



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Evolver Inc.; Armed Forces Services Corporation

File: B-413559.2; B-413559.8

Date: December 21, 2016

Alfred M. Wurglitz, Esq., Daniel S. Koch, Esq., and Michael E. Samuels, Esq., Miles & Stockbridge PC, for Evolver Inc.; and Antonio R. Franco, Esq., Patrick T. Rothwell, Esq., and Julia Di Vito, Esq., PilieroMazza PLLC, for Armed Forces Services Corporation, protesters.

Charles G. McCarthy, Esq., General Services Administration, for the agency.

Peter D. Verchinski, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging as unduly restrictive certain solicitation provisions relating to how points will be awarded under the agency's point scoring scheme is denied where the record supports the agency's position that the solicitation provisions are reasonably related to meeting the agency's needs.

DECISION

Evolver, Inc., of Reston Virginia, and Armed Forces Services Corporation (AFSC), of Arlington, Virginia, protest the terms of request for proposals (RFP) No. QTA0016JCA0003, issued by the General Services Administration (GSA), for the award of 60 contracts supporting the agency's Alliant 2 program. The protesters argue that certain terms in the solicitation are unduly restrictive of competition.

We deny the protest.

BACKGROUND

The Alliant 2 procurement was designed by GSA to establish multiple indefinite-delivery, indefinite-quantity contracts, under which fixed-price, cost-reimbursement, time-and-materials, and labor-hour task orders could be issued for a broad range of information technology services. RFP at 8-16. The RFP provides for a 5-year base period and one 5-year option period, with a total ceiling value for all task orders of \$50 billion. RFP at 54, 3. The Alliant 2 procurement follows the first Alliant

government-wide acquisition contract (GWAC), which was awarded in 2007. It is anticipated that the Department of Defense (DOD) will be Alliant 2's most active user. Evolver Agency Report (AR), Contracting Officer's (CO) Statement, at 1.

GSA conducted a lengthy acquisition planning and market research process to determine how to structure the procurement. See CO Statement at 1-4. Following its market research, GSA issued two solicitations for Alliant 2 contracts: the RFP here, which was unrestricted, and RFP No. QTA0016GBA0002, which was set aside for small businesses. The protesters challenge the terms of the unrestricted RFP.

The RFP states that the agency will select the 60 awardees using a "highest technically rated offerors with a fair and reasonable price" evaluation scheme.¹ RFP at 249. Under this scheme, offerors are to assign themselves points in the following categories: relevant experience; past performance; systems, certifications, and clearances; and organizational risk assessment.² RFP at 260-261. The RFP provides a total of 83,100 possible points under these categories, and further provides a detailed explanation of the point scheme, including the elements that make up the categories and explanations as to what supporting documents are to be provided to support an offeror's scores. RFP at 185-264.

As relevant to these protests, the RFP provides 7,600 possible points for an offeror's "systems." Of the 7,600 points, 5,500 points are for an "audited/adequate cost accounting system," and 1,500 of the points are for an "approved purchasing system." RFP at 261. In order to establish that an offeror is entitled to the 5,500 points, the RFP states that an offeror's supporting documents must include either (1) an official letter from the Defense Contracting Audit Agency (DCAA), Defense Contract Management Agency (DCMA), or any Cognizant Federal Agency (CFA) indicating unequivocally that the offeror's system has been audited, or (2) a copy of the offeror's official audit from DCMA. RFP at 231. Likewise, to establish that an offeror is entitled to the 1,500 points for an "approved purchasing system," an offeror must provide similar verification of its system from either the DCMA or any CFA. RFP at 232.

The RFP also provides that 3,500 points are possible for certain relevant experience with federal agencies. For every "separate and distinct federal agency" where an offeror has such experience, an offeror may claim 500 points, up to a total

¹ The protests at issue here do not challenge the propriety of the overall evaluation scheme.

