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Decision

Matter of: Trandes Corporation

File: B-411742; B-411742.2; B-411742.3

Date: October 13, 2015

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DIGEST

1. Protest that the issuance of a task order was inconsistent with the terms of a solicitation is sustained where the agency's source selection was based on a proposal that failed to satisfy a material solicitation requirement concerning key personnel.
 2. Protest challenging the agency's analysis of whether the awardee had an organizational conflict of interest is denied where the protester does not allege "hard facts" that indicate the existence of a conflict.
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DECISION

Trandes Corporation, of Lanham, Maryland, protests the issuance of a task order to Honeywell Technology Solutions, Inc., of Columbia, Maryland, under 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.¹ RFP, Statement of Work (SOW), at 24.

We sustain the protest in part and deny the protest in part.

BACKGROUND

On July 30, 2014, the RFP was issued pursuant to Federal Acquisition Regulation (FAR) Part 15, to contract holders under the Navy's SeaPort-e indefinite-delivery/indefinite-quantity multiple-award contract.² The RFP provided for a cost-plus-fixed-fee task order for field engineering services at various FACSFAC sites for a base year and four option years. RFP, amend. 3, at 3, 79. In this regard, a SOW was provided that identified various operations and maintenance services for various systems under the Area Control Systems (ACS) branch's cognizance. The services were to include, for example, limited test and evaluation, training, installation, and logistic support for systems, subsystems, and components associated with air traffic control and airspace management systems. *Id.* at 24. These services were required to be performed at on-site locations throughout the continental United States and outside of the continental United States. *Id.*

Offerors were informed 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 to be the most important, and consisted of the following subfactors, listed in descending order of importance: understanding the work, workforce, and management plan. Past performance was considered to be more important than cost/price. Technical and past performance, when combined, were stated to be significantly more important than price. Offerors were advised that the importance of cost/price would increase as the proposals became more equivalent under the technical and past performance factors. RFP, amend. 3, at 94.

The SOW stated that the maintenance work included maintenance support for various FACSFAC systems and/or their replacements. RFP, amend. 3, at 24. To accomplish this work, the RFP required offerors to propose personnel meeting specific minimum education and experience requirements set forth in the solicitation. *Id.* at 38-41. The RFP also identified the program manager and

¹ SeaPort-e is the Navy's electronic platform for acquiring support services in 22 functional areas including engineering, financial management, and program management. *See* <https://www.seaport.navy.mil/>. This procurement is a follow-on to an existing task order, currently being performed by Trandes. Agency Report (AR), Tab 6, Source Selection Decision Document (SSDD), at 1.

² The value of this task order is in excess of \$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).

“engineering technician VI” as key personnel for whom offerors were to submit resumes, whereas other positions were identified as non-key labor categories.³ RFP, amend. 3, at 38, 40. Each resume was to demonstrate the proposed person’s experience and specialized qualifications. RFP, amend. 3, at 82.

With regard to engineering technician VI personnel, the RFP required that offerors provide eight full-time people and one part-time person. RFP, amend. 3, at 28-29.⁴ The RFP noted that the contractor could rotate “approved personnel,” at the contractor’s expense, as necessary to accommodate for vacation, sick or emergency leave purposes. Id. at 29.

The RFP also established minimum educational and experience levels for key personnel, requiring engineering technician VIs to have a minimum of an Associate of Science (AS) or Associate of Arts (AA) degree in electronics or engineering technology, but permitted substituting a high school diploma plus 2 additional years of experience in automated air traffic control (ATC) surveillance systems. RFP, amend. 3, at 40. With respect to experience, the RFP specified as follows:

At least 16 years of practical experience in electronics or engineering technology. Ten (10) years of experience, to include: installation of such equipment. Six (6) of experience, to include: design, preparation of modification of engineering documents and drawings. Ten (10) years of experience in automated Air Traffic Control (ATC) surveillance systems, of which 7 must have been performed within the last 9 years, with two years of specific FACS/FAC/IRSS [integrated range status system] systems experience. Experience may be concurrent.

Id. Further, the RFP stated that years of experience meant full, productive years equaling 52 weeks, and that other actual time spent performing the qualifying functions might be cumulated to count as experience. Id. at 39.

