



Decision

Matter of: Federal Acquisition Services Team OASIS JV, LLC

File: B-418776

Date: July 24, 2020

Erin L. Felix, Esq., and Gregory S. Jacobs, Esq., Polsinelli PC, for the protester.
Christine C. Fontenelle, Department of Homeland Security, for the agency.
Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that the solicitation contained ambiguous and vague evaluation criteria is denied where the criteria is intelligible and informs prospective vendors of the basis for the evaluation.

DECISION

Federal Acquisition Services Team OASIS JV, LLC (FAST), of Virginia Beach, Virginia, protests the terms of request for quotations (RFQ) No. 70RCSA20Q00000028, issued by the Department of Homeland Security, Cybersecurity and Infrastructure Security Agency (CISA) for budget, acquisition, and contract support services. FAST complains that the RFQ's evaluation criteria are unreasonably vague or ambiguous.

We deny the protest.

BACKGROUND

On May 6, 2020, CISA issued the solicitation for budget, acquisition, and contract management support services.¹ Agency Report (AR) Tab 4, RFQ at 1; RFQ, Statement of Work (SOW) at 2-3; Contracting Officer's Statement of Facts (COS) at 2. The RFQ

¹ The RFQ was issued against the General Services Administration's One Acquisition Solution for Integrated Services indefinite-delivery, indefinite-quantity contract (IDIQ), and was restricted to eligible small businesses. RFQ, Instructions and Evaluation Criteria at 1.

contemplated the award of a single time-and-materials task order contract to be performed over a 1-year base period and two 1-year option periods. RFQ at 1-2. The RFQ delineated eight specific tasks for the selected contractor, including: program management; procurement strategic planning and execution support; contract management support; budget formulation support; budget execution support; finance and budget management support; surge support; and transitioning out. RFQ, SOW at 3-11.

The RFQ advised that award would be made on a best-value tradeoff basis considering the following factors: past experience, management approach, staffing approach, and price. RFQ, Instructions and Evaluation Criteria at 8-13. The RFQ specified that past experience would be considered the most important non-price factor, and also that, when combined, the non-price factors would be considered significantly more important than the price factor.² *Id.* at 13.

DISCUSSION

FAST raises multiple allegations challenging the evaluation criteria for the past experience and management approach factors as ambiguous and vague, and claims that such ambiguity and vagueness prevents vendors from competing on a common basis. Protest at 6-11. We note at the outset that a contracting agency must provide vendors with sufficient detail in a solicitation to enable them to compete intelligently and on a relatively equal basis; nevertheless, there is no legal requirement that the solicitation remove every potential uncertainty from each vendor's interpretation. *ACME Endeavors, Inc.*, B-417455, June 25, 2019, 2019 CPD ¶ 224 at 3. We have reviewed all of the protester's challenges, and conclude that none provides us with a basis to sustain the protest. We discuss the principal allegations below.

Past Experience

Under this factor, FAST alleges that the evaluation criteria requiring each vendor to detail its experience providing procurement planning and execution services is ambiguous. FAST mostly highlights multiple phrases within the criteria, such as "at the tactical level," "ability to support," "ability to independently develop and define," and "transcend beyond [the] status quo," as confusing and susceptible to varying interpretations. Protest at 6-9. In response, the agency generally explains that FAST has cherry-picked "innocuous phrases," and that the evaluation criteria is not ambiguous when the criteria is read in conjunction with the RFQ's instructions. Memorandum of Law (MOL) at 9.

Relevant to the instant protest, the RFQ instructs each vendor to provide two examples of its past experience providing procurement planning and execution services. RFQ,

² This protest is within our jurisdiction to hear protests of task orders placed under civilian agency IDIQ contracts valued in excess of \$10 million. 41 U.S.C. § 4106(f).

Instructions and Evaluation Criteria at 3. Each vendor should demonstrate its overall experience in managing a procurement project from acquisition planning to award, and its experience applying innovative procurement methods.³ *Id.* FAST argues that the evaluation criteria for both types of experience are ambiguous. We will discuss each in turn.

