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Decision

Matter of: New Generation Solution, LLC

File: B-421941

Date: October 24, 2023

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Russell W. Bottom, Esq., and Daniel C. McIntosh, Esq., Defense Information Systems Agency, for the agency.
Michael P. Grogan, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably rejected protester's proposal where the offeror failed to submit its proposal in accordance with the solicitation's instructions, and where those instructions were not reasonably susceptible to more than one interpretation.

DECISION

New Generation Solution, LLC (NGS), a small business joint venture of McLean, Virginia, protests its elimination from the competition under request for proposals (RFP) No. 832268164, issued by the Department of Defense, Defense Information Systems Agency (DISA) for information technology engineering development and sustainment services. The protester contends the agency's decision to eliminate its proposal from the competition was contrary to the terms of the solicitation, or, in the alternative, the solicitation was latently ambiguous.

We deny the protest.

BACKGROUND

The agency issued the RFP on February 24, 2023, pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 16.5, to firms holding DISA's ENCORE III small business suite multiple-award indefinite-delivery, indefinite-quantity (IDIQ)

contract. Agency Report (AR), Tab 1, RFP at 1.¹ The solicitation contemplated the issuance of a single task order, with fixed-price contract line items, with a 1-year base period of performance and four 1-year option periods. *Id.* DISA sought contractor support to design, plan, install, configure, and maintain systems and services for DISA's Compute Center's enterprise and cloud hosting, storage, backup, and virtualization desktop infrastructure programs. AR, Tab 2, attach 1, Statement of Work at 1.

The solicitation advised that award would be made on a best-value tradeoff basis, considering (1) technical/management approach and (2) price.² RFP at 4-6. In conducting its evaluation, DISA would first ensure that each proposal met the administrative requirements outlined in the RFP, and then would evaluate the underlying merits of each proposal. *Id.* at 4. The RFP provided that "[i]f an offeror is considered to not meet or adhere to any part of the administrative requirements of the RFP, their technical/management proposal will not be evaluated, and they will not be considered for award." *Id.* at 4.

As relevant to this protest, the solicitation explained that "[w]ork performed under this task order is up to the Secret level," and, as a result, offerors were required to complete and submit a Department of Defense (DD) Form 254.³ *Id.* at 2. The RFP stated:

The DD Form 254(s) shall be submitted in the original Government-provided, Attachment 3, PDF form. Completed DD Forms 254 in the original fillable form and format shall be submitted with proposals, or the offeror will be ineligible for award and their proposal will not be considered further.

Id.

On April 18, NGS submitted its proposal, to include its DD Form 254. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 8; AR, Tab 3, attach. 3, NGS DD Form 254. On April 19, the agency conducted an administrative review of the submitted proposals and determined that NGS's proposal failed to comply with the administrative requirement for submission of the DD Form 254. COS/MOL at 8; AR, Tab 4, Administrative Proposal Review at line 10 (notating that while the protester

¹ All citations are to the conformed version of RFP, using the Adobe PDF document page numbers.

² The technical/management approach factor included five subfactors: (1) management plan; (2) performance tuning approach; (3) storage tuning scenario; (4) x86 virtualization tuning scenario; and (5) cloud architecture design approach and scenario. RFP at 4-5.

³ The DD Form 254 is the Department of Defense Contract Security Classification Specification form. The form conveys security requirements, classification guidance, and procedures for handling classified material received or generated on a classified contract. See *A-B Computer Solutions, Inc.*, B-415819, Mar. 22, 2018, 2018 CPD ¶ 128 at 5 n.5.

submitted a DD Form 254 in a PDF format, it “is no longer fillable.”). On August 23, the agency notified NGS that its proposal would not be considered for award. AR, Tab 5, Pre-award Unsuccessful Offeror Letter at 1. DISA explained that the submitted DD Form 254 was submitted as “a PDF but is no longer fillable” and that “[t]he use of a non-fillable form is not the original Government-provided PDF form.” *Id.* NGS, having been eliminated from the competition as a result, filed the instant protest on September 5.⁴

DISCUSSION

Central to this protest is whether NGS’s failure to submit its DD Form 254 as a fillable PDF reasonably constituted grounds for its exclusion from the competition under the terms of the RFP. The protester contends the solicitation, by its terms, did not require that an offeror submit its DD Form 254 as a fillable PDF form. In the alternative, NGS argues the solicitation was latently ambiguous as to whether an offeror’s submitted DD Form 254 was required to be still-fillable after submission. For the reasons that follow, we find no basis to sustain the protest.

First, contrary to the protester’s assertion, we conclude the solicitation did require offerors to submit a fillable PDF version of their submitted DD Form 254. The RFP included as an attachment a fillable PDF version of DD Form 254. AR, Tab 2, attach. 3, DD Form 254. The solicitation expressly stated that the DD Form 254 “shall be submitted in the original Government-provided, Attachment 3, PDF form.” RFP at 2. This original PDF form was the fillable PDF version included as an attachment to the RFP. Moreover, the solicitation goes on to explain that “the original fillable form and format shall be submitted with proposals[.]” *Id.* If an offeror failed to comply with this requirement, “the offeror will be ineligible for award and their proposal will not be considered further.” *Id.* In our view, the solicitation clearly required offerors to submit a still-fillable PDF form with its proposal submission.

