



## Decision

**Matter of:** Wilson 5 Service Company, Inc.

**File:** B-422670

**Date:** September 25, 2024

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### DIGEST

1. Protest that the solicitation is unduly restrictive of competition where the solicitation provides that the agency will automatically assess an unfavorable aspect to a quotation if a vendor's prior experience examples do not meet certain criteria is sustained where the agency has not provided a reasonable basis or explanation for why vendors will be penalized if their prior experience does not meet these criteria.
  2. Protest that the solicitation's two-phase evaluation scheme limits competition where the most important evaluation factor is not considered until phase two is denied where the agency reasonably explained why the two-phase scheme is necessary to meet its needs.
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### DECISION

Wilson 5 Service Company, Inc. (Wilson 5), a small business of Kittery, Maine protests the terms of request for quotations (RFQ) No. 47PN0424Q0003, issued by the General Services Administration (GSA), Public Buildings Service for complete facilities maintenance at 17 locations throughout the state of Georgia. The protester asserts that the solicitation is unduly restrictive of competition where it provides that quotations will be viewed as having an unfavorable aspect if they do not demonstrate prior experience at multiple facilities under one contract or performance of similar services where there is a geographical distance of 200 miles between at least two facilities. The protester also alleges that the solicitation's evaluation scheme limits competition because the most important evaluation factor, management plan, is not evaluated until the second phase.

We sustain the protest in part and deny it in part.

## BACKGROUND

GSA issued the request for quotations (RFQ) as a small business set-aside on April 20, 2024, using the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) section 8.405-3 and seeking quotations to provide complete facilities maintenance (CFM) services in 17 locations throughout the state of Georgia.<sup>1</sup> Agency Report (AR), Exh. 6, RFQ amend. 0009 at 3-4; COS at 1.<sup>2</sup> The procurement is for facilities engineering, operations and maintenance, custodial services, elevator maintenance, and related services at each location. AR, Exh. 3, Performance Work Statement (PWS) at 23. The protester states that it has contracted with GSA for over 30 years and serves as the incumbent contractor, providing CFM services at four Georgia locations, in Augusta, Dublin, Statesboro, and Brunswick. Protest at 4.

The RFQ anticipates the establishment of a single blanket purchase agreement (BPA), with a 1-year base period and up to nine 1-year option periods. RFQ at 4. The RFQ advised that award would be based on a best-value tradeoff determination, considering in addition to price, the following non-price factors listed in descending order of importance: (1) management plan; (2) prior experience; (3) past performance; and (4) small business socioeconomic category designation. *Id.* at 11. The non-price factors, when combined, are considered more important than price. *Id.*

GSA will conduct the competition in two phases. *Id.* at 11-12. As relevant here, in the first phase, the agency will evaluate vendors' prior experience, past performance, small business socioeconomic category designation, and a portion of its pricing information. *Id.* After the phase one evaluation, GSA will notify vendors whose quotations have been evaluated as a low probability of success and high overall risk, however those vendors will not be deemed ineligible for award or eliminated from further review. *Id.* at 13. Rather, those vendors that notify the contracting officer of their continued interest in the procurement will be permitted to submit quotations in phase two. *Id.* In the second phase, vendors submit a management plan and remaining pricing information approximately 14 days after the agency requests submission of phase two quotations. *Id.* The agency will evaluate the management plan and the complete price quotation and then make its best-value determination. *Id.*

As relevant here, under the prior experience factor in phase one, the agency will measure the breadth, depth, and relevance of a vendor's prior experience performing projects similar in size, scope, and complexity to those described in the solicitation. *Id.*

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<sup>1</sup> Locations include federal buildings, court houses and post offices. RFQ at 4. According to the contracting officer, the locations were collectively known as "Georgia South." Contracting Officer's Statement (COS) at 1.

<sup>2</sup> Unless otherwise noted, citations to the record reference the Adobe PDF document page numbers. References to the RFQ refer to the revised version issued under amendment 0009, dated August 16, 2024.

at 19-20. In particular, the RFQ provides that “projects should be inclusive of two or more facilities, geographically dispersed from one another under one contract.” *Id.* at 19. The solicitation further states that “[a] distance of less than 200 miles between at least two of the locations under a project will be viewed as an unfavorable aspect of the offeror’s quote” and that “[p]rojects not inclusive of two or more facilities will be viewed as an unfavorable aspect of the offeror’s quote.” *Id.* at 19-20.

On June 18, prior to the closing time for quotation submissions, Wilson 5 filed this protest.

