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# Decision

**Matter of:** Benaka Inc.

**File:** B-418639

**Date:** July 9, 2020

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Lawrence M. Prosen, Esq., Gunjan R. Talati, Esq., Jamie C. Lipsitz, Esq., Benjamin L. Williams, Esq., and Caitlin E. Trevillyan, Esq., Kilpatrick Townsend & Stockton, LLP, for the protester.

Maureen A. McAndrew, Esq., Jenna Gustafson, Esq., Paul Blenz, Esq., and Patsy Falcigno, Esq., Department of the Army, for the agency.

Christopher Alwood, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest challenging agency's evaluation of proposal as technically unacceptable is denied where the record shows that certain required information in proposal was in pages that exceeded the solicitation's page limits, and the agency's decision not to consider that information was reasonable and consistent with the solicitation's terms.
  2. Protester is not an interested party to challenge other aspects of the evaluation where its proposal was reasonably evaluated as technically unacceptable.
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## DECISION

Benaka Inc., a small business of New Brunswick, New Jersey, protests the decision by the Department of the Army, Corps of Engineers (Corps) to eliminate Benaka's proposal from the competition pursuant to request for proposals (RFP) No. W912WJ20R0002, to provide design-build services in support of the Corps's New England district mission. Benaka asserts that the agency unreasonably determined that part of its proposal exceeded applicable page limitations, and therefore improperly evaluated Benaka's technical proposal. The protester also challenges various other aspects of the agency's evaluation.

We deny the protest.

## BACKGROUND

On October 11, 2019, the agency issued the RFP as a total small business set-aside, seeking to establish multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contracts for design-build construction services throughout 12 states and the District of Columbia.<sup>1</sup> Agency Report (AR), Exh. 1, RFP at 2-3, 31, 60. The solicitation contemplated a two-phase procurement which would result in awards to four offerors on a best-value tradeoff basis. *Id.* at 3, 15.

The solicitation provided that phase 1 would be evaluated considering the following evaluation factors, in descending order of importance: (1) experience; (2) technical and management approach; and (3) past performance. *Id.* at 15-16. As relevant here, the solicitation required offerors to submit a single volume, referred to as phase 1/volume 1, addressing the above-listed phase 1 evaluation factors, which was not to exceed 35 pages. *Id.* at 8. Directly beneath the table setting forth the page limits for the various proposal volumes for the two phases, the solicitation included the following, in bold:

**NOTE: All pages, including cover letters, Table of Contents pages, tables, illustrations, and appendices will be counted in the page calculation; with the exception of Past Performance Questionnaires. Past performance questionnaires WILL NOT count against the page limit. Pages that exceed the above noted page limitations will not be evaluated. Additional pages over the maximum allowed will be removed, not read, and will not be evaluated by the Government.**

*Id.* (emphasis omitted).

On November 1, 2019, the Corps issued amendment 0001, which answered questions from offerors concerning the solicitation. AR, Exh. 2, RFP Amendment 0001 at 1. An offeror asked whether page breaks, including blank pages meant to separate the sections of a proposal volume, would count against the page limit. *Id.* at 5. The agency responded: “[t]he offeror can package their proposal with page breaks if de[s]ired; however, all pages WILL count toward the stated page limit, with only those exceptions specifically stated in the solicitation.” *Id.*

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<sup>1</sup> The solicitation contemplated the subsequent issuance of task orders to holders of these multiple-award IDIQ contracts. The task orders would involve work in the Corps’s New England and North Atlantic Division regions, which include the states of Vermont, Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Delaware, and Virginia, as well as the District of Columbia. RFP at 30, 64.

As relevant here, the solicitation stated that offerors “shall include” in their proposals an organizational chart of the offeror’s overall structure and management of the project team. RFP at 10-11. The solicitation also provided that:

For submission requirements designated as “shall” or “must,” failure to provide the requested information will be considered a deficiency and the specified factor will be rated “unacceptable,” and the Offer will be considered un-awardable unless revised.

*Id.* at 16. The solicitation further provided that during the phase 1 evaluation, a marginal or unacceptable rating under the experience or technical and management approach factors would result in the entire proposal being eliminated from the competition. *Id.* at 17.

On or before the closing date of November 19, Benaka timely submitted its phase 1 proposal. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 3. Before evaluating Benaka’s proposal, the agency determined that Benaka’s phase 1/volume 1 proposal, excluding past performance information, was 36 pages long. *Id.* The agency removed page 36 from Benaka’s phase 1/volume 1 proposal and provided the first 35 pages to the source selection evaluation board (SSEB) for evaluation. *Id.* Page 36 of Benaka’s phase 1/volume 1 proposal contained the above-referenced organizational chart required by the RFP. *Id.*; see also AR, Exh. 5, Benaka’s Volume 1 Submission.

In evaluating Benaka’s proposal, the agency assessed a deficiency to the proposal for failure to include the required organizational chart, and also assigned the proposal a rating of unacceptable under the technical and management approach factor. AR, Exh. 7, SSEB Report at 3; AR, Exh. 8, Source Selection Authority (SSA) Down Selection Memorandum at 4-5. On February 12, 2020, the SSA made a down-select decision, which eliminated Benaka from the competition. See AR, Exh. 8, SSA Down Selection Memorandum at 1,7. Thereafter, Benaka was notified of its elimination from further consideration and was provided a debriefing. This protest followed.

## DISCUSSION

The protester argues that the agency unreasonably determined that part of its phase 1/volume 1 proposal exceeded applicable page limitations, and therefore improperly evaluated Benaka’s technical proposal. Specifically, Benaka contends that the agency unreasonably included Benaka’s cover page in its page calculation because the solicitation did not specifically identify cover pages as a type of page that would be counted; in other words, only pages after the word “including” were subject to the RFP’s page limitation.<sup>2</sup> *Id.* at 2-3. The protester also argues that the agency should not have

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<sup>2</sup> Benaka alternatively contends that if the agency’s interpretation of the page limit requirement is reasonable, it represents a latent ambiguity. Comments at 4-5. An

counted Benaka's cover page toward the page calculation because it was unnumbered and non-substantive. *Id.* at 3.

The agency responds that it reasonably excluded page 36 of Benaka's phase 1/ volume 1 proposal in accordance with the requirements of the solicitation. COS/MOL at 4-5. The agency further responds that the absence of the required organizational table from Benaka's phase 1/volume 1 proposal rendered it unacceptable. COS/MOL at 6-7.

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. *Planned Sys. Int'l, Inc.*, B-413028.5, Feb. 21, 2018, 2018 CPD ¶ 126 at 6. Where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. *Bauer Techs., Inc.*, B-415717.2, B-415717.3, June 22, 2018, 2018 CPD ¶ 217 at 4.

We find reasonable the agency's view that the RFP required it to count Benaka's cover page in its page calculation. The RFP specifically advised that "[a]ll pages, including cover letters, Table of Contents pages, tables, illustrations, and appendices will be counted in the page calculation; with the exception of Past Performance Questionnaires." RFP at 8. The plain language of this provision does not limit the types of pages which count against the 35 page limit of phase 1/volume 1 proposals, except for past performance questionnaires. *Id.* This solicitation language expressly identifies the types of pages that are exempt from the requirement to count "all pages," and cover pages are not excepted.

The plain language of this provision, when read as a whole, is not susceptible to the reading advanced by the protester. Under the protester's interpretation--that only page types specifically enumerated after the word "including" could be counted--the agency would be precluded from counting any proposal pages other than cover letters, table of contents pages, tables, illustrations, or appendices. Such an interpretation is antithetical to the very concept of the page limits imposed by the solicitation, as offerors could hypothetically include infinite technical proposal information as long as they did so in specific page formats.

The protester's argument that the cover page should not be counted because it is unnumbered and non-substantive is similarly unpersuasive. As noted above, the agency clearly explained in amendment 0001 that even blank pages acting as section

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ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. *Argus Int'l Risk Servs., LLC*, B-411682, B-411682.2, Sept. 25, 2015, 2015 CPD ¶ 303 at 5. This argument does not provide a basis to sustain a protest because, as we discuss below, Benaka does not put forth a reasonable interpretation of the page limit requirement.

dividers would count towards the page limit and “only those exceptions specifically stated in the solicitation” would not. AR, Exh. 2, RFP Amendment 0001 at 5. Accordingly, we find Benaka’s interpretation of the page limit requirement unreasonable and contrary to the plain language of the solicitation.

In light of the above, we find nothing improper about the Corps’s decision to count Benaka’s cover page against the phase 1/volume 1 page limitation and subsequently not evaluate the organizational chart on page 36. As a general matter, offerors must prepare their proposals within the format limitations set out in an agency’s solicitation, including any applicable page limits. *Techsys Corp.*, B-278904.3, Apr. 13, 1998, 98-2 CPD ¶ 64 at 6. Offerors that exceed a solicitation’s established page limitations assume the risk that the agency will not consider the excess pages. *Id.* As discussed above, the RFP in this case set forth clear, unambiguous page limitations for the volume 1/phase 1 proposal, and provided that the agency would not consider any excess pages.

The RFP also clearly provided that deficiencies would be assessed where required information was lacking and such deficiencies would result in the entire proposal being eliminated from the competition. RFP at 17. Clearly stated solicitation technical requirements are considered material to the needs of the government, and a proposal that fails to conform to such material terms is technically unacceptable. *See, e.g., Stewart Distributors*, B-298975, Jan. 17, 2007, 2007 CPD ¶ 27 at 3–4. Accordingly, we find no basis to disturb the agency’s evaluation of Benaka’s phase 1/volume 1 proposal as unacceptable under the technical and management approach factor for failing to include the required organization chart.

### Remaining Challenges

Benaka raised additional protest allegations challenging the agency’s evaluation of Benaka’s proposal under the technical and management approach factor. Protest at 16-18. We dismiss these remaining allegations because Benaka, having been found unacceptable under the technical and management approach factor, is not an interested party to raise them.

Under our Bid Protest Regulations, a protester must be an interested party, that is, an actual or prospective offeror whose direct economic interest would be affected by the award of a contract. 4 C.F.R. §21.0(a). A protester is not an interested party if it would not be in line for award if its protest were sustained. *BANC3, Inc.*, B-416486, B-416486.2, Sept. 10, 2018, 2018 CPD ¶ 316 at 9.

Benaka is not an interested party to maintain these remaining allegations because, as discussed above, its proposal was reasonably found unacceptable. Consequently, even if we found that Benaka’s remaining allegations had merit, Benaka’s proposal would still be unacceptable under the technical and management approach factor, and we would have no basis to disagree with the agency’s decision to eliminate Benaka’s proposal from the competition. Accordingly, we dismiss the remaining allegations.

The protest is denied.

Thomas H. Armstrong  
General Counsel