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Decision

Matter of: MicroTechnologies, LLC

File: B-418700

Date: July 31, 2020

Aron C. Beezley, Esq., Patrick R. Quigley, Esq., Sarah S. Osborne, Esq., Lisa A. Markman, Esq., and Nathaniel J. Greeson, Esq., Bradley Arant Boult Cummings LLP, for the protester.

Kelli Cochran-Seabrook, Esq., General Services Administration, for the agency. Michael P. Grogan, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency was required to seek clarification before rejecting the protester’s proposal as unacceptable is denied where the agency reasonably concluded that the protester’s proposal was unacceptable and was under no obligation to seek clarification regarding the protester’s failure to submit required information.

DECISION

MicroTechnologies, LLC (MicroTech), a service-disabled veteran-owned small business (SDVOSB) of Vienna, Virginia, protests its elimination from the competition conducted by the General Services Administration (GSA), under task order request (TOR) No. 47QFCA20R0018, for planning modernization, operation, and maintenance of information technology (IT) systems and services supporting U.S. Army Pacific Command and its subordinate commands and partners. The protester contends that the agency’s decision to eliminate MicroTech from the competition was unreasonable.

We deny the protest.

BACKGROUND

The agency issued the solicitation on March 9, 2020, pursuant to the procedures in Federal Acquisition Regulation (FAR) subpart 16.5, to SDVOSB firms holding GSA Veterans Technology Services 2 (VETS 2) indefinite-delivery, indefinite-quantity governmentwide acquisition contracts. Agency Report (AR), Tab 1, Contracting Officer’s Statement (COS), at 1-2. The TOR contemplated the issuance of a cost-plus-

award-fee task order, with a 1-year base period of performance and four 1-year option periods. AR, Tab 2, TOR at 2. The solicitation sought contractor support for planning modernization, operation, and maintenance of command, control, communications, and computers (C4) and IT systems and services. *Id.* at 33. Specifically, the task order sought contractor support for services including site surveys, engineering, design, procurement, logistics, implementation, operation and maintenance, knowledge management, cybersecurity, and training for new and existing C4 and IT systems. *Id.* at 10.

The solicitation advised that award would be made to the offeror whose proposal was most advantageous to the government, considering cost and other factors.¹ TOR at 89. In addition to cost, the TOR included the following evaluation factors: technical approach; management approach/key personnel/project staffing; and corporate experience. *Id.* at 91. In addition, the solicitation required offerors to meet specific pass/fail criteria. *Id.* at 81. The TOR stated that “[a] failure on any single Pass/Fail criteria will make the proposal ineligible for award, with no further evaluation of the technical and cost proposal conducted by the Government.” *Id.* at 89.

As relevant to this protest, offerors were also required to make representations in their proposals, to include representations concerning the use of certain telecommunications and video surveillance services or equipment. See TOR at 70, 78. In this regard, each offeror was required to affirmatively represent if it would, or would not, provide “covered telecommunications equipment or services” in accordance with FAR provision 52.204-24. This FAR provision implements section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which prohibits agencies from procuring covered telecommunications equipment or services from designated Chinese

¹ Offerors were required to submit their proposals in four parts. TOR at 75. First, each offeror was to submit a preliminary cost/price proposal, which was to include such information as current forward pricing rate agreements. *Id.* at 76. For parts two and three, an offeror was required to provide the remainder of its cost/price proposal and its technical proposal, respectively. *Id.* at 75. Finally, offerors were (if invited by the agency) to provide an oral technical proposal presentation covering the offeror’s technical approach, and management approach/key personnel/project staffing. *Id.* at 75, 87.

entities and/or affiliates.² If an offeror answered in the affirmative, it was required to provide additional information to the agency.³ *Id.* at 70-71.

MicroTech timely submitted the required parts of its proposal by the established due dates. On April 29, the agency notified the protester that its proposal was unacceptable. AR, Tab 13, Notice of Unacceptable Proposal. The agency advised that MicroTech's proposal "does not conform to material requirements of the [TOR]" and accordingly, the agency rejected the proposal as unacceptable. *Id.* at 1. According to the agency, MicroTech's certification under FAR provision 52.204-24 represented that it

² The phrase "covered telecommunications equipment or services" is defined by FAR provision 52.204-25 to include: (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

³ Specifically, if an offeror represented that it "will" provide covered telecommunications equipment or services, the Offeror was required to provide the following information as part of its offer:

(1) [A description of] all covered telecommunications equipment and services offered (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable);

(2) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) of this provision;

(3) For services, the entity providing the covered telecommunications services (include entity name, unique entity identifier, and Commercial and Government Entity (CAGE) code, if known); and

(4) For equipment, the entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known).

