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Decision

Matter of: Compel JV, LLC

File: B-421328

Date: March 8, 2023

Gary J. Campbell, Esq., and Joshua R. Turner, Esq., Perkins Coie LLP, for the protester.

Kevin P. Connelly, Esq., Kelly E. Buroker, Esq., and Jeffrey M. Lowry, Esq., Vedder Price PC, for Jones Public Affairs, LLC, the intervenor.

Tony A. Ross, Esq., Department of Health and Human Services, for the agency.

Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably excluded protester’s proposal from consideration where the proposal failed to include numerous calculations that were required by the terms of the solicitation.

DECISION

Compel JV, LLC, of Milwaukee, Wisconsin, protests the decision by the Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), to exclude Compel’s proposal from consideration under request for task order proposals (RFTOP) No. 283-23-0593, titled “SAMHSA 988 & Behavioral Health Crisis Coordinating Office Communications Support.” Protest at 1.¹ Compel’s proposal was excluded from consideration based on the agency’s determination that it failed to provide all of the information required by the solicitation. Compel contends that its proposal contained all information “reasonably considered to be required” and, alternatively, asserts that the solicitation contained latent ambiguities. *Id.* at 10-14.

We deny the protest.

¹ Page number citations in this decision refer to the Adobe PDF page numbers in the documents submitted.

BACKGROUND

On October 7, 2022, pursuant to section 16.505 of the Federal Acquisition Regulation (FAR), the agency issued the RFTOP to companies holding previously-awarded indefinite-delivery, indefinite-quantity (IDIQ) contracts for SAMHSA's "Domain IV-- Communication Projects." Agency Record (AR), Tab 3A, Subtab 7, Clauses at 1; see Contracting Officer's Statement at 1. The solicitation states that the objective of the procurement is "to provide a full range of communications . . . to further the 988 program awareness goals, including for audiences at higher risk of suicide."² AR, Tab 3A, Subtab 2, Performance Work Statement (PWS) at 2. The solicitation contemplated issuance of a task order for a 1-year base period and four 1-year option periods; identified five core tasks and one optional task;³ required submission of separate technical and business proposals; and provided that award "will be made to that responsible Offeror whose proposal is most advantageous to the Government, cost and other factors considered."⁴ AR, Tab 3A, Subtab 6, Proposal Instructions at 1, 3-4, 10-12.

In conducting the prior IDIQ procurement, SAMHSA permitted submission of either (1) cost-type proposals or (2) time-and-materials (T&M) proposals based on fully loaded labor rates from General Services Administration (GSA) schedule contracts; accordingly, SAMHSA awarded either cost-type or T&M-type IDIQ contracts to multiple awardees. Of relevance to this protest, Compel was awarded a T&M IDIQ contract.

As initially issued, the RFTOP stated that the agency "contemplated [award of] a Cost-Plus-Award-Fee (CPAF) type task order." AR, Tab 3A, Subtab 6, Proposal Instructions at 1. As subsequently amended, in response to a question submitted by Compel, the solicitation stated that "a T&M type task order will be considered

² In 2020, Congress "designated the new 988 dialing code to be operated through the existing National Suicide Prevention Lifeline." AR, Tab 3A, Subtab 2, PWS at 1. The solicitation describes the dialing code as a means of providing access to care and support for people experiencing suicidal thoughts, being at risk of suicide, or struggling with emotional distress. *Id.* at 2.

³ The core tasks were: (1) project management, planning, and reporting; (2) risk and crisis communications; (3) public relations services; (4) graphic design; and (5) transfer of activities; tasks 3 and 4 contained subtasks. *Id.* at 4-11. The optional task was on-site photography shoots. *Id.*

⁴ Although not at issue in this protest, the solicitation established the following non-cost factors: technical understanding/critical knowledge and technical experience/expertise; technical approach; and personnel and management plan. AR, Tab 3A, Subtab 6, Proposal Instructions at 10-12.

for offerors who were awarded a T&M type contract at the IDIQ level.” Tab 3B, RFTOP amend. 1, Questions and Answers at Question 14.

With regard to proposal format and content, the solicitation contained various attachments identifying information the agency expected offerors to include in their proposals. Of particular relevance to this protest, attachment 10, titled “Breakdown of Estimated Cost,” listed various cost elements (including proposed labor categories) that offerors were required to identify in their business proposals.⁵ See AR, Tab 3A, Subtab 13, Breakdown of Estimated Cost. Overall, the solicitation advised offerors:

The following instructions will establish the acceptable minimum requirements for the format and content of proposals. Special attention is directed to the requirements for technical and business proposals to be submitted in accordance with these instructions.

