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Decision

Matter of: Life Science Logistics, LLC

File: B-421018.2; B-421018.3

Date: April 19, 2023

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DIGEST

Protest alleging the agency failed to conduct meaningful discussions as part of its corrective action taken in response to a prior protest is sustained where the agency did not disclose evaluated flaws the agency first identified in its reevaluation of protester's materially unchanged proposal.

DECISION

Life Science Logistics, LLC (LSL), of Coppel, Texas, protests the award of a contract to Integrated Quality Solutions LLC (IQS), of Memphis, Tennessee, under request for proposals (RFP) No. 47QFCA22R0020, issued by the General Services Administration (GSA) for warehousing and deployment services for pharmaceutical products and disaster relief supplies and equipment intended to support government disaster relief and preparedness efforts. The protester argues that GSA failed to conduct meaningful discussions. LSL also challenges the agency's evaluation of offerors' technical proposals and the resulting award decision.

We sustain the protest.

BACKGROUND

The Administration for Strategic Preparedness and Response (ASPR), an operating agency of the Department of Health and Human Services, leads the nation's medical and public health preparedness for response to, and recovery from, disasters and public health emergencies. The strategic national stockpile, which contains the nation's largest supply of potentially life-saving pharmaceuticals, medical supplies, medical equipment, and emergency supplies, is a key component of the ASPR's mission. Agency Report (AR), Exh. 6, RFP at C-1. GSA's Federal Systems Integration and Management Center conducted the acquisition on behalf of the Department of Health and Human Services. Contracting Officer's Statement (COS) ¶ 1. The solicitation sought a contractor to provide a fully-managed service solution to a strategic national stockpile site referred to as site F.¹ *Id.*

GSA issued the solicitation on May 5, 2022, seeking a contractor to provide the necessary expertise with suitable storage, management of medical products, monitoring, logistics, reporting, and emergency staging for delivery of government-provided medical supplies for a national emergency at Site F.² RFP at C-1. The solicitation, issued under Federal Acquisition Regulation (FAR) parts 12 and 15, contemplated a contract with a 5-year base period and five 1-year option periods. *Id.* at B-2 to B-9.

The solicitation established that award would be made using a best-value tradeoff based on the following non-price factors, listed in descending order of importance: technical approach, management approach, and past performance.³ RFP at M-1 to M-2, M-4. All nonprice evaluation factors, when combined, were significantly more important than price. *Id.* at M-2. If a proposal received a rating of not acceptable for any factor, the proposal would be ineligible for award. *Id.* at M-4. Additionally, GSA would not evaluate an offeror's price proposal if the offeror's technical proposal did not receive an overall technical rating of at least acceptable. *Id.* at M-1. The solicitation

¹ The agency states that due to the nature of the products in the strategic national stockpile, the government does not reveal the location of the sites to the public and identifies the sites by code names. COS ¶ 3.

² GSA issued four amendments to the solicitation. *Id.* at ¶ 4. Unless otherwise stated, all references to the solicitation refer to the version issued with amendment 4 on November 3, 2022, submitted as agency report exhibit 6.

³ The agency evaluated the technical approach and management approach factors using the following adjectival ratings: excellent, good, acceptable, and not acceptable. AR, Exh. 67, Technical Evaluation Board (TEB) Report at 8-9. The solicitation stated that past performance would be evaluated using the following adjectival ratings: acceptable, not acceptable, and neutral. RFP at M-6. The solicitation also established nine pass/fail criteria (*id.* at M-2 to M-3), and it provided that price would be evaluated for reasonableness. *Id.* at M-3. Neither the pass/fail criteria nor the price evaluation, are relevant to the protest.

stated that the agency’s intention was to make award without conducting discussions but reserved the right to hold discussions if it determined during the evaluation of proposals that discussions were necessary. *Id.* at L-2, M-1.

The agency received proposals from two offerors, LSL and IQS, by the June 2022 deadline to submit initial proposals. COS ¶ 4. Following the receipt of proposals, the agency conducted a conformance check of the proposals, convened a question-and-answer session with each offeror, established a competitive range, and held discussions with IQS and LSL. AR, Exh. 78, Award Decision Document at 3-4. Protest, B-421018, at 8. As relevant here, GSA’s discussions with the protester were limited to concerns regarding potential contamination of LSL’s proposed site, schedule slippage related to possible excavation, and the rates for two labor categories. Protest, exh. 3, LSL Discussions Letter. The TEB then reviewed the proposals and responses to discussion questions, and rated LSL’s and IQS’s proposals as follows:

	LSL	IQS
Technical Approach	Good	Excellent
Management Approach	Excellent	Excellent
Past Performance	Acceptable	Excellent
Overall Rating	Good	Excellent
Evaluated Price	\$198,444,382	\$236,437,623

Protest, B-421018, at 10. GSA awarded the contract to IQS on August 16, 2022.

