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Decision

Matter of: International Business Machines Corporation

File: B-421841

Date: October 11, 2023

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DIGEST

Protest that the solicitation contains unduly restrictive terms is denied where the record shows that the evaluation criteria are reasonably related to the agency's needs and withstand logical scrutiny.

DECISION

International Business Machines Corporation (IBM), of Bethesda, Maryland, protests the terms of request for proposals (RFP) No. 36C10B23R0006, issued by the Department of Veterans Affairs (VA) for supply chain modernization services. IBM argues that evaluation criteria assessing offerors' financial liquidity and solvency are unduly restrictive of competition.

We deny the protest.

BACKGROUND

On June 29, 2023, the VA issued the RFP to procure supply chain modernization services. Agency Report (AR), Tab 5, RFP at 1, 12. The selected contractor would provide an easy-to-use cloud-based platform to manage the flow of goods, services, and information internally between agency personnel, and externally between agency personnel and customers. *Id.* at 12, 17.

The RFP contemplates the award of a single indefinite-delivery, indefinite-quantity contract to be performed over a 10-year ordering period. RFP at 41. Delivery and task orders would be placed on fixed-price, time-and-materials, or labor-hours bases. *Id.* at 78. Award would be made on a best-value tradeoff basis considering eight factors: corporate expertise; written technical approach; technical demonstration; past performance; small business participation commitment; veterans involvement; veterans employment; and, price. *Id.* at 79-80.

The RFP provides for a multi-step evaluation approach. During step one, offerors will submit their corporate expertise proposals. RFP at 86. Offerors will demonstrate experience under multiple elements, including inventory management, order management, asset management, supply chain risk management, system integration, data management, and general "overarching" categories. *Id.* at 82-83. Additionally, and as particularly relevant to the protester's challenge, under the corporate experience factor, offerors also need to demonstrate that their companies are financially liquid and solvent. *Id.* at 83. Offerors would be assigned points under each element and could achieve a maximum of 10,000 points. *Id.* Offerors would self-score their proposals and include relevant supporting and substantiating information. *Id.* at 81. The five offerors receiving the most points would advance to the second step of the evaluation. *Id.*

For step two, offerors would submit their written technical approach, past performance, small business participation commitment, veterans involvement, veterans employment, and price proposals. RFP at 86, 101. Offerors selected for step three will provide the live technical demonstration of their proposed products. *Id.* at 101.

Prior to the July 28 close of the solicitation period, IBM filed this protest with our Office.

DISCUSSION

IBM asserts that the RFP contains unduly restrictive tests for financial liquidity and solvency under the corporate expertise factor.[1] Protest at 6. First, IBM argues that the liquidity and solvency tests produce meaningless results, and narrowly evaluate a company's financial health at a particular point-in-time. *Id.* at 7. Second, IBM argues that the RFP unreasonably assigns points using an "all-or-nothing" approach (*i.e.*, offerors receive all possible points for demonstrating scores above particular ratios, or receive no points at all), as opposed to a sliding scale. *Id.* at 9.

In response, the agency explains generally that the financial liquidity and solvency tests do not restrict competition. MOL at 2. As support for the evaluation criteria, the agency initially explains that it has a legitimate interest and need to evaluate offerors' financial health because this requirement is deeply complex, has agency-wide implications, and will be performed over a 10-year period. *Id.* at 3-5. In other words, the agency explains that offerors without solid financial footing will pose higher risks of unsuccessful

[1] Liquidity and solvency are two core indicators of any private company's financial health. Memorandum of Law (MOL) at 8. Liquidity refers to a company's ability to pay short-term obligations, and solvency refers to a company's capacity to meet its long-term financial commitments. *Id.* at 8-9.

performance for this acquisition since they increase the likelihood of cost, schedule, and performance delays. *Id.* The agency then explains that it utilized liquidity and solvency tests derived from an internal policy memorandum. *Id.* at 5-7.

When responding to the specific protest allegations, VA explains that the liquidity and solvency tests are common and universally understood, and that the requisite ratios are both considered indicators of financially healthy companies. MOL at 9-10. Further, the VA argues that the "all-or-nothing" evaluation method is reasonable because the ratios reflect the minimum values demonstrating sound financial health. *Id.* at 15-16.

