



# Decision

**Matter of:** Cask Technologies, LLC

**File:** B-422437.2

**Date:** June 20, 2024

**DOCUMENT FOR PUBLIC RELEASE**

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## DIGEST

Protest is dismissed where protester’s proposal was technically unacceptable due to unavailability of proposed key personnel, and, as a result, protester is not an interested party to question the agency’s evaluation or source selection decision.

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## DECISION

Cask Technologies, LLC (Cask), a small business of Stafford, Virginia, protests the issuance of a task order to Resource Management Concepts, Inc. (RMC), a small business of Lexington Park, Maryland, under task order request for proposals (RFP) No. N6600123R3515, issued by the Department of the Navy, Naval Information Systems Warfare Command for enterprise network cyber defense services. The protester challenges the agency’s evaluation of proposals and resulting source selection decision.

We dismiss the protest because Cask is not an interested party.

## BACKGROUND

On July 13, 2023, using the procedures of Federal Acquisition Regulation (FAR) subpart 16.5, the agency issued the solicitation to small business holders of the Navy’s SeaPort Next Generation indefinite-delivery, indefinite-quantity (IDIQ) contracts. Req. for Dismissal, exh. 1, Source Selection Decision (SSD) at 2-3, 10; Protest, exh. 3, RFP

at 27, 63.<sup>1</sup> The solicitation sought proposals for enterprise network cyber defense services to be provided to the Defensive Cyberspace Operations Division of the Marine Corps Cyberspace Operations Group. SSD at 1, 3. The solicitation “is a follow-on” to a task order issued to Northrop Grumman whose period of performance was set to end on April 30, 2024. *Id.* at 4. Since 2019, Cask has been performing as a subcontractor under the current task order, and proposed to “provide incumbent personnel for” the solicited task order. Protest at 6.

The solicitation contemplated issuance of a cost-plus-fixed-fee task order with one base year and four option years on a best-value tradeoff basis, considering the following factors: (1) key personnel; (2) organizational experience; and (3) cost. SSD at 6; RFP at 28, 72. Key personnel was more important than organizational experience, and the two non-cost factors, when combined, were significantly more important than cost. SSD at 6; RFP at 72. As relevant here, the solicitation established 13 key personnel positions, and required offerors to submit “one resume for each Key Personnel labor category identified.” RFP at 68-70. The solicitation provided that the agency would evaluate offerors’ estimated costs and proposed fees for realism and reasonableness, but may limit its cost realism analysis “to those offerors whose proposals represent the most likely candidate(s) for award, based on the Government’s technical evaluation and the offeror(s) proposed costs.” *Id.* at 74. Further, the solicitation advised that the agency intended “to make award based on the initial proposals without conducting interchanges”--*i.e.*, clarifications or discussions. *Id.* at 63.

The agency received eight proposals, including those submitted by Cask and RMC. SSD at 10. Based on initial proposals, the evaluators concluded that RMC and a third offeror were the two most likely candidates for award, and conducted a cost realism analysis of only those two offerors’ proposals. *Id.* at 11, 13-14. Cask’s proposal was not considered a most likely candidate for award because its proposal received a lower rating than RMC and the third offeror for the most important factor--key personnel--and its proposed costs were higher than both RMC and the third offeror. *Id.* After completing evaluation of initial proposals, the agency rated Cask, RMC, and the third relevant offeror as follows:

	<b>Cask</b>	<b>RMC</b>	<b>Third Offeror</b>
<b>Key Personnel</b>	Acceptable	Good	Good
<b>Organizational Experience</b>	Outstanding	Good	Good
<b>Total Proposed Cost<sup>2</sup></b>	\$111,416,003	\$108,041,211	--
<b>Total Evaluated Cost</b>	Not Evaluated	\$108,041,211	\$110,218,413

SSD at 11.

<sup>1</sup> Cask and the agency submitted their protest exhibits and request for dismissal exhibits, respectively, as single, consolidated Adobe PDF files. Our citations to the various exhibits use the continuous pagination of the PDF files submitted by the parties.

<sup>2</sup> Our decision references only whole dollar amounts, without inclusion of any proposed or evaluated cents.

