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Decision

Matter of: Paradigm Technologies, Inc.

File: B-409221.2; B-409221.3

Date: August 1, 2014

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DIGEST

Protest is sustained in a negotiated procurement for the issuance of a task order, where the procuring agency selected the awardee's lower-rated, lower-cost revised proposal, even though the agency was aware that the awardee's proposal failed to satisfy a material solicitation requirement concerning key personnel.

DECISION

Paradigm Technologies, Inc., of Fairfax, Virginia, protests the issuance of a task order to Booz Allen Hamilton, Inc., of McLean, Virginia, by the Missile Defense Agency (MDA), Department of Defense, under request for task order proposals (RTOP) No. DOB-02-13 for strategic planning and financial support services.

We sustain the protest.¹

¹ The value of this task order is in excess of \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award contracts. 10 U.S.C. § 2304c(e)(1)(B).

BACKGROUND

The RTOP was issued pursuant to Federal Acquisition Regulation (FAR) § 16.505 to holders of MDA Engineering and Support Services multiple award contracts. The solicitation provided for the issuance of a cost-plus-fixed-fee task order for various strategic planning and financial support services for a base year and two option years.² In this regard, a performance work statement (PWS) was provided that identified 8 performance work objectives, such as strategic budget planning and programming (objective 5), business financial management services (objective 6), and resource baseline management and integrated change management services (objective 7). RTOP amend. 2.1, PWS, at 9-16. The support services were to be provided at five locations: Huntsville, Alabama; the National Capital Region; Dahlgren, Virginia; Colorado Springs, Colorado; and Albuquerque, New Mexico. PWS at 4.

Offerors were informed that the task order would be issued on a best-value basis, considering technical, past performance, small business utilization past performance, cost, and small business utilization. The technical factor was considered to be significantly more important than all other factors, and consisted of four, equally-weighted subfactors: approach, labor mix, key personnel, and transition. Past performance and small business utilization past performance were equally important and more important than cost and small business utilization (also equally important). Offerors were advised that the importance of cost and small business utilization would increase as the proposals become more equivalent under the technical factor. RTOP amend. 1, at 9.

As relevant here, with respect to the key personnel subfactor, offerors were required to propose as key personnel a contract program manager and a task order lead. In this regard, offerors were instructed to submit resumes for these two key personnel, as well as for any subject matter experts that were proposed. Id. at 4, 6.

With respect to cost, the solicitation informed offerors that total cost and fee would be evaluated for reasonableness, realism, and completeness. The cost realism analysis would be completed to determine that costs (1) were realistic for the performance of the work required, (2) reflected a clear understanding of the requirements, and (3) were consistent with the various elements of the offeror's technical proposal. Id. at 14.

MDA received proposals from Paradigm (the incumbent) and Booz Allen, which were evaluated by the agency's technical evaluation team, past performance evaluator, and cost/price evaluation team. The technical evaluation and past performance teams assigned adjectival ratings under the evaluation factors for each

² The second option year is actually only 11 months.

proposal, supported by a narrative that identified strengths, significant strengths, and weaknesses.³ MDA conducted several rounds of discussions with the offerors, and requested final proposal revisions (FPR). Booz Allen submitted its FPR on July 22, 2013, in which it provided resumes for the contract program manager (Ms. G) and the task order lead.⁴ See Agency Report (AR), Tab 5-2, Booz Allen Technical Vol., Append. A – Resumes.

On August 5, Booz Allen's proposed contract program manager, Ms. G, notified Booz Allen that she had accepted a position with another firm. See Booz Allen Comments, exhib. A, Ms. G Email, Aug. 13, 2013.

On October 23, MDA selected Booz Allen for issuance of the task order, and on October 28, Booz Allen notified the contracting officer of Ms. G's departure and proposed to provide Mr. H as the new contracts program manager. See Booz Allen Supp. Comments, exhib. A, Booz Allen Email, Oct. 28, 2013.

Following a debriefing, Paradigm protested to our Office on November 4, arguing, among other things, that Booz Allen proposed a key person, Ms. G, that Booz Allen knew would be unavailable. See Paradigm Protest (B-409221) at 32-35. On November 27, prior to submitting its agency report, MDA informed our Office that it would reevaluate proposals and make a new selection decision. We dismissed the protest as academic. Paradigm Techs., Inc., B-409221, Nov. 27, 2013.

