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Decision

Matter of: Ashton Marine Company

File: B-422634

Date: September 5, 2024

David A. Rose, Esq., Rose Consulting Law Firm, for the protester.
Ian McDaniel, Esq., Department of the Army, for the agency.
Uri R. Yoo, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's elimination of protester's proposal from competition is denied where the record shows that the agency reasonably determined that the protester failed to provide a required resume for a key person.
 2. Protest that agency conducted discussions in a manner that was not meaningful or equal is denied where the record shows that the agency reasonably advised the protester of the agency's concerns with the protester's proposal and treated offerors in an even-handed manner.
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DECISION

Ashton Marine Company, a small business of Muskegon, Michigan, protests the award of a contract to Midwest Construction Company, LLC, a small business of Nebraska City, Nebraska, under request for proposals (RFP) No. W912P624R0006, issued by the Department of the Army, Corps of Engineers for the delivery of armor stone to six Lake Michigan harbors. The protester contends that the agency unreasonably eliminated Ashton's proposal from the competition and failed to conduct meaningful and equal discussions.

We deny the protest.

BACKGROUND

On February 14, 2024, the agency issued the RFP pursuant to the procedures of Federal Acquisition Regulation (FAR) part 15, seeking proposals to provide armor stone for breakwater repairs at six harbors of Lake Michigan, located in Wisconsin, Illinois,

and Indiana. Contracting Officer's Statement (COS) at 1-2; Agency Report (AR), Tab 3, RFP at 010, 016.¹ The solicitation contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity contract with a 3-year ordering period. RFP at 016.

Award was to be made on a lowest-priced, technically acceptable basis, considering price and compliance with the solicitation. *Id.* at 039-040. Under the compliance with the solicitation factor, the RFP advised that the agency would evaluate each offeror's proposal for compliance with the solicitation instructions, assessing a rating of acceptable or unacceptable. *Id.* at 040. To receive a rating of acceptable, the agency needed to find that a proposal complied with all requirements of the solicitation instructions. *Id.*

As relevant here, under the "[c]ontent [r]equirement" portion of the proposal instructions, the solicitation required offerors to provide, among other items, the following:

A current copy of the Key personnel resume and a letter of commitment.
Refer to the Scope of work, for the requirements of a Stone Material Control Supervisor.

Id. at 038. The RFP's scope of work, in turn, provided that the contractor "shall assign as key personnel, a Stone Material Control Field [] Supervisor," and specified minimum qualification requirements for the position. AR, Tab 4, Purchase Description at 070.

The agency received two timely submitted proposals, one from Ashton and one from Midwest. COS at 2. During the course of the evaluation, the source selection evaluation board (SSEB) found that both proposals failed to comply with the solicitation requirement to provide a resume and letter of commitment for the stone material supervisor position and, as a result, determined that both offerors' proposals were technically unacceptable. AR, Tab 9, SSEB First Interim Evaluation Report at 098-099. Specifically, for the protester, the agency found that Ashton's proposal included a resume for its "tugboat pilot and not a Stone Material Control Field Supervisor" and thus "failed to comply with the resume and letter [of] commitment, as required." *Id.* at 098. The agency also found that Midwest similarly failed to "comply with the solicitation instructions [to] provide a Key Personnel resume." *Id.* at 099. Consequently, the agency decided that a "round of discussions is needed to correct resume and letter of commitment deficiencies in both proposals." *Id.* at 099.

On April 9, the agency conducted discussions by providing oral evaluation notices (EN) over the telephone to both offerors. AR, Tab 10, Oral EN Memorandum at 101. Specifically, at or about 3:20 p.m., the contracting officer placed a call to each offeror and left a voicemail message requesting a return call. *Id.* Both offerors returned the

¹ The RFP was amended seven times. COS at 2. Citations to the solicitation are to the conformed version of the RFP provided at tab 3 of the agency report. Citations to pages in the documents submitted with the agency report are to the sequential BATES numbers the agency assigned to those documents.

phone call--Midwest at 3:45 p.m. and Ashton at 4:37 p.m.--and the contracting officer informed each offeror that "they did not meet the resume and letter of commitment requirements." *Id.* The contracting officer requested revised proposals by the close of business on the following day, April 10. *Id.* When discussions were held with Ashton at 4:37 p.m., the contracting officer had concluded her workday and was attending an outdoor baseball game.² COS at 4.