## DISCUSSION

Our decision addresses three primary objections raised by the protester.<sup>3</sup> Wilson 5 argues that the solicitation unduly restricts competition because it provides that a quotation will automatically be viewed as having unfavorable aspects if the vendor cannot meet certain criteria under the prior experience factor. Supp. Comments at 2-6. Specifically, the protester asserts that the assessment of an unfavorable aspect to a quotation that does not demonstrate prior experience performed at multiple facilities under a single contract is without a reasonable basis and results in an improper “negative rating.” Protest at 3-5; Comments at 2-6, Supp. Comments at 2-6. The protester also contends that the agency lacks a reasonable basis for setting 200 miles between facilities as the minimum threshold for the assessment of an unfavorable aspect to a quotation. *Id.* Separately, the protester argues that the solicitation’s evaluation scheme also unduly restricts competition because the most important evaluation factor, management plan, is not evaluated until phase two. Protest at 3-5; Comments at 2-6; Supp. Comments at 2-6. For the reasons discussed below, we sustain the first two grounds and deny the remaining protest ground.

In FSS buys, as in other procurements, an agency has the discretion to determine its needs and the best method to accommodate them. *Veterans Healthcare Supply Solutions, Inc.*, B-409888, Sept. 5, 2014, 2014 CPD ¶ 269 at 3. Where a protester challenges a solicitation provision as unduly restrictive of competition, the agency must establish that the provision is reasonably necessary to meet the agency’s needs. See *Diversity Marketing & Commc’ns, LLC*, B-412196.2, Mar. 9, 2016, 2016 CPD ¶ 84 at 4. We examine the adequacy of the agency’s justification for a solicitation provision challenged as unduly restrictive to ensure that it is rational and can withstand logical scrutiny. *NCS Technologies, Inc.*, B-403435, Nov. 8, 2010, 2010 CPD ¶ 281 at 3. The

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<sup>3</sup> The protester raises other collateral arguments, and although our decision does not specifically address every argument presented, we have considered each argument and find that none provide a basis on which to sustain the protest. For example, the protester argues that the agency should allow vendors to participate in a site visit. The RFQ already provided for site visits held between May 1 to May 8, 2024, and the protester has not explained why those site visits were insufficient. RFQ at 5.

determination of a contracting agency's needs is primarily within the agency's discretion. *Diversity Marketing & Commc'ns, LLC, supra.*

#### Prior Experience at Multiple Locations Under One Contract

The protester complains that the solicitation puts Wilson 5 at a disadvantage because it provides that a quotation will be viewed as having an unfavorable aspect if the vendor cannot demonstrate prior experience at multiple locations under one contract.<sup>4</sup> Supp. Comments at 2-3. The protester alleges that this requirement is irrational and unfairly penalizes vendors, like Wilson 5, who have similar experience performing CFM services under its incumbent contracts at multiple locations concurrently, but under several contracts. *Id.*

In response, the agency argues that “[c]ontrary to Wilson 5’s claims, a requirement that a prior experience factor relate to geographically dispersed facilities managed under one contract is demonstrably reasonable.” Memorandum of Law (MOL) at 4. Further, the agency states that one of its goals was to reduce “risk of unsuccessful contract performance” by evaluating whether a vendor’s “prior experience was successful in managing locations with similar geographic dispersion.” *Id.* at 5. The agency also argues that the evaluation of contract performance of CFM services at the 17 locations throughout Georgia is reasonably necessary as this approach “embraces the best use of CFM services by eliminating duplicative service[s], and allow[s] for flexibility in staffing and reassignment of employees.” *Id.* Based on our review of the record, our Office is unpersuaded by the agency’s explanation. We find that the agency has not reasonably explained why it needs to favor experience with managing performance at geographically dispersed facilities under a single contract as compared to experience performing the same type of requirements under multiple contracts at the same time.

The RFQ describes that a project is similar if the project shows that similar CFM services were provided at two or more facilities, with a geographical dispersion of 200 miles between at least two locations, and all performed under one contract. RFQ at 19-20. As noted above, the RFQ provides that projects that do not meet these criteria--

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<sup>4</sup> Based on a prior version of the solicitation that was in effect when the protest was filed, the protester initially alleged that it would not be allowed to compete because it did not have prior experience at multiple locations under one contract. See Protest at 4; Comments at 5-6 (quoting RFQ where “projects must be inclusive of two or more facilities . . . under one contract vehicle.”) AR, Exh. 1, RFQ amend. 0004, ¶ 3.2.2. at 19-20. In response, during the pendency of the protest the agency issued a solicitation amendment revising the prior experience criterion to provide that the agency would view projects not meeting experience under one contract as an unfavorable aspect of a vendor’s quotation. AR, Exh. 6, RFQ amend. 0009, ¶ 3.2.2. at 19-20. In its comments filed after the agency issued this amendment, the protester argues that the solicitation changes do not resolve its protest grounds and challenges these new provisions as unduly restrictive as discussed in this decision. Supp Comments at 3-5.

e.g., do not involve performing services at multiple locations under one contract--would be viewed as “unfavorable aspects” of a vendor’s quotation. *Id.* at 19.

