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Decision

Matter of: Graham Technologies, LLC

File: B-413104.25

Date: February 25, 2019

Eden Brown Gaines, Esq., Brown Gaines, LLC, for the protester.
Christine Simpson, Esq., Department of Health and Humans Services, for the agency.
Young H. Cho, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest challenging elimination from competition is denied where agency reasonably found the protester's proposal failed to comply with the solicitation's specific instructions for providing verification of an adequate cost accounting system.

DECISION

Graham Technologies, LLC, an 8(a) small business, of Largo, Maryland, protests the Department of Health and Human Services, National Institutes of Health (NIH)'s exclusion of the protester's proposal from further consideration under request for proposals (RFP) No. NIHJT2016015, for information technology (IT) supplies and services. The protester argues that the agency's exclusion of its proposal was unreasonable because it complied with the solicitation's instructions.

We deny the protest.

BACKGROUND

The RFP, ¹ issued on March 14, 2016, contemplated the award of additional indefinite-delivery, indefinite-quantity (IDIQ) contracts for NIH's existing Chief Information Officer-Solutions and Partners 3 (CIO-SP3) small business governmentwide

¹ The solicitation was amended four times. All citations to the RFP are to the conformed RFP provided by the agency.

acquisition contract (GWAC), a 10-year IDIQ contract for IT solutions and services.² Id. at B-1, M-2; Supplemental (Supp.) Memorandum of Law (MOL) at 2. The RFP stated that the agency intended to make up to 35 awards, but also reserved the right to make fewer or more awards. RFP at L-6, M-2. In this regard, the RFP provided that the government would establish contractor groups and projected the number of anticipated awards for each group.³ See id. at M-2, M-3. The solicitation contemplated the issuance of fixed-price, time-and-materials, or cost-reimbursement task orders during the period of performance, which would correspond with the current GWAC contracts, and would end in 2022. Id. at B-1, L-6, F-1, G-6-G-8. The maximum order amount established for the contract was \$20 billion with a guaranteed minimum of \$250 per awardee. Id. at B-2.

The solicitation advised that the agency would evaluate proposals in two phases. Id. at M-1. During phase 1, the government would evaluate the proposals based on four go/no-go requirements: compliant proposal; verification of an adequate accounting system; IT services for biomedical research, health sciences, and healthcare; and domain-specific capability in a health-related mission. Id. at M-1, M-3-M-4. The solicitation advised that a proposal determined to be unacceptable for any of these four requirements under phase 1 would be ineligible for further consideration for award. Id. at M-4. Proposals found acceptable under phase 1 would proceed to be evaluated under phase 2, using a best-value tradeoff methodology, considering price and the following three factors: technical capability and understanding; management approach; and past performance. The technical capability and management approach factors were of equal importance, and both factors, individually were more important than past performance. Price was the least important of all evaluation factors. Id. at M-1.

The agency received 552 proposals--of which 167 were for the 8(a) contractor group--including a proposal from Graham Technologies. Supp. Contracting Officer Statement (COS) at 1; Supp. MOL, attach. 1, Emails Between Agency and Protester, Agency's Dec. 20, 2018, Notice of Unsuccessful Proposal, at 3. As relevant here, the agency found Graham Technologies' proposal unacceptable under the verification of an adequate accounting system requirement at phase 1, and therefore the proposal was ineligible for further consideration. See AR, Tab 4a, Go/No-Go Assessment Compliant Proposal and Verification of an Adequate Accounting System Socioeconomic Group 8(a) at 4, 6, 83.

² Pursuant to Section 5112(e) of the Clinger-Cohen Act of 1996, 40 U.S.C. § 11302(e), the Office of Management and Budget has designated NIH as an executive agent for government-wide IT acquisitions. Agency Report (AR), Tab 2, RFP at B-1.

³ The solicitation identified these contractor groups as: historically underutilized business zone (HUBZone), service-disabled veteran-owned small business (SDVOSB), section 8(a), and small business. RFP at M-2-M-3.

On December 20, 2018, the agency notified Graham Technologies that it was not selected for award. Supp. MOL, attach. 1, Emails Between Agency and Protester, Agency's Dec. 20, 2018, Notice of Unsuccessful Proposal, at 3. After requesting and receiving a debriefing, this protest followed.

DISCUSSION

Graham Technologies argues that the agency's elimination of its proposal from the competition for failing to comply with the solicitation's instructions for the verification of an adequate accounting system was unreasonable.⁴ Specifically, the protester argues that its proposal complied with the following solicitation language, which, according to the protester, provided the "explicit instructions" as to how to furnish the verification:

As such, the Offeror must provide in its proposal a contact name and contact information . . . of its representative at its cognizant DCAA [Defense Contract Auditing Agency], DCMA [Defense Contract Management Agency], federal civilian audit agency, or third-party accounting firm and submit, if available, a copy of the Pre-Award Survey of Prospective Contracting Accounting System (SF 1408), provisional billing rates, and/or forward pricing rate agreements.

Protest at 3; Comments at 2-3 (citing RFP at L-17) (emphasis added). In this regard, Graham Technologies alleges that the solicitation made clear by the use of the term "as such" that the verification requirement would be satisfied by providing the contact information for the offeror's representative of the cognizant federal audit agency. Protest at 3; Comments at 3; Supp. Comments at 4. By contrast, the protester asserts that the solicitation's use of the term "if available" indicated that additional information was not necessary to satisfy the solicitation's requirements. Id. Consequently, the protester essentially argues that its elimination based on the failure to provide a DCAA audit report, despite providing contact information for DCAA, was unreasonable. Id.

