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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

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## Decision

**Matter of:** Centerra Group, LLC  
**File:** B-412271.2; B-412271.3  
**Date:** February 26, 2016

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Craig S. King, Esq., Richard J. Webber, Esq., Patrick R. Quigley, Esq., and Kevin R. Pinkey, Esq., Arent Fox LLP, for the protester.  
Joe D. Baker II, Department of the Navy, for the agency.  
Cherie J. Owen, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Agency did not improperly disclose information proprietary to the protester when it provided information about the minimum requirements under the contract.
2. Protest that agency improperly disclosed proprietary information regarding the number of individuals with Department of Defense Common Access Cards employed by the protester at one particular location in performance of the predecessor contract for material support services is denied where the information disclosed cannot reasonably be considered proprietary and, in any case, the protester has made no showing that it is competitively disadvantaged by release of the information.

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### DECISION

Centerra Group, LLC, of Palm Beach Gardens, Florida, protests the terms of request for proposals (RFP) No. N68836-15-T-0021, issued by the Department of the Navy, Naval Supply Systems Command for material support services at the Naval Station, Guantanamo Bay, Cuba. The protester contends that the agency's response to questions in connection with the solicitation disclosed Centerra's proprietary information to other offerors.

We deny the protest.

## BACKGROUND

The RFP, issued on August 13, 2015, sought offerors to provide material support services, including receiving, receipt processing, issue processing, packaging/crating material, inventorying, and storage/warehousing services for a base year and three one-year option periods. RFP at 39; 27-37. The RFP provided for the award of a fixed-price contract to the offeror with the lowest-priced, technically acceptable proposal. RFP at 24, 111.

The agency initially made award to Centerra on September 25. An unsuccessful offeror thereupon protested the award to our Office and, on October 26, the agency notified our Office that it was taking corrective action in response to the protest. We thereupon dismissed the protest. Guardian Moving & Storage Co. Inc., B-412271, Oct. 28, 2015 (unpublished decision).

As part of its corrective action, the agency amended the solicitation to modify the performance work statement (including removing one of four key personnel positions) and the evaluation factors. Contracting Officer's Statement (COS) at 2-4. In this latter regard, the original RFP advised that the agency would evaluate proposals for acceptability by considering past performance and technical capability. Agency Report (AR) at 2; AR, Tab 1, Original RFP, at 83-87. The technical capability factor in the original solicitation had three subfactors: executive summary (including staffing), quality control and safety plan, and technical approach. Original RFP at 85.

In contrast, the revised solicitation advised that there were only two evaluation factors: technical and price. The revised RFP provided that in order to be considered technically acceptable:

Offerors need only submit a signed quote by the solicitation closing that[:] 1) shows the offeror is not taking exception to any solicitation term; 2) includes the Representations and Certifications contained in the provisions; and 3) includes unit prices and total prices for all line items and sub line items for which the Navy is soliciting a price.

OFFERORS SHOULD NOT SUBMIT ANY ADDITIONAL INFORMATION WITH THEIR QUOTE.

RFP at 90.<sup>1</sup> In this regard, the RFP further advised that an acceptable proposal was one that “does not take exception to any term of solicitation and therefore clearly meets the requirements of the solicitation.” Id.

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<sup>1</sup> Although the solicitation here referred to a “quote,” the solicitation, both initial and as revised, was designated an RFP. Original RFP at 1; RFP at 1.

After issuing the revised solicitation, the agency received several questions from interested firms. On November 18, the agency issued amendment 0009 to the solicitation to include questions and answers. RFP at 24-26.

As relevant here, the amendment provided the following information:

5. Do all hospital employees need a CAC [Department of Defense Common Access Card]?

ANSWER: No, there are currently three (3) CAC holders to access Government computer[s] to manage hospital supplies/material/equipment via "Defense Medical Logistics Standard Support (DMLSS) and Defense Property and Accounting System (DPAS) data base systems.

6. Are we required to have separate employees for the three key positions, or can certain roles be dual hatted? For example, the Foreman is required to be certified in shipping hazardous materials. Can the Foreman also serve as the Hazardous Shipper?

ANSWER: Yes.

7. With the removal of the Admin positions, how many CAC positions are required to perform booking procedures as outlined by the PWS?

ANSWER: At least Two (2).

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10. According to the PWS [Performance Work Statement] 4.9 Support of Naval Hospital. "As directed by the Contract Manager, the Supply Foreman shall provide supervision and will meet all requirements as described above." Is the Supply Foreman mentioned in this statement a different position than that of the Key Personnel Foreman?

ANSWER: No.

10(a). If the position referenced is the Key Personnel Foreman, is this position required to be onsite at the hospital at all times during normal working hours?

ANSWER: No.

AR, Tab 3, amend. 0009, at 2-3.

This protest followed.

## DISCUSSION

Centerra contends that the agency's answers to offerors' questions disclosed proprietary information about Centerra's staffing under the current contract, resulting in competitive harm to Centerra. Protest at 1. Centerra asserts that as a result of the agency's disclosure, the agency has negated the competitive price advantage that Centerra would have achieved due to its proprietary staffing approach. Protest at 6.

We have recognized the right of a firm to protect its proprietary data from improper exposure in a solicitation in the context of a bid protest. The Source, B-266362, Feb. 7, 1996, 96-1 CPD ¶ 48 at 2; Ingersoll-Rand Co., B-236391, Dec. 5, 1989, 89-2 CPD ¶ 517 at 2. As a general rule, proprietary information is that which is marked proprietary or otherwise submitted in confidence to the government. Good Food Serv., Inc., B-260728, June 20, 1995, 95-2 CPD ¶ 123 at 2. Where a protester alleges that such information was improperly disclosed, the record must show that the material involved significant time and expense in preparation and contained material or concepts that could not be independently obtained from publicly available literature or common knowledge, and establish that the protester was competitively prejudiced by the release, before we will sustain the protest. Rothe Dev., Inc., B-279839, July 27, 1998, 98-2 CPD ¶ 31 at 2-3; Urserly Cos., Inc., B-258247, Dec. 29, 1994, 94-2 CPD ¶ 264 at 2; Ingersoll-Rand Co., *supra*.

