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Decision

Matter of: Fiore Industries, Inc.

File: B-414197

Date: March 17, 2017

Carolyn Callaway, Esq., Carolyn Callaway, P.C., for the protester.

Frank V. Reilly, Esq., Frank V. Reilly Attorney at Law, for Team Technologies, Inc., the intervenor.

Kyle E. Gilbertson, Esq., and Jason R. Smith, Esq., Department of the Air Force, for the agency.

Pedro E. Briones, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where the agency's evaluation and award were reasonable and consistent with the terms of the solicitation and the protester's objection to the qualifications of the awardee's proposed personnel reflect only the protester's untimely disagreement with the plain, unambiguous language of the solicitation.

DECISION

Fiore Industries, Inc. (Fiore), of Albuquerque, New Mexico, protests the award of a contract to TEAM Technologies, Inc. (TEAM), also of Albuquerque, under request for proposals (RFP) No. FA8110-17-R-0002, issued by the Department of the Air Force for aircraft maintenance and testing. Fiore contends that TEAM's proposal should have been rejected as technically unacceptable, because its proposed personnel did not meet the RFP's qualification requirements.

We deny the protest.

BACKGROUND

The Air Force issued the solicitation on October 24, 2016, as a set-aside for small business concerns to provide preventative maintenance and testing services for two B-2 aircraft at Tinker Air Force Base, Oklahoma. RFP at 1-8; Contracting Officer's

Statement (COS) at 1.¹ The RFP stated that the agency would award a contract (for a base year and 2 option years) on a lowest-price, technically acceptable basis under Federal Acquisition Regulation (FAR) part 15, considering the following evaluation factors: technical proposal/mission capability, cost/price, and past performance. RFP at 3-8, 31. Offerors were to submit separate technical and price proposals, as well as examples of relevant past performance. Id. at 28-30.

In their technical proposals, offerors were to address how they intended to meet the requirements of the solicitation's performance work statement (PWS), including, at issue here, providing a senior systems engineer (SSE) who meets the qualifications discussed below. See id. at 29; PWS § 1.12.1. The RFP stated that technical acceptability would be determined based on the offeror's compliance with the PWS and whether its proposal met the specified minimum requirements necessary for acceptable contract performance. RFP at 29, 32.

The Air Force received proposals from two offerors, Fiore and TEAM, which were evaluated by an agency source selection evaluation team as follows:

	Technical Proposal / Mission Capability	Past Performance	Cost / Price
Fiore	Acceptable	Satisfactory	\$1,118,155
TEAM	Acceptable	Satisfactory	\$956,968

Agency Report (AR), Tab 6, Source Selection Decision Doc. (SSD), at 2. As reflected in the table above, both proposals were found to meet the PWS' criteria and evaluated as technically acceptable. Id. Of significance here, TEAM proposed an SSE who holds a doctoral degree (Ph.D.) in electrical engineering. AR, Tab 5, TEAM's Tech. Proposal, Sr. Sys. Eng'r., at 4.

The contracting officer, who was the source selection authority for the procurement, determined that TEAM offered the lowest-priced, technically acceptable proposal, and the agency awarded the contract to that firm for \$956,968. COS at 3; SSD at 3. This protest followed.

¹ Our references are to the conformed version of the solicitation provided by the Air Force.

DISCUSSION

Fiore contends that TEAM did not propose a qualified SSE as required by the following PWS provision:

[PWS Section] 1.12.1 Senior Systems Engineers (SSE)

The SSE shall have the following qualifications, certifications and functions:

Education: A Bachelor of Science [BS] degree in a physical science or engineering discipline such as physics, electrical, computer engineering, **or**

Experience: Shall have knowledge and experience of engineering sufficient to apply new concepts, developments, and experienced judgment to solve a variety of complex technical problems. This experience must include at least ten (10) years of professional engineering experience in the foregoing engineering functions for a BS degree, or eight (8) years of experience in the foregoing engineering functions for a MS degree, or six (6) years of experience in the foregoing engineering functions with a PHD degree, and minimum of three (3) year's specific experience in the operation and maintenance of hardware and software identified in this solicitation. SSE also should possess six (6) years specific experience processing and analyzing Hardness Maintenance/Hardness Surveillance and EMI/EMC data associated with the (PHSTS) utilized during test acquisition.

Functions: The SSE provides technical advice and expertise for the design, development and testing of Specialized Electromagnetic Transient (EMT), Electro Optical equipment, similar electromagnetic or other physical phenomena, data acquisition on the PHSTS and large-scale instrumentation systems. The SSE may also be responsible for leading a technical engineering group involved with the development of hardware and software systems and component-level designs for the support of testing capabilities. Provides system engineering designs and recommendations to resolve technical problems, and supports documentation of technical efforts and reports.

Protest at 3-4; PWS § 1.12.1 (emphasis added).

Fiore acknowledges that TEAM proposed an SSE who exceeds the educational requirements of the first paragraph of section 1.12.1 above, but claims that the SSE lacks the specified years of experience also required--according to Fiore--by the second paragraph.² See Protester's Comments at 15.

