

Decision

Matter of: Accenture Federal Services, LLC

File: B-418321.4

Date: January 29, 2021

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DIGEST

1. Procuring agency is responsible for defining its needs and determining the best methods for meeting its requirements, and this extends to matters involving the relevance of offerors' performance history.
 2. Protester's assertion that the terms of a solicitation should be more restrictive fails to state a basis for protest.
 3. Protester's speculation that the agency will evaluate proposals in an unreasonable manner is premature.
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DECISION

Accenture Federal Services, LLC, of Arlington, Virginia, protests the provisions of task order request for proposals (TORP) No. 191606, issued by the Department of Health and Human Services, seeking services to support operation of the Center for Medicare and Medicaid Services' (CMS) federally facilitated exchange. (FFE).¹ Accenture, the incumbent contractor, challenges the solicitation provisions regarding evaluation of corporate experience.

¹ The FFE is a health insurance exchange, the public-facing component of which is known as "Healthcare.gov." The FFE is operated by CMS pursuant to the Patient Protection and Affordable Care Act, and allows individuals and small-business employers to compare and shop for private health insurance options.

We dismiss the protest.

BACKGROUND

In July 2019, pursuant to Federal Acquisition Regulation subpart 16.5, the agency issued the solicitation to firms holding indefinite-delivery indefinite-quantity contracts under CMS's Strategic Partner Acquisition Readiness program. The solicitation contemplates award of a task order for a one-year base period and four 1-year option periods, and provides that source selection will be based on a best-value tradeoff between the following evaluation factors: relevant corporate experience; technical demonstration; technical approach/understanding; staffing plan/key personnel; small business utilization; and cost/price. Protest exh. 5, TORP amend. 3 at 15-17.

The solicitation provides for a two-phase evaluation, with phase I limited to evaluation of corporate experience. More specifically, the solicitation provides that, in phase I, each offeror must provide information regarding its corporate experience, and states that such information will be evaluated to determine the extent of an offeror's experience performing contracts "of similar size, scope and complexity to [these] requirement[s]." *Id.* at 15. Following evaluation of corporate experience, the agency "will advise offerors to participate in Phase II . . . or, based on the information submitted, that it is unlikely the offeror(s) is/are a viable competitor."² *Id.* at 1.

On November 17, the agency amended the solicitation,³ providing specific information regarding the type of experience the agency will consider to be similar, stating:

A system is of similar size to the FFE if it requires a similar amount of work to build and operate. This includes the entire software development lifecycle, including post-launch operations and maintenance. As such, a system of similar size also has multiple complex components, including external interfaces. A system of similar size does not necessarily process a similar number of transactions or serve a similar number of users, since an automated system should have largely fixed operating costs (except, for example, things like hosting.)

² Offerors that choose to continue will submit phase II technical and business proposals.

³ Accenture has filed two previous protests challenging the agency's prior evaluations and source selection decisions. Among other things, Accenture has complained that the agency's evaluation of corporate experience was contrary to the solicitation's stated evaluation factors in that Accenture's experience as the incumbent contractor "did not serve as a vast discriminator in [Accenture's] favor." Accenture Protest, June 22, 2020, at 3. Following the prior protests, the agency advised our Office that it would amend the solicitation, request and evaluate revised proposals, and make a new award determination. Protest exh. 2, Agency Letter to GAO, Sept. 22, 2020, at 1. The agency's November 17 solicitation amendment was part of its action following the prior protests.

A system is of similar scope to the FFE if it contains similar functional components. Specifically, the FFE includes a public-facing eligibility application; interfaces and logic for verifications; multi-stage eligibility logic; notice generation; and interfaces to external entities that support the provision of benefits.

A system is of similar complexity to the FFE if it contains multi-stage decision logic and multiple external interfaces, which are delivered in part through a public-facing interface with a required 24/7/365 uptime and ability to accommodate policy changes.

Protest exh. 5, TORP amend. 3 at 15-16.

The solicitation required submission of proposals by 2:00 pm on December 7, 2020. Shortly before that time, Accenture filed this protest with our Office.⁴

DISCUSSION

Accenture primarily challenges the amended solicitation's provision regarding assessing experience that is similar in size, focusing on the language stating that the agency may consider prior experience with another system to be similar in size even if it "does not necessarily process a similar number of transactions or serve a similar number of users."⁵ Protest at 9-13. More specifically, Accenture asserts that the agency may not reasonably consider an offeror's operation of state-based health exchanges to be similar in size because "user and transaction volume[s]" of state-based exchanges are significantly lower than the volumes experienced and anticipated under the FFE. *Id.* Accordingly, Accenture asserts that the amended solicitation's provision regarding similarity of size is "unreasonable on its face," and further complains that the provision improperly "conflates" consideration of size with considerations of scope and complexity.⁶ *Id.* at 9-14.

⁴ Because the value of the task order is in excess of \$10 million, this protest is within our jurisdiction to consider protests regarding civilian agency indefinite-delivery, indefinite-quantity task order contracts. See 41 U.S.C. § 4106(f)(1)(B); *Alliant Sols., LLC*, B-415994, B-415994.2, May 13, 2018, 2018 CPD ¶173 at 4 n.8.