In the reevaluation of FPRs, the technical evaluation team increased Booz Allen's rating under the transition subfactor from satisfactory to excellent, and increased Paradigm's rating under the key personnel subfactor from satisfactory to exceptional. AR, Tab 8-2, Technical Reevaluation Report, at 3. The firms' overall technical, past performance, and small business utilization past performance factor ratings did not change.

³ As relevant here, proposals were evaluated under the technical factor and subfactors as exceptional, excellent, satisfactory, or unacceptable. RTOP amend. 1, at 10.

⁴ The task order lead was also identified as a subject matter expert.

A summary of the results of the reevaluation is set forth below:

		Booz Allen	Paradigm
Technical		Satisfactory	Exceptional
Approach		Satisfactory	Exceptional
Labor Mix/Hours		Satisfactory	Exceptional
Key Personnel		Satisfactory	Exceptional
Transition		Excellent	Exceptional
Past Performance		Satisfactory Confidence	Substantial Confidence
Small Business Utilization Past Performance		Satisfactory	Satisfactory
Cost	Proposed	\$42,942,115	#[Deleted]
	Probable	\$43,405,154	#[Deleted]
Small Business Utilization Factor		2 nd (33.97%)	[Deleted]

Id.

As relevant here with respect to the evaluation of Booz Allen’s proposal under the key personnel subfactor, the technical evaluation team noted that, “on information and belief,” Booz Allen’s proposed contract program manager, Ms. G, was no longer employed by Booz Allen.⁵ Id. at 11. Although the evaluation team did not change Booz Allen’s satisfactory subfactor rating, it assigned a weakness for Booz Allen’s failure to provide one of the two required key personnel. In this regard, the evaluators stated that the risk regarding Booz Allen’s ability to satisfy key personnel requirements “is mitigated to some degree by the fact that [Booz Allen] has the demonstrated ability to recruit and hire qualified personnel to fulfill the Key Personnel ([contract program manager] in this case) duties.” Id. at 10-11.

The technical evaluation team also evaluated the realism of the offerors’ labor mixes and hours, and proposed adjustments as needed. In this regard, the team recommended [Deleted] adjusting Booz Allen’s proposed [Deleted] overall labor hours to perform the task order to [Deleted] hours. Id. at 8. The technical

⁵ As indicated above, Booz Allen notified the contracting officer on October 28 (after receiving the award) that Ms. G had left the company.

evaluation team did not propose any adjustments to Paradigm's proposal of [Deleted] overall labor hours to perform the task order. Id. at 28-29. The cost/price evaluation team accepted the recommendations of the technical evaluation team and [Deleted] adjusted Booz Allen's probable cost to reflect the recommended changes in labor hours.

The results of the technical and cost evaluations were presented to the agency's selection authority. See AR, Tab 10, Selection Authority Briefing, at 14. The selection authority recognized that Paradigm's proposal was rated higher than Booz Allen's under the technical and past performance factors, and that the technical factor was significantly more important than any other factor. AR, Tab 11, Source Selection Decision, at 23. The selection authority, however, concluded that the difference between the two technical proposals was not as significant as the adjectival ratings implied. In this regard, he also noted that, although Paradigm's proposal presented virtually no performance risk to the government, Booz Allen's proposal presented a low to moderate performance risk. The selection authority acknowledged that Paradigm's highly-rated proposal was worth paying some amount of cost premium, but concluded that the merit of Paradigm's proposal was not worth the substantial (\$[Deleted] or [Deleted] percent) cost premium. Id. at 24. The selection authority again selected Booz Allen to receive the task order.

After a debriefing, Paradigm protested to our Office.

DISCUSSION

Paradigm raises multiple challenges to MDA's evaluation of proposals. For example, Paradigm complains that MDA, in its reevaluation of proposals, did not reasonably assess Booz Allen's lack of a required contract program manager. Paradigm also complains, in the alternative, that MDA essentially reopened discussions only with Booz Allen when the agency allowed Booz Allen to identify a substitute contract program manager after submission of FPRs. Paradigm also contends that MDA failed to properly consider Booz Allen's conflicts of interest with respect to the firm's proposal of two former MDA officials and its relationship with The Carlyle Group. Paradigm also challenges various aspects of MDA's cost realism evaluation, such as the agency's adjustments to Booz Allen's proposed labor hours and MDA's decision to utilize weighted composite labor rates to conduct its cost realism analysis.

