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## Decision

**Matter of:** URS Federal Services, Inc.

**File:** B-413034; B-413034.2; B-413034.3

**Date:** July 25, 2016

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Richard B. O’Keeffe, Jr., Esq., William A. Roberts III, Esq., Brian G. Walsh, Esq., and Tara L. Ward, Esq., Wiley Rein LLP, for the protester.  
Dismas Locaria, Esq., Nathaniel S. Canfield, Esq. and James Y. Boland, Esq., Venable LLP, for SimVentions, Inc., the intervenor.  
Brian Kau, Esq., Department of the Navy, for the agency.  
Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that the agency unreasonably assigned a deficiency and unacceptable rating to the protester’s proposal is denied where the record shows the evaluation was reasonable and in accordance with the stated evaluation criteria.
2. Protest that the awardee’s proposal failed to meet a material requirement of the solicitation is denied where the record shows that the agency reasonably evaluated the awardee’s proposal.

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### DECISION

URS Federal Services, Inc., of Germantown, Maryland, protests the issuance of a task order to SimVentions, Inc., of Fredericksburg, Virginia, by the Department of the Navy, Naval Sea Systems Command, under request for proposals (RFP) No. N00024-15-R-3182 for engineering and other technical services. URS challenges various aspects of the agency’s evaluation of its own and the awardee’s proposals under the non-price factors.

We deny the protest.

### BACKGROUND

The RFP, issued on August 20, 2015, sought to award a task order under the Navy’s SeaPort-e multiple award contract for engineering and other technical

services<sup>1</sup> to the agency's Naval Surface Warfare Center, Dahlgren Division, in Dahlgren, Virginia.<sup>2</sup> Legal Memorandum at 1-2; RFP, Amendment 5, at 2. The agency was to award a single cost-plus-incentive-fee task order open to all Seaport-e contract-holders identified in the National Capital Zone 2. Id. at 103.

Proposals were to be evaluated on a best-value basis considering the following factors: technical, past performance and cost. Id. at 103, 105. The technical factor was to be more important than past performance, and the non-cost factors, when combined, were to be significantly more important than cost. Id. at 105. The technical factor included three subfactors listed in descending order of importance: technical understanding/capability/approach, workforce, and management plan. Id.

Under the technical factor, proposals were to be assigned one of the following combined technical/risk ratings: outstanding, good, acceptable, marginal, or unacceptable. If a proposal received a rating of unacceptable in any one factor or subfactor, the entire proposal was to be deemed unacceptable. Id. at 104. A rating of unacceptable was defined as, "[p]roposal does not meet requirements and contains one or more deficiencies. Proposal is unawardable." Id. A deficiency was defined as, "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 to an unacceptable level." Id.

As relevant here, the workforce subfactor consisted of two elements: staffing plan and key personnel resumes. Id. at 106. Under the staffing plan element, the agency was to evaluate "the degree to which the Offeror's plan to support all areas of the [statement of work (SOW)] with qualified people based on the staffing plan/matrix, as well as the availability of those individuals." Id. Performance risk was to be assessed based on the number of proposed positions for which personnel have not been identified. Id. Under the key personnel resumes element, the agency was to evaluate the degree to which resumes of key personnel meet the required qualifications for their respective labor categories, the degree to which key personnel meet or exceed desired qualifications, and the relevance of individual

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<sup>1</sup> The required engineering support was to encompass various tasks, including systems and software engineering, hardware and software research and development, software modifications, modeling and simulation, test and evaluation, configuration and data management, documentation generation and control, systems analysis, information assurance, and laboratory/test facility maintenance, operation, and training. RFP, Amendment 5, at 9.

<sup>2</sup> The awarded value of the task order at issue exceeds \$ 10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award indefinite-delivery, indefinite-quantity (ID/IQ) contracts. 10 U.S.C. § 2304c(e)(1)(B).

experience and degrees/certifications to the technical requirements of the SOW. Id. at 106-107.

The RFP required offerors to propose 35 full-time equivalent (FTE) personnel, including eight FTE key personnel. RFP at 90. As noted above, under the staffing plan element the agency was to evaluate, among other things, the availability of personnel. However, the RFP did permit offerors to propose “pending hire” personnel where the contractor has not identified a firm candidate for proposed positions. Id. at 91. Pending hires were permitted to be proposed as one of three categories: contingent, prospective and unknown. For key personnel, the RFP required resumes to be provided that “best demonstrate the Offeror’s ability for successfully meeting the requirements of this Task Order.” Id.

The RFP included special contract requirements with respect to key personnel. With respect to labor category qualifications, “[a]ll individuals performing under the key personnel labor categories are considered key. Resumes for any replacement of key personnel that are submitted following award shall have qualifications equal to or higher than the qualifications of the person to be replaced.” Id. at 44. The RFP also included NAVSEA 5252.237-9106, Substitution of Personnel (SEP 1990), which states, in pertinent part:

(a) The Contractor agrees that a partial basis for award of this contract is the list of key personnel proposed. Accordingly, the Contractor agrees to assign to this contract those key personnel whose resumes were submitted with the proposal necessary to fulfill the requirements of the contract. No substitution shall be made without prior notification to and concurrence of the Contracting Officer in accordance with this requirement.

