



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Gap Solutions, Inc.

File: B-310564

Date: January 4, 2008

Lars E. Anderson, Esq., Peter A. Riesen, Esq., Keir X. Bancroft, Esq., and Patrick R. Quigley, Esq., Venable LLP, for the protester.

Jerome S. Gabig, Esq., for Total Solutions, Inc., an intervenor.

Elise Harris, Esq., Department of Health and Human Services, for the agency.

Scott H. Riback, Esq., David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency's point scoring scheme was not sufficiently sensitive to highlight the distinctions among technical proposals is denied where record shows source selection decision was based on detailed narrative evaluation materials that reflected relative strengths and weaknesses of competing proposals, and protester raises no substantive challenge to agency's evaluation findings; point scores are merely guides to intelligent decision making and, absent a legitimate challenge to agency's underlying substantive findings, there is no basis to object to evaluation on basis of the point scoring.

DECISION

GAP Solutions, Inc. (GAP) protests the award of a contract to Total Solutions, Inc. under request for proposals (RFP) No. 2006-N-09171, issued by the Centers for Disease Control and Prevention for domestic technical, operational and professional services. GAP maintains that the technical evaluation scheme used by the agency improperly failed to highlight the distinctions among the proposals, and that the agency misevaluated the awardee's price proposal.

We deny the protest.

The RFP contemplated the award of an indefinite-delivery/indefinite-quantity, firm-fixed price labor hours contract (with cost reimbursable line items to cover other direct costs (ODC) such as travel) to perform various services for the Coordinating Center for Global Health for a period of 5 years from the date of award. The RFP advised that the agency intended to make award on a "best value" basis,

with technical factors being given greater consideration than price. The RFP further advised, however, that, if the technical proposals were determined to be essentially equal, price would govern the agency's source selection decision. For evaluation purposes, the RFP provided that proposals would be scored using a 420 point scale, with 100 points allocated to the evaluation of the proposal overall,¹ 100 points allocated to the offerors' responses to each of three task orders,² and 20 points allocated to past performance. RFP § M (as amended by Amendment 3).

For price evaluation purposes, offerors were required to prepare pricing sheets for each of the three sample task orders that showed proposed direct labor costs, fringe benefit costs, overhead costs, general and administrative (G&A) costs, and fee or profit. RFP attach. J.8 (as amended by Amendment 3). For purposes of preparing their business (price) proposals, the offerors also were provided prescribed ODC that were to reflect the cost reimbursable elements of their prices; for task order No. 1, the ODC specified was \$250, for task order No. 2, the ODC was \$12,000, and for task order No. 3, the ODC was \$10,000. RFP attach. J.5-J.7 (as amended by Amendment 3). Notwithstanding the required detail in the task order pricing that was to be submitted, the RFP advised that the agency would evaluate proposed prices using price analysis, which the RFP defined as the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. RFP § M (as amended by Amendment 3).

The agency received nine proposals. After evaluation of the initial proposals, the agency included four in the competitive range. Thereafter, the agency engaged in discussions with the competitive range offerors and obtained final proposal revisions (FPR). After evaluating the FPRs, the agency assigned the proposals the following scores:

¹ The 100 points allocated to the proposal overall were equally divided among four subfactors: technical approach/understanding of the requirement, personnel expertise/management plan, corporate experience/capabilities, and financial capabilities. RFP § M (as amended by Amendment 3).

² Each task order evaluation factor included three subfactors: technical approach/understanding of the requirement (worth up to 25 points), personnel expertise/management plan (worth up to 25 points), and corporate experience/capabilities (worth up to 50 points). RFP § M (as amended by Amendment 3).

| Offeror | Technical Score/Percentage of Available Points | Adjectival Rating | Price |
|-----------------|--|------------------------|--------------|
| Offeror A | 325/77.38 percent | Technically Acceptable | \$563,292.00 |
| GAP Solutions | 322.5/76.79 percent | Technically Acceptable | \$387,997.20 |
| Offeror B | 318.33/75.79 percent | Technically Acceptable | \$398,429.32 |
| Total Solutions | 314.16/74.8 percent | Technically Acceptable | \$380,105.68 |

Agency Report (AR), Legal Memorandum, at 4. Finding that all four competitive range proposals were technically equal, the agency made award to Total Solutions on the basis of its low price. After receiving a debriefing, GAP protested to our Office.³

GAP asserts that the agency’s proposal scoring scheme was flawed in that it essentially “negated” the technical distinctions among the proposals. In this respect, the record shows that the agency evaluated proposals by assigning numeric scores between 0 and 5 points for each of the 13 evaluation subfactors, and then multiplied the raw score by the weight assigned to each of the subfactors to arrive at weighted scores. According to the protester, because all of the acceptable proposals (that is, proposals that it describes as likely to have been included in the competitive range) would in practice be assigned raw numeric scores of either 3 or 4, the effect was to artificially narrow the range of possible total scores, such that it would appear from the numeric scores that all of the proposals were technically equal. According to the protester, this effectively left the source selection to be based on low price rather than on technical considerations which were to have received paramount consideration under the terms of the RFP.