On April 10, at 11:21 a.m., the agency received a proposal revision from Midwest, which included the required resume and letter of commitment for Midwest's proposed stone supervisor. *Id.*; see AR, Tab 14, Midwest Proposal Revision Email at 111-115. Ashton, on the other hand, called the contracting officer at 9:22 a.m. and 10:35 a.m. and, when unable to reach the contracting officer, left a voice message requesting a return call. COS at 5. At 10:48 a.m., an Ashton employee emailed the contracting officer, stating that the president of Ashton had questions but could not email or receive calls at the time; the email requested a time after lunch for a call with the contracting officer. *Id.*; see AR, Tab 11, Ashton Proposal Revision Emails at 102. The contracting specialist for the procurement responded to the email at 10:56 a.m. and requested that Ashton "relay [its] questions . . . via email." AR, Tab 11, Ashton Proposal Revision Emails at 102.

At 4:48 p.m. on April 10, Ashton provided a letter of commitment for its proposed stone supervisor and, in the cover email, referenced an earlier email with questions about the resume. *Id.* at 104-105; AR, Tab 12, Ashton Letter of Commitment at 108. When the contracting officer replied at 4:52 p.m. that she had not received any earlier email regarding the resume, Ashton responded at 5:12 p.m., attaching an earlier email not previously received by the agency, and asked "what I need to do to meet the qualifications on my resume." *Id.* at 103-104; COS at 6. The contracting officer replied at 5:20 p.m. that Ashton's "resume must meet the requirements in paragraph 3.2.2 of the [scope of work]," to which Ashton responded at 5:43 p.m. as follows:

Are you referring to section 3.2.2 titled "SMC FIELD SUPERVISOR PERSONNEL QUALIFICATIONS"?

If so, that would be [Employee X], not me. He is qualified for the Stone Material Control Field [] Supervisor role.

AR, Tab 11, Ashton Proposal Revision Emails at 103. This email was followed by another email at 9:08 p.m. in which Ashton's president stated as follows:

I will send over a resume for [Employee X] tomorrow. When you mentioned my resume did not me[et] the qualifications, I did not realize

² The protester alleges that the conditions during the call were "less than ideal" because the contracting officer was outdoors at a baseball game. Protest at 2. The contracting officer disputes the allegation, asserting that the substance of the call occurred while the contracting officer was in a parked vehicle with windows closed and that, during the call, the protester made no complaints about his ability to hear or understand the contracting officer. COS at 5.

you were referring to me as the [stone material control] field supervisor.
My apologies for the misunderstanding.

Id. at 106. At 9:24 a.m. the following day, April 11, Ashton emailed a resume of Employee X, stating that this was “who we plan on using for the [stone material control] field [s]upervisor as long as he is approved by your team.” *Id.*; see AR, Tab 13, Ashton Key Person Resume at 109.

The SSEB reviewed the revised proposals and concluded that Ashton’s proposal remained deficient and technically unacceptable because Ashton submitted the required resume and letter of commitment for its proposed stone supervisor after the close of business on April 10.³ AR, Tab 16, Revised SSEB Interim Evaluation Report at 122. Based on this conclusion, the agency eliminated Ashton from the competition. AR, Tab 17, Competitive Range Determination Final Update at 129.

After notifying Ashton of its elimination from the competition and providing a pre-award debriefing, the agency made award to Midwest. COS at 7. This protest followed.

DISCUSSION

Ashton alleges that the agency’s decision to eliminate Ashton’s proposal from the competition was unreasonable because it was based on a latent ambiguity in the solicitation with respect to the key personnel resume and letter of commitment requirement. Protest at 4-7. The protester also contends that the agency’s discussions were improper because they were conducted in a manner that failed to sufficiently clarify the ambiguous requirement and failed to provide Ashton with the same opportunity to correct its proposal as was provided to Midwest. *Id.* at 2, 4, 7-9.

