

Decision

Matter of: Program Insite, LLC

File: B-419646

Date: June 2, 2021

Emnet Menyahil, for the protester.
Megan Nathan, Esq., Department of Education, for the agency.
Raymond Richards, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency unreasonably assigned a deficiency to the protester's proposal is denied where the record shows the agency's evaluation of the proposal was reasonable and in accordance with the solicitation.
 2. Challenge to the exclusion of the protester's proposal from the competitive range is denied where the agency reasonably found that the proposal was technically unacceptable as submitted, was not among the most highly rated, and did not have a reasonable chance of being selected for award.
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DECISION

Program Insite, LLC, a small business of Olney, Maryland, protests its exclusion from the competitive range under request for proposals (RFP) No. 91990021R0010, issued by the Department of Education (DOE) for cloud hosting, system administration, and website support and development. The protester argues that the agency unreasonably evaluated its proposal, and improperly excluded it from the competitive range.¹

We deny the protest.

¹ The protester here proceeded without legal counsel, and therefore no protective order was issued in this protest. The agency filed both a protected and redacted version of its report with our Office. Our discussion here, where possible, references the redacted version of the report and is necessarily general in nature to avoid reference to non-public information.

BACKGROUND

On January 15, 2021, DOE issued the RFP in accordance with the procedures of Federal Acquisition Regulation (FAR) part 15, contracting by negotiation. Agency Report (AR), Tab E, RFP at 1, 98;² see *also* AR, Tab A, Contracting Officer's Statement (COS) at ¶ 8. The RFP's statement of work (SOW) described the following four tasks: (1) access to Amazon Web Services, Infrastructure-as-a-Service (IaaS); (2) system operations support; (3) website administration and development; and (4) software licenses. RFP at 43. Proposals were due by February 15. *Id.* at 1.

The RFP contemplated the award of a single contract with both fixed-price and cost-reimbursement contract line items, for a 1-year base period and four 1-year option periods. *Id.* at 2-4; 43-44, 113. Award was to be made on a best-value tradeoff basis considering cost and price, and the following five technical factors, listed in descending order of importance: (1) technical approach; (2) proposed project staff; (3) organizational capacity and resources; (4) management plan; and (5) past performance. *Id.* at 113. Technical merit was considered significantly more important than cost and price. *Id.*

The RFP explained that the agency could assess attributes of proposals with strengths, weaknesses, significant weaknesses, deficiencies, and risks. *Id.* at 116. Relevant to the protest, the RFP defined a deficiency as follows:

A material failure of a proposal to meet a Government requirement, or a combination of significant weaknesses in a proposal, that increases the risk of unsuccessful contract performance at an unacceptable level.

Id. The RFP advised that each technical factor would be assigned an adjectival rating--either superior, satisfactory, marginal, or unacceptable³--in order to assign proposals an overall technical rating. *Id.* at 115. Proposals could be rated one of three possible overall technical ratings: technically unacceptable; technically unacceptable but susceptible to being made acceptable; or technically acceptable. *Id.* at 115-116. The solicitation also explained that proposals would be assigned a risk rating of high risk, moderate risk, or low risk. *Id.* at 116.

² Citations to the RFP are to the Adobe PDF page number.

³ Relevant to the protest, the RFP defined an unacceptable rating as follows: "[t]he offeror's proposed solution is unacceptable and is not reasonably justified or substantiated. In total, the solution contains numerous inconsistencies, significant weaknesses, and/or [deficiencies] and, as a whole, presents an inconsistent solution that is unacceptable. The proposal may contain [strengths]; however, any [strengths] are outweighed by the significant weakness(es) and/or [deficiencies]. The proposal has little to no chance of success and correction would require extensive revision that amounts to a major rewrite in order to be rated as acceptable." RFP at 115.

DOE received multiple proposals in response to the RFP, including a proposal from Program Insite. COS at ¶ 32. To evaluate proposals, the agency convened a technical evaluation panel (TEP) consisting of three members. *Id.* at ¶ 34. The contracting officer, who was not a member of the TEP, served as the source selection authority. AR, Tab C, Source Selection Plan at 1.