With regard to questions 6, 7, 10, and 10(a), we find that the answers provided by the agency merely satisfied the agency's responsibility to ensure that the solicitation adequately informed offerors of the minimum requirements of contract performance. In this regard, specifications must be sufficiently definite and unambiguous to inform bidders of the minimum requirements of contract performance so they may bid intelligently and on a common basis. See Global Tech. Sys., B-411230.2, Sept. 9, 2015, 2015 CPD ¶ 335 at 19; Sunnybrook, Inc., B-225642, Apr. 10, 1987, 87-1 CPD ¶ 399 at 1-2; Crimson Enters., Inc., B-209918.2, June 27, 1983, 83-2 CPD ¶ 24 at 2-3.

We note that the agency's answers do not provide information about Centerra's performance, but rather, they provide factual answers to questions about the minimum requirements of the solicitation. For example, when asked whether the foreman could also serve as the hazardous shipper, the agency simply replied "Yes." Indeed, even the protester admits that the agency's answers "inform[ed] all the offerors just what level of effort and proposed technical approach innovations [the agency] was willing to accept." Comments at 11. We find no basis to conclude that the agency's answers to these questions provided offerors with anything other

than an understanding of whether certain staffing approaches would be acceptable under the solicitation's requirements, and we find nothing improper in informing all offerors of the agency's minimum needs.

With regard to the answer to question 5, which stated that "there are currently three (3) CAC holders,"<sup>2</sup> AR, Tab 3, amend. 0009, at 2-3, the agency argues, and we agree, that our decision in Rothe is on point. In Rothe, a potential offeror asked the agency how many personnel were currently working on the predecessor contract. In response, the agency informed offerors of the number of employees currently working on the contract and the number of employees working in a certain area. Rothe protested arguing that the agency had disclosed its proprietary information and destroyed its competitive position in competing for the contract.

We denied the protest, finding that the information disclosed could not "reasonably be considered proprietary to the protester or that its disclosure resulted in any competitive disadvantage to Rothe." Rothe, supra, at 3. Particularly relevant to the case here, as we noted in Rothe, are that "matters which are fully disclosed by the marketed product (such as the number of personnel performing a services contract monitored by the government) cannot be protected as a trade secret." Id. Similarly, here, we find that the agency's disclosure of the number of personnel with CAC cards at one location does not constitute proprietary information. See Arctic Slope World Servs., Inc., B-284481, B-284481.2, Apr. 27, 2000, 2000 CPD ¶ 75 at 5 (there is nothing improper in releasing information on the number of personnel performing an incumbent contract).

In any event, Centerra has failed to demonstrate that it was competitively disadvantaged by the agency's release of the information. In this regard, the agency notes that the RFP requires services at nine separate locations, including six warehouses, a lumber yard, a hospital supply warehouse, and a hospital galley. AR at 6; COS at 1; RFP at 42-43. Some of these locations are to be manned, while others are unmanned. Id. However, the agency's response to question 5 was limited to the services at the hospital warehouse. AR at 6. In addition, the agency's answer provided the number of employees at that location that were required to

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<sup>2</sup> The agency notes that the contract specialist who drafted the questions and answers did not know how many CAC holders were currently being used to perform the contract. She contacted the point of contact (POC) at Guantanamo Bay to inquire regarding the number of CAC holders necessary, and was initially told that three CACs was the maximum number permitted. COS at 6. When she requested clarification on two further occasions she was told that a minimum of three CAC holders were required and that "[t]he three CAC holders are US Citizens." Id. As a result, the contracting specialist drafted the response quoted above. The agency states that the use of the word "currently" was "an inadvertent choice and an oversight." COS at 6.

have a CAC card, not the total number of employees performing services at that location. Id. Further, while the solicitation permits the use of foreign national employees in performance of the contract, the agency did not disclose whether any foreign nationals were currently being used and if so, how many.<sup>3</sup> COS at 7.

Furthermore, the information disclosed did not reveal what labor categories, mix, or rates would be appropriate, or how Centerra would calculate its profit, overhead, and management costs--important elements of price, and in some instances technical approach. Thus, as in Rothe, the agency's release of the information here may, at best, operate to normalize to a small degree the competition so that all offerors will have a very rough estimate as to how many individuals will be needed for contract performance with regard to one specific area of performance. As such, even if the information disclosed could be considered proprietary, the effect of releasing the information on Centerra's competitive position under the terms of the RFP is speculative at best and provides no basis to sustain the protest.<sup>4</sup> See Rothe, supra, at 3-4; Ursery Cos., Inc., supra, at 3.

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>3</sup> Although Centerra claims that information about its current staffing was "known only to Centerra and the Agency," Comments at 11, the detailed and specific questions asked by another offeror leads to the conclusion that it already possessed some level of detail regarding Centerra's current staffing.

<sup>4</sup> In its comments, Centerra also questions the agency's revised evaluation approach in light of the allegedly improper agency disclosure. Comments at 15-16. Since, however, these arguments were not raised until December 31, after the next closing date (November 23) after the issuance of the questions and answers in amendment 0009, we find that any such challenge to the evaluation approach is untimely. 4 C.F.R. § 21.2(a)(1).