Decision

Matter of: SOS International, LLC

File: B-422410

Date: May 28, 2024

Dawn E. Stern, Esq., David R. Lacker, Esq., and Andrew W. Curent, Esq., DLA Piper LLP (US), for the protester.
Lieutenant Colonel Benjamin W. Hogan, Department of the Army, 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

Protest challenging the agency's elimination of the protester's proposal from the competition is denied where the agency's decision was reasonable and consistent with the terms of the solicitation.

DECISION

SOS International, LLC (SOSI), of Reston, Virginia, protests its elimination from the competition under request for task order proposals (RTOP) No. W50NH9-23-R-C3TO, issued by the Department of the Army, for intelligence operations support services. The protester contends the agency unreasonably eliminated SOSI from the competition because the Army was unable to access and view a portion of the offeror's submitted proposal.

We deny the protest.

BACKGROUND

The agency issued the RTOP on December 20, 2023, pursuant to the procedures of Federal Acquisition Regulation (FAR) section 16.505, to firms holding contracts under the Defense Intelligence Agency's Solutions for Intelligence Analysis 3 multiple-award indefinite-delivery indefinite-quantity (IDIQ) contact. Agency Report (AR), Tab 5a,

RTOP Amendment 1 at 1[1]; Contracting Officer's Statement (COS) at 1. The solicitation contemplated the issuance of a single task order, on cost-plus-fixed-fee basis, with a 1-year base period of performance and four 1-year option periods, for intelligence operations support services to U.S. Central Command. RTOP at 1, 7.

The solicitation advised that award would be made on best-value tradeoff basis, considering three factors, listed in descending order of importance: (1) staffing plan; (2) Outside the Continental United States (OCONUS) deployment approach; and (3) cost/price. RTOP at 42. As relevant to this protest, an offeror's cost/price proposal was required to include a government format pricing model (GFPM) workbook, which included direct labor categories and rates. *Id*. at 41. As it related to proposed subcontractors, the RTOP explained:

> If Subcontractor labor is proposed, the Prime Contractor is responsible for ensuring that the Subcontractor provides a full and complete labor rate build that provides complete transparency for the direct labor rate component and each indirect rate applied to it along with profit or fee regardless of contract type. The labor rate build shall be provided by all Subcontractors within the GFPM-Subs to include all formulas that demonstrate how the burdened rate is computed.

Id. at 46. Subcontractors were permitted to submit their unburdened direct hourly labor rates (what the RTOP calls "un-sanitized" rates) directly to the Army, via the Department of Defense Secure Access File Exchange (DOD SAFE). *Id*. A SOSI subcontractor, which we will refer to herein as Subcontractor X, submitted its GFPM cost/price spreadsheet to the Army via DOD Safe prior to the RTOP's established deadline. Protest, exh. 6, Subcontractor X DOD Safe Confirmation at 1.

Consistent with the RTOP, the Army undertook a proposal compliance review after the January 25, 2024, proposal submission deadline. COS at 3. In this regard, the RTOP provided 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 RTOP instructions, and whether the proposal meets any of the conditions listed [in the RTOP for the rejection of proposals]." RTOP at 54. During this review, the agency attempted to open Subcontractor X's GFPM pricing spreadsheet but could not access the file. *See* AR, Tab 11, Dialog Box at 1 (providing agency personnel were unable to open the document because they did not have the required access permissions). The Army rejected SOSI's proposal as non-compliant with the terms of the solicitation on February 26, explaining that the protester failed to provide the required GFPM workbook for all its proposed subcontractors and failed to provide fully functional spreadsheets. AR, Tab 13a, Non-Compliance Letter at 1; *see also* RTOP at 41 ("Failure to provide fully functional excel spreadsheets in the proposal may

---

[1] All citations to the solicitation are to the first amendment to the RTOP, and all citations to the agency's report are to the Adobe PDF document page numbers.

result in the proposal being rejected[.]"). Following a requested debriefing, this protest followed.[2]