Experience Managing a Procurement Project

To demonstrate overall experience managing a procurement project, the RFQ instructs each vendor to provide an example demonstrating it assisted an agency in procuring goods and services during all phases of the acquisition. RFQ, Instructions and Evaluation Criteria at 3. The RFQ specifically instructs each vendor to discuss its methodologies to ensure that the agency complies with all regulatory requirements. *Id.* Each vendor is also instructed to detail any challenges that it faced during the course of performance. *Id.*

When evaluating overall experience, the RFQ advises that it would assess the following:

Depth and breadth of expertise and knowledge in the federal procurement process at the tactical level, which includes the Quoter's ability to support a customer in the execution [of] a procurement from acquisition planning to contract award while applying all required internal and external federal regulations, agency policies and processes. The Government will also evaluate the Quoter's ability to independently develop and define effective and well researched procurement strategies and solutions to complex procurement problems to present leadership with options for decision making.

RFQ, Instructions and Evaluation Criteria at 9.

According to FAST, three phrases (*i.e.*, "at the tactical level," "ability to support," and "ability to independently develop and define") are ambiguous. Protest at 6-8. FAST argues that the phrase "at the tactical level" is ambiguous because the term is nonsensical, as it is neither a term of art nor commonly understood. *Id.* at 7. FAST argues that the phrase "ability to support" is ambiguous because the term could refer to either a vendor's capabilities or actual record of success. *Id.* at 8. Finally, FAST argues that the phrase "ability to independently develop and define" is ambiguous because the solicitation does not identify how the agency would determine whether a vendor successfully developed and defined effective procurement strategies. *Id.*

³ The RFQ specifies that each vendor may provide one example that details both its overall experience and experience applying innovative procurement methods. *Id.* Each vendor also had the option of providing two examples (*i.e.*, one example demonstrating overall experience, and another example demonstrating experience applying innovative procurement methods). RFQ, Instructions and Evaluation Criteria at 3.

Although we view the RFQ's use of the word "tactical" as imprecise, we do not conclude that the phrase will prevent vendors from competing on an equal basis. Consistent with the agency's position, we think the RFQ's instructions and evaluation criteria reasonably inform each vendor to describe experience where it assisted an agency in acquiring goods and services. MOL at 6. Despite the protester's complaints, we think the evaluation criteria, taken as a whole, reasonably informs vendors that the assessment will be based on how well the vendor assisted in conducting an acquisition, and how well the vendor developed effective procurement strategies to resolve complex issues during the course of an acquisition. See *id.* at 8-9; see *also* COS at 16.

Further, we do not find persuasive the protester's argument regarding the phrases "ability to support" or "ability to independently develop and define" because those phrases were used in the context of the agency's intent to review a vendor's record of performance, as opposed to assessing potential capabilities. Additionally, while the protester complains that the RFQ should include an evaluation standard to inform vendors how it would measure "ability to support" or "ability to independently develop and define," we do not think that level of extra detail is necessary because each vendor is already aware of the basis for the evaluation. See *Lexis-Nexis*, B-260023, May 22, 1995, 95-2 CPD ¶ 14 at 3 (agency was not required to include evaluation standard to achieve particular adjectival ratings because the solicitation explained the basis for the evaluation); *accord American Custom Meats, LLC*, B-409564, June 12, 2014, 2014 CPD ¶ 195 at 9-10 (protester's challenge to terms of evaluation criteria was denied where the solicitation reasonably informed offerors the basis for whether their proposals would be found technically acceptable). Accordingly, we deny this protest allegation.

