



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: Technology Concepts & Design, Inc.

File: B-403949.2; B-403949.3

Date: March 25, 2011

John J. O'Brien, Esq., and David S. Cohen, Esq., Cohen Mohr LLP, for the protester. Kathleen D. Martin, Esq., Department of State, for the agency. Paula J. Haurilesko, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the issuance of a task order is sustained where the agency did not provide adequate supporting rationale in the record for GAO to conclude that the agency's evaluation of the protester's proposal was reasonable.

DECISION

Technology Concepts & Design, Inc. (TCDI), of Reston, Virginia, protests the issuance of a task order to Abacus Technology Corporation, of Chevy Chase, Maryland, by the Department of State under task order request for proposals¹ (RFP) No. 467522 for technical support to the agency's Bureau of Verification, Compliance, and Implementation, Office of Verification Operations (VCI/VO). TCDI challenges the agency's evaluation of proposals and selection decision.

We sustain the protest.

BACKGROUND

VCI/VO is responsible for providing classified and unclassified information technology support for the negotiation, implementation, and verification of arms control related treaties, agreements, and regulations to users under State's

¹ Although the solicitation states that it is a task order request for proposals and the evaluation and selection documents refer to the evaluation of proposals, the parties refer to the solicitation as a request for quotations. We refer to the solicitation as the RFP, and to the firms' responses to the solicitation as proposals.

Undersecretary for Arms Control and International Security. RFP at 1. The RFP provided for the issuance of a labor-hour, performance-based task order under the General Services Administration’s (GSA) Commerce Information Technology Solutions - Next Generation (COMMITTS) government-wide acquisition contract to provide information technology support services to VCI/VO.² The solicitation stated that the task order would have a base performance period of a year with four option years, and provided for a 30-day transition period. Id. at 15, 17.

The RFP described a broad range of support services that would be provided, including operation and management of computer facilities and networks; software design, development and support; analytical, technical and subject matter expertise on IT requirements in support of arms control related subjects; cyber security; and operation of help desks. Id. at 3-8. In this regard, the RFP provided, as a guideline, an overall operational level of support and the current staffing model (identified by labor category and full-time equivalents (FTE) assigned to that category). Id. at 11-12. Offerors were advised to formulate staffing plans based on their best business judgment. Id. at 11.

Offerors were informed that the task order would be issued on a best-value basis, considering price and the following technical evaluation factors and subfactors:

Corporate Experience/Past Performance	
	Past performance
	Corporate experience
	Corporate quality certification
	Ability to meet constraints of the task order
Personnel Qualifications and Management	
Technical Approach	

The RFP provided that the corporate experience/past performance factor was slightly more important than the personnel qualifications/management factor, which was slightly more important than the technical approach factor. Offerors were also informed that the technical factors, when combined, were significantly more

² COMMITTS is an indefinite-delivery/indefinite-quantity (ID/IQ), multiple-award contract designed to offer information technology solutions to federal government customers.

important than price.³ RFP at 19-20. Elsewhere, the RFP informed offerors that the agency's evaluation would assess, among other things, the offeror's experience within classified and unclassified operating environments; performance supporting federal government and/or State Department contracts; and ability to recruit and retain a high-quality workforce. RFP amend. 3, at 16.

With regard to the past performance subfactor, the RFP provided that the agency would evaluate how an offeror's past and present performance validates expected performance and customer satisfaction. Offerors were required to provide references for work performed of the same or similar scope, size, and complexity to the scope of work of the task order. RFP at 20.

With regard to the corporate experience subfactor, the RFP stated that:

The Contractor will be evaluated on the depth, breadth, relevance, currency, and similarity, of its corporate experience relative to the requirements of this Statement of Work. Additionally, the Contractor will be evaluated on the depth, breadth and relevance of its experience in software maintenance and technical support on projects similar in size, scope, and complexity with the requirements of this Statement of Work.

Id.

With regard to the personnel qualifications/management factor, offerors were required to provide resumes for key personnel, and were permitted, but not required, to include brief resumes of "other important personnel."⁴ Id. at 19. Offerors were informed that the agency would evaluate, among other things, the experience and

³ The RFP provided for the assignment of color ratings of blue, green, yellow, and red for the evaluation of the technical factors and subfactors. RFP at 21. A blue rating reflected a proposal that exceeded the requirements of the solicitation, and contained no deficiencies or weaknesses. A green rating reflected a proposal that met the basic requirements of the solicitation, but might contain minor deficiencies or weaknesses without requiring a revised proposal. A yellow rating reflected a proposal that may meet the requirements of the solicitation but contained deficiencies or weaknesses that would need to be corrected through a revised proposal. A red rating reflected a proposal that failed to meet the basic requirements of the solicitation. Id.