With respect to cost/price, the RFP stated that the cost portion of the proposal would be evaluated for realism, to determine whether the overall costs proposed (1) were realistic for the performance of the work required, (2) reflected an

³ The RFP described the engineering technician VI position as a technician who independently plans and accomplishes complete projects or studies of broad scope and complexity; or serves as an expert in a narrow aspect of a particular field of engineering; and listed examples of the types of creative and complex work this key personnel might perform or supervise. RFP, amend. 3, at 40.

⁴ The RFP specified that full-time meant a person working 40 hours per week, and part-time meant 24 hours per week. RFP, amend. 3, at 28-29.

understanding of the requirements, and (3) were consistent with the various elements of the offeror's technical proposal. RFP, amend. 3, at 95.

The agency received proposals from Trandes (the incumbent) and Honeywell, which were evaluated by the agency's technical evaluation team (TET) and cost evaluation team (CET). In an initial technical evaluation summary, the TET assigned adjectival ratings under the evaluation factors for each proposal, supported by a narrative that identified strengths and weaknesses.⁵ A task order review panel (TORP) reviewed the initial technical evaluation and recommended that the source selection authority (SSA) enter into discussions with both offerors to resolve cost and technical issues identified in their initial proposals. AR, Tab 3, Initial TORP Memorandum of Consensus, at 1. The SSA issued letters opening discussions and establishing the date for receipt of final proposal revisions (FPRs). AR, Tab 4, Competitive Range Determination & Request to Enter Discussions. Both offerors submitted timely FPRs, and the TET and CET reconvened to evaluate the FPRs. A summary of the evaluation results is set forth below:

		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

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

The TORP reviewed the TET's Technical Evaluation Summary, concluded that Honeywell's proposal represented the best value, and recommended that the source selection authority (SSA) issue the task order to Honeywell. Agency Report

⁵ As relevant here, proposals were evaluated under the technical factor and subfactors as outstanding, good, acceptable, marginal, or unacceptable. RFP, amend. 3, at 97. The RFP described an outstanding rating as reflecting a proposal that met requirements and indicated an exceptional approach and understanding of the requirements with strengths that far outweigh any weaknesses. A good rating is described similarly, although with a thorough, rather than exceptional approach and strengths which simply outweigh any weaknesses. Id.

(AR), Tab 5, Final TORP Memorandum of Consensus.⁶ The SSA issued a source selection decision with a tradeoff analysis, determining that Honeywell should receive the task order. AR, Tab 6, SSDD. The agency notified Trandes of the decision, and after a debriefing, Trandes protested to our Office.⁷

DISCUSSION

Trandes raises multiple challenges to various aspects of the Navy's technical evaluation of both its and Honeywell's proposals. Primary among these is Trandes's assertion that the Navy waived certain mandatory experience requirements for a number of Honeywell's key personnel. Trandes also challenges the SSA's best-value tradeoff analysis, arguing that the SSA did not qualitatively compare the proposals; asserts that the agency erred in its cost realism evaluation; and contends that Honeywell's subcontractor, [deleted], has an unmitigated organizational conflict of interest (OCI) that should have required Honeywell to be excluded from the competition.

As explained below, we sustain Trandes's challenge to the agency's evaluation of Honeywell's key personnel. In light of our conclusions and recommendation, below, we do not address the additional protest grounds, other than Trandes's allegation of an unmitigated OCI. However, we have considered all of Trandes's arguments and find that none of the protester's other complaints provides a basis for sustaining the protest.

Key Personnel

Trandes argues that Honeywell's proposal was technically unacceptable, alleging that five of the eight engineering technician VIs proposed by Honeywell lacked the minimum experience required by the RFP.⁸ 2nd Supp. Protest at 8-11; Supp. Comments at 11-19.

⁶ We note that the agency submitted numerous CDs with various documents as its agency report. The first CD was submitted as an early document production (DP), and we will refer to it as "AR, DP Tab." All other references to the AR will be to the CD submitted as the supplemental agency report.

⁷ Trandes submitted three protest documents to our Office. The initial protest (B-411742) will be referenced here as "Protest." Seven days after filing the Protest, Trandes filed what it referred to as a consolidated and supplemental protest (B-411742.2). We will refer to this document as "Supp. Protest." Finally, after receiving the agency report, the protester filed a second supplemental protest (B-411742.3), which we will refer to as "2nd Supp. Protest."

