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## Decision

**Matter of:** Re-Engineered Business Solutions, Inc.

**File:** B-405662.4; B-405662.5

**Date:** September 19, 2012

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Wayne A. Keup, Esq., for the protester.  
Steven L. Reed, Esq., and J. Daniel Puckett, Esq., Smith, Currie & Hancock LLP, for Anderson Construction Company of Fort Gaines, an intervenor.  
Steven Sowell, Esq., and Megan O. Jorns, Esq., Department of the Army, Corps of Engineers, for the agency.  
Paul N. Wengert, Esq., Glenn G. Wolcott, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

1. Protester's allegations of bias with regard to a former agency employee provide no basis to sustain the protest where the allegedly biased employee left the agency before the final evaluation and source selection decision took place.
2. Protest that agency misevaluated proposals is denied where evaluation was reasonable and consistent with evaluation criteria.
3. Protest that agency held unequal discussions by raising issues with the protester that should similarly have been raised with the awardee is denied where protester did not demonstrate that it had been prejudiced by the more thorough discussions.

### **DECISION**

Re-Engineered Business Solutions, Inc. (RBS), of Frederick, Maryland, a small business, protests the award of a contract to Anderson Construction Company of Fort Gaines, of Fort Gaines, Georgia, by the Department of the Army, Corps of Engineers, Mobile Division, under request for proposals (RFP) No. W91278-11-R-0040 for operations, maintenance, and repair services--primarily in support of the recreational areas for boating, picnicking, and camping--at the Carters Lake Project Office in Oakman, Georgia. RBS argues that the Corps allowed the improper conduct of a government employee to taint the procurement in favor of Anderson, evaluated RBS's and Anderson's proposals unequally, held defective discussions, and made an unreasonable source selection decision.

We deny the protest.

## BACKGROUND

The Corps issued the RFP on May 5, 2011, seeking proposals to perform operations, maintenance, and repair services for a base year and four option years under a single cost-plus-award-fee contract. RFP at H-10; L-7. The RFP was set aside for Historically Underutilized Business Zone (HUBZone) small businesses.

The RFP set forth a statement of work, which described the types of buildings and recreational facilities, and identified the services required. The statement of work described a wide variety of duties, arranged into a general category, and 17 other specific categories, all of which are referred to as technical provisions (or TP's). Under the 18 TPs, the SOW listed more than 150 subtasks, some of which were further subdivided. RFP at C-9 to C-36. For example, under TP2 (Buildings, Structures, Facilities Mechanical, Electrical, Plumbing, Sewage and Water Systems), subtask 2.1 required the contractor to maintain and repair the "project management office, visitor center, powerhouse, powerhouse elevator, operations and maintenance buildings, gatehouses, restrooms, shower washhouses, well houses, storage buildings, shelters, and boathouse." RFP at C-9.

Under TP3 (Cleaning, Custodial Services, and Refuse Removal), the required tasks ranged from maintenance of grills and fire rings (subtask 3.3), litter removal (subtask 3.5), and camp site cleaning (TP 3.13), to cleaning of the hydro-power facility (subtask 3.15). Under the hydro-power facility cleaning subtask, the SOW noted that "[c]leaning of plate glass doors and windows in this area may require special equipment," and further specified a non-exclusive list of duties, among which was the following: "Clean door glass, glass walls, and windows. Some windows are approximately 27' above the floor." Id. at C-14 to C-15.

The RFP directed offerors to submit separate technical and cost proposals, and to address in detail how the offeror would accomplish the Corps's requirements, which the Corps refers to as "who, when, where, and how the work will be performed." AR, at 6; RFP at M-2. The RFP stated that the Corps would select the proposal that provided the best value to the government, and described a technical/past performance evaluation based on 11 evaluation factors, having differing levels of significance, as follows:

- a. Technical Methodology -- Very Important
- b. Schedule and Control of Work -- Very Important
- c. Maintenance and Control of Government Property -- Very Important
- d. Experience -- Very Important
- e. Past Performance -- Important
- f. Quality Control -- Important
- g. Subcontracting -- Less Important
- h. Personnel -- Less Important
- i. Personnel Policies -- Less Important

- j. Procurement Methods -- Less Important
- k. Safety/Health and Accident Prevention -- Less Important

Id.

The RFP provided that each of the 11 factors would be rated adjectivally as excellent, good, satisfactory, marginal, or unsatisfactory. Id.