Subsequently, LSL filed a protest with our Office, challenging various aspects of the agency’s evaluation of proposals, the conduct of discussions, and the award decision. The agency elected to take voluntary corrective action in the form of amending the solicitation, soliciting proposal revisions, conducting a new evaluation, and making a new award decision.⁴ COS at ¶ 5. Based on the proposed actions, our Office dismissed the protest as academic. *Life Science Logistics, LLC*, B-421018.1, Sept. 13, 2022 (unpublished decision).

As part of the corrective action, on October 28, 2022, GSA issued amendment 3 to the solicitation, which revised multiple sections of the solicitation, including the statement of work (SOW), instructions, and evaluation criteria. AR, Exh. 4, RFP amend. 3. As relevant here, amendment 3 added a requirement to submit standard blueprints for the proposed facility on 24-inch by 36-inch paper, in color, sufficiently detailed to depict the

⁴ During the course of this protest, our Office convened a hearing to better understand the positions of the parties. At the hearing, GSA’s witnesses testified that the agency elected to amend the solicitation--as opposed to cancelling it and re-soliciting the requirement--because the agency wanted to have the next contract in place before the protester’s incumbent contract ended in July 2023, and cancellation would have required more time. Hearing Transcript (Tr.) 19-20; 182-183.

solicitation requirements.⁵ RFP amend. 3 at L-4. The cover letter accompanying amendment 3 stated that the amendment required a complete resubmission of all proposal parts, and that prior proposal submissions would not be reviewed as part of the reevaluation. AR, Exh. 3, amend. 3 Cover Letter at 1. The letter also stated that GSA reserved the right to make award from the revised proposals without discussions.⁶ *Id.*

GSA received timely revised proposals from IQS and LSL. COS ¶¶ 12. LSL’s revised proposal was not materially changed from its initial proposal. Protest at 18. The agency performed a conformance check on the proposals, and the TEB evaluated the proposals and held virtual question-and-answer technical clarification sessions with each offeror. *Id.* at ¶¶ 13-14. GSA did not engage in discussions with either offeror.⁷ The TEB evaluated the offerors’ revised proposals as follows:

	LSL	IQS
Technical Approach	Not Acceptable	Excellent
Management Approach	Excellent	Excellent
Past Performance	Acceptable	Acceptable
Overall Rating	Not Acceptable	Excellent
Evaluated Price	Not Evaluated	\$238,674,507

AR, Exh. 77, TEB Report at 10. The TEB rated LSL’s proposal as not acceptable under the technical approach factor after assessing four significant weaknesses to LSL’s technical proposal, as well as two weaknesses. *Id.* at 29-31. The bases for the significant weaknesses were as follows: (1) LSL’s security drawings lacked required specifications and details; (2) LSL’s proposal did not provide primary and secondary access and egress points in and out of the facility; (3) the proposal did not provide multiple routes to the highway system; and (4) the protester’s proposal did not provide sufficient accessibility to the visitor and employee parking lots. AR, Exh. 77, TEB Report at 30-31. The TEB report stated:

⁵ Prior to the issuance of amendment 3, the requirement to submit 24-inch by 36-inch blueprints was within the submission instructions of the RFP. Tr. 16. LSL did not submit 24-inch by 36-inch drawings with its June 2022 proposal. *Id.* at 27. With amendment 3, the requirement to submit the larger drawings was included within the instructions and as a pass/fail requirement within the evaluation criteria. AR, Exh. 4, RFP amend. 3 at L-4, M-2.

⁶ On November 3, 2022, GSA issued amendment 4, which answered offerors’ questions. COS ¶¶ 11.

⁷ The contracting officer testified that the agency did not reopen discussions because GSA had an offeror with a technically excellent proposal and an offeror with a technically unacceptable proposal, and GSA was operating under schedule constraints. Tr. 22.

The proposal did not show an adequate understanding of all the details of the facility space requirements. The provided drawings omitted critical details of the security requirements and did not provide sufficient clarity, correctness, feasibility, and effectiveness regarding the design, installation, implementation, or management of the constellation of security equipment, workspaces, and systems within and surrounding the facility. The TEB determined the proposal did not depict a posture of understanding the complexities of delivering the complex facility conditioning required of ASPR's mission.

Id. at 25. Because the TEB rated LSL's proposal as not acceptable under the technical approach factor, the agency did not evaluate LSL's price proposal or conduct a best-value tradeoff. COS ¶ 17. The agency awarded the contract to IQS on December 22, 2022. *Id.* at ¶ 20.

After requesting and receiving a debriefing, LSL filed this protest with our Office. On March 22, 2023, our Office held a hearing, taking testimony from two witnesses: the contracting officer and the chair of the TEB.

