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Decision

Matter of: Next Phase Solutions and Services, Inc.

File: B-421165; B-421165.2

Date: December 29, 2022

Alexander B. Ginsberg, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for the protester.

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Ethan S. Chae, Esq., Department of Health and Human Services, for the agency.

Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation sought quotations for modernization and migration of an agency information technology system to the cloud; included a statement of objectives (SOO) that, among other things, provided for post-award analysis of alternative solutions; and stated that quotations should address all work to be performed under the SOO, the plain language of the solicitation is contrary to the protester's assertion that the solicitation did not contemplate inclusion of alternative solution analysis in quotations and precluded the recommendation of a specific solution.

DECISION

Next Phase Solutions and Services, Inc., of Columbia, Maryland, protests the issuance of a task order by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), to Index Analytics, LLC, pursuant to request for quotations (RFQ) No. CMS-2022-220829, to modernize and migrate CMS's Open Payment System (OPS) to the cloud.¹ Next Phase challenges the agency's evaluation

¹ The OPS supports the Open Payment Program (OPP), which was created by the Patient Protection and Affordable Care Act of 2009 and is a "statutorily required, national disclosure program that promotes transparency and accountability by making information about the financial relationships between Reporting Entities and Covered Recipients available to the public." Agency Report (AR), Tab 2, RFQ at 305. (All page

of Index's and Next Phase's quotations based on the premise that the RFQ "neither required nor *permitted* offerors to propose a *specific* migration approach."² Protester's Comments and Supp. Protest at 2.

We deny the protest.

BACKGROUND

On June 30, 2022, pursuant to the procedures in Federal Acquisition Regulation (FAR) subpart 8.4, the agency issued the RFQ as a small business set-aside to vendors holding multiple award schedule contracts with special item number 54151S, Information Technology (IT) Professional Services. RFQ at 1. The RFQ contemplated issuance of a single task order to "manage all aspects of [the] Open Payments System (OPS) and supporting services pertaining to the Open Payments Program (OPP)," and contained a statement of objectives (SOO) providing that the agency's goal was the "modernization, operation and maintenance of the OPS to enable system transition to the cloud, flexible development of various features, and enable publication of data in various visualizations to ensure collected data is visible to and usable by the general public."³ *Id.* at 283-84.

The solicitation provided that the source selection decision would be based on a best-value tradeoff between the following evaluation factors: (1) relevant experience;⁴

number citations in this decision refer to the Adobe PDF numbers in the documents submitted.)

² Although the solicitation was an RFQ, the record contains references to "offerors" and "proposals," as well as to "vendors" and "quotations." As discussed below, the agency performed an evaluation and best-value tradeoff similar to those performed in a negotiated procurement. Because the terminology has no effect on the outcome of Next Phase's protest, we consider the terms interchangeable.

³ The solicitation also noted that OPS's "current methodology employs a waterfall method of design and delivery which results in long release times and inflexibility," and identified the following current "pain points": "longer deployment and release cycles"; "deficient design and high estimation of efforts"; "cost control and overruns"; "poor project management and lack of coordination with other stakeholders"; "lack of innovations and lack of flexibility to adopt changes"; and "Operation and Maintenance issues increasing and impacting availability." RFQ at 287.

⁴ The solicitation provided for a two-phase process. In phase one, vendors submitted information regarding their relevant experience. After evaluation of that information, the agency made advisory recommendations to vendors regarding whether they should participate in phase two by submitting proposals responding to the other evaluation factors. RFQ at 258-59.

(2) performance work statement (PWS); (3) oral presentation; (4) section 508⁵ product accessibility template; and (5) price.⁶ RFQ at 258. In evaluating the non-price factors, the solicitation provided that the agency would assign confidence ratings (high confidence, some confidence, low confidence, or no confidence) under each factor.⁷

Of relevance to this protest, the solicitation provided that, in responding to evaluation factor 2, PWS, “The Offeror shall present a clear and concise Performance Work Statement (PWS) that demonstrates their understanding and approach of all work to be performed related to the Statement of Objectives (SOO).” *Id.* at 264-65. The solicitation stated that “[t]he Government will evaluate the proposed PWS, including the staffing and management plan, to meet the objectives of the agency encompassing all of the tasks and requirements of the Statement of Objectives.” *Id.* at 266.

