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Decision

Matter of: Companion Data Services, LLC

File: B-410022; B-410022.2

Date: October 9, 2014

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DIGEST

1. Protester's challenge to its elimination from consideration for award is denied where agency reasonably evaluated protester's proposal as failing to comply with multiple solicitation requirements.
 2. Protester's assertion that it was not permitted to compete for the agency's actual requirements is denied where agency's amendment of the solicitation following protester's elimination from consideration for award did not materially change the solicitation's requirements, and the changes were not related to the multiple evaluated flaws in protester's proposal.
 3. Agency did not conduct discussions with offerors during oral presentations and, accordingly, was not required to conduct discussions with protester prior to eliminating its proposal from consideration for award.
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DECISION

Companion Data Services, LLC (CDS), of Catonsville, Maryland, protests the award of a task order to Lockheed Martin Services, Inc., of Gaithersburg, Maryland, by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), pursuant to task order request for proposals (TORP) No. 140318 for infrastructure hosting and centralized connectivity services (IHCCS). CDS protests that the agency's evaluation of proposals was flawed; that CDS did not

have an opportunity to compete for the agency's actual requirements; and that the agency was required to conduct discussions with CDS.

We deny the protest.

BACKGROUND

The record establishes that CMS has implemented an enterprise-wide information technology (IT) infrastructure to support CMS's mission and the activities of CMS's employees and business partners across the country.¹ Agency Motion to Dismiss (MTD), attach. 2b, IHCCS Statement of Work (SOW), at 7. This IT infrastructure includes the CMS Baltimore Data Center, located in Woodlawn, Maryland, which serves as the primary site for supporting CMS's business processing and communications requirements. Id.

In November 2012, the agency awarded eight virtual data center (VDC) indefinite-delivery indefinite-quantity (IDIQ) contracts to support CMS's IT requirements; the IDIQ awardees included CDS and Lockheed. Previously, CMS had awarded Lockheed a contract, referred to as the "consolidated information technology infrastructure contract" (CITIC); under the CITIC, Lockheed has provided various IT services, including operation and maintenance of the Baltimore Data Center. IHCCS SOW at 7. The agency subsequently determined that it should separate the functions performed under the CITIC into various individual task orders, including task orders for: IHCCS; VDC infrastructure enterprise services; seat management; and data warehousing. See Agency MTD, attach. 6, TORP amend. 3, CMS Responses to Questions, at 29; Agency MTD, attach. 1, Pre-Negotiation Business Clearance Memorandum, at 3.

On August 13, 2013, in pursuing its intent to divide the CITIC requirements, the agency issued the TORP at issue here, seeking proposals for "non-commercial IT services associated with Infrastructure Hosting and Centralized Connectivity services." TORP at 1. Among other things, the solicitation provides that the IHCCS contractor will operate and maintain all hardware and software supporting the services and functions provided within the Baltimore Data Center.² IHCCS SOW at 8. The solicitation contemplated a 7-month transition period and nine 1-year

¹ CMS is responsible for the Medicare program, the Medicaid program, the Children's Health program, and a variety of other health care quality assurance programs. Agency Motion to Dismiss (MTD), attach. 2b, IHCCS SOW, at 7.

² The solicitation also described CMS's broader objectives, including transitioning the Baltimore Data Center from a government-owned contractor-operated (GOCO) facility to a contractor-owned contractor-operated (COCO) facility and reducing the physical footprint of that facility through the migration of workloads and assets to the IHCCS contractor's own facility. Id. at 8-9.

option periods; contained 6 fixed-price contract line item numbers (CLINs) and 2 cost-reimbursement CLINs;³ and provided that award would be made on a best-value basis, considering the following evaluation factors: technical approach, data center migration strategy, management approach, staffing, past performance, and cost/price.⁴ TORP at 32; IHCCS SOW at 7. The solicitation directed offerors to “propose to the requirements expressed within the Statement of Work (SOW),” and provided that the agency would evaluate each offeror’s technical approach to meeting the SOW requirements, assessing whether the proposal reflected an understanding of the agency’s requirements and the degree of risk it presented. TORP at 35-38, 42. Offerors were warned that a proposal with unsupported assumptions or exceptions to the solicitation’s requirements could be removed from further consideration. Id. at 32, 43.

