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

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## Decision

**Matter of:** Chandler Solutions, LLC

**File:** B-409655.2

**Date:** August 13, 2014

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Joseph A. Whitcomb, Esq., Whitcomb Law, for the protester.  
Jeffrey B. Salter, JDR Unlimited, LLC, the intervenor.  
Erik Claudio, Esq., and Nathaniel J. Greeson, Esq., Department of Homeland Security, Federal Emergency Management Agency, for the agency.  
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that agency improperly evaluated awardee's quotation as acceptable under requirement that vendor submit official documentation that it had applied for corporate armed guard license is denied where agency waived requirement that documentation be official, and accepted awardee's representation that it had applied for license because waiver of requirement for official documentation did not prejudice protester.

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### DECISION

Chandler Solutions, LLC, of Seattle, Washington, a small business, protests the award of a contract to JDR Unlimited, LLC, of Melbourne, Florida, by the Department of Homeland Security, Federal Emergency Management Agency (FEMA), under request for quotations (RFQ) No. HSFE10-14-Q-0003 for armed guard services at the Federal Regional Center, in Bothell, Washington, and the Northview Corporate Center, in Lynnwood, Washington. Chandler argues that FEMA miscalculated JDR's quotation as acceptable, and challenges the contracting officer's determination that JDR is responsible.

We deny the protest.

### BACKGROUND

FEMA issued the RFQ on November 26, 2013, seeking quotations to provide commercial armed guard services for a base year and up to 4 option years. RFQ at 1, 13. The RFQ, set aside for service-disabled veteran-owned small businesses

(SDVOSB), provided that a contract would be awarded to the firm that submitted the lowest-priced technically acceptable quotation. Id. at 1, 44, 49. Quotations were to be evaluated under four evaluation factors: transition plan, training plan, state and local requirements, and past performance. RFQ, Evaluation Factors attach., at 1-2.

Under the state and local requirements evaluation factor, the RFQ instructed vendors to provide licensing information:

The contractor shall obtain, possess and maintain state and/or local licenses and requirements,<sup>1</sup> except where precluded by local law or ordinance, by the deadline for submittal of quotes or provide official documentation from Washington State Licensing Department stating that the offeror has applied for state licensing by February 28<sup>th</sup> 2014.

Id. at 2.

FEMA received eight quotations by the January 3, 2014, due date. The agency rejected two quotations as late, and evaluated the remaining six quotations.

Chandler's quotation stated that it was submitted by Chandler Solutions, LLC, an SDVOSB. Protest, exh. at 146 (Chandler Initial Proposal at 3).<sup>2</sup> The quotation then stated that "Chandler Solutions and Chandler Security are the same company with the same management," and that Chandler Solutions competed for federal contracts as an SDVOSB, while Chandler Security engaged in state and private contracting. Id. In addressing the state and local requirements factor, the quotation listed the firm's business license number, and stated, "[w]e have our Private Security Guard Qualifying License." Protest, exh. at 165 (Chandler Initial Proposal at 22). Chandler's quotation did not include official documentation from Washington State regarding licensing.

FEMA's initial evaluation rated Chandler's quotation as acceptable under the state and local requirements factor, but rated it as "clarifications needed" under other factors. Agency Report (AR), exh. at 144 (Source Selection Decision Document at 22). FEMA then established a competitive range of five quotations, including Chandler's and JDR's. AR at 3. The contracting officer concluded that none of the quotations had the required state documentation regarding licensing.<sup>3</sup> Additionally,

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<sup>1</sup> The RFQ identified four such requirements: commercial armed guard service licensing, insurance/bonding, employee permits for carrying weapons and detaining persons, and adherence to minimum age requirements. Id.

<sup>2</sup> Neither the protest nor the agency report separately identified their exhibits, but both included "Bates" numbering for each page.

<sup>3</sup> This explanation was obtained during a conference call with the parties held by our Office, the substance of which our Office synopsis in a fax to all parties.

FEMA was unsuccessful in obtaining information from the state licensing agency about whether any specific firm had submitted an application. As a result, the contracting officer elected to accept representations by vendors that they possessed, or had applied for, a state license under the state and local requirements factor. Conference Call Summary E-mail from GAO to Parties, July 22, 2014, at 1.

On February 27, FEMA notified Chandler of the inclusion of its quotation in the competitive range, and initiated discussions. The letter identified technical issues for Chandler to address in a revised quotation, none of which concerned Chandler's state license representations. AR, exh. at 154-55 (E-mail Discussions Letter to Chandler, Feb. 27, 2014, at 1-2). The letter also advised Chandler that its price exceeded the government estimate, and that revised quotations were due by March 6. Id. at 155.

