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**Comptroller General
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**United States Government Accountability Office
Washington, DC 20548**

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The decision issued on the date below was subject to a GAO Protective Order. No party requested redactions; we are therefore releasing the decision in its entirety.

Decision

Matter of: Platinum Services, Inc.; WIT Associates, Inc.

File: B-409288.3; B-409288.4; B-409288.5

Date: August 21, 2014

Carol L. O’Riordan, Esq., Pamela J. Bethel, Esq., and Anthony J. Marchese, Esq., O’Riordan Bethel Law Firm, LLP, for Platinum Services, Inc.; and Lawrence J. Sklute, Esq., and Christy Milliken, Esq., Sklute & Associates, for WIT Associates, Inc., the protesters.
David B. Cook, Esq., Richard Martinelli, Esq., and Michael Rossiter, Esq., Department of the Navy, for the agency.
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that solicitation amendment improperly deleted corporate experience subfactor, which had been the subject of two earlier protests, each arguing for a contrary interpretation of the same subfactor, is denied where the record shows the agency reasonably determined that evaluation of corporate experience was inconsistent with its needs, and deletion of the subfactor would promote competition.
 2. Protest that amendment to solicitation created ambiguity over basis for award is denied where allegedly ambiguous language was consistent with provision of solicitation that specified award on a lowest-priced technically acceptable basis.
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DECISION

Platinum Services, Inc., of Baltimore, Maryland, and WIT Associates, Inc., of Hunt Valley, Maryland, both small businesses, protest actions taken by the Department of the Navy under request for proposals (RFP) No. N68836-13-R-0013 for household goods moving and storage services for personnel at Naval Air Station Guantanamo Bay, in Cuba. Both firms primarily argue that, during corrective action undertaken in response to an earlier protest, the Navy improperly deleted the corporate experience subfactor, which both firms argue should be interpreted (albeit in mutually contradictory ways) to result in award to itself.

We deny the protests.

BACKGROUND

The Navy issued the RFP on August 15, 2013, seeking proposals to supply household goods moving and storage services for personnel moving to or from postings at Guantanamo Bay. The RFP provided for award to be made on a lowest-priced technically acceptable (LPTA) basis, and identified three evaluation factors: technical capability, past performance, and price. RFP at 82. The RFP also identified three subfactors under the technical capability factor: technical approach/capability, corporate experience, and quality control plan. Id.

As relevant to the protest issues, under the technical approach/capability subfactor, the RFP directed offerors to demonstrate their understanding of the requirements, and to describe the firm's technical approach "to include describing the necessary staffing levels and key personnel." RFP at 82. On the other hand, the corporate experience subfactor specified that an acceptable rating would consider "the company's experience in performing this type of work in a remote location. Id. at 83. Thus, to obtain an acceptable rating under the corporate experience subfactor, the offeror was required to show that "[t]he Company has demonstrated experience in performing this type of work in a remote location." Id. (emphasis added).

The Navy received and evaluated two proposals, and awarded a contract to Platinum on November 18. WIT subsequently filed a protest in our Office arguing, among other things, that Platinum's corporate experience did not meet the RFP requirements. On December 3, the Navy elected to take corrective action to reevaluate the proposals and make a new source selection decision. Our Office dismissed WIT's protest as academic based on the corrective action.

On March 14, 2014, the Navy announced that it had selected WIT's proposal for award. Following a debriefing, Platinum filed a protest in our Office on April 10, arguing that the Navy had unreasonably evaluated the Platinum's lower-priced proposal as unacceptable under the corporate experience subfactor. On May 3, the Navy advised our Office that it planned to take corrective action by amending the solicitation to revise the evaluation criteria, requesting and evaluating revised proposals, and making a new source selection decision. Platinum objected to dismissal of its protest, arguing that the corrective action was a pretext to conceal a plan to award the contract to WIT. Our Office dismissed Platinum's protest as academic based on the corrective action.¹

¹ Platinum requests that we reconsider our decision to dismiss its protest as academic. The firm primarily argues that our Office should have continued to develop the protest record, which allegedly would have shown that the award to WIT was a result of the Navy's miscalculation of Platinum's proposal. Platinum Reconsideration Request at 3, 5. The request does not provide a basis for us to reconsider our decision. Since, in light of the Navy's corrective action, the

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On May 16, the Navy issued amendment 2 to the RFP, which removed the corporate experience subfactor. These protests followed.