With regard to consistency between technical and cost/price proposals, the solicitation required that offerors submit a labor category crosswalk between their technical and cost/price proposals, stating: “[m]apping of proposed labor . . . categories to corresponding . . . price book categories is required.” Id. at 42. The solicitation further emphasized the importance of consistency between the technical and cost/price volumes, stating:

The Offeror shall ensure that the cost/price volume is consistent with the technical volume since it may be used as an aid to determine the Offeror’s understanding of the technical requirements. Discrepancies may be viewed as a lack of understanding and may result in the proposal being downgraded or removed from further consideration for award.

Id. at 42.

Under the heading “Technical Proposal Requirements,” the solicitation advised that, “[t]he offeror’s technical proposal will be comprised of both the written technical

³ The fixed-price CLINs were: (1) application hosting services; (2) shared infrastructure services; (3) enterprise security services; (4) telecommunications and network services; (5) program management services; and (6) disaster recovery services. The cost-reimbursement CLINs were (1) phase-in transition services, and (2) infrastructure/production integration. TORP at 1-10.

⁴ The solicitation provided that “[t]he combination of all non-cost/price factors is more important to the Government than cost/price when determining best value.” Id. at 32.

volume⁵] and oral presentations,” and elaborated that, “[t]he written submission will be supplemented by information provided at oral presentations.” Id. at 34.

Finally, the solicitation advised offerors that the procurement was being conducted pursuant to subpart 16.5 of the Federal Acquisition Regulation (FAR), stating:

The Government intends to conduct a source selection process in accordance with FAR Part 16.505 for orders under IDIQ contracts. Formal Source Selection procedures, in accordance with FAR Part 15, will not be used. Accordingly, the Government is not obligated to determine a competitive range, conduct discussions with all Offerors, solicit final revised proposals, and use other techniques associated with FAR part 15. The Government, however, reserves the right to conduct discussions if the Contracting Officer (CO) determines them to be necessary and in the best interests of the Government. In such case, if the CO determines that the number of proposals that would otherwise be competitive from a best value standpoint exceeds the number at which an efficient competition can be conducted, the CO will limit the number of proposals to be considered to the greatest number that will permit an efficient competition among those proposals most likely to be determined best value.

Id. at 31-32.

In attachments to the solicitation, the agency identified the various hardware and software the IHCCS contractor will be required to operate and maintain.⁶ See TORP attachs. 22, 25; Supplemental Agency Memorandum, Aug. 13, 2014, at 2. On November 5, the agency issued TORP amendment 4, which included a revised “software inventory” (TORP amend. 4, attach. 40) and an “updated physical [hardware] inventory” (TORP amend. 4, attach. 41). The inventory lists contained over 39,000 hardware entries and over 69,000 software entries; the lists were created by Lockheed in its capacity as the CITIC contractor.

⁵ Offerors’ written proposals were to be submitted in four volumes: technical (volume I); cost/price (volume II); basis of estimate (volume III); and organizational conflict of interest/responsibility (volume IV). TORP at 32-33.

⁶ In TORP amendment 3, the agency responded to offeror questions, stating, among other things, “The actual inventory will continually be modified.” Agency MTD, attach. 6, TORP amend. 3 at 16.

On November 18, initial written proposals were submitted by four offerors, including CDS and Lockheed.⁷ In March 2014, the offerors made oral presentations to the agency. During the presentations, all the offerors were asked an identical series of questions. After the offerors responded, the agency representatives caucused to determine what additional questions to ask. The agency then posed a series of follow-up questions to each offeror that were based on each offeror’s initial responses. Each offeror provided oral responses to the follow-up questions and, the next day, submitted written confirmation of its responses. Pre-Negotiation Business Clearance Memorandum at 8.

