



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: Solution One Industries, Inc.

File: B-409713.3

Date: March 3, 2015

Bryant Banes, Esq., Sean Forbes, Esq., and Stormy N. Mayfield, Esq., Neel, Hooper & Banes, PC, for the protester.
Wade L. Brown, Esq., Debra J. Talley, Esq., and Rod Wolthoff, Esq., Department of the Army, for the agency.
Gary R. Allen, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency's implementation of corrective action is inconsistent with the corrective action that was originally proposed is denied where the agency's actions were an appropriate means to address the agency's concerns.
2. Protest that agency's acceptance of price revisions in final proposals was improper is denied where the request for final proposal revisions did not limit the scope of proposal revisions.

DECISION

Solution One Industries, Ltd., of Killeen, Texas, protests the award of a contract to King George, LLC, of Fort Worth, Texas under request for proposals (RFP) No. W912NW-14-R-0001, issued by the Department of the Army for motor vehicle operations and maintenance services at the Corpus Christi Army Depot motor pool facility. RFP at 3. Solution One protests that, following an earlier protest, the agency improperly implemented corrective action and conducted misleading and unequal discussions with offerors.

We deny the protest.

BACKGROUND

The RFP, issued on December 17, 2013, was set aside for small disadvantaged businesses participating in the Small Business Administration's 8(a) program under NAISC Code 81130--Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance. RFP at 1. The RFP provided for the award of a single fixed-price contract for a base year and two option years, based on the lowest-priced, technically acceptable offer. RFP at 3, 22.

The agency received and evaluated five proposals, including those from Solution One and Goldbelt Specialty Services, LLC, and ultimately selected the proposal submitted by Solution One for award. Goldbelt protested the agency's award decision, arguing, among other things, that the Army's evaluation of Solution One's proposal under the key personnel subfactor was unreasonable. During that protest, the cognizant GAO attorney held an outcome-prediction alternative dispute resolution telephone conference with the parties, indicating that the key personnel subfactor did not appear to have been evaluated in a manner consistent with the solicitation requirements. In response, the agency advised our Office that it intended to take corrective action, and sent its notice to that effect to our Office and the parties with the following transmittal email:

Attached is the Army's notice of correct[ive] action and request for dismissal of the above protest. Although the Army reserves the right to seek clarifications or to open discussions, it does not promise to do [so], and is not planning to take actions that would result in permitting a change in the pricing proposals at this time.

Protest, Exh. 3, Agency email of July 3, 2014. The formal notice of corrective action stated that the Army intended to reevaluate proposals under the key personnel subfactor and to make a new award decision, and expressly reserved the right to open discussions, if deemed necessary. Based on this proposed corrective action, we dismissed Goldbelt's protest as academic. Goldbelt Specialty Services, LLC, B-409713, July 7, 2014.

The agency's source selection evaluation board (SSEB) reevaluated the technical proposals and determined that none was technically acceptable. Agency Report (AR), Tab 4, Competitive Range Determination. On July 31, 2014, the agency opened discussions with offerors to address technical deficiencies in initial proposals, and requested final proposal revisions (FPRs) by August 8. On August 5, Goldbelt filed a second protest, timely challenging the agency's right to conduct discussions and arguing that such discussions favored Solution One by allowing the firm to correct a deficiency in its proposal that rendered it technically unacceptable. Goldbelt Specialty Servs. LLC, B-409713.2, Oct. 15, 2014, 2014 CPD ¶ 306. We denied Goldbelt's protest, finding that the solicitation reserved the agency's right to conduct discussions and that, in the circumstances presented,

discussions were an appropriate means to address the agency's concerns. Noting that the purpose of discussions, as stated in the Federal Acquisition Regulation (FAR), is to address deficiencies and significant weaknesses in proposals, see FAR § 15.306(d)(3), we found no basis on which to conclude that the agency's actions were improper.

The agency received and reviewed FPRs from the five offerors, and determined that only the FPRs submitted by Solution One, Goldbelt, and King George, LLC were technically acceptable. AR, Tab 7, Source Selection Decision, at 4. Since King George's price was lowest, King George was selected for award. Id. at 5. Notice of the award was sent to the unsuccessful offerors on November 17. After filing a protest with the agency, Solution One filed this protest with our Office.

DISCUSSION

Solution One raises various arguments challenging the agency's implementation of its corrective action, in essence complaining that the agency improperly permitted offerors to revise their price proposals and that this exceeded the actions the agency initially proposed. As discussed below, none of the protester's arguments provide a basis for questioning the corrective action or award decision.¹

Contracting officials in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure fair and impartial competition. Patriot Contract Servs. LLC, et al., B-278276.11 et al., Sept. 22, 1998, 98-2 CPD ¶ 77 at 4. We will not object to the specific proposed corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. Networks Elec. Corp., B-290666.3, Sept. 30, 2002, 2002 CPD ¶ 173 at 3.

