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# Decision

**Matter of:** Tipping Point Solutions, Inc.

**File:** B-422570; B-422570.2

**Date:** August 8, 2024

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Major Heather M. Martin, Department of the Army, for the agency.

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## DIGEST

Protest challenging agency's evaluation of proposal as technically unacceptable is denied where the record shows that certain required information was in proposal pages that exceeded the solicitation's page limits, and the agency's decision not to consider that information was reasonable and consistent with the solicitation's terms.

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## DECISION

Tipping Point Solutions, Inc., a small business of Highlands Ranch, Colorado, protests the award of a contract to AIM-KeyBridge Alliance, LLC (AKA), of Columbia, Maryland, under request for proposals (RFP) No. W911S0-23-R-MCTU, issued by the Department of the Army for online training and education support services. The protester asserts that the agency improperly downgraded Tipping Point's proposal based on a misinterpretation of the applicable solicitation page allowance requirements. Tipping Point also challenges the Army's evaluation of past performance proposals as unreasonable and unequal.

We deny the protest.

## BACKGROUND

The agency issued the solicitation on June 26, 2023, as a competitive 8(a) set-aside,<sup>1</sup> seeking to award a single indefinite-delivery, indefinite-quantity contract for one base year and four 1-year option periods for “Army Virtual Learning Environment 2.0” services in support of the Office of the Vice Provost for Digital Education at Fort Eustis, Virginia. Agency Report (AR), Tab 3, RFP at 1, 3; Contracting Officer’s Statement (COS) at 1. The Army issued the RFP under the procedures of FAR part 15 with subpart 16.5 to be used for subsequent fixed-price task orders. COS at 1.

The solicitation contemplated award on a best-value tradeoff basis, considering the following four evaluation factors: (1) technical approach--scenario based knowledge assessment; (2) management and staffing approach; (3) past performance; and (4) price. RFP at 45. As relevant here, the RFP required a “rating of no less than ‘[a]cceptable’ . . . for all non-priced factors” to be considered for award. *Id.*

Also of importance to this protest, the solicitation required offerors to submit proposals divided into five separate volumes, and provided page limitations for each of the non-price volumes of a proposal, as follows:

Volume	Title	Digital Copies	Maximum Pages
I	Technical Approach--Scenario Based Knowledge Assessment	1	50 (PDF)
II	Management and Staffing Approach	1	25 (PDF)
III	Past Performance	1	50 (PDF)
IV	Price	1	No page limit (PDF and/or Excel)
V	Solicitation, Offer and Award Documents, and Certifications / Representations	1	No page limit (PDF)

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<sup>1</sup> Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for the performance through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) 19.800. Firms participating in this program are commonly referred to as “8(a)” contractors.

*Id.* at 54. Directly beneath the table setting forth the page limits for the five proposal volumes, the solicitation included the following, in bold:

NOTE: Pages that exceed the required page limitations will not be evaluated. Additional pages over the maximum allowed will be removed or not read and will not be evaluated by the Government.

*Id.* at 54-55 (emphasis omitted). The RFP also provided specific instructions for the content of each volume. For example, the solicitation advised that volume I:

shall consist of a Table of Contents and the Narrative Discussion. The Table of Contents breaks down Factor 1 into sections and includes the list of key terms with their definitions, a list of acronyms and abbreviations, and a list of tables and drawings used in the proposal.

*Id.* at 55. The solicitation also directed that volume II should be organized into a management approach section (providing offerors' proposed management approaches to monitor and manage a workforce) and a staffing approach (providing offerors' detailed staffing, recruitment, and retention plans). *Id.* at 56-57. As part of the staffing approach, offerors were to provide "[l]etters of [c]ommitment (signed within 60 days of proposal submission) and resumes for key personnel;" the RFP specifically instructed that both letters of commitment and resumes were exempted from the management and staffing approach's 25-page limitation. *Id.* at 57.

On July 7, Tipping Point requested clarification from the agency regarding the solicitation's page limits. Specifically, the protester asked whether a "table of contents, list of key terms and their definitions, list of acronyms and abbreviations, and list of tables and drawings [were] excluded from the page count." AR, Tab 36, Tipping Point RFP Questions at 1. The agency responded that it was "following the guidance established in the solicitation." AR, Tab 8a, Questions and Answers at 9.

The Army received thirteen proposals in response to its solicitation, including proposals from Tipping Point and AKA. AR, Tab 34, Source Selection Evaluation Board (SSEB) Report at 2-3. Upon receipt, the agency determined that volume I of Tipping Point's proposal, the technical approach volume, was 70 pages long which exceeds the 50-page limit established by the solicitation. *Id.* at 93; Memorandum of Law (MOL) at 9. Specifically, volume I of the protester's proposal consisted of (1) a cover page, (2) a 19-page table of contents, with page numbers labeled i-xix, and (3) 50 pages of narrative summary, with page numbers labeled 1-50. MOL at 9-10; AR, Tab 12, Tipping Point Vol. I Proposal. In its evaluation of Tipping Point's volume I proposal, the agency only considered the first 50 pages. COS at 10.

