

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

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: Stinger Ghaffarian Technologies, Inc.

File: B-411041; B-411041.2; B-411041.3

Date: April 29, 2015

James H. Roberts III, Esq., Van Scoyoc Kelly & Roberts PLLC, for the protester.
Devon E. Hewitt, Esq., Protorae Law PLLC, for SAIC, an intervenor.
Abel L. Smith III, Esq., Justin, Martell, Esq., Jean Wulff, Esq., and Caitlin Cullitan, Esq., Federal Motor Carrier Safety Administration, for the agency.
Mary G. Curcio, Esq., Cherie J. Owen, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee's proposal failed to meet solicitation requirement for a private cloud environment is denied where agency reasonably concluded that awardee's private cloud met the private cloud definition established by the solicitation.
 2. Protest that awardee's proposal should have been downgraded based on inherent risks associated with awardee's plan to staff key personnel positions using subcontractor personnel as opposed to the awardee's own personnel is denied where the record reflects that the agency's evaluation of the awardee's proposal was not inconsistent with the terms of the solicitation or otherwise unreasonable.
-

DECISION

Stinger Ghaffarian Technologies, Inc. (SGT), of Greenbelt, Maryland, protests the Federal Motor Carrier Safety Administration's (FMCSA) issuance of a task order¹ to Science Application International Corporation (SAIC), of McLean, Virginia, under solicitation No. DTMC75-14-Q-MCRID, for information technology (IT) services and

¹ The estimated value of the task order is approximately \$71 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award ID/IQ contracts valued in excess of \$10 million. 41 U.S.C. § 4106(f)(1)(B).

IT services-based solutions. SGT asserts that the agency's evaluation of proposals was unreasonable.

We deny the protest.

BACKGROUND

The solicitation,² which was limited to offerors holding a General Services Administration (GSA) Alliant Government Wide Acquisition Contract (GWAC)³, sought proposals to develop operations and maintenance for an existing portfolio of FMCSA systems; develop, modernize, and enhance future-state systems, including transition to a cloud environment; and provide service desk support, configuration management, solution architecture, records management, and maintenance of network and telecommunications services. Agency Report (AR), Tab 2, Solicitation Release Letter, at 1. The solicitation established that the task order would be issued on a best value basis considering the following factors: technical approach (with subfactors for technical understanding, transition to cloud approach, application of information technology methodologies, and contract transition approach); past performance; management approach; quality management approach; and cost/price. RFP at 31-32.

As relevant here, the solicitation required the proposed solution to “provide hosting services within a private cloud environment.” RFP, Performance Work Statement (PWS), § C.3.5. In response to a question from a potential offeror, the agency provided all offerors with the following additional guidance on the requirement for a private cloud environment:

[Question] Please confirm that the term “Private Cloud” refers to the NIST [National Institute of Standards and Technology] publication SP800-145 . . . Please clarify if FMCSA applies any other definition, constraints or requirements to the term “private cloud” that the contractor needs to meet.

² The record inconsistently refers to the solicitation as either a request for proposals (RFP) or request for quotations (RFQ). See e.g., AR, Tab 3.a, GSA eBuy Page, at 1 (RFQ); Tab 2, Solicitation Release Letter, at 1 (RFP); Tab 3.a, Solicitation § L, at 3 (RFP). Because the appropriate characterization of the solicitation as an RFQ or RFP does not affect the outcome of this protest, we refer to the solicitation in this decision as an RFP and the offerors' submissions as proposals for the sake of consistency with the language of the solicitation.

³ The Alliant GWAC is a multiple-award indefinite-delivery/indefinite-quantity (ID/IQ) contract for various IT services.

[Answer] No, no other definitions, constraints, or requirements apply to “private cloud” other than NIST SP800-145.

Agency Report (AR), Tab 4.a, Solicitation Questions and Answers, at 8.

Six offerors responded to the solicitation; after an initial evaluation, the agency established a competitive range of SAIC, SGT, and one other offeror.⁴ AR, Tab 9e, Source Selection Decision (SSD), at 2.

