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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: W.P. Tax & Accounting Group

File: B-411806; B-411807

Date: October 7, 2015

Dee Monbo, for the protester.

James T. Mahoney, Esq., John H. Eckhardt, Esq., and Daniel C. Hymer, Esq.,
National Aeronautics and Space Administration, for the agency.

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GAO, participated in the preparation of the decision.

DIGEST

Protests challenging solicitation provision as unduly restrictive of competition are denied where the agency has articulated a reasonable basis for imposing the requirement.

DECISION

W.P. Tax & Accounting Group (WPTA), a small business of Owings Mills, Maryland, protests the terms of requests for quotations (RFQ) Nos. NNG15547972Q (RFQ-7972Q) and NNG15547975Q (RFQ-7975Q), issued by the National Aeronautics and Space Administration (NASA) for financial audit services. WPTA alleges that the solicitations are unduly restrictive of competition.

We deny the protests.

BACKGROUND

NASA issued the RFQs on July 16, 2015, as combined synopsis/solicitations pursuant to Federal Acquisition Regulation (FAR) subparts 12 and 13. RFQ-7972Q seeks proposals for the 2015 financial audit for the Goddard Child Development Center (GCDC) and RFQ-79750Q seeks proposals for the 2015 financial audit for

the Goddard Employees' Exchange.¹ The RFQs, which are set aside for small businesses, are identical except for the entity being audited. Both solicitations contemplate the award of a fixed-price contract on a lowest-priced, technically acceptable basis. RFQ-7972Q at Bates 25, 31; RFQ-7975Q at Bates at 36, 42.²

The solicitations include statements of work (SOW) that describe the scope of the audits and list contractor requirements. Specifically, the SOWs state that the audits are to be performed in accordance with Generally Accepted Government Auditing Standards (GAGAS).³ SOWs at 1. Of relevance here, the SOWs also include the following requirement:

[T]he contractor is required to provide evidence that the firm has had a Peer Review within the last three years in accordance with Government Auditing Standards.

Id. at 2.

Prior to the July 27 deadlines for the submission of quotations, WPTA filed protests challenging the peer review requirement of both solicitations.

¹ The GCDC and the exchange are non-appropriated fund instrumentalities located at the Goddard Space Flight Center in Greenbelt, Maryland. Contracting Officer's Statement at 1.

² NASA used a Bates numbering system in preparing the agency's report. Citations in this decision use the Bates numbers assigned by the agency.

³ With respect to GAGAS, the SOWs state the following:

Government Auditing Standards provide a framework for conducting high quality government audits and attestation engagements with competence, integrity, objectivity, and independence. Audits performed in compliance with Government Auditing Standards provide information used for oversight, accountability, and improvements of government programs and operations. When auditors comply with GAGAS, their work can lead to improved government management, better decision making and oversight, effective and efficient operations, and accountability for resources and results.

SOWs at 1-2.

DISCUSSION

WPTA contends that the solicitations' peer review requirements are unduly restrictive of competition.⁴ WPTA argues that certain state statutes and regulations may provide an exemption from the peer review requirement.

Where a protester challenges a specification or requirement as unduly restrictive of competition, the procuring agency has the responsibility of establishing that the specification or requirement is reasonably necessary to meet the agency's needs. Gov't & Military Certification Sys., Inc., B-411261, June 26, 2015, 2015 CPD ¶ 192 at 7. We examine the adequacy of the agency's justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. Id. Furthermore, the fact that a requirement may be burdensome or even impossible for a particular firm to meet does not make it objectionable if the requirement properly reflects the agency's needs. JRS Staffing Servs., B-410098 et al., Oct. 22, 2014, 2014 CPD ¶ 312 at 7.

Here, we find that the agency has established a reasonable basis for the peer review requirement in the solicitations. In this regard, NASA maintains that the requirements are necessary for compliance with federal law. Specifically, the agency explains that the Inspector General (IG) Act of 1978 requires agency IGs to assure that work performed by nonfederal auditors, such as the financial audits here, complies with GAGAS.⁵ Agency Report (AR) at 2, citing 5 U.S.C. app. § 4(b)(1). GAGAS, the agency points out, requires that organizations performing audits "have an external peer review performed by reviewers independent of the audit organization being reviewed at least once every 3 years." GAGAS § 3.82(b). Therefore, NASA asserts that contracting with a vendor that has not had a peer review would be in contravention of GAGAS and, by extension, the IG Act.

Moreover, the agency further explains that the inclusion of the peer review requirements is also in response to a recommendation from the NASA IG's Office. In this respect, a NASA IG review of a prior financial audit of the exchange deemed the audit deficient because the nonfederal auditing firm did not meet the GAGAS peer review requirement, among other reasons. AR, Tab 7, NASA IG Report No. ML-11-001, at Bates 104. The NASA IG recommended that all future audits of the exchange comply with GAGAS, and the agency highlights that these

⁴ WPTA has not had a peer review in the past three years. See Supplemental Comments at 9.

⁵ More specifically, the IG Act requires that agency IGs assure that "any work performed by non-Federal auditors complies with the standards established by the Comptroller General" 5 U.S.C. app. § 4(b)(1)(C). There is no dispute that the standards "established by the Comptroller General" are GAGAS.

solicitations reflect compliance with the IG's recommendation. Id. at Bates 114; CO Statement at 2.

The above considerations support the reasonableness of the peer review requirements. The record reflects that the requirements reasonably relate to ensuring compliance with an IG recommendation, GAGAS, and, ultimately, the IG Act. While the protester bases its objection on its view that certain firms may be exempt from the GAGAS peer review requirement, it has not shown that the requirements here lack a rational basis or that the agency's justifications are otherwise unreasonable. Moreover, as noted above, that certain vendors, including WPTA, may be precluded from performing the financial audits does not mean that the peer review requirements are objectionable. See JRS Staffing Servs., supra.

The protests are denied.

Susan A. Poling
General Counsel