

## Decision

**Matter of:** RELYANT Global, LLC

**File:** B-418693.7

**Date:** April 9, 2021

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James Price, Esq., Lacy, Price & Wagner, P.C., for the protester.  
Tristan Brown, Esq., Shannon McCurdy, Esq., Brynn Morgan, Esq., and Rebecca Elliott, Esq., Department of the Army, for the agency.  
Christopher Alwood, Esq., John Sorrenti, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

1. Where protest challenging an agency's decision to amend, rather than cancel, a solicitation is filed by an offeror that submitted a proposal under the original solicitation and was permitted to submit a revised proposal in response to the amendment, protester is not the appropriate party to raise such an issue on behalf of other potential offerors.
  2. Where an offeror was not prevented from competing under amended solicitation by the terms of the amendment, but represents that its particular circumstances made it uncompetitive under the amended solicitation's terms, agency is not required to equalize the protester's competitive position.
  3. Protest that amendments issued by the agency failed to describe the changes made to the solicitation in violation of Federal Acquisition Regulation section 15.206(g)(5) is denied where the record shows that the amendments described the changes.
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### **DECISION**

Relyant Global, LLC, a service-disabled veteran-owned small business of Maryville, Tennessee, protests the decision of the Department of the Army, Corps of Engineers (Corps) to amend, rather than cancel and revise, request for proposals (RFP) No. W912EK18R0022, issued by the Corps for debris management services. Relyant contends that the changes the agency made to the RFP after taking corrective action in response to a prior protest are so substantial that the agency is required to cancel the solicitation; and that the agency failed to properly describe the changes made in six amendments to the solicitation.

We deny the protest.

## BACKGROUND

On May 2, 2019, the Corps issued the RFP as a partial small business set-aside, seeking to establish twenty indefinite-delivery, indefinite-quantity (IDIQ) contracts for debris management operations after natural or man-made disasters across the United States. Agency Report (AR), Tab 1, RFP at 15, 111-112;<sup>1</sup> Contracting Officer's Statement (COS) at 1-2. The RFP contemplated two groups of awards, one restricted to small businesses and the other open to all offerors, with each to be made on a regional basis. RFP at 2, 108-112. The solicitation defined twelve small business set-aside regions and eight unrestricted regions, specifying that the agency was to award a single IDIQ contract for each region. *Id.* The solicitation did not limit the number of contracts a single offeror could be awarded. RFP at 2.

On or before the June 24, 2019 closing date for receipt of initial proposals,<sup>2</sup> Relyant submitted its proposal to be considered for award in three of the small business set-aside regions. MOL at 2; COS at 4. On April 1, 2020, the agency awarded contracts for each of the eight unrestricted regions. COS at 4. Following these awards, and before the agency had awarded any small business set-aside contracts under the RFP, four unsuccessful offerors filed protests with our Office, challenging the Corps's evaluation and award decisions. *Id.* In response to the protests, the agency informed our Office that it intended to take corrective action by, at a minimum, re-evaluating all proposals and making new award decisions.<sup>3</sup> *Id.* at 4-5.

During the pendency of the corrective action, the contracting officer determined that the solicitation contained "errors and ambiguities" that prevented the agency from meeting its procurement objectives while treating all offerors fairly. *Id.* at 5. The agency issued six amendments to the solicitation that addressed the problems the agency had

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<sup>1</sup> The Corps issued 18 amendments to the solicitation. The contents of the amendments are at issue in this protest. Accordingly, citations to the RFP without noting an amendment refer to the solicitation as originally issued.

<sup>2</sup> Proposals were originally due on June 3, 2019. RFP at 1. Through a series of amendments, the due date for receipt of initial proposals was extended to June 24, 2019. Memorandum of Law (MOL) at 2; *see also* AR, Tab 12, RFP amend. 0011 at 1.

<sup>3</sup> As a result of the agency's intended corrective action, we dismissed the protests as academic. *AshBritt, Inc.*, B-418693.1, B-418693.4, May 29, 2020 (unpublished decision); *Ceres Env'tl. Servs., Inc.*, B-418693.2, B-418693.3, May 29, 2020 (unpublished decision); *Phillips & Jordan, Inc.*, B-418693.5, May 29, 2020 (unpublished decision); *D&J Enters., Inc.*, B-418693.6, May 29, 2020 (unpublished decision).

identified<sup>4</sup> and set a January 5, 2021 deadline for offerors to submit revised proposals. *Id.* at 8; AR, Tab 17, RFP amend. 0016 at 2. On January 5, before the specified time for receipt of proposals based on the revised solicitation, Relyant filed the instant protest with our Office.

## DISCUSSION

Relyant first argues that the changes made by amendments 0013 through 0018 are so substantial that the agency was required to cancel and reissue, rather than merely amend, the solicitation. Protest at 4-12; Comments at 3-9. Relyant explains that it entered into binding teaming agreements based on the initial solicitation requirements, and that these agreements now prevent it from submitting a “competitive” proposal in response to the revised solicitation. Comments at 9. In this regard, Relyant contends that the agency’s failure to cancel the solicitation has rendered it effectively unable to submit a revised proposal. *Id.* at 9.

Section 15.206(e) of the FAR discusses cancellation of a solicitation as follows:

If, in the judgment of the contracting officer, . . . an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

As an initial matter, we consider whether Relyant is an aggrieved party for purposes of this section of the FAR, *i.e.*, whether Relyant has the requisite legal interest to raise this issue.

Relevant to the issues raised in this protest is the distinction between (1) amending a solicitation, and (2) canceling and revising a solicitation. Where, as here, an

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<sup>4</sup> The agency issued amendments 0013 through 0018 between October 20 and December 17, 2020. AR, Tab 14, RFP amend. 13 at 1; AR, Tab 15, RFP amend. 14 at 1; AR, Tab 16, RFP amend. 15 at 1; AR, Tab 17, RFP amend. 16 at 1; AR, Tab 18, RFP amend. 17 at 1; AR, Tab 19, RFP amend. 18 at 1. These amendments modified the solicitation in various ways including, but not limited to: revising the pricing schedule to be region specific; adding estimated quantities for a “likely” task order in each region that the agency would use to evaluate price; removing language in the solicitation that would have permitted the agency to issue cost-type task orders; clarifying how the agency would conduct its technical evaluation, *e.g.*, that it would be specific to each region; eliminating the key personnel evaluation subfactor; and specifying that the agency would consider the relevance of an offeror’s past performance as it related to each region for which the offeror was competing. *Id.*; see COS at 5-8. The amendments did not change the statement of work.

amendment is issued after the closing time for receipt of initial proposals, the FAR requires the agency to issue the amendment to all offerors that have not been eliminated from the competition and permit them to submit revised proposals. FAR 15.206(c). In contrast, where an agency cancels a solicitation and issues a new solicitation with revised specifications, the competition is not limited to offerors that previously submitted proposals.

With regard to FAR section 15.206(e), on which the protester relies, the purpose of this section of the FAR is to ensure that all potential offerors--not merely those that submitted proposals in response to the original solicitation--are clearly aware of the changed agency requirements, so that they may have the opportunity to compete on the new basis and the government may benefit from competition from all offerors who decide to submit proposals based on the amended requirements. *See AirTrak Travel, et al.*, B-292101 *et al.*, June 30, 2003, 2003 CPD ¶ 117 at 14 (where amendment significantly changed solicitation terms, agency was required to reopen competition to firms that did not submit proposals).

Here, Relyant--which submitted a proposal in response to the initial solicitation and was invited to submit a proposal in response to the amended solicitation--is not the appropriate party to challenge the agency's decision to amend the RFP. Based on the protester's arguments, Relyant appears to construe FAR section 15.206(e) as giving rights to an offeror that submitted a proposal in response to the original RFP and then finds that the RFP, when amended, has terms that the offeror can no longer competitively meet.<sup>5</sup> This interpretation is inconsistent with the cited FAR section, which is intended to benefit potential offerors that, unlike Relyant, might have been deterred from competing by the terms of the initial solicitation, and would not be able to compete if the solicitation was amended instead of canceled. *See Sun Microsystems Federal, Inc.*, B-254497.1, B-254497.2, May 20, 1994, 94-1 CPD ¶ 318 at 9.<sup>6</sup> While Relyant also contends that "other contractors likely refrained from [competing] under the initial solicitation," the protester is not an interested party to assert the rights of other potential offerors. *See Hadson Defense Sys., Inc.; Research Dev. Labs.*, B-244522.1, B-244522.2, Oct. 24, 1991, 91-2 CPD ¶ 368 (protester not an interested party to protest

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<sup>5</sup> While Relyant could have the requisite interest to challenge the terms of the amendment, *e.g.*, as overly restrictive of competition or not reflecting the agency's actual needs, the protester has not raised such arguments here. Rather, the protester argues that issuing the amendment violates section 15.206(e) of the FAR in that the changes are "significant," without alleging any specific impropriety in the amended terms. Comments at 5.