The RFP also provided that each offeror's cost proposal would be evaluated for reasonableness and cost realism. Id. at M-4. When combined, the technical/past performance evaluation was significantly more important than cost/price in selecting which offeror's proposal provided the best value. Id. at M-5.

According to the protester, at a time described as "several weeks" after the RFP was issued, employees of the incumbent contractor engaged in a conversation with a particular Corps employee.<sup>1</sup> Protester's Comments, July 19, 2012, attach. 1, Declaration of [DELETED], at 1. According to reports of the conversation later made by those incumbent employees to the incumbent's executives, the Corps supervisor allegedly stated that the incumbent employees should provide resumes to Anderson if they wished to keep their jobs. Id.

Thereafter, the Corps received six proposals, established a competitive range on the basis of the initial evaluation, held discussions, and ultimately requested revised proposals. Contracting Officer's Statement at 1. The technical proposals at issue here were extensive--RBS's initial proposal had nearly 500 pages, not including copies of company procedures and forms that were included with it, which themselves amounted to hundreds of additional pages. Anderson's proposal was of a similar size.

As relevant to the protest issues, RBS's proposal responded to the procurement methods factor with an explanation of the firm's approach to procurement. The proposal stated that RBS would coordinate with government officials, place "ultimate authority" for procurement with the firm's president, and have its superintendent provide financial and administrative responsibility, including functional oversight. The proposal also stated that RBS's procurement practices would utilize competition, and comply with the Federal Acquisition Regulation. RBS Initial Proposal at 427. The proposal then continued with a more detailed explanation of RBS's procurement processes arranged in 14 topics. Id. at 428-450. RBS's proposal also described its approach to performing services at the hydro-power

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<sup>1</sup> The employee is identified as both the Corps's project supervisor, and the lead technical advisor for the procurement, until his departure, which the Corps states occurred before the contract award.

facility, stating that RBS would clean glass surfaces, although the proposal did not specifically mention cleaning windows. RBS Initial Proposal at 80-83.

The Corps evaluated the initial proposals and held discussions in two rounds. The discussions did not raise concerns with RBS about cleaning windows or about the firm's procurement methods approach. See generally, AR, Tabs 10 & 11, Discussions Letters to RBS. The Corps then received and reviewed proposal revisions, which the Corps evaluated. The contracting officer selected Anderson for award on February 6, 2012.<sup>2</sup> Following a debriefing, RBS filed a protest, which it later supplemented. In response to those protests, the Corps announced that it would take corrective action. Our Office therefore dismissed RBS's protests as academic. Re-Engineered Bus. Solutions, Inc., B-405662.2, B-405662.3, Mar. 14, 2012.

The Corps thereafter convened a new evaluation panel and conducted an additional round of discussions. During this final round of discussions, the Corps notified Anderson of one significant weakness and one deficiency in its technical proposal, and commented on three issues regarding its cost proposal. AR, Tab 5b, Final Discussions with Anderson, at 1-2. The Corps notified RBS of 31 significant weaknesses or deficiencies in its technical proposal, and an additional two deficiencies and five additional comments on RBS's cost proposal. AR, Tab 5a, Final Discussions with RBS, at 1-6. During the technical discussions with RBS, the Corps advised the firm of one deficiency and one significant weakness under the procurement methods factor, and a deficiency for failing to address all requirements at the hydro-power facility, "such as cleaning high bay windows." Id. at 2, 5.

Both Anderson and RBS submitted final proposal revisions. In response to the discussions, RBS indicated that it would be submitting a revised page--and an additional new page--to address the weakness and deficiency under the procurement methods factor, but now concedes that it accidentally omitted the two pages from its revised proposal. Protest at 6. RBS did revise its approach for services at the hydro-power facility to include the following statement: "Clean the high 27 foot bay windows." RBS Final Proposal Revision at 83R.

The evaluation of final proposal revisions produced the following adjectival ratings for RBS and Anderson:

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<sup>2</sup> As mentioned previously, the Corps states that its project supervisor/lead technical advisor no longer held those positions when the initial source selection decision was made.

