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Decision

Matter of: InterImage, Inc.

File: B-413104.47

Date: January 21, 2021

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Krystal A. Jordan, Esq., Department of Health and Human 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 from the Defense Contract Audit Agency.

DECISION

InterImage, Inc., of Arlington, Virginia, 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 the agency used an unstated evaluation criterion.

We deny the protest.

BACKGROUND

The RFP, 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 small business governmentwide acquisition

contract (GWAC), a 10-year IDIQ contract for IT solutions and services.¹ Memorandum of Law (MOL) at 2; Agency Report (AR), Tab 7.c, RFP at 8.² 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 123, 142. In this regard, the RFP provided that the government would establish “contractor groups” and projected the number of anticipated awards for each group.³ *Id.* at 142. 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 8, 34, 40-42, 123. The maximum order amount established for the contract was \$20 billion with a guaranteed minimum of \$250 per awardee. *Id.* at 9.

The solicitation advised that the agency would evaluate proposals in two phases. *Id.* at 141. 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 141, 143-144. 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 144. 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. *Id.* at 141. The technical capability and management approach factors were of equal importance, and both factors, individually were more important than past performance. *Id.* Price was the least important of all evaluation factors. *Id.*

The agency received 552 proposals--of which 221 were for the small business contractor group--including a proposal from InterImage. Contracting Officer's Statement (COS) at 2. As relevant here, the agency found InterImage's proposal unacceptable under the verification of an adequate accounting system requirement at phase 1, thus making the proposal ineligible for further consideration. *Id.*

¹ 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 8.

² The solicitation was amended four times. All citations to the RFP are to the Adobe PDF pages of the conformed RFP provided by the agency at Tab 7.c of the agency report.

³ The solicitation identified these contractor groups as: historically underutilized business zone, service-disabled veteran-owned small business, section 8(a), and small business. RFP at 142-143.

On October 15, 2020, the agency notified InterImage that it was not selected for award. COS at 3. After requesting and receiving a debriefing, InterImage filed this protest on October 20. *Id.* at 5.

DISCUSSION

InterImage argues that the agency applied an unstated evaluation criterion when verifying whether offerors had an adequate accounting system. Protest at 11-14. InterImage contends, among other things, that the documentation it submitted regarding its accounting system satisfied the solicitation's requirements, and that NIH unreasonably failed to verify the adequacy of InterImage's accounting system with the cognizant federal audit agency representatives identified in its proposal.⁴ *Id.* at 11, 14-15.

The agency responds that it did not utilize an unstated criterion in its evaluation, but rather, the documentation submitted by InterImage did not substantively satisfy the requirements of the solicitation. MOL at 8. NIH also argues that even though the RFP instructed offerors to provide contact information for the cognizant federal audit agency representatives, this did not replace InterImage's obligation to provide verification of an adequate accounting system as required by the RFP, nor did it impose a duty on NIH to verify the adequacy of InterImage's accounting system with those identified representatives. *Id.* at 10-11.

The evaluation of an offeror's proposal is a matter within the agency's discretion. *National Gov't Servs., Inc.*, B-401063.2 *et al.*, Jan. 30, 2012, 2012 CPD ¶ 59 at 5. In reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency, but rather examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. *22nd Century Techs., Inc.*, B-413210, B-413210.2, Sept. 2, 2016, 2016 CPD ¶ 306 at 8. An offeror's disagreement with the agency's evaluation judgment, without more, is insufficient to establish that the agency acted unreasonably. *Vertex Aerospace, LLC*, B-417065, B 417065.2, Feb. 5, 2019, 2019 CPD ¶ 75 at 8.

The solicitation stated that under the verification of an adequate accounting system requirement, the agency would evaluate "evidence that the [o]fferor . . . ha[s] an adequate accounting system in accordance with [Federal Acquisition Regulation] FAR 16.301-3(a)(1), as required under [s]ection L.3.1.h." RFP at 143. Section L.3.1.h provided the following instructions:

⁴ 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 considered all of the protester's arguments and conclude that none furnishes a basis on which to sustain the protest.

Verification of an Adequate Accounting System

Because of the need for Contractors to respond to Cost Reimbursement task orders, to be eligible for award under the GWAC, Offerors must have verification from the Defense Contract Audit Agency (DCAA), the Defense Contract Management Agency (DCMA), any federal civilian audit agency, or a third-party Certified Public Accounting (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)

.....

As such, the Offeror must provide in its proposal, a contact name and contact information (i.e., phone number, address, email address) of its representative at its cognizant DCAA, DCMA, 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.

Id. at 134. The solicitation warned offerors that failure to furnish verification of an adequate cost accounting system would result in the assignment of an unacceptable rating for this requirement, and render the offeror ineligible for further consideration for award. *Id.* at 143-144.

