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Decision

Matter of: Task Source/Military Personnel Services Corporation FEPP, LLC

File: B-411173.3

Date: July 8, 2015

Steven J. Koprince, Esq., Amanda M. Wilwert, Esq., and Matthew T. Schoonover, Esq., Koprince Law LLC, for the protester.

David E. Fletcher, Esq., Christopher K. Kimball, Esq., Thomas O. Mason, Esq., and Erin Estevez, Esq., Cooley LLP, for Interactive Government Holdings, Inc., an intervenor.

Hattie Russell DuBois, Esq., Defense Human Resources Activity; and John W. Klein, Esq., and Sam Q. Le, Esq., Small Business Administration, for the agencies.

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

DIGEST

Protest that agency improperly failed to refer its decision not to award a contract to the Small Business Administration for consideration under that agency's certificate of competency program is denied where record shows that agency never made a negative responsibility determination with respect to the protester; record shows that the protester was ineligible for award based on a change in the identity of the offeror.

DECISION

Task Source/Military Personnel Services Corporation FEPP, LLC (Task Source), of Wesley Chapel, Florida, protests the award of a contract to Interactive Government Holdings, Inc. (IGH), of Washington, D.C., under request for proposals (RFP) No. H98210-15-R-0001, issued by the Defense Human Resource Activity (DHRA) to acquire support staff services for the Family Employer Programs and Policy Office, a component of DHRA. Task Source argues that the agency improperly failed to seek a certificate of competency (COC) from the Small Business Administration (SBA) on behalf of the protester in connection with the agency's decision not to award a contract to Task Source.

We deny the protest.

BACKGROUND

The RFP, which was issued as a total small business set-aside, contemplates the award of a fixed-price contract for a 1-year base period and two 1-year option periods to the firm submitting the proposal deemed to offer the best value to the government, considering price and several non-price considerations. RFP at 6, 70-73. In response to the solicitation, the agency received numerous proposals, including the proposal submitted by Task Source. The record shows that Task Source submitted its proposal as a joint venture comprised of a concern named Task Source, Inc., (TSI) a small business concern eligible under the SBA's section 8(a) program, and Military Personnel Services Corporation (MPSC), a concern that had graduated from the 8(a) program. Letter of Protest, exh. A, Task Source Joint Venture Agreement at 1. The record also shows that the two concerns entered into a mentor/protégé agreement pursuant to the SBA's regulations. Id.; 13 C.F.R. § 124.520.

After evaluating the proposals submitted, DHRA awarded a contract to Task Source on the basis of initial proposals on February 18, 2015, finding that the firm's proposal represented the best value to the government. Contracting Officer's Statement of Facts (COSF) at 5. That same date, the agency became aware of the fact that one of the principals of MPSC recently had pleaded guilty to federal bribery charges, and that another individual associated with MPSC also had pleaded guilty to federal bribery charges sometime earlier. Id. Because Task Source had failed initially to identify these facts in its representations and certifications, and also had failed to update its representations and certifications on an ongoing basis, the agency terminated the contract that had been awarded to the firm for cause on February 25. Id. at 6.

The record includes correspondence between the agency and Task Source that occurred around the time of the agency's termination of the firm's contract. As is relevant to the protest, the record includes an e-mail from the protester to the agency dated February 25 that explains that MPSC had withdrawn from the joint venture. Letter of Protest, exh. H. That e-mail also transmitted a letter from the president of MPSC dated February 24 representing that MPSC had withdrawn from the joint venture. Id. exh. B.

After terminating Task Source's contract, the record shows that the agency decided to make award to one of the remaining firms that had submitted a proposal. COSF at 7. After performing a new best value analysis among the remaining competitors, the agency awarded a contract to IGH on April 1. Id. at 8. After learning of the agency's new award decision, Task Source filed the instant protest.¹
PROTEST

¹ There are six other protests that have been filed in connection with this acquisition. We will decide those protests separately.

Task Source argues that the agency's decision to exclude it from consideration when it awarded the contract to IGH was improper.² According to the protester, the agency's failure to include it for consideration of the re-awarded contract constituted a negative responsibility determination. Task Source argues that the agency's actions were improper because it was unreasonable for the agency to have considered the two individuals that had pleaded guilty to federal bribery charges as "principals" of MPSC. Task Source also alleges that the agency's actions were improper because MPSC had withdrawn from the joint venture. Finally, Task Source argues that the agency was required to refer what it characterizes as the agency's negative determination of responsibility to the SBA so that SBA could determine whether or not to issue the protester a COC.