As an initial matter, in reviewing protests challenging the evaluation of an offeror’s proposal, 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 solicitation criteria and applicable procurement statutes and regulations. *NLT Mgmt. Servs., LLC*, B-415936.11 *et al.*, June 19, 2020, 2020 CPD ¶ 217 at 4. In a negotiated procurement, as is the case here, a proposal that fails to conform to the material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award. *NLT Mgmt. Servs., LLC, supra*; *ARBEIT, LLC*, B-411049, Apr. 27, 2015, 2015 CPD ¶ 146 at 4. In this regard, it is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. *South Bay Sand Blasting and Tank Cleaning, Inc.*, B-416822, Dec. 20, 2018, 2018 CPD ¶ 431 at 4.

³ While the solicitation did not define “close of business,” the SSEB noted that FAR clause 52.212-1, incorporated by reference into the solicitation, provides 4:30 p.m. as the “local time cut-off.” AR, Tab 16, Revised SSEB Interim Evaluation Report at 122.

Key Personnel Resume Requirement

As noted above, the protester alleges that the agency unreasonably found that Ashton's proposal failed to comply with the solicitation's requirement to submit a key personnel resume and letter of commitment because the requirement was latently ambiguous. Specifically, the protester contends that the solicitation provision requiring "the [k]ey personnel resume and a letter of commitment" was unclear because it failed to clearly define the term "key personnel" and did not indicate whose letter of commitment was being required. Protest at 4-7. The agency responds that the solicitation was unambiguous, and that the agency reasonably found that the protester's proposal failed to comply with the requirement. Memorandum of Law (MOL) at 4-6.

Where a dispute exists as to a solicitation's actual requirements, we begin by examining the plain language of the solicitation. *Qwest Gov't Servs., Inc. d/b/a CenturyLink QGS*, B-419597, B-419597.2, May 24, 2021, 2021 CPD ¶ 217 at 5; *Point Blank Enters., Inc.*, B-411839, B-411839.2, Nov. 4, 2015, 2015 CPD ¶ 345 at 4. We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. *Qwest Gov't Servs., Inc. d/b/a CenturyLink QGS, supra*; *Desbuild Inc.*, B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 5. If the solicitation language is unambiguous, our inquiry ceases. *Id.* An ambiguity exists where two or more reasonable interpretations of the solicitation are possible. *Id.* Here, as explained below, we conclude that the disputed solicitation provision was not ambiguous because the provision is susceptible to only one reasonable interpretation.

As noted above, the solicitation required "[a] current copy of the Key personnel resume and a letter of commitment" and directed offerors to "[r]efer to the Scope of work, for the requirements of a Stone Materials Control Supervisor." RFP at 038. The solicitation's scope of work, in turn, required the contractor to "assign as key personnel, a Stone Material Control Field [] Supervisor." AR, Tab 4, Purchase Description at 070. Later in the same section, the scope of work again stated that "[t]he [stone material control field supervisor] is considered key personnel." *Id.* The term "key personnel" does not appear again in any other portion of the solicitation. See *generally, id.*

On this record, we find the agency's interpretation of the solicitation to be reasonable. When read as a whole, these solicitation provisions reasonably advised offerors to submit a resume and a letter of commitment for the key personnel position of stone supervisor.

On the other hand, we find the protester's interpretation of the solicitation requirement to be unreasonable. In this regard, Ashton contends that the phrasing of the instructions could be interpreted to require a resume of "the key personnel of the company" and a letter of commitment from the stone supervisor. Protest at 6. Ashton further argues that "in a corporation, there are a lot of key personnel." *Id.* at 6-7. We find this argument unavailing when reading the solicitation as a whole. Nothing in the solicitation's express language--identifying the stone supervisor as the sole key person--supports the

protester's position that the term "key personnel" in the solicitation could refer to any other "key" employee of the company. See AR, Tab 4, Purchase Description at 070.