See TOR at 70-71.

would be utilizing covered telecommunications equipment and services, but the proposal did not, as required by the solicitation, provide the mandatory disclosure information concerning the use of such equipment and services. Consequently, the agency found that MicroTech's proposal did not conform to the TOR requirements and rejected the proposal as unacceptable. *Id.* at 2; see TOR at 70, 78. MicroTech timely filed this protest on May 1.⁴

DISCUSSION

In its protest, MicroTech claims that it inadvertently checked the incorrect box when it made its FAR provision 52.204-24 representation, mistakenly providing that it "would" (instead of "would not") be providing covered telecommunications equipment and services. Protest at 10; AR, Tab 12a, MicroTech Proposal, Part 1 at 38. Given the error, MicroTech explains that it did not provide any of the required disclosures, or any information explaining the use of such covered equipment and services in its proposal, as mandated by FAR provision 52.204-24 and the solicitation. Protest at 10.

Acknowledging that its proposal contained an error, MicroTech nonetheless marshals several arguments contending that GSA unreasonably rejected its proposal as unacceptable. Protest at 10-11. First, the protester argues that the agency should have sought clarification of its mistake concerning MicroTech's representation under FAR provision 52.204-24 because it was a clerical error evident on the face of the proposal. *Id.* at 11. According to the protester, such clarifications were contemplated by the solicitation. *Id.* at 12-13; see TOR at 89. Second, MicroTech argues that the agency's decision to reject its proposal was unreasonable because the FAR provision 52.204-24 representation requirement was not among the pass/fail elements--the failure of which would make a proposal ineligible for award--and was not otherwise tied to the evaluation criteria set forth in the TOR. Protest at 13-14; Comments at 4-13. Third, the protester maintains that it was contrary to the terms of the solicitation to reject its proposal before the solicitation's oral presentation phase of the competition. Comments at 7-9. While we do not address every argument raised by MicroTech, we have reviewed them all and find that none provides a basis to sustain the protest.

As a preliminary matter, it is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. See *International Med. Corps*, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 8. An offeror is responsible for affirmatively demonstrating the merits of its proposal and, as here, risks the rejection of its proposal if it fails to do so. *HDL Research Lab, Inc.*, B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5. In reviewing protests challenging the rejection of a proposal based on the agency's evaluation, it is not our role to reevaluate proposals; rather, our Office examines the record to determine whether the agency's judgment was

⁴ As the estimated value of the task order exceeds \$92 million, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award IDIQ contracts in excess of \$10 million. 41 U.S.C. § 4106(f)(1)(B).

reasonable and in accordance with the solicitation criteria and applicable procurement statutes and regulations. *Wolverine Servs. LLC*, B-409906.3, B-409906.5, Oct. 14, 2014, 2014 CPD ¶ 325 at 3; *Orion Tech., Inc.*, B-405077, Aug. 12, 2011, 2011 CPD ¶ 159 at 4.

In support of its first argument, that the agency should have resolved the error in its proposal through clarifications, the protester reasons that its mistaken representation was evident from the face of its proposal. Protest at 12-13; Comments at 15-24. For example, MicroTech argues that its failure to provide the required explanatory disclosure for an affirmative representation under FAR provision 52.204-24 should have put the agency on notice that it mistakenly checked the wrong box, which in turn should have prompted the agency to seek a clarification. Protest at 12; Comments at 2. Moreover, had the agency reviewed MicroTech's entire proposal, the agency "would have been alerted to the ambiguity and conflicting representations" made in MicroTech's proposal. Comments at 18.

This task order procurement was conducted as a competition among SDVOSB VETS 2 contract holders and, as such, was subject to the provisions of FAR subpart 16.5, which does not establish specific requirements for conducting clarifications or discussions. *Technatomy Corp.*, B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 7. Where, as here, however, an agency conducts a task order competition as a negotiated procurement, our analysis regarding fairness, will, in large part, reflect the standards applicable to negotiated procurements. See, e.g., *TDS, Inc.*, B-292674, Nov. 12, 2003, 2003 CPD ¶ 204 at 4; *Uniband, Inc.*, B-289305, Feb. 8, 2002, 2002 CPD ¶ 51 at 3-4.

