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Decision

Matter of: InterImage, Inc.

File: B-418733; B-418733.2

Date: August 10, 2020

Alexander B. Ginsberg, Esq., and Kevin R. Massoudi, Esq., Pillsbury Winthrop Shaw Pittman LLP, for the protester.

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DIGEST

1. Protest challenging a solicitation as unduly restrictive of competition is denied where the agency's justification for the restrictive solicitation provision is rational and reasonably necessary to meet the agency's needs.
 2. Protest challenging exclusion from competition for failure to follow solicitation instructions is denied where the record shows that the protester failed to follow the solicitation's clear instructions.
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DECISION

InterImage, Inc., of Arlington, Virginia, challenges its exclusion from participating in the competition under request for proposals (RFP) No. HC1047-20-R-0009 issued by the Department of Defense (DOD), Defense Information Systems Agency (DISA), for comprehensive support services to modernize the agency's various legacy systems architecture for DOD's Global Force Management (GFM).¹ The protester argues that amendment 3 to the solicitation is unduly restrictive of competition and that the agency unreasonably excluded it from the procurement.

We deny the protest.

¹ In general terms, GFM allows the Secretary of Defense to strategically manage the employment of military personnel among combatant commanders. DOD Joint Publication 3-35 Deployment and Redeployment Operations, Jan. 10, 2018, at 22.

BACKGROUND

The solicitation, issued on April 16, 2020, under Federal Acquisition Regulation part 15, contemplated the award of a single indefinite-delivery, indefinite-quantity contract under which fixed-price and cost-plus-fixed-fee task orders could be issued during a 5-year ordering period. Agency Report (AR), Tab 1, RFP at 1, 2, 8, 49.² In general terms, the solicitation sought comprehensive support services to modernize the agency's aging legacy systems architecture to a "netcentric, service-oriented architecture and deliver next generation services," that provide force planning, deployment planning, and force projection capabilities to the warfighter.³ AR, Tab 10, RFP amend.4, attach. 1, Base Performance Work Statement (PWS) at 1. Award will be made on a best-value tradeoff basis considering the following factors: technical; past performance; price; and small business. AR, Tab 1, RFP at 76. The technical factor is comprised of four subfactors: schedule; design and architecture; software development life cycle plan; and management approach. *Id.* The management approach subfactor includes the following two elements: management plan and staffing approach. *Id.* Proposals were due on May 28, 2020. *Id.* at 1.

The solicitation initially contemplated providing offerors with a pre-proposal presentation and code preview on May 5. *Id.* at 50-51; AR, Tab 15, Decl. of Contracting Officer at 1. Access to the presentation and code preview would only be granted to participants that had been vetted and approved by the agency. AR, Tab 1, RFP at 50. The solicitation limited the total number of pre-proposal presentation and code preview participants to four individuals per company for each event; participants could be the same or different individuals for each event. *Id.* The solicitation instructed offerors to submit a roster of their proposed participants along with a signed non-disclosure agreement (NDA) for each participant. *Id.* The roster of participants and associated documentation first would be evaluated under two threshold criteria.⁴ *Id.* at 50, 77. InterImage timely provided information addressing the two threshold criteria, and the firm was notified on April 30 that it had been found acceptable. Combined Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 5.

² The solicitation has been amended four times. All citations to the record are to the consecutive numbering of the pages in the Adobe PDF format of the documents provided by the agency.

³ The Joint Planning and Execution Services (JPES) system is the modernization effort intended to replace the legacy Joint Operation Planning and Execution System. AR, Tab 10, RFP amend. 4, attach. 1, Base PWS at 1.

⁴ The two threshold criteria were to be evaluated as acceptable or unacceptable prior to the agency's evaluation of the proposals under the evaluation factors identified above. The two criteria were: (1) pre-proposal conference and code preview NDA and (2) level of facility security clearance. AR, Tab 1, RFP at 49-50, 77. The second criterion is not relevant to this discussion.

