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Decision

Matter of: NCI Information Systems, Inc.

File: B-419322; B-419322.2

Date: January 12, 2021

Daniel P. Graham, Esq., Elizabeth K. McIntyre, Esq., Ryan D. Stalnaker, Esq., and Alison S. Harmes, Esq., Vinson & Elkins, for the protester.

Lawrence P. Block, Esq., and William Kirkwood, Esq., Reed Smith LLP, for the intervenor.

John E. Cornell, Esq., Department of Homeland Security, for the agency.

Christopher Alwood, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of the protester's proposal as ineligible for award is denied where agency reasonably found that the protester's proposal failed to comply with the solicitation's specific instructions for providing evidence of an adequate accounting system.

2. Protester is not an interested party to challenge other aspects of the evaluation where its proposal was reasonably evaluated as ineligible for award.

DECISION

NCI Information Systems, Inc. (NCI), of Reston, Virginia, protests the issuance of a task order to Salient CRGT, of Fairfax, Virginia, pursuant to request for proposals (RFP) 70SBUR20R0000001, issued by the Department of Homeland Security, United States Citizenship and Immigration Services (USCIS), for information technology deployment, maintenance, and repair services in support of the USCIS Office of Information Technology. NCI argues that the agency's evaluation of its proposal as not eligible for award based on a failure to submit appropriate evidence of an adequate cost accounting system was unreasonable. The protester also challenges various other aspects of the procurement.

We deny the protest.

BACKGROUND

The agency issued the RFP to firms holding contracts under the General Services Administration's (GSA's) Alliant 2 governmentwide acquisition contract (GWAC). Protest at 2; Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 1. The RFP contemplated the issuance of a task order, on a best-value tradeoff basis, for a 3-month transition period, a 9-month base period, and four 1-year option periods to provide information technology deployment, maintenance, and repair services in support of the USCIS Office of Information Technology. Agency Report (AR), Exh. 1, RFP¹ at 1-15.

The solicitation provided for a three-phase procurement. In phase 1, the agency was to provide all Alliant 2 GWAC holders with a fair opportunity notice and all amendments to the RFP. RFP at 60. In order to advance to phase 2, interested offerors were to provide a statement of interest and a copy of their firm's latest Department of Defense Contract Security Classification Specification form. *Id.* at 60. In phase 2, offerors were to provide oral presentations responding to four scenarios provided by the agency and a "Rough Order of Magnitude" proposed total price. *Id.* at 60-61. The agency would evaluate the oral presentations and conduct an advisory down-select based on confidence ratings assessed to the offerors.² *Id.* at 61. *Id.*

In phase 3, offerors were required to submit written proposals. *Id.* As relevant here, the RFP required offerors to provide "[e]vidence of an adequate accounting system for all prime and subcontractors." *Id.* The RFP specified that such evidence:

shall include a written opinion or other statement from the cognizant federal auditor (CFA) or the cognizant federal agency official (CFAO) that the system is approved or has been determined to be adequate, or if the contractor or subcontractor provides a review by a public accounting firm, the approval shall state that the accounting system complies with the requirements applicable to the contract type

Id. The solicitation further advised that offerors not providing such proof could be found ineligible for award and that the agency "will not accept self-certification of an adequate accounting system." *Id.*

¹ All citations to the RFP are to the final conformed version provided at Exhibit 1 of the Agency Report.

² The RFP stated that the agency intended to invite up to the three offerors who were evaluated with the highest confidence rating, but did not prohibit the agency from inviting more than three. RFP at 61. The agency ultimately invited the five most highly rated offerors from phase 2 to participate in phase 3. COS/MOL at 2.

The agency received five phase 3 proposals, including from NCI and Salient. See AR, Exh. 7, Technical Evaluation Committee Report at 3. In evaluating NCI's proposal the Business Evaluation Committee (BEC) found that NCI's proposal "did not contain the required evidence of an adequate accounting system for the prime and subcontractors." AR, Exh. 6, BEC Report at 18. The source selection authority concurred with the BEC's evaluation, finding that "in order to award to NCI discussion [would] need to be held in order to allow them to provide the evidence of an adequate accounting system for the prime and subcontractors." AR, Exh. 11, Source Selection Decision Document (SSDD) at 5, 8.

The source selection authority concluded that Salient's proposal, valued at \$174,999,083, provided the best value to the government. *Id.* at 4, 10. On September 30, 2020, the agency notified NCI that it had issued the task order to Salient and provided NCI a written debriefing. Protest, Exh. A, Notice of Unsuccessful Offer. This protest followed.³

DISCUSSION

The protester argues that the agency unreasonably determined that NCI had failed to comply with the requirement to submit evidence of an adequate accounting system, and therefore improperly evaluated NCI's phase 3 proposal. NCI contends that its proposal included citations to both a Defense Contract Management Agency (DCMA) letter approving NCI's accounting system and the most recent Defense Contract Audit Agency (DCAA) audit report for its accounting system, and that these citations were sufficient to meet the RFP's requirements. Comments at 1-2. Specifically, NCI argues that the "RFP's requirement that offerors provide evidence of an adequate/approved accounting system did not require offerors to physically attach a document" or otherwise "provide copies of the DCMA letter or the DCAA report." *Id.* at 2; Resp. to Req. for Dismissal at 2.