<b>Factor</b>	<b>Anderson</b>	<b>RBS</b>
Technical Methodology	Excellent	Satisfactory
Schedule and Control of Work	Good	Satisfactory
Maintenance and Control of Government Property	Excellent	Good
Experience	Good	Good
Past Performance	Excellent	Excellent
Quality Control	Good	Good
Subcontracting	Good	Satisfactory
Personnel	Satisfactory	Satisfactory
Personnel Policies	Excellent	Satisfactory
Procurement Methods	Excellent	Marginal
Safety/Health and Accident Prevention	Excellent	Good
<b>OVERALL</b>	<b>Excellent</b>	<b>Satisfactory</b>
<b>Evaluated Price (millions)</b>	<b>\$9.416</b>	<b>\$9.153</b>

Contracting Officer's Statement at 3; AR, Tab 7, Final Source Selection Evaluation Board Report, at 1.

The final technical evaluation included narrative explanations of each evaluated strength, significant weakness, or deficiency, and of the evaluators' rationale for the adjectival rating under each of the 11 factors. For example, in rating RBS satisfactory under the schedule and control of work factor, the evaluators explained that RBS had provided an adequate response, but that its single strength was that RBS proposed to use regular meetings to address the status of open work orders. Id. at 15-16. In contrast, the evaluators assigned a higher rating of good to Anderson's proposal under the same factor, explaining that Anderson's proposal showed three strengths that could provide significant benefit to the government: using [DELETED] during peak season, having [DELETED] maintenance crews, and discussing an approach to [DELETED] efficiently. Id. at 9.

In total, the evaluators identified 19 strengths, two significant weaknesses, and one deficiency in the evaluation of RBS's final proposal revision. One significant weakness for RBS was assigned under the technical methodology factor, which the evaluators explained was because although RBS had added information on its approach to performing services in the hydro-power building, the firm had only mentioned cleaning windows in general, but failed to demonstrate an appropriate approach to cleaning the 27' high bay windows. Id. at 14-15.

Since, as noted above, RBS failed to submit the two pages revising its approach under the procurement methods factor, the evaluators continued to assess both a significant weakness and a deficiency to RBS's final proposal revision under that factor. As before, the weakness related to the firm's failure to identify the lines of authority within RBS for authorizing and making purchases, and the deficiency was assigned because the proposal did not discuss the firm's approach to conducting

procurements, and lacked a detailed discussion of how field personnel would obtain supplies and materials. Id. at 17.

The Corps evaluated Anderson's cost at \$9.416 million, while RBS's evaluated cost was \$9.090 million.<sup>3</sup> AR, Tab 8, Source Selection Decision Document, at 9. The contracting officer then made a new source selection decision, which determined that the superiority of Anderson's proposal justified the additional cost of approximately \$325,000. In explaining this conclusion, the contracting officer contrasted her assessment of RBS's approach as lacking a sufficiently thorough discussion of the firm's approach--particularly in the areas where the deficiency and significant weaknesses remained--to Anderson's thorough and sound approaches to all requirements following discussions. AR, Tab 8, Source Selection Decision Document, at 7-8. The contracting officer therefore concluded that Anderson's proposal was comparatively better than RBS's proposal, and merited award even though Anderson's cost was higher, so she again selected Anderson for award on June 8, 2012. Id. at 10. After a debriefing, RBS filed this protest.

## DISCUSSION

The protester's challenges to the award fall into three main areas: that a Corps employee was biased in favor of Anderson; that the Corps misevaluated RBS's proposal and treated the offerors unequally in the evaluation; and that the Corps held defective discussions. We will address RBS's arguments under each area in turn, and as explained below, we conclude that none of them has merit.

### Corps Project Supervisor Conversation with Incumbent Employees

As noted above, RBS argues that the Corps's project supervisor, who also functioned as the lead technical advisor in the initial evaluation, was biased against RBS, and had allegedly stated to employees of the incumbent contractor that the incumbent's employees should consider submitting resumes for employment by Anderson. Protest at 4; Protester's Comments at 3 & attaches. 1 & 2 (declarations of former incumbent contractor's managers).

The Corps disputes RBS's characterization of the employee's actions and, more significantly, explains that the individual at issue was already in the process of moving to a position in a different agency, had left by the time of the initial contract award, and had no involvement whatsoever in the reevaluation or the award decision at issue in this protest. AR, at 4 n.1; Supplemental AR, at 2-3. Accordingly,

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<sup>3</sup> The record reflects that as a result of a cost realism analysis, the Corps lowered RBS's most probable cost by approximately [DELETED] to remove the price of certain [DELETED] that were deemed outside the scope of the contract. AR, Tab 8, Source Selection Decision Document, at 9.

the Corps maintains that the individual's earlier alleged actions are not relevant to the validity of the award at issue in this protest. Although RBS does not meaningfully dispute the Corps's representations about when the employee left the agency, it alleges that the taint of favoritism towards Anderson has not been removed.