Following oral presentations, multiple rounds of discussions, and the submission and evaluation of final proposal revisions (FPR), the agency assigned SAIC’s proposal an overall rating of exceptional for the non-price/cost factors, with ratings of exceptional for technical approach, low risk for past performance, exceptional for management approach, and good for quality management approach. SAIC’s evaluated price was \$70,982,779. Id. at 3. The agency assigned SGT’s proposal an overall rating of good for the non-price/cost factors, with ratings of good for the technical approach, management approach, and quality management approach factors, and low risk for past performance. SGT’s evaluated price was \$69,886,800. Id. The agency performed a best-value trade-off analysis and selected SAIC for award. In making the trade-off, the agency concluded that SAIC’s proposal was worth its higher price based on its exceptional technical approach, including its superior approach under the transition to cloud subfactor and the contract transition subfactor. Id. Upon learning of the agency’s selection decision, SGT timely filed this protest.

DISCUSSION

SGT raises various challenges to the issuance of the task order to SAIC. We have reviewed each of the allegations and find that they do not provide a basis to sustain the protest. We discuss SGT’s principle arguments below.⁵

⁴ As discussed more fully below, SAIC’s proposal was initially submitted by Leidos. Contracting Officer’s Statement (COS) at 3. During the procurement SAIC and Leidos signed a novation agreement whereby SAIC became the holder of the relevant GSA Alliant GWAC, as well as the prime contractor under the solicitation, and Leidos became SAIC’s subcontractor. Id. at 3, 4. Since Leidos submitted the initial proposal, there are many references in the protest documents to Leidos as the offeror. In this decision, however, we generally refer to SAIC as the offeror since SAIC was the successor in interest to Leidos for the purpose of submission of the proposal responding to the solicitation, and the ultimate awardee of the task order.

⁵ As one of its arguments, SGT complained that the agency assigned its proposal a weakness regarding its roadmap even though it corrected that weakness during discussions. The agency agreed that the weakness was mistakenly listed on SGT’s

(continued...)

Private Cloud Requirement

SGT argues that SAIC's offer of a cloud solution using Amazon Web Service (AWS) infrastructure does not meet the solicitation's requirement of a private cloud. Protest at 5. Specifically, SGT contends that SAIC's solution does not provide exclusive use by a single organization because it is built on shared data infrastructure, including storage and networking that was designed for a multi-tenant cloud service model and does not provide a set of computer hardware, i.e., servers, for the customer's exclusive use. Id. Instead, SGT contends that the AWS solution uses software to separate customers, resulting in a virtual, rather than physical, separation between consumers. SGT asserts that a physical separation of customers was required under the applicable NIST private cloud definition, and that, accordingly, AWS's virtual separation is noncompliant with the solicitation's requirement for a private cloud. The protester also notes that at any given time it is impossible to know on which hardware the agency's data will be stored or workloads executed. Protester's March 9 Comments at 4.

The evaluation of offerors' technical proposals is primarily a matter within the contracting agency's discretion, since the agency is responsible for defining its needs and the best method of accommodating them. Computer Sciences Corp., B-409386.2, B-409386.3, Jan. 8, 2015, 2015 CPD ¶ 34 at 3-4; Highmark Medicare Servs., Inc., et al., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 12. In

(...continued)

debriefing slide, but asserts that the weakness was assigned under technical approach subfactor 3 (application of information technology methodologies), and the error did not result in prejudice to SGT. AR at 11. We agree. There were four subfactors under the technical approach factor for which SGT received ratings of exceptional, good, acceptable, and acceptable, with an overall rating of good. Id. at 10. Without the error, and even if SGT's rating for subfactor 3 were raised to good, its overall rating for technical approach would not increase to the exceptional rating that SAIC was awarded for the technical approach factor. Moreover, SGT's ratings for technical approach subfactors 2 and 4 were good and acceptable and these ratings would not change. SAIC was rated exceptional for these subfactors, and it was based on a consideration of SAIC's superiority under these subfactors that the agency determined that SAIC offered the best value to the government.

