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July 15, 2021

VIA EPDS

Office of General Counsel
U.S. Government Accountability Office (GAO)
441 G Street, N.W.
Washington, D.C. 20548

REDACTED VERSION

Attn: Procurement Law Control Group

CICA STAY OF AWARD REQUIRED

Re: Protest of Tata America International Corporation
Solicitation No. 75N98121R00001, Chief Information Officer –
Solutions and Partners (CIO-SP4)
National Institutes of Health Acquisition and Assessment Center (NITAAC)

Dear Sir or Madam:

Tata America International Corporation (“TAIC”), 101 Park Avenue, 26th Floor, New York, NY 10178 (Tel: (212) 557-8083; Fax: (212) 867-8652), through its undersigned counsel, hereby files this preaward protest in connection with the National Institutes of Health Acquisition and Assessment Center (“NITAAC” or “Agency”) Chief Information Officer – Solutions and Partners (“CIO-SP4”) procurement for information technology (“IT”) solutions and services in connection with Request for Proposals No. 75N98121R00001 (“the RFP”).

As required by 4 C.F.R. § 21.1(e), a complete copy of the protest with all attachments will be transmitted to the following Contracting Officer within one day of this filing: Rose Schultz, Procuring Contracting Officer, National Institutes of Health Information Technology Acquisition and Assessment Center (NITAAC), 6011 Executive Blvd, Suite 503 Rockville, MD 20852; E-mail: CIOSP4.NITAAC@nih.gov.

As explained in more detail below, the RFP is unduly restrictive of competition because it requires [REDACTED]

[REDACTED] that is not reasonably necessary to meet the Agency’s needs. Specifically, the RFP’s Self Scoring Sheet Experience Template requires offerors to [REDACTED]

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[REDACTED] . [REDACTED]
[REDACTED] . As a result, the RFP unfairly
provides a barrier to offerors [REDACTED]
[REDACTED] .

Therefore, TAIC respectfully requests that GAO sustain this protest and direct NITAAC to amend the RFP, remove the current [REDACTED] [REDACTED] provide a less restrictive alternative to [REDACTED], afford TAIC a reasonable opportunity to prepare its proposal in accordance with the Agency's needs, set a new deadline for submission of proposals, and evaluate proposals in accordance with the revised RFP.

I. INTERESTED PARTY STATUS

TAIC is an interested party because it is a prospective offeror whose direct economic interest would be affected by the award of the contract or by the failure to award a contract under the RFP. [REDACTED]

[REDACTED] obtain full and open competition. 41 U.S.C. § 3301. Accordingly, TAIC is an interested party with a direct economic interest in the award of the contract and is entitled to pursue this pre-award protest. 4 C.F.R. § 21.0(a).

II. JURISDICTION

GAO has jurisdiction over this protest pursuant to 31 U.S.C. § 3551.

III. TIMELINESS AND SUSPENSION OF PERFORMANCE

This protest is timely filed prior to the due date for receipt of proposals, July 23, 2021 at 2:00 PM EST. *See* 4 C.F.R. § 21.2; RFP, Am. 0006 § L.3.1 at 148. Accordingly, NITAAC must withhold award on this procurement pursuant to 4 C.F.R. § 21.6 and CICA, 31 U.S.C. § 3553(c).

TAIC respectfully requests that GAO immediately notify NITAAC of this protest so that the Agency can withhold award in connection with RFP No. 75N98121R00001.

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IV. BACKGROUND

On July 9, 2021, NITAAC issued Amendment 0006 to the RFP for its CIO-SP4 Government Wide Acquisition Contract (“GWAC”). The RFP seeks a wide range of IT solutions and services, including for health, biomedical, scientific, administrative, operational, managerial, and information systems, as well as general IT services, RFP, Am. 0006 § A.1 at 1,¹ in the following ten task areas:

1. IT Services for Biomedical Research, Health Sciences, and Healthcare
2. Chief Information Officer (CIO) Support
3. Digital Media
4. Outsourcing
5. IT Operations and Maintenance
6. Integration Services
7. Cybersecurity
8. Digital Government and Cloud Services
9. Enterprise Resource Planning
10. Software Development

RFP, Am. 0006 § C.1 at 17.

The RFP contemplates multiple task order contracts for the same or similar supplies or services, with about 75 to 125 awards anticipated for other than small businesses, and awards reserved for other business categories. *See* RFP, Am. 0006 § L.2 at 147. The maximum ceiling value for each awarded contract is \$50 billion. RFP, Am. 0006 § G.9 at 5.

The RFP instructs offerors to submit proposals by 2 pm EST on July 23, 2021, in six volumes: (I) Administrative and Self-Scoring Information; (II) Go/No-Go Requirements; (III) Health IT Capability; (IV) Management Approach; (V) Past Performance; and (VI) Price. RFP, Am. 0006 § L.5 at 154-59.

The RFP provides that for Phase I of the evaluation, the Agency will review offerors’ self-scoring sheets and select offerors with the highest scores to proceed to Phase II. RFP, Am. 0006 § L.4 at 153. In Phase II, the Agency will review offerors’ documentation against the go/no-go requirements in RFP sections L.5.3 and M.3; offerors that pass all requirements will

¹ Citations to RFP page numbers are to the “with tracked changes” version, available at: https://sam.gov/api/prod/ops/v3/opportunities/resources/files/2842769bcbfa43a0aeacae4978023801/download?api_key=null&token=.

