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# Decision

**Matter of:** Inalab Consulting, Inc.

**File:** B-418950

**Date:** October 9, 2020

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Isaias Alba, IV, Esq., Jason A. Blindauer, Esq., and Timothy F. Valley, Esq., PilieroMazza PLLC, for the protester.  
Kristen M. Nowadly, Esq., and Carol Latterman, Esq., General Services Administration, for the agency.  
Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest that agency improperly rejected protester's proposal is denied where agency reasonably determined that protester failed to submit specific documents showing execution of relevant experience project as required by the solicitation.
  2. Protest that agency improperly failed to waive a solicitation requirement as immaterial fails to state a valid basis for protest; waiver of a solicitation requirement, even if immaterial, is a discretionary action, and offerors have no entitlement to waiver.
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## DECISION

Inalab Consulting, Inc., an 8(a) small business of Fairfax, Virginia, protests the elimination of its proposal from consideration for award under request for proposals (RFP) No. 47QREB-20-R-0001--referred to as the Human Capital and Training Solutions (HCaTS) 8(a) solicitation--issued by the General Services Administration (GSA) to provide training and development services across the federal government.<sup>1</sup> Inalab contends that the agency's rejection of its proposal as noncompliant was improper.

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<sup>1</sup> Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) 19.800. This program is commonly referred to as the 8(a) program.

We deny the protest.

## BACKGROUND

The HCaTS procurement was initiated in 2015, as a small business set-aside, and sought proposals for customized training and development services, customized human capital strategy services, and customized organizational performance improvement services. Protest, attach. 1, RFP at 15-17;<sup>2</sup> Contracting Officer's Statement (COS) at 1. HCaTS is comprised of two separate sets of government-wide multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contracts, referred to as "pools" (based on different small business size standards), under which task orders can be issued.<sup>3</sup> Memorandum of Law (MOL) at 1.

The HCaTS 8(a) solicitation here was issued on November 27, 2019, pursuant to the procedures of FAR part 15, and sought to "on-ramp" additional contractors into two 8(a) pools.<sup>4</sup> RFP at 8; MOL at 3. The solicitation contemplated that the agency would award approximately 20 IDIQ contracts for each 8(a) pool for a 1-year base period with a 5-year option period. RFP at 26, 88. Awards were to be made to the offerors that submitted proposals that were the "Highest Technically Rated with Fair and Reasonable Prices." *Id.* at 88.

The RFP explained that the agency would conduct a multi-phased evaluation. First, the agency would identify the top 40 proposals using the offeror's self-scoring worksheets. *Id.* at 89. Next, the agency would perform an initial screening of the top 40 proposals to determine whether the offeror provided all of the attachments and documents listed on the solicitation checklist. *Id.* at 89-90. If an offeror submitted all required attachments and documents, the agency would then validate the offeror's self-scoring worksheet. *Id.* at 90-91.

The RFP instructed offerors to submit six relevant experience projects (REP) as part of their proposals. *Id.* at 76. For each REP, the solicitation required offerors to submit documentation to substantiate seven requirements: (1) execution; (2) recency; (3) period of performance; (4) obligated dollar amount; (5) scope; (6) North American Industry Classification System code; and (7) past performance rating. *Id.* at 77-79.

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<sup>2</sup> References to page numbers in the protest attachments are to the sequential numbering provided by Inalab in its filing to our Office.

<sup>3</sup> For additional details regarding the original HCaTS procurement, see our decisions in *Cybermedia Techs., Inc. d/b/a CTEC*, B-413156.25, Apr. 6, 2017, 2017 CPD ¶ 116, and *RGS Assocs., Inc.*, B-413155.5, Aug. 30, 2016, 2016 CPD ¶ 248.

<sup>4</sup> The first pool would be for 8(a) sole-source task orders, while the second pool would be for 8(a) competitive set-aside task orders. RFP at 8.

Relevant to the protest here, the RFP stated that with regard to supporting documents generally, “[u]nless specifically prohibited, Offerors may provide whatever **official**, verifiable contractual documentation is necessary to substantiate any minimum requirements or claimed scoring elements; a verifiable contractual document can be the award document, contractual documents, and contractual deliverables, signed or certified and legally recognized documents.” *Id.* at 77. However, with regard to the “execution” requirement specifically, the RFP cautioned that “[t]he Offeror must submit a copy of the award document that is dated and includes the name and signature of the awarding party,” and “FPDS–NG Report, CPARS, or PPIRS shall not be used as supporting documents for execution of the REP.”<sup>5</sup> *Id.* Proposals that did not meet all requirements for all REPs were to be removed from further consideration for award. *Id.* at 90.