Thereafter, the agency evaluated the initial proposals, rating them as follows:

	Lockheed	[Redacted]	[Redacted]	CDS
Technical Approach	Excellent	Good	Unacceptable	Unacceptable ⁸
Data Migration Strategy	Good	Good	Good	Good
Management Approach	Marginal	Marginal	Marginal	Marginal ⁹
Staffing	Good	Marginal	Marginal	Unacceptable
Past Performance	Good	Good	Good	Good
Cost/Price	\$559,489,926	\$569,307,106	\$434,929,060	\$672,132,206

Contracting Officer’s Statement at 7; Pre-Negotiation Business Clearance Memo at 9, 11.

In evaluating CDS’s proposal as unacceptable with regard to technical approach, the agency noted that CDS had failed to address multiple SOW requirements.

⁷ The other two offerors were [redacted] and [redacted].

⁸ An unacceptable rating was defined as follows: “The proposal demonstrates a lack of competence and indicates a reasonably good probability that one or more goals and objectives will not be met. The proposal contains at least one material deficiency, or multiple significant weaknesses, the correction of which would require a significant revision to the proposal.” TEP Report Addendum 1 at 3.

⁹ A marginal rating was defined as follows: “The proposal demonstrates ability to perform the services with reasonably good probability that all goals and objectives will be met. There are no material deficiencies and the proposal is technically acceptable. The proposal is characterized by sound approaches but with weaknesses or risks that are correctable with a moderate degree of effort.” *Id.* at 2.

Among other things, the agency found that CDS's proposal failed to adequately and/or acceptably respond to the SOW requirements regarding security (SOW sections 2.1.4, 4.1.2, 4.1.3, and 4.2); shared infrastructure services (SOW sections 3.1.1 and 3.1.2); cabling (SOW section 2.1.10); and network control center (SOW section 2.1.3). Agency MTD, attach. 4, Technical Evaluation Panel (TEP) Report Addendum 1 at 33-34. The record shows that, rather than structuring its proposal to address all of the SOW requirements, as the solicitation directed, CDS's proposal addressed only a portion of requirements--those that were specifically highlighted in the solicitation as ones the agency "may consider" in its evaluation.¹⁰

With regard to CDS's unacceptable rating under the staffing factor, the agency noted that the number of labor hours reflected in CDS's technical volume was significantly higher than the number of labor hours reflected in CDS's cost/price volume. TEP Report Addendum 1 at 37. Specifically, the agency's TEP found that CDS's technical volume reflected a total of [redacted] hours, while CDS's cost/price volume reflected a total of [redacted]--a difference of [redacted] hours. Id. The agency further noted that CDS had not provided a labor category crosswalk between its technical and cost/price volumes, as the solicitation required,¹¹ and observed that the labor categories and description of duties within the two volumes did not match. Id. at 36.

Finally, the agency noted that CDS's proposal also included multiple assumptions that were either unacceptable or created high risk. TEP Report Addendum 1 at 39-49. For example, CDS's proposal included an assumption that pricing related to migration from the Baltimore Data Center to CDS's facility would be considered outside the scope of CDS's proposal. Id. at 40. The agency found this assumption unacceptable because the solicitation provided that migration was within the scope of the task order.¹² As noted above, the solicitation warned offerors that a proposal

¹⁰ In its instructions to offerors, the solicitation required offerors to present their approach to satisfying the TORP requirements, and listed certain SOW "sub-elements" that the agency "may consider" in its evaluation. TORP at 35, 36. However, in this instruction, the solicitation also warned that the requirements that were listed "do not necessarily address every requirement," and further advised offerors that the agency's evaluation would consider information regarding the listed sub-elements "along with information presented on any requirements not listed among the sub-elements." Id.

¹¹ As noted above, the solicitation stated: "[m]apping of proposed labor and fee-for-service categories to corresponding . . . price book categories is required." TORP at 42.

