[redacted]

August 19, 2021

By EPDS

General Counsel
U.S. Government Accountability Office
441 G Street, NW
Washington, D.C. 20548
Attn: Procurement Law Control Group

1. Re: Protest of International Global Solution, LLC
Solicitation No. 75N981-21-R-00001
Award Suspension Required

Dear Sir or Madam:

International Global Solution, LLC[1] ("IGS") protests the unduly restrictive and vague terms of Solicitation No. 75N981-21-R-00001 the "Chief Information Officer-Solutions and Partners 4" ("CIO-SP4") solicitation (the "Solicitation"), issued by the National Institutes of Health ("NIH") of the Department of Health and Human Services ("DHS").

I. Summary.

The Solicitation is both unduly restrictive and does not provide sufficient information for offerors to intelligently bid on supplying IT solutions and services. To the detriment of the U.S. government and the U.S. taxpayer, the restrictions and vagaries in the Solicitation will unnecessarily impede competition for the contracts under it. Although NIH has provided some responses to some questions, still others have not received any clarification, necessitating this protest to properly define just what the agency seeks in bids and to ensure that offerors can actually meet the timing requirements of the Solicitation.

The terms include certain time requirements for drafting and getting approval for Mentor/Protégé Agreements ("MPAs") that render achieving such in a timely manner impossible. Furthermore, the most recent amendment was made three days prior to the proposal due date, yet did not extend said due date, despite requesting further information from offerors and making further requirements. The Solicitation also needlessly prohibits utilizing large business subcontractors, which will result in companies being unable to use even large accounting

[1] All correspondence relating to this protest should be sent to us. But, as required by 4 C.F.R. § 21.1(c), IGS provides the following information:

International Global Solution, LLC
643 Massachusetts Ave., Suite 200
Indianapolis, Indiana 46204
317-345-9993

platforms. Furthermore, there are numerous examples of vague terms that make bidding intelligently extremely difficult at best. Taken together, GAO should recommend that NIH go back to the drawing board to correct these errors. For these reasons, and those discussed below, GAO should sustain this protest.

II. IGS is an interested party.

IGS is an interested party for purposes of filing and pursuing this protest because it is a prospective bidder under the Solicitation, but whose ability to compete for the award is hindered by the unnecessarily restrictive terms. See 4 C.F.R. § 21.0(a)(1).

III. This protest is timely.

Because proposals are due under the Solicitation no later than 12:00 p.m. Eastern on August 20, 2021, this protest is timely. See 4 C.F.R. § 21.2(a)(1).

IV. Request for protective order.

Although this is a pre-award protest, IGS believes that its resolution may involve discussions of its capabilities and intended response to the Solicitation. To protect this sensitive information, IGS therefore asks that a protective order be issued. See 4 C.F.R. § 21.4.

V. Background.

NIH issued the most recent iteration of the Solicitation on August 17, 2021. See Amendment 10. The Solicitation is under NAICS code 541512. Id. at 128. It seeks IT solutions and services related to health, biomedical, scientific, administrative, operational, managerial, and information systems requirements, in addition to general IT services requiring sound infrastructure systems. Id. at 1. It is a Government Wide Acquisition Contract ("GWAC"), under which any federal government agency may award task orders to acquire IT services. Task orders may be multi-year, multiple year, or include options. Id. at 2.

Since the initial issuance of the Solicitation, it has been amended ten times. With the first amendment, NIH also provided a form for questions from potential offerors regarding provisions of the Solicitation. See Amendment 1 J.4 Industry Question Table. In response, NIH received numerous questions, which it responded to as part of the third amendment to the Solicitation. See Amendment 3, Response to Questions and Comments. The questions relevant to this protest are as follows:

NIH answered questions regarding Section L.3.7 in Amendment 3. See Amendment 3. The table on each was separated into the section, the question, and then the answer. Question 16 for Section L asked,

16	L.3.7 Instructions for CTAs, JVs, and Mentor-Protégé Agreements	Can the subcontractor be a large business as long as the small business prime contractor performs more than 50% of the work under the contract?	Yes, under a Mentor-Protégé Agreement or a FAR 9.601-2 CTA.

See id.

Question 28 asked,

28	L.3.7 Instructions for CTAs, JVs, and Mentor-Protégé Agreements	L.3.7.1 says "the experience and abilities of prime subcontractors may be used in the offerors proposal ". Does this statement in L.3.7.1 apply to all areas of Section L that requires corporate experience support?	Yes.

See id.

