



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: NextGen Consulting, Inc.

File: B-413104.4

Date: November 16, 2016

Saif Rehman for the protester.
Seeta Rebbapragada, Esq., and Erin V. Podolny, Esq., Department of Health and Human Services, for the agency.
Young H. Cho, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the elimination of a proposal submitted by a competitive team arrangement offeror from competition is denied where agency reasonably concluded that the protester's contractor team arrangement agreement did not clearly provide information required by the solicitation.

DECISION

NextGen Consulting, Inc. (NextGen), of Washington, DC, protests the exclusion of its proposal from further consideration under request for proposals (RFP) No. NIHJT2016015, issued by the Department of Health and Human Services, National Institutes of Health for information technology supplies and services. The protester argues that the agency unreasonably excluded NextGen's proposal based on the agency's misinterpretation of its contractor team arrangement (CTA) agreement.

We deny the protest.

BACKGROUND

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. RFP at B-1.¹ The RFP, issued on March 14, 2016, contemplated the award of up to 35 additional indefinite-delivery, indefinite-quantity (IDIQ) contracts for NIH's existing Chief Information Officer-Solutions and Partners small business (CIO-SP3 SB) government-wide acquisition contract (GWAC), a 10-year IDIQ contract for IT solutions and services.² Id. The solicitation contemplated the issuance of fixed-price, time-and-material, or cost-reimbursement task orders during the period of performance, which corresponded with the current GWAC contracts and will end in 2022. Id. at B-6, F-1. The maximum potential amount established for orders under the GWAC was \$20 billion, with a minimum guarantee of \$250 per awardee. Id. at B-2.

The RFP contained detailed instructions regarding the submission of proposals. As relevant here, the solicitation stated that offerors were allowed (but not required) to form contractor team arrangements (CTAs), as defined under FAR § 9.601,³ in order to propose on the GWAC. Id. at L-14. In this regard, the solicitation stated that if the potential offeror forms a CTA and “wants all members of the CTA to be considered for evaluation under the GWAC, the CTA must be a CTA as defined under FAR 9.601(1) . . . and include with its proposal the information required under subpart (1) of this section, ‘Instructions regarding FAR 9.601(1) CTAs.’” Id.

By contrast, the solicitation stated that “[a]n offeror may also enter into [p]rime/[s]ubcontractor arrangements as defined under FAR 9.601(2); however, in this type of arrangement, only the prime will be considered in the evaluation for

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

² The solicitation further provided that the government would establish “contractor groups” (historically underutilized business zone (HUBZone), service-disabled veteran-owned small business (SDVOSB), section 8(a), and small business), and projected the number of anticipated awards for each group. See RFP at M-2, M-3.

³ As relevant here, FAR § 9.601 states:

9.601 Definition.

Contractor team arrangement, as used in this subpart, means an arrangement in which –

- (1) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or
- (2) A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified [g]overnment contract or acquisition program.

48 C.F.R. § 9.601 (bold and italics in original).

award of the GWAC.” Id. The solicitation also stated that “[o]fferors forming CTAs as defined under FAR 9.601(2) are not required to submit any additional documentation regarding the proposed [p]rime/[s]ubcontractor contractual relationship or the identification and/or qualifications of the proposed [s]ubcontractors.” Id.

The solicitation stated that the government “will evaluate a FAR 9.601(1) CTA provided that the offeror submits a full and complete copy of the document establishing the CTA relationship and containing at least the minimum information required by the solicitation closing date.” Id. at L-15. See also id. at M-2. The solicitation further explained that no specific form or format was prescribed for the CTA documents, but listed the information that an offeror was required to provide in the CTA document. Id. at L-15. As relevant here, the listed information included the identity of the parties, designation of a team lead, and specific duties and responsibilities of each member of the team. Id.

The solicitation advised offerors that the government would evaluate proposals in two phases. Id. at M-1. As relevant here, the RFP stated that during phase 1, the government would evaluate the proposals based on four “Go/No-Go” requirements, including whether the proposal was compliant with the solicitation’s document submission requirements. Id. at M-3. In this regard, the solicitation stated that the government might deem a proposal unacceptable and ineligible for further consideration for failure to submit a “compliant proposal.” Id.

The agency received a total of 552 proposals, among which were 70 HUBZone proposals, including one from NextGen. Agency Report (AR), Contracting Officer Statement of Facts (COS) at 1; AR, Memorandum of Law (MOL) at 4. The agency evaluated the protester’s proposal with the HUBZone grouping. AR, MOL at 4.

NextGen proposed as a CTA. AR, COS at 2; see generally AR, Tab 6.B.2, NextGen/WhiteSpace CTA. The CTA agreement submitted by NextGen identified NextGen as the team lead and identified three additional entities as team members: WhiteSpace Enterprise Corporation (WhiteSpace); Twin Imaging Technology, Inc. (Twin Imaging), and the University of Arizona (U of A). AR, Tab 6.B.2, NextGen/WhiteSpace CTA at 1. The agreement further stated that NextGen and WhiteSpace were teaming with the parties under FAR § 9.601(1), whereas Twin Imaging and U of A were teaming with the parties under FAR § 9.601(2). Id.

As relevant here, the agreement included a section addressing specific team activities and delivery responsibilities. Id. at 3. This section stated that NextGen would be the team lead and that, as such, “NextGen’s delivery responsibilities are managing the overall contract and project management,” as well as other administrative matters. Id. The section further identified “primary delivery responsibilities,” for each team member. In this regard, NextGen was assigned “overall contract management, staffing, coordinating and managing the work

required for” task areas 2, 4-10; WhiteSpace was assigned task area 1; Twin Imaging was assigned task area 3; and U of A was assigned task areas 1, 4, 5, and 10. Id. The agreement also stated that the four team members “will coordinate and jointly perform the work associated with common delivery responsibilities as required by task order issuance,” but also that “[r]esponsibilities for all parties are subject to change at the issuance of any future CIO-SP3 task orders.” Id.

This section also included three appendices. Id. The CTA stated that Appendix B was NextGen’s “Technical Proposal & Management Approach submitted in response to” the solicitation.⁴ Id. While the proposal stated that this document was “incorporated by reference,” NextGen also included the document in its entirety in its CTA document. Id.; see also id., NextGen (CTA), 626731272, Appendix B. Appendix B consisted of two sections. The first, relevant here, indicated that it was NextGen’s response to factor 1, technical capability and understanding.⁵ Id., NextGen (CTA), 626731272, Appendix B, Section 2 – Factor 1. This response referred to capabilities of “Team NextGen” for all 10 task areas. Id. The second section indicated that it was a response to factor 2, management approach.⁶ Id., NextGen (CTA), 626731272, Appendix B, Section 3 – Factor 2. However, the cover page of that section it stated that it was prepared and presented by Complete Systems Integrators, Inc. (KOMPSYS), an entity not identified in NextGen’s CTA.⁷ Id. The section further referred to “Team KOMPSYS” and stated that the team lead was Kevin Doby, president of KOMPSYS. Id. at 1, 12.

As part of the agency’s evaluation, the agency requested clarifications from all offerors who had proposed a CTA, asking that they confirm the type of CTA the

⁴ As relevant here, the solicitation contained three non-price evaluation factors: technical capability and understanding; management approach; and past performance. RFP at M-4.

⁵ Under factor 1, offerors were required to demonstrate their ability to perform in task area one, plus a minimum of three other task areas. RFP at M-6. The solicitation stated that the government “will evaluate, specific to” each of the 10 task areas identified in the solicitation, the offerors’ “proposed technical approach and methodology in order to assess the level of knowledge and expertise for each [t]ask [a]rea proposed.” Id.; see also id. at M-4 – M-7.

⁶ Under factor 2, the solicitation stated that the offeror’s management experience and capabilities would be evaluated to assess the offeror’s capability to perform task orders under the contract as well as to determine the prospective offeror’s likelihood of successful performance under the contract. RFP at M-8.

⁷ NextGen acknowledges that KOMPSYS is a teaming partner on a separate submission for this solicitation. Comments at 4.

offeror was proposing. AR, COS at 2; see also AR, Tab 5, Clarifications at 2. NextGen responded that its CTA was a 9.601(1) type CTA, but listed the “teaming partners that are participating in FAR 9.601(2) capacity as a courtesy only.” AR, COS at 2; AR, Tab 5, Clarifications at 1.

The agency noted that NextGen’s CTA included both FAR § 9.601(1) and § 9.601(2) proposed CTA members. See AR, Tab 7, Go/No-Go Assessment: Compliant Proposal and Verification of an Adequate Accounting System for Socioeconomic Group: HUBZone, at 63. The agency found that because the CTA agreement distributed the task areas without regard for the CTA type, and because it was not clear from the CTA that the prime contractor would be taking full responsibility as team lead, it was impossible for the agency to distinguish between the capabilities proposed by the offeror, its FAR § 9.601(1) CTA members, and its FAR § 9.601(2) subcontractors. Id. The agency concluded that the resulting confusion about the entities’ roles and responsibilities made an assessment of the proposal impossible. Id. As a result, the agency found NextGen’s proposal not compliant with the solicitation, and therefore unacceptable and ineligible for award. Id.

After being informed of its elimination from the competition on August 3, 2016, NextGen filed this protest with our Office.

DISCUSSION

The protester argues that the agency unreasonably excluded its proposal based on the agency’s misinterpretation of NextGen’s CTA agreement. In this regard, the protester essentially argues that its CTA, taken as a whole, clearly distinguished between the capabilities of the offeror, FAR § 9.601(1) CTA members, and FAR § 9.601(2) subcontractors. See Protest at 6-7; Comments at 4. The protester contends that the CTA clearly stated that NextGen and WhiteSpace were FAR § 9.601(1) members; whereas Twin Imaging and U of A were FAR § 9.601(2) subcontractors, who, NextGen informed the agency during clarifications, were listed in the CTA “as a courtesy only.” Id. The protester also argues that the term “primary delivery responsibility” was used in the CTA to delineate the type or scope of work to be performed. Id. As a result, the protester explains, as between a FAR § 9.601(1) CTA member and FAR § 9.601(2) subcontractor, the FAR § 9.601(1) CTA member would have “primary” responsibilities. Id.

We have long held that the evaluation of proposals is a matter within the discretion of the procuring agency; we will question the agency’s evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the RFP. Hardiman Remediation Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3.

On this record, we do not find the agency’s evaluation unreasonable. Here, the solicitation required that a CTA offeror submit a CTA document to clearly designate

a team lead and identify specific duties and responsibilities. RFP at L-15. The record shows that as a whole, NextGen's CTA provided conflicting information as to who the team lead was, and failed to clearly identify the specific duties and responsibilities of the team members. Underlying NextGen's contention is the assumption that inherent in the designation of an entity as a FAR § 9.601(1) CTA member is the assignment to that entity of a lead role or responsibility for any task area. See Comments at 4. However, there is nothing in the CTA agreement that would allow the agency to make that assumption. For example, for task area 3, the CTA did not identify a CTA member that was assigned the primary delivery responsibility for that area. See AR, Tab 6.B.2, NextGen/WhiteSpace CTA at 3. Instead, the primary delivery responsibility for that area was assigned to a subcontractor. In addition, while the agreement stated that the four team members "will coordinate and jointly perform the work associated with common delivery responsibilities as required by task order issuance," it also stated that "[r]esponsibilities for all parties are subject to change at the issuance of any future CIO-SP3 task orders." Id. Finally, the CTA incorporated NextGen's response to the solicitation, which referred to "Team NextGen," which did not provide any indication as to what the specific duties and responsibilities of the team members were. See generally id., NextGen (CTA), 626731272, Appendix B, Section 2 – Factor 1.

Finally, NextGen concedes in its comments that its CTA included "the wrong management approach attachment to the CTA," which provided conflicting information about who the team lead was and added to the potential for confusion. See Comments at 4; compare AR, Tab 6.B.2, NextGen/WhiteSpace CTA at 1 (identifying NextGen as team lead) with id., NextGen (CTA), 626731272, Appendix B, Section 3 – Factor 2 at 1, 12 (identifying Kevin Doby, president of KOMPSYS, as team lead).

It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. See, e.g., International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7. An offeror runs the risk that a procuring agency will evaluate its proposal unfavorably where it fails to do so. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6. On this record, we find the agency's evaluation of NextGen's proposal as unacceptable was reasonable and consistent with the terms of the RFP.

The protest is denied.

Susan A. Poling
General Counsel