

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: The Ambit Group, LLC

File: B-420079

Date: November 19, 2021

Terry L. Elling, Esq., Kelsey M. Hayes, Esq., and Jeremy D. Burkhart, Esq., Holland & Knight LLP, for the protester.

Gary J. Campbell, Esq., G. Matthew Koehl, Esq., and Lidiya Kurin, Esq., Womble Bond Dickinson (US) LLP, for Booz Allen Hamilton Inc., the intervenor.

Gabriel E. Kennon, Esq., and Andrew M. Wagner, Esq., Department of Homeland Security, for the agency.

Charmaine A. Stevenson, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that a solicitation's key personnel requirements are unreasonable and unduly restrictive of competition is denied where the agency has demonstrated that the requirements are not unduly restrictive, but rather reasonably limited to the agency's minimum needs.
 2. Protest is dismissed where the protester's quotation was rated as "no-go" under the solicitation's threshold key personnel factor, and the protester did not challenge all of the bases for the agency's no-go rating and elimination of its quotation from the competition, thus failing to establish that it was competitively prejudiced.
-

DECISION

The Ambit Group, LLC (Ambit), of Vienna, Virginia, protests the terms of request for quotations (RFQ) No. 70CTD021Q00000134, issued by the Department of Homeland Security, Immigration and Customs Enforcement (ICE), for design development and data analytics for ICE's Repository for Analytics in Virtualized Environment ("RAVEN") program. Ambit further challenges ICE's evaluation and elimination of its quotation from the competition. The protester contends that the terms of the RFQ are unduly restrictive of competition, and the agency's evaluation of its quotation is unreasonable and unfair.

We deny the protest in part, and dismiss the protest in part.

BACKGROUND

The RFQ, issued on July 19, 2021, using the procedures at Federal Acquisition Regulation (FAR) subpart 8.4, contemplates the award of a single hybrid fixed-price and time-and-materials task order. Agency Report (AR), Tab 27, RFQ at 1.¹ The RAVEN platform is intended to provide expert analytic tools and services to ensure the employment of innovative analytic techniques to support criminal investigations by Homeland Security Investigations.² PWS at 3. This requirement for design development and data analytics is one of three contract vehicles that the agency is in the process of competing to support the RAVEN platform.³ COS at 1.

The RFQ states that quotations will be evaluated under the following factors: key personnel; corporate experience and capability; technical demonstration; staffing plan; and price. RFQ at 12-14. Further, the RFQ states that the evaluation will be performed using a two-phased approach. *Id.* at 15. Under the first phase, the RFQ states that the agency will first evaluate the key personnel and corporate experience and capability factors. *Id.* Under the key personnel factor, the agency will evaluate key personnel on a “go/no-go” basis; a quotation that receives a no-go rating will not be further evaluated and will not be considered for award. *Id.* at 12.

The RFQ identifies four key personnel positions: Program Manager, Architect – Lead, Senior Data Engineer – Lead, and Senior Data Scientist – Lead. PWS at 8. The phase one go/no-go evaluation of key personnel is to be based solely on the Senior Data Scientist – Lead position. RFQ at 4-5, 12. The RFQ requires vendors to submit a resume for the Senior Data Scientist – Lead that demonstrates the individual meets all the requirements of the PWS. *Id.* at 4.

Quotations were due by 10:00 a.m. Eastern Time on July 30. *Id.* At 4:20 p.m. on July 29, the protester filed an agency-level protest with the contracting officer, alleging that the solicitation was unduly restrictive and contained other improprieties, defects, and ambiguities. AR, Tab 51, Ambit Agency-Level Protest. At 9:12 a.m. on July 30, the agency sent the protester the following response:

¹ The RFQ was amended once. All references to the RFQ are to the revised version provided by the agency as RFQ amendment 01.

² Homeland Security Investigations is the principal investigative arm of the Department of Homeland Security and the second largest investigative agency in the federal government. AR, Tab 28, RFQ attach. 2, Performance Work Statement (PWS) at 3.

³ ICE states that the requirements to be competed in the three procurements “do not directly map to the requirements of the legacy awards,” and have been restructured in order to eliminate overlapping scopes of work between functional areas. Contracting Officer’s Statement (COS) at 1. Booz Allen Hamilton is the incumbent contractor for development, security, and operations requirements; DirectViz Solutions, LLC, is the incumbent contractor for data analytics requirements; and KCI Acuity, LLC, is the incumbent contractor for user interface/user experience requirements. *Id.*

We acknowledge receipt of this agency protest and will comply with [FAR] 33.103(f) which states, “(f) Action upon receipt of protest. (1) Upon receipt of a protest before award, a contract may not be awarded, pending agency resolution of the protest, unless contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to agency procedures.”

