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**Comptroller General  
of the United States**

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

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## Decision

**Matter of:** Gonzales-Stoller Remediation Services, LLC

**File:** B-406183.2; B-406183.3; B-406183.4

**Date:** March 2, 2012

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Young H. Cho, Esq., and Charmaine A. Howson, Esq., Department of Energy, for the agency.

Nora K. Adkins, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protester's challenges to the agency's evaluation of its proposal constitute mere disagreements with the agency's judgments and provide no bases for sustaining the protest where the agency, in accordance with the stated evaluation criteria, reasonably and equally evaluated the proposals and concluded that the awardee's proposal offered the best value to the government despite its higher price.

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### DECISION

Gonzales-Stoller Remediation Services, LLC (Gonzales), of Broomfield, Colorado, protests the Department of Energy's (DOE) issuance of a task order to Portage, Inc., of Idaho Falls, Idaho, under request for task order proposals (RTP) No. DE-SOL-0001300 for environmental remediation, including excavation and transportation of residual radioactive material (RRM), at DOE's Moab project site in Utah.

We deny the protest.

### BACKGROUND

On December 17, 2010, DOE issued the RTP under its multiple award, small business, environmental management nationwide indefinite-delivery/indefinite-quantity (ID/IQ) contract to all contract holders. The RTP sought offerors to conduct

remediation of RRM at DOE's Moab site, which includes work related to RRM excavation, conditioning, and filling of containers at the Moab site; transporting RRM from the Moab site to a site 30 miles away in Crescent Junction, Utah; disposal of RRM in a disposal cell at the Crescent Junction site and interim and final cover placement of the disposal cell; and reclaiming the Moab site to appropriate standards. RTP at C-3.

As relevant here, the RTP's performance work statement provided a description of the project performance requirements for the excavation and handling of RRM at Moab, and the transportation of RRM from the Moab site to the Crescent Junction site. RTP at C-5-10. These sections detailed the agency's requirements that offerors provide safe, efficient, and cost effective debris handling plans for the transfer of RRM, which contemplated the decontamination of RRM containers; a transportation plan, which included the shipment of oversized materials and/or debris to the Crescent Junction site by truck; and an RRM excavation plan, which was to include such matters as excavation method, excavation sequence, mixing of slimes and sands, segregation of oversized materials, and water management. Id.

The RTP provided for the award of a single cost-plus-award-fee task order for the environmental remediation portion of the work, with a fixed-price component associated with the disposal of RRM at the Crescent Junction site. Award would be made to the offeror whose proposal represented the best value considering the evaluation of three equally rated technical evaluation criteria--technical approach, key personnel and organization, and past performance--and cost/price (which would be evaluated for reasonableness and realism). RTP at M-1. In determining best value, the combined weight of the non-cost criteria was significantly more important than cost/price. Id.

The RTP instructions for the preparation of proposals under the technical approach factor required offerors to describe their technical approach for all major performance work statement activities; identify the risks and impacts of their proposed approach; provide rationale for the identified risks and impacts; and explain their approach to eliminate, avoid, or mitigate the identified risks. RTP at L-10. Offerors were also to provide as part of their technical approaches a detailed integrated schedule, including a critical path schedule. RTP at L-10-11.

The evaluation of the technical approach factor was based upon the depth, quality, completeness, effectiveness, and reasonableness of the contractor's technical approach for the major performance work statement activities--transition, facility/ground maintenance, excavation and handling at Moab, transportation, Crescent Junction operations, and project support--to meet the purposes and objectives of the RTP within the existing funding and regulatory framework. The evaluation would consider the identification of risks and impacts of the offeror's proposed approach; the rationale for the identified risks and impacts; and the offeror's approach to eliminate, avoid, or mitigate risks. RTP at M-2. The realism of

an offeror's detailed integrated schedule, including the critical path schedule, would also be evaluated.

In response to the RTP, six small business ID/IQ contract holders submitted proposals, including Gonzales and Portage. Gonzales is a Small Business Administration-approved Mentor-Protégé LLC consisting of S.M. Stoller Corporation as the mentor and JG Management Systems, Inc. as the protégé. Skanska USA Civil West is an integrated subcontractor to Gonzales. Gonzales Proposal, vol. II, Technical Approach, at 1-1.

