



Decision

Matter of: Better Direct, LLC

File: B-419893.27

Date: July 5, 2023

Robert C. Warnicke, Esq., Warnicke Law PLC, for the protester.
Peter G. Hartman, Esq., Department of Homeland Security, for the agency.
Mary G. Curcio, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Agency reasonably eliminated protester's proposal from award consideration where the proposal included an incomplete attachment that was required by the solicitation.
 2. Protest is denied where agency may, but is not required to, engage in clarifications with protester to allow protester to submit complete attachment.
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DECISION

Better Direct, LLC, a historically underutilized business zone (HUBZone) and service-disabled veteran-owned small business (SDVOSB) concern, of Tempe, Arizona, protests that the Department of Homeland Security (DHS) unreasonably eliminated its proposal submitted in response to request for proposals (RFP) No. 70RTAC21R00000003, issued for information technology hardware and software. Better Direct asserts that the elimination of its proposal for failing to complete a required attachment was unreasonable when the agency already possessed the relevant information. Better Direct further protests that the agency should have engaged in clarifications to allow the protester to correct this clerical error.

We deny the protest.

BACKGROUND

The solicitation was issued as a small business set-aside¹ on April 20, 2021 to establish the DHS-wide FirstSource III contract for two functional categories--information technology value added resellers (ITVAR) and software.² The solicitation anticipates the award of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts under each of the functional categories for a 5-year base period, three 1-year option periods, and one 2-year option period. Agency Report (AR), Tab 16c, RFP amend. 15 at 24. The estimated value of the procurement is \$10 billion. *Id.* at 1. Offerors were permitted to submit proposals for either or both functional categories. *Id.* at 104.

The agency is conducting the procurement in two phases. *Id.* This protest concerns Better Direct's phase II ITVAR proposal. During phase II, offerors were required to submit a compliance checklist, a signed cover letter, technical proposal assumptions, price proposal assumptions, responses to two technical evaluation factors: experience and past performance, and a price proposal.³ *Id.* at 104, 105. Award would be made on a best-value tradeoff basis. *Id.* at 123. Phase II proposals were due on January 25, 2023.

The solicitation notified offerors that the government would conduct a compliance review for both phases. In particular, the RFP stated: "Proposals that are found to be noncompliant in accordance with the solicitation instructions will not be evaluated" and that; "[p]roposals shall be submitted in accordance with the instructions outlined in Section L. A proposal may be rejected if the [contracting officer] determines that the proposal does not materially comply with the instructions provided." *Id.* at 106, 122.

As relevant to this protest, attachment 1 to the solicitation was the ITVAR pricing schedule. See AR, Tab 13d, RFP attach. 1, ITVAR pricing schedule. The pricing schedule identified all 31 items that offerors were required to price. Attachment 8 to the solicitation listed the salient characteristics--*i.e.*, the specifications--of the 31 items that offerors were required to price. See AR, Tab 16d, RFP attach. 8, ITVAR Pricing Schedule Salient Characteristics.

¹ The RFP included the following small business set-aside categories: 8(a); HUBZone; SDVOSB; women-owned small business; and all small businesses. RFP amend. 2 at 2.

² First Source III is a DHS-wide contract vehicle for commercial information technology commodity solutions and value-added reseller services for a wide variety of applications. The contract will provide DHS with a full array of value-added reseller services and access to a wide and renewable variety of information technology commodities and solutions (hardware and software) from multiple original equipment manufacturers that will be available through delivery order competitions. RFP at 10.

³ During phase I, offerors were required to submit a compliance checklist, a signed cover letter, and responses to two technical evaluation factors: ability to perform the work, and supply chain risk management approach. *Id.* at 104, 105.

Attachment 9 to the solicitation was a pricing schedule crosswalk that contained two columns. See AR, Tab 13h, RFP attach. 9, Pricing Schedule Crosswalk. As relevant here, in the left-hand column, offerors were instructed to list the salient characteristics for each item that were provided in attachment 8. See *id.* In the right-hand column, offerors were required to provide the item description and quantity of the items they were proposing, and confirm that the items met or exceeded the solicitation requirements. The final version of attachment 9 was therefore a crosswalk that would allow the agency to compare each item's salient characteristics from attachment 8 in the left-hand column with the item description and quantity of the items the offeror was proposing in the right-hand column.

The solicitation notified offerors that failure to provide the attachment 9 pricing schedule crosswalk would result in the proposal being deemed noncompliant with the solicitation, and removed from further consideration for award. AR, Tab 16b, RFP amend. 15 at 121.

