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# Decision

**Matter of:** Distributed Solutions, Inc.

**File:** B-416394

**Date:** August 13, 2018

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## DIGEST

Protest of agency's decision to reject proposal as nonresponsive is denied where proposal failed to comply with material solicitation requirements in multiple respects.

## DECISION

Distributed Solutions, Inc., (DSI) of Reston, Virginia, protests the rejection of its proposal, submitted in response to request for proposals (RFP) No. N00039-17-R-0002, which was issued by the Department of the Navy, Space and Naval Warfare Systems Command (SPAWAR), for an electronic procurement system. DSI challenges the agency's assessment that the firm's proposal was nonresponsive based on the failure to comply with several aspects of the solicitation.

We deny the protest.

## BACKGROUND

SPAWAR issued the RFP on July 13, 2017, seeking a contractor to develop a commercial electronic procurement system (ePS) for the Navy. The RFP, issued pursuant to the negotiated procurement procedures of Federal Acquisition Regulation (FAR) part 15, contemplated the award of a hybrid contract with both fixed-price and cost-reimbursable line items, for a 10-year period of performance, which included a 1.5-year base period and nine option periods. Agency Report (AR), exh. 1, RFP

amend. 7, at 251, 310, 357.<sup>1</sup> The contract was to be awarded on a best-value tradeoff basis, considering five evaluation factors.<sup>2</sup> Id. at 381.

The RFP included detailed instructions for the preparation and submission of proposals. In this respect, the RFP specified that offerors structure their proposals in seven volumes, five of which corresponded to the evaluation criteria and the other two volumes encompassed various administrative materials and required forms. Id. at 360-63, § L-9.1. Of relevance here, proposal volume VI (referred to as the “Offer/Signed Solicitation Set” volume) was to include miscellaneous solicitation items such as a cover letter, certain standard forms (e.g., Standard Form 33 (SF 33)), the completed RFP sections A-K, and the DD Form 254,<sup>3</sup> among other materials. Id. at 363, § L-9.1. For each of these volume VI documents, the solicitation stipulated numerous, clearly stated requirements, as discussed more fully below. See id. at 375-76, § L-10.7.

The solicitation also addressed the importance of compliance with the various proposal requirements. In this respect, the RFP cautioned that “[t]o be considered for award, the Offeror’s proposal must include all data and information requested by the RFP and must be submitted in accordance with these instructions. The offer shall be compliant with the requirements as stated.” Id. at 360, § L-8.1. The RFP further highlighted that the government “reserves the right to reject any proposal that does not comply with proposal preparation instructions.” Id., § L-8.2. Indeed, the solicitation reiterated the importance of compliance with the instructions, expressly warning that “Offerors must comply with the detailed instructions for the format and content of the proposals. Proposals that do not comply may be considered nonresponsive, and may render the Offeror ineligible for award.” Id. at 365-66, § L-9.5. Furthermore, the RFP advised that the government intended to award the contract without conducting discussions, and therefore the offeror’s initial proposal was to contain the offeror’s “best terms.” Id. at 381, § M-1.7.1.

DSI timely submitted a proposal prior to the December 18, 2017, submission deadline. As an initial step, a SPAWAR contracting officer reviewed proposals, including DSI’s, for

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<sup>1</sup> The solicitation was amended seven times. Combined Contracting Officer’s Statement/Memorandum of Law (COS/MOL) at 3. Citations herein are to the conformed version of the solicitation, issued as amendment 7.

<sup>2</sup> Though not relevant to this decision, the evaluation factors were product capability, gap closure approach, technical approach, management approach, and cost/price. RFP at 382, § M-2.

<sup>3</sup> The DD Form 254 is the Department of Defense Contract Security Classification Specification form. The form conveys security requirements, classification guidance, and procedures for handling classified material received and/or generated on a classified contract. See A-B Computer Solutions, Inc., B-415819, Mar. 22, 2018, 2018 CPD ¶ 128 at 5 n.5.

compliance with the solicitation's numerous, detailed instructions. COS/MOL at 7. With respect to DSI's proposal, the contracting officer identified several aspects of the offer that were not in compliance with the RFP, four of which are at issue here.<sup>4</sup> Id. at 8-9; AR, exh. 2, DSI Compliance Review, at 2-4, 14-16.

