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Decision

Matter of: 22nd Century Technologies, Inc.

File: B-418404

Date: April 16, 2020

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DIGEST

Protest challenging agency's exclusion of protester's proposal from the competition for failing to meet all solicitation requirements is denied where the record shows that the agency's decision was reasonable and consistent with the terms of the solicitation.

DECISION

22nd Century Technologies, Inc., (22nd Century), of McLean, Virginia, protests the exclusion of its proposal from the competition conducted under request for proposals (RFP) No. 621900227, which was issued by the Defense Information Systems Agency (DISA), to provide various information technology (IT) support services for DISA's Department of Defense Network (DoDNet) environment. The protester argues that the agency's exclusion of its proposal as noncompliant with the solicitation requirements was unreasonable.

We deny the protest.

BACKGROUND

On June 21, 2019, DISA issued the RFP to holders of the agency's ENCORE III multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contracts, pursuant to the

fair opportunity provisions of Federal Acquisition Regulation (FAR) subpart 16.505.¹ RFP at 1.² The procurement, which is referred to as DISA's Development and Business Center 4th Estate Network Optimization's requirement for DoDNet services, solicited proposals for contractor assistance for a wide range of IT support services such as, operations and maintenance support to the DoDNet common use commodity IT service network environment, and to grow the network in order to meet new/changing customer requirements. Performance Work Statement (PWS) at 1. In general terms, the PWS detailed the background and scope of the solicited support services and listed the labor categories, labor hours, experience, education, and certifications for contractor personnel to perform the various tasks and subtasks. See, e.g., PWS at 3-18, 33.

The RFP contemplates issuance of a fixed-price task order with a 1-year base period, three 1-year option periods, and one 6-month extension of services period. RFP at 1. The solicitation stated that the task order would be issued on a best-value tradeoff basis, considering two evaluation factors: technical/management approach (hereinafter, technical) and price. *Id.* at 10-11, 14. The technical factor was comprised of the following four subfactors, in descending order of importance: management approach; operations, maintenance and sustainment support services approach; migration and implementation engineering support services approach; and small business participation plan. *Id.* at 11-12. Each technical subfactor was in turn comprised of elements on which the agency's evaluation would be based. *Id.* As relevant to this protest, here, the management approach subfactor consisted of two elements--the offeror's³ staffing plan, and the offeror's resumes for key personnel. *Id.* at 11-12.

Of the various labor categories listed in the RFP, the RFP identified seven functional positions as key personnel (the program manager, chief architect, cyber lead, infrastructure tier III lead, server tier III lead, desktop tier III lead, and identity management subject matter expert). *Id.* at 6. The solicitation required the key personnel to possess demonstrated experience in the different skill sets required and functions to be performed. Offerors were instructed to submit resumes for each proposed key person that described the individual's qualifications and capabilities, including education, relevant certifications, and relevant experience in terms of years, skills, positions and levels (senior, junior, entry level). *Id.* at 6-7.

¹ When conducting a task order competition under FAR 16.505, agencies are required to provide contract holders a "fair opportunity" to be considered for task order award. FAR 16.505(b)(1).

² The RFP was amended 12 times. Unless specified otherwise, all references are to the final version of the solicitation, i.e., amendment 12 which was issued on November 14, 2019.

³ Although firms that compete for task orders under IDIQ contracts are generally referred to as "vendors," the record and the parties' briefing primarily use the term "offerors." For the sake of consistency, we refer to the firms that competed for the task order as offerors.

As relevant here, the solicitation included the following statement regarding resumes for key personnel: “Generic resumes (not identified to an individual) will not be accepted.” *Id.* at 6. As further relevant to this protest, the solicitation stated that the offeror must ensure that “sensitive Personally Identifiable Information (PII) is omitted” from the resumes of key personnel. *Id.* (emphasis added). The solicitation did not define the phrase “sensitive PII.” The RFP provided that the agency would evaluate the qualifications and experience of the proposed key personnel to determine whether they could perform the solicited requirements. *Id.* at 11.

Elsewhere, the RFP included another provision regarding the key personnel requirement. Offerors were informed that a key personnel chart included in the RFP would be completed by the agency after “review of technical/Management proposals” submitted by offerors. RFP amend. 4, attach 10, Key Personnel Chart at 12. To complete this chart, the agency would list the individual name and labor category for each proposed key person. The solicitation also stated, in pertinent part, that the chart could be amended during the life of the task order to either add or delete key personnel. *Id.*

With respect to price, the solicitation instructed offerors to submit a proprietary pricing spreadsheet, delineated by performance year, which includes fully loaded hourly rates for each labor category required to accomplish the specified tasks and subtasks throughout the life of the task order. RFP at 7. Offerors were required to structure their pricing spreadsheet using separate contract line item numbers (CLINs) to align with the stated solicitation and PWS requirements for the base year, all option years, and the 6-month extension period. *Id.* The solicitation included a government-provided CLIN structure as an attachment to the solicitation to assist offerors in the development of their own CLIN structure. *Id.*; see also, RFP attach 6, DISA CLIN Structure.

