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**United States Government Accountability Office  
Washington, DC 20548**

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## Decision

**Matter of:** METAG Insaat Ticaret A.S.

**File:** B-401844

**Date:** December 4, 2009

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James H. Roberts III, Esq., Van Scoyoc Kelly PLLC, for the protester.  
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Paula A. Williams, Esq., and Ralph O. White, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging agency's evaluation is denied where the record supports the reasonableness of the evaluations.

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### DECISION

METAG Insaat Ticaret A.S. (METAG) of Ankara, Turkey protests the award of a contract to Serka Insaat Ve Ticaret A.S. (Serka) of Istanbul, Turkey under request for proposals (RFP) No. W912ER-09-R-0004, issued by the Department of the Army, Army Corps of Engineers, for design and construction services. METAG argues that the agency's evaluation and its subsequent award to a significantly higher-priced offeror were improper.

We deny the protest.

On November 13, 2008, the Corps issued this RFP for a contractor to design and construct a strategic airlift ramp and hot cargo pad at the Manas Air Base in Kyrgyzstan. The solicitation contemplated award of a fixed-price contract to the responsible offeror whose proposal was most advantageous to the government, price and other factors considered. RFP at 6. The RFP identified the following evaluation factors which were of equal importance: (1) price; (2) management and technical (with subfactors for management capabilities, technical capabilities, and subcontracting); (3) experience (with subfactors for design experience and construction experience); and (4) past performance (with subfactors for prime contractor past performance and subcontractor past performance). *Id.* at 8-13. Under the non-price factors and subfactors, proposals were to be rated as either outstanding (O), good (G), acceptable (A), marginal (M), susceptible to being made acceptable (SA), unacceptable (U), or neutral (N). *Id.* at 7.

For the price evaluation, the RFP stated that price proposals would be evaluated for (1) completeness, *i.e.*, the degree to which an offeror has priced all aspects of the work; and for (2) reasonableness, *i.e.*, the offeror's proposed prices would be compared to the independent government estimate (IGE) as well as to the proposed prices of the other offerors. RFP at 13. In addition, offerors were required to complete and submit a cost breakdown sheet which was included as an attachment to the RFP. This cost breakdown sheet asked offerors to provide cost/price information such as direct labor costs; construction equipment cost; construction material costs; subcontracting costs; overhead costs, and profit costs. RFP attach. 3, Cost Breakdown Sheet.

The RFP advised that award would be made without conducting discussions unless the agency otherwise determined discussions to be necessary. *Id.* at 7, 13.

Nine offerors, including METAG and Serka, submitted proposals by the extended closing date of February 6, 2009. The agency convened a technical evaluation team to evaluate offerors' proposals under the non-price factors; the team prepared consensus evaluation reports which were referenced and incorporated into a source selection memorandum. As a result of this review, three of the proposals received (from offerors C, E, and F) were excluded from further consideration for reasons not relevant here. Agency Report (AR), Source Selection Memorandum, at 13. For the remaining six offerors, the evaluation results under the non-price factors were as follows:

	<b>METAG</b>	<b>A</b>	<b>B</b>	<b>D</b>	<b>Serka</b>	<b>G</b>
<b>Management/Technical</b>	<b>M</b>	<b>M</b>	<b>M</b>	<b>M</b>	<b>A</b>	<b>A</b>
--Management Capabilities	M	A	A	M	A	G
--Technical Capabilities	M	M	M	M	G	M
--Subcontracting	M	M	M	U	A	A
<b>Experience</b>	<b>G</b>	<b>G</b>	<b>M</b>	<b>G</b>	<b>A</b>	<b>A</b>
--Design Experience	G	A	M	A	G	M
--Construction Experience	G	G	M	G	A	A
<b>Past Performance</b>	<b>G</b>	<b>O</b>	<b>A</b>	<b>G</b>	<b>G</b>	<b>G</b>
--Prime Contractor Past Performance	G	O	A	G	G	O
--Subcontractor Past Perf.	A	N	N	N	N	A

AR exh. 8, Consensus Evaluation Report, at 2-3.

The agency's cost analyst evaluated offerors' price proposals and prepared a price analysis report which was also referenced and incorporated into the source selection memorandum.

