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Decision

Matter of: Global Solutions Ventures

File: B-420254; B-420254.2

Date: January 11, 2022

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Christopher Alwood, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency unreasonably evaluated the awardee's proposal with regard to the solicitation's security clearance requirements is denied where the agency's judgments were reasonable and consistent with the terms of the solicitation.
2. Protest that agency's price realism analysis was inadequate is denied where the record shows that the agency conducted its price realism analysis using applicable price analysis techniques, and with results that were reasonable and consistent with the terms of the solicitation.

DECISION

Global Solutions Ventures, LLC, of Bethesda, Maryland, protests the issuance of a task order to Jefferson Consulting Group, LLC, of Washington, DC, under request for proposals (RFP) No. 7200AA21R00059, issued by the United States Agency for International Development (USAID) for research and institutional and technical support services for USAID's Bureau of Africa. The protester contends the agency's evaluation of Jefferson's proposed approach to meeting the RFP's security clearance requirements and price realism analysis were unreasonable.

We deny the protest.

BACKGROUND

On May 26, 2021, USAID issued the RFP to firms holding contracts under the General Services Administration's (GSA) One Acquisition Solution for Integrated Services Small Business (OASIS SB) Pool 1 governmentwide acquisition contract (GWAC). Contracting Officer's Statement (COS) at 1. The RFP was issued as a set-aside procurement for women-owned small businesses. Agency Report (AR), Tab 2, RFP Amendment 0001 at 1. The RFP contemplated the issuance of a task order for a 5-year period, to provide institutional support services¹ to USAID's Bureau for Africa. RFP at 9-10.²

The RFP provided for the issuance of the task order on a best-value tradeoff basis, considering price and three non-price evaluation factors, in descending order of importance: (1) technical approach; (2) organizational capability; and (3) key personnel and management structure. *Id.* at 74. The RFP assigned each factor an associated number of points so that offerors would "know which areas require emphasis in the preparation of proposals," but did not describe whether or how points would be assessed as part of the evaluation. *Id.* The RFP noted that, in making the source selection decision, if the contracting officer determined that competing technical proposals were "essentially equal, cost factors may become the determining factor." *Id.* at 75.

As relevant here, section C.7.1 of the RFP, entitled "Facilities and Data Security," stated in relevant part:

Under this Classified Contract, the Contractor must possess and maintain a facility Security (Top Secret level) clearance from the Defense Security Service (DSS) that will allow the Contractor to request the processing and issuance of Top Secret security clearances for Contractor employees. USAID will accept offers from firms with a SECRET level [facility clearance (FCL)] at the time of proposal, but the offeror must demonstrate that they have an application in place at the time of award for a TOP SECRET FCL and have the ability to obtain the [Top Secret] Clearance for contractor staff by year 2 of the award. Alternatively, the offeror can demonstrate that they or their subcontractor has this ability at the time of award.

Id. at 23.

¹ The RFP specified that such institutional support services involved the successful offeror recruiting, hiring, and maintaining a "contracted technical, professional, operational, and administrative support staff" in both the United States and at missions in Africa. AR, Tab 4, RFP at 9.

² The agency amended the solicitation twice. Unless otherwise noted, citations in this decision are to the conformed copy of the solicitation issued with amendment 2.

To evaluate the organizational capability factor, the agency would assess “the capability of the [o]fferor and any proposed subcontractors to deliver the required services.” *Id.* at 74. With regard to the evaluation of whether offerors met the RFP’s security clearance requirements, the RFP specified only the following:

Failure to submit minimum proof of active “Secret” Facility Security Clearance (FCL), and demonstrate that they have the ability to obtain the Top Secret Clearance for contractor staff by year 2 of the award will result in the proposal being deemed non-compliant and the proposal will not be evaluated.

Id.

