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## Decision

**Matter of:** Kratos Defense & Rocket Support Services, Inc.

**File:** B-413143; B-413143.2

**Date:** August 23, 2016

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Richard B. O'Keeffe Jr., Esq., William A. Roberts, III, Esq., and Tara L. Ward, Esq., Wiley Rein LLP, for URS Federal Services, Inc., the intervenor.  
Brian Kau, Esq., Department of the Navy, for the agency.  
Glenn G. Wolcott, Esq., April Y. Shields, and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest is sustained where awardee's proposal was based on the assumption that the agency would provide on-site work space and equipment, despite the agency's specific statement that no on-site workspace would be provided and the fact that the solicitation did not identify any government-provided equipment.

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### DECISION

Kratos Defense & Rocket Support Services, Inc., of San Diego, California, protests the Department of the Navy's issuance of a task order to URS Federal Services, Inc., of Germantown, Maryland, pursuant to request for proposals (RFP) No. N000024-15-R-3322, to provide various support services for the Naval Surface Warfare Center (NSWC), in Dahlgren, Virginia. Kratos asserts that URS's proposal took exception to the solicitation's requirements and challenges the agency's evaluation and source selection process.

We sustain the protest.

## BACKGROUND

On October 1, 2015, the RFP was issued, pursuant to Federal Acquisition Regulation (FAR) Part 16, to contract holders under the Navy's SeaPort-e indefinite-delivery/indefinite-quantity (IDIQ) multiple award contract.<sup>1</sup> The solicitation sought proposals for a cost-plus-fixed-fee, level-of-effort task order to provide "systems engineering, design and technical direction agent engineering, configuration management, and logistics support services" for the NSWC.<sup>2</sup> Agency Report (AR), Tab 1, RFP at 5, 78.

The solicitation provided for a best-value award, based on the following factors, listed in descending order of importance: technical understanding/capability/approach;<sup>3</sup> workforce;<sup>4</sup> management; past performance; and cost. Id. at 80-83. Adjectival ratings were assigned under the non-cost factors and subfactors.<sup>5</sup> Id. at 78-79. With regard to the evaluation of cost, the solicitation provided that the agency would perform cost realism analyses for "those contractor proposals that represent the most likely candidates for award." Id. at 83.

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<sup>1</sup> SeaPort-e is the Navy's electronic platform for acquiring support services in 22 functional areas including engineering, financial management, and program management. See <https://www.seaport.navy.mil/> (last visited August 17, 2016).

<sup>2</sup> The services will support the NSWC's Gun and Electric Weapon Systems Department and its Weapon Control and Integration Department, which conduct research and development analyses regarding: pulsed power; electromagnetic weapons systems; gun weapons systems; test and evaluation; maritime warfare control systems; missile systems integration and weapons effectiveness, and platform integration. RFP at 5. Kratos is the incumbent contractor for these services.

<sup>3</sup> Under this factor, the solicitation established the following subfactors: (1) statement of work; (2) scenario #1 (integration of a railgun into a new platform); and (3) scenario #2 (delivery of surface to surface missile module (SSMM) capability). Id. at 80-81.

<sup>4</sup> Under this factor, the solicitation established the following subfactors: (1) resumes of key personnel; and (2) staffing plan/matrix. Id.

<sup>5</sup> With regard to evaluation under the first three factors, the solicitation provided for assignment of the following ratings: outstanding, good, acceptable, marginal, or unacceptable. In evaluating past performance, the solicitation provided for assignment of relevance ratings (very relevant, relevant, somewhat relevant, or not relevant) and confidence ratings (substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence/neutral). Id. at 79-80.

Offerors were required to submit proposed labor rates for personnel to fill various labor categories, and the solicitation provided that “[a]ll personnel . . . are required to have, as a minimum, a DoD [Department of Defense] Industrial Security Clearance in JPAS [joint personnel adjudication system] SECRET.” Id. at 63. The solicitation also provided that “[t]he contractor’s primary facility supporting this requirement must have a Facility Security Clearance of TOP SECRET with SECRET storage and processing capability.” Id. Finally, the solicitation established a limitation on teleworking, stating that the contractor “may perform up to 10% of the hours at an alternate worksite.”<sup>6</sup> Id. at 41.

Following publication of the solicitation, the agency responded to various offeror questions, including a question regarding RFP section C.5. That section stated: “The contractor shall provide sufficient on-site supervision to assure all personnel work instructions and schedules originate with the contractor rather than with the Government technical office.” See AR, Agency Responses to Offeror Questions, at 6. With regard to this RFP provision, the agency posted the following question and answer :

Question: What are the on-site locations the government plans to have contractor work space in? How many FTEs [full time equivalents] by labor category will be working on government site?