DISCUSSION

The protester ushers two principal challenges to its elimination from the competition. First, SOSI argues the Army failed to abide by the terms of the solicitation, where the agency did not notify SOSI that it could not access Subcontractor X's spreadsheet. Second, the protester contends the Army's actions in eliminating SOSI's proposal from the competition violated applicable regulations, namely FAR section 15.207(c), governing unreadable proposals. For the reasons that follow, we find no basis to sustain the protest.[3]

First, the protester argues the Army failed to follow the terms of the RTOP by not affording SOSI an opportunity to resubmit Subcontractor X's pricing spreadsheet, which the agency could not access or view. Protest at 10; Comments at 2-5; Supp. Comments at 2-12. In this regard, SOSI avers that because a portion of its proposal (that is, Subcontractor X's pricing spreadsheet) was "rendered unreadable by damage in electronic transit," per the terms of the solicitation, the Army was required to notify SOSI and permit the firm to resubmit the unreadable portion of its proposal. RTOP at 41; *see also* FAR 15.207(c). In response, the Army contends its actions were

---

[2] The estimated value of the task order at issue exceeds $25 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery, indefinite-quantity contracts established under the authority of title 10 of the United States Code. 10 U.S.C. § 3406(f)(1)(B).

[3] SOSI raises other collateral allegations, and although our decision does not specifically address every argument presented, we have considered each argument and find that none provides a basis on which to sustain the protest. For example, the protester argues the Army acted unreasonably by not engaging in clarifications with SOSI concerning the agency's inability to open Subcontractor X's spreadsheet. Protest at 12-13; Comments at 7-8.

Our Office has consistently explained that 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. *See* 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 failed to comply with the solicitation's instructions regarding the submittal subcontractor pricing information. *See* RTOP at 41 ("Failure to provide fully functional excel spreadsheets in the proposal may result in the proposal being rejected[.]"); *id.* at 56 (explaining an offeror's proposal may be rejected where "an offeror's proposal provides some data and information but omits significant material data and information required by Section L."). Given the broad discretion afforded to agencies concerning when to conduct clarifications, and the clear solicitation requirements concerning submission of pricing spreadsheets, we cannot conclude the agency abused its discretion for failing to seek clarification from SOSI.

reasonable and consistent with the terms of the solicitation. Memorandum of Law (MOL) at 7-12; Supp. MOL at 2-13.

Several salient facts, as developed in the record, lead us to conclude the agency's decision to reject SOSI's proposal was not inconsistent with the terms of the solicitation. As explained above, subcontractors were to provide their GFPM labor rate pricing spreadsheets to the Army. RTOP at 43. The RTOP also explained spreadsheet cells must be visible, any formulas used must be included, and that "[f]ailure to provide fully functional [E]xcel spreadsheets in the proposal may result in the proposal being rejected[.]" *Id*. at 41. Furthermore, the RTOP unequivocally directed that "[i]f Workbooks or Worksheets are password protected, then the passwords must be provided." *Id.* The agency would also conduct a compliance review; after the receipt of proposals, the Army would determine "the extent of compliance to the RTOP instructions" to include whether a proposal meets the express conditions for rejection of a proposal as described in the solicitation. *Id*. at 54. One of these stated conditions for rejection was "[w]hen an offeror's proposal provides some data and information but omits significant material data and information required by [the proposal submission instructions]." *Id*. at 56.

The record reflects that Subcontractor X did submit its GFPM spreadsheet to DOD SAFE. Protest, exh. 7, Subcontractor X Operations General Manager Declaration at 2; AR, Tab 9, Subcontractor X DOD SAFE Confirmation at 1. However, during the Army's compliance review, the agency determined it could not open or view Subcontractor X's spreadsheet due to a lack of requisite access permissions. Specifically, the agency could not access the file, but instead received the following message:

> You are not signed into Office with an account that has permission to open this workbook. You may sign in a new account into Office that has permission or request permission from [Jane Doe's email account with Company Y].[4]

AR, Tab 11, Dialog Box at 1. The Army determined that "[b]ecause the Government lacked the permissions to open the file, the company failed to provide fully functional excel spreadsheets as required by the RTOP." AR, Tab 10, Memorandum for Record Concerning Rejection of Offerors at 4. The agency concluded that Subcontractor X's failure to provide the GFPM pricing spreadsheet constituted a failure to provide "significant material data and information" (RTOP at 56) and "the omission of a readable GFPM [spreadsheet] for [Subcontractor X] is a ground for the rejection of SOSi's offer." AR, Tab 10, Memorandum for Record Concerning Rejection of Offerors at 4.

