



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: IMPRES Technology Solutions, Inc.; Metis Intellisystems, LLC; Futron Inc.; Patriot Comm; Ideal Systems Solutions, Inc.

File: B-409890; B-409890.2; B-409890.3; B-409890.4; B-409890.5

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DIGEST

Where protesters included pages of contractor “letters of support” in proposals, agency acted properly in counting those pages in calculating compliance with applicable page limitation and excluding from consideration proposal pages that exceeded that limitation.

DECISION

IMPRES Technology Solutions, Inc., of Santa Fe Springs, California; Metis Intellisystems, LLC, of Wilmington, Delaware; Futron Inc., of Woodbridge, Virginia; Patriot Comm of Woodbridge, Virginia; and Ideal System Solutions, Inc., of Minnetonka, Minnesota, protest the National Aeronautics and Space Administration’s (NASA) exclusion of their proposals from further consideration for award of a contract under request for proposals (RFP) No. NNG13451284R, for the Solutions for Enterprise-Wide Procurement (SEWP) V. The protesters assert that the agency unreasonably determined that parts of their proposals exceeded applicable page limitations, failed to permit clarification of this issue, and therefore improperly failed to consider portions of their proposals.

We deny the protests.

BACKGROUND

The RFP, issued on August 16, 2013, provided for the award of multiple fixed-price, indefinite-delivery/indefinite-quantity (IDIQ) contracts to furnish a range of advanced technology, including tablets, desktops, servers and other information technology and audio-visual products and services. As government-wide acquisition contracts (GWAC), the SEWP V contracts will be available for use by any Federal agency. Award was to be made on a best-value basis considering: management/technical approach, including subfactors for excellence of proposed systems, offeror's support and commitment, and management plan, past performance, and price.

By the December 16, 2013, closing date, NASA had received 233 timely SEWP V proposals from offerors, including the five protesters here. Contracting Officer (CO) Statement (COS) at 9.¹ On May 20, 2014, the protesters were advised that their proposals were found unacceptable, and therefore disqualified from further consideration for award. AR, Tab 5, NASA Letter, May 16, 2014; at 1; Protest at 1. NASA informed the protesters that their proposals had exceeded the applicable page limitation for Volume II, "Management/Technical Approach," and that the pages in excess of the limitation would not be considered and were being returned. Id. According to the agency, the "remaining" proposals after exclusion of the excess pages were determined to be "unacceptable" because they did not "represent a reasonable initial effort to address the essential requirements of the RFP." Id. at 1. These protests followed.

DISCUSSION

The protesters assert that the agency acted improperly first in its determination of which proposal pages should count against the solicitation's page limitation. Alternatively, the protesters contend that NASA should have allowed them to clarify which pages were part of their proposals before rejecting the proposals as unacceptable. We find the agency's actions unobjectionable.

¹ The five protesters here submitted proposals that were, in pertinent part, substantially similar, and received substantially similar responses from the agency. As a consequence, except as noted below, the corresponding protests, agency reports, and comments are also substantially similar. Accordingly, for simplicity, in this decision we will cite relevant documents in the protest record of IMPRES Technology Solutions, Inc., B-409890.1, unless the circumstances require otherwise.

Page Limitations

As an initial matter, the protesters assert that the agency unreasonably determined that parts of their proposals exceeded applicable page limitations. In this regard, the solicitation provided that Proposal Volume II was to consist of an executive summary and Tabs 1-8. RFP at Bates 0137-39. Pertinent here were Tab 6 (Commitment to Supply Chain Management and Supply Diversity), Tab 7 (Post Award Support and Service) and Tab 8 (Management Plan). Id. at Bates 0139. The RFP set forth a page limitation of 90 pages for Volume II, excluding from the count: (a) “Cover Page, Indices”; (b) “Deviations and Exceptions”; and (c) Tabs 1 and 3. RFP, § A.3.6(b)(1), at Bates 0138. The RFP specifically provided that “[p]ages submitted in excess of the limitations specified in this provision will not be evaluated by the Government and will be returned to the offeror in accordance with NFS [NASA FAR Supplement] 1815.204-70(b).” RFP, § A.3.6(b)(5), at Bates 0139. In this regard, NASA FAR Supplement § 1815.204-70(b) provides, in pertinent part, as follows:

Pages submitted in excess of specified limitations will not be evaluated by the Government. The contracting officer shall return one copy of the excess pages removed from the proposal to the offeror, advising the offeror that they were over the limit and will not be evaluated.

