



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: QED Systems, LLC

File: B-419441.4

Date: January 28, 2022

Matthew T. Schoonover, Esq., Matthew P. Moriarty, Esq., John M. Mattox II, Esq., and Ian P. Patterson, Esq., Schoonover & Moriarty LLC, for the protester.
E. Sanderson Hoe, Esq., Andrew R. Guy, Esq., and Anna M. Menzel, Esq., Covington & Burling LLP, for Envision Innovative Solutions, Inc., the intervenor.
Wade L. Brown, Esq., Michael L. Hoyle, Esq., and Jennifer A. Janulewicz, Esq., Department of the Army, for the agency.
Heather Self, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's decision not to consider firm's proposal is denied where the proposal failed to comply with the solicitation's instructions, and the solicitation permitted the agency to deem non-compliant proposals ineligible for award.

DECISION

QED Systems, LLC, a small business of Aberdeen, Maryland, protests the issuance of a task order to Envision Innovative Solutions, Inc., a small business of Manasquan, New Jersey, under task order request for proposals (RFP) No. RS3-19-0042 issued by the Department of the Army, Army Materiel Command, for engineering and technical support services. The protester challenges the agency's decision that the firm's final revised proposal was incomplete, and, thus, unevaluable and ineligible for award.

We deny the protest.

BACKGROUND

On May 19, 2020, the agency issued the RFP, using Federal Acquisition Regulation (FAR) subpart 16.5 procedures, to small business holders of the agency's Responsive Strategic Sourcing for Services indefinite-delivery, indefinite-quantity (IDIQ) contracts.

Agency Report (AR), Tab 3, RFP at 89; Tab 19, Solicitation Distribution at 2.¹ The agency sought proposals for the provision of engineering and technical services to support the Army's Command, Control, Communications, Computers, Combat Systems, Intelligence, Surveillance, and Reconnaissance Center.² AR, Tab 4, RFP attach. 1, Performance Work Statement (PWS) at 2. The solicitation contemplated issuance of a single task order with fixed-price and cost-plus-fixed-fee contract line item numbers, a 30-day transition-in period, an 11-month base period, and three 1-year option periods. RFP at 89.

As relevant here, the solicitation permitted subcontractors to submit their cost proposals directly to the agency, rather than to the prime contractor for inclusion in the prime's proposal, "if the subcontractor deem[ed] its proposal contains proprietary data." RFP at 115. Section L of the solicitation, "Instructions to Offerors," required cost proposals submitted by either a prime or subcontractor to include three parts: (1) a cost narrative; (2) a cost proposal; and (3) a sanitized cost proposal, which was to "be the same as the cost proposal but with all costs/prices deleted." *Id.* at 116, 121.

The solicitation provided for use of a best-value tradeoff award methodology, in which the agency would compare the technical volumes of the proposals to their cost/price volumes to select the "best suited" offeror. RFP at 127. The technical volume was "significantly more important than" the cost/price volume. *Id.* Additionally, the solicitation established that offerors "must be determined eligible" for award, and that the agency would evaluate proposals "for compliance with submission requirements." *Id.* at 128.

In order to be considered eligible for award, the solicitation required an offeror to "[f]ollow all instructions in this RFP," and "[p]rovide all submission requirements for all Volumes," among other requirements. RFP at 128. The solicitation cautioned that "[f]ailure by the offeror or its subcontractor to submit the required information or documentation in the format (including formatting and formula requirements of the Volume II--Cost/Price) specified may render the offeror's proposal unevaluable and the proposal will be ineligible for award without further consideration." *Id.* Further, the agency reserved "the right to not fully evaluate the Volume II--Cost/Price of any offeror whose" proposal "[f]ailed to follow all instructions in this RFP," or "[f]ailed to provide all submission requirements for all Volumes." *Id.* at 131.

The solicitation established that the agency intended "to make award based on the initial proposal submissions without conducting interchanges," but reserved the right to conduct interchanges. RFP at 132. If interchanges were conducted, proposal revisions

¹ Citations to the record use the Adobe PDF pagination of submitted documents.