As also relevant to this protest, the SOO contained various appendices, including appendix G, Concept of Operations (CONOP), which identified the tasks the contractor will be required to perform after award.⁸ In discussing the scope of requirements under task 5 (OPS modernization and transition to the cloud), the CONOP provided, among other things that, within six months after award, the contractor will be required to deliver “a minimum viable product (MVP) as a pilot for the modernization effort” and, 15 days earlier, submit an “analysis of alternatives.”⁹ *Id.* at 356, 371.

⁵ Though not at issue in this protest, section 508 refers to the Rehabilitation Act of 1973, as amended, which generally requires that agencies’ electronic and information technology be accessible to people with disabilities. See 29 U.S.C. § 794d.

⁶ The solicitation stated that the first four factors were listed in descending order of importance and that these non-price factors combined were significantly more important than price. RFQ at 258. In addition to the evaluation factors listed above, the solicitation also required offerors to submit information regarding potential organizational conflicts of interest (OCIs), but stated that “the OCI volume will not be considered in terms of best value” and the agency’s OCI evaluation “will not result in a score/rating as it is only applicable to the apparent successful Offeror.” RFQ at 276.

⁷ The solicitation provided that the ratings would reflect varying levels of agency confidence in a vendor’s ability “to successfully pursue achievement of the Government’s intent, with the expectation of little need for Government intervention.” *Id.* at 258.

⁸ The required activities were grouped into five tasks: (1) contract transition; (2) project management; (3) operation, maintenance and enhancement support, (4) help desk; and (5) OPS modernization and transition to the cloud. RFQ at 313-58.

⁹ This requirement is consistent with the solicitation’s more specific statement that, pursuant to task 5, the contractor will be required to “[p]rovide an alternative analysis of different solutions relating to modernization and cloud migration effort . . . and present

Finally, the solicitation incorporated the agency’s answers to multiple vendor questions. AR, Tab 3, RFQ Questions and Answers (Q&As). For example, a vendor asked: “Is it CMS’s intent to move from waterfall to Agile delivery?” The agency responded: “There is no requirement to move to Agile methodology. The contractor should propose their best technical approach.” *Id.* at Q&A No. 10. Similarly, a vendor asked: “Please confirm if CMS is planning to use the same technologies or requesting new technologies.” The agency responded “CMS is looking for the contractor to propose their best technical solution, which could include new technologies.” *Id.* at Q&A No. 82. Another vendor asked: “Is SAS [Statistical Analysis System] part of the framework the Contractor will need to migrate to the cloud or can the Contractor use the Native Java Spring Framework?” The agency responded “The contractor should propose their best technical approach.” *Id.* at Q&A No. 83.

On or before the solicitation’s July 15, 2022 closing date, the agency received eight quotations, including those of Next Phase and Index Analytics.¹⁰ In responding to the solicitation requirement to prepare a PWS, Next Phase acknowledges that its quotation provided only a “high-level framework” that it would use, after award, to generate alternative solutions for the agency. Protester’s Comments and Supp. Protest at 2; see AR, Tab 4.2, Next Phase’s PWS at 18-24. In contrast, Index’s PWS identified three alternative strategies; provided a brief synopsis of each; and recommended one-- providing a significant level of detail for the recommended strategy.¹¹ AR, Tab 15.1, Index’s PWS at 27-37. Thereafter, Next Phase’s and Index’s quotations were evaluated as follows:

	Next Phase	Index Analytics
Relevant Experience	High Confidence	High Confidence
Performance Work Statement	Low Confidence	High Confidence
Oral Presentation	Some Confidence	High Confidence
Section 508	Low Confidence	Low Confidence
Price	\$38,904,411	\$24,794,501

CMS each alternative’s pros and cons and the recommended/suitable solution.” RFQ at 356.

