



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Cybermedia Technologies, Inc. d/b/a CTEC

**File:** B-413156.25

**Date:** April 6, 2017

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Kay Ramesh, Cybermedia Technologies, Inc., d/b/a CTEC, for the protester. Kristen M. Nowadly, Esq., General Services Administration, for the agency. Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Agency reasonably rejected protester's proposal where solicitation required offerors to submit specific documents showing that relevant experience projects were performed under specified North American Industry Classification System codes and protester failed to do so.

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### DECISION

Cybermedia Technologies, Inc., d/b/a CTEC, a small business of Reston, Virginia, challenges the elimination of its proposal from consideration for award under request for proposals (RFP) No. GS02Q15CRR0002 (frequently referred to as the Human Capital and Training Solutions Small Business (HCaTS SB) solicitation), issued by the General Services Administration (GSA) to provide training and development services across the federal government. CTEC asserts that the agency unreasonably evaluated its proposal.

We deny the protest.

### BACKGROUND

On August 17, 2015, GSA published the HCaTS SB solicitation as a small business set-aside seeking proposals for "customized training and development services, customized human capital strategy services, and customized organizational performance improvement services." RFP at 15. HCaTS SB comprised two separate, government-wide multiple-award indefinite-delivery/indefinite-quantity

(IDIQ) contracts, referred to as “pools,” which covered eight North American Industry Classification System (NAICS) codes.<sup>1</sup> Id. at 62. The solicitation contemplated that the agency would award up to 40 IDIQ contracts for each pool. Id. at 156. Awards were to be made to the offerors that submitted proposals that were the “Highest Technically Rated with Fair and Reasonable Prices.” Id. Offerors could submit proposals for one or both pools.

The solicitation explained that the agency would conduct a multi-phased evaluation. First, the agency would identify the top 40 proposals using the offeror’s self-scoring worksheets. RFP at 157. Next, the agency would perform an initial screening of the top 40 proposals to determine whether the offeror stated that all attachments and documents listed on the solicitation checklist were included in the proposal and that the attachments and documents were in fact submitted. Id. at 158-59. If an offeror submitted all required attachments and documents, the agency would then validate the offeror’s self-scoring worksheet. Id. at 159, 161.

Offerors entered points on the self-scoring worksheet for past performance, relevant experience, and accreditations and substantiated these scores by submitting various attachments and documentation. Id. at 108-16, 142-43. The solicitation established several minimum requirements, including, as relevant to this protest, specific requirements for experience. In this regard, the solicitation provided that “to be eligible for consideration” the offeror must have performed six relevant experience projects (REPs), at least four of which were performed in the NAICS codes for the pool(s) for which the offeror was submitting a proposal. Id. at 133, 138. Offerors submitting for pool 2 were to provide information on the six relevant experience projects using attachments J.12.2 (relevant experience projects supplemental form pool 2) and J.12.4 (supplemental relevant experience projects, collection of task orders). Id. at 142. Attachment J.12.2 required offerors to provide, among other things, the contract/order number, the name of a reference and title, the NAICS code for the project, and the method of substantiating the NAICS code for the project.

The solicitation set forth several methods an offeror could use to substantiate that at least four of the relevant experience projects had been performed in the relevant NAICS codes. Specifically, the solicitation provided that:

The NAICS codes shall be validated by the Federal Procurement Data System-Next Generation (FPDS-NG) report. If the FPDS-NG report is unavailable, the NAICS code shall be validated by the most current

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<sup>1</sup> GSA assigned three NAICS codes (611430, 611699, and 642310) with a corresponding size standard of \$11 million to pool 1, and five NAICS codes (541611, 541612, 541613, 541618, and 611710) with a corresponding size standard of \$15 million for pool 2. RFP at 62.

Contractor Performance Assessment Reports System (CPARS) report, Past Performance Information Retrieval System (PPIRS) report, or Attachment J.6 (Past Performance Substitute Form). . . .

RFP at 136. If an offeror used attachment J.6 (past performance substitute form) to validate a NAICS code for a federal government relevant experience project, the solicitation stated that the form must be signed by a warranted contracting officer. Id. The solicitation specifically provided in this regard that “[i]f Attachment J.6 (Past Performance Substitute Form) is completed by someone who is not a duly warranted Contracting Officer, the Government shall not accept the NAICS Code.” Id.

Further, if there were no FPDS-NG, CPARS, or PPIRS reports for the relevant experience project, and the offeror was unable to have a warranted contracting officer sign attachment J.6 (past performance substitute form), then the offeror was required to provide other verifiable evidence from the contract, task order, or purchase order award form, such as a Standard Form (SF) 1449. Id. If the offeror had a legitimate reason that the NAICS code for any relevant experience project was reported incorrectly, the offeror could request the opportunity to submit attachment J.10 (NAICS code confirmation form) from a warranted contracting officer from the awarding agency, who would identify the correct NAICS code. Id. The solicitation provided that if there was a conflict between the FPDS-NG report and SF 1449, the SF 1449 would take precedence unless a warranted contracting officer responsible for the relevant experience project submitted Attachment J.10 (NAICS Code confirmation form) indicating that the NAICS code selected in attachment J.10 represents the preponderance of the work performed. Id.