DISCUSSION

Platinum argues that the Navy's actions subsequent to its protest--its deletion of the corporate experience subfactor and its request for final proposal revisions--are a "pretext" to award to WIT once more, and will result in an allegedly impermissible auction. Platinum Reconsideration Request at 4-5; see also Platinum Protest at 14; Platinum Opposition to Dismissal at 2. WIT argues that the deletion of the corporate experience subfactor will fail to provide the Navy with its minimum needs. WIT Protest at 10-11. WIT also argues that the solicitation includes conflicting language on the basis for award; that is, the RFP allegedly specifies both a lowest-priced technically acceptable basis for award, and best value trade-off basis for award. Id. at 6-7.

As explained below, we conclude that the Navy reasonably determined that the corporate experience subfactor exceeded the agency's needs, and therefore it took reasonable corrective action to delete that requirement and to request final proposal revisions. The record does not support either protester's claims that the corrective action is otherwise improper, or results in a defective solicitation. We also find that the solicitation's language concerning the basis for award is not ambiguous.

Deletion of Corporation Experience Subfactor

As noted above, Platinum argues that the Navy's deletion of the corporate experience subfactor, and its request for final proposal revisions, are a "pretext" to award to WIT once more, and will result in an allegedly unlawful auction. Platinum argues that the Navy based its action on a misinterpretation of its own solicitation as prohibiting the agency from considering the experience of Platinum's key personnel under both the technical approach/capability subfactor and also the corporate experience subfactor. According to Platinum, the solicitation allows the experience of Platinum's key personnel to be considered under both subfactors. Thus, Platinum

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evaluation of Platinum's proposal as unacceptable was no longer the basis for a source selection decision, there was no longer a basis to consider the firm's challenges to that evaluation; that is, the resolution of those challenges was academic. See VSE Corp.--Recon. & Entitlement to Costs, B-258204.3, B-258204.4, Dec. 28, 1994, 94-2 CPD ¶ 260 at 2. Our Office will not consider a protest where the issue presented has no practical consequences with regard to an existing federal procurement, and thus is of purely academic interest. Dyna-Air Eng'g Corp., B-278037, Nov. 7, 1997, 97-2 CPD ¶ 132.

argues, there is no legitimate need for the Navy to delete the corporate experience subfactor; instead, the Navy should re-award the contract to Platinum as the lowest-priced technically acceptable offeror. To do otherwise, Platinum argues, is therefore a pretext for the Navy's true motive: to conduct an auction so that the agency can award the contract to WIT.

Despite the certainty with which Platinum expresses the argument, this bare allegation of bad faith by the Navy lacks factual support.² Platinum has shown no evidence that the Navy prefers one offeror over the other. Instead, in our view, the record provides ample support for the agency's actions as a means to obtain the lowest-priced technically acceptable proposal after a fair competition between the two eligible offerors. After attempting to apply the corporate experience in two separate evaluations, both of which were challenged by the unsuccessful offeror, the Navy has now concluded that its corporate experience evaluation standard is inconsistent with both the agency's needs and the goal of ensuring a fair competition. Therefore, the agency has deleted that subfactor, and invited both firms to submit final proposal revisions. Other than its own view of the facts, Platinum provides no evidence of the Navy's alleged intention to hold a sham competition. In sum, the facts here are insufficient to show that the Navy has taken corrective action as a "pretext" to make award to WIT, rather than an effort to hold a fair competition for the agency's actual needs.³

With respect to Platinum's second argument, the Federal Acquisition Regulation does not prohibit auctions, and agencies are not otherwise prohibited from taking corrective action in the form of requesting revised price proposals, even where the original awardee's price has been disclosed. Jackson Contractor Group, Inc., B-402348.2, May 10, 2010, 2010 CPD ¶ 154 at 3. Here, Platinum's total evaluated price⁴ was released in connection with the original award, while WIT's total evaluated price was released in connection with the subsequent award to it (that is, after an earlier round of corrective action). Nevertheless, as discussed above, the Navy has now concluded that the solicitation established an unjustified (and possibly ambiguous), experience standard, which has thereby impaired competition.

² As a general matter, government officials are presumed to act in good faith. Consequently, a protester's claim that contracting officials are motivated by bad faith must be supported by convincing proof; our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Basic Concepts, Inc., B-299545, May 31, 2007, 2007 CPD ¶ 98 at 3-4; Shinwa Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 5 n.6.

³ WIT's argument that the Navy's actions were a pretext to avoid a decision on its earlier protest similarly lacks any factual basis.

⁴ This price, according to Platinum's earlier protest, was based on approximately 75 contract line items (CLIN) and sub-CLINs. Protest, B-409288.2, at 6.