Program Insite’s proposal was assigned the following ratings under the RFP’s individual evaluation factors:

	TEP Consensus Rating
Technical Approach	Marginal
Proposed Project Staff	Unacceptable
Organizational Capacity	Satisfactory
Management Plan	Satisfactory
Past Performance	Satisfactory

AR, Tab H, TEP Consensus Report at 2-4. Relevant here, under the proposed project staff factor, the TEP assigned Program Insite’s proposal two strengths, five weaknesses, five significant weaknesses, two deficiencies, and one risk. *Id.* at 3-4. The two deficiencies were described as follows:

- Position descriptions for missing resumes are generic and lacking detail about requirements.
- [The] Senior Web Architect does not demonstrate any experience with Microsoft WEB development stack^[4] as stated in the SOW.

Id. at 3. By consensus, the TEP assigned Program Insite’s proposal an overall rating of technically unacceptable. *Id.* at 1.

Based on the evaluation results, the contracting officer established a competitive range. AR, Tab I, Competitive Range Determination at 3. The contracting officer concluded that Program Insite should not be included in the competitive range because its proposal contained significant weaknesses, deficiencies, and risks that could not be remedied without a complete redraft of its proposal. COS at ¶ 47.

⁴ The agency explains that “.NET, Classic ASP, ASP.NET, SQL Server, etc.” are commonly referred to as the “Microsoft Web development stack.” Memorandum of Law (MOL) at 10. The programs composing the Microsoft Web development stack are used in a complementary manner to develop and administer websites. See *generally* RFP at 48-49.

On February 27, the agency notified Program Insite that its proposal was excluded from the competitive range and would not be considered for award.⁵ AR, Tab J, Notice of Exclusion at 1-3. The notice of exclusion included a summary of strengths, weaknesses, significant weaknesses, and deficiencies found during the TEP's evaluation of Program Insite's proposal, and noted the contracting officer's conclusion that Program Insite's proposal was not capable of remediation through negotiations. *Id.* at 1-2.

On March 1, Program Insite responded to the notice of exclusion. AR, Tab K, Response to Exclusion at 1. Program Insite's response addressed the weaknesses, significant weaknesses, and deficiencies summarized in the notice of exclusion. *Id.* at 2-5. This response also included a request to be admitted to the competitive range. *Id.* at 5. The agency did not respond to Program Insite at that time. COS at ¶ 52.

On March 5, Program Insite requested a debriefing. AR, Tab M, Request for Debriefing and Agency Resp. at 1. The agency replied to Program Insite on the same day, noting that, based on the February 27 notice of exclusion, Program Insite did not timely submit the debriefing request. *Id.* Therefore, no debriefing was provided. On March 8, Program Insite filed this protest with our Office.⁶

DISCUSSION

Program Insite argues that the agency unreasonably evaluated its proposal by applying an unstated evaluation criterion under the proposed project staff factor. In addition, the protester argues that it was improperly excluded from the competitive range. Protest at 1-3; Comments at 2-4; Supp. Comments at 2-4, 6.⁷ The agency argues that it reasonably evaluated Program Insite's proposal in accordance with the solicitation, and

⁵ We note that February 27 was a Saturday. Even if we were to conclude that Program Insite received the notice of exclusion on Monday, March 1, the protester's March 5 request for a debriefing would still be untimely. FAR 15.505(a)(1).

⁶ The protest was submitted to our online docketing system on Saturday, March 6, at 6:43 p.m., Eastern Time (ET). Electronic Protest Docketing System No. 1 (showing filing time). Our Bid Protest Regulations provide that a document is filed on a particular day when it is received by 5:30 p.m., ET. 4 C.F.R. § 21.0(g). Therefore, we consider the protest to have been filed on the next business day, or Monday, March 8. See *id.* § 21.0(d).