The solicitation included several other provisions related to price. For instance, offerors’ price proposals should “include detailed information regarding the resources required to accomplish the task (e.g., labor categories, labor hours, number of employees for each labor category, rates, travel, incidental equipment, contract access fees, etc.).” RFP at 14. In addition, the solicitation instructed offerors to submit pricing for the base period and all option periods, including the 6-month extension of services authorized by FAR clause 52.217-8.⁴ *Id.* at 14. According to the RFP, an offeror’s pricing spreadsheet should “include a separate line item for the additional 6-month period” and the 6-month extension prices should “be identical to the quoted pricing in the 6 months prior to expiration of the base period, or the final option period.” *Id.* The total evaluated

⁴ FAR clause 52.217-8 allows the government to require continued contract performance at the end of the stated performance period for up to six months at the rates specified in the contract.

price consisted of the offeror's proposed price for the base period, all option periods, the option pricing for the additional 6-month period, and surge pricing.⁵ *Id.*

Of relevance to this protest, the RFP provided that price proposals would be evaluated for reasonableness and completeness. More specifically, the solicitation provided that in evaluating completeness, the agency would consider whether all solicitation requirements were priced, whether prices were correctly calculated, and whether prices were presented in a clear and useful format. *Id.* Finally, the solicitation cautioned that if terms, conditions, or assumptions were included in a proposal, the offeror's proposal might be excluded from the competition "on grounds that it failed to comply with the RFP's instructions." *Id.*

DISA received a number of proposals in response to the solicitation, including the one submitted by 22nd Century. In its proposal, the protester furnished resumes for seven key personnel positions. Each resume detailed the key person's requisite experience in terms of years, skills, previous work experience, levels of education achieved and any relevant certifications. None of the protester's resumes listed the name of the individual proposed for the stated key position. Protester's Technical Proposal, Vol. IV at 1-22.

The agency conducted what it termed a "compliance review" of proposals. After reviewing 22nd Century's proposal, the agency found the firm's proposal noncompliant because it failed to meet two solicitation requirements and excluded the offeror's proposal from the competition. Joint Contracting Officer's Statement and Memorandum of Law at 5-6. The agency notified 22nd Century that its proposal was removed from the competition because (1) none of the resumes submitted with its proposal included the names of its proposed key personnel, as required by paragraph 2.h.iv of the RFP; and (2) the firm's price proposal did not include a detailed pricing tab for the 6-month extension period, as required by paragraph 2.h.v(a) of the RFP. Agency Report (AR) exh. 15, Agency Noncompliance Letter at 1 (Dec. 16, 2019). 22nd Century requested and received a debriefing and this protest followed.

DISCUSSION

22nd Century challenges the reasonableness of the agency's conclusions that its proposal failed to meet the solicitation's requirements regarding its resumes for key personnel and failed to provide a detailed pricing tab for the 6-month extension period in its price proposal. Protest at 8-10. Regarding its resumes, the protester argues that they were fully compliant with the terms of the solicitation. According to the protester, paragraph 2.h.iv of the RFP provided in relevant part that the offeror "shall ensure that sensitive Personally Identifiable Information (PII) is omitted from Key Personnel resumes." Protest at 8, *citing* RFP at 6. The protester asserts that is exactly what it did.

⁵ With regard to surge pricing, the solicitation stated that the agency "may require surge support during the base or any option period" and instructed offerors to propose exactly 30 percent of the offeror's total proposed price "for the base period and all option periods, excluding any 6-month extension of services." RFP at 8; see *also*, PWS at 2.

That is, it excluded the names of its key personnel from the resumes because, in its view, these names were PII data that should be omitted. As support for its position, 22nd Century points to the definition of PII data--posted on DISA's website--which includes, among other things, an individual's name, date of birth and social security number. *Id.* at 9. Since it followed the solicitation instructions to remove PII from the resumes, including the individuals' names, 22nd Century contends that the agency should not have rejected its proposal as noncompliant. *Id.* at 10-11. Moreover, the protester argues that, even without the names, the resumes were not generic because they listed specific unique information for the individual, to include places of employment, education level, certifications, and specific skills.

