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Decision

Matter of: Strategy Consulting Team, LLC

File: B-418512

Date: June 2, 2020

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Christopher Alwood, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that an agency conducted misleading discussions with the protester concerning its proposed staffing in a task order competition under Federal Acquisition Regulation part 16 is denied where the record shows that the agency reasonably advised the protester of the deficiencies in its proposal that required improvement and the language of the evaluation notice did not misinform the protester about the problem with its proposal.
 2. Protest alleging the existence of an unequal access to information organizational conflict of interest is denied where the protester fails to present hard facts indicating the existence of a conflict.
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DECISION

Strategy Consulting Team, LLC (SCT), of Fairfax, Virginia, protests the award of a task order to Serco, Inc., of Herndon, Virginia, under request for proposals (RFP) No. W15QKN-20-R-0019, issued by the Department of the Army for analytic, management, and advisory services in support of the Army's civilian readiness and talent management (CRTM) efforts. The protester contends that the Army conducted misleading discussions and that Serco had a potentially disqualifying organizational conflict of interest (OCI).

We deny the protest.

BACKGROUND

On November 27, 2019, the Army issued the RFP to firms holding contracts under the Army Human Resource Solutions Personnel Life Cycle Support multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contract, pursuant to the procedures of Federal Acquisition Regulation (FAR) part 16. Agency Report (AR), Tab 4a, Army Email Issuing RFP; AR, Tab 4b, RFP Evaluation Plan at 1; Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 1-2. The solicitation sought proposals to provide CRTM support to the Assistant Secretary of the Army for Manpower & Reserve Affairs. AR, Tab 5b, RFP amend. 0001, Performance Work Statement (PWS) at 1. The solicitation contemplated award of a single task order with fixed-price and cost-reimbursement contract line items for a 14-day transition period, an 11.5 month base period, and four 1-year option periods. AR, Tab 4b, RFP Evaluation Plan at 1.

The RFP provided for award on a best-value tradeoff basis, considering technical and price evaluation factors. *Id.* For purposes of performing the best-value tradeoff, the technical factor was more important than the price factor. *Id.*

The technical factor would be evaluated by considering each offeror's proposed technical approach, staffing approach, management process, and transition plan. *Id.* at 3. These four areas were not subfactors and would not be separately weighted. Each of the four areas was to be evaluated for its demonstrated understanding of the PWS requirements, the completeness and adequacy of the response to the RFP, and the feasibility of the proposed approach. *Id.* at 5-6. As specifically relevant here, the RFP provided that each proposal would be evaluated "to determine whether the Offeror's understanding of the requirements is adequately reflected in their approach." *Id.* Also, each proposal would be evaluated to determine "the extent to which the Offeror is expected to be able to successfully complete the PWS tasks and technical requirements within the required schedule. The evaluation will also consider the proposed hours and labor mix for the [task order]." *Id.* at 6.

The technical factor would be rated as outstanding, good, acceptable, marginal, or unacceptable. *Id.* at 6-7. As relevant here, the RFP defined an unacceptable rating as one where the proposal did "not meet requirements of the RFP, and thus, contains one or more deficiencies, and/or risk of unsuccessful performance is unacceptable. Proposal is unawardable." *Id.* at 7. The RFP defined a deficiency as a "material failure of the proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level." *Id.* The RFP specified that offerors whose proposals received a rating of unacceptable for the technical factor would be ineligible for award. *Id.* at 7. The price factor would be evaluated for balance and by calculating a total evaluated price based on each offeror's proposed labor hours. *Id.* at 7-8.

On or before the December 13, 2019 closing date, the Army received proposals from six offerors, including from SCT. COS/MOL at 7. After evaluating initial proposals, the

Army established a competitive range which included all offerors. AR, Tab 9, Competitive Range Determination. The Army states that it conducted discussions by sending evaluation notices to all offerors, including SCT, on January 14, 2020. COS/MOL at 8. The evaluation notices required a response and final proposal revisions to be submitted by January 17. *Id.*; see also, e.g., AR, Tab 11a, SCT Evaluation Notice Emails at 4. As relevant here, SCT evaluation notice E-T-02 described a deficiency that was assigned to SCT's proposal as follows:

[SCT] proposed insufficient labor hours to perform all non-optional tasks in accordance with Technical Exhibit 3-Workload. During the Government's evaluation, it was determined that the Offeror's proposed annual labor hours of [DELETED] ([DELETED] in option years), when compared to the Offeror's proposed approach, is insufficient (by approximately 75 [percent] to 80 [percent] the majority of which is in the Management Analyst-Senior labor category) to successfully execute the PWS requirements.

