



## Decision

**Matter of:** Planned Systems International, Inc.

**File:** B-413028.5

**Date:** February 21, 2018

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### DIGEST

Protester's post-award challenge to the cost realism methodology set forth in the solicitation is untimely.

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### DECISION

Planned Systems International, Inc. (PSI), of Arlington, Virginia, protests the decision of the Defense Information Systems Agency (DISA), Department of Defense (DOD), not to award it one of the "Encore III" contracts under request for proposals (RFP) No. HC1028-15-R-0030 for information technology services supporting DOD and other federal agencies. The protester challenges the agency's cost evaluation and source selection decision.

We dismiss the protest.

## BACKGROUND

On March 2, 2016, the agency issued the solicitation, referred to as “Encore III,”<sup>1</sup> which anticipated the award of two separate suites of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts, one resulting from full-and-open competition, and the other, set aside for small business concerns.<sup>2</sup> For the full-and-open suite, which is the subject of this protest, the RFP provided that “[t]he government intends to award up to 20 [ ] contracts,” each with a 5-year base period, and one 5-year option period. RFP at 121.

The RFP provided for award using a lowest-priced, technically acceptable source selection process, considering the following evaluation factors: technical/management approach, past performance, and cost/price.<sup>3</sup> Id. at 144-49.

As relevant here, under the cost/price factor, offerors were required to propose fixed-price and cost-reimbursement labor rates for both government and contractor sites, for all 116 labor categories listed in the solicitation. Id. at 132. For both the fixed-price and the cost-reimbursement labor rates, offerors were to include direct and indirect rate burdens, and detailed labor rate build-up information, including all formulas and methodology. Id. The solicitation provided that the agency would “calculate a Total Proposed Price [TPP] for each offeror by applying Government estimated labor hours for each year of contract performance to each offeror’s proposed fully burdened FP [fixed price] and CR [cost reimbursement] labor rates for each labor category at both site locations.” Id. at 148.

With regard to the cost evaluation, the RFP provided that the agency would “perform a cost realism analysis on the proposed [cost reimbursement] labor rates in accordance with [Federal Acquisition Regulation] FAR 15.404-1(d).” Id. at 149. Specifically, the RFP provided that the agency would conduct the following standard deviation analysis

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<sup>1</sup> Encore III is a follow-on to Encore II and represents an ongoing expansion of DISA’s Defense Enterprise Information Services (DEIS) I and DEIS II contracts. RFP at 11, 13.

<sup>2</sup> On April 25, 2016, two protests were filed with our Office challenging the terms of the initial solicitation. On August 3, 2016, we sustained the protests. See CACI, Inc.-Federal; Booz Allen Hamilton, Inc., B-413028 et al., Aug. 3, 2016, 2016 CPD ¶ 238. In response, the agency amended the solicitation and accepted revised proposals. In all, the RFP was amended seven times. References herein are to the conformed version of the RFP that is inclusive of the seven amendments.

<sup>3</sup> The solicitation also provided that the agency would evaluate offerors’ small business subcontracting plans, and organizational/consultant conflict of interest plans. RFP at 150.

to determine cost realism:

The cost/price team will develop an average for each CR [cost reimbursement] labor rate utilizing the proposed CR rates on the “CR Labor Rate Table” tab from ALL complete proposals within each suite (Full and Open and Small Business). The team will then calculate the standard deviation of the average for each CR labor rate. . . . The Government considers a rate that is 1 standard deviation below the average to be a realistic rate, subject to cost analysis techniques in accordance with FAR 15.404. The initial calculations for Average and Standard Deviation will be utilized for the entirety of the evaluation and will not be recalculated if a competitive range is set.

Id.

In addition, the solicitation provided that “if an offeror’s proposed CR labor rate is more than 1 standard deviation below the average for that labor rate, the Cost/Price Team will review the submitted supporting documentation at the component level for that rate.” Id. The solicitation explained that, “[i]f it is determined that the supporting documentation supports the realism of the proposed rate, no adjustment will be made to the offeror’s rate.” Id. However, the solicitation further provided that, “[i]f inadequate or no justification is provided by the offeror for any component of that rate[,] . . . the Government will adjust the fully burdened CR Labor rate to be equal to the average for purposes of calculating the Most Probable Cost for that offeror.” Id.

Based on the standard deviation cost realism analysis, the RFP provided that the agency would “calculate a total [m]ost [p]robable [c]ost (MPC) for the CR [cost reimbursement] only portion of the proposal for each offeror by applying Government estimated labor hours for each year of contract performance to each offeror’s most probable cost labor rates for each labor category at both Government and contractor sites.” Id.

The solicitation provided that the agency would then calculate a total evaluated price (TEP) by adding the TPP for the fixed price portion of the proposal to the MPC for the cost reimbursement portion of the proposal. Id. at 150. The RFP explained that the cost/price team would then “organize the proposals by their TEP price from lowest to highest for each suite,” and “[u]p to 20 (30 if a competitive range is established) of the lowest evaluated priced proposals for each suite [would] next be evaluated by the contracting officer [ ] for compliance with other terms and conditions of the RFP.” Id. After the contracting officer’s compliance review, the lowest evaluated priced proposals remaining in each suite would be evaluated under the non-cost/price factors. Id.

The agency calculated the TEPs and established a competitive range of the 30 proposals with the lowest total evaluated prices. Protest, exh. B, Debriefing Letter, at 1. After the agency conducted several rounds of discussions and received/evaluated final proposal revisions, PSI’s proposal was ranked 21st based on evaluated price. Id. at 4.

On November 2, 2017, the agency notified PSI that its proposal had not been selected for award. Id., exh. A, Award Notification, at 1. After a debriefing, PSI filed this protest.

## DISCUSSION

PSI challenges the agency's cost/price evaluation, arguing that the agency failed to conduct a proper cost realism analysis.<sup>4</sup> Specifically, the protester asserts that the agency failed to adequately analyze the offerors' proposed costs and prices in light of the offerors' proposed technical approaches and abilities to perform the requirements of the performance work statement (PWS). The protester also contends that the agency deviated from the RFP's stated source selection procedures by making only 20 awards. In this regard, the protester asserts that when the agency established a competitive range, as it did here, the solicitation provided that the agency would make "up to 30" awards. Protest at 10.

We first address PSI's contention that the agency failed to conduct a proper cost realism analysis. In support of this argument, the protester points to a "Problem Statement" in the RFP, which the offerors were required to address in their technical/management proposals. Protest at 12; RFP at 144-46. As relevant here, the solicitation provided for the evaluation of offerors' approaches to addressing the Problem Statement under seven technical subfactors. Id. The protester asserts that the Problem Statement was "very complex," and that, by failing to consider "the complexity of the technical/management subfactors . . . [in] the [a]gency's cost realism analysis," the agency's cost evaluation was improper. Protest at 13. DISA responds that PSI's protest in this regard is an untimely challenge to the terms of the solicitation. For the reasons discussed below, we agree with the agency that PSI's post-award challenge to the agency's methodology for evaluating the offerors' proposed costs is untimely.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Verizon Wireless, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Our timeliness rules specifically require that a protest based upon alleged solicitation improprieties that are apparent prior to the closing time for submission of proposals must be filed before that time. 4 C.F.R. § 21.2(a)(1); see AmaTerra Envtl. Inc., B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3.

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<sup>4</sup> PSI's initial protest also challenged the agency's evaluation of price realism. Protest at 11. Although the agency responded to this argument in its request for dismissal, PSI failed to rebut or substantively address the agency's response in its reply to the dismissal request. Protester's Response at 2-3. As a result, we view these contentions as abandoned. Enterprise Sols. Realized, Inc.; Unissant, Inc., B-409642, B-409642.2, June 23, 2014, 2014 CPD ¶ 201 at 5 n.6.

Here, as set forth above, the solicitation specified a detailed approach for the agency's evaluation of cost realism. RFP at 149. In this regard, offerors were informed that the agency would conduct a standard deviation cost realism analysis on the offerors' proposed labor rates for the 116 labor categories provided in the RFP (for both government and contractor sites). Id. The solicitation provided that the agency would develop an average cost reimbursable labor rate for each of the 116 labor categories from the labor rates proposed by the offerors. Id. The solicitation also advised offerors that the agency would consider any labor rate within one standard deviation of the average to be realistic, subject to additional cost/price analysis. For any rate found to be outside of the one standard deviation, the solicitation provided that it would be evaluated by component (direct rates, indirect rates, etc.). If inadequate or no justification was provided for any component, the solicitation explained that "the Government [would] adjust the fully burdened CR Labor rate to be equal to the average for purposes of calculating the [m]ost [p]robable [c]ost for that offeror." Id. Based on this analysis, the RFP provided that the agency would "calculate a total [m]ost [p]robable [c]ost" for the cost reimbursement portion of the proposal for each offeror "by applying Government estimated labor hours for each year of contract performance to each offeror's most probable cost labor rates for each labor category at both Government and contractor sites." Id.

The protester does not assert that the agency failed to follow the detailed cost evaluation process that was set forth in the RFP, which did not provide for the consideration of offerors' proposed technical approaches to the Problem Statement.<sup>5</sup> Rather, the protester interprets the solicitation's reference to FAR § 15.404-1(d)--which states that cost realism involves the process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are "realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal"--to mean that the agency was also required to consider technical approach as part of its cost/price evaluation. The divergence between the protester's interpretation, and the evaluation process identified in the solicitation, however, was apparent on the face of the RFP. Accordingly, any ambiguity regarding the protester's interpretation and the plain language of the solicitation was patent, i.e., clear or obvious on the face of the RFP, rather than latent. Since any alleged ambiguity regarding the solicitation was apparent on the face of the RFP itself, a protest on this ground was required to be filed prior to the submission of proposals. 4 C.F.R. § 21.2(a)(1); U.S. Facilities, Inc., B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 10. Accordingly, PSI cannot now timely challenge this matter.

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<sup>5</sup> We note that our Office has previously considered an agency's use of the standard deviation methodology as a tool for determining the realism of offerors' proposed labor rates. Noblis, Inc., B-414055, Feb. 1, 2017, 2017 CPD ¶ 33 at 12-13 (finding the agency's use of the standard deviation methodology reasonable where the agency conducted additional analysis once a labor rate was determined to be lower than the minimum deviation).

PSI next argues that the agency deviated from the RFP's stated source selection procedures by making 20 awards (rather than 30 awards) to the lowest-priced, technically acceptable proposals in the competitive range.

In support of this argument, the protester points to the following provision in the RFP:

The [contracting officer] will forward the sets of up to 20 (30 if a competitive range is established) of the lowest evaluated priced proposals in each suite for evaluation of the non-cost/price factors to the technical and past performance teams.

RFP at 141.

PSI interprets the above solicitation language to mean that "30 of the lowest[-]price proposals [were] in contention for award [in instances] where the Agency establishe[d] a competitive range." Protester Response at 4. Accordingly, because the contracting officer established a competitive range here, the protester asserts that it was improper for the agency to make only 20 awards where there were technically acceptable proposals, such as PSI's, within the 30 lowest-priced proposals.

The agency disagrees with the protester's interpretation of the above language, and contends that the RFP stated the agency's intention to "award up to 20 ID/IQ contracts" regardless of whether a competitive range was established. RFP at 121 ("The Government intends to award up to 20 ID/IQ contracts for the Full and Open Suite."). The agency also maintains that its intention to make a maximum of 20 awards, even if discussions were opened, was further articulated to the offerors through the RFP's questions and answers (Q&As). Agency Dismissal Request at 8; see, e.g., RFP, Q&A 279, 576, 577, 580, 716.

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. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. DynCorp Int'l LLC, B-289863, B-289863.2, May 13, 2002, 2002 CPD ¶ 83 at 8.

Here, the RFP clearly provided that "[t]he Government intends to award up to 20 ID/IQ contracts for the Full and Open Suite[.]" RFP at 121. Accordingly, to the extent PSI believed, based on its reading of the solicitation, that the agency would make "up to 30 awards" if the agency established a competitive range, such an interpretation clearly conflicted with the RFP provision providing that the agency intended to award "up to 20 ID/IQ contracts." RFP at 121. Any ambiguity regarding these provisions was patent, i.e., clear or obvious on the face of the RFP, rather than latent, and as such, a protest

on this ground was required to be filed prior to the submission of proposals. 4 C.F.R. § 21.2(a)(1); U.S. Facilities, Inc., supra. The protester's failure to do so renders it untimely now.<sup>6</sup>

The protest is dismissed.

Thomas H. Armstrong  
General Counsel

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<sup>6</sup> We also point out that even if the solicitation had clearly provided for up to 30 awards, it would not have been a violation of the solicitation's terms for the agency to award only 20 contracts. See Canadian Commerical Corp./Liftking Indus., Inc., B-282334 et al., June 30, 1999, 99-2 CPD ¶ 11 at 1 (finding that solicitation language stating that the agency intended to make up to two awards did not create a legal obligation to award two contracts, but rather, gave the agency discretion to make a single award).