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Decision

Matter of: DAI Global, LLC

File: B-416992

Date: January 17, 2019

Robert Nichols, Esq., Andrew Victor, Esq., Rebekah Woods, Esq., and Jason C. Lynch, Esq., Nichols Liu LLP, for the protester.

Daniel R. Forman, Esq., and Lauren H. Williams, Esq., Crowell & Moring LLP, for Abt Associates Inc.; James Y. Boland, Esq., and Emily A. Unnasch, Esq., Venable LLP, for Palladium International, LLC; and Kayleigh Scalzo, Esq., J. Hunter Bennett, Esq., Evan Sherwood, Esq., Covington & Burling, LLP, for Management Sciences for Health, Inc., intervenors.

John B. Alumbaugh, Esq., United States Agency for International Development, for the agency.

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

DIGEST

Protest alleging that the solicitation contained a latent ambiguity is denied where the protester's interpretation of the solicitation is not reasonable.

DECISION

DAI Global, LLC, of Bethesda, Maryland, protests its nonselection for award an of indefinite-delivery, indefinite-quantity (IDIQ) contract under request for proposals (RFP) No. SOL-7200AA18R00008, issued by the United States Agency for International Development (USAID), for health system strengthening services. The protester argues that the solicitation contained a latent ambiguity that resulted in a disparate evaluation of proposals.

We deny the protest.

BACKGROUND

The RFP, issued on March 29, 2018, pursuant to Federal Acquisition Regulation (FAR) part 15, contemplated the award of multiple IDIQ contracts to support USAID's Bureau for Global Health, as well as USAID missions and other bureaus, in planning and

implementing health system strengthening programs with the overall goal of improving health and transitioning capacity to local partners. Agency Report (AR) Tab 6, RFP at 1, 19, 115, 116.¹ The RFP stated that the agency intended to award approximately four contracts on an unrestricted basis and approximately two contracts as set-asides for small business concerns. Id. at 116. The protester submitted a proposal for consideration in the unrestricted pool and the awards at issue here relate to that pool. The solicitation contemplated the issuance of fixed-price and cost-type task orders during the five-year ordering period. Id. at 10, 36.

The solicitation advised that awards would be made on a best-value tradeoff basis considering the following factors in descending order of importance: institutional experience and capability; technical approach; contractor past performance information (past performance); and cost/price. Id. at 130-132. The solicitation advised that the technical factors were considered significantly more important than the cost/price factor. Id. at 130.

The agency received nine proposals, including DAI's and the four awardees, whose proposals were evaluated as follows:

	Offeror A	Offeror B	Offeror C	Offeror D	DAI
Institutional Experience/Capability	Exceptional	Exceptional	Exceptional	Very Good	Satisfactory
Technical Approach	Exceptional	Exceptional	Satisfactory	Very Good	Satisfactory
Past Performance					
Technical/Quality of Product or Service	Very Good	Very Good	Very Good	Very Good	Exceptional
Cost Control	Very Good	Satisfactory	Very Good	Satisfactory	Very Good
Schedule/Timeliness	Satisfactory	Very Good	Very Good	Satisfactory	Very Good
Management or Business Relations	Very Good				
Small Business Subcontracting	Very Good	Very Good	Very Good	Very Good	Satisfactory
Regulatory Compliance	Very Good	Satisfactory	Very Good	Satisfactory	Very Good
Probable Cost	\$8,855,224	\$8,246,989	\$8,330,691	\$7,926,399	\$9,404,362

AR, Tab 26, DAI Post-award Debriefing Letter at 6-7; see also AR, Tab 23, Source Selection Decision Document (SSDD) at 22-23.

¹ The RFP was amended three times. Amendment 003, which was issued after the receipt of initial proposals to make revisions to the draft request for task order proposal, did not affect the terms and conditions of the solicitation as applicable to this protest. See Memorandum of Law (MOL) at 2 n.2. Unless otherwise noted, all citations to the solicitation are to the final version as amended.

The contracting officer, who served as the source selection authority (SSA) for the procurement, reviewed the results of the technical and cost evaluations and performed a tradeoff between the offerors with the four highest technically-rated proposals and those that had a lower probable cost. Id. Offerors A, B, and C were the three highest technically-rated proposals. AR, Tab 23, SSDD at 22. The fourth highest technically-rated proposal (Offeror E) was also the highest evaluated priced proposal (\$11,594,669). Id. at 31-32. As a result of the agency's tradeoff analysis between Offerors D and E, the agency determined that the benefits of Offeror E's higher technically-rated proposal was not worth the 38 percent cost premium above Offeror D's fifth highest technically-rated proposal. Id. DAI's proposal was the seventh highest technically-rated and second highest evaluated priced proposal. Id. at 22-23. As a result, the SSA determined that the proposals of Offerors A, B, C, and D, offered the best value to the government and selected these offerors for award. Id. at 33.

On September 25, 2018, the agency notified DAI that it was not selected for award. AR, Tab 25, DAI Post-award Notice and Debriefing Planning Emails at 1. After requesting and receiving a debriefing, this protest followed.

DISCUSSION

DAI contends that the following provision from the solicitation contained a latent ambiguity that resulted in the agency's disparate evaluation of proposals:²

The [o]fferor must demonstrate experience and capability in implementing health system strengthening activities of magnitude and complexity similar to those described in [the statement of work] If any major subcontractor(s) are proposed, the [o]fferor must demonstrate combined experience and capability and must describe the complementarity of the experience and capability. Major subcontractors are those whose proposed cost is expected to exceed 20 [percent] of the [o]fferor's total estimated cost for each future task order.

RFP at 120 (emphasis in original); see Protest at 12; Protester's Oct. 29, 2018 Response at 3-6; Protester's Comments at 4-5, 9-10. Specifically, DAI argues that the phrase "20 [percent] of the [o]fferor's total estimated cost for each future task order" was

² In filing and pursuing this protest, DAI has made arguments that are in addition to, or variations of, those discussed below, as well as arguments that were withdrawn or abandoned during the development of the protest. See Protester's Oct. 29, 2018, Response to Agency's Request for Dismissal (Protester's Oct. 29, 2018 Response), at 1; Protester's Comments at 1 ("In these comments . . . [DAI] focuses on a single, determinant issue: the [s]olicitation language regarding 'major subcontractors'"). While we do not address every issue raised, we have considered all of the protester's arguments to the extent they have not been withdrawn or abandoned, and conclude that none furnishes a basis on which to sustain the protest.

subject to two different interpretations: “20 [percent] of the estimated cost for any one of the future task orders or 20 [percent] of the estimated cost for all of the future task orders combined.” Protester’s Oct. 29, 2018 Response at 4 (emphasis in original).

The protester further asserts that “DAI interpreted the language as meaning it could not include a subcontractor’s information unless it anticipated giving at least 20 [percent] of the entire contract award – i.e., 20 [percent] of all the future task orders combined – to that single subcontractor.” Id. (citing Protest at 10). The protester contends that as a result of its interpretation, despite the fact that DAI assembled “a consortium of incredibly strong entities,” DAI presented only information pertaining to itself and one of its subcontractors resulting in the agency’s assessment of weaknesses as well as the assignment of only satisfactory ratings under the institutional experience and capability factor and technical approach factor. Id.; Protest at 10-12. The protester further alleges that as a result of the agency’s failure to recognize this latent ambiguity, the offerors were unable to compete intelligently on a relatively equal basis. Protester’s Oct. 29, 2018 Response at 5; Protest at 12; Protester’s Comments at 9-10.

In response, the agency explains that “20 [percent] of the [o]fferor’s total estimated cost for each future task order means 20 [percent] of the estimated cost for every one of the future task orders.” MOL at 5. The agency also represents that the awardees all complied with the major subcontractor requirement and that DAI and all the awardees were evaluated equally regarding this requirement. Id. at 6.

Where a dispute exists as to a solicitation’s actual requirements, we will first examine the plain language of the solicitation. Intelsat Gen. Corp., B-412097, B-412097.2, Dec. 23, 2015, 2016 CPD ¶ 30 at 8. 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. Crew Training Int’l, Inc., B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. Colf. Def., LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations. See WingGate Travel, Inc., B-412921, July 1, 2016, 2016 CPD ¶ 179 at 7. If the solicitation language is unambiguous, our inquiry ceases. Id.

Here, the protester’s reading of the solicitation is not reasonable as it is inconsistent with the plain language of the solicitation. There is nothing in the express language of the solicitation supporting DAI’s position that “each future task order” could be interpreted as “all of the future task orders combined” or “the entire contract award.” Compare RFP at 120 with Protester’s Oct. 29, 2018 Response at 4. In this regard, the common dictionary definition of the term “each” refers to “every one or two or more . . . things, regarded and identified separately.” Oxford English Dictionary, <https://en.oxforddictionaries.com/definition/each> (last visited Jan. 11, 2019). DAI’s proposed interpretation would render the term “each” superfluous as DAI’s interpretation

would effectively substitute the term “each future task order” for “all of the future task orders combined.” See L & J Bldg. Maint., LLC, B-411827, Oct. 27, 2015, 2015 CPD ¶ 344 at 4 (finding unreasonable the protester’s proposed interpretation of solicitation language regarding the relevance of offerors’ past performance and experience insofar as it would render other solicitation language superfluous).

Moreover, during the solicitation question and answer (Q&A) period, an offeror submitted a question requesting the agency consider revising the requirements to “state that ‘major subcontractors are those whose proposed cost is expected to exceed 20 [percent] of the [offeror’s] cost across all task orders over the life of the project[.]’” See AR, Tab 5, RFP, amend. 0002, at 22 (Q&A 89). In response, the agency stated “[t]his requirement remains unchanged,” putting offerors on notice that the agency did not intend to deviate from the solicitation’s stated requirements. Id. Consequently, the protester’s interpretation of “20 [percent] of the [offeror’s] total estimated cost for each future task order” as “20 [percent] of the entire contract award” or “20 [percent] of all the future task orders combined” is not only inconsistent with the plain language of the solicitation, it is also inconsistent with the solicitation’s Q&A 89. Because we conclude that the protester’s interpretation of the RFP was unreasonable, we do not find the RFP’s requirements to ambiguous.³ See WingGate Travel, Inc., supra. Accordingly, on this record the protester’s arguments do not provide any basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong
General Counsel

³ In fact, despite the arguments made in DAI’s earlier submissions, in comments to the agency report, the protester now argues that “DAI interpreted this language as permitting information for only itself and any subcontractor anticipated to reliably receive over 20 [percent] of every single task order.” Protester’s Comments at 4; Protester’s Comments, exh. A, Declaration of DAI’s Chief Growth Officer). On its face, this argument appears to be inconsistent from the positions taken by the protester in its protest and Oct. 29, 2018 response. Compare id. with Protester’s Oct. 29, 2018 Response at 4 (“DAI interpreted the language as meaning . . . at least 20 [percent] of the entire contract award – i.e., 20 [percent] of all the future task orders combined”). To the extent that the protester did, in fact, rely on the interpretation asserted in its comments to the agency report, this would appear to indicate that the protester and the agency both interpreted the term in the same manner, and therefore, there was no ambiguity in the solicitation requirement. Compare Protester’s Comments at 4 (“20 [percent] of every single task order”) with MOL at 5 (“means 20 [percent] of the estimated cost for every one of the future task orders”).