¹² Elsewhere in its protest submissions to this Office, CDS unambiguously asserts: "Migration is a primary SOW requirement." CDS Comments on Supp. Report, Aug. 25, 2014, at 20.

with unsupported assumptions or exceptions to the solicitation requirements could be removed from the competition. TORP at 32, 43.

Based on its evaluation of initial proposals, the agency concluded that CDS's proposal "do[es] not demonstrate [a] complete and thorough understanding of the Government's requirements and it is not clear that [it] possess[es] the ability and intent to perform the required work." Pre-Negotiation Business Clearance Memo at 12. Accordingly, consistent with the terms of the solicitation and FAR § 16.505, the contracting officer determined that it was appropriate to perform a "down-select," limiting the number of proposals to those that stood the greatest likelihood of representing the best value to the government. *Id.* at 21. On April 16, CDS's proposal was eliminated from further consideration for award.¹³

On April 18, the agency issued TORP amendment 5, sending that amendment only to Lockheed and [redacted], the remaining offerors being considered for award. In that amendment, the agency provided updated hardware and software inventory lists. Thereafter, the agency conducted discussions with Lockheed and [redacted] and requested final proposal revisions. On May 30, Lockheed was selected for award and, thereafter, CDS was notified that its proposal had been removed from consideration. This protest followed.

DISCUSSION

CDS protests that the agency's evaluation of proposals and the resulting down-selection was flawed; that CDS did not compete against the agency's actual requirements; and that the agency was obligated to conduct discussions with CDS. We reject CDS's assertions.¹⁴

Agency's Evaluation and Down-Selection of Proposals

CDS first protests that the agency "misevaluated" its proposal, asserting that "[n]one of the identified bases for finding a material deficiency in the CDS technical proposal withstand scrutiny." Protest at 30. Accordingly, CDS asserts that it was improper for the agency to exclude its proposal from further consideration. We disagree.

¹³ At that time, [redacted] proposal was also eliminated. CDS and [redacted] were not notified of their elimination until after award.

¹⁴ In pursuing this protest, CDS has made various arguments that are in addition to, or variations of, those discussed below. We have considered all of CDS's various assertions and find no basis to sustain its protest.

A contracting agency's evaluation of proposals and the establishment of a competitive range are matters within the agency's discretion. Carson Helicopter Servs., Inc., B-299720, B-299720.2, July 30, 2007, 2007 CPD ¶ 142 at 5; Foster-Miller, Inc., B-296194.4, B-296194.5, Aug. 31, 2005, 2005 CPD ¶ 171 at 6. In reviewing an agency's evaluation and competitive range determination, we will not reevaluate proposals; rather, we will examine the evaluation and determination to ensure that they were reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. CEdge Software Consultants, LLC, B-409380, Apr.1, 2014, 2014 CPD ¶ 107 at 5; The Eloret Corp., B-402696, B-402696.2, July 16, 2010, 2010 CPD ¶ 182 at 12. It is the agency's role to define both its underlying needs and the best method of accommodating those needs, and it is within the agency's discretion to reject as unacceptable proposals that do not meet the requirements that it defines and to determine which of the proposals are reasonably within the competitive range. See Encompass Group, LLC, B-299092, Dec. 22, 2006, 2007 CPD ¶ 6 at 3. An offeror's disagreements with the agency's actions are insufficient to render those actions unreasonable. The Eloret Corp., *supra*. Here, we have reviewed the entire record and find no basis to question the reasonableness of the agency's evaluation and down-selection.

First, with regard to the unacceptable rating assigned to CDS's proposal under the staffing factor, CDS offers no meaningful explanation as to why it believes the agency's assessment was unreasonable. In this regard, CDS does not dispute that the labor categories in its technical proposal did not match the labor categories in its cost/price proposal; nor does CDS dispute that it failed to provide a labor category crosswalk, as the solicitation specifically required; nor does CDS dispute that the level of effort in its cost/price proposal is significantly lower than the level of effort in its technical proposal.¹⁵

As noted above, the solicitation expressly warned offerors that inconsistencies between their technical and cost/price proposals could be "viewed as a lack of understanding and may result in the proposal being downgraded or removed from further consideration for award." TORP at 42. Accordingly, we find no basis to question the agency's evaluation of CDS's proposal as unacceptable under the staffing factor.

