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Decision

Matter of: Trandes Corporation

File: B-411742.4

Date: February 22, 2016

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DIGEST

1. Protest that an agency unreasonably excluded protester from meaningfully competing when it amended a solicitation (in response to a prior protest) and limited ensuing discussions and proposal revisions to the discrete areas of proposals that the amendment addressed is denied where the agency shows that the amendment could not reasonably have an effect on other aspects of the proposals.
2. Protest that an amendment relaxing solicitation requirements does not reflect the agency's actual needs is denied where the agency provided a reasonable basis for its revised solicitation terms.
3. Protest that limited proposal revisions will result in award based on stale pricing is denied where the offerors have confirmed their pricing well past our decision date, and any challenge to a potential failure to update the cost realism analysis is premature.

DECISION

Trandes Corporation, of Lanham, Maryland, protests the terms of request for proposals (RFP) No. N00024-13-R-3184, issued by the Department of the Navy, Naval Air Warfare Center Aircraft Division, for field engineering services in support of the Fleet Area Control and Surveillance Facility (FACSFAC), comprised of

FACSFAC air control tracking system and the FACSFAC Navy Scheduling System, located at various FACSFAC sites. RFP, Statement of Work, at 24.

We deny the protest.

BACKGROUND

On July 30, 2014, the RFP was issued pursuant to Federal Acquisition Regulation (FAR) Part 16, to contract holders under the Navy's SeaPort-e indefinite-delivery/indefinite-quantity multiple-award contract. The RFP provided for the issuance of a cost-plus-fixed-fee task order for field engineering services at various FACSFAC sites for a base year and four option years.¹ RFP, amend. 3, at 3, 79.

The RFP provided that the task order would be issued on a best-value basis, considering technical, past performance, and cost/price evaluation factors. The technical factor was considered the most important, and included the following three subfactors: understanding the work, workforce, and management plan. Of relevance here is the workforce subfactor, under which the RFP required offerors to propose key personnel meeting specified minimum education and experience requirements. As also relevant here, the RFP identified the program manager and "engineering technician VI" as key personnel for whom offerors were to submit resumes.

Trandes (the current incumbent) and Honeywell Technology Solutions, Inc., of Columbia, Maryland, submitted the only proposals. These proposals were evaluated as follows:

| | | Trandes | Honeywell |
|-------------------------|-------------------------------|------------------------|------------------------|
| Technical | | Good | Outstanding |
| | Understanding the Work | Outstanding | Outstanding |
| | Workforce | Good | Outstanding |
| | Management Plan | Good | Good |
| Past Performance | | Substantial Confidence | Substantial Confidence |
| Cost/Price | | | |
| | Proposed | \$21,359,337.50 | \$24,063,590.62 |
| | Evaluated | \$27,101,177.80 | \$27,525,821.91 |

¹ The value of this task order is greater than \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award contracts. 10 U.S.C. § 2304c(e)(1)(B).

AR, Tab 17, Technical Evaluation Summary, at 2-3; Tab 6, Source Selection Decision Document (SSDD), at 2.

On June 20, 2015, the Navy issued the task order to Honeywell. After a debriefing, Trandes filed a protest with our Office (B-411742), as well as two supplemental protests (B-411742.2 and B-411742.3). In these protests, Trandes challenged the cost evaluation of its proposal; the technical evaluation of both its and Honeywell's technical proposals; the best value tradeoff decision; and also alleged that Honeywell had an unmitigated organizational conflict of interest.

Primary among Trandes's assertions was that the Navy waived certain mandatory education or experience requirements for Honeywell's proposed key personnel. We sustained the protests based on an issue concerning the agency's evaluation of the engineering technician VI position, finding that two of Honeywell's proposed individuals for this position did not meet minimum qualification requirements set forth in the RFP. Trandes Corp., B-411742 et al., Oct. 13, 2015, 2015 CPD ¶ 317 at 8-9. We denied the remainder of the protest grounds. Id. at 5.

In the decision, we recommended that the agency re-examine the RFP's key personnel qualification requirements to determine whether they accurately reflected the agency's needs. Trandes Corp., supra, at 10. We recommended that if the agency determined that the requirements overstated (or otherwise failed to reflect) the agency's actual minimum requirements, the agency should amend the RFP to reflect its actual needs; re-open discussions, if necessary; obtain and evaluate revised proposals, and make a new source selection decision. Id.

The Navy subsequently determined that the qualifications set forth in the RFP for the engineering technician VI position did not accurately state the agency's needs. Contracting Officer's (CO) Statement at 1; AR, Tab 10, Corrective Action Letter. The agency decided to amend the RFP only with respect to the qualifications required for the engineering technician VI position. Id.; RFP, amend. 4. This amendment allowed a general educational development (GED) certificate to be substituted for a high school diploma, and "military B or C school experience in electronics or engineering technology" to be substituted for and AA or AS degree. RFP, amend. 4.

