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## Decision

**Matter of:** Prudential Protective Services, LLC

**File:** B-419005, B-419005.2

**Date:** October 28, 2020

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Douglas L. Patin, Esq., and Lisa A. Markman, Esq., Bradley, Arant, Boult, Cummings, LLP, for the protester.

H. Todd Whay, Esq., Baker, Cronogue, Tolle, and Werfel, LLP, for Starside Security and Investigation, Inc., the intervenor.

Amy Cook, Esq., General Services Administration, for the agency.

Heather Self, Esq., and Peter Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that the solicitation contained a latent ambiguity is denied because the protester's interpretation of the solicitation language is not reasonable.
2. Protest that the agency unreasonably evaluated the protester's quotation as technically unacceptable is denied because the record reflects that the agency's evaluation was reasonable and in accordance with the solicitation.

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### DECISION

Prudential Protective Services, LLC, a small business of Monroe, Michigan, protests the issuance of an order to Starside Security and Investigation, Inc., a small business of Diamond Bar, California, under request for quotations (RFQ) No. ID07200045, issued by the General Services Administration (GSA), on behalf of the United States Marshals Service (USMS), for detention officers. The protester argues that the agency unreasonably found its quotation technically unacceptable.

We deny the protest.

## BACKGROUND

In March 2019, GSA established six blanket purchase agreements (BPAs) with holders of federal supply schedule (FSS) Schedule 84<sup>1</sup> contracts for detention officers to provide guard and transportation services in support of the USMS in various locations, referred to as districts. COS at 1 ¶ 3. Three of the six vendors with BPAs were small businesses. *Id.* at 2 ¶ 8. On July 16, 2020, utilizing the procedures of Federal Acquisition Regulation (FAR) subpart 8.4, GSA issued the solicitation to the three small business BPA-holders. *Id.* at 2 ¶ 10; AR, Tab 5, RFQ at 1, 5. The solicitation sought quotations for detention officer services to be provided in San Diego, California, and up to six additional optional districts. RFQ at 2. The solicitation contemplated issuance of a fixed-price time-and-materials order with a 1-year base period and four 1-year option periods to the vendor that submitted the lowest-priced, technically acceptable quotation. *Id.* at 5, 14.

The solicitation required vendors to include in their quotations pricing information, key personnel resumes, and a transition plan, among other things. RFQ at 14, 17. As relevant here, the solicitation provided that vendors:

must provide key personnel resumes that meet the minimum requirement[s] for the position. In addition, the [project manager's] resume shall contain an active project list. Failure to meet the minimum requirement[s] or failure to provide the requested information for key personnel will result in an "unacceptable" rating for this evaluation factor.

*Id.* at 15-16.

The solicitation provided that the agency would assess the total price quoted by each vendor, and then would evaluate the lowest-priced quotation for technical acceptability. RFQ at 14. If the lowest-priced quotation was evaluated as technically acceptable, the agency would select that quotation for award and no other quotations would be further evaluated. *Id.* If, however, the lowest-priced quotation was evaluated as technically unacceptable, the agency would evaluate the technical acceptability of the next lowest-priced quotation, and this process would continue until a quotation was evaluated as technically acceptable and selected for award. *Id.*

The agency received timely quotations from all three small business BPA-holders, including Prudential and Starside. COS at 4 ¶ 19; AR, Tab 10, Award Decision at 3. Prudential submitted the lowest-priced quotation and Starside submitted the second lowest-priced quotation. COS at 4 ¶ 19. In accordance with the solicitation, the agency evaluated Prudential's lowest-priced quotation first. AR, Tab 10, Award Decision at 6.

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<sup>1</sup> Schedule 84 is an FSS acquisition vehicle for "Law Enforcement, Security, Facilities Management, Fire, Rescue, Clothing, Marine Craft, and Emergency/Disaster Response." Agency Report (AR), Tab 1, Contracting Officer's Statement (COS) at 1 ¶ 3.

The evaluators concluded that Prudential's quotation failed to meet all of the minimum requirements set forth in the solicitation, and found Prudential's quotation technically unacceptable. *Id.* at 6-7; AR, Tab 9, Technical Evaluation Report (Tech. Eval. Rpt.) for Protester at 3-4. Consistent with the terms of the solicitation, the agency next evaluated the second lowest-priced quotation submitted by Starside. COS at 7 ¶ 29. The evaluators found Starside's quotation technically acceptable, and, after determining that Starside's quoted price was fair and reasonable, the agency issued a BPA call order to Starside in the amount of \$32,292,026.35. *Id.* at 7 ¶¶ 30, 32, 34; AR, Tab 10, Award Decision at 11. Following receipt of a brief explanation of award, Prudential filed this protest. See AR, Tab 11, Brief Explanation Letter.