Moreover, CDS also fails to meaningfully challenge the reasonableness of the unacceptable rating its proposal received under the technical approach evaluation

¹⁵ Although CDS points out that the differing levels of effort in its proposal were both higher than the government estimate and the levels of effort reflected in other offerors' proposals, that fact does not negate the significant internal inconsistency within CDS's proposal.

factor. As noted above, the agency's evaluation listed multiple provisions of the SOW that CDS's proposal failed to adequately or acceptably address.

For example, with regard to security requirements, the solicitation contemplated a "role based" system. Specifically, the SOW stated: "The contractor shall control access to all environments through the use of a controlled role based access system . . . which will be linked to CMS's Identity Management System." IHCCS SOW at 17. At the hearing conducted in connection with this protest,¹⁶ the agency's technical evaluator explained that a role based security system linked to CMS's identity management system provides "a way of limiting the ability of people to do only very certain things that they are authorized to do." Hearing Transcript (Tr.) at 304. The evaluator testified that, while CDS's proposal recognized this requirement, it failed to discuss what CDS would do to meet the requirement, particularly with regard to the linking its access system to CDS's identity management system. Tr. at 311-15.

Similarly, with regard to the security requirements for non-cloud-based services, the agency noted that CDS "use[d] a global statement to indicate compliance," criticized the proposal as "lacking in detail," and concluded that lack of detail could leave CMS vulnerable to gaps in security services that would "compromise the enterprise and privacy of its beneficiaries and providers." TEP Report Addendum 1 at 34.

CDS's various protest submissions express disagreement with the agency's judgments and assessments, but fail to establish that the agency's evaluation was unreasonable.¹⁷ Based on our review of the record, we find no basis to question the agency's determination that CDS's proposal was properly rated as unacceptable under both the technical approach and staffing evaluation factors. Further, in our view, correction of the multiple errors, inconsistencies, and lack of detail, along with addressing its comparatively high price (more than \$100 million higher than Lockheed's and [redacted] prices), would have required major revisions to CDS's proposal. As noted above, the solicitation expressly warned offerors that their proposals could be eliminated from consideration based on internal inconsistencies, invalid assumptions, and/or failure to be competitive from a best value viewpoint. On the record here, exclusion of CDS's proposal from further consideration was

¹⁶ In resolving this protest GAO conducted a hearing, on the record, at which testimony was provided by CDS's chief technology officer, the agency's contracting officer, a member of the TEP, an agency subject matter expert supporting the TEP, and the TEP chair.

¹⁷ CDS also asserts that the agency's evaluation was unequal, arguing that Lockheed's and [redacted] proposals reflected flaws which the agency allegedly overlooked. We have considered all of CDS's various arguments challenging the agency's evaluation of proposals and find no basis to sustain the protest.

reasonable and consistent with the terms of the solicitation and applicable law and regulations.

The Agency's Requirements

Next, CDS asserts that the revisions to the hardware and software inventory lists, provided only to Lockheed and [redacted] in TORP amendment 5, changed the procurement in a material way. Accordingly, because CDS was eliminated from the competition prior to amendment 5, CDS asserts that it never had an opportunity to compete for the agency's actual requirements. As discussed below, we reject CDS's assertion that amendment 5 reflected a material change to the agency's requirements. Further, we conclude that the amendment 5 changes were not related to the multiple evaluated flaws in CDS's proposal.

