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# Decision

**Matter of:** Global Dimensions, LLC

**File:** B-419672

**Date:** May 12, 2021

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Richard L. Moorhouse, Esq., and Brett A. Castellat, Esq., Greenberg Traurig LLP, for the protester.

Captain Philip L. Aubart, Department of the Army, for the agency.

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## DIGEST

Protest that the agency unreasonably rejected the protester's proposal is denied where the rejection was consistent with the terms of the solicitation.

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## DECISION

Global Dimensions, LLC (GDL), of Fredericksburg, Virginia, protests the rejection of its proposal under request for task order proposals (RTOP) No. W911W4-19-R-GTMO III, issued by the Department of the Army for linguist support services. Global Dimensions complains that the Army unreasonably rejected its proposal for omitting a nondisclosure agreement.

We deny the protest.

## BACKGROUND

On December 20, 2019, the Army issued the RTOP against the Department of Defense Language Interpretation and Translation Enterprise II indefinite-delivery, indefinite-quantity contract to procure linguist support services at Guantanamo Bay, Cuba. Agency Report (AR), Tab 3, Conformed RTOP at 2, 18; Contracting Officer's Statement (COS) at 2. The selected contractor would be expected to interpret, translate, and transcribe information obtained from enemy combatant detainees. RTOP at 19.

The RTOP contemplated the issuance of a task order to be performed on both time-and-materials and cost-reimbursable bases over a 1-year base period and four 1-year option periods. RTOP at 3-16. The task order had an estimated value of

[DELETED]. COS at 2. Award would be made on a best-value tradeoff basis considering management and cost/price factors. RTOP at 75, 77-79.

Importantly, the RTOP advised, as part of the evaluation criteria, that the agency would conduct a compliance review. RTOP at 75. Specifically, the RTOP advised under section M.2.2, Compliance Review, that “[a]fter receipt of proposals, but prior to the evaluation process, the Government will perform a compliance review of the offeror’s proposal to determine the extent of compliance to the solicitation instructions, and whether the proposal meets any of the conditions listed in M.4, Rejection of Offerors.” *Id.* One of the conditions for rejection included failing to respond meaningfully to the proposal preparation instructions by omitting significant material data and information. *Id.* at 76.

The RTOP instructed offerors that a third-party firm may serve as a non-government advisor during the source selection process. RTOP at 69. Because the third-party firm may require access to proprietary information, offerors were required to contact the third-party firm directly to form a non-disclosure agreement (NDA). *Id.* When submitting their proposals, the RTOP advised that “[e]ach offeror shall submit copies of the agreement with their proposal.” *Id.*

GDL and multiple other offerors submitted proposals prior to the January 4, 2021, close of the solicitation period. AR, Tab 6, Compliance Checklist Results at 1. The Army rejected GDL’s proposal because the proposal omitted the NDA with the non-government advisor.<sup>1</sup> *Id.* at 6; see also AR, Tab 5, Compliance Checklist--GDL (showing that the agency determined that firm’s proposal lacked the required NDA, and therefore omitted significant information required by the RTOP); see also Protest at 3 (acknowledging that the firm did not submit the NDA as part of its proposal). After learning that its proposal was rejected, GDL filed this protest with our Office.<sup>2</sup>

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<sup>1</sup> When rejecting GDL’s proposal, the contracting officer inadvertently identified section M.4.1.2 as the basis for rejection. COS at 6-7. Nevertheless, the agency’s rationale for rejecting GDL’s proposal is clearly based on section M.4.1.1. See AR, Tab 6, Compliance Checklist Results at 6; Memorandum of Law (MOL) at 12, 15; COS at 6-7.

<sup>2</sup> As noted, the task order has an estimated value exceeding \$25 million; therefore, this protest is within our jurisdiction to review protests related to the issuance of orders under multiple-award IDIQ contracts issued under the authority provided by Title 10 of the United States Code. 10 U.S.C. § 2304c(e)(1)(B).

## DISCUSSION

GDL asserts that the Army unreasonably rejected the firm's proposal.<sup>3</sup> GDL argues that the RTOP did not require firms to submit the NDA. Protest at 4-5 (arguing that the NDA did not constitute required proposal content). Alternatively, GDL argues that the NDA did not constitute a material requirement because the agreement does not affect the price, quantity, or delivery of the services. *Id.* at 5. Finally, GDL argues that the agency should have engaged in clarifications in order for the firm to submit the NDA. Comments at 10-11. In response, the Army argues that GDL's proposal did not comply with solicitation requirements and was therefore reasonably rejected. MOL at 8-11.

