



# Decision

## DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. The entire decision has now been approved for public release.

**Matter of:** Summit Construction & Environmental Services

**File:** B-416985; B-416985.2; B-416985.3

**Date:** January 15, 2019

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David A. Edelstein, Esq., and Allison Geewax, Esq., Asmar, Schor & McKenna, PLLC, for the protester.

Benjamin D. Lorber, Esq., General Services Administration, for the agency.

Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Agency reasonably rejected protester's proposal where proposal failed to comply with material solicitation requirements.

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## DECISION

Summit Construction & Environmental Services, of Richmond, Virginia, protests the General Services Administration's (GSA) award of a contract to DelSur SDAV Joint Venture, LLC, pursuant to request for proposals (RFP) No. 47PE0218R0008, to provide building operations, maintenance, and janitorial services at the Sam Nunn Atlanta Federal Center. Summit challenges various aspects of the agency's source selection process, including the agency's determination that Summit's proposal failed to comply with material solicitation requirements.

We deny the protest.

## BACKGROUND

On June 18, 2018, GSA issued the solicitation, seeking fixed-price proposals to provide operations and maintenance (O&M), janitorial, and related services at the Sam Nunn Atlanta Federal Center. The solicitation provided that award would be made on a lowest-price, technically acceptable basis, and established the following evaluation factors: (1) O&M and janitorial minimum performance standards; (2) past performance; and (3) price. Agency Report (AR), Tab 3.1, RFP, at 333-37.

Among other things, the solicitation identified minimum staffing requirements for certain identified positions.<sup>1</sup> Specifically, with regard to the building O&M requirements, the solicitation provided that offerors must, at a minimum, propose to fill the following positions at specified staffing levels: lead heating ventilation and air conditioning (HVAC) mechanic/control technician; HVAC mechanic; maintenance electrician; fire alarm monitor; maintenance painter; general maintenance worker; production control clerk; and working mechanical supervisor.<sup>2</sup> RFP at 41. With regard to the minimum staffing requirements, the solicitation added that “[t]hese staffing levels as determined by the Government are limited to hourly full time (40 hours per week FTE [full time equivalent]) productive employees and trades,” and notified offerors that there was a collective bargaining agreement (CBA) in place for this contract. Id. at 41, 332.

Section L-5 of the solicitation provided proposal instructions to the offerors. With regard to price proposals, section L-5 stated:

Each of the following items must be included as part of the price proposal or GSA cannot effectively evaluate the proposed price. Failure to include the following in accordance with these instructions will result in the offeror's proposal being nonresponsive.

Direct Costs:

- (i) Labor: Submit manning tables showing the basis for the labor cost proposed for the base year and all option periods.
- (ii) Labor Burden: Submit a schedule showing the basis of the amount of payroll burden proposed by occupation codes, titles and labor rate(s). The labor burden should include such items as FICA [Federal Insurance Contribution Act], FUTA [Federal Unemployment Tax Act], SUTA [State Unemployment Tax Act], Workmen's Compensation, etc., and the cost of providing fringe benefits such as pension, H&W [health & welfare], holiday, vacation, overtime and sick pay for the base year and all option periods.

RFP at 331-32.

In response to an offeror's question concerning the information submission requirements of RFP section L-5, the agency reiterated the requirement that price proposals must include labor rate and labor burden information for each mandated

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<sup>1</sup> The solicitation provided that “these levels are MINIMUM levels only” (capitalization in original), adding that offerors could propose additional staffing beyond the minimums specified. RFP at 41.

<sup>2</sup> The solicitation similarly identified required positions and associated staffing levels for janitorial services. Id.

position, stating: “The contractor shall list in the [proposal’s] manning tables cost[s] associated for all personnel and positions stipulated in [the] minimum staffing requirements.” AR, Tab 3.4, Questions/Answers, at 15-16.

Finally, section M-6 of the solicitation (titled “Price Evaluation Factors”) emphasized the significance of complying with the section L-5 price proposal instructions, stating: “Failure to follow the instructions in L-5 – Volume III (Price Quote) will result in the offeror’s proposal being found nonresponsive.” RFP at 337.

The solicitation also provided that proposed prices would be evaluated for realism, stating that an unrealistically low price would reflect an offeror’s failure to understand the contract requirements, and further advising offerors that proposed prices would be evaluated for “accuracy [and] completeness.” Id. at 334, 337.

On or before the August 8 closing date, proposals were submitted by several offerors, including Summit and DelSur. The proposals were thereafter evaluated, and the agency did not conduct discussions.<sup>3</sup>

In evaluating Summit’s proposal, the agency concluded that Summit’s price proposal failed to comply with certain solicitation requirements. First, the agency found that Summit’s manning tables omitted any reference to the mandatory position of maintenance electrician and, accordingly, Summit’s proposal contained no labor rate or burden cost information for that position. AR, Tab 3.5, Price Analysis, at 1-2; Tab 3.2, Award Decision, at 6; see AR, Tab 3.3. Summit Price Proposal, Vol. III at 4-8. In light of the solicitation’s specific provisions requiring submission of this information, the agency concluded that Summit’s proposal failed to comply with these requirements.<sup>4</sup>

Despite Summit’s failure to comply with the solicitation requirements, the agency performed a price realism assessment regarding the costs associated with the items that Summit omitted from its proposal, in order to determine the potential impact of those omissions on Summit’s performance. AR, Tab 3.5, Price Analysis, at 1-2; Tab 3.2, Award Decision, at 6. In performing that assessment, the agency considered the costs associated with comparable contracts, and applied the agency’s own independent judgment. Id. Based on its assessments, the agency concluded that the additional costs Summit would be required to incur in performing the omitted items would render its proposed price unrealistically low, resulting in a “high probability that

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<sup>3</sup> The solicitation advised offerors that, while the agency reserved the right to conduct discussions, it intended to award a contract without doing so. RFP at 323.