AR, Tab 10b, SCT Evaluation Notice E-T-02. On January 15, SCT asked the Army to clarify whether it considered SCT's proposed labor hours to be 75 to 80 percent insufficient when compared to the total labor hours SCT proposed or when compared to the total hours required. AR, Tab 11a, SCT Evaluation Notice Emails at 3. Later, on January 15, the contracting officer replied that it could not provide an answer to SCT's question. *Id.* at 1. On January 17, SCT submitted its responses to the evaluation notices and its revised proposal.¹ COS/MOL at 8.

Under the technical factor, the agency evaluated SCT's revised proposal as unacceptable, identifying three strengths and one deficiency. AR, Tab 14, SCT Final Technical Evaluation at 1-2. The Task Order Evaluation Board (TOEB) assessed SCT's proposal a deficiency for proposing insufficient labor hours to execute all of the PWS requirements successfully, given SCT's proposed approach. *Id.* at 2. The TOEB stated that the deficiency was "a material failure of the proposal that demonstrates a lack of understanding of the requirement and increases risk of unsuccessful task order performance to an unacceptable level." *Id.* Specifically, the TOEB found that SCT's proposed staffing levels had failed to demonstrate a clear understanding of all the requirements in the PWS, and did not provide a feasible approach for the successful execution of the task order. *Id.* at 3. The TOEB concluded that SCT's proposal was ineligible for award. *Id.*

¹ SCT's revised proposal increased its total proposed annual labor hours for non-optional tasks to [DELETED] in the base year and to [DELETED] in option years. AR, Tab 12, SCT Final Technical Proposal at 19.

On February 12, the Army issued the task order to Serco in the amount of \$30,493,313. AR, Tab 15, Notice of Unsuccessful Offer. This protest followed.²

DISCUSSION

SCT contends that the Army conducted misleading discussions. Protest at 6; Comments at 1-10. SCT also asserts that Serco had a potentially disqualifying unequal access to information OCI. Protest at 10; Comments at 10. Based on our review of the record, we find no basis to sustain the protest.³

Allegedly Misleading Discussions

SCT asserts that the agency's discussions were misleading because evaluation notice E-T-02 did not make clear whether SCT's proposed hours were insufficient by 75 percent to 80 percent of the total hours SCT had proposed or the total hours required.⁴ Protest at 6-9; Comments at 2-5.

The agency responds that the discussions with SCT were not misleading. COS/MOL at 18-25. Specifically, the agency argues that the solicitation was clear that it was the responsibility of the offeror to propose its own approach, including the personnel and level of effort to support and successfully perform the contract. *Id.* at 23. The agency also argues that evaluation notice E-T-02 made clear that SCT's proposed labor hours did not match its intended approach, and SCT's misinterpretation of the evaluation notice further demonstrated its failure to understand the requirement. COS/MOL at 13, 22. For the reasons set forth below, we agree with the agency.

With regard to competitions for task and delivery orders under IDIQ contracts, FAR 16.505 does not establish specific requirements for discussions; nonetheless, when exchanges with the agency occur in task order competitions, they must be fair and not misleading. *AT & T Corp.*, B-414886 *et al.*, Oct. 5, 2017, 2017 CPD ¶ 330 at 4. Where, as here, an agency conducts a task order competition as a negotiated procurement, our analysis regarding fairness will, in large part, reflect the standards

² The task order at issue is valued in excess of \$25 million, and was issued under an IDIQ contract established by the Army. Accordingly, our Office has jurisdiction to consider SCT's protest. 10 U.S.C. § 2304c(e)(1)(B).

³ SCT raises other collateral arguments. While we do not address each of the protester's allegations and variations thereof, we have reviewed them all and find that none provides a basis to sustain the protest.

⁴ SCT also contends that the discussions created a latent ambiguity in the terms of the solicitation. Protest at 6-9; Comments at 2-5. However, we have concluded, below, that evaluation notice E-T-02 was sufficiently clear and therefore not ambiguous. Accordingly, we deny this ground of protest.

applicable to negotiated procurements. *Skyline Ultd, Inc.*, B-416028, B-416028.2, May 22, 2018, 2018 CPD ¶ 192 at 6.

In this regard, discussions, when conducted, must be meaningful; that is, they may not be misleading. *SMS Data Prods. Grp., Inc.*, B-414548 *et al.*, July 12, 2017, 2017 CPD ¶ 222 at 8. More specifically, an agency may not mislead an offeror through the framing of a discussion question into responding in a manner that does not address the agency's actual concerns, or otherwise misinform the offeror about a problem with its proposal. *Nexant, Inc.*, B-407708, B-407708.2, Jan. 30, 2013, 2013 CPD ¶ 59 at 3-4. In this context, however, we have consistently stated that agencies are not required to spoon-feed an offeror during discussions; agencies need only lead offerors into the areas of their proposals that require amplification or revision. *NCI Info. Sys., Inc.*, B-405589, Nov. 23, 2011, 2011 CPD ¶ 269 at 10.

