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Decision

Matter of: Systems Implementers, Inc.

File: B-418963.4

Date: April 19, 2021

David S. Black, Esq., Gregory R. Hallmark, Esq., and Amy L. Fuentes, Esq., Holland & Knight LLP, for the protester.

Alexis J. Bernstein, Esq., and Allison Johnson, Esq., Department of the Air Force, for the agency.

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DIGEST

Protest challenging the adequacy of discussions and limitation of initial proposal revisions in connection with the agency's ongoing source selection process is dismissed as premature.

DECISION

Systems Implementers, Inc., a small business of Clearfield, Utah, protests the Department of the Air Force's implementation of corrective action taken in response to a prior protest filed in connection with request for proposals (RFP) No. FA8201-20-R-0005, issued by the agency to obtain enterprise information technology (IT) services. As part of its corrective action, the agency reopened discussions with offerors. The protester argues that the agency is conducting discussions in a misleading and not meaningful manner.

We dismiss the protest as premature.

BACKGROUND

On January 23, 2020, the agency issued the solicitation, seeking proposals for IT services for its Hill Enterprise Data Center Sustainment, Modernization, and Consolidation project. Req. for Dismissal, attach. 1, RFP at 1, 7. Specifically, the solicitation sought the provision of "professional subject matter expertise in enterprise architecture and engineering services[.]" including "engineering, infrastructure and architecture design, application modernization and onboarding, consolidation, configuration management, cybersecurity, and program/project management support."

Id. The solicitation contemplated issuance of a single fixed-priced, indefinite-delivery, indefinite-quantity contract with one cost-reimbursable element. *Id.* at 63. The solicitation provided that award would be made on the basis of a best-value tradeoff, considering price and non-price factors. Req. for Dismissal, attach. 3, Evaluation Factors for Award at 3. The solicitation further provided that the non-price factors combined were significantly more important than price. *Id.* at 4.

On July 16, the agency issued an order to Transcend Technological Systems, a small business of Prattville, Alabama. Req. for Dismissal at 2. Following a debriefing, Systems Implementers filed a protest with our Office challenging numerous aspects of the agency's evaluation and source selection decision. See *Systems Implementers, Inc.*, B-418963.2, B-418963.3, Aug. 27, 2020 (unpublished decision). In response to the prior protest, the agency notified our Office that it intended to take corrective action by reevaluating proposals and making a new source selection decision. *Id.* As a result, we dismissed the prior protest as academic.¹ *Id.*

After reevaluating previously submitted proposals, the agency reopened discussions with all offerors in the competitive range, including Systems Implementers. As part of its conduct of discussions, the Air Force provided Systems Implementers with the agency's updated adjectival ratings following reevaluation of the firm's proposal and an evaluation notice (EN). Req. for Dismissal at 3. The EN advised that the agency was not requesting an "entire revised proposal[.]" and asked for submission of "only the pages of your [firm's] proposal that were revised due to the EN(s)." Req. for Dismissal, attach 5, EN at 2.

During a phone call and subsequent email communications with the agency, Systems Implementers requested an extension of time to facilitate making proposal revisions related to weaknesses not included in the EN but identified in the debriefing the firm received before filing its prior protest. Req. for Dismissal, attach. 6, Email Chain between Agency and Systems Implementers at 2. The agency responded that, during "this period of discussions[.]" the firm needed to limit its proposal revisions to issues addressed in the EN. *Id.* at 1. The agency provided, however, that offerors would be permitted to make any additional changes they might choose at the final proposal revision (FPR) stage, explaining that "[w]e do not intend to limit the scope of changes at FPR[.]" *Id.* After receiving the agency's response, Systems Implementers filed this protest challenging the agency's ongoing reevaluation.

