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# Decision

**Matter of:** TRAX International Corporation

**File:** B-416927

**Date:** January 9, 2019

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Amy L. O'Sullivan, Esq., Olivia L. Lynch, Esq., Robert Sneckenberg, Esq., James Peyster, Esq., and Stephanie L. Crawford, Esq., Crowell & Moring LLP, for the protester.

Scott N. Flesch, Esq. Captain Harry M. Parent, and Andrew J. Smith, Esq., Department of the Army, for the agency.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest challenging firm's elimination from the competitive range is denied where record shows that agency reasonably found the firm's proposal technically unacceptable in accordance with the terms of the solicitation and applicable statutes and regulations.

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## DECISION

TRAX International Corporation, of Las Vegas, Nevada, protests the elimination of its proposal from consideration under request for proposals (RFP) No. W91151-18-R-0005, issued by the Department of the Army, for mission support services at White Sands Missile Range. TRAX argues that the agency unreasonably eliminated its proposal from the competition.

We deny the protest.

## BACKGROUND

The RFP contemplates the award, on a best-value tradeoff basis, of a hybrid cost-plus-fixed-fee, cost-reimbursement, and fixed-price, type contract for a 90-day phase-in period, a 9-month base period and four 1-year options to provide mission support services at the White Sands Missile Range, considering evaluated cost/price, along with several non-cost/price evaluation factors. The non-cost/price factors were: mission

capability; past performance; and small business participation. RFP at 82-83.<sup>1</sup> The mission capability factor had four subfactors: program management; cost management; recruitment and retention of technical expertise; and continuity of operations. Id. Firms were advised that the mission capability factor was deemed significantly more important than past performance (with the subfactors under that factor listed in descending order of importance); past performance and small business participation were deemed equal in importance; and all non-cost factors in combination were deemed significantly more important than cost. Id. at 83. For purposes of evaluating cost/price, the RFP advised that the agency would evaluate proposals for realism, reasonableness and balance. RFP at 89. In addition to these evaluation considerations, and as relevant to the protest, the RFP also provided offerors with a staffing matrix that identified all of the labor categories to be staffed during performance, and also stipulated the number of hours for each labor category. RFP, exh. T.

The agency received a number of proposals in response to the solicitation, including the proposal submitted by TRAX, the incumbent contractor for this requirement. The agency performed an initial evaluation of the firm's proposal and, after the technical and cost evaluators compared their evaluation results, the agency concluded that TRAX appeared to be offering to retain 100 percent of the incumbent workforce for the requirement, but was proposing that its workforce be comprised of [deleted] percent part-time or temporary workers, and [deleted] percent full-time workers, which was a significant departure from how TRAX had staffed the incumbent contract.

Because the agency wanted to ensure that it fully understood the TRAX proposal, the agency sent a series of clarification letters that included questions about how TRAX intended to staff the requirement and the impact of that decision on fringe benefits that would be available for proposed part-time or temporary employees, as well as the firm's use of overtime in connection with performance of the requirement. Specifically, the agency asked questions concerning the accrual of paid vacation time, paid sick leave and the firm's proposed use of overtime to meet solicitation requirements. AR, exhs. 32-34.

In response to the agency's requests, TRAX clarified its proposal through the submission of a series of letters. AR, exhs. 35-37. TRAX advised that, consistent with the Army's understanding, the firm was, in fact, offering to staff the requirement using a mix of approximately [deleted] percent part-time or temporary employees and [deleted] percent full-time employees, and that the firm was not proposing to use [deleted] amounts of overtime, notwithstanding the fact that the RFP identified a certain amount of overtime work based on historical data. AR, exh. 35, Clarification Letter No. 1, at 2-3.

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<sup>1</sup> All references to the RFP are to the conformed version of the solicitation that was issued as amendment No. 0005 to the solicitation and included in the agency report (AR) as exhibit 8.

The protester also advised the agency that it did not intend to provide part-time or temporary employees [deleted] sick leave since the firm believed that the likelihood of its part-time employees using sick leave under the firm's proposed staffing plan was low. AR, exh. 36, Clarification Letter No. 2, at 3. TRAX further advised the agency that, consistent with its accounting system, sick leave was not [deleted] at the time it was accrued, but, rather, at the time it was used by the employee, and since it did not anticipate its part-time employees using [deleted] sick leave, it did not include the cost of such leave in its proposal. Id. In addition, TRAX advised the agency that it did not intend to provide part-time or temporary employees [deleted] holiday or vacation leave, since it also believed that its proposed staffing approach would [deleted] for providing part-time employees holiday or vacation leave; correspondingly, TRAX did not include the cost associated with such holiday or vacation leave in its proposal. Id.