As relevant to this protest, the RFP required the agency to evaluate the realism of the price proposals. *Id.* at 75. Specifically, the RFP provided that the realism analysis would include determining “what the Government should realistically expect to pay for the proposed effort and the [o]fferor’s ability to perform the requirements of the contract.” *Id.* The solicitation stated that such a review would consider whether an offeror’s price proposal reflected “the work needed to be performed to implement the Offeror’s understandings of the requirements” and was consistent with the technical proposal. *Id.*

On or before the July 6 closing date, the agency received proposals from four offerors, including Global Solutions and Jefferson. COS at 2. After the initial evaluation of proposals, the agency entered into discussions with the offerors. See, e.g., AR, Tab 7, Jefferson Discussions. As part of its discussions with Jefferson, the agency stated it had evaluated certain labor rates proposed by Jefferson as “low.” *Id.*

After receipt of final proposals, the agency evaluated Global Solutions’s proposal as the highest technically rated with an evaluated price of \$70,458,376 and Jefferson’s proposal as the second-highest technically rated with an evaluated price of \$64,897,262.³ AR, Tab 15, Global Solutions Debriefing at 1. Based on the evaluation, the source selection authority found that despite the above ranking, Global Solutions’s and Jefferson’s technical proposals were “substantially equal” and Jefferson’s “much lower overall price . . . therefore presented the best value.” *Id.*; see also AR, Tab 12, Source Selection Decision Document at 1.

³ The record reveals only the relative ranking of the non-price evaluation factors and does not state the number of points assessed to each proposal under the non-price evaluation factors. See AR, Tab 15, Global Solutions Debriefing at 3 (noting that the ranking of technical proposal was done “by points”).

The agency subsequently notified Global Solutions of the award to Jefferson and provided Global Solutions a debriefing. AR, Tab 14, Notice of Award; AR, Tab 15, Global Solutions Debriefing. On October 8, Global Solutions filed the instant protest.⁴

DISCUSSION

Global Solutions challenges various aspects of the agency's evaluation of the offerors' ability to meet the RFP's security clearance requirements. Protest at 4-5; Comments & Supp. Protest at 2-6; Protester's Supp. Comments at 1-6. The protester also contends that the agency's price realism analysis was unreasonable. Protest at 5; Comments & Supp. Protest at 6-7; Protester's Supp. Comments at 6. For the reasons set forth below, we conclude that the protester's arguments provide no basis to sustain the protest.⁵

Security Clearance Requirements

Global Solutions disagrees with the agency's assessment that Jefferson's proposal met the RFP's top secret facility clearance requirement. Comments & Supp. Protest at 2-3, 5-6. In this regard, the protester interprets the RFP to contain two requirements related to security clearances. *Id.* at 2-3. First, Global Solutions argues that the RFP requires offerors to either possess a top secret facility clearance, or possess a secret facility clearance and demonstrate that it has an application for a top secret facility clearance in place at the time of award. *Id.* at 2. Global Solutions also interpreted the RFP to separately require that offerors demonstrate the ability to obtain top secret clearances for personnel requiring such clearances by year 2 of contract performance. *Id.* Global Solutions avers that the language of the RFP allowed a subcontractor to meet the latter requirement at the time of award, but did not permit an offeror to alternatively satisfy the requirement to demonstrate a top secret facility clearance application through a subcontractor with a top secret facility clearance. *Id.* at 2-3. Based on the above interpretation, Global Solutions contends that the agency's evaluation either unreasonably accepted Jefferson's "mere assertion" of compliance with the facility clearance application requirement⁶ or improperly allowed a subcontractor to meet this requirement in Jefferson's stead. *Id.* at 2-3, 5-6.

⁴ The task order at issue is valued in excess of \$10 million, and was issued under an indefinite-delivery, indefinite-quantity contract established by GSA. Accordingly, our Office has jurisdiction to consider Global Solutions's protest. 41 U.S.C. § 4106(f)(1)(B).

⁵ Global Solutions makes other collateral arguments. While we do not address each of the protester's allegations and variations thereof, we have reviewed them all and find the agency's evaluation reasonable and consistent with the solicitation's evaluation criteria.

