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Decision

Matter of: LunaTek, LLC

File: B-422882.3

Date: March 26, 2025

Milton C. Johns, Esq., Executive Law Partners PLLC, for the protester.
Max D. Houtz, Esq., Darren S. Gilkes, Esq., William S. Whitman, Esq., James Durkee, Esq., and Gregory T. O'Malley, Esq., Defense Intelligence Agency, for the agency.
Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of corrective action taken in response to a prior post-award protest is denied where the corrective action was within the agency's discretion and appropriate to remedy the concerns raised in the prior protest.

DECISION

LunaTek, LLC, of Albuquerque, New Mexico, protests the terms of an amendment to request for proposals (RFP) No. HHM40224R0005, which was issued by the Defense Intelligence Agency (DIA) and seeks proposals to provide various support services for DIA to be performed in the United Kingdom. The agency initially selected LunaTek for award under the solicitation. Thereafter, another offeror (OCH-Sawdey Joint Venture, LLC) filed a protest with our Office challenging that award. In response, the agency took corrective action, amending the solicitation and requesting submission of revised proposals. LunaTek protests the agency's corrective action, asserting that it is "[not] within the scope of the [agency's] corrective action notice." Protest at 1.¹

We deny the protest.

¹ The page numbers referenced in this decision are the Adobe PDF page numbers in the documents submitted.

BACKGROUND

On April 19, 2024, the agency issued RFP No. HHM40224R0005, seeking proposals to provide various services “in support of USEUCOM’s [U.S. European Command] NATO [North Atlantic Treaty Organization] Intelligence Fusion Center.”² AR, Tab 4, RFP at 159. The solicitation provided for award on a best-value basis and established the following evaluation factors: security, technical/management capability,³ past performance, and price. *Id.* at 99. With regard to price, the solicitation identified various labor categories for which offerors were required to propose fixed-price fully burdened labor rates. *Id.* at 89. With regard to the evaluation of price, the solicitation stated that proposals would be evaluated for reasonableness, but also stated: “[t]he Government may reject any proposal that is evaluated to be . . . unrealistically high or low in price.” *Id.* at 98, 105.

On or before May 31, proposals were submitted by two offerors: OCH-Sawdey and LunaTek. Thereafter, the agency evaluated the proposals and assessed identical adjectival ratings to each proposal under the non-price factors. LunaTek’s proposal offered the lower price of \$7,287,075; OCH-Sawdey’s proposal offered a price of \$7,841,265. Source Selection Decision at 1.

On August 15, the agency selected LunaTek’s proposal for award on the basis of its lower price. *Id.* On August 30, following a debriefing, OCH-Sawdey filed an initial protest challenging various aspects of the evaluation and source selection decision;⁴ on September 26, OCH-Sawdey filed a supplemental protest based on the agency’s failure to perform any price realism analysis. Upon reviewing the protest, the agency identified various concerns regarding its evaluation and prior source selection decision, including an acknowledgment that it had not performed any price realism analysis.⁵ Thereafter, the agency filed a notice of corrective action, stating:

² The solicitation states that “The U.S. element of the NATO Intelligence Fusion Center (NIFC) provides command and control, administration, operational support, analysis, collection management, liaison, and other key intelligence functions to the NIFC.” Agency Report (AR), Tab 4, RFP at 121.

³ Under the technical/management factor, the solicitation established three subfactors: technical experience, staffing, and retention. *Id.* at 100.

⁴ Among other things, the initial protest challenged the agency’s evaluation under the technical/management capability and past performance evaluation factors.

⁵ The agency also acknowledged flaws regarding its evaluation of past performance and determination of technical equality. AR, Tab 8, Corrective Action Determination at 1-2.

[T]he agency will, at a minimum, re-evaluate all eligible offerors' proposals and make a new source selection decision. . . . In addition, the agency may take any other form of corrective action that it deems appropriate.

Notice of Corrective Action at 1.

GAO subsequently dismissed OCH's protests based on the agency's corrective action. *OCH-Sawdey Joint Venture, LLC*, B-422882, B-422882.2, Oct. 7, 2024 (unpublished decision).

Thereafter, the agency amended the solicitation and conducted discussions. Among other things the solicitation amendments: (1) eliminated the provisions regarding a price realism analysis; (2) revised the weighting of the evaluation factors and subfactors; (3) revised the requirements under the security evaluation factor; and (4) revised the requirements under the technical/management capability and past performance evaluation factors to provide for consideration of the technical expertise of predecessor companies, key personnel, and subcontractors. Contracting Officer's Statement (COS) at 7-11; see AR, Tab 19.51 RFP amend. at 135-140, 158-164.