After receiving the clarification letters from TRAX, the agency completed its evaluation of the firm's proposal. The record shows that the agency rated the protester's proposal as overall unacceptable under the mission capability factor, assigning it marginal ratings under the program management and the recruitment and retention of technical expertise subfactors, and an unacceptable rating under the continuity of operations subfactor. AR, exh. 38, Initial Source Selection Evaluation Board (SSEB) Report, at 86.<sup>2</sup>

The record also shows that the agency made an upward most probable cost adjustment to the protester's proposal of approximately [deleted], comprised principally of additions to the firm's proposal to account for the fringe costs (sick leave and annual or vacation leave for the part-time employees proposed), as well as overtime costs that the agency thought were significantly understated. Id. at 107. Based on these evaluation results, the agency eliminated the TRAX proposal from the competitive range. After being advised of its elimination from the competition and requesting and receiving a debriefing from the agency, TRAX filed the instant protest.

## DISCUSSION

TRAX argues that the agency unreasonably eliminated its proposal from the competitive range based on its offer to staff the contract using [deleted] percent part-time or temporary staff. According to the protester, it has a reasonable means of achieving its proposed staffing profile that was outlined in its proposal, and the agency's actions in eliminating it from consideration were unreasonable.

We find no merit to this aspect of TRAX's protest. We note at the outset that, in reviewing protests challenging an agency's evaluation of proposals, our Office does not

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<sup>2</sup> The initial SSEB report included in the record shows that the document was 161 pages long, but that the agency provided only a 44-page excerpt of the document because much of it related to the evaluation of other proposals and was not relevant to the protest issues. All citations in this decision are to the original page numbers.

reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, and applicable statutes and regulations.

ManTech Advanced Sys., Int'l, Inc., B-413717, Dec. 16, 2016, 2016 CPD ¶ 370 at 3. On this record, we have no basis to object to the agency's actions.

As noted, the agency's central concern with the TRAX proposal was its offer to provide a staff that was [deleted] percent part-time or temporary employees that would not receive [deleted] fringe benefits, and in particular, [deleted] sick leave, holiday leave or vacation leave. The agency was unable to reconcile this approach with TRAX's proposal to retain 100 percent of the incumbent workforce, and this particularly concerned the agency in terms of how TRAX would transition from the current incumbent contract to the solicited requirement. The agency evaluators described their concerns as follows:

While the plan emphasized hiring/retaining 100% of the incumbent workforce, the information provided by the Offeror revealed the conversion of [deleted]% of the workforce to Part[-]time employees with [deleted] fringe benefits. In paragraph B on page 122 of the Offeror's proposal states "To provide the WSMR MSS [White Sands Missile Range Mission Support Services] contract with a trained workforce and to minimize interruptions or delays to work in progress that would impact the mission, TRAX intends to hire 100% of the incumbent employees." In Table II-27, page 117 of the Offeror's proposal, the Offeror claims "Risk free phase-in with no mission impact: We are currently doing the work and can seamlessly transfer to a new contract with zero impact to the customer." The ability of the Offeror to retain highly skilled trained employees on a part time basis with [deleted] fringe benefits on day one of transition is of great concern and there is a real possibility of a union strike in the short term. Furthermore there is a realistic possibility of disgruntled part-time employees having a negative impact on mission operations and the government expects there to be erosion of the highly trained and skilled part time work force that the Offeror was able to convert over time. The Offeror's proposal did not identify the transition of [deleted]% of their workforce to part[-]time with [deleted] fringe benefits as a risk. There was no risk evaluation or mitigation for the implementation of this strategy in the proposal. The conversion of [deleted]% of the workforce to Part-time status with [deleted] fringe benefits raises the risk of unsuccessful contract performance during the transition period to an unacceptable level. Based on the Offeror's proposed high risk approach the risk to the government is considered unacceptable and therefore the proposal is considered deficient.

AR, exh. 38, Initial SSEB Report, at 97. The record also shows that the agency's concerns extended to TRAX's ability to recruit and retain staff in light of its approach of using part-time employees without [deleted] fringe benefits, with the agency voicing concern about the protester's ability to hire highly-skilled employees in light of its

approach. Id. at 94. Lastly, the agency expressed concern about the protester's program management capabilities in light of its proposed approach of using part-time employees because the pool of trained and experienced subject matter experts would be limited. Id. at 88.<sup>3</sup>

TRAX challenges the agency's conclusion that it was proposing to convert [deleted] percent of the incumbent staff from full-time employees to part-time employees at the time of contract award because, according to the protester, it never specifically proposed such a conversion, and the estimated hours and staffing profile for the predecessor contract differ from the estimated hours and staffing profile stipulated in the RFP.

