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## Decision

**Matter of:** MT & Associates, LLC

**File:** B-410066

**Date:** October 17, 2014

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Steven J. Koprince, Esq., Petefish, Immel, Heeb & Hird, LLP, for the protester. Alfred M. Wurglitz, Esq., Stephen P. Ramaley, Esq., and Lorenzo F. Exposito, Esq., Miles & Stockbridge PC, for MAF Interpreting, Inc., the intervenor. Debra E. Rubin, Esq., National Geospatial-Intelligence Agency, for the agency. Frank Maguire, Esq., and David Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protest that agency failed to refer alleged nonresponsibility determination for small business concern to the Small Business Administration for consideration for a Certificate of Competency is denied where solicitation required offerors to identify in their proposals the proposed interpreters and their clearances, and the agency reasonably concluded that the protester's identification in its timely submitted proposal revisions of interpreters without the required security clearances called into question the protester's commitment to comply with the requirement, thereby rendering the proposal unacceptable; where a proposal, on its face, should lead an agency to the conclusion that an offeror has not agreed to comply with a material term or condition of the solicitation, the matter is one of the proposal's acceptability, and not a matter of the offeror's responsibility.

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### **DECISION**

MT & Associates, LLC (MTA), of St. Louis, Missouri, protests the National Geospatial-Intelligence Agency's (NGA) award of a contract to MAF Interpreting, Inc. (MAF), of Bethesda, Maryland, under request for proposals (RFP) No. HM0177-14-R-0007, for interpreting services. MTA challenges the adequacy of discussions and argues that the agency's conclusion about MTA's ability to provide interpreters with required security clearances was, in essence, a responsibility determination that had to be referred to the Small Business Administration (SBA) for a certificate of competency (COC) review.

We deny the protest.

## BACKGROUND

The RFP, issued on April 7, 2014 as a small business set-aside, provided for the award of a contract for sign language interpreting services to the offeror with the lowest-priced, technically acceptable proposal. Agency Report (AR), Tab 3i, RFP<sup>1</sup>, at 1, 4. The contractor was required to provide both daily on-site (DOS) interpreters and a minimum of four intermittent interpreters, RFP, Statement of Work (SOW), at 8; RFP at 60, Question and Answer No. 9, and both categories were required to have Top Secret/Sensitive Compartmented Information (TS/SCI) security clearances. RFP at 9, 37. As the agency made clear in response to offeror questions, “[a]ll personnel except for intermittent interpreters shall possess a TS/SCI at proposal submission,” while “Intermittent Interpreters shall possess a TS/SCI at contract start date.” See RFP at 62, Question and Answer Nos. 23, 24. Offerors were required to complete a Personnel Security Clearance Information form documenting required personnel security clearances, with columns for entry of “Type of Investigation/Date,” “SCI Eligibility Date,” “Status of SCI,” and “Govt. Sponsor.” RFP at 9-10, attach. 2. The solicitation further provided that the “[p]ersonnel clearances for the intermittent personnel will be evaluated for the prospective awardee only, just prior to contract award.” RFP, Amend. No. 3, at 4.

Four timely proposals were received on May 5, including proposals from MTA and MAF. Relevant here, MTA’s Personnel Security Clearance Information form for its proposed intermittent interpreter personnel provided simply “N/A” with regard to all four individuals in each column related to security clearance. AR, Tab 4, MTA Initial Proposal, at 58-59. Additionally, the program staffing and commitment plan in MTA’s proposal indicated “None” with regard to “TS/SCI” for each of MTA’s proposed intermittent interpreters. Id. at 25.

After completion of the initial technical evaluation, the contracting officer opened discussions with offerors to permit them to address the weaknesses in their proposals. Pertinent here, the agency evaluated MTA’s initial proposal as technically unacceptable on the basis that, among other reasons, “[t]he 4 intermittent Interpreters proposed by [MTA] are not cleared. (SOW 11.A.3.)” AR, Tab 6a, Technical Evaluation Worksheet-Group Consensus for MTA, dated May 29, 2014, at 3. In the June 11 discussion letter sent to MTA, the agency identified three weaknesses, including, as relevant here:

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<sup>1</sup> In this decision, references to the RFP are to AR, Tab 3i, Amend. No. 2, Apr. 18, 2014, unless the context requires otherwise.

3. The Government is requesting that your security template for intermittent interpreters be completed in full for the personnel you originally submitted for intermittent personnel.

AR, Tab 8a, First MTA Discussions Letter, at 3. In a subsequent email exchange with MTA, the agency further advised MTA that it “did not submit all information required on the security template for the intermittent interpreters proposed.” AR, Tab 8, Agency Email to MTA, June 12, 2014.

