



Decision

Matter of: Renova-Sovereign JV II

File: B-421629

Date: July 28, 2023

Paulo Rodriguez Heyman for the protester.
Wade L. Brown, Esq., Department of the Army, for the agency.
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DIGEST

1. Protest challenging agency's exclusion of protester's proposal from the competition based on agency's interpretation of allegedly ambiguous solicitation language is denied where the language in question is not ambiguous.
 2. Protest alleging that protester's failure to provide a price for a required contract line item should have been waived is denied where the agency was not obligated to waive the requirement.
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DECISION

Renova-Sovereign Joint Venture II, an 8(a) small business of Ocean Township, New Jersey, protests the decision to exclude its proposal from the competition under request for proposals (RFP) No. W56ZTN-21-R-0001, issued by the Department of the Army, for installation-wide support in maintaining compliance with all applicable Federal and State environmental laws and regulations.¹ The protester contends that the solicitation contained a latent ambiguity, and that it was unreasonable for the agency to exclude its proposal from the competition based on the agency's interpretation of the ambiguous language. The protester also contends that its failure to provide pricing for contract line item number (CLIN) 0002 should have been waived.

¹ Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for performance of those contracts through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) 19.800. This program is commonly referred to as the 8(a) program.

We deny the protest.

BACKGROUND

On September 13, 2021, the agency issued the solicitation, in accordance with FAR part 15, seeking facility maintenance, construction, and demolition services to support the Army's Environmental Division of the Directorate of Public Works in ensuring compliance with environmental laws and regulations.² Agency Report (AR), Tab 4, RFP at 16; Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 2-3. The RFP contemplated the award of multiple fixed-price indefinite-delivery, indefinite-quantity (IDIQ) contracts for a 1-year base period and four 1-year option periods. RFP at 10. The due date for receipt of proposals was November 23, 2021. COS/MOL at 2.

The solicitation provided for the submission of proposals in four volumes: technical, past performance, price, and certifications and representations.³ RFP at 137-143. Proposals were to be evaluated based on technical, past performance, and price factors. RFP at 148. The solicitation provided that past performance was the most important factor and technical was the second most important factor. *Id.* When combined, past performance and technical were significantly more important than price. *Id.* The solicitation contemplated the award of approximately five contracts to the offerors whose proposals represented the best value to the agency, although the agency reserved the right to award more or less than five contracts. *Id.*

The solicitation instructed offerors that their pricing would "be evaluated based on the total amount proposed for CLINs 0001 (Base Year), 0002 ("Seed Project"), 1001 (Option Year 1), 2001 (Option Year 2), 3001 (Option Year 3), and 4001 (Option Year 4) of Section B of the [standard form (SF)] 33." The RFP further advised that "[p]ricing must be balanced between years and CLINs, and the pricing for the Seed Project Task Order proposed in CLIN 0002 must be reasonable." *Id.* at 158.

The agency received nine timely proposals, including one from Renova-Sovereign. COS/MOL at 2. Following the evaluation, the agency awarded contracts to four offerors; Renova-Sovereign's proposal was not selected for award. *Id.* In evaluating Renova-Sovereign's proposal, the source selection authority (SSA) stated that Renova-Sovereign proposed a total price of \$5,045,240 for CLINs 0001, 1001, 2001, 3001, and 4001, but failed to include pricing for CLIN 0002. AR, Tab 12, Source Selection Decision at 39. The SSA concluded that by not proposing pricing for CLIN 0002,

² The agency amended the solicitation twice. All citations are to the Adobe PDF numbers of the final, amended version.

³ The subject protest challenges only the agency's evaluation of the protester's price proposal. Protest at 3-4. Therefore, the evaluation of the remaining volumes is not at issue here.

Renova-Sovereign did not follow the instructions of the RFP, rendering its proposal ineligible for award. *Id.*

The agency sent Renova-Sovereign an unsuccessful offeror notice on March 15, 2023, wherein the agency explained that Renova-Sovereign's proposal was ineligible for award based on the protester's failure to submit pricing for CLIN 0002. AR, Tab 13, Unsuccessful Offeror Notice at 2. On March 28, Renova-Sovereign requested a debriefing, which the agency provided on April 3. COS/MOL at 2. Renova-Sovereign then submitted questions on April 5, to which the agency responded on April 10. *Id.* at 2-3. Renova-Sovereign filed this protest with our Office on April 20.

DISCUSSION

The protester argues that it was unreasonable for the agency to exclude its proposal from the competition for failing to provide pricing for CLIN 0002. Protest at 1, 3. According to the protester, the solicitation's price proposal instructions were latently ambiguous as to whether offerors were required to propose pricing for CLIN 0002.⁴ See *id.* For reasons discussed below, we deny this argument.⁵

The solicitation provided that price proposals "shall consist of the completed pricing spreadsheet" and "the completed Section B of the SF 33," which consisted of CLINs 0001, 0002, 1001, 2001, 3001, and 4001. RFP at 143. For CLIN 0002, the solicitation provided that the "minimum guarantee is up to \$2500.00, or a lower amount proposed by the offeror." *Id.* at 4. According to the protester, this language was ambiguous because it was unclear whether the "minimum guarantee" was a range of prices that offerors could propose, or a default amount offerors accepted simply by submitting their proposals. Protest at 3. The protester argues that it "understandably concluded" that if it did not propose an amount under \$2500, then the minimum guarantee, by default, would be \$2500. *Id.* In response, the agency argues that the language was not ambiguous, but provided a clear requirement to propose \$2500 or lower for CLIN 0002. COS/MOL at 1.