On May 4, DISA issued amendment 3 to the solicitation. AR, Tab 6, RFP amend. 3 at 1. Relevant here, the amendment changed the pre-proposal presentation and code preview date from May 5 to May 7. *Id.* The amendment also included instructions on how the pre-proposal presentation and code preview would be provided to offerors. AR, Tab 6, RFP amend. 3, attach. 20, Instruction to Offerors for the Pre-Proposal Presentation and Code Preview (Pre-Proposal Presentation and Code Preview Instructions).

The Pre-Proposal Presentation and Code Preview Instructions stated that the government would send an email to the approved participants with further guidance on how to access the pre-proposal presentation, code preview, and JPES First Look Site.⁵ *Id.* Relevant here, the instructions stated that the individuals approved to attend the pre-proposal presentation would be notified by email about when the files would be available for access. The instructions advised that the email would provide a web link for access to the DOD's Secure Access File Exchange (SAFE) site and would also contain additional information necessary to access the documents.⁶ *Id.*

The instructions also informed offerors that all pre-proposal presentation, code preview, and JPES First Look Site related emails would be sent on May 6. The instructions further warned:

In order to mitigate any competitive advantage, Offerors' personnel shall not access the Pre-Proposal Presentation, Code Preview, and JPES First Look Site before 8:00am EST, 07 May 2020. The Government will monitor the system and any access thereto. Any Offeror who accesses, through a submitted and vetted [point of contact (POC)] or POCs or any other individual(s), the Pre-Proposal Presentation, Code Preview, or JPES First Look Site prior to 8:00am EST, 07 May 2020, or otherwise fails to comply with the provided instructions, *will be removed from the competition for failure to follow solicitation instructions and will not be considered for award.*

⁵ The "First Look Site" is a prototype environment for JPES that "permits a limited number of stakeholders access via the internet to review and interact with the JPES software during the development process and allow the Contractor to demonstrate capability as required." AR, Tab 10, RFP amend. 4, attach. 1, Base PWS at 19.

⁶ The DOD SAFE is a web-based tool that provides users with authenticated DOD common access cards (CAC), and guests (unauthenticated users), the ability to securely send and receive large files, including files that are too large to be transmitted via email. Guests can receive files from CAC users. Once files are uploaded, an automated email is sent by DOD SAFE notifying the email recipient that the files are available for download. DOD SAFE, <https://safe.apps.mil/about.php> (last visited July 22, 2020).

Id. (emphasis added).

On May 6, at 8:35 a.m. Eastern Time (ET), the agency sent an email with the subject header, "Instructions to Offerors for the Global Force Management Pre-Proposal Presentation and Code Preview" to all approved participants, including those for InterImage. AR, Tab 7, Pre-Proposal Instructions Email. Four documents were attached to this email. *Id.* The email described the content of each attachment and reiterated the warning in the Pre-Proposal Presentation and Code Preview Instructions. Specifically, these instructions warned that participants were not to access the pre-proposal presentation, code preview, or JPES First Look Site, before 8:00 a.m. ET on May 7, and that if they did, the offeror would be excluded from the competition. *Id.*

Relevant here, attachment 1 to the May 6 email was the DOD SAFE Instructions. AR, Tab 7, Pre-Proposal Instructions Email attach. 1, DOD SAFE Instructions. The email specifically directed the recipient's attention to the instructions in attachment 1. AR, Tab 7, Pre-Proposal Instructions Email. In addition to providing instructions on how to access the files, the DOD SAFE Instructions (attachment 1) also included a complete list of names (and a short description) of the pre-proposal presentation documents provided at the DOD SAFE site. AR, Tab 7, Pre-Proposal Instructions Email attach. 1, DOD SAFE Instructions at 1-2.

