

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Tridentis, LLC

File: B-418690.4

Date: January 5, 2021

Alexander B. Ginsburg, Esq., Robert C. Starling, Esq., Meghan Doherty, Esq., and Dinesh Dharmadasa, Esq., Pillsbury Winthrop Shaw Pittman LLP, for the protester. James J. McCullough, Esq., and Michael J. Anstett, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for Marine Systems Corporation, an intervenor. Candice Thomas, Esq., Matthew Hawkins, Esq., Department of the Navy, for the agency. Katherine I. Riback, Esq., and Evan C. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's rejection of the protester's proposal as technically unacceptable is denied, where the protester failed to establish that it possessed a facility security clearance on the due date for receipt of proposals, as required by the solicitation.

DECISION

Tridentis, LLC, a small business of Alexandria, Virginia, protests the disqualification of its proposal by the Department of the Navy, Naval Sea Systems Command, under request for proposals (RFP) No. N00178-19-R-3500, issued for ship integration services. Tridentis argues that its proposal was unreasonably excluded for not meeting a solicitation requirement that involved a matter of responsibility, and, therefore was able to be fulfilled prior to award. The protester also argues that it demonstrated its compliance with the solicitation requirement at the time of proposal submission.

We deny the protest.

BACKGROUND

On May 23, 2019, the agency issued the solicitation, as a small business set-aside, under the Navy's Seaport-Next Generation (SeaPort-NXG) multiple award contract.

Agency Report (AR), Tab 1, RFP at 2-3.¹ The solicitation, as amended, contemplated the award of a cost-plus-fixed-fee, level-of-effort task order with a base year and four 1-year options. *Id.* at 50, 68. Award was to be made to the responsible offeror whose proposal represented the best value, considering the following factors, listed in descending order of importance: technical understanding/capability/approach, workforce, management, past performance, and cost. *Id.* at 71.

Procedural History

The agency received three proposals in response to the solicitation, including those of Tridentis and Marine Systems Corporation (MSC). Combined Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 2. On April 15, 2020, after evaluating proposals, the agency concluded that MSC represented the best value to the government, and advised Tridentis of the outcome of the competition.

On April 27, Tridentis filed a protest with our Office. Protest (B-418690). In its protest, Tridentis challenged various aspects of the agency's evaluation of its proposal, as well as the agency's best-value determination. After receipt of the agency report and additional documents, the protester filed supplemental protest grounds, concerning the agency's evaluation of MSC's proposal. Comments and Supp. Protest (B-418690.2) at 2-4.

On June 15, the agency notified our Office of its intent to take corrective action, stating its intent to reevaluate offerors' past performance and to conduct a new best-value determination. Our Office dismissed Tridentis's protest as academic. *Tridentis LLC*, B-418690, B-418690.2, June 19, 2020 (unpublished decision).

On July 5, Tridentis filed a request with GAO that our Office recommend reimbursement of Tridentis's costs of filing and pursuing its earlier protest. Req. for Reimbursement of Costs, B-418690.3. In its request, Tridentis argued that it should be reimbursed its protest costs because the agency unduly delayed taking corrective action in the face of clearly meritorious protest grounds. On October 14, our Office denied the protester's request for reimbursement to the extent it sought reimbursement for the pursuit of protest grounds beyond those which the agency agreed to reimburse.

During the implementation of its corrective action, the agency notified Tridentis that its proposal was disqualified from the competition due to a failure to meet a material solicitation requirement. This protest followed.

Current Protest

As relevant here, section C of the RFP contained the following mandatory requirement concerning an offeror's facility security clearance:

¹ The citations to the RFP are to a conformed copy of the RFP provided by the agency.

C.10 MANDATORY REQUIREMENTS

[. . .]

Requirement 2: Facility Security Clearance. The Offeror's primary facility must be cleared to the SECRET level and be authorized SECRET storage. Additionally, the Contractor's primary facility support[ing] this effort shall be able to store and safeguard Unclassified Naval Nuclear Propulsion Information (U-NNPI) and Not Releasable to Foreign Nationals (NOFORN) material.