Thank you for your interest and support. We greatly appreciate it.

AR, Tab 52, Email from Agency to Ambit, July 30, 2021. Despite its protest to the agency, Ambit timely submitted its quotation in response to the RFQ. See AR, Tabs 34-46, Ambit Quotation.

Thereafter, on August 9, the agency notified Ambit that its quotation was rated as no-go under the key personnel factor, and would not be further evaluated or considered for award. AR, Tab 50, Ambit Down-Select Letter at 1. The agency additionally provided, for informational purposes, a summary of the basis for the no-go rating. *Id.* at 1-2. On August 16, Ambit filed this protest.⁴

⁴ Although the agency has stayed award pending resolution of the protest, our Office acknowledged Booz Allen Hamilton as an intervenor because the agency advised that it was the only vendor remaining in the competition. Electronic Protest Docketing System No. 22, Emails Between GAO and ICE, Aug. 30, 2021. Prior to the filing of the agency report, the intervenor and agency requested that our Office dismiss the protest as untimely because it was filed more than 10 days after the protester knew, or should have known, the basis for its protest; specifically, they argue that the agency proceeding with receipt of quotations, despite Ambit’s filing of its agency-level protest, constituted adverse agency action. Intervenor Resp. to Req. for Dismissal; Agency Reply to Intervenor’s Resp. to Req. for Dismissal. Our Bid Protest Regulations define adverse agency action as “any action or inaction by an agency that is prejudicial to the position taken in a protest filed with the agency,” which may include “a decision on the merits of a protest; the opening of bids or receipt of proposals, the award of a contract, or the rejection of a bid or proposal despite a pending protest; or contracting agency acquiescence in continued and substantial contract performance.” 4 C.F.R. § 21.0(e).

Here, Ambit’s agency-level protest was timely filed prior to the deadline for quotation submission. *Id.* § 21.2(a)(1). As noted, the agency acknowledged receipt of Ambit’s agency-level protest just prior to the deadline for quotation submission, and indicated that award would be stayed pending agency resolution of the protest. In light of this communication, we do not think that Ambit should have known that the agency proceeding with receipt of quotations constituted initial adverse agency action, *i.e.*, that the agency did not intend to resolve its protest. However, rather than resolve the

DISCUSSION

Ambit argues that multiple aspects of the solicitation are unduly restrictive of competition, and further challenges the agency's evaluation of its quotation and elimination from the competition. Although we do not address all of the various arguments raised by the protester, we have considered them all and find that none provide a basis to sustain the protest. As discussed below, we deny Ambit's allegation that the RFQ is unduly restrictive under the key personnel factor, and dismiss its remaining allegations.

Unduly Restrictive Requirements

The protester argues that the evaluation requirements for the Senior Data Scientist – Lead under the key personnel factor are unduly restrictive of competition, and lack a rational basis. Protest at 12-13. The agency argues that the RFQ reflects the agency's minimum needs, and Ambit's protest ignores the multiple instances in which ICE has either justified a particular requirement or modified the solicitation to address Ambit's pre-award concerns. Memorandum of Law (MOL) at 6-10.

Agencies must specify their needs in a manner designed to permit full and open competition, and may include restrictive requirements only to the extent they are necessary to satisfy the agencies' legitimate needs or as otherwise authorized by law. 41 U.S.C. § 3306(a). Where a protester challenges a solicitation specification or requirement as unduly restrictive of competition, the procuring agency must establish that the specification or requirement is reasonably necessary to meet the agency's needs. *Remote Diagnostic Techs., LLC*, B-413375.4, B-413375.5, Feb. 28, 2017, 2017 CPD ¶ 80 at 3-4. We examine the adequacy of the agency's justification for a solicitation provision challenged as unduly restrictive to ensure that it is rational and can withstand logical scrutiny. *Coulson Aviation (USA), Inc.*, B-414566, July 12, 2017, 2017 CPD ¶ 242 at 3. The determination of a contracting agency's needs, including the selection of evaluation criteria, is primarily within the agency's discretion and we will not object to the use of particular evaluation criteria so long as they reasonably relate to the agency's needs in choosing a contractor that will best serve the government's interests. *SML Innovations*, B-402667.2, Oct. 28, 2010, 2010 CPD ¶ 254 at 2. A protester's disagreement with the agency's judgment concerning the agency's needs and how to

