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Decision

Matter of: ManTech Advanced Systems International, Inc.

File: B-420509.7

Date: September 29, 2022

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DIGEST

Protest challenging the adequacy of discussions during corrective action is dismissed as premature where the agency's source selection process is ongoing and the agency has not foreclosed the possibility of conducting further discussions.

DECISION

ManTech Advanced Systems International, Inc., of Herndon, Virginia, protests the scope of the corrective action taken by the General Services Administration (GSA) in connection with a prior protest under Task Order Request (TOR) No. ID09200109, for systems engineering and integration services. The protester alleges that the agency has conducted discussions in a manner that is unequal and not meaningful, and that the agency is required to conduct additional discussions with ManTech regarding a significant weakness in its proposal.

We dismiss the protest.

BACKGROUND

The agency issued the TOR on May 26, 2021, to firms holding GSA's One Acquisition Solution for Integrated Services (OASIS) unrestricted pool 5(b) contracts. Contracting Officer's Statement (COS) at 1. The GSA issued the solicitation on behalf of the United

States Space Force, Space Systems Command, for systems engineering and integration support services in support of the remote sensing programs group. *Id.*

The TOR contemplated issuance of a single, cost-plus-incentive-fee task order on a best-value tradeoff basis, for a 12-month base period and six 12-month option periods. Agency Report (AR), Exh. 8, Tab 1.a, TOR at 1, 13, 66.

Of relevance to this protest, the TOR required offerors to identify organizational conflicts of interest (OCIs) in their proposals, as follows:

The offeror and each subcontractor, consultant, and teaming partner involved in proposal development shall complete and sign an OCI Statement. The contractor must represent either that (1) it is not aware of any facts which create any actual or potential OCI relating to the award of this contract, or (2) it has included information in its proposal, providing all current information bearing on the existence of any actual or potential OCI.

TOR at 61.

Also of relevance, the TOR required that offerors identify individuals proposed for certain key personnel positions. TOR at 56-57. For each such individual, offerors were instructed to submit a signed “letter of intent” which “show[ed] the individual’s commitment to perform the task order for at least 12 months, if it is awarded to the [o]fferor.” *Id.* The TOR also required “letters of commitment” with respect to these individuals, which did not need to demonstrate a 12-month commitment.¹ TOR at 64.

The agency received three proposals, including proposals from ManTech and Booz Allen Hamilton. COS at 1. On January 11, 2022, the agency issued the task order to Booz Allen. *Id.* ManTech requested and received a debriefing. See Protest, exh. D, ManTech Debriefing. This debriefing informed ManTech that the agency had identified no significant strengths, twenty strengths, eight weaknesses, one significant weakness, and no deficiencies in ManTech’s proposal. *Id.* at 8.

ManTech and the other unsuccessful offeror filed timely protests with our Office. In general, the protesters challenged the agency’s evaluation of Booz Allen’s proposal (including its OCI statements and its letters of intent), the agency’s evaluation of the protesters’ proposals, and the agency’s best-value tradeoff decision.

On April 26, our Office conducted a combined alternative dispute resolution (ADR) conference with respect to both protests. During the conference, our Office predicted that we would likely sustain the protests of the agency’s evaluation of Booz Allen’s OCI

¹ Letters of commitment were required to state that the individual was employed by the offeror or had an offer of employment that the individual intended to accept, and that the individual was available and committed to begin work on the required date. TOR at 64.

statements.² In this regard, it appeared to our Office that Booz Allen's own OCI statement had not disclosed a potential conflict of interest related to [DELETED]. It also appeared that several of Booz Allen's proposed subcontractors had identified potential conflicts of interest, but had submitted OCI statements to the contrary, stating that they had no known conflicts of interest. In addition to these OCI issues, our Office noted that there was a risk to the agency that we would sustain the protests as a result of the agency's evaluation of Booz Allen's key personnel letters of intent, since these letters did not show individuals' commitment to perform the task order for 12 months, as required by the TOR.

On April 29, GSA notified our Office that it intended to take corrective action in response to the protests. Notice of Corrective Action, B-420509.2, B-420509.4, April 29, 2022. The agency's notice stated:

At a minimum, GSA plans to conduct additional investigation to address the OCI protest allegations to ensure that all OCIs are avoided, mitigated, neutralized, or waived. At a minimum, GSA also intends to conduct limited discussions on the [l]etters of [i]ntent. GSA reserves the right to take other actions reasonably necessary to address and correct the matters subject to the ADR.

Id. ManTech objected to the agency's corrective action notice, specifically arguing that the agency "must at a minimum also engage ManTech in discussions on the significant weakness assigned to its proposal that ManTech has never had an opportunity to address."³ Objection to Corrective Action Notice, B-420509.2, B-420509.4, May 2, 2022.