The solicitation cautioned offerors that the agency intended to make award without holding discussions, and that offerors “will not be allowed to resubmit or revise any document(s) related to the Relevant Experience Projects.” RFP at 159. The solicitation stated, however, that the agency could allow an offeror to respond to clarifying questions in an effort to validate minimum requirements and scored elements. Id. The solicitation also stated that the agency “intends to strictly enforce all of the proposal submission requirements” and that failure “to comply with these requirements may result in an Offeror’s proposal being rejected as being non-conforming to solicitation requirements.” Id. at 156. As relevant here, the solicitation stated:

For a Federal government Relevant Experience Project, if the Offeror does not provide verifiable documentation (FPDS-NG Report, CPARS/PPIRS Report, Attachment J.6 {Past Performance Substitute Form}, Attachment J.10 {NAICS Code Confirmation Form}, or official Government award form or solicitation), the Relevant Experience Project shall not be considered as one of the four Relevant Experience Projects that shall have a Pool NAICS Code.

Id. at 136.

The agency received 95 proposals, including one from CTEC for pool 2, by the December 3, 2015 closing date for the receipt of proposals. Contracting Officer's Statement (COS) at 2. CTEC provided information with respect to its REPs on Attachment J.12.2 (relevant experience projects supplemental form pool 2) and J.12.4 (supplemental relevant experience projects, collection of task orders). CTEC provided information for six REPs, and represented that four (REPs 1, 2, 3, and 6) had been performed under the pool 2 NAICS codes. Id. CTEC indicated that it was using attachment J.6 (past performance substitute form) to substantiate the NAICS codes for REPs 1, 2, and 3, and CPARS/PPIRS reports to substantiate the NAICS code for REP 6. Id. CTEC had also submitted a SF 1449 for REP 3.

Based on the documentation submitted, the agency was able to validate the NAICS codes for REPs 1 and 6, but not for REPs 2 and 3. For REP 2, attachment J.6 (past performance substitute form) was signed by the Army Community Services Director. Similarly, for REP 3, attachment J.6 (past performance substitute form) was signed by the Directorate Operations Officer. In addition, there was a conflict regarding the NAICS code applicable to REP 3. Specifically, CTEC submitted an SF 1449 for REP 3, which indicated that it was awarded under a non-pool NAICS code (541890).

On February 9, 2016, the agency sent CTEC a clarification request, notifying the offeror that "[b]ased on what was submitted, it does not appear that Pool 2 contains four Relevant Experience Projects with Pool NAICS Codes." Agency Report (AR), Exh. 4, Agency Clarification Request, at 1. The request noted that the agency could not validate the claimed NAICS codes for REPs 2 and 3 because the attachments J.6 (past performance substitute forms) CTEC submitted were not signed by a warranted contracting officer. Id. CTEC was further advised that with respect to REP 3, the SF 1449 submitted conflicted with attachment J.6 (past performance substitute form) regarding the applicable NAICS code. Id. at 2. CTEC was instructed as follows:

Your response to the [] clarification(s) shall be limited to the location of the claimed element in the verifiable contractual document that was submitted in your initial proposal submission. . .

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Your response to this clarification shall not include any submitted document nor Offeror explanation. Any documents submitted or narratives beyond a reference in the verifiable contractual documents submitted in your firm's initial proposal submission will not be reviewed or accepted into your proposal.

Id. at 1-2. In response, CTEC did not reference documents that were submitted with its initial proposal. Instead, for REP 2, CTEC explained the position of the official who signed attachment J.6 (past performance substitute form), and advised the government that it should check the FPDS-NG report available online to validate the NAICS code. AR, Exh. 4, CTEC Response, at 1. For REP 3, CTEC asserted that attachment J.6 could be used to validate the NAICS code, even though it was not signed by a contracting officer, and it conflicted with SF 1449. Id. CTEC also advised the agency to check the FPDS-NG report available online to validate the NAICS code for REP 3. Id.

Subsequently, GSA notified CTEC that its offer was eliminated from the competition because the agency could not validate that four REPs were performed within the pool 2 NAICS codes, as required by the solicitation. AR, Exh. 5-1, Letter to Unsuccessful Offeror. CTEC protests that decision.

## DISCUSSION

CTEC notes that the solicitation provides that “[t]he NAICS Codes shall be validated by the Federal Procurement Data System-Next Generation (FPDS-NG) Report. If the FPDS-NG Report is unavailable, the NAICS Codes shall be validated by the most current Contractor Performance Assessment . . . .” RFP at 136. According to CTEC, this language in the solicitation did not require offerors to submit the FPDS-NG report. Rather, argues the protester, the agency had access to the FPDS-NG report, and was required to access it to validate the NAICS codes.<sup>2</sup> According to CTEC, offerors were required to provide documentation to substantiate the NAICS codes only if the agency would be unable to validate the NAICS codes using the FPDS-NG reports itself. CTEC asserts that the agency eliminated its proposal from the competition without accessing the FPDS-NG report based on the alternate documentation that CTEC provided with its proposal.

