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Decision

Matter of: Wits Solutions, Inc.

File: B-421775.14

Date: November 22, 2024

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DIGEST

Protest challenging exclusion of the protester's proposal from consideration for the award of one domain number within the scope of an indefinite-delivery, indefinite-quantity contract award is denied where the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Wits Solutions, Inc.,¹ of Ashburn, Virginia, protests the General Services Administration's (GSA) award decision with respect to the proposal it submitted under request for proposals (RFP) No. 47QRCA23R0001. GSA issued the RFP for the award of multiple indefinite-delivery, indefinite-quantity (IDIQ or MA-IDIQ) governmentwide acquisition contracts for a variety of services-based solutions, known as One Acquisition Solution for Integrated Services Plus (OASIS+). The protester contends that GSA's decision to exclude Wits from consideration under one domain number within the scope of an IDIQ contract award was unreasonable and inconsistent with the terms of the solicitation.

We deny the protest.

¹ Wits submitted a proposal and proposed to team with several companies as subcontractors, including GrammaTech, Inc. Contracting Officer's Statement (COS) at 9; Agency Report (AR), Tab 5, Wits Proposal, Wits Team.

BACKGROUND

The agency issued the solicitation on June 15, 2023.² AR, Tab 4, RFP at 1. The OASIS+ contract is intended “to provide Government agencies with total integrated solutions for a multitude of services-based requirements on a global basis.” *Id.* at 21. The contract consists of six distinct IDIQ contract vehicles for different socioeconomic programs (*i.e.*, unrestricted, small business, woman-owned small business, 8(a), service-disabled veteran-owned small business, and Historically Underutilized Business Zone). *Id.* at 12. Within each contract vehicle, the RFP anticipated the award of an unlimited number of contracts but specified that a contractor may not hold more than one master contract³ within any IDIQ contract vehicle--for example, the RFP explained that a contractor may not hold two small business master contracts. *Id.* at 83, 194, 196. The small business category is relevant to this protest, and it was organized into the following seven domains: management and advisory; technical and engineering; research and development; intelligence services; environmental services; facilities; and logistics. *Id.* at 23.

The RFP explained that these domains were “within scope of the Master Contract” and listed associated North American Industry Classification System (NAICS) codes for each domain--for example, the RFP listed eight NAICS codes for orders under the management and advisory domain. *Id.* at 23-24. The RFP also referred to these domains as contract line item numbers (CLINs), and an offeror was permitted to submit a proposal for more than one domain CLIN. See *id.* at 145.

The solicitation provided that a proposal would be selected for award if the proposal was submitted by a qualifying offeror⁴ and the proposal received at least 36 of the 50 available scored credits for a specified domain.⁵ *Id.* at 202. Relevant here, distinct from the scored evaluation, the RFP provided that the agency would initially conduct an

² The agency issued six amendments to the RFP. Citations of the RFP in this decision refer to the version of the solicitation issued with amendment 6 and submitted as tab 4 to the agency report.

³ The RFP refers to the family of OASIS+ services contracts as the master contract(s). RFP at 12. The scope of the OASIS+ contract was organized by domains, with each domain referring to functional groupings of related services. *Id.*

⁴ The RFP defined a qualifying offeror as an offeror that met the following criteria: (1) is determined to be responsible, (2) submits a proposal that conforms to the RFP requirements, (3) meets all technical requirements of the RFP, (4) submits fair and reasonable pricing, and (5) is otherwise eligible for award. RFP at 196.

⁵ Offerors could earn credits for the following scored evaluation elements: qualifying project experience; federal prime contractor experience; systems, rates, and clearances; certifications; and past performance. RFP at 197. The credits available for each evaluation element varied by domain, and the RFP included a qualifications matrix and scorecard for each domain. *Id.*

acceptability review to verify that the proposal met all of the submission requirements on an acceptable/unacceptable basis, and that “[a]ny proposal that fails the Acceptability Review will be removed from consideration for award[.]” *Id.* at 196-197. In this regard, solicitation section L.5, Proposal Content, identified information the offerors were required to submit, and the RFP stated that “submissions detailed in Section L.5.1 are mandatory requirements to be eligible for award.” *Id.* at 150.