Nowhere in its proposal does TRAX explain how it will both simultaneously retain 100 percent of the incumbent workforce and at the same time use a staff comprised of [deleted] percent part-time or temporary employees to perform the anticipated effort being solicited. There also is no discussion in TRAX's proposal that explains how differences in the estimated hours and staffing profiles between the two contracts which it now claims exist will somehow enable it to accomplish the transition while retaining 100 percent of the incumbent staff.<sup>4</sup>

Finally, although the TRAX technical proposal does not describe its [deleted] percent part-time-to-full-time staff approach in any detail, an examination of the TRAX cost proposal bears out the agency's observation that [deleted] percent of TRAX's proposed staff are being offered as part-time or temporary employees, and these employees are identified as not receiving [deleted] fringe benefits. AR, exh. 16, TRAX Cost Proposal, Attach. 1, Cost Proposal Spreadsheet. In light of the information presented in its proposal, we conclude that the agency's concerns were reasonable under the circumstances. Accordingly, we deny this aspect of TRAX's protest.

TRAX also suggests that the RFP essentially dictated that a part-time staffing approach be used because some of the staffing categories included hours that add up to less than a full-time equivalent for each labor category.

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<sup>3</sup> We note that the agency also identified a separate weakness in TRAX's transition-in approach because it proposed to have three of its key employees--its [deleted]--perform as part of the protester's transition team, even though these same individuals also were obligated to perform full-time duties under the predecessor contract. AR, exh. 38, Initial SSEB Report, at 98. TRAX does not challenge this finding on the part of the agency.

<sup>4</sup> In fact, in one of its clarification letters to the agency, TRAX specifically notes as follows: "The resources which we used in our bid are those specified in Exhibit T. This baseline is representative of the previous contract and does not represent a forecast forward." AR, exh. 35, Clarification Letter No. 1, at 3 (emphasis supplied).

TRAX appears to suggest that it was misled by the terms of the RFP to propose a staff that was largely part time. However, an examination of the contemporaneous record demonstrates that the protester was not misled to believe that it was required to propose a largely part-time staff, and that this approach was a matter of its business judgment rather than TRAX's reading of the RFP requirements. TRAX stated as follows in its first clarification letter to the agency:

There is no specified Government requirement to use part-time or full-time employees. Our management solution takes into consideration the current and future budget reductions and limitations for both our institutional and reimbursable customers.

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The resources which we used in our bid are those specified in Exhibit T. This baseline is representative of the previous contract and does not represent a forecast forward. Nothing in this exhibit describes a requirement for the resource to be full-time, part-time, or a requirement for overtime. We elected to use the 'part-time' resource to save money and [deleted] between tests.

AR, exh. 35, Clarification Letter No. 1, at 2, 3 (emphasis supplied); see also, AR, exh. 37, Clarification Letter No. 3, at 3 ("The Government's concern about our use of a part time workforce is not reflected in the requirements of the RFP—there are no minimum or maximum overtime percentages or specifications of part-time or full-time percentage requirements in the RFP.").

The record therefore is clear that TRAX did not believe that the terms of the RFP dictated that it use a part-time labor force solution. In fact, TRAX actually characterized that approach as its management solution and as a way to reduce costs. In light of the foregoing discussion, we deny this aspect of TRAX's protest.

Finally, TRAX argues that it was "prejudicially misled" by the agency's clarifications. According to the protester, the agency never conveyed to it that it was concerned with TRAX's proposed use of a largely part-time workforce.

TRAX misunderstands the legal purpose of clarifications and confuses the government's obligation during clarification communications with its obligation during discussions. The Federal Acquisition Regulation (FAR) describes the purpose of clarification communications as follows:

[They] may be conducted to enhance Government understanding of proposals; allow reasonable interpretation of the proposal; or facilitate the Government's evaluation process. Such communications shall not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal.

FAR § 15.306(b)(2). Inasmuch as clarification communications are for the sole purpose of enhancing the government's understanding of a proposal as submitted--and are not intended to afford the offeror an opportunity to alter its proposal--we do not understand how TRAX may have been misled here, since it was not provided an opportunity to revise its proposal, and could not have altered it in a way that would have affected its competitive position. In any event, TRAX has neither alleged nor demonstrated that it provided an explanation of its proposed approach that was inaccurate or otherwise mischaracterized its technical solution. We therefore deny this aspect of its protest.<sup>5</sup>

The protest is denied.

Thomas H. Armstrong  
General Counsel

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<sup>5</sup> TRAX also takes issue with the cost realism adjustments the agency made to its proposal. We need not consider these allegations in detail since the record shows that TRAX was eliminated from the competitive range based on its proposal being found technically unacceptable, rather than any consideration relating to its proposed cost. AR, exh. 39, Competitive Range Determination, at 15. We therefore dismiss these allegations as academic without consideration on the merits. Dyna-Air Eng'g. Corp., B-278037, Nov. 7, 1997 97-2 CPD ¶ 132.