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**Comptroller General
of the United States**

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

Decision

Matter of: Freedom Systems, LLC

File: B-405846; B-405846.2

Date: January 5, 2012

Reginald B. McFadden for the protester.

Darian A. Stanford, Esq., Slinde Nelson, for Command Management Services, Inc., the intervenor.

Capt. Michael E. Murray, Department of the Army, for the agency.

Susan K. McAuliffe, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation and rejection of proposal as technically unacceptable is denied where the record reflects that the evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Freedom Systems, LLC, of Manassas, Virginia, protests the evaluation and rejection of its proposal as technically unacceptable, and the award of a contract to Command Management Services, Inc. (CMS), of Portland, Oregon, under request for proposal (RFP) No. W9124D-11-R-0029, issued by the Department of the Army for meals, lodging and transportation for Armed Forces applicants processing through the Baltimore Military Entrance Processing Station (MEPS), Baltimore, Maryland.

We deny the protest.

The RFP, issued on May 18, 2011, anticipated the award of a fixed-price requirements contract for a base year and four 1-year option periods to the firm that submitted the proposal deemed most advantageous to the agency considering technical evaluation factors for mission capability and past performance (where mission capability was to be significantly more important than past performance), and price (where the technical factors combined were to be significantly more important than price). RFP at 15. Each offeror was required to submit an original proposal (including the firm's technical proposal and price proposal) and four copies of its technical proposal. The RFP emphasized that the proposal submissions, including each copy, was to be

complete. Offerors were expressly required to submit “as a minimum, the content specified” in the RFP and advised that a proposal without the required information “may be judged unacceptable and risk not being considered for award.” Id. at 9. The RFP required the submission of “supporting data” for an offeror’s statements of compliance with solicitation requirements, and each firm was required to show “how the offeror intends to perform/comply with all of the requirements of the solicitation making certain the ... evaluation factors (and elements) are discussed.” Id. at 11.

In particular, each copy of the technical proposal submitted by an offeror was to include current inspection reports and other documentation (such as a state health inspection report for proposed food preparation/dining facilities, fire/safety, pool/spa and elevator inspection reports, the hotel operator’s permit/license, and proof of insurance for any proposed hotel shuttle van). Id. at 11. In this regard, offerors were specifically advised that the failure to submit this required documentation, or the reason for their omission, could render the proposal unacceptable. Id. at 12. Similarly, for the evaluation of the firms’ proposed meals, offerors were required to submit in their technical proposals “sample menus for each meal ... [that] depict the type of meals expected to be served ... generic menus may be determined unacceptable.” Id.

Fifteen proposals were received by the scheduled June 23 closing date and were evaluated.¹ The protester’s proposal, at \$7,839,826.50, was the lowest-priced proposal received under the RFP, however, it was rejected due to its technically unacceptable rating under the mission capability factor. Although the evaluators found that the proposal met numerous RFP requirements, they cited several weaknesses and deficiencies. Two significant weaknesses concerned the proposal’s lack of clarity regarding the location for serving breakfast and the protester’s proposed plan for addressing applicant overflow. Additionally, the agency identified several deficiencies based on the protester’s failure to provide a menu for breakfast, a menu for meals to be provided to late arrivals, required inspection reports, and the driving time from the hotel to the airport and the MEPS facility. The protester’s proposal was rated as excellent under the less important technical factor, past performance.

An award, at \$11,165,914.70, was made to CMS on the basis of its highest-rated proposal (the awardee’s proposal was rated excellent under both the mission capability and past performance factors, with several cited strengths and significant strengths, and no cited weakness or deficiency). The agency determined that the price premium associated with the award to CMS (compared to the next highest-rated proposal, which was slightly lower-priced but substantially lower-rated than

¹ Since the protester is not represented by counsel, a protective order was not issued in this matter. This decision includes a general discussion of the evaluation, although our review of the protest record included the full evaluation record.

the CMS proposal) was warranted in light of the substantial benefits associated with that firm's technical proposal. This protest followed.