Among those submission requirements, the RFP identified requirements applicable to offerors with contractor teaming arrangements such as, specifically, proposed small business subcontractors. *Id.* at 150-151, 153-154. The RFP stated in section L.5.1.3.2 that “[a]n offeror may agree with one or more other small businesses to have them act as its first-tier subcontractors under a potential OASIS+ award” subject to certain conditions, including:

The Offeror will ONLY be awarded those Domain CLINs under this MA-IDIQ in which the Offeror and all proposed subcontractors represent as small businesses under the associated size standard(s), or qualify as a small business under one of the exceptions to affiliation set forth in 13 C.F.R. § 121.103(b).⁶

Id. at 153-154.

In explaining the basis for award, the RFP reiterated this requirement by specifying:

If the Government determines the Offeror meets the qualification standard for a particular Domain, under the RFPs that are set aside for small business concerns, the firm would be awarded only the Domain CLINs in which the entity represents that it is a small business concern for the size standard corresponding with the NAICS code assigned to each CLIN. The awarded CLINs represent the fair opportunity pools in which the awardee may compete. Offerors will not be awarded any Domain CLINs in which they represent their size as other than small. . . .

Id. at 195. Here, the RFP also reiterated the condition that, for offerors submitting “a proposal with proposed small business subcontractors IAW [in accordance with] Section L.5.1.3.2, the Offeror will ONLY be awarded those Domain CLINs in which the Offeror and all proposed subcontractors represent as small businesses under the associated size standard(s).” *Id.*

Proposals were due no later than October 20, 2023. Wits submitted proposals to be considered for a small business IDIQ contract with three domains: the management and advisory domain, the technical and engineering domain, and the research and

⁶ Because the exceptions to affiliation in 13 C.F.R. § 121.103(b) are not relevant to the protest allegations, and for the ease of discussion, our decision does not further address this part of the RFP language.

development domain. After considering Wits's proposal, on July 30, 2024, GSA notified Wits that the firm had been identified as an apparent awardee to receive a small business IDIQ contract, and it provided Wits with a written debriefing. AR, Tab 7, Award Notification Letter. GSA identified two domain CLINs as part of the apparent award to Wits: the technical and engineering domain, and the research and development domain. GSA explained that Wits had not been awarded the management and advisory domain CLIN because "the proposal failed the acceptability review"--specifically, "[t]he Offeror does not qualify as a small business for at least one of the NAICS codes in the Management & Advisory Domain." *Id.* at 5. In response to questions from Wits, the agency further explained:

In reviewing your submission, there are 5 subcontractors proposed at the RFP level and each of these subcontractors was evaluated for size standards at the RFP (master contract) level. GrammaTech has average annual receipts over the size standard for the M&A [management and advisory] domains. Regardless of team member mix at the domain level, all proposed subcontractors size standards are taken into consideration for the entire RFP as a whole.

Protest, exh. 2, Debriefing Follow-up Email at 1. The agency further stated that this "concludes your debriefing," *id.*, and this protest followed.

DISCUSSION

Wits argues that the agency's decision not to include the management and advisory domain in its small business IDIQ contract award was "unreasonable and inconsistent with the terms of the solicitation." Protest at 18. The record shows that Wits included GrammaTech as a subcontractor in its proposal to receive an OASIS+ small business IDIQ contract award, and Wits does not dispute that GrammaTech does not qualify as small under the NAICS codes applicable to the management and advisory domain. However, Wits states that its proposed approach to the management and advisory domain included only itself--not GrammaTech or any subcontractors--to perform the work under that domain. In the protester's view, "[i]f, as here, an offeror did not propose a teaming subcontractor for a particular domain submission, then only the offeror's small business status would apply." *Id.* at 22. In other words, Wits asserts that it interpreted the solicitation to mean that "the offeror and all subcontractor(s) proposed for a particular domain need to qualify under the size standards for that particular domain" and, therefore, that it was improper for the agency to exclude the protester from consideration for the management and advisory domain because it had not specifically proposed GrammaTech as a subcontractor for the management and advisory domain. *Id.*