Similarly, the agency found that volume II of Tipping Point's proposal, covering the management and staffing approach, was 37 pages long, exceeding the solicitation's 25-page limitation. MOL at 10; AR, Tab 13, Tipping Point Vol. II Proposal. While, pursuant

to the RFP instructions, the Army excluded a one-page letter of commitment and four pages of resumes from the page count, the cover page and two pages of the table of contents counted against the 25-page limit for the management and staffing approach proposal. MOL at 10.

In its evaluation, the SSEB assessed seven deficiencies in Tipping Point's volume I proposal as a result of its failure to provide required information within the applicable 50-page limit. AR, Tab 34, SSEB Report at 93-95. As a result, the board assigned the proposal a rating of unacceptable under the technical approach factor. *Id.* at 93. The SSEB further assessed a deficiency in Tipping Point's volume II for failure to answer a staffing approach question within the applicable 25-page limit and assigned the proposal a rating of marginal under the management and staffing approach factor. *Id.* at 95-96.

Ultimately, the source selection authority eliminated Tipping Point from the competition. See AR, Tab 35, Source Selection Decision at 3. Thereafter, the protester was notified of its elimination and was provided a debriefing. This protest followed.

## DISCUSSION

The protester argues that the agency unreasonably determined that the firm's volume I and II proposals exceeded applicable page limitations, resulting in the agency unreasonably downgrading Tipping Point under the technical approach and management and staffing approach factors. Protest at 2-3, 6-8. Specifically, the protester contends that the agency improperly included Tipping Point's cover pages and tables of contents in the page calculation for both volumes. *Id.* at 3, 6-9. Tipping Point argues that the solicitation specifically differentiated between the table of contents and the narrative discussion, and hence, only pages comprising the narrative discussion were subject to the RFP's page limitation.<sup>2</sup> *Id.* at 6-10. Had the agency not improperly excluded portions of the narrative discussion sections for both volumes, the protester contends that its proposal would not have received deficiencies under either the technical approach factor or the management and staffing approach factor.<sup>3</sup> *Id.*

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<sup>2</sup> Tipping Point does not specifically explain why the cover pages should not be counted against the solicitation page limits. The protester only states that they were included "consistent with the [s]olicitation's requirement that each volume be 'clearly indexed and logically assembled' with each volume 'clearly identified.'" Protest at 6 (*quoting* RFP at 54).

<sup>3</sup> The protester alternatively contends that if the agency's interpretation of the page limit requirement is reasonable, it represents a latent ambiguity. Comments at 2-3. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. *Argus Int'l Risk Servs., LLC*, B-411682, B-411682.2, Sept. 25, 2015, 2015 CPD ¶ 303 at 5. This argument does not provide a basis to sustain the instant protest, however, because, as we discuss below, Tipping Point does not put forth a reasonable interpretation of the page limit requirement.

The agency responds that it reasonably excluded excess pages from the first two volumes of Tipping Point's proposal, in accordance with the requirements of the solicitation. MOL at 14-17; COS at 7-11. For the volume I proposal, the Army explains that the protester's failure to respond, within the page limits, to required questions on two practical scenarios rendered Tipping Point unacceptable under the technical approach factor, and hence unawardable. COS at 11. For the volume II proposal, the agency maintains that the first 25 pages of Tipping Point's volume II did not include "several substantive portions" of its proposed staffing approach, resulting in a deficiency assessment and a rating of marginal under the management and staffing approach factor. MOL at 17.

As a general matter, offerors must prepare their proposals within the format limitations set out in the solicitation, including any applicable page limits. See, e.g., *ManTech Advanced Sys. Int'l, Inc.*, B-409596, B-409596.2, June 13, 2014, 2014 CPD ¶ 178 at 3; see also *TechSys Corp.*, B-278904.3, Apr. 13, 1998, 98-2 CPD ¶ 64 at 6. Offerors that exceed a solicitation's established page limitations assume the risk that the agency will not consider the excess pages. *TechSys Corp.*, *supra*, at 6. In those instances where a solicitation has established clear page limitations, we have explained that an agency is not obligated to sort through an offeror's proposal to decide which pages should or should not be counted toward that limitation. *Id.*

In addition, 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. *Planned Sys. Int'l, Inc.*, B-413028.5, Feb. 21, 2018, 2018 CPD ¶ 126 at 6. Where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. *Bauer Techs., Inc.*, B-415717.2, B-415717.3, June 22, 2018, 2018 CPD ¶ 217 at 4.