⁴ RFP designated six labor categories as key personnel: program manager, project manager, operations manager, configuration management specialist, system security analyst, and database administrator III. RFP at 14.

capabilities of the offeror's proposed key personnel; the availability of proposed individuals to work on the project; the availability of personnel with security clearances;⁵ and the availability of other corporate personnel who could be drawn upon as project resources. Id. at 20.

With regard to price, the RFP provided:

The Government will evaluate each Contractor's cost/price proposal to determine reasonableness. This analysis is intended to determine:

- The Contractor's understanding of the requirements;
- The degree to which the cost/price proposal reflects the technical approach and staffing with appropriate levels of expertise;
- The degree to which the costs included in the cost/price proposal accurately represents the work effort included in the proposal.

* * * * *

Cost assumptions, conditions, and exceptions will be evaluated for acceptability, realism, risks, reasonableness and potential impact on other information provided in the Task Order proposal.

Id. at 22.

The agency received proposals from four offerors, including TCDI (the incumbent contractor) and Abacus, which were evaluated by its technical evaluation panel (TEP). Contracting Officer's Statement at 4. Ultimately, a task order was issued to Abacus, and TCDI protested to our Office. Prior to submitting a report in response to the protest, the agency advised our Office and TCDI that it would take corrective action, and TCDI withdrew its protest. Id. at 5.

The TEP reevaluated proposals and provided a new evaluation report to the contracting officer. TCDI's and Abacus's proposals were rated green overall and under each technical factor and subfactor. The TEP's color ratings were supported

⁵ In this regard, the RFP provided that all contractor employees assigned to the task order must hold an active secret or top secret personnel security clearance, commensurate to the level of access required, prior to contract performance. RFP at 16.

by a brief narrative under each evaluation factor and subfactor, which included both strengths and weaknesses. See Agency Report (AR), Tab 4, TEP Evaluation Report.

For example, under the past performance subfactor, the agency acknowledged that TCDI's proposal had a number of project execution and product delivery successes, but noted as a weakness that TCDI's successes involved "mostly older, smaller legacy systems." Id. at 3. The TEP also assessed a weakness in TCDI's proposal on the basis that a number of TCDI's delivered products—that is, the World Military Expenditures and Arms Transfers (WMEAT) database, CWC/MIMS,⁶ and the Treaty Information Portal—required significant rework and/or reengineering. Id.

Under the corporate experience subfactor, the TEP recognized that TCDI is the incumbent and has 20 years of relevant experience in the arms control arena at the Arms Control and Disarmament Agency, and with State and the Department of Commerce.⁷ Id. at 4. Nevertheless, the TEP also assigned a weakness to TCDI for a limited depth and breadth of experience relevant to working within the federal sector, compared to other offerors' proposals. Id. Additionally, the TEP assigned a weakness with respect to TCDI's Commerce Department contract, noting that the contract was limited in depth, breadth, scope, and complexity, and that currently only two staff were supporting the contract. Id. Also, the TEP noted under this subfactor that TCDI had a limited resource pool of cleared and qualified personnel available for critical periods. Id.

Under the personnel qualifications/management factor, the TEP acknowledged that TCDI's incumbent, proposed staff appears to have the knowledge and experience to meet the requirements of the task order. In addition to this strength, however, the TEP assigned a weakness under this subfactor because, although TCDI's proposal asserts that it could address any perceived shortfall in staffing through its teaming arrangement with another company, TCDI did not propose any of its teaming partner's staff.⁸ Id. at 5.

With respect to Abacus's proposal, the TEP noted a number of strengths under the evaluation factors and subfactors and identified no weaknesses. For example, under

⁶ We presume that the agency's reference to CWC refers to the Chemical Weapons Convention. See www.cwc.gov. State does not explain to what the acronym refers. TCDI states that it does not know to what the agency is referring, but believes that the reference to CWC/MIMS concerns something from 10 to 12 years ago. Protest at 20 n.9.

⁷ The Arms Control and Disarmament Agency was integrated into State in 1999.

