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**Comptroller General
of the United States**

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

Decision

Matter of: CACI Technologies, Inc.

File: B-411282

Date: June 18, 2015

Craig S. King, Esq., Kevin R. Pinkney, Esq., and Patrick R. Quigley, Esq., Arent Fox LLP, for the protester.

Gwendolyn Iaci, Esq., and Rizlane Riahi, Esq., Department of the Navy, Naval Sea Systems Command, for the agency.

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

DIGEST

Protest that agency improperly rejected protester's proposal and failed to engage in discussions is denied where record shows that protester failed to include key personnel resumes that were identified as a material solicitation requirement, and solicitation provided that the agency contemplated issuing task order without discussions.

DECISION

CACI Technologies, Inc., of Chantilly, Virginia, protests the rejection of its proposal under request for proposals (RFP) No. N00024-13-R-3328, issued by the Department of the Navy, Naval Sea Systems Command, for professional support services for the agency's program executive office. CACI maintains that the agency improperly misevaluated its proposal and also failed to engage in discussions with the firm.

We deny the protest.

The RFP contemplates the issuance, on a best value basis, of a task order to the firm submitting the proposal deemed most advantageous to the government, considering cost and several non-cost evaluation factors.¹ RFP at 82. As is

¹ The RFP contemplates a competition among contractors that hold indefinite-delivery, indefinite-quantity (IDIQ) contracts under the agency's Seaport-Enhanced
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relevant to the protest, the RFP required, among other things, that offerors include resumes for all proposed key personnel. RFP at 71. The RFP identified a total of 9 key personnel positions and included detailed qualification requirements for each individual being proposed. RFP at 70-71. The RFP provided that the resumes would be evaluated as the second most important subfactor under the most important non-price factor, technical capability and experience. RFP at 83.

The record shows that, in submitting its proposal, CACI (the current incumbent) failed to include the required key personnel resumes. The agency evaluated and rejected the CACI proposal, finding that, because of CACI's failure to include the key personnel resumes, its proposal was noncompliant, and therefore ineligible for award. Agency Report (AR) exh. 3, Proposal Review for CACI. Specifically, the agency advised CACI as follows:

CACI's failure to follow the instructions to submit the key personnel resumes prevents the Government from fully evaluating its proposal. The omission is particularly problematic where Key Personnel is the second most important subfactor within the most important factor (Technical Capability and Experience) for evaluation purposes (See Solicitation, Section M, § 2.1(b)[]).

Id. at 2.

CACI concedes that it failed to include the required key personnel resumes with its proposal and asserts that this was an administrative error on its part. In its original letter of protest, CACI asserted that, despite the absence of the required resumes, its proposal nonetheless included much of the information that would have been found in those resumes; the protester therefore maintained that, even without the resumes, the agency should have found its proposal acceptable. In addition, the protester asserted that the agency unreasonably failed to engage in discussions with the firm in order to afford it an opportunity to correct its proposal.

In its report responding to the protest, the agency described the RFP's material informational requirements that were not included in the CACI proposal, that, under the RFP's terms, should have been included in resumes prepared in accordance with the solicitation's instructions. AR at 15-18. For example, the agency points out that CACI's proposal does not provide information relating to the details of the educational background of its proposed key personnel (including the dates on which

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multiple-award IDIQ contract program. The estimated value of the task order at issue exceeds \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award IDIQ contracts. 10 U.S.C. § 2304c(e)(1)(B).

their proposed candidates received their degrees, the degrees held, and the schools from which the degrees were awarded); their related professional job experience and training; and the special experiences, qualifications and certifications held by their proposed candidates. Id.

In commenting on the agency's report, CACI acknowledged that allowing the firm to submit the resumes after the fact would constitute discussions rather than clarifications with the firm because, without the resumes, the firm's proposal omitted material information required by the RFP. CACI specifically represented as follows:

It is not in dispute that: (i) the Key Personnel are identified in CACI's proposal; (ii) their qualifications are discussed in the proposal; (iii) their resumes are referenced in the proposal; and (iv) the omission of those resumes was pure administrative error. It is also not disputed that the omitted resumes address a substantive requirement of the solicitation — so the omission cannot be corrected by mere "clarifications." Submission of the resumes would properly occur only as a result of discussions and proposal revisions.