Concomitant with the filing of this protest, SOSI submitted a declaration providing insight regarding the spreadsheet file at issue. Protest, exh. 7, Subcontractor X

---

[4] The agency explains that another firm, which we shall refer to herein as Company Y, purchased Subcontractor X. Supp. MOL at 6 n.3. Here, we refer to the person listed as the Company Y point of contact as "Jane Doe".

Operations General Manager Declaration at 2. The Subcontractor X employee explains that after investigating why the Army could not open the GFPM spreadsheet, he learned that "an automated [information technology (IT)] system control was applied to the email that included the pricing file attachment, when paired with another file containing sensitive markings, during transmission by electronic mail inside [Subcontractor X's] IT environment." *Id*. He explained "[Subcontractor X] uses the Microsoft Purview Data Loss Prevention ('DLP') tool to detect files that contain or are associated with sensitive markings ('Markings'), such as 'Controlled Unclassified Information,' during the electronic transmission process" and "[t]his system, which provides information rights management, allows only authorized IT system users to open files that contain or are associated with such Markings." *Id*. The employee further explained the "system automatically applies these access controls to such files." *Id*. He also noted that "[Subcontractor X] has configured its IT environment so that if one document in an internal email has Markings, all documents in the email will be access controlled." *Id*. at 3. In sum, the file access permissions were applied by Subcontractor X's own IT systems in accordance with its IT system design.

It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. *See International Med. Corps*, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 8. An offeror is responsible for affirmatively demonstrating the merits of its proposal and, as here, risks the rejection of its proposal if it fails to do so*. HDL Research Lab, Inc*., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5. In reviewing protests challenging the rejection of a proposal based on the agency's evaluation, it is not our role to reevaluate proposals; rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accordance with the solicitation criteria and applicable procurement statutes and regulations. *Wolverine Servs. LLC*, B-409906.3, B-409906.5, Oct. 14, 2014, 2014 CPD ¶ 325 at 3; *Orion Tech., Inc.*, B-405077, Aug. 12, 2011, 2011 CPD ¶ 159 at 4.

Based on the facts in the record, we find no basis to conclude that the agency's actions in rejecting SOSI's proposal ran contrary of the stated terms of the solicitation. As noted above, the RTOP contained clear instructions on what was required to be submitted; offerors were required to provide "fully functional excel spreadsheets", the failure of which may result in a proposal being rejected during the compliance review period. RTOP at 41. SOSI's failure to provide subcontractor Subcontractor X's GFPM pricing spreadsheet that could be opened, and thus viewed, by the Army failed to satisfy the RTOP's criteria for a "fully functional" spreadsheet. In turn, and in the absence of any argument to the contrary, we find reasonable the agency's determination that this failure was an omission of "significant material data and information" required by the solicitation and constituted a sufficient basis to eliminate the protester's proposal. RTOP at 56.

Nonetheless, the protester avers the Agency failed in its duty to follow the express terms of the RTOP, pointing to a solicitation provision that, in its view, required the Army to notify SOSI that the agency could not access Subcontractor X's spreadsheet:

> The offeror shall make every effort to ensure that the proposal is virus-free. Proposals (or portions thereof) submitted which indicate the presence of a virus, or which are otherwise rendered unreadable by damage in electronic transit, shall be treated as "unreadable" as described in FAR 15.207(c).

RTOP at 41. In this regard, SOSI contends because Subcontractor X's spreadsheet was "rendered unreadable by damage in electronic transit" the Army was required to follow the precepts of FAR section 15.207(c), namely, notify SOSI and permit the firm to resubmit the unreadable Subcontractor X spreadsheet. *Id*.; *see also* FAR 15.207(c) (explaining that if a portion of a proposal is unreadable, "the contracting immediately shall notify the offeror and permit the offeror to resubmit the unreadable portion of the proposal."). Accordingly, because the Army failed to notify SOSI of the unreadable spreadsheet before the agency eliminated the firm's proposal from the competition, the protester argues the Army failed to abide by the terms of the solicitation. Protest at 10; Comments at 2-5; Supp. Comments at 2-12.

Where a dispute exists as to a solicitation's actual requirements, we begin by examining the plain language of the solicitation. *Lioce Group.*, B-416896, Jan. 7, 2019, 2019 CPD ¶ 52 at 4. Here, we are unpersuaded that this provision applies because we conclude that Subcontractor X's spreadsheet cannot reasonably be considered "rendered unreadable by damage in electronic transit." RTOP at 41.

First, we do not view the file submitted to be considered "damaged". While that term is not specifically defined by the RTOP, the parties offer differing views as to what "damaged" should mean in this context. *Compare* Supp. MOL at 8-9 (applying a dictionary definition of "loss or harm resulting from injury to person, property, or reputation") *with* Supp. Comments at 7-8 (applying a National Institute of Standards and Technology (NIST) definition of "[h]arm caused to something in such a way as to reduce or destroy its value, usefulness, or normal function."). In our view, the common understanding of an electronic file being "damaged" does not reasonably encompass mere access restrictions placed on a document. That is, an electronic file being damaged most reasonably means that it was affected by a virus, distorted, or otherwise corrupted to the point of not being able to be opened or to function properly.

Here, the inability of the Army to open the document was not caused by a virus or a corrupted file, but instead, was the result of a deliberate access restriction applied to the file by Subcontractor X's internal IT controls. *See* Protest, exh. 7, Subcontractor X Operations General Manager Declaration at 2-3 ("[A]n automated IT system control was applied to the email that included the pricing file attachment, when paired with another file containing sensitive markings, during transmission by electronic mail inside Subcontractor X's IT environment. . . . [Subcontractor X] has configured its IT environment so that if one document in an internal email has Markings, all documents in the email will be access controlled."). In this regard, the access control implemented by Subcontractor X was akin to password protecting the document; the document was not

corrupted or inoperable, but, rather, was only accessible to those with appropriate permission. SOSI's team's failure to provide the requisite access permission cannot reasonably be viewed as the filing suffering damage in electronic transit. *See* RTOP at 41 (requiring for files with password protection that "the passwords must be provided"). On these facts, we cannot conclude the spreadsheet file was "damaged" as that term is understood under the terms of the RTOP.[5] Accordingly, we deny SOSI's protest allegation.[6]

The protester also alleges that, separate from the solicitation's dictates, applicable regulation required the Army to notify SOSI of the agency's inability to access the file, and to allow the offeror a chance to cure the problem. In this regard, SOSI contends that even accepting that the RTOP provision concerning a file "rendered unreadable by damage in electronic transit" was not operative, the Army was bound by FAR section 15.207(c), which provides that "[i]f any portion of a proposal received by the contracting officer electronically or by facsimile is unreadable, the contracting officer shall notify the offeror and permit the offeror to resubmit the unreadable portion of the proposal." The protester reasons because the solicitation incorporated several FAR part 15 provisions, and Subcontractor X's spreadsheet was "unreadable", the Army breached its duty under FAR section 15.207(c) where the agency failed to notify SOSI before eliminating the offeror from the competition. Protest at 4; Comments at 5; Supp. Comments at 5-6.

The regulations concerning evaluation and source selection under FAR part 15 (Contracting by Negotiation), which pertain to negotiated procurements, do not, as a

---

[5] Even accepting the protester's assertion that the NIST definition of damage should be controlling, we fail to see how access controls placed on or to a document could be considered a "harm" to that file. Supp. Comments at 7.