Specifically, SPAWAR assessed that: (1) DSI's SF 33 did not include an original signature, and the firm failed to submit signed copies, or otherwise acknowledge, the RFP's seven amendments;<sup>5</sup> (2) DSI's cover letter did not address the firm's intent to comply with the RFP requirements or address whether the firm took exception to any solicitation terms; (3) DSI's proposal volume VI did not contain filled-out versions of certain RFP sections and, instead, improperly cross-referenced to information in other proposal volumes (e.g., identifying key personnel); and (4) DSI's DD Form 254 was not completed fully. AR, exh. 2, DSI Compliance Review, at 4, 14-16; exh. 4, Compliance Review Brief to Source Selection Advisory Council (SSAC), at 5.

As a result of these "major points" of noncompliance, SPAWAR deemed DSI's proposal nonresponsive and rejected the firm's offer. AR, exh. 3, ePS Source Selection Compliance Review Results, at 1; exh. 4, Compliance Review Brief to SSAC, at 5. Following notice that its proposal had been rejected as nonresponsive, on April 13, 2018, DSI filed an agency-level protest with the Navy opposing the rejection of the firm's offer. AR, exh. 5, SPAWAR Letter to DSI, at 1-3; exh. 6, DSI Agency-Level Protest, at 1-5. By letter of May 11, the contracting officer denied DSI's agency protest, concluding that DSI's proposal was properly rejected.<sup>6</sup> AR, exh. 7, Agency-Level Protest Decision, at 1-6. Thereafter, DSI timely protested to our Office.

## DISCUSSION

DSI protests the agency's decision to reject its proposal as nonresponsive. The protester maintains that the issues cited by the agency were not mistakes, but rather derived from DSI's reasonable interpretation and compliance with the RFP's plain language. Protest at 1. DSI further complains that each of the alleged nonconformities

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<sup>4</sup> As an example of matters not at issue here, SPAWAR noted that DSI failed to include the date on each page of its proposal (as required by section L-9.3(a)(9) of the RFP), but the contracting officer determined that this omission was "not substantial" and was not used as a basis to reject the proposal. AR, exh. 2, DSI Compliance Review, at 3; COS/MOL at 8 n.1.

<sup>5</sup> The Standard Form 33, Solicitation Offer and Award, is the solicitation and contract award document used for this procurement.

<sup>6</sup> The contracting officer concurred with the protester that its proposal actually was in compliance with a requirement for which it initially had been assessed as noncompliant, but the determination did not impact the decision to remove the proposal from consideration. AR, exh. 7, Agency-Level Protest Decision, at 5; COS/MOL at 9.

were, “at best, minor issues where the Agency elected to choose form over substance . . . .” Id.

In reviewing protests challenging the evaluation of an offeror’s proposal, or as here, the rejection of a proposal based on the agency’s evaluation, it is not our role to reevaluate proposals; rather our Office examines the record to determine whether the agency’s judgment was reasonable, and in accordance with the solicitation criteria and applicable procurement statutes and regulations. Orion Tech., Inc., B-405077, Aug. 12, 2011, 2011 CPD ¶ 159 at 4. In a negotiated procurement, 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. LOGMET, B-409906.2, Oct. 10, 2014, 2014 CPD ¶ 301 at 3. Moreover, an offeror bears the burden of submitting an adequately written proposal that contains all of the information required under a solicitation. Business Integra, Inc., B-407273.22, Feb. 27, 2014, 2014 CPD ¶ 88 at 3. Where a proposal omits, inadequately addresses, or fails to clearly convey required information, the offeror runs the risk of an adverse agency evaluation. Addvetco, Inc., B-412702, B-412702.2, May 3, 2016, 2016 CPD ¶ 112 at 7-8.

