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## Decision

**Matter of:** Advanced Technology Systems, Inc.

**File:** B-413291

**Date:** September 28, 2016

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Lawrence P. Block, Esq., and Elizabeth G. Leavy, Esq., Reed Smith LLP, for the protester.

James H. Roberts, III, Esq., Van Scoyoc Kelly & Roberts PLLC, for Stinger Ghaffarian Technologies, an intervenor.

Ryan Carpenter, Esq., Kristen Zearfoss, Esq., and Kimberly Manganello, Esq., Pension Benefit Guaranty Corporation, for the agency.

Young H. Cho, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that proposal was improperly found unacceptable for failing to submit a mandatory performance work statement and deliverables schedule is denied where the record shows that the evaluation was reasonable and consistent with the terms of the solicitation.

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### DECISION

Advanced Technology Systems, Inc. (ATS), of Fairfax, Virginia, protests the issuance of a work order to Stinger Ghaffarian Technologies (SGT), of Greenbelt, Maryland, under work order request (WOR) No. PBGC01-RP-16-0010, issued by the Pension Benefit Guaranty Corporation (PBGC), for business management application (BMA) suite support. ATS protests the evaluation of proposals and the source selection decision, primarily arguing that its proposal was improperly found to be unacceptable because it submitted a required performance work statement (PWS) as a table, rather than a narrative description.

We deny the protest in part and dismiss it in part.

### BACKGROUND

PBGC is a government-owned corporation established under Title IV of the Employee Retirement Income Security Act of 1974 to protect the defined benefit

pension plans of more than 40 million workers and retirees. Agency Report (AR), Contracting Officer's Statement of Facts (COS) at 1. This procurement is for support services for the BMA suite of applications supporting PBGC's Office of Benefits Administration. Id.; WOR<sup>1</sup> at 6-8. The purpose of the BMA suite of applications is to manage and report on participant and beneficiary information, and provide business users with an automated method of facilitating the administration of benefits. Id.

The solicitation was issued on January 20, 2016, to firms with which an information solutions and engineering services 2 (ISES 2) flexible ordering agreement (FOA) had been established under the National Institutes of Health, Chief Information Officer-Solutions and Partners 3 (CIO-SP3), government-wide acquisition contract (GWAC).<sup>2</sup> WOR at 1; AR, COS at 1. The solicitation contemplated the award of a single fixed-price work order with a one-year base period and three 12-month option periods. See WOR at 3; AR, COS at 1. Award was to be made on a best-value basis, considering price and the following equally-weighted technical factors: technical approach; experience of key personnel and adequacy of staffing plan; and past performance. WOR at 25. Technical quality was significantly more important than price. Id. The solicitation advised that the agency intended to evaluate offers and make award without discussions, and cautioned that an initial offer should therefore contain the offeror's best terms from a price and technical standpoint. Id.

The WOR advised in a statement of objectives (SOO) that this procurement is "to acquire software developmental, operational and maintenance services, and production support services for the BMA suite for the PBGC." Id., SOO at 11. Among other things, the SOO outlined the high-level components of the BMA suite; identified the scope of the requirement; and described six specific objectives, with details about their minimum respective requirements. See id. at 8-20.

Of particular relevance here is section 6 of the WOR, titled "Responding to this SOO," which instructed offerors that "[t]he offeror's response to this SOO shall

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<sup>1</sup> The solicitation was amended twice. All citations to the solicitation are to the final version, as amended. All citations to the record are to the pagination provided by the agency.

