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# Decision

**Matter of:** Right Direction Technology Solutions, LLC

**File:** B-416615.2

**Date:** October 26, 2018

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William K. Walker, Esq., Walker Reausaw, and Kenneth A. Martin, Esq., The Martin Law Firm, PLLC, for the protester.

Eden Brown Gaines, Esq., Brown Gaines, LLC, for Strativia, LLC, the intervenor.

Major Felix S. Mason, and Scott N. Flesch, Esq., Department of the Army, for the agency.

Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest is denied where the record establishes that the agency properly applied the solicitation's stated evaluation factors, and evaluated offerors' proposals consistently and equally against common evaluation criteria.

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## DECISION

Right Direction Technology Solutions, LLC (RDTS), of Honolulu, Hawaii, protests the Department of the Army's award of a contract to Strativia, LLC, of Largo, Maryland, pursuant to request for proposals (RFP) No. W912CN-18-R-0002 to provide various information technology, visual information, and administrative support services for the Tripler Army Medical Center (TAMC) at Oahu, Hawaii.<sup>1</sup> RDTS complains that the agency failed to adhere to the terms of the solicitation and failed to treat offerors equally.

We deny the protest.

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<sup>1</sup> The agency states that the TAMC "serves as the premier Health Readiness Platform in the Regional HealthCare Pacific (RHCP) area of responsibility by providing high quality, safe, patient centered healthcare . . . and ensuring a medically ready force." Agency Report (AR), Tab 9, RFP at 26.

## BACKGROUND

In December 2017, the agency issued the solicitation as a 100% small business set-aside under section 8(a) of the Small Business Act, seeking proposals that would lead to the award of a fixed-price contract for a 12-month base period,<sup>2</sup> four 12-month option periods, and one 6-month option period.<sup>3</sup> RFP at 80-94, 134.<sup>4</sup> The solicitation provided for award on a lowest-price technically acceptable (LPTA) basis and established the following evaluation factors: technical capability, past performance, and price.<sup>5</sup> Id. at 106. As amended, the solicitation also provided for a 20-day phase in period, stating:

The Contractor shall provide a detailed phase-in/out plan, which discusses the Offeror's scheduling, phasing-in of all functional activities outlined in the PWS [performance work statement], and milestone dates for implementation. The phase-in period shall be completed within 20 calendar days from contract award and a phase out period shall be 30 calendar days upon notice of award of a new contract in the event of any follow-on procurement.

RFP at 44.

Finally, the solicitation directed offerors to include pricing for the phase-in period in their prices for the base performance period.<sup>6</sup> Id. at 76.

On or before the closing date, proposals were submitted by 12 offerors, including RDTs and Strativia. RDTs's proposal for the base performance period reflected a lower number of manhours than it proposed for the option periods on the basis that, as RDTs subsequently explained:

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<sup>2</sup> The solicitation stated that the period of performance (POP) for the base period would run from August 1, 2018 through July 31, 2019. RFP at 95.

<sup>3</sup> The solicitation stated that the contract requirements had been consolidated from three prior contracts. RFP at 63.

<sup>4</sup> Citations to the RFP in this decision refer to the final conformed solicitation, submitted in the AR at Tab 9.

<sup>5</sup> With regard to technical capability, the solicitation required that each offeror submit a management and staffing plan that identified the number of personnel within the associated labor categories on which its price was based. RFP at 107.

<sup>6</sup> The solicitation's pricing schedule did not contain a separate contract line item number for the phase-in requirements.

During the transition, we anticipate that Incumbent contractor personnel currently performing the work will continue supporting the requirement prior to our Team taking full control, management and performance responsibility of the work. This approach is specifically designed to minimize the cost impact<sup>7</sup>. . . .

AR, Tab 23, RDTs Response to Discussion Questions, at 6.

On May 10, the agency opened discussions with the offerors, and sent a discussion letter to RDTs that, among other things, noted that RDTs's proposed level of effort for the base performance period appeared to be inadequate. AR, Tab 18, RDTs Discussion Letter, at 2.