(b) All proposed substitutions shall have the qualifications equal to or higher than the qualifications of the person to be replaced. The Contracting Officer shall be notified in writing of any proposed substitution at least forty-five (45) days . . . in advance of the proposed substitution. Such notification shall include: (1) an explanation of the circumstances necessitating [sic] the substitution; (2) a complete resume of the proposed substitute; (3) any other information requested by the Contracting Officer to enable him/her to judge whether or not the Contractor is maintaining the same high quality of personnel that provided the partial basis for award.

Id. at 51.

Three proposals were received in response to the solicitation. An evaluation of proposals provided the following relevant results:

	<b>SimVentions</b>	<b>URS</b>
<b>Technical</b>	Outstanding	Unacceptable
<b>Technical Understanding</b>	Outstanding	Marginal
<b>Workforce</b>	Outstanding	Unacceptable
<b>Management Plan</b>	Outstanding	Acceptable
<b>Past Performance</b>	Very Relevant/Substantial Confidence	Very Relevant/Substantial Confidence
<b>Cost</b>	\$37,800,727	\$35,975,244

Agency Report (AR), exh. 4, Business Clearance Memorandum, at 12, 21.

URS' proposal received an unacceptable rating under the technical factor because it did not meet the requirements of the RFP and contained deficiencies under the workforce subfactor. Id. at 15. Specifically, the business clearance memorandum states that URS received an unacceptable rating because it proposed to fulfill 0.5 FTE of the senior software engineer key personnel requirement with an individual who resigned from URS after proposals were submitted. Id. at 15. The unacceptable rating was also assigned, in part, because URS proposed two individuals for the senior engineer key personnel positions for the base period only, but did not identify any pending backfill for those missing FTE in the four option years. Id.

The evaluation shows that the agency did not evaluate URS' cost proposal, and did not evaluate the third offeror's cost proposal, which also received an unacceptable technical rating. Id. at 21. The source selection authority ultimately decided that SimVentions' proposal represented the best value to the government. Id. at 22. After a debriefing, this protest followed.

## DISCUSSION

URS protests various aspects of the agency's evaluation of both its own proposal and SimVentions proposal under the technical factor. The most significant of the challenges relates to the agency's assignment of an unacceptable rating to the URS proposal under the technical factor, and what URS argues is the unreasonable failure of the agency to find SimVentions' proposal unawardable despite allegedly suffering from the same deficiency. We address each argument in turn.<sup>3</sup>

<sup>3</sup> URS also challenges the evaluation of its proposal under the management plan and technical plan subfactors and SimVentions' proposal under the technical factor. As we conclude that the agency reasonably assessed a deficiency to URS' proposal, rendering it ineligible for award, and conclude that URS' challenge to the acceptability of SimVentions' proposal is without merit, we need not address URS' other challenges.

## URS Technical Evaluation

URS argues that the agency's assignment of an unacceptable rating to the firm's technical proposal was unreasonable because the departure of the proposed key person was not the fault of URS, personnel substitution was a "ministerial action" under the contract, and his departure "could not reasonably be said to constitute a deficiency." Protest at 14-15. These allegations are without merit.

In reviewing protests challenging an agency's evaluation of proposals in a task order competition that uses negotiated procurement techniques, our Office does not reevaluate proposals, but examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria, applicable procurement laws and regulations. Trandes Corp., B-411742 et al., Oct. 13, 2015, 2015 CPD ¶ 317 at 6. It is a fundamental principle in a negotiated procurement that a proposal that fails to conform to a material solicitation requirement is technically unacceptable and cannot form the basis for award. Id. at 6; The Boeing Co., B-311344 et al., June 18, 2008, 2008 CPD ¶ 114 at 54.

A review of the record shows that the submission of key personnel resumes was a material requirement of the solicitation. The RFP required submission of resumes for each of the eight identified FTE key personnel categories. RFP at 91. These submitted resumes were to be evaluated under the key personnel resumes element of the workforce subfactor. Id. at 106. Moreover, contractors were to agree that a partial basis for award of this contract was the list of key personnel proposed. Id. at 51. Consequently, URS' submission of a key person who was not, in fact, available reasonably supported the assignment of an unacceptable rating to the firm's proposal.