² Although this is a task order competition under a multiple-award IDIQ contract, the agency issued the solicitation as an RFP rather than a request for quotations and refers to the submissions of proposals from offerors instead of quotations from vendors. For consistency and ease of reference to the record, we do the same.

were to “be requested simultaneously” at the time interchanges were opened, and the solicitation cautioned that “[n]o subsequent Final Proposal Revisions will be requested after the interchanges are closed.” *Id.* The agency further reserved the right to conduct additional interchanges with only the offeror determined to be the “best-suited,” *i.e.*, the apparent successful offeror. *Id.*

The agency received eight timely-submitted proposals, and, after conducting evaluations, selected QED’s offer for award on September 30, 2020. AR, Tab 40, Task Order Decision Document (TODD) at 2-3.³ Envision and a second unsuccessful offeror filed protests with our Office challenging the September award decision. *Id.* at 4-5. In response, the agency advised our Office that it intended to take corrective action by reevaluating and making a new selection decision, resulting in our dismissal of the protests as academic. *Envision Innovative Solutions, Inc.*, B-419441, Jan. 5, 2021 (unpublished decision); *Adams Communication & Eng’g Tech., Inc.*, B-419441.2, Jan. 4, 2021 (unpublished decision). Subsequent to our dismissal of its protest, Envision challenged the scope of the agency’s proposed corrective action. AR, Tab 40, TODD at 6. In response, the agency advised our Office of its intent to take corrective action again, which included, among other things, reassessing proposals for compliance with the solicitation’s submission requirements, and, if needed, engaging in interchanges with offerors. *Envision Innovative Solutions, Inc.*, B-419441.3, Feb. 1, 2021 (unpublished decision).

In implementing its corrective action, the agency first reevaluated proposals for “compliance with the submission requirements.” AR, Tab 40, TODD at 13. As part of that review, the agency “determined that there were no [o]fferors eligible for award due to compliance failures.” *Id.* The agency then sent interchange letters to all eight offerors identifying the non-compliance issues in their initial proposals. *Id.* The interchange letters advised offerors that revised proposals would “be considered a permanent part of the [o]fferor’s proposal, superseding prior submissions.” AR, Tab 32, QED Interchanges Letter at 2. The letter further cautioned offerors that “[n]o subsequent Final Proposal Revisions will be requested after the Interchanges are closed.” *Id.* Finally, the letters provided that once the agency determined an apparent successful offeror, it reserved “the right to engage” in additional interchanges “with only that” offeror in order to finalize a task order. *Id.*

In response to interchange letters, the agency received eight revised proposals, which it again reviewed first for a “compliance screening.” AR, Tab 40, TODD at 14. The agency found five of the revised proposals, including QED’s, to be non-compliant with the solicitation’s submission requirements. *Id.* In accordance with the solicitation, the agency concluded that the five non-compliant proposals were “ineligible for award,” and did not evaluate them further. *Id.* at 14-20.

³ Our Office concluded that, in its initial report responding to the protest, the agency over-redacted AR Tab 40, and we requested that the agency submit a less redacted version. Herein, we cite to the less redacted version submitted by the agency at Electronic Protest Docketing System (Dkt.) No. 30.

Specific to QED, the agency found that one of the firm's subcontractors, [DELETED], submitted a revised sanitized cost proposal in which it "did not delete the Cost (dollar value) from the Summary of Cost Elements and Labor tabs." AR, Tab 40, TODD at 19; see also AR, Tab 36, [DELETED] Revised Sanitized Cost Proposal at Summary by CLIN worksheet, column D, rows 8-13, and Summary of Cost Elements worksheet, row 18, columns D-J, and Labor worksheet, rows 9-11, columns F-G, I-J, L-M, O-P, R-S; Tab 39, Army's Screening for Compliance with the Solicitation, May 24, 2021, at Contracting Compliance Check (2) worksheet, row 36, column C.⁴