After the email had been sent, the contracting officer was notified later that day (May 6) by both agency personnel and InterImage, that one of InterImage's approved participants had accessed the pre-proposal presentation from DOD SAFE at 10:06 a.m. ET, that morning. COS/MOL at 8; AR, Tab 15, Decl. of Contracting Officer at 3; Tab 8, DOD SAFE Pickup Confirmation Email; Tab 9, InterImage Email re DOD SAFE Pickup. Because InterImage's representative accessed the presentation before 8:00 a.m. ET, May 7, the contracting officer concluded that InterImage had failed to follow the solicitation instructions, and excluded the firm from participating further in the competition. AR, Tab 11, InterImage Exclusion Letter Email attach. 1, Exclusion Letter. InterImage was notified of its exclusion later that day. *Id.* As a result of its exclusion, InterImage and its representatives were not allowed access to the pre-proposal presentation and code preview. AR, Tab 15, Decl. of Contracting Officer at 3.

On May 8, InterImage requested that the contracting officer reconsider her decision to exclude the firm from the competition. AR, Tab 12, InterImage Recon. Req. Email attach. 1, Letter. The agency responded that same day that it would not reconsider the decision. AR, Tab 13, Agency Response to InterImage Recon. Req. This protest followed.

DISCUSSION

InterImage challenges as unduly restrictive of competition the Pre-Proposal Presentation and Code Preview Instructions set forth in amendment 3 that prohibited offerors from accessing pre-proposal information prior to the designated date and time. In filing and pursuing this protest, InterImage has made arguments that are in addition

to, or variations of, those discussed below. While we do not address every issue raised, we have fully considered all of the protester's arguments and conclude that none furnishes a basis on which to sustain the protest.⁷

The protester, essentially, argues that the restriction provided in amendment 3 is irrational, lacks a reasonable basis, and is unduly restrictive of competition. According to the protester, unlike the code preview, the pre-proposal presentation does not contain "competition sensitive" information that would provide a competitive advantage over other offerors. As such, InterImage contends that its exclusion from the competition is unreasonable. While the protester does not dispute that its representative accessed materials from DOD SAFE before the authorized date and time, it contends that the access was unintentional and the agency's actions in response were unwarranted. Protest at 10; Comments and Supp. Protest at 2-3, 10-13.

DISA explains that due to the sensitive nature of the code preview and pre-proposal presentation, the agency wanted to screen and approve participants before allowing access. Therefore, DISA required offerors to provide confirmation that the firms had the appropriate facility security clearance, as well as having signed NDAs in place, prior to granting approval for any participant to access those materials. AR, Tab 15, Decl. of Contracting Officer at 1. The contracting officer considered, in whole, the nature and content of the documents provided in the pre-proposal presentation, and concluded that the pre-proposal presentation included non-public information about the JPES system and code that was related to the requirement which would be of value to offerors in developing their proposals. *Id.*; COS/MOL at 15. As a result, the contracting officer decided that all offerors should receive these documents at the same time to provide

⁷ For example, InterImage contends that neither amendment 3 nor the May 6 email from the agency provided sufficient information to alert offerors about what to expect from the automated notification email that would be sent by DOD SAFE on May 6. Because of this, the protester alleges that it was understandable for a recipient to be confused about the nature of the automated DOD SAFE email and for the recipient to click on the provided link in the email to download documents. Protest at 8. We disagree. Here, the record shows the automated notification email from DOD SAFE was sent at 8:52 a.m. ET on May 6 to Mr. C. Protest, exh. A-2, DOD SAFE Automated Email to Mr. C. The automated email included names of the files which were identical to and/or consistent with the title of the documents provided in the DOD SAFE Instructions provided in the 8:35 a.m. ET email provided earlier on May 6. AR, Tab 7, Pre-Proposal Instructions Email attach 1. DOD SAFE Instructions.

