



Decision

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Matter of: A-B Computer Solutions, Inc.

File: B-415819

Date: March 22, 2018

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DIGEST

1. Protester is not an interested party to challenge agency's evaluation of awardee's technical approach and past performance where protester would not be in line for award if its protest were to be sustained.
 2. Protest that awardee's proposal does not comply with a definitive responsibility criterion requiring personnel security clearances at a secret level is denied, where the solicitation does not require the awardee to have such clearances prior to award of the contract.
 3. GAO will not review challenge to contracting officer's affirmative responsibility determination where the record fails to show that contracting officer ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible.
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DECISION

A-B Computer Solutions, Inc., a small business located in Mandeville, Louisiana, protests the award of a contract to Advanced Global Resources (AGR), LLC, a small business located in Dallas, Texas, under request for proposals (RFP) No. W56HZV-16-R-0267, issued by the Department of the Army for information technology support services for the Red River Army Depot. The protester, the incumbent contractor, asserts that the contracting officer improperly determined AGR to be a responsible

prospective contractor, and that the agency conducted a flawed evaluation of the awardee's technical proposal and past performance.

We deny the protest.

BACKGROUND

On July 11, 2017, the Army issued the RFP seeking automated data processing, unclassified network, local database, and land-mobile radio maintenance and repair services at the Red River Army Depot. The solicitation, which was set aside for small businesses, anticipated award of a single indefinite-delivery, indefinite-quantity contract, with provisions for the placement of fixed-price and time-and-materials task orders. RFP at 89.

The RFP contemplated award to the responsible offeror whose proposal represented the best value to the agency considering the following three evaluation factors: technical, past performance, and cost/price. Id. at 92. Evaluation of the technical factor would consider two subfactors: management structure and staffing plan. Id.

The Army received five timely proposals in response to the RFP, including proposals from AGR and A-B. The agency evaluated the proposals as follows:

| | Technical: Management Structure | Technical: Staffing Plan | Overall Technical | Past Performance | Total Evaluated Price |
|------------------|--|---|------------------------------|-----------------------------|--------------------------------------|
| A-B | Outstanding | Outstanding | Outstanding | Substantial Confidence | \$12,533,249 |
| AGR | Outstanding | Outstanding | Outstanding | Substantial Confidence | \$8,178,339 |
| Offeror A | Outstanding | Outstanding | Outstanding | Satisfactory Confidence | \$7,980,536 |
| Offeror B | Outstanding | Outstanding | Outstanding | Substantial Confidence | \$8,558,277 |
| Offeror C | Marginal | Marginal | Marginal | Limited Confidence | \$10,578,324 |

Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 3.¹

On December 14, the Army awarded the requirement to AGR. Following a debriefing, A-B filed a protest with our Office.

¹ The names of three of the unsuccessful offerors were redacted from the agency report. For ease of reference, we refer to these offerors as Offerors A, B, and C.

DISCUSSION

A-B primarily argues that the contracting officer improperly determined AGR to be a responsible prospective contractor despite the fact that AGR's personnel do not possess the required personnel security clearances. The protester asserts that the requirement for security clearances was a definitive responsibility criterion that the agency improperly waived. The protester further contends that, even if this requirement was not a definitive responsibility criterion, the Army nonetheless acted unreasonably by determining AGR to be responsible. Finally, A-B argues that the agency improperly evaluated AGR's past performance and technical approach.

As an initial matter, the record shows that A-B is not an interested party to raise many of its protest grounds, because it would not be in line for award even if these challenges were sustained. See P3I, Inc.; Quantech Servs., Inc., B-405563.4 et al., Aug. 6, 2015, 2015 CPD ¶ 333 at 12 (a protester is not interested party for purposes of challenging an awardee's entitlement to award where the record shows that, even if protester were correct, an intervening offeror would be next in line for award). In this respect, while the protester challenges the agency's technical and past performance evaluations of the awardee's proposal,² the evaluation record shows that at least one other offeror, Offeror B, was equally rated to A-B in all of the non-price factors, while proposing a price that was more than 31 percent lower than A-B's price. In comparing the proposals of A-B, AGR, and Offeror B during the best-value tradeoff determination, the source selection authority specifically noted that "[i]n both the Technical and the Past Performance Factors, I found no meaningful differences between AGR's proposal and the proposals of A-B and [Offeror B]." Agency Report, Tab K, Source Selection Decision Document, at 19-20. Accordingly, we conclude that A-B would not be in line for award even if the agency did not make award to AGR, because an intervening offeror was next in line for award.

With regard to the protester's challenge to the agency's affirmative responsibility determination, however, we find that the protester is an interested party to raise this protest ground. In this regard, the protester challenges the contracting officer's determination that AGR is responsible despite not having a facility clearance at the time of award. As discussed more fully below, A-B argues that such a clearance was needed to meet the solicitation's security clearance requirements. In responding to A-B's protest arguments, the agency conceded that, of the five offerors that the agency considered for award, only A-B was known to have a facility clearance license prior to award. See COS/MOL at 16. Accordingly, we conclude that the protester is an interested party with respect to its challenge to the agency's responsibility

² The protester also includes unsupported assertions in its protest filings alleging that the Army erred in its technical evaluations of other offerors. See e.g., Protest at 9; Protester's Reply to Agency's Resp. at 9. The protester, however, failed to cite any specific evidence to support these assertions, and we therefore do not find any basis to credit this argument.

determination, since if A-B prevailed on this protest argument, it would result in A-B being the only offeror that could qualify for award. We therefore will examine this protest ground.