* * * * *

The business proposal must be supported by detailed cost and pricing information. The proposed cost, profit or fee (as applicable) shall be proposed for the RFTOP **per task, by year**, and **a summary total for all years combined and spreadsheet reflecting each year’s totals**. See the Attachment #10 Breakdown of Proposed Estimated Costs for template.^[6]

AR, Tab 3A, Subtab 6, Proposal Instructions at 1-4.

⁵ Consistent with the initial solicitation’s statement that award of a CPAF task order was anticipated, attachment 10 also sought disclosure of indirect costs associated with proposed labor rates (fringe benefits and overhead) and fee. AR, Tab 3A, Subtab 13, Breakdown of Estimated Cost.

⁶ The attachment 10 template specifically contemplated each offeror’s calculation and presentation of summary costs for the individual cost elements--including cost summaries (in dollar amounts) for each proposed labor category. Among other things, the attachment 10 template included columns for presenting: costs, by year, to perform individual core tasks; costs, by year, to perform optional tasks; costs, by year, to perform all core tasks; costs, by year, to perform core tasks and optional tasks; and total costs for all years. *Id.* at 1-4. Consistent with the format of the template, the solicitation specifically stated: “For EACH year of the contract, provide detailed cost breakdown for EACH core task and EACH optional task,” and further directed “In addition to the cost breakdown by TASK by YEAR, provide a roll-up summary of costs for all years of the contract.” *Id.* at 2-3. Finally, the solicitation explained: “The cost information will be used to establish the reasonableness of the proposed amount as well as to perform any required cost realism analysis.” AR, Tab 3A, Subtab 6, Proposal Instructions at 4.

With regard to the offerors' use of the attachment 10 template, the solicitation stated:

This format must be used to submit the breakdown of all proposed estimated cost elements. List each cost element and sub-element for direct costs, indirect costs and fee, if applicable. In addition, provide detailed calculations for all items.[⁷]

AR, Tab 3A, Subtab 13, Breakdown of Estimated Cost at 1.

On or before the October 21 closing date for proposal submission, Compel submitted a T&M proposal that reflected fully loaded labor rates and estimated levels of effort for over 25 labor categories. AR, Tab 4A, Compel Business Proposal at attach B. Despite the solicitation's statement that the attachment 10 format "must be used," Compel submitted a spreadsheet "in lieu of" the attachment 10 template. Protest at 6. Compel asserts that its submission of an alternative spreadsheet was appropriate because the solicitation provided that the template "may require amending to meet the specific requirements of this solicitation." Protest at 5. Among other things, Compel's alternative spreadsheet did not provide summary cost calculations for each labor category, by core and optional task, by year, as contemplated by the attachment 10 template. Compel's proposal did not provide any explanation as to how the "specific requirements of this solicitation" warranted omission of the summary cost calculations for each labor category.⁸

On November 8, the agency sent Compel a notice of noncompliance,⁹ advising Compel that its proposal had been excluded from consideration on the basis that the spreadsheet Compel submitted in lieu of attachment 10 did not include "all required

⁷ The solicitation also noted: "This [attachment 10] format has been prepared as a universal guideline for all RFTOPs issued by [SAMHSA]. It may require amending to meet the specific requirements of this solicitation. For example, this solicitation may require the submission of cost/price data for three years. . . . If this solicitation is phased, identify each phase in addition to each year. Total each year, phase, and sub-element." AR, Tab 3A, Subtab 13, Breakdown of Estimated Costs at 1.

⁸ Additionally, Compel's spreadsheet did not provide information regarding the indirect costs (fringe benefits or overhead) associated with its labor rates because Compel's T&M proposal was based on Compel's fully loaded GSA schedule rates. Compel notes that, in response to offeror questions regarding how to respond to information requests for indirect costs or fee when a proposal was based on fully loaded GSA labor rates, the agency stated that offerors should "fill[] in only those areas that are applicable." See AR, Tab 3B, RFTOP amend. 1, Questions and Answers at Questions 17, 20.

⁹ The agency sent an initial notice of noncompliance to Compel on November 7. Thereafter, Compel contacted the agency, asserting that the notice contained various flaws. In response, the agency provided a revised, final notice on November 8.

information.” AR, Tab 5B, Final Noncompliance Notification at 1. Specifically, the agency advised Compel that its proposal “failed to provide detailed costs per task, by year, and a summary total for all years combined and spreadsheet reflecting each year’s totals as provided in the template in Attachment 10.” *Id.*

On November 10, Compel filed an agency-level protest, asserting that its proposal contained all of the information reasonably required for a T&M proposal and complaining that the solicitation contained “latent ambiguities.” Protest, exh. G, Agency-Level Protest at 3-9.