DISA acknowledges that the name of an individual is considered PII, but argues that the solicitation only contemplated the exclusion from the resumes of "sensitive PII," which is more specific than PII generally, and does not encompass names. In support of its position, the agency maintains that "Sensitive PII" is defined as "Personally Identifiable Information, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual, and includes social security numbers, driver's license or state ID numbers, passport numbers, alien registration numbers, financial account numbers, and biometric identifiers; PII includes your name, work email, address, and phone." See Joint Contracting Officer's Statement and Memorandum of Law at 10 n.4 (*citing* definition from Department of Homeland Security Handbook for Safeguarding Sensitive PII at 5-6). The agency also notes that the solicitation expressly advised offerors that generic resumes, that is, resumes not identified to an individual, would not be accepted by the agency. *Id.* at 9, *citing* RFP at 6.⁶ To the extent the resumes contained specific details, such as places of employment, education, and experience, the agency argues that without a name associated with the resume it would have had to assume that the details were attributable to a particular individual.

We agree with the agency. 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. *Alluviam LLC*, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2; *Constructure-Trison JV, LLC*, B-416741.2, Nov. 21, 2018, 2018 CPD ¶ 397 at 3. A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations. *WingGate Travel, Inc.*, B-412921, July 1, 2016, 2016 CPD ¶ 179 at 7. If the solicitation language is unambiguous, our inquiry ceases. *Id.*

Here, unlike DISA's interpretation of the solicitation, 22nd Century's interpretation of paragraph 2.h.iv of the RFP fails to account for the solicitation's inclusion of the word

⁶ The agency also points to another provision in the solicitation which informed offerors that, after review of the proposals received, the agency would use the names of proposed key personnel to complete the key personnel chart included in the solicitation. Joint Contracting Officer's Statement and Memorandum of Law at 9.

“sensitive” before the term PII. Specifically, in its response to the agency report, the protester focuses solely on the solicitation’s reference to “PII” to support the view that it was not required to include the names of its key personnel in the provided resumes. The protester fails to explain how names on the resumes can be considered “sensitive PII.” This line of argument effectively rewrites the solicitation to delete the term “sensitive,” modifying the RFP’s reference to PII. See *Lamar Strong Assocs., LLC*, B-407170, Nov. 19, 2012, 2012 CPD ¶ 322 at 5 (holding that the protester’s interpretation of the RFP’s experience requirements was inconsistent with the plain language of the solicitation and that the protester, in effect, would rewrite the RFP to substitute the word “or” for “and.”); *AHNTECH Inc.*, B-291998, Apr. 29, 2003, 2003 CPD ¶ 90 at 4 ([N]otwithstanding the protester’s view as to the grammatically correct reading of the provision, we think the listing of the experience/qualifications alternatives in three separate paragraphs, separated by the word “or,” made the agency’s intent clear.”); see also *Bethel-Webcor JV*, B-410772, Feb. 12, 2015, 2015 CPD ¶ 96 at 7-8 n. 9 (protester’s argument ignores the plain language of the RFP). As reasonably explained by the agency, sensitive PII is more limited than PII generally, and would not generally encompass information such as a person’s name. By failing to give effect to all of the RFP language, the protester has not advanced a reasonable reading of the solicitation.

Nonetheless, 22nd Century argues that the agency improperly eliminated its proposal because the solicitation precluded “generic resumes,” and, notwithstanding the lack of names on the resumes, the resumes were not generic because they clearly pertained to particular individuals. In this regard, the protester points to the fact that the resumes described the individuals’ knowledge, education, work history, experience, and certifications necessary to perform the solicited services. Protest at 2-3. The flaw in 22nd Century’s arguments, however, is that the detailed information provided in the resumes was explicitly required by the solicitation and the solicitation also expressly required that the resumes be “identified to an individual.” RFP at 6. Because, as explained above, the solicitation did not contemplate removing the names of individuals from their resumes, it only contemplated the removal of sensitive PII, the agency reasonably concluded that the protester’s resumes, provided without names, failed to meet the requirement that they be “identified to an individual.”

Offerors are responsible for submitting an adequately written proposal and bear the risk that the agency will find its proposal unacceptable when the offeror fails to demonstrate compliance with all of a solicitation’s requirements. *ManTech Advanced Sys., Int’l, Inc.*, B-413717, Dec. 16, 2016, 2016 CPD ¶ 370 at 3. Here, the explicit language of paragraph 2.h.iv of the RFP reasonably encompassed the requirement to provide the names of the offeror’s key personnel and put the protester on notice that its failure to adhere to this requirement for the resumes “would not be accepted.” Accordingly, we have no basis to question the agency’s decision to exclude the protester for failing to comply with the terms of the RFP.

Given our conclusion that the agency’s evaluation was consistent with the terms of the solicitation, we need not address the protester’s remaining challenges to the agency’s additional findings of noncompliance. Even if the protester were to prevail on this

additional basis of protest, its proposal would remain noncompliant with at least one solicitation requirement which provides a reasonable basis to exclude 22nd Century's proposal from the competition. Accordingly, on this record, we do not find that any of the protester's arguments provide a basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong
General Counsel