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Decision

Matter of: Management & Training Corporation--Costs

File: B-415673.3

Date: August 27, 2018

Alex P. Hontos, Esq., and Daniel Falknor, Esq., Dorsey & Whitney LLP, for the protester.
Peter J. Dickson, Esq., Dennis A. Adelson, Esq., and Vijaya S. Surampudi, Esq., Department of Labor, for the agency.
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DIGEST

Request for recommendation that protest costs be reimbursed is denied on the basis that the protest allegations were not clearly meritorious.

DECISION

Management & Training Corporation (MTC), of Centerville, Utah, requests that we recommend reimbursement of the costs it incurred in filing and pursuing its protest challenging the Department of Labor's award of a contract to Adams & Associates, Inc., of Reno, Nevada, under request for proposals (RFP) No. DOL-ETA-16-R-00059 for the operation of the Gary Job Corps Center in San Marcos, Texas.

We deny the request.

BACKGROUND

The agency issued the RFP on August 9, 2016, seeking to award a cost-plus-incentive-fee contract for a 2-year base period with three option years to operate the Gary Job Corps Center. Agency Report (AR), Tab 1, RFP, at 2, 28.¹ The RFP provided for

¹ Unless otherwise indicated, citations to the protest record are to documents submitted by the protester and agency during the development of MTC's February 6, 2018, protest (B-415673.2).

award on a best-value tradeoff basis and established the following evaluation factors: technical approach, relevant experience, staff resources, past performance, and business management/costs. RFP at 89-95.

On or before November 14, 2016,² the agency received proposals from three offerors. Following an inadvertent disclosure of the agency's independent government cost estimate (IGCE), the agency provided the IGCE to all three offerors and requested revised cost proposals by July 19, 2017. Protest, Exh. 4, E-mail Correspondence Between MTC and DOL, July 10, 2017. Thereafter, the agency evaluated the final proposal revisions (FPRs) and awarded the contract to Adams.

On November 6, MTC filed a protest, which led the agency to take voluntary corrective action and our Office to dismiss the protest as academic. Management & Training Corp., B-415673, Dec. 6, 2017 (unpublished decision). On January 31, 2018, the agency reaffirmed the award to Adams, and on February 6, MTC filed a second protest with our Office. In its protest, MTC raised numerous challenges primarily to the agency's evaluation of its and Adams's proposals and the agency's award decision. Protest at 2-3.

On March 8, the agency filed its report responding to MTC's protest, in which it defended its evaluation and award decision. On March 16, the agency advised our Office that it intended to take corrective action, citing concerns about "the identification of potential procurement errors in the agency record that could make it more difficult for GAO to render a meaningful review and resolution of this protest." Notice of Corrective Action, Mar. 16, 2018, at 1. Accordingly, we again dismissed the protest as academic. Management & Training Corp., B-415673.2, Mar. 22, 2018 (unpublished decision). Thereafter, MTC filed its request for our recommendation that it be reimbursed for its protest costs.

DISCUSSION

MTC contends that reimbursement is warranted because its protest included clearly meritorious protest grounds, and the agency's corrective action, taken after it filed its initial report, was unduly delayed. Request for Costs at 2.

Where a procuring agency takes corrective action in response to a protest, our Office may recommend reimbursement of protest costs where, based on the circumstances of the case, we determine that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. 4 C.F.R. § 21.8(e); AAR Aircraft Servs.--Costs, B-291670.6, May 12, 2003, 2003 CPD ¶ 100 at 6. That is, as a prerequisite to our recommendation that protest costs be reimbursed, the protest must not only have been meritorious, but it also must have been clearly meritorious, i.e., not a close question.

² While proposals were initially due by October 11, an amendment extended the deadline to November 14. AR, Tab 6, RFP amend. 4, at 1.

InfraMap Corp.--Costs, B-405167.3, Mar. 26, 2012, 2012 CPD ¶ 123 at 3. A protest is clearly meritorious where a reasonable agency inquiry into the protester's allegations would reveal facts showing the absence of a defensible legal position. First Fed. Corp.--Costs, B-293373.2, Apr. 21, 2004, 2004 CPD ¶ 94 at 2.

We disagree with MTC that its protest grounds were clearly meritorious; in this regard, none of its arguments were without a defensible legal position. Below, we address a few representative arguments.