We find nothing in the record to support GSA’s assertion that performance of similar CFM services at multiple facilities should be viewed differently whether performed under a single contract or multiple, concurrent contracts. The purpose of evaluating a vendor’s experience is to assess whether the work performed is relevant to work required under the solicitation, and thereby enables the agency to predict whether the offeror is likely to succeed in performing the solicitation requirements. See *Computer World Servs. Corp.*, B-419956.18 *et al.*, Nov. 23, 2021, 2021 CPD ¶ 368 at 18. GSA fails to establish how a vendor is unable to demonstrate relevant work and evidence of decreased risk of unsuccessful contract performance, if that work involved performing similar CFM services but under multiple, concurrent contracts. See MOL at 5.

Our Office has sustained a protest where the record did not contain analyses or documentation supporting the agency’s justification for its requirements. See *NCS Technologies, Inc.*, *supra* (where the agency’s asserted justification of the restriction was unreasonable because it provided “nothing more than unsupported conclusions” for its claim that solicitation restrictions were necessary). See *id.* Similarly here, GSA relies on conclusory statements when it states “a requirement that a prior experience factor relate to geographically dispersed facilities managed under one contract is demonstrably reasonable” without any supporting analysis. GSA has not explained why a vendor should be penalized for submitting experience performing relevant work solely because the work was performed under separate and concurrent contracts rather than a single contract. See *Id.*, See MOL at 4. Therefore, because we are unable to conclude that the challenged solicitation provision is reasonably necessary for the agency to meet its needs, we sustain this protest ground.

#### Prior Experience Where There is a Minimum Distance of 200 Miles Between At Least Two Facilities

The protester argues that the solicitation’s provision under the prior experience factor that automatically views quotations as unfavorable if the vendor cannot demonstrate CFM services performed where there was a minimum distance of 200 miles between at least two facilities is irrational, results in the negative treatment of vendors, and limits competition. Protest at 4; Comment at 4-6; Supp. Comments at 4-5. As stated, the protester states that it has contracted with GSA for over 30 years and serves as the incumbent contractor, providing CFM services at four Georgia locations, in Augusta, Dublin, Statesboro, and Brunswick which are 196 miles apart and yet this experience would result in its quotation being automatically assessed a negative aspect. Protest at 4.

In response, GSA asserts that it reasonably considered the distance requirements based on the locations of the facilities identified in the solicitation. See MOL at 4-6. To justify the 200-mile distance requirement, as part of the agency’s pre-solicitation analysis, the agency selected the distance based on the fact that 7 of the 17 buildings

where CFM services would be provided were more than 200 miles from Savannah, Georgia. *Id.* at 6 (citing AR Exh. 4, Combined Square Footage Distance Calculations for RFQ); COS at 6. The agency also states that Wilson 5 is not precluded from submitting a competitive quotation because GSA can consider quotations with “CFM services at Augusta, Dublin, Statesboro with buildings that are 196 miles apart.” MOL at 5. In sum, the agency asserts that a 200-mile distance requirement was a “meaningful evaluation standard” that accurately reflects its needs. *Id.* at 6.

Based on our review of the record, we agree with the protester that the agency has not adequately explained why this criterion is reasonably necessary to meet its needs. While the agency relies on its pre-solicitation analysis as the basis for the 200-mile distance requirement, the standard was established based on the distance for 41 percent (7 of 17) of the locations. See MOL at 6 (citing AR, Exh. 4, Combined Square Footage Distance Calculations for RFQ). Thus, 10, or 58 percent of the agency’s locations are at distances less than 200 miles, and the distance between some of these locations is only 43 miles. See AR, Exh. 4, Combined Square Footage Distance Calculations for RFQ. The agency has not explained why it did not consider that the majority of the locations are less than 200 miles apart in setting this standard.