<sup>2</sup> CIO-SP3 is an indefinite-delivery, indefinite-quantity contract that authorizes federal agencies to award task orders to acquire information technology services. See CIO-SP3 GWAC Contract (Conformed) (March 2016), Articles B.1, B.2, B.3, available at <https://nitaac.nih.gov/services/cio-sp3> (last visited Sept. 21, 2016). ATS did not challenge the agency's selected contract vehicle. Although the protester does not raise this issue, nothing in this decision should be construed as expressing this Office's opinion regarding the propriety of the agency's issuance of a work order under a FOA that was established under a GWAC.

include a Performance Requirements Summary (PRS) [that] identifies performance standards for each service and the method by which PBGC will monitor the contractor's performance in meeting those standards. The offeror is to complete the below table." WOR at 21. The table, which was titled "Performance Requirements Summary Table," sought information in four areas: required services, performance standards, acceptable quality levels (AQL), and monitoring methods. Id.

Beneath the table, and also of particular relevance here, this section required that "[t]he offeror shall propose performance measures, standards, surveillance methods, and acceptable quality levels (AQL) as part of its submission in the Performance Work Statement (PWS)." Id. With regard to performance measures, the solicitation stated that offerors "shall propose performance measures that [will] allow the PBGC to effectively evaluate the [c]ontractor's performance. Where feasible, the [o]fferor shall align the performance measures to the objectives stated in this solicitation." Id.

The solicitation also required, under section 7, Deliverables/Deliverables Schedule, that the offerors provide "[a]t a minimum" 16 deliverables. Id. at 21-22. As relevant here, due dates were prescribed for half of the deliverables, while the due dates for the remaining deliverables were noted as "Per PWS\*." Id. at 22.

On January 26, 2016, prior to the proposal due date, the contracting officer provided to the ISES 2 FOA holders questions and answers (Q&As) about the solicitation. The following two Q&As address questions about what information the solicitation required proposals to include:

**Question 6.** In section 9.1 Content of the Proposal, a PWS table is referenced for inclusion.<sup>3</sup> Should the offer[or] assume that PWS table is the same as PRS [performance requirements summary] table referenced in [s]ection 6 and should include the proposed Performance Standards and Quality levels?

**Answer:** This should read "PWS, PRS table that includes the proposed Performance Standards and Quality levels,..."

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<sup>3</sup> As relevant here, section 9.1 of the solicitation, Contents of Technical Proposal, stated: "Technical Approach: Description of the technical approach, methodology, technique, PWS table, subcontractor management plan, transition plan, and an operational plan to accomplish the tasks identified in the SOO including quality assurance procedures." WOR at 23.

**Question 7.** Section 9 Proposal Instructions references that Performance Work Statements are not included in the page count<sup>4</sup> however a PWS is not specifically requested in the instructions – just the PWS table which we assume is the PRS table from [s]ection 6. Is the PWS, inclusive of the PRS tables, excluded from the PWS? Can PBGC please clarify the submission requirements?

**Answer:** See Question 6. Both the PWS and the PRS are excluded from the page count.

AR, Tab 6, Work Order Solicitation, Contracting Officer Jan. 26, 2016 Email to ISES 2 FOA Holders, at PBGC Solicitation097.

Finally, as relevant here, the WOR specifically advised that an offeror that included essential information to substantiate its proposal would be rated higher than an offeror whose proposal contained unclear or ambiguous language, or merely paraphrased the solicitation's requirements; and that proposals prepared in accordance with the government's instructions would rate higher than proposals that did not follow the instructions. WOR at 25. The amount of clarification required to rate the proposal would also be taken into consideration. Id. Further, the WOR cautioned that a proposal that simply stated the offeror would perform the work and complete the requirements would be considered unacceptable and would be eliminated from further consideration for award. Id.

On January 27, 2016, the agency received three timely proposals, including those from ATS and SGT. Of significance to this decision is ATS's response to the solicitation's requirement for the submission of a PWS and PRS, set forth above. ATS's proposal included an attachment labeled "Appendix A - Performance Work Statement," which presented an introductory paragraph followed by a table labeled "**Figure 18: PWS. PWS in a PRS Summary table format is a living document.**" AR, Tab 7, ATS Technical Proposal, Appendix A at i. The table that followed was the completed four-column PRS table prescribed in the solicitation. Id.

Also of relevance here, with regard to section 7 of the solicitation, Deliverables, ATS's proposal provided a blanket statement that ATS would "provide all deliverables according to [s]ection 7 of the SOO." AR, Tab 7, ATS Technical Proposal at 17.

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<sup>4</sup> The proposal preparation instructions limited technical proposals to a total of 20 pages overall, expressly exempting from this limit "Resumes of Key Personnel, Project Schedules, Performance Work Statements, Past Performances, and Tables of Contents." WOR at 23.

A technical evaluation panel (TEP) evaluated the technical proposals. The TEP identified various strengths, weaknesses, areas of clarifications, and assigned adjectival ratings, as follows:

	ATS	SGT
Technical Approach	Marginal	Satisfactory
Key Personnel/Staffing	Satisfactory	Satisfactory
Past Performance	Very Good	Very Good
Overall Rating	Marginal	Satisfactory
Total Evaluated Price	\$13,252,150	\$13,131,543

AR, Tab 5, TEP Report at 2, 11.

The TEP identified three weaknesses in ATP’s proposal under the technical approach factor<sup>5</sup> for failure to: include a complete PWS; reference applicable SOO requirements in its PRS; and, include a deliverables schedule. AR, Tab 5, TEP Report at 6. The TEP found that each weakness presented a risk to the government. Id. With regard to the first weakness, the TEP found that ATS’s proposal did not include a complete PWS and included only a PRS table. Id. The TEP found that this omission presented high risk because the evaluators could not assess ATS’s intentions, and could not discern whether ATS demonstrated a full understanding of the requirements. Id. The second weakness noted that the PRS, while identifying required services, did not address the applicability of ATS’s proposed performance requirement to the stated objectives in the SOO. Id. The TEP found that this lack of clarity reflected a misunderstanding of the government’s requirements, and increased the level of risk. Id. The third weakness noted that ATS did not provide the required deliverables schedule, and thus provided no method for evaluating whether the correct deliverables were being proposed, or how and when they would be delivered. Id. The TEP found this weakness created a high risk for the government. Id.

The TEP assigned a marginal rating to ATS’s proposal, specifically noting that ATS’s failure to include a complete PWS was “of very high risk to the government” because the agency was unable to determine “how the contract work would be monitored and [assessed] for completeness.” Id. at 8. The TEP also indicated that extensive discussions with ATS would be required to ascertain the content of ATS’s “proposed solutions.” Id.

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<sup>5</sup> The solicitation described the evaluation under the technical approach factor as including the extent to which the offeror’s approach to performing and managing the effort demonstrated knowledge of the challenges in performing the requirements in the SOO. WOR at 25-26.

The TEP also compared ATS's proposal with the awardee's proposal, discussing "key differences" between the offerors' proposals. Id. at 12-13. In contrast to ATS's proposal, the TEP found that SGT demonstrated a comprehensive understanding of the requirements stated within the SOO, and that, in addition to offering innovative technical solutions, SGT's proposal outlined an approach that reduced overall risk to the government. Id. at 12. In sum, the TEP concluded that, taking into account SGT's proposal rating and overall lower level of risk, SGT presented the best option, price and other factors considered. Id. at 13.

The contracting officer, who served as the source selection authority (SSA), reviewed and considered the TEP's evaluation. As relevant here, the contracting officer disagreed with the TEP's assignment of a marginal overall rating to ATS's proposal, finding that the multiple weaknesses and lack of detailed information--including ATS's failure to submit the mandatory PWS--constituted a material deficiency, rendering the proposal unacceptable. AR, Tab 4, Source Selection Decision Document at 7. As a result, the contracting officer found that SGT submitted the only technically-compliant proposal, determined that SGT's proposal offered the best value to the government, and selected SGT's proposal for award. Id. at 9.

ATS was informed of the award decision on June 2, 2016, and was debriefed on June 14, 2016. AR, COS at 3. This protest followed.