The agency responds that its decision to exclude Wits from consideration under the management and advisory domain was consistent with the terms of the solicitation and applicable procurement law and regulation. First, the agency explains that team arrangements, like the one Wits entered into with GrammaTech as a proposed subcontractor, "are formed at the contract level," and this is consistent with the

solicitation stating that “a contractor may not hold more than one Master Contract within any IDIQ (*i.e.*, one contractor cannot hold more than one OASIS+ [small business] contract).” Memorandum of Law (MOL) at 2; RFP at 83. In other words, as the contracting officer explains: offerors were eligible for a single master OASIS+ IDIQ contract; teaming arrangements are accomplished at the master contract level, not the domain level; and the solicitation does not contemplate the award of separate contracts down at the domain level. COS at 11, *citing, e.g.*, RFP at 83, 153-54.

Second, the agency explains that this structure for this IDIQ contract vehicle is consistent with and reinforced by the solicitation provisions for offerors with proposed small business subcontractors. The agency reiterates the plain language of the solicitation, which states, as noted above, that an offeror “will ONLY be awarded those Domain CLINs under this MA-IDIQ in which the Offeror and all proposed subcontractors represent as small businesses under the associated size standard(s).” MOL at 2; RFP at 154, 195. The agency further explains that this requirement was “consistently reinforced” during the questions and answers that were incorporated into the solicitation, as well as at a pre-proposal conference presentation. MOL at 2; AR, Tab 8, OASIS+ Questions and Answers Group 3 at 5; AR, Tab 9, OASIS+ Pre-Proposal Conference Presentation at 11 (stating that “[o]fferors will only be awarded Domain CLINs based on entire team’s size”). For example, in response to a question about partnering with a large company, the agency responded that “under the unrestricted solicitation, you may have a [contractor team agreement] partner with a large company,” but cautioned offerors to reference the solicitation for small business and socio-economic set-asides and specifically reiterated: “Offerors will not be awarded any Domain CLINs in which any team member represents its size as other than small[.]” AR, Tab 8, OASIS+ Questions and Answers Group 3 at 5; MOL at 10.

In the agency’s view, the solicitation had a “clear requirement that *all team members* must meet the size standards to be eligible for award” and did not, contrary to the protester’s interpretation, specify that the agency would check the size standards of subcontractors only according to whether they were proposed for a particular domain. MOL at 10. Because Wits proposed to team with GrammaTech as a subcontractor for an OASIS+ small business IDIQ contract award, and because GrammaTech did not qualify as small under the associated size standards for the management and advisory domain, the agency argues that it properly excluded the firm from consideration for that one domain CLIN within the scope of the awarded IDIQ contract. *Id.* at 6.

In reviewing a protest challenging an agency’s evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency’s discretion. Rather, we will review the record to determine whether the agency’s evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *Computer World Servs. Corp.*, B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. When a protester and agency disagree over the meaning of solicitation language, we will 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 manner. *Constructure-Trison JV, LLC*, B-416741.2, Nov. 21, 2018, 2018 CPD ¶ 397 at 3. We begin our review of a dispute concerning the meaning of a solicitation term by examining the plain language. *Bluehorse Corp.*, B-414809, Aug. 18, 2017, 2017 CPD ¶ 262 at 5.

As noted above, the RFP stated that, for offerors with proposed small business subcontractors: “The Offeror will ONLY be awarded those Domain CLINs under this MA-IDIQ in which the Offeror and all proposed subcontractors represent as small businesses under the associated size standard(s).” RFP at 154, 195. The plain language of the RFP does not support the protester’s interpretation that the agency was to consider associated size standards for subcontractors “proposed for a particular domain” and not at the overall contract level. Protest at 22. As the agency points out, such an interpretation could result in having to make separate domain-by-domain contract awards to a single contractor, “such as one contract with team members for a certain Domain and another contract without team members for another Domain”--an outcome not permitted under the terms of the RFP, which stated that “a contractor may not hold more than one Master Contract within any IDIQ” contract vehicle. RFP at 83; see also COS at 12.

