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Decision

Matter of: Emerge Solutions Group, LLC

File: B-423299.2

Date: August 1, 2025

Matthew J. Michaels, Esq., and Scott E. Pickens, Esq., Barnes & Thornburg LLP, for the protester.

Jason R. Smith, Esq., Department of Defense, for the agency.

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DIGEST

Protest that solicitation improperly fails to require an evaluation of professional compensation plans is dismissed as untimely where the alleged solicitation defect was apparent on the face of the solicitation as initially issued and the protest was filed after the initial due date for submission of proposals.

DECISION

Emerge Solutions Group, LLC, a minority-owned 8(a) small business of Rockville, Maryland, protests the terms of request for proposals (RFP) No. HT001124R0041, issued by the Department of Defense, Defense Health Agency, for development, operations, and maintenance of clinical systems and data processing.¹ The protester contends that the RFP improperly fails to require an evaluation of offerors' professional compensation plans.

We dismiss the protest as untimely filed.

¹ 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 performance through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) 19.800. This program is commonly referred to as the 8(a) program.

BACKGROUND

As alleged by the protester, the agency issued the RFP on June 18, 2024, to 8(a) offerors holding General Services Administration (GSA) multiple award schedule (MAS) contracts under special item numbers (SIN) 54151HEAL for health information technology services or 54151S for information technology professional services. Protest at 3-4. Relevant here, the RFP did not expressly incorporate FAR provision 52.222-46, Evaluation of Compensation for Professional Employees. *Id.* at 8, 9. Additionally, the RFP's instructions did not require the submission of professional compensation plans. Protest, attach. 1, RFP at 29-41. Proposals in response to the RFP were due by August 15, 2024. *Id.* at 1.

The agency previously issued an order pursuant to the RFP, which the protester challenged in a protest filed with our Office. See *Emerge Sols. Grp., LLC*, B-423299, Feb. 27, 2025 (unpublished decision). We dismissed the protest as academic after the agency notified us that it intended to take corrective action. *Id.*

After dismissal of the previous protest, the agency issued two amendments to the RFP. Protest at 5. One amendment extended the transition period from two weeks to two months, updated the periods of performance, and permitted offerors to revise their labor rates. *Id.* It also made corresponding changes to the pricing worksheet, the performance work statement, and other sections of the RFP. *Id.* The agency requested that offerors update their price and technical proposals to the extent they were affected by the amendment, but did not permit changes to past performance proposals. *Id.* The amendment did not state anything with respect to professional compensation plans or FAR provision 52.222-46. See *generally* Protest, attach. 2, RFP amend. No. 0002.

The other amendment extended the time period for proposal submission to June 23, 2025, at 5:00 p.m. Eastern time. Protest at 5. It, too, did not state anything with respect to professional compensation plans or FAR provision 52.222-46. See *generally* Protest, attach. 3, RFP amend. No. 0003.

On June 19, the protester contacted the agency *via* email, stating that FAR provision 52.222-46 was incorporated into task order solicitations under MAS contracts, asking whether the agency would conduct a price realism evaluation, and requesting that the agency confirm that offerors should submit professional compensation plans as part of their revised proposals. Protest, attach. 6, Email Correspondence at 1-2. On June 20, the agency responded that FAR provision 52.222-46 was not incorporated into the RFP, the agency did not intend to conduct a price realism analysis, and offerors were not expected to submit professional compensation plans. *Id.* at 1.

The protester filed this protest with our Office on June 23.

DISCUSSION

Citing our decision in *Skyward IT Solutions, LLC*, B-421105.2, Apr. 27, 2023, 2023 CPD ¶ 108 at 12-13, the protester contends that, notwithstanding the RFP's silence regarding FAR provision 52.222-46, that provision is incorporated into the RFP by virtue of the terms of offerors' MAS contracts, which include both that provision and FAR clause 52.216-18, Ordering. Protest at 5, 8-9. The protester further contends that the agency's June 20 email introduced an ambiguity into the RFP by stating that offerors were not expected to submit professional compensation plans and that the agency did not intend to conduct a price realism analysis. *Id.* at 6-7, 9-10. The agency contends that the protest is untimely, as the RFP as originally issued did not contemplate the submission or evaluation of professional compensation plans, and the subsequent amendments and the agency's response to the protester's questions did not introduce any changes in that regard. Req. for Dismissal at 2-3.

