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# Decision

**Matter of:** CACI, Inc.-Federal

**File:** B-419499

**Date:** March 16, 2021

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## DIGEST

Protest that agency improperly waived a material solicitation requirement on behalf of the awardee, and should have excluded the awardee from competing, is dismissed because the protester fails to demonstrate that it is an interested party to pursue this challenge.

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## DECISION

CACI, Inc.-Federal, of Chantilly, Virginia, protests the issuance of a delivery order to Telos Corporation, of Ashburn, Virginia, under request for delivery order proposals (RFDOP) No. W52P1J-20-R-INC4, issued by the Department of the Army for the Yongsan Relocation Program (YRP)/Land Partnership Plan (LPP) increment 4 (INC 4) requirement. CACI alleges that Telos was not an eligible offeror and should have been disqualified from receiving the delivery order award.

We dismiss the protest.

## BACKGROUND

The United States maintains a significant military presence in support of the defense of South Korea; at present time, United States Forces Korea (USFK) is comprised of 28,500 U.S. soldiers, sailors, airmen, and marines. See [www.usfk.mil/](http://www.usfk.mil/) (last visited Mar. 3, 2021). Also, since 2001, U.S. military bases in South Korea have undergone a major process of consolidation and relocation as part of the United States – South Korean LPP. Defense Management: Comprehensive Cost Information and Analysis of

Alternatives Needed to Assess Military Posture in Asia, GAO-11-316 at 8-21 (May 2011). In 2018, the USFK headquarters was relocated from Yongsan (one of the districts in the city of Seoul), South Korea, to Camp Humphreys (Pyeongtaek), South Korea. The YRP/LPP INC 4 project addresses the final phases of the USFK relocation and realignment mission, including critical command, control, communications, computers, and intelligence infrastructure and services. Agency Report (AR), Tab 7, Statement of Work at 9.

The RFDOP<sup>1</sup> was issued on May 19, 2020, to holders of General Services Administration (GSA) Alliant 2 governmentwide acquisition contracts, pursuant to the procedures of Federal Acquisition Regulation subpart 16.5.<sup>2</sup> AR, Tab 4, RFDOP at 2; Contracting Officer's Statement (COS) and Memorandum of Law (MOL) at 4. The solicitation contemplated the issuance of a cost-plus-fixed-fee delivery order for a 5-year period. The RFDOP established that the evaluation of proposals would be conducted using a two-step approach. RFDOP at 16-17. In the first step, offerors would be evaluated, on a "go/no go" basis, on a series of "gate" criteria (e.g., export controls compliance). *Id.* In the second step, offerors would be evaluated--and delivery order issuance would be made on a best-value tradeoff basis--on three evaluation factors: (1) management; (2) technical competency and experience (technical competency); and (3) cost. *Id.* at 16, 18. The management factor was more important than the technical competency factor, and the two non-cost factors, when combined, were significantly more important than cost. *Id.* at 18.

Additionally, relevant to the protest here, the solicitation stated that,

Offerors shall submit a notice of intent to propose on this RFDOP by [May 21, 2020, 3:00 p.m. Central Time]. The notice shall be in a form of an electronic communication and shall contain at least the Company name and Point of Contact. In response, the Government will reply with a pseudonym assignment for the Company for use in its proposal (in lieu of the Company's name).<sup>3</sup>

*Id.* at 3.

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<sup>1</sup> The solicitation was subsequently amended five times. Unless stated otherwise, all citations are to the final conformed version of the RFDOP.

<sup>2</sup> GSA Alliant 2 is a multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) for information technology services worldwide. See *Sevatec, Inc.; et al.*, B-413559.3 *et al.*, Jan. 11, 2017, 2017 CPD ¶ 3 at 2. There are 48 firms which presently hold GSA Alliant 2 contracts. AR, Tab 32, List of Current Alliant 2 Industry Partners.

<sup>3</sup> Likewise, the solicitation instructed offerors that the management and technical competency proposal volumes "shall NOT include references to the Offeror's name, Logo, or other identifiers," but instead, to use the government-assigned pseudonym (e.g., Offeror A, Offeror B, etc.). RFDOP at 7.

Three GSA Alliant 2 contract holders, including CACI and Offeror C, submitted intent-to-propose notices by the May 21 due date. AR, Tab 30, Supp. COS at 3. Three other GSA Alliant 2 contract holders, including Telos, submitted intent-to-propose notices after May 21 (Telos submitted its notice on June 3). *Id.* at 3-4. The contracting officer decided that it was in the best interest of the government to waive, or relax, the notice-to-propose due date, as doing so would increase competition for the procurement.<sup>4</sup> *Id.* at 4. In making this determination, the contracting officer also found that there would be no prejudice to any of the offerors who had timely submitted intent-to-propose notices: “I did not afford Telos or any other contractor . . . any additional time to submit [q]uestions on the [s]olicitation, nor did I allow them additional time to submit their proposal[s].” *Id.* at 4-5.