SGT also asserted in its initial protest that the agency failed to provide it with meaningful discussions. Since SGT did not respond to the agency's report on this issue we consider it abandoned. IntelliDyne, LLC, B-409107 et al., Jan. 16, 2014, 2014 CPD ¶ 34 at 3 n.3. SGT similarly abandoned issues raised in its supplemental protest concerning SAIC's representations and certifications and the reasonableness of SAIC's proposed prices.

reviewing an agency's evaluation, we will not reevaluate the proposals, but will examine the record of the evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria as well as with procurement law and regulation. Computer Sciences Corp., *supra*. A protester's disagreement with a procuring agency's judgment is insufficient to establish that the agency acted unreasonably. TriWest Healthcare Alliance Corp., B-401652.12, B-401652.13, July 2, 2012, 2012 CPD ¶ 191 at 18.

The agency argues, and we agree, that it reasonably found SAIC's proposal to have met the solicitation's private cloud requirements. In this regard, the agency notes that NIST describes 4 types of cloud deployment: private, community, public, and hybrid. NIST Special Publication (SP) 800-145 at 3. As noted above, in response to a question regarding the solicitation's private cloud requirements, the agency confirmed that no definitions, constraints, or requirements apply other than those set forth in NIST SP 800-145, which defines a private cloud as follows:

Private Cloud--The cloud infrastructure [⁶] is provisioned for exclusive use by a single organization comprising multiple consumers (*e.g.* business units). It may be owned, managed and operated by the organization, a third party, or some combination of them, and it may exist on or off premises.

NIST SP 800-145 at 3.

The agency reports that SAIC proposed a private cloud solution that is based on the **[DELETED]**, which, in the agency's view, meets the NIST definition of a private cloud.⁷ Agency Report at 4. In this regard, the record reflects that SAIC offered an AWS **[DELETED]**. AR, Tab 6.a, SAIC Technical Proposal, at 2. SAIC also explains that by using **[DELETED]**. Intervenor's March 9 Comments at 4. In this manner, the **[DELETED]** offered by SAIC purports to provide a user with dedicated hardware--that is, hardware dedicated to a single customer. *Id.*; AR, Tab 6a, SAIC Proposal Cover Letter and Proposal, at 49.

Our Office asked SAIC and the agency to respond to written questions for the record, and therein provide further details regarding the AWS virtual private cloud.

⁶ NIST defines cloud infrastructure as "the collection of hardware and software that enables the five essential characteristics of cloud computing." NIST SP 800-145 at 2 n.2.

⁷ SAIC acknowledges that the AWS solution is generally associated with a "multi-tenant" environment, where customer information is isolated only through software. However, in response to this solicitation, SAIC offered an AWS solution with a **[DELETED]**. Intervenor's March 9 Comments at 4.

In response to our questions, the agency explained that AWS has provisioned its cloud infrastructure for use by a single organization, which, in the agency's view, meets the definition of private cloud as defined by NIST SP 800-45. Supplemental Agency Report (Mar. 31, 2015) at 5. **[DELETED]**. Supplemental Agency Report (Mar. 31, 2015) at 4. This is accomplished because the server **[DELETED]**. Id.

Specifically, the agency explained as follows:

[DELETED]

This . . . comports with the Agency's initial and consistently held understanding of the awardee's proposal. The FMCSA understands that whenever the Agency uses the cloud (i.e., whenever FMCSA has an instance of use) **[DELETED]**.

Supplemental Agency Report (Mar. 31, 2015) at 4 (citing Intervenor's March 27 Comments at 2).

As noted above, a private cloud, as defined by NIST SP 800-145, must have cloud infrastructure that is provisioned for exclusive use by a single organization comprising multiple consumers. Although the protester argues that there must be hardware, i.e., servers, that are reserved exclusively for the agency, the protester has cited no authority for such a narrow reading of the private cloud definition. In addition, the protester has failed to otherwise demonstrate that the agency's interpretation of the applicable NIST private cloud definition, **[DELETED]** is unreasonable. Accordingly, we have no basis to question the agency's evaluation of SAIC's proposed private cloud environment.

