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Decision

Matter of: Vysnova Partners, Inc.

File: B-420654; B-420654.2; B-420654.3

Date: July 7, 2022

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James Braswell, Esq., General Services Administration, for the agency.

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DIGEST

1. Protest that agency unreasonably eliminated offeror's proposal from competition is denied where protester failed to provide required cost/price documentation.
 2. Protest that agency failed to conduct clarifications to address required cost/price documentation missing from the protester's proposal is denied where clarifications are not required and where the agency would have been required to engage in discussions, rather than clarifications, to resolve the omission.
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DECISION

Vysnova Partners, Inc., of Landover, Maryland, protests the decision of the General Services Administration (GSA) to reject its proposal submitted in response to task order request for proposals (TOR) No. 47QFCA21R0058, issued for cybersecurity program support. Vysnova asserts that the agency rejected its proposal for failing to submit documentation that was not required by the solicitation. In the alternative, Vysnova argues that the solicitation contained a latent ambiguity. Vysnova also argues that the agency should have engaged with Vysnova in clarifications to correct any misunderstanding of its proposal.

We deny the protest.

BACKGROUND

The solicitation, for cybersecurity support services, was issued on February 15, 2022, to contract holders under the GSA One Acquisition Solution for Integrated Services

(OASIS) Small Business (SB) pool 1 multiple award contract. GSA conducted the procurement on behalf of the United States Cyber Command.¹ Contracting Officer's Statement (COS) at 1.

The solicitation, which was issued under the fair opportunity procedures of Federal Acquisition Regulation (FAR) section 16.505, anticipated the issuance of a cost-plus-fixed-fee task order for a 1-year base period and four 1-year option periods. Agency Report (AR), Exh. 3, Request for Task Order Proposals (TOR), amend. 1 at 42, 108. The solicitation provided that the task order would be issued to the offeror that submitted the proposal that was rated pass for all pass-fail elements, and was most advantageous to the government considering technical and price factors. *Id.* at 125. Offerors were required to submit written cost/price and technical proposals, and to orally present their technical proposals. *Id.* at 109. The cost/price proposals of those offerors that submitted technical proposals rated acceptable or better were to be evaluated for realism and reasonableness. *Id.* at 125, 127.

As relevant to this protest, offerors were required to provide specific cost information for the prime contractor and proposed subcontractors to enable the government to perform the cost/price analysis. *Id.* at 113-114. Section L.5.1.8 of the solicitation required offerors to provide documentation for the labor contract line items, including a summary total for each element of cost (direct labor, OH [overhead], G&A [general and administrative], facilities capital cost of money fee). *Id.* at 113. Section L.5.1.9 required offerors to provide cost documentation for the prime contractor. *Id.* at 113. Section L.5.1.10 required cost/price documentation for proposed subcontractors as follows:

The offeror shall also provide supporting cost/price documentation for all proposed subcontractors, including the total value of the proposed subcontract, the proposed type of subcontract, the rationale and/or justification for this type of subcontract type, and how fee will be determined and paid. Additionally, the offeror shall provide a narrative detailing the processes used to evaluate the subcontracts it is proposing, including cost and/or price analysis conducted. . . . Failure to provide complete supporting documentation may result in no further consideration of the offeror's proposal. . . .

The prime offeror is responsible for ensuring that all proposed major subcontractors with contract values over ten percent of the total contract value include the appropriate supporting cost/price documentation. For cost-type subcontractors proposed, the offeror shall include the same type of cost detail required for the prime. All non-cost subcontractors shall provide:

¹ The United States Cyber Command is a Department of Defense (DOD) combatant command that has the mission to direct, synchronize, and coordinate cyberspace planning and operations to defend and advance national interests in collaboration with domestic and international partners. COS at 1.

a. Firm-Fixed-Price (FFP): A basis of estimate for the FFP amount is required, which includes the LOE [level of effort], and fully burdened labor rates associated with the FFP amount.