Here, we have no basis to question SPAWAR’s decision to reject DSI’s proposal as nonresponsive. In this respect, our review of the record confirms the agency’s assessment that DSI failed to comply with the clearly stated solicitation requirements in several respects. In addition, we agree with SPAWAR that these failures were “substantive issues, not minor informalities.” COS/MOL at 27. By way of example, we address the two most significant areas of noncompliance below.<sup>7</sup>

First, as noted above, the RFP detailed specific requirements for the documentation in proposal volume VI, which included the cover letter and SF 33. With respect to the offeror’s cover letter, the RFP required that the letter “[a]ddresses compliance to all RFP requirements and instructions to include any exceptions to the Terms and Conditions of the solicitation [and be] signed by an officer of the Offeror that is authorized to bind the Offeror’s company.” RFP at 376, § L-10(a)(1)(ii)-(iii). In DSI’s cover letter, the firm’s

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<sup>7</sup> While we directly discuss two aspects of noncompliance, we have considered all of the agency’s documented bases for rejecting DSI’s proposal, and find each of the agency’s concerns supported by the record and unobjectionable. For instance, DSI had, in fact, neglected to provide filled-out versions of RFP section C, which identified its key personnel and would become part of the actual contract upon award; the firm merely referred to other volumes of its proposal in contravention of the RFP instructions. See AR, exh. 11, DSI Proposal Vol. VI, RFP Sections A-K, at 1. Likewise, the firm did not submit a completed DD Form 254. See AR, exh. 13, DSI Proposal Vol. VI, DD Form 254, at 2-3. As noted above, clearly stated requirements are considered material to the needs of the government, and 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. NOVA Corp., B-411851, Nov. 6, 2015, 2015 CPD ¶ 346 at 5 (denying protest challenging rejection of proposal for failing to submit a DD Form 254).

chief executive officer (CEO)--who signed the letter in ink--wrote, "This submission addresses compliance to all RFP requirements and instructions that include any exceptions to the Terms and Conditions of the solicitation." AR, exh. 9, DSI Cover Letter, at 1.

We find unobjectionable the agency's assessment that DSI's cover letter failed to comply with the solicitation. In this respect, as noted, the RFP required that an offeror address in its cover letter compliance with the RFP, as well as whether the firm was taking exception to any solicitation terms. Moreover, the RFP expressly cautioned against restating solicitation requirements. See RFP at 360, § L-8.3 ("The proposal should not simply rephrase or restate the Government requirements, but shall provide convincing rationale to address how the Offeror intends to meet these requirements"); see also id. at 366, § L-10 ("Statements such as 'the Offeror understands and complies' with the requirements or paraphrasing the requirements in the RFP is considered inadequate").

Despite these warnings and the clear instructions, DSI "simply restated the requirement," which left the contracting officer unclear as to whether DSI complied with all of the RFP terms and conditions and whether the firm was taking exception to any terms. COS/MOL at 22; AR, exh. 5, SPAWAR Letter to DSI, at 2. In this respect, DSI's cover letter did not affirmatively represent that the firm intended to comply with the solicitation requirements or unambiguously indicate that the firm did not take exception to any solicitation terms, as anticipated by the RFP. On this record, we find reasonable the agency's conclusion that DSI's cover letter failed to comply with the RFP.

Next, with respect to the SF 33, the RFP required that that an offeror's proposal "contain a completed and signed SF 33 and a signed copy of amendment [sic], if any. An official authorized to bind the company shall sign the SF Form 33 with blocks 12 through 18 completed." RFP at 376, § L-10(e)(1). The agency assessed DSI's SF 33 as noncompliant with these instructions because the firm's SF 33, which also was being used by DSI to acknowledge the solicitation amendments, did not include an "original signature."<sup>8</sup> AR, exh. 5, SPAWAR Letter to DSI, at 1.