Better Direct timely submitted a phase II proposal for the ITVAR functional category. However, attachment 9 to the proposal was incomplete. Specifically, Better Direct failed to include the salient characteristics from attachment 8 on its attachment 9 crosswalk, and thus provided no crosswalk between the attachment 8 requirements and the details of the items it was proposing. The agency reviewed the proposal during the compliance check and determined that for this reason the proposal was noncompliant with the solicitation. As a result, Better Direct's proposal was eliminated from the competition.

On March 20, the agency notified Better Direct of its elimination from the competition. Ten days later, Better Direct timely filed this protest.

DISCUSSION

Better Direct protests that the agency unreasonably eliminated its proposal from the competition. According to Better Direct, it included all the information for each of its proposed items in the right-hand column of attachment 9, and indicated that the items it proposed met all solicitation requirements. Better Direct asserts that the missing information in the left-hand column was the agency's own list of salient characteristics that was already in attachment 8, which the agency wanted reprinted in attachment 9. Better Direct contends that the agency could have put this information in attachment 9 itself. Better Direct further maintains that this is at most a clerical error which the agency should have allowed Better Direct to correct using clarifications. As discussed below we find that neither of these arguments have merit and deny the protest.

In reviewing protests challenging the evaluation of an offeror's proposal, or as here, the rejection of a proposal based on the agency's evaluation, it is not our role to reevaluate proposals; rather 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. *Orion Tech., Inc.*, B-405077, Aug. 12, 2011, 2011 CPD ¶ 159 at 4. In a negotiated procurement, a proposal that fails to conform to the material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award. *Wolverine Servs. LLC*, B-409906.3, B-409906.5, Oct. 14,

2014, 2014 CPD ¶ 325 at 3-4. Furthermore, an agency is not required to adapt its evaluation to comply with an offeror's submissions--the question is not what an agency could possibly do to cure a noncompliant submission, but, rather, what it is required to do. *Strategic Resources, Inc.*, B-411024.2, Apr. 29, 2015, 2015 CPD ¶ 200 at 4. In this regard, where, as here, proposal submission requirements are clear, an agency is not required to assume the risks of potential disruption to its procurement to permit an offeror to cure a defect in its proposal submission caused by the offeror's failure to comply with a mandatory solicitation requirement. *LOGMET LLC*, B-412220.2, Dec. 23, 2015, 2015 CPD ¶ 400 at 5.

Here, the solicitation specifically and clearly instructed offerors to include the salient characteristics listed in attachment 8 in the left-hand column of attachment 9, and a description of the items offered in the right-hand column of attachment 9 to create a crosswalk. AR, Tab 13h, RFP attach. 9, Pricing Schedule Crosswalk. The agency also made clear that offerors were required to include the salient characteristics from attachment 8 in their attachment 9 crosswalk in responding to a question from a potential offeror:

Question: Please clarify what format the Government wants the mapped crosswalk to be displayed? For example, the sample text provided in Attachment 9 appears to be a listing of salient characteristics, but is not displayed as a mapping to Attachment 8. Will the Government accept a complete listing of salient characteristics in Attachment 9 Crosswalk, or would the Government prefer to see a line-by-line mapping?

Answer: Contractors shall list the salient characteristics for the items they're proposing in Attachment 9 along with the specifications for that item from Attachment 8. See revised Attachments 8 and 9.

AR, Tab 13i, Questions and Answers at 2. The solicitation also specifically notified offerors that proposals that were not compliant in accordance with the solicitation instructions would not be evaluated. AR, Tab 16c, RFP amend. 15 at 106, 122.

Based on this record, and given the language in the solicitation, we conclude that the agency reasonably rejected Better Direct's proposal. Better Direct failed to include the attachment 8 salient characteristics in its attachment 9 crosswalk, and thus failed to provide the required crosswalk between the agency's item specifications and the items it was proposing, as it was instructed to do.⁴

⁴ The requirement to list the attachment 8 salient characteristics on attachment 9 was incorporated into the solicitation in amendment 12. To the extent Better Direct believes that the requirement was burdensome, Better Direct was required to protest prior to January 18, 2023, the closing date for the receipt of proposals established by amendment 12. 4 C.F.R. § 21.2(a)(1). Since Better Direct did not submit its protest until March 30, this argument is untimely.

Better Direct argues that in any case the agency should have allowed Better Direct to correct through clarifications what the protester considers a clerical error. The agency disagrees that the omission of the salient characteristics from attachment 8 was a minor or clerical error. However, even if the omission was a minor or clerical error, the agency was not required to allow Better Direct to correct the omission. Clarifications are limited exchanges between the agency and offerors that may occur when contract award 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. Federal Acquisition Regulation 15.306(a); *Satellite Servs., Inc.*, B-295866, B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n.2. Accordingly, we find that the agency's decision not to engage in clarifications with Better Direct to correct the proposal was unobjectionable.

The protest is denied.

Edda Emmanuelli Perez
General Counsel