



Decision

Matter of: EDC Consulting, LLC; Cybermedia Technologies, Inc.; Harmonia Holdings Group, LLC; Incentive Technology Group, LLC; Brilliant Corporation; Citizant, Inc.; Ventera Corporation; BC Digital Services, LLC-JV; IntegrityOne Partners

File: B-414175.10; B-414175.11; B-414175.12; B-414175.13; B-414175.14; B-414175.15; B-414175.16; B-414175.17; B-414175.18; B-414175.19; B-414175.20; B-414175.21; B-414175.22; B-414175.23; B-414175.24; B-414175.25; B-414175.26

Date: June 9, 2017

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DIGEST

Protests are dismissed where agency's determination to terminate the challenged contract awards and cancel the underlying solicitation renders the protests academic.

DECISION

EDC Consulting, LLC, of McLean, Virginia; Cybermedia Technologies, Inc., of Reston, Virginia; Harmonia Holdings Group, LLC, of Blacksburg, Virginia; Incentive Technology Group, LLC, of Arlington, Virginia; Brilliant Corporation, of Reston, Virginia; Citizant, Inc., of Chantilly, Virginia; Ventera Corporation, of Reston, Virginia; BC Digital Services, LLC-JV, of Arlington, Virginia; and IntegrityOne Partners, of Reston, Virginia, protest the Department of Homeland Security's (DHS) contract awards to Ad Hoc, LLC; Excella Consulting, Inc.; Innovations JV LLC; Karsun Solutions; LinkTec; Navitas Business Consulting, Inc.; SemanticBits, LLC; SimonComputing, Inc.; Soft Tech Consulting, Inc.; Solution Technology Systems, Inc.; and Wexler Technical Solutions, Inc., pursuant to request for proposals (RFP) No. HSHQDC-16-R-00118. The solicitation sought proposals to provide "[a]gile design and development services" that would provide "viable, digital solutions in support of DHS's strategic mission and objectives."¹ Agency Report (AR), Tab 5.4, RFP at 2. The protesters challenge various aspects of the agency's evaluation and source selection process.

Based on the agency's termination of the challenged contract awards and cancellation of the underlying solicitation, we dismiss the protests.

BACKGROUND

The agency issued RFP No. HSHQDC-16-R-00118 as a small business set-aside in August 2016, stating that it anticipated the award of 8 to 12 indefinite-delivery, indefinite-quantity (IDIQ) contracts for a 1-year base period and two 1-year option periods.² The total estimated value of the contracts was \$1.54 billion. RFP at 2, 71. The solicitation provided that the awards would be made on a best-value basis and established the following evaluation factors, listed in descending order of importance: technical challenge,³ staffing, past performance, and price.⁴ RFP at 83-86. With regard to the most important evaluation factor, technical challenge, the solicitation stated:

¹ This procurement is frequently referred to as the "Flexible Agile Support for the Homeland" or the "FLASH" procurement.

² The solicitation provided that the agency reserved the right to increase or decrease the number of awards. RFP at 71.

³ The technical challenge factor had 3 elements--engineering, agile, and design--and the solicitation provided that the engineering element was more important than each of the other two elements. RFP at 84.

Each Offeror shall participate in a challenge exercise that will be completed in one business day^[5] and will be used to evaluate the Offeror's ability to perform the scope of support required

The challenge shall require Offerors to leverage Digital Service Playbook concepts to design, develop, and deploy a Minimum Viable Product (MVP). At the end of the design, development, and deployment of the MVP, the Offeror shall present a 30 minute oral presentation. . . .

The challenge is for the Offeror to develop a responsive web app that will be used to report and track staff performance recognition of individuals by their coworkers, including providing "kudos" to peers.

RFP at 74-75.

On or before the August 22, 2016 closing date, proposals were timely submitted by 111 offerors. Thereafter, technical challenges were performed by each offeror.⁶ The technical challenge exercises were recorded on video and the offerors' performances were evaluated by agency personnel.

In November 2016, the agency made its initial source selection decisions, awarding contracts to 13 offerors. Thereafter, several protests were filed. On December 27, the agency advised our Office that it was taking corrective action to include reviewing its prior evaluation and, if necessary, making new award determinations. Based on the agency's actions, we dismissed the protests.

The agency states that, thereafter, a reevaluation of proposals was conducted; the technical evaluation team (TET) and price evaluation team (PET) prepared consensus evaluation reports and presented those findings to the TET chair; the contracting officer and TET chair conducted a best value tradeoff analysis, recommending award to the 11 offerors listed above; and the source selection authority (SSA) reviewed the best value tradeoff analysis report and concurred with the assessments and award recommendations. Contracting Officer's Statement, Apr. 18, 2017, at 3.

(...continued)

⁴ The solicitation provided that the non-price factors combined were significantly more important than price. Id.

⁵ The agency subsequently established a 4-hour time limit for the technical challenge exercise.

⁶ The agency states that the challenge exercises "were scheduled at two (2) site locations 455 Mass Ave, and 650 Mass Ave" and that "[f]our (4) offerors were scheduled per day at each site." Contracting Officer's Statement, April 18, 2017, at 2.

In a source selection decision document (SSDD) dated March 6, the SSA stated that he was awarding contracts to the 11 offerors as recommended, elaborating: “this award decision is based on the revised Best Value Tradeoff Analysis (BVTA), Technical Evaluation Team Report and Price Evaluation Report that incorporated the corrective action taken by the evaluation team and presented to me to make my independent decisions.” AR, Tab 14, Memorandum from SSA to Contracting Officer, Mar. 6, 2017, at 1. Notification of the award determinations was published on March 7. These protests followed.