The agency concluded that the "subcontractor's failure to comply" with the solicitation's instructions rendered QED's proposal unevaluable "and ineligible for award without further consideration." AR, Tab 40, TODD at 19. In support of this conclusion, the agency explained that "[w]ithout this required documentation proposed in the mandated format" the agency could not "fully evaluate Volume I--Technical" because the fully sanitized cost proposal was meant to be used by the "technical evaluation team to assess the consistency of the proposed approach, specific to labor mix, between Volume I--Technical and Volume II--Cost/Price" without introducing any cost/price-based influence into the technical evaluation. *Id.* at 19-20.

After eliminating from further consideration for award five of the eight proposals due to failure to comply with the solicitation's submission requirements, the agency conducted technical and cost/price evaluations of the three remaining proposals. AR, Tab 40, TODD at 21. Based on evaluations and a comparison of the three proposals, the contracting officer, who was also the source selection official, selected Envision's proposal, in the amount of \$65,217,131, as offering the best-value to the agency. *Id.* at 41. Following notice of award and receipt of a debriefing, QED filed this protest with our Office.⁵ AR, Tab 42, QED Unsuccessful Offeror Letter; Tabs 43-47 QED Debriefing.

DISCUSSION⁶

QED maintains it was unreasonable for the agency to exclude the firm from the competition. QED contends that the agency had all the information necessary to

⁴ Our Office also concluded that, in its initial report responding to the protest, the agency over-redacted AR Tab 39, and we requested that the agency submit a less redacted version. Herein, we cite to the less redacted version submitted by the agency at Dkt. No. 30.

⁵ As the value of the issued task order exceeds \$25 million, this procurement is within our jurisdiction to hear protests of task orders placed under defense agency IDIQ contracts. 10 U.S.C. § 2304c(f)(1)(B).

⁶ Prior to submission of the agency's report responding to the protest, the intervenor requested that we dismiss the protest, arguing that it was untimely and legally insufficient. See Req. for Dismissal. We concluded that, despite being styled as a

evaluate the firm's proposal without the subcontractor's incompletely sanitized cost submission, and that the solicitation permitted the agency to continue with evaluation of the firm's proposal. Protest at 6-8. Further, QED asserts that the agency should have corrected the sanitization issue through clarifications, and that by not doing so the agency acted unreasonably. *Id.* at 8-10. QED raises additional ancillary protest arguments, which we do not discuss. We have considered all of the protest arguments, however, and conclude that none provides a basis to sustain the protest.⁷

Completeness of Proposal

We note at the outset that the protester does not dispute that one of QED's subcontractor cost submittals included in the firm's revised proposal was not fully sanitized. Protest at 5. Nonetheless, QED maintains that the solicitation did not require elimination of a non-compliant proposal, but said only that the agency "may" eliminate such a proposal. *Id.* at 7. Thus, QED argues, prior to eliminating the firm's non-compliant proposal, the agency should have assessed whether it could still evaluate the firm's proposal. *Id.* Here, QED contends, the agency could still evaluate either by looking to the prime contractor's submission for the information missing from the subcontractor's submission or by substituting the subcontractor's initial fully sanitized cost proposal submission for its non-compliant revised proposal submission. *Id.* at 6-8; Comments at 4-5, 7-10, *citing* AR, Tab 25, QED Initial Sanitized Cost Proposal at [DELETED] Labor worksheet; Tab 26, [DELETED] Initial Sanitized Cost Proposal. The agency responds generally that its review of QED's proposal "was both consistent with the terms of the solicitation and reasonable." Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 17. We agree.

In reviewing protests challenge an agency's evaluation of proposals in a task order competition, our Office does not reevaluate proposals, but examines the record to determine if the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. *HumanTouch, LLC*, B-419880 *et al.*, Aug. 16, 2021, 2021 CPD ¶ 283 at 6.

