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Decision

Matter of: DecisionPoint Corporation- f/k/a Emesec Inc.

File: B-422245.5

Date: November 13, 2024

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John E. Jensen, Esq., and Toghrul M. Shukurlu, Esq., Pillsbury Winthrop Shaw Pittman LLP, for Centuria Corporation, the intervenor.
Colonel Nina Padalino, Nicholas T. Iliff, Jr., Esq., Erika Whelan Retta, Esq., and Kent H. Grubb, Esq., Department of the Air Force, for the agency.
Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's determination that protester's proposal was ineligible for award because it failed to include proof of a required certification is sustained where the solicitation required proof that the prime contractor had the certification at the time of proposal submission and, due to a merger between the protester and its wholly owned subsidiary, the prime contractor has the required certification.

DECISION

DecisionPoint Corporation, known at the time of proposal submission as EmeSec Inc., a service-disabled veteran-owned small business (SDVOSB) of Gaithersburg, Maryland, protests the Department of the Air Force's rejection of its proposal under fair opportunity proposal request (FOPR) No. FA8773-23-R-0003, for defensive cyber realization, integration, and operational support (DCRIOS) services. The agency determined that it could not make award to the protester because EmeSec did not demonstrate that it held a required certification at the time it submitted its proposal. The protester argues that the solicitation did not require the certification at the time of proposal submission and, even if it did, the agency improperly ignored the effect of a novation in finding that EmeSec's proposal did not comply with the certification requirement.

We sustain the protest.

BACKGROUND

Using the procedures of Federal Acquisition Regulation (FAR) section 16.505, the Air Force issued the FOPR on March 23, 2023, under the General Services Administration's (GSA's) Veterans Technology Services 2, governmentwide acquisition contract (VETS II contract). Agency Report (AR), Tab 5, FOPR at 66.¹ The solicitation, which was set aside for SDVOSBs, sought cyber protection team (CPT) support, management, engineering and technical services.² COS at 2. As relevant here, the FOPR included a requirement that offerors submit proof of a level III Capability Maturity Model Integration (CMMI) certification for the "prime contractor providing the CPT support services."³ AR, Tab 7, FOPR, amend. 0002 at 52.

EmeSec's Proposal and Award

On May 1, 2023, the Air Force received proposals from offerors, including EmeSec and Centuria Corporation. COS at 4. EmeSec's proposal identified EmeSec as the prime contractor that had the required VETS II contract and that would be performing the CPT support services. *Id.* EmeSec's proposal also explained that it was a wholly owned subsidiary of DecisionPoint. *Id.* Because EmeSec did not have a level III CMMI certification, its proposal provided DecisionPoint's level III CMMI certificate, along with a meaningful relationship commitment letter (MRCL). AR, Tab 10, EmeSec Proposal at 311-312; Memorandum of Law (MOL) at 4-5. The MRCL between DecisionPoint and EmeSec indicated DecisionPoint's agreement "to support [EmeSec] in its use of

¹ The FOPR was amended four times; unless otherwise noted, citations to the FOPR are to tab 5 of the agency report. In addition, citations to documents in the agency report are to the Adobe PDF page numbers.

² CPTs conduct rapid and focused defensive cyberspace operations to "hunt and clear" critical mission systems in support of Combatant Command and Joint Force requirements. AR, Tab 7, FOPR, amend. 0002 at 7; Contracting Officer's Statement (COS) at 2.

³ The contracting officer explained in response to the prior protest that the CMMI is a process improvement approach that provides organizations with the essential elements of effective processes that ultimately improve their performance. CMMI maturity level III, which is one of five "Maturity Levels" in the CMMI, indicates that an organization's processes are well characterized and understood, and are described in standards, procedures, tools, and methods. *Centuria Corp.*, B-422245 *et al.*, Supp. COS at 1-2. Certificate recipients take a proactive approach to managing projects and processes and are dedicated to continuous improvement and producing work that makes a difference. *Id.* at 2.

DecisionPoint's CMMI Level III certification[.]”⁴ AR, Tab 10, EmeSec Proposal at 311-312.

