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Decision

Matter of: Integrity Consulting Engineering and Security Solutions, LLC

File: B-405199.3

Date: December 8, 2011

Alfred M. Wurglitz, Esq., Daniel Wang, Esq., and Joseph G. Billings, Esq., Miles & Stockbridge P.C., for the protester.
Gerald H. Werfel, Esq., Pompan, Murray & Werfel, PLC, for Tamarack Technologies, Inc., the intervenor.
Craig Haughtelin, Esq., Department of the Navy, for the agency.
Nora K. Adkins, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that the agency's solicitation amendment, issued as part of corrective action in response to a protest by another firm, improperly disclosed proprietary staffing level information included in the protester's proposal is denied where the record shows that the staffing level identified in the solicitation amendment was independently developed by the agency, and was different from the protester's proposed staffing level.

DECISION

Integrity Consulting Engineering and Security Solutions, LLC (ICESS), of Frederick, Maryland, protests the amended terms of request for proposals (RFP) No. N62583-10-R-0360, issued by the Department of the Navy for program management, technical, and integrated services in support of the Navy's Anti-terrorism Force Protection Ashore program.

The RFP, issued on July 22, 2010 as a Service-Disabled Veteran-Owned Small Business set-aside, contemplated the award of an indefinite-delivery, indefinite-quantity contract with a 1-year base period and four 1-year options. The RFP advised offerors that the award would be based upon a best-value evaluation, considering the factors of technical capability, past performance, and cost/price. RFP at 42.

Among the tasks included in the RFP was a requirement to provide Facilities Engineering Command Team Leads (FECTL) to “facilitate project coordination, liaison with region and installation customers, monitor task order execution, manage [contract data requirements list] review process, and develop and submit project deviation requests in addition to other coordination activities.” RFP at 14. The solicitation allowed offerors to present their own solution for FECTL staffing. RFP, attach. 2, Task Order 1, FECTL Support, at 1. The RFP also identified the current level of staffing for the FECTLs under the incumbent contract. Id.

On October 4, ICESS submitted its initial proposal in response to the RFP, which included an approach that used [REDACTED] FECTLs. After discussions, on April 12, 2011, the contracting officer requested the offerors to submit final proposal revisions. On April 20, ICESS submitted its final proposal revision with a solution of [REDACTED] FECTLs for [REDACTED]. ICESS was awarded the contract on June 2.

On June 14, Tamarack protested the award to ICESS to our Office. Among other things, Tamarack contended that the evaluation of ICESS’s proposal was unreasonable. On June 20, Tamarack filed a supplemental protest in which it contended that the agency improperly changed its FECTL staffing requirements, but failed to amend the solicitation to reflect this change. Tamarack also alleged that the agency’s new staffing requirements were provided to ICESS prior to the receipt of final proposal revisions, which gave ICESS an unfair competitive advantage.

On June 28, the agency informed our Office that it intended to take corrective action in response to the protests. The agency advised that it intended to cancel the award of the contract; modify the solicitation with regard to FECTL support; provide all offerors with a briefing slide, which had been presented at an agency briefing held on April 13 and which discussed a draft FECTL staffing plan; permit offerors to revise their proposals; and re-evaluate revised proposals. Our Office dismissed the protest as academic on July 6.

In implementing the corrective action, the agency issued amendment 10 to the RFP on August 22. Amendment 10 provided changes to the RFP performance work statement with regard to the FECTL staffing requirements. Specifically, the amendment required “Nine (9) FTE FECTLs to man the nine FECTL offices.” RFP amend. 10, at 10-11. The amendment also included attachment 10, which provided, in six slides, details regarding the agency’s FECTL plans. RFP amend. 10, attach. 10. As relevant here, one of the briefing slides, which was used in the April 13 presentation, listed by name the planned FECTLs for nine of the Navy regional offices. The amendment stated that,

[a]t least on[e] offeror had previously seen these slides. They are now being provided to all offerors in order to prevent the possibility of an

unfair advantage which might result from an unequal access to the information therein.

RFP amend. 10 at 16. The amendment provided that offerors could submit revised proposals by September 19. Id. at 2.

ICESS submitted this protest to our Office on September 1. ICESS first contended that the agency's basis for the corrective action was unreasonable. On September 26, we dismissed this protest basis as untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2011), because ICESS was aware of the corrective action on June 28, but did not file its protest until September 1.

ICESS also timely contended that the agency improperly disclosed ICESS's FECTL staffing plan in amendment 10 to the RFP. ICESS explains that the amendment revealed the [REDACTED] number of FECTLs proposed by ICESS on April 20 in response to the agency's request for final proposal revisions.

In response, the agency asserts that ICESS is incorrect in its assumption that the Navy relied upon ICESS's final proposal revision in amending the RFP to nine FECTLs because the Navy had plans to reduce the number of FECTLs months prior to receiving ICESS's final proposal revision. The Navy explains that in January 2011, during the on-going competition for this work, its program office determined that it could carry out the FECTL function with nine FECTLs. This plan was memorialized in a briefing slide presented at the April 13 presentation, which was attended by both agency and contractor employees, before ICESS submitted its April 20 final proposal revision. This was the slide included in attachment 10 in amendment 10. As indicated, this briefing slide identified nine people by name to perform FECTL duties. The agency asserts that it did not use ICESS proprietary information in arriving at the nine person FECTL solution included in amendment 10 because it had received direction from the program office to reduce the number of FECTLs and presented this information at the April 13 briefing, prior to receiving ICESS's April 20 proposal revision.

As noted, ICESS asserts that amendment 10 revealed the "[REDACTED] number of FECTLs proposed by ICESS." Protest at 9. In response, the agency has provided an affidavit from its Program Manager for the Antiterrorism Force Protection Ashore program, which states that, in late 2010, he was asked to reduce the number of FECTLs utilized by the program. In response, in January 2011, he developed a plan to staff the FECTLs with nine individuals that was reflected in the slide presented at the April 13 agency briefing, which was attended by both agency and supporting contractor officials. Declaration of Program Manager for the Antiterrorism Force Protection Ashore program (Sept. 28, 2011) at 1. ICESS has

presented no evidence that casts any doubt on the program manager's explanation.¹

Furthermore, as noted by the agency, while [REDACTED] amendment 10 and ICESS's final proposal revision [REDACTED] FECTLs, amendment 10 does not provide the same FECTL solution as ICESS's proposal revision. For example, ICESS's final proposal revision [REDACTED] the FECTL [REDACTED] and proposed [REDACTED], whereas amendment 10 [REDACTED] the FECTL [REDACTED] and did not [REDACTED]. This also supports the agency's position that the FECTL staffing level identified by amendment 10 did not result from misappropriating ICESS's proposal information.

Based upon this record, we find no evidence to suggest that the agency disclosed ICESS's proprietary information in amendment 10.

The protest is denied.

Lynn H. Gibson
General Counsel

¹ ICESS asserts that the briefing slide is ambiguous as to the number of FECTLs required by the Navy. Our review of this slide reveals that while contractors may have interpreted this slide differently, it is obvious that there were only nine named individuals on the briefing slide.