The results of the price evaluation were as follows (with results omitted for the offerors who were eliminated from further consideration after evaluation of the non-price factors):

	<b>Total Evaluated Price</b>	<b>Difference From IGE</b>	<b>Reasonableness</b>	<b>Completeness</b>
<b>METAG</b>	\$21,521,210.00	[Redacted]-	No	Yes
<b>A</b>	\$24,494,090.70	[Redacted]	No	Yes
<b>B</b>	\$28,929,637.44	[Redacted]	Yes	Yes
<b>D</b>	\$32,890,900.00	[Redacted]	Yes	Yes
<b>Serka</b>	\$32,891,861.76	[Redacted]	Yes	Yes
<b>G</b>	\$41,147,800.00	[Redacted]	Yes	Yes
<b>IGE</b>	[Redacted]			

AR exh. 7, Price Analysis, at 1-2; AR exh. 8, Source Selection Memorandum, at 10.

As relevant here, the SSA discussed in detail the merits of each offeror’s proposal under each of the evaluation factors. According to the SSA, the proposal submitted by METAG

... has six significant weakness and eight weaknesses. The cumulative total of weaknesses might be sufficient to qualify as [a] deficiency. The offeror’s proposed cost is [Redacted] less than the IGE ... [and] was found unreasonable. Using the average cost of [Redacted], the offeror’s proposal is [Redacted] below the average offered price. I have concluded...[METAG’s] non-pricing and pricing proposals contain very high risk that unsuccessful project performance would occur.

Id. at 11-12. As a result, the SSA concluded that award to METAG would not be “most advantageous to the government.” AR, Source Selection Memorandum, at 14.<sup>1</sup> The SSA determined that Serka’s proposal represented the best value to the government notwithstanding its higher evaluated price, based on the following rationale:

The payment of a higher price is justified by a proportionate superiority in the non-pricing factors. SERKA’s non-pricing evaluation included ratings of Good

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<sup>1</sup> The SSA, for reasons not relevant to this protest, also concluded that award to Offerors A, B, or D, was not “most advantageous to the government.” AR, Source Selection Memorandum, at 14.

and Acceptable, they had no Marginal or Unacceptable ratings. In addition, they had the most significant strengths of all offerors [11 significant strengths and three strengths]. SERKA's pricing is within the average market price and lower than the government estimate.

AR exh. 8, Source Selection Memorandum, at 14. Following a debriefing, METAG filed this protest with our Office.

## DISCUSSION

METAG's protest raises numerous issues regarding the agency's evaluation of proposals and subsequent award determination. First, the protester alleges that Serka was ineligible for award because the agency evaluators had identified "significant informational deficiencies" in Serka's proposal concerning the qualifications of its key personnel, matters of security clearance, and logistical operations, which the protester argues were mandatory solicitation requirements.<sup>2</sup> Protester's Comments at 2-4.

The evaluation of technical proposals is a matter within the agency's discretion since the agency is responsible for defining its needs and the best methods for accommodating them. U.S. Textiles, Inc., B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2. Our Office will review a challenge to an agency's evaluation of a proposal only to determine whether the agency acted reasonably and in accord with the solicitation's evaluation factors and applicable procurement statutes and regulations. Manassas Travel, Inc., B-294867.3, May 3, 2005, 2005 CPD ¶ 113 at 2-3. A protester's mere disagreement with the agency's judgment in its determination of the relative merits of competing proposals does not establish that the evaluation was unreasonable. SDS Int'l Inc., B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127 at 6.

Here, under the management and technical factor, the RFP stated that offerors "should" provide information concerning the qualifications and background

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<sup>2</sup> METAG's initial protest also challenged the evaluation of its proposal under each of the three non-price factors on the basis that the firm merited ratings higher than those assigned, especially in comparison with SERKA. Protest at 6-7. In its report on the protest, the Corps refuted these allegations, specifically explaining the basis for METAG's proposal ratings, as well as the reasons why its proposal was not assigned the strengths METAG argued should have been assigned. In its comments in response to the agency report, METAG did not dispute the agency's explanation of the bases for the evaluation conclusions under the non-price factors. Accordingly, we consider these issues abandoned and will not consider them. See Council for Adult & Experiential Learning, B-299798.2, Aug. 28, 2007, 2007 CPD ¶ 151 at 5 n.5.

experience for each management personnel responsible for various aspects of the project such as logistical operations. In addition, offerors “should” describe how they would obtain security clearances and base access permissions in an expeditious manner. RFP at 8.