## DISCUSSION

Prudential argues that the agency unreasonably found its quotation technically unacceptable because it did not include an active project list for its quoted project manager. Prudential contends that its quotation included sufficient information for the agency to evaluate its quoted project manager. Alternatively, Prudential argues that if any information was missing from its quotation, that information was not included because of a latent ambiguity in the solicitation. Prudential further contends that the agency disparately evaluated its and Starside's quotations, which both quoted the same individual for the project manager position. We disagree.

When, as here, an agency issues a solicitation to holders of FSS contracts under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation. *EA Eng'g, Science, and Tech., Inc.*, B-417361, B-417361.2, June 13, 2019, 2019 CPD ¶ 218 at 3. In a competitive FSS procurement, it is the vendor's burden to submit an adequately written quotation that establishes the merits of its quotation. *SRA Int'l, Inc.; NTT DATA Servs. Fed. Gov., Inc.*, B-413220.4 *et al.*, May 19, 2017, 2017 CPD ¶ 173 at 10.

As set forth above, the solicitation required submission of a resume for a vendor's quoted project manager, and further required that a project manager's resume "shall contain an active project list." RFQ at 15-16. The record reflects that Prudential quoted as its project manager the person currently performing in that capacity for Starside on the incumbent contract. AR, Tab 6, Protester's Technical Quotation at 2; see also Protest, exh. 2, Project Manager Resume. The record further reflects that Prudential did not include in its quotation any document identified as an active project list, or any other documents in addition to the resume for its quoted project manager. See AR, Tab 6, Protester's Technical Quotation. In their assessment of Prudential's quotation, the evaluators noted that the requirement for a vendor to submit an active project list for its quoted project manager was "material to the evaluation" and was needed "to ensure

the [vendor's quoted]<sup>2</sup> Project Manager will have sufficient time and capacity to properly manage this large requirement," which had the potential to include up to seven districts. AR, Tab 9, Tech. Eval. Rpt. for Protester at 3; see also Tab 10, Award Decision at 7.

Prudential does not dispute that its quotation did not include a document identified as an active project list or a resume section presented as an active project list for its quoted project manager. Rather, Prudential argues that it was unreasonable for the agency to conclude based on the lack of such a document that it was "incapable of determining the Project Manager's likelihood for successful performance." Protest at 6, *citing* AR, Tab 11, Brief Explanation Letter at 2. Prudential contends that because its quotation provided that its quoted project manager has been performing as the incumbent project manager from July 2016 to the present, and included a summary of the duties performed while serving as the incumbent project manager, that this information constituted the quoted project manager's "active projects." Protest at 6-7. Specifically, Prudential maintains that, because the solicitation did not define "active project list," it "reasonably believed that if the resume for its [quoted] project manager showed current work, that it would fulfill the requirement" for submission of an "active project list." Comments & Supp. Protest at 4.

The agency explains that a resume "demonstrates an applicant's experience, education, background, skills, and accomplishments," while the requirement for an "active project list" was meant to capture "what specific projects an individual is currently supporting." COS at 8-9 ¶ 45. The agency further explains that the reason the solicitation required a list of projects currently being supported by a vendor's quoted project manager "was to ensure that the [project manager] has the capacity to manage multiple projects" for the agency, as the requirement here could involve managing the provision of detention officer services in as many as seven districts. *Id.* The agency acknowledges that the resume included in Prudential's quotation reflects that its quoted project manager is the incumbent project manager, but maintains that neither the resume, nor any other information in Prudential's quotation, indicate whether the incumbent contract is the only project the quoted individual manages or whether there are others. *Id.* at 9 ¶ 47. Rather, the agency concluded that "[t]he quantity of projects [Prudential's quoted project manager] was managing was unknown." *Id.* The agency represents that knowing the number of projects managed by a quoted project manager was especially important

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<sup>2</sup> Prudential, in its protest and comments, and the agency, in its report responding to the protest and in the contemporaneous record, both refer to vendors as offerors and to vendor submissions as offers or proposals, or to a vendor's proposed, rather than quoted, project manager. Generally, a vendor's submission in response to an RFQ is a quotation, and is not a submission which the government may accept to form a binding contract. FAR 13.004(a); *Computer Assocs. Int'l, Inc.--Recon.*, B-292077.6, May 5, 2004, 2004 CPD ¶ 110 at 3. A vendor's quotation is purely informational, and in the RFQ context it is the government that makes the offer, generally based on the information provided by the vendor in its quotation. *Id.* Where necessary, we have modified quoted language from the parties' filings, indicated by use of brackets, to provide consistency and accuracy in the terminology used throughout this decision.

here because the current solicitation more than doubles the estimated labor hour total provided under the incumbent contract. *Id.* at 9 ¶ 48.