Three offerors--Telos, Offeror C, and CACI--submitted proposals by the July 10 closing date. COS/MOL at 5. The Army evaluated the non-cost proposals using an adjectival rating scheme that was set forth in the solicitation: outstanding, good, acceptable, marginal, or unacceptable. The agency evaluators also identified strengths and weaknesses in the proposals in support of the assigned adjectival ratings. *Id.* at 11-23. The final evaluation ratings and costs were as follows:

	Telos	Offeror C	CACI
Management	Good	Good	Good
Technical Competency	Good	Good	Good
Cost	\$35,895,531	\$37,957,470	\$38,297,708

AR, Tab 31, Source Selection Decision Document (SSDD) at 11, 26.

On September 28, the contracting officer, as source selection authority (SSA), conducted a comparative assessment of the offerors’ proposals. The SSA found, as reflected by the assigned adjectival ratings, that the proposals of Telos, Offeror C, and CACI were comparatively equal technically, and that “[t]here [was] no benefit to the Government to go to a higher[-cost] Offeror. . . .” *Id.* at 27. The SSA thereafter concluded that among the three proposals, Telos’s lowest-cost proposal represented the overall best value to the government. *Id.* at 27-28; COS/MOL at 10.

The agency provided CACI with notice of award to Telos on September 29, and a debriefing which concluded on October 14. COS/MOL at 10-11. On October 19, CACI filed an agency-level protest. AR, Tab, 28, Agency-Level Protest. Specifically, CACI alleged the Army’s evaluation of its proposal under the management and technical competency factors was unreasonable and not in accordance with the stated evaluation

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<sup>4</sup> The agency notes that the May 21 due date for submission of the intent-to-propose notice was established “to ensure that Offerors had sufficient time to prepare their proposals using the assigned pseudonym . . . ,” in accordance with the solicitation’s proposal preparation instructions. Supp. COS at 3.

criteria; CACI also alleged the agency's best-value determination was flawed because it was based upon an unreasonable underlying evaluation. *Id.* at 4-10. Finally, CACI asserted that Telos was not an eligible offeror, and should have been disqualified from proposing, because Telos did not submit a timely intent-to-propose notice. *Id.* at 10-11.

By letter dated December 14, the Army denied CACI's agency-level protest. AR, Tab 29, Agency-Level Protest Decision. The Army found the challenged evaluation to be reasonable and in accordance with the solicitation; consequently, CACI's derivative challenge to the best-value determination was also found to be without merit. *Id.* at 12-25. Finally, with regard to CACI's last protest ground, the Army found that Telos was an eligible offeror because the intent-to-propose notice was but an administrative requirement--used solely to assign pseudonyms to the offerors for evaluation purposes--which the Army reasonably waived to increase competition. *Id.* at 25-26. Moreover, the Army found that even assuming the intent-to-propose notice was a material requirement, CACI had "failed to allege, much less establish[,] how it was competitively prejudiced by the Army's actions." *Id.* at 27. This protest followed.<sup>5</sup>

## DISCUSSION

CACI again contends that Telos was ineligible to compete because Telos did not submit a timely intent-to-propose notice (the protester, however, raises no challenges to the eligibility of Officer C).<sup>6</sup> Protest at 2-3. In support thereof, CACI argues that the intent-to-propose notice requirement was not administrative in nature, because "[o]fferors understood this to [be] a material requirement." *Id.* at 3. CACI also argues that it was prejudiced by the Army's waiver of this requirement, because CACI utilized a "price-to-win" strategy "based on [CACI's] knowledge of the contractors who admitted to submitting a notice of intent to propose."<sup>7</sup> Protest, Exh. D, CACI Vice President Declaration. Had the agency indicated that the deadline for submitting a notice of intent to compete was meaningless, CACI argues, "then CACI would have understood tha[t] the universe of competitors could be different and, thus, CACI would have developed a different technical and price strategy for responding." *Id.*

The Army argues CACI's protest is without merit, *i.e.*, that the intent-to-propose notice was not a material requirement, and CACI's assertions that it was somehow aware of

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<sup>5</sup> As the value of the awarded task order was greater than \$10 million, the procurement here is within our jurisdiction to hear protests related to the issuance of task orders under IDIQ contracts awarded by civilian agencies. 41 U.S.C. § 4106(f); *Analytic Strategies LLC; Gemini Indus., Inc.*, B-413758.2, B-413758.3, Nov. 28, 2016, 2016 CPD ¶ 340 at 4-5.

<sup>6</sup> Unlike its agency-level protest, CACI's protest to our Office raises no other challenges.