As the protester points out, the evaluators found that Serka’s proposal submission did not clearly indicate that Serka’s [Redacted] has the necessary RMS experience nor did the firm identify the individual who would be responsible for logistical operations. The evaluators also found that Serka had not described how necessary security clearances would be obtained in an expeditious manner. However, as stated above, this information was not made a mandatory requirement in the RFP. As a result of these identified proposal weaknesses, the agency assigned Serka’s proposal an “acceptable” rating as opposed to “good” under the management capabilities subfactor. AR exh. 6, Consensus Evaluation Report, at 5.

We find that the agency reasonably evaluated Serka’s proposal in accordance with the solicitation’s evaluation factors. Although it is true that Serka did not specifically identify certain management personnel and/or their requisite experience for those positions, the firm otherwise provided a detailed management approach that satisfied the solicitation management/technical requirements, including providing a mobilization plan, project execution plan, and organizational chart with accompanying clarifying descriptions and explanations. Therefore, we do not agree with the protester that the agency acted unreasonably in finding that Serka’s proposal was acceptable and eligible for award.

To the extent METAG believes that Serka’s proposal should have received a lower evaluation rating under this factor, we find the protester’s arguments to be nothing more than a mere disagreement with the agency’s evaluation judgment, which does not render the agency’s evaluation unreasonable. See SDS Int’l Inc., supra, at 6. For the record, we note that there were similar evaluation weaknesses identified in METAG’s proposal; that is, METAG (1) had not provided information for the individual responsible for logistical operations nor (2) had the protester described how it would obtain the necessary security clearances and base access permissions in an expeditious manner. AR exh. 5, Consensus Evaluation Report, at 3. These weaknesses did not result in a determination of unacceptability for either offeror—an Indication that the evaluations here treated offerors equally.

METAG next contends that the agency was required to conduct discussions since the cumulative total of identified weaknesses in METAG’s and Serka’s proposal could be considered a deficiency. The protester asserts that had discussions been conducted METAG could have addressed the various weaknesses in its proposal thereby

improving its rating under the non-price factors. In its view, the agency's failure to hold discussions was unreasonable.<sup>3</sup> Protester's Comments at 5-6. We disagree.

Where, as here, an RFP provides for award on the basis of initial proposals without conducting discussions, an agency may make award without discussions, unless discussions are determined to be necessary. Federal Acquisition Regulation § 15.306(a)(e). The contracting officer has broad discretion in deciding whether to hold discussions, which our Office will review only to ensure that it was reasonably based on the particular circumstances of the procurement. Incident Catering Servs., LLC, B-296435.2 et al., Sept. 7, 2005, 2005 CPD ¶ 193 at 9. The decision not to conduct discussions was unobjectionable.

METAG also asserts that the agency misevaluated its price proposal as unreasonably low, arguing that price reasonableness concerns whether a price is higher, not lower, than warranted. Protester's Comments at 6-8. In the context of a solicitation that provides for award of a fixed-price contract, an agency may, in its discretion, provide for the use of a price realism analysis for purposes of assessing whether a price is so low as to evince a lack of technical understanding on the part of the offeror and for assessing the risk inherent in an offeror's proposal. L-3 Commc'ns, KDI Precision Prod., Inc., B-290091 et al., June 14, 2002, 2002 CPD ¶ 155 at 5-6.

METAG acknowledges that the RFP provides for assessing the offerors' understanding of the solicitation requirements, Protester's Comments, at 8, but insists, in conclusory form, that there is no evidence to indicate that METAG's pricing would result in any performance problems. We think the agency nevertheless could reasonably be concerned that METAG's low evaluated prices created an unacceptable risk that the firm could successfully perform the project. In other words, the protester's pricing reasonably raised questions as to whether METAG's prices were realistic for the work to be performed and whether METAG had a clear understanding of all the solicitation requirements. In this regard, the risk of poor performance when a contractor is forced to provide services at little or no profit is a legitimate concern in evaluating proposals. Molina Eng'g, Ltd/Tri-J Indus., Inc. Joint Venture, B-284895, May 22, 2000, 2000 CPD ¶ 86 at 4. In sum, based on our

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<sup>3</sup> METAG's contention that the agency had established a competitive range comprised of six offerors, including itself, is not supported by the written record. Despite the protester's assertion to the contrary, a competitive range was never established; consequently, any obligation to conduct discussions based on a competitive range decision never arose.

review of the entire record, we find no basis to question the agency's evaluation findings, nor its award determination.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel