



United States Government Accountability Office  
Washington, DC 20548

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## Decision

**Matter of:** The Walsh-Vaughn JV  
**File:** B-407998.2; B-407998.4  
**Date:** May 21, 2013

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Charles L. Webster III, Esq., Department of the Army, for the agency.  
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### DIGEST

The rejection of the protester's final revised proposal as technically unacceptable was reasonable where a required electronic construction schedule, first submitted in response to discussions, contained a material deficiency.

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### DECISION

Walsh-Vaughn Joint Venture, of Chicago, Illinois, protests the rejection of its proposal and the award of a contract to Clark-McCarthy Healthcare Partners II, JV, of Dallas, Texas, under request for proposals (RFP) No. W912G-12-R-0054, issued by the Department of the Army, Corps of Engineers, for the design and construction of a hospital and related buildings at Fort Bliss in El Paso, Texas. Walsh-Vaughn challenges the agency's evaluation of its proposal and the adequacy of discussions.

We deny the protest.

### BACKGROUND

The RFP provided for the award of a fixed-price contract for the design and construction of a new hospital and related buildings at Fort Bliss. Detailed design and performance specifications were provided, including a construction schedule that required completion of all work within 1,277 calendar days after the agency's notice to proceed. See RFP, Specifications, § 01 00 00.00 44.

Offerors were informed that award would be made on a best-value basis, considering the following factors: past performance; prime contractor's key personnel; organization and technical approach; proposed schedule; small business participation; and price. The non-price factors, combined, were stated to be significantly more important than price. RFP amend. 5, § 4.1.

The RFP provided that technical proposals would be rated adjectivally by the agency's source selection evaluation board (SSEB). Proposals would be evaluated under the non-price factors, except past performance, as outstanding, good, acceptable, marginal, or unacceptable.<sup>1</sup> Id. § 12.3. As relevant here, an unacceptable rating reflected a proposal that did not meet requirements and contained one or more deficiencies.<sup>2</sup> Id. § 12.3.5. Offerors were warned that the agency would not award a contract to an offeror whose proposal contained a deficiency. Id. § 13.2.

With respect to the proposed schedule factor, the RFP instructed offerors to propose a contract duration of no more than 1,277 calendar days from the agency's notice to proceed, and to provide a summary construction schedule based upon a critical path methodology.<sup>3</sup> The RFP provided that the agency would evaluate the proposed contract duration, taking into account whether the summary construction schedule supported the proposed duration, as well as other information, such as "independent judgment concerning logic, constraints, and typical construction durations." See id. §§ 8.1.2, 8.2.1. The RFP also provided that the summary schedule would be evaluated for compliance with the contract's project schedule specifications and cost loading requirements.<sup>4</sup> Id. § 8.2.1. Offerors were instructed

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<sup>1</sup> Proposals would receive adjectival ratings under the past performance factor that reflected levels of relevancy and confidence. See RFP amend. 5, §§ 5.7, 5.8.

<sup>2</sup> A deficiency is defined by the RFP as a material failure of a proposal to satisfy a government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level. RFP amend. 5, § 11.3.1; see also Federal Acquisition Regulation (FAR) § 15.001.

<sup>3</sup> A construction schedule based upon a critical path methodology includes a list of activities required to complete the project, the duration of each activity (e.g., the start and finish dates for the activities), and the sequential relationships between the activities.

<sup>4</sup> Offerors were required to provide a cost curve (spend-curve or s-curve) in their price proposals to establish their compliance with the expected incremental funding approach for this contract. See RFP amend. 5, § 8.2.1. The offerors' cost loading in their electronic schedules (provided as part of technical proposals) was expected  
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not to include any cost information in the technical proposal, other than the cost loading to be included in the electronic schedule. See id. § 8.1.3(g); see also Hearing Transcript (Tr.) at 28-29.

Offerors were instructed to submit their summary construction schedule on a DVD to allow the agency, using “Primavera” software, to review and analyze the schedule.<sup>5</sup> RFP amend. 5, § 8.1.3. The RFP also informed offerors that the summary construction schedule would be considered the offeror’s “preliminary schedule as required by Section 01 32 01.00 10: Project Schedule.”<sup>6</sup> Id. The preliminary construction schedule was required to provide detail about the offeror’s approach during the first 90 days after receipt of notice to proceed. Among other things, this detail was to include “the proposed values per the Submitted CLIN schedule which meets the incremental funding requirements, as well as all applicable codes required by the specification.” Id. In this regard, the RFP informed offerors that the preliminary schedule would be used for payment purposes for the first 90 days, and that the schedule should be cost loaded. RFP, Specification 01 32 01.00 10, §§ 3.3.10, 3.4.1.

The RFP, as amended, established October 9, 2012, as the closing date for receipt of initial proposals. It also provided that some portions of the initial proposals--including the summary construction schedule--could be provided within 48 hours of that date. See RFP amend. 5, § 3.4.3 (“Proposal Due Date Exceptions”). The Army received proposals from five firms, including Walsh-Vaughn, by the October 9 closing date. Walsh-Vaughn also submitted a hard copy of its proposed construction schedule in portable document format (pdf) on October 11, but did not submit the electronic version of its schedule on DVD as required.<sup>7</sup> AR, Tab 16, Contract Specialist’s Declaration, at 1.

Beginning October 15, the SSEB evaluated the offerors’ technical proposals, and the contract specialist evaluated the cost proposals. As relevant here, the firms’

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to support the cost curve in the price proposal. See Hearing Transcript (Tr.) at 65, 127, 158.

<sup>5</sup> Primavera is project scheduling software that is published by Oracle Corporation. Agency Report (AR), Tab 19A, Statement of SSEB Technical Advisor, at 2.

<sup>6</sup> Offerors were expected to provide a summary construction schedule that outlined the offerors’ schedule for the entire contract. The first 90 days of the schedule were required to be more detailed; this was considered the offeror’s preliminary construction schedule. Tr. at 18-20.

<sup>7</sup> Although not required by the RFP, all offerors provided paper copies (in pdf format) of their summary construction schedules. Tr. at 27-28.

proposed summary construction schedules were evaluated by the SSEB's technical advisor, who reviewed the firms' electronic schedules using Primavera software. AR, Tab 19A, Statement of SSEB Technical Advisor, at 2.

On October 17, Walsh-Vaughn informed the contract specialist that it had inadvertently failed to include an electronic version of its summary construction schedule with its proposal, and asked permission to submit its electronic schedule despite the fact that both the date for receipt of proposals, and the 48-hour period for submitting certain additional information (like construction schedules), had passed. See id.; Protest at 5. The agency advised that Walsh-Vaughn could not submit its electronic schedule at that point, but, if discussions were held, the firm would be permitted to submit its electronic schedule with a revised proposal.<sup>8</sup> AR, Tab 16, Contract Specialist's Declaration, at 2; 2<sup>nd</sup> Suppl. AR at 11.

Ultimately, the agency decided to conduct discussions and established a competitive range that included the proposals of all five offerors, including Walsh-Vaughn. Evaluation notices were sent to each offeror identifying deficiencies, weaknesses, and/or uncertainties in the offerors' respective proposals. Walsh-Vaughn was informed that its initial proposal had a number of deficiencies, weaknesses, and other concerns, including, as relevant here, that Walsh-Vaughn failed to submit the electronic version of its summary construction schedule. See AR, Tab 17, Walsh-Vaughn Evaluation Notice, at 1. In response, Walsh-Vaughn provided the electronic version of its proposed summary schedule on a DVD with its revised proposal. 2<sup>nd</sup> Suppl. AR at 11.

In its evaluation of Walsh-Vaughn's revised proposal, the agency found that Walsh-Vaughn had resolved the deficiencies and weaknesses identified during discussions. The Army also found, however, that the protester's electronic schedule, which was submitted with its final revised proposal, had a number of material deficiencies, including that the schedule contained open-ended activities<sup>9</sup> that were prohibited by the RFP and failed to include cost loading. See Tr. at 57-59, 61, 73, 78; AR, Tab 19A, Statement of SSEB Technical Advisor, at 5; Tab 20, SSEB Report, at 53, 65. Based upon these

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<sup>8</sup> The parties disagree about whether Walsh-Vaughn submitted its electronic schedule with its October 17 request to supplement its proposal. We need not resolve this disagreement. There is no dispute in the record that Walsh-Vaughn did not submit its electronic schedule by the due date for initial proposals (or within 48 hours after that due date). There is also no dispute that the agency advised the company that it would not be permitted to remedy the omission unless (and until) the agency opened discussions with the offerors.

<sup>9</sup> An activity that does not have a logically scheduled start or finish date is considered open-ended. See Tr. at 74-76.

deficiencies in the protester's electronic schedule, the Army rejected Walsh-Vaughn's revised proposal as unacceptable. AR, Tab 24, Source Selection Decision, at 2.

Clark-McCarthy's proposal was found to offer the best value, and was selected for award. Id. at 10. This protest followed a debriefing.

## DISCUSSION

Walsh-Vaughn raises numerous objections to the agency's conduct of this procurement. Among other things, the protester complains that the Army unreasonably found Walsh-Vaughn's electronic schedule and revised proposal to be unacceptable and that the Army did not conduct meaningful discussions with the protester because the agency did not give Walsh-Vaughn an opportunity to address the deficiencies identified in its electronic schedule. As discussed below, we find that the agency reasonably concluded that the protester's electronic schedule, which was first submitted in response to discussions, was deficient, and that Walsh-Vaughn received meaningful discussions.<sup>10</sup>

### Technical Evaluation

As noted above, the Army found that Walsh-Vaughn's electronic construction schedule had a number of deficiencies, including its failure to provide required cost loading in the schedule.<sup>11</sup> The protester acknowledges that it did not provide

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<sup>10</sup> Given our conclusion that Walsh-Vaughn's proposal was reasonably determined to be technically unacceptable based on the deficiency arising from its electronic schedule, and given that there are other acceptable offers, Walsh-Vaughn is not an interested party to challenge other aspects of the agency's conduct of the procurement and selection decision. See Tetra Tech Tesoro, Inc., B-403797, Dec. 14, 2010, 2011 CPD ¶ 7 at 6. We have reviewed all of the protester's contentions, and to the extent there are any not covered by the discussion above (and not covered by our conclusion that the protester is not interested to raise most of its other challenges), those contentions are denied.

<sup>11</sup> Walsh-Vaughn argues that its electronic schedule was evaluated as having only two deficiencies. See, e.g., Protester's Post-Hearing Comments at 2. The record shows, however, that the agency found that the protester's electronic schedule had seven deficiencies. See AR, Tab 20, SSEB Report, at 53, 65; Tab 26, Army Debriefing Letter to Walsh-Vaughn, at 5. We do not address all of the deficiencies evaluated in Walsh-Vaughn's electronic construction schedule, because the RFP provided that a proposal with a single deficiency was unacceptable. See RFP amend. 5, § 13.2. The protester's failure to provide cost loading in its electronic schedule was viewed as the most serious of all the deficiencies. Tr. at 57-58.

“complete” cost loading information in its summary construction schedule, but argues that this detailed information was not required to be submitted until after award and receipt of the notice to proceed. See Protester’s Comments at 10; Protester’s Supp. Comments at 8. Walsh-Vaughn also contends that, to the extent that the RFP required offerors to include cost loading in their summary construction schedules, this requirement was latently ambiguous. Protester’s Comments at 10-11.

In reviewing protests of alleged improper evaluations and source selection decisions, it is not our role to reevaluate proposals. Rather, we will 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. See Abt Assocs. Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. Where there is a dispute concerning the meaning of a solicitation term, we resolve that dispute by reading the solicitation as a whole and in a manner that gives effect to all its provisions; to be reasonable, an interpretation of a solicitation must be consistent with such a reading. See Raytheon Co., B-404998, July 25, 2011, 2011 CPD ¶ 232 at 17.

Here, the RFP unambiguously informed offerors that the agency would evaluate cost loading in the offerors’ summary construction schedules. In particular, offerors were required to provide detailed cost loading information for the first 90 days of their schedule, and were informed that the agency would evaluate their schedules “for compliance with specifications and cost loading.” See RFP amend. 5, §§ 8.1.3, 8.2.1. Walsh-Vaughn argues, however, that this solicitation instruction and the associated evaluation criterion are inconsistent with the specification section of the RFP that informed offerors that the preliminary project schedule was required to be submitted within 15 days after receipt of notice to proceed. See Protester’s Comments at 9-11. We do not agree. The solicitation, when read as a whole, clearly informed offerors that they were to include, and the agency would evaluate, detailed information such as cost loading in the first 90 days of the offerors’ summary construction schedules, which would be considered the offeror’s preliminary schedule.<sup>12</sup> See RFP amend. 5, § 8.1.3.

