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# Decision

**Matter of:** Leidos, Inc.

**File:** B-418987; B-418987.2

**Date:** October 29, 2020

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## DIGEST

Protest that the agency unreasonably rejected the protester’s proposal as noncompliant is denied where the record shows that the agency’s determination was made in accordance with the terms of the solicitation.

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## DECISION

Leidos, Inc., of Reston, Virginia, protests its elimination from the competitive range under request for task order proposals (RTOP) No. W911W4-20-R-902D, issued by the Department of the Army for analytical support services. Leidos complains that the agency unreasonably determined that its proposal did not comply with the solicitation’s requirements.

We deny the protest.

## BACKGROUND

On April 17, 2020, the agency issued the RTOP against the Solutions for Intelligence Analysis 3 (SIA-3) multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contract. Agency Report (AR), RTOP, amend. 3, at 5. The agency sought to procure analytical support services for Army counterintelligence, counter terrorism, and human intelligence operations. AR, Tab 3a, RTOP, Performance Work Statement at 6. The RTOP contemplated the award of a cost-plus-fixed-fee contract with cost-reimbursable and fixed-price components to be performed over a 1-year base period, and four 1-year option periods. *Id.* at 7, 9; RTOP, amend. 3 at 5. Award would be made on a best-value tradeoff basis considering the following factors, listed in descending order of

importance: staffing plan, management plan, and cost/price. RTOP, amend. 3 at 37, 39.

Importantly, the RTOP also advised, as part of the evaluation criteria, that “[a]fter receipt of proposals, but prior to the evaluation process, the Government will perform a compliance review of the offeror’s proposal to determine the extent of compliance to the RTOP instructions, and whether the proposal meets any of the conditions listed in M.5, Rejection of offerors.” RTOP, amend. 3 at 37. One of the conditions included an offeror failing to respond meaningfully to the proposal preparation instructions by omitting significant material data and information. *Id.* at 38.

The RTOP instructed offerors to submit a cost volume as part of their proposals. RTOP, amend. 3 at 29. Offerors were required to identify the components of their labor rates, and were specifically cautioned that “[t]he Prime is responsible for ensuring that the subcontractor provide a full and complete labor rate build that provides complete transparency for the direct labor rate component and each indirect rate applied to it along with profit or fee regardless of contract type.”<sup>1</sup> *Id.*

Leidos and [DELETED] other offerors submitted proposals prior to the June 15 closing date. Contracting Officer’s Statement (COS) at 2, 5. The agency rejected Leidos’s proposal as noncompliant because one of its subcontractors did not identify the components of its labor rates. COS at 6-7. After the agency informed Leidos that its proposal was rejected, the firm filed this protest with our Office.<sup>2</sup> See AR, Tab 8, Rejection Letter from the Army to Leidos, July 28, 2020, at 1-2.

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<sup>1</sup> The RTOP repeated this requirement throughout the instructions. *E.g.*, RTOP, amend. 3 at 30 (“Prime Offerors and any cost reimbursable subcontractors shall show complete development of the elements of its labor rates[.]”), 32 (“The Prime Offeror and Subcontractors shall explain in its Cost Narrative any indirect rates used in its [cost-plus-fixed-fee] Prime or Subcontractor labor build-up and in the Subcontractor Prime Add-Ons.”), (“All proposed subcontractor [fully burdened labor rates] (whether “Fixed Rates” or not) shall be justified by a full labor buildup, detailing all elements of cost that comprise the proposed [fully burdened labor rates] in accordance with all instructions[.]”), 34 (“All subcontractors to the prime offeror, regardless of subcontract contract type with the prime offeror, shall submit a time-phase labor buildup in its own format, showing how the proposed labor rates were developed. The labor buildup should show the elements of cost (labor, fringe, overhead, [general and administrative]) used to develop the proposed fully burdened labor rates.”).

<sup>2</sup> The Defense Intelligence Agency awarded the SIA-3 IDIQ. The task order has an expected value exceeding \$25 million, and is therefore within our jurisdiction to review protests related to the issuance of orders under multiple-award IDIQ contracts issued under the authority provided by Title 10 of the United States Code. 10 U.S.C. § 2304c(e)(1)(B); see *also* Protest at 8 n.3.