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c. All proposed OASIS SB Pool 1 labor categories should be mapped to the appropriate labor category in the supporting documentation, and a description of the labor categories should be provided.

d. If the proposed subcontractor does not possess an established acquisition vehicle (e.g., GSA Schedule), the subcontractor shall provide payroll/invoices or Commercial Catalogs for labor rate verification.

Id. at 114.

Vysnova's proposal included **[DELETED]** "unpriced" subcontractors that the protester explained would be used for **[DELETED]**. Protest at 9. The subcontractors were proposed on a firm-fixed-price basis. AR, Exh. 10, Vysnova Cost/Price Proposal at 87. Vysnova explained that these **[DELETED]** subcontractors were each identified with a subcontract value of zero dollars, and that they did not receive any hour allocations. *Id.* Vysnova further stated that it evaluated the rates of all teammates, and for subcontractors that were unpriced it would ensure that final negotiated rates fell within the contract established cost parameters for the overall contract effort. *Id.* Vysnova's proposal assumed that all subcontractors listed in its proposal, including the unpriced subcontractors, would be approved at the time of award. *Id.*

GSA summarily rejected Vysnova's proposal because it did not include supporting cost/price documentation for the **[DELETED]** "unpriced" subcontractors. AR, Exh. 14, Proposal Rejection Letter. The agency found that Vysnova did not provide for these subcontractors, among other things, labor rates, labor hours, or documentation of the supporting cost or price analysis Vysnova conducted. *Id.* In addition, because the information was missing, the agency found that Vysnova erroneously assumed that the agency would approve the subcontractors at the time of award. *Id.* GSA advised Vysnova on March 28 that its proposal "failed to comply with material requirements of the TOR" and was therefore rejected. COS at 3. This protest followed.²

DISCUSSION

² This protest is within our jurisdiction to hear protests of task orders valued in excess of \$10 million placed under civilian agency indefinite-delivery, indefinite-quantity (IDIQ) contracts. *Booz Allen Hamilton Eng'g Servs., LLC*, B-411065, May 1, 2015, 2015 CPD ¶ 138 at 6 n.12. While the task order here will be in support of a Department of Defense organization, the authority under which we exercise our task order jurisdiction is determined by the agency that awarded the underlying IDIQ task order contract, which in this instance is GSA. See *Wyle Labs., Inc.*, B-413989, Dec. 5, 2016, 2016 CPD ¶ 345 at 4.

Vysnova protests that GSA unreasonably rejected its proposal. The protester raises two primary arguments. First, the protester argues that the agency unreasonably interpreted the solicitation to require offerors to provide information concerning subcontractors proposed on an “unpriced” basis; alternatively, the protester contends that the solicitation was ambiguous with respect to whether offerors were permitted to propose unpriced subcontractors. Second, the protester argues that even if the agency’s interpretation and evaluation were reasonable, the agency should have conducted clarifications to permit the protester to resolve this matter. For the reasons discussed below, we find no basis to sustain the protest.³

Requirement for Cost/Price Information

Vysnova contends that the solicitation did not prohibit offerors from proposing “unpriced” subcontractors, by which the protester means subcontractors for whom no price was identified. Moreover, according to the protester, it provided all documentation that was required to be submitted for unpriced subcontractors. In the alternative, Vysnova argues that the solicitation was ambiguous with respect to whether offerors were permitted to propose unpriced subcontractors. We find no merit to these arguments.

Clearly stated RFP requirements are considered material to the needs of the government, and a proposal that fails to conform to material terms is unacceptable and may not form the basis for award. *National Shower Express, Inc.; Rickaby Fire Support*, B-293970, B-293970.2, July 15, 2004, 2004 CPD ¶140 at 4-5. Where a dispute exists as to a solicitation’s actual requirements, we will first examine the plain language of the solicitation. *Intelsat Gen. Corp.*, B-412097, B-412097.2, Dec. 23, 2015, 2016 CPD ¶ 30 at 8. Where a protester and agency disagree about 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. *Crew Training Int’l, Inc.*, B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4.