<sup>4</sup> The agency also concluded that Summit’s proposal failed to comply with the solicitation’s provisions regarding recycling, having omitted costs for removing recyclables from the Federal Center premises to an authorized recycling facility. AR, Tab 3.5, Price Analysis, at 1-2; Tab 3.2, Award Decision, at 6. As discussed below, we need not address this additional evaluated deficiency in Summit’s proposal.

this contract will fail.” AR, Tab 3.5, Price Analysis, at 2. Based on the entirety of its evaluation, the agency concluded that Summit’s failure to provide the required manning information for the maintenance electrician position and the omission of recycling removal costs rendered Summit’s proposal unacceptable. AR, Tab 3.5, Price Analysis, at 2; Tab 3.2 Award Decision, at 5.

Thereafter, the agency awarded the contract to DelSur. This protest followed.

## DISCUSSION

Summit protests various aspects of the agency’s evaluation, including asserting that its proposal properly included the cost of a maintenance electrician under a line item for subcontracted costs. Protest at 4-5. Among other things, Summit asserts that providing a maintenance electrician was “certainly called out as [a] task[] that the contractor would be required to perform, but there was no indication in the Solicitation that [it] needed to be separately priced.” Id. at 4. Accordingly, Summit argues that the agency applied “unstated evaluation criteria” and improperly evaluated Summit’s proposal as unacceptable. Id.

The agency responds that the solicitation did not permit offerors to subcontract for the mandated manning requirements, noting that the solicitation provided that the minimum staffing requirements were “limited to hourly full time (40 hours per week FTE) productive employees and trades.” RFP at 41. The agency further responds that, even if the solicitation permitted an offeror to provide a subcontractor’s full-time employee to perform the maintenance electrician requirement, Summit’s proposal failed to include the labor rate and labor burden costs for that position. In short, the agency maintains that: (1) the solicitation explicitly advised offerors that submission of labor rate and labor burden cost information was required because the contract is subject to a CBA that imposes certain obligations with regard to wage rates and fringe benefits;<sup>5</sup> (2) the solicitation unambiguously warned offerors that failure to provide the labor rate and labor burden costs for each of the mandated positions “will result in the offeror’s proposal being nonresponsive”; and (3) there is no dispute that Summit’s proposal did not provide the required labor rate and labor burden costs for the maintenance electrician position. Accordingly, the agency maintains that, pursuant to the terms of the solicitation, Summit’s proposal was properly rejected as nonresponsive and ineligible for award. AR, Tab 2, Memorandum of Law, at 10-15. We agree.

Clearly stated requirements within a solicitation are considered to be material to the needs of the government, and a proposal that fails to conform to the solicitation’s

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<sup>5</sup> Summit acknowledges that: “The statutory provision governing successor contracts in the presence of a CBA states, in relevant part: ‘a contractor or subcontractor may not pay a service employee less than the wages and fringe benefits the service employee would have received under the predecessor contract.’” Supplemental Protest, Nov. 1, 2018, at 6.

material terms and conditions must be considered unacceptable and may not form the basis for award. E.g., ARBEiT, LLC, B-411049, Apr. 27, 2015, 2015 CPD ¶ 146 at 4; Mission 1<sup>st</sup> Group, Inc., B-404811.3, B-404811.6, June 2, 2011, 2011 CPD ¶ 115 at 4.

Here, as discussed above, the solicitation identified various positions--including maintenance electrician--for which offerors were required to submit their proposed labor rates and detailed information regarding labor burden costs. Further, the solicitation clearly notified offerors of an applicable CBA, and Summit acknowledges that that CBA imposed certain requirements on the awardee regarding wages and fringe benefits that must be paid to service employees. Next, the solicitation unambiguously stated that an offeror's failure to provide the labor rates and labor burden costs for each of the mandated positions "will result in the offeror's proposal being found nonresponsive."<sup>6</sup> RFP at 332. Finally, the record is clear that Summit's proposal did not include all of the required labor rates and labor burden cost information that the solicitation required. On this record, we find no basis to question the agency's determination that Summit's proposal failed to comply with the solicitation requirements and was unacceptable.<sup>7</sup>

The protest is denied.

Thomas H. Armstrong  
General Counsel

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<sup>6</sup> As noted above, a nonresponsive proposal may not form the basis for an award.

<sup>7</sup> Summit's various protest submissions present additional complaints regarding the agency's price realism assessments and the agency's evaluation of the solicitation's recycling requirements. In light of our determination that Summit's proposal failed to comply with the solicitation's specific requirements regarding submission of labor rates and labor burden costs, which properly rendered Summit's proposal ineligible for award, we need not further consider Summit's additional complaints.