⁷ The agency report filed on April 7 included heavily redacted documents which prevented the protester from viewing relevant, non-protected information. On April 15, our Office requested the agency provide less redacted versions of certain documents to provide the protester an opportunity to meaningfully respond. GAO Req. for Documents. The agency provided the requested documents on April 16. Citations to the protester's supplemental comments refer to the comments filed on April 23 in response to the less redacted documents.

that it reasonably excluded Program Insite's proposal from the competitive range. MOL at 1. For the reasons explained below, we deny the protest.⁸

Technical Evaluation of Proposed Project Staff

Program Insite argues that the agency applied an unstated evaluation criterion under the proposed project staff factor by evaluating a non-key person, its proposed Senior Web Architect, and assessing a deficiency to Program Insite's proposal based on that individual's experience. Protest at 2; Comments at 2; Supp. Comments at 2. In this regard, the protester argues that only key personnel were to be evaluated under the proposed project staff factor, and therefore the agency's evaluation was unreasonable. *Id.*

The agency argues that its evaluation of Program Insite's proposal under the proposed project staff factor was reasonable and in accordance with the solicitation. MOL at 9-10. The agency asserts the solicitation advised offerors that, under the proposed project staff factor, the agency would evaluate offerors' proposed teams. *Id.* The agency argues that it properly evaluated Program Insite's proposed team when it assessed a deficiency to Program Insite's proposal because the individual proposed as the Senior Web Architect on Task 3 did not demonstrate the experience required by the solicitation. *Id.* at 10. In this regard, the agency explains that nothing in Program Insite's proposal, including the resume for the Senior Web Architect, demonstrated that this individual had relevant experience with .NET, Classic ASP, or SQL Server--*i.e.*, the Microsoft Web development stack--as required under Task 3. *Id.*; AR, Tab H, TEP Consensus Report at 3.

In reviewing protests challenging the rejection of a proposal for award consideration, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgement was reasonable and in accordance with the

⁸ Program Insite also raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find no basis to sustain the protest. For example, Program Insite argues that the record fails to show how the agency weighed the strengths and weaknesses assigned to its proposal in order to arrive at its overall technical rating. Protest at 2; Comments at 4. The record shows that Program Insite's proposal was assigned--among other negative marks--two deficiencies. AR, Tab H, TEP Consensus Report at 3; RFP at 116. While Program Insite's proposal was assigned a number of strengths, the protester does not explain how these strengths could have remedied the instances where its proposal materially failed to meet government requirements. Therefore, we conclude that Program Insite has failed to state a factually and legally sufficient basis of protest here. 4 C.F.R. §§ 21.1(c)(4), (f); 21.5(f). Program Insite also argues that the agency unreasonably found that its proposal did not address certain RFP requirements. Protest at 1-2. The agency addressed these allegations in detail, MOL at 6-8, however, Program Insite failed to rebut the agency's response. Accordingly, we consider this ground to be abandoned. 4 C.F.R. § 21.3(i)(3).

solicitation criteria and applicable procurement statutes and regulations. *High Noon Unlimited Inc.*, B-419268, Jan. 12, 2021, 2021 CPD ¶ 22 at 5; *Wolverine Servs. LLC*, B-409906.3, B-409906.5, Oct. 14, 2014, 2014 CPD ¶ 325 at 3.

Under the proposed project staff factor, the RFP provided the following instructions to offerors:

This section should fully provide the offeror's proposed team with appropriate knowledge, skills and abilities to support [the] Department's goals and objectives for this initiative. The proposal shall identify key personnel and describe in detail the qualifications of key personnel, detailing their competencies and experience in performing work of similar size and scope to that outlined in the SOW, and describing their role in the project and what tasks they will support.

RFP at 100-101. The RFP's evaluation criteria under this factor read as follows:

The Government will evaluate the offerors' proposed team to include appropriate knowledge, skills and abilities to support the Department's goals and objectives for this initiative. The proposal will be evaluated on the identification of key personnel and a description of their qualifications; detailing their competencies and experience in performing work of similar size and scope to that outlined in the SOW, describing their role in the project and what tasks they will support.

Id. at 114.

As previously mentioned, the SOW included four tasks; Task 3 was titled website administration and development. *Id.* at 43. Under Task 3, the RFP explained that "[a]ll web development work is developed in .NET or Classic ASP for legacy applications." *Id.* at 47. Task 3 included a list of mandatory duties, one of which was to "[u]pdate and improve the ERIC dissemination website . . . and backend data management tools. These web based applications were developed using ASP.NET (C#), Apache SOLR, SQL Server, and AWS S3." *Id.* at 49.