On December 1, the agency dismissed Compel’s protest on the basis that “civilian agencies are only authorized to hear protests in connection with the issuance or proposed issuance of an order under an IDIQ task-order contract where the protester alleges, as grounds for its protest, that the order ‘increases the scope, period, or maximum value of the contract’ under which it was issued.” Protest, exh. I, SAMHSA Response to Agency-Level Protest.

On December 12, Compel filed this protest with our Office.¹⁰

DISCUSSION

Compel protests that its proposal contained all of the information a “reasonable offeror” would interpret the solicitation to require for T&M proposals. Protest at 10-12. Alternatively, Compel asserts that the solicitation contained latent ambiguities that require clarification and resubmission of proposals. *Id.* at 2, 12-14.

With regard to the solicitation’s requirements, Compel notes that some of the cost elements identified in the attachment 10 template “would not apply to T&M proposals,” suggesting that the agency may have improperly excluded Compel’s proposal for failing to identify the indirect costs associated with its fully loaded GSA labor rates. See Protest at 13; Comments at 2-3, 5-7, 9. In this regard, Compel summarizes its protest by stating: “the fundamental issue [in this protest] is the Agency’s failure to acknowledge that a . . . T&M-type proposal is incongruent with a cost-type solicitation.”¹¹ Comments at 1. More specifically, Compel complains that the solicitation: “was drafted for cost-type proposals”; advised offerors that attachment 10

¹⁰ On December 5, the agency issued a task order to Jones Public Affairs, LLC for \$26.8 million. Because the value of the task order exceeds \$10 million, the protest is within our jurisdiction to hear protests of task order awards under civilian agency multiple-award, IDIQ contracts. 41 U.S.C. § 4106(f)(1)(B).A

¹¹ In its agency-level protest, Compel, characterized cost-type contracts and T&M contracts as “apples [and] oranges.” Protest, exh. G, Agency-Level Protest at 6.

“may require amending”; and “[did] not specify how Attachment 10 should look for T&M-type proposals.” Protest at 4-5; Comments at 5.

Although Compel did not seek clarification from the agency regarding the attachment 10 requirements prior to submitting its T&M proposal--and neither its proposal nor protest discuss why presentation of the summary cost calculations for each labor category was “incongruent” with a T&M proposal--Compel nonetheless asserts that it properly “amended the [attachment 10] format . . . to support its proposal” by providing what Compel viewed as “relevant pricing information.” Protest at 13. In this context, Compel asserts that the solicitation’s statement that the attachment 10 template “may require amending” gave Compel “discretion” to modify the template as it deemed appropriate; maintains that the agency’s “insistence” on submission of the information contemplated by the attachment 10 template was improper; and complains that the agency’s objections “could have been resolved simply by a clarification^[12] and/or adding up certain elements of the information that Compel JV provided.”¹³ *Id.* at 11-12, 14; Comments at 2. Alternatively, Compel asserts that the terms of the solicitation were “latently ambiguous,” maintaining that the agency must clarify the solicitation requirements and permit Compel to resubmit its proposal. Protest at 12-14.

The agency responds that the solicitation clearly advised offerors that the attachment 10 format “must be used to submit the breakdown of all proposed estimated cost elements”; and that proposed costs for each cost element, including labor categories, were to be identified “per task, by year, and a summary total for all years combined and spreadsheet reflecting each year’s totals.” Contracting Officer’s Statement at 4-5. Consistent with the solicitation’s statement that the required cost information “will be used to establish the reasonableness of the proposed amount as well as to perform any required cost realism analysis,” see AR, Tab 3A, Subtab 6, Proposal Instructions at 4, the agency explains that the attachment 10 template was provided “to ensure that all required information was captured and provided” and to facilitate the agency’s analysis and evaluation of proposals. *Id.* at 5, 9; Supp. Contracting Officer’s Statement at 1.

Finally, in response to GAO’s request for clarification,¹⁴ the contracting officer submitted “markups” of attachment 10 and Compel’s alternative spreadsheet, identifying over 100 summary cost calculations (dollar amounts) for year 1 alone that were required by the

¹² The solicitation advised offerors: “The Government intends to make an award based on initial proposals,” see AR, Tab 3a, Subtab 6, Proposal Instructions at 10. Compel has not asserted that the agency engaged in discussions with the awardee.