A protester's claim that contracting officials were motivated by bias or bad faith must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Shinwha Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 5 n.6.

Here, the protester's basis for alleged bias consists primarily of oral reports by incumbent employees to supervisors, now retold to our Office only by those supervisors. Further, RBS has failed to provide any support for the assertion that such alleged bias had any effect on the final discussions, proposal revisions, evaluation, and ultimately, the source selection decision at issue here. In addition, all of these events occurred after the allegedly biased employee had left the agency. In short, RBS has failed to show that the alleged bias affected the outcome of the competition here. We will not sustain a protest on this basis.

#### Evaluation of Technical Proposals

RBS next challenges the two significant weaknesses and one deficiency that were assessed in the final evaluation under the technical methodology and procurement methods factors, and further challenges nearly all of the adjectival ratings assigned to its proposal.

First, with respect to the assignment of a deficiency and a significant weakness to RBS's proposal under the procurement methods factor, RBS argues that the evaluation was unreasonable, even though (as noted above) the firm concedes that it mistakenly omitted the two revised pages of its proposal that were intended to respond to the agency's discussions questions on precisely those two points. That is, RBS argues that its proposal should never have been assigned a significant weakness or deficiency, and so the firm's failure to respond to discussions on the issue was unimportant.

The Corps responds that its evaluation identified reasonable concerns with RBS's initial proposal--that it lacked detail on how the firm would handle purchasing of required supplies and equipment, and appeared to place all contractor purchasing authority with a single person. Thus, when RBS prepared revised proposal pages addressing those concerns, but failed to actually submit those pages, the Corps contends that its decision to retain the previous evaluation of a significant weakness and a deficiency--and to retain a marginal rating for the procurement methods factor--was reasonable.

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. It is an offeror's obligation to submit an adequately written proposal for the agency to evaluate. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 19.

We agree with the Corps. Notwithstanding RBS's arguments, the record supports the Corps's decision to downgrade RBS's approach under the procurement methods factor. The evaluators provided a reasoned explanation to support their conclusion that RBS's proposal needed to address more thoroughly how the firm's workers would obtain needed equipment and supplies, and appeared to place all procurement authority in the hands of one person. The Corps's concerns were brought to RBS's attention during discussions. Since RBS's mistake--failing to submit its replacement pages--meant that it did not respond to either of those concerns, the Corps reasonably evaluated RBS as marginal under the procurement methods factor. Since the evaluators felt that the unchanged approach would be impractical and problematic, the marginal rating reasonably reflected the nature of the unresolved deficiency and significant weakness in RBS's final proposal.

Second, with respect to the remaining significant weakness, RBS argues that the RFP did not require it to explain an approach to cleaning the 27-foot high windows in the hydro-power building. RBS argues that this was a minor omission, and that the firm's promise to clean the windows should have been sufficient.

The Corps responds that the RFP requested a detailed approach to performing all requirements, and with respect to the 27-foot high windows, the RFP further specifically identified the height of those windows, in recognition of the fact that cleaning the windows could require specialized equipment or procedures. The Corps maintains that it was reasonable for the evaluators to consider whether each offeror had shown a clear approach to safely and appropriately cleaning those windows. The Corps also contends that it was reasonable to assess a significant weakness, given that RBS's final proposal revision merely stated that the windows would be cleaned, but did not show that the firm had considered the equipment, or special procedures, that workers would need to accomplish that aspect of the work.

As noted above, our review of challenges to an agency's technical evaluation is limited to determining whether the evaluation was reasonable. Further, statements in a proposal that are essentially blanket offers of compliance with the stated requirements are not an adequate substitute for detailed information necessary to establish how an offeror proposes to meet the agency's needs. Professional Performance Dev. Group, Inc., B-311273, B-311273.2, June 2, 2008, 2008 CPD ¶ 101 at 4.

