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Decision

Matter of: FedTec, LLC

File: B-422138.2; B-422138.3

Date: July 9, 2024

W. Brad English, Esq., Maynard Nexsen, PC, for the protester.
Adam K. Lasky, Esq., Bret C. Marfut, Esq., and Sarah E. Barney, Esq., Seyfarth Shaw LLP, for CompQsoft, Inc., the intervenor.
Colonel Patricia Wiegman-Lenz, Nicholas T. Iliff, Jr., Esq., and Katie Illingworth, Esq., Department of the Air Force, for the agency.
Glenn G. Wolcott, Esq., April Y. Shields, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where agency's interchange notices permitted proposal revisions "pertaining to" identified staffing weaknesses, and the awardee's staffing approach included cross-utilization of personnel, the agency reasonably permitted broad revisions to awardee's proposed staffing plan.

DECISION

FedTec, LLC, of Reston, Virginia, protests the issuance of a task order to CompQsoft, Inc., of Houston, Texas, pursuant to fair opportunity proposal request (FOPR) No. FA2517-23-R-0005, issued by the Department of the Air Force, U.S. Space Force, to provide information technology support services at Peterson Space Force Base (PSFB) and Schriever Space Force Base (SSFB) in Colorado. FedTec protests CompQsoft's alleged failure to comply with the agency's instructions regarding offerors' submission of proposal revisions.

We deny the protest.

BACKGROUND

On June 30, 2023, pursuant to subpart 16.5 of the Federal Acquisition Regulation (FAR), the agency issued the solicitation to small business contractors holding indefinite-delivery, indefinite-quantity (IDIQ) contracts under the Defense Information

Systems Agency's Encore III program. Agency Report (AR), Tab 3, Initial FOPR at 1.¹ As amended, the solicitation sought proposals to provide a workforce capable of performing "all services required to support the operation, maintenance and logistics of the PSFB and SSFB Installation Base Operating Support Information Technology (BOS-IT) systems." AR, Tab 15, Performance Work Statement (PWS) at 4. The PWS was comprised of multiple "chapters" that described the various performance requirements, and each offeror was required to identify the Encore III labor categories and number of full-time employees (FTEs) necessary to perform those requirements. AR, Tab 14, FOPR at 4; see AR, Tab 16, FOPR attach. 2, staffing plan. In the context of proposed staffing, the solicitation also directed offerors to address "cross-utilization [of personnel] between positions." AR, Tab 14, FOPR at 4. The solicitation contemplated issuance of a hybrid cost-reimbursable and cost-plus-fixed-fee task order, with a 90-day phase-in period, a 1-year base period, and two 1-year option periods, and provided for award on the basis of a best-value tradeoff between two evaluation factors: technical and cost/price. *Id.* at 7-10.

Under the technical evaluation factor, the solicitation established two subfactors: (1) staffing plan and (2) core services action plan. With regard to the first subfactor, staffing plan, the solicitation provided that the agency would evaluate each offeror's proposed staffing to determine whether it presented "sufficient rationale and justification for the number of employees proposed along with any cross-utilization anticipated," and thereafter assign a subfactor rating of outstanding, good, acceptable, marginal, or unacceptable. *Id.* at 7-8. With regard to the second subfactor, core services action plan, the solicitation provided that proposals would be evaluated on an acceptable/unacceptable basis.² *Id.* at 8-9. Finally, with regard to cost/price, the solicitation required offerors to use the solicitation's cost/price template to present their proposed labor rates by labor category, annual hours, contract line item number (CLIN),³ and performance period. *Id.* at 5-6; see AR, Tab 12, FOPR attach. 3, cost/price template. The solicitation provided that each offeror's proposed cost/price would be evaluated to determine if it was "reasonable, realistic, affordable and not unbalanced." AR, Tab 14, FOPR at 9-10.

¹ The page numbers referenced in this decision are the Adobe PDF page numbers in the documents submitted.

² Under this subfactor, the agency rated both proposals as acceptable, and those evaluations are not in dispute; accordingly, this subfactor is not relevant to resolution of the protest.