Here, the agency led SCT into the area of its proposal that required revision, clearly advising SCT that its staffing plan was significantly understaffed "when compared to [SCT's] proposed approach."⁵ AR, Tab 10b, SCT Evaluation Notice E-T-02 at 1. Further, we find that the language in Evaluation Notice E-T-02 that SCT's "proposed annual labor hours . . . [are] insufficient [by approximately 75 [percent] to 80 [percent]]" is sufficiently clear and should not have misinformed SCT about the problem with its proposal. *Id.* A proposed amount that is "insufficient by" 75 to 80 percent is only 25 to 20 percent of a desired total. Accordingly, SCT should have known from the plain language of the evaluation notice that it needed to increase its proposed labor hours by a factor of approximately four to five in order to propose a sufficient number of labor hours to successfully perform its proposed approach. Further, SCT does not allege that the labor hours it proposed were adequate to meet the PWS requirements, given its technical approach, or disagree with the agency's conclusion that SCT does not understand the level of effort required to meet all the PWS requirements. On these facts, we conclude that the Army's discussions were not misleading and adequately advised SCT of the need to increase its staffing.

Organizational Conflict of Interest

SCT asserts Serco has an OCI that should have disqualified the firm from the competition, because Serco, in its role as an incumbent,⁶ allegedly obtained non-public

⁵ SCT repeatedly argues that the agency was evaluating its staffing plan against an unstated minimum labor hour requirement. *See, e.g.*, Comments at 1. However, the record shows that the evaluation was not based on any unstated labor hour requirement; rather, the agency evaluated how many labor hours SCT would need to meet the PWS requirements based on SCT's proposed approach. AR, Tab 14, SCT Final Technical Evaluation at 2.

⁶ Serco is the incumbent on the Army Civilian Workforce Transformation contract, a direct predecessor effort to the current procurement. AR, Tab 20, OCI Determination at 1.

information from the agency that unfairly assisted Serco in proposing sufficient labor hours. Protest at 10; Comments at 10. Specifically, SCT argues that Serco “likely” had access to proposed contracting budgets and a draft plan for overhauling the Army’s civilian talent management strategy, which the Army refused to make available to other offerors. *Id.*

The agency responds that SCT’s OCI allegation is based on nothing but conjecture and speculation, noting that SCT only contends that Serco was “likely” to have had access to non-public information.⁷ COS/MOL at 25-26. The agency also argues that it included terms in the RFP to safeguard against the development of an OCI, including appropriate OCI clauses and contract monitoring, and at no time during the source selection process had there been any indication of the existence of an OCI. *Id.* at 17, 26. Nonetheless, upon receipt of the protest, the contracting officer conducted an investigation to determine whether Serco, in its role as an incumbent, had access to competitively useful information that would have given Serco an unfair competitive advantage. AR, Tab 20, OCI Determination. The contracting officer concluded that there was no evidence that an OCI had existed at any point in the procurement process with regard to Serco or any other potential offeror. *Id.* at 2.

In this connection, an unequal access to information OCI exists where a firm has access to nonpublic information, and where that information may provide the firm a competitive advantage in a later competition for a government contract. *Systems Made Simple, Inc.*, B-412948.2, July 20, 2016, 2016 CPD ¶ 207 at 6. A protester alleging the existence of an OCI 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. *Enterprise Res. Planned Sys. Int’l, LLC*, B-413805.5, B-413805.6, July 6, 2017, 2017 CPD ¶ 215 at 6.

SCT does not meaningfully dispute the Army’s assertions or the conclusions reached in the OCI investigation. See Protester’s Comments at 10. Although SCT reiterates its belief that Serco had unequal access to information, it has failed to establish that the agency’s consideration of this matter was unreasonable. SCT has failed to identify any hard facts beyond Serco’s incumbent status; instead, its general accusations and allegations merely reflect SCT’s ongoing dissatisfaction and speculation. On the record here, SCT’s protest that Serco should have been disqualified on the basis of an alleged OCI is denied.

We deny the protest.

Thomas H. Armstrong
General Counsel

⁷ SCT also concluded that Serco had unequal access to information based on “reasonable inference,” “likely” access, and asserted “belief.” Comments at 10-11.