⁸ The TEP, however, credited TCDI for various certifications of its teaming partner under the corporate quality certification subfactor. See AR, Tab 4, TEP Evaluation Report, at 4; see also Tab 3, Selection Decision, at 9.

the past performance subfactor, the TEP noted performance of contracts of similar size, scope and complexity that Abacus had with State and with other agencies, such as the Department of Defense. Id. at 2. Under the corporate experience subfactor, the TEP noted the awardee's significant relevant experience with State and with the federal government generally. The TEP also noted under this subfactor the depth and breadth of the Abacus's personnel experience. Id.

The TEP concluded that the proposals of Abacus and TCDI met the basic requirements of the RFQ, but determined that Abacus's proposal was technically superior due to the number of strengths identified in the awardee's proposal compared to the other proposals. Id. at 6. As a result, the TEP recommended that the task order be issued to Abacus. As part of its recommendation, the TEP raised for the first time a concern with TCDI's ability to effectively "backfill" the senior program manager position during absences caused by illness or extended periods of leave, and stated that problems were created by these absences. See id. at 7.

The agency also evaluated the offerors price proposals. Abacus offered the lowest price of \$46,067,061, and TCDI offered the highest price of \$49,632,149. AR, Tab 3, Selection Decision, at 13-14. The agency's contract specialist compared the offerors' labor rates against the labor rates published in each firm's GSA Federal Supply Schedule contract for schedule 70, information technology. The contract specialist also compared the offerors' price proposals with each other and the government's cost estimate. Contract Specialist's Supp. Statement at 1-2. As part of his comparison of the offerors' proposed prices, the contract specialist calculated the firms' FTE as consisting of 1,920 hours.⁹ The contract specialist found that using 1,920 hours for the offerors' FTE calculations did not change the relative competitive position of the price proposals; that is, Abacus's proposed price continued to be low overall. Id.

The TEP also performed a crosswalk between the price proposals and the technical proposals to ensure that pricing accurately represented the work proposed. Supp. Contracting Officer's Statement at 2. In this regard, the TEP concluded that Abacus's and TCDI's price proposals demonstrated an understanding of the scope and requirements of the task order. The TEP also noted that the price proposals of Abacus and TCDI contained no assumptions, conditions or exceptions that required evaluation for acceptability, realism, or risk. See AR, Tab 3, Selection Decision, at 14-15.

The contracting officer, who was the source selection authority, disagreed with the TEP's conclusion that Abacus's proposal was technically superior. Instead, the contracting officer determined that, based upon their overall green ratings, Abacus's,

⁹ TCDI based its FTE calculations upon 1,920 hours per FTE, and Abacus calculated its FTE using [deleted] hours per FTE. See Abacus Price Proposal at 8.

TCDI's, and another offeror's proposals were technically equal. The task order was issued to Abacus on the basis of that firm's lower price. See id. at 15-17. This protest followed.

DISCUSSION

TCDI broadly objects to the evaluation of its and Abacus's proposals. In this regard, TCDI challenges many of the weaknesses evaluated in its proposal. TCDI also challenges the agency's price evaluation, asserting the agency failed to assess the realism of Abacus's low price. As explained below, we find that the State's assessment of a number of weaknesses in TCDI's proposal is unsupported in the record, and sustain TCDI's protest on this basis. In resolving the protest, we have considered all of the parties' arguments, but address only TCDI's primary protest grounds.

Interested Party

As an initial matter, State requested that we dismiss TCDI's protest, arguing that TCDI was not an interested party to challenge the issuance of a task order to Abacus, or, in the alternative, that TCDI was not prejudiced by the agency's evaluation of weaknesses in the protester's proposal. Specifically, State states that TCDI, Abacus, and another offeror (which offered a lower price than TCDI) were all rated green overall and were therefore technically equal. The agency contends that TCDI would not be line for award, even if we accepted its protest arguments, because the third "equal" offeror was an intervening offeror that would receive award on the basis of that firm's lower price. AR at 19. The agency also argues that, because TCDI did not assert that its proposal should have been rated blue, the protester was not prejudiced by the agency's evaluation of its proposal. See id. at 7-9.