⁶ Global Solutions also argues that Jefferson should have submitted significant proof of its top secret facility clearance application with its proposal, and the agency's reliance on Jefferson's unsupported assertion that it had prepared such an application was

The agency responds that it evaluated Jefferson's proposal in accordance with the solicitation's evaluation criteria. Memorandum of Law (MOL) at 7, Supp. MOL at 8. The agency argues that Jefferson met the requirement by proposing a subcontractor that possessed a top secret facility clearance. Supp. MOL at 5-6, 8. In this regard, the agency contends that the plain language of the RFP allowed offerors to meet the RFP's clearance requirements if either an offeror or proposed subcontractor possessed a top secret facility clearance at the time of award. Supp. MOL at 5-6.

Where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. *Bauer Techs., Inc.*, B-415717.2, B-415717.3, June 22, 2018, 2018 CPD ¶ 217 at 4. Where a protester and an agency disagree over the meaning of solicitation language, we will resolve the matter by assessing whether each posited interpretation is reasonable. *Anders Constr., Inc.*, B-414261, Apr. 11, 2017, 2017 CPD ¶ 121 at 3. To be reasonable, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Planned Sys. Int'l, Inc.*, B-413028.5, Feb. 21, 2018, 2018 CPD ¶ 126 at 6.

As noted above, the solicitation stated that the purpose of requiring the successful contractor to possess a top secret facility clearance was to "allow the [c]ontractor to request the processing and issuance of [t]op [s]ecret security clearances for [c]ontractor employees," noting that facilities clearance "is necessary in order to supply institutional contract staff." RFP at 23. The solicitation further provided that:

USAID will accept offers from firms with a SECRET level FCL at the time of proposal, but the offeror must demonstrate that they have an application in place at the time of award for a TOP SECRET FCL and have the ability to obtain the TS Clearance for contractor staff by year 2 of

unreasonable. *Id.* at 5-6. Were we to assume, for the sake of argument, that the protester's contentions regarding the interpretation of the facilities clearance requirements were correct, we would still not sustain a protest on this basis.

Our review of the solicitation's language found no evaluation criteria requiring that the agency consider the sufficiency of an offeror's demonstration of its top secret facility clearance application or mandating specific information in this regard in the proposal. Rather, with regard to security clearances, the solicitation specified only that the agency would evaluate: (1) whether an offeror submitted minimum proof of an active secret facility clearance and (2) whether the offeror demonstrated "that they have the ability to obtain" top secret clearance for contractor staff by the second year of contract performance. RFP at 74. Here, without more, the protester's arguments amount to disagreement with the agency's judgment and are insufficient to establish that the agency acted unreasonably. See *Vertex Aerospace, LLC*, B-417065, B-417065.2, Feb. 5, 2019, 2019 CPD ¶ 75 at 8.

the award. Alternatively, the offeror can demonstrate that they or their subcontractor has this ability at the time of award.

Id.

On this record, we find reasonable the agency's view that the RFP allowed offerors to meet the top secret facility clearance requirement solely through a subcontractor at the time of award.⁷ The plain language of the solicitation can be read to apply the instruction to demonstrate both (1) a top secret facility clearance application and (2) the ability to obtain top secret clearances for contractor staff in the second year of performance only to offerors with a secret facility clearance that do not propose a subcontractor with a top secret facility clearance. *Id.* at 23. The solicitation provides a singular "alternative" manner to meet the facilities clearance requirement by allowing an offeror to demonstrate "that they or their subcontractor has this ability at the time of award." *Id.*

We see nothing in the RFP's language requiring that an offeror with an active top secret facility clearance make the required demonstrations of top secret clearance capabilities "at the time of award." In this regard, an offeror with an active top secret facility clearance would not need to prepare an application to obtain one, and even the protester concedes that an active top secret facility clearance would adequately demonstrate an ability to obtain top secret clearances for contractor staff. See Comments & Supp. Protest at 3. Further, when describing the alternative manner of meeting the requirement to demonstrate top secret capabilities, the plain language of the RFP does not differentiate between an offeror's or a subcontractor's ability "at the time of award." When the above is read as a whole with the RFP's stated purpose of the facility clearance requirements--to be able to provide top-secret-cleared staff for contract performance--we find reasonable the agency's interpretation that a subcontractor could meet the requirement at the time of award by possessing an active top secret facility clearance.