The protester also argues that the solicitation requirement was confusing because the instructions referred offerors to the scope of work "for requirements of Stone Materials Control Supervisor" when the scope of work described a "Stone Material Control *Field* Supervisor." Comments at 3. The protester, however, does not explain how--or even whether--Ashton was misled by this slight difference in terminology, especially when Ashton's timely submitted resume was for a tugboat operator rather than a stone material control supervisor or a stone material control *field* supervisor.

In sum, we find Ashton's interpretation of the solicitation to be unreasonable and therefore find that the solicitation was not ambiguous. See *Desbuild Inc., supra*. Accordingly, we find no merit to the argument that the agency unreasonably evaluated Ashton's proposal. Rather, the agency reasonably rejected the protester's proposal for failing to comply with a material requirement of the solicitation.

Conduct of Discussions

Ashton also contends that the agency's discussions with Ashton, pertaining to the key personnel resume requirement, were not meaningful or equal to the discussions conducted with Midwest. Protest at 2, 7-8. In this regard, the protester argues that discussions were not meaningful because the contracting officer conducted oral discussions while "attending an outdoor event[] that was very noisy, without access to the contract file," and "could not answer [Ashton's] specific questions." *Id.* at 2, 7. The protester also argues that discussions were unequal because, unlike with Ashton, discussions with Midwest were "conducted in ideal conditions" while the contracting officer was "in the office environment and had access to the [s]olicitation and could answer any questions [Midwest] had about the requirement." *Id.* at 7.

The agency responds that its discussions with Ashton were meaningful and equal to those held with Midwest. MOL at 6-11. Specifically, the agency contends that, despite not being in the office at the time she held discussions with Ashton, the contracting officer conveyed the same information to both offerors. *Id.* at 7, 9-10. In this regard, the contracting officer identified the offerors' failure to meet the solicitation requirement for a key person resume and letter of commitment, and both offerors acknowledged their understanding of this information. *Id.*; COS at 4-5. The agency further maintains that the protester's allegation about the awardee's ability to obtain additional information during discussions is factually incorrect. MOL at 9-10; COS at 5. Instead, the contracting officer purposely limited the information conveyed to both offerors to pointing out that their proposal submissions "did not meet the resume and letter of commitment requirements in the scope of work." COS at 4.

Agencies have broad discretion to determine the content and extent of discussions, and we limit our review of the agency's judgments in this area to a determination of whether they are reasonable. *InfoPro, Inc.*, B-408642.2, B-408642.3, Dec. 23, 2014, 2015 CPD

¶ 59 at 9. When an agency engages in discussions with an offeror, the discussions must be meaningful, that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving the award. FAR 15.306(d)(3). The degree of specificity required in conducting discussions is not constant and is primarily a matter for the procuring agency to determine. *Synergy Sols., Inc.*, B-413974.3, June 15, 2017, 2017 CPD ¶ 332 at 10. An agency need not "spoon-feed" an offeror as to each and every item that could be revised to improve an offeror's proposal. *Wolverine Tube Inc. d/b/a Wolverine Industries*, B-418339.4, B-418339.5, July 26, 2022, 2022 CPD ¶ 219 at 9; *L-3 Sys. Co.*, B-404671.2, B-404671.4, Apr. 8, 2011, 2011 CPD ¶ 93 at 15. Further, an agency may not mislead an offeror--through the framing of a discussion question or a response to a question--into responding in a manner that does not address the agency's concerns, or misinform the offeror concerning a problem with its proposal or about the government's requirements. *Wolverine Tube Inc. d/b/a Wolverine Industries, supra*. In addition, offerors must be afforded equal opportunities to address the portions of their proposals that require revision, explanation, or amplification. *Unisys Corp.*, B-406326 *et al.*, Apr. 18, 2012, 2012 CPD ¶ 153 at 7.

