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Decision

Matter of: Gateway Ventures, Inc.

File: B-420965

Date: November 22, 2022

James Y. Boland, Esq., Allison M. Siegel, Esq., and Lindsay M. Reed, Esq., Venable LLP, for the protester.

Emilia M. Thompson, Esq., Department of the Navy, for the agency.

Christine Milne, Esq., Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency unreasonably eliminated the protester's proposal from consideration is denied where the record shows that the agency properly determined that the protester's proposal was unacceptable for failing to meet all of the solicitation's pass/fail criteria.

DECISION

Gateway Ventures, Inc., of Norfolk, Virginia, protests the issuance of a task order to McLaughlin Research Corp., of Middletown, Rhode Island, under request for proposals (RFP) No. N66604-22-R-3001, issued by the Department of the Navy, Naval Sea Systems Command, for engineering services to support the agency's towed hull and sensor system programs. The protester contends that the agency unreasonably eliminated its proposal from consideration.

We deny the protest.

BACKGROUND

The facts in this case are straightforward and not in dispute. The RFP contemplates the issuance, on a best-value tradeoff basis, of a cost-reimbursable task order under the Navy's SeaPort Next Generation (SeaPort NxG) indefinite-delivery, indefinite-quantity contracts to perform engineering support services for a 1-year base period and four 1-

year option periods. Agency Report (AR), Tab 2, RFP, amend. 2 at 2-4, 7, 77.¹ Firms were advised that, in making the source selection, the agency would consider five pass/fail requirements; proposed/evaluated cost; and two equally-weighted non-cost factors, technical capability and past performance. *Id.* at 77-81. The RFP required firms to meet all five pass/fail factors in order to be eligible for issuance of the task order, and advised that failure to meet any one of the factors would render a proposal ineligible for issuance of the task order. *Id.* at 77. Because the solicited engineering services required the handling and storage of classified information, one of the pass/fail requirements was that offerors possess a facility security clearance (FSC); the FSC requirement is at the center of Gateway's protest.

The RFP provided that the agency would evaluate the FSC requirement on a pass/fail basis by determining whether an offeror's FSC met the requirements specified in the Department of Defense Contract Security Classification Specification form (DD Form 254) included with the solicitation. *Id.* at 77; RFP, attach. 1, DD Form 254. Offerors had to meet the requirements specified in DD Form 254 at the time of proposal submission. *Id.* During evaluations, the agency conducted an FSC verification check and learned that while Gateway possesses a secret-level facility security clearance, Gateway did not possess a "document safeguarding facility clearance"--specifically the capability to receive, store, and generate classified information--one of the requirements specified in DD Form 254. AR, Tab 3, Facility Verification Notification Checklist at 1; Contracting Officer's Statement (COS) at 5. As a result, the agency eliminated Gateway's proposal for failing to meet the FSC requirement. AR, Tab 6, Source Selection Decision Document at 2-3. The agency issued the task order to McLaughlin for \$33,310,037, and notified Gateway the same day. After requesting and receiving a debriefing, Gateway filed the instant protest.²

DISCUSSION

Gateway argues that the agency erred in rejecting its proposal because the RFP did not require offerors to hold a document safeguarding facility clearance, which Gateway asserts is a separate requirement from a FSC. Protest at 1, 7. Gateway argues in the alternative that whether an offeror possesses a document safeguarding security clearance is a matter of responsibility. *Id.* at 10.

We find no merit to Gateway's protest. In reviewing protests of alleged improper evaluations, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the solicitation's evaluation criteria and

¹ All references to the RFP are to the version issued as Amendment 2.

² Because the value of the task order is over \$25 million, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award, indefinite-delivery, indefinite-quantity contracts awarded under the authority granted in title 10 of the United States Code. 10 U.S.C. § 3406(f)(1)(B).

applicable statutes and regulations. *Tridentis, LLC*, B-418690.4, Jan. 5, 2021, 2021 CPD ¶ 186 at 6.

Here, we find that the solicitation expressly required that offerors hold a document safeguarding facility clearance at the time of proposal submission. The RFP's FSC pass/fail criterion provides: "The Government will verify whether the offeror's facility clearance meets the level specified in the DD Form 254 using Government sources of information for all CAGE [commercial and government entity] codes provided." RFP at 77.

The DD Form 254, in turn, included two references to the requirement for a document safeguarding facility clearance. First, block 1 of the DD Form 254, entitled "Clearance and Safeguarding," required the contractor to possess two discrete security clearance elements. DD Form 254, block 1. Block 1(a), required possession of a secret level FSC for any facility to be used during contract performance and block 1(b)--separately--required possession of a secret level clearance for "Safeguarding For Classified Information/Material Required *At Contractor Facility*." *Id.* (emphasis added). This second element requires the offeror to possess the capability to safeguard classified information at the contractor's facility--in other words, a document safeguarding facility clearance.

Second, block 11 of the DD Form 254 provides that, in performing the contract the contractor will "RECEIVE, STORE, AND GENERATE CLASSIFIED INFORMATION OR MATERIAL." DD Form 254, block 11. Logic dictates that, in order to be able to receive and store classified information or materials, the contractor necessarily must have an approved document safeguarding facility clearance.

Gateway has not argued or demonstrated that it possessed a document safeguarding facility clearance at the time of proposal submission. In this connection, since Gateway has not demonstrated that it possesses a document safeguarding facility clearance, which was required in order to demonstrate an FSC clearance, we therefore conclude that the agency properly rejected its proposal as unacceptable for failing to meet the FSC requirements of the RFP. In addition, in light of the discussion above, we conclude that, because the RFP expressly required offerors to have a FSC at the time of proposal submission, Gateway's failure to possess the required FSC at the time of proposal submission was a matter of its proposal's acceptability, not a matter of the firm's responsibility. *Tridentis, LLC, supra*.

Gateway also argues that the agency improperly found its transition plan unacceptable (transition plan was another of the RFP's pass/fail factors), and that the agency's best-value source selection decision was unreasonable. Protest at 9, 11.

Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. *Facility Services Management, Inc.*, B-418526, B-418526.2, May 20, 2020, 2020 CPD ¶ 180

at 4. Because we have determined that Gateway's proposal was properly eliminated for failing to meet the FSC requirement, and the RFP provided that a failing rating on any one of the five pass/fail requirements would render a proposal ineligible for issuance of the task order, Gateway's proposal is ineligible for award regardless of the merits of its remaining challenges. As a result, Gateway cannot show that its proposal was prejudiced by these remaining issues and we need not consider them further. *TASC, Inc.*, B-412674.2, B-412674.3, Aug. 25, 2016, 2016 CPD ¶ 230 at 7 (protester cannot show prejudice where agency reasonably found protester otherwise ineligible for award).

The protest is denied.

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General Counsel