As referenced above, the RFP provides that the agency will assess multiple elements of offerors' corporate profiles during step one of the evaluation and assign points to each element with a maximum total score of 10,000 points. RFP at 82-83. One element identified is financial health, which is worth a total of 1,700 points, or 17 percent of the total points. *Id.* at 83. The agency will evaluate offerors' financial health by examining whether their current ratios for liquidity and solvency meet specified minimum values. *Id.* Both liquidity and solvency are worth 850 points. *Id.*

For financial liquidity, offerors are required to state whether their current ratio of assets to liabilities is greater than one. AR, Tab 5H, RFP, attach. 16, Corporate Expertise Self-Scoring Worksheet. To determine this response, the RFP requires offerors to divide their total current assets by their total current liabilities. *Id.* Offerors with ratios greater than one (*i.e.*, having more assets than liabilities) will be awarded 850 points, and offerors with ratios less than one (*i.e.*, having fewer assets than liabilities) will not be awarded any points. *Id.*

Regarding financial solvency, offerors are required to state whether their current ratio of net cash flow to liabilities exceeds 20 percent. AR, Tab 5H, RFP, attach. 16, Corporate Expertise Self-Scoring Worksheet. To determine this response, offerors will identify the sum of their net income and depreciation (*i.e.*, net cash flow), and divide their net cash flow by their total liabilities (*i.e.*, short-term liabilities plus long-term liabilities). *Id.* Offerors with percentages greater than 20 percent would be awarded 850 points, and offerors with lower percentages would not receive any points. *Id.*

Agency officials enjoy broad discretion when selecting the evaluation criteria that will be used during an acquisition. *The Electronic On-Ramp, Inc.*, B-421229.4, Feb. 22, 2023, 2023 CPD ¶ 58 at 3. The agency may select evaluation criteria that is burdensome, or otherwise makes a firm's proposal less competitive, so long as the agency demonstrates that the evaluation criteria is reasonably related to its needs, can withstand logical scrutiny, and does not violate some applicable procurement law or regulation. *Id.*; *accord McGoldrick Constr. Servs. Corp.*, B-419327, Jan. 15, 2021, 2021 CPD ¶ 53 at 12-13. A protester's disagreement with the agency's judgment concerning the agency's needs and how to best accommodate them does not show that the agency's judgment is not rationally supported. *Ponsford, Ltd.*, B-410379, Dec. 11, 2014, 2014 CPD ¶ 370 at 3.

On this record, we conclude that the agency has demonstrated that the financial liquidity and solvency tests are reasonably related to its needs and withstand logical scrutiny. As noted, the agency explains that evaluating the long-term financial health of every offeror is essential because this acquisition will affect virtually every internal operation and will be performed over a 10-year period. *See* Contracting Officer's Statement (COS) at 8. Further, the agency explains that an offeror with poor financial liquidity or solvency presents risk of unsuccessful performance because such offerors may not be able to deliver on their contractual obligations consistently and without disruption during the entire period of performance. *Id.*; *see also* AR, Tab 6, VA Chief Acquisition Officer (CAO) Policy Memorandum at 3. After reviewing the agency's explanation, we conclude that the protester has not provided a basis to question whether the tests are reasonably related to the agency's needs because they will ensure that the agency selects a financially sound contractor. *See* Comments at 3 ("IBM acknowledges that VA has a legitimate interest in evaluating an offeror's financial health.").

Further, we agree with the agency that the financial tests withstand logical scrutiny because the tests provide insight into an offeror's ability to meet immediate and long-term financial obligations. In this regard, the agency explains that the ratios are easy-to-use, commonly understood, and widely applicable measures of adequate financial liquidity and solvency. AR. Tab 6, VA CAO Policy Memorandum at 1-4; *see also* MOL at 8-10. To support its position, the agency cites to financial sources showing that the formulas are common methods of determining liquidity and solvency. MOL at 8-10.

For instance, the agency shows that financial sources refer to the selected liquidity test as a commonly understood ratio that measures a company's ability to pay short-term obligations or those due within one year and indicates how a company can maximize the current assets on its balance sheet to satisfy its current debt and other payables. MOL at 9 (citing Jason Fernando, "Current Ratio Explained with Formula and Examples," www.investopedia.com/terms/c/currentratio.asp, and CFI Team, "Lending Ratios," www.corporatefinanceinstitute.com/resources/commercial-lending/lendingratios/). For solvency, the agency shows that financial sources refer to the selected test as a commonly understood metric that examines whether a company can meet its financial obligations in the long-term. MOL at 10 (citing CFI Team, "Solvency Ratio," www.corporatefinanceinstitute.com/resources/commercial-lending/solvency-ratio/).

