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**Comptroller General
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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Leader Communications, Inc.

File: B-413104.9

Date: March 17, 2017

Maria L. Panichelli, Esq., and Robert G. Ruggieri, Esq., Cohen Seglias Pallas Greenhall & Furman PC, for the protester.

Seeta Rebbapragada, 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 elimination from competition is denied where agency reasonably found that 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

Leader Communications, Inc. (Leader), of Oklahoma City, Oklahoma, 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 based on a failure to submit verification of an adequate cost accounting system from the Defense Contract Audit Agency (DCAA) was unreasonable.

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-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 B-1, F-1, G-6-G-8. The maximum order amount established for the contract was \$20 billion with a guaranteed minimum of \$250 per awardee. Id. at B-2.

The RFP contained detailed instructions regarding the submission of proposals. As relevant here, the solicitation required under section L.3.1.h. that, in order to be eligible for award under the GWAC offerors "must have verification from [DCAA] . . . 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)". Id. at L-17. The solicitation also required that an offeror "provide in its proposal a contact name and contact information (*i.e.*, phone number, address, email address) of its representative at its cognizant DCAA . . . 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 agreements." Id.

The solicitation advised that the agency would evaluate proposals in two phases. Id. at M-1. Relevant here, the RFP stated that during phase 1, the government would evaluate the proposals based on four "Go/No-Go" requirements, one of which was the "verification of an adequate accounting system." Id. at M-1, M-3. In this regard, the solicitation stated that the government would "evaluate evidence that the [o]fferor . . . [has] an adequate accounting system in accordance with FAR 16.301-3(a)(1), as required under Section L.3.1.h." Id. at M-3. The solicitation cautioned that failure to "furnish verification of an adequate cost accounting system" would result in a rating of unacceptable, as well as a determination that the proposal was unacceptable and ineligible for further consideration for award. Id.; see also id. at M-4.

The agency received 552 proposals, including a proposal from Leader. Agency Report (AR), Contracting Officer Statement of Facts (COS) at 1. The agency

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

² The solicitation 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.

evaluated the protester's proposal along with others in the SDVOSB contractor grouping. AR, Memorandum of Law (MOL) at 4. As relevant here, Leader's proposal included a document created by Leader entitled "L.3.1.h Verification of Adequate Accounting System." See AR, Tab 6F, Leader Proposal, L.3.1.h Verification of an Adequate Accounting System. This document stated that Leader's accounting system was approved by DCAA after an audit in 2008 and provided the audit report number. Id. The document also provided additional information about its accounting system, cost accounting practices and contact information for the cognizant DCAA office and representative. Id.

The agency found Leader's proposal failed to comply with the requirements of Section L.3.1.h of the solicitation because Leader's own representations about its accounting system did not meet the requirements to provide verification of an adequate accounting system. See AR, Tab 7, Go/No-Go Assessment: Compliant Proposal and Verification of Accounting System for Socioeconomic Group: SDVOSB at 65. As a result, the protester's proposal was found unacceptable and therefore ineligible for further consideration for award. Id.; see also RFP at M-3, M-4.

After being informed of its elimination from the competition on December 13, 2016, Leader filed this protest with our Office.

DISCUSSION

Leader essentially argues that the solicitation required only that offerors have received verification from DCAA that their accounting systems had been audited and determined adequate, but did not require the submission of any documentation from DCAA itself.³ Protest at 5-6; Comments at 3-4. In this regard, Leader contends that its elimination from the competition was unreasonable because Leader met the RFP's requirement by providing its own unambiguous statement that its accounting system had been audited and approved by DCAA, along with the 2008 DCAA audit report number and additional information. Id. In Leader's view, this information was sufficient for the agency itself to independently confirm with DCAA the verification and audit of its accounting system. Id.

In response, the agency acknowledges that a DCAA audit report would have been an acceptable source of verification; however, it explains that the solicitation expressly required offerors to furnish verification from DCAA with its proposal. AR, MOL at 8; AR, see also Supp. MOL at 3-6. In this regard, the agency also explains that the solicitation did not permit offerors to essentially self-verify the adequacy of

³ In filing and pursuing its protest, Leader has made arguments that are in addition to, or variations of, those discussed below. We have considered all of the protester's assertions and find no basis to sustain its protest.

their accounting systems. Rather, by requiring offerors to provide verification from DCAA, the agency would obtain independent verification that offerors' accounting systems had been audited and determined adequate. Id.

When a dispute arises as to the actual meaning of solicitation language, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. See Level 3 Commc'ns LLC, B-412854 et al., June 21, 2016, 2016 CPD ¶ 171 at 7; KAES Enters., LLC, B-411225 et al., June 18, 2015, 2015 CPD ¶ 186 at 5. A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations. WingGate Travel, Inc., B-412921, July 1, 2016, 2016 CPD ¶ 179 at 7. If the solicitation language is unambiguous, our inquiry ceases. Id.

On this record, we find that the agency's interpretation of the solicitation, when read as a whole, is reasonable, whereas the protester's interpretation is not reasonable. Here, the solicitation stated that an offeror "must have **verification from [DCAA]** . . . of an accounting system that has been audited and determined adequate" in order to be eligible for award. Id. at L-17 (emphasis added). The solicitation also advised that the agency would "evaluate **evidence** that the [o]fferor . . . [has] an adequate accounting system . . . **as required under Section L.3.1.h.**" Id. at M-3 (emphasis added). Finally, the solicitation cautioned that failure to "**furnish verification** of an adequate cost accounting system" would result in a rating of unacceptable and render the proposal ineligible for award. Id. (emphasis added). As explained by the agency, contrary to Leader's contentions, the solicitation did not contemplate that an offeror could simply provide a declarative statement in lieu of the submission of evidence from DCAA verifying the adequacy of the offeror's accounting system. See AR, Supp. MOL at 5. On this record, we find that the agency followed the clear and unambiguous terms of the solicitation and reasonably found Leader's proposal unacceptable because it did not provide verification from DCAA that its accounting system had been audited and deemed adequate.⁴

Leader also argues that its proposal should nonetheless have been accepted because it satisfied the agency's actual and reasonable needs, its acceptance would not result in unfair prejudice to other offerors or provide Leader with a competitive advantage, and it contained sufficient information for the agency to

⁴ Leader also attempts to parse additional language in Section L.3.1.h of the RFP, that allows offerors to submit verification from a third-party certified public accountant (CPA), to argue that because this additional language specified that such verification had to be "on the letterhead of the third-party CPA firm," the requirement to submit documentation was either limited to CPA-provided verification or was latently ambiguous. Comments at 6-7. We disagree, based on the plain language of the RFP, discussed above.

obtain additional verification or confirmation with DCAA. See Protest at 6; Comments at 7-8. We disagree.

Clearly stated RFP requirements are considered material to the needs of the government, and a proposal that fails to conform to such material terms is unacceptable and may not form the basis for award. AttainX, Inc.; FreeAlliance.com, LLC, B-413104.5, B-413104.6, Nov. 10, 2016, 2016 CPD ¶ 330 at 5; TYBRIN Corp., B-298364.6, B-298364.7, Mar. 13, 2007, 2007 CPD ¶ 51 at 5; National Shower Express, Inc.; Rickaby Fire Support, B-293970, B-293970.2, July 15, 2004, 2004 CPD ¶ 140 at 4-5. As explained by the agency, here, the requirement to provide verification from DCAA was a material requirement, the waiver of which would result in an inconsistent and unfair evaluation, thereby prejudicing other offerors. See AR, MOL at 6-7; AR, Supp. MOL at 7. Accordingly, we have no basis to sustain the protest.

The protest is denied.

Susan A. Poling
General Counsel