Here, Solution One argues that the agency improperly allowed other offerors to revise their prices, which the protester claims "deviat[ed] from the corrective action notice." Protest at 2. Further, the protester claims that discussions were conducted in an unequal manner, alleging that Solution One, in contrast to the other offerors, was not afforded an opportunity to revise its pricing proposal. We find these arguments both belied by the record and without merit, as discussed below.

With respect to the protester's insistence that the agency had represented that the corrective action would not include permitting offerors to revise their prices, and that

¹ Although we have considered all of the protester's arguments, we do not address them all. For example, in its comments on the agency report, Solution One argues for the first time that the agency only could permit offerors to revise prices by amending the solicitation. We find none of Solution One's arguments provide a timely basis to question the agency's actions or to sustain the protest.

it was therefore improper for the agency to accept pricing revisions from the other offerors, we find nothing in the record to support this assertion. The protester repeatedly cites the agency's email of July 3, transmitting its notice of corrective action, as support for the premise that the Army limited its corrective action to technical (and not price) matters. Protest at 4-5. The protester's reliance on this email is misplaced. Even were we to construe the agency's transmittal letter as expressing a limit in the scope of corrective action--which we do not--it would not be dispositive here. It is the agency's discussion questions and request for FPRs that determine whether offerors could submit, and the agency could accept, pricing revisions in FPRs, and not a statement made by contracting officials when the need for corrective action was first recognized.

Here, while the invitation to submit FPRs did not expressly call for price revisions, it did not limit the scope of changes that could be made to proposals. The general rule in this regard is that offerors in response to an agency request that discussions be opened or reopened may revise any aspect of their proposals, including portions of their proposals which were not the subject of discussions. See Velos, Inc. et al., B-400500, et al., Nov. 28, 2008, 2010 CPD ¶ 3 at 11; American K-9 Detection Servs., Inc., B-400464.6, May 5, 2009, 2009 CPD ¶ 107 at 7; Partnership for Response and Recovery, B-298443.4, Dec. 18, 2006, 2007 CPD ¶ 3 at 3. Since the agency's request for FPRs did not limit the scope of revisions in any way, we find no basis to object to the agency's acceptance of revised price proposals.

To the extent the protest is based on an assertion that the acceptance of FPRs with revised prices was improper simply because it exceeded the corrective action initially proposed, we disagree with the protester's premise that an agency's discretion in implementing corrective action is limited in this way.² In our view, the corrective action was appropriate to remedy the concern that caused the agency to take corrective action, and well within the broad discretion afforded to contracting agencies in these circumstances. While the agency's initial concern was with its technical evaluation, this concern was overtaken by the agency's reevaluation of technical proposals, which led the contracting officer to conclude that discussions were necessary in order to obtain acceptable proposals. Protest, Exh. 4, Solution One Discussions Letter, at 1. The agency is not required to limit the scope of

² Moreover, the protester's premise appears to confuse corrective action (in which a procuring agency attempts to remedy an impropriety in some aspect of a procurement to ensure a fair and impartial competition) with settlement negotiations (in which adversarial parties engage in some form of give-and-take and reach an agreement that forms the basis for dismissal or resolution of a complaint). Corrective action is not an agreement that, by itself, confers rights on a protester; rather, the actions taken in implementing corrective action are subject to the same laws and regulations as any other procurement actions.

proposal revisions in such circumstances. See Partnership for Response and Recovery, B-298443.4, Dec. 18, 2006, 2007 CPD ¶ 3 at 3.

Solution One also argues that the agency conducted unequal discussions, favoring the other offerors, because it allegedly informed the others that they could revise their pricing proposals but did not similarly inform Solution One.

The Federal Acquisition Regulation (FAR) provides that, when an agency conducts discussions with one offeror, it must conduct discussions with all offerors whose proposals are determined to be in the competitive range, and it must then allow them to submit revised proposals. FAR §§ 15.306(d)(1), 15.307(b); WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 5-6.

Again, we find no support in the record for the protester's assertions. The protester has neither shown that the discussions letter it received limited the scope of revisions permitted in Solution One's FPR, nor has it shown that other offerors were given any more explicit guidance than the protester with respect to proposal revisions. The discussions letter sent to each offeror addressed areas specific to each proposal, but did not limit proposal revisions. Accordingly, this opportunity permitted each offeror, including Solution One, to revise any aspect of its proposal.³ On this record, Solution One's assertions provide no basis to sustain its protest.

The protest is denied.

Susan A. Poling
General Counsel

³ To the extent that Solution One is now challenging the propriety of the language permitting final proposal revisions in the discussions letter, its challenge is untimely. See our Bid Protest Regulations, 4 C.F.R. § 21.2(a).