<sup>6</sup> *Sun Microsystems* considered this cancellation requirement as it existed in FAR section 15.606(b)(4) (1994), where the relevant portion provided: "if a change is so substantial that it warrants complete revision of a solicitation, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition."

solicitation defects on behalf of other offerors). We therefore dismiss Relyant's protest, to the extent it alleges on behalf of other parties that the agency violated section 15.206(e) of the FAR by failing to cancel and resolicit the RFP.

Relyant argues nonetheless that the amendment caused the protester competitive harm. According to the protester, its current teaming agreements prevent it from submitting a competitive revised proposal, and it cannot extricate itself from its current teaming agreements unless the solicitation is cancelled.<sup>7</sup> Comments at 9. Our Office will not sustain a protest absent a reasonable possibility of competitive prejudice--that is, a showing that, but for the agency's actions, the protester would have had a substantial chance of receiving the award. *The New Jersey & H Street Ltd. P'ship.*, B-288026.1, B-288026.2, July 17, 2001, 2001 CPD ¶ 125 at 4. Relyant has made no such showing here.

Relyant has not identified, nor has our review of the solicitation revealed, any requirement that offerors must have entered into binding teaming agreements in order to be considered for award. In this regard, Relyant has not explained why the agency should be required to take into account Relyant's business decision to enter into teaming agreements which it allegedly cannot modify or cancel in the face of amendments to the solicitation. Here, Relyant fails to distinguish between competitive prejudice that may be caused by improper agency actions--e.g., restricted competition or other improprieties in a solicitation--on the one hand, and a competitive disadvantage that is caused by the offeror's own business decision, on the other. There is no requirement that an agency equalize a competitive advantage or disadvantage an offeror may experience because of its own particular business circumstances, where, as here, that disadvantage does not result from a preference or unfair action by the government. See *Missouri Machinery & Eng'g Co.*, B-403561, Nov. 18, 2010, 2010 CPD ¶ 276 at 5. Accordingly, we deny this ground of protest.

Relyant also contends that amendments 0013 through 0018 violated FAR section 15.206(g)(5) because the "summary of changes" sections did not provide an adequate description of each of the changes being made. Protest at 3-4; Comments at 2. The protester complains that the summary of changes sections "never fully identified" the changes, which forced offerors "to conduct sweeping reviews to identify . . . the complete nature of the changes that were being made." Protest at 4. The agency responds that it satisfied its obligation under section 15.206(g)(5) because each

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<sup>7</sup> Relyant claims that it is legally obligated to continue under its current teaming agreements unless the solicitation is cancelled but has not produced the agreements as part of its protest or comments on the agency report. Protest at 5. The protester does note in its comments--late in the development of the protest record--that it was "willing to provide more information about these teaming agreements upon entry of a protective order"; however, at no point during the pendency of this protest did Relyant request that our Office issue a protective order. Comments at 9, n.2. In any event, Relyant has not alleged or shown any impropriety on the agency's part in this regard.

amendment included an accurate description of the changes being made as well as the actual changed solicitation text. MOL at 9-10.

Section 15.206(g)(5) of the FAR requires that each issued amendment to a solicitation include a “[d]escription of the change being made”. Relyant does not identify, and our review of the regulation does not reveal, any requirement to provide a summary of changes or to include any specific amount of information if a summary is provided. The protester concedes that offerors could find all the changes made by the agency in each amendment if they simply “read the entire amendment.” Comments at 2. We see no basis to sustain a protest on these grounds where, as here, the protester had actual notice of all changes made in each amendment and has otherwise failed to demonstrate that it was competitively prejudiced by the agency’s actions. *See The New Jersey & H Street Ltd. P’ship, supra* at 4 (our Office will not sustain a protest absent a reasonable possibility of competitive prejudice).

The protest is denied.

Thomas H. Armstrong  
General Counsel