On June 12, MTA emailed a proposal revision to the agency. AR, Tab 9, MTA Proposal Revision, June 12, 2014. With regard to intermittent interpreters, the revision stated that: “We have completed the security template with descriptions to assist in clarification of the missing information.” Id. at 1. However, while MTA included an updated Personnel Security Clearance Information form for intermittent personnel that provided more information than did MTA’s initial form, the updated form indicated with regard to each proposed intermittent interpreter: “Does not hold an SCI.” Agency Supp. Submission, September 22, 2014.

On June 23, the agency reopened discussions with emails to the offerors remaining in the competitive range, MTA and MAF, requiring that any proposal revisions be submitted by June 25 at 3:00 p.m. AR, Tab 13, Second MTA Discussions Letter, June 23, 2014. The agency advised MTA that: “Your proposed Intermittent Interpreters don’t appear to have TS/SCI clearances, which is required of all interpreters prior to award.” Id. at 12. The agency further advised that: “The Government is requesting that your security template for intermittent interpreters be completed in full with intermittent interpreters who have TS/SCI clearances, as required by the RFP.” Id. at 14; see AR at 4.

On June 23, MTA responded to the second discussions letter, advising that, based on its reading of pertinent RFP provisions, “Intermittent Interpreters are required to have TS/SCI at contract start date, not at award.” AR, Tab 13, MTA Email, June 23, 3:17 p.m. On June 24, the contracting officer replied, citing provisions in the RFP requiring the evaluation prior to award of intermittent interpreters’ security clearances. Agency Email, June 24, 2014, 9:37 a.m. Later on June 24, MTA responded, indicating that it was “still unable to locate the information that states the requirement that all intermittent interpreters are required to have a TS/SCI at award.” MTA Email, June 24, 2014, 1:37 p.m. MTA also proffered its “plan upon/after award,” which involved, among other measures, extending “offers of employment to Government preferred interpreter(s) in the Saint Louis metro area with a TS/SCI to fill intermittent positions.” Id. The contracting officer replied later that same day, again citing provisions in the RFP requiring the evaluation prior to award of intermittent interpreter’s security clearances. The contracting officer also advised MTA that, “to be eligible for award, please submit evidence that your proposed intermittent interpreters have been determined to be SCI-access eligible within the

last two years, assuming an award date of 30 June 2014.” Agency Email, June 24, 2014, 5:14 p.m.

On the morning of June 25, MTA advised the agency that it intended “to work around the clock to satisfy this request,” and had “already begun the process of making contact with potential TS/SCI Interpreters.” MTA Email, June 25, 2014, 7:01 a.m. MTA, however, requested an extension of the June 25, 3:00 p.m. due date for proposal revisions to June 30. *Id.* When the contracting officer declined to extend the due date, Agency Email, June 25, 2014, 12:00 p.m., MTA continued to press for an extension of time to submit a revised proposal, finally requesting at 3:00 p.m. on June 25, “a few extra hours.” MTA Email, June 25, 2014, 3:00 p.m. According to MTA’s requests, “[w]e already have three people signed up for intermittent work who hold a TS/SCI,” MTA Email, June 25, 2014, 1:04 p.m., and it needed “just a few extra hours to receive the final signature.” MTA Email, June 25, 2014, 3:00 p.m. In none of its emails, however, did MTA identify the intermittent interpreters with TS/SCI clearances it intended to propose. Only in a late proposal revision received from MTA at 11:16 p.m. on June 25, did the firm finally furnish a revised security form that identified four proposed intermittent interpreters with TS/SCI clearances. AR, Tab 15a, at 10.

After MTA was found to be ineligible for award because none of the identified intermittent interpreters included in its timely submitted proposal revisions had the required TS/SCI clearances, award was made to MAF on June 30, 2014. MTA received a debriefing on July 7, and this protest followed on July 10.

## DISCUSSION

### Adequacy of Discussions

MTA asserts that the agency failed to provide it with meaningful discussions regarding the lack of TS/SCI clearances for its proposed intermittent interpreters. Specifically, the protester complains that the initial, June 11 discussion letter it received only requested that the “security template for intermittent interpreters be completed in full,” First MTA Discussions Letter, at 3, and that only in the second, June 23 letter, shortly before the June 25 due date for final proposal revisions, did the agency specifically advise it that intermittent interpreters were required to have TS/SCI clearances prior to award. Second MTA Discussions Letter, June 23, 2014.