³ The solicitation's pricing template contained CLINS that corresponded to the requirements identified in chapters 2 through 13 of the PWS, which included requirements for program management, network operations, network infrastructure, client systems support, information technology asset management, cybersecurity office, communications focal point, local registration authority, cable maintenance, and enterprise information management. AR, Tab 12, FOPR attach. 3, cost/price template.

On August 11, 2023, proposals were submitted by several offerors,⁴ including CompQsoft and FedTec.⁵ Thereafter, the agency conducted interchanges,⁶ sought proposal revisions, and evaluated the revised proposals. On September 28, the agency selected FedTec for award.

On October 16, CompQsoft filed a protest with our Office challenging the agency's source selection decision. AR, Tab 25, CompQsoft Protest. On October 25, the agency stated its intent to take corrective action, elaborating that it intended to reevaluate proposals with regard to cost/price realism, but added that it would "take any other form of corrective action that [the agency] deems appropriate" and make a new award decision. AR, Tab 26, Notice of Corrective Action at 2. Thereafter, we dismissed CompQsoft's protest as academic. *CompQsoft, Inc.*, B-422138.1, Nov. 9, 2023 (unpublished decision).

In implementing its corrective action, the agency determined that "an entirely new evaluation" was necessary. Contracting Officer's Statement at 3. Following that

⁴ The other offerors' proposals are not relevant to this protest and are not further discussed.

⁵ The proposal was actually submitted by New Generation Solution, LLC (NGS), which characterized itself as "an SBA [Small Business Administration] approved Mentor-Protégé Joint Venture (JV) between FreeAlliance.com LLC (Protégé) and 22nd Century Technologies, Inc. (Mentor)." AR, Tab 17, NGS Initial Proposal at 6. FedTec asserts that, after submission of the initial proposal, "FreeAlliance.com, LLC changed its name to FedTec," and "[NGS] novated the [Encore III] IDIQ contract to FedTec." Decl. of FedTec Vice President at 2 n.1; Protest at 1. FedTec acknowledges that its subsequent submissions continued to represent that the proposal was being submitted by NGS; carried NGS's CAGE (commercial and government entity) code; and represented that 22nd Century Technologies, Inc. would perform as a joint venture member, although 22nd Century intended to perform as a subcontractor. Decl. of FedTec Vice President at 1-2; see, e.g., AR, Tab 21, FedTec Response to IN-001 at 7. Based on these facts, the intervenor requested dismissal of the protest, arguing that the protester is not an interested party under our Bid Protest Regulations. 4 C.F.R. §§ 21.0(a)(1), 21.1(a). As discussed below, we find no merit in FedTec's protest, and we do not further address the intervenor's dismissal request.

In responding to the protest, and based on the information summarized above, the agency advised our Office that: "[a]ll references to FedTec are intended to apply to either NGS or FedTec depending on which entity held the IDIQ at the time of any specific event." Contracting Officer's Statement at 3 n.1. Our references to FedTec in this decision adopt the agency's approach in this regard.

⁶ The solicitation defined interchanges as "fluid interaction(s) between the Contracting Officer (CO) and offerors that may address any aspect of the proposal and may or may not be documented in real time." AR, Tab 14, FOPR at 7.

evaluation, the agency engaged in interchanges with some of the offerors, including FedTec and CompQsoft.

Specifically, on December 19, the agency sent an interchange notice (IN) to FedTec in which it identified “an unresolved weakness in that [redacted] FTEs may be insufficient to support the required workload [under chapter 12 of the PWS, titled Cable Maintenance at PSFB].”⁷ AR, Tab 27, FedTec IN-003 at 1. The IN further stated:

Please revise the proposed number of FTE’s justifying the number or via narrative format provide additional rationale and justification beyond what is included within Volume I [the technical volume] to sufficiently discuss the basis for the number of FTE’s proposed provided the considerations above. Please submit revised proposal documentation should there be any required directly pertaining to this interchange.