Second, and in the alternative, the protester contends the solicitation provision governing the submission of the DD Form 254 was latently ambiguous and subject to multiple reasonable interpretations. Protest at 5-6; Comments at 7-9. DISA, in response argues the plain language of the solicitation has only one reasonable interpretation--that the completed version of the DD Form 254 was required to be submitted in the original, fillable PDF format. COS/MOL at 15-17.

Our decisions provide that an ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. *Red Heritage Medical, Inc.*, B-418934, Oct. 19, 2020, 2020 CPD ¶ 348 at 2; *Desbuild Inc.*, B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 5; *Colt Def., LLC*, B-406696, July 24,

⁴ Because the estimated value of the to be issued task order is over \$25 million, this procurement is within our jurisdiction to hear protests related to the issuance of orders placed under defense agency IDIQ contracts under the authority granted in title 10 of the United States Code. 10 U.S.C. § 3406(f)(1)(B).

2012, 2012 CPD ¶ 302 at 8. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. *Id.* Where there is a latent ambiguity, both parties' interpretation of the provision may be reasonable. *Id.*; see also *SunGard Data Sys., Inc.*, B-410025, Oct. 10, 2014, 2014 CPD ¶ 304 at 6. A solicitation requirement is only considered ambiguous when it is susceptible to two or more reasonable interpretations. *Plum Run*, B-256869, July 21, 1994, 94-2 CPD ¶ 38 at 4. The mere allegation that a solicitation is ambiguous or restrictive does not make it so. *Skyline Indus., Inc.*, B-257340, Sept. 22, 1994, 94-2 CPD ¶ 111 at 4.

The crux of NGS's protest allegation is there are multiple reasonable interpretations to this solicitation provision:

The DD Form 254(s) shall be submitted in the original Government-provided, Attachment 3, PDF form. Completed DD Forms 254 in the original fillable form and format shall be submitted with proposals, or the offeror will be ineligible for award and their proposal will not be considered further.

RFP at 2. NGS argues it interpreted this language to mean that offerors were required "to use the fillable form that was Attachment 3 [to the RFP] to complete the DD 254 and then submit it as a PDF." Comments at 7. In other words, an offeror was required to use the fillable version of the DD Form 254 to complete the form, but offerors did not have to submit a still-fillable PDF version. The protester contends the solicitation provision at issue was poorly drafted, unclear, and susceptible to at least two interpretations. *Id.* at 8-9. However, the protester's assertion of a solicitation ambiguity here fails because NGS's interpretation is unreasonable and not in accordance with stated terms of the RFP.

While NGS attacks the syntax and passive voice used in the relevant solicitation provision, we conclude the plain language of the RFP makes clear what offerors were to provide, and was not reasonably open to interpretation. The first sentence manifests a requirement that the form be "submitted" in the "PDF form" provided. RFP at 2 ("The DD Form 254(s) shall be submitted in the original Government-provided, Attachment 3, PDF form."). The flaw in the protester's argument--that the RFP's requirement for submission of a "PDF form" meant that an offeror could submit a PDF form that was not still-fillable--stems from the fact that the "original Government-provided" PDF form was, itself, a fillable PDF form. Accordingly, an offeror who complied with the RFP's instructions would, necessarily, be submitting a fillable PDF form, *i.e.*, the "original Government-provided" version. NGS's selective reading does not give rise to solicitation ambiguity.

Even accepting, for the sake of argument, that the first sentence of the provision at issue might be subject to two reasonable interpretations, the reasonableness of the protester's reading of the submission requirements is essentially foreclosed by the clear instructions in the second sentence. See *id.* ("Completed DD Forms 254 in the original

fillable form and format shall be submitted with proposals, or the offeror will be ineligible for award and their proposal will not be considered further.”) (emphasis added). Indeed, the RFP required “completed” forms in the “original fillable form and format” to be “submitted” with proposals. *Id.* The protester’s assertion that the participle phrase “in the original fillable form and format” has no clear noun-referent does not demonstrate that the RFP’s provision, when reasonably read in context, was ambiguous; “original fillable form and format” could only, logically, refer to the DD Form 254. It is evident from the plain language of the solicitation that a completed DD Form 254 was required to be submitted in fillable form. Accordingly, we conclude there is no reasonable basis for the protester’s argument that the solicitation contained a latent ambiguity.⁵

The protest is denied.

Edda Emmanuelli Perez
General Counsel

⁵ NGS raises other collateral allegations. Although our decision does not specifically address them all, we have considered each argument and find that none provides a basis on which to sustain the protest. For example, the protester argues the agency abused its discretion by failing to seek clarification from NGS concerning its DD Form 254. Protest at 4-5; Comments at 3-7. Citing opinions from the U.S. Court of Federal Claims and decisions from our Office, NGS contends its submission of a non-fillable PDF document was a minor clerical issue that should have been resolved by DISA seeking clarification. Comments at 6-7.

An agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. FAR 15.306(a); *Satellite Servs., Inc.*, B-295866, B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n.2. Here, the protester’s failure to comply with the solicitation’s instructions for submittal of its DD Form 254 affects DISA’s ability to facilitate security acceptance. COS/MOL at 7; *see also Defense Solutions Group, LLC*, B-420353, Feb. 15, 2022, 2022 CPD ¶ 124 at 3 (explaining why a failure to provide the original government-provided PDF attachment for a DD Form 254 would not facilitate security acceptance). Given the broad discretion afforded to agencies concerning when to conduct clarifications, the stated rationale for why DISA required submission of the original fillable PDF, and the clear solicitation requirement, we cannot conclude the agency abused its discretion for failing to seek clarification from NGS, in this instance.