Vysnova argues that the solicitation did not specifically prohibit what it calls unpriced subcontractors, that is, firms that were identified in a proposal for the performance of requirements, but were not allocated a specific level of work to be performed. See Protest at 9. We disagree that the solicitation permitted offerors to propose unpriced subcontractors. While the solicitation did not explicitly prohibit the use of unpriced subcontractors, the solicitation clearly required offerors to submit information for proposed subcontractors that precluded proposing unpriced subcontractors in the manner used by the protester.

³ While we have considered all the arguments that Vysnova made in its protest, and have found that none of them would lead us to sustain this protest, our decision does not discuss all the arguments raised.

First, section L.5.1.8 of the solicitation required offerors to provide full documentation for all labor line items including direct labor, overhead, and general and administrative expenses. AR, Exh. 3, TOR at 113. Second, section L.5.1.10 of the solicitation required the offeror to provide for “all proposed subcontractors,” supporting cost/price documentation, including the total value of the proposed subcontract, the proposed type of subcontract, the rationale for the type of subcontract, and how fee will be determined and paid. In addition, the offeror was required to provide a narrative detailing the processes used to evaluate the subcontractors it proposed, including any cost or price analysis conducted. *Id.* at 114.

Third, in accordance with section L.5.1.10 of the solicitation, the prime contractor was responsible for ensuring that all subcontractors proposed on a firm-fixed-price basis: (1) provided a basis of estimate for the firm-fixed-price amount, including the level of effort and fully burdened labor rates associated with the firm-fixed-price amount; (2) mapped OASIS IDIQ contract labor categories to the appropriate documentation; and (3) provided payroll invoices or commercial catalogs for labor rate verification if it did not possess an established acquisition vehicle, (e.g., GSA Schedule). *Id.* at 114-15.

Although the solicitation required offerors to provide their subcontractors’ fully burdened labor rates and information concerning the OASIS IDIQ labor rates utilized in the proposal, Vysnova contends that this information was not required because it elected not to identify a level of effort for its subcontracts. Protest at 9-10. In this regard, the protester states that it proposed **[DELETED]** subcontractors to provide additional labor to address **[DELETED]**. *Id.*

GSA explains that the information above was required to allow it to conduct the required cost and price analyses. Agency Supp. Response May 24, 2022, at 1-2. The agency states that the absence of adequate documentation in Vysnova’s proposal rendered its proposal ambiguous and prevented the agency from conducting a complete evaluation. COS at 3. In this regard, the agency notes that Vysnova’s proposal stated, as discussed above, that the protester had “evaluated that rates of all teammates, and for “subcontractors that [were] unpriced” and would ensure that “final negotiated rates fell well within the contract established cost parameters for the overall [contract] effort.” AR, Exh. 10, Vysnova Cost/Price Proposal at 87. Thus, the agency found that the protester’s proposal anticipated utilizing subcontractors, but failed to provide a specific value for their effort or required information concerning the labor rates to be utilized. COS at 3.

The agency was also concerned that Vysnova’s proposal to negotiate final rates that fell within the contract’s “established cost parameters” was meaningless given that no such parameters existed prior to the issuance of the task order. COS at 3; Agency Supp. Response May 24, 2022, at 1-2. The agency concluded that the lack of information created a significant and unacceptable risk that, per the terms of the solicitation, required rejection of the proposal. *Id.*

In sum, the agency contends that the solicitation's requirements for cost/price information regarding proposed subcontractors clearly demonstrate that the agency expected offerors to provide cost information for all proposed subcontractors. In other words, the requirement to identify the level of effort for a subcontractor and the total value of the contract did not permit an offeror to propose an unspecified level of effort and a contract value of \$0. See TOR at 113-15. The solicitation required Vysnova to identify and submit pricing information along with supporting price documentation for the **[DELETED]** identified subcontractors. As Vysnova proposed unpriced subcontractors for which it anticipated the possibility of work, but did not provide the required cost price documentation, including labor categories and fully burdened labor rates, we conclude that GSA properly rejected its proposal.⁴

