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Decision

Matter of: Capgemini Government Solutions, LLC

File: B-421962

Date: October 4, 2023

Ian Cronogue, Esq. and H. Todd Whay, Esq., Baker, Cronogue, Tolle & Werfel, LLP, for the protester.

Shirin Ahlhauser, Esq., General Services Administration, for the agency.

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DIGEST

Protest challenging an agency official's failure to complete a past performance questionnaire for an upcoming procurement is dismissed as premature where protest was filed prior to the completion of the agency's evaluation and the agency has not otherwise provided substantive notice that it interprets the solicitation to prohibit the evaluation of past performance on the incumbent contract.

DECISION

Capgemini Government Solutions, LLC, of McLean, Virginia, protests the General Services Administration's (GSA) refusal to complete a past performance questionnaire for consideration in the evaluation conducted under request for quotations (RFQ) No. 1645904/47HAA023Q0126, issued by GSA for information technology (IT) operations and maintenance and development support services. The protester contends that the agency's decision not to complete a past performance questionnaire for the incumbent contract is unreasonable.

We dismiss the protest.

BACKGROUND

On August 30, 2023, the agency issued the RFQ to firms holding contracts under GSA's Alliant 2 governmentwide acquisition contract. Req. for Dismissal, exh. 1, RFQ at 1;

Req. for Dismissal at 1.¹ The RFQ contemplates the issuance of a task order for a 12-month base period and four 12-month option periods to provide IT operations and maintenance and development services in support of both existing and future GSA IT applications. RFQ at 19-20; Protest, exh. 2, Performance Work Statement at 3. The RFQ provides for award on a best-value tradeoff basis considering price and the following non-price factors: technical approach, past performance, and management approach. RFQ at 9, 19.

The solicitation provides for a two-phase procurement. In phase 1, the agency will evaluate quotations under the past performance and management approach factors. *Id.* at 14-15. After phase I evaluations, the agency will eliminate any quotations that receive an adjectival rating lower than “good” under either factor. *Id.* In phase 2, the agency will evaluate quotations under the technical approach and price factors. *Id.* at 15.

As relevant here, the RFQ instructs vendors to distribute an attached past performance questionnaire to all past performance references included in their quotation. *Id.* at 11. The completed questionnaires are to be returned by the reference directly to one of the two contracting officers listed in the solicitation. *Id.* at 11-12. Vendors were also required to identify in their quotations the references to whom the vendors had submitted questionnaires. *Id.* at 11-12. The solicitation explains that the agency could consider both past performance information submitted by the vendors as well as from other sources available to the agency. *Id.* at 18.

Capgemini is the incumbent contractor for the instant requirement. On September 6, Capgemini sent the RFQ’s past performance questionnaire to the contracting officer’s representative (COR) on the incumbent contract. Protest, exh. 4, Questionnaire Emails at 1-2. On September 7, the COR replied:

I’ve been advised to decline your request to provide an evaluation to the Contracting Office. This will prevent any conflict of interest issues related to any pending solicitation and subsequent review as a member of the Tech Evaluation Board.

Therefore, I recommend you consider another Capgemini contract to solicit past performance information.

Id. at 1.

On September 11, this protest followed.

¹ The agency issued a revised solicitation on September 7. RFQ at 1. Citations to the RFQ in this decision are to the revised version provided by the agency as an exhibit to its request for dismissal.

DISCUSSION

The protester contends that the agency's actions here indicate that the agency will not consider Capgemini's past performance under the incumbent contract despite no such prohibition existing in the RFQ. Protest at 7. Capgemini avers that the incumbent COR's failure to provide a past performance questionnaire, when read with his recommendation to consider another past performance reference, is tantamount to a failure to evaluate past performance information that is "too close at hand."² *Id.* The agency requests that we dismiss such arguments as premature and speculative because the agency has not yet conducted its evaluation of past performance under the RFQ and has not made a source selection decision. Req. for Dismissal at 2.