In our view, the Corps's evaluation here was reasonable. The RFP required offerors to provide a detailed approach, and specifically called attention to the existence of



windows that were significantly higher than usual, and thus required a specialized approach. Additionally, in the final round of discussions, the Corps specifically called RBS's attention to its failure to address that requirement. Based on the RFP and the discussions, we conclude that the Corps appropriately considered whether RBS had shown an understanding of this aspect of the requirement. Since RBS's final proposal revision merely committed to cleaning the high bay windows without elaborating on RBS's intended approach, the Corps's evaluation of a significant weakness on this basis was reasonable.<sup>4</sup>

RBS also raises challenges to nearly every evaluation factor, arguing that the evaluated strengths of its proposal should have raised its adjectival ratings higher than those that the evaluators assigned. Protest at 7-9; Protester's Comments at 7-8. The Corps responds that the source selection evaluation board report provides a reasoned basis for each evaluation, and that RBS's arguments do not go beyond disagreeing with the conclusions reached by the evaluators.

Based on our review of the record here, we agree with the Corps. In our view, RBS's arguments that particular strengths identified with its proposal under each factor should have resulted in a higher adjectival rating reflect mere disagreement with the reasoned judgments of the Corps's evaluators. In this regard, the contemporaneous evaluation record shows that the evaluators were not arbitrary, but instead reasonably explained their judgments and conclusions. Our Office will not reevaluate proposals, and a protester's mere disagreement with those conclusions does not demonstrate that those conclusions are unreasonable. UNICCO Gov't Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7. Since we conclude that the evaluation was thorough, reasoned, and consistent with the RFP, we deny RBS's challenges.

## Discussions

RBS raises two challenges to the Corps's conduct of discussions. First, RBS argues that the Corps improperly held multiple rounds of discussions without posing any issues of significance to RBS, in an effort to ensure award to Anderson. Protest at 9-10. Second, in a supplemental protest filed after receipt of the agency's report containing protected documents, including copies of the agency's discussion

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<sup>4</sup> RBS asserts that Anderson's proposal, which proposed to [DELETED] to clean the windows (including proposing a [DELETED]), was not meaningfully superior to RBS's proposal--which simply stated that RBS would clean the windows. Accordingly, RBS argues that it was unfair to evaluate its proposal less favorably than Anderson's. Protester's Supplemental Comments at 7. RBS's argument here is without merit; it was well within the Corps's discretion to view the two proposals here as reflecting different levels of understanding and, therefore, to assess them differently.

questions and Anderson's final proposal, RBS asserts that the Corps raised certain issues with RBS, but did not raise those same issues with Anderson.

The Corps responds that discussions were held equally for both offerors, and that the discussions conducted with each offeror were based on the agency's reasonable evaluation of their respective proposals.

The record supports the Corps's claim that it held equal discussions with both RBS and Anderson, and did not hold additional rounds to allegedly coach Anderson. See generally, AR, Tabs 5a, 5b, 10, 11, Discussions with RBS and Anderson. Since the protester has failed to show factual support for its claim that Anderson was provided more extensive discussions than RBS, we deny this ground of protest.

Finally, RBS complains that several of the issues that were raised with RBS during discussions were equally applicable to Anderson, but were not treated as significant in the final evaluation for either offeror. Supplemental Protest at 2-3. However, RBS does not show how it was prejudiced by the allegedly unequal treatment that RBS received. In particular, RBS has not alleged that the discussions caused it to revise its proposal in a way that harmed it in the evaluation, or caused the firm's costs to increase.

Competitive prejudice must be established before our Office will sustain a protest; where the record does not demonstrate that the protester would have had a reasonable chance of receiving the award but for the agency's actions, we will not sustain a protest, even if deficiencies in the procurement process are found. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3.

Here, RBS has not demonstrated any harm resulting from the allegedly more expansive discussions that it received. Rather, the allegedly unequal discussions merely prompted the protester to provide a more thorough explanation of its approach to certain requirements (for example, a better explanation with regard to recycling light bulbs and electrical components, or a detailed method for pest control). Although the evaluators ultimately may not have considered this additional detail (or the alleged lack of similar detail in Anderson's proposal) to be significant, RBS has not shown that being prompted to provide such detail diminished the

likelihood that the firm would receive the award. Accordingly, RBS has not shown prejudice, and we deny RBS's challenges regarding the agency's discussions.

The protest is denied.<sup>5</sup>

Lynn H. Gibson  
General Counsel

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<sup>5</sup> RBS also claimed that a copy of its proposal submitted to the Corps was, thereafter, "discovered to be missing." Protest at 4. The contracting officer reports that all copies of RBS's proposal have been maintained securely. Contracting Officer's Statement at 4. Since RBS has provided no factual support for its complaint regarding the Corps's handling of its proposal, this allegation provides no basis for sustaining the protest.