In the alternative, Vysnova argues that the solicitation was ambiguous with respect to whether offerors were permitted to propose unpriced subcontractors. According to Vysnova, since the solicitation did not explicitly prohibit the use of unpriced subcontractors it was not aware of this prohibition until it received the notice rejecting its proposal. Protest at 11. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. *Colt Def., LLC*, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. *Id.*

Here, as discussed above, since the solicitation clearly required offerors to provide price documentation for all proposed subcontractors, Vysnova's interpretation of the solicitation was not reasonable. Accordingly, there is no basis to conclude that the solicitation was ambiguous. See *Deco Sec. Servs.*, B-294516, Nov. 1, 2004, 2004 CPD ¶ 224 at 2.

Clarifications

⁴ Vysnova filed a supplemental protest on May 9 in which it argued for the first time that offerors were only required to provide cost/price documentation for proposed major subcontractors, that is those with contract values that were more than 10 percent of the contract value. Comments & 1st Supp. Protest at 6. The agency contends, among other things, that there was no basis to know what percentage of the work would be performed by a subcontractor, since the protester did not identify an amount for its proposed subcontractors. Supp. MOL, May 12, 2022, at 4. We conclude that this basis of protest is untimely, and will not be considered further, since it was filed more than 10 days after Vysnova knew or should have known of its basis. 4 C.F.R. § 21.2(a)(2). In this regard, Vysnova was notified that its proposal was rejected for failing to provide cost/price documentation for its unpriced subcontractors on March 28.

Vysnova also argues that, even if GSA's interpretation of the solicitation and evaluation of its proposal were reasonable, the agency should have engaged in clarifications with Vysnova, which would have enabled the protester to explain why it was not required to submit cost/price documentation for the **[DELETED]** unpriced subcontractors. Vysnova would have specifically explained that it could not submit cost/price documentation for the unpriced subcontractors because they were not assigned any hours, but would only be used on an as needed basis. We disagree.

The provisions at FAR section 15.306 describe a spectrum of exchanges that may take place between a contracting agency and an offeror during a negotiated procurement.⁵ Clarifications are limited exchanges between the agency and offerors that may occur when contract award without discussions is contemplated; 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. FAR 15.306(a); *Satellite Servs., Inc.*, B-295866, B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n.2. Clarifications cannot be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, or otherwise revise the proposal. *A.G. Cullen Constr., Inc.*, B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 5-6. Discussions occur when an agency communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal, or provides the offeror with an opportunity to revise or modify its proposal in some material respect. *ADNET Sys., Inc. et al.*, B-408685.3, *et al.*, June 9, 2014, 2014 CPD ¶ 173 at 16.

There is no merit to Vysnova's contention that GSA was required to engage in clarifications with it regarding its proposed unpriced subcontractors. As discussed above, the solicitation did not permit offerors to propose unpriced subcontractors. Accordingly, to make its proposal acceptable, Vysnova would have had to revise its proposal to eliminate the unpriced subcontractors, or to provide the required cost documentation for those subcontractors. Such a material revision to the protester's proposal would have required the agency to conduct discussions, rather than clarifications. See *A.G. Cullen Constr., Inc.*, B-284049.2, *supra*; *ADNET Sys., Inc., et al.*, B-408685.3, *et al.*, *supra*. In any case, an agency is permitted, but not required, to

engage in clarifications with offerors. *Satellite Servs., Inc.*, B-295866, B-295866.2, *supra*.

The protest is denied.

⁵ While FAR section 16.505 does not establish specific requirements for discussions in a task order competition, where an agency conducts a task order competition as a negotiated procurement, our analysis will, in large part, reflect the standards applicable to FAR part 15 negotiated procurements. See *IBM Corp.*, B-417664, Sept. 18, 2019, 2019 CPD ¶ 327 at 10; *Ohio KePRO, Inc.*, B-417836.4, B-417836.5, Nov. 4, 2020, 2021 CPD ¶ 325 at 5.

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