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Decision

Matter of: GC Services Limited Partnership

File: B-416443; B-416443.2

Date: September 5, 2018

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DIGEST

Protest alleging that the agency failed to amend a solicitation issued pursuant to the flexible, two-phase procurement authority of 20 U.S.C. § 1018a for Phase I responses to reflect material changes to the agency’s requirements is denied where the solicitation provided a sufficient general description of the purpose of the procurement, and the protest allegations are otherwise premature as they merely anticipate that the agency will evaluate responses unreasonably.

DECISION

GC Services Limited Partnership, of Houston, Texas, challenges the terms of the Department of Education’s (DOE) request for proposals (RFP) for the agency’s Next Generation Financial Services Environment (the NextGen Environment). GC Services alleges that the solicitation is defective because it does not reflect the agency’s actual requirements based on the agency’s proposed corrective action taken in response to protests relating to a different DOE procurement.

We deny the protest.

BACKGROUND

The core mission of DOE’s Office of Federal Student Aid (FSA) is to ensure that all eligible customers benefit from federal financial assistance for education beyond high

school. RFP at 2.¹ In conjunction with institutions of higher learning and third-party vendors, FSA provides lending information and services across the entire student loan lifecycle, including: application and eligibility determination; disbursement; loan processing and servicing; and recovery. Id. Eighteen million students apply for federal aid annually, and FSA has over 42 million customers across the student lending lifecycle. Id. FSA's total lending portfolio is \$1.3 trillion in outstanding loans, and its portfolio is growing at 7 percent per year. Id.

DOE believes that the current environment is fragmented, and has generated a number of issues, including: inconsistent customer experiences; limited branding opportunities for FSA; and operational complexity and inefficiency. Id. at 3. For example, there are currently nine servicers which provide student loan processing and servicing activities for loans that are current or less than 360 days in default. They include: customer service; loan counseling; billing and payment application and processing; repayment plan adjustments and application of benefits (e.g., deferments, forbearances, or loan forgiveness/discharge); outreach and default aversion; quality control, and financial and other data reporting. Id. at 2. Each of the nine servicers currently has its own engagement layer with proprietary branding (e.g., websites, mobile tools, and contact centers), utilizes one of four servicing platforms, and maintains additional technical systems. Id.

The RFP, which was issued on February 20, sought responses in connection with DOE's NextGen Environment. Specifically, the agency intends to deploy a new technical and operational architecture that provides a world-class customer experience across the entire student aid lifecycle, including both enterprise-wide solutions, and solutions specifically for loan processing and servicing, including: (1) omni-channel, enterprise-wide customer engagement led by a mobile-first, mobile-complete, and mobile-continuous solution; (2) common, integrated data management; (3) robust cybersecurity and data protection; (4) integration across the enterprise and potential to further scale solutions; and (5) procurement of best-in-class components to reduce complexity and improve efficiency. Id. at 5-6.

The RFP identifies 9 components that FSA intends to procure for the NextGen Environment, and vendors were invited to provide a response for one, multiple, or all components. Components A, B, G, H, and I seek the development and roll out of information technology platforms and other technology tools and solutions used in servicing financial aid products across the student aid lifecycle. Id. at 7-8. Components C, D, E, and F relate to the processing and servicing of borrower accounts, with components C and D involving technology platforms, and components E and F including the non-automated business operations required in servicing accounts, including customer engagement and outreach, contact center support, and loan

¹ The RFP was amended five times; references herein are to the RFP as amended.

processing. Id. at 7, 16-18. Only components E and F are relevant to the issues in this protest.²

For the purposes of the NextGen Environment procurement, FSA is utilizing its flexible procurement authority pursuant to 20 U.S.C. § 1018a, as implemented by Education Federal Acquisition Regulation § 3415.302-70(b). Pursuant to 20 U.S.C. § 1018a(d), FSA is authorized to use a two-phase source-selection procedure for the procurement of property or services. Specifically, in Phase I, the contracting officer is required to publish a notice of the procurement in accordance with 41 U.S.C. § 1708 and sections (e), (f), and (g) of 15 U.S.C. § 637, except that the notice shall include only the following: (i) a general description of the scope or purpose of the procurement that provides sufficient information on the scope or purpose for sources to make informed business decisions regarding whether to participate in the procurement; (ii) a description of the basis on which potential sources are to be selected to submit offers in the second phase; (iii) basic information, such as information on the offeror's qualifications, the proposed conceptual approach, costs likely to be associated with the proposed conceptual approach, past performance of the offeror, and other information requested by the contracting officer; and (iv) any additional information that the contracting officer determines appropriate. 20 U.S.C. § 1018a(d)(2). Phase II, which is restricted to the sources selected in Phase I, is to be conducted on a competitive basis in accordance with the applicable procurement provisions of Title 41 of the U.S. Code. Id. at (d)(3).