In a negotiated procurement conducted pursuant to FAR part 15, clarifications are "limited exchanges" between the government and vendors that may occur when award without discussions is contemplated. FAR 15.306(a)(1). As a general matter, agencies may, but are not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor clerical errors. See e.g., *Valkyrie Enterprises, LLC*, B-414516, June 30, 2017, 2017 CPD ¶ 212 at 5. Agencies have broad discretion as to whether to seek clarifications from offerors, and offerors have no automatic right to clarifications regarding proposals. *Id.* at 7. This is especially true where, as here, the solicitation permits, but does not require, the agency to seek clarifications. See TOR at 89 (providing that the agency "reserves the right" to ask clarification questions in the course of its evaluation). Thus, even if the error was evident from the face of the protester's proposal, as the protester argues, given the agency's broad discretion to decide when to seek clarifications, we would have no basis to find that the agency acted improperly by rejecting MicroTech's proposal without seeking to resolve the matter through clarifications.

In any event, we reject MicroTech's claim that the alleged clerical error was evident on the face of its proposal. An agency's evaluation is dependent on information furnished in a proposal, and, as set forth above, it is the offeror's burden to submit an adequately written proposal for the agency to evaluate. *Leader Commc'ns., Inc.*, B-298734, B-298734.2, Dec. 7, 2006, 2006 CPD ¶ 192 at 7. Here, MicroTech's proposal indicated

that it was providing covered telecommunications in its FAR provision 52.204-24 representation, but failed to include the required mandatory disclosures for such a representation. While this disconnect reflected a clear error with MicroTech's proposal, the nature of the error was, itself, not clear. That is, it was not clear from the protester's failure to provide the mandatory disclosures whether MicroTech was in fact proposing covered telecommunications equipment and neglected to provide the required information, or whether MicroTech may have checked the wrong box. Thus, the highlighted discrepancy, alone, could not have put GSA on notice that MicroTech committed the type of clerical error it now alleges, nor would it give rise to a requirement that the agency seek out clarification from MicroTech.⁵ The agency was not required to fill in the gaps of MicroTech's proposal, where the firm did not provide sufficiently clear information. See *CTIS, Inc.*, B-414852, Oct. 3, 2017, 2017 CPD ¶ 309 at 5 ("Agencies are not required to infer information from an inadequately detailed quotation, or to supply information that the protester elected not to provide.").

We also reject MicroTech's second argument, contending that the agency's decision to reject its proposal as unacceptable runs contrary to the terms of the solicitation. In support of its position, the protester contends that the representation required by FAR provision 52.204-24 was not included among the TOR's pass/fail criteria, nor was it part of the stated evaluation criteria. Protest at 13-14; Comments at 5-13. As such, the agency's finding that MicroTech failed to meet a material requirement of the TOR--by not providing the required disclosures under FAR provision 52.204-24--was unreasonable and could not serve as the basis for GSA's rejection of its proposal. *Id.* The agency counters that the information required by FAR provision 52.204-24 was a material requirement, and MicroTech's failure to provide disclosures under that provision constituted a failure to provide information necessary to conduct the evaluation.⁶ Memorandum of Law at 6; COS at 6.

⁵ We find similarly unpersuasive MicroTech's argument that its representation made under FAR provision 52.204-26--which is maintained in the system for award management (SAM) website, and which MicroTech argues was incorporated into its proposal under the terms of the solicitation--should have alerted the agency to the clerical nature of the alleged error in its proposal. See Comments at 15-24. FAR provision 52.204-26 concerns the same representations at play in FAR provision 52.204-24. Assuming, for the sake of argument, that the agency should have considered this representation maintained in the SAM website, because the two representations are contradictory in nature, they fail to make clear the protester's intended representation about its proposed use of covered telecommunications equipment.

⁶ The contracting officer provides that this information is necessary to determine if the agency will seek a waiver to procure covered items. See COS at 6; AR, Tab 9, Memorandum Concerning MicroTech's FAR provision 52.204-24 Response at 1-2. In narrow circumstances, the agency may seek a waiver to allow an offeror to provide the agency with covered telecommunications equipment and services. See FAR 4.2104.

Here, the protester is correct that the representation required in FAR provision 52.204-24 was not listed among the pass/fail criteria, nor was it expressly mentioned in the evaluation section of the solicitation. Nonetheless, the solicitation expressly required offerors to make certain representations, to include representations concerning their proposed use of covered telecommunications equipment and services; if an offeror represented an intention to provide such covered equipment or services, it was required to submit a required disclosure statement. See TOR at 70-71, 78 (“The offeror shall respond in accordance with the provision in FAR provision 52.204-24 under Section K.”). Without such information, the agency could not properly evaluate an offeror’s proposal to determine if it could receive an award consistent with applicable law and regulation. See FAR 4.2103 and 4.2104 (concerning when an agency can obtain covered equipment or supplies).