Answer: No on-site space will be provided. The word “on-site” will be removed from the first sentence in paragraph C.5 in an amendment.<sup>7</sup>

Id.

As Kratos points out, the underlying SeaPort-e IDIQ contracts provide that “[t]he Contractor shall provide qualified personnel, materials, facilities, equipment, test instrumentation, data collection and analysis, hardware and software, and other services that will support the Navy and Marine Corps in the execution of . . . the specific missions of the individual activities and ordering offices.” Supp. Protest, exh. 1, SeaPort-e IDIQ Contract, at 8. The underlying IDIQ contracts further state that, if the government is providing any equipment in connection with the performance of a particular task order, such equipment will be identified. Id. at 11. (“All Government furnished . . . equipment will be specified in the individual task orders.”) Here, the solicitation specifically advised offerors that no government work space would be provided and did not identify any government-provided equipment.

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<sup>6</sup> The solicitation defined an alternate worksite as “an employee’s residence or a telecommuting center.” Id. at 42.

<sup>7</sup> Thereafter, section C.5 of the solicitation was revised to eliminate the word “on-site.” See RFP at 10.

On or before the November 6 closing date, proposals were submitted by three offerors, including Kratos and URS.<sup>8</sup> Notwithstanding the solicitation requirements discussed above, URS’s proposal stated, under the heading “Indirect Rates/Budgets,” that:

URS has proposed URS site rates and Government/Client site rates for this effort. For Government/Client site rates, URS assumes that the Government/Client will provide working space, computers and telephones for the proposed staff at no cost to URS in order to use Government/Client site rates.<sup>9</sup>

AR, Tab 12, URS Cost Proposal, at 6.

Following oral presentations, the agency evaluated Kratos’s and URS’s proposals as follows:

<b>Factor/Subfactor</b>	<b>Kratos</b>	<b>URS</b>
Technical Understanding/ Capability/Approach	Acceptable	Good
Statement of Work	Good	Good
Scenario # 1 (railgun)	Marginal	Good
Scenario # 2 (SSMM)	Marginal	Outstanding
Workforce	Good	Acceptable
Resumes of Key Personnel	Good	Acceptable
Staffing Plan/Matrix	Good	Acceptable
Management	Good	Acceptable
Past Performance	Very Relevant/ Substantial Confidence	Relevant/ Substantial Confidence
Total Proposed Cost	\$62,072,222	\$51,564,344
<b>Overall Rating</b>	<b>Good</b>	<b>Good</b>

AR, Tab 4, Business Clearance Memorandum, at 10, 17-18.

The agency concluded that Kratos’s and URS’s proposals were “rated equal in the non-price Factors” and, because URS proposed a lower cost, the agency performed

<sup>8</sup> The third offeror’s proposal is not relevant to this protest, and is not further discussed.

<sup>9</sup> URS’s cost proposal reflected its intent for multiple personnel to work at the government site. See URS Cost Summary, FTE Table, at 12, 13, 22, 23, 101, 102, 124, 125, 126, 131, 132, 133, 134, 135, 136, 152.

a cost realism analysis only on URS's proposal.<sup>10</sup> Id. at 24. In performing that analysis, the agency upwardly adjusted URS's proposed cost to \$54,704,514. AR, Tab 3, Cost Realism Report, at 1-2. This adjustment reflected the agency's determination that various aspects of URS's cost proposal were unrealistically low, including certain labor rates, indirect rates, and material and handling rates. Id. Nothing in the agency's cost evaluation either recognized or addressed URS's stated assumption that its proposal "assumes that the Government/client will provide working space, computers, and telephones for the proposed staff at no cost to URS."

Based on the agency's conclusion that URS and Kratos had submitted proposals that were rated equal under the non-cost/price factors, and URS's lower evaluated cost, URS was selected for award. This protest followed.<sup>11</sup>

## DISCUSSION

Kratos's initial protest challenged various aspects of the agency's evaluation and source selection process. Following receipt and review of the agency report, which disclosed the assumptions in URS's proposal regarding government-provided work space and equipment, Kratos filed a supplemental protest asserting that URS's proposal took exception to the solicitation's requirements. We agree.

A proposal that takes exception to a solicitation's material terms and conditions should be considered unacceptable and may not form the basis for an award. CHE Consulting, Inc., B-406639, June 28, 2012, 2012 CPD ¶ 190 at 2-3; Solers, Inc., B-404032.3, B-404032.4, Apr. 6, 2011, 2011 CPD ¶ 83 at 3-7; CAMS Inc., B-292546, Oct. 14, 2003, 2003 CPD ¶ 191 at 2. Material terms of a solicitation are those which affect the price, quantity, quality, or delivery of the goods or services being provided. Seaboard Elecs. Co., B-237352, Jan. 26, 1990, 90-1 CPD ¶ 115 at 3.

