

Decision

Matter of: Triad Logistics Services Corporation

File: B-406416

Date: March 19, 2012

Edward J. Kinberg, Esq., Kinberg & Associates, LLC, for the protester.
Phillip Reiman, Esq., Department of the Air Force, for the agency.
Kenneth Kilgour, Esq., and Edward Goldstein, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protester did not establish prejudice associated with agency's failure to amend solicitation to account for 2-month reduction in base period of performance.

DECISION

Triad Logistics Services Corporation, of Melbourne, Florida, protests the award of a contract to Shilo Services, Incorporated, of Cedar Park, Texas, under request for proposals (RFP) No. FA4800-11-R-0015, issued by the Department of the Air Force for transient aircraft services. The protester alleges that the agency improperly shortened the contract's base performance period without amending the RFP.

We deny the protest.

The RFP, a total small business set-aside, anticipated a base year of 9 months (January 1, 2012 through September 30, 2012), with four 1-year options. RFP at 4-11. It sought a contractor to perform transient aircraft services, to include transient aircraft management control, arrival, processing, and departure services. The three evaluation factors were price, technical, and past performance.¹ Price would be evaluated as the total price for the base year plus the total price for all options. Id. at 21. Award would be made to the offeror with the lowest-priced, technically acceptable proposal with an acceptable level of past performance. Id. at 19. The government reserved the right to conduct discussions. Id. at 21.

¹ Technical had three components--program management, security, and aircraft expertise--each of which would be evaluated as acceptable or unacceptable.

The RFP contained specific staffing requirements. See RFP, Performance Work Statement ¶ 1.2.4, Hours of Operation. From the 13 offers that it received, the Air Force perceived a need to conduct discussions with offerors in order to ascertain that they understood the staffing requirements and that their proposals complied with them.² The agency invited revised proposals. After evaluation, the agency selected Shiloh Services as offering the lowest-priced, technically acceptable proposal based on the 57 month period of performance (base plus option periods) set forth in the solicitation.

As the agency explains, the delay caused by the acceptance of revised proposals pushed the start of the base period for the contract forward by 2 months, reducing it from 9 to 7 months. Request for Dismissal at unnumbered page 2. The four 1-year option periods remained unchanged. To account for this fact, the agency reevaluated price proposals using the offerors' unit prices for the shorter base period and identical options periods. Using a contract period of 55 months, rather than the announced 57 months, the Air Force once again determined that Shilo Services offered the lowest price. Award was made to Shilo Services, and this protest followed.

Triad argues that the award to Shilo Services was improper because offerors based their proposals on a 9-month base period of performance, yet the agency's actual requirement, at the time of award, was only 7 months. According to Triad, the agency was required to amend the RFP to account for the shortened base period and obtain revised proposals from all offerors.³ As a general matter, the Federal Acquisition Regulation (FAR) requires that, "[w]hen, either before or after receipt of proposals, the Government changes its requirements or terms and conditions, the contracting officer shall amend the solicitation." FAR § 15.206(a). Moreover, a contract's period of performance is generally considered to be a material solicitation requirement. See, e.g., Integrated Business Solutions, Inc., B-292239, July 9, 2003, 2003 CPD ¶ 122 at 3.

² Request for Dismissal at unnumbered page 2. The agency characterizes the exchanges as clarifications. Id. In as much as the record suggests that some offerors materially changed their offers in response to the agency's query, the exchanges are properly regarded as discussions. The distinction is not material to our analysis.

³ The protester also alleges that the agency must have deviated from the announced evaluation criteria. Protest at 5-6. The factual basis for this allegation, according to the protester, is that the agency conducted discussions with more than just one firm. The protester offers no legal support for this allegation, see id., and we find it to be without merit.

Our Office will not sustain a protest, however, unless the protester demonstrates a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 103 F.3d 1577, 1581 (Fed. Cir. 1996). Here, the protester has offered no evidence to establish that it was prejudiced by the agency's failure to shorten the base period through the issuance of an amendment. The protester has not asserted that it would have reduced its unit pricing by an amount that would have overcome the awardee's price advantage. Because the protester has offered no basis on which we could conclude that it was prejudiced by the agency's action, we will not sustain the protest.

The protest is denied.

Lynn H. Gibson
General Counsel