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Decision

Matter of: Point Blank Enterprises, Inc.

File: B-415021

Date: October 16, 2017

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DIGEST

Protest that agency improperly rejected protester's proposal is denied where protester failed to submit, with its proposal, the number of product demonstration models, as required by the solicitation.

DECISION

Protest that agency improperly rejected protester's proposal is denied where protester failed to submit, with its proposal, the number of product demonstration models, as required by the solicitation.

DECISION

Point Blank Enterprises, Inc., (PBE) of Pompano Beach, Florida protests its exclusion from the competitive range under request for proposals (RFP) No. D17PS00345, issued by the United States Special Operations Command (USSOCOM) for soft armor ballistic inserts. The protester argues that the agency unreasonably determined that PBE failed to submit the number of product demonstration models (PDMs) required by the solicitation.

We deny the protest.

BACKGROUND

On March 3, 2017, the agency issued the RFP, pursuant to Federal Acquisition Regulation (FAR) part 15, for SPEAR (Special Operations Forces Personal Equipment

Advanced Requirements) soft armor ballistic inserts. Agency Report (AR), RFP, at 1-48, 92.¹ The solicitation contemplated the award of an indefinite-quality, indefinite-delivery (IDIQ) contact with a 1-year base period and four 1-year options to the offeror or offerors submitting proposal(s) determined by USSOCOM to represent the best value.² The deadline for receipt of proposals was May 15. Id. at 1, 92.

Proposals were to be evaluated in three phases under the RFP.³ Id. at 92-93. During phase one, proposals were to be evaluated, on a pass/fail basis, to determine whether they met certain minimum solicitation requirements.⁴ Id. One of these minimum requirements mandated that offerors submit a specific number of PDMs with their proposal. RFP attach. 3 at 2; RFP at 86. Of relevance here, offerors were required to submit two “sets” of five different sizes of SPEAR plate shaped soft armor inserts.⁵ AR, Tab 5, RFP attach. 1, at 20. Offerors were also notified that a failure to meet the PDM submission requirement, or any other phase one evaluation requirement, would “constitute failure of the entire proposal” and would result in “remov[al] from further consideration of award.” RFP at 93.

The agency received [DELETED] proposals in response to the RFP, two of which were submitted by PBE. Contracting Officer Statement (COS) at 5. On July 24, PBE was notified that both of its proposals were excluded from the competitive range and, thereby, eliminated from the competition because PBE had failed to submit the correct number of PDMs required under the solicitation. AR, Tab 12, Notification of Exclusion from Competitive Range, at 2. PBE requested, and on July 26, received a pre-award debriefing. COS at 6. PBE filed its protest with our Office on August 1. Protest at 1.

¹ Citations to the RFP are to the conformed version of the solicitation provided in the agency report.

² The agency reserved the right to make a single award or multiple awards under the solicitation. RFP at 92.

³ If proposals made it past phase one of the evaluation, phase two required proposals to be evaluated using the following three factors, in descending order of importance: technical / management; past performance; and price. Ballistic testing would then take place in phase three of the evaluation. Id. at 92-93.

⁴ This phase of the evaluation was described in the RFP as a “Go/No-Go evaluation.” RFP at 92. The minimum requirements established for this phase were identified in attachment three of the solicitation. AR, Tab 6, RFP attach. 3, at 1-4; RFP at 93.

⁵ The five different sizes of the SPEAR armor components were identified as small, medium, medium-long, large, and x-large. RFP attach. 1 at 20.

DISCUSSION

The protester asserts that the agency unreasonably excluded PBE's proposals from the competitive range for failing to submit the requisite number of PDMs required by the solicitation.⁶ In this regard, the protester contends that the RFP contained a latent ambiguity, making it unclear exactly how many PDMs were required for submission. Protest at 8-10. In support of this contention, PBE asserts that because the RFP required offerors to price SPEAR soft armor inserts on an individual basis, rather than as a set, this created an ambiguity in the solicitation regarding the requisite number of PDMs in a set. Id. The protester also asserts that its latent ambiguity argument is further bolstered by the fact that there is no front or rear SPEAR plate armor insert because the item is interchangeable, and so submitting a front and back component is impossible. Id. at 10.

The agency argues that the RFP is unambiguous and that, reading the solicitation as a whole, it is clear that "two (2) sets in each of the five (5) size[s] listed equals ten (10) sets," and that nowhere in the solicitation "does it state that PDMs should be submitted in accordance with Section B CLIN Structure or that Section B should be considered when submitting PDMs."⁷ COS at 9 (emphasis omitted). We have reviewed all of the protester's contentions and find none provide a basis to sustain its protest.

Where 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. Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. Sygnetics, Inc., B-414649, Aug. 2, 2017, 2017 CPD ¶ 253 at 2. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. Id. Under our Bid Protest Regulations, a patent ambiguity must be protested prior to the time set for receipt of initial proposals, when it is most practicable to take effective action against such defects. Id.; 4 C.F.R. § 21.2(a)(1).

As mentioned previously, offerors were required to submit two "sets" of five different sizes of SPEAR plate shaped soft armor inserts. AR, Tab 5, RFP attach. 1, at 20. The solicitation defined the term "set" as including a front and rear plate component. Id.; RFP at 3-6, 12-15, 21-24, 30-33, 39-42. A plain reading of the language of the RFP indicates that one set of the submission requirement would entail 10 PDMs (front and

⁶ PBE submitted 10 PDMs for review, where the agency asserts that 20 PDMs were required by the solicitation. Protest at 1.

⁷ Section B of the RFP refers to the pricing schedule for the individual contract line item numbers (CLINs).

back plates for 5 different sizes). Accordingly, two sets would, by necessity, require 20 PDMs to be provided (2 x 10 PDMs). Although the solicitation required pricing for the SPEAR plate shaped soft armor inserts on an individual basis, offerors were required to specifically submit two sets of five different sizes to meet the RFP's PDM submission requirements. RFP attach. 1 at 20; RFP at 17. Furthermore, on May 9, 2017, the agency released answers to questions it received in response to the solicitation.⁸ AR, Tab 7, RFP Questions and Answers (Q&A), at 9. In response to a question regarding what was required to be submitted as a PDM, the agency confirmed that offerors had to submit two sets of the five sizes of the SPEAR plate shaped soft armor inserts.⁹ Id.

On this record, and in reading the solicitation as a whole, it is not apparent that any ambiguity exists in regards to the PDM submission requirement. However, to the extent that the differences in the pricing structure and PDM submission requirements for the SPEAR armor insert created any ambiguity, such ambiguity was patent, that is, apparent on the face of the solicitation and, thus, required to be protested before the due date for the submission of proposals. Moreover, if the protester believed that the agency improperly used the word "set" to describe the solicitation's PDM submission requirement because the SPEAR soft armor insert does not contain a front or rear component, that issue should have likewise been protested prior to the May 15 closing date for receipt of proposals. PBE's protest was filed on August 1, well after proposals were due. The protester's failure to timely protest this patent ambiguity provides no basis for relief here.

In the absence of a timely challenge to the RFP, we review the agency's evaluation to determine whether it was consistent with the agency's interpretation of the terms of the solicitation. Sygnetics, Inc., supra, at 3. An offeror that chooses to compete under a patently ambiguous solicitation does so at its own peril, and cannot later complain when the agency proceeds in a way inconsistent with its interpretation. Id. at 2. Here, the agency reviewed PBE's proposal to determine if it met the solicitation's phase one PDM submission requirements for 20 SPEAR soft armor inserts. AR, Tab 11, Competitive

⁸ The answers provided by the agency were in response to the sixth set of questions received in response to the RFP. AR, Tab 7, RFP Questions and Answers (Q&A), at 1.

⁹ Specifically, the Q&A provided:

Q2: For the SPEAR Plate Shaped Soft Armor Insert, please confirm unit of measure is EACH? However a SET of each size is to be provided as a PDM?

A2: The unit of issue within Section B of the solicitation for the SPEAR Plate Shaped Soft Armor Insert is EACH. However, per Attachment 1, Performance Specification, Appendix C Table C-3, vendors shall submit "2 sets" of each of the five sizes as PDMs for evaluation purposes.

Id. at 9.

Range Determination, at 2. The protester does not dispute that it did not submit 20 of the inserts. Protest at 11. The solicitation notified offerors that a failure to meet the phase one requirements of the evaluation would “constitute failure of the entire proposal” and would result in “remov[al] from further consideration of award.” RFP at 93. Since PBE failed to comply with the RFP’s PDM submission requirements, we find reasonable the agency’s decision to exclude it from the competitive range and reject the protester’s offer. Solicitation requirements are considered material to the needs of the government, and a proposal that fails to conform to such material terms is unacceptable and may not form the basis for award. TYBRIN Corp., B-298364.6, B-298364.7, March 13, 2007, 2007 CPD ¶ 51 at 5. Accordingly, we find nothing objectionable with the agency’s decision to reject PBE’s proposals for failing to meet the requirements of the solicitation.

The protest is denied.

Susan A. Poling
General Counsel