In short, when read as a whole, the agency's reasonable interpretation of the RFP allows an offeror to meet the facility clearance requirement at the time of award in three ways: (1) possess an active top secret facility clearance; (2) possess an active secret facility clearance and propose a subcontractor that possesses an active top secret facility clearance; or, (3) possess an active secret facility clearance and demonstrate future top secret facility clearance capability. Accordingly, we find nothing improper

⁷ Notably, the protester is clear that its protest "is not a challenge to Jefferson's ultimate compliance" with the requirement to possess a top secret facility clearance. Protester's Supp. Comments at 5. Generally, such arguments that an awardee will not obtain required clearances during contract performance are matters of contract administration which our Office will not consider. 4 C.F.R. 21.5(a); see also *Aegis Defence Servs. Ltd.*, B-400093.4, B-400093.5, Oct. 16, 2008, 2008 CPD ¶ 205 at 9 (*citing Catapult Tech., Ltd.*, B-294936, B-294936.2, Jan. 13, 2005, 2005 CPD ¶ 14 at 7 n.7).

about the agency's conclusion that Jefferson's proposal met the RFP's facility clearance requirement at the time of award. See AR, Tab 6b, Jefferson Compliance Checklist at 2. The record shows that Jefferson demonstrated it possessed an active secret facility clearance and proposed a subcontractor that possessed an active top secret facility clearance. AR, Tab 4B, Jefferson Technical Proposal at 24, 46-47. In sum, we find both the agency's interpretation of the solicitation's facility clearance requirements and its assessment that Jefferson met these requirements to be reasonable and deny this basis of protest.⁸

Global Solutions also argues that, even if the agency's interpretation of the solicitation's terms was reasonable, it was still unreasonable for the agency to allow a subcontractor's facility clearance to meet the solicitation's facility clearance requirement. Comments & Supp. Protest at 3. Global Solutions explains that the agency's interpretation and actions here are contrary to section 2-100 of the Department of Defense (DOD) National Industrial Security Program Operating Manual (NISPOM), which, the protester argues, requires a prime contractor to possess the appropriate facility clearance required by a contract, even if all the classified work will be performed by subcontractors. *Id.*; Protester Response to Req. for Dismissal at 3.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012,

⁸ Global Solutions alternatively contends that its above arguments demonstrate a latent ambiguity in the terms of the solicitation. Comments & Supp. Protest at 3; Protester's Supp. Comments at 4. We note that a party's interpretation need not be the most reasonable to support a finding of ambiguity; rather, a party need only show that its reading of the solicitation is reasonable and susceptible of the understanding that it reached. *The HP Group, LLC*, B-415285, Dec. 14, 2017, 2017 CPD ¶ 385 at 5. Notwithstanding our conclusions above about the reasonableness of the agency's interpretation of the RFP, we also find reasonable the protester's interpretation that the RFP could be read to not allow an offeror with a secret facility clearance to meet the requirement that it have a top secret facility clearance application in place by proposing a subcontractor with a top secret facility clearance.

However, the protester cannot demonstrate that it was prejudiced by such a latent ambiguity. Where a solicitation contains a latent ambiguity, prejudice is measured with respect to the agency's intended meaning of the ambiguous provision. Thus, we examine whether the offeror would have altered its proposal to its competitive advantage if it had an opportunity to respond to the intended meaning. *STAcqME LLC*, B-417128, Feb. 25, 2019, 2019 CPD ¶ 95 at 6. Under this standard, we find nothing in the record demonstrating that the protester was competitively prejudiced; that is, had Global Solutions known that the terms of the solicitation allowed a subcontractor to meet the top secret facility clearance requirements at the time of award, there is no indication that it would have altered its proposal in any way.

