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# Decision

**Matter of:** Quality Specialty Products

**File:** B-417279.3

**Date:** October 3, 2019

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## DIGEST

Protest that agency improperly evaluated the protester's proposal as technically unacceptable is denied where the record shows that the agency's evaluation was reasonable and in accordance with the solicitation requirements.

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## DECISION

Quality Specialty Products (QSP), of Melville, New York, protests the award of indefinite-delivery, indefinite-quantity (IDIQ) contracts to Sorinex Exercise Equipment (Sorinex), of Lexington, South Carolina, and Atlantic Diving Supply (Atlantic), of Virginia Beach, Virginia, by the Department of the Army, under request for proposals (RFP) No. W56HZV-19-R-0028, for commercial Army combat fitness test (ACFT) equipment. The protester challenges the agency's evaluation of its proposal as technically unacceptable.

We deny the protest.

## BACKGROUND

On December 28, 2018, the Army issued the RFP as a small business set-aside, seeking proposals for the delivery of ACFT equipment sets. RFP at 7.<sup>1</sup> An ACFT set consists of 11 types of fitness equipment: hex bar, 10-pound bumper plates, 15-pound

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<sup>1</sup> The RFP was amended 11 times. Citations are to the conformed copy of the RFP included as exhibit 2 of the agency report.

bumper plates, 25-pound bumper plates, 35-pound bumper plates, 45-pound bumper plates, barbell collar, nylon sled with pull strap, 10-pound medicine ball, kettlebells, and a metric tape measure. Id. at 15. The solicitation contemplated awards of up to two, fixed-price IDIQ contracts, each with a 3-year ordering period. Id. at 7.

The RFP included a description/specifications/work statement, delineating the specification requirements for each type of fitness equipment being solicited. Id. at 15-16. At issue here, the specifications for the sled with pull strap listed five specific requirements, including the requirement for “reinforced padding/strips.” Id. at 16. The specifications for the measuring tape also listed specific requirements, including the requirement for “Long-lasting Fiberglass Blades with vinyl/PVC coating in ABS shatter resistant case.” Id.

Additionally, and relevant here, offerors were required to complete a technical information questionnaire (questionnaire) which was structured to align with the RFP’s description/specifications/work statement for the solicited fitness equipment, including the sled with pull strap, and the measuring tape.<sup>2</sup> RFP attach. 2, Technical Information Questionnaire at 1-2. Of particular relevance to the protest, the questionnaire listed in one column (titled, “Evaluation Question”) various specification questions and, in a separate column (titled, “Vendor Response”), offerors were to affirmatively respond yes/no to each evaluation question. Id. at 1-2. The questionnaire also stated that offerors’ response to each question “must be supported with substantiating data” see, id. at 1, which the agency would evaluate to determine whether the offered equipment meets the stated specification requirements. RFP at 69. In this regard, the RFP expressly stated: “The burden of providing thorough, clear, and complete information rests with the offeror. Unsubstantiated claims may result in an Unacceptable rating which will make the offeror ineligible for award.” Id. at 70.

For the sled with pull strap equipment, the questionnaire required offerors to verify if (1) the sled size is between 23” and 25” (length); between 20” and 21” (width); and if (2) the sled includes reinforced padding/strips. RFP attach. 2, Technical Information Questionnaire at 1-2. For the measuring tape, offerors were to verify if (1) the open reel tape measure is 1x30m; and if (2) it is a metric scale with long-lasting fiberglass blades with a vinyl/PVC coating 98 to 100 feet/30M by ¼ to ½ inch. Id. at 2.

The solicitation stated that awards would be made on a lowest-price, technically acceptable basis, considering two factors, technical and price.<sup>3</sup> RFP at 68. Under the

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<sup>2</sup> Of the 11 types of fitness equipment, the medicine ball and kettlebells were the two not listed on the questionnaire. RFP attach. 2, Technical Information Questionnaire.

<sup>3</sup> The RFP required offerors to complete a price evaluation worksheet which included separate contract line item numbers (CLINs) corresponding to each solicited fitness equipment item. For each CLIN, offerors were to indicate if the offered fitness equipment item was domestic, foreign exempt, foreign non-exempt, or some

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technical factor, proposals would be evaluated on an acceptable/unacceptable basis and any proposal that received an unacceptable rating would be ineligible for award.<sup>4</sup> Id. at 69-70.

The RFP explained that the evaluation process would begin with a review of proposals to determine their compliance with the solicitation instructions. Then, unless otherwise rejected, each offeror's price proposal would be reviewed to determine a total evaluated price (TEP). Next, the agency would evaluate the two lowest-priced proposals under the technical factor on an acceptable/unacceptable basis. If one or both of the lowest-priced proposals were determined to be unacceptable, the agency would conduct a technical evaluation of the next lowest-priced proposal until the two lowest-priced technically acceptable proposals were identified. Id. at 69.