Consistent with the above authorities, the RFP contemplates a two-phase proposal and evaluation process. RFP at 22. In Phase I, offerors were to include six sections in their respective responses. First, offerors were to provide an executive summary limited to two pages. Id. at 23, 27. Next, offerors were to provide a narrative, for each component to which they wished to respond, describing how the NextGen Environment goals would be met, taking into account the overarching constraints, milestones, and component-specific objectives and constraints detailed in the RFP. Id. at 23. Offerors were limited to seven pages to discuss their overall proposed solution, and an additional five pages each for their proposed solutions for Components E and F. Id. at 27. Third, offerors were to provide up to three past performance references per component (up to a maximum of six in total). Id. Fourth, offerors were to include the costs likely to be associated with their respective approaches, including the pricing methodology used, an explanation of any potential savings to the government, and details on how to share potential future cost savings that may result from technology or business process improvements or economies of scale. Id. at 23-24. Fifth, for components C, D, E, and F, offerors were to submit a narrative describing the vendor's understanding of the

² After the receipt of Phase I responses, the agency cancelled components A, B, and H. See Agency Notice (Aug. 24, 2018) at 1; Agency Notice (Aug. 27, 2018) at 1. DOE subsequently indicated that it intends to procure the requirements of Components A and B under a task order procurement under the NITAAC CIO-SP3 governmentwide acquisition contract. Agency Response (Aug. 29, 2018) at 2. The RFP also indicated that independent quality assurance support would be separately solicited. RFP at 8.

current student aid financial services environment, which was limited to five pages. Id. at 24, 27. Sixth, offerors were to address any team members and potential subcontractors, including their prospective roles and responsibilities. Id. at 24.

In Phase I, the RFP established that DOE would consider four evaluation factors in determining which offerors will be invited to submit Phase II proposals: (1) strategic fit; (2) past performance; (3) cost/price; and (4) understanding of the current student financial aid environment. First, under the strategic fit evaluation factor, DOE is to assess the degree to which the solution included in the vendor's response ensures the achievement of FSA's goals at an acceptable level of risk while meeting scheduled milestones, including: delivery of a world-class customer experience; achievement of greater operational flexibility; reduction in complexity; and improvement in customer outcomes of FSA programs. Id. at 22. Second, under the past performance evaluation factor, the agency is to assess how the vendor's past performance experience indicates success in deploying world-class solutions of similar complexity and scope for the component(s) the vendor responded to. Id. Third, under the cost/price evaluation factor, DOE is to assess whether the cost submitted: is the cost likely to be associated with the solution offered; delivers to the government price(s) consistent with those offered to the offeror's best, most favored customers; and demonstrates innovation in managing and reducing cost over the span of the contract and passing all or a portion of savings to customers. Id. Finally, with respect to components C, D, E, and F, under the understanding of the student aid financial services environment evaluation factor, the agency is to assess whether the offeror's response demonstrates an understanding of the current student aid financial services environment. Id.

Factor 1, strategic fit, is significantly more important than factors 2 through 4. Id. at 23. In determining which offerors will be invited to submit Phase II proposals, the agency is to consider which vendors submit the most advantageous component solutions to the government. Id. The contracting officer is to limit the number of selected firms to the number of sources that the contracting officer determines is appropriate and in the best interests of the government. Id. The RFP established that no contracts would be created as a result of Phase I, nor would selection to participate in Phase II constitute or guarantee a contract award. Id. at 25. Phase I responses were due by April 18; GC Services timely submitted a response.

Separate from the NextGen Environment procurement, DOE had been attempting to procure follow-on services for default debt collection services, including most recently under RFP No. ED-FSA-16-R-0009 (the Default Collection Procurement). The Default Collection Procurement was the subject of several rounds of protests, resulting in several decisions from our Office and the federal courts. See, e.g., Cont'l Serv. Grp. v. United States, 722 Fed. App'x 986 (Fed. Cir. 2018); FMS Inv. Corp. v. United States, 136 Fed. Cl. 439 (2018); Premiere Credit of N.A., LLC; Financial Mgmt. Sys. Inv. Corp.-- Recon., B-414220.49, B-414220.50, Apr. 6, 2017, 2017 CPD ¶ 117; General Revenue Corp. et al., B-414220.2 et al., Mar. 27, 2017, 2017 CPD ¶ 106. Relevant here, DOE, in response to the most recent set of post-award protests, sought dismissal of the protests on the basis that it was cancelling the solicitation for the Debt Collection Procurement.