Protester's Comments, May 7, 2015, at 6.

Accordingly, we find that CACI has conceded that its proposal lacked the substantive information necessary to find it acceptable, as determined by the agency. Thus, the only remaining issue is whether the agency was required to engage in discussions with CACI in order to allow the firm to cure the material deficiency that existed in its initial proposal.

CACI argues that the provisions of Defense Acquisition Regulations Supplement (DFARS) § 215.306 require the agency to engage in discussions when the value of the acquisition equals or exceeds \$100 million (which is the case here, based on CACI's proposed cost). In addition, CACI argues that the agency must make a "reasoned and reasonable" determination concerning whether or not engaging in discussions is in the government's best interest. Id. at 7-10.

We find no merit to CACI's argument. The agency specifically has represented that it intends to issue this task order based on initial proposals without discussions. Agency Supplemental Report, at 3. The RFP also advised offerors that the agency intended to issue the task order without engaging in discussions. The RFP provided: "The Government intends to evaluate proposals and award the Task Order upon initial proposals. Therefore, the Offeror's initial proposal should contain the Offeror's best terms from a cost or price and technical standpoint." RFP at 81. Where, as here, a solicitation advises offerors that the agency intends to make award based on initial proposals, the agency is not required to engage in discussions in order to afford a protester the opportunity to cure one or more deficiencies in its proposal; rather, it is the protester's affirmative obligation to

demonstrate the merits of its proposal. Korea Resources Environment Co., Ltd., B-409996, Oct. 3, 2014, 2014 CPD ¶ 298 at 3-4.

In addition, the provisions of DFARS § 215.306 have no application to a procurement conducted under Federal Acquisition Regulation (FAR) part 16, which governs task order procurements under multiple-award IDIQ contracts like the Navy's Seaport Enhanced multiple-award vehicle at issue here. DFARS § 215.306 provides as follows: "For acquisitions with an estimated value of \$100 million or more, contracting officers should conduct discussions. Follow the procedures at FAR 15.306 (c) and (d)." However, FAR part 16 specifically provides that the procedures detailed in FAR part 15.3 (including those in FAR §§ 15.306(c) and (d)) are inapplicable to the instant requirement. See FAR § 16.505(b).²

Finally, CACI's argument that the agency was required to make a "reasoned and reasonable" determination regarding whether it was in the government's best interest to engage in discussions also is without merit. We are aware of no requirement for an agency affirmatively to make the "reasoned and reasonable" determination that CACI advocates was required here. In fact, as we have previously held, we generally will not review an agency's decision whether or not to engage in discussions because there are no statutory or regulatory criteria specifying when an agency should or should not initiate discussions, nor is there any requirement for an agency to document its decision not to engage in discussions. Kiewit Louisiana Co., B-403736, Oct. 14, 2010, 2010 CPD ¶ 243 at 3. As noted, where, as here, a solicitation advises offerors that an agency intends to make award on the basis of initial proposals, the agency is under no obligation to engage in discussions, and properly may make award based on initial proposals. Mare Island Dry Dock, LLC, B-410821, Feb. 26, 2015, 2015 CPD ¶ 100 at 5.

In the final analysis, CACI's position essentially is that it is in the government's best interest to engage in discussions because doing so will allow CACI to continue to participate as a competitor for the agency's requirement. While it appears to be in CACI's best interest for the agency to engage in discussions, there is no showing in the record or by CACI that, objectively, it is in the government's best interests to open discussions here.

The protest is denied.

Susan A. Poling
General Counsel

² See also, DFARS § 201.303(a)(iii), which states that the provisions of the DFARS must parallel the FAR numbering system. Thus, DFARS § 215.306 is intended to supplement the provisions at FAR § 15.306.