⁸ As noted above, the RFP denoted engineering technician VIs as key personnel, and required that offerors provide eight full-time (40 hours per week per person) and
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In reviewing protests challenging an agency's evaluation of proposals, even in a task order competition, as here, we do not reevaluate proposals, but examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. Technology Concepts & Design, Inc., B-403949.2, B-403949.3, Mar. 25, 2011, 2011 CPD ¶ 78 at 8. It is a fundamental principle in a negotiated procurement that a proposal that fails to conform to a material solicitation requirement is technically unacceptable and cannot form the basis for award.⁹ See The Boeing Company, B-311344 et al., June 18, 2008, 2008 CPD ¶ 114 at 54; Special Operations Group, Inc., B-287013, B-287013.2, Mar. 30, 2001, 2001 CPD ¶ 73 at 4.

As one example of the agency's failure to properly evaluate Honeywell's proposal with respect to the experience of key personnel, Trandes contends that one of the persons Honeywell proposed as an engineering technician VI, [deleted], did not meet the requisite minimum ATC surveillance systems experience requirement. 2nd Supp. Protest at 10. Specifically, Trandes argues that [deleted]'s resume states that he only has 8 years of automated ATC surveillance system experience, instead of the 12 years required.¹⁰ Id. at 11.

Honeywell presented the resumes in its proposal in a clear and consistent format, in which the required qualifications for the key personnel position were listed in a box at the top of the first page, with each requirement followed by an italicized statement of how the proposed person met or exceeded the particular requirement. A summary and chronological listing of the person's employment history followed.

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one part-time (24 hours per week per person) engineering technician VIs. RFP, amend. 3, at 28-29, 38, 40.

⁹ This task order procurement was conducted as a competition between SeaPort-e contract holders and, as such, was subject to the provisions of Federal Acquisition Regulation (FAR) subpart 16.5, rather than FAR Part 15. Where, as here, however, an agency conducts a task order competition as a negotiated procurement, our analysis regarding fairness, will, in large part, reflect the standards applicable to negotiated procurements. See, e.g., Companion Data Servs., LLC, B-410022, Oct. 9, 2014, 2014 CPD ¶ 300 at 12; TDS, Inc., B-292674, Nov. 12, 2003, 2003 CPD ¶ 204 at 4.

¹⁰ As noted above, the RFP required proposed engineering technician VIs with an AS or AA degree to have a minimum of 10 years of automated ATC surveillance system experience, while those with only a high school diploma were required to have 12 years' experience. RFP amend. 3, at 40. Here, [deleted]'s resume indicated that he had only a high school diploma. AR, DP Tab 17, Honeywell Tech. Proposal, at 2-30.

The qualifications box in [deleted]'s resume listed experience that exceeded the minimum amount for most of the specific requirements. However, after identifying the requirement for "10 years ATC surveillance systems, 7 of which must be performed within the past 9 years," [deleted]'s resume states "*He has 8 years.*" AR, DP Tab 17, Honeywell Proposal, Vol. 2, at 2-30 (emphasis in original). The representation that [deleted]'s experience in this area consists of 8 years is consistent with the employment history section of his resume. Id.

In response to the protester's allegation that [deleted]'s experience did not satisfy the requirements set forth in the RFP, the agency states as follows:

[T]he TET found [deleted] met the experience requirements where he had nine years of ACS ATC specific experience, four years' experience on similar ATC systems while serving in the U.S. Navy, and worked for Allied Signal/Bendix as an Electronics Technician IV for five years, which equals eighteen years. [Cite to resume in proposal]. In short, [deleted] exceeded the qualification requirements with more than thirty-five years of experience.

. . . [deleted]'s resume states that he has well over the required number of years *and* has eight of the last ten years in ATC, FACSFAC/IRSS systems. This experience exceeds the requirement for seven years of experience.

Supp. AR, Memorandum of Law, at 12-13.

Taken at face value, the agency's response is not supported by the record. First, the resume explicitly listed 8 years of experience in ATC surveillance systems, after acknowledging that the minimum requirement was for 10; in fact, given this employee's lack of an associates' degree, the requirement was for 12 years. Second, the reference to the TET's findings does not reflect the contemporaneous record; the "experience on similar ATC systems while serving in the Navy" is neither evident from [deleted]'s resume nor described as such in the evaluation record.