On November 4, 2015, the agency notified the offerors of the amendment and stated that it would re-open the competition to allow offerors to address the changes made in the amendment. Offerors were advised that discussions would be limited to the engineering technician VI position and any direct labor costs affected by the amendment. AR, Tab 10, Corrective Action Letter. The agency also requested that each offeror confirm the validity of its proposal through December 31, 2015. Id. Both offerors did so. AR, Tab 18, Trandes Proposal Extension Confirmation; Tab 19, Honeywell Proposal Extension Confirmation.

After receiving the corrective action letter, on November 11, 2015, Trandes filed this protest. On November 17, the agency requested that each offeror confirm the continued validity of its proposal through March 7, 2016. CO Statement at 2. Again, both offerors complied with the request. AR, Tab 20, Trandes 2nd Proposal Extension Confirmation; Tab 21, Honeywell 2nd Proposal Extension Confirmation.

DISCUSSION

Trandes challenges the narrow scope of the agency's corrective action, complaining that the limitations imposed on discussions and proposal revisions unfairly advantage Honeywell and exclude Trandes from meaningfully competing. Protest at 8. The protester also contends that the requirements as amended do not realistically reflect the agency's needs, and that the limited scope of proposal revisions will result in award being made on stale pricing. Id. at 10-13. We have considered all of the protester's contentions, although we specifically address only the primary arguments necessary to resolve this protest. As explained below, we find on this record that the agency reasonably limited the scope of proposal revisions.

The agency asserts that it properly limited discussions and proposal revisions to correct the specific error identified by our Office in the sustain decision, and that permitting additional revisions at this stage in the procurement would have a detrimental impact on both the cost and the procurement schedule. AR at 4.

In negotiated procurements, COs have broad discretion to take corrective action where the agency determines that such action is necessary to ensure a fair and impartial competition. Intermarkets Global, B-400660.10, B-400660.11, Feb. 2, 2011, 2011 CPD ¶ 30 at 3. An agency's discretion in the area of corrective action extends to deciding the scope of proposal revisions, and there are circumstances where an agency may reasonably decide to limit revisions offerors make to their proposals. See, e.g., Computer Assocs. Int'l, Inc., B-292077.2, Sept. 4, 2003, 2003 CPD ¶ 157 at 5. However, where an agency amends a solicitation and permits offerors to revise their proposals, our Office has held that offerors generally should be permitted to revise any aspect of their proposals--including those that were not the subject of the amendment--unless the agency demonstrates that the amendment could not reasonably have an effect on other aspects of the proposals, or that allowing such revisions would have a detrimental impact on the competitive process. Power Connector, Inc., B-404916.2, Aug. 15, 2011, 2011 CPD ¶ 186 at 3-4; Cooperativa Muratori Riuniti, B-294980.5, July 27, 2005, 2005 CPD ¶ 144 at 7; Lockheed Martin Sys. Integration-Owego; Sikorsky Aircraft Co., B-299145.5, B-299145.6, Aug. 30, 2007, 2007 CPD ¶ 155 at 5.

Here, the agency argues that its corrective action was reasonable because it allowed offerors to revise all aspects of their proposals that were affected by this

discrete change in engineering technician VI qualifications, including any affected direct labor costs. AR, Tab 10, Corrective Action Letter.

Trandes has not attempted to rebut the agency's assertion that RFP amendment 4 affects only those aspects of the proposals specifically related to the qualifications of the engineering technician VI position, and does not reasonably have an effect on other aspects of the proposals. Instead, Trandes argues that the limitation on discussions and proposal revisions was primarily to allow the awardee to fix its otherwise unacceptable proposal, and that it did not similarly provide Trandes with the opportunity to become more competitive through meaningful discussions--which the protester equates to a circumstance our Office found inappropriate in American K-9 Detective Servs., Inc., B-400464.6, May 5, 2009, 2009 CPD ¶ 107. Protester's Comments at 4.

The protester's reliance on American K-9 is misplaced. In that case, discussions were limited to an area of proposals that permitted one offeror to improve its competitive position, but did not discuss with the protester other significant weaknesses or deficiencies that had been identified in the protester's proposal. Id. at 4-9. We concluded that the limitation of discussions was inappropriate because it resulted in discussions that were unfair and not meaningful. When an agency engages in discussions with an offeror, the discussions must be meaningful, equitable, and not misleading; that is, at a minimum, sufficiently detailed so as to indicate to an offeror deficiencies, significant weaknesses, or adverse past performance information to which the offeror has not yet had an opportunity to respond. FAR § 15.306(d)(3); The Boeing Co., B-311344 Et al., June 18, 2008, 2008 CPD ¶ 114 at 49.