## DISCUSSION

ATS challenges the agency's evaluation and award decision, arguing that the agency improperly rejected its proposal for producing its PWS in a table format rather than as a narrative. Protest at 5-6. In this regard, the protester maintains that the solicitation required offerors to submit a PWS table, and did not require a narrative response. Id. at 6. In the alternative, ATS argues that the solicitation contained a latent ambiguity as to whether a narrative response was required. Id. at 9-12. ATS also challenges the agency's assignment of weaknesses for failing to reference any applicable SOO requirements or include a deliverables schedule. See Comments and Supplemental (Supp.) Protest at 10-14. Finally, ATS contends that the contracting officer's downgrading of the overall rating assigned to ATS's proposal, from marginal to technically unacceptable, was improper and inconsistent with the rating scheme used in this procurement. See id. at 4-6. Although we do not specifically address all of ATS's arguments, we have fully considered them and find that they afford no basis upon which to sustain the protest.<sup>6</sup>

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<sup>6</sup> ATS also challenged numerous other aspects of the agency's technical, past performance, and price evaluations; as well as the agency's source selection decision. Because we find that the agency reasonably found ATS ineligible for award, ATS is not an interested party with respect to its remaining protest grounds. (continued...)

In reviewing protests challenging an agency's evaluation of proposals, even in a task order competition as here, we do not reevaluate proposals, but rather we examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. Wyle Labs., Inc., B-412964, B-412964.3, May 27, 2016, 2016 CPD ¶ 144 at 7 (citing Paradigm Techs., Inc., B-409221.2, B-409221.3, Aug. 1, 2014, 2014 CPD ¶ 257 at 6). It is a fundamental principle in a negotiated procurement that a proposal that fails to conform to a material solicitation requirement is technically unacceptable and cannot form the basis for award. Id. at 7-8. In response, the agency first explains that the solicitation required the offerors to submit a PWS, contained numerous references to a PWS, and explained the type of detailed information that should be provided therein. See AR, Memorandum of Law (MOL) at 3-5. In contrast, the agency points out that the only reference to a "PWS table" in the solicitation, in section 9.1, was deleted during Q&As on January 26, 2016, when the contracting officer informed all offerors that both a "PWS" and a "PRS table," that included proposed performance standards and quality levels, were required. Id. at 4-5.

When a dispute arises as to the actual meaning of solicitation language, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. See Level 3 Commc's LLC, B-412854 et al., June 21, 2016, 2016 CPD ¶ 171 at 7; KAES Enters., LLC, B-411225 et al., June 18, 2015, 2015 CPD ¶ 186 at 5. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. Colt Def., LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. A party's particular interpretation need not be the most reasonable to support a finding of ambiguity; rather, a party need only show that its reading of the solicitation provisions is reasonable and susceptible of the understanding that it reached. DynCorp Int'l LLC, B-289863, B-289863.2, May 13, 2002, 2002 CPD ¶ 83 at 8.

On this record, we disagree with the protester's premise that the agency, in its evaluation, imposed an unstated requirement that proposals provide a PWS in narrative form, rather than a table. We have reviewed the solicitation and agree with the agency that both a PWS and a PRS table were required, and that the protester's allegations are premised on an unreasonable interpretation of the

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(...continued)

Wyle Labs., Inc., B-412964, B-412964.3, May 27, 2016, 2016 CPD ¶ 144 at 7 n.5 (citing Rotech Healthcare, Inc., B-409020, B-409020.2, Jan. 10, 2014, 2014 CPD ¶ 28 at 5). Accordingly, these protest grounds are dismissed.

solicitation.<sup>7</sup> Further, the WOR required that proposals provide sufficient information to demonstrate the offeror's intent and level of understanding, and performance measures that would allow the agency to effectively evaluate performance under the work order.

It is well-established that offerors are responsible for submitting a well-written proposal with adequately detailed information that allows for a meaningful review by the procuring agency. DKW Commc'ns, Inc., B-411853.2 et al., Jan. 8, 2016, 2016 CPD ¶ 17 at 5. In this regard, the TEP's assessment of weaknesses in ATS's proposal is not based on the format ATS used--i.e., table instead of narrative--but rather, the proposal's lack of required information.