Specifically, on May 23 (or approximately a month after the submission of Phase I responses to the NextGen Environment RFP), DOE represented to the Court of Federal Claims that FSA intended to revise its approach to default debt collection. In the contracting officer's memorandum accompanying the agency's request for dismissal of the protests as academic, the agency explained that it currently uses private collection agencies (PCA) to service borrower accounts that are 360 days or more delinquent. See Protest, exh. A, Memo. from Contracting Officer, Docket no. 244-1, FMS Inv. Corp. v. United States, No. 18-cv-204 (Fed. Cl.), at 1. The PCAs contact these delinquent borrowers and work to resolve their student loan debt via collection of payments, rehabilitation, consolidation, and/or involuntary programs such as administrative wage garnishment and the Department of the Treasury Offset Program. Id. FSA represented that it intends to move away from this model of debt collection by having loan servicers provide services to borrowers beginning 90 days after a borrower account becomes delinquent, and to continue those services through the resolution of any subsequent default. Id.³

As a result of shifting this work from PCAs to loan servicers and more proactive engagement with customers to avoid or resolve defaults, which the agency refers to as "enhanced" servicing, the need for separate PCAs operating under separate agreements from the enhanced servicers will diminish over time. Id. The agency further represented that cancellation of the Default Collection Procurement, which was conducted on an unrestricted basis, was appropriate because DOE currently has a sufficient numbers of PCAs that were awarded small business set-aside contracts under a separate procurement that can provide any necessary debt collection services through 2024 during the transition to enhanced servicing. Id. The Court of Federal Claims subsequently dismissed the protests as moot because of the agency's cancellation of the solicitation. FMS Inv. Corp. v. United States, No. 18-cv-204, 2018 U.S. Claims LEXIS 588 (May 29, 2018).

DISCUSSION

In its current protest before our Office, GC Services argues that the agency's memorandum submitted to the Court of Federal Claims demonstrates that the NextGen Environment solicitation is materially flawed because it does not reflect the agency's actual requirements. Specifically, the protester contends that the solicitation's objectives and constraints for Components E and F, pertaining to loan processing, are

³ An internal agency memorandum, which describes the proposed plan as "modify[ing] significantly [FSA's] current practices," describes the objectives of the approach as: focusing on assisting borrowers with getting into repayment plans they can afford; providing additional communications to borrowers; and increasing focus on outreach to borrowers and enhanced levels of skip tracing to locate borrower contact information to allow for communications. Agency Report (AR), Tab 22, Final Internal Memo. (May 3, 2018), at 2.

primarily focused on restricted business process operations like back office activities relating to loan servicing, printing and mailing servicing related materials, processing inbound servicing physical mail, and other processing activities including reviewing, validating, and processing loans associated with enrollment, applications, and requests for various borrower programs. In contrast, GC Services contends that the implementation of enhanced servicing will require more proactive customer engagement, and require additional, specialized services pertaining to defaulted student loans. The protester contends that these material changes to the scope of the solicitation's objectives and constraints should have resulted in an amendment to the RFP, and the opportunity for new or revised Phase I responses. In this regard, GC Services argues that it would modify its technical approach and pricing information to be responsive to the enhanced servicing requirements, as well as highlight relevant past performance information.

DOE argues that amendment to the RFP is unnecessary for several reasons. Most relevant, the agency argues that, under the flexible two-phase procurement authority of 20 U.S.C. § 1018a, the RFP was not required to include a detailed and firmly established set of requirements. Rather, DOE contends that the solicitation satisfied the Phase I requirement to provide a general description of the scope or purpose of the procurement that provided sufficient information on the scope or purpose for sources to make informed business decisions regarding whether to participate in the procurement. See 20 U.S.C. § 1018a(d)(2)(i). The agency argues that the RFP's objectives and constraints for Components E and F reasonably apprised potential offerors of the government's general requirements, which are for non-automated business operations required in servicing accounts, including customer engagement and outreach, contact center support, and loan processing. DOE argues that it may reasonably define its requirements further in Phase II. The agency also argues that, in light of the Phase I evaluation criteria, the agency will evaluate responses based on the current DOE environment, not on the prospective changes that will result from the implementation of enhanced servicing. For the reasons that follow, we find no basis to sustain the protester's challenges to DOE's Phase I solicitation.⁴

Generally, where an agency's requirements materially change after a solicitation has been issued, it must issue an amendment to notify offerors of the changed requirements and afford them an opportunity to respond. Federal Acquisition Regulation § 15.206(a); CGI Fed. Inc., B-410330.2, Dec. 10, 2014, 2014 CPD ¶ 366 at 11. The purpose of the rule is to avoid award decisions not based on the agency's most current view of its minimum needs, and to provide offerors an opportunity to submit revised proposals on a common basis reflecting the agency's actual requirements. International Data Sys., Inc., B-277385, Oct. 8, 1997, 97-2 CPD ¶ 96 at 4-5. Unlike a traditional, single-phase procurement where the agency solicits proposals with respect to a defined set of

⁴ GC Services raises other collateral issues. While our decision does not specifically address every argument, we have considered all of the protester's arguments and find that they do not provide a basis on which to sustain the protest.

requirements and makes an award based on the proposals submitted, the procurement at issue here is being conducted pursuant to FSA's two-phase procurement authority. In Phase I, the agency is required to provide only a general description of the scope or purpose of the procurement. More is not required since the detailed requirements and proposals are prepared, and contracts awarded, in Phase II. 20 U.S.C. § 1018a(d)(3). As a result, the agency's Phase I notice provided a reasonably adequate general description of its requirements, and therefore met the minimum solicitation requirements established by 20 U.S.C. § 1018a(d)(2).

Relating to Components C and D, DOE is seeking Phase I responses for the technical systems necessary for servicing loans in the FSA environment. RFP at 13-15. Relating to Components E and F, the agency is seeking Phase I responses for the business process resources necessary to initiate engagement with FSA's customers, respond to inbound customer contacts, and perform functions that cannot be automated. Id. at 16-18. The agency's stated objectives for these components include customer engagement and outreach, contact center support, and loan processing. Id. Accepting for the purposes of the protester's argument that the enhanced servicing activities are additional, or at least more intensive, services as compared to those set forth in the RFP, we nevertheless conclude that they do not represent such a material departure from the general description of anticipated services to require amendment of the Phase I solicitation. In this regard, it is apparent that the agency was generally seeking responses demonstrating a vendor's prospective approach and experience providing customer engagement and outreach, contact center support, and loan processing services. In light of the requirement that FSA need only provide a general description in Phase I of the scope or purpose of the procurement, and the fact that the agency will need to specifically define its requirements in Phase II, we find that the agency's Phase I description was sufficient to provide prospective offerors an understanding of the general purpose of the services being procured.⁵

Our interpretation is further supported by the Phase I response instructions and evaluation criteria. Just as the Phase I objectives and operating and solution

⁵ GC Services argues that other PCAs, whose processes and functions will largely be overtaken by the enhanced servicers, "did not have a strong incentive to bid on the Next Gen Solicitation, particularly because the Solicitation did not appear to supplant the work done by PCAs." Comments at 10. This argument is irrelevant to our consideration, as the protester submitted a response to the RFP, and thus is not an interested party to assert arguments on behalf of other prospective offerors which may have elected not to respond. See, e.g., Manus Medical LLC, B-412331, Jan. 21, 2016, 2016 CPD ¶ 49 at 7 (explaining prospective offeror was not an interested party to bring solicitation challenge on behalf of other potential offerors affected by solicitation terms); Government & Military Cert. Sys., Inc., B-409420, Apr. 2, 2014, 2014 CPD ¶ 116 at 3-4 (finding the protester was not an interested party to challenge a solicitation requirement as being unduly restrictive of competition where it conceded that it could satisfy the requirement).

constraints were relatively general, so too were the anticipated responses sought by the agency. As set forth above, offerors' proposed approaches were to be brief, limited to a seven page overview of their proposed approaches, and five additional pages each for their specific approaches to Components E and F, and their understanding of DOE's current financial services environment. RFP at 26-27. Thus, the agency was seeking a general overview of the offeror's prospective approach, not a detailed response to well-defined requirements. As noted above, the detailed requirements and proposals, and potential contract awards, are part of the Phase II solicitation. See id. at 25.