protest, the agency instead proceeded with its evaluation, and nine days later notified Ambit that its quotation was rated as no-go under the key personnel factor and eliminated from the competition. Accordingly, we find that Ambit's protest is timely because the agency's rejection of Ambit's quotation despite its pending agency-level protest constituted initial adverse agency action, and Ambit filed its protest with our Office within 10 days. *Id.* § 21.0(e); see also *id.* § 21.2(a)(3) ("In cases where an alleged impropriety in a solicitation is timely protested to an agency, any subsequent protest to GAO will be considered timely if filed within the 10-day period provided by this paragraph, even if filed after bid opening or the closing time for receipt of proposals.").

accommodate them, without more, does not establish that the agency's judgment is unreasonable. *Protein Scis. Corp.*, B-412794, June 2, 2016, 2016 CPD ¶ 158 at 2.

As noted above, under the key personnel factor, the RFQ requires vendors to submit a resume for the Senior Data Scientist – Lead demonstrating that the individual meets certain requirements identified in the PWS. RFQ at 4. In this regard, PWS section 5.1.7 sets forth 13 requirements that the Senior Data Scientist – Lead must demonstrate. PWS at 13-14. These requirements include a minimum of four years of professional experience developing and deploying machine learning solutions into production applications, as well as experience with certain other systems and technologies. PWS at 13. The PWS also states that the Senior Data Scientist – Lead must demonstrate additional experience as follows:

- 5.3.4.1. At least two years of experience working with property graphs with specific focus on designing specialized graph schemas and conducting complex graph operations.
- 5.3.4.1.1. Demonstrate at least two years [of] experience developing solutions to perform entity resolution in a U.S. Federal Government production environment.
- 5.3.4.1.2. Demonstrate at least two years [of] experience Designing/Building/Delivering machine learning based information extraction and normalization services in a U.S. Federal Government production environment.
- 5.3.4.1.3. Demonstrate at least two years [of] experience working with a property graph containing at least 1,000,000,000 Nodes.

Id. at 17 (§ 5.3.4); see also RFQ at 4-5. The RFQ informs vendors that a quotation will be rated as a “no-go” if the resume for the Senior Data Scientist – Lead fails to demonstrate any aspect of these requirements. RFQ at 12.

Ambit contends that the more than 25 skill or experience requirements in the PWS overstate the required qualifications for the Senior Data Scientist – Lead. The protester asserts that “finding a Senior Data Scientist – Lead that possesses all of the RFQ’s minimum required experience, and has an active Top Secret clearance is nearly impossible.” Protest at 13. Ambit also argues that “[t]here is no reasonable explanation for why a vendor’s quotation will rise or fall based solely on the resume of one key personnel position.” *Id.* Finally, Ambit contends that the evaluation of the key personnel factor lacks a rational basis because the required years of experience for the Senior Data Scientist – Lead is less than what is required for the other key personnel positions.

As an initial matter, we note that Ambit fails to specify and explain which of the multiple requirements set forth in PWS sections 5.1.7 and 5.3.4 exceed the agency’s minimum requirements. In response to Ambit’s protest, the agency provided an explanation for why a number of these requirements are reasonably necessary to meet the agency’s law enforcement needs for this contract. MOL at 10-15. In its comments on the agency

report, the protester does not refute those explanations, but rather asserts that it is the “totality of the required skill/experience requirements” as well as the strict go/no-go evaluation basis that unduly restricted competition. Comments at 8. On this record, where the protester has failed to respond substantively to the agency’s explanation for why these requirements are necessary, we find no basis to sustain the protest.

Regardless, to the extent the protester contends that the Senior Data Scientist – Lead requirements place it at a competitive disadvantage, an agency is not required to eliminate a disadvantage an offeror may experience because of its particular business circumstances, where that advantage or disadvantage does not result from an improper preference or unfair action by the government. *See Management & Tech. Servs. Alliance Joint Venture*, B-416239, June 25, 2018, 2018 CPD ¶ 218 at 4-5; *Missouri Mach. & Eng’g Co.*, B-403561, Nov. 18, 2010, 2010 CPD ¶ 276 at 5. The fact that a requirement may be burdensome, or even impossible, for a particular firm to meet does not make it objectionable if that requirement reasonably represents the agency’s needs. *Advanced Commc’n Cabling, Inc.*, B-410898.2, Mar. 25, 2015, 2015 CPD ¶ 113 at 6-7.