The intervenor, Honeywell, asserts that each of its proposed employees exceeded the RFP's requirements by significant margins. In a chart listing the key personnel Honeywell proposed, and their years of experience, Honeywell lists [deleted] as having "35 [years] electronics experience" and "8 years providing ATC NORA support." Intervenor's Comments at 7; AR, Tab 17, Honeywell Proposal, at 2-21. After Trandes identified its specific concerns regarding [deleted]'s experience in its supplemental protest, Honeywell again provided its key personnel chart, listing [deleted]'s qualifications as before, without specifically addressing Trandes's arguments concerning [deleted]'s resume. Instead, Honeywell asserts that while the protester "complains of certain people not having the exact years of experience,

the agency explained why the experience it considered was relevant, comparable or equivalent and thus satisfied the requirement.” Intervenor Supp. Comments at 9. Honeywell contends that this approach was within the agency’s discretion.

The record here does not support either the agency’s or intervenor’s arguments. First, the resume Honeywell submitted for this person specifically states that he only has a high school diploma and 8 years’ experience with automated ATC surveillance systems. AR, DP Tab 17, Honeywell Tech. Proposal, at 2-30 to 2-31. Second, while the agency’s technical evaluation of Honeywell’s proposal mentions two other persons Honeywell proposed for engineering technician VI positions, it nowhere refers to [deleted].¹¹ The evaluation does not have any discussion of particular persons having “relevant, comparable or equivalent” experience that satisfies the requirement. The evaluation only generally states, in a conclusory paragraph, that “[o]n the whole, [Honeywell’s] proposed workforce is found to be exceptionally qualified to perform the required work,” with no weaknesses or deficiencies, having a combined total of 222 years of relevant experience in electronics, 160 of those specifically in ACS systems.¹² AR, Tab 17, Final Tech. Eval., at 8-9. Under these circumstances, we find that the agency’s technical evaluation of Honeywell’s technical proposal concerning its proposed key personnel failed to conform to the very specific evaluation criteria set forth in the RFP, and sustain this protest basis.

In another example, another of Honeywell’s proposed engineering technician VIs, [deleted], appears to have fewer than 16 years of experience in electronics and engineering technology. The narrative summary of [deleted]’s resume states that he has spent the past 14 years working in these areas, and “previously provided engineering software installation services for two years.” DP, Tab 17, Honeywell Technical Proposal, at 2-34. The only other work experience listed in [deleted]’s resume states that [deleted] was an intern for 3 summer and winter breaks at a company while attending a university from 1993-1996. *Id.* at 2-35. It is unexplained in the record how [deleted]’s experience equals the required 16 years. As noted above, the RFP specifically stated that years of experience meant full, productive years equaling 52 weeks, and that other actual time spent performing the qualifying functions might be cumulated to count as experience. RFP, amend. 3, at 39. Here, [deleted]’s resume provides for three summer and winter breaks, without any indication as to the actual length of each break or the actual time [deleted] spent

¹¹ Despite the apparent discrepancy between Honeywell’s resumes and the explicit requirements in the RFP, the agency assigned Honeywell an outstanding rating for its workforce. Contracting Officer’s Statement at 1.

¹² We note that there appear to be other instances where the agency ignored the specific years’ experience requirements in assessing key personnel proposed by Honeywell. See, e.g., AR, DP Tab 17, Honeywell Tech. Proposal, at 2-34 to 2-35.

during those breaks working on qualifying functions. In short, how three such summer and winter breaks equal 2 full-time years of work is neither apparent nor addressed in Honeywell's proposal, [deleted]'s resume, or the agency's evaluation record.

Organizational Conflict of Interest

Trandes contends that [deleted], which Honeywell identifies in its proposal as its subcontractor to perform the requirement at issue here, has a significant organizational conflict of interest (OCI) that was not effectively mitigated. Supp. Protest at 21-22. The protester asserts that, approximately a year ago, during the sources-sought phase of this procurement, [deleted] was performing air traffic control related duties under a parallel task order to Trandes's task order under the SeaPort-e contract. Id. at 21. Trandes complained to the agency at that time that [deleted] had attempted to contact and recruit Trandes's employees. AR, Tab 19, OCI Memorandum, at 2-3. The procuring contracting officer initiated a conflict-of-interest investigation, including questioning and receiving responses from [deleted]. AR, Tab 19, OCI Memorandum. Based upon the investigation, the contracting officer concluded that there was no evidence of an OCI, and prepared a memorandum detailing the investigation and conclusion, providing a copy of this memorandum to Trandes in 2014 before the RFP was issued. Id.; AR, Tab 23, Agency E-Mail to Trandes. In our view, the Navy reasonably determined at that time that no OCI existed.