The dispute here stems from approximately 60 pages of original equipment manufacturer (OEM) “letters of support,” included in Volume II of the protesters’ proposals under Tab 6, Commitment to Supply Chain Management and Supply Diversity. Proposal at Bates 0262-0320. The CO counted these pages for purposes of determining compliance with the 90-page limit for Volume II. COS at 10. As a result, the CO calculated that the 90-page limit was reached mid-way through the “letters of support” and, consistent with the RFP, did not consider the remainder of the material under Tab 6 as well as all of Tab 7 (Post Award Support and Service) and Tab 8 (Management Plan) of the proposals. Id. at 11. Since Tabs 7 and 8 were not considered, the CO determined that the protesters’ proposals did not address post award support and service (Tab 7) and did not include a management plan (Tab 8), which were to be evaluated under Subfactor C, “Management Plan,” under the management/technical approach factor. COS at 12; see RFP at Bates 145. In this regard, management plan was the most heavily weighted subfactor under the management/technical approach factor. RFP at Bates 157. The CO therefore determined that the protesters’ proposals “contained a material omission” which made them unacceptable and excluded them from further evaluation. COS at 12.

The protesters challenge the CO’s decision to count the “letters of support” included in their proposals under Tab 6 in determining compliance with the 90-page limit for Volume II. Protest at 4-7. The protesters point out that the RFP required that “[a]ll

pages” of the Proposal “be numbered,” RFP at Bates 0137, and that, since the letters of support were not assigned page numbers, this demonstrated that they were not “proposal pages” and were instead included as support documents for NASA’s reference only.² Protest at 5. According to the protesters, the “letters of support” were “meant to **be extra documents in support of, and in addition to the main proposal, and not a substitute or a part of the main SEWP V proposal.**” Comments at 3 (emphasis in original). The protesters also point out that the Table of Contents for Tab 6 did not include the letters of support. Protest at 6; see Proposal at Bates 0242; but see id. at 0187, Vol. II Table of Contents. The protesters further argue that, even if NASA was required to count the “letters of support” in calculating compliance with the page limitation, it should not have counted the pages in Volume II in the order they were placed in its proposal, but rather should have first counted all “properly numbered” pages, followed by “all ‘non-numbered’ supporting/reference documents like ‘Letters of Support.’” Protest at 6.

We find nothing improper about NASA’s decision to count the “letters of support” attached to Tab 6 against the Volume II page limitation. As a general matter, offerors must prepare their proposals within the format limitations set out in an agency’s solicitation, including any applicable page limits. Techsys Corp., B-278904.3, Apr. 13, 1998, 98-2 CPD ¶ 64 at 6; see also All Star Maintenance, Inc., B-244143, Sept. 26, 1991, 91-2 CPD ¶ 294 at 3-4; Infotec Dev., Inc., B-238980, July 20, 1990, 90-2 CPD ¶ 58 at 4-5. Here, the RFP set forth clear, unambiguous page limitations for Volume II. RFP, § A.3.6, at Bates 0138-39. In this regard, while the protesters contend that the OEM “letters of support” were simply extra documents in support of the main proposal, the RFP provided:

If any reference to documentation is made by the offeror such documentation shall be cited at the page, section, and paragraph level. The cited offeror documentation shall be included in the proposal and counts against the page count as defined in A.3.6.

RFP at Bates 0141; see COS at 5. This inclusion of “reference” documentation in the page count was also consistent with the agency’s position in its response to the Industry Questions and Answers, published on FebBizOpps:

324. **A.3.10.3**, Please clarify what the government means by “any reference to documentation.[”]

² According to the protesters, the “letters of support” were attached to the back of Tab 6, instead of the back of Tab 8, the end of Volume II, for “NASA’s convenience,” so that NASA would not be required to “flip pages back and forth.” Protest at 5.

