

“IMPLICIT PROMISE” IN FEDERAL SUPPLY SCHEDULE NOT GOOD ENOUGH TO MEET SOLICITATION REQUIREMENTS

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The Government Accountability Office (“GAO”) recently sustained a protest of an agency’s evaluation and source selection which made award to a firm that submitted a quote that failed to meet material solicitation requirements. *ISHPI Info. Tech., Inc.*, B-420718.2, .3, July 29, 2022.

The Department of Energy sought a Blanket Purchase Agreement and two task orders for cybersecurity support services. Competition for this requirement was confined to Federal Supply Schedule (“FSS”) vendors holding appropriate FSS schedules. ISHPI challenged the evaluation of quotations and the source selection decision, stating that the awardee (AmVet) did not meet minimum educational and experience requirements of the labor categories in the RFQ. The RFQ identified three labor categories: (1) program manager; (2) assessment team leader and (3) specialist mid. In order to demonstrate compliance with the requirements, firms were required to “map” the labor categories from their FSS schedules to the position description and minimum qualifications identified for each specified labor category. Firms could include additional information in their quotes, but nothing in the RFQ permitted them to quote personnel that did not meet at least the minimum qualifications identified in the solicitation for each labor category.

In evaluating the awardee’s quote, the GAO concluded that in all three labor categories, AmVet’s quote included a number of labor categories that were not mapped to the three RFQ’s required labor categories. While some of the labor categories that were not mapped met the qualifications of the Specialist Mid position, there were three unmapped labor categories that did not meet any of the required minimum qualifications in the RFQ.

The agency argued that the AmVet quotation included an “implicit promise” to provide personnel meeting the RFQ’s minimum educational and experience requirement because its FSS schedule “generically” identified the educational requirement for each position as minimums, and this was a sufficient implicit promise.

GAO rejected the agency reasoning. “Nothing in the record shows that AmVet actually included any information in its quote to show that it would perform with personnel meeting the RFQ’s more stringent educational and experience requirements.” Footnote 12 to the opinion says this:

The agency claims that the AmVet quotation generally represented that, in compliance with its FSS contract, educational and experience minimums would be agreed upon with the customer based on order requirements. Notwithstanding the agency’s claim, no such language actually is included in the AmVet quotation. In any event a generic prospective promise to provide appropriately qualified personnel (perhaps in connection with subsequently-issued task orders) would not excuse AmVet’s failure to quote personnel meeting the RFQ’s educational and experience requirements for the two orders actually solicited.

The GAO sustained the protest and recommended a re-evaluation of vendors’ quotations.

Takeaway. Yet another case where an offer or quotation failed to meet material solicitation requirements, and should have been rejected as such during the agency's evaluation. Offerors should have a disinterested but knowledgeable person (i.e. someone who hasn't been involved in preparing the quotation) review the quote to determine if it complies with the solicitation, or should be redone.

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