The agency's arguments ignore, however, that the RFP provided for a cost/technical tradeoff analysis that would comparatively consider the offerors' respective strengths and weaknesses. Where, as here, the RFP provides for a cost/technical tradeoff basis for award--as opposed to the selection of the lowest-priced, technically acceptable offer--evaluation of proposals is not limited to determining whether a proposal is merely technically acceptable. Rather, in determining which proposal offers the best value, the agency should consider the differences between proposals to distinguish their relative quality. Johnson Controls World Servs., Inc.; Meridian Mgmt. Corp., B-281287.5 et al., June 21, 1999, 2001 CPD ¶ 3 at 4. In this regard, ratings, whether numerical, color, or adjectival, are merely guides to assist agencies in evaluating proposals; information regarding strengths and weaknesses of proposals is the type of information that source selection officials should consider, in addition to ratings, to enable them to determine whether and to what extent meaningful differences exist between proposals. Pemco Aeroplex, Inc., B-310372, Dec. 27, 2007, 2008 CPD ¶ 2 at 6; ACCESS Sys. Inc., B-400623.3, Mar. 4, 2009, 2009 CPD ¶ 56 at 7. Proposals with the same adjectival ratings are not necessarily of

equal quality, and an agency may properly consider specific advantages that make one proposal higher quality than another. Pemco Aeroplex, Inc., *supra*, at 6-7.

Here, TCDI's challenge of the agency's evaluation of TCDI's and Abacus's proposals calls into question the agency's determination that TCDI's, Abacus's, and the third offeror's proposals were technically equal. That is, accepting TCDI's protest allegations, State would be required to comparatively assess the evaluated differences in the proposals to determine whether the proposals were in fact technically equal in merit or whether a cost/technical tradeoff analysis should be performed. Accordingly, we find that TCDI is an interested party and has shown a reasonable possibility of prejudice.

Evaluation of TCDI's Proposal

TCDI challenges the agency's evaluation of the firm's proposal under a number of corporate experience/past performance evaluation subfactors.

First, the protester complains that State unreasonably assessed a weakness in TCDI's proposal under the past performance subfactor, after concluding that a number of TCDI's delivered products, specifically the WMEAT database, CWC/MIMS, and the Treaty Information Portal, required significant rework and/or reengineering. Protest at 20. With respect to State's assertion that rework was required on the WMEAT database, TCDI explains that it was tasked with converting the database from an obsolete version of Oracle to the Microsoft SQL Server database system in 2007.¹⁰ Afterwards, system tests revealed errors in the Microsoft functions and not in TCDI's work. TCDI explains that it reengineered the scripts to produce the correct output and rewrote the computer code to enable the system to work. *Id.* With respect to the agency's reference to rework for CWC/MIMS, TCDI states that it is unfamiliar with the acronym and speculates that it may have been a project from 10-12 years earlier. *Id.* n. 9. With respect to the Treaty Information Portal, TCDI disputes that the product required significant rework, noting that the previous contracting officer's technical representative was very satisfied with the work. *Id.* at 20.

In reviewing protests of alleged improper evaluations and source selections, even in a task order competition as here, we do not reevaluate proposals, but rather we examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. ACCESS Sys. Inc., *supra*. In order for us to review an agency's evaluation judgment, an agency must have adequate documentation to support its

¹⁰ TCDI explains that the WMEAT database is a low-use, classified database that is used once a year to prepare a report to Congress regarding worldwide military expenditures and arms transfers.

judgment. Northeast MEP Servs., Inc., B-285963.5 et al., Jan. 5, 2001, 2001 CPD ¶ 28 at 7. We do not limit our review to contemporaneous evidence, but consider all the information provided, including the parties' arguments, explanations, and documentation prepared in response to protest contentions. Systems Research and Applications Corp.; Booz Allen Hamilton, Inc., B-299818 et al., Sept. 6, 2007, 2008 CPD ¶ 28 at 12. While we consider the entire record, including the parties' later explanations and arguments, we accord greater weight to contemporaneous evaluation and source selection material than to arguments and documentation prepared in response to protest contentions. Id. Where an agency fails to provide documentation of its evaluation, it bears the risk that there may not be adequately supporting rationale in the record for us to conclude the agency had a reasonable basis for its evaluation and selection decision. Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10.

State responds that its evaluation was based on "observed performance and user feedback" but provides no explanation or documentation of what was observed or what feedback it received. See AR at 6. Although State contends that TCDI's work on the WMEAT database was not timely completed, it does not address TCDI's explanation as to why the firm was not responsible for problems in the database. The agency also does not address in any fashion TCDI's arguments with respect to the assessed concerns with CWC/MIMS and the Treaty Information Portal. In short, State has failed to provide either contemporaneous documentation or subsequent explanation supporting its assessment of this weakness in TCDI's proposal. Accordingly, we find from the record before us that State did not have a reasonable basis for the assignment of this weakness in TCDI's proposal.¹¹

Next, TCDI challenges the agency's assessment of a weakness under the corporate experience subfactor that TCDI's proposal lacked "depth and breadth of experience relevant to working within the Federal sector" as compared to other offerors' proposals. Protest at 7-10. TCDI disagrees with the agency's assessment and contends that the RFP did not indicate that experience with other government agencies was required. Id. at 9. TCDI states that it drafted its proposal to focus on its experience with State because this is what the solicitation indicated would be evaluated. Comments at 24 n.13.

