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# Decision

**Matter of:** Katmai Health Services, LLC

**File:** B-413816.3

**Date:** July 12, 2017

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William K. Walker, Esq., Walker Reausaw, for the protester.  
Ethan E. Marsh, Esq., Damien C. Specht, Esq., and James A. Tucker, Esq., Morrison & Foerster LLP, for Arctic Slope Mission Services, LLC, the intervenor.  
Rachel G. Borden, Esq., Holly H. Styles, Esq., and Jonathan D. Tepper, Esq., Internal Revenue Service, for the agency.  
Pedro E. Briones, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest of the award of a contract is denied where the protester has not demonstrated that it was competitively prejudiced by the agency's improper evaluation of the awardee's proposed project manager.

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## DECISION

Katmai Health Services, LLC, of Anchorage, Alaska, protests the award of a contract to Arctic Slope Mission Services, LLC, of Beltsville, Maryland, under request for proposals (RFP) No. TIRNO-16-R-0006, issued by the Department of the Treasury, Internal Revenue Service (IRS), for services to support the agency's management of the seized and forfeited assets (MSFA) program. Katmai protests the agency's evaluation of Arctic Slope's proposed project manager.

We deny the protest.

## BACKGROUND

The RFP was issued on June 28, 2016, as an 8(a) small business set-aside, and provided for the award of a fixed-price contract (for an 8-month base period, 3 option years, and a 4-month option period) for MSFA program support. Agency Report (AR), Tab 4A, RFP §§ II.1.0(b)-(c); pt. II, Performance Work Statement (PWS), § 2; IV.2. The solicitation stated that the contract would be awarded on a best-value basis considering price and the following weighted, non-price evaluation factors: (1) technical/management approach (40 percent); (2) relevant experience (30 percent); (3) quality

control systems (15 percent); (4) past performance (10 percent); and (5) key personnel (5 percent). Id. § V.11. The RFP advised that the non-price evaluation factors, when combined, were significantly more important than the price factor. Id. Offerors were to submit separate technical and price proposal volumes.<sup>1</sup> AR, Tab 4C, RFP amend. 2, § V.1.

The sole issue here is IRS's evaluation of Arctic Slope's proposal under the key personnel evaluation factor, specifically, the evaluation of the awardee's proposed project manager.<sup>2</sup> Offerors were to propose, among other key personnel, a project manager "technically qualified in all aspects of management and contract administration[.]" and provide a resume and references for the individual. Id., § V.7.5; RFP § VI, attach. 3, Labor Category & Position Qualifications, § 27.

The RFP required the following:

The Project Manager must have a Bachelor's degree AND a minimum of five (5) years experience in the management, supervision and analysis of data/word processing operations. These requirements may be substituted with a minimum of ten (10) years of relevant experience.<sup>3</sup>

RFP § VI, attach. 3, Labor Category & Position Qualifications, § 27 (emphasis in original). The RFP stated that the resumes and references of key personnel would be evaluated to determine the relevance of their skill levels, background, education, training, skills, and years of generalized/specialized experience in performing or managing the required effort. RFP amend. 2, § V.7.5.

IRS received proposals from Katmai and Arctic Slope (the incumbent) by the July 25 submission deadline. Contracting Officer's Statement (COS) ¶ III.A; RFP amend. 2, at 2 (proposal due date). Arctic Slope proposed its current MSFA project manager for that same position and listed three prior work experiences on her resume. AR, Tab 6, Arctic Slope Tech. Proposal, at I-44-46. Listed first on the resume was her recent experience as the current project manager, a position that she had held for 2 years and 7 months at the time that Arctic Slope submitted its proposal. Id. at I-44-45. Listed second was her previous 5 years and 8 months of experience as the MSFA project coordinator. Id.

Thus, Arctic Slope's proposed project manager--who did not have a bachelor's degree--had a total of 8 years and 3 months of MSFA contract experience. Katmai

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<sup>1</sup> Offerors were also to submit an affirmation and description of their efforts to follow the protocols of Section 508 of the Rehabilitation Act, which would be evaluated on a pass/fail basis. RFP § V.11; AR, Tab 4B, RFP amend. 1, Questions & Answers, No. 26; see also RFP § III.29 (Section 508 conformance of contract products and services).

<sup>2</sup> Katmai affirmatively withdrew all subsequent protest grounds. Protester's Email to Parties, May 16, 2017 (withdrawing supplemental protest B-413816.4).

<sup>3</sup> The RFP did not define relevant experience. RFP § VI, attach. 3, § 27.

does not dispute that this experience is relevant to her proposed position as the project manager. Rather, as we address below, Katmai contends that the third experience listed on her resume--4 years as a corporate recruiter--was not relevant to the project manager position, and therefore did not meet the RFP's alternate requirement of 10 years of relevant experience for an individual without a bachelor's degree. See id. at I-45-46.