We find no merit to Task Source's allegations. As noted above, Task Source advised the agency that MPSC had withdrawn from the joint venture agreement previously entered into between MPSC and TSI. Letter of Protest, exhs. B, H. Accordingly, the entity that originally had submitted a proposal in response to the solicitation--Task Source--is different than the entity that now seeks to be considered for award of the contract, TSI. In this connection, the Task Source proposal describes the offering entity as follows:

Task Source/MPSC FEPP, LLC.³ Task Source and MPSC have an approved Small Business Administration (SBA) Mentor-Protege relationship and have entered into a Joint Venture (JV) in response to this solicitation.

Agency Report (AR) exh. 8, Task Source Proposal, Volume II, at 4. For the agency to consider TSI for award of the contract in the wake of MSPC's withdrawal from the joint venture would be tantamount to the agency allowing the firm to make material changes to its proposal, namely, a change in the composition of the offeror, as well as substantive changes to the proposal.⁴ For the agency to evaluate the Task

² Task Source specifically states that it is not protesting the agency's decision to terminate its previously awarded contract. Letter of Protest, at 5 n.3.

³ The record shows that the proposal was submitted by Task Source/Military Personnel Services Corporation FEPP, LLC, a limited liability company created under the law of the state of Virginia. See <https://sccefile.scc.virginia.gov/Documents/1402125449.pdf?documentName=1402125449> for its articles of organization. While the offeror putatively would remain Task Source/Military Personnel Services Corporation FEPP, LLC, the record shows that the performing entity would be TSI.

⁴ For example, the Task Source proposal includes four past performance questionnaires. Only one of those questionnaires is for a contract performed by
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Source proposal as materially altered essentially would amount to the agency engaging in discussions. Standard Communications, Inc., B-406021, Jan. 24, 2012, 2012 CPD ¶ 51 at 3 (discussions occur where an offeror is afforded an opportunity to make material revisions to its proposal).⁵

Here, as noted, the agency made award on the basis of initial proposals without engaging in discussions. For our Office to require the agency to evaluate the Task Source proposal--as materially altered by the withdrawal of MPSC from the joint venture--essentially would compel the agency to engage in discussions with all offerors, since, if an agency engages in discussions with one offeror, it must engage in discussions with all offerors. Standard Communications, Inc., *supra*. However, the agency properly made award of the contract on the basis of initial proposals, as permitted by the RFP. RFP at 69.

In the final analysis, the record shows that the agency properly declined to consider the Task Source proposal in connection with its re-award of the contract. Simply stated, Task Source itself rendered its proposal ineligible for award based on the firm's decision to make a material change in the composition of the offeror, and the agency's decision not to evaluate its proposal did not constitute a negative responsibility determination. It follows that, since the agency did not make a

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TSI; the remaining past performance questionnaires are for contracts that were performed by MPSC. AR, exh. 8, Task Source Proposal, Volume II, at 27-32.

⁵ Task Source directs our attention to a clause of its joint venture agreement that provides that either joint venturer would be responsible for performing the contract in the event that one party withdrew from the joint venture agreement. Letter of Protest, exh. 1, Joint Venture Agreement, at 7. Essentially Task Source suggests that the agency is required to evaluate its proposal after the withdrawal of MPSC from the joint venture agreement based on this provision. However, this provision relates solely to a circumstance that might arise after award of a contract, *id.*, and does not impose an obligation on the agency to evaluate the Task Source proposal as materially altered by the withdrawal of MPSC from the joint venture agreement.

negative responsibility determination with respect to Task Source, it was not required to refer the matter to the SBA for consideration under that agency's COC procedure.⁶

The protest is denied.

Susan A. Poling
General Counsel

⁶ We solicited the views of the SBA in connection with this case. SBA's view is consistent with our decision above. SBA stated in its submission to our Office as follows:

SBA's regulations do not require a COC referral under these facts. Indeed, the record does not contain a determination of non-responsibility that SBA could review in the event the agency were to refer the matter for a COC. Additionally, because the mentor firm for this mentor-protégé joint venture--Military Personnel Services Corporation (MPSC)--now appears on the SAM.gov excluded parties list, SBA would find the joint venture ineligible for COC, if the agency were now to send a referral. 13 C.F.R. § 125.5(b)(2).

Letter from SBA to our Office, May 29, 2015, at 2.