On May 5, we dismissed ManTech's protest as academic. *ManTech Advanced Systems Int'l, Inc.*, B-420509.2, B-420509.4, May 5, 2022 (unpublished decision). We noted ManTech's objection, and stated: "To the extent ManTech objects to the agency's decision to take corrective action, or to the scope of the corrective action, it may file a protest on these bases, consistent with our Bid Protest Regulations." *Id.* at 2 n. 1.

On July 7, as part of its corrective action, the agency issued an amendment to the TOR, amendment 7. AR, Exh. 5, Corrective Action Amendments at 1-3. This amendment

² In an outcome prediction ADR conference, the GAO attorney informs the parties what the GAO attorney believes will be the likely outcome of the protest and the reasons for that belief. A GAO attorney will engage in this form of ADR only if she or he has a high degree of confidence regarding the outcome. The outcome prediction reflects the view of the GAO attorney, but it is not an opinion of our Office and does not bind our Office should issuance of a written decision remain appropriate. *Africa Automotive Distribution Services, Ltd.*, B-418246.6, Aug. 24, 2021, 2021 CPD ¶ 308 at 5 n.7.

³ The significant weakness related to [DELETED]. AR, Exh. 12, Tab 1, ManTech Technical Evaluation Board Consensus Report at 11-12. The agency concluded that "ManTech ha[d] [DELETED]," and that ManTech's proposal "was [DELETED]." *Id.*

modified the TOR's requirements regarding key personnel letters of intent and letters of commitment by merging them into one letter, which was required to show each proposed individual's 12-month commitment to perform the task order. *Id.* The amendment stated: "The purpose of this amendment is to reopen the solicitation to conduct limited discussion with all offerors as part of the corrective action taken by the [g]overnment. Per the proposed corrective action, discussions are limited to resubmission of offerors' [l]etters of [c]ommitment/[i]ntent in accordance with the amended solicitation provisions." *Id.* at 1. Amendment 7 requested that offerors submit letters of commitment, with a due date for responses of July 15.

On July 15, the agency issued amendment 8 to the TOR, responding to questions submitted by the offerors. AR, Exh. 5, Corrective Action Amendments at 4-6. Of relevance here, ManTech asked: "Does the [g]overnment intend to conduct additional discussions, address any previously identified evaluation findings with offerors that were not subject to discussions, or allow final proposal revisions?" *Id.* at 5; see Protest at 6. The agency responded: "The [g]overnment does not intend to enter into discussions, however reserves that right after reviewing the revised submissions." AR, Exh. 5 at 5. Amendment 8 set a revised due date for responses of July 25, 2022 at 4:30 p.m. Pacific Time. *Id.* at 6.

Prior to the time for responses to amendment 8, ManTech protested to our Office.⁴

In responding to ManTech's protest, the agency has represented to our Office that "a technical reevaluation of updated proposals has not been completed" and that "a new award has not yet been made." COS at 2.

DISCUSSION

ManTech's protest raises several protest grounds, all of which ultimately challenge the adequacy of the agency's discussions with offerors. ManTech alleges that the agency held discussions with Booz Allen related to its OCI statements, and is therefore required to hold discussions with ManTech concerning--at a minimum--the significant weakness identified in ManTech's proposal. Protest at 18-21. The protester also argues that the agency's decision to limit discussions to revised letters of intent is unfair and amounts to unequal treatment because it permits Booz Allen, but not ManTech, to remedy issues with its proposal. *Id.* at 21-25. Finally, ManTech renews an argument from its initial protest that the agency conducted discussions prior to the initial award decision, and was required at that time to allow ManTech to address the significant weakness in its proposal. *Id.* at 25-33.

The agency argues that our Office should dismiss ManTech's protest as an untimely challenge to the scope of the agency's corrective action, which ManTech knew or

⁴ We analyze our jurisdiction to hear protests of task orders issued under GSA's OASIS IDIQ under Title 41 of the United States Code. *Futron, Inc.*, B-420703, July 25, 2022, 2022 CPD ¶ 189 at 3-4, n. 3. Because the value of the protested task order exceeds \$10 million, this protest is within our jurisdiction. 41 U.S.C. § 4106(f)(1)(B).

should have known when it received the notice of corrective action on April 29, 2022. Memorandum of Law (MOL) at 3-6. In the alternative, the agency requests that we dismiss ManTech's protest as premature and speculative because no award decision has yet been made and the agency has not changed the ground rules for the procurement. *Id.* at 7-10.

When evaluating the timeliness of a protest challenging the ground rules that the agency has announced for a corrective action, our Office's practice is to treat such protests as analogous to a preaward challenge to the terms of a solicitation. *Shimmick Construction Co., Inc.*, B-420072.3, Mar. 17, 2022, 2022 CPD ¶ 125 at 4. To be timely, such a protest must be filed not later than the next closing time for receipt of proposals; if no closing time is established or no further submissions are anticipated, the protest must be filed within 10 days of when the alleged impropriety was known or should have been known. *Id.* at 4-5; 4 C.F.R. § 21.2(a)(1). By contrast, where the agency does not alter the ground rules for the competition, we have considered pre-award protests to be premature. *Quotient, Inc.*, B-416473.4, B-416473.5, March 12, 2019, 2019 CPD ¶ 106 at 4. In that circumstance, post-award protests of the agency's corrective action are timely, provided that they are otherwise timely filed in accordance with our Bid Protest Regulations. *WorldWide Language Resources, Inc.*, B-418767.5, July 12, 2022, 2022 CPD ¶ 180 at 7-9.

Regarding discussions during corrective action, our Office has found that challenges to the adequacy of such discussions are "ground rules" challenges that must be brought as a pre-award protest when the protester knew or should have known of the basis for the protest prior to the award decision. *Domain Name Alliance Registry*, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 8 n. 7.

Where, however, the agency leaves open the possibility that it may conduct additional discussions, we have found such pre-award protests to be premature.⁵ See, e.g., *Nuclear Production Partners, LLC*, B-407948.9, Sept. 24, 2013, 2013 CPD ¶ 228 at 7 (challenge to adequacy of discussions was premature where agency stated that it might engage in "further communications with [o]fferors"); *American K-9 Detection Servs., Inc.*, B-400464.6, May 5, 2009, 2009 CPD ¶ 107 at 5 (discussing dismissal of pre-award protest of the adequacy of discussions). In these circumstances, we have found post-award protests of corrective action discussions to be timely. *American K-9*, *supra* at 6-7 n.4 (finding post-award protest of corrective action discussions timely where agency "did not specifically indicate that no further discussions would be conducted" prior to award). In this regard, we have found that protesters are required to raise pre-award challenges to the scope of corrective action discussions only where the agency's

⁵ This is consistent with our decisions in other contexts finding that, where the agency reserves its rights to conduct additional corrective action, pre-award challenges to the scope of that corrective action are premature. See, e.g., *Cooper/Ports America, LLC*, B-419000.2, Jan. 15, 2021, 2021 CPD ¶ 52 at 4 (protest that corrective action would not address all protest grounds was premature because of "the agency's statement reserving the right to take such other corrective action as it deems appropriate.").

actions clearly indicate to the protester that the agency will make award without further discussions. See, e.g., *Domain Name*, *supra* at 8 (despite protester's objection that further discussions were required, agency informed protester's counsel via email that it intended to make award within approximately two weeks).

Here, the agency contends that the protest is untimely because the April 29 notice of corrective action informed ManTech that the agency intended to limit the scope of discussions to revised letters of intent only. We disagree. While the agency's notice stated that the agency would conduct discussions concerning letters of intent, it qualified this with "[a]t a minimum." Notice of Corrective Action, B-420509.2, B-420509.4, April 29, 2022. The notice further stated that the agency "reserved the right to take other actions reasonably necessary to address and correct the matters subject to the ADR." This notice did not specifically advise that no further discussions would be conducted. *American K-9*, *supra* at 6-7 n. 4. Instead, it expressly left open the possibility of further corrective action, which could include additional discussions with offerors. See *Nuclear Production Partners*, *supra* at 7. Accordingly, had ManTech protested the scope of the agency's corrective action within ten days of receiving the corrective action notice, the protest would have been premature. Therefore, the fact that ManTech filed its protest after that date does not make the protest untimely.

For similar reasons, we find that ManTech's protest is still premature, and dismiss it on that basis. Specifically, in response to ManTech's question regarding whether the agency would conduct additional discussions, the agency stated in amendment 8 to the TOR that it does not "intend" to do so, but it "reserves that right after reviewing the revised submissions." AR, Exh. 5 at 5. In this regard, the agency has informed our Office that "a technical reevaluation of updated proposals has not been completed" and that "a new award has not yet been made." COS at 2. Thus, there is still a possibility that the agency will take some other corrective action or will conduct further discussions prior to making its award decision. The record here does not contain any communications between the agency and the protester that would suggest otherwise. That is, there are no facts in this protest analogous to the unique situation presented by the parties' email communication in *Domain Name*, *supra* at 8. In these circumstances, ManTech's protest is premature.⁶ See *Cooper/Ports America*, *supra* at 3; *Nuclear Production Partners*, *supra* at 7.

⁶ All of ManTech's protest grounds relate to the adequacy of discussions. See Protest at 18-33. The protester does not allege any other ground rule changes warranting our pre-award review. *Id.*; *Systems Implementers, Inc.*, B-418963.4, Apr. 19, 2021, 2021 CPD ¶ 174 at 3.

Because we dismiss the protest as premature, we decline at this time to reach any conclusions as to the adequacy of discussions or the agency's limitations on proposal revisions.⁷ See *Systems Implementers, Inc.*, *supra* at 3-4.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel

⁷ Allegations dismissed as premature may be subsequently raised with this Office, provided they are presented in a manner that is otherwise compliant with our Bid Protest Regulations. See 4 C.F.R. Part 21.