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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: NOVA Corporation

File: B-411851

Date: November 6, 2015

James Y. Boland, Esq., William L. Walsh, Jr., Esq., and Nathaniel S. Canfield, Esq., Venable LLP, for the protester.

Robert J. Symon, Esq., and Lisa A. Markman, Esq., Bradley Arant Boult Cummings, LLP, for Chameleon Integrated Services, the intervenor.

Sarah L. Carroll, Esq., Defense Information Systems Agency, for the agency.

Peter D. Verchinski, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably rejected protester's proposal where the proposal failed to provide information required by the solicitation.

DECISION

NOVA Corporation, of Chambersburg, Pennsylvania, protests the rejection of its proposal, and award of a contract to Chameleon Integrated Services, of St. Louis, Missouri, under request for proposals (RFP) No. 00013, issued by the Defense Information Systems Agency (DISA), Defense Information Technology Contracting Organization (DITCO), for support services for the agency's global service desk. The protester argues that the agency improperly determined that its proposal was non-responsive based on its failure to submit a Department of Defense Contract Security Classification Specification form (DD Form 254).

We deny the protest.

BACKGROUND

The RFP, issued on May 13, 2015, contemplated the issuance of a task order with fixed-price and cost-reimbursable elements for a 1-year base period and three 1-year option periods. The RFP limited competition to the four Small Business Administration section 8(a) firms holding a DISA Information Technology Enterprise Support Services (DESS) indefinite-delivery, indefinite-quantity (ID/IQ) contract.

The solicitation was posted on DITCO's Contracting Opportunities (DCOP) website, and it informed offerors that proposals must be submitted through the DCOP website by June 4, 2015, at 11:00 a.m. RFP, amend. 3, at 2, 8. As relevant to this protest, the RFP required an offeror to submit a completed DD Form 254 with its proposal. The RFP further provided that the agency reserves the right to reject any proposal that "does not adhere to the administrative requirements of this RFP." Id. at 3.

NOVA submitted its proposal on June 3. According to the protester, it uploaded its proposal to the website in 11 separate documents by 11:45 p.m. Protest at 4; Protest, exh. 2, Affidavit of Client Relationship Manager, at 2. One of these documents was NOVA's proposal Volume IV, Contract Documentation, which contained NOVA's DD Form 254. Protest, exh. 2, Affidavit of Client Relationship Manager, at 2; Agency Report (AR), Tab 9, NOVA Email to the Agency, July 27, 2015, attach., Volume IV.

The agency received four proposals, including NOVA's, in response to the RFP. In conducting its evaluation of NOVA's proposal, the agency determined that it had not received NOVA's DD Form 254. Based on the firm's failure to submit this form, the agency concluded that NOVA's proposal was non-responsive and ineligible for award. AR, Tab 5, Price Negotiation Memorandum, at 7.

The agency notified the protester on July 27 that award was being made to Chameleon at an evaluated price of \$24,850,718. AR, Tab 6, Notification of Unsuccessful Offeror Letter. NOVA requested and received a debriefing, during which NOVA learned the basis of its elimination. AR, Tab 8, NOVA Debriefing. In this regard, NOVA learned that the agency had not received Volume IV of the firm's proposal.¹ AR, Tab 9, 10, Emails between NOVA and DITCO, July, 27, 2015. This protest followed.²

¹ In addition to the DD Form 254, NOVA's Volume IV contained the names of the individuals authorized to negotiate on NOVA's behalf, NOVA's corporate address, and other corporate identification information. AR, Tab 9, NOVA Email to the Agency, July 27, 2015, attach. Volume IV. The parties do not contend that this information is relevant to the protest here.