¹³ Compel’s spreadsheet provided the labor rates and estimated hours for each labor category, by task, per year. AR, Tab 4A, Compel Business Proposal at attach B.

¹⁴ Following submission of the agency report, GAO conducted a conference call with counsel for the parties, seeking clarification regarding the specific information on which exclusion of Compel’s proposal was based.

attachment 10 template--but were omitted from Compel's alternative spreadsheet.¹⁵ See Supp. Contracting Officer's Statement, attach. 2, Markup of Compel's Spreadsheet. Specifically, the contracting officer's submission shows that, for each proposed labor category, Compel's spreadsheet failed to calculate: costs, by year, for individual core tasks; costs, by year, for the optional task; costs, by year, for all core tasks; and costs, by year, for core and optional tasks.¹⁶ *Id.* Based on the contracting officer's response, we understand the agency to assert that the spreadsheet Compel submitted in lieu of the attachment 10 template omitted hundreds of summary cost calculations that were required by the template. On this record, the agency maintains that Compel's proposal was properly excluded from further consideration.

With regard to Compel's assertion that the solicitation's requirements were latently ambiguous,¹⁷ the agency responds that, as stated above, the solicitation clearly provided that the attachment 10 format "must be used," and provided a template which sought, for each proposed labor category: costs, by year, for individual core tasks; costs, by year, for optional tasks; costs, by year, for all core tasks; costs, by year for all tasks; total costs, by year; and total costs for all years. The agency maintains there was no ambiguity regarding the solicitation's request for the summary cost information--the omission of which formed the basis for excluding Compel's proposal from consideration. The agency also responds that, to the extent Compel's protest is based on its overall assessment that the solicitation was structured for award of a cost-type task order and failed to provide sufficient guidance for submission of T&M proposals, that alleged flaw was apparent on the face of the solicitation and, accordingly, Compel was required to raise that issue prior to submitting its proposal. Memorandum of Law at 14.

It is fundamental that a proposal must conform to the material terms of a solicitation, *Manthos Eng'g, LLC*, B-401751, Oct. 16, 2009, 2009 CPD ¶ 216 at 2; *Plasma-Therm, Inc.*, B-280664.2, Dec. 28, 1998, 98-2 CPD ¶ 160 at 3, and that an offeror is responsible for submitting an adequately written proposal that contains all required information and

¹⁵ Based on Compel's identification of labor rates and estimated hours, the contracting officer: calculated and inserted the missing calculations for year 1; indicates that similar omissions were reflected in Compel's spreadsheet for years 2 through 5; and explains that, "due to the burden of this task," he did not make the additional calculations for years 2 through 5. Supp. Contracting Officer's Statement at 3.

¹⁶ The contracting officer's response to GAO's request for clarification did not list Compel's omission of the indirect costs (fringe benefits or overhead) associated with Compel's fully loaded labor rates as a basis for excluding Compel's proposal from consideration. See Supp. Contracting Officer's Statement, Attach. 1, Markup of RFTOP Attachment 10.

¹⁷ Compel asserts that the solicitation was latently ambiguous regarding the extent to which proposals were required to reflect the attachment 10 format because the solicitation: was initially drafted in anticipation of a cost-type task order; provided that attachment 10 "may require amending"; and "[did] not specify how Attachment 10 should look for T&M-type proposals." Protest at 4-5; Comments at 5.

allows for meaningful review by the procuring agency. *Innovative Pathways, LLC*, B-416100.2, June 13, 2018, 2018 CPD ¶ 212 at 5; *Hallmark Capital Grp., LLC*, B-408661.3 *et al.*, Mar. 31, 2014, 2014 CPD ¶ 115 at 9. In this context, a contracting agency is not required to search for required information, make entries or calculations on behalf of an offeror, or adapt its evaluation to comply with an offeror's submissions. *Opus Group, LLC*, B-413104.40, Oct. 11, 2019, 2019 CPD ¶ 358 at 3-5; *Grant Thornton, LLC*, B-413155.4, Aug. 30, 2016, 2016 CPD ¶ 247 at 3-4; *LOGMET, LLC*, B-412220.2, Dec. 23, 2015, 2015 CPD ¶ 400 at 4-6; *URS Federal Services, Inc.*, B-411024.4, Apr. 30, 2015, 2015 CPD ¶ 149 at 4-6; *Joint Venture Penauillie Italia S.p.A. et al.*, B-298865, B-298865.2, Jan. 3, 2007, 2007 CPD ¶ 7 at 4-6. In reviewing protests challenging the rejection of a proposal, our Office examines the record to determine whether the agency's judgment was reasonable and in accordance with the solicitation criteria and applicable procurement statutes and regulations. *Wolverine Servs. LLC*, B-409906.3, B-409906.5, Oct. 14, 2014, 2014 CPD ¶ 325 at 3; *Orion Tech., Inc.*, B-405077, Aug. 12, 2011, 2011 CPD ¶ 159 at 4.