Gonzales proposed a 28-week (6.5 months) RRM tailings excavation and movement "campaign" for each year of the contract, which would begin in early March and end in mid-September. Id. at 1-11. For the 24 weeks (5.5 months) Gonzales was not excavating and moving RRM, Gonzales proposed a reduction of its staff to [REDACTED] members to focus on management, planning, maintenance, and security activities. Id. During the 5.5-month work cessation period, Gonzales' proposal provided that it would "attempt to place the staff on other Stoller and Skanska construction jobs where opportunities exist." Id. at 1-30. Additionally, Gonzales' proposal offered employees an incentive to return to work, after the 5.5-month work cessation period ended, by providing a 401k plan with a match by Gonzales [REDACTED]. While Gonzales "expect[ed] some loss of staff from year to year," Gonzales provided that it "anticipate[d] [that] the majority of staff will return for the opportunity to work at Moab." Id.

Portage proposed a [REDACTED]-month excavation and movement schedule with a [REDACTED]-month curtailment during the winter. Portage Proposal, vol. II, Technical Approach, at 7. During its work cessation period, Portage proposed retaining a staff of [REDACTED] employees to provide the year-round solicitation requirements of security, maintenance, and site support. Id. Portage's proposal recognized the project risk associated with retention of the workforce at Moab due to the [REDACTED]-month work cessation, but stated that it was "highly confident that we can avoid and/or mitigate what we believed would be the primary risk associated with the [REDACTED]-month option (i.e., our ability to re-hire the craft workforce after the winter curtailment)." Id. at 4. Portage proposed to retain the workforce after work cessation through moving the workers to its subcontractors,<sup>1</sup> which offered several options to retain staff in their operations, and through a 401k benefit plan with a matching contribution by Portage that would allow [REDACTED] for employees who [REDACTED]. Id. at 3.

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<sup>1</sup> For example, Portage's major subcontractor, Nielson Construction, offered several options for retention of staff (e.g., moving craft staff to local pit development and crushing activities), and Portage's subcontractor, DeNuke Contracting Services, Inc., indicated that it was highly confident they can place staff on temporary assignments on existing contracts. Portage Proposal, vol. II, Technical Approach, at 3.

The proposals of Gonzales and Portage were evaluated by the technical evaluation team (TET), which resulted in the following technical ratings and total evaluated price for Gonzales' and Portage's proposals:

<b>Technical Factor</b>	<b>Gonzales</b>	<b>Portage</b>
Technical Approach	Adequate	Outstanding
Key Personnel & Organization	Outstanding	Outstanding
Past Performance	Outstanding	Good
Total Evaluated Price	\$110,592,610	\$123,826,620

Agency Report (AR), Tab 2, Task Order Evaluation Report, at 8.<sup>2</sup>

The TET identified three strengths, three weaknesses, and one significant weakness in its evaluation of Gonzales' technical approach. Id. at 19-21. Gonzales' significant weakness concerned its scheduling and workforce retention activities during its 5.5-month work cessation period. Id. at 21. As relevant here, two of Gonzales' weaknesses concerned its approach to debris handling in transporting RRM by truck, and its approach to RRM excavation with regard to the double handling of sand tailings. Id. at 21. The TET's evaluation of Portage's technical approach identified two significant strengths, three strengths, and one weakness. Id. at 27-30. The two significant strengths in Portage's technical approach concerned its scheduling and workforce retention activities during its [REDACTED]-month work cessation period, and its detailed description of RRM excavation. Id. at 28.

The source selection authority (SSA) concluded that Portage's proposal provided the best value to the government based on his comparison of the proposals' strengths and weaknesses, and relative merits.<sup>3</sup> AR, Tab 3, Source Selection Statement, at 13. The SSA specifically found that Portage's proposal was superior to the other proposals, including Gonzales, under the non-cost evaluation factors. In this regard, the SSA found that Portage's technical approach, with two evaluated significant strengths, represented a major discriminator between the proposals. Id. at 11. The SSA also found that Portage's "exceptional approaches for its RRM tailing and

<sup>2</sup> Possible adjectival ratings for the technical approach factor were outstanding, good, adequate, inadequate, and unsatisfactory. The possible adjectival ratings for the past performance factor were outstanding, good, satisfactory, marginal, and unacceptable. AR, Tab 2, Task Order Evaluation Report, at 14.

<sup>3</sup> In making the best value decision, the SSA reviewed the offerors' proposals and the TET's evaluation report, received a briefing from the TET chairperson and contracting officer, and conferred with TET members. AR, Tab 3, Source Selection Statement, at 6.

debris excavation strategies, shipping campaign (including debris handling and transportation), and workforce retention alone provide a significant advantage over all contractors.” Id. at 13. The SSA also found the offerors’ “outstanding” key personnel and organization were not a discriminator. The SSA did recognize that there were qualitative differences between Gonzales’ and Portage’s past performance, but found that this did not represent a significant discriminator because the differences in past performance were considered “minimal” and all offerors would be able to meet contract expectations. Id. Based on his integrated assessment of the proposals, including the evaluated costs, the SSA determined that Portage’s proposal represented the best value. Id. In this regard, the SSA expressly determined that when Portage’s proposal was compared to Gonzales’ proposal, Portage’s superior technical approach “more than outweighs” its higher evaluated cost. Id.

The award was made to Portage on November 4, 2011. After receiving a debriefing, Gonzales filed this protest with our Office on November 25.

## DISCUSSION

Gonzales contends that the agency unreasonably evaluated its proposal, applied an unstated evaluation criterion, evaluated the proposals of Gonzales and Portage unequally, and unreasonably found that Portage’s higher cost proposal represented the best value.

In considering protests challenging an agency’s evaluation of proposals, we will not reevaluate proposals; rather, we will examine the record to determine whether the agency’s evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. James Constr., B-402429, Apr. 21, 2010, 2010 CPD ¶ 98 at 3. A protester’s mere disagreement with a procuring agency’s judgment is insufficient to establish that the agency acted unreasonably. Id.

Here, we conclude that the evaluation of Gonzales’ proposal and the source selection decision were reasonable and consistent with the solicitation. Although our decision does not specifically address all of Gonzales’ arguments, we have fully considered each of them. As illustrated by the following examples of Gonzales’ primary arguments, we find that none of these arguments provide a basis to sustain the protest.

## Gonzales' Work Cessation Schedule

Gonzales challenges the significant weakness assigned its technical approach asserting that the agency unreasonably evaluated its 5.5-month work cessation schedule. The TET report described the significant weakness as follows:

Schedule Activities – Winter Shutdown – [Gonzales] proposed a seasonal, cyclical operating approach where the craft labor (i.e., operators, drivers, laborers, etc.) will be furloughed each year during winter shutdown . . . resulting in increased safety incidents due to loss of safe operating capabilities, knowledge base, efficiency, and DOE safety culture due to increased skilled/trained workforce turnover. . . . The opportunities and benefits described in [Gonzales'] proposed plan to retain the existing workforce year after year (e.g., 401k plan where employees are vested [REDACTED], accrued vacation benefits, etc.) were not reasonable or adequate incentives for workforce continuity to retain most of the skilled/trained workers each year. [Gonzales'] incomplete, ineffective and unreasonable winter shutdown approach described above are flaws that appreciably increase the risk of unsuccessful task order performance.

AR, Tab 2, Task Order Evaluation Report, at 21.

Gonzales disputes the agency's claim that its cyclical operating approach increased the risk of safety incidents. Gonzales argues that the agency's underlying conclusions, with regard to its ability to retain its workforce year after year, are unreasonable because the agency failed to consider that its proposal stated that it would attempt to place workers on other construction jobs where opportunities exist, and improperly determined that its 401k incentive plan to retain furloughed workers after the end of the 5.5-month work cessation period did not provide reasonable or adequate incentives for workers to return to work at Moab.