Id.

As with the INs issued throughout this procurement (including INs issued before the initial award to FedTec), the top of the IN carried the following statement: “The Government will accept a revised proposal only pertaining to the items discussed below.” *Id.*

On December 27, FedTec responded by submitting a revised proposal that increased the number of FTEs it proposed to perform the chapter 12 requirements and increased its cost/price accordingly. AR, Tab 29, FedTec Response to IN-003.

Similarly, on December 19, the agency sent an IN to CompQsoft stating that the agency had “identified an additional weakness in the personnel proposed of having [redacted] FTEs [to perform the PWS chapter 10 requirements, titled Local Registration Authority],”⁸ and adding “[t]he Government does not believe that [redacted] FTEs will be enough manpower to complete the workload required.” AR, Tab 28, CompQsoft IN-003 at 1. Using language identical to that quoted above in the IN to FedTec, the agency concluded by stating:

⁷ Pursuant to chapter 12 of the PWS, the contractor must “provid[e] highly reliable wired telecommunications and networked voice, video, and data services” at PSFB. PWS at 51.

⁸ Pursuant to chapter 10 of the PWS, the contractor must provide “local registration authority services” for the purpose of “enabling authorized access to SIPRNET [secret internet protocol router network], authorized administrator access to NIPRNET [non-classified internet protocol router network] and SIPRNET, and to perform acquisition and issuance of electronic certificates for organizational email boxes to those members and organizations who require it in the performance of their official duties.” *Id.* at 41.

Please revise the proposed number of FTE's justifying the number or via narrative format provide additional rationale and justification beyond what is included within Volume I [the technical proposal] to sufficiently discuss the basis for the number of FTE's proposed provided the considerations above. Please submit revised proposal documentation should there be any required directly pertaining to this interchange.

Id.

Again, the top of the IN carried the statement, "The Government will accept a revised proposal only pertaining to the items discussed below." *Id.*

Later that day, in response to the IN, CompQsoft sent an email to the agency seeking clarifications as follows:

1. CompQsoft's proposal . . . incorporated a labor cross utilization methodology which involved multiple PWS Chapters. To address the Government's concerns as contained in IN-003 regarding enough FTEs to ensure all work is completed in Chapter 10, we will need to update our cross-utilization matrix. This would include updates to other Chapters in our Technical response which will ensure successful execution of all PWS requirements while limiting any impact to our pricing model. As part of our response, we will need to resubmit our Technical, Labor Matrix spreadsheet and our Cost spreadsheet. Please confirm that this approach[] is acceptable and is in accordance with the received Interchange Notice.
2. Would the Government please confirm that all BOS-IT offerors are level set at a standard man year [for each FTE] of 1992 hours?

Intervenor's Req. for Dismissal and Comments, exh. A, Email Chain at 1-2.

On December 20, the agency responded to CompQsoft's email. With regard to the first question, the agency stated: "This approach is acceptable." *Id.* at 1. With regard to the second question, the agency stated: "Contractors can assume that a[n] FTE could work 1,992 hours. However, due to unique staffing solutions or cross-utilization plans this number is not hard set as it could vary as a result of these aspects." *Id.*

On January 5, 2024, CompQsoft submitted a revised proposal. Consistent with its December 19, 2023 email and the agency's response--along with CompQsoft's proposed approach to cross-utilize personnel--the revised proposal reflected a "remodeled" staffing approach that went beyond increasing the number of FTEs

proposed to perform the chapter 10 requirements, including a reduction of hours per FTE.⁹ See AR, Tab 30, CompQsoft Response to IN-003 at 9-20, 48-54, 71.