While the protester correctly points out that the RFP included seven domain CLINs, each with associated NAICS codes, Protest at 22, the protester has not established that these features altered the plain language of the RFP as discussed above. To the extent Wits argues that the submission and evaluation terms were ambiguous where the protester’s narrower interpretation inserts the term “for a particular domain” for checking size status, the protester’s position is based on, at best, a patent ambiguity in the terms of the solicitation. A patent solicitation ambiguity exists where the solicitation contains an obvious, gross, or glaring error. *International Bus. Machines Corp.*, B-417596.10, Mar. 17, 2021, 2021 CPD ¶ 127 at 15. An offeror has an affirmative obligation to seek clarification of a patent ambiguity prior to the due date for submissions. 4 C.F.R. § 21.2(a)(1); *Credence Mgmt. Sols., LLC*, B-420408, B-420408.2, Mar. 18, 2022, 2002 CPD ¶ 81 at 7. Where a patent ambiguity exists but is not challenged prior to the submission of solicitation responses, we will not consider subsequent untimely arguments asserting the protester’s own interpretation of the ambiguous provisions. *Jensen Promotional Items, Inc.*, B-421884, B-421884.2, Nov. 17, 2023, 2023 CPD ¶ 261 at 9. Wits did not challenge any alleged ambiguity in the RFP prior to proposal submission and, therefore, we will not consider it further.

As a final matter, the protester and the agency invoke language from the Federal Acquisition Regulation (FAR) about contractor team arrangements to support their contrasting positions. The relevant language of FAR section 9.603 states that, as a matter of policy, “the Government will recognize the integrity and validity of contractor team arrangements; *provided*, the arrangements are identified and company relationships are fully disclosed in an offer[.]” FAR 9.603.

In this regard, Wits complains that the agency “failed to acknowledge the specificity” and “integrity and validity” of its team arrangement in accordance with FAR section 9.603. Comments at 4. Wits points to various parts of its proposal submission

to emphasize that it did not propose its subcontractor GrammaTech to perform work under the management and advisory domain. Protest at 23-24, *citing* Protest, exh. 4, Symphony OASIS+ Small Business Page Printout at 8 (showing that it indicated “0 [zero]” subcontracting/teaming partners for its management and advisory domain submission), 49. For example, pointing to the subcontractor letter of commitment in its proposal, Wits complains that it “fully disclosed” its intent not to use GrammaTech to perform work under the management and advisory domain. Comments at 4. In the letter, GrammaTech stated that it “agreed to be a SUBCONTRACTOR to WITS Solutions Inc. (Prime Contractor/Offeror) on the OASIS+ MAC Request for Proposal (RFP) Response.” AR, Tab 5, Wits Proposal, Subcontractor Letter of Commitment--GrammaTech at 1. Later in the letter, GrammaTech stated that “specifically this teaming is for the OASIS+ bid for the Research and Development (R&D) Domain.” *Id.*

To the extent Wits claims these references allowed it to separate itself from GrammaTech in one part of its proposal and that the agency’s decision violated FAR section 9.603 by failing to “recognize the integrity and validity of contractor team arrangements,” we disagree. Indeed, the record demonstrates that the agency recognized Wits’s decision to submit a proposal for a small business IDIQ contract award using GrammaTech as a proposed subcontractor. See AR, Tab 5, Wits Proposal, Wits Team; AR, Tab 6, Wits Management and Advisory Domain Evaluation; Protest, exh. 2, Debriefing Follow-up Email at 1. The qualifying language in Wits’s proposal did not change the basis for evaluation established by the terms of the solicitation as discussed above. If Wits thought the solicitation should have allowed for the type of evaluation it argues FAR section 9.603 requires, as also explained above, Wits should have challenged the terms of the solicitation prior to the due date for submission of proposals. 4 C.F.R. § 21.2(a)(1).

In sum, there is no dispute that Wits proposed to team with GrammaTech for its proposal to receive an OASIS+ small business IDIQ contract, and GrammaTech is not considered small under the management and advisory domain CLIN’s size standards. See AR, Tab 5, Wits Proposal, Wits Team; AR, Tab 6, Wits Management and Advisory Domain Evaluation; Protest, exh. 2, Debriefing Follow-up Email at 1. On these facts, and consistent with the terms of the RFP discussed above, we agree with the agency’s position that it properly determined that Wits was not eligible for the management and advisory domain CLIN within the scope of its awarded IDIQ contract.

The protest is denied.

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