Answer: “Any reference to documentation” are documents cited in your proposal that were not required in the RFP.

325. **A.3.10.3**, In order to help evaluators assess the compliance of mandatory minimum requirements, would the government allow offerors to provide an appendix of reference documentation (outside page limitations in soft copy format only) that detail related product specifications?

Answer: No, reference documentation is included in the page limitations.

AR, Tab 3, Q&A, at Bates 0184-85 (emphasis in original).

In any case, as noted by the agency, the RFP specifically required offerors to address “Supply Chain Management and Supply Diversity” in Tab 6, including describing “their teaming relationships with other vendors and manufacturers.” AR at 6; see RFP at Bates 144. We agree with the agency that the protesters’ arguments would render the RFP’s explicit page limitation superfluous, since an offeror could evade the limitation simply by labeling proposal pages, including those responsive to solicitation requirements, as “attachments” or by failing to number them.

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 held 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.; HSQ Tech., B-277048, Aug. 21, 1997, 97-2 CPD ¶ 57 at 3 n.1. Here, the agency began counting with the first text page in Volume II and continued up to the 90-page limit. Consistent with the RFP, the agency did not consider the remainder of the material under Tab 6, as well as any of the material in Tabs 7 and 8. COS at 10-11. We see nothing objectionable in this approach. Accordingly, since the CO reasonably decided that the protesters’ proposals failed to address key solicitation requirements within the applicable page limitations, she reasonably determined that they were unacceptable and excluded them from the competition. See, e.g., Blocacor, LDA, B-282122.3, Aug. 2, 1999, 99-2 CPD ¶ 25 at 2 n.1 (proposal that failed to meet material requirements of the solicitation was properly rejected as unacceptable).

Clarifications

The protesters also argue that, under Federal Acquisition Regulation (FAR) § 15.306(a), the agency should have engaged in clarifications with them regarding how the letters of support should be counted. Protest at 7, see RFP, § A.3.6(b)(4), at Bates 0138. In this regard, the protesters assert that NASA ignored their

“requests for a brief telephone call to explain the errors that NASA [had] made in counting” proposal pages. Protest at 7. The protesters argue that “[g]etting a simple clarification would have allowed NASA to make the right and fair decision based on right assumptions after correct and consistent evaluation.” Comments at 7.

NASA, however, was not required to permit the protesters to revise their proposals after submission. The RFP provided that: “The Government intends to evaluate proposals and award contract(s) without discussions with offerors (except clarifications as described in FAR 15.306(a)).” RFP, § A.3.6(b)(4), at Bates 0138-39. 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. FAR § 15.306(a); Mission1stGroup, Inc., B-404811.3, B-404811.6, June 2, 2011, 2011 CPD ¶ 115 at 5 (agency may, but is not required to, engage in clarifications); JBlanco Enters., Inc., B-402905, Apr. 5, 2010, 2010 CPD ¶ 186 at 4 n.4 (although agencies have broad discretion as to whether to seek clarifications from offerors, there is no requirement that offerors be permitted to clarify their proposals). Further, because the intentions of the protesters could not be clearly and convincingly ascertained from the RFP and the face of the proposal itself, see Matrix Int’l Logistics, Inc., B-272388.2, Dec. 9, 1996, 97-2 CPD ¶ 89 at 13, any revisions of the protesters’ proposals would have required the agency to conduct discussions with the offerors. Omega World Travel, Inc., B-283218, Oct. 22, 1999, 2002 CPD ¶ 5 at 6. Discussions, which involve the agency indicating to each offeror the significant weaknesses, deficiencies, and other aspects of its proposal that could be altered or explained to materially enhance the proposal’s potential for award, are to occur after establishment of the competitive range. FAR § 15.306(d)(3). Here, the agency reasonably decided to exclude the protesters’ unacceptable proposals from any further consideration. See Veteran Technologists Corp., B-409628, June 25, 2014, 2014 CPD ¶ 189 (where offeror fails to submit information required by the solicitation, GAO cannot find that the agency acted unlawfully when it refused to further consider that offeror for award).

The protests are denied.

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General Counsel