Thereafter, the agency evaluated the revised proposals and assigned ratings of “acceptable” to both proposals under the staffing plan subfactor. AR, Tab 35, Fair Opportunity Decision Document (FODD) at 23. The agency further concluded that “no strengths or deficiencies were identified [in either proposal]” and, because neither proposal “had any differentiating qualities or aspects,” they were considered “equally Acceptable.” *Id.* With regard to cost/price, the agency determined that both offerors’ proposals were reasonable, realistic, and not unbalanced, and that CompQsoft proposed a total evaluated cost/price of \$30,177,153, while FedTec proposed a total evaluated cost/price of \$32,187,406. *Id.* at 24. Accordingly, the agency concluded that CompQsoft’s proposal offered the best value to the agency.

On March 20, 2024, FedTec was notified of the agency’s source selection decision. This protest followed.¹⁰

DISCUSSION

FedTec protests that CompQsoft’s final proposal revisions failed to comply with the IN instructions which, FedTec asserts, limited revisions to those that directly addressed the number of FTEs CompQsoft proposed to perform the chapter 10 requirements. FedTec asserts that it would have made additional revisions to its proposal had that been permitted. Comments and Supp. Protest at 2, 8. In challenging CompQsoft’s actions, FedTec acknowledges that resolution of this matter “boils down to the meaning of ‘pertaining to,’” arguing for a very narrow reading of that term. *Id.* at 3. Alternatively, FedTec asserts that the instructions were latently ambiguous or that the agency “changed its interpretation of the instructions.”¹¹ *Id.* at 6-8.

The agency and intervenor respond that FedTec’s interpretation of the IN instructions is unreasonable on its face due to the plain language of the INs that permitted revisions “pertaining to” the items discussed. In this context, the agency maintains that the plain meaning of the words “pertaining to” is synonymous with “related or connected to” and, accordingly, maintains that “any items that were related to or connected to the items

⁹ CompQsoft reduced its hours per FTE from 1,992 to either [redacted] or [redacted], depending on the function. AR, Tab 30, CompQsoft Response to IN-003 at 71. The record shows that FedTec’s proposal similarly relied on [redacted] hours per FTE. See AR, Tab 29, FedTec Response to IN-003 at 10.

¹⁰ The value of the protested task order exceeds \$25 million. Accordingly, this protest is within our jurisdiction to hearing protests of task orders placed under defense agency IDIQ contracts. 10 U.S.C. § 3406(f)(1)(B).

¹¹ In its initial protest, FedTec challenged various additional aspects of the agency’s source selection decision, including the agency’s cost/price realism analysis, but subsequently withdrew those challenges. Comments and Supp. Protest at 9 n.6.

[identified in the INs] were open to revision.” Resp. to Supp. Protest at 2-3; Contracting Officer’s Statement at 11. More specifically, in the context of the facts presented in this procurement--in which CompQsoft proposed cross-utilization of personnel as permitted by the solicitation,¹²--the agency maintains that application of the plain meaning of the words “pertaining to” permitted CompQsoft’s broader staffing revisions because its entire staffing plan was interdependent. Resp. to Supp. Protest at 2-6. Additionally, the intervenor notes that the scope of communications during the interchanges¹³ expressly extended to the number of hours per FTE that the solicitation required and, accordingly, its revisions in that regard were directly related to the items discussed. In short, the agency and intervenor maintain that CompQsoft’s revised staffing approach was related to, and thus “pertained to” the matters identified during the interchanges.

With regard to FedTec’s assertions that the IN instructions were unclear or latently ambiguous, or that the agency changed its interpretation of the instructions during the procurement, the agency rejects both assertions, noting that the terms at issue had been presented to offerors throughout the procurement, and had been uniformly applied throughout. Resp. to Supp. Protest at 6-8. More specifically, the intervenor argues that FedTec’s position is untenable because the record shows that FedTec, in revising its proposal in response to prior INs, exercised a broad interpretation of the language for which it now seeks a narrow interpretation.¹⁴ Intervenor’s Request for Dismissal and Comments at 15-17. The intervenor maintains that it is FedTec---not the agency--that has altered its prior interpretation of the language. Similarly, the intervenor asserts that, in the context of FedTec’s prior responses, any alleged ambiguity regarding IN-003 was patent, not latent.

