



United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

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Decision

Matter of: Planning & Learning Technologies, Inc.--Advisory Opinion

File: B-413156.23

Date: October 14, 2016

David E. Frulla, Esq., Elizabeth C. Johnson, Esq., and Amba M. Datta, Esq., Kelley Drye & Warren LLP, for the protester.
Christopher Murphy, Esq., Kristen M. Nowadly, Esq., General Services Administration, for the agency.
Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation required offerors to provide verifiable contract documents showing that relevant experience had been performed within five years of the solicitation's closing date, agency reasonably rejected protester's proposal that only included a verifiable contract document showing experience that was outside the five-year timeframe.
 2. Agency properly engaged in clarifications where it did not allow protester to submit documentation to demonstrate proposal acceptability.
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DECISION

Planning & Learning Technologies, Inc. (Paltech), a small business of Arlington, Virginia, challenges the elimination of its proposal from consideration for award under request for proposals (RFP) No. GS02Q15CRR0002 (frequently referred to as the Human Capital and Training Solutions Small Business (HCaTS SB) solicitation), issued by the General Services Administration (GSA) to provide training and development services across the federal government. Paltech submitted a protest to our Office on May 23, 2016, asserting that the agency unreasonably concluded that its proposal did not comply with the solicitation's requirements. Paltech also argued that, in any case, if the agency required further information, Paltech should have been allowed to submit it during clarifications.

On July 19, we dismissed Paltech's protest, and several others, when another offeror under the solicitation submitted a protest to the United States Court of Federal Claims.¹ Bid Protest Regulations, 4 C.F.R. § 21.11(b) (2016). On August 1, the Department of Justice filed a motion with the court requesting an advisory opinion from our Office. The court granted the motion and requested that our Office issue an advisory opinion regarding the merits of the protest Paltech filed with our Office. See id. Our opinion here is issued in response to the court's request, and is presented in the same general format as we normally employ to issue decisions responding to bid protests. As explained below, our Office finds the protest without merit, and we would deny this protest.

BACKGROUND

On August 17, 2015, GSA published the HCaTS SB solicitation as a small business set-aside seeking proposals for "customized training and development services, customized human capital strategy services, and customized organizational performance improvement services." RFP at 15. HCaTS SB comprised two separate, government-wide multiple-award indefinite-delivery/indefinite-quantity (IDIQ) contracts, referred to as "pools," which covered eight North American Industry Classification System (NAICS) codes.² Id. at 62. The solicitation contemplated that the agency would award up to 40 IDIQ contracts for each pool. Id. at 156. Awards were to be made to the offerors that submitted proposals that were the "Highest Technically Rated with Fair and Reasonable Prices." Id.

The solicitation 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. RFP at 157. Next, the agency would perform an initial screening of the top 40 proposals to determine whether the offeror stated that all attachments and documents listed on the solicitation checklist were included in the proposal and that the attachments and documents were in fact submitted. Id. at 158-59. If an offeror submitted all required attachments and documents, the agency would then validate the offeror's self-scoring worksheet. Id. at 159, 161.

Offerors entered points on the self-scoring worksheet for past performance, relevant experience, and accreditations and substantiated these scores by submitting various attachments and documentation. Id. at 108-16, 142-43. The solicitation established several minimum requirements, including, as relevant to this protest, specific requirements for experience. In this regard, the solicitation provided that "to

¹ The Arbinger Co., et al., B-413156.4 et al., July 19, 2016 (unpublished decision).

² GSA assigned three NAICS codes with corresponding size standards of \$11 million to pool 1, and five NAICS codes with corresponding size standards of \$15 million to pool 2. RFP at 62.

be eligible for consideration” the offeror must have performed six relevant experience projects that met the minimum requirements of section L.5.2.2. of the RFP. Id. at 133. That section of the solicitation states, among other things, that the project must “have been performed within the past five years prior to the solicitation closing date; or, be ongoing.” Id. at 140.³ The solicitation further provided that the project must be substantiated by “providing enough evidence within a verifiable contractual document.” Id. at 137, 146. Verifiable contractual documents “can be, but [are] not limited to, the award document, contractual documents, contractual deliverables, and/or signed, certified and/or legally recognized documents.” Id. at 138. If the relevant experience project relates to a subcontract, then the “verifiable contractual document shall be between the Prime Contractor and Offeror and not the Customer/Client Organization and Prime Contractor.” Id.

The solicitation cautioned offerors that the agency intended to make award without holding discussions, and that offerors “will not be allowed to resubmit or revise any document(s) related to the Relevant Experience Projects.” RFP at 159. The solicitation stated, however, that the agency could allow an offeror to respond to clarifying questions in an effort to validate minimum requirements and scored elements. Id. The solicitation also stated that the agency “intends to strictly enforce all of the proposal submission requirements” and that failure “to comply with these requirements may result in an Offeror’s proposal being rejected as being non-conforming to solicitation requirements.” Id. at 156.

The agency received 95 proposals, including one from Paltech, by the December 3, 2015 closing date for the receipt of proposals. Contracting Officer’s Statement (COS) at 2. In its proposal, Paltech listed, as one of its six relevant experience projects, a contract under which it was a subcontractor to IT Shows. Agency Report (AR), Exh. 2, Relevant Portions of Paltech Proposal, Attachment J.6, at 4. Paltech offered three documents to demonstrate that it met the relevancy criteria for this subcontract, including the requirement that performance had taken place within five years of the solicitation’s closing date. These documents included the subcontract agreement between Paltech and IT Shows, the technical proposal IT Shows submitted to the procuring agency for which it was awarded the contract, and solicitation attachment J.12.2 (relevant experience projects supplemental form small business). Id., IT Shows Technical Proposal; IT Shows and Paltech Subcontract Agreement; Attachment J.12.2, at 14.

The agency considered only the subcontract agreement between Paltech and IT Shows to be a verifiable contract document.⁴ The agency concluded that the

³ It was acceptable if any portion of performance took place within the five-year period. RFP at 146, Note 1.

⁴ The agency did not consider the technical proposal of IT Shows a verifiable contract document because there was no information to show that Paltech

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subcontract agreement did not verify that performance occurred within five years of the solicitation's closing date because although the subcontract indicated that the performance period of the subcontract was from October 1, 2009 through September 29, 2012, the same agreement showed that the base period for Paltech was only from October 1, 2009 through September 29, 2010, and the funding period was only from October 1, 2009 through June 30, 2010. AR, Exh. 3, Proposal Evaluation, at 17. Further, the subcontract stated: "There is no legal liability on the part of IT Shows to order increased work or for payment to Subcontractor in excess of the specified amounts above." Id. The agency concluded that there was no indication that any contract option had been executed to extend the subcontract beyond the base period or funded period. Id.

On February 18, 2016, the agency sent Paltech a clarification request, notifying the offeror that the government could not discern from the submitted verifiable contractual document that the period of performance occurred within five years of the solicitation closing date. AR, Exh. 6, Agency Clarification Request, at 1. The request noted the following:

Your response to the below clarification(s) shall be limited to the location of the claimed element in the verifiable contractual document that was submitted in your initial proposal submission. . .

* * * * *

Your response to this clarification shall not include any submitted document nor Offeror explanation. Any documents submitted or narratives beyond a reference in the verifiable contractual documents submitted in your firm's initial proposal submission will not be reviewed or accepted into your proposal.

Id. In response, Paltech referenced its subcontract agreement with IT Shows which, it noted, stated that its period of performance for the subcontract was October 1, 2009 through September 29, 2012. AR, Exh. 6, Response to Clarification, at 1.

GSA notified Paltech on May 16, 2016, that its offer was eliminated from competition. AR, Exh. 7, Paltech Debriefing. Specifically, in the debriefing letter,

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performed under the technical proposal. COS at 2; see RFP at 138 (if the relevant experience project relates to a subcontract, then the verifiable contractual document must be between the prime contractor and offeror). The agency did not consider the attachment because the solicitation provides that attachments to the solicitation could not be used to verify the period of performance. COS at 1-2; see RFP at 138.

GSA informed Paltech that its relevant experience for its project with IT Shows did not meet the solicitation's period of performance requirement since the verifiable contractual document submitted only demonstrates a period of performance from October 1, 2009 through September 29, 2010, with a funding period only until June 30, 2010. Id. at 1. GSA further stated that Paltech did not provide verifiable contractual documents demonstrating an option was exercised or funding was extended, which would show that the experience was within 5 years of the solicitation closing date. Id. at 2.

DISCUSSION

According to Paltech, it met the requirement to substantiate that performance was completed within five years of the closing date for proposals because the stated period of performance for the subcontract was until September 29, 2012. Paltech further asserts that it listed the period of performance for the IT Shows relevant experience project as 36 months in attachment J.12.2 to the solicitation and that GSA should have considered this information. Paltech also argues that it should have been allowed to submit additional, required information during clarifications. The agency disagrees, and argues that Paltech failed to provide verifiable contractual documents to substantiate that the project with IT Shows met the solicitation's requirements and that it was not required to allow Paltech to provide additional documents during clarifications.

Proposal Evaluation

In reviewing protests of alleged improper evaluations, it is not our role to reevaluate proposals; rather, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement laws and regulations. IN2 LLC, B-408099 et al., June 18, 2013, 2013 CPD ¶ 149 at 5. In this regard, an offeror has the burden of submitting an adequately written proposal, and runs the risk that its proposal will be evaluated unfavorably when it fails to do so. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6. A protester's disagreement with an agency's judgment is not sufficient to establish that an agency acted unreasonably. A&T Systems, Inc., B-410626, Dec. 15, 2014, 2015 CPD ¶ 9 at 3.

Here, the solicitation specifically advised offerors to submit verifiable contract documents to demonstrate that the projects they provided for relevant experience were completed within five years of the closing date for the receipt of proposals. RFP at 137-38, 146. Some performance had to have taken place within that five-year period. Id. at 146. Paltech submitted its subcontract agreement with IT Shows, which showed a performance period through 2012, but also showed:

Base Period: October 1, 2009 – September 29, 2010
Ceiling Value: Not-To-Exceed (NTE): ...