As set forth above, the solicitation here required submission of sanitized cost proposals from both prime and subcontractors, and cautioned multiple times that failure to comply with all of the submission requirements may result in the proposal being deemed unevaluable and eliminated from consideration for award. RFP at 115-116, 121, 128, 131. Moreover, the interchange letter received by QED reiterated that failure to comply with the solicitation's submission requirements may render an offeror's proposal

procedural challenge, the intervenor's request for dismissal argued the merits of the protest. Accordingly, we declined to dismiss the protest. See Dkt. No. 19.

⁷ QED also initially argued that the agency failed to request final proposal revisions in accordance with section 15.307 of the FAR and that the agency engaged in unequal treatment. Protest at 5-6, 9-10. In its comments on the agency's report responding to the protest, QED withdrew these initial protest arguments. Comments at 2 n.1.

unevaluable, and required QED's revised proposal to "be submitted in accordance with the requirements of the RFP." AR, Tab 32, QED Interchange Letter at 1-2. The interchange letter further advised that any revised proposal submissions would supersede QED's prior submissions. *Id.* at 2. Thus, the solicitation permitted the agency to reject a non-compliant proposal.

The protester acknowledges that the solicitation permitted the agency to reject non-compliant proposals, but argues that, prior to rejecting "QED's proposal, despite [DELETED]'s sanitization issues, it was incumbent upon the [agency] to determine whether QED's proposal could nevertheless be evaluated." Protest at 7. The solicitation at issue here, however, did not include a requirement for the agency to make such an assessment before exercising its discretion to reject a non-compliant proposal. Accordingly, the pertinent question is whether the protester's proposal complied with the solicitation's submission requirements.

The record reflects, and the protester does not dispute, that one of QED's subcontractors submitted a cost proposal that was not properly sanitized, in contravention of the solicitation's requirements. Thus, in accordance with the solicitation's clear and express provisions, the agency reasonably eliminated QED's revised proposal from further consideration for award. See e.g., *Kratos Def. & Rocket Support Servs., Inc.*, B-418172.2, Jan. 26, 2021, 2021 CPD ¶ 37 at 3 (denying protest challenging agency's decision not to consider vendor's incomplete cost quotation where the solicitation provided that "quotes that do not comply with the detailed instructions for the format and content of the quote may be considered non-responsive and may render the quoter ineligible for award"); *LS3 Inc.*, B-401948.11, July 21, 2010, 2010 CPD ¶ 168 at 2 (denying protest challenging agency's rejection of proposal that failed to redact offeror's identifying information where "solicitation contained an explicit, mandatory requirement" for such redaction and provided that failure to comply with the redaction requirement "will result in a finding that the proposal is not acceptable").

Clarifications

Similar to the protester's contention that, even though the solicitation permitted the agency to eliminate non-compliant proposals, the agency should have exercised its discretion to not do so, the protester also argues that the agency should have engaged in clarifications with QED to permit the firm to fix its non-compliant proposal.⁸ Protest

⁸ In support of its argument, the protester cites to two U.S. Court of Federal Claims (COFC) decisions--*BCPeabody Constr. Servs., Inc. v. United States*, 112 Fed. Cl. 502, 512 (2013) and *Level 3 Comms., LLC v. United States*, 129 Fed. Cl. 487, 504-505 (2016). Protest at 8-9. The protester contends that these decisions stand for the proposition that while the agency's use of clarifications is discretionary, that discretion is not absolute. *Id.* The protester maintains that the agency abused its discretion by failing to engage in clarifications here. *Id.* As a preliminary matter, our Office views decisions by the COFC as persuasive, but not controlling authority in our forum.

at 8-9; Comments at 10-12. In response, the agency first notes that the procurement at issue here was conducted using the fair opportunity procedures of FAR subpart 16.5, not the negotiated procurement procedures of FAR part 15. COS/MOL at 28. The agency further points out that “[e]ven in a FAR Part 15 procurement an agency is permitted, *but not required*, to engage in clarifications.” *Id.*