In response, the agency acknowledges that had the protester provided a DCAA audit report with its proposal, it would have been an acceptable source of verification. Supp. COS; Supp. MOL at 3. However, the agency states that the solicitation did not permit

⁴ In filing and pursuing this protest, Graham Technologies has made arguments that are in addition to, or variations of, those discussed below, as well as arguments that were withdrawn during the development of the protest. See Comments at 4 (withdrawing protest ground). In addition, the protester raised repeated objections with regard to the scope of the agency's document production, based on its mistaken belief that the agency had established a competitive range--which it had not. See Protest at 2-3; Comments at 1-2; Supp. Comments at 1-3. While we do not address every issue raised, we have considered all of the protester's arguments to the extent they have not been withdrawn and conclude that none furnishes a basis on which to sustain the protest.

offerors to essentially self-verify the adequacy of their accounting systems. Id. Rather, NIH explains that by requiring offerors to provide verification from DCAA (or other audit or accounting agencies), NIH would obtain independent verification that offerors' accounting systems had been audited and determined adequate. Id.

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 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. Crew Training Int'l, Inc., B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4.

We have reviewed the solicitation, and on this record, we find that the agency's interpretation of the solicitation, when read as a whole, is reasonable, whereas the protester's interpretation is not reasonable.

The solicitation stated that under the verification of an adequate accounting system requirement, the agency "will evaluate evidence that the [o]fferor . . . ha[s] an adequate accounting system in accordance with FAR [Federal Acquisition Regulation] 16.301-3(a)(1), as required under [s]ection L.3.1.h." RFP at M-3-M-4 (emphasis added). The solicitation clearly warned offerors that failure to "furnish verification of an adequate cost accounting system will result" in the assignment of an unacceptable rating for that requirement, as well as a determination that the proposal is unacceptable and ineligible for further consideration for award. Id. (emphasis added).

Furthermore, Section L.3.1.h provided instructions with regard to the verification of an adequate accounting system requirement, which included the language quoted by the protester above. Id. at L-17. Notably, the paragraph preceding the quoted language included the following instructions:

Because of the need for [c]ontractors to respond to [c]ost [r]eimbursement task orders, to be eligible for award under the GWAC, [o]fferors must have verification from [DCAA, DCMA], any federal civilian audit agency, or a third-party [c]ertified [p]ublic [a]ccounting (CPA) firm of an accounting system that has been audited and determined adequate for determining costs applicable to this contract in accordance with FAR 16.301-3(a)(1).

Id. (emphasis added).

On this record, we find that the agency's interpretation of the solicitation, when read as a whole, is reasonable, whereas the protester's interpretation is not reasonable. In this regard, when read in isolation, the provision quoted by Graham Technologies supports the protester's interpretation that the only information that was required to be submitted with its proposal was the contact information for its DCAA representative and that no other information was required to be submitted unless available. See RFP at L-17.

However, when read as a whole, the solicitation clearly instructed offerors to provide “evidence” or “verification from [DCAA, DCMA], any federal civilian audit agency, or a third-party [CPA] firm” that NIH would then evaluate. Id., see also id. at M-3-M-4. Graham Technologies’ proposed interpretation of the solicitation’s requirements based on its selective reading of the RFP would render the solicitation’s references to provide “evidence” and “verification from [DCAA, DCMA], any federal civilian audit agency, or a third-party [CPA] firm” superfluous.

Moreover, during the solicitation question and answer period, NIH specifically addressed questions regarding the accounting verification requirement. See, e.g., RFP, amend. 2, Solicitation Questions and Answers, at 27 (Response Nos. 135 and 137). Here, the protester’s interpretation ignores the agency’s responses to offerors’ questions that repeatedly stated that “[v]erification of an adequate accounting system is required to be submitted with the proposal.” Accordingly, Graham Technologies’ interpretation that it was only required to provide the contact information for its representative at DCAA is not reasonable. See, e.g., Magellan Federal, B-416254, B-416254.2, June 7, 2018, 2018 CPD ¶ 206 at 4.

Further, on this record, we find that the agency followed the clear and unambiguous terms of the solicitation and reasonably found Graham Technologies’ proposal unacceptable. Graham Technologies’ proposal included a document created by Graham Technologies that represented that its accounting system was approved by DCAA. AR, Tab 3, L.3.1.h Graham Technologies Verification of Accounting System. Although this document included the audit report number, the date of the report number, and the contact information for the cognizant DCAA office and representative, the document did not include any verification from DCAA itself. Id. While the agency acknowledged in its evaluation that the protester’s proposal referenced a DCAA audit report and provided contact information for DCAA, it nonetheless determined that the information provided by Graham Technologies did not satisfy the requirements of the solicitation to provide verification from DCAA. AR, Tab 4a, Go/No-Go Assessment Compliant Proposal and Verification of an Adequate Accounting System Socioeconomic Group 8(a) at 83. As a result, we find the agency’s evaluation both reasonable and consistent with the solicitation and the protester’s arguments do not provide any basis to sustain the protest. Leader Commc’ns, Inc., B-413104.9, Mar. 17, 2017, 2017 CPD ¶ 96 at 4 (denying challenge to elimination from competition where protester’s proposal failed to comply with the solicitation’s instructions for providing independent verification of an adequate cost accounting system).

The protest is denied.

Thomas H. Armstrong
General Counsel