² "Organizational risk assessment" concerns whether an offeror has previously worked in its proposed teaming arrangement. RFP at 261.

of 3,500 points (for 7 experience with agencies). RFP at 216, 261. In order to establish that an offeror is entitled to the points, an offeror is required to provide a Federal Procurement Data System (FPDS) report, which shows the funding agency's identity. RFP at 216. The RFP also provides that a total of 4,000 points are possible for certain experience with cost-reimbursement projects. RFP at 261. In order to establish that an offeror is entitled to these points, offerors are again required to submit FPDS reports verifying the cost-reimbursement projects. RFP at 217.

According to the RFP's evaluation scheme, the agency will first rank all offerors by highest point score to lowest point score using the offeror's self-scoring worksheet. The agency will then identify and verify the offerors with the top 60 technical scores. After the top 60 firms are identified, the evaluation team will analyze the pricing of these 60 offerors for fairness and reasonableness. If an offeror's price is found to be fair and reasonable, the firm is awarded a contract. If an offeror's price is found not to be fair and reasonable, the firm is excluded from the competition. The process continues until 60 awardees have been identified. The RFP provides that, at the end of the evaluation process, the agency will have awarded 60 contracts to the firms with the highest technical scores that have fair and reasonable pricing. RFP at 249-259.

Prior to the closing time for receipt of proposals, Evolver and AFSC filed these protests.

DISCUSSION

Evolver and AFSC challenge the agency's basis for assigning certain points. Specifically, both Evolver and AFSC challenge the RFP provision that, in order to be awarded 5,500 points for an "audited/adequate cost accounting system," an offeror's proposal must include proof of a federally audited and approved accounting system. The firms maintain that this requirement is overly restrictive of competition, as there are independent public accounting firms that can verify the adequacy of an offeror's accounting system for federal contracts. The firms further argue that proof of an acceptable system should not be required with proposal submission; rather, proof should be provided only at the time the government actually requires the service for which the certification is necessary.

Where a protester challenges a specification or requirement as unduly restrictive of competition, the procuring agency has the responsibility of establishing that the specification or requirement is reasonably necessary to meet the agency's needs. See Streit USA Armoring, LLC, B-408584, Nov. 5, 2013, 2013 CPD ¶ 257 at 4. We examine the adequacy of the agency's justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. Nexagen Networks, Inc., B-411209.7, June 10, 2016, 2016 CPD ¶ 164 at 4. The determination of a contracting agency's needs, including the selection of evaluation

criteria, is primarily within the agency's discretion and we will not object to the use of particular evaluation criteria so long as they reasonably relate to the agency's needs in choosing a contractor that will best serve the government's interests. SML Innovations, B-402667.2, Oct. 28, 2010, 2010 CPD ¶ 254 at 2.

Here, the record supports the agency's position that assigning points to firms that have a federally audited and approved accounting system is reasonably related to the agency's needs. In this regard, the agency points out that it anticipates (based on the first Alliant GWAC) that a significant number of DOD task orders will be competed under Alliant 2. Evolver AR at 15. Indeed, the agency states that approximately two-thirds of all task orders issued under Alliant 1 were DOD client task orders. Id. DOD requires, for cost-reimbursement type contracts, that the contractor have a cost accounting system that is certified by DCAA, DCMA, or some other cognizant federal agency, and does not recognize third party certifications. Evolver AR, CO Statement, at 7. The record further provides that approximately 25 percent of the task orders issued under Alliant 1 were cost-reimbursement contracts (representing \$5.7 billion dollars), and that the agency expects the same ratio to continue under Alliant 2. Id.; AFSC AR, CO Statement at 7. Under these circumstances, where the agency can reasonably anticipate that DOD will be the prime user of the Alliant 2 GWAC, and where DOD does not accept third party certification of a contractor's cost accounting system, we find nothing improper about the solicitation's provision that gives an evaluation preference to firms that have a federally audited and approved accounting system.³