Protests that an agency has evaluated quotations in a manner that is inconsistent with the terms of a solicitation generally are filed after the agency announces its source selection decision, consistent with the requirement that a protest must be filed within 10 days of when the basis for protest is known or should have been known. 4 C.F.R. § 21.2(a)(2). We typically dismiss as speculative and premature protests alleging that an agency intends to evaluate quotations in a manner inconsistent with the terms of a solicitation where the protest is filed prior to the agency's actual evaluation of quotations. *Cryo Techs.*, B-406003, Jan. 18, 2012, 2012 CPD ¶ 29 at 2 n.1. However, where the agency makes clear its interpretation of the solicitation through substantive notice during its evaluation, it may render an issue sufficiently final such that our Office's consideration of the issues during the ongoing evaluation is the most efficient, least intrusive method to resolving the dispute. *Bastion Technologies, Inc.*, B-418432, May 5, 2020, 2020 CPD ¶ 163 at 5; *Blue Origin, LLC*, B-408823, Dec. 12, 2013, 2013 CPD ¶ 289 at 8-9 (protest of agency interpretation of solicitation was timely, despite being filed after the deadline for proposal submissions, where protest was filed within 10 days of the agency expressly advising the protester of a solicitation interpretation that differed from the protester's interpretation).

Here, our review of the record does not reveal anything in the COR's email stating that the agency will not or cannot evaluate Capgemini's performance on the incumbent contract. While the COR has taken the position that it would be inappropriate or a conflict of interest to contribute past performance information to the current procurement, the email does not establish that this is the formal position of the agency or that the agency will not otherwise consider Capgemini's performance under the incumbent contract.³ Further, the protester does not point to any solicitation language

² To the extent the protester is arguing that agency officials administering contracts are generally required to complete past performance questionnaires, Capgemini does not point to any statute, regulation, or contract requirement in support of such a position. Without more, we view such allegations as issues of contract administration, which our Office does not review. 4 C.F.R. § 21.5(a).

³ Our Office has explained that an agency official is generally not precluded from serving as both an evaluator and a past performance reference in the same

(continued...)

that prohibits the agency from considering incumbent past performance or past performance for which a questionnaire is not submitted to the contracting officers. To the contrary, as noted above, the RFQ explicitly contemplates that the agency will consider past performance information other than that provided by the vendor, to include interviews with agency officials. RFQ at 18.

On this record, we see no basis to conclude that the COR's email constitutes substantive notice that the agency interprets the solicitation to prohibit the evaluation of Capgemini's performance on the incumbent contract. Accordingly, to the extent the protester challenges the ongoing evaluation of quotations, we dismiss these protest grounds as premature. See *Cryo Techs., supra*. After the agency has completed its evaluation and source selection, if Capgemini is excluded from consideration under phase 2 or not selected for award, it may raise whatever evaluation challenges it deems appropriate at that time, consistent with our Bid Protest Regulations.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel

procurement. See e.g., *TPL Inc.*, B-297136.10, B-297136.11, June 29, 2006, 2006 CPD ¶ 104 at 9; see also *NVT Techs., Inc.*, B-297524, B-297524.2, Feb. 2, 2006, 2006 CPD ¶ 36 at 5 (denying protest that the agency should not have considered questionnaires for the incumbent contract submitted by evaluators where "there had been no showing of improper influence on the evaluation"). To the contrary, our Office has recognized that in limited circumstances an agency has an obligation (as opposed to the discretion) to consider "outside information" bearing on a vendor's past performance when it is "too close at hand" to require vendors to shoulder the inequities that spring from an agency's failure to obtain and consider the information. *Perspecta Eng'g, Inc.*, B-420501.2, B-420501.3, Dec. 13, 2022, 2022 CPD ¶ 314 at 12 (citing *International Bus. Sys., Inc.*, B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5). We have generally applied this principle to situations where, such as here, the alleged "close at hand" information relates to contracts for the same services with the same procuring activity, or information personally known to the evaluators. *TRW, Inc.*, B-282162, B-282162.2, June 9, 1999, 99-2 CPD ¶ 12 at 5; *Leidos, Inc.*, B-414773, B-414773.2, Sept. 12, 2017, 2017 CPD ¶ 303 at 10.