Additionally, the record shows that the agency considered the ratios as applicable to this procurement because the computer systems design services industry does not deviate from standard financial conditions. COS at 8 (explaining that the ratios at-issue apply to a wide variety of industries and apply to the instant acquisition); Supp. MOL at 5 ("Here, VA is utilizing universally accepted, industry standard financial metrics which do not automatically preclude [IBM] from competing."); *see also* RFP at 1 (including North American Industry Classification System (NAICS) code 541512, Computer Systems Design Services). Although the protester may complain about the lack of data supporting the agency's conclusion, we note that IBM never definitively explains why these standards are inapplicable to this industry. *See* Comments at 4, 7; Supp Comments at 3-4.

Also, we do not agree that the agency was required to research and conduct an exhaustive analysis of every potential liquidity or solvency ratio. *See* Comments at 4-5. In this context, while IBM may argue that other ratios or a combination of other ratios may capture more accurate information, *see* Comments at 5, we note that this position simply disagrees with the agency's assessment of the relative worth of the standard liquidity and solvency ratios and therefore does not demonstrate that the agency's chosen evaluation approach is unreasonable.[2] *See Ponsford, Ltd.*, *supra*. To the contrary, the RFP withstands logical scrutiny because the record shows that the agency reasonably determined that the ratios would gather meaningful information about these offerors' financial positions.

Similarly, we are not persuaded that the liquidity and solvency tests are unreasonable because they narrowly evaluate an offeror's financial health at a particular point-in-time. Instead, the agency explains, and we agree, that the tests are designed to ensure that offerors have adequate financial health at the start of contract performance. COS at 8; MOL at 12 ("Simply put, VA is examining the financial health of its prospective bidders in Step One of the source selection process. That examination is meant to provide the [a]gency with assurance that prospective companies have the financial stability to perform the contract.").

Additionally, we are not persuaded that the selected "all-or-nothing" approach is without a reasonable basis. The agency explains that the thresholds for receiving passing scores are consistent with common indicators. Supp. MOL at 7. Indeed, the policy memorandum provides the following with respect to the financial liquidity test:

> [DELETED].

AR, Tab 6, CAO Policy Memorandum at 2. Similarly, with respect to the solvency test, the policy memorandum provides:

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[2] IBM references a mock example where it shows that a small company with limited financial assets and some liabilities could be evaluated favorably under the liquidity and solvency ratios and argues that such analysis demonstrates that the ratios yield misleading results because these companies would be evaluated favorably, whereas "a company with vastly more financial resources and experience – may well be considered a financial risk[.]" Protest at 7. We do not find this example persuasive because, as the agency explains, a smaller company may, in fact, be more liquid and solvent than a larger company, which is unobjectionable because the fact that a company may be less competitive under some evaluation criteria does not establish that the criteria is unreasonable. *The Electronic On-Ramp, Inc.*, *supra*. Further, as the agency explains, any larger company may be evaluated more favorably under the remaining corporate expertise evaluation criteria. MOL at 11-12.

[DELETED].

Id. at 3. Thus, we see nothing objectionable about the evaluation methodology because the agency already determined that this industry did not deviate from standard financial conditions, and our review confirms that the passing scores are consistent with the standard minimum indicators for adequate financial health. *See* MOL at 14-15 (showing that the target ratios are standard indications of positive financial health).

Finally, to the extent IBM argues that the financial tests are restrictive because offerors not passing the financial tests will most likely be excluded from the second phase, IBM's argument is misplaced. A solicitation is not unduly restrictive merely because the chosen evaluation criteria may adversely impact some offerors. *C. Lawrence Constr. Co., Inc.*, B-289341, Jan. 8, 2002, 2002 CPD ¶ 17 at 3; *The Electronic On-Ramp, Inc.*, *supra*. As explained above, evaluation criteria are unobjectionable where they are reasonably related to an agency's needs, can withstand logical scrutiny, and do not violate applicable procurement law or regulation. *The Electronic On-Ramp, Inc.*, *supra*; *accord Land Shark Shredding, LLC*, B-415785, Mar. 6, 2018, 2018 CPD ¶ 103 at 3. Further, an agency is not required to equalize a competitive advantage that a firm may enjoy--or a disadvantage it may experience--because of the firm's particular business circumstances, where that advantage or disadvantage does not result from improper preference or unfair action by the government. *ADVENTureOne LLC; Apogee Eng'g, LLC*, B-408685.23, Sept. 20, 2019, 2019 CPD ¶ 329 at 6.

The protest is denied.

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General Counsel