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# Decision

**Matter of:** Dynamic Systems Technology, Inc.

**File:** B-419109.3; B-419109.4

**Date:** January 21, 2021

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## DIGEST

1. Protest challenging the agency's decision to take corrective action is denied where agency reasonably identified and corrected a latent ambiguity in the solicitation.
  2. Protest challenging agency's limitation on revisions following an amendment is denied where the protester did not suffer any competitive prejudice.
  3. Protest alleging that the agency might evaluate proposal contrary to terms of solicitation is dismissed as premature where the agency has not reevaluated proposals.
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## DECISION

Dynamic Systems Technology, Inc. (DysTech), a small business of Fairfax, Virginia, protests the decision of the agency to take corrective action under request for proposals (RFP) W15QKN-20-R-0055, issued by the Department of the Army, for recovery care coordinator support services for the Department of the Air Force. The protester contends that the agency's decision to take corrective action was unreasonable. The protester also contends that the agency's limitation on revisions following its amendment to the solicitation was unreasonable.

We deny the protest.

## BACKGROUND

On May 7, 2020, the Army issued the RFP, in accordance with Federal Acquisition Regulation (FAR) part 16, as a small business set-aside to all prime contractors holding

the Human Resource Solutions Personnel Life-Cycle Support indefinite-delivery, indefinite-quantity (IDIQ) contract. Agency Report (AR), Tab 9a, RFP at 1; Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 2. The Army contemplated the award of a single fixed-price task order. COS/MOL at 2. The due date for proposals, as amended, was June 24, 2020. *Id.* at 7.

The Army received six proposals by the deadline, and after conducting its technical evaluation, awarded the task order to Patriot Enterprises, LLC. *Id.* at 7-8. On August 27, the Army sent DysTech an unsuccessful offeror notice and debriefing letter. *Id.* Following its debriefing, DysTech filed a protest with our Office on September 8. AR, Tab 2, Protest at 1. On September 28, the Army filed a notice of corrective action. AR, Tab 5, Notice of Corrective Action at 1. In the notice, the Army stated that the RFP's performance work statement (PWS) did not reflect the Army's needs. *Id.* Specifically, the Army stated that section 1.11.1 of the PWS, which contained the experience requirements for the program manager, was latently ambiguous. *Id.* The Army then stated that it intended to revise section 1.11.1, allow the submission of new proposals for that section of the PWS, and make a new award decision. *Id.*

Prior to our dismissal of DysTech's protest, DysTech filed a supplemental protest challenging the Army's corrective action. AR, Tab 7a, Sept. 30 Supp. Protest at 1. In its supplemental protest, DysTech argued that corrective action was unnecessary as the PWS was clear and unambiguous. *Id.* at 1-2. In dismissing the protest, our Office noted that DysTech's objection to the solicitation language as revised was premature because, at the time of our decision, the Army had not revised the language. AR, Tab 8, Dismissal of Protest B-419109 and B-419109.2.

On October 13, the Army issued amendment 0005 to the RFP to clarify its intent in PWS section 1.11.1 for the program manager position. AR, Tab 10n, Amendment 0005 at 1. The Army stated that offerors were permitted to revise only those aspects of their proposals related to PWS section 1.11.1, and that the Army would not review any proposal changes made to areas outside of that section. COS/MOL at 7. Responses to amendment 0005 were due by 2:30 p.m. on October 15. Amendment 0005 at 1. Prior to the 2:30 p.m. deadline on October 15, DysTech filed this protest with our Office.<sup>1</sup>

## DISCUSSION

DysTech contends that the language of section 1.11.1 in the original PWS was clear and unambiguous, and therefore, the Army's determination that a latent ambiguity existed was unreasonable. DysTech also contends that the Army's restriction on price revisions to allow pricing adjustments only for the program manager position was unreasonable. Finally, DysTech argues that the Army improperly ranked offerors

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<sup>1</sup> Our Office has jurisdiction over this protest pursuant to 10 U.S.C. 2304c(e)(1)(B) because the value of the task order, which was placed under an IDIQ contract established by the Army, exceeds \$25 million.

contrary to the terms of the solicitation. For reasons discussed below, we deny the protest.<sup>2</sup>

### Challenge to Corrective Action

As a general rule, agencies have broad discretion to take corrective action where the agency has determined that such action is necessary to ensure fair and impartial competition. *MSC Indus. Direct Co., Inc.*, B-411533.2, B-411533.4, Oct. 9, 2015, 2015 CPD ¶ 316 at 5; *Zegler, LLC*, B-410877, B-410983, Mar. 4, 2015, 2015 CPD ¶ 168 at 3. The details of implementing the corrective action are within the sound discretion and judgment of the contracting agency, and we will not object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. *DGC Int'l*, B-410364.2, Nov. 26, 2014, 2014 CPD ¶ 343 at 3; *Northrop Grumman Info. Tech., Inc.*, B-404263.6, Mar. 1, 2011, 2011 CPD ¶ 65 at 3. Where an agency has reasonable concerns that there were errors in the procurement, corrective action may appropriately include reopening discussions and requesting revised proposals before reevaluating. See, e.g., *Consortium HSG Technischer Service GmbH and GeBe Gebäude-und Betriebstechnik GmbH Südwest Co., Management KG*, B-292699.4, Feb. 24, 2004, 2004 CPD ¶ 44 at 3.