On March 11, 2019, the agency received timely proposals from 11 offerors, including the protester. Agency Report (AR) exh. 7, Source Selection Decision Memorandum at 8. In performing its evaluation, the agency reviewed each proposal for compliance with the solicitation instructions; only four proposals were evaluated as compliant. Id. exh. 12, Memorandum for Record at 1 (Mar. 12, 2019).<sup>5</sup> The agency reviewed the proposed prices of these four offerors and calculated a TEP for each offeror. Id. exh. 7, Source Selection Decision Memorandum at 12. The lowest-priced offer was submitted by QSP with a TEP of \$14,504,455.68. The second lowest-priced offer was submitted by ProMaxima MFG, with a TEP of \$20,500,480.00. The third lowest-priced offer was submitted by Sorinex, with a TEP of \$31,104,902.40; and the fourth lowest-priced offer was submitted by Atlantic, with a TEP of \$32,673,189.12. Id.

The agency then evaluated the two lowest-priced proposals, submitted by QSP and ProMaxima, under the technical factor for acceptability, using the completed

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combination thereof; and to list the country of origin and the name of the manufacturer. RFP attach. 1, Price Evaluation Worksheet.

<sup>4</sup> The solicitation notified offerors that the government reserved the right to conduct a pre-award survey on any or all offerors, or its subcontractors, to assist the agency in the evaluation of proposals. In conducting the pre-award survey, the solicitation also stated that offerors might be asked to provide "financial, technical, production, or managerial background information." RFP at 69.

<sup>5</sup> While the agency determined that the protester's proposal was compliant, the evaluators noted that there was "significant uncertainty" regarding the protester's manufacturer, [DELETED], which was identified as the sole domestic, small business manufacturer for all 11 items of fitness equipment. AR exh. 12, Memorandum for Record at 3. To resolve this uncertainty, the agency decided to conduct a pre-award survey, to verify if [DELETED] was the sole domestic manufacturer for all the solicited equipment and also to verify what percentage of the estimated contract value would be manufactured by small business concerns. Id. at 3-4.

questionnaire and substantiating data submitted by these two offerors. QSP's proposal received an unacceptable rating because two of its offered ACFT equipment items did not meet the solicitation requirements. Id. exh. 6, Proposal Evaluation Worksheet at 2.<sup>6</sup> Specifically, for QSP's offered sled with pull strap, the evaluators rated the sled unacceptable because the commercial product literature submitted by QSP did not demonstrate that the straps on the sled were reinforced or padded. The evaluators also noted that the images for the sled which were included in the protester's proposal did not depict reinforced or padded straps on the sled. Id. at 3. The protester's offered measuring tape was rated unacceptable because neither the commercial product literature nor the images of a measuring tape furnished by QSP in its proposal demonstrated that the measuring tape met the specification requirements for fiberglass, 100/30m, folding handle or a fiberglass blade PVC/vinyl coating. Id. at 4. On the basis of the above findings, QSP's proposal was found ineligible for further consideration for award.<sup>7</sup>

The agency evaluated the next two proposals, submitted by Sorinex and Atlantic, and each proposal was evaluated as technically acceptable. Id. exh. 7, Source Selection Decision Memorandum at 14-16. On June 19, the Army informed the protester that Sorinex and Atlantic were the two apparent successful offerors. Id. exh. 3, Pre-Award Notification to QSP. On June 26, the agency awarded the IDIQ contracts to Sorinex and Atlantic. Joint Contracting Officer's Statement and Memorandum of Law at 6. That same day, the agency advised QSP that it was not an awardee. AR exh. 5, Notice to Unsuccessful Offeror. On July 1, QSP filed this protest with our Office.

## DISCUSSION

QSP contends that the agency unreasonably evaluated its proposal as technically unacceptable and ineligible for award, arguing that the agency did not fairly consider all of the information contained in its proposal. Protest at 8; Comments at 12. The protester also contends that the agency's evaluation was inconsistent with the terms of the solicitation because the agency evaluated its proposal against unstated solicitation requirements. Protest at 10-11; Comments at 18. For the reasons discussed below, we find that the agency reasonably evaluated QSP's proposal in accordance with the solicitation.<sup>8</sup>

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<sup>6</sup> Our Office added consecutive numbers to the pages of this document.

<sup>7</sup> ProMaxima's proposal was evaluated as technically unacceptable and was not considered for award. Our decision will not discuss this offeror further.

<sup>8</sup> In addition to its primary complaints challenging the agency's evaluation of its proposal as technically unacceptable, QSP presents arguments that are in addition to, or variations of, its primary complaints, including assertions that the agency: conducted a pre-award survey before evaluating its proposal and making an award decision; and improperly determined the protester was not a responsible small business. Protest at 5; Comments at 19-21. Although our decision does not address all of QSP's multiple  
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It is well established that the evaluation of proposals is a matter within the discretion of the contracting agency. ADNET Sys., Inc., B-413033, B 413033.2, Aug. 3, 2016, 2016 CPD ¶ 211 at 7. In reviewing protests challenging an agency's evaluation, our Office does not reevaluate proposals, or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria as well as applicable procurement statutes and regulations. Desbuild, Inc., B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 3. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. Novetta, Inc., B-414672.4, B-414672.7, Oct. 9, 2018, 2018 CPD ¶ 349 at 13; Innovative Mgmt. & Technology Approaches, Inc., B-413084, B-413084.2, Aug. 10, 2016, 2016 CPD ¶ 217 at 4