Where a protester and agency disagree over the meaning of solicitation language, we 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

⁴ In its protest, the protester also argued that the agency unreasonably accepted proposals beyond the minimum acceptance period. Protest at 1. Although the agency addressed that argument in the agency report, the protester's comments did not respond to the agency's rebuttal. Protest at 2; see *generally* Comments. Accordingly, we consider this argument to be abandoned and will not address it further. See *G.A. Braun, Inc.*, B-413735, Dec. 21, 2016, 2016 CPD ¶ 374 at 3-4.

⁵ Although we do not specifically address every argument raised by the protester, we have considered them and find none to be meritorious.

manner. *Crew Training Int'l, Inc.*, B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. *Id.* A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations. *See id.* If the solicitation language is unambiguous, our inquiry ceases. *Desbuild Inc.*, B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 5.

Based on the record, we have no basis to conclude that the solicitation language in question was ambiguous, primarily because the protester's suggested interpretation is not reasonable. As the agency points out, the solicitation expressly provided that "[o]fferors *shall also propose* a firm fixed price amount for the Seed Project Task Order[.]" which was CLIN 0002. COS/MOL at 9; RFP at 96 (emphasis added). Additionally, the RFP specified that "[t]he \$2500 (or lower [amount] if proposed lower by the Offeror), constitutes the entire minimum guarantee for the [Basic Environmental Support Services (BESS)] IV IDIQ contract." A prospective offeror asked a question concerning the minimum guarantee for CLIN 0002, in response to which the agency reiterated that "[f]or CLIN 0002 . . . offerors *shall propose* an amount up to \$2,500.00 for the Seed Project Task Order." AR, Tab 7, RFP amend. 0001 at 6-7 (emphasis added).⁶ These excerpts demonstrate that offerors were required to affirmatively propose an amount for CLIN 0002, and that the amount proposed could range up to \$2500. The protester's interpretation would permit offerors to leave blank CLIN 0002 with the expectation that an amount of \$2500 would then auto-populate. *See* Protest at 3. Such an interpretation directly contradicts the plain language of the solicitation providing that offerors "*shall . . . propose* a firm fixed price amount for the Seed Project Task Order" and that the amount proposed be reasonable. RFP at 96, 158 (emphasis added). In light of the foregoing, this protest ground is denied.⁷

⁶ The answer to this question was subsequently incorporated into the solicitation via amendment 0001. *Id.* at 2.

⁷ Even if we were to find the protester's interpretation of the solicitation language reasonable, we would still lack a basis to sustain the protest because the resulting inconsistency would give rise to a patent, as opposed to a latent, ambiguity. A patent ambiguity exists where a solicitation contains an obvious, gross, or glaring error--for example, where solicitation provisions appear inconsistent on their face, while a latent ambiguity is more subtle. *Pasha Hawaii Holdings LLC, B-419020 et al.*, Nov. 25, 2020, 2020 CPD ¶ 386 at 10. Here, the protester's interpretation of the solicitation as providing a default value for CLIN 0002 in the event an offeror did not enter an amount for the CLIN is clearly inconsistent with the solicitation's instruction to offerors to propose a reasonable amount for CLIN 0002. *See* RFP at 96, 158. In situations involving a patent ambiguity, an offeror may not simply make unilateral assumptions regarding the meaning of the patently ambiguous terms and then expect relief when the agency does not act in the manner assumed. *Environmental Sys. Research Inst., Inc.*, B-408847.2, Jan. 17, 2014, 2014 CPD ¶ 53 at 5. Rather, the offeror must protest the alleged ambiguity prior to the time set for initial proposals. *Id.*

The protester raises an alternative argument that its failure to provide pricing for CLIN 0002 should have been waived because the pricing for CLIN 0002 had “an immaterial impact on the contract value.” Comments at 1. Specifically, the protester contends that even if it proposed the maximum amount of \$2500, that value would have constituted only 0.05 percent of its proposed price of \$5,045,240. Protest at 3. In other words, the protester argues, its pricing for CLIN 0002 was not material to the contract because the maximum value was too low to have any meaningful impact on the overall price of the contract. *See id.* In response, the agency argues that per the terms of the solicitation, the price for the seed project established the guaranteed minimum for the contract, which is “one of the most material terms of the contract” because without it, an IDIQ contract is not a binding contract. COS/MOL at 8. The agency argues that, as a result, it could not waive the protester’s omission.

In resolving this matter, we question the premise of the protester’s contention that the failure to include a price for the very CLIN that was included in the solicitation to establish the minimum guarantee for the contract was a minor error that could readily be waived by the agency. Nonetheless, we need not decide the matter because even if the protester’s failure to include a price for the CLIN was a minor informality or irregularity in its proposal that the agency could have waived, the decision to waive such a matter was entirely permissive and within the discretion of the agency. In this regard, we note that the solicitation included FAR provision 52.212-1(g), which expressly provided that the agency “may . . . waive informalities and minor irregularities in offers received.” RFP at 87. As we have previously explained, however, such language is merely permissive. *See e.g., TriStar Aerospace LLC*, B-419093, Dec. 11, 2020, 2020 CPD ¶ 400 at 4 (explaining, with respect to identical language contained in FAR provision 52.215-1(f)(3), that waiver of informalities and irregularities is permissive and therefore “provides agencies latitude to waive informalities and minor irregularities, but it does not require such waiver”). In light of the foregoing, we have no basis to conclude that the agency should have waived the requirement to provide pricing for CLIN 0002.

The protest is denied.

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General Counsel