At some point prior to proposal submission, EmeSec merged into DecisionPoint. AR, Tab 12, Novation Agreement. After proposal submission, but prior to award, on June 26, 2023, DecisionPoint entered into a novation agreement with GSA that recognized DecisionPoint as EmeSec's successor in interest. *Id.* The agreement identified the effective date as January 1, 2023. *Id.* at 2. Thereafter, on December 5, 2023, the Air Force awarded the contract to EmeSec. *Id.* It was not until that date, post-award, that DecisionPoint informed the agency of the novation agreement. AR, Tab 28, Fair Opportunity Decision Document (FODD) at 160; MOL at 4. The contracting officer then modified the contract document on December 6, 2023, reflecting award to DecisionPoint. *Id.* at 161.

Centuria protested the award to EmeSec/DecisionPoint to our Office.⁵ *Id.* at 161. Centuria's protest alleged that EmeSec was not eligible for award because it did not hold a level III CMMI certificate and that the use of DecisionPoint's level III CMMI certificate was improper because the solicitation required EmeSec as the prime contractor to have the CMMI certificate. *Id.* at 161. In response to the protest, the Air Force argued that the MRCL between DecisionPoint and EmeSec sufficed to attribute the DecisionPoint level III CMMI certificate to EmeSec. *Id.* at 161; MOL at 5. In support of the agency's position, the contracting officer explained that he found DecisionPoint's CMMI level III certificate sufficient to meet the requirement that EmeSec have one, based on the fact that DecisionPoint and EmeSec were parent and subsidiary, along with the MRCL, which stated that DecisionPoint and EmeSec operated as a “single internal operational unit” and shared “personnel, human resources, purchasing, and accounting procedures and corporate policies and guidelines.” AR, Tab 28, FODD at 161-162.

The GAO attorney assigned to the protest conducted outcome prediction alternative dispute resolution (ADR) with the parties, explaining that the MRCL did not clearly describe how the resources of the parent would be available for performance. Thereafter, the Air Force opted to take corrective action to reevaluate offerors' proposals and make a new best-value determination. COS at 5. Accordingly, GAO dismissed the protest as academic. *Centuria Corp., B-422245 et al.*, Mar. 5, 2024 (unpublished decision).

⁴ The agency states in response to the protest that under the VETS II contract, GSA allows offerors to provide MRCLs to identify the utilization of specific resources from a parent company, affiliate, division, or subsidiary within an existing corporate structure. MOL at 5.

⁵ At the time of its protest, Centuria did not know that the agency had modified the contract to reflect award to DecisionPoint.

Air Force's Corrective Action

The Air Force's corrective action involved the agency contacting the entity that issues the CMMI certificates--*i.e.*, the Information Systems Audit and Control Association (ISACA)--for information regarding how ISACA issues its certificates. MOL at 5-6. After receiving this information from ISACA, the Air Force issued two interchange notices (INs) to DecisionPoint regarding its level III CMMI certification.⁶ COS at 6.

After reevaluating proposals, the contracting officer issued the task order to Centuria in the amount of \$83,184,746.⁷ COS at 6; AR, Tab 29, Unsuccessful Offeror Notice at 1. On July 29, 2024, the agency notified DecisionPoint that it had not been selected for award. AR, Tab 29, Unsuccessful Offeror Notice at 1. The agency explained that it found DecisionPoint's proposal was ineligible for award because it failed to submit proof of any level III CMMI certification for the prime contractor providing the CPT support services as required by the solicitation. AR, Tab 32, Debriefing at 1. After requesting and receiving a debriefing that ended on August 1, 2024, DecisionPoint filed this protest with our Office. COS at 6; AR, Tab 33, Addl. Debriefing at 1.