As to Ambit’s argument that the key personnel evaluation should not be based solely on the Senior Data Scientist – Lead, the contracting officer responds that the Senior Data Scientist – Lead is a specialized position that must be staffed and ready to work at the start of contract performance. COS at 6. The contracting officer also explained that the individual filling the role “is required for successful performance of this task order and meeting the minimum requirements of the position is non-negotiable.” *Id.* The contracting officer further explains that the other key personnel positions do not require experience as specialized as the Senior Data Scientist – Lead and can be more readily substituted as needed. *Id.* In this regard, the agency argues that it is less restrictive to evaluate key personnel on the basis of one, rather than four, key personnel resumes, and thus the RFQ is not unduly restrictive rather than reasonably based on ICE’s minimum needs. MOL at 17-19. We find this explanation reasonable and therefore have no basis to question the agency’s conclusions.

With regard to Ambit’s argument that the RFQ’s minimum experience requirements for the Senior Data Scientist – Lead lack a rational basis because they require fewer years than other key personnel, the record shows that Ambit has misread the solicitation. As reflected in the PWS sections discussed above, the RFQ requires a minimum of four years of experience for the Senior Data Scientist – Lead, and additionally specifies that fewer years of experience are required for certain areas of specialized experience within this overall requirement. Indeed, the agency received the following question and provided an answer specifically confirming this RFQ requirement:

[Question:] It appears that key personnel require 4 years of experience, except the Senior Data Scientist - Lead, which is a 2-year experience requirement. Can the government please confirm this is accurate?

[Answer:] The required two years of experience is a subset of the higher level four years of experience: “[PWS section] 5.1.7.4. Possess a

minimum of four years of professional experience developing and deploying machine learning solutions into production applications.”

AR, Tab 33, RFQ amend. 01, Questions and Answers, Nos. 2 and 4. On this record, we conclude that the RFQ reasonably reflects the agency’s minimum experience requirements under the key personnel factor, and deny these protest allegations.

Ambit also argues that the corporate experience and technical demonstration factors are unduly restrictive of competition. Protest at 14-17. However, we have found that the RFQ is not unduly restrictive under the key personnel factor, and the agency has since evaluated Ambit’s quotation and eliminated it from the competition on the basis that its quotation is a “no-go” under the key personnel factor. Thus, even if we were to agree with Ambit that the corporate experience and technical demonstration factors were unduly restrictive--which we need not do here--we see no basis to conclude that Ambit could be competitively prejudiced by any of the challenged requirements because Ambit’s quotation would still remain unacceptable under the RFQ’s threshold evaluation factor, the key personnel factor. See, e.g., *Arc Aspicio, LLC et al.*, B-412612 *et al.*, Apr. 11, 2016, 2016 CPD ¶ 117 at 12-13. Accordingly, we dismiss these allegations.⁵

Evaluation of Ambit’s Key Personnel

Ambit also argues that the agency’s evaluation of its key personnel, and decision to eliminate its quotation from the competition, are both unreasonable and unfair. Specifically, Ambit challenges the agency’s conclusion that the resume submitted for its proposed Senior Data Scientist – Lead did not demonstrate that he possessed a minimum of three years of experience designing and implementing solutions in medium to large enterprise systems. Protest at 18-19. Ambit additionally contests the agency’s conclusion that the resume failed to demonstrate a strong knowledge of concepts, methodologies, and best practices especially as they pertain to mitigating development risks, estimating tasks, coding standards and source control procedures. *Id.* at 19-20; see AR, Tab 48, Technical Evaluation Team (TET) Consensus Report at 3-4.

In the agency’s report responding to the protest, ICE fully addressed Ambit’s arguments and defended its evaluation of Ambit under the key personnel factor. MOL at 22-30. The agency provided contemporaneous evaluation materials showing that, in addition to the two evaluation conclusions challenged by Ambit, the agency concluded that Ambit’s Senior Data Scientist – Lead was also rated as no-go for failing to demonstrate the following experience: (1) at least two years developing solutions to perform Entity

⁵ In its initial protest, Ambit argued that the requirement that all key personnel have an active top secret clearance prior to on-boarding was ambiguous and unduly restrictive of competition, but later withdrew this allegation. Protest at 14; Comments at 4 n.2. Ambit also argued that the RFQ’s mandatory corporate experience requirements with certain technologies was unduly restrictive and exceeded the agency’s requirements, but later partially withdrew this allegation, specifically with respect to experience requirements for schema.org. Protest at 16; Comments at 11 n.5.