Id. at 13. Also pertinent here, another solicitation provision addressed the facility security clearance requirement as follows:

The Contractor's primary facility must be cleared to the SECRET level. The Contractor shall require access to Non-SCI [sensitive compartmented information] intelligence information, NATO [North Atlantic Treaty Organization] information at the SECRET level for SIPRNet [secret internet protocol router network] access, For Official Use Only (FOUO) information, Personally Identifiable Information (PII), and uNNPI. These accesses are needed because this support will require knowledge [and] experience of Navy and Joint systems and programs in the areas of systems, engineering, test & evaluation, systems integration and analyses and in order to provide ship integration services to support NSWCDD [Naval Surface Warfare Center Dahlgren Division] as specified on the DD [Directive Division] form 254.

Physical Security: Secret storage of classified material is authorized at the Contractor site.

Id.

The solicitation expressly required offerors to address the mandatory requirements of section C of the RFP, which included the facility security clearance requirement, at the time of proposal submission; specifically in their oral presentations (*Id.* at 58), as well as in their written technical proposals (*Id.* at 61). In addition, the solicitation contained the following warning regarding an offeror's failure to meet these mandatory requirements:

Offerors must meet each of the mandatory requirements noted in Section C at the time of proposal submission. An Offeror not meeting the requirement at time of proposal submission shall not be considered eligible for award and therefore shall not be evaluated.

Id. at 68.

Tridentis addressed the facility clearance requirement in its oral presentation by including a slide titled "Facility Security Clearance." AR, Tab 2, Tridentis Technical

Proposal--Oral Presentation at 19. This slide listed its name and then included an address in Virginia Beach, Virginia, and the following statement about the Virginia Beach facility, “[e]xisting [DELETED] [f]acility [c]learance.” In the written portion of its technical proposal, Tridentis stated that it “currently maintains a [DELETED] level facility in its [DELETED] office.” AR, Tab 3, Tridentis Technical Proposal--Written Portion at 1. Of relevance to this protest, Tridentis’s proposal also included a teaming agreement with another firm that would be its subcontractor, *i.e.*, [DELETED]. AR, Tab 4, Tridentis Technical Proposal--Written Portion, Teaming Agreement. Of note, the teaming agreement included [DELETED] address, which was the same address in Virginia Beach, Virginia, that was listed as Trident’s facility in the oral presentation materials. AR, Tab 2, Tridentis Technical Proposal--Oral Presentation at 19.

The agency initially evaluated Tridentis’s [DELETED] facility as meeting the facility security clearance requirement. During its corrective action, however, the agency conducted a facility security clearance and storage check within the National Industrial Security System (NISS) for the three offerors who submitted proposals. The agency conducted this check by searching for the company name or commercial and government entity (CAGE) code. The agency’s check did not include a search of the offerors’ listed addresses. AR, Tab 5, Facility Security Clearance Requirement Verifications; COS/MOL at 6.

The NISS search confirmed that the two other offerors met the facility security clearance requirement at the time of proposal submission. With respect to Tridentis, the agency’s search revealed that while Tridentis had a secret facility clearance under CAGE code, [DELETED], it had no clearance at that facility for the safeguarding of secret information, as confirmed in the NISS and email correspondence with the Defense Counterintelligence and Security Agency (DCSA). *Id.* at 1, 7. The agency also checked additional Tridentis locations for clearance for safeguarding secret information, but did not find any other Tridentis locations authorized for such storage. COS/MOL at 7.

On August 12, the agency then sent a request for clarification to Tridentis that noted the contents of Tridentis’s proposal and identified the results of the facility security clearance verifications. AR, Tab 6, Navy Request for Clarification Letter at 2-3. The clarification letter included the following:

This NISS check appears to conflict with Tridentis’[s] representation in its technical proposal in Volume II, Section 1.2, as discussed above, that a Secret level facility is maintained in its [DELETED] office which also provides a Secret level of safeguarding for classified information/material, and which is to be used as the primary facility supporting the task order.

Id. at 3. Tridentis responded to the agency’s clarification letter with the following:

We intend to use our [DELETED] facility as the primary office on this contract The CAGE code for [DELETED] facility is [DELETED] and this is the code that should be used by your security personnel to perform the pre-award facility security clearance survey, not 4J2N6.