AGENCY RESPONSE TO PROTESTS

In April 2017, the agency responded to the various protests, submitting individual reports addressing each protester’s assertions separately. Among other things, the agency reports included the technical evaluation report, price evaluation report, and best value tradeoff analysis that the agency represented as having been the basis for the SSA’s March 6 source selection decisions.

In the protesters’ comments, a question was raised as to whether the documents supporting the agency’s source selection decisions, filed with the agency reports (AR), had been prepared or revised after the March 6 decisions were made. Our Office requested that the agency respond to the comments.

In a letter to our Office dated May 1, agency counsel disclosed that, based on her review of the agency reports, she had “discovered that the price evaluation report . . . [is] incorrect” and that “some of the information provided in the AR . . . was prepared or changed after award.” Letter from DHS to GAO, May 2017, at 1. The agency’s post-award changes to the original price evaluation documents included the insertion of a multi-page table, as well as the creation of several memoranda regarding the price realism evaluation methodology and findings. In the May 1 letter, agency counsel further disclosed that “[a]fter award, the agency revised the Technical Evaluation Report and [the] Best Value Tradeoff Analysis.” Id. at 2. With the May 1 letter, the agency provided what it asserted was the version of these documents that existed at the time of the source selection decisions. These newly-produced documents showed that the agency’s post-award alterations resulted in substantial changes to the total number of pages in each of the altered documents.

Following the agency’s disclosures, this Office consolidated all of the protests and conducted several conference calls with counsel for the parties, expressing concern regarding the agency’s submission of altered documents, and advising the parties that GAO intended to conduct a hearing to address various matters including the agency’s preparation and submission of the altered documents.

On May 25, we issued a Hearing Notice that stated, among other things:

GAO will conduct a hearing in connection with the above-referenced protests; that hearing will begin at 9:00 a.m. on Wednesday, May 31, 2017. . . .

In addition to addressing the agency's post-award alteration of documents, and the submission of those documents to GAO, the hearing will address the following issues: 1) the agency's best value determinations, and the cost/technical tradeoffs on which those determinations were based; 2) the agency's price realism evaluation; and 3) the agency's technical evaluation.

GAO Hearing Notice, May 25, 2017, at 1-2.

On May 26, the agency advised our Office that it intended to take corrective action by terminating all of the contract awards and cancelling the procurement. Email from DHS Counsel to GAO, May 26, 2017. In its notice of corrective action, the agency discussed its post-award alterations of the record, and the impact of those actions on the integrity of the procurement, as follows:

DHS has previously acknowledged that documents had been created after award, specifically additional price realism memoranda and a memorandum detailing the methodology it used to evaluate price realism, and changed documents after award, specifically the Technical Evaluation Report (TER) and BVTA. Given the additions and the changes to documents after award, which DHS had previously submitted to [the] Government Accountability Office (GAO) as representative of the record at the time of award DHS has determined that the evaluation process and documents do not meet DHS' standards for award.

Agency Motion to Dismiss, May 27, 2017, at 1-2.

The agency further discussed other matters--including the solicitation's failure to accurately reflect the agency's needs, and flaws in the agency's evaluation and source selection process--that led to the decision to take corrective action, stating:

DHS has determined that the evaluation criteria and adjectival ratings did not permit evaluators to reasonably evaluate the offerors and assign appropriate ratings based upon the evaluation criteria. DHS has also determined that the evaluation of the offerors may have resulted in unequal treatment of offerors' weaknesses and risks. This is partially due to the adjectival ratings that were used, but also due to the evaluation process used to evaluate and assess offerors during the technical challenge exercises. DHS has identified issues in the price evaluation report (PER) and best value tradeoff analysis (BVTA) which do not adequately support its award decisions. The methodology by which the price evaluation team evaluated price realism is not identified in the PER. Nor is it evident in the PER itself what DHS reviewed and

evaluated to determine whether prices were reasonable and realistic. DHS did not require offerors to provide sufficient information to assess whether the prices proposed were realistic to perform work on task orders at the Top Secret/Sensitive Compartmented Information (TS/SCI) level or provide the necessary information to assess whether the rates proposed met the requirements of FAR 52.222-46.

Within the BVTA, DHS has determined it did not conduct a reasonable tradeoff of offerors to determine which offerors represented a best value to DHS. . . .

In addition to the above, DHS has determined that substantial modifications to the requirements would need to be made to ensure that FLASH meets DHS' evolving mission needs. Through the process of awarding FLASH, DHS has learned more about its needs and the ways that FLASH does not meet them. The FLASH requirements, while extensive, do not include services that DHS now sees as critical components for the success of this type of vehicle. The inclusion of these additional required services would require a significant change to what information offerors would be required to provide and how DHS would evaluate offerors.

DHS has determined that cancellation of the FLASH solicitation, HSHQDC-16-R-00118, is the only viable option to address the many issues that DHS has identified as problems with the requirement and the record.

Id.

When an agency terminates a contract and cancels the underlying solicitation, the agency's actions render a protest challenging the contract award academic. See, e.g., Ferris Optical, B-403012.2, B-403012.3, Oct. 21, 2010, 2010 CPD ¶ 265 at 2. A reasonable basis to cancel a solicitation exists when, for example, an agency determines that the solicitation does not accurately reflect its needs. MedVet Dev. LLC, B-406530, June 18, 2012, 2012 CPD ¶ 196 at 2-3.

Here, we view the agency's termination of the contract awards and cancellation of the underlying solicitation as rendering the protests academic. Accordingly, the protests are dismissed.

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General Counsel