Experience Applying Innovative Procurement Methods

To demonstrate experience in applying innovative procurement methods, the RFQ instructs each vendor to describe a specific example of past experience where the vendor applied innovative procurement techniques that "go beyond" traditional methods. RFQ, Instructions and Evaluation Criteria at 3. The RFQ specifically instructs each vendor to discuss its approach to solving unique and large-scale procurement problems, such as streamlining the procurement process and how to acquire rapidly changing technology and services. *Id.*

When evaluating each vendor's experience applying innovative procurement methods, the RFQ provides:

Quoter's demonstrated experience in using innovative procurement methods that incorporates the latest procurement[] trends to streamline actions that result in rapid, flexible, and agile procurements to allow [the agency] to "transcend beyond [the] status quo" or go beyond using traditional/routine procurement tools and methodologies and advance to innovate and sustainable approaches appropriate to support high tempo

cyber and technology centric environments similar to the space in which [the agency] operates.

RFQ, Instructions and Evaluation Criteria at 9.

FAST argues that this evaluation criterion is vague because the phrase “transcend beyond [the] status quo” is nonsensical, and because the agency does not identify what constitutes traditional/routine procurement tools. Protest at 8-9. The agency counters that the RFQ, when read as a whole, is not susceptible to more than one reasonable interpretation. MOL at 8.

We have no basis to object to the agency’s position. When read in conjunction, the RFQ’s instructions and evaluation criterion make clear that a prospective vendor should demonstrate experience showing that it used innovative procurement techniques on a prior contract to address large-scale procurement problems, and that a vendor would be assessed based on how well it was able to implement or utilize such innovative techniques. See COS at 16. Although FAST complains that the phrase “transcend beyond [the] status quo” is nonsensical, we disagree because the phrase adequately conveys that a vendor will be evaluated based on whether its quotation demonstrates innovative procurement tools. See MOL at 8. Furthermore, the solicitation immediately qualifies the phrase as referring to using procurement techniques that exceed traditional/routine tools. RFQ, Instructions and Evaluation Criteria at 9; see *a/so* MOL at 8. Thus, we do not find the RFQ to be vague because the phrase is intelligible and qualified in the criterion, and therefore is not susceptible to more than one reasonable interpretation.

As to FAST’s alternate complaint, while it may be more helpful to prospective vendors if the agency articulated what constitutes traditional/routine procurement tools, we do not think the agency is required to provide that additional detail. Consistent with the agency’s position, all vendors are aware that the competition requires them to demonstrate experience using innovative procurement tools and techniques, and as a result, we think they are plainly aware of the basis for the competition.⁴ MOL at 8; see *Lexis-Nexis, supra*.

⁴ Additionally, we do not see how the protester could possibly be prejudiced by the agency’s failure to articulate what constitutes traditional procurement tools. Competitive prejudice is an essential element of every viable protest, and we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency’s actions. *Orbit Research, LLC*, B-417462, July 17, 2019, 2019 CPD ¶ 258 at 7. Here, the agency explains that one of the protester’s members is the incumbent contractor. As a result, FAST is plainly aware of the agency’s existing procurement tools and should therefore be better positioned than its competitors to demonstrate experience using innovative techniques. Although FAST may argue that the RFQ’s SOW and the SOW for its incumbent contract contain varying duties, we do

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Further, we note that an agency is not required to explain every potential uncertainty, and prospective vendors are expected to use their professional expertise and business judgment in preparing their quotations; in other words, FAST, as a service provider in this industry, is well-equipped to determine what constitutes an innovative procurement technique without the agency's assistance. See *ARAMARK Servs., Inc.*, B-282232.2, June 18, 1999, 99-1 CPD ¶ 110 at 5 ("An agency may properly impose substantial risk upon the contractor and minimal risk upon itself, and offerors reasonably are expected to use their professional expertise and business judgment in anticipating risks and preparing their offers."). Moreover, the agency explains that 17 vendors submitted quotations, and that not a single vendor asked a question during the RFQ's question-and-answer phase inquiring about what constitutes a traditional procurement tool; thus, it does not appear that the solicitation inhibited competition or prevented vendors from preparing quotations properly. MOL at 9; see *Int'l Security Tech., Inc.*, B-215029, Jan. 2, 1985, 85-1 CPD ¶ 6 at 5 (noting that none of the other eight offerors complained about the allegedly vague provision, and therefore "it does not appear that the solicitation inhibited competition or prevented offerors from preparing proposals properly"). Accordingly, we deny the protest allegation.⁵