## DISCUSSION

Leidos raises multiple allegations challenging the agency's decision to reject its proposal as noncompliant. First, Leidos alleges that the agency's decision to reject the firm's proposal was inadequately documented because the agency did not memorialize its decision in a separate document, and appeared to reject the firm's proposal after agency officials' conducted internal oral conversations. Comments and Supp. Protest at 17. Second, Leidos alleges that the agency unreasonably rejected its proposal because the firm submitted fixed-price commercial rates, and because the firm did not omit any material information since it pledged to compensate its employees in accordance with the minimum direct labor rates. Protest at 16-20. We discuss each allegation in turn.<sup>3</sup>

First, we address the protester's contention that the agency did not document its decision to reject the firm's proposal as noncompliant. When reviewing whether agency decisions and evaluations were adequately documented, our decisions explain that the record must show the rationale for the agency's decision and evaluation determinations. See *Computer World Servs.*, B-417356, May 16, 2019, 2019 CPD ¶ 185 at 3.

By way of background, the agency reviewed proposals for compliance against the RTOP's instructions following the close of the solicitation period. COS at 4. Agency officials reviewed each proposal against a checklist to determine whether it provided the required information set forth in the RTOP's instructions, and then noted whether each proposal was "essentially complete," "partially complete," or "substantially incomplete" with respect to each of the instructions. AR, Tab 9, Compliance Matrix at 1-2; Supp. COS at 1. After reviewing the proposals, agency officials identified Leidos's proposal as non-compliant because the firm did not identify the specific labor rate components for one of its subcontractors. AR, Tab 9, Compliance Matrix at 1-2; COS at 6. Agency officials then communicated this fact to the source selection authority (SSA) in an oral meeting, and recommended that the agency reject Leidos's proposal. COS at 6-7. The SSA reviewed the information, and agreed that Leidos's proposal was incomplete. *Id.* at 7. The SSA also determined that the acquisition would still have adequate competition. *Id.* The agency then provided Leidos with a letter of noncompliance explaining why its proposal was rejected as noncompliant. *Id.*; AR, Tab 8, Letter from Agency to Leidos Explaining Rejection, July 28, 2020, at 1-2.

Although the agency did not memorialize its rationale for rejecting Leidos's proposal in a separate document and discussed the firm's rejection in an oral meeting, we do not find that this provides us with a basis to sustain the protest because the record contains adequate documentation showing the basis for the firm's rejection. Indeed, the record shows that the agency identified the subcontractor's rates as incomplete. AR, Tab 9, Compliance Matrix at 1-2. When reviewing Leidos's proposal against the checklist, the

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<sup>3</sup> We have reviewed all of the allegations raised and find that none provides us with a basis to sustain the protest.

agency identified the proposal as “partially complete” with regard to the requirement to identify the specific components of all subcontractor’s labor rates.<sup>4</sup> *Id.* Further, the agency officials’ emails show that they identified Leidos’s proposal as noncompliant because the firm submitted fully burdened labor rates and did not identify direct labor rates, indirect labor rates, and other labor rate components. See AR, Tab 9d, Compliance Emails at 1; see also AR, Tab 9f, Compliance Email 3 at 1 (explaining that the RTOP required offerors to detail the components of their subcontractor’s rates and that Leidos did not provide that information).

Moreover, the agency effectively memorialized its rationale for rejecting the firm’s proposal in the notice that it sent to Leidos, wherein it explained that the firm’s proposal did not comply with the instructions because it did not identify the components of the labor rates for one of its subcontractors. AR, Tab 8, Letter from Agency to Leidos Explaining Rejection, July 23, 2020, at 1-2. Accordingly, we deny this allegation because the record contains sufficient detail to allow our Office to review the agency’s determination.<sup>5</sup>

Turning to the remaining allegations, when reviewing an agency’s rejection of a proposal as noncompliant, our Office will examine the record to determine whether the agency’s decision was reasonable and in accordance with the solicitation criteria and applicable statutes and regulations. See, e.g., *Distributed Sols., Inc.*, B-416394, Aug. 13, 2018, 2018 CPD ¶ 279 at 4. Where a proposal omits required information, the offeror runs the risk that its proposal will be rejected. *Id.*

As noted above, the RTOP advised, as part of its evaluation criteria, that the agency would conduct a compliance review to determine whether proposals contained all of the

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<sup>4</sup> The compliance matrix included the following color ratings: green, yellow, and red. Supp. COS at 1. A rating of “green” indicated compliance, a rating of “yellow” indicated a partially incomplete proposal, and a rating of “red” indicated a substantially incomplete proposal. *Id.*