Here, the RFP clearly established a 50-page Adobe PDF limit for volume I, covering the technical approach factor. In addition, the solicitation provided that volume I "shall consist" of a table of contents and a narrative discussion. RFP at 55.<sup>4</sup> Because the solicitation required a table of contents to be a part of the 50-page PDF volume I, we fail to see how these pages could be excluded from the page count. *Id.* We note that the solicitation expressly provided that the page limitation applied to the PDF document itself (rather than to just a portion of the PDF), stating that the "maximum pages" for the first proposal volume was "50 (PDF)." *Id.* at 54. Had the solicitation intended the table of contents to not count towards the volume I page limitation--which would have meant that the volume I PDF could have exceeded 50 pages--it would not have provided that the page limit was "50 (PDF)." *Id.* Accordingly, we find that offerors were on notice that

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<sup>4</sup> The RFP further included specific instructions regarding the table of contents, which was to incorporate "the list of key terms with their definitions, a list of acronyms and abbreviations, and a list of tables and drawings used in the proposal." RFP at 55.

the 50-page limitation would apply to the entire PDF document to be submitted as volume I, including the required table of contents pages. *Id.*

The plain language of this provision, when read as a whole, is not susceptible to the reading advanced by the protester. Under Tipping Point's interpretation--that the table of contents and narrative sections "were independent of each other," with the page limit applying only to the narrative section of the volume I--the RFP's language specifying that the maximum pages for the volume was 50 PDF pages would be superfluous. Protest at 7.

The protester further argues that it specifically requested the agency to clarify whether the table of contents counted against the page limit, yet the agency only stated that it was following the guidance established in the solicitation. Protest at 8-9. According to Tipping Point, such a response was indicative of a general rule--allegedly reflected in previous decisions issued by our Office--that "when a [s]olicitation establishes a page limit, that limit [only] applies to the narrative section of the of the proposal unless specifically stated otherwise." Protest at 9.

We see no merit to the protester's argument here. While we agree with Tipping Point that the Army missed an opportunity to clarify the issue in response to an offeror's question, we see no reason to draw a broader inference from that lack of clarification regarding the specific page limitation requirements. Nor do we agree with the protester that solicitation page limits apply only to the narrative section of a proposal unless specifically stated otherwise. Protest at 9. Tipping Point fails to cite any particular decision of our Office for this purported principle, nor does it identify any specific law or regulation providing for such a standard. Moreover, our own review of the authority generally cited by the protester reveals no such principle.<sup>5</sup>

In sum, we find nothing improper about the Army's decision to count Tipping Point's table of contents against the volume I page limitation and to therefore not evaluate the pages beyond page 50 of the technical approach proposal. We also find that the agency properly declined to consider the additional portions of Tipping Point's volume II proposal that exceeded the stated page limit.

The RFP also clearly provided that deficiencies would be assessed where required information was lacking and such deficiencies would result in the entire proposal being found unawardable. RFP at 48. We note that clearly stated solicitation technical requirements are considered material to the needs of the government, and a proposal

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<sup>5</sup> For example, the protester cites *Facility Servs. Mgmt., Inc.--Advisory Opinion*, B-414857.9, Aug. 23, 2018, 2019 CPD ¶ 35, as supporting its argument. Protest at 8. In that opinion, however, our Office merely noted that an agency had excluded tables of contents pursuant to solicitation instructions that expressly excluded such tables from the applicable page limitation. See *Facility Servs. Mgmt., Inc.--Advisory Opinion, supra* at 7. The facts of that opinion bear no similarity to the instant solicitation, where no such express exclusion exists.

that fails to conform to such material terms is technically unacceptable. See, e.g., *Stewart Distributors*, B-298975, Jan. 17, 2007, 2007 CPD ¶ 27 at 3-4.

Accordingly, we find no basis to disturb the agency's evaluation of Tipping Point's proposal as unacceptable under the technical approach factor. Similarly, we find that the Army reasonably evaluated the protester's volume II proposal as marginal under the management and staffing approach factor.

### Remaining Challenges

Tipping Point raises additional protest allegations challenging the agency's evaluation of past performance as unreasonable and unequal. Supp. Protest at 1-6. We dismiss these remaining allegations because Tipping Point, having been found unacceptable under the technical approach factor, is not an interested party to raise them.

Under our Bid Protest Regulations, a protester must be an interested party, that is, an actual or prospective offeror whose direct economic interest would be affected by the award of a contract. 4 C.F.R. §21.0(a). A protester is not an interested party if it would not be in line for award if its protest was sustained. *BANC3, Inc.*, B-416486, B-416486.2, Sept. 10, 2018, 2018 CPD ¶ 316 at 9.

Tipping Point is not an interested party to maintain these remaining allegations because, as discussed above, its proposal was reasonably found unacceptable. Consequently, even if we found that Tipping Point's remaining allegations had merit, Tipping Point's proposal would still be unacceptable under the technical approach factor, and we would have no basis to disagree with the agency's decision to eliminate Tipping Point's proposal from the competition. Accordingly, we dismiss the remaining allegations.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel