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Decision

Matter of: Goldbelt Specialty Services, LLC

File: B-409713.2

Date: October 15, 2014

Robert E. Korroch, Esq., Williams Mullen, for the protester.
Debra Talley, Esq., U.S. Army Materiel Command, for the agency.
Gary R. Allen, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's right to open discussions and request revised proposals as corrective action in response to Government Accountability Office protest is denied where the solicitation expressly reserved the agency's right to conduct discussions, and discussions were an appropriate means to address the agency's concerns.

DECISION

Goldbelt Specialty Services, LLC, of Herndon, Virginia, protests the corrective action being taken by the Department of the Army in connection with a protest Goldbelt filed challenging the agency's evaluation of proposals and award to Solution One Industries, Ltd., for motor vehicle operations and maintenance services at the Corpus Christi Army Depot under request for proposals (RFP) No. W912NW-14-R-0001. Goldbelt argues that the proposed corrective action will change the evaluation ground rules and favor Solution One, Inc. over other offerors.

We deny the protest.

The RFP is set aside for small disadvantaged businesses participating in the Small Business Administration's 8(a) program under NAICS Code 811310--Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance. The RFP provided for the award of a single fixed-price contract for a base year and two option years, to the lowest-priced, technically acceptable offeror. Technical proposals were to be evaluated under the following subfactors:

performance management, key personnel, and past performance. RFP at 101. As relevant here, offers were to be evaluated under the key personnel subfactor based on whether they identified a program manager with the requisite skills and experience, as evidenced by previous work assignments. RFP at 101. The RFP stated that although the Army intended to make award without discussions, it reserved the right to conduct discussions if it was determined to be in government's best interests. Id. at 103.

The agency received and evaluated proposals, including those from Goldbelt and Solution One, and ultimately selected the proposal submitted by Solution One for award. Goldbelt protested the agency's award decision, arguing, among other things, that the Army's evaluation of Solution One's proposal under the key personnel subfactor was improper. During that protest, the cognizant GAO attorney held an outcome-prediction alternative dispute resolution telephone conference with the parties, indicating that the key personnel subfactor did not appear to have been evaluated in a manner consistent with the solicitation requirements. In response, the agency advised our Office that it intended to take corrective action by reevaluating offers under the key personnel subfactor, possibly opening discussions or seeking clarifications from offerors, and making a new award decision.¹ Based on the agency's proposed corrective action, we dismissed Goldbelt's protest as academic. Goldbelt Specialty Services, LLC, B-409713, July 7, 2014.

On July 31, the agency opened discussions with offerors to address technical deficiencies in initial proposals, and established an August 8 due date for final proposal revisions. The discussion letter to Goldbelt identified information that was missing from the protester's proposal with respect to the proposed program manager. Protest, Exh. A, Discussions Letter.

On August 5, Goldbelt filed the current protest in our Office, maintaining that the agency's corrective action improperly changed the evaluation ground rules. In this regard, Goldbelt argues that conducting discussions favors Solution One, because it will allow Solution One to correct a deficiency in its proposal that rendered it technically unacceptable. Protest at 5-6; Protester's Opposition to Dismissal Request at 1. Goldbelt maintains that the terms of the RFP--the ground rules--require the agency instead to reevaluate the initial proposals, without conducting

¹ Prior to our decision to dismiss Goldbelt's earlier protest as academic, Goldbelt objected to the agency's proposed corrective action, stating that the agency "implies that [Solution One] could correct the defect in its proposal in clarifications, which is an inaccurate statement of law." Protest at 5, quoting Goldbelt's July 6 Objections to the Agency's Notice of Corrective Action at 2. Goldbelt apparently misread the scope of the agency's proposed corrective action, which included the possibility of opening discussions, as well as seeking clarifications.

discussions, and to reject Solution One's proposal as technically unacceptable. Protest at 6; Protester's Opposition to Dismissal Request at 1-2.

Contracting officials in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure fair and impartial competition. Patriot Contract Servs. LLC, et al., B-278276.11 et al., Sept. 22, 1998, 98-2 CPD ¶ 77 at 4. We will not object to the specific proposed corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. Networks Elec. Corp., B-290666.3, Sept. 30, 2002, 2002 CPD ¶ 173 at 3.

Here, the concern was that initial proposals did not provide all of the information needed for the agency to evaluate proposals. We find nothing unreasonable in the agency's determination to conduct discussions to allow offerors to address technical deficiencies in their initial proposals.² Indeed, the Federal Acquisition Regulation (FAR) specifically states that the purpose of discussions is to address deficiencies and significant weaknesses in proposals. FAR § 15.306(d)(3) (2014). We therefore find no basis on which to conclude that this corrective action was inappropriate to remedy the agency's concern.

Although Goldbelt asserts that the discussions will favor Solution One, it provides no basis for this assertion, other than its complaint that discussions will allow Solution One to submit additional information necessary to make its proposal acceptable. The record shows that the agency also identified information that was missing from Goldbelt's own proposal and invited Goldbelt to address this omission during discussions.³ Protester's Opposition to Dismissal Request, Exhibit A, July 31, 2014 Discussions Letter from the Agency to Goldbelt.

In short, we find no basis to object to the agency's corrective action here.

The protest is denied.

Susan A. Poling
General Counsel

² With respect to Goldbelt's argument that the agency changed the ground rules for evaluation by conducting discussions, as noted above, the RFP expressly reserved the agency's right to conduct discussions if it was determined to be in the best interests of the government. RFP at 103. Accordingly, we find no merit to this argument.

³ Goldbelt also argues that the agency altered the ground rules by "tailoring discussions to each offeror." Protester's Opposition to Dismissal Request at 2. Such tailoring is precisely what the FAR requires. See FAR § 15.306 (d)(1).