The Air Force contends that Fiore fundamentally misreads the PWS. Mem. of Law (MOL) at 2. We agree. In reviewing protests of an agency's evaluation, our Office does not reevaluate proposals, rather, we review the record to determine if the evaluation was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. See Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6; Cherry Road Techs.; Elec. Data Sys. Corp., B-296915 et al., Oct. 24, 2005, 2005 CPD ¶ 197 at 6.

Where the reasonableness of the evaluation turns on the agency's interpretation of a solicitation provision, the agency's interpretation of the provision must be consistent with the solicitation when read as a whole and in a reasonable manner. Solec Corp., B-299266, March 5, 2007, 2007 CPD ¶ 42 at 2. A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations. WingGate Travel, Inc., B-412921, July 1, 2016, 2016 CPD ¶ 179 at 7. If the solicitation language is unambiguous, our inquiry ceases. Id.

Here, as the Air Force correctly points out, Fiore's interpretation of section 1.12.1 of the PWS fails to account for the word "or" between the education and experience paragraphs. MOL at 2. In our view, Fiore's interpretation of the qualification requirements for the SSE position is inconsistent with the explicit language of the solicitation, and is thus unreasonable. In effect, the protester would rewrite the solicitation to substitute the word "and" for "or." Lamar Strong Assoc., LLC, B-407170, Nov. 19, 2012, 2012 CPD ¶ 322 at 5 (holding that the protester's interpretation of the RFP's experience requirements was inconsistent with the plain language of the solicitation and that the protester, in effect, would rewrite the RFP to substitute the word "or" for "and."); AHNTECH Inc., B-291998, Apr. 29, 2003, 2003 CPD ¶ 90 at 4 ("[N]otwithstanding the protester's view as to the grammatically correct reading of the provision, we think the listing of the experience/qualifications alternatives in three separate paragraphs, separated by the word 'or,' made the agency's intent clear."); see Bethel-Webcor JV, B-410772, Feb. 12, 2015, 2015 CPD ¶ 96 at 9 n.9 (holding that the protester's argument ignores the plain language of the RFP).

² Fiore does not protest any other aspect of the agency's evaluations. Although our decision does not specifically address each of the protester's arguments, we have considered all of its assertions and find none furnishes a basis for sustaining its protest.

Nevertheless, Fiore argues that the agency's position is unreasonable, conflicts with the purpose of the procurement, and is unsupported by the facts and the text of the solicitation. Protester's Comments at 1. For example, Fiore argues that there is "no parity between" the education and experience requirements (paragraph nos. 1 and 2), and that the experience and functions (paragraph nos. 2 and 3 of PWS § 1.12.1) far exceed anything a new, recent graduate with a Bachelor of Science (B.S.) degree could provide.³ Id. at 4. According to Fiore, "[i]f a simple B.S. degree is sufficient, then there is no purpose to explaining the desired higher experience requirements for a B.S. holder" in the subsequent paragraph. Id. at 10. The flaw in Fiore's B.S. (degree) arguments, however, is that while the education paragraph explicitly requires a degree in a physical science or engineering discipline, the experience paragraph does not specify a discipline of study. Thus, for example, a proposed individual who holds a B.S., Master of Science (M.S.), or Ph.D. in some other discipline such as chemistry may qualify for the SSE position, if that individual has the requisite years of professional engineering experience providing technical advice and experience for the design, development, and testing of the specialized equipment at issue here.

In any event, even if we were to assume that PWS section 1.12.1 was ambiguous (which it is not), the alleged ambiguity was patent from the face of the solicitation, and Fiore's objection is untimely at this point.⁴ Where a patent ambiguity is not challenged prior to submission of solicitation responses, we will not consider subsequent untimely arguments asserting the protester's own interpretation of the ambiguous provisions. See FFLPro, LLC, B-411427.2, Sept. 22, 2015, 2015 CPD ¶ 289 at 11. An offeror who chooses to compete under a patently ambiguous solicitation does so at its own peril, and cannot later complain when the agency proceeds in a manner inconsistent with one of the possible interpretations. Id.

Fiore should have, but failed to, protest the PWS's qualification requirements prior to the time set for receipt of initial proposals. See 4 C.F.R. § 21.2(a)(1) (time for filing protest based on alleged solicitation impropriety); Protester's Comments at 2, 4, 12 (complaining about the misplaced, stray "or" and that the RFP failed to include

³ Fiore concedes that "the SSE proposed by TEAM is considerably more qualified than a brand new B.S. with no experience," but insists that the "fact that the awardee here has proposed something better . . . is irrelevant to interpreting the meaning of the solicitation." Protester's Comments at 2, 15.

⁴ A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. Colt Def., LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. The fact the disjunctive "or" was used in the provision rather than the conjunctive "and" (which would have been consistent with the protester's interpretation), was obvious and glaring on the face of the solicitation.

an engineer in its FAR provision 52.222-42, Statement of Equivalent Rates for Federal Hires). In fact, the Air Force points out that the seven prior contracts (since 2012) for this requirement have consistently included the word “or” between the education and experience paragraphs of the SSE qualifications provision. MOL at 8; see AR, Tabs 9-15, B-2 Maint. & Testing Conts., 2012-2016, PWS, Sr. Sys. Eng’r.

In short, Fiore’s disagreement with the plain, unambiguous language of the solicitation provides no basis for us to sustain the protest. See Lamar Strong Asoc., LLC, supra.

The protest is denied.

Susan A. Poling
General Counsel