The agency received a total of 106 proposals, including a proposal submitted by Inalab, by the March 16, 2020, closing date. COS at 3. Inalab’s second REP (hereinafter REP 2) referenced a 2017 purchase order with the U.S. Fish and Wildlife Service (FWS).<sup>6</sup> Protest, attach. 3, Inalab REP 2 at 125-151. The purchase order, however, was not signed or dated by the FWS contracting officer (or by Inalab).<sup>7</sup> *Id.* at 125. The GSA contracting officer subsequently concluded that because Inalab’s REP 2 lacked the signature of the awarding contracting officer--and thus did not substantiate execution--the proposal was eliminated from further consideration. COS at 2-3.

On July 14, the agency notified Inalab that its proposal had been eliminated from consideration for failing to meet the experience requirements. Specifically, the agency stated: “The award documents (‘Inalab\_REP2\_Award’), submitted for this REP are not signed by the awarding party.” Protest, attach. 4, Notification of Unsuccessful Proposal at 153. This protest followed.

## DISCUSSION

Inalab contends that the agency’s elimination of the offeror’s proposal was improper. While acknowledging that the submitted REP 2 lacked the procuring contracting officer’s signature, Inalab argues that the supporting documents which it provided in its proposal nevertheless properly substantiated contract execution. Protest at 12-13. Inalab also

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<sup>5</sup> Respectively, the provided acronyms are as follows: Federal Procurement Data System – Next Generation (FPDS-NG); Contractor Performance Assessment Reporting System (CPARS); and Past Performance Information Retrieval System (PPIRS).

<sup>6</sup> The record shows the FWS utilized simplified acquisition procedures, pursuant to FAR part 13, for that procurement. The provided solicitation (SF 1449) indicates that the “Method of Solicitation” was a request for quotations (RFQ), while the corresponding FPDS-NG report states the solicitation procedure was “Simplified Acquisition.” Protest, attach. 3, Inalab REP 2 at 125, 144

<sup>7</sup> Additionally, Inalab represents that the FWS contracting officer has been deceased since 2018. Protest at 10-11.

argues the agency should have waived the requirement for a contracting officer's signature because it was not material in nature. *Id.* at 14-15. Had GSA not elevated form over substance, the protester argues, Inalab would have been among the most highly-rated offerors selected for award. *Id.* at 15. We have considered all of the protester's arguments and find no basis on which to sustain the protest.

In reviewing protests challenging an agency's evaluation, our Office does not reevaluate proposals; rather, we review the record to determine whether the evaluation was reasonable, consistent with the terms of the solicitation, and compliant with procurement statutes and regulations. See, e.g., *Cybermedia Techs., Inc. d/b/a CTEC, supra* at 6; *RGS Assocs., Inc., supra* at 3. An offeror's disagreement with an agency's evaluation, without more, does not establish that the evaluation was unreasonable. *Alutiiq Tech. Servs. LLC*, B-411464, B-411464.2, Aug. 4, 2015, 2015 CPD ¶ 268 at 4. Offerors are responsible for submitting well-written proposals with adequately detailed information that allows for meaningful review by the procuring agency. See *Hallmark Capital Grp., LLC*, B-408661.3 *et al.*, Mar. 31, 2014, 2014 CPD ¶ 115 at 9.

We find that the agency reasonably evaluated Inalab's proposal. As noted above, Inalab does not dispute that its proposal relied upon an unsigned contract award document to substantiate the execution of REP 2. As stated above, however, the RFP required submission of a dated and signed copy of the award document. In support of its determination not to accept Inalab's proposal because of the unsigned contract award document, GSA argues that it did exactly what the RFP said the agency would do--eliminate offerors "that failed to follow the explicit requirements in the Solicitation." MOL at 4. We agree. Because Inalab's proposal was reasonably found not to meet the execution requirement for REP 2, its elimination was also reasonable. See *Sevatec, Inc.*, B-413155.11, Aug. 24, 2016, 2016 CPD ¶ 229 at 3-4 (noting that "we find no basis to question the reasonableness of the agency's determination that the unsigned document submitted by [the protester] was insufficient to meet the solicitation's experience requirements"); *RGS Assocs., Inc., supra* (finding reasonable an agency's decision to eliminate a proposal that relied upon an unsigned document to substantiate required experience); *ABSG Consulting, Inc.*, B-413155.14, Oct. 12, 2016, 2016 CPD ¶ 287 at 4 (finding reasonable the agency's determination that the protester's submission of an unsigned contract document was insufficient to meet the solicitation's requirements).

Inalab argues that notwithstanding the lack of the FWS contracting officer's signature, it was clear that the award document for REP 2 evidenced a binding contract with Inalab, *i.e.*, "an undeniable mutual intent to be contractually bound." Protest at 12. Inalab also points to the other supporting documents it submitted to substantiate that REP 2 represented a binding contract. *Id.* at 13; Comments at 3-4.