In its protest, Freedom Systems challenges the various weaknesses and deficiencies identified by the agency and the agency's selection decision. As a general matter, when reviewing a protest against the propriety of an evaluation, it is not our function to independently evaluate proposals and substitute our judgment for that of the contracting activity. Barents Group, L.L.C., B-276082, B-276082.2, May 9, 1997, 97-1 CPD ¶ 164 at 6. Rather, we will review an evaluation to ensure that it was reasonable and consistent with the evaluation criteria in the solicitation and applicable procurement statutes and regulations; a protester's mere disagreement with the evaluation does not show it lacked a reasonable basis. Id.

Here, the RFP expressly required technical submissions from each offeror demonstrating the firm's capability and the merits of its proposed approach to meet the agency's requirements. Contrary to the protester's suggestion that the RFP did not provide for rejection of a proposal where it failed to meet a stated element of the mission capability evaluation factor, the RFP clearly established that a firm's failure to submit required documentation, such as sample menus and inspection reports, could result in rejection of the proposal as technically unacceptable. For example, without a breakfast menu (the record reflects that the protester provided a single menu that referenced only lunch and dinner and did not include any breakfast items), the agency was unable to evaluate the adequacy of the proposed meal, an important service to be provided under the contract. Thus, the agency's conclusion that the protester's failure to provide the required breakfast menu information was a material deficiency, which rendered its proposal unacceptable, was consistent with the terms of the RFP.

Similarly, the record reflects that the agency evaluators assigned the protester a deficiency because the protester's technical proposal did not include the inspection reports and other certifications required by the RFP. The protester challenges this finding arguing that its "original" proposal submission contained the missing documentation. Our review of the record, however, confirms the agency's report that none of the firm's technical proposal copies included the required documentation. As explained above, the RFP required offerors to provide four "complete" copies of their technical proposals for evaluation and to include the inspection reports and required documentation in "each copy" of their technical proposals. RFP at 10-11. The record further reflects that the agency used the incomplete technical proposal copies, which the protester provided, for its evaluation. Given that the protester failed to follow the solicitation's instructions regarding the submission of complete copies of its technical proposal, and that the agency relied on the incomplete copies to perform its evaluation, we have no basis to conclude that the agency acted unreasonably in not noticing the protester's error. We also know of no basis to shift responsibility to the agency for the protester's mistake. Offerors bear the burden of submitting an adequately written proposal by including all information that was requested or necessary for its proposal to be

evaluated. LS3 Inc., B-401948.11, July 21, 2010, 2010 CPD ¶ 168 at 3, n.1; Hi-Tec Sys., Inc., B-402590, B-402590.2, June 7, 2010, 2010 CPD ¶ 156 at 3.

In sum, since the RFP here required the offerors to include, as a minimum, specific technical information for evaluation, and, in fact, advised offerors that proposals could be rejected as technically unacceptable for omitting the information, we consider reasonable the agency's determination that the protester's failure to submit the required information rendered its proposal technically unacceptable.² Given the reasonableness of the agency's rejection of the proposal under the terms of the RFP, we have no basis to question the reasonableness of the agency's selection of the higher-priced, but technically superior, proposal from CMS.

The protest is denied.

Lynn H. Gibson
General Counsel

² The protester also filed a supplemental protest arguing that CMS's proposal should not have been rated excellent since its proposed hotel was not yet in operation at the time of the agency's evaluation. We dismiss this allegation as it was not timely filed. The record shows that the protester knew, no later than September 20, the identity of the awardee, its proposed hotel, and that the firm's proposal based on that hotel had been rated excellent. Although the protester states it did not research publicly available information about the awardee's proposed hotel until weeks after that date, it has not explained why the same information would not have been available as early as September 20. The supplemental protest, filed on October 21, more than 10 days from when the protester should have known the basis for its protest, therefore, is untimely. 4 C.F.R. § 21.2(a)(2) (2011). Moreover, in light of the reasonableness of the rejection of the protester's proposal, as discussed above, the firm lacks standing to challenge the award here, since the agency reports it received several other acceptable proposals. 4 C.F.R. §§ 21.0(a)(1), 21.1(a).