With regard to protests challenging the terms of a solicitation, alleged solicitation defects that are apparent on the face of a solicitation must be protested prior to submission of proposals. *See, e.g., Credence Mgmt. Solutions, LLC*, B-420408, B-420408.2, Mar. 18, 2022, 2022 CPD ¶ 81 at 7-9. Where a dispute exists as to a solicitation's requirements, we will examine the plain language of the solicitation and resolve the matter by reading the solicitation as a whole. *See Glock, Inc.*, B-414401, June 5, 2017, 2017 CPD ¶ 180 at 8.

Based on our review of the record here, we find no basis to sustain Compel's protest. First, the record establishes that Compel's proposal was excluded from consideration on the basis that it failed to include a significant number of summary cost calculations for each of its proposed labor categories. As discussed above, the attachment 10 template contained separate columns for those summary calculations and, read as a whole, the solicitation provided that the template's format "must be used" unless "specific requirements of this solicitation" required its amendment (such as differing periods of performance). Here, Compel has offered no meaningful explanation as to how the "specific requirements of this solicitation" (or even the unique aspects of a T&M proposal) formed a reasonable basis to ignore the solicitation's requirement that offerors provide summary cost information for each labor category, by task, by year, consistent with the attachment 10 template. Accordingly, based on our review of the solicitation's plain language, and reading the solicitation as a whole, we reject Compel's assertion that the solicitation gave Compel "discretion" to omit the summary cost information.¹⁸

¹⁸ To the extent Compel asserts that the terms of the solicitation were latently ambiguous due to the provisions that permitted amendment of attachment 10 and the alleged lack of detail provided to T&M offerors, the bases for Compel's allegations were apparent on the face of the solicitation and, thus, at most, constitute patent, not latent, ambiguities; such ambiguities must be challenged prior to submission of proposals. Specifically, Compel's complaints that the solicitation "was drafted for cost-type

We also reject Compel's assertion that the agency should have "add[ed] up certain elements of the information that Compel JV provided." See Protest at 14. As noted above, an offeror is responsible for submitting an adequately written proposal, and a contracting agency is not required to make entries or calculations on behalf of an offeror.¹⁹ Given the significant number of Compel's omissions, we do not question the agency's determination that the omissions were material. See *Vysnova Partners, Inc.*, B-420654 *et. al.*, July 7, 2022, 2022 CPD ¶ 177 at 4-7; *PEAKE*, B-417744, Oct. 11, 2019, 2019 CPD ¶ 359 at 4-8.

Finally, we reject Compel's assertion that the agency should have sought "clarification" from Compel regarding its proposal. Clarifications may not be used to cure proposal deficiencies or material omissions; rather, communications that result in such revisions constitute discussions.²⁰ See *Vysnova Partners, Inc.*, *supra*. As noted above, the solicitation clearly stated that "The Government intends to make an award based on initial proposals," see AR, Tab 3a, Subtab 6, Proposal Instructions at 10, and Compel has not asserted that the agency engaged in discussions with the awardee.

In summary, none of Compel's complaints provides a basis for sustaining its protest.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

proposals" and "[did] not specify how Attachment 10 should look for T&M-type proposals," along with its view that a T&M proposal "is incongruent with a cost-type solicitation," are challenges to the terms of the solicitation that are not timely filed. See, *e.g.*, *Credence Mgmt. Solutions*, *supra*.

¹⁹ We have noted that an agency would be responsible for errors in making such entries or calculations on behalf of an offeror. See *Grant Thornton, LLC*, B-413155.4, Aug. 30, 2016, 2016 CPD ¶ 247 at 3 n.4.

²⁰ While section 16.505 of the FAR does not establish specific requirements for discussions in a task order competition, where an agency conducts a task order competition as a negotiated procurement, our analysis will, in large part, reflect the standards applicable to FAR part 15 negotiated procurements. See *IBM Corp.*, B-417664, Sept. 18, 2019, 2019 CPD ¶ 327 at 10; *Ohio KePRO, Inc.*, B-417836.4, B-417836.5, Nov. 4, 2020, 2021 CPD ¶ 325 at 5.