



Decision

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Matter of: CACI, Inc.-Federal
File: B-416549
Date: September 13, 2018

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Alfred M. Wurglitz, Esq., and Cameron S. Hamrick, Esq., Miles & Stockbridge P.C., for Digital Management, LLC, the intervenor.
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Alexander O. Levine, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency engaged in unfair and misleading discussions is denied where the agency did not limit the proposal aspects that could be revised, and the protester therefore should have been aware of its right to make proposal revisions beyond the specific areas raised by the agency during discussions.

DECISION

CACI, Inc.-Federal, of Chantilly, Virginia, challenges the issuance of a task order to Digital Management, LLC, of Bethesda, Maryland, under task order request (TOR) No. ID11170001, issued by the General Services Administration (GSA) for system operations and maintenance for the Department of Housing and Urban Development (HUD), Office of Community Planning and Development. The protester contends that the agency engaged in misleading and unfair discussions.

We deny the protest.

BACKGROUND

On November 2, 2017, GSA issued the TOR to holders of GSA's Alliant Governmentwide Acquisition Contract to obtain services related to the operations, corrective maintenance, and development/modernization/enhancement of HUD's grant management information technology systems. TOR at 10. The solicitation

contemplated the award of a hybrid fixed-price/labor-hour task order with a 12-month base period and four 12-month option periods. Id. at 52.

Proposals were to be evaluated on the basis of three evaluation factors: technical approach, experience, and price. Id. at 88. The non-price factors, when combined, were significantly more important than price. Id. The TOR also called for the evaluation of an offeror's proposal, on a pass/fail basis, for compliance with section 508 of the Rehabilitation Act of 1973.¹ Id.

On January 8, 2018, the agency timely received proposals from CACI and Digital Management. See Contracting Officer's Statement at 5. On April 10, GSA conducted oral discussions with CACI and Digital Management.

During discussions with CACI, GSA sought additional price discounts from CACI for option years 3 and 4. See Agency Report (AR), Tab 8, Discussion Minutes, at 2. The agency also asked CACI to confirm its staffing hours for the first task area, provide confirmation that it had not proposed an escalation rate, and provide further information and confirmation regarding its labor categories and rates for the base year. See id.

During discussions with Digital Management, the agency requested a rationale for the offeror's staffing hours for the first and third task areas, and expressed a concern regarding Digital Management's retention of employees in light of its proposed price discounts. See id. at 4.

On April 13, both offerors submitted final proposal revisions. GSA evaluated the proposals as follows:

	508 Compliance	Technical Approach	Experience	Price
CACI	Pass	Excellent	Excellent	\$46,770,332
Digital Management	Pass	Excellent	Excellent	\$44,196,342

AR, Tab 13, Award Decision Document, at 23-24. The agency conducted a best-value tradeoff determination and concluded that "the benefits associated with the CACI proposal do not merit paying a premium of approximately \$2.6 million." Id. at 28.

¹ Section 508 of the Rehabilitation Act of 1973, as amended, generally requires that agencies' electronic and information technology be accessible to people with disabilities. See 29 U.S.C. § 794d.

On June 29, GSA announced that it would issue the task order to Digital Management. Following a debriefing with the protester, CACI protested to our Office.²

DISCUSSION

The protester contends that the agency engaged in unfair and misleading discussions.³ In this regard, CACI argues that it was directed to provide only limited revisions to its proposal, while discussions with Digital Management “more broadly invited proposal revisions.” Comments at 2. In support of this argument, the protester asserts that the only area of its proposal where it was directed to provide anything beyond “confirmation” or “clarification” related to a request from the agency to provide additional price discounts for option years 3 and 4. Id. at 1. The protester contends that the awardee, by contrast, was invited to provide broader revisions to its proposal, including a rationale for its staffing hours and substantiation for its discounts across all of its rates. The protester contends that had it been specifically advised that it could broadly revise its proposal, it would have increased its price discounts for the other contract periods, beyond option years 3 and 4, and thereby reduced its final price.