On May 16, RDTs sent an email to the agency seeking clarification of the solicitation requirements with regard to the transition/phase-in period, asking: "will the performance of the incumbent contract continue for [the phase-in period] after contract award . . . allowing for transition activities of the newly awarded contract?" AR, Tab 20, RDTs/Agency Emails, at 2. Consistent with its theory that the incumbent would continue to be responsible for contract performance during the first part of the base performance period, RDTs further queried whether it should assume that "the start of performance and service payments will begin [at the end of the phase-in period] after contract award?" Id.

On May 18, the agency responded, stating "[t]he transition period is expected to start 30 days<sup>8</sup> before the POP [period of performance] start date,"<sup>9</sup> elaborating that "[t]his will allow the awardee time to prepare for the contract, hire employees, etc." Id. at 1.

On May 22, RDTs responded, stating that it understood the agency's response and was increasing its level of effort, and proposed price, for the base period, explaining:

With the Government's clarification to our question submitted in regards to the start of the transition period and overlap with the incumbent contract being allotted before the start of the new contract period of performance, we have revised our pricing to properly allocate hours for the first month of performance for our anticipated contract staff. Although our revised price

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<sup>7</sup> RDTs's proposal stated that it would perform the transition/phase-in activities "at no additional cost to the Government." AR, Tab 15, RDTs Price Proposal, Mar. 12, 2018, at 2.

<sup>8</sup> The solicitation was subsequently amended to reduce the transition/phase-in period to 20 days.

<sup>9</sup> As noted above, the solicitation stated that the POP for the base period would begin on August 31, 2018. RFP at 95.

now covers a full 12 months of personnel service, we still elect to not charge the Government for the transition period.

AR, Tab 23, RDTs Response to Discussion Letter, at 4.

Thereafter, final proposals were submitted and evaluated. RDTs and Strativia's proposals were each evaluated as acceptable under the non-price evaluation factors.<sup>10</sup> Strativia's proposal offered the lowest price (\$8,241,173); RDTs's proposal offered the second-lowest price (\$8,271,217). AR, Tab 31, Source Selection Decision Document, at 2. Accordingly, Strativia's proposal was selected for award. This protest followed.

## DISCUSSION

RDTs protests that the agency "failed to adhere to its disclosed evaluation criteria" and "failed to treat offerors equally." Protest at 11-13. As discussed below, RDTs's assertions are without merit.

First, with regard to the agency's alleged failure to apply the solicitation's stated evaluation factors, RDTs complains that the solicitation should have been construed as providing that the phase-in period began on the same date as the POP start date--thereby permitting RDTs to propose (and price) a decreased level-of-effort during the first month of contract performance. Protest at 11-12. Based on this assertion, RDTs maintains that it should have received award on the basis of its initially-proposed price--which reflected a decreased level-of-effort, and a price that was lower than the award price. Id. Finally, RDTs complains that, "after the Army stated . . . that the transition period would begin before the period of performance," RDTs was "confronted with the dilemma of either increasing its proposed price . . . or leav[ing] its proposed price unchanged with the hope of being able to recover the [phase-in] costs . . . as a change order." Protest at 11.

The agency responds that it did, in fact, apply the solicitation's stated evaluation criteria, noting that the solicitation contemplated award on an LPTA basis; that Strativia's proposal was properly evaluated as acceptable under the non-price factors; and that Strativia's proposal offered the lowest price.

The agency further responds that, to the extent RDTs's protest reflects its view that RDTs should have been permitted to price its proposal based on less than a 12-month base period, its protest is not timely filed. In this regard, the agency notes that, during discussions, it explicitly advised RDTs that phase-in activities were to be performed

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<sup>10</sup> Nine of the 12 offerors' proposals were determined to be acceptable under the non-price evaluation factors. AR, Tab 31, Source Selection Decision Document, at 2.

prior to the performance start date,<sup>11</sup> and that the requirement to perform those activities did not reduce the stated length of the base performance period. Finally, the agency notes that RDTs expressly acknowledged its understanding of this matter in its May 22, 2018 response to the agency's discussion letter. See AR, Tab 23, RDTs Response to Discussion Letter, at 4. In summary, the agency states that RDTs's protest is based on the assertion that it should have been permitted to propose--and be evaluated on--a level of effort for the base period that was less than the 12 months specified in the solicitation and that, following discussions, this assertion reflects, at best, a patent ambiguity which RDTs was required to protest before submitting its final proposal.