² Since the estimated value of this task order was approximately \$25,000,000, this procurement falls within our jurisdiction to hear protests related to the issuance of task orders under multiple-award ID/IQ contracts valued in excess of \$10 million. 10 U.S.C. § 2304c(e)(1)(B)

DISCUSSION

The protester challenges the agency's decision to exclude its proposal based upon its failure to submit a DD Form 254. NOVA argues that it did, in fact, submit a DD Form 254 with its proposal. The protester alleges that the disappearance of its Volume IV submission is due to problems with the agency's DCOP website, and not any failure on NOVA's behalf. The protester also argues that even if the agency did not receive its DD Form 254, the contracting officer was required to resolve this minor error by informing NOVA of the omission, and requesting and accepting a resubmission of the document. The protester contends that since the missing DD Form 254 was not material to the agency's evaluation, it would not gain a competitive advantage if it submitted the form after the deadline set for receipt of proposals. We have considered all of NOVA's arguments, although we address only its primary ones, and find that none provides a basis for questioning the agency's actions.

The evaluation of an offeror's proposal is a matter within the agency's discretion. See IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3.

In its protest, NOVA asserts that it submitted the DD Form 254, as required by the solicitation, with Volume IV of its proposal. In support of its assertion, the protester submitted a sworn statement from an employee, detailing the process he used to upload the documents that comprised the proposal. In this regard, the statement explains that he individually uploaded each document to the website, and after uploading the document, checked to see if it "appeared on the portal screen to verify that it was uploaded successfully." Protest, exh. 2, Affidavit of Client Relationship Manager. In this manner, the employee states that he "verified that [he] submitted the entirety of NOVA's proposal, including Volume IV." Id. Thus, Nova argues that if the agency did not receive the form, the problem must lay with DITCO's website. The employee's statement also details instances in which the agency has had problems with the DITCO website in the past. Id.

In response to the protester's various allegations, DISA denies that it received NOVA's Volume IV submission, and asserts that the missing documentation is due to the protester's error, not problems with the DCOP website. In this regard, DISA submitted a statement from the agency's software deployment branch chief, along with a record of all files uploaded in response to the RFP on June 3. AR, Tab 18, Statement of Software Deployment Branch Chief, DISA, Business System Division, attach 1-6. In his statement, the chief explains how (with corresponding documentary support) he reviewed the system's user logs, website logs, production

support logs, and developer's logs pertaining to the DCOP website. Id. at 1-2, attach. 1-6. In doing so, he states that he found "no evidence" of any errors, including errors uploading files, with the agency's system on June 3. Id. The agency record also demonstrates that three other firms were able to submit their proposals without problems both before and after NOVA submitted its proposal.³ Id., attach. 2. Finally, the agency record shows that the agency received 10 files on June 3 from NOVA, with no Volume IV received. Id. Thus, the agency argues that it properly determined that NOVA's proposal was non-responsive and asserts that it was not required to open discussions to address the protester's failure to submit the required form.

An offeror has the responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. ProActive, LLC, B-403545, Nov. 18, 2010, 2011 CPD ¶ 56 at 5. An offeror that does not affirmatively demonstrate the merits of its proposal risks rejection of its proposal or risks that its proposal will be evaluated unfavorably where it fails to do so. Johnson Controls, Inc., B-407337, Nov. 20, 2012, 2012 CPD ¶ 323 at 3. Based on the record in this case, we have no basis to question the reasonableness of the agency's determination that NOVA failed to submit information required by the RFP.⁴

Although NOVA argues that the problem lay with the DCOP website, the protester has not convincingly established that it did, in fact, upload Volume IV. In this regard, other than the protester's affidavit, the protester has provided no supporting evidence to demonstrate that it attempted to upload the document.⁵ While the protester asserts, essentially, that NOVA has no way to provide this evidence as there is no way to confirm whether DISA actually received all of the documents that

³ The other three proposals were received between 7:00 p.m. on June 3, and 9:00 a.m. on June 4. Id.

⁴ NOVA's protest maintains that the agency's failure to receive its Volume IV here is part of a pattern of problems with DITSA's DCOP website, and thus the agency has failed to satisfy its obligation to promote competition. NOVA argues that the facts here are analogous to S.D.M. Supply, Inc., B-271492, June 26, 1996, 96-1 CPD ¶ 288, and East West Research Inc., B-239565, B-239566, Aug. 21, 1990, 90-2 CPD ¶ 147, where our Office found that the agency's loss of an offer was the result of a systemic failure, such that the agency failed to fulfill its obligation to maintain adequate procedures for the receipt of proposals. These cases are distinguishable, however, because the record in those cases established that the protesters had, in fact, attempted to submit their proposals.