[6] Even if, for the sake of argument, we were to accept the protester's contention that the file here was "damaged", the record does not evidence that such damage occurred in "electronic transit". *See* RTOP at 41. SOSI argues the phase "electronic transit" should encompass anything that occurred during the "upload process", to include access restrictions placed on the spreadsheet that become operative when the file is viewed outside the subcontractor's IT network. Comments at 4. However, the common understanding of "electronic transit" would indicate the damage occurred when the document was emailed, uploaded, or otherwise sent to another party. Here, however, by the protester's own admission, any alleged "damage" did not occur in "electronic transit"; instead, the protester explains an automated IT system control was applied to the email that included the pricing file attachment when it was paired with another file containing sensitive markings, "during transmission by electronic mail inside Subcontractor X's IT environment." Protest, exh. 7, Subcontractor X Operations General Manager Declaration at 2. Based on the subcontractor's statement, Subcontractor X's IT system applied the accessibility controls prior to delivery (or attempted delivery) to the agency. As such, we cannot conclude internal email traffic constitutes "electronic transit" as that term is understood in the RTOP.

general rule, govern task and delivery order competitions conducted under FAR subpart 16.5 (Indefinite-Delivery Contracts). *Mission Essential, LLC*, B-418767, Aug. 31, 2020, 2020 CPD ¶ 281 at 5; *Chameleon Integrated Servs.*, B-407018.3, B-407018.4, Feb. 15, 2013, 2013 CPD ¶ 61 at 5; *M.A. Mortenson Co.*, B-413714, Dec. 9, 2016, 2016 CPD ¶ 361 at 8. Instead, it is generally the ordering provisions of FAR section 16.505 (Ordering) that govern task and delivery order competitions. *M.A. Mortenson Co.*, *supra*. In this regard, we have previously found that the proposal handling requirements in FAR section 15.207(c) are generally inapplicable in a procurement conducted pursuant to FAR subpart 16.5 procedures. *See DirectorViz Solutions*, B-421598, B-421598.4, July 19, 2023, 2023 CPD ¶ 175 at 7.

Here, the RTOP stated the competition was conducted under FAR section 16.505 procedures. RTOP at 42, 54. However, while the RTOP expressly provided that the procedures of FAR subpart 15.3 (Source Selection) did not apply, the solicitation also expressly included FAR provision 52.215-1 (Instructions to Offerors--Competitive Acquisition) and stated that various parts of the evaluation would be conducted in accordance with this provision. *See* RTOP at 58 (providing that the agency's cost/price analysis would be conducted in accordance with FAR section 15.404). Where, as here, the evaluation record expressly provides for the agency's voluntary election of specific FAR part 15 provisions (*e.g.*, FAR provision 52.215-1) to a FAR part 16 procurement, we will also evaluate the agency's adherence to those provisions in assessing the evaluation. *Imagine One Tech. & Mgmt., Ltd.*, B-401503.4, Aug. 13, 2010, 2010 CPD ¶ 227 at 7; *see also Allied Tech. Grp., Inc.*, B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 5 n.8 (applying similar analysis in Federal Supply Schedule competition).

However, consistent with our prior decisions, the incorporation of *some* FAR part 15 procedures or provisions does not, alone, convert the *entire* acquisition to a part 15 acquisition. *See Mission Essential, LLC*, *supra* at 5 (noting that our Office will evaluate an agency's voluntary election of *specific* FAR part 15 provisions in an FAR subpart 16.5 competition) (emphasis added). Instead, specific FAR part 15 procedures will apply only where part 15 provisions are expressly incorporated into FAR subpart 16.5 (*e.g.*, FAR subpart 15.4 policies and methods related to pricing, FAR 15.503 and 15.506 regarding debriefing procedures), or where the agency expressly incorporates part 15 provisions into a solicitation.

As applied, we conclude FAR section 15.207(c) does not apply to the facts at hand. First, the application of FAR section 15.207(c) was limited under the terms of the RTOP to when a proposal (or portion of a proposal) contained a virus, or was rendered unreadable by damage in electronic transit, neither of which, as explained above, is the case, here. Second, the solicitation did not otherwise incorporate FAR section 15.207, and the mere inclusion of other FAR part 15 provisions (*e.g.,* FAR clause 52.215-1) does not otherwise implicate the applicability FAR section 15.207(c). *See Mission Essential, LLC*, *supra* at 5. Accordingly, because FAR section 15.207(c) does not apply, the agency did not act contrary to regulation by eliminating SOSI's proposal prior to notifying the firm it could not open Subcontractor X's spreadsheet.

The protest is denied.

Edda Emmanuelli Perez
General Counsel