In reviewing protests alleging an agency's failure to evaluate proposals on the basis of the solicitation's stated criteria, our Office will review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's stated evaluation factors and applicable statutes and regulations. See, e.g., FP-FAA Seattle, LLC, B-411544, B-411544.2, Aug. 26, 2015, 2015 CPD ¶ 274 at 7. While solicitations must inform offerors of the basis for proposal evaluation and source selection, and the agency's evaluation must be based on the factors identified in the solicitation, the solicitation need not specifically identify every area that may be taken into account where offerors are reasonably on notice of the areas that the evaluation will encompass. See, e.g., MicroTechnologies, LLC, B-403713.6, June 9, 2011, 2012 CPD ¶ 131 at 3.

Further, it is well-settled that a party who has the opportunity to object to allegedly improper or patently ambiguous terms in a solicitation, but fails to do so prior to the time set for receipt of proposals, waives its ability to raise the same objection later. See, e.g., Baldt Inc., B-402596.3, June 10, 2010, 2010 CPD ¶ 139 at 2. We have noted that this rule prevents an offeror from taking advantage of the government, as well as other offerors, by waiting silently during the procurement process, only to spring forward after award with an alleged defect in an effort to restart the procurement. See, e.g., Del-Jen Educ. & Training Grp./Flour Fed. Sols. LLC, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 7 n.9.

Here, based on our review of the record, it is clear that the agency adhered to the solicitation's stated evaluation factors. As noted above, the solicitation contemplated award on an LPTA basis, and Strativia's proposal offered the lowest price of the offerors' proposals that were evaluated as acceptable under the non-price factors. Further, to the extent RDTs's protest is based on the agency's alleged failure to properly construe the terms of the solicitation, the protest is untimely. The record shows that the solicitation stated that: an offeror's price for phase-in activities was to be included in its proposed price for the base performance period; the agency explicitly advised RDTs that phase-in activities were to be performed prior to the performance start date; and RDTs expressly acknowledged its understanding of this matter. In this

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<sup>11</sup> As noted above, the solicitation expressly provided that the start date for the base performance period was August 1, 2018 and ran through July 31, 2019. RFP at 95.

regard, RDTs is, now, essentially arguing that it should have been permitted to ignore the solicitation's requirement to include phase-in costs in its price, and incur such costs that would not be considered for purposes of the source selection decision, but which RDTs "hope[d]" to subsequently recover through a change order. See Protest at 11. On the record here, RDTs's various complaints regarding the agency's application of the solicitation's provisions provide no basis to sustain its protest.

Next, RDTs asserts that the agency did not treat the offerors equally, speculating that Strativia's final proposal must have been based on a reduced period of performance for the base period, as RDTs's initial proposal had been. Protest at 13.

The agency responds that RDTs was the only offeror that submitted a proposal that contemplated less than 12 months of performance for the base period. AR, Tab 2, Contracting Officer's Statement, at 4. More specifically, the agency states that none of Strativia's proposal submissions priced the base year differently from the option years. Finally, the agency notes that Strativia's proposal stated that its transition would include "off-hours interviewing, training, and onboarding," AR, Tab 16, Strativia Proposal Vol. II, at 6, indicating that Strativia understood that the transition/phase-in requirements would occur prior to the POP start date for the base period. In short, the agency maintains that RDTs's and Strativia's final proposals were both evaluated based on 12 months of contract performance for the base period, and that the agency evaluated them consistently and equally against the solicitation's stated criteria.

As noted above, an agency must evaluate proposals against the solicitation's stated evaluation factors, and must do so even-handedly. See, e.g., FP-FAA Seattle, LLC, supra; Fitnet Purchasing All., B-410263, Nov. 26, 2014, 2014 CPD ¶ 344 at 8-9.

Here, contrary to RDTs's assertions, the record establishes that Strativia's proposal was, in fact, based on full performance for the base period, and the record further establishes that the agency evaluated the proposals consistently and equally against the solicitation's stated evaluation factors. RDTs's assertions of unequal treatment are without merit.

The protest is denied.

Thomas H. Armstrong  
General Counsel