When reviewing an agency's rejection of a proposal as noncompliant, our Office will examine the record to determine whether the agency's decision was reasonable and in accordance with the solicitation criteria and applicable statutes and regulations. See, e.g., *Distributed Sols., Inc.*, B-416394, Aug. 13, 2018, 2018 CPD ¶ 279 at 4. Where a proposal omits required information, the offeror runs the risk that its proposal will be rejected. *Id.*

Here, as noted earlier, the RTOP's evaluation criteria advised that proposals would be evaluated for compliance with the preparation instructions, and that failure to submit all information requested could serve as grounds for rejection. RTOP at 75-76. These provisions are significant because they permit the agency to reject any proposal not in strict compliance with the instructions. *Id.*; see *Safeguard Base Operations, LLC*, B-415588.6, B-415588.7, Dec. 14, 2018, 2018 CPD ¶ 426 at 3 (proposals could be rejected for failing to comply with proposal preparation instructions where the evaluation criteria specifically allowed for rejection on that basis). We therefore conclude that the agency reasonably rejected Global Dimension's proposal because, by omitting the NDA, the firm's proposal did not strictly comply with the RTOP's instructions. See Protest at 3; AR, Tab 4, GDL's Proposal; cf. *Leidos, Inc.*, B-418978, B-418978.2, Oct. 29, 2020, 2020 CPD ¶ 356 at 3-4 (agency reasonably rejected proposal where the evaluation criteria advised that strict conformance with preparation instructions was required and the firm's proposal omitted information).

While GDL advances a more lenient interpretation of the RTOP (*i.e.*, that rejection was only permitted when an offeror failed to include information related to the price, quantity, or delivery terms), we do not find that argument persuasive.<sup>4</sup> See Comments at 5. We

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<sup>3</sup> We have reviewed all of GDL's protest allegations, and find that none provide a basis to sustain the protest. To the extent we do not discuss an allegation, it is denied.

<sup>4</sup> To support its argument, GDL cites several of our decisions addressing the rejection of nonresponsive bids under Federal Acquisition Regulation (FAR) section 14.405. Protest at 5 (citing, for example, *Century Marine Corp.*, B-232630, Dec. 16, 1988, 88-2 CPD ¶ 598 at 3 and *GMI Inc.*, B-239064, July 3, 1990, 90-2 CPD ¶ 8 at 2). However, this acquisition was conducted under FAR part 16, and incorporated FAR clause 52.215-1. RTOP at 65-66. As a result, GDL's argument based on these

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disagree because the RTOP provided that all offerors must “carefully read, understand, and provide all the information requested in the proposal preparation instructions,” and that the Government may reject proposals for numerous reasons, including “[w]hen an Offeror’s proposal provides some data and information but omits significant material data and information required by Section L.” RTOP at 76. Furthermore, the RTOP never articulated that omission was restricted to omission of a proposal’s technical or price features. See *id.* Thus, consistent with the agency’s position, we think the RTOP provided that offerors were required to provide all requested information. See MOL at 12; cf. *MicroTechnologies, LLC*, B-418700, July 31, 2020, 2020 CPD ¶ 260 at 4-5 (proposal was eliminated because the protester did not provide disclosures regarding telecommunications equipment as requested by the solicitation).

Moreover, we also agree with the agency that the NDA constituted “significant material data and information.” See MOL at 13-14; see also RTOP at 76 (proposal may be rejected “[w]hen an Offeror’s proposal provides some data and information but omits significant material data and information required by [the proposal preparation instructions]”). The agency explains that it needed the non-government advisor to assist with the evaluations, and that the NDA was required to allow participation by the non-government advisor. *Id.* Thus, contrary to GDL’s argument, we do not view omission of the NDA as inconsequential because the NDA ensured that the agency could evaluate proposals in accordance with its selected plan. See *Expeditions Int’l Travel Agency*, B-252510, June 28, 1993, 93-1 CPD ¶ 497 at 2 (“Contracting agencies have broad discretion to establish an evaluation plan that is best suited to their needs[.]”). Accordingly, we deny this protest allegation.

Finally, we do not agree that the Army was required to engage in clarifications with GDL in order to allow the firm to submit the NDA. See Comments at 10-11. Clarifications are limited exchanges between an agency and offerors that may occur when contract award without discussions is contemplated; an agency may, but is not required to, engage in clarifications that give offerors an opportunity to elucidate certain aspects of proposals, or resolve minor or clerical errors. *CJW-Desbuild JV, LLC*, B-414219, Mar. 17, 2019, 2019 CPD ¶ 94 at 3. Thus, even if GDL’s omission could have been remedied through clarifications, the agency had no obligation to afford the firm that opportunity. Accordingly, we deny this protest allegation.

The protest is denied.

Thomas H. Armstrong  
General Counsel

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decisions and the authority contained therein does not provide us with any basis to sustain the protest.