In its protest, QSP contends that it furnished substantiating data in its proposal to verify that its offered sled with pull strap included reinforced padding/strips, as required by the solicitation. See Protest exh. 5, QSP's Substantiating Documents at 5.<sup>9</sup> As support, the protester points out that for each evaluation question listed in the questionnaire for the sled with pull strap, it affirmatively answered "yes" and provided the manufacturer's technical specifications and three pictures "that unmistakably show the reinforced padding/strips" for the sled. Protest at 12-13. Since "the reinforced padding/strips are unmistakably shown and clearly identifiable in each of the three (3) pictures" see Protest at 8, the protester argues that the substantiating data and its affirmative response were "clearly enough for the [g]overnment to conclude" that its proposal met all the solicitation requirements. Comments at 6-7

In response, the agency explains that it reviewed the substantiating data provided by the protester in its entirety and found nothing in the data clearly demonstrated that the straps on the sled were reinforced or padded as required by the solicitation. According to the agency, although the manufacturer's product literature for QSP's offered sled lists several technical specifications, such as the conforming length and width, and capability to hold up to 45 pounds, absent from that list was any indication that the straps were reinforced or padded. Joint Contracting Officer's Statement and Memorandum of Law at 13-14. Moreover, the agency points out that while the pictures of two sleds provided by the protester appear to be very different, the evaluators concluded that nothing in the pictures clearly indicated that the straps meet the solicitation requirement at issue here. Although the pictures depict stitching on some of the straps, which may be an indication of padding or reinforcement, the agency asserts that stitching, by itself, was not conclusive proof that the straps were reinforced or padded. Id. The agency therefore

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allegations, we have fully considered each of them and find no basis to sustain its protest.

<sup>9</sup> Our Office added consecutive numbers to the pages of this document.

argues that it was not required to infer compliance from QSP's inadequately detailed proposal.

Based on this record, we find nothing unreasonable about the agency's evaluation of QSP's proposal under the technical factor. QSP had the responsibility to submit an adequately written proposal that established the technical acceptability of its offered ACFT equipment. According to the protester, it was unreasonable and inconsistent with the solicitation's evaluation criteria for the agency to evaluate its proposal as unacceptable because "it did not write down every salient characteristic for the ACFT equipment sets." Comments at 17-18.

The protester misconstrues what the solicitation required. The solicitation did not require recitation of the salient characteristics; rather, offerors had to demonstrate compliance with the identified characteristics for the ACFT equipment. As discussed above, the solicitation expressly informed offerors that their proposals would be evaluated as either acceptable or unacceptable based on their compliance with the RFP's directive that their substantiating data for the ACFT equipment must be thorough, clear, and complete to demonstrate compliance with the solicitation requirements.

Clearly stated requirements within a solicitation are considered to be material to the needs of the government, and a proposal that fails to conform to the solicitation's material terms and conditions must be considered unacceptable and may not form the basis for award. E.g., ARBEIT, LLC, B-411049, Apr. 27, 2015, 2015 CPD ¶ 146 at 4; Mission 1st Group, Inc., B-404811.3, B-404811.6, June 2, 2011, 2011 CPD ¶ 115 at 4. Our Office has consistently stated that it is an offeror's responsibility to submit an adequately written proposal and where, as here, a proposal omits, inadequately addresses, or fails to clearly convey required information, the offeror runs the risk of an adverse agency evaluation. See Distributed Sols., Inc., B-416394, Aug. 13, 2018, 2018 CPD ¶ 279 at 4; Affolter Contracting Co., Inc., B-410878, B-410878.2, Mar. 4, 2015, 2015 CPD ¶ 101 at 7; Mike Kesler Enters., B-401633, Oct. 23, 2009, 2009 CPD ¶ 205 at 2-3. Given QSP's failure to submit thorough, clear, and complete data to substantiate that its sled with pull strap meets all the solicitation requirements, we find the agency reasonably evaluated QSP's proposal unacceptable and the offeror ineligible for award.

Next, the protester challenges the agency's determination that its measuring tape was technically unacceptable for failing to meet certain stated solicitation requirements. Even if we found merit to the protester's argument that the agency improperly evaluated its proposal, the agency's decision not to award a contract to the protester would still be based on a valid separate and independent ground; that is, QSP's unacceptable rating for its proposed sled with pull straps, as previously discussed. See Technatomy Corp., B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 7 (determining that prejudice is an essential element of every viable protest, and where none is shown or otherwise evident, we will not sustain a protest even where a protester may have shown that an agency's actions were arguably improper). Thus, we need not address the unacceptability of the protester's measuring tape. In sum, on this record, we find that

the agency followed the clear and unambiguous terms of the solicitation and reasonably evaluated QSP's proposal as technically unacceptable and ineligible for award. The protester's arguments to the contrary do not provide any basis to sustain the protest.

The protest is denied

Thomas H. Armstrong  
General Counsel