⁵ The agency maintains that its system will generate an error message to the user if an attempted upload is unsuccessful. Id. at 2.

the firm uploaded,⁶ the agency maintains, and the record demonstrates, that it was possible for the contractor to view the list of files that had been successfully uploaded. AR, Tab 18, Statement of Software Deployment Branch Chief, DISA, Business System Division, attach. 4; Intervenor's Comments, exh. A (screenshot of DISA's website, taken by Chameleon after uploading its proposal, showing each file's name, size, uploaded time, user, and description). Accordingly, we find unobjectionable the agency's decision to reject NOVA's proposal as non-responsive. See Nevada Real Estate Servs., Inc., B-293105, Feb. 3, 2004, 2004 CPD ¶ 36 at 4 (even though protester claimed agency had lost the missing proposal contents, proposal was reasonably found unacceptable).

The protester also argues that the agency should not have determined that this minor error rendered the proposal non-responsive. In this regard, the protester asserts that the failure to provide the form was not a material omission, and it did not prevent the agency from evaluating its proposal. The protester also contends that the agency unreasonably refused to request and accept resubmission of the form after proposals had been received.

While the protester makes much of the fact that the agency only eliminated its proposal from the competition after conducting its evaluation, arguing that this demonstrates the form was immaterial, we disagree. Clearly stated requirements are considered material to the needs of the government, and, as noted above, 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. See Mission1st Group, Inc., B-404811.3, B-404811.6, June 2, 2011, 2011 CPD ¶ 115 at 4. As the record shows, the agency did not receive the protester's DD Form 254 as part of NOVA's proposal. In light of the RFP's plain and unambiguous requirement to submit the DD Form 254, along with the statement that the agency reserves the right to reject proposals that fail to adhere to the administrative requirements of the RFP, we conclude that the agency reasonably eliminated NOVA's proposal from the competition.

To the extent the protester contends that the agency should have requested a clarification from NOVA and permitted it an opportunity to resubmit its form, such an opportunity would have been improper. In a negotiated procurement conducted pursuant to Federal Acquisition Regulation (FAR) part 15 (which is not applicable here), clarifications are "limited exchanges" between the government and offerors that may occur when award without discussions is contemplated.⁷ FAR

⁶ NOVA notes that the system does not provide email confirmation of uploaded documents, or "otherwise provide a confirmation of receipt of documents uploaded to the DCOP site." Protest at 4.

⁷ We note that this procurement was conducted as a competition between ID/IQ contract holders and, as such, was subject to the provisions of FAR §16.505, which
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§ 15.306(a)(1). Such exchanges may allow offerors to clarify certain aspects of their proposals or to resolve minor clerical errors. See FAR § 15.306(a)(2). Clarifications, however, cannot be used to cure deficiencies or material omissions in a proposal, or materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. Id. Although agencies have broad discretion as to whether to seek clarifications from offerors, offerors have no automatic right to clarifications regarding proposals. See A.G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 5-6. Since NOVA was determined to be ineligible for award based upon its DD Form 254 omission, any request that would have permitted NOVA to cure this deficiency would have constituted discussions, not clarifications. See Environmental Quality Mgmt., Inc., B-402247.2, Mar. 9, 2010, 2010 CPD ¶ 75 at 5. As such, it was within the contracting officer's discretion not to seek submission of NOVA's DD Form 254.

In sum, the record shows that the Army properly determined NOVA's proposal to be non-responsive and eliminated the proposal from the competition.

The protest is denied.

Susan A. Poling
General Counsel

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does not establish specific requirements for conducting clarifications or discussions. See Companion Data Servs., LLC, B-410022, B-410022.2, Oct. 9, 2014, 2014 CPD ¶ 300 at 12. Where, as here, however, an agency conducts a task order competition as a negotiated procurement, our analysis regarding fairness will, in large part, reflect the standards applicable to negotiated procurements. See, e.g., TDS, Inc., B-292674, Nov. 12, 2003, 2003 CPD ¶ 204 at 4; Uniband, Inc., B-289305, Feb. 8, 2002, 2002 CPD ¶ 51 at 3-4.