2012 CPD ¶ 260 at 4. Our timeliness rules specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals or quotations be filed before that time. 4 C.F.R. § 21.2(a)(1).

As relevant here, DOD formalized the NISPOM into the Code of Federal Regulations, effective February 24, 2021. NISPOM, 85 Fed. Reg. 83300 (Dec. 21, 2020); 32 C.F.R. part 117. This formalization included the mandate relied upon by the protester, that a prime contractor must have a facility clearance at the same or higher classification level as a subcontractor that will perform all classified work under a contract. NISPOM, 85 Fed. Reg. at 83326; 32 C.F.R. § 117.9(a)(5). The agency issued amendment 02 to the RFP--which contained the final facility clearance requirements--on May 26, 2021. RFP at 1. Amendment 02 to the solicitation also set the due date for receipt of proposals as July 6. *Id.*

Given our conclusions, above, regarding the reasonableness of the agency's interpretation of the solicitation, we find that amendment 02 to the RFP put offerors on notice that an offeror with an active secret facility clearance could meet the facility clearance requirements at the time of award by proposing a subcontractor with a top secret facility clearance. Accordingly, we view Global Solutions's protest--that the agency's acceptance of a subcontractor's top secret facility clearance to meet the solicitation's facility clearance requirement was contrary to the NISPOM and its already implemented regulations--as a protest of the terms of the solicitation. Thus, in order to be timely, this ground of protest had to be filed no later than the closing time for receipt of proposals, on July 6. Global Solutions first argued that the agency's actions violated the NISPOM on October 21, more than three months after the July 6 closing date. See Protester's Response to Agency Req. for Dismissal at 3. We therefore dismiss this allegation as untimely.

Global Solutions also argues that, even if Jefferson met the top secret facility clearance requirement, the agency unreasonably evaluated this requirement on a pass/fail basis. Protest at 4-5; Comments & Supp. Protest at 5; Protester's Supp. Comments at 4-5. In this regard, the protester argues that the agency should have evaluated the offerors' approaches to top secret facility clearance compliance qualitatively, and, had the agency done so, it would have assessed the protester an enhanced evaluation credit for its allegedly superior approach. *Id.*

The agency responds that its pass/fail evaluation of the top secret facility clearance requirements was reasonable and in accordance with the terms of the RFP. MOL at 9-10; Supp. MOL at 12. The agency argues that the language of the RFP did not require it to evaluate the top secret facility clearance requirements, much less to do so qualitatively. *Id.*

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. *AECOM Mgmt. Servs., Inc.*, B-417639.2, B-417639.3, Sept. 16, 2019, 2019 CPD ¶ 322 at 9. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Vertex Aerospace, LLC*, B-417065, B-417065.2, Feb. 5, 2019, 2019 CPD ¶ 75 at 8.

Based on our review of the record, we find the agency's evaluation of the offerors' compliance with the top secret facilities clearance requirement unobjectionable. The above-noted RFP language describing the evaluation of security clearance requirements under the organizational capability evaluation factor clearly states that failure to demonstrate compliance with the security clearance requirements "will result in the proposal being deemed non-compliant and the proposal will not be evaluated." RFP at 74. While Global Solutions argues that it read this evaluation factor "as contemplating a substantive evaluation as to the offerors' various approaches to satisfying" the top secret facility clearance requirement, it does not explain such a reading or point to any language mandating that the agency conduct such a qualitative evaluation.⁹ See Protester's Supp. Comments at 4. In short, Global Solutions has not shown that the agency's evaluation of the top secret facility clearance requirement was inconsistent with the stated evaluation criteria or otherwise unreasonable. We deny this ground of protest.

Price Realism

Global Solutions also argues that the agency's price realism analysis was unreasonable. Comments & Supp. Protest at 6-7; Protester's Supp. Comments at 6-7. In this regard, the protester alleges that the agency failed to specifically review whether Jefferson's proposed price accounted for the costs of complying with the requirements related to top secret clearances. Comments & Supp. Protest at 6.