DISCUSSION

Systems Implementers' protest is based on its view that it should be permitted to revise additional aspects of its proposal related to weaknesses identified by the agency during the previous round of evaluations. Protest at 15, 17-18. Systems Implementers posits that "the [a]gency remains concerned about the weaknesses it identified in its prior

¹ A third offeror also filed a prior protest, which we similarly dismissed as academic. See *OM Group, Inc.*, B-418963, Aug. 25, 2020 (unpublished decision).

evaluation” because the adjectival ratings the agency assigned to the protester’s proposal for two non-price factors [DELETED]. *Id.* at 28. Systems Implementers contends that the currently-ongoing, limited discussions are not meaningful because of the agency’s failure to raise the previously identified weaknesses. *Id.* at 29. Systems Implementers further argues that the fact that it will be permitted to address the previously identified weaknesses at the FPR stage “is significantly less valuable than an opportunity to respond to its significant weaknesses *in discussions.*” *Id.* at 18, 31. Similarly, Systems Implementers maintains that the agency’s discussions related to price are misleading because a previously identified issue related to [DELETED] was not included in the EN that forms the basis of the currently-ongoing discussions. *Id.* at 32-33.

In response, the agency argues that Systems Implementers’ protest is premature because discussions are still ongoing. Req. for Dismissal at 1. The agency represents that it “may still enter into discussions covering other areas of the proposals[,]” and that it “anticipates doing so.” *Id.* at 4. The agency further contends that Systems Implementers’ allegations assume that the weaknesses previously evaluated in the firm’s proposal will carry forward, and ignore the fact that the agency reevaluated proposals--before entering into the latest round of discussions--as part of its ongoing corrective action. *Id.* at 5.

As a general matter, the details of corrective action are within the sound discretion of the contracting agency, and an agency may reasonably limit the scope of proposal revisions, provided such limitation is appropriate to remedy the procurement impropriety. *Alliant Techsystems, Inc.*, B-405129.3, Jan. 23, 2012, 2012 CPD ¶ 50 at 7. Further, when an agency’s proposed corrective action does not alter the ground rules for the competition, we generally will consider a protester’s pre-award challenge to be premature. *Nuclear Prod. Partners, LLC*, B-407948.9, Sept. 24, 2013, 2013 CPD ¶ 228 at 7.

Here, we conclude that Systems Implementers’ complaints challenging the adequacy of discussions and the limitation on initial proposal revisions are premature. In reaching this conclusion, we note that the agency has not yet made a new source selection decision, has represented that it anticipates engaging in further discussions, and has advised that offerors will be permitted to make any proposal revisions they choose at the FPR submission stage. Moreover, Systems Implementers does not allege that the agency’s requirements or the evaluation scheme have been altered in a way that changed the ground rules of this procurement in a manner warranting our pre-award review. See *generally* Protest; Resp. to Req. for Dismissal.

Accordingly, because we dismiss this protest as premature, we decline to reach any conclusions as to the adequacy of discussions or the agency’s limitations of initial

proposal revisions, at this time.² See *Nuclear Prod. Partners, LLC, supra* at 7 (dismissing as premature protester's challenge to the adequacy of corrective action discussions when agency had not made a new source selection decision and had represented it may engage in further communications with offerors); *American K-9 Detection Servs., Inc.*, B-400464.6, May 5, 2009, 2009 CPD ¶ 107 at 6-7 n.4 (noting that our Office dismissed as premature a prior pre-award protest challenging agency's limitation of discussions because the agency did not clearly announce the ground rules of the corrective action and did not specifically indicate that no further discussions would be conducted); see also *Alliant Techsystems, Inc., supra* at 10 n.6 (noting that it was premature to conclude that weaknesses previously assessed in the protester's proposal would carry forward given that the agency intended to revisit the evaluation as part of its corrective action).

The protest is dismissed.

Thomas H. Armstrong
General Counsel

² Allegations dismissed as premature may be raised subsequently with our Office, provided that they are presented in a manner that is otherwise compliant with our Bid Protest Regulations. See 4 C.F.R. Part 21.