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<sup>8</sup> More specifically, DSI sought to comply with the requirement to sign and acknowledge the solicitation amendments by identifying the amendments in the appropriate spaces in block 14 of the SF 33. See AR, exh. 10, DSI Proposal Vol. VI, SF 33 (Block 14 - Acknowledgement of Amendments). Because the agency assessed the SF 33 as lacking an original signature, this also resulted in the firm not having officially acknowledged the amendments. COS/MOL at 19-20; AR, exh. 5, SPAWAR Letter to DSI, at 1-2. Because, as discussed herein, we concur with the agency's determination that DSI's SF 33 was noncompliant due to the lack of a signature, we also find unobjectionable the agency's determination that DSI had not officially signed or acknowledged the solicitation amendments.

Here, the record shows that while block 16 of DSI's SF 33 identified the firm's CEO as the person authorized to sign the offer, the SF 33 only included the typewritten name of the CEO in a cursive font in block 17, the signature block. AR, exh. 10, DSI Proposal Vol. VI, SF 33. Notably, the form did not include the CEO's actual handwritten signature in ink or an authenticated digital signature. See id. Nevertheless, DSI maintains that this typewritten name complied with the solicitation requirements and legally bound the company if the agency had accepted the offer. Protest at 7-8. We disagree.

The FAR defines "signature" or "signed" as "the discrete, verifiable symbol of an individual that, when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing. This includes electronic symbols." FAR § 2.101. Under the circumstances here, the typewritten name of the CEO in the signature block, albeit in a cursive script font, is not a signature, as contemplated by the FAR.<sup>9</sup> While the use of computer font arguably resulted in an "electronic symbol," the typewritten name itself did not constitute a discrete, verifiable symbol that was sufficiently distinguishable to be authenticated.<sup>10</sup> That is, anyone can type a person's name; without a signature that could be authenticated, the named individual could just as easily disavow the legal instrument on which the typed name is affixed.

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<sup>9</sup> In this respect, we do not agree with the protester that the Electronic Signatures in Global and National Commerce (E-SIGN) Act mandates that SPAWAR accept DSI's CEO's typewritten name as an official signature. See Protest at 6, citing E-SIGN Act, 15 U.S.C. § 7001 et seq. As an initial matter, the Act is not applicable to the Department of Defense. See COS/MOL at 16, citing 41 U.S.C. § 2301(f). Moreover, the E-SIGN Act expressly provides that a governmental agency need not accept electronic signatures with respect to a contract. See 15 U.S.C. § 7001(b)(2); see also Excel Building & Dev. Corp., B-401955, Dec. 23, 2009, 2009 CPD ¶ 262 at 4 n.4 (discussing Office of Management and Budget (OMB) guidance regarding government discretion to use or accept electronic signatures). Indeed, the FAR provides that agencies may accept electronic signatures and records in connection with government contracts; it does not provide a regulatory obligation that an electronic signature be accepted without reservation. See FAR § 4.502(d). Regardless, we fundamentally disagree with DSI that the CEO's typewritten name constituted an electronic signature under either the FAR or the E-SIGN Act.

<sup>10</sup> Our conclusion herein is consistent with other forums' interpretations of the FAR's definition of the term "signature." See, e.g., ABS Dev. Corp., ASBCA No. 60022 et al., 16-1 BCA ¶ 36,564 (2016) (rejecting use of company official's name typed in Lucida Handwriting font as a valid signature); Tecknocraft Inc., ASBCA No. 55438, 08-1 BCA ¶ 33,846 (2008) (finding that typewritten notation "//signed//" did not constitute a valid signature because the "indefinite generic notation" was not a discrete, verifiable signature that could be authenticated).