Walsh-Vaughn argues, however, that the failure to provide cost loading in its electronic schedule could not be considered a deficiency because, as recognized by the Army, this omission could be corrected.<sup>13</sup> See Protester’s Post-Hearing

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<sup>12</sup> The agency’s technical advisor explained that the contractor would be permitted, but was not required, to submit a revised preliminary schedule after award. Tr. at 20.

<sup>13</sup> Walsh-Vaughn also notes, citing the SSEB technical advisor’s testimony, that contractors often revise their schedules during contract performance and that the contract here was awarded to Clark-McCarthy, although that firm’s final electronic

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Comments at 1-3. In this regard, the protester argues that the RFP defined a deficiency to be a material failure to “meet a Government requirement . . . that increases the risk of unsuccessful contract performance to an unacceptable level.” Id. at 3, citing RFP § 11.3.1. In the protester’s view, because these matters could be “easily” corrected, the omission of cost loading information could not be material, because “if” the omission was corrected, there would be no risk of unsuccessful contract performance. Id.

The responsibility for submitting a well-written proposal--with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency--lies first and foremost with the offeror. Mike Kesler Enters., B-401633, Oct. 23, 2009, 2009 CPD ¶ 205 at 2-3. An offeror that does not affirmatively demonstrate the merits of its proposal risks rejection of its proposal. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5. Proposals with significant informational deficiencies properly may be excluded from further consideration, whether the deficiencies are attributable to either omitted or merely inadequate information addressing fundamental factors. American Gov’t Servs., Inc., B-292242, Aug. 1, 2003, 2003 CPD ¶ 163 at 4. In this regard, clearly stated RFP technical requirements are considered material to the needs of the government, and a proposal that fails to conform to such material terms is technically unacceptable and may not form the basis for award. Concept Analysis and Integration, LLC, B-406638.3, Mar. 29, 2013, 2013 CPD ¶ 86 at 6.

Walsh-Vaughn argues that despite its omission of cost loading information from its electronic schedule, the agency had sufficient information to conclude that the company’s proposed schedule would comply with the incremental funding constraints applicable to this contract. See Protester’s Post-Hearing Comments at 5, citing Tr. at 126-27. The protester contends that this determination could be made from the spend curve that the firm provided in its price proposal, which according to Walsh-Vaughn demonstrates that the firm’s proposed schedule will not exceed the available funding. Id. This argument ignores, however, that the RFP provided for evaluating whether an offeror’s pricing promises in the firm’s spend

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schedule had a “non-compliance” that the firm would be required to revise after award. See Protester’s Post-Hearing Comments at 3-4. The fact that revisions may be made to a contractor’s construction schedule after award has no bearing upon whether there is a material deficiency in a schedule provided for evaluation during the competition for award. With respect to the protester’s suggestion that the Army may have treated the awardee and Walsh-Vaughn disparately, the record shows that the non-compliance in Clark-McCarthy’s electronic schedule did not rise to the level of a deficiency (as it concerned the use of more than 30 characters in some of the activity descriptions). In contrast, we think Walsh-Vaughn’s failure to submit its electronic construction schedule was properly labeled a deficiency.

curve matched the cost loading provided in its construction schedule (particularly for the first 90 days). See RFP amend. 5, § 8.2.1. Because Walsh-Vaughn failed to provide the required cost loading information with its construction schedule, this assessment could not be made.

Walsh-Vaughn also complains that the contemporaneous SSEB evaluation report and the source selection decision do not specifically reference the protester's failure to provide the required cost loading information in its electronic schedule. See Protester's Comments at 9-10; Protester's Supp. Comments at 8. Although the protester is correct, the record shows that the omission of required cost information was recognized by the agency during the evaluation as a material defect. Specifically, the contemporaneous evaluation notes of the SSEB's technical advisor recorded this failure as a material deficiency in Walsh-Vaughn's electronic schedule, and these notes were included as an attachment to the SSEB's evaluation report.<sup>14</sup> See AR, Tab 20, SSEB Evaluation Report, at 65. Further, Walsh-Vaughn was advised in its written debriefing that this failure was found to be a material deficiency. See AR, Tab 26, Corps Debriefing Letter to Walsh-Vaughn, at 5.