Similarly, the evaluation criteria show the generalized nature of the Phase I evaluations. For example, under the strategic fit evaluation factor, the agency was to assess the degree to which the proposed solution ensures the achievements of FSA's goals at an acceptable level of risk. RFP at 22. The general focus on meeting FSA's broad goals, in lieu of demonstrating compliance with a defined statement of work or performance work statement, reflect the general scope of the Phase I evaluation. Furthermore, the agency is to specifically consider an offeror's response to Component E and F by considering whether the response demonstrates an understanding of the current student aid financial services environment. Id. Thus, the RFP strongly indicates that the agency's consideration of offerors' responses is to be predicated on an offeror's response in light of FSA's current environment and the offeror's approach to addressing the requirements of the current environment. See Memorandum of Law (MOL) at 13 ("There is no indication that FSA expects vendors to have an understanding of specific changes which were adopted only after submission of Phase One responses.")⁶.

⁶ On August 27, DOE notified our Office of its intent to cancel Components A and B, which sought responses for an enterprise-wide digital platform, and enterprise-wide contact center platform and customer relationship manager (CRM), respectively. See note 2, supra. Based on this information, GC Services filed a supplemental protest arguing that the agency was required to reopen the Phase I solicitation due to the agency's cancellation of Components A and B. Supplemental Protest at 3. Based on the agency's notice, our Office sought clarification regarding whether the cancellation of Components A and B would require an amendment to the RFP because the objectives and constraints for Components E and F specifically reference Components A and B. For example, under Component E's contact center support operating and solution constraints, the RFP provides that the vendor shall "[p]erform contact center operations for customers with loans on Solution 3.0 (Component C) while operating within the system boundaries of the agency desktop/CRM solution provided by the enterprise-wide contact center (Component B)." RFP at 16. DOE responded that amending the RFP is unnecessary because Phase I did not guarantee that the agency would award or proceed to Phase II for any given component, and, more importantly, the agency still anticipates that the vendor for Components E and F will need to operate within the system boundaries of a digital platform and contact center platform and CRM as contemplated by Components A and B. In this regard, DOE anticipates procuring these components, albeit under a different contract vehicle. See Agency Response (Aug. 29, 2018) at 1-2. Thus, other than a change in the procurement vehicle from a Phase II

(continued...)

To the extent that GC Services anticipates that DOE will unfavorably review its Phase I response for failing to account for the anticipated requirements of enhanced servicing, we conclude that the protester's arguments here merely anticipate adverse actions by the agency, and are thus premature. Our Office assumes that agencies will conduct procurements in a fair and reasonable manner in accordance with the terms of the solicitation, and we will not consider a protest allegation which speculates that an agency will not evaluate proposals in the manner set forth in the solicitation. TRAX Int'l Corp., B-410441.14, Apr. 12, 2018, 2018 CPD ¶ 158 at 8; Booz Allen Hamilton, Inc., B-414822.5, Oct. 13, 2017, 2017 CPD ¶ 315 at 4.⁷

The protest is denied.

Thomas H. Armstrong
General Counsel

(...continued)

RFP under the NextGen Environment solicitation to a different contract vehicle, the government's general requirements have not materially changed. Accordingly, we conclude that the general description of the objectives and constraints in the Phase I RFP were reasonable and adequate to put vendors on notice of DOE's actual requirements and find no basis on which to sustain the supplemental protest.

⁷ As an apparent alternative argument, DOE asserts that the RFP's general references to concepts such as innovation and flexibility reasonably put offerors on notice of the agency's anticipated enhanced servicing requirements, and that the implementation of the enhanced servicing requirements do not constitute a material change to the RFP's stated objectives and constraints because vendors should have reasonably anticipated them. See, e.g., MOL at 2-3, 13-14, 25. We similarly find these arguments regarding the agency's interpretation of the RFP and how it may evaluate Phase I responses to be premature. Nevertheless, we question the agency's position in this regard. The enhanced servicing model was first documented in an internal agency draft memorandum on the same day as the Phase I response deadline, and was not publically disclosed until more than a month later. See AR, Tab 21, Draft Internal Memo. (Apr. 18, 2018); Tab 22, Final Internal Memo. (May 3, 2018); Protest, ex. A, Memo. from Contracting Officer, Docket no. 244-1, FMS Inv. Corp. v. United States, No. 18-cv-204 (Fed. Cl.) (May 23, 2018). Moreover, DOE's suggestion that the enhanced servicing requirements were either reasonably encompassed within the RFP's objectives and constraints, or otherwise reasonably discernable to offerors, is inconsistent with the agency's assertion that "[t]here is no indication that FSA expects vendors to have an understanding of specific changes which were adopted only after submission of Phase One responses." MOL at 18.