Here, in response to a direct question regarding whether on-site working space would be provided by the government, the agency unambiguously stated: "No on-site space will be provided." AR, Agency Responses to Offeror Questions, at 6. Further, nothing in the solicitation identified any equipment that would be provided

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<sup>10</sup> As noted above, the solicitation stated that cost realism analysis would be performed only for "proposals that represent the most likely candidates for award." RFP at 83.

<sup>11</sup> The estimated value of the task order at issue is greater than \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery, indefinite-quantity contracts. 10 U.S.C. § 2304c(e)(1)(B).

by the government. Nonetheless, the agency accepted URS's proposal based on its "assum[ption] that the Government/Client will provide working space, computers and telephones for the proposed staff at no cost to URS." See AR, Tab 12, URS Cost Proposal, at 6. On this record, the award to URS was improper.

Following submission of Kratos's supplemental protest, the agency asserted that URS's proposal was reasonably construed to mean that the labor it proposed at "Government/Client" rates would be performed at "alternate work locations." Supp. AR, July 15, 2016, at 3. We reject this post-protest assertion based on the plain language of URS's cost proposal. The agency fails to provide a reasonable basis for its assertion that URS's statement that "[URS] assumes the Government/Client will provide working space, computers and telephones...at no cost to URS" could be interpreted to mean that URS was referring to teleworking arrangements at "alternate work locations." Indeed, nothing in the contemporaneous evaluation record supports, or even makes reference to, such interpretation.

Further, under the column heading "site," URS's cost summary reflects one of three designations for each of its proposed personnel: "CONT," "GOVT," and "ALT."<sup>12</sup> A substantial number of URS's proposed personnel are identified as working at the "ALT" site. See URS Cost Summary, FTE Table, at 16, 24, 31, 36, 37, 48, 49, 50, 51, 52, 53, 54, 56, 85. The agency's assertion that URS used the "GOVT" and "ALT" designations interchangeably is facially unreasonable.

Finally, the combination of the personnel listed as working at the "GOVT" site and the "ALT" site constitutes over 20 percent of URS's total proposed labor. Accordingly, even if we accepted the agency's assertion that URS used the designations of "GOVT" and "ALT" interchangeably-- which we do not--URS's proposal would have violated the solicitation requirements that limited permissible telework to 10% of the total proposed labor. See RFP at 41 ("the Contractor may perform up to 10% of the hours at an alternative worksite"). On this record, award to URS was improper.

The agency and intervenor also assert that Kratos was not competitively prejudiced, performing various cost analyses to argue that, if URS's proposal were rewritten to reflect the solicitation's actual requirements, its evaluated cost would still be lower than Kratos's proposed cost. We decline to deny the protest on this basis. Where, as here, the solicitation expressly requires that the contractor have a top secret facility clearance, requires all personnel to have secret security clearances, and places a 10% limit on permissible telework arrangements, URS's impermissible assumptions regarding the location at which, and the equipment with which, its personnel will perform the contract requirements has the potential to impact URS's

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<sup>12</sup> We believe it is beyond dispute that these terms referred to government, contractor, and alternate work sites, respectively.

proposal under the non-cost evaluation factors. On the record here, we reject the assertions that URS's clear exceptions to the solicitation requirements were non-prejudicial.<sup>13</sup>

## RECOMMENDATION

Since it appears that the terms of the solicitation may not reflect the agency's actual requirements, we recommend that the agency review the terms of the solicitation and revise them as necessary. If the solicitation is revised, the agency should solicit new proposals that reflect the agency's actual needs. In the event the agency determines that the solicitation does not need to be revised, it should either: (1) terminate the task order awarded to URS, and make award to the offeror whose proposal complies with the terms of the solicitation and offers the best value to the government; or (2) open discussions with all offerors, obtain revised proposals, and make award consistent with the terms of the solicitation. We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing its protest, including reasonable attorney's fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claim for costs, detailing the time spent and costs incurred, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling  
General Counsel

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<sup>13</sup> We decline to address Kratos's various challenges to the evaluation of URS's proposal under the non-cost evaluation factors, since URS's express exception to the solicitation requirements regarding the location at which, and the equipment with which, URS personnel will perform the contract requirements were contrary to the terms of the solicitation. We have considered all of Kratos's various challenges to the agency's evaluation of Kratos's proposal under the non-cost evaluation factors, and find no merit in them.