As a general matter, our Office does not review affirmative determinations of responsibility, since the determination that an offeror is capable of performing a contract is largely committed to the contracting officer's discretion. 4 C.F.R. § 21.5(c); FN Mfg., Inc., B-297172, B-297172.2, Dec. 1, 2005, 2005 CPD ¶ 212 at 8. The exceptions to this rule are protests that allege that definitive responsibility criteria in the solicitation were not met and those that identify evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. Id. at 8-9. Definitive responsibility criteria are specific and objective standards designed to measure a prospective contractor's ability to perform the contract. Reyna-Capital Joint Venture, B-408541, Nov. 1, 2013, 2013 CPD ¶ 253 at 2. Our Office will not consider a requirement to obtain a security clearance to be a definitive responsibility criterion where the solicitation does not require the clearance to be obtained prior to award. See e.g., Ktech Corp.; Physical Research, Inc., B-241808, B-241808.2, Mar. 1, 1991, 91-1 CPD ¶ 237 at 3.

The protester contends that various requirements in the solicitation, when read "as a whole and in context," created a definitive responsibility criterion requiring the awardee to have a staff in place, at the time of award, that satisfies the solicitation's personnel security clearance requirements. Protest at 6. In this regard, the protester quotes requirements taken from the performance work statement (PWS), including the requirement that "[i]ndividuals will have and maintain a current SECRET clearance prior to and during employment," and the requirement that "[c]ontract personnel performing [information technology] workforce functions identified in DoD 8570.01M³ shall be trained and certified prior to [c]ontract award" Id. A-B argues that since AGR does not possess a facility clearance license, it cannot employ cleared personnel in the roles required by the RFP and, "by extension[,] cannot meet the RFP requirements related to required personnel clearances at the time of award." Id. at 17.

Based on our review of the solicitation, we do not agree that the RFP contained a requirement obligating the awardee to have personnel clearances at the time of award. Our Office resolves disputes regarding the meaning of a particular solicitation provision by reading the solicitation as a whole and in a manner that gives effect to all provisions. ArmorWorks Enters. LLC, B-405450, Oct. 28, 2011, 2011 CPD ¶ 242 at 3. Here, none of the provisions cited by the protester, even when read together, can be reasonably construed as creating a requirement for proposed personnel to have security clearances at the time of award. In this regard, while the PWS contained performance requirements relating to personnel security clearances, it was notably silent regarding

³ DoD 8570.01M is a manual provided by the Department of Defense describing its information workforce improvement program.

the timeframe applicable to these requirements.⁴ In addition, the solicitation did not require offerors to submit documentation with their proposals demonstrating that they would have such clearances in place at the time of award. In the absence of a specific and objective RFP requirement for personnel security clearances to be obtained prior to award, we conclude that the solicitation did not contain any such definitive responsibility criterion.⁵ See Ktech Corp.; Physical Research, Inc., supra.

The protester further argues that even if the solicitation did not contain a definitive responsibility criterion requiring personnel security clearances to be obtained by the time of award, the contracting officer's affirmative responsibility determination was nonetheless "unreasonable, arbitrary, and capricious." Comments at 4. In support of this argument, the protester asserts that the contracting officer failed to realize that lengthy delays in the clearance process would prevent AGR from obtaining a facility clearance in time to perform the contract requirements. A-B contends that without such a facility clearance, AGR cannot employ cleared personnel in the roles required by the RFP, because any cleared personnel hired by AGR would see their clearances deactivated as a result of their employer's lack of a facility clearance. In the protester's view, the contracting officer's erroneous conclusion regarding the length of time needed to obtain a facility clearance stemmed from his reliance upon several mistaken assumptions, such as the assumption that AGR was "likely" to have previously had a facility clearance or have previously employed a facility security officer. Protester's Reply to Agency's Resp. at 12-13.

As noted previously, our Office will review an affirmative determination of responsibility where the protester identifies evidence raising serious concerns that, in reaching a

⁴ While the protester highlights a provision that requires personnel to be trained and certified prior to award, this provision does not address the solicitation's security clearance requirements.

⁵ In support of its argument that the solicitation, when read as a whole, required personnel with secret clearances at the time of award, the protester also points to the solicitation's evaluation criteria, which provided that the agency would evaluate the process proposed by each offeror to ensure that all personnel "will possess the minimum qualifications (experience level, education, certification, U.S. citizenship, and security clearance eligibility)" to meet the PWS requirements. RFP at 100-101. This provision did not require offerors to propose personnel that would have security clearances at the time of award, however, and instead phrased the minimum requirement as one of "security clearance eligibility." Accordingly, it does not support the protester's argument. The protester additionally argues that a reference to the contractor being provided a DD Form 254, which is a form designed to convey security requirements and classification guidance, establishes a requirement for the contractor to have applicable security clearances at the time of award. We have reviewed this argument and conclude that it lacks merit. In particular, A-B does not cite any regulatory, statutory, or solicitation requirement that supports its position that the form was required to be executed at the time of award.

particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information. See FN Mfg., Inc., supra. We do not regard the protester's allegations here as sufficient to meet that standard, and thus find no basis to review the contracting officer's affirmative determination of AGR's responsibility. In this respect, the protester has provided no evidence that the contracting officer acted in bad faith or ignored evidence raising serious concerns. Instead, the protester simply challenges several of the rationales used to support the contracting officer's conclusion that AGR will be able to acquire a facility clearance within a relatively short time. While this argument is couched as an allegation that the agency "ignored relevant information," it, in fact, asks us to second-guess the contracting officer's subjective business judgment regarding whether the offeror will be ready to perform prior to the cessation of the transition period, which we decline to do.

The protest is denied.

Thomas H. Armstrong
General Counsel