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

Decision

Matter of: Ernst & Young, LLP

File: B-422025

Date: December 29, 2023

Craig A. Holman, Esq., Amanda J. Sherwood, Esq., and Julia Swafford, Esq., Arnold & Porter Kaye Scholer LLP, for the protester.
Carlos S. Pedraza, Esq., and Camille Small-Simon, Esq., Department of Justice, for the agency.
Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's complaints regarding the agency's evaluation of its quotation during an initial phase of the procurement are premature where the agency has not made any award and has not excluded the protester from the competition.
 2. Protester's speculation regarding the agency's future actions do not establish a basis for protest.
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DECISION

Ernst & Young LLP (E&Y), of New York, New York, protests the Department of Justice's evaluation of E&Y's quotation under request for quotations (RFQ) No. 1629665 to provide professional and information technology support services. E&Y asserts that, based on the agency's evaluation of E&Y's quotation during the first phase of the procurement, its quotation was "effectively eliminate[d]" from further consideration. Protest at 3.¹

We dismiss the protest.

¹ Page number citations in this decision refer to the Adobe PDF page numbers in the documents submitted.

BACKGROUND

On June 30, 2023, pursuant to section 8.405-3 of the Federal Acquisition Regulation, the agency issued the RFQ, seeking to establish multiple blanket purchase agreements (BPAs) with vendors holding certain General Services Administration (GSA) federal supply schedule (FSS) contracts. Agency Report (AR), Exh. 1, RFQ. The solicitation provided that submission and evaluation of quotations would be conducted in four phases and that, following each phase, the agency would provide advisory notices to each vendor reflecting the agency's recommendation as to whether the vendor should proceed to the next phase.

With regard to phase 1, the solicitation provided that vendors should "attempt to map" the labor categories identified in the solicitation² to labor categories in their FSS contracts.³ RFQ at 48. The solicitation further provided that, depending on the agency's assessment of the extent to which a vendor was able to successfully perform the required mapping, the agency would assign ratings of high, medium, or low confidence.⁴ Finally, the solicitation provided that vendors receiving low confidence ratings for the phase 1 mapping requirement would be sent advisory notices recommending that they not continue to compete for award; nonetheless, vendors were permitted to continue to compete notwithstanding receipt of such an advisory notice.⁵ *Id.* at 61.

On July 31, 2023, E&Y submitted its phase 1 quotation. On September 18, E&Y received an advisory notice from the agency stating that "[E&Y] has received a Low Confidence [rating] for Phase 1 and therefore is advised **NOT** to participate in Phase 2." Protest, Exh. A, Advisory Down Select Notice at 2. Consistent with the provisions of the solicitation, the notice also stated:

[T]his notice is a recommendation only and discontinuing the pursuit of the requirement following this notification is voluntary. The intent of this

² The solicitation identified more than 260 labor categories for which mapping was sought. See RFQ, attach. 5, Labor Category (LCAT) Crosswalk.

³ The solicitation provided that, if the title of an FSS labor category was not an "exact match" to the solicitation category to which it was mapped, the vendor should provide "the entire alternative [FSS] LCAT description" in its quotation. *Id.*

⁴ The solicitation provided that a high confidence rating would be assigned where the quotation successfully mapped at least 237 of the solicitation's labor categories to its FSS contract; a medium confidence rating would be assigned where a quotation mapped 203 to 236 labor categories; and a low confidence rating would be assigned where a quotation mapped fewer than 203 labor categories. RFQ at 64.

⁵ Vendors opting to continue to compete, notwithstanding the agency's recommendation to the contrary, were required to advise the agency of their intent to do so within two business days. *Id.* at 61.

advisory notice is to minimize bid and proposal development costs for Vendors with little to no chance of receiving an award.

Id.

On September 20, E&Y advised the agency that it intended to continue to participate in the procurement. Protest Exh. D, E&Y Response to Agency Notice.

DISCUSSION

E&Y protests that the agency's assignment of a low confidence rating to E&Y's quotation under the phase 1 evaluation was unreasonable and contrary to the terms of the solicitation. Protest at 1.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557. Pursuant to that authority, our Office's jurisdiction extends to bid protests that challenge: a solicitation; the cancellation of a solicitation; an award or proposed award of a contract; or a termination of such contract, if the protest alleges that the termination was based on improprieties in the award of the contract. 31 U.S.C. §§ 3551(1). In this context, a protester's speculation regarding an agency's subsequent actions do not establish a basis for protest. See *SparkSoft Corp.*, B-420156, B-420156.2, Nov. 15, 2021, 2021 CPD ¶ 362 at 4-7; *Systems Implementers, Inc.*, B-418963.4, Apr. 19, 2021, 2021 CPD ¶ 174 at 3-4.

Here, as noted above, the agency has not excluded E&Y from continuing to compete for an award; nor has the agency made, or proposed to make, any awards in this procurement. Indeed, the terms of the solicitation, as well as the notice to E&Y, specifically provide that E&Y is eligible to continue competing for an award. Accordingly, the record here does not currently present a set of facts that GAO will consider pursuant to our bid protest authority. While the agency's future actions in this matter may create a set of facts appropriate for our consideration, E&Y's current protest, based on its assumptions regarding the agency's future actions, is premature and will not be considered. See *SparkSoft Corp.*, *supra*.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel