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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: A-TEK, Inc.

File: B-299557

Date: May 3, 2007

Debbie Rieger for the protester.

Jonathan R. Celniker, Esq., and Michael J. Ettner, Esq., General Services Administration, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In procurement that will include cost-reimbursement task orders, agency reasonably rejected protester's proposal for lack of verification of federally audited accounting system as required by the solicitation.

DECISION

A-TEK, Inc. protests the rejection of its proposal as unacceptable, based on a requirement concerning the adequacy of the firm's accounting system, under request for proposals (RFP) No. TQ2006MCB0001, issued by the General Services Administration (GSA) for information technology (IT) services. A-TEK primarily asserts that the rejection is unreasonable because it furnished sufficient information to satisfy the requirement and, in any event, GSA is responsible for A-TEK's failure to meet the requirement.

We deny the protest.

The RFP anticipated the award of some 25 to 30 contracts under a multiple-award, indefinite-delivery/indefinite-quantity (ID/IQ) government-wide acquisition contract (GWAC) for a broad range of IT services, with a not-to-exceed ceiling of \$50 billion. Contractors were to provide all management, supervision, labor, facilities and materials necessary to perform on a task order basis, including cost-reimbursement orders. Awards were to be made on a "best value" basis, with proposals evaluated under two equally important technical factors--past performance and contract plan--which, combined, were significantly more important than price. Prior to the

evaluation under these factors, proposals were to be reviewed for acceptability on a pass/fail basis; those failing this review would not be considered further for award.

Proposals were required to include the Defense Contract Audit Agency's (DCAA), or other federal audit agency's, verification of "an accounting system that has been audited and determined adequate for determining costs applicable to this contract in accordance with [Federal Acquisition Regulation] FAR 16.301-3(a)(1)."¹ RFP § L.12.5, as amended. Any offeror that did not have audit verification but was "certain its accounting system has been determined adequate" could provide contact information from a cognizant auditing representative office. Id. Offerors were warned that their proposals would be rejected if the agency was unable to obtain audit verification. Id.

In response to this requirement, A-TEK's proposal provided information on its use of Deltek software for its accounting and job costs system; contact information for the contracting officer on two current contracts with cost-type task orders; and notice that it had submitted provisional billing rates to DCAA. A-TEK Proposal, Folder J. After GSA reviewed this information and contacted the listed references, it informed A-TEK that it could not verify that the firm's accounting system had been properly audited and deemed adequate. GSA requested additional contact information for verification purposes. In response, A-TEK repeated the information in its proposal, argued that the requirement was arbitrary, and requested that GSA conduct a pre- or post-award audit for offerors lacking audit verification. Thereafter, GSA notified A-TEK that its proposal had been rejected, and this protest followed.

A-TEK asserts that, even though it did not have a verified accounting system, the agency erred in rejecting its proposal because the firm met the RFP's requirements through its use of the Deltek accounting system, submission of provisional billing rates to DCAA for audit, and current contracts with cost-reimbursable-type task orders.²

¹ Under the provisions of FAR § 16.301-3(a)(1), a cost-reimbursement contract may be used only when a contractor's accounting system is adequate for determining costs applicable to the contract.

² A-TEK also asserted that the rejection of its proposal conflicted with RFP § L.12.5, as amended, which stated that offerors did not need a verified estimating system. This assertion is without merit. While the RFP provision advised that a verified estimating system was not required, it also provided that an offeror needed verification that its accounting system had been audited and deemed adequate. It was A-TEK's failure to meet this accounting system requirement, not the lack of a verified estimating system, that resulted in the rejection of its proposal.

In considering a protest of an agency's proposal evaluation, our review is confined to determining whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11. Offerors have the burden of submitting an adequately written proposal, and an offeror's mere disagreement with the agency's judgment concerning the adequacy of the proposal is not sufficient to establish that the agency acted unreasonably. Carlson Wagonlit Travel, B-287016, Mar. 6, 2001, 2001 CPD ¶ 49 at 3.

The evaluation here was reasonable. The RFP unequivocally required offerors to have DCAA or other federal audit agency verification that the firm's accounting system had been audited and determined adequate for determining costs applicable to the solicited work in accordance with FAR § 16.301-3(a)(1). Contact with DCAA revealed that A-TEK did not have any cost-reimbursement contracts in place; had never been audited by DCAA; and had never been subject to a pre-award survey of its accounting system. Further, A-TEK's submission of provisional rates was not relevant because it lacked any existing cost-type contracts. Agency Report, exh. D, at 3. Further, while the Deltek software is widely used by companies with adequate accounting systems, use of the software alone did not constitute verification that A-TEK's accounting system had been audited and verified as adequate. Id. With regard to A-TEK's other contracts, GSA learned that those contracts contained provisions that specifically prohibited the firm from submitting a proposal for a cost-reimbursement-type task order because it had not had its accounting system audited and deemed adequate for those contracts. Id. at 3-4. While A-TEK also submitted a letter from its accountant, the agency found that it was insufficient to meet the RFP's requirements because it was not from a federal audit agency, it clearly stated that the accountant had not audited A-TEK's accounting system, and it failed to state that A-TEK's system had been deemed adequate for this contract. In short, A-TEK failed to provide any information that satisfied the RFP requirement. Based on A-TEK's failure to provide the required information, the agency reasonably concluded that the firm lacked a properly audited accounting system, and thus reasonably rejected the firm's proposal.

A-TEK has not challenged or refuted GSA's findings. Instead, it simply asserts that, since only the government can request and perform the required audit, meeting the requirement is beyond the firm's control, and it should not be penalized as a result. In this regard, A-TEK now asserts that the RFP requirement was ambiguous because it understood that filing its indirect rates and waiting for the government to take the necessary action was sufficient to meet the requirement. Comments at 1.

A solicitation ambiguity exists where two or more reasonable interpretations of the terms of the solicitation are possible. Ashe Facility Servs., Inc., B-292218.3, B-292218.4, Mar. 31, 2004, 2004 CPD ¶ 80 at 10. To be reasonable, an interpretation must be consistent with the solicitation read as a whole and in a reasonable manner. Malkin Elecs. Intl, Ltd., B-228886, Dec. 14, 1987, 87-2 CPD ¶ 586 at 4.

There is nothing ambiguous in the RFP provision at issue; again, it clearly required offerors to include verification of an audited and adequate accounting system, and warned that failure to do so would result in rejection of their proposals. Contrary to A-TEK's reading of the RFP, nothing in the solicitation supports its interpretation that an offeror awaiting an audit will meet the requirement. In fact, prior to submitting its proposal, A-TEK was well-aware that the agency did not share this interpretation. In this regard, A-TEK had complained about its difficulty in obtaining a DCAA audit and asked GSA to revise its requirement to allow firms to compete that could show evidence of indirect rates on file with DCAA at the time of proposal submission. Protest, exh. A, Question No. 467. The agency responded unequivocally that there was no requirement for audited rates, but reiterated the requirement for DCAA or federal civilian audit agency evidence of an adequate accounting system to be in place by the time of proposal submission in order to be considered for award. Id. A protest based on alleged solicitation improprieties that are apparent prior to the closing time for receipt of proposals must be filed before that time. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2006). Since the RFP clearly required offerors to include verification of an audited and adequate accounting system, and did not provide for the alternative A-TEK suggests, and since A-TEK was aware of the agency's interpretation prior to the closing time, it was required to protest prior to that time. A-TEK did not protest on this basis prior to the closing time; accordingly, this aspect of the protest is clearly untimely and will not be considered.

The protest is denied.

Gary L. Kepplinger
General Counsel