Where an agency's requirements change in a material way after a solicitation has been issued, the agency must generally issue an amendment and afford all offerors an opportunity to compete for its changed requirements. Murray-Benjamin Elec. Co., L.P., B-400255, Aug. 7, 2008, 2008 CPD ¶ 155 at 3-4. Nonetheless, our Office has held that where a solicitation contemplates ongoing fluctuations of requirements that do not constitute material changes, and such fluctuations occur after a solicitation is issued, an agency need not, in effect, begin the procurement anew. See Logistics 2020, Inc., B-408543.4, Feb. 28, 2014, 2014 CPD ¶ 110 at 6; Nuclear Prod. Partners, LLC, B-407948.9, Sept. 24, 2013, 2013 CPD ¶ 228 at 5. Similarly, the FAR mandates that an agency cancel an existing solicitation and begin the procurement anew only where its requirements have changed in a manner that "is so substantial as to exceed what prospective offerors reasonably could have anticipated." FAR § 15.206(e); cf. FAR § 15.206(c).

Here, CDS complains that in amendment 5, the agency added 130 new hardware assets, deleted 235 hardware assets and "revised" over 100 software assets. Protest at 2. In response, the agency and intervenor note that CDS's protest fails to put these numbers into the context of the solicitation's total requirements. Specifically, the agency and intervenor point out that the inventory lists in amendment 4 (against which CDS prepared its proposal) contained over 39,000 hardware items and over 67,000 software items. Agency Pre-Hearing Brief, Sept. 9, 2014, at 5; Lockheed Pre-Hearing Brief at 11-12. Accordingly, they argue that the amendment 5 changes did not constitute material changes to the requirements.

At the hearing, CDS argued that the vast majority of the items on the amendment 4 inventory lists "have nothing to do with the data center and IHCCS," asserting that most of the amendment 4 hardware items "relate to a separate seat management contract." CDS Post-Hearing Brief, Sept. 24, 2014, at 73. Specifically, CDS asserts that only about 2,800 hardware items and 1,300 software products are relevant to

the IHCCS task order.¹⁸ Id. Accordingly, CDS asserts that the materiality of the changes contained in amendment 5 should be considered in the context of these considerably smaller inventory lists.

As noted above, prior to submission of initial proposals, the agency expressly advised offerors that “[t]he actual inventory will continually be modified.” TORP amend. 3, CMS Responses to Questions, at 17. Accordingly, even if we accepted protester’s hearing testimony at face value, we are unpersuaded that the inventory changes reflected in amendment 5 materially changed the agency’s requirements in a manner beyond what prospective offerors could have reasonably anticipated. See FAR § 15.206(e); Logistics 2020, Inc., supra; Nuclear Prod. Partners, LLC, supra. In this regard, we note that amendment 5 did not alter the SOW in any way. Further, CDS has failed to establish that any significant portion of the multiple evaluated flaws in its proposal were caused by the outdated inventory lists in amendment 4. See NV Servs., B-284119.2, Feb. 25, 2000, 2000 CPD ¶ 64 at 18-21 (protester was not prejudiced when it failed to establish that it would have had a substantial chance for award). For example, CDS cannot reasonably assert that the labor hour inconsistencies between its technical and cost/price proposal were related to changes in the hardware and software inventory lists. Similarly, there is no nexus between the inventory lists and CDS’s decision to structure its proposal so as to address only a portion of the SOW requirements. On this record, CDS’s assertion that it was precluded from competing for the agency’s actual requirements provides no basis for sustaining its protest.¹⁹

Discussions

Finally, CDS asserts that various communications between CMS and the offerors during oral presentations constituted discussions. Accordingly, CDS maintains that, because CMS conducted discussions with one or more of the offerors prior to CDS’s exclusion from the competition, the agency was required to conduct discussions with CDS. We reject CDS’s arguments.

¹⁸ To the extent CDS’s protest is based on a challenge to the accuracy of the amendment 4 inventory lists, its protest is not timely. 4 C.F.R. § 21.2(a)(1) (2014).

¹⁹ To the extent CDS asserts that Lockheed had an unfair competitive advantage due to its status as the incumbent contractor, the protest is without merit. An offeror may properly possess unique information, advantages, and capabilities due to its status as an incumbent contractor, and a procuring agency need not equalize competition to compensate for such an advantage, unless there is evidence of preferential treatment or other improper action. See, e.g., Onsite Health Inc., B-408032, B-408032.2, May 30, 2013, 2013 CPD ¶ 138 at 9-10. Here, CDS has not established preferential treatment or improper action.