Our Bid Protest Regulations require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1). Conversely, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested not later than the next closing time for receipt of proposals following the incorporation. *Id.*

Here, the alleged solicitation impropriety--the failure to require the submission and evaluation of professional compensation plans--was not introduced by either the amendments to the RFP or the agency's response to the protester's questions. In that regard, the RFP as initially issued on June 18, 2024, did not expressly require the submission of professional compensation plans. Thus, to the extent the protester is correct that the agency was obligated to apply FAR provision 52.222-46 by virtue of the terms of offerors' MAS contracts and FAR clause 52.216-18, the absence of any express requirement to submit professional compensation plans was an alleged impropriety in the RFP that was apparent prior to the closing time for receipt of initial proposals.² That alleged impropriety was not subsequently introduced by the amendments issued by the agency after dismissal of the previous protest, as neither of those amendments stated anything with respect to professional compensation plans. Consequently, the protest, which was filed after the closing time for receipt of initial

² In *Skyward IT*, we concluded that FAR provision 52.222-46 was incorporated into the solicitation because it "advised vendors . . . that the task order would be issued pursuant to 'the applicable terms and conditions' of the GSA MAS SIN 54151S contract vehicle." *Skyward IT*, *supra* at 12. On that factual basis, we distinguished the circumstances from those in *Jefferson Consulting Group, LLC*, B-417555, B-417555.2, Aug. 16, 2019, 2019 CPD ¶ 293, as the protester there also had argued that the solicitation incorporated FAR 52.222-46 "but did not explain why or how this was so[.]" *Skyward IT*, *supra* at 13. Here, the protester does not identify--and we do not independently discern--any similar provision in the RFP. See *generally* Protest, attach. 1, RFP; attach. 2, RFP amend. No. 0002; attach. 3, RFP amend. No. 0003.

proposals, is untimely filed. *Accord Devtech Sys., Inc. v. United States*, 176 Fed. Cl. 297, 333-335 (Fed. Cl. 2025) (where protester contended that FAR provision 52.222-46 was incorporated into solicitation issued under MAS contracts by operation of FAR clause 52.216-18, “[t]he conflict between FAR [provision] 52.222-46, which requires a compensation plan, and the [s]olicitation, which did not, would have been obvious to [the protester] before the close of bidding[,]” and the protester therefore “waived its right to challenge this obvious conflict by failing to do so before the close of bidding”).

Additionally, the agency’s response to the protester’s questions only confirmed that the RFP’s requirements would remain the same, *i.e.*, that offerors were not expected to submit professional compensation plans. The agency’s response therefore also did not introduce any alleged impropriety that did not exist in the initial RFP, and the time for challenging the terms of the RFP with respect to the submission and evaluation of professional compensation plans was prior to the due date for initial proposals on August 15, 2024. *See SteerBridge Strategies, LLC*, B-422831.2, B-422831.3, Dec. 31, 2024, 2025 CPD ¶ 57 at 4 (protest dismissed as untimely where agency responses to vendor questions confirmed that solicitation requirements would remain the same, and therefore did not introduce alleged improprieties).³

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel

³ The protester contends that the agency’s response, by stating that offerors were not expected to submit professional compensation plans, introduced an ambiguity into the RFP because the agency’s response was contrary to the terms of offerors’ MAS contracts, which the protester argues incorporated FAR provision 52.222-46 into the RFP. Protest at 6-7. That alleged ambiguity, however, was already apparent on the face of the RFP by the absence of instructions to submit professional compensation plans.