Prudential argues that the explanation of what the solicitation meant by “active project list,” provided by the agency in its report responding to the protest, should be ignored as a *post-hoc* rationale. Comments & Supp. Protest at 4. Prudential contends that because the definition of “active project list” espoused by the agency in its report was not contained in the solicitation, vendors were not on notice that the requirement would be interpreted in the way now advanced by the agency. *Id.* at 4-5. Prudential further maintains that the agency’s *post-hoc* interpretation is unreasonable, or, in the alternative, reveals a latent ambiguity in the solicitation. *Id.* at 5. We disagree.

As an initial matter, we note that the explanation of what was meant by the solicitation’s requirement for an active project list, provided in the agency’s report, is not a *post-hoc* rationalization, as alleged by Prudential. The record reflects that the evaluators were concerned about Prudential’s failure to include an active project list because it made it impossible for them to assess whether Prudential’s quoted project manager would “have sufficient time and capacity to properly manage this large requirement.” AR, Tab 9, Tech. Eval. Rpt. for Protester at 3. The explanation in the agency’s report, that the requirement for an active project list was meant to enable assessment of a quoted project manager’s capacity, mirrors the explanation found in the contemporaneous record. Moreover, as we have consistently explained, our Office will not limit its review to contemporaneous evidence, but considers all the information provided, including a party’s arguments and explanations. *ERC Inc.*, B-407297, B-407297.2, Nov. 19, 2012, 2012 CPD ¶ 321 at 9.

Nor do we find persuasive Prudential’s arguments that the agency’s interpretation of “active project list” either is unreasonable or indicative of a latent ambiguity. When 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. *CTIS, Inc.*, B-414852, Oct. 3, 2017, 2017 CPD ¶ 309 at 3. To be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Id.* An ambiguity exists when two or more reasonable interpretations of a solicitation’s terms are possible. *Ashe Facility Servs., Inc.*, B-292218.3, B-292218.4, Mar. 31, 2004, 2004 CPD ¶ 80 at 10. If the solicitation language is unambiguous, our inquiry ceases. *Desbuild Inc.*, B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 5.

Here, the interpretation advanced by Prudential fails to take into account all of the solicitation’s language. Specifically, Prudential’s interpretation, that it could satisfy the solicitation’s requirement for submission of an active project list by providing information only about its quoted project manager’s duties on the incumbent contract, ignores the solicitation’s requirement that “[i]n addition, the [project manager’s] resume shall contain an active project list.” RFQ at 15-16 (emphasis added). It is customary for a resume to include a section listing an individual’s relevant employment history and discussing the duties performed by the individual in each job listed. As such, it would be expected that

the resume of Prudential's quoted project manager would list the individual's job as incumbent project manager and discuss the duties performed in that capacity. Accordingly, Prudential's interpretation of the solicitation unreasonably ignores the clear requirement for an active project list as something more than--i.e., in addition to--a customary resume. We do not find Prudential's interpretation of the solicitation, when read as a whole, to be reasonable. Because the solicitation provision is not susceptible to two or more reasonable interpretations, we do not find the requirement to be ambiguous, latent or otherwise. *CTIS, Inc., supra* at 4.