Katmai's and Arctic Slope's proposals were evaluated as follows:<sup>4</sup>

	<b>Arctic Slope</b>	<b>Katmai</b>
<b>Technical/Management Approach (40%)</b>	Very Good	Very Good
<b>Relevant Experience (30%)</b>	Excellent	Marginal
<b>Quality Control Systems (15%)</b>	Excellent	Very Good
<b>Past Performance (10%)</b>	Very Good	Very Good
<b>Key Personnel (5%)</b>	Very Good	Very Good
<b>Section 508</b>	Pass	Pass
<b>Proposed Price<sup>5</sup></b>	\$41,596,067	\$50,085,192

AR, Tab 7a, Tech. Evaluation Rep., at 4, 7; Memorandum of Law (MOL) at 24. Technical proposals were evaluated by a technical evaluation panel (TEP), which made the following findings with respect to Arctic Slope's key personnel:

The project manager has worked on the [MSFA] contract for over 8 years. The government found this to be a significant strength as it means they would already be familiar with our organization, business activities, and contract needs . . . [the] Review team could find no reason why the proposed personnel would have any difficulty in car[ry]ing out the required tasks. The project manager, however, had the minimum education level possible and instead substituted experience, see RFP attachment three, item 27.

<sup>4</sup> Under the RFP's evaluation scheme, proposals were assigned an adjectival rating of excellent, very good, good, marginal, or inadequate, under the evaluation factors for technical/management approach, quality control systems, past performance, and key personnel. RFP amend. 2, §§ V.6, V.9. Under the relevant experience factor, proposals were assigned ratings of excellent, acceptable, marginal, unacceptable, or neutral. Id.

<sup>5</sup> Katmai does not challenge IRS's price evaluations, and the agency did not disclose the offerors' evaluated prices.

See AR, Tab 7a, Tech. Evaluation Rep., at 6.

IRS found that Arctic Slope's higher-rated, lower-priced proposal offered the best value to the government, over Katmai's lower-rated, and significantly higher-priced proposal. AR, Tab 7B, Source Selection Dec., at 12. The agency awarded the contract to Arctic Slope on March 17, 2017, for \$36.2 million and Katmai filed this protest following receipt of an oral debriefing.<sup>6</sup> COS ¶ 1.B.

## DISCUSSION

Katmai protests IRS's evaluation of Arctic Slope's technical proposal, arguing that it was unreasonable and inconsistent with the RFP's key personnel requirements. Protest at 7-12. As stated above, Katmai contends that the proposed project manager's experience as a corporate recruiter was not relevant to the project manager position, and thus did not meet the RFP's alternate requirement of 10 years of relevant experience for an individual without a bachelor's degree. Protester's Comments at 2-6.

In reviewing protests of an agency's evaluation, our Office does not reevaluate proposals, rather, we review the record to determine if the evaluation was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. See Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6; Cherry Road Techs.; Elec. Data Sys. Corp., B-296915 et al., Oct. 24, 2005, 2005 CPD ¶ 197 at 6.

As set forth above, the RFP stated that key personnel would be evaluated to determine the relevance of their skill levels, background, education, training, skills, and years of generalized/specialized experience in performing or managing the required effort. See RFP amend. 2, § V.7.5. With respect to the project manager position, the proposed individual was to have either: (1) a Bachelor's degree and a minimum of 5 years of experience in the management, supervision and analysis of data/word processing operations; or (2) a minimum of 10 years of relevant experience. RFP § VI, attach. 3, Labor Category & Position Qualifications, § 27.

Here, as Katmai points out, nothing in the contemporaneous evaluation record, quoted above, indicates that the TEP considered whether the corporate recruiting experience of Arctic Slope's proposed project manager met the solicitation's requirement for experience in management, supervision and analysis of data/word processing operations. Protester's Comments at 4. In fact, the record shows that although the evaluators recognized that the proposed project manager did not meet the educational

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<sup>6</sup> IRS made an initial award to Arctic Slope on September 26, 2016, but cancelled the award and reevaluated proposals in response to a protest and supplemental protest filed with our Office by Katmai. See COS ¶ III.A, at 4. The details of Katmai's earlier protests, which our Office dismissed as academic, and IRS's subsequent corrective action, are not relevant here. See Katmai Health Servs., LLC, B-413816; B-413816.2, Oct. 19, 2016 (unpublished decision).

requirement of a Bachelor's degree, they only referenced her 8 years of experience on the MSFA contract. AR, Tab 7a, Tech. Evaluation Rep., at 6.