While the protester argues that the assignment of a deficiency was unreasonable because the key person's departure was not the fault of URS, we are provided no basis to question the agency's evaluation in this regard. As our Office has held, upon notice of the withdrawal of key personnel prior to contract award, the agency has two options: either evaluate the proposal as submitted, where the proposal would be rejected as technically unacceptable for failing to meet a material requirement, or reopen discussions to permit the offeror to correct this deficiency. Paradigm Techs., Inc., B-409221.2, B-409221.3, Aug. 1, 2014, 2014 CPD ¶ 257 at 5. With respect to the latter option, an agency's discretion to hold discussions is quite broad, and is not generally reviewed by this Office, Alliance Worldwide Distributing, LLC, B-408491, Sept. 12, 2013, 2013 CPD ¶ 223 at 3, and we do not review that discretion here.<sup>4</sup>

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<sup>4</sup> The protester argues that it was unreasonable for the agency not to enter into discussions here. The agency responds that the decision to enter into discussions (continued...)

We also disagree with URS that the assignment of an unacceptable rating was unwarranted because personnel substitution was a ministerial act under the contract. First, it is apparent from the RFP that the replacement of key personnel was within the discretion of, and subject to the approval of, the contracting officer. More importantly, as discussed above, the submission of key personnel resumes was a material requirement of the RFP, and the unavailability of the identified key personnel reasonably formed the basis of an unacceptable rating. Likewise, and contrary to URS' contention, the record reasonably supports the assignment of a deficiency to URS' proposal.

A deficiency was defined as a material failure of a proposal to meet a government requirement. RFP at 104. Here, the unavailability of a key person was a material failure of URS' proposal to meet a material requirement of the RFP. Moreover, the assignment of a deficiency reasonably supports the assignment of a rating of unacceptable, which was justified where a proposal does not meet requirements and contains one or more deficiencies. Id. Consequently, under the terms of the solicitation, the agency properly assigned a deficiency to URS' proposal, which justified the assignment of an unacceptable rating to the firm's proposal and, in turn, rendered the proposal unawardable. Id.

#### SimVentions' Proposal

URS argues that SimVentions' proposal was similarly unawardable because the firm did not identify key personnel in the option years for three of its key personnel positions. Specifically, URS points to the awardee's proposal to transition four of its key personnel from the contract after the base period to pending hires that are not identified in the firm's proposal. URS argues that this failure to identify individuals, and to provide resumes for evaluation renders SimVentions' proposal unawardable. We disagree.

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(...continued)

is within its discretion, relying on our Office's decision in Pioneering Evolution, LLC, B-412016, B-412016.2, Dec. 8, 2015, 2015 CPD ¶ 385, to support its position. In Pioneering we upheld the decision of an agency to reject a proposal when proposed key personnel became unavailable after submission of proposals, and the closing of discussions, but prior to award of the task order. URS argues that Pioneering is distinguishable from the facts here because in that procurement, the agency had already engaged in various rounds of discussions prior to its decision not to reopen discussions to address the availability of key personnel. However, given the discretion afforded to agencies in deciding whether to enter into discussions, we view this as being a distinction without a difference.

A review of SimVention's proposal shows that the firm proposed key personnel and resumes for each FTE for the base year. However, for four of its proposed key personnel, the awardee proposed to transition them after the base year to a category marked as "Pending Hire." AR, exh. 10, SimVentions Technical Proposal, at 72-74. SimVentions did not provide resumes for the pending hire categories. See id. Instead, SimVentions' proposal explained that the firm purposely included pending hires for two reason: to provide for potentially desired personnel that are working on the current contract to be picked up after contract award, and to provide for a certain amount of cost reduction to the customer by executing a phased two year knowledge transfer process. Id. at 71. SimVentions' proposal adds that the firm will ensure that any individual added to the contract will meet or exceed the requirements of the position being filled, that it has "a long history of providing fully qualified and highly desirable staff," and will use its staffing experience to fill positions on this task order. Id.

The RFP requires the identification of eight FTE key personnel and the submission of resumes to be evaluated under the key personnel resumes element of the workforce subfactor. As stated, a partial basis for award was to be the list of key personnel proposed. Here, at the time of award SimVentions had identified key personnel for each of the eight FTE key personnel positions and had submitted resumes for each of the eight identified key personnel, which were evaluated by the agency and, in part, formed the basis of award to SimVentions. Our review of the record shows that SimVentions' proposal met the material terms of the RFP with respect to the proposal of key personnel. That the awardee's proposal proposed to later substitute these personnel after award, a procedure that was provided for by the terms of the RFP, does not render the proposal unacceptable.

The record shows that the agency assessed a weakness to SimVentions' proposal for this aspect of its proposal. AR, exh. 4, Business Clearance Memorandum, at 10. The record also shows that URS' proposal was also assigned a weakness under the workforce subfactor for similarly proposing two key personnel for the base period, but not for the option years. However, in URS' case, and unlike SimVentions' proposal, the firm's proposal does not explain why it failed to propose these key personnel beyond the base period. See generally AR, exh. 6, URS Technical Proposal. We are provided no basis to question the agency's evaluation in this regard.

The protest is denied.

Susan A. Poling  
General Counsel