It is a fundamental principle of negotiated procurements that discussions, when conducted, must be meaningful; that is, discussions must identify deficiencies and significant weaknesses in an offeror’s proposal that could reasonably be addressed so as to materially enhance the offeror’s potential for receiving award. PAI Corp., B-298349, Aug. 18, 2006, 2006 CPD ¶ 124 at 8; Spherix, Inc., B-294572, B-294572.2, Dec. 1, 2004, 2005 CPD ¶ 3 at 13. To satisfy the requirement for meaningful discussions, the agency need only lead an offeror into the areas of its

proposal requiring amplification or revision. Epsilon Systems Solutions, Inc., B-409720, B-409720.2, July 21, 2014, 2014 CPD ¶ 230 at 16; ITT Fed. Sys. Int'l Corp., B-285176.4, B-285176.5, Jan. 9, 2001, 2001 CPD ¶ 45 at 7. The scope and extent of discussions with offerors are matters of a contracting officer's judgment. Federal Acquisition Regulation § 15.306(d)(3) (2014); Am. States Utilities Servs., Inc., B-291307.3, June 30, 2004, 2004 CPD ¶ 150 at 5.

Here, we conclude that the agency's discussions with MTA were meaningful. As noted, the initial agency discussions letter instructed MTA to complete "in full" the required Personnel Security Clearance Information form for its proposed intermittent interpreters. That form, however, included columns where for each interpreter the offeror was required to enter the "Type of Investigation/Date," "SCI Eligibility Date," "Status of SCI," and "Govt. Sponsor." RFP, attach. 2. In light of the clear and unambiguous solicitation requirement that "Intermittent Interpreters shall possess a TS/SCI at contract start date," RFP at 62, Question and Answer No. 24, and the solicitation statement that "[p]ersonnel clearances for the intermittent personnel will be evaluated . . . just prior to contract award," RFP, Amend. No. 3, at 4, the direction to complete these columns can only reasonably have been understood to indicate that MTA was required to identify in its proposal intermittent interpreters with a TS/SCI clearance. In any case, at a minimum, we believe that the agency reasonably led MTA into the area of its evaluated deficiency, such that the discussions were meaningful.

#### Failure to Refer to SBA

MTA asserts that the requirement that intermittent interpreters possess TS/SCI clearances was a classic responsibility factor, and since it was evaluated on a "pass/fail" basis, the agency was required to refer the rejection of its proposal for failure to meet that requirement to the SBA under its Certificate of Competency (COC) procedures.

Our Office has held that the ability to obtain a security clearance is generally a matter of responsibility, absent an express requirement in the solicitation to demonstrate the clearance prior to award, which would indicate that the requirement was a definitive responsibility criterion. See TMG Constr. Corp., B-407190, Nov. 19, 2012, 2012 CPD ¶ 343 at 5; Rohmann Servs., Inc., B-405171, B-405171.2, Sept. 8, 2011, 2011 CPD ¶ 177 at 8; Waterfront Techs., Inc.--Protest and Costs, B-401948.16, B-401948.18, June 24, 2011, 2011 CPD ¶ 123 at 6. Under the Small Business Act, 15 U.S.C. § 637(b)(7) (2006), the SBA has conclusive authority to determine the responsibility of small business concerns. Thus, when a procuring agency finds that a small business is not eligible for award based on a nonresponsibility determination or a failure to satisfy definitive responsibility criteria, the agency is required to refer the matter to the SBA for a final determination under its COC procedures. TMG Constr. Corp., *supra*, at 5 n.4; Waterfront Techs., Inc.--Protest and Costs, *supra*.

Here, we find that the agency was not required to refer the matter to the SBA for COC consideration. Where a proposal, on its face, should lead an agency to the conclusion that an offeror has not agreed to comply with a material term or condition of the solicitation, the matter is one of the proposal's acceptability, and not a matter of the offeror's responsibility. TYBRIN Corp., B-298364.6, B-298364.7, Mar. 13, 2007, 2007 CPD ¶ 51 at 6 (proposal that on its face does not satisfy a solicitation's limitation on subcontracting clause concerns the acceptability of the proposal, and not the offeror's responsibility). Further, a proposal that fails to conform to a material term or condition of the solicitation is unacceptable and may not form the basis for an award. Id. In this regard, MTA's final proposal, as timely revised prior to the final closing time, identified only four intermittent interpreters, none of whom had an TS/SCI clearance as required by the solicitation. In these circumstances, the agency could reasonably conclude that, notwithstanding MTA's assurances that it was working on obtaining certain unidentified intermittent interpreters with the requisite clearance, the fact that its timely submitted proposal identified interpreters without the requisite clearance called into question MTA's commitment to comply with this requirement, thus furnishing a basis for rejecting the proposal as unacceptable.

The protest is denied.

Susan A. Poling  
General Counsel