



Decision

Matter of: SNAP, Inc.

File: B-402746

Date: July 16, 2010

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DIGEST

Agency properly rejected proposal that included identifying information, where solicitation explicitly required that all identifying information be redacted from proposals.

DECISION

SNAP, Inc., of Chantilly, Virginia, protests the rejection of its proposal under request for proposals (RFP) No. DOL110RP20829, issued by the Department of Labor (DOL) for automated data processing and related services at DOL's Employment Training Administration (ETA), Office of Unemployment Insurance (OUI).

We deny the protest.

The solicitation, a section 8(a) set-aside, contemplated the award of a time-and-materials/labor-hour contract for a base year, with four 1-year options. RFP at L-1, F-1. The successful offeror was to be determined based on a "best value" evaluation of initial proposals. RFP at M-1. Because some members of the technical evaluation panel (TEP) were former employees of the contractors and subcontractors competing for award, the agency structured the procurement to insure anonymity of offerors, in order to achieve an unbiased evaluation. Agency Report (AR) at 2. Specifically, offerors were required to submit one original and three redacted copies of their technical proposals. RFP at L-3. The solicitation, at section L.6, stated that the redacted copies "shall not contain the name of the offeror's company, logos,

markings, or photos associated with the company or the names of personnel.” RFP at L-3. This requirement was essentially repeated at section L.6.c. Id. at L-4. Additionally, section L.6.d(i) stated in bold type that

Redacted proposal copies must be completely redacted of all identifying information. Failure to submit properly redacted copies may result in the offeror being excluded from further consideration.

RFP at L-5. Offerors were to contact the contract specialist to obtain an offeror code to be used throughout their proposals in lieu of company names or logos. When referencing subcontractors, offerors were to use their code, followed by a hyphen and then an A, B, C, etc. Id. at L-6. Proposals were to include resumes for proposed key personnel. RFP at L-5. In response to two questions regarding redactions for proposed personnel, the agency advised offerors that all resumes were required to be redacted, RFP, amend. 3, Questions and Answers No. 20, at 5, and also that “All references to key personnel’s names must be redacted.” Id., No. 48, at 12.

Several offerors, including SNAP, submitted proposals. AR, Tab 37, Contracting Officer’s (CO) Statement, at 2. The TEP reviewed the redacted copies of SNAP’s proposal and determined that the proposal did not comply with the identifying information redaction requirement. In this regard, the TEP chair noted that, while SNAP used no corporate name or logo, it consistently identified itself by using the term “incumbent” and/or by noting that it had significant experience working with ETA/OUI. AR, Tab 38, Declaration of TEP Chair, at 1. For example, the proposal states that “ETA/OUI-005 (SNAP’s offeror code) as a Prime contractor has formed a team (ETA/OUI-005 Team) with incumbent contractor ETA/OUI-005A and ETA/OUI-005B to provide DOL with a proven past performance that eliminates transition costs and continues to perform exceptionally for DOL-ETA,” and “the ETA/OUI-005 Team’s incumbency provides unmatched understanding of OUI’s requirement” SNAP Proposal at 1, 17, Executive Summary, at 1. Similarly, regarding personnel, the proposal states, for example, that “the ETA/OUI-005 Team is currently the incumbent team (and promises to deliver 100% of incumbent staff),” and that “ETA/OUI-005 Project Manager, Ms. - - - is leader of the incumbent team.” SNAP Proposal at 40. SNAP’s proposal also stated that its proposed technical team leader—systems operations currently serves as the operations task team leader on the DOL contract held by ETA/OUI-005B. Proposal Resume at 11.

The TEP chair explains that, because SNAP stated that its team included the incumbent contractor, which, he was aware, had “graduated” from the section 8(a) program and therefore could not be the prime contractor, he deduced that the incumbent was one of SNAP’s proposed subcontractors. AR, Tab 38, Declaration of TEP Chair, at 1. The TEP chair further states that, based on this knowledge, he also could deduce the identity of the proposed personnel. Id. Based on its conclusion that SNAP had violated the identifying information redaction requirement, the agency rejected SNAP’s proposal as unacceptable. AR, Tab 36, Memorandum of Law, at 8; AR, Tab 37, CO Statement, at 2. In notifying SNAP of its determination, the

agency noted that SNAP had included “identifying information” in its technical proposal in violation of section L.6.d(i), and had violated “the spirit, if not the letter” of RFP sections L.6 and L.6.c. Id.

SNAP asserts that it was improper for the agency to reject its proposal based on the identifying information redaction requirement, arguing that the agency’s interpretation of the requirement as established by the RFP is incorrect. Protest at 5. Specifically, SNAP maintains that the term “identifying information” in section L.6.d(i) is specifically defined in sections L.6 and L.6.c as the name of the offeror’s company, logos, marking or photos that are associated with the offeror’s company, or the names of proposed key personnel. Protester Comments at 3. SNAP contends that, if DOL intended a more expansive definition, the RFP should have so indicated, by, for example, adding “and all other identifying information” to the end of those clauses. Id. Similarly, the protester argues that DOL’s statement that “all references to key personnel’s names must be redacted” required only that names be redacted, not all identifying information, including incumbency-related information. Protester Comments at 6-7.

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; Fox Dev. Corp., B-287118.2, Aug. 3, 2001, 2001 CPD ¶ 140 at 2.

We find that only the agency’s interpretation of the RFP is reasonable. The solicitation contained the explicit, mandatory requirement at section L.6.d(i) that “[r]edacted proposal copies . . . be completely redacted of all identifying information.” While sections L.6 and L.6.c identified specific types of information to be redacted, nothing in the RFP indicated that the identifying information listed in these sections was intended to be exclusive, so as to relax the unequivocal general prohibition against identifying information set forth in section L.6.d(i). Absent such an express exception to the unequivocal requirement that all identifying information be redacted, there was no reasonable basis for SNAP to ignore section L.6.d(i) and interpret the requirement more loosely. Further, we note that SNAP’s interpretation would render the prohibition meaningless, since, as with SNAP’s proposal, offerors would be permitted to include information that could enable the evaluators to associate a proposal—directly or by deduction—with a particular firm or its subcontractors; this is the result the identifying information prohibition was intended to avoid. Since the agency’s interpretation of the requirement is the only reasonable reading, and that the agency properly rejected SNAP’s proposal for failing to comply with the RFP requirement.

Alternatively, SNAP asserts that interpreting the RFP as requiring offerors to redact incumbency-related background and experience from their technical proposals evidences a latent ambiguity of which it became aware only after its proposal was

rejected. Protest at 6; Protester Comments at 12. This argument is without merit. As discussed above, we find that the agency's reading of the RFP was the only reasonable one; in other words, the RFP was not ambiguous. However, even if we agreed that the instructions regarding required redactions were ambiguous, any ambiguity was patent rather than latent. That is, to the extent the sections L.6 and L.6.c led the protester to interpret the RFP as requiring redactions of only limited, specific information, that interpretation was inconsistent with section L.6.d(i), which unequivocally required the redaction of all identifying information. Since any alleged ambiguity regarding these provisions was apparent from the RFP itself, a protest on this ground was required to be filed prior to the deadline for receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.1(a)(1) (2010). Since SNAP did not protest until after rejection of its proposal, this protest ground was not timely raised.

The protest is denied.

Lynn H. Gibson
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