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<sup>2</sup> CTEC argues that the agency ignored “close-at-hand” information regarding its relevant experience projects here because the FPDS-NG reports were available online. While we have explained that an agency “may” consider close-at-hand experience information known to the agency and not found in a firm’s proposal, we have declined to extend the close-at-hand doctrine beyond the area of past performance so as to require an agency to consider the information in the context of an experience evaluation. Aerostar Perma-Fix TRU Servs., LLC, B-411733, B-411733.4, Oct. 8, 2015, 2015 CPD ¶ 338 at 10 n.7. Moreover, the “close-at-hand” doctrine is not intended to remedy an offeror’s failure to include information in its proposal. SNAP, Inc., B-409609, B-409609.3, June 20, 2014, 2014 CPD ¶ 187 at 8; Great Lakes Towing Company dba Great Lakes Shipyard, B-408210, June 26, 2013, 2013 CPD ¶ 151 at 8.

CTEC also disputes the agency's position that the NAICS codes for REPs 2 and 3 could not be validated using attachment J.6 (past performance substitute form), which CTEC submitted with its proposal for both REPs 2 and 3. In this regard, CTEC states that the attachment for REP 2 was signed by the Army Community Services Director, because the contracting officer was on extended leave, and the attachment for REP 3 was signed by the Directorate Operations Officer at the request of the contracting officer. CTEC concludes that its proposal was improperly rejected.

The agency disagrees that it was the government's responsibility to access the FPDS-NG report to validate the NAICS codes for REPs 2 and 3. The agency also disagrees that it could accept attachment J.6 (past performance substitute form) to substantiate the NAICS codes where the attachment was not signed by a warranted contracting officer. Finally, the agency notes that for REP 3, there is a conflict in the relevant NAICS code between attachment J.6 and SF 1449, with SF 1449 indicating that REP 3 was not performed under a pool 2 NAICS code.

In reviewing protests of alleged improper evaluations, it is not our role to reevaluate proposals; rather, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement laws and regulations. IN2 LLC, B-408099 et al., June 18, 2013, 2013 CPD ¶ 149 at 5. In this regard, an offeror has the burden of submitting an adequately written proposal, and runs the risk that its proposal will be evaluated unfavorably when it fails to do so. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6. A protester's disagreement with an agency's judgment is not sufficient to establish that an agency acted unreasonably. A&T Systems, Inc., B-410626, Dec. 15, 2014, 2015 CPD ¶ 9 at 3.

Here, we find that the agency reasonably eliminated CTEC's proposal from consideration for award. CTEC submitted attachment J.12.2 setting forth information for each relevant experience projects. For REPs 2 and 3, CTEC stated the contract number, names of the contracting officer, NAICS code, and a statement that it was using attachment J.6 (past performance substitute form) to validate the NAICS code assigned to the contract. The solicitation stated that attachment J.6 must be signed by a warranted contracting officer and that "[i]f Attachment J.6 (Past Performance Substitute Form) is completed by someone who is not a duly warranted Contracting Officer, the Government shall not accept the NAICS Code." RFP at 136. The attachment J.6 that CTEC submitted for REPs 2 and 3 were not signed by the individuals that CTEC stated on attachment J.12.2 were contracting officers for the projects. Rather, the attachments were signed by individuals that CTEC has stated are contracting officer representatives, but not necessarily warranted contracting officers, as specifically required by the solicitation. See Comments at 3; Comments, Exh. 1. CTEC has not shown how GSA's evaluation was inconsistent with the terms of the solicitation. ADNET Sys., Inc., et al.,

B-408685.3 et al., June 9, 2014, 2014 CPD ¶ 173 at 13.

Further, CTEC's argument that it would not have been rejected had the agency accessed the FPDS-NG reports online for its REPs fails since there was a conflict with respect to the NAICS code for REP 3. In this regard, as noted above, the solicitation provided that when substantiating under which NAICS code a relevant experience project was performed, in the event there was a conflict between SF 1449 and the FPDS-NG report, the SF 1449 would take precedence unless a warranted contracting officer responsible for the REP submits attachment J.10 (NAICS code confirmation form) indicating that the applicable NAICS code he or she selects in attachment J.10 represents the preponderance of the work performed. RFP at 136. CTEC did not submit attachment J.10 to substantiate that REP 3 was performed under a pool 2 NAICS code. Thus, the SF 1449 CTEC submitted for REP 3, which indicates that REP 3 was not performed under a pool 2 NAICS code, takes precedence over attachment J.6 and any FPDS-NG report the agency would have obtained. Consequently, REP 3 would not be considered performed under a pool 2 NAICS code. Since CTEC would not have demonstrated that it performed four REPs under pool 2 NAICS codes, its proposal would be unacceptable.

The protest is denied.

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General Counsel