In its proposal, InterImage represented that it underwent a DCAA audit in 2002 and its accounting/cost accumulation systems were deemed adequate at the time. AR, Tab 8.g, InterImage Proposal, General, Verification of Adequate Accounting System at 1. Despite providing the title and date of the 2002 DCAA audit report, InterImage did not provide a copy of the DCAA audit report. *Id.* The protester instead explained in its proposal that DCAA had subsequently audited or performed adequacy reviews of its “incurred cost submissions annually through 2012” and stated that InterImage was submitting a 2014 letter containing the results of DCAA’s most recent adequacy evaluation. *Id.* InterImage further represented that it had continuously performed cost-plus type contracts since 2005 and that DCAA “audited or reviewed” its annual cost submissions which reflect the proper allocation of costs to contracts in each year from 2005-2012. *Id.* Finally, InterImage provided the contact information for the representatives at its cognizant federal audit agencies. *Id.*

NIH found that InterImage’s proposal failed to provide independent verification of an adequate accounting system. AR, Tab 15, Go, No-Go Compliance Review, InterImage Excerpt at 7-8. Upon review, the agency found that the documentation provided by InterImage did not actually state that InterImage’s accounting system had been audited by DCAA and determined to be adequate. *Id.* Rather, the documentation, itself, indicated that InterImage’s 2012 incurred cost submission had been evaluated for adequacy, but that the adequacy evaluation “does not constitute an audit or attestation engagement under generally accepted government auditing standards.” *Id.* Moreover, NIH noted that evidence of an incurred cost proposal reviewed by DCAA was not “dispositive proof that the contractor had cost-reimbursement contracts,” because

incurred cost submissions could be required for both time-and-material and cost-reimbursement contracts. *Id.* NIH also found that InterImage's representation that it underwent a DCAA audit in 2002 was not supported by independent validation because it was based only on the offeror's "self-certification" where InterImage only provided the report number and date. *Id.* Finally, NIH acknowledged that InterImage provided contact information for its representatives at its cognizant government audit agency as required by the RFP, but asserted that the solicitation did not contemplate that contact information could substitute for the requirement to submit documentation verifying the adequacy of an accounting system. *Id.* Based on our review of the record, InterImage's arguments provide no basis to sustain the protest.

First, we find no merit to the protester's assertion that NIH applied an unstated evaluation criterion. As discussed above, the agency did not find InterImage's proposal to be unacceptable because the protester had failed to submit a particular type of document. Rather, the record reflects that NIH found the documentation submitted by InterImage failed to provide independent verification of an accounting system adequate for determining costs applicable to the contract, as required by the solicitation. *Compare* RFP at 143 with AR, Tab 15, Go, No-Go Compliance Review, InterImage Excerpt at 7-8. The mere fact NIH found the documentation submitted by InterImage to be inadequate to meet the requirements of the solicitation, does not, by itself, translate into the application of an unstated evaluation criterion by the agency in reaching this conclusion. *ESAC, Inc.*, B-413104.34, Apr. 17, 2019, 2019 CPD ¶ 162 at 6.

Although agencies are required to identify in a solicitation all major evaluation factors, they are not required to identify all areas of each factor that might be taken into account in an evaluation, provided that the unidentified areas are reasonably related to, or encompassed by, the stated factors. *See, e.g., Northrop Grumman Sys. Corp.*, B-414312 *et al.*, May 1, 2017, 2017 CPD ¶ 128 at 12. The RFP required that the submitted documentation show that the offeror's accounting system had been audited and determined adequate for determining costs applicable to this contract. As discussed above, the agency found the documentation submitted by InterImage did not reflect that an audit had been performed or that its accounting system was determined to be adequate. This conclusion was reasonably related to, or encompassed by, the evaluation criterion. The protester's assertion to the contrary is without merit.

Next, we find nothing unreasonable about the agency's conclusion that the documentation submitted by InterImage did not satisfy the solicitation's requirements. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that 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 8. 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.

Here, the documentation submitted by InterImage was a memorandum from a DCAA branch office to a Federal Aviation Administration contracting officer regarding the fiscal

year (FY) 2012 incurred cost proposal submitted by InterImage. AR, Tab 8.g, InterImage Proposal, General, Verification of Adequate Accounting System at 2. This memorandum stated that DCAA performed an “adequacy evaluation” and found that the FY 2012 incurred cost proposal was adequate in accordance with the requirements of FAR clause 52.216-7, Allowable Cost and Payment. *Id.* The memorandum repeatedly stated that no audit was performed. *Id.* (noting e.g. “you disclosed no concerns that would require an audit”; “it was not selected for audit”; “[t]he scope of work performed does not constitute an audit or attestation engagement under generally accepted government auditing standards.”). Further, nothing in the memorandum indicated that DCAA determined that InterImage had an adequate cost accounting system, as required by the solicitation. On this record, we find the agency’s conclusion reasonable.

In support of its arguments, InterImage relies on two of our prior decisions involving both the same agency and the same solicitation, *Graham Techs., LLC*, B-413104.25, Feb. 25, 2019, 2019 CPD ¶ 94 and *Leader Commc’ns, Inc.*, B-413104.9, Mar. 17, 2017, 2017 CPD ¶ 96. Protest at 13-14. InterImage contends that our Office interpreted the solicitation requirement at issue in those decisions and did not determine that the verification requirement could be satisfied only by the submission of a DCAA accounting system audit report or another specific document. InterImage also points out that while our Office denied those protests, InterImage claims that it actually submitted verification from DCAA, unlike the protesters in those decisions. *Id.* We do not find persuasive InterImage’s arguments attempting to distinguish our prior decisions. As discussed above, the solicitation did not have a requirement for the submission of an audit report from DCAA. Rather, the solicitation required that an offeror’s submission contain verification of an adequate accounting system for determining costs. The documentation submitted by InterImage, however, did not contain such verification.

InterImage also raises a number of arguments justifying its submission of the DCAA memorandum, which we do not find persuasive. For example, InterImage represents in its protest that it “had good reason for submitting this memorandum,” rather than its 2002 DCAA accounting system audit report. InterImage explains that it never received a copy of the 2002 report, and was later informed by DCAA that the report had been lost and it was against DCAA’s policy to create a new report under such circumstances. Protest at 14.

As explained above, the agency’s evaluation was dependent on this information. InterImage’s explanation about the inability to submit its 2002 DCAA audit report was not provided in its proposal, and thus could not be considered as part of the agency’s evaluation. AR, Tab 8.g, InterImage Proposal, General, Verification of Adequate Accounting System at 1. Providing this explanation at this juncture does not render unreasonable the agency’s evaluation of the proposal it received.

InterImage also contends that it provided alternative verification in response to similar requirements when it competed for federal cost-reimbursement type contracts in the past, and that InterImage believed the memorandum it submitted satisfied the solicitation’s requirements. Protest at 14. As our Office has repeatedly observed,

however, each procurement stands alone. See, e.g., *Sayres & Assocs. Corp.*, B-418374, Mar. 30, 2020, 2020 CPD ¶ 115 at 5 n.9; *Genesis Design and Dev., Inc.*, B-414254, Feb. 28, 2017, 2017 CPD ¶ 79 at 3 n.2. The fact that InterImage's alternative verification was accepted in other procurements did not require the agency to similarly accept it in this instance.

The protester also contends that because its proposal represented that InterImage had "passed eight consecutive annual incurred cost submission reviews," this statement demonstrated the adequacy of InterImage's accounting system. Protest at 11. Thus, according to InterImage, by providing a copy of the DCAA memorandum, "InterImage met the [s]olicitation's requirement to provide verification of its adequate accounting system." *Id.* However, as noted in the agency's evaluation, the agency could not conclude that the DCAA memorandum verified the adequacy of InterImage's accounting system because incurred cost submissions could be required for time-and-material and cost-reimbursement contracts. Although InterImage argues that it could not legally have been awarded cost-reimbursement contracts unless its accounting system had been found adequate to perform such contracts, there is nothing in the DCAA memorandum, itself, providing such verification. Compare *id. with* AR, Tab 8.g, InterImage Proposal, General, Verification of Adequate Accounting System at 2-4.

Finally, we disagree with the protester that given the alleged concerns regarding the DCAA memorandum submitted by InterImage, NIH should have confirmed the adequacy of InterImage's accounting system by using the DCAA contact information listed in its proposal. Here, the solicitation clearly required the submission of information sufficient to verify the existence of an adequate accounting system from a government audit agency or third-party accounting firm and the contact information for an offeror's representative at its cognizant government audit agency or third-party accounting firm.

The protester contends that if NIH did not intend to use the contact information, there was no reason for NIH to require the submission of the information. Protest at 15. The mere fact that the solicitation required offerors to submit such information did not create an obligation on the agency to contact those listed representatives. In this regard, the agency explains that it requested the contact information in the RFP to allow the agency, at its discretion, to independently confirm with the applicable government audit agency or third-party accounting firm verification and audits. COS at 7. On this record, we know of no requirement that the agency contact the representatives identified by InterImage in its proposal. See, e.g., *Alexandra Constr., Inc.*, B-417212, Apr. 2, 2019, 2019 CPD ¶ 132 at 4 (finding reasonable an agency's decision not to verify protester's performance with certain points of contacts listed in the proposal where solicitation did not require the agency to contact all the individuals listed in a proposal).

The protest is denied.

Thomas H. Armstrong
General Counsel