⁵ As noted above, the solicitation provides that, in assessing similarity of size, the agency will consider whether the prior effort required "a similar amount of work to build and operate," including consideration of "the entire software development lifecycle," and/or requirements for "multiple complex components, including external interfaces." Protest exh. 5, TORP amend. 3 at 15.

⁶ Accenture also protests that the solicitation fails to reflect a "surge of new customers" that Accenture maintains will occur "due to the coronavirus pandemic." Protest at 14-17. In its December 7 filing, although Accenture designated the protest as

In responding to Accenture's protest, the agency notes that the solicitation's size provision does not limit the ability of Accenture--the incumbent contractor--to compete. Agency Request for Dismissal, Dec. 11, 2020, at 2-4. Accordingly, the agency maintains that Accenture does not qualify as an interested party to challenge this provision. Further, the agency responds that Accenture's complaints merely reflect its attempt to restrict competition and provide a greater advantage for Accenture's incumbency. *Id.* More specifically, the agency asserts that Accenture's protest merely reflects a desire to diminish the competitiveness of offerors whose experience is limited to operating state-based health insurance exchanges.

As a general matter, a procuring agency is responsible for defining its needs and identifying the best method for accomplishing them, *see, e.g., Watershed Security, LLC*, B-417178.4, B-417178.6, July 11, 2019, 2020 CPD ¶ 3 at 4; this principle extends to consideration of an offeror's experience and past performance, and includes the agency's determinations regarding the relevance of an offeror's performance history. *Honeywell Tech. Solutions, Inc.*, B-407159.4, 2013 CPD ¶ 110 at 3-4; *MFM Lamey Group, LLC*, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. In this context, an agency may reasonably provide for an evaluation that fosters competition by increasing the viability of proposals being submitted by non-incumbent offerors. *See, e.g., New Mexico State Univ.*, B-409566, June 16, 2014, 2014 CPD ¶ 228 at 4.

In addition, a prospective offeror does not generally qualify as an interested party to protest the terms of a solicitation where the protester meets the challenged requirements and, accordingly, is not prejudiced by the allegedly defective solicitation provisions. *See, e.g., Government & Military Certification Sys., Inc.*, B-409420, Apr. 2, 2014, 2014 CPD ¶ 116 at 4; *Westinghouse Elec. Corp.*, B-224449, Oct. 27, 1986, 86-2 CPD ¶ 479 at 2. In this regard, the role of our Office in reviewing bid protests is to ensure that the statutory requirements for full and open competition are met--not to protect a protester's interest in restricting competition. *See, e.g., Honeywell Tech. Solutions, Inc., supra.* Finally, a protester's speculation that a procuring agency will

protected on GAO's electronic protest docketing system (EPDS), it still redacted significant portions of this argument--precluding GAO's review of the redacted portions. On December 17, several days after the solicitation closing date, Accenture submitted the complete protest on EPDS, thereby disclosing to GAO, for the first time, all of its allegations regarding this issue. There is no dispute that all of the information submitted on December 17 was available to Accenture at the time it filed its December 7 protest. Our Bid Protest Regulations require a protester to timely set forth all of the known legal and factual grounds supporting its allegations; that is, piecemeal presentation of evidence or information is prohibited. 4 C.F.R. § 21.2(a)(2); *see XTec, Inc.*, B-418619 *et al.*, July 2, 2020, 2020 CPD ¶ 253 at 25; *Raytheon Blackbird Techs., Inc.*, B-417522, B-417522.2, July 11, 2019, 2019 CPD ¶ 254 at 4; *Ellwood Nat'l Forge Co.--Protests and Costs*, B-416582 *et al.*, Oct. 22, 2018, 2018 CPD ¶ 362 at 11. Here, Accenture's untimely submission on December 17 is not for our consideration.

evaluate proposals in an unreasonable manner is premature and will not be considered by our Office. See, e.g., *DGC Int'l*, B-410364.2, Nov. 26, 2014. 2014 CPD ¶ 343 at 3.

Here, we view Accenture's complaints regarding the terms of the solicitation as assertions that the solicitation should be more restrictive of competition. As noted above, a procuring agency is responsible for defining its needs, and determining the best methods for meeting its requirements; this extends to matters involving the relevance of offerors' performance history; and an agency may reasonably provide for an evaluation that fosters competition by increasing the feasibility of proposals submitted by non-incumbent offerors. In this context, Accenture has not identified any procurement statute or regulation that establishes parameters for determining the relevance of an offeror's experience with which the agency has failed to comply. Additionally, it is not lost on this Office that, to the extent Accenture's protest repeatedly references and relies upon its unique experience performing the current FFE contract, its protest is attempting to limit the agency's meaningful consideration of offerors that appear to be no less experienced than Accenture was upon its award of the incumbent contract. In this context, we see no basis to question the manner in which the agency states it will evaluate experience.

Further, there is no question that Accenture is capable of complying with the solicitation provision regarding size similarity; that is, Accenture is not prejudiced by this provision--other than the "prejudice" of potentially facing more meaningful competition. On this record, we do not view Accenture as qualifying as an interested party to challenge the provision. Finally, to the extent Accenture is speculating that the agency will subsequently apply the stated evaluation factors in an unreasonable manner, its protest is premature and not for our consideration.

The protest is dismissed.

Thomas H. Armstrong
General Counsel