With regard to task order procurements, while FAR subpart 16.5 does not establish specific requirements for interchanges between the agency and offerors, such interchanges must be fair, equal, and not misleading. *See, e.g., CGI Fed. Inc., B-403570 et al.*, Nov. 5, 2010, 2011 CPD ¶ 32 at 9. In this context, when an agency

¹² In contrast, FedTec’s proposed staffing approach did not employ cross-utilization of personnel. AR, Tab 29, FedTec Response to IN-003 at 11.

¹³ As noted above, the solicitation defined interchanges as: “fluid interaction(s) between the Contracting Officer (CO) and offerors that may address any aspect of the proposal and may or may not be documented in real time.” AR, Tab 14, FOPR at 7.

¹⁴ Specifically, the intervenor references FedTec’s responses to two INs the agency issued to FedTec earlier in the procurement. The first IN presented several questions regarding FedTec’s proposed staffing under various PWS chapters, see AR, Tab 20, FedTec IN-001; the second IN questioned FedTec’s calculation of a certain fee that was separate and apart from the proposed fixed fee, and identified errors in FedTec’s calculation of its individual labor rates. See FedTec IN-002 at 1. Nothing in either of the INs made any reference to the fixed fee FedTec proposed. Nonetheless, in its proposal revisions following receipt of those INs, FedTec made various changes--including lowering its fixed fee from [redacted] percent to [redacted] percent. AR, Tab 22, FedTec Response to IN-001.

seeks revisions to proposals, the agency may, in appropriate circumstances, limit such revisions. See, e.g., *CACI, Inc.-Fed.*, B-416549, Sept. 13, 2018, 2018 CPD ¶ 318 at 3. In reviewing the scope of such limitations, our Office will consider both the language of the agency's instructions and the particular facts presented in the procurement. See, e.g., *NCS Techs., Inc.*, B-413500.2, Feb. 14, 2017, 2017 CPD ¶ 123 at 4-6; *Imagine One Tech. & Mgmt., Ltd.*, B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 22; *Resource Consultants, Inc.*, B-293073.3 *et al.*, June 2, 2004, 2005 CPD ¶ 131 at 7-8; *Rel-Tek Sys. & Design, Inc.--Modification of Remedy*, B-280463.7, July 1, 1999, 99-2 CPD ¶ 1 at 4 n.5.

Here, we reject FedTec's assertion that CompQsoft's proposal revisions went beyond the scope of the agency's instructions. Our conclusion in that regard reflects the plain meaning of the words "pertaining to" in the context of the particular facts presented. As an initial matter, for the reasons advanced by the agency and the intervenor, we agree that the plain meaning of the words "pertaining to" is synonymous with the words "related to" or "connected to." Further, we believe that the identification of matters that are related or connected depends on the particular facts presented in a given procurement. Here, as noted above, the solicitation permitted offerors to propose cross-utilization of personnel, and CompQsoft's proposed staffing plan employed that approach. The adjustment of staffing in one area by CompQsoft was therefore reasonably related or connected to CompQsoft's overall staffing approach. In addition, as part of the interchange, CompQsoft sought clarification from the agency regarding the number of hours per FTE that was required, the agency provided clarification regarding the solicitation's requirements in that regard, and CompQsoft made changes to the number of hours per FTE consistent with this aspect of the agency's guidance. Accordingly, we conclude that the agency reasonably determined that CompQsoft's proposal revisions were within the scope of the items discussed during the interchange.

Finally, as discussed above, FedTec's prior interpretation of the language at issue here appears to have been less restrictive than the interpretation it now asserts was required. Specifically, the record here supports the intervenor's assertion that, in response to prior INs containing the same language at issue here, FedTec submitted proposal revisions that did not comply with the limitations it now seeks to impose.

In summary, based on our review of the record, we find no basis to sustain FedTec's protest on the basis of its assertions that: CompQsoft's proposal revisions were outside the scope of the agency's instructions; the instructions were latently ambiguous; or the agency changed its interpretation of the instructions.

The protest is denied.

Edda Emmanuelli Perez
General Counsel