DISCUSSION

DecisionPoint challenges the agency's determination that its proposal was ineligible for award because it failed to include proof of any level III CMMI certification for the prime contractor providing the CPT support services, as required by the FOPR. The protester argues that the agency's determination is improper because the solicitation did not require submission of proof of the certificate at the time of proposal submission. The protester also argues that the agency's decision was unreasonable because it failed to consider EmeSec's merger into DecisionPoint⁸ and the novation of the VETS II contract from EmeSec to DecisionPoint. As discussed below, although we find that the FOPR required offerors to submit evidence of a level III CMMI certification at the time of proposal submission, we conclude that the Air Force's determination that DecisionPoint's proposal failed to meet this requirement was not reasonable and sustain the protest on this basis.

⁶ The contracting officer issued the first IN on April 15, 2024, and DecisionPoint responded on April 18, 2024. AR, Tab 26, Clarification Notice 1 at 1. The agency issued the second IN on April 23, 2024, and DecisionPoint responded on April 26, 2024. AR, Tab 27, Clarification Notice 2 at 1.

⁷ As the awarded value of the task order at issue here is \$83,184,746, this protest is within our jurisdiction to hear protests of task orders placed under civilian agency IDIQ contracts valued in excess of \$10 million. 41 U.S.C. § 4106(f)(2); COS at 6.

⁸ Although, as previously discussed, at the time of proposal submission on May 1, 2023, the protester's proposal explained that it was a wholly owned subsidiary of DecisionPoint, due to the June 26, 2023 novation agreement, which had an effective date of January 1, 2023, DecisionPoint's position now is that EmeSec merged into DecisionPoint in January 2023.

In reviewing a protest of an agency's evaluation, our Office will not reevaluate proposals or substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *22nd Century Techs., Inc.*, B-420139, Dec. 9, 2021, 2022 CPD ¶ 8 at 4. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *Id.* A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was unreasonable. *Id.*

Challenge to the Agency's Interpretation of the Solicitation

DecisionPoint argues that the Air Force erred in interpreting the solicitation as requiring offerors to submit evidence, at the time of proposal submission, that the prime contractor held a level III CMMI certification. Protest at 14-16. DecisionPoint argues that the solicitation required only that the awardee possess a level III CMMI certification during performance of the task order. *Id.* at 15.

Regarding the CMMI certification requirement, the FOPR required that offerors "[s]ubmit proof of any Level III CMMI Certification for the prime contractor providing the CPT support services" as part of volume IV of their proposals. AR, Tab 7, FOPR, amend. 0002 at 52. The solicitation further required offerors to "meet all solicitation requirements" and instructed that "[f]ailure to comply with the terms and conditions of the solicitation may result in the Offeror being ineligible for award." FOPR at 125; see also AR, Tab 7, FOPR, amend. 0002 at 52 (noting in the evaluation criteria that "[b]y submission of its offer, the offeror accedes to all proposal requirements, including terms and conditions, representations and certifications, and technical requirements, in addition to those identified as evaluation factors or subfactors.").

In support of DecisionPoint's interpretation of the solicitation as not requiring submission of the certification at the time of proposal submission, the protester points to the FOPR language requiring that offerors "[s]ubmit proof of *any* Level III CMMI Certification for the prime contractor providing the CPT support services." AR, Tab 7, FOPR, amend. 0002 at 52 (emphasis added). The protester claims that, by using the word "any" as opposed to the word "the" in the above-quoted phrase, the solicitation did not require "that the [c]ertification be provided if it did not exist at the time of proposal submission[.]" Protest at 15.

The agency disagrees with the protester and asserts that the above-quoted language, in conjunction with the PWS language and the agency's questions and answers, support the interpretation that the certification was, in fact, required at the time of proposal submission.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions. To be reasonable, and therefore valid, an interpretation

must be consistent with the solicitation when read as a whole and in a reasonable manner. *Alluviam LLC*, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2.

Here, we find that the solicitation language, read as a whole, including the agency's questions and answers, supports the agency's interpretation and fails to support the protester's interpretation. As noted above, the solicitation explicitly required offerors to submit their level III CMMI certification as part of volume IV of their proposals. AR, Tab 7, FOPR, amend. 0002 at 52 (requiring that offerors "[s]ubmit proof of any Level III CMMI Certification for the prime contractor providing the CPT support services" as part of Volume IV of their proposals.). The solicitation also required offerors to "meet all solicitation requirements" and instructed that "[f]ailure to comply with the terms and conditions of the solicitation may result in the Offeror being ineligible for award." FOPR at 125.