With regard to the protester's contention that it is unduly restrictive of competition to require firms to present proof of a federally audited and approved accounting system at the time of proposal submission in order to be awarded these points, we disagree. Here, the agency explains that possessing this certification and approval from DCAA, DCMA, or other CFA, at the time of contract award relates to the agency's need to provide a contract vehicle (a GWAC) where DOD and other agencies can find companies qualified to perform cost-reimbursement type contracts. Evolver AR at 17-18; AFSC AR at 19-20. In this regard, the agency explains that allowing firms to accrue points in this manner helps to provide a

³ The firms also challenge the RFP provision that, in order to be awarded 1,500 points for an "approved purchasing system," an offeror's proposal must include proof of a federally approved purchasing system. In its reports, the agency provided its rationale for including such a requirement in the solicitation. Evolver AR at 16-17; AFSC AR at 17-18. The protesters failed to respond to or rebut the agency's rationale in their comments; we therefore consider the protesters' challenges to be abandoned. 4-D Neuroimaging, B-286155.2, B-286155.3, Oct. 10, 2001, 2001 CPD ¶ 183 at 9 n.11. In any event, based on our review of the record, we do not find unduly restrictive the agency's point scoring system for an approved purchasing system.

GWAC where successful offerors have experience in government contracting. In addition, successful offerors will be able to perform cost-reimbursement task orders for DOD from the first day the GWAC is awarded, and procuring agencies issuing task orders under the GWAC will not have to waste time and resources while vendors subsequently obtain an audited and approved system. Id. Given this explanation by the agency, we find nothing improper about the solicitation's approach of awarding points to offerors that have proof of an audited system at the time of contract award.⁴

AFSC also challenges the RFP's requirement that, in order to be awarded certain points for projects the offeror performed at multiple federal agencies, and points for projects that involve cost-reimbursement contracts at multiple federal agencies, offerors must submit a federal procurement data system (FPDS) report for each project. AFSC argues that, because many types of federal contracts are not reported in the FPDS, offerors who cannot provide such reports improperly lose points in the agency's scoring system.⁵ AFSC further notes that the RFP provides for a process whereby an offeror without a FPDS report (if, for example, the report is unavailable) may nevertheless still receive credit for the project. AFSC maintains that such a process should also apply to projects performed at agencies that do not provide FPDS reports.

Here, the record supports the agency's position that assigning points to firms that can provide a FPDS report is reasonably related to the agency's needs. The agency explains that contracts that do not have a FPDS report are contracts that are not subject to the Federal Acquisition Regulation (FAR). AFSC AR at 10. That is, all contracts that are governed by the FAR must be reported in FPDS. Id. Given that the acquisitions that will take place under the Alliant 2 GWAC are acquisitions

⁴ AFSC asserts that, since proof of an audited system at the time of proposal submission is not a mandatory requirement of the RFP, the agency has "conceded that contract holders do not need a pre-approved cost-accounting system on 'day one' of contract performance." AFSC Comments at 5. While the protester correctly points out that the agency's evaluation scheme does not mandate proof of an audited system at the time of proposal submission, the goal of the evaluation scheme here is to increase the likelihood that successful offerors will have such a system. Given that the agency's requirements for Alliant 2 do not necessitate that every awardee have such a system (indeed, there will be a large number of Alliant 2 task orders that will not require an audited system), the fact that the agency does not require every offer to provide proof of such a system does not render the evaluation preference for such a system overly restrictive.

⁵ AFSC points out that agencies such as the U.S. Postal Service, agencies within the legislative and judicial branches of government, and agencies utilizing non-appropriated funds, are not required to file reports in the FPDS. Protest at 6.

that will be competed, awarded and performed under the FAR, we find nothing objectionable with an RFP provision that provides an evaluation preference to contracts that were performed under the FAR. Furthermore, we note that firms that have federal contracts with agencies that are not subject to the FAR, are not precluded from receiving points for these contracts under the RFP, but instead may receive points for these contracts under other elements of the agency's scoring system. AFSC AR at 12-13; RFP at 207-228. In this context, where awardees will be expected to compete and perform under the FAR, it is reasonable for the agency to provide an evaluation preference or additional credit for those projects that were performed under the FAR.

The protests are denied.

Susan A. Poling
General Counsel