Here, we find the agency reasonably conducted discussions with Ashton about its proposal's noncompliance with the key personnel resume requirement and that these discussions were meaningful. The record shows that the protester and the agency disagree on the actual sound quality of the telephonic discussions held with the protester and the exact words exchanged during the discussions. See COS at 4-5; Protest, exh. 7, Affidavit of Ashton's President at 1. Our review of the record, however, also shows that there is no reasonable dispute about the baseline information conveyed to, and understood by, Ashton during the discussions: Ashton's proposal "did not meet the resume and letter of commitment requirements" of the solicitation. AR, Tab 10, Oral EN Memorandum at 101; see Protest, exh. 7, Affidavit of Ashton's President at 1.

In this regard, in an affidavit submitted with the protest, Ashton's president attests that the contracting officer informed him during discussions that he "needed to submit a letter of commitment for the stone inspector that [he] planned to use for the job and that [his] resume did not meet the qualifications." Protest, exh. 7, Affidavit of Ashton's President at 1. In addition, the record shows that, on the proposal revision due date, Ashton's president emailed the contracting officer, apologizing for his misunderstanding and stating that he would send the resume of Ashton's stone supervisor the next day. AR, Tab 11, Ashton Proposal Revision Emails at 106. In that email, Ashton's president explained that, when the contracting officer "mentioned [his] resume did not me[et] the qualifications," he "did not realize" that the contracting officer was referring to the resume for the stone supervisor. *Id.*

On this record, we find that the agency meaningfully conducted discussions with Ashton, notwithstanding the protester's unhappiness with the amount of "details or specifics" or the lack of "clarification on the revision required for compliance" provided during discussions. See Protest at 4; Protest, exh. 7, Affidavit of Ashton's President at 1. As discussed above, the solicitation expressly required "[a] current copy of the

Key personnel resume and a letter of commitment” and identified the stone supervisor as the sole key person required under the contract. RFP at 038; AR, Tab 4, Purchase Description at 070. Therefore, when the contracting officer informed Ashton that its resume submission did not meet solicitation requirements, the agency sufficiently led the protester to the area of its proposal requiring revision: the key person resume and letter of commitment.⁴ Having been led to the area of its proposal that was deficient, it was incumbent upon the protester to review the contents of its proposal against the unambiguous solicitation requirement. The agency was not required to “spoon-feed” Ashton with details or specifics about how to correct the deficiency with its resume submission. See *Wolverine Tube Inc. d/b/a Wolverine Industries, supra*.

We similarly find no merit to the protester’s assertion that the agency’s discussions were unequal. Although the protester asserts that the awardee was provided a greater “level of opportunity to correct” its proposal, the protester provides no support for this assertion. Protest at 2. In this regard, the protester speculates that, because Midwest was able to reach the contracting officer “while the Contracting Officer was in the office environment and had access to the Solicitation,” the contracting officer “could answer any questions they had about the [key personnel resume] requirement.” *Id.* at 7.

The contracting officer, however, contemporaneously documented that she “informed both of [the offerors], they did not meet the resume and letter of commitment requirements and gave them both until close of business on 10 April 2024 to submit a revised proposal and comply with the requirements.” AR, Tab 10, Oral EN Memorandum at 101. The contracting officer adds that she was careful with her selection of words and “did not provide additional detailed clarification” to Midwest; rather, she informed Midwest that she “could not provide any additional clarification, because [she] needed to ensure consistent communications with both offerors due to this being an oral discussion as part of the formal source selection process.”⁵ COS at 4. The protester provides no evidence, other than speculation, to rebut the agency’s representations on the content of the discussions with Midwest. On this record, we find that Ashton has failed to establish that the agency conducted discussions in an unequal manner. Accordingly, we find no basis to sustain this protest allegation.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

⁴ We note further that Ashton’s president concedes that he understood from the discussions that he “needed to submit a letter of commitment for the stone inspector,” Protest, exh. 7, Affidavit of Ashton’s President at 1, but still failed to submit the letter of commitment until after the close of business on the proposal revision due date.

⁵ The contracting officer also attests that she likewise informed Ashton during discussions that she “could provide no additional clarification due to this being an oral discussion as part of the formal source selection process.” COS at 5.