Trandes alleges that once award was made under the current task order solicitation, [deleted] again began to contact Trandes's employees. Supp. Protest at 21. According to Trandes, "it is evident that [deleted] gathered Trandes[s] proprietary information while performing its [deleted's] own SeaPort contract, transferred the data to Honeywell, and planned with Honeywell to employ the Trandes workforce in this procurement. . . . Honeywell's proposal likely used Trandes' proprietary information acquired in an unauthorized manner. . . ." Id. at 22. Trandes argues that Honeywell should therefore be excluded from this follow-on procurement.

To demonstrate that an agency's OCI determination is arbitrary or capricious, a protester must identify hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. Pillar Sys. Corp., B-408221, July 11, 2013, 2013 CPD ¶ 172 at 3; see Turner Constr. Co., Inc. v. United States, 645 F.3d 1377, 1387 (Fed. Cir. 2011); PAI Corp. v. United States, 614 F.3d 1347, 1352 (Fed. Cir. 2010). As relevant here, an unequal access to information OCI exists where a firm has access to non-public information as part of its performance of a government contract and where that information may provide the firm a competitive advantage in a later competition for a government contract. FAR §§ 9.505(b), 9.505-4; CapRock Gov't Solutions, Inc.; ARTEL, Inc.; Segovia, Inc., B-402490 et al., May 11, 2010, 2010 CPD ¶ 124 at 25; Maden Techs., B-298543.2, Oct. 30, 2006, 2006 CPD ¶ 167 at 8.

The FAR requires that contracting officers avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505. The responsibility for determining whether an actual or apparent conflict of interest will arise, and to what extent the firm should be excluded from the competition, rests with the contracting agency. Aetna Gov't Health Plans, Inc.; Found. Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶129 at 12. The FAR directs contracting officers to examine each situation individually and exercise "common sense, good judgment, and sound discretion" in determining whether significant conflicts exist. FAR § 9.505. Where an agency has given meaningful consideration to whether an OCI exists, we will not substitute our judgment for that of the agency absent clear evidence that the agency's conclusion is unreasonable. MASAI Techs. Corp., B-298880.3, B-298880.4, Sept. 10, 2007, 2007 CPD ¶ 179 at 8.

On this record, we find that Trandes's protest arguments lack the hard facts required for our Office to sustain the protest. The protester's allegations--that [deleted] obtained information improperly and then provided it to Honeywell--is premised on its prior allegation that [deleted] had an unmitigated OCI, which the contracting officer already investigated and considered, and on that basis reasonably concluded there was no evidence to substantiate an OCI. AR, Tab 19, OCI Memorandum. Moreover, with respect to Honeywell's actions, we conclude that Trandes's allegation that someone from [deleted] contacted some of its employees and that Honeywell "likely" used Trandes's proprietary information does not provide any hard facts to show that [deleted] or Honeywell had unequal access to non-public information of the nature that gives rise to an OCI. Again, we find that the agency gave meaningful consideration to whether an OCI existed, and we will not substitute our judgment for that of the agency absent clear evidence that the agency's conclusion was unreasonable. MASAI Techs. Corp., supra. Accordingly, we deny this basis of Trandes's protest.

RECOMMENDATION

We recommend that the Navy re-examine the key personnel qualification requirements established in the RFP to determine whether they accurately reflect the agency's needs. If so, we recommend the agency reject Honeywell's proposal as unacceptable under the specific terms of the RFP, and make a new source selection consistent with the solicitation. If, on the other hand, the Navy determines that the specifications overstate (or otherwise fail to reflect) the agency's actual minimum requirements, we recommend that the agency amend the RFP, reopen discussions, if necessary, obtain and evaluate revised proposals, and make a new source selection decision. If Honeywell's proposal is rejected or Trandes's proposal is found to offer the best value to the government, the agency should terminate Honeywell's task order for the convenience of the government and issue a task order to Trandes, consistent with this decision.

We also recommend that the protester be reimbursed its reasonable costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protester's certified claim for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained in part and denied in part.

Susan A. Poling
General Counsel