As noted above, this procurement was conducted as a competition between IDIQ contract holders and, as such, was subject to the provisions of FAR § 16.505. In that regard, FAR § 16.505 does not establish specific requirements for conducting discussions; nevertheless, when discussions are conducted, they must be fair and reasonable. Hurricane Consulting, Inc., B-404619 et al., Mar. 17, 2011, 2011 CPD ¶ 70 at 5; CGI Fed. Inc., B-403570 et al., Nov. 5, 2010, 2011 CPD ¶ 32 at 9; see also Imagine One Tech. & Mgmt., Ltd., B-401503.4, Aug. 13, 2010, 2010 CPD ¶ 227 at 7-8. Where, as here, an agency conducts a task order competition as a negotiated procurement, our analysis regarding fairness will, in large part, reflect the standards applicable to negotiated procurements. See, e.g., TDS, Inc., B-292674, Nov. 12, 2003, 2003 CPD ¶ 204 at 4; Uniband, Inc., B-289305, Feb. 8, 2002, 2002 CPD ¶ 51 at 3-4. Although the FAR anticipates “dialogue among parties” during the course of oral presentations, see FAR § 15.102, when agency personnel begin speaking, rather than merely listening, the content of that dialogue may ultimately lead to a conclusion that the agency held discussions. As we have long held, the acid test for deciding whether an agency has engaged in discussions is whether the agency has provided an opportunity for proposals to be materially changed. See, e.g., TDS, Inc., supra; Priority One Servs., Inc., B-288836, B-288836.2, Dec. 17, 2001, 2002 CPD ¶ 79 at 5. In contrast, clarifications are not used to cure proposal deficiencies or materially alter the technical or cost elements of a proposal, but are limited to enhancing the agency’s understanding and allowing reasonable interpretation of proposals or facilitating the agency’s evaluation process. FAR § 15.306(b)(2). Requesting clarifications from one offeror does not trigger a requirement that the agency seek clarifications from other offerors. Serco Inc., B-406061.1, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61.

Here, we have reviewed the record regarding the oral presentations and conclude that, even applying FAR part 15 standards to this procurement, the agency’s communications constituted clarifications, not discussions. In this regard, the record establishes that the agency made a conscious effort to ask only limited questions and to seek clarification regarding aspects of offerors’ proposals that had been referenced during the presentation; the agency did not seek, nor did the offerors’ responses constitute, proposal revisions.

For example, CDS asserts that one of CMS’s questions to Lockheed regarding additional computing capacity referenced in its proposal constituted discussions. Specifically, Lockheed’s written proposal stated:

[T]he elements of our technical solution infrastructure mirrors the current [Baltimore Data Center] environment and provides enough . . . capacity to meet all current [Baltimore Data Center] workloads, plus

[redacted] additional in-place capacity that can be immediately activated through an authorized change request.

AR, Tab 9a, Lockheed Technical Proposal, at I-4.

With reference to this portion of the proposal, the agency asked Lockheed to respond to the following: “[E]xpand on ‘[redacted] additional capacity.’ Is it in the scope and included in firm fixed price?” AR, Tab 11b, CMS Summary of Lockheed Oral Presentation at 8. Lockheed responded, stating, “The additional ‘[redacted]’ is NOT within the proposed FFP but readily available.” Id. In its written follow-up, submitted the next day, Lockheed reiterated that its additional capacity “can be activated with [an] appropriate approved change order for additional price.” AR, Tab 11d, Lockheed Summary of Oral Presentation at 21.