Key Personnel of Leidos/SAIC

SGT also protests that it was unreasonable for the agency to select SAIC as the awardee with Leidos performing as a subcontractor. Supplemental Protest, Jan. 30, 2015, at 1. In this regard, SGT notes that the solicitation required offerors to submit resumes for certain full-time, key personnel, including the program manager, deputy program manager, and financial asset manager. See RFP, PWS § 4.1.1. In addition, offerors were required to propose, as key personnel, a technical lead and a security lead. According to SGT, because Leidos personnel will fill key personnel positions, SAIC's proposal creates performance risk that should have been acknowledged in the agency's evaluation.⁸ Protester's March 20 Comments at 7. In

⁸ In a supplemental protest filed on March 9, 2015, SGT argued for the first time that the agency should have rejected the SAIC proposal as late since SAIC did not enter the procurement until November 21, when it submitted the final proposal revision. SGT was aware that SAIC and Leidos entered into a novation agreement and that

(continued...)

this regard, SGT argues that SAIC's proposal should have received a rating of "no more than an overall 'Marginal'" given the "obvious inherent risks" associated with SAIC subcontracting to Leidos. Id.

As relevant here, on May 5, 2014, the date initial proposals were due, Leidos, the holder of a GSA Alliant GWAC, submitted an offer in response to the solicitation. Contracting Officer's Statement at 3. Subsequently, on July 7, Leidos and SAIC entered into a novation agreement under which SAIC became the transferee and successor in interest to Leidos's GSA Alliant GWAC. Id. On August 22, the GSA Alliant contract was modified to incorporate the novation agreement and SAIC became the holder of the Alliant GWAC. Id. at 4. On October 20, Leidos notified FMCSA that, as a consequence of the novation, SAIC would be the prime contractor if it received the award and Leidos would perform the work as subcontractor. Id. SAIC submitted a final proposal revision on November 7. Id. at 5.

At the time Leidos submitted the initial proposal responding to the solicitation, the agency assigned the proposal a rating of good under the key personnel subfactor based on the qualifications of the personnel offered by Leidos. AR, Tab 9a, Consensus Evaluation at 1. When SAIC became the offeror in connection with the novation of the Alliant GWAC, SAIC advised the agency that Leidos would perform the contract as a subcontractor to SAIC; SAIC did not change any of the proposed key personnel, which were to be provided by Leidos as set forth in the initial proposal submitted by Leidos. AR, Tab 6a, SAIC Proposal, Technical Vol., at 4

Although the protester takes issue with the fact that SAIC's proposed key personnel are all employee's of SAIC's subcontractor, Leidos, there was no prohibition in the Alliant GWAC or the task order solicitation against subcontracting. Further, there was no requirement that key personnel be prime contractor employees. The agency's evaluation of key personnel was based on the personnel offered to perform, and nothing in the record reflects that the agency should have had any reason to believe that these key personnel would not be available to perform the contract. In short, we find no merit in the protester's contention that the agency was required to assign performance risk to SAIC's proposal simply because the key

(...continued)

the agency made award to SAIC no later than January 28, 2015, from information that the agency provided in a dismissal request. SGT knew no later than February 6, 2015 that SAIC submitted the final proposal revision (FPR) since the agency sent SGT a redacted version of the FPR on that date. Accordingly, this basis of protest, filed more than 10 days after SGT knew the basis of protest, is untimely. See 4 C.F.R. § 21.2(a)(2).

personnel were subcontractor personnel.⁹ While the protester disagrees with the agency's evaluation judgments, SGT has not demonstrated that they were unreasonable.

The protest is denied.

Susan A. Poling
General Counsel

⁹ We have previously considered similar situations in which a procuring agency awarded a contract to the successor in interest of an FSS contract where the initial holder of that contract (which was the offeror that submitted the quotation) is subsequently proposed to perform as a subcontractor. See, e.g., IBM U.S. Federal, a division of IBM Corp.; Presidio Networked Solutions, Inc., B-409806.2 et al., Aug. 15, 2014, 2014 CPD ¶ 241 at 21.