¹¹ Similarly with respect to the agency's assignment of a weakness that TCDI's successful past performance related mostly to performance on "older, smaller, legacy systems," State does not substantively respond to the protester's arguments concerning this weakness, other than to state that it was a minor weakness without impact. AR at 6. Based upon this record and the agency's failure to explain its evaluation, we are unable to determine whether this weakness was intended to refer to TCDI's specific incumbent performance (which would not appear to be the case) or to one of TCDI's other past performance references.

State responds that it considered this to be a minor weakness and that the RFP “clearly indicated” that the depth of work outside State would be considered because the program requires interface with interagency partners. AR at 5. However, the agency does not identify where in the RFP offerors were notified that the depth, breadth, and scope of an offeror’s relevant work for other federal agencies was a requirement. Moreover, we find that the agency’s evaluation record does not demonstrate that the assignment of this weakness was reasonable. State does not explain why TCDI’s experience as the incumbent did not provide sufficient experience working with other agencies, such as Commerce and the Department of Defense.

TCDI also challenges State’s evaluation of its proposal under the personnel qualifications/management factor, where it received a rating of green. Protest at 21. Although the TEP noted that TCDI, as the incumbent, had nearly all staff cleared and ready to immediately perform, it also noted that TCDI had failed to propose any teaming partner staff. Specifically, the TEP stated that, although TCDI’s proposal stated that the firm had sufficient access to staff through its teaming partner to meet any perceived shortfalls related to certification or expertise, TCDI did not specifically offer any staffing from its teaming partner. AR, Tab 4, TEP Evaluation Report, at 5. TCDI argues that the RFP did not require offerors to identify all proposed staff, and therefore the State Department evaluated proposals on a different basis than that announced in the solicitation. Protest at 24. Moreover, TCDI contends that the agency’s assignment of a weakness in this area is irrational, given that the State Department also noted a strength in TCDI’s proposal under the corporate quality certifications subfactor for the various certifications of its teaming partner. Id. at 24 n.11.

State does not refute TCDI’s arguments, nor does it provide an explanation for the apparent inconsistency between the weakness assigned under one evaluation factor and the strength assigned in a subfactor. Rather, State merely notes that TCDI’s proposal was rated green under this evaluation factor. AR at 7.

Here too, we have no basis to find State’s evaluation to be reasonable, given the agency’s failure to provide any documentation or support for its evaluation. In this regard, we also agree with TCDI that the RFP did not require offerors to identify staff other than key personnel.

Evaluation of Awardee’s Proposal

TCDI also raises a number of challenges to the evaluation of the awardee’s technical and price proposal. We have considered all of TCDI’s arguments, but do not find, as explained below, that the agency’s evaluation of Abacus’s proposal was unreasonable.

TCDI complains that State failed to assess the realism of Abacus's low price.¹² Protest at 26-29; Supp. Protest at 3-4. TCDI contends that Abacus's price is too low to allow the awardee to provide and retain the experienced and senior staff that the awardee proposed. Protest at 26-29; Comments at 8-10. The agency responds that the RFP did not provide for a realism analysis of offerors' prices.¹³ AR at 14. In this regard, State notes that the RFP did not require offerors to provide cost breakdowns, and that offerors, including TCDI, submitted loaded labor rates. Supp. AR at 10.

We find that the solicitation did not provide for the kind of realism analysis that TCDI asserts that the agency was required to perform. As noted above, offerors were informed that the agency would assess the reasonableness of the offerors' proposed prices and, as part of that assessment, would consider the offeror's understanding of the effort. See RFP at 22. Also, the solicitation did not request detailed cost information, and the offerors provided only loaded labor rates. Under these circumstances, we find that the agency's comparison of the offerors' price proposals to each other and the government's estimate, its comparison of the offerors' proposed loaded labor rates to the firm's respective GSA Federal Supply Schedule rates, and its crosswalk between the offeror's technical and cost proposals, satisfied the RFP's requirements.

