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Decision

Matter of: Barbaricum, LLC

File: B-418427.7

Date: December 11, 2020

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Lois Hanshaw, Esq., and Evan C. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's rejection of the protester's proposal as technically unacceptable is denied where the proposal failed to meet a material solicitation requirement.

DECISION

Barbaricum, LLC, a service-disabled veteran-owned small businesses (SDVOSB) of Washington, D.C., protests the award of a contract to F3EA, Inc., an SDVOSB of Savannah, Georgia, under request for proposals (RFP) No. W900KK-19-R-0078, issued by the Department of the Army, U.S. Army Materiel Command, for training support services. Barbaricum challenges the agency's evaluation of past performance and technical proposals.

We deny the protest.

BACKGROUND

On October 30, 2018, the agency issued the solicitation as a set-aside for SDVOSBs pursuant to Federal Acquisition Regulation (FAR) part 15, Contracting by Negotiation. Agency Report (AR), Tab 3, RFP at 2, 58. The RFP contemplated the award of an indefinite-delivery, indefinite-quantity (IDIQ) contract with an ordering ceiling of \$245,000,000. *Id.* at 2.

The RFP sought proposals for training support services in support of the Special Operations Forces Requirements Analysis, Prototyping, Training, Operations and Rehearsal (SOF RAPTOR) IV requirement. AR, Tab 4, Performance Work Statement at 3. The SOF RAPTOR IV contract would provide special operations forces (SOF) training for counter terrorism, counter narco-terrorism, counter proliferation and unconventional warfare missions using a mix of live, virtual, and constructive simulation scenarios. *Id.*

Award would be made on a best-value tradeoff basis considering three evaluation factors, listed in descending order of importance, capability, past performance, and cost/price. *Id.* at 58-59. The capability factor consisted of three subfactors, listed in descending order of importance, program management, crisis response force (CRF), and core competencies. RFP at 59.

The program management subfactor required offerors to address four areas, including, as relevant here, exercise management, which required an offeror to demonstrate a thorough understanding of complex pre-exercise coordination and post-exercise activities. *Id.* In this regard, offerors were required to provide a realistic military training packet and an after action review (RMT/AAR) for a previously executed exercise. *Id.* The RFP advised that an offeror would only receive credit for an RMT/AAR produced organically. *Id.* at 59.

Prior to submission of proposals, offerors asked multiple questions regarding the meaning of “produced organically.” As relevant here, the agency provided the responses below on October 21, November 28, and December 3. AR, Tab 23, Question and Answers (Q&As) at 1, 5, 7.

No.	Question	Response
October 21, 2018 Questions		
17	Request that you clarify “produced organically” to include RMT/AARs produced by either of the joint venture members. We believe this meets the intent of this language to ensure that the prime contractor has this experience without relying on subcontractors.	<p>Work completed organically by any member of a team can be brought into any new team arrangement as a Prime.</p> <p>Updated to include response from Question 86. Submit a RMT packet and an AAR from a CRF, Unconventional Warfare (UW), or Special Activities (SA) exercise that the Prime produced and submitted to the Government for approval. Offeror will only receive credit for work (RMT/AAR) produced organically. Credit will not be given for work done by another entity regardless of relationship, association, affiliation, etc. with offeror. Offeror will not be given credit for work (RMT/AAR) produced by the Government.</p>

November 28, 2018 Responses		
No.	Question	Response
86	Please confirm that “produced organically” means 100% produced by any Prime (i.e., all Joint Venture partners) or any of the offeror’s formal team members (i.e., all entities with signed Teaming Agreements).	Submit a RMT packet and an AAR from a CRF, UW, or SA exercise that the Prime produced and submitted to the Government for approval. Offeror will only receive credit for work (RMT/AAR) produced organically. Credit will not be given for work done by another entity regardless of relationship, association, affiliation, etc. with offeror. Offeror will not be given credit for work (RMT/AAR) produced by the Government. The RMT packet and AAR must be in an original format, unedited from time of original submission, and be from the same exercise. The RMT packet and AAR must be complete (un-redacted) and unclassified.

December 3, 2018 Responses		
No.	Question	Response
137	Pursuant to the Government’s answer to Question 17 which states that “Work completed organically by any member of a team can be brought into any new team arrangement,” will the Government confirm that a RMT/AAR produced by a teammate of the offeror is considered as being produced organically?	Please see updated/revised answer to Question 17.

AR, Tab 23, Q&As at 2, 6-7.