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proceed to Phase III. *Id.* In Phase III, the Agency will evaluate offerors' Health IT capability management, past performance, and price proposals and make award to the most highly rated offerors. *Id.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

V. GROUNDS OF PROTEST

By statute, agencies may include restrictive provisions in solicitations only to the extent necessary to satisfy the agency's legitimate needs. 41 U.S.C. § 3306(a)(2)(B); *Total Health Res.*, B-403209, Oct. 4, 2010, 2010 CPD ¶ 226, at 2-3; *AES UXO, LLC*, B-419150, Dec. 7, 2020, 2020 CPD ¶ 395, at 3. Where a protester challenges an [REDACTED] as unduly restrictive, the procuring agency must establish that the specification is reasonably necessary to meet its needs. *See Total Health Res.*, 2010 CPD ¶ 226, at 3. GAO will examine the adequacy of the agency's justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. *Id.* (internal citation omitted).

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[REDACTED]

[REDACTED]

Therefore, although

[REDACTED]

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[REDACTED]

[REDACTED]

Accordingly, the RFP's [REDACTED] requirements constitute an unreasonable restriction on competition that is not necessary to meet the Agency's minimum needs. The [REDACTED] requirement effectively limits [REDACTED], which is not a legitimate need and very unlikely the desired outcome intended by the RFP. [REDACTED], is relevant to each of the ten stated task areas as defined in the RFP, [REDACTED]. See RFP § C.2.1 to C.2.10 at 19-26 (task areas); *id.* § G.5.5.1 at 41 (task order types).

Importantly, the Agency also has less restrictive means to accomplish the goal of [REDACTED]. For example, TAIC [REDACTED]. The RFP currently permits [REDACTED] but does not require offerors to provide additional [REDACTED], but the Agency could require [REDACTED]. Indeed, other agencies using a similar self-scoring procurement method have recognized that alternative [REDACTED]

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offeror experience. For instance, GSA’s Human Capital and Training Solutions (“HCaTS”) 8(a) Pool 1 and Pool 2 RFP provided that submission of certain requested [REDACTED] [REDACTED] [REDACTED] may be “specifically prohibited,” and permitted offerors to submit “legally recognized documents” in lieu of [REDACTED]

[REDACTED]

VI. CONCLUSION

Since the Agency’s minimum needs can be met through less restrictive [REDACTED] requirements [REDACTED] the RFP terms for [REDACTED] [REDACTED] are unduly restrictive, irrational, and do not withstand scrutiny. Accordingly, TAIC’s protest should be sustained. *See Total Health Res.*, 2010 CPD ¶ 226 (sustaining protest of [REDACTED] as unduly restrictive where agency failed to explain why [REDACTED] had to be satisfied by the offeror and not by a subcontractor or other teaming partner) [REDACTED]

[REDACTED]

VII. REQUEST FOR PRODUCTION OF DOCUMENTS

TAIC hereby requests that the Agency produce the following documents² that are relevant to the protest. These documents are being requested in addition to those documents required to be produced as part of the Agency Report in this protest:

1. The RFP and all amendments to the RFP.

² For the purpose of this document request, the term “documents” means correspondence, memoranda, notes, work papers, worksheets, presentation materials, reports, viewgraphs, computer files, video or audio recordings/ documentation and any transcriptions thereof, and electronic transmissions, including all drafts thereof.

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2. All questions submitted by offerors during the Q&A process and any responses thereto.
3. Proposals submitted by other offerors in response to the RFP on or before July 23, 2021.
4. [REDACTED]
5. The source selection plan and any acquisition plan, or acquisition strategy report prepared for this procurement and any other guides or reference documents prepared or used in this procurement, including all revisions thereto.
6. Any other documents relevant to this protest.

VIII. REQUEST FOR A PROTECTIVE ORDER

TAIC requests that a protective order be issued for this protest, pursuant to 4 C.F.R. §§ 21.1(d)(1) and 21.4(a) because this protest and many of the requested documents may contain proprietary and source selection sensitive information not appropriate for public release.

IX. RESERVATION OF RIGHT TO REQUEST A HEARING

Pursuant to 4 C.F.R. §§ 21.1(d)(3) and 21.7, TAIC reserves the right to request a hearing should it be necessary or helpful to resolve this protest.

X. CONCLUSION AND REQUEST FOR RELIEF

Pursuant to 4 C.F.R. § 21.1(c), for the reasons discussed above, TAIC respectfully requests that GAO sustain this protest on all grounds and recommend that NITAAC amend the RFP and its unduly restrictive [REDACTED]

[REDACTED]. GAO should further recommend that NITAAC issue an amendment to the RFP revising the deadline for receipt of proposals to allow offerors a reasonable opportunity to prepare their proposals based on the Agency's amended [REDACTED]

[REDACTED] TAIC also requests that it be reimbursed its reasonable costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1).

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Respectfully submitted,

s/ David T. Hickey
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