After evaluation of initial proposals was completed, Cask notified the agency that one of its proposed key personnel had become unavailable. SSD at 13-14 n.1. The record shows that the agency “decided not to engage in ‘interchanges’ with Cask and did not allow a substitution of the key personnel” because

Cask’s proposal was already not considered a “most likely candidate for award” because it rated lower technically than RMC (“Good” vs “Acceptable” for Key Personnel--the most important factor, and only a marginally better rating for Organizational Experience--the least important technical factor) and proposed costs that were higher than RMC’s total proposed and evaluated cost.

*Id.* Additionally, as “Cask was no longer under consideration for award” the agency concluded “there was no need (or value added) to go back and revise [Cask’s] technical rating to reflect the new information that [proposed key person X] was no longer available for performance under the task order.” *Id.* Accordingly, “Cask’s rating of ‘Acceptable’ for Key Personnel is based on Cask’s original proposal and does not take into account [X’s] unavailability.” *Id.*

Having decided not to engage in “interchanges” with Cask, the agency did not establish a competitive range, did not conduct discussions with any offeror, did not permit any offeror to submit proposal revisions, and instead made award on the basis of initial proposals. Contracting Officer’s Statement (COS) at 1-2. The agency selected RMC’s initial proposal as offering the best value, and issued RMC a task order for approximately \$108 million.<sup>3</sup> SSD at 1, 35. After receiving notification of the award decision and a debriefing, Cask filed this protest with our office.

## DISCUSSION

Cask primarily contends that issuance of a task order “to RMC was improper because RMC either improperly proposed individuals to fulfill the Key Personnel who were not available for this task order or that RMC did not expect to use during contract performance, or RMC proposed Cask’s Key Personnel without authorization to include their resumes.” Protest at 13. Cask also challenges the evaluation of its own proposal under the key personnel factor as unreasonable, and asserts it should have received a higher rating. *Id. generally* at 18-24. Further, Cask takes issue with the agency’s cost realism evaluation of RMC’s proposal. *Id. generally* at 25-26. Finally, Cask argues that the agency’s best-value tradeoff was necessarily flawed because it relied on a flawed underlying evaluation. *Id.* at 26-27.

The agency requests that we dismiss the protest because Cask is not an interested party. Req. for Dismissal at 2. First, the agency maintains that Cask is not next in line

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<sup>3</sup> The value of the protested task order exceeds \$25 million, and, thus, this protest is within our jurisdiction to hear protests of task orders placed under defense agency IDIQ contracts. 10 U.S.C. § 3406(f)(1)(B).

for award, as a third offeror was evaluated as higher technically rated and lower priced than Cask. *Id.* at 2-3. Second, the agency asserts the protester's proposal is technically unacceptable and cannot form the basis for an award due to one of Cask's proposed key personnel becoming unavailable after proposals were submitted, but prior to the agency making award. *Id.* at 3-4. For the reasons explained below, we find that dismissal is appropriate here.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557, only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). A protester is not an interested party if it would not be eligible to receive a contract award were its protest to be sustained. *Win Aviation, Inc.*, B-422037, B-422037.2, Dec. 21, 2023, 2024 CPD ¶ 12 at 6.

As relevant here, our Office has recognized that offerors are obligated to advise agencies of changes in proposed staffing and resources, even after submission of proposals. *Chenega Healthcare Servs., LLC*, B-416158, June 4, 2018, 2018 CPD ¶ 200 at 3 n.2. Additionally, when a solicitation, such as the one here, requires resumes for key personnel, the resumes form a material requirement of the solicitation. *YWCA of Greater Los Angeles*, B-414596 *et al*, July 24, 2017, 2017 CPD ¶ 245 at 4. When an agency is notified of the unavailability of a key person, it has two options: either evaluate the proposal as submitted, in which case the proposal would be rejected as technically unacceptable for failing to meet a material requirement; or open discussions to permit the offeror to amend its proposal. *Id.*; *Chenega Healthcare Servs., LLC*, *supra* at 3 n.2.

Here, the record shows that after submission and evaluation of initial proposals but prior to award, Cask notified the agency that one of its proposed key personnel had become unavailable, rendering Cask's initial proposal technically unacceptable. SSD at 13-14 n.1. Cask does not dispute this fact. See Resp. to Req. for Dismissal at 3. Rather, Cask argues that if its "protest were sustained, it would be a likely candidate for award and the Agency would engage in interchanges with Cask to consider its substitute key personnel." *Id.* In support of this argument, Cask contends that the agency's dismissal request "suggests that [the Navy] opened interchanges with other offerors that were determined to be likely candidates for award," and that "if Cask's protest were sustained, the Agency would be required to open interchanges with Cask as well, because Cask would be in the competitive range." *Id.* at 4.