Although DecisionPoint asserts that the solicitation merely gave offerors the option to submit proof of a level III CMMI certification because it states "[s]ubmit proof of any Level III Certification," Protest at 15, when considering the references to this requirement in the PWS and Q&As, it is clear that the word "any" in this context logically refers to the fact that there are different types of level III CMMI certifications (e.g., development, services, supplier management), and offerors were allowed to submit proof of any CMMI certification as long as it was level III. ISACA.org, What is the difference between CMMI, CMMI-DEV, CMMI-SVC, CMMI-SPM (formerly CMMI-ACQ), People CMM, and DMM?, <https://support.isaca.org/s/article/What-is-the-difference-between-CMMI-CMMI-DEV-CMMI-SVC-CMMI-SPM-formerly-CMMI-ACQ-People-CMM-and-DMM-1598331745508> (last visited Nov. 8, 2024)(explaining the different types of CMMI certifications).

Indeed, one offeror specifically understood the use of the word "any" as permitting the use of any type of level III CMMI certification and highlighted in the Q&As that this understanding was inconsistent with the PWS, which specifically required a CMMI-*Services* level III certification.⁹ AR, Tab 9, FOPR Q&As at 17 (emphasis added); AR, Tab 6, FOPR, amend. 0001 at 28 (specifying that "[t]he prime contractor shall hold and maintain Capability Maturity Model Integration - Services (CMMI) Level III throughout the entire performance period of the contract, inclusive of ordering periods."). In response, the Air Force issued an amendment making the PWS consistent with the solicitation requirement by removing the specification in the PWS for a "Services" type level III CMMI certification. AR, Tab 7, FOPR, amend. 0002 at 10. To conclude that offerors were not required to submit proof of a level III CMMI certification, would ignore the agency's revision of the PWS (which removed the requirement for a services type level III CMMI certificate) so that the PWS matched the solicitation requirement for the submission of "any Level III [c]ertification." *Id.* at 51-52. Accordingly, we find the

⁹ Specifically the offeror asked: "Can the government confirm that any Level III CMMI certification for the prime contractor is acceptable?" AR, Tab 7, FOPR, amend. 0002 at 61.

agency's interpretation of the FOPR is reasonable and the protester's interpretation is not.

Evaluation of DecisionPoint's Proposal

DecisionPoint argues that the Air Force's decision that DecisionPoint was ineligible for award because it failed to include proof of any level III CMMI certification for the prime contractor providing the CPT support services was unreasonable because the Air Force ignored EmeSec's merger into DecisionPoint and the novation of the VETS II contract from EmeSec to DecisionPoint, with an effective date of January 2023,¹⁰ which was prior to the submission of proposals. Protest at 11-14. In DecisionPoint's view, DecisionPoint was eligible for award because DecisionPoint had a level III CMMI certification at all relevant times, and inherited EmeSec's rights and obligations with respect to the VETS II contract and the proposal by merging with EmeSec. *Id.* at 13.

The Air Force responds that it did in fact recognize the novation when re-assessing EmeSec's proposal as part of the corrective action leading to the new award decision. MOL at 11-19; see AR, Tab 28, FODD at 160 ("This section summarizes the evaluation of the contractual considerations of the offeror's proposal to include relevant information related to the contractor's novation . . . and subsequent interchange notices."). In this regard, the Air Force does not dispute that the novation agreement gave DecisionPoint all the rights that EmeSec held. MOL at 12. The agency explains, however, that at the time of proposal submission (and at the time the agency conducted its evaluation), EmeSec was identified as the prime contractor that would perform the CPT services using assets that had been part of EmeSec. *Id.* The agency asserts that, while the novation can work to grant DecisionPoint all of the rights of EmeSec, such as the VETS II contract, it does not cause ISACA (the entity that issues the CMMI certificates) to recognize as CMMI certified the EmeSec portions of DecisionPoint that were proposed to the Air Force to perform this contract with level III CMMI certification that only DecisionPoint was evaluated for--before EmeSec merged into it. *Id.* at 13. In other words, the agency maintains that the CMMI certification held by DecisionPoint does not apply to EmeSec because EmeSec's "assets to perform the CPT support services" were not "analyzed by ISACA" so that it is "therefore unreasonable to suggest that the novation changed what EmeSec proposed, substituting the analyzed portion of DecisionPoint." *Id.* at 12-13.

