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## Decision

**Matter of:** Shivoy Inc.

**File:** B-413104.36

**Date:** April 8, 2019

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### DIGEST

Protest challenging elimination from competition is denied where agency reasonably found the protester's proposal failed to comply with the solicitation's specific instructions for providing verification of an adequate cost accounting system for its contractor team arrangement member.

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### DECISION

Shivoy, Inc., an 8(a) small business of McLean, Virginia, protests the Department of Health and Human Services, National Institutes of Health's (NIH) exclusion of the protester's proposal from further consideration under request for proposals (RFP) No. NIHJT2016015, for information technology (IT) supplies and services. The protester argues that the exclusion of Shivoy's proposal, based on the failure to submit verification of an adequate accounting system for its contractor team arrangement (CTA) member, was unreasonable because Shivoy complied with the solicitation's instructions.

We deny the protest.

### BACKGROUND

The RFP, issued on March 14, 2016, contemplated the award of additional indefinite-delivery, indefinite-quantity (IDIQ) contracts for NIH's existing Chief Information Officer-Solutions and Partners 3 (CIO-SP3) small business governmentwide

acquisition contract (GWAC), a 10-year IDIQ contract for IT solutions and services.<sup>1</sup> RFP at B-1, M-2; Memorandum of Law (MOL) at 2. The RFP stated that the agency intended to make up to 35 awards, but also reserved the right to make fewer or more awards.<sup>2</sup> RFP at L-6, M-2. In this regard, the RFP provided that the government would establish contractor groups and projected the number of anticipated awards for each group.<sup>3</sup> See id. at M-2, M-3. The solicitation contemplated the issuance of fixed-price, time-and-materials, or cost-reimbursement task orders during the period of performance, which would correspond with the current GWAC contracts, and would end in 2022. Id. at B-1, L-6, F-1, G-6-G-8. The maximum order amount established for the contract was \$20 billion with a guaranteed minimum of \$250 per awardee. Id. at B-2.

The solicitation advised that the agency would evaluate proposals in two phases. Id. at M-1. During phase 1, the government would evaluate the proposals based on four go/no-go requirements: compliant proposal; verification of an adequate accounting system; IT services for biomedical research, health sciences, and healthcare; and domain-specific capability in a health-related mission. Id. at M-1, M-3-M-4. The solicitation advised that a proposal determined to be unacceptable for any of these four requirements under phase 1 would be ineligible for further consideration for award. Id. at M-4. Proposals found acceptable under phase 1 would proceed to be evaluated under phase 2, using a best-value tradeoff methodology, considering price and the following three factors: technical capability and understanding; management approach; and past performance. The technical capability and management approach factors were of equal importance, and both factors, individually, were more important than past performance. Price was the least important of all evaluation factors. Id. at M-1.

The agency received 552 proposals--of which 167 were for the 8(a) contractor group--including a proposal from Shivoy. Contracting Officer Statement (COS) at 1; MOL at 2. As relevant here, the agency found Shivoy's proposal unacceptable at phase 1 for failing to provide verification of an adequate accounting system for its CTA member, thus rendering the proposal ineligible for further consideration.<sup>4</sup> See AR, Tab 4a,

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<sup>1</sup> Pursuant to Section 5112(e) of the Clinger-Cohen Act of 1996, 40 U.S.C. § 11302(e), the Office of Management and Budget has designated NIH as an executive agent for government-wide IT acquisitions. Agency Report (AR), Tab 2, RFP at B-1.

<sup>2</sup> The solicitation was amended four times. All citations to the RFP are to the conformed RFP provided by the agency.

<sup>3</sup> The solicitation identified these contractor groups as: historically underutilized business zone (HUBZone), service-disabled veteran-owned small business (SDVOSB), section 8(a), and small business. RFP at M-2-M-3.

<sup>4</sup> Under the terms of the solicitation, offerors were allowed to form CTAs, as defined under section 9.601 of the Federal Acquisition Regulation (FAR), in order to propose on the GWAC. Id. at L-14. Shivoy entered into a teaming arrangement with [DELETED], a wholly-owned subsidiary of [DELETED] for this procurement. AR, Tab 3, Protester's Proposal, General, L.3.1.a Cover Letter; AR, Tab 3, Protester's Proposal, General, L.3.1.e.1 CTA.

Go/No-Go Assessment Compliant Proposal and Verification of an Adequate Accounting System Socioeconomic Group 8(a) (Go/No-Go Assessment) at 4, 8, 154.

On December 20, 2018, the agency notified Shivoy that it was not selected for award. Protest at 10-11. After requesting and receiving a debriefing, this protest followed.

## DISCUSSION

Shivoy argues that the agency unreasonably found its proposal unacceptable because its CTA member, [DELETED], had, in fact, submitted documentation that complied with the solicitation's requirement for the verification of an adequate accounting system.<sup>5</sup> Protest at 13; Protester's Comments at 5. The agency explains that the documentation submitted by [DELETED] was not verification, as required by the solicitation, but was only a standard auditors' report for a financial audit of [DELETED] parent company, [DELETED], and its subsidiaries. COS at 3. The agency asserts that the audit report simply indicated that the accounting system utilized to prepare the audited financial statements was operated in accordance with generally accepted accounting procedures, not that the accounting system was adequate for determining costs applicable to a cost-reimbursement contract in accordance with FAR section 16.301-3(a)(1), as required by the solicitation. Id.

We have consistently recognized that the evaluation of proposals is a matter within the procuring agency's discretion; we will question the agency's evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the solicitation. Hardiman Remediation Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3.