Management Approach

For this factor, FAST likewise argues that the evaluation criteria contains vague terms that do not provide sufficient information for vendors to compete equally. Protest at 10-12. Specifically, FAST complains that the evaluation criteria assessing a vendor's contract management practice is unreasonable. *Id.*

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not see how that means that FAST is unaware of the agency's existing procurement techniques and practices. Comments at 10-11.

⁵ The protester also alleges that the RFQ is ambiguous because the SOW calls for systems development services even though the procurement is for procurement support services. Protest at 9, n.4; see *also* Comments at 7-10. We do not find this position persuasive because, as the agency points out, the SOW does not call for systems development services; rather, the SOW requires the selected contractor to maintain the procurement request and purchase request databases and "make minor enhancements" to include manipulating stored data. MOL at 9-10; RFQ, SOW at 7. Further, the SOW specifically identifies that the agency's purchase request database uses the Microsoft Access software application and does not contemplate that the selected vendor will develop or implement a separate software application. MOL at 9-10; RFQ, SOW at 7. Accordingly, we deny this allegation because the SOW does not include conflicting duties or tasks that would reasonably confuse prospective vendors as to what services are to be provided under the contract.

As background, the RFQ instructs each vendor to describe its management approach using a draft Performance Management Plan for providing budget and acquisition support in terms of contract management and resource management. RFQ, Instructions and Evaluation Criteria at 5. Relevant to this allegation, when describing contract management, the RFQ instructs each vendor to address four topics.

First, each vendor is instructed to describe its knowledge and experience in managing procurement data and systems to manage large volumes of purchase request files, contract databases, and funding databases. RFQ, Instructions and Evaluation Criteria at 5. Second, the RFQ instructs each vendor to describe its processes that identify, analyze, and improve upon existing business processes required to complete the tasks outlined in the SOW; specifically, each vendor should describe how its management approach streamlines procurement activities, reduces operating inefficiencies, automates business processes, and identifies rapid acquisition techniques. *Id.* The RFQ also instructs each vendor to describe its knowledge management processes to ensure that all of its personnel are aware of procurement trends and regulatory changes. *Id.*

Third, the RFQ instructs each vendor to discuss its subcontractor/teaming approach, if applicable, and how it would successfully manage any subcontractors. RFQ, Instructions and Evaluation Criteria at 5. Fourth, each vendor is instructed to describe how it will manage and ensure customer satisfaction. *Id.*

When assessing the contract management component of each vendor's management approach, the RFQ provided four evaluation criteria mirroring the four instructions. *Id.* FAST argues that the second, third, and fourth of these evaluation criteria are ambiguous and vague. We will discuss each challenge in turn.

Second Contract Management Evaluation Criterion

The RFQ advised that the agency would assess each vendor's management approach based on the following:

Solid process and methodologies to proactively identify, analyze and improve upon existing business processes required to complete the tasks within the SOW, specifically, as it relates to procurement innovation to streamline procurement activities, reduce inefficiencies, automate processes, and identify/utilize rapid acquisition methodologies/techniques to meet [agency] procurement needs in a dynamic and fast-paced cyber/technology environment. The Government will also evaluate the Quoter[s] defined Knowledge Management processes and tools required to create, share use, and manage knowledge in the performance of this

contract to ensure staff performing on this contract stays apprised and applies the latest procurement/budget trends and regulations that impact the day to day performance of this contract.

RFQ, Instructions and Evaluation Criteria at 10.