Resolution in a United States federal government production environment; (2) at least two years designing/building/delivering machine learning based information extraction and normalization services in a United States federal government production environment; and (3) expert and intermediate level skills with all of the required “concepts, methodologies, and best practices especially as they pertain to mitigating development risks, estimating tasks, coding standards and source control procedures” listed in the PWS. AR, Tab 48, TET Consensus Report at 1-2, 4-5. The agency argues that the protest fails to challenge these aspects of the agency’s evaluation of Ambit’s quotation under the key personnel factor, and thus this protest ground should be dismissed. MOL at 25-26; see also Req. for Dismissal at 2-4. We agree.

Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency’s improper actions, it would have had a substantial chance of receiving the award. *Information Mgmt. Res., Inc.*, B-418848, Aug. 24, 2020, 2020 CPD ¶ 279 at 7 n.4. Where the record establishes no reasonable possibility of prejudice, we will not sustain a protest irrespective of whether a defect in the procurement is found. *Procentrix, Inc.*, B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 11-12.

Despite receiving the information showing that Ambit’s Senior Data Scientist – Lead failed to satisfy these additional requirements, Ambit never raised these additional challenges to its rating of no-go under the key personnel factor.⁶ As a result, even if the protester could show that the challenged aspects of its evaluation under the key personnel factor were unreasonable, Ambit would remain ineligible for award because it failed to challenge all of the reasons for the agency’s rating of no-go for its Senior Data Scientist – Lead. We therefore conclude that Ambit has failed to establish that it could have been prejudiced here.

Since Ambit has failed to establish that it was prejudiced here, it is not an interested party to raise its further challenge that the agency’s phase one down-select decision was flawed. In order for a protest to be considered by our Office, a protester must be an interested party, that is, an actual or prospective offeror whose direct economic interest would be affected by the award or failure to award a contract. 4 C.F.R. §§ 21.0(a)(1), 21.1(a); *Cattlemen’s Meat Co.*, B-296616, Aug. 30, 2005, 2005 CPD ¶ 167 at 2 n.1. A firm is not an interested party if it is ineligible to receive award under the protested solicitation, *Trailblazer Health Enters., LLC*, B-407486.2, B-407486.3, Apr. 16,

⁶ Prior to filing its report, the agency initially filed a request for dismissal with which it provided a copy of the Technical Evaluation Team Consensus Report for Ambit’s quotation. See Req. for Dismissal, attach. 2; AR, Tab 48, TET Consensus Report. In response, Ambit stated, “Now that Ambit has seen the Technical Evaluation Consensus Report and is aware that its key personnel resume allegedly failed to meet six separate PWS areas, it will timely challenge these alleged deficiencies. Ambit is still well within the ten-day period to submit supplemental protests based on the new information just recently provided by the Agency.” Opposition to Req. for Dismissal at 8. However, Ambit did not file a supplemental protest.

2013, 2013 CPD ¶ 103 at 14; *Acquest Dev. LLC*, B-287439, June 6, 2001, 2001 CPD ¶ 101 at 6, or if it would not be in line for award if the protest were sustained. *VSolvit, LLC*, B-418265.2, B-418265.3, July 30, 2020, 2020 CPD ¶ 259 at 6; *Cyberdata Techs., Inc.*, B-411070 *et al.*, May 1, 2015, 2015 CPD ¶ 150 at 9.

Because we find that the RFQ is not unduly restrictive under the key personnel factor, and have no basis to disturb the agency's rating of Ambit's quotation as no-go under this factor, we need not reach its remaining challenges. Even if we were to agree with Ambit that the agency erred in those respects, its quotation would remain technically unacceptable, and an unacceptable quotation cannot form the basis for award. *Trailboss Enters. Inc.*, B-419209, Dec. 23, 2020, 2020 CPD ¶ 414 at 8-9. Ambit, therefore, lacks the direct economic interest necessary to be an interested party to otherwise protest the agency's phase one down-select decision. *Id.*

The protest is denied in part and dismissed in part.

Edda Emmanuelli Perez
General Counsel