Deletion of that requirement is within the agency's discretion to take corrective action. It is a reasonable means to remedy a greater harm to the integrity of the competitive procurement system--especially since only two proposals have been received--than the risk that the disclosure of the award prices for both offerors might place either at a greater disadvantage in the reopened competition than the other firm. See id. In our view, since the agency has changed the evaluation criteria upon which it will make award, it has also properly informed the offerors of that change and requested final proposal revisions. In short, none of Platinum's arguments demonstrate a valid basis of protest.

WIT's protest argues that by deleting the corporate experience factor from the evaluation criteria, the Navy will fail to obtain a satisfactory contractor. WIT Opposition to Dismissal at 15-16; WIT Comments at 5. The Navy responds that it has amended the RFP because the Navy's needs do not include requiring the contractor to have a minimum level of specific corporate experience, particularly because the agency will also be considering key personnel experience. WIT Dismissal Request at 7; WIT Agency Report (AR) at 8.

Generally, our Office will not consider contentions that specifications should be made more restrictive because our role in reviewing bid protests is to ensure that the statutory requirements for full and open competition are met, not to protect any interest a protester may have in limiting competition through more restrictive specifications. Simplix, B-274388, Dec. 6, 1996, 96-2 CPD ¶ 216 at 5-6. WIT's protest does not include sufficient information to establish the likelihood that the agency in this case violated applicable procurement laws or regulations.

Nevertheless, WIT argues that since our Office has recognized that agencies have a legitimate interest in assessing the experience and past performance of prospective contractors, the Navy must impose the corporate experience subfactor in order to obtain minimally acceptable services. WIT Protest at 10-11. The Navy responds that it made a reasonable determination that corporate experience performing these same services in a remote location is not required for the Navy to obtain a contractor to perform the commercial services at issue here. WIT AR at 8. Further, the Navy argues, such a requirement would overly restrict the already-limited competition. Id. at 10.

An agency has the discretion to determine its needs and the best way to meet them. USA Fabrics, Inc., B-295737; B-295737.2, Apr. 19, 2005, 2005 CPD ¶ 82 at 4. This includes broad discretion in the selection of the evaluation criteria that will be used in an acquisition, and so, our Office will not object to the absence or presence of a particular evaluation criterion (or even the deletion of one), so long as the criteria used reasonably relate to the agency's needs in choosing a contractor that will best serve the government's interests. King Constr. Co., B-298276, July 17, 2006, 2006 CPD ¶ 110 at 3. Here, the Navy has provided a reasonable basis for its

decision to delete the corporate experience subfactor and WIT has given us no reason to question the Navy's actions.

Alleged Ambiguity

WIT also argues that the RFP is ambiguous because it allegedly sets forth both a best value tradeoff between non-price and price factors, but also states that the Navy will base award on an LPTA basis. WIT points to provisions in the RFP advising offerors to "meet or exceed" the agency's requirements under multiple factors, making reference to evaluation of the "content and merit" of the proposals, and specifying the selection of the "most advantageous" offer, as evidence that the RFP requires a tradeoff between non-price and price factors. WIT Opposition to Dismissal at 8-9. The Navy argues that the provisions cited by WIT are, in fact, consistent with making award on a LPTA basis, and that the RFP unambiguously states that award will be made on a LPTA basis. WIT Request for Dismissal at 4-5; WIT AR at 4-5.

None of the language identified by WIT makes the RFP ambiguous. The use of the term "meet or exceed" in this context does not create ambiguity. The RFP does not suggest that the extent to which an offeror exceeds a stated requirement will be a consideration in selecting the contractor, only that the offeror must at least meet each specified standard. Neither does the fact that the agency will evaluate the merit of each proposal under multiple criteria suggest that the agency may select the contractor based on a tradeoff of one offeror's evaluation under those criteria versus another's advantage under other aspects. Finally, the term "most advantageous" is used as part of the statement of the basis of award thus:

The contract . . . will be awarded to the responsible offeror [whose proposal is] . . . the Lowest Price Technically Acceptable offer and most advantageous to the Government.

RFP amend. 2 at 4.

Contrary to WIT's argument, this language is consistent with making award on a LPTA basis; in other words, the lowest-priced technically acceptable proposal is deemed to be the most advantageous to the Navy. See Duncan Sec. Consultants, Inc., B-290574, Aug. 8, 2002, 2002 CPD ¶ 144 at 2 (solicitation reference to award to "most advantageous" proposal did not require the agency to conduct a best value tradeoff rather than make award under the lowest-priced technically acceptable criteria); see also Federal Acquisition Regulation § 15.101 (both tradeoff process

and LPTA process are part of best value continuum). Accordingly, we deny this ground of protest.

The protests are denied.

Susan A. Poling
General Counsel