<sup>5</sup> In support of this allegation, Leidos also argues that the agency rejected the firm’s proposal because the agency wanted to “set an example” for future procurements under the SIA-3 IDIQ. See Comments and Supp. Protest at 11-13. We do not find this allegation persuasive. As noted above, the agency produced several emails wherein agency officials discussed whether Leidos’s proposal was noncompliant. In one of the emails, an agency official explained that Leidos’s proposal was noncompliant because the firm did not identify the components of its subcontractor’s labor rate, and that he thought rejection, as opposed to allowing the firm to submit a revised cost proposal or conducting clarifications, was in the agency’s best interest to ensure that offerors would follow applicable solicitation instructions in any future procurements issued under the SIA-3 IDIQ. AR, Tab 9d, Compliance Emails at 1. Thus, the record does not show that the agency rejected Leidos’s proposal solely to “set an example”; rather, the agency considered the proposal noncompliant as a result of the missing rate information.

requisite information as outlined in the solicitation's instructions. RTOP, amend. 3 at 37-38. Further, the RTOP instructed offerors to identify the components for each of their labor rates, and for the labor rates of any subcontractors. *Id.* at 39. Thus, the RTOP plainly required offerors to provide this information or risk their proposals being excluded from further consideration. See Memorandum of Law (MOL) at 12-13; see also *Optimal Sols. & Techs.*, B-310123.2, Sept. 21, 2007, 2007 CPD ¶ 172 at 3 (solicitation permitted agency to reject proposals for failure to conform to the proposal preparation instructions when the evaluation criteria advised that failure to do so could be grounds for exclusion of the proposal from further consideration).

Given that requirement, we conclude that the agency reasonably rejected the firm's proposal because our review confirms that Leidos did not submit full and complete labor rate information for one of its subcontractors. See MOL at 12-13. As examples, the subcontractor listed commercial labor rates for its knowledge manager, collection manager, and source analysts. AR, Tab 7f, Subcontractor's Cost Narrative at 5-6. Further, the subcontractor specifically explained that the indirect labor rate, fringe benefits rate, overhead rate, general and administrative rate, and fee rate were inapplicable because the subcontractor was proposing commercial labor rates. *Id.* at 6-7; see also AR, Tab 7g, Subcontractor's Cost Worksheets. Additionally, we note that Leidos effectively concedes that its proposal did not identify the labor rate components. Comments and Supp. Protest at 9 (stating that the subcontractor included a redacted version of its pricing worksheet in the proposal, and that the worksheet included the fully burdened labor rates but did not reveal the full build-up of the subcontractor's labor rates).

While Leidos may argue that full and complete labor rates were unnecessary because the firm intended to comply with the agency's minimum direct labor rates, we do not find that argument persuasive since the firm was required to identify the labor rate components so that the agency could independently verify that aspect of the firm's proposal. See Comments and Supp. Protest at 8-9; see also AR, Tab 7f, Subcontractor's Cost Narrative at 5-7. Similarly, the firm's argument that the full and complete labor rate is immaterial as it committed to paying the minimum direct labor rate is unpersuasive, because the agency explains that it requires the specific direct labor rate and indirect rates (which were not provided) in order to conduct the cost realism analysis as contemplated by the solicitation.<sup>6</sup> MOL at 17-19. Additionally, Leidos's assertion that its proposal was "essentially complete" since five of its six subcontractors identified the components of their labor rates, see Supp. Comments at 8-9, is unavailing because the RTOP required that this information be provided for all

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<sup>6</sup> Leidos also appears to assert that it did not need to disclose cost elements because this procurement was for a commercial item. Protest at 16-17 (citing Federal Acquisition Regulation 15.403-1(c)(3)). We find this allegation unpersuasive because, as the agency explains, the cited provision is inapplicable here because the analytical services sought are non-commercial. MOL at 15; see also RTOP, amend. 3 at 5; AR, Tab 10, Commerciality Determination at 2.

subcontractors. Accordingly, we deny the protest allegations because the agency reasonably rejected the firm's proposal in accordance with the solicitation's evaluation criteria.<sup>7</sup>

The protest is denied.

Thomas H. Armstrong  
General Counsel

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<sup>7</sup> The protester also alleges that the solicitation allowed the agency to evaluate the subcontractor's labor rates using information provided in the prime contractor's cost volume of its proposal, and that the agency failed to do so. Protest at 19-20. We deny this allegation because Leidos does not identify where in its cost volume the protester disclosed its subcontractor's direct and indirect labor rates, and therefore does not provide us any basis to conclude that the agency unreasonably rejected the firm's proposal in this regard. *See id.*