This argument is without merit. It is well established that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision making in the procurement process. Business Consulting Assocs., LLC, B-299758.2, Aug. 1, 2007, 2007 CPD ¶134 at 4. Where the evaluators and source selection official reasonably consider the underlying bases for the ratings, including advantages and disadvantages associated with the specific content of competing proposals, in a manner that is fair and equitable and consistent with the solicitation, a protester’s

³ In its initial protest, GAP asserted that the agency failed to adhere to the stated evaluation criteria because it did not give paramount weight to the technical considerations, in contravention of the terms of the RFP; that the agency misevaluated proposals; and that the agency did not engage in adequate discussions with GAP. The agency responded to these assertions in its report. In its comments on the report, GAP made no mention of any of these assertions and instead advanced two new arguments (discussed below). We therefore deem the above original assertions abandoned. Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4.

disagreement over the actual adjectival or numeric ratings assigned essentially is inconsequential in that it does not affect the reasonableness of the judgments made in the source selection decision. Id.

The record here shows that the agency performed an evaluation of the proposals consistent with the RFP evaluation factors and prepared detailed narrative materials reflecting the evaluators' findings. AR exhs. D12, D19. The record also shows that those findings were specifically considered in detail by the agency's source selection official in making the agency's award decision. Indeed, because the scoring was so close among the four proposals, the source selection official expressly queried the evaluators "to determine if there was a proposal that contained technical aspects that would clearly set it apart from any of the other ones." AR exh. G7, Source Selection Decision, at 8. The technical panel concluded that no proposal had technical advantages or discrepancies that would set it apart from the other proposals and, as a result, the proposals were determined to be technically equal.

GAP does not challenge any of the agency's underlying substantive findings with respect to the relative merits of the competing proposals. The protester does not, for example, allege that the agency unreasonably failed to identify strengths that were present in its proposal or unreasonably identified weaknesses that were not present; nor does it challenge the agency's underlying findings with respect to the other proposals in the competitive range, including the awardee's. Moreover, GAP also has not alleged or demonstrated that it should have been assigned higher numeric scores, or that the awardee should have been assigned lower numeric scores, based upon the strengths or weaknesses identified by the agency in its evaluation. In these circumstances, given the absence of any substantive challenge to the agency's detailed narrative evaluation findings, we simply have no basis to question the agency's evaluation results. We therefore deny this aspect of GAP's protest.

GAP asserts that the agency miscalculated Total Solutions's business proposal in that it failed to account for certain costs for which Total Solutions is likely to bill the government under the contract. According to the protester, the Total Solutions business proposal expressly provides for application of the firm's G&A rate to the cost reimbursable ODC component of the contract, as well as to the rates billed by its subcontractors. GAP also asserts that the Total Solutions proposal contemplates application of a [deleted] percent fee or profit, as well as the inclusion of fees it may have to pay to travel agents or recruiters to find qualified personnel. The protester concludes that the price advantage identified by the agency in favor of Total Solutions is illusory.

We dismiss this aspect of the protest. As noted, the RFP directed offerors to use preestablished amounts for ODC in preparing their responses to the sample task orders. In addition, the RFP pricing form for each sample task order required submission of a single total loaded labor rate (including the fringe, overhead, G&A and profit components of that rate) for the single labor category to be furnished

under each task order, with no provision in the form for differentiating prime contractor from subcontractor labor rates. Moreover, the RFP expressly provided that the agency would confine its evaluation to price analysis techniques, specifically stating that “cost/price will be evaluated on the basis of price analysis which is defined as the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.” RFP, § M1 (as amended by Amendment 3. The record shows that the agency evaluated the business proposals in a manner that was consistent with the terms of the RFP, which did not provide for an evaluation of the individual cost components of the proposals, as advocated by GAP. To the extent that GAP thought such an evaluation approach was inappropriate, it should have raised the matter prior to the deadline for submitting proposals, since our Bid Protest Regulations require that protests based upon solicitation improprieties must be filed prior to the deadline for submitting proposals. 4 C.F.R. § 21.2(a)(1) (2007).

In its comments responding to the agency’s supplemental report, GAP asserted for the first time that the agency miscalculated Total Solutions’s proposal by failing to take into account the fact that its technical proposal contemplates the use of subcontractors, but its business proposal did not include any costs for subcontractors. According to the protester, Total Solutions was given credit in the agency’s technical evaluation for its use of subcontractors, even though its business proposal appears not to have included the costs for those subcontractors.

This aspect of GAP’s protest is untimely. GAP received Total Solutions’s entire proposal, as well as the record of the agency’s evaluation, when the agency submitted its initial report; consequently, any assertions arising from those materials had to be filed within 10 days of GAP’s receipt of the agency report. 4 C.F.R. § 21.2(a)(2). Since GAP did not raise this assertion until it filed its supplemental comments, more than 10 days after its receipt of these materials, we dismiss this aspect of its protest as untimely.

The protest is denied.

Gary L. Kepplinger
General Counsel