Here, the solicitation stated that under the verification of an adequate accounting system requirement, the agency would evaluate evidence that:

the [o]fferor, and all CTA members (if applicable) have an adequate accounting system in accordance with FAR [§]16.301-3(a)(1), as required under [s]ection L.3.1.h. If the [o]fferor and all CTA members (if applicable) fail to furnish verification of an adequate cost accounting system will result in an "[u]nacceptable" rating, the proposal will be determined "[u]nacceptable" and ineligible for further consideration for award.

RFP at M-3-M-4.<sup>6</sup> Section L.3.1.h provided, as relevant here, the following instructions:

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<sup>5</sup> In filing and pursuing this protest, Shivoy has made arguments that are in addition to, or variations of, those discussed below. While we do not address every issue raised, we have considered all of the protester's arguments to the extent they have not been withdrawn and conclude that none furnishes a basis on which to sustain the protest.

<sup>6</sup> FAR section 16.301-3(a)(1) provides that "[a] cost-reimbursement contract may be used only when [t]he factors in 16.104 have been considered . . . ." Those factors include the adequacy of the contractor's accounting system to "ensure that the

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Because of the need for [c]ontractors to respond to [c]ost [r]eimbursement task orders, to be eligible for award under the GWAC, [o]fferors must have verification from the Defense Contract Audit Agency (DCAA), the Defense Contract Management Agency (DCMA), any federal civilian audit agency, or a third-party [c]ertified [p]ublic [a]ccounting (CPA) firm of an accounting system that has been audited and determined adequate for determining costs applicable to this contract in accordance with FAR [§]16.301-3(a)(1).

Id. at L-17 (emphasis added).

Here, Shivoy's CTA member submitted an independent auditors' report for the consolidated financial statements of [DELETED]'s parent company and subsidiaries. AR, Tab 3, Protester's Proposal, General, L.3.1.h Verification of an Adequate Accounting System for [DELETED]. This report expressly states that the responsibility of the auditors was "to express an opinion on these consolidated financial statements" and that the audits were conducted "in accordance with auditing standards generally accepted in the United States of America," which required the auditors to "obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement." Id. This report further indicates that it was the auditors' opinion that "the consolidated financial statements . . . present fairly, in all material respects, the financial position of [DELETED] and its subsidiaries . . . and the results of their operations and their cash flows for each of the years in the three-year period . . . in accordance with U.S. generally accepted accounting principles." Id.

As discussed previously, the agency found that this report failed to comply with the requirements of section L.3.1.h of the RFP, because the auditors' report was simply an audit report of the parent company's (and its subsidiaries') financial statements, and because the report did not certify that the accounting system had been audited and deemed adequate for determining costs applicable to this contract in accordance with FAR section 16.301-3(a)(1), as required by the solicitation. AR, Tab 4a, Go/No-Go Assessment at 154. We agree.

On this record, we find the agency's evaluation to be reasonable and consistent with the solicitation. The solicitation clearly required verification of an accounting system that has been audited and determined adequate for determining costs applicable to the contract in accordance with FAR section 16.301-3(a). See RFP at L-17. By contrast, the verification submitted by [DELETED] was an auditor's report expressing an opinion of the validity of the consolidated financial statements for the CTA member's parent

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contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type . . . ." FAR § 16.104(i). Additionally, FAR section 16.301-3(a)(3) reiterates that a cost-reimbursement contract may not be used unless "[t]he contractor's accounting system is adequate for determining costs applicable to the contract or order."

company (and subsidiaries) and did not provide any verification of the adequacy of the accounting system for determining costs applicable to a cost-reimbursement contract. See AR, Tab 3, Protester's Proposal, General, L.3.1.h Verification of an Adequate Accounting System for [DELETED]. Although, the auditor's report found that the consolidated financial statements "present fairly, in all material respects, the financial position of [the parent company] and its subsidiaries," the report provides no indication that the auditors determined that these entities' accounting systems were "adequate for determining costs." Compare id. with RFP at L-17.

Shivoy's additional argument that NIH engaged in unequal treatment provides no basis to sustain the protest. Shivoy's argument primarily relies on the facts of a United States Court of Federal Claims (COFC) decision, that do not align with the facts of this protest.<sup>7</sup> See Protest at 13, 17; Comments at 5-8. Shivoy asserts that NIH engaged in disparate treatment because the agency found [DELETED]'s verification unacceptable while based on the facts of the COFC decision the agency found another offeror's similarly noncompliant verification acceptable. We find this argument is without merit. The verification provided by the offeror in the COFC decision stated "we believed their accounting and billing systems can adequately track contract costs and billings for the purpose of providing to us the information necessary to prepare the LLC's annual income tax returns." FreeAlliance.com, LLC v. United States, 135 Fed. Cl. 80 (emphasis added). We cannot conclude that the agency engaged in disparate treatment where the record shows that the language provided in [DELETED]'s verification--which expresses no opinion with regard to the adequacy of [DELETED]'s accounting system--does not actually bear any similarity to the language quoted above. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. See, e.g., Abacus Tech. Corp.; SMS Data Prods. Grp., Inc., B-413421 et al., Oct. 28, 2016, 2016 CPD ¶ 317 at 11. On this record, we have no basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong  
General Counsel

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<sup>7</sup> While the COFC case involved the same procurement, the protester there challenged its elimination from the HUBZone contractor group for failure to comply with the solicitation's instructions to submit verification on the letterhead of the third-party CPA providing the verification, which is not the issue here. See FreeAlliance.com, LLC v. United States, 135 Fed. Cl. 71 (2017).