The agency's evaluation of Gonzales' proposed approach concluded that there was an increased risk of safety concerns, which would be caused by the adverse effect on workforce retention attendant with Gonzales' cyclical operating approach, given that Gonzales' proposal failed to provide sufficient details regarding its plan for providing other opportunities for furloughed workers. AR, Tab 2, Task Order Evaluation Report, at 21. For example, the agency found that Gonzales' proposal failed to address where the jobs may be located or demonstrate its past success in relocating furloughed workers to other projects. AR at 16. The agency also determined that Gonzales' proposed 401k plan failed to provide adequate incentives for the skilled workers to return after the lengthy 5.5-month furlough period. AR, Tab 2, Task Order Evaluation Report, at 21. As explained by the agency, an inexperienced and unskilled workforce unfamiliar with the work site, processes and

procedures, and safety culture--which could result from a failure to retain the skilled workforce--could increase safety incidents. AR at 18.

In short, Gonzales failed to provide sufficient detail in its proposal to convince the agency that it could retain its skilled/trained workers after a 5.5-month furlough. It is an offeror's responsibility to submit an adequately written proposal that establishes its capability and the merits of its proposed technical approach in accordance with the evaluation terms of the solicitation. Carolina Satellite Networks, LLC; Nexagen Networks, Inc., B-405558, et al., Nov. 22, 2011, 2001 CPD ¶ 257 at 4. Based on our review of the record, we conclude that the agency's finding that Gonzales' work cessation approach increased the risk of safety concerns was reasonable. Gonzales' attempts to rebut the agency's conclusions amount to no more than mere disagreement with the agency's judgments, and do not provide any basis to sustain the protest.

Nevertheless, Gonzales contends that the RTP did not expressly or impliedly require an offeror to present a workforce retention plan as part of their proposal, nor did the evaluation criteria state or imply that workforce retention would be an evaluation factor. Thus, Gonzales asserts that the agency's technical approach evaluation, which was based in part on an offeror's ability to retain its workforce, unreasonably applied an unstated evaluation factor. We disagree.

Although agencies are required to identify in a solicitation all major evaluation factors, they are not required to identify all areas of each factor that might be taken into account in an evaluation, provided that the unidentified areas are reasonably related to or encompassed by the stated factors. Information Ventures, Inc., B-401448.5, B-401448.6, May 13, 2010, 2010 CPD ¶ 180 at 7. While the RTP did not expressly provide that the agency would take into consideration the ability of an offeror to retain its workforce, it did provide for the evaluation of the risks and impacts of the offeror's approach. Here, Gonzales proposed an approach that would furlough [REDACTED] members of its workforce for 5.5 months, which brought with it the possibility of workers not returning after the work cessation period ended. Based on Gonzales' approach, it was appropriate for the agency to evaluate the risk of its cyclical schedule, which reasonably encompassed whether Gonzales could retain its skill/trained workers after its work cessation period ended. Indeed, the protester's proposal, by including information on its intention to attempt to place workers in other positions and its 401k benefits incentives, implicitly recognized that the RTP contemplated evaluation of these considerations as part of the technical approach evaluation. Accordingly, we find the evaluation to be consistent with the terms of the solicitation.

Gonzales also contends that the agency's assignment of a significant weakness for its proposed 5.5-month work cessation schedule, while assigning Portage a significant strength for its proposed [REDACTED]-month work cessation schedule, reflects unequal treatment.

It is a fundamental principle of government procurement that competition must be conducted on an equal basis, that is, offerors must be treated equally and be provided with a common basis for the preparation of their proposals. Continental RPVs, B-292768.2, B-292768.3, Dec. 11, 2003, 2004 CPD ¶ 56 at 8.