Funded Period: October 1, 2009 – June 30, 2010
Funded Value (NTE): ...

AR, Exh. 2, Relevant Portions of Paltech Proposal, Subcontract, at 2. The subcontract further stated that the prime contractor was not obligated to order additional work and that the prime contractor would issue a written modification to Paltech when additional work and funds became available. Id. Therefore, the document showed that Paltech had only performed for a period that ended no later than June of 2010, more than five years before the closing date of the solicitation.

There is no dispute in the record that Paltech indicated in solicitation attachment J.12.2 that the period of performance for its IT Shows subcontract was 36 months. However, the record shows that this attachment did not qualify as a verifiable contract document. Specifically, the solicitation stated that “any attachment in Section J [to the solicitation] shall not be used to substantiate scope, period of performance, and total estimated/obligated dollar value.” RFP at 138. Attachment J.12.2 was a form created by the agency for the procurement, and once completed, it contained only Paltech’s statement that it had performed for 36 months; the attachment was not a document that the agency could use to verify that Paltech actually performed the contract within the five-year period.⁵ Thus,

⁵ Paltech asserts that the source selection plan (SSP) allows the agency to use attachment J.12.2 to substantiate minimum experience requirements, including the period of performance. We disagree. The source selection plan instructs the evaluator to review the attachments to ensure that the offeror indicated it had met the requirements of the solicitation. See AR, Exh. 4, SSP, at 15. This is different from the requirement for the offeror to submit verifiable contract documents so that the agency can validate the information. Id. at 15, 16. In any case, the solicitation clearly provided that the attachments could not be used to verify the period of performance. RFP at 138. Further, alleged violations of a source selection plan do not provide a basis for protest. See ENMAX Corp., B-281965, May 12, 1999, 99-1 CPD ¶ 102 at 5.

Paltech also asserts that the solicitation and SSP demonstrate that the agency would allow some documentation to be resubmitted or revised. The solicitation provided that offerors would not be permitted to submit or revise documentation related to experience or scored elements to cure material deficiencies omissions. RFP at 159. Additional information related to responsibility issues, however, could be submitted during clarifications. See RFP at 130. If, in fact, the agency allowed some offerors to revise their proposals in a way that would make an unacceptable proposal acceptable, the agency would have engaged in discussions and been required to hold discussions with all offerors in the competitive range. See Coastal International Security, Inc., B-411756, B-411756.2, Oct. 19, 2015, 2015 CPD ¶ 340. The record provided to our Office does not indicate that any offerors submitted

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there was no verifiable documentation that Paltech performed the IT Shows subcontract within five years of the closing date for the receipt of proposals, as required by the solicitation. In sum, it was reasonable for the agency to eliminate Paltech's proposal from the competition for not meeting this solicitation requirement.

Clarifications

Paltech also asserts that the agency unreasonably refused to allow Paltech to submit additional documentation when the agency requested Paltech to clarify whether there was information in its proposal demonstrating performance within five years of the solicitation's December 3 closing date. The agency states that the solicitation did not allow additional submissions or revisions relating to anything that could affect an offeror's score.

It is well-settled that "[a]n agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors." Wolverine Services LLC, B-409906.3, B-409906.5, Oct. 14, 2014, 2014 CPD ¶ 325 at 6; see also, Sawee Consulting, Inc., B-408623, B-408623.2, Nov. 8, 2013, 2013 CPD ¶ 265 at 6. Clarifications cannot be used to cure deficiencies or material omissions in a proposal or otherwise revise a proposal. Sawee Consulting, Inc., *supra*. Providing an offeror the opportunity to revise its proposal and cure a deficiency would constitute discussions, not clarifications, because that would require the submission of information necessary to make the proposal acceptable. *Id.*

The solicitation stated that the agency could allow an offeror to respond to clarifying questions but that offerors could not resubmit or revise documents. RFP at 159. Therefore, the agency provided Paltech the opportunity to clarify whether the proposal contained verifiable contractual documents demonstrating the required performance period for the IT Shows subcontract. Specifically, the agency requested that Paltech provide the location of the needed information in the verifiable contractual document that was submitted in its initial proposal submission and stated that Paltech could not provide additional documents or explanation. AR, Exh. 6, Agency Clarification Request, at 1. In response, Paltech referenced its subcontract agreement with IT Shows. AR, Exh. 6, Response to Clarification, at 1.

Here, additional documentation was required to demonstrate that Paltech met the five-year performance period requirement for the IT Shows subcontract and for Paltech's proposal to become acceptable. This information could only be submitted in the course of discussions. See Sawee Consulting, Inc., *supra*. Since the

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revised or new documents to the agency, other than those related to responsibility issues.

agency did not hold discussions, it properly did not permit Paltech to provide additional documentation. In this regard, clarifications cannot be used to cure deficiencies or material omissions in a proposal, or to otherwise revise a proposal. Id.

On the record presented to our Office, and in response to the court's request for an advisory opinion, we would deny this protest.

Susan A. Poling
General Counsel