¹⁰ Next Phase teamed with [redacted]. Protest at 2. Following Next Phase’s and Index’s submission of information regarding their relevant experience, both vendors were invited to participate in phase two of the procurement. The other vendors’ quotations are not relevant to this protest and are not further discussed.

¹¹ Next Phase describes Index’s quotation as “devot[ing] ten pages to detailing precisely how [Index] will implement [its] selected approach, including by addressing the specific software, tools and processes required for this approach.” Protester’s Supp. Comments at 23.

AR, Tab 8, Source Selection Decision Document (SSDD) at 18, 20, 23.

With regard to the rating of low confidence for Next Phase's quotation under the PWS factor, the agency stated:

[Next Phase] did not provide a detailed technical solution, choosing to propose providing an analysis of alternatives after award, for CMS to determine the strategy going forward. By not submitting a firm technical approach, the TEP [technical evaluation panel] does not know if their technical solution is sound and able to meet the SOO requirements. As a result, the Government has low confidence that [Next Phase] can understand and deliver requirements using a sound approach.^[12]

AR, Tab 8, SSDD at 21.

In assessing a rating of high confidence to Index's quotation under the PWS factor, the agency stated:

[Index's] proposed strategy of parallel teams to accomplish tasks concurrently, raises confidence that the SOO requirements will be completed in a timely manner. The proposed personnel and the parallel teams approach also support a seamless transition and allow [Index] to immediately begin addressing legislated requirements and timelines, even during the transition-in period. Lastly, [Index] proactively proposed multiple innovative approaches, including but not limited to [redacted] and [redacted], to address known pain points in the OPS and OPP. This provides high confidence that [Index] will be able to enhance the system for an optimized user experience, provide valuable enhancements during the migration and modernization tasks and ultimately meet the legislated requirements in a timely manner with little or no CMS intervention.

Id.

On September 27, 2022, the source selection authority selected Index for issuance of the task order, stating:

Index Analytics is the highest rated technical quote and its quoted price was the lowest price and determined to be fair, reasonable, and realistic. . . . Index Analytics has a significant technical advantage over Next Phase Solutions . . . while maintaining a fair, reasonable, and realistic price. . . . [I]t has been determined that Index Analytics' quote, as the highest

¹² The TEP also noted that "if the [subsequently identified] technical solution is not sound, significant CMS resources could be required to determine the best technical approach." AR, Tab 7, TEP Report at 4-6.

technically rated and lowest price, and without any identified price risks within its business quote, is the overall best value for the Government.

Id. at 39.

Thereafter, Next Phase was notified of the agency's source selection decision. This protest followed.

DISCUSSION

Next Phase does not dispute the agency's determination that Next Phase's PWS did not identify any potential solutions for modernizing and migrating the OPS to the cloud. See Protester's Comments and Supp. Protest at 1-4. Rather, Next Phase asserts that the agency's evaluation of the two quotations was contrary to the terms of the solicitation because the solicitation contemplated only a "high-level framework that could be used to generate alternative approaches [after award]," and more specifically asserts that "[t]he Solicitation neither required nor *permitted* offerors to propose a *specific* migration approach." *Id.* at 1-2. Next Phase's assertions in this regard are primarily based on the fact that the solicitation required delivery of a pilot product six months after award, along with delivery of an "analysis of alternatives" 15 days earlier.¹³ In light of these post-award requirements, Next Phase maintains that Index "jumped the gun" by focusing on a specific solution and, therefore, its quotation should have been "deemed ineligible for award." *Id.* at 20. Overall, Next Phase acknowledges that "[t]he critical question in this protest is what the Solicitation required, and reasonably permitted, offerors to propose."¹⁴ *Id.* at 13.

The agency responds that Next Phase's assertions regarding the solicitation's provisions are fundamentally flawed. First, the agency points out that, under the

¹³ Next Phase also asserts that its theory regarding the solicitation's limitations is supported by the agency's independent cost estimate (IGCE), which reflects a higher level of effort than that proposed by Index. Next Phase argues that the IGCE's higher level of effort is consistent with Next Phase's approach to defer any analysis of potential solutions until after award.