#### Meaningful Discussions

Next, Walsh-Vaughn complains that it did not receive meaningful discussions because the Army did not inform the company that its not-yet-submitted electronic schedule was to include cost loading.

When an agency engages in discussions with a vendor, the discussions must be "meaningful," that is, sufficiently detailed to lead the vendor into the areas of its quotation requiring amplification or revision. AINS, Inc., B-400760.4, B-400760.5, Jan. 19, 2010, 2010 CPD ¶ 32 at 5. To satisfy this obligation to conduct meaningful discussions, an agency must lead firms into the areas of their proposals or quotations that reflect deficiencies or significant weaknesses; that is, an agency must identify aspects of the firm's proposal or quotation that, unless further addressed, would prevent the firm from having a reasonable chance for award. Northrop Grumman Info. Tech., Inc., B-290080 et al., June 10, 2002, 2002 CPD ¶ 136 at 6.

Here, there is no dispute that the primary deficiency in Walsh-Vaughn's initial proposal was its failure to provide an electronic version of its construction schedule as required by the RFP. This matter was specifically raised in discussions with the protester. The deficiencies later identified in Walsh-Vaughn's electronic schedule,

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<sup>14</sup> Although the technical advisor was not a voting member of the SSEB, the advisor evaluated the offerors' electronic schedules and briefed the SSEB on her conclusions. See Tr. at 29-30, 143-44.



including its failure to provide cost loading, were first identified when that electronic schedule was provided in the protester's final revised proposal in response to these discussions. Although Walsh-Vaughn generally asserts that "some" of these deficiencies could have been determined from the paper copy (pdf) of its schedule in its initial proposal, see Protest at 12,<sup>15</sup> the lack of cost loading could not have been determined from the paper version of the schedule. In addition, the paper version of Walsh-Vaughn's schedule was provided with its technical proposal; the RFP expressly advised that offerors were not to include any cost information in their technical proposals. RFP amend. 5, §§ 8.1.3.(g); 8.2.1. Thus, the protester's paper copy of its schedule did not alert the agency that Walsh-Vaughn had not provided cost loading. See also Tr. at 28-29.

Walsh-Vaughn also suggests that, because other offerors' electronic schedules were not compliant with some of the requirements for the detailed preliminary schedule, the Army should have anticipated that when Walsh-Vaughn ultimately submitted its electronic schedule, it would likely have failed to comply in similar ways. The protester argues that the agency was obliged, therefore, to caution Walsh-Vaughn to check its electronic schedule for compliance with the RFP requirements with which the other offerors had initially been noncompliant. See Protester's Comments at 25.

We also find no merit to this contention. To be meaningful, discussions are required to be tailored to an offeror's own proposal. See FAR § 15.306(d)(1); WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD § 68 at 5-6. Here, the agency informed Walsh-Vaughn that it had failed to provide the electronic schedule required by section 8 of the RFP. That section specifically stated that offerors were required to submit an electronic schedule with their initial proposals that satisfied the preliminary schedule requirements in section 01 32 01.00 10, which included cost loading. We find that the discussions conducted with Walsh-Vaughn were meaningful.

Walsh-Vaughn also complains that all of the deficiencies in the protester's electronic schedule could have been easily corrected. See Protester's Post-Hearing Comments at 1, 8-10. An agency, however, has no obligation to reopen discussions to provide an offeror additional opportunity to revise its proposal where, as here, a proposal flaw (such as its failure to provide cost loading) first becomes

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<sup>15</sup> Walsh-Vaughn does not identify in its initial protest which of the evaluated deficiencies could have been determined from its paper version of its schedule.

apparent in a post-discussion submission. See Raytheon Co., B-403110.3, Apr. 26, 2011, 2011 CPD ¶ 96 at 7.

The protest is denied.

Susan A. Poling  
General Counsel