Further, DSI's proposal lacked any documentation that expressly authorized typewritten names to bind the company. More specifically, there is no indication in the contemporaneous record that DSI adopted the typewritten form of the CEO's name as his official signature.<sup>11</sup> See SWR, Inc., B-278415, Dec. 17, 1997, 97-2 CPD ¶ 166 at 2; cf. Hawaiian Dredging Constr. Co. v. U.S., 69 Fed. Cl. 305 (2004) (holding that mechanically applied signature was binding where it was accompanied by adequate assurances that the company intended to be bound by the signature). Indeed, SPAWAR's concern regarding the typewritten name is particularly understandable given that the CEO's handwritten signature was used on other parts of the proposal. See, e.g., AR, exh. 9, DSI Cover Letter, at 1; exh. 14, DSI Proposal Vol. VI, attach. 23, Organizational Conflict of Interest Declaration & Disclosure, at 1. On this record, we find persuasive the contracting officer's concern that the government's acceptance of the proposal might not have resulted in a binding contract.<sup>12</sup> See COS/MOL at 12-13.

Given that the CEO's typewritten name does not qualify as a signature, we see nothing unreasonable with the agency's assessment that the protester's SF 33 failed to comply with the RFP. In this respect, an offer which is not signed, and lacks some other material indication of the offeror's intention to be bound, generally must be rejected since the government's acceptance of the offer would not result in a binding contract without confirming the offeror's intention to be bound. SWR, Inc., supra; see generally G. Penza & Sons, Inc., B-249321, Sept. 2, 1992, 92-2 CPD ¶ 147 (finding rejection of protester's bid unobjectionable where required bid form included handwritten printed name of protester's representative rather than actual signature). In addition, where, as here, the solicitation contemplated award on the basis of initial proposals, after the established date for submitting proposals, it would have been unfair to other offerors to ask a company that had submitted an unsigned proposal whether it intended to be bound by its offer.<sup>13</sup> SWR, Inc., supra.

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<sup>11</sup> In its protest pleadings, DSI included a declaration from its CEO--signed in ink--in which the CEO represents that he had authorized other company employees to use his typewritten name on the SF 33 to bind the company. Protest, exh. 4, Dec. of DSI CEO, ¶¶ 2-3. Notwithstanding the post-protest assertion, such confirmation of the CEO's intent to be bound by his printed name was not provided with the proposal itself, and, consequently, cannot be relied on by the agency at this juncture, well after the proposal submission deadline. See SWR, Inc., supra; see generally Stafford Grading & Paving Co., Inc., B-245907, Jan. 14, 1992, 92-1 CPD ¶ 66 at 2 (finding unobjectionable agency's rejection of unsigned bid despite protester's submission of a corporate resolution authorizing the use of a signature stamp after bid opening).

<sup>12</sup> We note that the contracting officer's concern is exacerbated by the lack of clarity in the proposal cover letter regarding whether DSI complied with the terms and conditions of the solicitation or took any exception to the terms. See COS/MOL at 10, 22.

<sup>13</sup> More specifically, while DSI maintains that each of the nonconformities discussed above were minor and should have been waived by SPAWAR, see Protest at 8, 10-12, an agency is not required to adapt its evaluation to comply with an offeror's

(continued...)

We recognize that the result here is frustrating for DSI, particularly in light of the effort that ostensibly went into preparing the firm's 500-page proposal. However, taking into consideration the numerous aspects of the proposal that were not in compliance with the RFP's clearly stated requirements, we cannot find the agency's decision to reject the proposal unreasonable. In this respect, as noted above, an offeror bears the burden of submitting an adequately written proposal, and it runs the risk that its proposal will be evaluated unfavorably where it fails to do so. E.g., Tribalco, LLC, B-414120, B-414120.2, Feb. 21, 2017, 2017 CPD ¶ 73 at 5.

The protest is denied.

Thomas H. Armstrong  
General Counsel

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(...continued)

submissions--the question is not what an agency could possibly do to cure a noncompliant submission, but, rather, what it is required to do. See Phoenix Mgmt., Inc., B-412220, Dec. 21, 2015, 2015 CPD ¶ 398 at 6. Moreover, where, as here, proposal submission requirements are clear, an agency is not required to assume the risks of potential disruption to its procurement to permit an offeror to cure a defect in its proposal submission caused by the offeror's failure to comply with a mandatory solicitation requirement. Id.