Here, the Army took corrective action to remedy what it believed to be a latent ambiguity in the PWS. COS/MOL at 17. According to the Army, DysTech's September 8 protest identified language in section 1.11.1 of the PWS that it believed was subject to multiple reasonable interpretations. *Id.* at 18. Specifically, the Army identified DysTech's claim that Patriot's proposal was ineligible for award because Patriot's program manager did not have "experience as a General Officer or as an [senior executive service] SES Level 1 (or above)" as an indication that the section was latently ambiguous. *Id.* at 17. The Army contends that it never intended to require program managers to have served as a general officer or SES, and therefore, it reasonably clarified the language of the PWS to reflect its true intent. *Id.* at 18.

In response, DysTech argues that the Army unreasonably relied on an outdated argument as justification for its corrective action. Comments at 2. Specifically, while DysTech concedes that it initially argued that a program manager must either have experience as a general officer or SES, it explains that it later argued that "at no time [did it] actually believe[] the [program manager] must be a general officer or member of the SES or other equivalent." Comments at 2. Accordingly, DysTech argues that the Army could not reasonably use DysTech's previous argument as a current justification for its corrective action.

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<sup>2</sup> DysTech also argues that even if a latent ambiguity existed, the awardee is still ineligible under the amended PWS. Protest at 3. This argument, however, is premature because the Army has not yet conducted its new evaluation; our Office does not review premature allegations. *F-Star Zaragosa Port, LLC; F-Star Socorro Holding, LLC*, B-417414, B-417414.2, Apr. 15, 2019, 2019 CPD ¶ 148 at 1.

Under the circumstances here, we have no basis to object to the Army's decision to take corrective action. The record reflects that the Army identified language that was subject to multiple interpretations and reasonably clarified its intent by explaining precisely what type of experience it sought for program managers. COS/MOL at 19. The Army was not required to overlook an ambiguous provision in its solicitation simply because DysTech later changed its argument. Although DysTech may now disagree with its previously-argued position, the Army is permitted to find it persuasive nonetheless. This protest ground is denied.

#### Challenge to Limitation on Revisions

DysTech next argues that it was unreasonable for the Army to limit pricing revisions to only the program manager section of proposals. Protest at 3. We make no determination as to whether the limitation was reasonable because DysTech has failed to show any competitive prejudice.

Competitive prejudice is an essential element of every viable protest. *Armorworks Enters., LLC*, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions. *Raytheon Co.*, B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 17. In other words, the protester must show that but for the agency's actions, it would have had a substantial chance of receiving the award. *Id.*

Here, although DysTech contends that "its overall approach to this procurement would [have been] different" had it known in advance that the Army intended to amend the solicitation, it failed to provide any evidence indicating specifically which aspects of its proposal it would have changed. Protest at 3. Furthermore, in an email to the Army, DysTech expressly stated that it "reviewed [amendment 0005] against [its] current response, and determined no change is required." AR, Tab 16, Oct. 15 Email. DysTech's failure to explain how it was prejudiced, in addition to its statement that it did not need to change its proposal in light of the amendment, belies the argument DysTech suffered any competitive prejudice as a result of the amendment and subsequent limitation on revisions. As a consequence, this protest ground is also denied.

#### Challenge to Army's Purported Ranking of Offerors

Last, DysTech contends that it "is concerned that the Army is prejudging it, and is doing so on a basis not supported by the [RFP]." Comments at 9. In support of this contention, DysTech argues that the Army's statement in the agency report that it did not rank offerors, but if it did, "it is almost certain that DysTech would not have been next in line for award" indicates that the Army might have evaluated DysTech contrary to the terms of the solicitation. *Id.* at 8. We do not address this protest ground as it is premature.

The current protest challenges the Army's decision to take corrective action; it does not challenge the evaluation of proposals, namely because the Army has not reevaluated proposals or made a new award decision. See Protest at 1; COS/MOL at 9. Therefore, any allegation by DysTech that the Army evaluated its proposal contrary to the terms of the solicitation is premature.<sup>3</sup> *F-Star Zaragosa Port, LLC; F-Star Socorro Holding, LLC, supra.*

The protest is denied.

Thomas H. Armstrong  
General Counsel

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<sup>3</sup> Moreover, to the extent DysTech challenges the Army's evaluation of its proposal prior to the amendment, that challenge has been rendered academic by the Army's corrective action.