With regard to the omission of a complete PWS, the TEP report identifies a high level of risk based on the agency's resulting inability to evaluate ATS's "true intent" and level of understanding. AR, Tab 5, TEP Report at 6. Similarly, the failure to reference any applicable SOO requirements in the PRS table was found to present increased risk because it was not clear how (or whether) the performance requirements identified in the table were related to the stated objectives in the SOO.<sup>8</sup> Id. The record also shows that the protester's failure to identify any specific deliverables left the agency with "no method to evaluate . . . whether the correct deliverables are being proposed and how and when they will be delivered."<sup>9</sup> This, in turn, was found to present "high risk to the government." Compare AR, Tab 7, ATS Proposal at 17 with AR, Tab 5, TEP Report at 6.

Overall, the TEP concluded that the omissions of various elements of the PWS did not provide the TEP "with any insight into how the contract work would be monitored and [assessed] for completeness," and, as submitted, did not enable the evaluators to determine what solutions were being proposed. AR, Tab 5, TEP Report at 8. The protester has not demonstrated that this information was provided in its proposal, or otherwise shown that the PRS table it submitted somehow met the WOR requirement for submitting a complete PWS.

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<sup>7</sup> With regard to ATS's argument that the solicitation was ambiguous, we disagree. We do not find reasonable the protester's argument that the solicitation could be understood not to require the submission of a complete PWS.

<sup>8</sup> The protester's PRS table listed 14 different services, corresponding performance standards, AQLs, and monitoring methods. See AR, Tab 7, ATS Proposal, Appendix A, at i-iii. However, there is nothing in ATS's proposal that maps the required services to the stated objectives of the SOO. Id.

<sup>9</sup> In this regard, even assuming that ATS's blanket promise to "provide all deliverables" was intended to be its offer to provide the 16 deliverables listed in section 7 of the solicitation, see AR, Tab 7, ATS Proposal at 17, by failing to submit a complete PWS, ATS failed to propose due dates for half of those deliverables.



Finally, with regard to ATS's complaint that the SSA improperly lowered the ratings assigned to its proposal by the TEP, source selection officials may reasonably disagree with the evaluation ratings and results of lower level evaluators. See, e.g., Verify, Inc., B-244401.2, Jan. 24, 1992, 92-1 CPD ¶ 107 at 6-8. In this regard, a SSA has broad discretion in determining the manner and extent to which evaluation results are used, is permitted to make an independent evaluation of proposals, and may disagree with or expand upon the findings of lower-level evaluators, provided the basis for the evaluation is reasonable and documented in the contemporaneous record. KPMG Consulting LLP, B-290716, B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 13-14; Brisk Waterproofing Co., Inc., B-276247, May 27, 1997, 97-1 CPD ¶ 195 at 2 n.1.

Here, the solicitation clearly advised that an “[o]fferor’s technical approach must demonstrate a thorough understanding of the context of the work to be performed and must possess the ability to perform all task requirements and have a clear value proposition that attempts to differentiate itself from other potential [o]fferors.” See WOR at 25. As discussed above, the omission of required information from ATS’s technical proposal deprived the agency of the ability to determine whether ATS understood the government’s requirements, and to assess how ATS intended to perform and monitor the work to be performed. Further, revising the submitted proposal to address these omissions would have necessitated significant revisions to the proposal through discussions. Accordingly, on this record, we do not find unreasonable the contracting officer’s conclusion that ATS’s technical proposal was unacceptable because it failed to include a complete PWS and a deliverables schedule, instead only including a PRS table that did not reference any applicable SOO requirements. We find that the agency reasonably concluded that these were material deficiencies that rendered ATS’s technical proposal unacceptable, and ineligible for award.

This protest is denied in part and dismissed in part.

Susan A. Poling  
General Counsel