The discussions e-mail intended for JDR was sent to the wrong e-mail address, and the firm did not submit a revised quotation on the date FEMA provided to the other competitors. As a result, on March 11, FEMA sent an e-mail to the correct e-mail address for JDR, and requested a response. On March 13, JDR responded with a revised quotation. Its revised quotation included a copy of a check and a signed application by JDR for a state license, both dated February 28, 2014. AR, exh. at 145 (Source Selection Decision Document, at 23 n.10).

In evaluating JDR's revised quotation, FEMA accepted JDR's signed application form and check as sufficient to show that it had applied for the required license, and rated the firm acceptable under the state and local requirements factor. Id. at 151 (Source Selection Decision Document at 29 n.11); AR at 10. The evaluation results for the five revised quotations in the competitive range were as follows:

<b>Vendor</b>	<b>Transition Plan</b>	<b>Training Plan</b>	<b>State/Local Req'ments</b>	<b>Past Performance</b>	<b>Price (millions)</b>
<b>JDR</b>	Acceptable	Acceptable	Acceptable	Neutral	\$4.1
<b>Offeror A</b>	Acceptable	Unacceptable	Acceptable	Acceptable	\$5.2
<b>Offeror B</b>	Acceptable	Acceptable	Unacceptable	Acceptable	\$3.1
<b>Chandler</b>	Unacceptable	Acceptable	Acceptable	Acceptable	\$5.9
<b>Offeror C</b>	Unacceptable	Unacceptable	Unacceptable	Neutral	\$4.1

AR, exh. at 151 (Source Selection Decision Document, at 29).

On April 22, FEMA awarded the contract to JDR as the only firm to submit a technically acceptable quotation. Contracting Officer's Statement at 8. Chandler filed this protest after a debriefing.

## ANALYSIS

Chandler argues that FEMA should have found JDR's quotation unacceptable under the state and local requirements factor because JDR did not apply to Washington

State for a commercial armed guard service license, which, Chandler alleges, may not have been submitted until April 2014. Protest at 2. Chandler also argues that FEMA unreasonably found JDR to be a responsible contractor because the firm lacked experience performing armed guard services, and because of the firm's alleged failure to apply for a license by the specified date.<sup>4</sup> Id. at 2-3. Finally, Chandler argues that its own quotation should have been rated acceptable. Id. at 3.

As explained below, the record supports FEMA's evaluation of JDR's quotation as acceptable under the state and local requirements factor, and acceptable overall. Further, Chandler's allegations do not provide a basis to question the contracting officer's responsibility determination. Since the RFQ provided for award to be made to the firm with the lowest-priced acceptable quotation, and JDR's price was lower than Chandler's, we need not address Chandler's remaining challenges because any errors in the evaluation of its own quotation were not prejudicial.

#### Untimely Grounds of Protest Raised in Comments

As an initial matter, Chandler raised several new arguments in its comments on the agency report, including challenging whether FEMA's discussions were meaningful, and arguing that FEMA's decision to allow JDR to submit a late revised quotation improperly favored JDR. Chandler's comments on the agency report were originally due on June 19, based on its receipt of the agency report on June 9. On the afternoon of June 19, Chandler's counsel requested a 1-day extension to submit its comments, which our Office granted. In doing so, our Office expressly noted that the extension of the due date for filing comments could not extend the time for raising new grounds of protest. E-mail from GAO to Parties, June 19, 2014, at 4:29 p.m. (stating that an extension of the comments due date does not toll our timeliness requirements for the filing of new protest contentions, and citing Exelon Servs. Fed. Group, B-291934, Apr. 23, 2003, 2003 CPD ¶ 86 at 7 n.4). Chandler then filed its comments on June 20 (which was thus 11 days after receipt of the agency report), in which it raised these new arguments.

Chandler's new arguments are untimely because they were filed more than 10 days after Chandler's counsel received the agency report, on which the new grounds of protest were based. New or amended grounds of protest must be filed within 10 days of receipt of information giving rise to them, as provided in our Bid Protest Regulations.<sup>5</sup> 4 C.F.R. § 21.2(a)(2) (2014); Raydar & Assocs., Inc., B-401447, Sept. 1, 2009, 2009 CPD ¶ 180 at 6 n.3.

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<sup>4</sup> Chandler acknowledges that Washington State issued a license to JDR on April 3. Protest, exh. at 96.