The protester also argues that the automatic finding of an unfavorable aspect if vendors cannot meet this criterion “puts the lie” to the agency’s statement that Wilson 5 can submit a “competitive proposal” because GSA can consider quotations with “CFM services at Augusta, Dublin, Statesboro with buildings that are 196 miles apart.” Supp. Comments at 5; MOL at 5. The protester asserts that “[c]learly Wilson 5 cannot submit a competitive proposal if its proposal has an immediate disadvantage.” Supp. Comments at 5.

The agency made this statement prior to amending the solicitation to add the language about viewing quotations as having unfavorable aspects if they cannot demonstrate certain criteria under the prior experience factor. However, after amending the solicitation, the agency has not clarified this statement or explained how a vendor could still submit a “competitive proposal” where that quotation would automatically be assessed as having unfavorable aspects under the terms of the solicitation. It is unclear why the agency can not consider a range of comparable distances below 200 miles; stated otherwise, GSA has not explained why it is reasonable that GSA will negatively assess relevant experience 4 miles less than the 200-mile standard. The agency has thus failed to demonstrate that a 200-mile distance between at least two buildings is reasonably required to meet the agency’s needs under this procurement and consequently, we also find this provision to be unreasonable.

### Two-Phase Evaluation Scheme

Wilson 5 argues that delaying submission and evaluation of the management plan-- which is the most important non-price evaluation factor, to the second phase, potentially limits the best quotations from consideration for award and serves no competitive purpose. Protest at 3. In this regard, the protester contends that the two-phase

evaluation scheme will “limit competition by scaring off worthy competitors whose offers are downgraded over the least important evaluation factors before they are even evaluated on the most critical evaluation factor.” *Id.*

In response, the agency states that the phased evaluation is reasonably related to GSA’s current minimum needs. MOL at 4. GSA relies on phased procurements to “reduce unnecessary time and proposal preparation costs” for vendors. COS at 4. The agency further states the phased procedures benefit the government and industry as it conserves “time, staffing, and cost resources.” *Id.* In this regard, the agency contends that the phased evaluation will provide meaningful insight into the likelihood of award, prior to a vendor’s “expenditure of significant resources to develop a Phase 2 submission.” See MOL at 4 (*quoting* COS where the management plan consists of 13 elements and a 100-page limitation). Moreover, the agency notes that a vendor is not eliminated following phase one and can continue to compete in phase two regardless of the agency’s initial evaluation of a quotation under phase one. MOL at 3-4 (citing RFQ at 13).

As stated, the determination of a contracting agency’s needs and the best method of accommodating them are matters primarily with the agency’s discretion. See *Trigent Solutions, Inc.*, B-419801, August 6, 2021, 2021 CPD ¶ 230 at 4; see also *Veterans Healthcare Supply Solutions, Inc.*, *supra*. Based upon our review of the record, we find the RFQ’s evaluation scheme unobjectionable.

In this case, following the phase one evaluation, GSA will notify vendors that have a low probability of success and high overall risk. RFQ at 13. However, vendors are not eliminated from the competition, and could choose to participate in phase two. *Id.* The protester’s claim that the best quotations will not be considered for award because the management plan factor will not be evaluated until phase two is therefore without merit. See Protest at 4. In other words, even if a vendor is notified after phase one that it has a low probability of success and high overall risk, it can still submit its management plan quotation and the agency will still evaluate and consider that quotation. Therefore, the two-phase evaluation process will not limit quotations from consideration for award. Accordingly, we conclude that the challenged phased evaluation approach, with the management approach factor considered under phase two, is reasonable and not unduly restrictive of competition. We therefore find no basis to sustain this protest ground.

## CONCLUSION

In sum, we find the solicitation unduly restricts competition because the agency has not articulated a reasonable basis for the solicitation’s evaluation methodology under the prior experience factor. Specifically, the agency has not reasonably explained why vendors’ quotations should be viewed as containing an unfavorable aspect if their projects are not inclusive of two or more facilities geographically dispersed from one another by at least 200 miles under one contract.

## RECOMMENDATION

For the reasons discussed above, we sustain Wilson 5's protest challenging the solicitation's prior experience evaluation criteria. We recommend, consistent with the discussion in this decision, the agency amend the solicitation to remove language assessing an unfavorable aspect to a quotation that does not demonstrate prior experience under one contract and a minimum distance of 200 miles between at least two facilities. We further recommend the agency revise the solicitation to include an evaluation scheme that better reflects the agency's needs.

We also recommend that the agency reimburse the protester the costs associated with filing and pursuing its protest. 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained in part and denied in part.

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