The agency responds that it reasonably found that NCI was ineligible for award. COS/MOL at 4. The agency argues that NCI's proposal was not compliant with the terms of the solicitation because it did not include proper evidence of an appropriate accounting system. COS/MOL at 4. In this regard, the agency contends that the RFP's language required offerors to submit a written statement from the appropriate DCMA, DCAA, or public accounting firm auditor or official, and that the citations in NCI's proposal were not sufficient to meet the solicitation's requirement. *Id.*

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation

³ The task order at issue is valued in excess of \$10 million, and was issued under an indefinite-delivery, indefinite-quantity contract established by GSA. Accordingly, our Office has jurisdiction to consider NCI's protest. 41 U.S.C. § 4106(f)(1)(B).

must be consistent with the solicitation when read as a whole and in a reasonable manner. *Planned Sys. Int'l, Inc.*, B-413028.5, Feb. 21, 2018, 2018 CPD ¶ 126 at 6. Where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. *Bauer Techs., Inc.*, B-415717.2, B-415717.3, June 22, 2018, 2018 CPD ¶ 217 at 4.

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 the required evidence of an adequate accounting system "shall include a written opinion or other statement from" the relevant auditor or official. RFP at 61. The solicitation also advised that the agency "will not accept self-certification of an adequate accounting system." *Id.* Finally, the solicitation cautioned that an offeror that fails to provide the required evidence "may be found ineligible for award." *Id.* As explained by the agency and contrary to NCI's contentions, the solicitation did not contemplate that an offeror could simply attest and cite to a document presumably on file elsewhere in lieu of providing a "written opinion or other statement." *See Id.*

In light of the above, we find nothing improper about the agency's decision to find NCI's proposal ineligible for award. Clearly stated solicitation 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. *See, e.g., Leader Communications, Inc.*, B-413104.9, Mar. 17, 2017, 2017 CPD ¶ 96 at 5. NCI does not argue, and our review does not reveal, that its proposal included a written opinion or other statement from an auditor or agency official. *See AR, Exh. 2, NCI Proposal at 75.* As noted above, both the agency evaluators and the source selection authority found that NCI had failed to meet this clearly stated solicitation requirement, and the source selection authority found the proposal ineligible for award. *AR, Exh. 6, BEC Report at 17; AR, Exh. 11, SSDD at 8.* Accordingly, we find no basis to disturb the agency's evaluation of NCI's proposal as ineligible for award for failing to include the required evidence of an adequate accounting system.

Remaining Challenges

NCI raises additional protest allegations challenging the agency's evaluation of phase 3 proposals, its best-value determination, and the agency's failure to amend the RFP after it discovered an error in the independent government cost estimate. Protest at 9-19; Supp. Protest at 2-12. We dismiss these remaining allegations because NCI, having been found ineligible for award, is not an interested party to raise them.⁴

⁴ NCI contends that it is still an interested party because Salient allegedly also failed to provide sufficient evidence of an adequate accounting system. Comments at 2-3. Thus, NCI argues that the agency will have to enter into discussions, which would allow NCI to become eligible for, and therefore have a substantial chance of receiving, award. *Id.* Under our Bid Protest Regulations a protester is not an interested party where it

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Under our Bid Protest Regulations, a protester must be an interested party, that is, an actual or prospective offeror whose direct economic interest would be affected by the award of a contract. 4 C.F.R. § 21.0(a)(1). A protester is not an interested party if it would not be in line for award if its protest were sustained. *BANC3, Inc.*, B-416486, B-416486.2, Sept. 10, 2018, 2018 CPD ¶ 316 at 9.

In summary, even if we found that NCI's remaining allegations had merit, NCI's proposal would still be ineligible for award for failing to include the required evidence of an adequate accounting system, and we have found no basis to disagree with the agency's evaluation of NCI as ineligible for award. Accordingly, we dismiss the remaining allegations.

The protest is denied.

Thomas H. Armstrong
General Counsel

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would not be in line for award even were its protest to be sustained. 4 C.F.R. § 21.0(a)(1); *RELM Wireless Corp.*, B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. Here, the record shows that even if Salient were ineligible for award, there are still three offerors found eligible for award, and therefore in line for award before NCI. See AR, Exh. 11, SSDD at 9-13. Since there has been no challenge to any of the intervening proposals that would precede the protester's in eligibility for award under this RFP, the protester lacks the direct economic interest required to maintain its protest.