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Decision

Matter of: Sotera Defense Solutions, Inc.

File: B-415723

Date: February 28, 2018

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DIGEST

Protest alleging an ambiguity in a solicitation is denied where the protester does not demonstrate that its interpretation of the provision is reasonable.

DECISION

Sotera Defense Solutions, Inc., of Herndon, Virginia, challenges the elimination of its proposal from competition under request for proposals (RFP) No. W900KK-17-R-0014, issued by the Department of the Army, for training support services. The protester argues that the solicitation contained a latent ambiguity that resulted in the agency's improper exclusion of its proposal from the competition.

We deny the protest.

BACKGROUND

The solicitation, issued on August 8, 2017, contemplated the award of a single indefinite-delivery, indefinite-quantity (IDIQ) contract, with a 7-year ordering period and maximum contract value of \$785,000,000. RFP at 1, 2.¹ The purpose of the contract is for the acquisition of services for the Army Intelligence Center of Excellence in support

¹ The solicitation was amended four times. Unless otherwise noted, all citations to the solicitation are to the conformed version as provided by the agency.

of their training and support missions at Fort Huachuca, Arizona.² Agency Report (AR), Combined Contracting Officer's Statement and Memorandum of Law (COSMOL) at 1-2. The solicitation provided that fixed-price and cost-plus-fixed-fee task orders would be issued under the contract. RFP at 2, 64. Award was to be made on a best-value tradeoff basis considering the following factors: program management, small business participation, past performance, and total evaluated cost/price (TECP). Id. at 81.

The solicitation advised offerors that the government intended to strictly enforce all of the solicitation/proposal submission requirements outlined in section L of the solicitation. Id. at 80. The solicitation also advised that the government would utilize a compliance matrix--which was included in the solicitation--to screen the proposals. Id.; see also id. at 71-72; id., section J, attach. 9, Compliance Matrix. The compliance matrix was a table/chart that referenced 52 areas of section L for which offerors were to provide references to applicable sections of their proposals. Id., section J, attach. 9, Compliance Matrix. The matrix also included a "[g]overnment [c]heck" column, in which the agency would indicate whether "the offeror has followed the instructions of [s]ection L," by checking it as "complete," as appropriate. Id. The solicitation warned that failure to comply with the solicitation requirements and have items checked as "complete" would result an offeror's proposal being rejected and not being evaluated. RFP at 80; see also id. at 66.

Relevant here is solicitation instruction L.6.5.1, Cost/Price Workbook, which was also referenced in the compliance matrix. Id. at 77; id., section J, attach. 9, Compliance Matrix.at 3. For the TECP factor, the solicitation, as amended, instructed offerors to submit a workbook as follows:

The completed workbook shall be consistent with the instructions and consistent with the offeror's proposal (for example, labor rates proposed in the workbook shall match those presented in the Total Compensation Plan, if applicable, in Volume I of the proposal, and the subcontractors shall match those presented in [Federal Acquisition Regulation] FAR Clause 52.244-2, Subcontracts). All of the offeror's applicable rates (and all subcontractor(s)'s applicable fully burdened rates) shall be included in the workbook. The list of subcontractors will be listed in Section I of the resultant contract, FAR Clause 52.244-2, Subcontracts, and will be binding within HTASC.

RFP at 77. The solicitation further instructed with regard to rates that "[t]he offeror (to include the prime and any subcontractors for the purposes of [the instructions with regard to rates] shall provide . . . supporting data and rationale for the direct rates and indirect rates included in the workbook, including labor rate development methodologies" Id. at 78.

² The contract is also referred to as the Huachuca Training and Support Contract (HTASC). RFP at 2.