Although InterImage's representative may have been confused by the email, based on our review of the record, the DOD SAFE email was neither confusing, on its face, nor was it drafted in a manner that would lead a recipient to be confused as to the nature of the email. Moreover, given that the agency's earlier email notified recipients of what was to be expected from the forthcoming DOD SAFE email, we do not agree that the protester's confusion regarding the DOD SAFE email was "understandable." The protester's arguments provide no basis to sustain the protest.

equal access and a common basis for the competition. *Id.* In order to achieve this goal, the agency explains, it included the two threshold criteria in the solicitation and advised offerors that additional information about the pre-proposal presentation, code preview, and JPES First Look Site would be provided only after the proposed participants had been vetted and approved by the agency. *Id.*

Finally, the agency explains that on May 6, prior to the designated date and time offerors were allowed to access the pre-proposal presentation, one of InterImage's approved participants accessed the pre-proposal presentation. As a result, the agency contends it reasonably excluded InterImage from the competition. AR, Tab 15, Decl. of Contracting Officer at 3.

Generally, agencies must specify their needs in a manner designed to permit full and open competition, and may include restrictive requirements only to the extent necessary to satisfy legitimate needs, or as otherwise authorized by law. 10 U.S.C.

§ 2305(a)(1)(B)(ii). Where a protester challenges a solicitation requirement as unduly restrictive of competition, the acquiring activity has the responsibility of establishing that the requirement is reasonably necessary to meet the agency's requirements. *AAR Mfg. Inc., d/b/a AAR Mobility Sys.*, B-418339, Mar. 17, 2020, 2020 CPD ¶ 106 at 13; *OMNIPLEX World Servs. Corp.*, B-415988.2, Dec. 12, 2018, 2018 CPD ¶ 424 at 3. We examine the agency's justification for a challenged provision to ensure that it is rational, and can withstand logical scrutiny. *AAR Mfg., supra*; *Flight Support, Inc.*, B-417637.2, Oct. 3, 2019, 2019 CPD ¶ 375 at 3. A protester's disagreement with the agency's judgment concerning the agency's needs and how to accommodate them, without more, does not establish that the agency's judgment is unreasonable. *AAR Mfg. Inc., supra* at 14; *Crosstown Courier Serv., Inc.*, B-416261, July 19, 2018, 2018 CPD ¶ 300 at 3.

On this record, we find reasonable the agency's restriction on accessing pre-proposal information prior to the designated date and time. We also see no basis to object to the agency's decision to send the necessary information to the offerors, but at the same time, prohibit offerors from accessing the information prior to the specified date and time set forth in the solicitation. We also find reasonable the agency's explanation that it included the early access prohibition in order to provide a fair competition.

We further agree with the agency that the Pre-Proposal Presentation and Code Preview Instructions clearly placed offerors on notice that any attempt to access the information before the specified time, or any failure to comply with the instructions, would result in elimination from the competition. AR, Tab 6, RFP amend. 3, attach. 20, Pre-Proposal Presentation and Code Preview Instructions. While the protester disagrees with the agency's assessment about the competitive value of the non-public information in the pre-proposal presentation documents, our review of the documents and the protester's arguments, leads us to conclude that there is no a basis in the record to sustain a protest. Comments and Supp. Protest at 10-13; *id.*, attach. A, Decl. of Mr. C; Supp. COS/MOL at 7-15; AR, Tab 19, Pre-Proposal Documents. InterImage's disagreement with DISA's judgment concerning the agency's needs and how to accommodate them,

does not establish the agency's judgment is unreasonable. *Trailboss Enters., Inc.*, B-415970 *et al.*, May 7, 2018, 2018 CPD ¶ 171 at 4.

As set forth in detail above, the Pre-Proposal Presentation and Code Preview Instructions specifically directed offerors not to access the pre-proposal presentation prior to 8:00 a.m. ET, May 7. The instructions also clearly indicated that early access by a participant would result in elimination from the competition. As there is no dispute here that one of InterImage's approved participants accessed the pre-proposal presentation prior to the designated date and time, we find reasonable the agency's decision to exclude InterImage from the competition.

The protest is denied.

Thomas H. Armstrong
General Counsel