AR, Tab 7, Tridentis Response to Navy Request for Clarification at 1.²

Thereafter, the agency conducted a NISS verification on CAGE code [DELETED] and discovered that between the original NISS verification on July 20, and this later check on August 13, Tridentis received an interim clearance at its [DELETED] location. AR, Tab 8, Facility Security Clearance Requirement Verification.³ The agency then found Tridentis's proposal to be technically unacceptable at the time of proposal submission because the firm did not meet the material solicitation requirement that its primary facility be cleared at the secret level with secret storage at the time of proposal submission. AR, Tab 9, Notice of Ineligibility for Award.

In response, Tridentis stated that its intent was to use the cleared facility belonging to its subcontractor, [DELETED]. AR, Tab 10, Email Chain at 3-4. Tridentis explained that [DELETED]'s cleared facility, located in [DELETED], was to be considered as the primary location for Tridentis to fulfill the requirements at the time of proposal submission, while Tridentis waited on its facility to be cleared. *Id.* To this end, Tridentis supplied the agency with a new CAGE code; specifically, the CAGE code for [DELETED]. *Id.* At this time, the protester also requested that the agency engage in additional clarifications. *Id.*

The agency replied that additional clarifications or exchanges would not be permitted. AR, Tab 10, Email Chain at 1-2. In this regard, the agency explained that because Tridentis's proposal did not meet the mandatory requirement concerning facility security clearance at the time of proposal submission, the proposal would not be further evaluated by the agency. *Id.* Tridentis again requested that the agency engage in additional clarifications. AR, Tab 11, Tridentis Request for Additional Clarification Letter. Once again, the agency advised the protester that the notice of ineligibility would not be withdrawn. AR, Tab 10, Email Chain at 1. On September 28, Tridentis filed this protest with our Office.⁴

² The agency states that while Tridentis identified CAGE code [DELETED], the correct code is [DELETED]. COS/MOL at 7 n.2.

³ The agency confirmed this finding with DCSA, the agency that granted the safeguarding clearance, and confirmed that Tridentis's primary facility in [DELETED] had only received an interim secret facility security clearance with a document safeguarding level of secret in August 2020. The agency also confirmed that Tridentis did not have a clearance on the date of proposal submission in July 2019. *Id.*

⁴ The estimated value of this task order for ship integration services is \$44,690,712. B-418690, AR, Tab 5, Government Independent Cost Estimate at 2. Since the value of the task order at issue exceeds \$25 million, the protest is within our Office's jurisdiction to hear protests of task orders that are issued under multiple-award contracts established by Department of Defense agencies. 10 U.S.C. § 2304c(e)(1)(B).

DISCUSSION

In its protest, Tridentis contends that the solicitation did not ask offerors to submit documentation or any other evidence of their facility clearance requirement compliance, and that this requirement involved a matter of responsibility that it was permitted to satisfy at any time prior to award. The protester also contends, in the alternative, that it fully complied with the RFP facility clearance requirement in that it demonstrated that its primary facility was cleared at the secret level with secret storage at the time of proposal submission. In this regard, Tridentis asserts that its proposal identified the cleared facility of its subcontractor, [DELETED]. For the reasons discussed below, we find no basis to sustain the protest.⁵

In reviewing protests of alleged improper evaluations, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws. *URS Group, Inc.*, B-402820, July 30, 2010, 2010 CPD ¶ 175 at 3. A protester's disagreement with the agency's evaluation, without more, does not provide our Office a basis to object to the agency's evaluation. *Harris IT Servs. Corp.*, B-406067, Jan. 27, 2012, 2012 CPD ¶ 57 at 10. Also, as relevant here, our Office has explained that the ability to obtain a security clearance is generally a matter of responsibility, absent an express requirement in the solicitation to demonstrate the ability prior to award. *Waterfront Technologies, Inc.-- Protest and Costs*, B-401948.16, B-401948.18, June 24, 2011, 2011 CPD ¶ 123 at 6.

Based upon our review of the record, we conclude that the agency reasonably concluded that the protester failed to establish that it met the facility security clearance requirement on the due date for receipt of proposals, as required by the RFP.

As stated above, the solicitation required that offerors satisfy the facility security clearance requirement at the time of proposal submission. RFP at 13. In addition, the RFP instructed offerors to address this requirement in their oral presentations and written proposals. *Id.* at 58, 61. Thus, under the terms of the solicitation here, we agree with the agency that an offeror's showing that it met the facility clearance requirement at

⁵ The protester also raises collateral protest allegations. We have considered all of the protester's arguments and, although not all are discussed here, conclude that none provides a basis to sustain the protest. For example, Tridentis contends that the agency treated its proposal unfairly, suggesting the agency's exclusion of its proposal was undertaken in bad faith. Protest at 12. We have consistently explained that government officials are presumed to act in good faith, and a contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not attribute unfair or prejudicial motives to procurement officials based upon mere inference, supposition, or unsupported speculation. *Undercover Training, LLC*, B-418170, Jan. 9, 2020, 2020 CPD ¶ 25 at 6 n.4. Here, Tridentis's speculation that the agency's facility and security clearance check with NISS was motivated by bias, does not meet the high threshold for demonstrating bad faith or improper conduct on the part of the agency.

the time of proposal submission was a material term of the solicitation. See *ProTech Servs. USA, LLC*, B-417484, July 19, 2019, 2019 CPD ¶ 260 at 4. Further, due to these solicitation provisions, we find that whether an offeror met this mandatory requirement was a matter that involved an offeror's technical acceptability, rather than a firm's responsibility. Cf. *Waterfront Techs., Inc.*, *supra* (protester's failure to meet a mandatory solicitation requirement to have an interim secret facility clearance was a matter of responsibility where the solicitation did not require offerors demonstrate ability to meet this requirement in their proposals). We therefore next address the reasonableness of the agency's evaluation of Tridentis's proposal regarding the facility clearance requirement.

Tridentis argues that it fully complied with the requirements of the RFP because at the time of proposal submission, the facility belonging to its subcontractor, [DELETED], located in Virginia Beach, Virginia, possessed the required facility security clearance. Comments at 4. The protester maintains that after the submission of proposals its location in [DELETED], Virginia, also received the required facility security clearance. *Id.*

Our Office has consistently stated that it is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. *CACI Techs., Inc.*, B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. Indeed, where a proposal omits, inadequately addresses, or fails to clearly convey required information, the offeror runs the risk of an adverse agency evaluation. *Addvetco, Inc.*, B-412702, B-412702.2, May 3, 2016, 2016 CPD ¶ 112 at 7-8. We find no basis to question the reasonableness of the agency's evaluation of Tridentis's proposal with respect to the facility clearance requirement.

Here, Tridentis failed to clearly demonstrate that it met the facility clearance requirement at the time of proposal submission. While its proposal contained the address of its teaming partner's Virginia Beach facility--which did possess the required facility clearance--the proposal did not explain that the facility belonged to another firm, or that Tridentis would be relying on that firm's facility to meet the clearance requirement. When the agency attempted to verify Tridentis's facility clearance by using its CAGE code, the agency's search yielded no results. Unable to confirm Tridentis's facility clearance, the agency concluded that Tridentis failed to demonstrate that it possessed a facility that met the solicitation's requirements. Based upon our review of the protester's proposal, we also note the lack of explanation as to how the facility requirement would be met, and therefore find no basis to question the reasonableness of the agency's finding in this regard.

Since Tridentis had the burden of submitting an adequately written proposal, it cannot now, in its protest, explain its intent or provide more information when these details were not provided in the proposal. See *Software Eng'g Servs. Corp.*, B-415694.2, Feb. 16, 2018, 2018 CPD ¶ 97 at 5. Thus, to the extent the protester contends that its proposal was sufficiently clear, adequately detailed, or should have been interpreted

differently, the protester's disagreement, without more, is insufficient to establish that the agency's evaluation was unreasonable to sustain the protest.

The protest is denied.

Thomas H. Armstrong
General Counsel