FAR clause 52.244-2, Subcontracts, was one of several contract clauses that the solicitation referenced in the compliance matrix and instructed offerors to complete. Id. at 42-44, 73; id., section J, attach. 9, Compliance Matrix, at 2. This clause requires the contracting officer to provide prior consent in order for the awardee to enter into certain subcontracts after award. The contractor's consent request requires the contractor to provide detailed information regarding pricing of the subcontractor, but specifically exempts subcontracts that "were evaluated during negotiations." FAR § 52.244 2(j). As relevant here, the solicitation required offerors to specifically identify those subcontracts. RFP at 43-44.

The solicitation stated that the labor rates as proposed in the workbook, for both the prime and subcontractor(s), would be binding, incorporated into the contract, and would be the rates used at the task order level, subject to "Language for Subsequent Contract" provisions. RFP at 6. As relevant here, these provisions allowed for the rates that were incorporated into the contract to be adjusted on an annual basis. Id. at 6-7. The provision also provided that:

In the event a new subcontractor (or subcontractors) is (are) required (other than those included in clause 52.244-2(j)) OR if an existing subcontractor needs to utilize an additional (but existing) labor category, the direct labor rates, indirect rates, and fully burdened labor rates associated with that subcontractor shall be proposed, negotiated (if applicable), and incorporated within [s]ection J of this contract prior to any [task order] award which includes the new subcontractor(s).

Id. at 7.

Sotera timely submitted its proposal. AR, COSMOL at 4. The agency found Sotera's proposal to be complete in 45 of the 52 compliance check areas in the compliance matrix. Id.; see also AR, Tab 17a, Preaward Debriefing Slides, encl. 2, Completed Compliance Matrix. As relevant here, the agency did not find Sotera's proposal "complete" in several areas because Sotera failed to provide information for several subcontractors that were identified as subcontractors under FAR clause 52.244-2 and other areas in its proposal. See AR, Tab 16, Preaward Notification Letter at 3; Tab 17, Preaward Debriefing Presentation Slides at 6, 9-11; AR, Tab 17a, Preaward Debriefing Slides, encl. 2, Completed Compliance Matrix. As a result, the agency eliminated Sotera's proposal from the competition. See AR, Tab 16, Preaward Notification Letter.

The agency informed Sotera of its exclusion on November 9 and provided a debriefing on November 16. See AR, Tab 16, Preaward Notification Letter; AR, Tab 17, Preaward Debriefing Presentation Slides. This protest followed.

DISCUSSION

Sotera challenges the agency's exclusion of its proposal from the competition.³ In this regard, Sotera argues that the agency's addition of the word "applicable" to solicitation instructions for the workbook, along with an answer to a solicitation question about the workbook, created a latent ambiguity. Protest at 16-17; Protester's Comments at 5-8. The protester contends that the agency was required to clarify this and to permit Sotera to submit a revised proposal. Id. Specifically, the protester argues that it reasonably understood the solicitation instruction that "all of the offeror's applicable rates (and all subcontractor(s) applicable fully burdened rates) shall be included in the workbook" to mean that it was not required to submit pricing information for all subcontractors, but rather only for those subcontractors with "applicable fully burdened rates." Id.; see also Protester's Comments at 3, 8. In this regard, Sotera argues that the agency excluded it from the competition solely on the basis of including in its proposal subcontractors for which it did not submit any pricing information. See Protester's Comments at 9.

In response, the agency argues that there is no ambiguity because Sotera's interpretation contradicts the plain language of the RFP and the answer the agency provided in response to a related question. AR, COSMOL at 13-14. In this regard, the agency also argues that Sotera's identification of subcontractors for which no pricing information was provided is inconsistent with the solicitation, which clearly stated the agency's intent to incorporate into the contract all proposed prime and subcontractor pricing for the entire duration of the contract period of performance. Id. at 7, 14.

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. Crew Training Int'l, Inc., B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. Id. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. Id.