With regard to competitions for task and delivery orders under indefinite-delivery, indefinite-quantity contracts, Federal Acquisition Regulation § 16.505 does not establish specific requirements for discussions; instead, exchanges with offerors under task order competitions, like other aspects of such a procurement, must be fair, equal, and not misleading. CGI Fed. Inc., B-403570 et al., Nov. 5, 2010, 2011 CPD ¶ 32 at 9. In general, when an agency opens or reopens discussions with offerors, the offerors may revise any aspect of their proposals, including portions of their proposals which were not the subject of discussions. Imagine One Tech. & Mgmt., Ltd., B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 22. In appropriate circumstances, however, agencies may limit the revisions that offerors may make to their proposals following discussions. Id.

² The awarded value of the task order exceeds \$10 million. Accordingly, this procurement is within our statutory grant of jurisdiction to hear protests in connection with task and delivery orders valued in excess of \$10 million issued under civilian agency multiple-award indefinite-delivery, indefinite-quantity contracts. 41 U.S.C. § 4106(f).

³ The protester initially raised other protest grounds, including challenges to GSA’s evaluation of proposals and its best-value tradeoff determination. Our Office dismissed one of the protest grounds, which challenged the evaluation of Digital Management’s experience, because the protest ground failed to state a legally sufficient basis for protest, as required by our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4), (f). Subsequently, the protester withdrew its remaining protest grounds, with the exception of its challenge to the discussions conducted by the agency. See Comments at 1.

Based on our review of the evaluation record, we conclude that the agency did not engage in unfair or misleading discussions. In this regard, we note that the record does not support the protester's assertion that the agency limited the scope of CACI's final proposal revisions to those proposal areas expressly addressed during discussions. Although the protester broadly avers that this was the case, the agency's contemporaneous notes of the discussions meeting do not reflect any such instruction being provided. See generally AR, Tab 8, Discussion Minutes. Nor does the protester provide any support for its assertion that a limitation instruction was given.⁴

To the extent CACI inferred such a limitation based on the narrow areas raised during discussions, we find that this was not a reasonable inference to draw. The general rule, cited above, that offerors may revise any aspect of their proposals during discussions, applies even when an agency does not expressly advise offerors of this right and instead instructs them to answer specific questions about their proposals. See, e.g., Medical Receivables Solution, B-409358, Mar. 19, 2014, 2014 CPD ¶ 99 at 3. Moreover, we note that the protester could have sought clarification on this point with the agency during its discussions meeting. In sum, we find no merit to the protester's contention that it was reasonably unaware of its right to broadly revise its price proposal.

Additionally, based on our review of the record, we find that the agency's discussions with offerors were not unfair or unequal. While discussions may not be conducted in a manner that favors one offeror over another, they need not be identical among offerors; rather, discussions are to be tailored to each offeror's proposal. Joint Logistics Managers, Inc., B-410465.2, B-410465.3, May 5, 2015, 2015 CPD ¶ 152 at 4. Here, the agency tailored its discussions to each offeror's proposal and reasonably led both CACI and Digital Management to the areas of their proposals that required amplification or revision. Indeed, the final proposal of each offeror received the highest possible ratings for the two non-price factors.⁵

The protest is denied.

Thomas H. Armstrong
General Counsel

⁴ Indeed, the notes from the meeting state that the agency "requested additional discounts, at a minimum, for option periods three and four," an instruction that supports the agency's position that it did not limit price proposal revisions. AR, Tab 8, Discussion Minutes, at 2. While the protester contends that it does not recall such an instruction, it did not provide any support for this assertion.

⁵ Although the agency did not inform CACI that its price was higher than Digital Management's, the agency was under no obligation to do so where CACI's price was not determined to be unreasonable or unacceptable. See Joint Logistics Managers, Inc., supra.