IRS's counterarguments are unavailing. For example, we disagree with the agency's suggestion that it could broadly evaluate the relevance of Arctic Slope's proposed project manager because, according to IRS, the solicitation did not define relevant experience. See MOL at 9; COS ¶ IV.1 at 8. Although the RFP did not expressly define relevant experience with respect to the project manager position, it is clear that when read as a whole, the solicitation contemplated that relevant experience meant "experience in the management, supervision and analysis of data/word processing operations."<sup>7</sup> In this respect, we also disagree with IRS's assertion that the proposed project manager's "role as a corporate recruiter involved similar duties to the program manager position, such as hiring, interviewing, and advertising for open positions." COS ¶ IV.1 at 8. Here, the agency identifies nothing in the solicitation's PWS that suggests that the program manager will be involved in tasks such as employment advertising. See PWS § 3.1.3 (Project Manager shall be responsible for the overall management and coordination of the contract and for daily operational management).

However, although we agree with Katmai that IRS evaluated Arctic Slope's proposed project manager unreasonably and contrary to the terms of the RFP, we find that the protester has not shown that it was prejudiced by the improper evaluation. Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. HP Enter. Servs., LLC, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 6; Booz Allen Hamilton Eng'g Servs., LLC, B-411065, May 1, 2015, 2015 CPD ¶ 138 at 10 n.16; Colonial Storage Co.--Recon., B-253501.8, May 31, 1994, 94-1 CPD ¶ 335 at 2-3.

Under the RFP's evaluation scheme described above, technical proposals were evaluated using five non-price evaluation factors, which were weighted by different percentages that, when totaled, equaled 100 percent. The key personnel factor was worth the least (five percent) among the weighted evaluation factors.

The record reflects--and the protester does not challenge--that Arctic Slope was rated equal to, or better than, Katmai in every other, more heavily-weighted technical evaluation factor. See Table supra at 3. Notably, Arctic Slope was rated higher under

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<sup>7</sup> See RFP § VI, attach. 3, Labor Category & Position Qualifications, § 27; see, e.g., OMNIPLEX World Servs. Corp., B-291105, Nov. 6, 2002, 2002 CPD ¶ 199 at 8 ("The record shows that the evaluators took no notice of [the awardee's] failure to propose trained investigators but only considered the number of personnel proposed and their geographic dispersion. While the RFP does not explicitly provide that offerors must demonstrate immediate access to more than 500 'trained' investigators, the solicitation, when read as a whole, requires that the investigators to be provided be 'trained investigators.'")

the relevant experience and quality control systems factors, which accounted for 30 percent and 15 percent, respectively, of the technical evaluation. In particular, Arctic Slope was rated significantly higher (excellent versus marginal) than Katmai under the relevant experience factor. Thus, even if Katmai were to prevail in its protest of IRS's evaluation under the key personnel factor (worth 5 percent), and Arctic Slope was assigned the lowest possible adjectival rating (inadequate) under that factor, it would not alter the fact that Arctic Slope's proposal was still rated equal to or better than Katmai's proposal under all of the other, more heavily-weighted technical factors (worth the remaining 95 percent).<sup>8</sup> In other words, Arctic Slope would still have a higher-rated technical proposal.

Moreover, as the agency states--and, again, the protester does not challenge--Katmai's proposal was significantly higher-priced than Arctic Slope's proposal. As such, Katmai cannot demonstrate that there was a need for a price/technical tradeoff between its lower-rated, significantly higher-priced proposal and Arctic Slope's higher-rated, lower-priced proposal, and thus we find that Katmai has failed to establish prejudice from the agency action it protests. Pond Constructors, Inc., B-414307, B-414307.2, May 1, 2017, 2017 CPD ¶ \_\_ at 5-6 n.8 (denying protest where protester failed to establish prejudice because it could not demonstrate a need for a price/technical tradeoff). Where, as here, the highest-rated, lowest-priced proposal is selected for award, a tradeoff is not required. Dell Servs. Fed. Govt., Inc., B-412340 et al., Jan. 20, 2016, 2016 CPD ¶ 43 at 7 n.6; Alliance Tech. Servs., Inc., B-311329, B-311329.2, May 30, 2008, 2008 CPD ¶ 108 at 3.

In short, even where an agency waives a material solicitation requirement, our Office will not sustain a protest, where, as here, the protester cannot demonstrate that it was prejudiced by the waiver, i.e., that the protester would have submitted a different proposal or that it could have done something else to improve its chances for award had it known that the agency would waive the requirement. Technology & Telecomms. Consultants, Inc., B-413301, B-413301.2, Sept. 28, 2016, 2016 CPD ¶ 276 at 13-15 (concluding that while the agency effectively waived the experience requirement for the awardee's proposed manager, the waiver could not have resulted in any prejudice to the protester given its higher price and lower rating under the more heavily-weighted evaluation factor).

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>8</sup> Under the solicitation's evaluation scheme, assignment of an "inadequate" rating did not render a proposal ineligible for award. RFP amend. 2, §§ V.6, V.9.