The record does not support Cask's contention. Rather, the solicitation expressly advised that the agency contemplated making award on the basis of initial proposals. RFP at 63. Both the contemporaneous source selection decision and the contracting officer's statement in response to the protest reflect that the agency made award on the basis of initial proposals without establishing a competitive range, conducting

discussions with any offeror, or permitting any offeror to submit proposal revisions.<sup>4</sup> See SSD at 10-14, 36; COS at 1-2. Accordingly, the protester's contention that the agency would be required to conduct discussions with Cask were we to sustain the firm's challenges to the evaluation of its own proposal under the key personnel factor is without foundation. See e.g., *Chenega Healthcare Servs., LLC, supra* at 5-6 (denying protest where the unavailability of a key person rendered protester's proposal technically unacceptable and solicitation advised agency had discretion to make award without discussions).

Cask further argues against dismissal because "as set forth in the protest, the Agency unfairly waived the Key Personnel requirements for RMC and now is arguing Cask's proposal is unawardable for having one unavailable Key Person[]." Resp. to Req. for Dismissal at 4. Our review, however, finds that Cask's protest does not present a waiver argument, but instead frames its challenge to the agency's evaluation of RMC's key personnel as a "classic 'bait and switch'." Protest at 15; see *generally id.* at 13-17.

Only in responding to the agency's dismissal request does Cask allege, for the first time, that the agency waived the key personnel requirement. To the extent that Cask now attempts to raise a waiver allegation with regards to its key personnel challenge, it is untimely. Our Bid Protest Regulations require that protests other than those challenging the terms of the solicitation be filed within 10 days of when a protester knew, or should have known, of its basis for protest. 4 C.F.R. § 21.2(a)(2). Moreover, our regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. *CapRock Gov't Sols., Inc., et al.*, B-402490, *et al.*, May 11, 2010, 2010 CPD ¶ 124 at 24. Here, the protester knew the operative facts underlying this allegation prior to filing its protest. There is no evidence that the waiver argument could not have been timely raised when Cask filed its protest. Accordingly, this argument is untimely and will not be considered. *Id.*; 4 C.F.R. § 21.2(a)(2).

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<sup>4</sup> The agency engaged in "limited interchanges" with the third offeror considered one of the two most likely candidates for award to request additional substantiating documentation about the basis of the third offeror's indirect rates. COS at 1. The third offeror submitted the requested additional documentation but was not permitted to revise its proposal. *Id.* at 1-2. As our Office has explained consistently, the "acid test" for deciding whether discussions have been held is whether it can be said that an offeror was provided an opportunity to revise or modify its proposal. *Logistics Mgmt. Inst.*, B-419219, B-419219.2, Dec. 30, 2020, 2021 CPD ¶ 46 at 7. Based on the record before us, we find the agency's "limited interchanges" with the third offeror were clarifications, not discussions. See e.g., *Booz Allen Hamilton, Inc.*, B-405993, B-405993.2, Jan. 19, 2012, 2012 CPD ¶ 30 at 12-13 (finding that awardee's provision of supplemental cost information constituted clarifications rather than discussions where information was furnished to provide additional explanation for proposed indirect cost rates, rather than revising the proposed rates).

In sum, even if Cask were to prevail on all of its protest arguments, the protester would not be in line for award because: (i) its proposal would still be technically unacceptable and ineligible for award; (ii) the agency would be under no obligation to open discussions with Cask to permit it to revise its proposal; and (iii) the agency received a technically acceptable proposal from at least one other offeror that would be in line for award if the task order to RMC were set aside. Accordingly, Cask is not an interested party for purposes of questioning the agency's evaluation of proposals and resulting source selection decision. See e.g., *PAE Applied Techs., LLC*, B-419133, Nov. 4, 2020, 2020 CPD ¶ 363 at 7, 10 (after concluding that agency reasonably found protester's proposal unacceptable due to unavailability of a proposed key person, dismissing remaining protest allegations because protester was not an interested party); *Missing Link Communications, LLC d/b/a Missing Link Security*, B-420288.2 *et al.*, May 27, 2022, 2022 CPD ¶ 136 at 8-9 (similar).

The protest is dismissed.

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General Counsel