As relevant here and noted above, the agency took corrective action to reevaluate offerors' proposals and make a new best-value determination. COS at 5. As part of this process, the contracting officer contacted ISACA to obtain additional information regarding the CMMI certification appraisal process. COS at 14. As a result of the information provided by ISACA, the Air Force issued two clarification INs to DecisionPoint regarding its level III CMMI certification. COS at 6. Following review of the IN responses, the contracting officer concluded that "the offeror did not submit proof

¹⁰ Although the novation was not executed until June 2023, the agreement listed the effective date as January 1, 2023. AR, Tab 12, Novation Agreement at 2.

of any Level III CMMI Certification for the prime contractor providing the CPT support services.” AR, Tab 28, FODD at 165.

DecisionPoint disagrees with the agency’s evaluation and argues that EmeSec’s lack of a CMMI level III certificate is irrelevant because DecisionPoint had a level III CMMI certificate at all relevant times, and inherited EmeSec’s rights and obligations with respect to the VETS II contract and the proposal by merging with EmeSec. Protest at 11-14.

Our decisions regarding matters of corporate status and restructuring are highly fact specific and turn largely on the individual circumstances of the proposed transactions and timing. *Vertex Aerospace, LLC*, B-420073, Nov. 23, 2021, 2022 CPD ¶ 5 at 6. Primarily, these decisions generally focus on whether it was reasonable for an agency to reach the conclusions it did regarding the corporate transaction. *Id.* Our Office has warned, however, that where an agency is aware of an impending or already consummated corporate transaction but fails to assess the impact on proposals of the restructuring, the agency runs the risk that its failure to do so will be deemed improper, based of course, on the unique posture of that procurement and the corporate transaction at issue. *Id.*

Based on our review, we find that the agency’s determination that DecisionPoint’s proposal was ineligible for award because it failed to include proof of any level III CMMI certification for the prime contractor providing the CPT support services is not consistent with the terms of the solicitation or supported by the record. As previously discussed, the solicitation required offerors to submit “proof of any Level III CMMI Certification for the prime contractor providing the CPT support services” as part of volume IV of their proposals. AR, Tab 7, FOPR, amend. 0002 at 52. As the record reflects and the agency acknowledges, as a result of the merger between DecisionPoint and EmeSec, which was effective January 1, 2023, the prime contractor is now DecisionPoint. While the agency did not know that DecisionPoint was the prime contractor at the time of its initial evaluation, the agency was aware of this fact when it conducted its post-corrective action evaluation. Accordingly, at that point, it was incumbent on the agency to consider the impact of the merger on DecisionPoint’s proposal. While the agency claims that it did so, we note that the effect of the merger on DecisionPoint’s proposal means that DecisionPoint (not EmeSec) is the prime contractor. As such, the record shows that at the time the agency conducted its post-corrective action evaluation, the prime contractor (DecisionPoint) included proof of its level III CMMI certificate in its proposal as required by the solicitation. We therefore find that agency’s decision to the contrary was unreasonable and not supported by the record.

RECOMMENDATION

We recommend that the agency reevaluate the protester's proposal consistent with this decision and conduct and properly document an analysis of the effect of the corporate transaction at issue on the protester's proposed approach to performing the contract. We further recommend that, upon completion of these analyses, the agency make a new source selection decision. If, after performing the reevaluation, the agency determines that a firm other than Centuria represents the best value to the government, we further recommend that the agency terminate the contract awarded for the convenience of the government and make award to the firm selected, if otherwise proper. We also recommend that DecisionPoint be reimbursed its costs of filing and pursuing this protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). DecisionPoint should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Edda Emmanuelli Perez
General Counsel