Our review of the record does not show unequal treatment by the agency because there were significant differences amongst the proposals, which the agency reasonably evaluated. The duration of work cessation between the two proposals was not inconsequential--Gonzales proposed a 5.5-month shut down and Portage proposed [REDACTED]-month shut down. Furthermore, the agency found that Portage's proposal provided a level of detail that was lacking in Gonzales' approach. In this regard, the TET's report described Portage's significant strength as follows:

Scheduling Activities – Winter Operations – Portage proposed a detailed, seasonal; [REDACTED]-month operating approach where work activities would cease during a winter curtailment. . . . Portage's proposed schedule activities and its discussion on how to retain its skilled/trained workforce year after year is reasonable for workforce continuity. Portage proposed to offer affected workers the ability to work at other locations and provides significant details regarding the remaining staff responsibilities and activities. Portage, along with its named major/critical subcontractors, offered to move operators/laborers to their local quarry where stone mining and crushing activities are staffed up in the winter to develop aggregate stockpiles (currently being completed at the site by Nielson). Key equipment operators could be transitioned to coal haul operations, gas and oil field operations, and pipeline work where winter activities are ongoing. Moab staff could also be placed on temporary assignment on existing task orders with other DOE and commercial clients. Retaining project personnel with the current contractors will ensure a stable safety culture. Project-related winter curtailment activities include site support to DOE and the [technical assistance contractor], site inspections after significant weather events, long lead maintenance of heavy equipment, stakeholder interactions, training, updates to plans and reports, and preparations for resumption of activities in March. Portage offered a 401K plan allowing employees who [REDACTED]. Portage's proposed schedule of work activities will ensure the retention of safe operating capabilities, knowledge base, efficiency, and DOE safety culture due to skilled/trained workforce re-hire. Portage's in-depth, complete, and reasonable scheduling activities described above for excavation, handling and placement are attributes that appreciably increase the probability of successful task order performance.

AR, Tab 2, Task Order Evaluation Report, at 28.



Comparing the two offers with regard to retaining its skilled/trained workers who were furloughed during the shutdown period, Gonzales stated that it would attempt to place the staff on other Stoller and Skanska construction jobs where opportunities exist and offer employees an incentive to return to work, after the 5.5-month work cessation period ended, by providing a 401k plan with a match by Gonzales [REDACTED]. Gonzales Proposal, vol. II, Technical Approach, at 1-30. Gonzales' proposal explained that while it expected some loss of staff from year to year it anticipated that the majority of staff will return for the opportunity to work at Moab. Id.

Portage, on the other hand, stated that it was highly confident that it could avoid and/or mitigate what it acknowledged to be the primary risk associated with its [REDACTED]-month shutdown plan (i.e., its ability to re-hire the craft workforce after the winter curtailment) by proposing to retain the workforce after curtailment through moving the workers to its subcontractors. Portage Proposal, vol. II, Technical Approach, at 4. Portage's proposal detailed that its subcontractor Nielson offered several options for retention of staff (i.e., moving craft staff to local pit development and crushing activities), and its subcontractor, DeNuke, indicated that it was highly confident it can place staff on existing contracts. Id. at 3. Portage's proposal also stated that Nielson had a history of providing similar work to retain workers from its winter construction work cessation, which resulted in a 95-percent return rate after the winter furlough. Id. Portage also provided a 401k incentive benefit plan with a match by Portage that would allow [REDACTED] for employees who [REDACTED].<sup>4</sup> Id. at 3-4.

While neither Portage nor Gonzales could guarantee that they will temporarily place all furloughed workers or retain its workforce after work cessation, the agency's evaluation determined that Portage's proposal provided far more confidence than Gonzales' proposal that it could successfully do so. This is not unequal treatment but a reasonable evaluation of the respective offerors' approaches.

#### Gonzales' Debris Handling and Transportation

The agency determined that Gonzales' approach to debris handling and transportation warranted a weakness because it did not provide adequate detail and discussion, which increased the risk of unsuccessful task order performance.

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<sup>4</sup> The agency found that Portage's [REDACTED] 401k plan, when combined with a longer annual period of employment, provided a better workforce retention incentive than Gonzales' 401k plan with a shorter annual period of employment. Supp. AR at 12. While Gonzales disagrees, it has not shown the agency's judgment was unreasonable.

Specifically, the agency found that Gonzales' proposal failed to explain its truck decontamination and surveying process and failed to provide information regarding the size and type of dump trucks to be used or the number of round trips required. The agency also found that Gonzales' proposed schedule for RRM movement via truck could impact the local community traffic patterns for the Moab area. AR, Tab 2, Task Order Evaluation Report, at 20.