¹⁴ Next Phase also asserts that Index's proposed price was "incomplete" based on its assertion that the solicitation required vendors to defer all analysis of alternative solutions until after award. Protester's Comments and Supp. Protest at 21; Protester's Supp. Comments at 24 n.2. Similarly, Next Phase protests the agency's best-value determination on the basis that it reflected the agency's allegedly flawed evaluation. Since, as discussed below, we reject Next Phase's assertions regarding the provisions of the solicitation, we dismiss Next Phase's assertions regarding Index's price and the agency's best-value determination, as they are derivative of the rejected allegations. See, e.g., *Computer World Servs.*, B-417356, May 16, 2019, 2019 CPD ¶ 185 at 5 n.4.

heading “Details regarding preparation instructions for each portion of the quote,”¹⁵ section M of the solicitation contained the following instruction:

How to prepare [the PWS] volume of the quote: The Offeror shall present a clear and concise Performance Work Statement (PWS) that demonstrates their understanding and approach [for] all work to be performed related to the Statement of Objectives (SOO).

RFQ at 260, 264.

Directly below this statement, the solicitation provided a list of more specific instructions, including: “[p]rovide an approach that demonstrates a strategy for continuing to meet . . . program timelines”; “[c]learly describe innovative approaches”; and “[p]rovide an approach for modernization of the OPS that clearly address[es] . . . transitioning OPS from the current CMS on-premises to the modernized OPS in cloud hosting solution . . . [and] aligning OPS design with best available current technology solutions.” *Id.* The agency notes that, while the solicitation contemplated a post-award analysis of alternative solutions that could be more detailed,¹⁶ and would be subject to the agency’s approval, the terms of the solicitation clearly contemplated a vendor’s identification and analysis of potential solutions in its quotation.

Finally, the agency notes that Next Phase’s promise to provide meaningful analysis of potential solutions only after award gave the agency a very limited basis to determine the extent to which Next Phase understood the contract requirements--and the extent to which agency intervention would be required. In contrast, the agency maintains that Index’s submission of potential solutions, and its recommendation of one that was supported by detailed information, gave the agency high confidence that Index will be able to successfully perform the solicitation requirements without significant agency intervention. Accordingly, the agency maintains that its confidence ratings for Next Phase’s and Index’s quotations under evaluation factor 2, PWS, were reasonable and consistent with the terms of the solicitation.

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. See *Glock, Inc.*, B-414401, June 5, 2017, 2017 CPD ¶ 180 at 8. Where a dispute exists as to a solicitation’s actual requirements, we will first examine the plain language of the solicitation. *Id.*

¹⁵ Vendors were directed to submit their quotations in five volumes that corresponded to the evaluation factors. RFQ at 260-61.

¹⁶ The solicitation established a 35-page limit for a vendor’s proposed PWS. RFQ at 261.

Here, we reject Next Phase's assertion that, because the solicitation contemplated an analysis of alternative solutions after award, it did not contemplate, and in fact precluded, submission of any such analysis in vendors' quotations. To the contrary, as discussed above, the plain language of the solicitation provided specific instructions on "[h]ow to prepare [the PWS] volume," unambiguously stating that the quotation should demonstrate the vendor's understanding and approach for "all work to be performed" under the SOO. Further eliminating any ambiguity, directly below this instruction, the solicitation provided a detailed list of objectives that quotations should address. Finally, in response to vendors' questions regarding the content of their quotations, the agency repeatedly stated that vendors "should propose their best technical approach."

On this record, a reasonable reading of the solicitation's plain language should have placed both vendors on notice that the agency expected quotations to include information, analyses, and recommendations regarding potential solutions. Accordingly, as the protester's challenges to the agency's evaluation of quotations are premised on an unsupportable interpretation of the solicitation, its arguments about the agency's evaluation of quotations does not provide us with a basis to sustain the protest.

The protest is denied.

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General Counsel