



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Millennium Corporation, Inc.

File: B-416485.2

Date: October 1, 2018

Milton C. Johns, Esq., and Rachel Leahey, Esq., Fluet Huber & Hoang PLLC, for the protester.

Kevin P. Mullen, Esq., Charles L. Capito, Esq., and Lauren J. Horneffer, Esq., Morrison & Foerster LLP, for Precise Systems, Inc.; and Isaias “Cy” Alba, IV, Esq., Julia Di Vito, Esq., and Meghan F. Leemon, Esq., PilieroMazza PLLC, for Davis Defense Group, Inc., the intervenors.

Robin Ray Coll, Esq., and Stephanie K. Polk, Esq., Department of the Navy, for the agency.

Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency unreasonably evaluated protester’s proposal is sustained where there was a latent ambiguity in the terms of the solicitation.

DECISION

Millennium Corporation, Inc., a service-disabled veteran-owned small business of Arlington, Virginia, protests the award of contracts under request for proposals (RFP) No. N00421-18-R-0039, issued by the Department of the Navy, Naval Air Systems Command (NAVAIR), Naval Air Warfare Center Aircraft Division, for program management technical support services.¹ Millennium contends that the Navy’s evaluation of the offeror’s proposal and resulting award decision were improper.

We sustain the protest.

¹ The solicitation was subsequently amended twice. All citations are to the final, conformed version of the RFP.

BACKGROUND

The RFP, issued on October 23, 2017, as a small business set-aside, contemplated the award of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts under which task orders would be placed for a base year with four 1-year options.² *Id.* at 2, 8. In general terms, the statement of work required contractors to provide the personnel necessary to address NAVAIR's "program[] management and acquisition support requirements throughout the entire domestic and/or foreign military acquisition and sustainment lifecycle of a weapon system program." *Id.* at 14. The solicitation provided that award would be made to the 20 highest technically-rated offerors that offered fair and reasonable prices, and established criteria for assigning technical points with regard to the following factors: relevant experience; past performance; and systems, certifications, and clearances.³ *Id.* at 96, 98-99. Finally, the solicitation provided that each offeror was to self-score its proposal against the solicitation's evaluation criteria and provide documentation with its proposal to support the points claimed. *Id.* at 99-106; attach. J.5.1, Self-Scoring Worksheet, at 1-3.

A total of 84 offerors, including Millennium, submitted proposals by the December 18 closing date. Agency Dismissal Request at 3. Following submission of proposals, the agency evaluated the documentation submitted and point scores claimed by each offeror. With regard to Millennium, while the offeror's self-score was 6,375 points, the agency's evaluated score was 5,975 points. Agency Dismissal Request at 4. As detailed below, the 400-point reduction to Millennium's self-score concerned the assessment of one of the offeror's past performance references.

The Navy thereafter posted a list of the awardees and disclosed that contract awards were being made to 21 offerors that had evaluated point scores ranging from 7,625 to 6,150.⁴ Based on the agency's evaluation of Millennium's proposal, and its deduction of the 400 points discussed above, Millennium's proposal was not among the highest-rated offerors and was not eligible for award. This protest followed.

DISCUSSION

Millennium challenges the Navy's evaluation of its proposal. Specifically, the protester alleges that the downward adjustment to its self-score was unreasonable and not in accordance with the plain language of solicitation. The gravamen of Millennium's protest is that the Navy's interpretation of the solicitation evaluation criteria was contrary

² The RFP specified that the maximum order amount under the IDIQ contract was \$960 million, the maximum amount for any individual task order was \$250 million, and the guaranteed minimum was \$1,000. Agency Dismissal Request, exh. 1, RFP, at 8.

³ The maximum point score possible was 8,000 points.

⁴ There was a tie in the evaluated scores of the 20th and 21st highest-rated offerors; accordingly, award was made to 21 offerors.

to the plain language of the provision. Millennium also argues that it was prejudiced by the alleged error and that its proposal should have been among those selected for award. As detailed below, we find that the solicitation contained a latent ambiguity and sustain the protest on that ground.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Harper Constr. Co., Inc., B-415042, B-415042.2, Nov. 7, 2017, 2018 CPD ¶ 47 at 4; Analytical Innovative Solutions, LLC, B-408727, Nov. 6, 2013, 2013 CPD ¶ 263 at 2. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Harper Constr. Co., Inc., *supra*.

As set forth above, the quality of an offeror's past performance was one of the criteria upon which technical point scores were based. The RFP included a detailed formula for converting the adjectival ratings received on a contractor performance assessment report (CPAR) into an average score, and then into points on the self-scoring worksheet.⁵ For example, for each relevant project, a past performance average score of 3.50 to 3.74 was worth 400 points, while an average score below 3.50 was worth 0 points. *Id.* at 101.

Relevant to this protest, the RFP included the following provisions for determining CPAR average scores as follows:

(a) For each Project with an interim or final CPAR, an average point value will be assigned based on each CPAR criteri[on] and adjectival rating in accordance with the following [adjectival rating/point value] table. If any of the past performance criteria were not assigned an adjectival rating, that criteri[on] will not be averaged into the final score.

(b) NOTE: CPARS Rating Categories changed in 2014 as shown below. Please utilize the categories that were rated in the CPARS you are claiming when calculating the past performance score for each Project.

Categories prior to 2014:

1. Quality of Product or Service
2. Schedule
3. Cost Control

⁵ The RFP included a table showing that CPAR adjectival ratings would be converted into point values as follows: exceptional, 5 points; very good, 4 points; satisfactory, 3 points; marginal, 1 point; and unsatisfactory, 0 points. RFP § M.4.2.1(c), at 101-102. To obtain the average CPAR score, offerors were to add up the numerical scores and divide by the number of rated CPAR categories.

4. Business Relations
5. Management of Key Personnel
- 6. Utilization of Small Business**

Current Categories:⁶

1. Technical/Quality of Product or Service
- 2. Schedule/Timeliness**
- 3. Cost Control**
4. Management or Business Relations
- 5. Utilization of Small Business**
6. Regulatory Compliance

RFP § M.4.2.1, at 101 (emphasis in original).⁷

Millennium's self-scoring sheet included four past performance references. Protest, exh. 3, Millennium Self-Scoring Worksheet, at 2-3. Millennium's first reference utilized only five of the evaluation categories identified as "current categories" in the solicitation;⁸ however, Millennium's CPAR report also included another evaluation category not among those listed in the RFP (i.e., "travel/other direct costs" category).⁹ Id. at 1-2. The inclusion of this additional category in Millennium's calculation resulted in an average score of 3.50 for Millennium's first past performance reference, and 400 points on the offeror's self-scoring worksheet.¹⁰ Id. at 1.

⁶ Contrary to the list of "current categories" identified in the RFP, a CPAR evaluation currently "includes seven evaluation areas to rate the contractor's performance:" (1) Technical/Quality of Product or Service; (2) Schedule/Timeliness; (3) Cost Control; (4) Management or Business Relations; (5) Utilization of Small Business; (6) Regulatory Compliance; and (7) Other. Guidance for the Contractor Performance Assessment Reporting Systems (CPARS), July 2018, at 26, available at <https://www.cpars.gov/pdfs/CPARS-Guidance.pdf> (last visited September 26, 2018). The seventh CPAR category provides the contracting officer with the option to evaluate up to three "other areas" of a contractor's performance. Id.

⁷ The RFP also included past performance scoring examples showing how average scores and points would be determined, and each CPAR example was based on the evaluation categories enumerated in the RFP. Id. at 103-104.

⁸ Millennium's CPAR report here did not include an evaluation regarding small business utilization. Id., exh. 2, Millennium CPAR Report, at 1.

⁹ The inclusion of the "travel/other direct costs" category among the CPAR evaluation areas was specific to Millennium's first past performance reference.

¹⁰ Recall that an average score of 3.50 to 3.74 was worth 400 points, while an average score below 3.50 was worth 0 points.

The Navy evaluators reviewed Millennium's self-scoring worksheet, including the CPAR evaluation categories upon which the offeror had computed its average scores. Protest, exh. 6, Millennium Debriefing, at 4-5; Agency Dismissal Request at 6. The evaluators found that while Millennium's average score for its first past performance reference was based on six CPAR evaluation categories (as anticipated), one of those categories was an "other" category as permitted by the CPARS Guide (but not among those set forth in the RFP). Agency Dismissal Request at 6. Because the removal of this category resulted in an average score below 3.50 for Millennium's first reference, the evaluators deducted 400 points from the offeror's self-scoring worksheet. Id.

Millennium contends the agency's evaluation was improper, and its interpretation of the solicitation was unreasonable. Millennium argues that the RFP did not contain any language indicating that only the listed CPAR categories would be used for scoring purposes, or mention that "other areas" could not be included in the ratings to be scored. Protest at 11. Millennium notes that the RFP expressly directed offerors to use "the categories that were rated in the CPARS you are claiming when calculating the past performance score for each Project." Id., citing RFP § M.4.2.1(b), at 101.

The Navy argues that its evaluation was reasonable because the solicitation language was "clear and unambiguous" that the CPAR evaluation categories to be used in scoring offerors' past performance were only those set forth in the RFP.¹¹ Id. Alternatively, the Navy argues, even if Millennium's interpretation of the RFP was also reasonable, any ambiguity in the solicitation was so obvious that the protester was required to raise it prior to the submission of proposals. Id.

Where a dispute exists as to a solicitation's requirements, we begin by examining the plain language of the solicitation. Harper Constr. Co., Inc., supra; Point Blank Enters., Inc., B-411839, B-411839.2, Nov. 4, 2015, 2015 CPD ¶ 345 at 3. We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. Desbuild Inc., B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 5. If the solicitation language is unambiguous, our inquiry ceases. Id. An ambiguity, however, exists where two or more reasonable interpretations of the solicitation are possible. Colt Def., LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. If the ambiguity is an obvious, gross, or glaring error in the solicitation (e.g., where solicitation provisions appear inconsistent on their face), then it is a patent ambiguity; a latent ambiguity is more subtle. A-P-T Research, Inc., B-414825, B-414825.2, Sept. 27, 2017, 2017 CPD ¶ 337 at 12; Harper Constr. Co., Inc., supra. Here, as detailed below, we conclude that the disputed terms of the solicitation were latently ambiguous because the provisions appear to be susceptible to two reasonable interpretations.

¹¹ The Navy also points to the scoring examples provided in the RFP that were based on only the enumerated CPAR categories as further support of its position. Agency Dismissal Request at 12, citing RFP at 103-104. As set forth in greater detail below, we conclude that these examples do not render patent any ambiguity here.

First, we find the agency's interpretation of the solicitation is not unreasonable. As set forth above, the RFP instructed offerors to "utilize the categories that were rated in the CPARS you are claiming when calculating the past performance score for each [reference]," and then immediately listed CPAR categories, which did not include "travel/ other direct costs." RFP § M.4.2.1(b), at 101. Moreover, while all of the RFP's CPAR scoring examples involved fewer than the six current CPAR categories identified in the RFP, none of these scoring examples exceeded the enumerated CPAR evaluation categories. We find the agency's interpretation essentially ties together the parts of RFP § M.4.2.1(b)--that the CPAR categories to be used when calculating the average score were the enumerated ones--and is consistent with the solicitation when read as a whole and gives effect to each of its provisions. See Arch Sys., LLC; KEN Consulting, Inc., B-415262, B-415262.2, Dec. 12, 2017, 2017 CPD ¶ 379 at 6.

Millennium advances an alternate interpretation of the solicitation. The protester points to RFP § M.4.2.1(a) which stated that "an average point value will be assigned based on each CPAR criteria," without limitation. Protest at 10. Millennium also contends that it understood the purpose of listing the CPAR categories in RFP § M.4.2.1(b) was not to limit the categories to be considered, but rather, to distinguish the current CPAR categories from older ones.¹² Id. at 11.

We also find Millennium's interpretation of the solicitation to be reasonable. RFP § M.4.2.1(a) stated that the average score "will be assigned based on each CPAR criteri[on]" on which the offeror was rated, and did not include a limitation. Further, RFP § M.4.2.1(b) expressly instructed offerors to "utilize the categories that were rated in the CPARS you are claiming when calculating the past performance score for each Project." As set forth above, consistent with this language, Millennium utilized all of the categories that were rated in the CPAR report that it was claiming, which included the "other areas" category. While RFP § M.4.2.1(b) also distinguished between the current and former CPAR evaluation categories, in neither instance did the solicitation state that the listed categories were the only acceptable ones. Quite simply, Millennium's interpretation is based on, and not contradicted by, the express language of the solicitation.¹³

¹² Millennium also claims "the [a]gency told offerors that in rating Past Performance, '[a]n average point value will be assigned based on each adjectival rating that was given a score'" Id. at 6, citing RFP § M.4.2.3(c). We find Millennium's reliance on RFP § M.4.2.3(c) to be misplaced, as this aspect of the solicitation applied to past performance rating forms and not to CPAR reports.

¹³ Although the Navy argues that Millennium's interpretation "is unreasonable because it contradicts the express language of the solicitation," Agency Dismissal Request at 12, the agency fails to identify what specific RFP provision Millennium's interpretation contradicted. The fact that Millennium utilized a CPAR category--on which it had been properly rated--that was other than the enumerated evaluation categories does not amount to a contradiction.

Finally, we conclude that the RFP here did not contain any inconsistency in its language that was obvious, gross, or glaring, such that the ambiguity was patent on the face of the solicitation. We therefore find the ambiguity in the RFP's scoring scheme was a latent one. The RFP expressly stated that the average score would be "based on each CPAR criteri[on]," and also instructed offerors to "utilize the categories that were rated in the CPARS you are claiming when calculating the past performance score for each Project." RFP § M.4.2.1(a), (b). While the Navy may have intended the enumerated CPAR evaluation categories to be the only acceptable ones, the express language of the RFP contained no such limitation. Further, the RFP provisions at issue are not facially inconsistent (and thus patently ambiguous). To the contrary, we find nothing in the RFP which contradicts the express language upon which Millennium relies. The Navy essentially argues that offerors should have known what the agency intended based on the listed CPAR categories and scoring examples provided. Quite simply, we do not find these factors sufficiently obvious, gross, or glaring to create a patent ambiguity, especially in light of the express solicitation language to the contrary. In sum, we find that the solicitation contained a latent ambiguity about how the agency would treat offerors whose CPAR reports contained ratings in other than the six enumerated CPAR evaluation categories. See Ashe Facility Servs., Inc., B-292218.3, B-292218.4, Mar. 31, 2004, 2004 CPD ¶ 80 at 10-12.

RECOMMENDATION

We recommend that the Navy reevaluate Millennium's proposal using the alternative reasonable interpretation.¹⁴ In the event that Millennium's revised score is at or above that of the 21st highest-rated offeror (i.e., 6,150 points), and reasonably-priced, we recommend that the agency simply make an additional award to Millennium. We also recommend that the agency reimburse Millennium for the firm's costs of filing and pursuing its protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). Millennium's certified claim for costs, detailing the time expended and costs incurred, must be submitted directly to the Navy within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Thomas H. Armstrong
General Counsel

¹⁴ While we generally recommend that the agency amend the solicitation to clarify the latently-ambiguous requirement--as such an ambiguity may preclude offerors from competing on a relatively equal basis, see, e.g., Coastal Int'l Security, Inc., B-411756, B-411756.2, Oct. 19, 2015, 2015 CPD ¶ 340 at 8--we see no need to disturb the existing awards in light of the ambiguity here. In addition, given that we have been provided no evidence that other offerors faced this rarely-seen conundrum in scoring their past performance, we see no basis to recommend that the Navy revise its solicitation and reopen the competition.