With regard to truck decontamination, Gonzales' proposal provided, "[REDACTED]." Gonzales Proposal, vol. II, Technical Approach, at 1-18. The agency determined that this description failed to provide the necessary details to adequately explain its approach, such as the location of the decontamination facility and the process of truck decontamination. AR, Tab 2, Task Order Evaluation Report, at 20. In its protest, Gonzales asserts that the agency's determination was unreasonable because the agency failed to recognize that it provided additional detail regarding the process for truck decontamination in its proposal. See Gonzales Proposal, vol. II, Technical Approach, at 1-17, Figure 1-9. However, based on our review of Gonzales' proposal, we agree with the agency that the decontamination process Gonzales pointed to in its protest focuses solely on decontamination of railcar containers and does not provide any additional details to address truck or truck component (chassis) decontamination.<sup>5</sup> See AR at 23.

As to truck sizes and types, and the number of round trips between Moab and Crescent Junction, we agree with the protester that this information was contained within the basis of estimate portion of Gonzales' cost proposal. However, the agency properly did not consider the information contained within Gonzales' cost proposal in evaluating Gonzales' technical approach, particularly given the admonition in the RTP instructions, which stated that "[n]o cost information shall be included in the Technical and Management Proposal." RTP at L-10.

We likewise find that the agency's determinations with regard to Gonzales' schedule to move RRM via truck during the [REDACTED] to be reasonable. The agency reasonably found that the proposed movement of RRM over a [REDACTED]-day

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<sup>5</sup> Gonzales argues that the evaluation of its debris handling approach as compared to how the agency's evaluated Portage's debris handling approach was unequal and unreasonable. Gonzales' contentions here lack merit, inasmuch as they are based upon a faulty description and/or understanding of Portage's approach. For example, Gonzales claims that Portage received a significant strength, even though it failed to provide the necessary details to adequately explain its approach to truck decontamination prior to over the road travel, when in fact, Portage's approach did not require an explanation of truck decontamination since its over-the-road trucks did not cross into the contamination area, as Gonzales' trucks did. See Portage Proposal, vol. II, Technical Approach, at 5, 14-15.

period, during peak tourist season, could have an impact on the local and community traffic patterns, which could increase the risk of unsuccessful performance. While Gonzales contends that its shipments would not have any impact on the local or community traffic patterns, this disagreement does not show that the agency's judgment was unreasonable.

#### Excavation of RRM

Gonzales' technical approach also received a weakness for its RRM excavation approach to mixing sand tailings with the slime tailings. The agency determined that Gonzales' approach lacked efficiency and created safety problems because the sand tailings were being handled more than what was needed to meet the performance work statement requirements. The agency determined that the double-handling of the sand tailings increased the risk of safety incidents, wear and tear on equipment, and unsuccessful task order performance. AR, Tab 2, Task Order Evaluation Report, at 20. While Gonzales again disagrees, it has not shown that the agency's judgment that this approach constituted a weakness was unreasonable.

Here too, Gonzales asserts that the agency unequally evaluated Gonzales' and Portage's proposals for RRM excavation. However, we once again find significant differences between the two proposals. Gonzales proposed to excavate the [REDACTED]. Gonzales Proposal, vol. II, Technical Approach, at 1-11-13; Supp. AR at 24. Portage, on the other hand, proposed that [REDACTED]. Portage Proposal, vol. II, Technical Approach, at 12-13; Supp. AR at 25. We have no basis to find the agency unequally evaluated the offeror's RRM excavation approaches.

#### Best Value Decision

Gonzales finally contends that the agency's best value decision, which resulted in the payment of a \$13 million premium, was unreasonable. As indicated above, the SSA clearly articulated the basis for his determination that Portage's superior technical approach more than outweighed its higher total evaluated price. AR, Tab 3, Source Selection Decision at 13. In so doing, the SSA took into account Gonzales' higher rated past performance and identified the specific advantages in Portage's approach that reasonably supported the price premium. We find the agency's award decision was reasonable and consistent with the evaluation criteria.

The protest is denied.

Lynn H. Gibson  
General Counsel