DISCUSSION

The protester challenges GSA's evaluation of its technical proposal, asserting that the technical proposal LSL submitted after the agency's corrective action (referred to here as the November proposal) was materially unchanged from its prior proposal (referred to here as the June proposal), and argues that because GSA failed to raise in discussions during the initial evaluation the significant weaknesses that resulted in its proposal being rated as not acceptable in the subsequent evaluation, it did not conduct meaningful discussions. Protest at 39-40; Comments & Supp. Protest at 3-6.

GSA disputes LSL's assertion that the November proposal was materially unchanged, arguing that the differences between the prior and current evaluations were due to the submission of larger drawings and an updated photo. Memorandum of Law (MOL) at 8; Agency Post-Hearing Comments at 5-6. GSA also argues that it was not required to provide LSL with meaningful discussions because the corrective action evaluation was a "*de novo*," or from the beginning evaluation, in which offerors understood that the agency would not consider the June proposals, and the amended solicitation and cover letter to amendment 3 notified offerors that the agency did not intend to conduct discussions. MOL at 4.

To be meaningful, discussions must lead an offeror into those areas of its proposal that require modification, amplification, or explanation. *DynCorp Int'l LLC*, B-409874.2, B-409874.3, May 13, 2015, 2016 CPD ¶ 348 at 6. At a minimum, the agency must discuss all deficiencies, significant weaknesses and adverse past performance information to which the offeror has not had an opportunity to respond. FAR 15.306(d)(3); *Sunglim Eng'g, & Constr. Co.*, B-419067.3, Aug. 6, 2021, 2021 CPD ¶ 278 at 5. When an agency seeks revised proposals, its reevaluation may identify

flaws in a materially-unchanged proposal that the agency would have been required to discuss with the offeror, had the flaws been identified when the proposal was initially evaluated. In that situation, the agency must reopen discussions in order to disclose its concerns, thereby giving all offerors similar opportunities to revise their proposals. *Sunglim Eng'g & Constr. Co., Ltd.*, *supra* at 5; *Lockheed Martin Simulation, Training & Support*, B-292836.8 *et al.*, Nov. 24, 2004, 2005 CPD ¶ 27 at 10-12; *DevTech Sys., Inc.*, B-284860.2, Dec. 20, 2000, 2001 CPD ¶ 11 at 4-5.

In this context, the requirement to reopen discussions is predicated on the fact that the underlying evaluated concern should have been apparent to the agency when it initially evaluated proposals prior to conducting discussions. *Cynergy Prof'l Sys., LLC-Recon.*, B 418367.8, Sept. 22, 2020, 2020 CPD ¶ 300 at 5. For example, we have sustained protests for failing to reopen discussions where the agency's initial evaluation was inconsistent with evaluation criteria or otherwise inadequate. See, e.g., *West Sound Servs. Grp., LLC*, B-406583.2, B-406583.3, July 3, 2013, 2013 CPD ¶ 276 at 11-13 (sustaining protest where agency failed to raise during initial discussions, or subsequently reopen discussions, to address concerns that certain aspects of the protester's proposed effort were understaffed where the agency represented that it had not evaluated those aspects of the protester's initial proposal prior to conducting discussions).

Here, as discussed above, when GSA evaluated the protester's June proposal, the agency rated the proposal as good under the technical approach factor and did not assess any significant weaknesses. Then, when the agency evaluated LSL's (essentially unchanged) November proposal, the TEB assessed four significant weaknesses and rated the proposal as not acceptable under the technical approach factor. Despite GSA's argument that the initial and latter proposals are materially different, it is undisputed that the content giving rise to the significant weaknesses was present in both proposals but overlooked in the prior evaluation. Specifically, at the hearing conducted during the development of this protest, neither the contracting officer nor the TEB chairperson could identify any material differences between what was depicted in the smaller drawings in the June proposal and the larger blueprints in the November. Tr. 82-83 (no material change to drawing showing termination of road and a lack of secondary access), 159-160 (same), 88 (no change in depiction of routes), 93-94 (no change to drawing showing parking lot access), 169 (same), 106 (problems with security drawings were present in June proposal), and 176 (same). When the TEB chair was asked why the concerns that led to LSL's proposal being rated as not acceptable were not taken into account when the TEB evaluated the June proposal, she testified: "Because we realized that we said that we were going to evaluate it in a specific way, but we weren't checking for all the details that we should have been." Tr. 166.