Prudential further argues that it was unreasonable for the agency to conclude that "the "active project list" was needed in order to "confirm sufficient Project Manager capacity to adequately manage and oversee" the project" because "by selecting Starside for award" the agency "agreed that the Project Manager [quoted by both Starside and Prudential] had the capacity to perform the project." Protest at 7, *citing* AR, Tab 11, Brief Explanation Letter at 1; Comments & Supp. Protest at 7-8. Prudential contends that the agency disparately evaluated its and Starside's quotations, both of which quoted the same individual for the project manager position.<sup>3</sup> Comments & Supp. Protest at 2. As discussed above, the solicitation's requirement for vendors to submit both a resume and an active project list was to enable the agency to evaluate both the ability and the capacity of vendors' quoted project managers to perform the required services. Prudential's arguments ignore the solicitation's provision that "failure to provide the requested information for key personnel will result in an "unacceptable" rating." RFQ at 16. Additionally, Prudential's arguments regarding the alleged

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<sup>3</sup> To the extent that Prudential's allegation of disparate treatment may be considered a separate protest ground from its initial argument that the agency unreasonably reached different conclusions about the qualifications of the same individual when quoted for the project manager position by Prudential versus when quoted by Starside, we dismiss it as untimely. Our Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues, when, as here, the protester raises arguments for the first time in its comments that could and should have been made in its protest. 4 C.F.R. § 21.2(a)(2); *Hughes Network Systems, LLC*, B-409666.3, B-409666.4, Aug. 11, 2014, 2014 CPD ¶ 237 at 5 n.7.

Similarly, we dismiss as untimely Prudential's argument that the agency's evaluation of whether vendors' quoted project managers had the capacity to perform the project resulted in the application of an unstated evaluation criterion. See Comments & Supp. Protest at 6-7. The agency informed Prudential in its August 11 brief explanation of award letter that Prudential's quotation had been found unacceptable because Prudential's failure to provide an active project list for its quoted project manager resulted in the agency being unable to evaluate the capacity of the quoted individual to perform successfully. AR, Tab 11, Brief Explanation Letter at 1-2. Accordingly, Prudential's argument that the solicitation did not provide for evaluation of a quoted project manager's capacity, which was first raised in its September 10 comments on the agency's report, is untimely. *Hughes Network Systems, LLC, supra* at 5 n.7.

equivalency of its own quotation to that submitted by Starside conflate the ability and capacity assessments reasonably undertaken by the agency.

The record reflects that the agency did not have any concerns about the ability of Prudential's quoted project manager to perform the required services. The evaluators noted that the quoted individual had over 30 years of experience, 15 different teaching credentials and certifications, as well as 4 years' experience supporting the USMS. AR, Tab 9, Tech. Eval. Rpt. for Protester at 3. The evaluators did, however, have concerns about whether Prudential's quoted project manager had "sufficient time and capacity to properly manage this large requirement" because the lack of an active project list left them without sufficient information to determine the quoted individual's capacity. *Id.* The evaluators' concerns reasonably were based on the contents of Prudential's own quotation because it is a vendor's burden to submit an adequately written quotation that establishes the merits of its quotation. *SRA Int'l, Inc.; NTT DATA Servs. Fed. Gov., Inc., supra* at 10. Additionally, any active project list submitted by Starside would be wholly irrelevant were Prudential to become the awardee because the project manager would no longer be employed by Starside and, therefore, no longer managing the projects on any active project list submitted by Starside. The information that was relevant to the agency's evaluation of Prudential's quotation was information regarding what, if any, projects in addition to the solicited requirement the quoted project manager would concurrently manage as a Prudential employee.

Finally, Prudential argues that it was unreasonable for the agency to ignore its own direct knowledge of Prudential's quoted project manager's performance as the incumbent. Comments & Supp. Protest at 8. We have recognized that in certain limited circumstances, an agency has an obligation (as opposed to the discretion) to consider information about which the agency is aware bearing on a vendor's or offeror's past performance. See e.g., *International Bus. Sys., Inc.*, B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5 (concluding that the agency could not reasonably ignore information regarding the protester's performance of a recent contract involving the same agency, the same services, and the same contracting officer). We have, however, declined to apply this obligation in situations like this one, where the information relates to technical requirements of a solicitation, rather than past performance information. *Earth Resources Tech. Inc.*, B-416415, B-416415.2, Aug. 31, 2018, 2018 CPD ¶ 312 at 6 (concluding that because information about key personnel qualifications was to have been addressed in vendor's proposals, the agency was not required to provide information the vendor did not provide).

Here, the solicitation clearly required vendors to submit an active project list for their quoted project managers, and cautioned that failure to provide the required information would result in a quotation being evaluated as technically unacceptable. Prudential failed to provide the requested information, and, as a result, the agency reasonably rejected its quotation. Because the active project list was part of the key personnel qualifications information required to be addressed in vendors' quotations, there was no obligation for the agency to provide information to remedy Prudential's failure to submit it.

The protest is denied.

Thomas H. Armstrong  
General Counsel