As a preliminary matter, we have previously decided that, in the context of an RFQ (as was the case for Inalab REP 2), the issuance of a purchase order lacking the contracting officer's signature does not constitute an offer that may be accepted by the vendor to form a binding contract. *Dehler Mfg.Co., Inc.--Recon.*, B-416601.2, Feb. 13,

2019, 2019 CPD ¶ 92 (affirming denial of a protest challenging the exclusion of the vendor's quotation where a purchase order lacking the signature of the contracting officer did not constitute the issuance of an order, and thus, the vendor's signing of the order did not constitute acceptance); see also *Valencia Tech. Servs., Inc.*, B-223288, July 7, 1986, 86-2 CPD ¶ 40 (rejection of protester's unsigned offer and award to another offeror was proper since attempted acceptance of unsigned offer would not result in a binding contract).

We need not decide, however, as Inalab suggests, whether REP 2 constituted a binding contract, as we find that the agency's evaluation was reasonable in light of the stated RFP requirement that the offeror submit a dated and signed copy of the award document.<sup>8</sup> Also, while the RFP did, in certain instances, permit offerors to provide other official, verifiable contractual documentation, none of the documents which Inalab provided properly substantiated REP execution. As the protester itself acknowledges, "the [s]olicitation does not treat the unsigned [purchase order] and modification as verified contractual documents, and the FPDS-NG excerpts expressly would not be considered." Comments at 4. Lastly, while Inalab also relies on the executed past performance evaluation form (RFP attachment J.5) which it submitted as part of REP 2, the RFP stated that "[a]ny solicitation attachment in Section J **shall not** be used as a supporting document, except as otherwise specified." RFP at 77. In sum, the record shows Inalab failed to substantiate the execution requirement for REP 2 by any permissible means.

Inalab also argues that GSA should have waived the lack of the FWS contracting officer's signature on REP 2, as the requirement was immaterial in nature. Protest at 14-15. The agency argues that waiver was not appropriate because the requirement was a material one and its waiver would prejudice other offerors. MOL at 6. We need not decide whether the requirement here was a material one, or if waiver would have been prejudicial to other offerors, because the agency's decision not to waive the RFP's execution requirement fails to state a valid basis of protest.

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<sup>8</sup> We likewise find no merit in Inalab's assertion that the agency improperly elevated form over substance. Protest at 15; Comments at 4 ("the [a]gency [r]eport reveals that there is no narrative rationale for the [a]gency's decision-making, only a checklist that shows the level of cursory thinking that the [GSA] evaluators gave to Inalab's proposal"). As set forth above, the solicitation provided that contract awards would be made on a highest-technically-rated-with-fair-and-reasonable-prices basis, through the use of offerors' self-scoring point worksheets. RFP at 88. To the extent Inalab now challenges the RFP's evaluation methodology, its protest is untimely. 4 C.F.R. 21.2(a)(1); *PricewaterhouseCoopers Public Sector, LLP*, B-413316.2, B-413316.3, Dec. 27, 2016, 2017 CPD ¶ 12 at 9; *Ball Aerospace & Techs. Corp.*, B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 4. Moreover, we find an evaluation conducted consistent with the plain language of the solicitation does not, as the protester avers, improperly elevate form over substance.

Our Office has explained that an agency may waive or relax a material solicitation requirement when the award will meet the agency's actual needs without prejudice to the other offerors. *Booz Allen Hamilton, Inc.*, B-417418 *et al.*, July 3, 2019, 2019 CPD ¶ 246 at 6; *Lockheed Martin Corp.*, B-411365.2, Aug. 26, 2015, 2015 CPD ¶ 294 at 14. However, the decision to waive a solicitation requirement, even when permissible, is a discretionary action; an agency is not required to waive a solicitation requirement and offerors have no entitlement to a waiver. *Avondale Indus., Inc.*, B-271510, July 15, 1996, 96-2 CPD ¶ 16 at 3-4 (finding that the waiver of a stated solicitation requirement is entirely at the agency's discretion and that a protester has no entitlement to a waiver); see *American Relocation Connections, LLC*, B-416035, May 18, 2018, 2018 CPD ¶ 174 at 6 (dismissing a challenge to an agency's decision not to exercise its discretionary authority to set a solicitation aside for small businesses as failing to state a valid basis of protest); *AeroSage, LLC*, B-414640, B-414640.3, July 27, 2017, 2017 CPD ¶ 233 at 5 (finding that even though agencies have the discretion to seek a waiver of the nonmanufacturer rule, an agency's refusal to undertake such a discretionary act does not provide a basis to sustain a protest); see also *Armory Discount Pope's Realty*, B-246721, Dec. 2, 1991, 91-2 CPD ¶ 498 at 1-2 (finding that a protest challenging agency's discretionary decision to extend the solicitation's closing date does not state a valid basis for protest).

In short, while the protester contends that GSA should have waived Inalab's nonconformance with the RFP execution requirement here, the agency's decision not to do so fails to state adequate legal grounds of protest. 4 C.F.R. § 21.5(f); see *American Relocation Connections, LLC, supra* ("we conclude that the contracting officer here has discretionary authority to set-aside an order against the FSS, but is not required to do so . . . [protester's] argument fails to state adequate legal grounds of protest, and therefore dismiss it on that basis").

The protest is denied.

Thomas H. Armstrong  
General Counsel