As explained below, we sustain Paradigm's challenge to the agency's evaluation of Booz Allen's contract program manager. In light of our recommendation below for the agency to either reject Booz Allen's proposal as unacceptable or to reopen discussions and evaluate revised proposals, we decline to address its additional protest grounds in further detail. However, we have considered all of Paradigm's protest grounds and conclude that no other grounds of protest provide a basis for sustaining the protest.

Contract Program Manager

Paradigm argues that Booz Allen's FPR was technically unacceptable, complaining that MDA in its reevaluation of proposals knew that Booz Allen's proposed contract program manager, Ms. G, was no longer employed by the firm and would not be available to perform under the task order. Protest at 22. Paradigm contends that, because offerors were required to propose a contract program manager as a key person, Booz Allen's lack of a contract program manager failed to satisfy a material solicitation requirement. Paradigm also argues, in the alternative, that MDA allowed Paradigm after the submission of FPRs to substitute a new contract program manager, in effect reopening discussions with only Booz Allen.

In reviewing protests challenging an agency's evaluation of proposals, even in a task order competition as here, we do not reevaluate proposals, but rather we 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. Technology Concepts & Design, Inc., B-403949.2, B-403949.3, Mar. 25, 2011, 2011 CPD ¶ 78 at 8. 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. See The Boeing Company, B-311344 et al., June 18, 2008, 2008 CPD ¶ 114 at 54; Special Operations Group, Inc., B-287013, B-287013.2, Mar. 30, 2001, 2001 CPD ¶ 73 at 4.

Here, the record shows that MDA was notified prior to the agency's decision to reevaluate proposals that Booz Allen's proposed contract program manager had left the firm's employment and would not be available to perform the task order. The proposal of a contract program manager is a material solicitation requirement, as offerors were required to identify a specific individual for this key position by submitting a resume. See RTOP amend. 1, at 4, 6. When Ms. G left Booz Allen's employment, Booz Allen's FPR no longer satisfied this material requirement. Although MDA considered this failure to be a weakness, it was in fact a deficiency. A weakness generally reflects a proposal flaw that increases the risk of unsuccessful performance, while a deficiency reflects the failure of a proposal to meet a material requirement. See, e.g., FAR § 15.001; see also Special Operations Group, Inc., supra at 5 (protest sustained where awardee failed to provide a required key person, rendering its proposal technically unacceptable).

We recognize that Booz Allen ultimately notified MDA that Ms. G would not be available to perform as the firm's contract program manager under the task order. See Greenleaf Constr. Co., Inc., B-293105.18, B-293105.19, Jan. 17, 2006, 2006 CPD ¶ 19 at 10 (it is an offeror's obligation to inform a procuring agency of changes in proposed staffing and resources, even after submission of proposals); see also Dual, Inc., B-280719, Nov. 12, 1998, 98-2 CPD ¶ 133 at 3-6. Although Booz Allen

should not have allowed almost three months to pass before notifying the agency that one of its two key people was no longer available, our concern here is with MDA's failure to recognize that Booz Allen's revised proposal could not be viewed as satisfying the solicitation's key personnel requirements. That is, having been informed prior to its reevaluation of proposals and making a new selection decision that Booz Allen's FPR no longer satisfied requirements concerning a key person, MDA could not simply accept Booz Allen's revised proposal and consider the matter a weakness. Under these circumstances, MDA should have either rejected Booz Allen's proposal as technically unacceptable for failing to meet a material requirement or reopened discussions to permit the firm to correct this deficiency.⁶

RECOMMENDATION

We recommend that MDA either reject Booz Allen's proposal as unacceptable or reopen discussions, obtain revised proposals, and make a new selection decision. If Booz Allen's proposal is rejected or Paradigm's proposal is found to offer the best value to the government, the agency should terminate Booz Allen's task order for the convenience of the government and issue a task order to Paradigm. We also recommend that the protester be reimbursed its reasonable costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2014). The protester's certified claim for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling
General Counsel

⁶ With respect to the agency's receipt of a resume for Booz Allen's substitute contract program manager, had the agency's reevaluation considered the resume, MDA would have, in effect, reopened discussions only with Booz Allen. In this regard, an agency may not allow one firm after discussions have closed to correct its proposal to become acceptable, without reopening discussions with other offerors. See Federal Data Corp., B-236265.2, Jan. 25, 1990, 90-1 CPD ¶ 104 (protest is sustained where awardee notified agency after award and during a bid protest of the need to substitute a subsystem to become acceptable).