Here, in contrast, no weaknesses or deficiencies were identified in Trandes's proposal; Trandes has not alleged that the agency failed to provide meaningful discussions; and, although Trandes claims that the limited corrective action deprives the protester of an opportunity (equal to Honeywell's) to make its proposal more competitive, it has not explained how it would revise its proposal, if given the opportunity, or how, exactly, it has been "excluded from meaningfully competing."² Protest at 8. On this record, Trandes's circumstance is also distinguishable from the facts in Power Connector, Inc., supra (amendment of past performance impacted price, but price revisions were prohibited); Lockheed Martin, supra (change in evaluation scheme impacted both cost and non-cost proposals, but agency limited proposal responses); and Cooperativa, supra (amendment altering the timing for exercising options impacted schedule, but schedule revisions were not permitted). In short, Trandes has not shown that the agency's corrective action

² In this regard, Trandes has already been provided discussions concerning all aspects of its proposal, and has had the opportunity to make proposal revisions accordingly.

prejudiced Trandes. Competitive prejudice is an essential element of a viable protest; where, as here, the record establishes no reasonable possibility of prejudice, we will not sustain a protest even if a defect in the procurement is found. See Excellus Solutions, Inc., B-410959.3, July 24, 2015, 2015 CPD ¶ 241 at 5. We therefore conclude that Trandes's arguments do not furnish any basis on which to sustain the protest.

Trandes also argues that the agency's revisions in RFP amendment 4 "do not realistically reflect [the agency's] needs." Protest at 11-13. The protester contends that these changes do not consider the "agency's and the offerors' intent to have incumbent employees stay on the program," since the revisions would permit offerors to substitute less qualified personnel. Id. at 11.

The agency responds that after our Office sustained the protest, the Navy reviewed its qualification requirements for the engineering technician VI position, and found no reason why the requirement for a high school diploma could not be met with a GED certificate. It also concluded that there was no qualitative difference between completion of the Navy B or C school in electronics or engineering technology and an Associate's degree. Id. at 10. In this regard, the agency asserts that the purpose of the amendment was to clarify the RFP language to more accurately reflect the agency's actual needs, and not to change the underlying requirement.

Contracting agencies have broad discretion to determine their needs and the best way to meet them. URS Fed. Support Servs., Inc., B-407573, Jan. 14, 2013, 2013 CPD ¶ 31 at 4. Agency acquisition officials also have broad discretion in the selection of the evaluation criteria that will be used in an acquisition, and we will not object to the absence or presence of a particular evaluation criterion so long as the criteria used reasonably relate to the agency's needs in choosing a contractor or contractors that will best serve the government's interests. King Constr. Co., Inc., B-298276, July 17, 2006, 2006 CPD ¶ 110 at 3.

Here, the Navy has provided a reasonable basis for its decision to expand the scope of what it considers to be equivalent ways to meet the qualification requirements for the engineering technician VI position. Trandes has not shown that the agency abused its discretion in this regard, nor has it provided any reason to question the agency's determination.³ Trandes's disagreement with the agency's

³ We discount Trandes's claim that the amendment will make it harder to retain incumbent employees; the fact that more employees, not fewer, will be viewed as having equivalent experience, should not have any impact of an offeror's ability to retain the incumbent staff. We also note that Trandes (as the incumbent) previously stated that if the Associates degree requirement could not be satisfied with an experience equivalency "or a military education equivalency," the result would be

(continued...)

judgment concerning its needs and how best to accommodate them does not, by itself, demonstrate that the agency's judgment was unreasonable. TaxSlayer LLC, B-411101, May 8, 2015, 2015 CPD ¶ 156 at 8.

Moreover, the agency's determination that its needs may be met by less restrictive requirements serves to better promote full and open competition. We find this consistent with the requirements of the Competition in Contracting Act (10 U.S.C. §§ 2301 et seq.), which requires an agency to specify its needs in a manner designed to obtain full and open competition, including the use of restrictive provisions only to the extent necessary to satisfy its needs. 10 U.S.C. §§ 2305 (a)(1)(A)(i), B(ii).

Finally, Trandes contends that by allowing only limited proposal revisions, the agency will make award based on stale pricing. Protest at 10. Specifically, the protester argues, for example, that nearly all of the positions are covered by the Service Contract Act (SCA), and health and welfare benefits, all of which will have changed since the last price proposal submission. Protest at 10. Trandes also alleges that it has made changes to its own structural planning. Id. In its comments, the protester also asserts that the agency might make award based on its prior cost realism evaluation with corresponding cost adjustments that are nearly a year old. Comments at 10.

The agency responds that Trandes's arguments fail because: (1) both Trandes and Honeywell responded that their costs were valid until March 6, 2016;⁴ (2) this is a cost-plus-fixed-fee contract that is designed to permit regular rate increases, such as Department of Labor rate updates; and (3) Honeywell's SCA employees will receive the identical raise to their health and welfare rates, raising Honeywell's costs equally. AR at 9.

Trandes has not meaningfully rebutted the agency's arguments or otherwise shown the agency's position to be unreasonable. As discussed above, both offerors have been allowed to revise those aspects of their prices that are directly affected by the RFP amendment, and both have confirmed the validity of their prices through March 6, 2016. Finally, Trandes's argument that agency might fail to update its cost

(...continued)

that "approximately 75% of the incumbent staff" would not be retained. Protest at 12, citing Trandes's August 4, 2014 letter to the agency.

⁴ See, e.g., AR, Tab 20, Trandes 2nd Proposal Extension Confirmation; and Tab 21, Honeywell 2nd Proposal Extension Confirmation.

realism evaluation due to the passage of time is premature because award has not yet been made.

The protest is denied.

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General Counsel