In our view, the solicitation language, when read as a whole, does not support Sotera's understanding that it did not have to include rates for all of its proposed subcontractors. The solicitation instructions for the workbook requires that:

The completed workbook shall be consistent with the instructions and consistent with the offeror's proposal (for example, labor rates proposed in

³ In filing and pursuing this protest, Sotera has raised arguments in addition to, or variations of, those discussed herein. While we do not address every issue raised, we have considered all of the protester's arguments and allegations and find no basis to sustain the protest.

the workbook shall match those presented in the Total Compensation Plan, if applicable, in Volume I of the proposal, and the subcontractors shall match those presented in FAR Clause 52.244-2, Subcontracts). **All of the offeror's applicable rates (and all subcontractor(s)'s applicable fully burdened rates) shall be included in the workbook.** The list of subcontractors will be listed in Section I of the resultant contract, FAR [c]ause 52.244-2, Subcontracts, and will be binding within HTASC.

RFP at 77 (emphasis added).

As relevant here, the solicitation, as originally issued, required “all of the offeror's rates (and all subcontractor(s)'s fully burdened rates) shall be included in the workbook.” See Original RFP at 77. In response to the question about the workbook instructions, “[d]oes the government expect that each subcontractor will complete the Cost/Price Workbook for their assigned labor categories only?” the agency responded “No, the Government does not expect each subcontractor to complete a Cost/Price Workbook” AR, Tab 7, Solicitation Amendment 1 Questions and Answers (Q&As) at 5. The answer further indicated that the solicitation would be amended to insert “applicable” before rates. Id.; see also RFP, Amendment 2, at 1, 17.

In this context, we do not find reasonable Sotera's interpretation of the solicitation instruction “all of the offeror's applicable rates (and all subcontractor(s) applicable fully burdened rates) shall be included in the workbook” to mean that it was not required to provide rates for all its proposed subcontractors. Rather, it is clear that the solicitation required that the subcontractors in the workbook were required to match those presented in FAR clause 52.244-2, which essentially precludes offerors from proposing subcontractors in the manner proposed by Sotera, i.e., for which no pricing information was provided.⁴ In fact, the solicitation instructions with regard to rates states that “[t]he offeror (to include the prime and any subcontractors for the purposes of L.6.5.2) shall provide . . . supporting data and rationale for the direct rates and indirect rates included in the workbook, including labor rate development methodologies” Id.

Further, we do not find that the answer to the question regarding the workbook supports the protester's understanding of the solicitation's instructions. We agree with the agency that the answer clearly stated that offerors were not required to submit a workbook from each subcontractor, i.e., meaning that only one workbook from the prime offeror detailing all the rates was required. We therefore find no support for the

⁴ In this regard, Sotera states in its protest that these subcontractors were proposed to serve as supplemental team members that would be available, as needed, in response to future task orders. See Protest at 1-2. Sotera states that it offered an enhancement of its subcontracting plan to the agency, proposing to make available notable subcontractors if and when their relevant skill and experience was called for by future task orders. Id. at 2.

protester's understanding that offerors were not required to propose rates for all its proposed subcontractor. See AR, COSMOL at 14.

Because we do not find Sotera's interpretation reasonable, we find no ambiguity here. Accordingly, we find reasonable the agency's determination that Sotera's proposal was not "complete" because it failed to propose rates in the workbook for all of its proposed subcontractors identified under FAR clause 52.244-2. On this record, Sotera's arguments provide no basis to sustain this protest ground.

Further, because we find reasonable the agency's findings that Sotera's proposal was not "complete" in the area discussed above, we conclude that the agency reasonably rejected Sotera's proposal. This is so because the solicitation, as described above, warned offerors that failure to comply with the solicitation requirements and have all items checked as "complete" in the compliance matrix would result in an offeror's proposal being rejected and not being evaluated. RFP at 80; see also id. at 66. While the agency also determined that Sotera's proposal was not "complete" in other areas, we need not determine whether any of these other flaws provides an additional basis for rejecting the proposal.

The protest is denied.

Thomas H. Armstrong
General Counsel