<sup>7</sup> CACI fails to explain, however, how it would have been aware--among the 48 GSA Alliant 2 contract holders--which of those holders had submitted timely intent-to-propose notices. See Protest, Exh. D, CACI Vice President Declaration. The Army asserts that this information was not disclosed to offerors. COS/MOL at 10.

which offerors had submitted timely notices--and proposed based on that knowledge--are entirely unsupported. COS/MOL at 15-27; see *also* Telos Comments at 2 n.1 (arguing that CACI's allegations regarding prejudice "amount[] to nothing more than speculation upon speculation"). Additionally, the Army argues that CACI is not an interested party to pursue its protest here because even if it were to prevail, it is not next in line for award. COS/MOL at 14-15. We agree.

Under our Bid Protest Regulations, a protester must be an interested party to pursue protest allegations before our Office. 4 C.F.R. § 21.1. An interested party is an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). A protester is an interested party to challenge the agency's evaluation of proposals where there is a reasonable possibility that the protester would be next in line for award if its protest were sustained. *NCS Techs., Inc.*, B-416936, Jan. 11, 2019, 2019 CPD ¶ 56 at 3; *SRA Int'l, Inc.; NTT Data Servs. Fed. Gov't, Inc.*, B-413220.4 *et al.*, May 19, 2017, 2017 CPD ¶ 173 at 28. In this regard, where there is an intervening offeror who would be in line for the award even if the protester's challenges were sustained, the intervening offeror has a greater interest in the procurement than the protester, and we generally consider the protester's interest to be too remote to qualify it as an interested party. See *NCS Techs., Inc.*, *supra*.

As set forth above, the record shows that another offeror, Offeror C, received the same evaluation ratings as did Telos and CACI on the two non-cost factors, and proposed a cost that was lower than CACI's offer. AR, Tab 31, SSDD at 11. Further, the record reflects the SSA found all three offerors here to be comparatively equal technically, such that cost was the determining factor. *Id.* at 26-27. Thus, the proposals of Telos and Offeror C were both technically equal to, and lower cost than, the proposal submitted by CACI. In light of this evaluation record, we conclude that CACI is not an interested party because it would not be in line for award even if we sustained this protest; rather, Offeror C would be next in line for award. *Panum Telecom, LLC*, B-418202, Jan, 17, 2020, 2020 CPD ¶ 34 at 3 (finding that "[w]here, as here, there is an intervening offeror who would be in line for the award if the protester's challenge to the award were sustained, the intervening offeror has a greater interest in the procurement than the protester, and we generally consider the protester's interest to be too remote to qualify as an interested party").

CACI does not dispute that Offeror C was rated technically equal to, and was also lower cost than, CACI. See Comments at 9. Rather, CACI essentially argues that where the government waives or relaxes a material solicitation requirement, the protester is an interested party even though it is not now next in line for award since the appropriate relief would be for the Army to "revise its solicitation and permit offerors to resubmit proposals" under which CACI could compete.<sup>8</sup> *Id.* We disagree.

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<sup>8</sup> In making such an argument, the protester essentially requests that we decide the materiality of any solicitation provision waiver or relaxation in order to determine its interested party status.

To be clear, the protester does not allege that the Army waived the requirement to submit an intent-to-propose notice, but only that the Army improperly relaxed the date by which offerors were to submit the notice. We find the materiality of the requirement--the due date for the intent-to-propose--however, to be of no consequence to the analysis here, because, even if the requirement was material, there is an intervening offeror for whom the requirement was not relaxed.<sup>9</sup> The record reflects that Offeror C timely submitted its intent-to-propose notice. Supp. COS at 3, 5-6. Thus, Offeror C would have been next in line for award regardless of the materiality of the requirement. See *Government Tech. Servs., Inc. et al.*, B-258082 *et al.*, Sept. 2, 1994, 94-2 CPD ¶ 93 at 4-5; *Panhandle Venture V; Sterling Inv. Props., Inc.--Recon.*, B-252982.3, B-252982.4, Sept. 1, 1993, 93-2 CPD ¶ 142 at 2 (finding that because as the agency's requirements had not changed, even if the award represented an unauthorized waiver or relaxation of a solicitation provision, the agency would not be required to resolicit its requirements but could properly award the contract to the second low, unchallenged offeror).

In sum, if the requirement is not material, then there was no improper waiver. By contrast, even if the requirement was material, there still remains an intervening offeror here. Quite simply, at best the protester's interest is too remote to establish that it is an interested party for purposes of protesting the delivery order award to Telos.

The protest is dismissed.

Thomas H. Armstrong  
General Counsel

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<sup>9</sup> Although we express no view on the materiality of the deadline to submit an intent-to-propose notice, our decisions have found material terms of a solicitation to be those that affect the price, quantity, quality, or delivery of the good or services being procured--which does not appear to the case here. See *Gemmo S.p.A.*, B-416864.3, Sept. 19, 2019, 2019 CPD ¶ 328 at 7; *Concurrent Techs. Corp.*, B-415513, B-415513.2, Jan. 18, 2018, 2018 CPD ¶ 59 at 11.