

IS A SOLICITATION REQUIREMENT FOR FINANCIAL LIQUIDITY AND SOLVENCY UNDULY RESTRICTIVE?

Copyright 2024 Richard D. Lieberman, Consultant & Retired Attorney

In a recent solicitation by the Department of Veterans Affairs (“VA”) for a ten year, indefinite delivery, indefinite contract for supply chain modernization services, IBM protested that the evaluation criteria assessing offerors’ financial liquidity and solvency are unduly restrictive of competition. The Government Accountability Office (“GAO”) disagreed and denied the protest. *International Business Machines Corp.*, B-421841, Oct. 11, 2023.

The evaluation of offerors involved a two step process, with the first step assessing corporate experience (including a need to demonstrate that offerors were financially liquid and solvent), the second step being a technical evaluation and the third step being a live demonstration of their products.

IBM protested that the solicitation contained unduly restrictive tests for financial liquidity and solvency. (Liquidity refers to a company’s ability to pay short-term obligations, while solvency refers to a company’s capacity to meet its long-term financial commitments). In response to the protest, the VA asserted that liquidity and solvency tests are common and universally understood, and the scoring (up to 10,000 points) was reasonable. VA assigned specific minimum values for each element.

The GAO noted that agencies have broad discretion when selecting evaluation criteria---even if such criteria is burdensome or makes a firm’s proposal less competitive, as long as the agency demonstrates that the evaluation criteria are reasonably related to its needs, can withstand logical scrutiny and doesn’t violate a procurement law or regulation.

The GAO noted that these tests for liquidity and solvency provide insight into an offeror’s ability to meet short and long-term financial obligation, and therefore withstand logical scrutiny. Further, the tests apply to a wide variety of industries, and it wasn’t necessary for the VA to research or conduct an exhaustive analysis of them.

GAO concluded there was nothing objectionable in VA’s evaluation methodology. Furthermore, a solicitation is not unduly restrictive merely because the chosen evaluation method may adversely impact some offerors. The test is as stated above, within the broad discretion that the agencies have in selecting evaluation criteria, and VA’s criteria are not objectionable.

Takeaway. In order to protest restrictive evaluation criteria you must show that the criteria do not withstand logical scrutiny, are not reasonably related to the agency’s needs, or violate applicable procurement laws or regulations. If you cannot do that, the agency’s determination of the criteria will not be objectionable to the GAO.

**For other helpful suggestions on government contracting, visit:
Richard D. Lieberman’s FAR Consulting & Training
at <https://www.richarddlieberman.com/>, and Mistakes in Government Contracting
at <https://richarddlieberman.wixsite.com/mistakes>.**