As its primary allegation, FAST takes issue with the fact that the agency plans to evaluate a vendor's knowledge management tools. Protest at 10-11. FAST asserts that the agency will provide all tools (including knowledge management tools) to the selected contractor, and therefore, the agency need not evaluate a vendor's defined knowledge management processes. *Id.* at 10. Based on that assertion, FAST argues that this evaluation criterion is vague because it is inconsistent with the services outlined in the SOW. FAST also argues that the evaluation criterion's use of "tools" is, vague and confusing. Comments at 8-9.

We do not find that the provision is inconsistent with the SOW. The agency explains, and our review confirms, that the selected contractor is not required to create or upload a new knowledge management tool (*i.e.*, software application) inconsistent with the SOW; instead, the agency explains that this evaluation criterion is designed to review a critical aspect of any functioning management plan in this industry. MOL at 13 ("Here, the Agency is attempting to gauge how the vendor will manage procurement innovation and sourcing best practices."). Further, many of the duties outlined in the SOW depend upon the selected contractor having a high-functioning knowledge management component of their management plan because the selected contractor must develop, streamline, or improve acquisition operations using recently developed procurement techniques and strategies. See RFQ, SOW at 5-7. Thus, we do not find that the evaluation criterion is unreasonably vague or ambiguous because it does not contradict the duties outlined in the SOW.

We also do not find the solicitation's use of "tools" to be vague or confusing. When reading the RFQ, we agree with the agency that the only reasonable interpretation of the provision is that the CISA will assess how well each vendor's management plan addresses the sharing, using, and managing of knowledge throughout its organization and among its personnel. See MOL at 13. Although the protester argues that the solicitation's use of tools as part of the phrase "Knowledge Management processes and tools" is vague because a prospective vendor will be unsure whether it should propose a tool (which is potentially prohibited), we do not find that argument persuasive. See Comments at 8-9. Consistent with the agency's position, we think that the solicitation reasonably conveys that its use of "tools" in this provision refers to a business strategy since the provision uses "tools" in the same context as "processes," as opposed to a software application which is the type of tool that the protester appears to reference.⁶

⁶ Specifically, the protester asserts the following:

[I]n making a submission under Factor 2, Contract Management, a quoter will have to decide whether to propose Knowledge Management tools for
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MOL at 13; RFQ, Instructions and Evaluation Criteria at 10. Accordingly, we deny the protest allegation.

The protester also argues that this evaluation criterion is vague because the agency does not articulate what constitutes “existing business processes.” Protest at 10. Specifically, the protester asserts that CISA “does not provide enough information regarding the current status quo to enable quoters to propose improvements on the current processes.” *Id.*

As outlined above and as explained by the agency, the SOW requires the selected contractor to advise the agency regarding how it might improve or streamline its acquisition processes. RFQ, SOW at 5-7; MOL at 12. Further, the evaluation criterion provides that CISA will evaluate a vendor’s processes to streamline and automate the acquisition process. RFQ, Instructions and Evaluation Criteria at 10. Thus, each vendor is plainly aware that it will be evaluated based on how well its processes could improve CISA’s acquisition efforts. Similar to its other complaints, although FAST may seek additional information, we do not think that any further detail is required because prospective vendors are plainly aware of the basis for the evaluation. *Lexis-Nexis, supra*. Furthermore, we are aware of no legal requirement, and FAST does not cite any, that an agency must “spoon feed” vendors by explaining in minute detail every proposal component necessary to ensure a high score in the evaluation. *C3, Inc., B-241983.2, Mar. 13, 1991, 91-1 CPD ¶ 279 at 4*. Accordingly, we deny this protest allegation.⁷

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evaluation by CISA where the SOW states that all such tools shall be provided by the Government. On one hand, a quoter’s proposing tools could lead to the conclusion that it does not understand the nature of government furnished information under the SOW; on the other hand, failing to propose tools could lead to a negative evaluation under the stated criteria. The contradictory nature of the Solicitation has created a situation where offerors cannot reasonably discern whether or not they should be proposing Knowledge Management tools.

Comments at 7.