Under the section detailing its proposed project staff, Program Insite's proposal listed 11 individuals, their job titles, and job descriptions. AR, Tab G, Program Insite (PI) Proposal, Volume 1 Technical Proposal at 20-23. Two individuals were listed as key personnel, neither of which were the individual proposed as the Senior Web Architect.⁹ *Id.* at 22. The Senior Web Architect was not designated as a key person, and his job description reads in full: "[T]he Senior Web Architect on Task 3 . . . has overall responsibility for website architecture, design, and establishing requirements." *Id.* at 23.

⁹ We note that Program Insite's proposal contains a section labeled Appendix D – key personnel resumes, which includes the Senior Web Architect's resume. AR, Tab G, PI Proposal, Volume 1 Technical Proposal at 40.

As noted above, the agency assessed a deficiency to Program Insite's proposal because "[the] Senior Web Architect does not demonstrate any experience with Microsoft Web development stack as stated in the SOW." AR, Tab H, TEP Consensus Report at 3.

On this record, we conclude that the agency's evaluation of Program Insite's proposal under the proposed project staff factor was reasonable. The RFP expressly stated that the evaluation would assess whether offerors' proposed teams included the appropriate knowledge, skills, and abilities. RFP at 100-101, 114. The RFP also required proposals to detail which of the four tasks each team member would support; for Task 3, offerors had to demonstrate Microsoft Web development stack experience. RFP at 47-49, 100-101. In describing the knowledge and skills of its Senior Web Architect, who would support Task 3, Program Insite's proposal stated only that he had "overall responsibility for website architecture, design, and establishing requirements." AR, Tab G, PI Proposal, Volume 1 Technical Proposal at 23. Therefore, we conclude that it was reasonable for the agency to evaluate the experience and credentials of Program Insite's proposed Senior Web Architect under the proposed project staff factor, and to assign a deficiency based on this individual's apparent lack of experience with the Microsoft Web development stack. This protest ground is denied.

Exclusion from the Competitive Range

The protester argues that it was improperly excluded from the competitive range. Protest at 1-3; Comments at 2-4; Supp. Comments at 2-4, 6. In this regard, the protester insists that since its proposal was assigned several strengths, its proposal should have earned an overall rating of technically unacceptable but susceptible to being made acceptable, which would, according to the protester, allow Program Insite to remain in the competition. Protest at 3-4; Comments at 3-4. The agency argues that Program Insite's proposal was technically unacceptable as submitted, and that it was reasonably excluded from the competitive range because it was not among the most highly rated and did not have a realistic prospect of being selected for award. MOL at 12-13.

Contracting agencies are not required to retain in the competitive range proposals that are not among the most highly rated or that the agency otherwise reasonably concludes have no realistic prospect of being selected for award. FAR 15.306(c); *Wahkontah Servs., Inc.*, B-292768, Nov. 18, 2003, 2003 CPD ¶ 214 at 4. Where a proposal is technically unacceptable as submitted and would require major revisions to become acceptable, exclusion from the competitive range is generally permissible. *High Noon Unlimited Inc.*, *supra*. Even a proposal that is technically acceptable or susceptible to being made acceptable may be excluded from the competitive range if, based on the evaluation, the agency determines that the proposal does not stand a reasonable

chance of being selected for award. *The Cadmus Grp., Inc.*, B-241372, B-241372.3, Sept. 25, 1991, 91-2 CPD ¶ 271 at 8.¹⁰

Based on the record, we find reasonable the agency's decision to exclude Program Insite's proposal from the competitive range. As noted above, the agency excluded Program Insite's proposal because it was found technically unacceptable overall, and that due to the multiple significant weaknesses, deficiencies, and risks, the proposal was not susceptible to remediation absent a complete rewrite. COS at ¶ 47. Program Insite has not challenged with specificity one of the two deficiencies assessed in its proposal, nor has it challenged a number of the weaknesses, significant weaknesses, or risks assigned to its proposal. Thus, we have no basis to question the agency's decision to exclude Program Insite's proposal from the competitive range.

The protest is denied.

Thomas H. Armstrong
General Counsel

¹⁰ In *The Cadmus Group*, our Office explained that continuing negotiations with an offeror when that offeror has no reasonable chance of being selected for award is unfair to the offeror and undermines the integrity of the procurement process. *The Cadmus Grp., Inc.*, *supra*.