On December 17, the agency notified offerors that discussions were closed and requested that revised proposals be submitted by December 20. On December 19, LunaTek filed this protest.⁶

DISCUSSION

Lunatek first asserts that the agency's actions are beyond "the scope of the [agency's] corrective action notice." Protest at 1. More specifically, LunaTek objects to the agency's request for submission of revised proposals, asserting that "[t]he appropriate corrective action is to evaluate the original proposals for price realism--not to amend the solicitation or accept new pricing submissions." Protest at 3-4. In this context, Lunatek

⁶ LunaTek did not submit a revised proposal by December 20. On January 8, the agency notified Lunatek that, since it had failed to respond to the agency's request, Lunatek would be ineligible for award. On January 9, LunaTek submitted a supplemental protest asserting that the agency's January 8 notification was improper because, pursuant to the Competition in Contracting Act (CICA), "the award of any contract under this solicitation must be stayed until resolution of the GAO protest." Supp. Protest at 2. First, while an agency is generally precluded from awarding a contract while a pre-award protest is pending, it is not required to suspend the closing date for receipt of proposals or refrain from evaluating offerors' proposals. See *LifeCare Mgmt. Partners*, B-297078, B-297078.2, Nov. 21, 2005, 2006 CPD ¶ 8 at 10-11 n.16; *Northwest Express Ltd.*, B-246431, Feb. 28, 1992, 92-1 CPD ¶ 244 at 2 n.1. Further, an agency's alleged non-compliance with the CICA stay provisions does not constitute a basis for protest pursuant to GAO's regulations. 4 C.F.R. § 21.6. Accordingly, LunaTek's supplemental protest will not be considered.

notes that there are “no new pricing elements [required by the amended solicitation],” and asserts that “[a]llowing competitors to revise their pricing . . . undermines the integrity of the procurement process, violating FAR 15.306(e)(1), which prohibits actions that give one offeror an unfair advantage.” *Id.* at 4.

The agency responds by first noting that offerors were clearly advised that the agency’s corrective action was not limited to reevaluation of offerors’ proposals; rather, the agency’s corrective action stated: “the agency may take any other form of corrective action that it deems appropriate.” See Notice of Corrective Action at 1. Next, the agency notes that, upon reviewing its prior evaluation and source selection record, it found multiple flaws, as well as aspects of the solicitation that failed to properly reflect the agency’s requirements; accordingly, it amended the solicitation to address those concerns. The agency elaborates that it amended the solicitation to eliminate any reference to price realism because a price realism analysis is not required in procurements for services with fixed-price labor rates. Next, the agency explains that it amended the solicitation to reflect revised requirements under the technical/management capability and past performance evaluation factors--to expand consideration of technical expertise to include that held or demonstrated by predecessor companies, key personnel, and subcontractors. COS at 7-11; AR, Tab 19.51, RFP amend. at 136-138, 158-164. Finally, the agency notes that the solicitation was amended to reflect “newly enacted security clearance requirements” that were published on July 19, 2024. COS at 10; see AR, Tab 19.51, RFP amend. at 135, 162-163.

In summary, the agency states that the changes made to the solicitation’s provisions reflected material changes to the agency’s requirements and, accordingly, that offerors should be permitted to revise their proposals to reflect those revised requirements. On this record, the agency maintains that the scope of its corrective action was reasonable and consistent with the agency’s concerns and, accordingly, that Lunatek’s protest should be denied.

As a general rule, agencies have broad discretion to take corrective action where the agency has determined that such action is necessary to ensure fair and impartial competition. *MSC Indus. Direct Co., Inc.*, B-411533.2, B-411533.4, Oct. 9, 2015, 2015 CPD ¶ 316 at 5; *Zegler, LLC*, B-410877, B-410983, Mar. 4, 2015, 2015 CPD ¶ 168 at 3. The details of implementing the corrective action are within the sound discretion and judgment of the contracting agency, and we will not object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. *DGC Int’l*, B-410364.2, Nov. 26, 2014, 2014 CPD ¶ 343 at 3; *Northrop Grumman Info. Tech., Inc.*, B-404263.6, Mar. 1, 2011, 2011 CPD ¶ 65 at 3. In this context, agencies are not prohibited from taking corrective action in the form of a new competition where the original awardee’s prices have been disclosed. *Jackson Contractor Grp., Inc.*, B-402348.2, May 10, 2010, 2010 CPD ¶ 154 at 3. The possibility that the contract may not have been awarded based on a fair determination of the most advantageous proposal has a more harmful effect on the integrity of the competitive procurement system than does the possibility that the

original awardee will be disadvantaged in the reopened competition. *Partnership for Response and Recovery*, B-298443.4, Dec. 18, 2006, 2007 CPD ¶ 3 at 4; *PCA Aerospace, Inc.*, B-293042.3, Feb. 17, 2004, 2004 CPD ¶ 65 at 4.

Here, based on our review of the record, we find no basis to question the scope of the agency's corrective action, including its amendments to the solicitation and request for submission of revised proposals. First, as noted above, the agency's notice of corrective action clearly stated that, in addition to reevaluating proposals and making a new source selection decision, the agency "may take any other form of corrective action that it deems appropriate." See Notice of Corrective Action at 1. Further, for the reasons discussed above, we find no basis to question the agency's assertion that the solicitation amendments reasonably reflect the agency's requirements or address flaws that it identified in its prior evaluation. In this context, the protester has not meaningfully challenged any of the bases for the various solicitation amendments or suggested that the changes are immaterial. Rather, LunaTek simply asserts that the agency should be precluded from obtaining any further submissions from competing offerors because such submissions will "undermine the integrity of the procurement process." Protest at 4. As noted above, the potential harm caused by awarding a contract based on proposals that do not address all of the agency's actual requirements is greater than that caused by reopening the procurement. See *Partnership for Response and Recovery, supra*; *PCA Aerospace, Inc., supra*.

The protest is denied.

Edda Emmanuelli Perez
General Counsel