Where, as here, a solicitation provides for a price realism analysis, the depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. *Navistar Def., LLC; BAE Sys., Tactical Vehicles Sys. LP*, B-401865 *et al.*, Dec. 14, 2009, 2009 CPD ¶ 258 at 17. In reviewing protests challenging price realism evaluations, our focus is on whether the agency acted reasonably and in a manner consistent with the solicitation's requirements. *General Dynamics One Source, LLC; Unisys Corp.*, B-400340.5, B-400340.6, Jan. 20, 2010, 2010 CPD ¶ 45 at 9.

As noted above, the solicitation provided that the agency would conduct a price realism analysis "to determine what the Government should realistically expect to pay for the

⁹ Notably, Global Solutions argues only that it understood the organizational capability evaluation factor "allowed the [a]gency to give enhanced evaluation credit" when evaluating whether offerors met the top secret facility clearance requirement; and that nothing in this evaluation factor suggested that the agency would evaluate this requirement on a pass/fail basis. Comments & Supp. Protest at 5; Protester's Supp. Comments at 4.

proposed effort and the Offeror's ability to perform the requirements of the contract." RFP at 75. The solicitation stated that such a review would consider whether an offeror's price proposal reflected "the work needed to be performed to implement the Offeror's understanding[] of the requirements" and was consistent with the technical proposal. *Id.*

Here, the agency assessed the overall proposed prices for realism by comparing them both to the average of the other proposed prices and to the independent government cost estimate (IGCE). AR, Tab 11, Price Analysis at 7. The record further demonstrates that the agency specifically evaluated Jefferson's proposed labor rates and initially found that its proposed short-term technical assistance (STTA) position labor rates were low. AR, Tab 7, Jefferson Discussions at 1. After discussions, Jefferson's revised proposal included increased STTA labor rates which the agency found realistic. AR, Tab 11, Price Analysis at 11. On the basis of the above comparisons and considerations, the agency ultimately concluded that Jefferson's price was realistic. *Id.* at 10-11.

In our view, USAID reasonably conducted its price realism analysis because its methodology utilized price analysis techniques set forth in Federal Acquisition Regulation (FAR) section 15.404-1(b)(2). That section provides that an agency may determine realistic prices by, among other techniques, comparing offerors' prices and also comparing proposed prices against an IGCE. FAR 15.404-1(b)(2)(i), (v). The record discussed above shows that USAID combined those techniques to perform the instant price realism analysis.

Despite the general reasonableness of the agency's price realism analysis, Global Solutions maintains that the costs of complying with the RFP's top secret clearance requirements were significant enough that the agency should have specifically analyzed them as part of its price realism analysis. Protester's Supp. Comments at 6-7. As we noted above, the depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. *Navistar Def., LLC; BAE Sys., Tactical Vehicles Sys. LP, supra*. Here, the solicitation did not require the agency to specifically analyze whether the proposed prices accounted for the costs of complying with top secret clearance requirements, and Global Solutions does not identify any procurement statute or regulation limiting the agency's discretion in this regard.¹⁰ Thus, even if we

¹⁰ It is not clear that any such requirement in the RFP would have provided a basis to sustain the protest. As noted above, the agency conducted its realism analysis through comparison to the other proposed prices and the IGCE. AR, Tab 11, Price Analysis at 7. The protester does not explain how the realism analysis failed to take into account the cost of complying with the top secret clearance requirements where it was based in part on comparison to higher-priced proposals--including Global Solutions's--that presumably did include such considerations. Further, the price analysis states that the IGCE was developed using historical price information and prices paid for similar services. *Id.* at 6. Global Solutions also does not explain why such historical price

were to agree that Global Solutions's proposed approach would have improved USAID's analysis, we would not sustain the protest allegation because the agency has discretion to select the nature and extent of its price realism analysis. See *NTT Data Services Federal Government, Inc.*, B-417235.2, B-417235.3, January 2, 2020, 2020 CPD ¶ 19 at 3-4. Accordingly, we deny this ground of protest.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

information and prices paid for similar services would not capture the costs of top secret clearance compliance.