Given the solicitation’s clear requirement, and because the agency was unable to ascertain whether MicroTech’s proposal, as written, met the requirements of the solicitation and applicable procurement law, we cannot conclude that the agency acted unreasonably in rejecting MicroTech’s proposal as unacceptable. See *Sallyport Global Holdings, Inc.*, B-415460, B-415460.4, Jan. 9, 2018, 2018 CPD ¶ 23 (agency reasonably determined proposal was unacceptable where offeror failed to follow solicitation’s instructions on preparing proposal); *AttainX, Inc.; FreeAlliance.com, LLC*, B-413104.5, B-413104.6, Nov. 10, 2016, 2016 CPD ¶ 330 at 5 (agency acted reasonably in eliminating protester’s proposal from the competition where the protester did not provide the required documentation from a third-party certified public accountant); *Herman Constr. Group, Inc.*, B-408018.2, B-408018.3, May 31, 2013, 2013 CPD ¶ 139 at 3 (agency properly rejected protester’s proposal because electronic versions of spreadsheets were not submitted in Excel format, with formulas included, as required by solicitation).

MicroTech relies on our decision in *McCann-Erickson USA, Inc.*, B-414787, Sept. 18, 2017, 2017 CPD ¶ 300, to argue that the agency unreasonably eliminated its proposal for failing to follow proposal preparation instructions, when nothing in the evaluation criteria put offerors on notice that the agency would do so. Comments at 5-12. We disagree because this case is distinguishable from the one in *McCann-Erikson*. In *McCann-Erikson*, the agency performed a cursory pass/fail compliance check to determine whether firms had prepared their proposals in strict conformance with the solicitation’s proposal preparation instructions, to include formatting requirements. We sustained the protest because nothing in the solicitation put offerors on notice that the agency would conduct such a pass/fail compliance check.

Here, on the other hand, MicroTech’s failure to supply information related to its representation in FAR provision 52.204-24 did not concern superficial proposal preparation information, but instead, concerned whether MicroTech’s proposal was compliant with applicable procurement laws. Because MicroTech did not provide the information required by the solicitation, the agency was unable to assess whether the offeror’s proposal met the baseline requirements for issuance of the task order, *i.e.*, whether it was proposing covered telecommunications equipment or services. On this

record, MicroTech's argument provide no basis to sustain the protest. See *Sallyport Global Holdings, Inc.*, *supra* at 5-6.

Finally, the protester argues that the solicitation did not allow the agency to eliminate MicroTech's proposal before the agency held oral technical presentations with the offerors, when GSA could have sought clarification from the protester concerning its FAR provision 52.204-24 representation. Comments at 7-9. For support, MicroTech points to the TOR's language advising that "[e]ach offeror's Oral Technical Proposal Presentation will be preliminarily scheduled by the [agency] after receipt of Part I and will be confirmed after Part II is received and the [agency] determines that the offeror passed all of the Pass/Fail requirements." TOR at 85. The protester posits that because the FAR provision 52.204-24 representation was not among the pass/fail criteria, and that MicroTech otherwise satisfied that criteria, MicroTech should have been permitted to provide its oral technical presentation; without such an opportunity, the protester argues it was unreasonable for GSA to eliminate MicroTech from the competition.⁷

The solicitation provided that the agency had the option, but was not required, to ask clarification questions of offerors concerning their proposals. See TOR at 89 ("[T]he Government reserves the right [to] . . . [h]ave communications; ask clarifying questions, request corrections relative to minor errors in the cost/price proposal, or request cost/price substantiating documentation to facilitate the Government's final evaluation of cost proposals with one or some offerors."). Having already concluded that the agency was reasonable in not seeking a clarification from MicroTech following its receipt of the protester's proposal, we fail to see why the agency would also be required to seek the same clarification during or after oral technical presentations. An agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. *Future Techs. Consulting Group, Inc.*, B-409867, Aug. 13, 2014, 2014 CPD ¶ 240 at 5; *Savvee Consulting, Inc.*, B-408623, B-408623.2, Nov. 8, 2013, 2013 CPD ¶ 265 at 6. Given the discretion

⁷ The protester also couches this allegation as a disparate treatment argument, contending that other offerors who met the pass/fail criteria "will proceed to the oral technical evaluations and [Question and Answer] portion of the evaluation-unlike MicroTech." Comments at 13. However, having found that the agency acted reasonably in not seeking clarification upon receipt of MicroTech's proposal, and given that the agency was not otherwise required to seek clarifications, we find no merit in the protester's contention that GSA's conduct constituted disparate treatment.

afforded to agencies in seeking clarifications, we cannot conclude that GSA's decision to eliminate MicroTech from the competition prior to oral technical presentations--because its proposal was found to be unacceptable--was unreasonable.

The protest is denied.

Thomas H. Armstrong
General Counsel