By the December 14, 2018 due date, 10 offerors submitted proposals, including Barbaricum, F3EA, and Offeror H. On January 15, 2020, the agency made award to F3EA. Joint Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 6. Five unsuccessful offerors subsequently protested the award. *Id.* On January 31, the agency notified our Office that it intended to take corrective action.¹ GAO

¹ The agency stated that it would take corrective action by reevaluating proposals consistent with the solicitation, determining the impact of the reevaluations on the source selection decision, documenting its reevaluations and new best-value determination, and taking whatever additional steps it deems appropriate. *Patriot Def. Grp., LLC*, B-418427, Feb. 5, 2020 (unpublished decision); *Black Talon Operational Eng’g Servs., LLC*, B-418427.2, Feb. 5, 2020 (unpublished decision); *ITility, LLC*, B-418427.3, Feb. 5, 2020 (unpublished decision); *Oak Grove Techs., LLC*, B-418427.4, Feb. 5, 2020 (unpublished decision); B-418427.5, *Lukos-VATC JV III, LLC*, Feb. 5, 2020 (unpublished decision).

subsequently dismissed the protests as academic. *Patriot Def. Grp., LLC, supra; Black Talon Operational Eng'g Servs., LLC, supra; ITility, LLC, supra; Oak Grove Techs., LLC, supra; B-418427.5, Lukos-VATC JV III, LLC, supra.* After completing its corrective action, final ratings were as follows:

	F3EA	Offeror H	Barbaricum
Capability	Outstanding	Good	Unacceptable
Program Management	Outstanding	Good	Unacceptable
Crisis Response Force	Outstanding	Acceptable	Good
Core Competencies	Outstanding	Good	Acceptable
Past Performance	Very Relevant/ Substantial Confidence	Relevant/ Satisfactory Confidence	Relevant/ Satisfactory Confidence
Cost/Price	\$4,347,814	\$4,727,661	\$4,936,434

AR, Tab 41, Source Selection Decision Document at 6.

Barbaricum’s proposal identified “Team Barbaricum,” which consisted of Barbaricum and [DELETED] subcontractors. AR, Tab 27, Barbaricum Capability Proposal at 4, 6-7.² As relevant to this protest, the proposal also included an RMT/AAR produced by one of its subcontractors for an exercise on which the subcontractor performed as a prime contractor. *Id.* at 79.

The agency found Barbaricum’s proposal unacceptable under the capability factor. AR, Tab 29, Proposal Evaluation Report at 2. In this respect, the agency assessed a single deficiency under the program management subfactor based on its conclusion that the RMT/AAR produced by Barbaricum’s subcontractor failed to comply with the material requirement to offer an RMT/AAR that was produced organically by the prime contractor. *Id.* at 12, 14-15.

On August 31, the agency again made award to F3EA. After requesting and receiving a debriefing, Barbaricum timely protested to our Office.

DISCUSSION

Barbaricum challenges the agency’s evaluation of its proposal under the capability and past performance factors. Protest at 8, 19. The protester also asserts that the agency engaged in disparate treatment by relaxing the requirements for the RMT/AAR when evaluating the awardee’s proposal. *Id.* at 13.

As discussed below, we have reviewed the protester’s allegations and conclude that the agency reasonably evaluated the protester’s proposal as technically unacceptable

² Citations are to the pages in the Adobe pdf version of the document provided by the agency.

under the program management subfactor of the capability factor, and therefore, ineligible for award. Because we conclude that the agency reasonably found the protester's proposal unacceptable, we need not address the protester's remaining challenges to the agency's evaluation of either the protester's or the awardee's proposals. *The McHenry Mgmt. Grp., Inc.*, B-409128 *et al.*, Jan. 23, 2014, 2014 CPD ¶ 56 at 5 (a protester reasonably found unacceptable is not interested to challenge the evaluation of the remainder of its proposal); *Tyonek Worldwide Servs., Inc.; DigiFlight, Inc.*, B-409326 *et al.*, Mar. 11, 2014 2014 CPD ¶ 97 at 7 (where there is another acceptable proposal eligible for award, a protester is not an interested party to challenge the award where it would not be in line for award were its protest sustained).

The protester contends that the agency erred in concluding that its subcontractor-produced RMT/AAR was not produced organically. Protest at 8. The protester asserts that the RFP did not prevent a prime contractor's teammate from producing these documents. *Id.* at 8-9. The protester also asserts that to the extent its interpretation of the RFP differed from the agency's, that difference resulted from a latent ambiguity in the RFP and the agency's Q&A responses. *Id.* at 8. In this regard, Barbaricum relies on a portion of the agency's response to Question No. 17 to argue that it reasonably interpreted the RFP and Q&As to allow for "an RMT produced by the offeror, *i.e.* Barbaricum or a member of its team, as long as such work was performed as a prime contractor under a prior project." *Id.* at 10.

The agency asserts that the RFP and its Q&A responses informed offerors that an RMT/AAR produced by a subcontractor would not be considered to be organically produced. COS/MOL at 12. The agency contends that because the solicitation and Q&As explained which entities could organically produce the required documents, the solicitation and Q&As were not ambiguous. *Id.* at 15.

In response, the protester asserts that the RFP was silent on the acceptability of a teammate-produced RMT. Comments at 3. Additionally, the protester continues to assert that the agency's response to Question No. 17 allowed a subcontractor to produce the RMT/AAR as long as the subcontractor performed the work as a prime contractor under a prior project. *Id.*

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. See *Mercom, Inc.*, B-413419, B-413419.2, Oct. 25, 2016, 2016 CPD ¶ 316 at 3. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *IN2 LLC*, B-408099 *et al.*, June 18, 2013, 2013 CPD ¶ 149 at 5. A protester's disagreement with reasonable evaluation judgments does not provide a basis to sustain its protest. *RIVA Sols., Inc.*, B-418408, Mar. 31, 2020, 2020 CPD ¶ 133 at 4.

Here, the RFP required that the RMT/AAR be organically produced. RFP at 59. The agency answered multiple questions regarding the definition of the term "produced organically." Specifically, the agency's answer to Question No. 17 initially indicated that

for joint ventures (JVs), to be “produced organically” meant “[w]ork completed organically by any member of a team can be brought into any new team arrangement as a Prime.” AR, Tab 23, Q&As at 1. Then, the agency’s answer to Question No. 17 was subsequently revised and updated in response to Question No. 137, which asked whether the phrase “[w]ork completed organically by any member of a team can be brought into any new team arrangement” included an RMT/AAR produced by a teammate of the offeror. *Id.* at 7. The agency’s response stated “[s]ubmit [an RMT/AAR] that the Prime produced and submitted to the government for approval. [. . .] Credit will not be given for work done by another entity regardless of relationship, association, affiliation, etc. with [the] offeror.” *Id.* at 2.

We find no merit to the protester’s assertions. First, the agency’s initial response to Question No. 17 addressed an inquiry regarding a JV’s production of the RMT/AAR. AR, Tab 23, Q&As at 2. To the extent the protester relies on the initial response to Question No. 17, the protester has not shown how that response could reasonably be understood to apply to Barbaricum’s offered teaming arrangement. In this regard, the record shows that the protester’s proposal contemplated performing the requirement using a prime contractor-subcontractor relationship. AR, Tab 27, Barbaricum Proposal at 4, 6-7. Additionally, assuming the protester did understand the answer to Question No. 17 to apply to non-JV teaming arrangements, Question 137 specifically sought clarification as to whether the phrasing in Question No. 17 would permit the teammate of the offeror to produce the required documents. AR, Tab 23, Q&As at 7. In response, the agency stated that only a prime could produce the required documents. *Id.* at 2. Thus, in the context of Barbaricum’s teaming agreement, only Barbaricum, as the prime contractor in a prime contractor-subcontractor relationship, could organically produce the RMT and AAR. In our view, an RMT/AAR produced by the protester’s teammate and subcontractor would not comply with the solicitation’s requirement that these documents be produced by the prime.

To the extent the protester contends that the solicitation and Q&As were ambiguous and that a subcontractor could produce the required documents as long as the subcontractor had performed the work as a prime on a prior contract, we disagree. 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. *TCG, Inc.*, B-417610, B-417610.2, Sept. 3, 2019, 2019 CPD ¶ 312 at 5. A solicitation requirement is only considered ambiguous when it is susceptible to two or more reasonable interpretations. *See Colt Def., LLC*, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8.

Here, the protester’s interpretation is not reasonable because it fails to acknowledge that the agency’s response to Question No. 137 addressed whether an RMT/AAR could be produced organically by a teammate of the offeror. In this regard, when the initial and revised responses to Question No. 17 are read together with the response to Question No. 137, the protester’s interpretation fails to explain how offering its subcontractor’s work, even if performed as a prime on a previous contract, changes the

subcontractor's status on this procurement. In short, Barbaricum's subcontractor would still be a subcontractor on this contract; a subcontractor is not converted to a prime contractor simply because the subcontractor performed as a prime contractor on a previous contract. Accordingly, we fail to see how the protester could offer a subcontractor-produced RMT/AAR without running afoul of the RFP's requirements that the prime produce the required documents and that no credit would be given for work done by another entity. See *Crew Training Int'l, Inc.*, Feb. 7, 2017, B-414126, 2017 CPD ¶ 53 at 5 (no basis to find ambiguity where protester's interpretation of the solicitation language is not reasonable when the solicitation is read as a whole).

Based on our review of the record, we conclude that the agency reasonably assessed a deficiency under the program management subfactor. Because the RFP stated that a proposal with one or more deficiencies would be rated unacceptable, and unawardable, RFP at 65, we need not address the remainder of the protester's arguments. *The McHenry Mgmt. Grp., Inc., supra*; *Tyonek Worldwide Servs., Inc., supra*; *DigiFlight, Inc., supra*.

The protest is denied.

Thomas H. Armstrong
General Counsel