



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Energy Engineering & Consulting Services, LLC

**File:** B-407352

**Date:** December 21, 2012

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Dennis R. Zappone, for the protester.  
Charles G. McCarthy, Esq., General Services Administration, for the agency.  
Andrew J. Stephens, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging the evaluation of the protester's proposal as unacceptable is denied where the record shows that the agency reasonably found that the protester did not address a material requirement of the solicitation.

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### DECISION

Energy Engineering & Consulting Services, LLC (EECS), of Swayzee, Indiana, protests the award of a contract to Tetra Tech EM, of Pasadena, California, under request for quotations (RFQ) ID09120060, issued by the General Services Administration (GSA), for resource efficiency management (REM) support services. The protester argues that the agency unreasonably found that its proposal was technically unacceptable.

We deny the protest.

GSA issued the RFQ on July 24, 2012, for onsite REM support services at the Misawa Air Base in Japan. The RFQ was limited to vendors who hold contracts under GSA Federal Supply Schedule No. 03FAC. The RFQ had a base period of 12 months with four 12-month options. The RFQ listed two technical evaluation factors: (1) technical solution and management approach, and (2) past performance and past experience. The RFQ also included a cost factor for evaluation. The RFQ stated that the award would be awarded on a lowest-price, technically-acceptable basis.

GSA received proposals from three offerors, including EECS and Tetra Tech EM. Two of the offerors, including EECS, received a rating of "Not Met" with respect to

the technical solution and management approach factor, indicating that the proposal was unacceptable. With regard to the protester's proposal, GSA identified six significant deficiencies, any one of which would be sufficient to support its finding the proposal technically unacceptable. Agency Report (AR), at 8. GSA selected Tetra Tech EM for award based on the agency's conclusion that the other two proposals were technically unacceptable. AR, at 4. Upon EECS's request, on September 12, the agency provided a brief explanation of the award decision to EECS by email.<sup>1</sup> EECS filed this protest with our office on September 18.

EECS argues that the six deficiencies identified by GSA in its proposal reflect requirements beyond the scope of the RFQ. For this reason, the protester contends its rating was unreasonable. As discussed below, we conclude that GSA's evaluation was reasonable with regard to the first deficiency. Since any one of the six deficiencies would be enough to find EECS's proposal technically unacceptable, we need not proceed beyond the agency's findings regarding the first deficiency.<sup>2</sup>

The first deficiency found by GSA concerned the protester's failure to provide details regarding the conduct of the energy audits with respect to Task 1 of the RFQ. AR, Technical Evaluation Worksheet, at 2. For Task 1, the RFQ required offerors to address the conduct of energy audits, field investigations, feasibility studies, and life cycle costs analysis to identify energy conservation opportunities. Amended Performance-Based Statement of Work (Aug. 10, 2012) (SOW) at 2. EECS's proposal did not identify the audit standards to be applied, but instead stated that an audit plan would be developed after the facilities to be audited were identified. AR, EECS Proposal, at 3-4.

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<sup>1</sup> EECS argues that the GSA's email failed to comply with the requirements of Federal Acquisition Regulation § 8.405-2 to provide, upon request, "a brief explanation of the basis for the award decision." The adequacy and conduct of a debriefing is a procedural matter that does not involve the validity of an award and, for this reason, this argument will not be considered by our Office. USGC Inc., B-400184.2 et al., Dec. 24, 2008, 2009 CPD ¶ 9 at 9, citing, Healthcare Tech. Solutions Int'l, B-299781, July 19, 2007, 2007 CPD ¶ 132 at 5. In any event, we note that GSA's email did explain that EECS received a "Not Met" rating for the technical solution and management approach factor and listed five significant weaknesses which are similar to five of the six deficiencies identified in the Agency Report.

<sup>2</sup> Although we only address the first deficiency, we reviewed the protester's and agency arguments for the other identified deficiencies and in no instance find that the agency's evaluation was unreasonable.

In evaluating EECS's proposal, the agency found and contemporaneously documented that EECS did not address "the level of the audit to be conducted or how the audits will be accomplished." AR, Technical Evaluation Worksheet, at 2. The evaluation stated that the audit level for the contract was as follows: 10 percent of the facilities were to be audited using at a minimum American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) Level II standards. Id. As GSA notes in its response to the protest, the level of energy audit required for the RFQ was established in a question and answer (Q&A) document issued by the contracting officer (CO), which stated that ASHRAE Level II was the minimum and ASHRAE Level III was preferred. RFQ attach. 1, Q&A No. 4 (July 30, 2012).

EECS argues that the ASHRAE Level II requirement cannot properly be imposed during the evaluation here because it was provided in the Q&A on July 30, rather than an amendment to the RFQ. As our Office has held, however, information disseminated during the course of a procurement that is in writing, signed by the contracting officer, and provided to all vendors, contains all of the essential elements of an amendment--even where not designated as an amendment--and is sufficient to operate as such. Linguistic Sys., Inc., B-296221, June 1, 2005, 2005 CPD ¶ 104 at 2. The Q&A here meets all of the essential elements of an amendment. Thus, in our view, the ASHRAE requirements have been added to this solicitation.

EECS also argues that the July 30 Q&A regarding the ASHRAE Level II requirements were not added to this solicitation because GSA issued an amended SOW on August 10, which did not address the audit requirements. In contrast, the protester notes that the August 10 SOW revised the RFQ concerning an August 10 Q&A, concerning the due date for a different performance requirement. Amended SOW (Aug. 10, 2012) at 1.

We find no merit to the protester's argument. The August 10 Q&A involved an inconsistency between terms of the RFQ, the resolution of which required amending one of the two conflicting terms of the RFQ. The July 30 Q&A concerned no such inconsistency, and its content--the minimum requirement for ASHREA Level II audits--merely provides clarification of the stated requirements of the RFQ. For this reason, the July 30 Q&A amendment applied to the amended SOW--thus establishing the ASHRAE Level II requirement as the applicable audit criterion for the RFQ.<sup>3</sup>

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<sup>3</sup> To the extent that EECS argues that there was a conflict between the July 30 Q&A and the August 10 amendment regarding the audit requirements, this was a patent defect that would have had to be challenged prior to the due date for quotations. Where a patent ambiguity is not challenged prior to the submission of proposals, we will dismiss as untimely any subsequent protest assertion that is based on an alternative interpretation from the agency's. Bid Protest Regulations, 4 C.F.R.

(continued...)

Because EECS's proposal did not address the requirement for ASHRAE Level II audits, we conclude the GSA reasonably found protester's proposal technically unacceptable.<sup>4</sup> In this regard, a procuring agency has discretion in determining whether a particular product meets the solicitation's technical requirements and we will not disturb the agency's determination unless it is shown to be unreasonable. Great Journey West, LLC, B-407045, Sept. 21, 2012, 2012 CPD ¶ 262 at 3.

The protest is denied.

Susan A. Poling  
General Counsel

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(...continued)

§ 21.2(a)(1) (2012); U.S. Facilities, Inc., B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 10.

<sup>4</sup> EECS also observes that it was awarded a contract under RFQ ID09120061 for REM services at the Kunsan Air Base in South Korea. EECS points to the many similarities between the two RFQs and argues that, although the disparate evaluations do not prove EECS's proposal was technically acceptable under this RFQ, the disparate results in the two evaluations compel EECS to suspect serious errors in this evaluation. Evaluation ratings under another solicitation are not probative of the alleged unreasonableness of the evaluation ratings under the solicitation at issue, given that each procurement stands on its own. Leader Commc'ns, Inc., B-298734, B-298734.2, Dec. 7, 2006, 2006 CPD ¶ 192 at 8.