



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Propagation Research Associates, Inc.

File: B-405362

Date: October 20, 2011

Susan F. Dugas, Propagation Research Associates, Inc., for the protester.
Debra J. Talley, Esq., Department of the Army, for the agency.
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the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly found protester's proposal non-compliant where the proposal exceeded the page limitation set forth in the solicitation.

DECISION

Propagation Research Associates, Inc. (PRA), of Marietta, Georgia, protests the rejection of its proposal submitted in response to solicitation No. FY11.2, issued by the Department of the Army under the Department of Defense (DOD) Small Business Innovation Research (SBIR) program for distributed navigation solutions. PRA asserts that the agency improperly rejected its proposal for exceeding the 20-page limitation imposed by the solicitation.

We deny the protest.

BACKGROUND

The SBIR program is conducted pursuant to the Small Business Innovation Development Act, 15 U.S.C. § 638 (2006), which requires certain federal agencies to reserve a portion of their research and development funds for awards to small businesses. As part of its SBIR program, DOD periodically issues SBIR solicitations listing the research topics for which it will consider SBIR program admission.

The solicitation at issue was published in April 2011 and sought Phase I proposals for various topics, including topic No. A11-097, entitled "Distributed Navigation

Solutions.”¹ Solicitation §§ 1.2, 1.5.c, 8.0; Agency Report (AR), Tab 2, Army SBIR Proposal Submission Instructions, at 50-51. The objective of this topic was to develop a solution that leverages existing communication networks to support a navigation function to establish position location information of soldiers in environments without global positioning system solutions. AR, Tab 2, Army SBIR Proposal Submission Instructions, at 50.

As relevant here, the solicitation required proposals to contain four sections: proposal cover sheets, technical proposals, cost proposals, and a company commercialization report. Solicitation §§ 3.0, 6.1. With regard to the technical proposal, the solicitation required offerors to provide a “Phase I Work Plan” that addressed “how and where the work will be carried out, a schedule of major events, and the final product to be delivered.” Id. § 3.5.b(3)(1). The solicitation also advised offerors that the “[i]nvolvement of a university or other subcontractors or consultants” was permitted. Id. § 3.5.b(9). Offerors were advised that “[i]f such involvement is intended, it should be described in detail and identified in the cost proposal.” Id.

With respect to cost proposals, offerors were to provide “enough information . . . to allow the DoD Component to understand how the proposer plans to use the requested funds if the contract is awarded.” Id. § 3.5.c. With regard to subcontractor costs, the solicitation stated as follows:

All subcontractor costs and consultant costs must be detailed at the same level as prime contractor costs in regards to labor, travel, equipment, etc. Provide detailed substantiation of subcontractor costs in your cost proposal.

Id. § 3.5.c(6).

The solicitation also directed offerors to read and follow the SBIR submission instructions that applied to the relevant DOD components, e.g., as relevant here, the instructions for the Army SBIR program. Id. § 8.0. With regard to the supplemental proposal instructions, the solicitation advised offerors to “[r]ead and follow these instructions carefully to help avoid administrative rejection of your proposal.” Id.

¹ The SBIR program has three phases: Phase I, to determine the scientific, technical, and commercial merit of ideas; Phase II, to perform the principal research and development effort resulting in a well-defined, deliverable prototype; and Phase III, during which the small business must obtain private and public funding to develop the prototype into a viable commercial product for sale to military and/or private sector markets. See Photonics Optics Tech, Inc., B-402967, July 28, 2010, 2010 CPD ¶ 173 at 1-2.

(emphasis in original); see also AR, Tab 2, Army SBIR Proposal Submission Instructions, at 9.

The solicitation stated that proposals for Army topics, like the one at issue here, were limited to 20 pages, and that the 20 pages included the cover sheets, but did not include the cost proposal. Solicitation §§ 3.2, 3.4. The Army SBIR proposal submission instructions, which were incorporated by reference to the solicitation, stated in relevant portion as follows:

PHASE I PROPOSAL SUBMISSION

Army Phase I Proposals have a 20-page limit including the Proposal Cover Sheets . . . as well as the Technical Proposal (beginning on page 3, and including, but not limited to: table of contents, pages left blank intentionally by you, references, letters of support, appendices, and all attachments). Therefore, a Technical Proposal of up to 18 pages in length counts towards the overall 20-page limit. ONLY the Cost Proposal and the Company Commercialization Report (CCR) are excluded from the 20-pages Army Phase I proposals submitted over 20-pages will be deemed NON-COMPLIANT and will not be evaluated

AR, Tab 2, Army SBIR Proposal Submission Instructions, at 1, 9 (emphasis in original); see Solicitation § 8.0. The Army SBIR submission instructions reiterated that “[p]roposals not conforming to the terms of this [s]olicitation will not be considered.” AR, Tab 2, Army SBIR Proposal Submission Instructions, at 1.

Offerors had to submit proposals electronically to the DOD SBIR submission website identified in the solicitation by 6:00 a.m. on June 29, 2011. Solicitation §§ 6.1, 6.2.

The day before the solicitation closed, PRA uploaded its proposal to the submission website. Protest at 1. In its proposal, PRA included additional information concerning a proposed subcontractor. AR, Tab 4, PRA Proposal, at 22-26. This information consisted of a letter stating the subcontractor’s willingness to be a consultant to PRA, and two attachments: a statement of work (SOW) and a “proposal pricing sheet.” Id. The SOW listed four “tasks” the subcontractor would perform in support of PRA’s proposed technical approach. Id. at 23. Under each of these tasks were descriptions of work to be performed by the subcontractor as part of the identified task. Id. As relevant here, the subcontractor SOW did not include any information regarding the cost or price of these tasks. See id. The subcontractor proposal pricing sheet consisted of information concerning the cost of performing the work to be provided in support of PRA. Id. at 24.