⁷ Related to this criterion, FAST complains that the RFQ is confusing because the SOW requires the selected contractor to implement changes to CISA’s systems, while the RFQ prohibits the selected contractor from making those types of changes. Protest at 10; Comments at 7. We deny this allegation because the SOW does not require the protester to make any of the large-scale technological changes, or systems development changes, to which the protester refers; indeed, the SOW requires the contractor to perform functions like “assist with the development and implementation of standardized acquisition and procurement templates and briefings, standard operating procedures, best practices, and training initiatives for program personnel.” RFQ, SOW at 6; see *also* MOL at 12-13. Thus, we agree with CISA that the RFQ does not

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Third Contract Management Evaluation Criterion

The RFQ advised that the agency would assess each vendor's management plan under the following criterion, if applicable:

Strong subcontractor/teaming management approach to select, maintain, and manage subcontractors, to include how the Quoter identifies what capabilities and specialties required to perform the contract need to be subcontracted. The Quoter will also be evaluated in the quality of subcontractor selected and appropriateness in terms of size to support this contract. Additionally, the Government will evaluate the management of performance assessment of subcontractors to ensure subcontractor staff continuously meet and exceed the requirements of the SOW. This is only applicable to Quoters proposing to use subcontractors as part of the management approach for the resultant award.

RFQ, Instructions and Evaluation Criteria at 10.

FAST asserts that this criterion is vague because the agency plans to evaluate the "quality of subcontractor," but does not specify how quality will be objectively measured. Protest at 11. In response, the agency argues that the evaluation criterion, when read in conjunction with the RFQ's instructions, make clear that the agency will evaluate the vendor's judgment and approach to selecting a subcontractor. MOL at 14.

We have no basis to object to the agency's position. We agree with the agency that this evaluation criterion contemplates that the agency will assess each vendor's approach to selecting a subcontractor (*i.e.*, how they distinguish between potential subcontractors) and then review the "quality of subcontractor" ultimately selected based on the actual application of the selection methodology. See RFQ, Instructions and Evaluation Criteria at 5, 10. Indeed, as the agency points out, the RFQ's instructions make plain that the agency will assess the "quality of subcontractor" in this manner because each vendor is specifically instructed to describe its particular approach to selecting a subcontractor. *Id.* at 5; MOL at 14. Accordingly, we deny the protest allegation.

Fourth Contract Management Evaluation Criterion

The final evaluation criterion for the contract management component of the management approach factor advises as follows:

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introduce any confusion as to what a prospective vendor must include in its quotation in order to receive a favorable evaluation under this criterion. MOL at 12-13.

Demonstrate strong business[] processes to manage and ensure customer satisfaction throughout the performance of the contract.

RFQ, Instructions and Evaluation Criteria at 10.

FAST argues that this criterion is vague because CISA does not provide a definition for “strong business practices,” and the phrase “manage and ensure customer satisfaction” does not provide any clarity. Protest at 11. According to FAST, the agency should provide additional guidance regarding what types of business processes the agency seeks to evaluate, and what aspects of those processes will be considered strong. *Id.*

On this record, we conclude that the evaluation criterion is not vague. As the agency points out, the RFQ clearly indicates what material should be provided, and how that material will be evaluated; indeed, the RFQ plainly instructs each vendor to describe its specific processes for managing and ensuring customer satisfaction, and explains that it will evaluate the quality of each proposed process. RFQ, Instructions and Evaluation Criteria at 5, 10; see MOL at 14-15. Thus, we agree with CISA that the only reasonable interpretation of the RFQ is that the agency intends to evaluate whether each proposed process can capably manage and ensure customer satisfaction. Although FAST seeks additional guidance as to how it can tailor its customer satisfaction process to receive a more favorable evaluation, we do not think that any additional detail is necessary, particularly where, as here, all competitors are plainly aware of the basis for the evaluation. See *Lexis-Nexis, supra*. Accordingly, we deny the protest allegation.

The protest is denied.

Thomas H. Armstrong
General Counsel