TCDI also contends that Abacus based its FTE calculation upon less than 1,920 hours per year, which TCDI argues was inconsistent with the solicitation. Supp. Protest at 5-6. TCDI contends that this allowed the awardee to propose a lower price. Id. at 6. We find no merit to this argument. As noted by the agency, the solicitation did not require offerors to use an FTE of 1,920 hours per year. Supp. AR at 9. Rather, the RFQ provided a staffing model, but specifically stated that "offerors should formulate staffing plans based on their best business judgment." RFP at 11; Supp. AR at 9. Although the RFP, as amended, clarified that the staffing model provided as guidance was based on an FTE of 1,920 hours per year, it did not require offerors to use the current staffing model. RFP amend. 3, Questions and Answers, at 2. We find that Abacus's use of [deleted] hours per year did not violate the RFP's requirements.

¹² TCDI raises a number of challenges to the agency's evaluation of Abacus's proposed price, all of which are premised upon the protester's belief that the agency was required to conduct a realism evaluation.

¹³ State argues that it was not required to conduct a realism analysis because this procurement was conducted under Federal Acquisition Regulation (FAR) subpart 8.4 procedures. See AR at 14-15. However, the record shows that this was not a Federal Supply Schedule procurement, but a competition for the issuance of a task order under a multiple award, ID/IQ contract. See e.g., RFP amend. 3, Questions and Answers, at 1, 2; AR, Tab 3, Selection Decision, at 1.

TCDI also protests that Abacus made a material misrepresentation in its proposal with respect to four TCDI employees. Specifically, TCDI asserts that Abacus used the names of these four individuals without their permission. Supp. Protest at 10. State responds that Abacus did not propose any of TCDI's incumbent staff as key personnel, and moreover, did not mislead the agency into believing that it had negotiated employment agreements with those individuals.¹⁴ Supp. AR at 12.

An offeror's misrepresentation concerning personnel that materially influences an agency's consideration of its proposal generally provides a basis for proposal rejection or termination of a contract award based on the proposal. Mantech Advanced Sys. Int'l, Inc., B-255719.2, May 11, 1994, 94-1 CPD ¶ 326 at 5. A misrepresentation is material where the agency relied upon it and it likely had a significant impact upon the evaluation. Johnson Controls Sec. Sys., B-296490, B-296490.2, Aug. 29, 2005, 2007 CPD ¶ 102 at 5.

Here, Abacus named in its proposal four of the incumbent's staff as non-key personnel. See Abacus Technical Proposal at 20. The record does not show, nor has the protester demonstrated, that the agency relied on Abacus's representations in its evaluation or selection decision. That is, there is no mention of these four individuals in the evaluation documentation or selection decision. We conclude that, even accepting TCDI's arguments that Abacus made a misrepresentation with respect to these four individuals, it was not material.

Finally, TCDI argues that the awardee failed to meet the requirement from the underlying COMMITS contract that all individuals proposed to perform under the contract have an active secret or top secret clearance before the issuance of a task order. Supp. Protest at 14-17. In this regard, TCDI identified 13 people that Abacus proposed for performance of the task order that TCDI asserts did not yet have clearances. Id. at 16-17.¹⁵ State responds that the task order RFP only required contractor personnel to have the appropriate clearances prior to the start of

¹⁴ The protester also provided e-mails from TCDI employees associated with the incumbent contract to demonstrate that they had not given Abacus permission to use their names in the awardee's proposal.

¹⁵ TCDI also argues that State unreasonably assigned a number of strengths to Abacus's proposal for the firm's past performance and experience with classified systems because Abacus allegedly did not satisfy the requirement that it propose individuals that already had a security clearance. Supp. Protest at 17. This argument is without merit. Whether or not Abacus had cleared personnel to perform the task order was to be evaluated under the personnel qualifications/management factor. See RFP at 20. The strengths, of which TCDI complains, were assessed under the past performance and corporate experience subfactors, and under the technical approach factor.

performance, and that it had no indication that Abacus would not comply with this performance requirement. Supp. AR at 6. We need not address this argument, given our decision and recommendation to reevaluate proposals. We note, however, that to the extent that the requirements of the RFP conflict with the underlying COMMITS contract, as the agency argues, this is a patent ambiguity that should have been protested before the solicitation closed. See SMARTnet, Inc., B-400651.2, Jan. 27, 2009, 2009 CPD ¶ 34 at 6 n.10.

RECOMMENDATION

We recommend that the State Department reevaluate TCDI's proposal in accordance with the terms of the solicitation and make a new cost-technical trade-off decision. If TCDI's proposal is selected for award, we recommend that the State Department terminate the awardee's contract and make award to the protester. We also recommend that TCDI be reimbursed its reasonable costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claims for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
General Counsel