The agency reviewed PRA’s proposal and concluded that while the subcontractor proposal pricing sheet was part of its cost proposal, the subcontractor letter and the subcontractor SOW were part of its technical proposal. AR, Tab 5, Email from

Agency to PRA, July 7, 2011. In this regard, the cover letter and subcontractor SOW, each of which was one page, counted toward PRA's proposal's page count, which brought the firm's proposal to 22 pages. AR at 1, 6. Consequently, the Army informed PRA by letter dated July 1 that its proposal exceeded the 20-page limit, and would not be evaluated for award. AR, Tab 7, Non-Compliance Notification letter, at 1. PRA subsequently filed this protest.

DISCUSSION

PRA protests the agency's rejection of its proposal for exceeding the page limitation.² Protest at 1. Specifically, PRA contends that the subcontractor letter and SOW were supporting documentation for the cost proposal and should not have been counted against the page limit. Protest at 2; Comments at 2.

Offerors are required to prepare their proposals in the format established by the solicitation, including page and other limitations. Client Network Servs., Inc., B-297994, April 28, 2006, 2006 CPD ¶ 79 at 6. If the solicitation provides that a proposal exceeding a specified page limit will be rejected and an offeror does not protest those terms, then rejection of a proposal that exceeds the limit is unobjectionable. See Macfadden & Assocs., Inc., B-275502, Feb. 27, 1997, 97-1 CPD ¶ 88 at 2. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals, but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's mere disagreement with the agency's judgment in its evaluation does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

First, PRA argues that the solicitation required offerors to provide "detailed substantiation" of proposed subcontractor costs. Protest at 2; Solicitation § 3.5.c(6). The protester argues that the subcontractor SOW was a "cost substantiation," which was intended to enable the agency to understand the proposed costs for the subcontractor. Comments at 4, citing Solicitation § 3.5.c(6).

The Army contends that the subcontractor cover letter and SOW related to the work to be performed by the subcontractor, rather than a substantiation of the costs of

² We note that PRA does not dispute the solicitation's page restrictions, nor did the firm contest the terms of the solicitation prior to submitting its proposal. Protest at 1; see Mathews Assocs., B-299305, March 5, 2007, 2007 CPD ¶ 47 at 3. To the extent that PRA now protests the solicitation's cost proposal requirements, such protest grounds would be untimely. See Protest at 2; Comments at 3; see also 4 C.F.R. § 21.2(a)(1) (2011).

performance. To the extent that the protester contends that the solicitation required “substantiation” of subcontractor costs in the form of technical approach information, the agency notes that the solicitation advised offerors that the level of detail for subcontractor costs must be the same as that provided for the prime contractor. AR at 7, citing Solicitation § 3.5.c(6). The agency further notes that PRA did not provide details concerning its own technical approach in its cost proposal, thus undercutting the protester’s interpretation that the solicitation required subcontractor costs to be supported by technical approach information in the cost proposal. AR at 7.

We think that the agency’s conclusion was reasonable. The solicitation did not state, as the protester contends, that offerors were required or permitted to include technical approach information in their cost proposals. See Comments at 2. Consistent with the solicitation, all such information should have been part of the technical proposal. Solicitation § 3.5.b(3)(1). Neither the subcontractor’s cover letter nor the SOW itself discuss the subcontractor’s costs or how the subcontractor plans to use the requested funds. See AR, Tab 4, PRA Proposal, at 22-23; Solicitation § 3.5.c(6). Instead, PRA separately provided details concerning the subcontractor’s proposed costs in the “Proposal Pricing Sheet.”³ AR, Tab 4, PRA Proposal, at 24. On this record, we conclude that the agency reasonably found the cover letter and subcontractor SOW to be part of the technical proposal.

Next, PRA argues that the “mere brevity” of the subcontractor SOW is evidence that the page was not meant to provide “any technical substance.” Comments at 3, 4. Regardless of the protester’s intentions in submitting this information, the record shows that the subcontractor SOW described the work related to the tasks to be performed. For this reason, we do not think that the protester’s representations concerning its intended purpose for the subcontractor SOW demonstrate that the agency unreasonably found that the pages counted toward PRA’s technical proposal.

Finally, PRA argues that, in connection with other Army SBIR solicitations, it has submitted similar subcontractor information as part of its cost proposal, and that the Army did not reject those proposals. Protest at 2; Comments at 3. For this reason, the protester contends that the agency should not have deviated from its prior practice. Even if the protester is correct that the agency had not previously rejected other PRA proposals that included similar subcontractor information—a point not substantiated by the protester—we find no merit to this argument. As our Office has long held, each federal procurement stands on its own, and an agency’s prior practices, if independently reasonable, are not rendered improper by the fact that the agency might have viewed a prior proposal differently. See e.g., Gonzales-McCaulley

³ The agency concluded that this page was part of PRA’s cost proposal. AR, Tab 5, Email from Agency to PRA, July 7, 2011.

Inv. Group, Inc., B-402544, May 28, 2010, 2010 ¶ 127 at 3 n.4; FR Countermeasures, Inc., B-295375, Feb. 10, 2005, 2005 CPD ¶ 52 at 8.

In sum, we conclude that the agency reasonably found that the subcontractor cover letter and SOW were part of PRA's technical proposal, rather than its cost proposal. Thus, consistent with the terms of the solicitation, the agency counted these pages toward the technical proposal page limit. Because these two pages resulted in the protester's proposal exceeding the solicitation's 20-page limit, the agency reasonably rejected PRA's proposal.

The protest is denied.

Lynn H. Gibson
General Counsel