There is no dispute that the drawings in LSL's proposal that gave rise to the assessment of significant weaknesses were materially the same in both proposals. However, GSA contends that LSL included an aerial photograph of the site in its November proposal that resulted in the TEB's assessment of three of the significant weaknesses. Agency Post-Hearing Comments at 4-6; Intervenor Comments at 6-8. In

this regard, for example, the TEB assessed a significant weakness to the protester's proposal because a proposed secondary gate connected to an incomplete road, which meant the protester's proposal did not provide the required primary and secondary access and egress points to the site. AR, Exh. 77, TEB Report at 30-31. GSA argues that the aerial photo made this concern apparent for the first time. Agency Post-Hearing Comments at 4. We find GSA's argument unavailing. As the agency's witnesses acknowledged during the hearing, the drawings in LSL's June proposal showed that the road was incomplete and did not connect to the gate. Tr. 75-79, 82-83, and 159-160. The contracting officer acknowledged that the road as depicted in the June proposal did not meet the solicitation's access/egress requirements. Tr. 83. The significant weakness was apparent without the addition of the aerial photo, and the same reasoning applies to the significant weaknesses that pertain to accessibility of the parking lot and the number of routes to the highway system from the site.⁸

Further, regarding GSA's argument that it was not required to open discussions as part of its corrective action because the corrective action evaluation was a "*de novo*" evaluation, we find the agency's attempt to negate its obligation to provide meaningful discussions on this basis unavailing. While the agency may have intended to restart the competition entirely anew, this was not conveyed to the offerors. The agency only instructed offerors to submit new proposals and advised that prior proposal submissions would not be reviewed as part of the reevaluation. There was nothing about disregarding the initial round of discussions with LSL, which identified some areas of concern with LSL's proposed approach, but not others. In this regard, the hearing revealed--and GSA's witnesses conceded--that the drawings in LSL's June proposal were not materially different from the drawings in LSL's November proposal. The problems that gave rise to the assessment of significant weaknesses when the TEB evaluated the November proposal were apparent in the June proposal. GSA did not advise LSL of the significant weaknesses until it selected IQS for award. In sum, the discussions that occurred were not meaningful because the agency did not advise the protester of significant weaknesses in its June proposal. FAR 15.306(d)(3); *Sunglim Eng'g & Constr. Co., Ltd., supra*, at 5; *Lockheed Martin Simulation, Training & Support, supra*, at 10-12; *DevTech Sys., Inc., supra*, at 4-5.

⁸ The significant weakness concerning LSL's security drawings is unrelated to the aerial photo. With respect to that significant weakness, there is no dispute that LSL's proposal changed because the protester moved the location of the Drug Enforcement Administration cage and multiple cameras on its security drawings. However, both witnesses testified that the alleged significant weakness existed in the June proposal (tr. 106, 176), and GSA did not advise LSL of any concerns related to the security drawings during discussions. Additionally, the agency's witnesses were unable to explain how any changes to the security drawings resulted in the assessment of the significant weakness when the TEB evaluated the November proposal.

Accordingly, because the underlying evaluated concern was reasonably apparent to the agency when it evaluated LSL's June proposal, we find the agency failed to provide the protester with meaningful discussions, and we sustain the protest on that basis.⁹

RECOMMENDATION

We recommend that the agency reopen the procurement and conduct appropriate and meaningful discussions with LSL and IQS, request and evaluate revised proposals, and make a new source selection decision.¹⁰ If LSL's proposal is selected, the agency should terminate IQS's contract for the convenience of the government and award a contract to LSL, if otherwise proper. In addition, we recommend that LSL be reimbursed its costs of filing and pursuing this protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim, detailing the costs incurred, directly to the contracting officer within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Edda Emmanuelli Perez
General Counsel

⁹ GSA and the intervenor argue that the protester was not competitively prejudiced by the lack of meaningful discussions. Agency Post-Hearing Comments at 7-8; Intervenor Post-Hearing Comments at 21. We disagree. When an agency fails to conduct meaningful discussions, we will resolve any doubts concerning prejudice in favor of the protester. See, e.g., *HomeSafe Alliance, LLC*, B-418266.5 *et al.*, Oct. 21, 2020, 2020 CPD ¶ 350 at 19; *Delfasco, LLC*, B-409514.3, Mar. 2, 2015, 2016 CPD ¶ 192 at 7. Our Office will not speculate as to the agency's ultimate source selection decision following its provision of the required, meaningful discussions. Here, we cannot know what tradeoff decision the agency would have made had the agency properly held discussions with LSL and provided LSL with an opportunity to revise its proposal, particularly where LSL's proposed price was \$34,746,327 less than the price offered by IQS. Protest at 1.

¹⁰ LSL also challenges the agency's evaluation of IQS's technical proposal and the award decision. Because we conclude that the agency failed to conduct meaningful discussions with LSL, and recommend that it reopen the procurement to provide the protester the benefit of such discussions, our decision does not further address the agency's evaluation of the proposal LSL submitted without the benefit of meaningful discussions, the agency's evaluation of IQS's proposal, or the agency's best-value tradeoff decision. See *Devtech Sys., Inc.*, *supra* at 6 n.4.