On this record, we reject CDS’s assertion that the exchange regarding Lockheed’s additional capacity constituted a revision to Lockheed’s proposal. Specifically, nothing in Lockheed’s written proposal is inconsistent with the response it provided. That is, the portion of Lockheed’s proposal, quoted above, expressly discussed activation of its additional capacity “through an authorized change request”—thereby indicating that the capacity was not within the scope of Lockheed’s fixed price. Wholly consistent with that provision, Lockheed’s response confirmed that the additional capacity was, indeed, not within the scope of its proposed price, and that activation of such capacity would be contingent on receipt of additional compensation. Accordingly, Lockheed’s response to the agency’s request for clarification did not in any way constitute a change to its proposal, and we reject CDS’s assertion that these communications constituted discussions.

By way of another example, CDS complains that, after Lockheed had responded to the uniform series of questions presented to all offerors, one of the agency’s follow-up questions asked Lockheed about a particular software tool, called [redacted], that Lockheed had referenced. By way of background, Lockheed’s written proposal stated: We will achieve end-to-end automation. . . .We will leverage COTS [commercial of the shelf software], open source software, and our corporate developed scripting and programming solutions to . . . enable productivity improvement, and provide operational cost savings.” Lockheed Technical Proposal at I-19. During its oral presentation Lockheed referenced [redacted], a software modeling tool. Thereafter, the agency asked Lockheed to: “expand on use of [redacted] modeling tool (what is it? Is it in the Proposal?)” AR, Tab 11b, CMS Summary of Lockheed Oral Presentation at 8. Lockheed responded by providing additional information regarding [redacted], describing it as a “COTS product that manages workloads within and across platforms.” AR, Tab 11d, Lockheed Summary of Oral Presentation at 22. Lockheed also noted that its written proposal discussed Lockheed’s intent to introduce efficiencies through automation, and stated that, although [redacted] was not referenced by name in Lockheed’s written proposal, it was an example of automation that “we are investigating.” Id.

Again, nothing in Lockheed's response to the agency's question altered its proposal. To the contrary, Lockheed expressly acknowledged that its written proposal had not specifically offered [redacted] and, consistent with that fact, Lockheed's response to the agency's question did not commit to provide that tool; rather, Lockheed's response stated that Lockheed was still "investigating" it. On this record, CDS's assertion that these communications constituted discussions is without merit.

Finally, CDS asserts that both Lockheed and [redacted] "alter[ed] their [proposed] organizational structure/key personnel" by bringing personnel to the oral presentations who had not been proposed as key personnel or listed on their organizational charts. CDS Comments, Aug. 25, 2014, at 23. In this regard, CDS references the agency's directions to offerors regarding oral presentations which stated:

Participants

The contractor shall include only those personnel who will participate in the performance of the task order. Corporate Officers/Managers are allowed only if they will participate within and contribute to performance. The Government should therefore be able to match the names in the written proposal's organization chart to faces attending oral presentations. Marketing and business development personnel will not be allowed to attend. The offeror's participants shall include the proposed key personnel.

AR, Tab 6a, TORP attach. 4, Instructions for Orals, at 2.

CDS complains that Lockheed and [redacted] each brought one individual to their oral presentations who had not been proposed as key personnel or listed on their respective organization charts. Accordingly, CDS argues that the attendance of these individuals at the oral presentations effectively altered their proposals.

Even were we to conclude that the participation of particular personnel in oral presentations constituted changes to Lockheed's and [redacted] proposals (which we do not), we would reject CDS's assertion that such changes were the result of discussions. As established by the FAR, discussions are undertaken by an agency with the intent to obtain proposal revisions and include bargaining, give and take, persuasion, and alteration of assumptions and positions. FAR § 15.306(d). Clearly, the purported "changes" in Lockheed's and [redacted] personnel were not the result of such give and take between the agency and the offerors. Rather, at most, they reflected changes due to factors completely unrelated to communications between the offerors and the agency. On this record, we reject CDS's assertion that the participation at oral presentations of Lockheed and

[redacted] personnel who had not been proposed as key personnel or listed on the organization charts constituted discussions.

In sum, we do not view any of the communications the agency conducted with any of the offerors during oral presentations to constitute discussions. Accordingly, we reject CDS's assertion that the agency was required to conduct discussions with CDS.

The protest is denied.

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