This procurement was conducted as a competition between IDIQ contract holders and, as such, was subject to the provisions of section 16.505 of the FAR, which does not establish specific requirements for conducting clarifications or discussions. *Pioneering Evolution, LLC*, B-412016, B-412016.2, Dec. 8, 2015, 2015 CPD ¶ 385 at 9. When, as here, an agency conducts a task order competition as a negotiated procurement, however, our analysis regarding fairness will, in large part, reflect the standards applicable to negotiated procurements. *Id.* at 9-10. As noted by the agency and acknowledged by the protester, the FAR provides agencies with broad discretion as to whether to seek clarifications from offerors, and even in a FAR part 15 procurement offerors have no automatic right to clarifications regarding their proposals. COS/MOL at 28; Comments at 11-12; *SigNet Techs., Inc.*, B-417335, B-417335.2, May 28, 2019, 2019 CPD ¶ 202 at 4. Rather, agencies may, but are not required to, engage in clarifications. *Id.*

Here, the agency engaged in interchanges with QED to allow it to revise its non-compliant and ineligible initial proposal, and advised that “[n]o subsequent Final Proposal Revisions will be requested after the Interchanges are closed.” AR, Tab 32, QED Interchanges Letter at 1-2. In its revised proposal submission, one of QED’s subcontractors introduced a new error that resulted in the firm’s revised proposal reasonably being found non-compliant and ineligible for award. Despite QED’s protestations to the contrary, the agency was not obligated to reopen interchanges with QED to permit it to correct its subcontractor’s mistake. *See e.g., Phillips and Jordan, Inc.*, B-411551, Aug. 25, 2015, 2015 CPD ¶ 273 at 5 (noting that agencies are not required to reopen discussions to address deficiencies first introduced by the offeror after discussions have closed).

In any event, even if we were to agree that the agency was required to engage in clarifications with QED--which we do not--given the nature of the error (*i.e.*, submission of an improperly sanitized subcontractor cost proposal), the error could not have been addressed through clarifications. Recognizing that this procurement was conducted under the less stringent requirements of FAR subpart 16.5, we are informed by FAR part 15’s description of the spectrum of exchanges that may take place between a contracting agency and an offeror. *See* FAR 15.306. Clarifications are limited exchanges between the agency and offerors that may occur when contract award

CJW-Desbuild JV, LLC, B-414219, Mar. 17, 2017, 2017 CPD ¶ 94 at 4 n.2. In any event, the referenced COFC decisions applied to errors that were clerical or minor in nature, and/or correctable by means of clarifications, which, as discussed below, is not the situation here. Based on the record before us here, we find no such clerical or minor violation.

without discussions is contemplated; an agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. FAR 15.306(a); *Satellite Servs., Inc.*, B-295866, B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n.2. Section 15.306(b)(2) of the FAR specifically provides that exchanges under this section “shall not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal.” See also FAR 15.306(b)(3) (describing communications as exchanges leading to establishment of the competitive range but notes that “communications shall not provide an opportunity for the offeror to revise its proposal”).

Here, to become “evaluable” and eligible for award, QED’s proposal would have required the submission of a properly sanitized version of [DELETED]’s cost proposal. Providing an offeror the opportunity to revise its proposal and cure a deficiency would constitute discussions (or “interchanges” as the agency calls it here), not clarifications, because that would require the revision of information that was a condition-precedent to being eligible for award. FAR 15.306(d); *Mission Essential, LLC*, B-418767, Aug. 31, 2020, 2020 CPD ¶ 281 at 7-8. Thus, while the protester views its error to be minor or clerical, correction of the error could not have been accomplished through clarifications, as contemplated under the FAR. Therefore, QED’s contention that the agency was essentially obligated to engage in clarifications regarding the firm’s noncompliant cost proposal, and to permit the protester to submit revised information, lacks merit. *Id.*

The protest is denied.

Edda Emmanuelli Perez
General Counsel