As one example, MTC alleges that the agency "failed to engage in meaningful discussions that were not misleading" when the agency requested the offerors to submit revised cost proposals following the disclosure of the agency's IGCE in July 2017. Protest at 11. In this regard, MTC contends that the agency's request for FPRs constituted discussions; that the agency's release of the IGCE and refusal to provide additional information about the IGCE misled MTC to [redacted] its proposed staffing levels; that the agency then improperly assessed a weakness for MTC's proposed staffing levels in its FPR; and that the agency did not provide another opportunity "throughout the discussions period or at any time . . . [including] during the corrective action period [following MTC's initial protest]" for MTC to address this weakness. Id. at 11-13.

Discussions, when conducted, must be meaningful; that is, they may not mislead offerors and must identify proposal deficiencies and significant weaknesses that could reasonably be addressed in a manner to materially enhance the offeror's potential for receiving award. Federal Acquisition Regulation (FAR) § 15.306; Serco Inc., B-405280, Oct. 12, 2011, 2011 CPD ¶ 237 at 11. Although discussions must address deficiencies and significant weaknesses identified in proposals, the precise content of discussions is largely a matter of the contracting officer's judgment. FAR § 15.306(d)(3); American States Utilities Servs., Inc., B-291307.3, June 30, 2004, 2004 CPD ¶ 150 at 5. To satisfy the requirement for meaningful discussions, an agency need only lead an offeror into the areas of its proposal requiring amplification or revision; all-encompassing discussions are not required, nor is the agency obligated to "spoon-feed" an offeror as to each and every item that could be revised to improve its proposal. ITT Fed. Sys. Int'l Corp., B-285176.4, B-285176.5, Jan. 9, 2001, 2001 CPD ¶ 45 at 7.

Here, we find no basis to conclude that the agency misled MTC or failed to conduct meaningful discussions. To the extent MTC believes the agency was required to provide more detail to supplement the released IGCE and guide the offerors in revising their proposals, we find that the agency was not required to do so. Further, as the agency explains and as the record shows, the agency's assessment of a weakness to MTC's proposed reduced staffing levels in its FPR did not rise to the level of a "significant" weakness. AR at 2-4; AR, Tab 16, Source Selection Decision (SSD), at 15. Thus, the agency was not required by the FAR to raise the weakness with MTC at any point. In conclusion, we do not find any of MTC's arguments with regard to discussions to be clearly meritorious.

As another example, MTC alleges that the agency “misapplied the RFP’s evaluation criteria by ‘double counting’ Adams’s additional proposed residential staff.” Protest at 14. MTC bases its claim solely on the following statement from the debriefing given to MTC: “[I]n addition to showing superiority in technical approach, past performance, and staff resources, Adams proposed utilizing approximately [redacted] than the government model.” Protest, Exh. 2, Debriefing, Feb. 1, 2018, at 5. In MTC’s view, this means the agency improperly gave Adams “credit” for its proposed staffing under both the staff resources factor and in the SSD. Protest at 14.

We find no merit to this aspect of MTC’s protest. As a preliminary matter, we are unconvinced by MTC’s underlying premise that identifying some proposal feature or element as a discriminator in the SSD necessarily shows that the agency gave it greater weight in its evaluation; merely highlighting a particular aspect of an offeror’s proposal in the SSD is, by itself, unobjectionable. See, e.g., SGT, Inc., B-405736, Dec. 27, 2011, 2012 CPD ¶ 149 at 10.

Moreover, in the agency’s view, the source selection authority “cited that element in his best value determination, not to give Adams credit again, but rather to identify that element as a discriminator, or a differentiating benefit, in support of his best value decision.” AR at 8; see also SSD at 35. We also note that the debriefing given to MTC included a similar explanation, but MTC did not acknowledge this detail in its protest. See Debriefing at 5 (“The government viewed this [proposed staffing] as a strengthening of oversight as well as offering a high likelihood of secure and safe center operations. This was considered a benefit to the Job Corps program.”). We find no reason to question the agency’s explanation in this regard, and we do not find MTC’s concerns here to be clearly meritorious.

Finally, MTC raises numerous arguments that are in addition to, or variations of, those specifically discussed above, including, but not limited to: allegations that the agency unreasonably evaluated MTC’s past performance; that the agency demonstrated bias against MTC; that the agency failed to conduct a cost reasonableness analysis and conducted a flawed, arbitrary, and capricious cost realism analysis; and that the agency conducted a flawed and inadequately documented best-value tradeoff decision. We have reviewed all of MTC’s allegations and find that they do not meet the clearly meritorious standard for our Office to recommend reimbursement of protest costs.

The request is denied.

Thomas H. Armstrong
General Counsel