<sup>5</sup> Chandler argues that its new arguments should be viewed as violations of the Procurement Integrity Act, and that our Bid Protest Regulations should allow it 14 days to raise these arguments, citing 4 C.F.R. § 21.5(d). Chandler does not  
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## Evaluation of JDR Quotation

Chandler argues that FEMA unreasonably evaluated JDR's quotation as acceptable under the state and local requirements factor because the firm lacked--and allegedly had not applied for--the state license specified in the RFQ by February 28. Protest at 2. As evidence, Chandler has supplied e-mail messages between its president and a licensing manager at the State of Washington Department of Licensing. In one e-mail, the licensing manager stated that the office received an application from the CEO of JDR on April 1, that the application was dated February 28, and that the license was issued on April 3. Protest, exh. at 96. When Chandler's president then inquired whether JDR's license application had been backdated, the licensing manager replied that "[i]t looks that way." Id. at 95. Accordingly, Chandler argues that FEMA could not reasonably have found JDR acceptable under the state and local requirements factor.

FEMA responds that it reasonably evaluated JDR as acceptable under the state and local requirements factor as it did with the other quotations; that is, based on the firm's representations, which were backed up by the firm's submission of a check and a signed application that appeared to conform to the RFP requirements. AR at 10; AR, exh. at 151 (Source Selection Decision Document, at 29 n.11). FEMA argues that Chandler's e-mail evidence (which was not available to FEMA's evaluators) does not show that FEMA's evaluation was unreasonable. AR at 10-11.

FEMA also argues that since neither JDR nor Chandler provided the evidence of state licensing specified in the RFQ, the contracting officer reasonably waived the requirement for official state documentation for both vendors, and found both acceptable on that basis. Supplemental AR at 2. FEMA also argues that Chandler was not prejudiced by the waiver because state records now show that only an affiliated company, Chandler Security LLC, has ever applied for or obtained the

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explain how its allegations demonstrate a violation of any provision of the Procurement Integrity Act, 41 U.S.C. §§ 2101-2107 (2012), nor do we accept its argument that the cited regulation provides an exception to our timeliness rules.

required license from Washington State, and thus Chandler Solutions, LLC, the SDVOSBC firm submitting the quotation, still lacks the required license.<sup>6</sup> Id. at 3-5.

We agree that FEMA reasonably waived the requirement for official state documentation for both firms. Neither JDR's nor Chandler's quotation provided official state documentation that the firm possessed a corporate license or had applied for one. Where an agency waives a requirement for both the protester and awardee that neither fully meets, there is no basis for our Office to find that the protester was prejudiced by the agency's action. E.g., Geo-Seis Helicopters, Inc., B-294543, Nov. 22, 2004, 2004 CPD ¶ 237 at 3 (no prejudice shown where agency found letter of intent to purchase a helicopter acceptable and neither vendor provided proof of ownership or binding purchase agreement as solicitation required); see also CourtSmart Digital Sys., Inc., B-292995.8, Dec. 9, 2004, 2005 CPD ¶ 28 at 6 (no prejudice shown where agency waived field-testing requirement and neither awardee nor protester met requirement for the system it had offered).

Here, Chandler provided neither evidence that its own quotation included official state documentation that it had applied for a license, nor evidence that it would have altered its quotation to its advantage (i.e., lowered its price sufficiently to displace JDR) if notified of the waiver. As a result, Chandler was not prejudiced by the waiver. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. Armed Forces Hospitality, LLC, B-298978.2, B-298978.3, Oct. 1, 2009, 2009 CPD ¶ 192 at 9-10; McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. Chandler has made no such showing.

Finally, since FEMA reasonably evaluated JDR's quotation as acceptable, JDR's quotation was lower priced, and the RFQ provided for award to the lowest-priced

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<sup>6</sup> FEMA argues that public records confirm that Chandler Solutions LLC and Chandler Security LLC are separate legal entities, albeit apparently with common ownership, and that the claim in Chandler's quotation that "Chandler Solutions and Chandler Security are the same company," was inaccurate. Supp. AR at 4. As a result, Chandler Solutions could only be deemed acceptable under the state and local requirements factor by virtue of the waiver. In contrast, Washington State issued a license to JDR Unlimited on April 3. Protest, exh. at 96; Supplemental AR, exh. 4 (Washington State licensing database entry for JDR Unlimited).

technically acceptable quotation, any errors in the technical evaluation of Chandler's quotation are not prejudicial.

The protest is denied.<sup>7</sup>

Susan A. Poling  
General Counsel

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<sup>7</sup> Chandler argues that FEMA also unreasonably found JDR responsible, but acknowledges that Washington State has issued the required license to JDR. To the extent that Chandler believes JDR's alleged lack of experience also calls into question the contracting officer's affirmative determination of responsibility, Chandler has failed provide a factual basis to support its allegations sufficiently to call into question the contracting officer's discretion. 4 C.F.R. § 21.5(c).