Later in the question and answers, NIH stated "Section L.5.2.3 how are dollar values to be calculated for federal multiple award experiences?" Id. at 18. NIH's reply: "Dollar values are calculated for federal multiple award experiences, by combining all the awarded Task Orders' obligated dollar amounts under a single multiple award contract. These task orders cannot have terminated more than 3-years prior to the CIO-SP4 proposal close date." Id. Question 56 similarly asked how to calculate dollar values for multiple award experiences, to which the agency answered, "Dollar values are calculated for Leading Edge Technology experiences, by calculating the obligated up to the date of submission - obligated not contract ceiling, options, NTE, etc. - dollar amounts for each experience. These experiences cannot have terminated more than 3-years prior to the CIO-SP4 proposal close date." Id.

In addition to the above, Question 87 asked, "For Self-Scoring rows 8-11 the RFP states, 'For SB, 8a, WOSB, VOSB, SDVOSB, HUBZone, IEE, and ISBEE offerors, the following point values may be assigned per example.' Is an example defined as an individual task order or the entire multiple awards or IDIQ effort accumulated together (such as all task orders performed)?" Id. at 23. NIH's response: "For Self-Scoring rows 8-11 point values are assigned per example; examples are defined as all eligible awards (terminating within 3-years of the proposal close date) for the entire multiple award or IDIQ effort accumulated together (all task orders performed). Award amounts are calculated as all obligated dollars, not awarded amounts." Id. Additionally, with Amendment 3, a Self-Scoring Sheet was attached. See J.5 Self Scoring Sheet.

After a fourth amendment, NIH released a fifth amendment of the Solicitation on July 2, 2021. See Amendment 5. A cover letter for the amendment noted that "Amendment 0005 takes precedence over any inconsistency or conflicting information that was provided in the Questions & Answers that were posted for amendment 0003." Amendment 5 Cover Letter. In this amendment, it stated, regarding the self-scoring sheet: "The dollar value of the corporate experience example is the total value of the contract including options." Amendment 5, p. 153. A table in this section, Section L.5.2.1, notes that small businesses are required to propose on task areas 1 and a minimum of seven additional task areas. Id. This section is followed by Section L.5.2.2, "Row 9 Leading Edge Technology Experience" and Section L.5.2.3, "Row 10 Federal Multiple Award Experience." See id. at 155, 157.

On July 23, 2021, after 2 subsequent amendments following the fifth amendment, NIH released an eighth amended version of the Solicitation. See Amendment 8. In this amendment, language for Section L.3.7.3, "Instructions regarding FAR 9.601(2) CTAs," states as follows:

> Offerors forming CTAs as defined under FAR 9.601(2) are not required to submit any additional documentation regarding the proposed prime / subcontractor

> contractual relationship or the qualifications of the proposed subcontractors unless the offeror is seeking a small business award.
>
> Offerors that are seeking a small business award must establish a Small Business Teaming Arrangement as defined in 52.207-6(a) and submit a copy of the written agreement required per FAR provision 52.207-6(a)(1)(ii).

Id. at 147.

An additional section of the Solicitation, L.5.3.1, "Verification of an Adequate Accounting System," provides that

> offerors must have an accounting system that has been audited and determined adequate for determining costs applicable to this contract in accordance with FAR 16.301-3(a)(1). The government will accept audit reports from DCMA, DCAA, a federal civilian audit agency, or a third party certified public accounting firm…Failure to provide verification of an adequate accounting system will result in elimination from the competition.

Id. at 164.

On August 2, 2021, a ninth amendment was released by NIH for the Solicitation. See Amendment 9. This amendment stated that:

> Note: The dollar value utilized for experience in sections L.5.2.1, L.5.2.2, and L.5.2.3 is determined by the total dollars that were obligated.
>
> Experience examples can be either a collection of orders or one single order. If an experience example is a "collection of orders" placed under an IDIQ contract or BPA, the dollar value will be the sum of all orders based on the methods above being applied to each individual order. (If the maximum dollar value is achieved without submitting all the orders that have been awarded, then only submit those orders that achieve the maximum results for experience in L.5.2.1, L.5.2.2, and L.5.2.3).
>
> Subcontracts performed in support of federal prime contracts will be considered federal experience.

Id. at 156. The amendment also added the term "obligated" to the specification for calculating the corporate experience example: "the total obligated value of the contract including options." Id.

On August 17, 2021, NIH made yet another amendment to the Solicitation, Amendment 10. See Amendment 10. This amendment added the following instruction:

> Contractors receiving awards under this GWAC will be restricted to participating in only those task areas for which they provide experience deemed valid under L.5.2.1 (Corporate Experience). To receive an award, offeror must have corporate

> experience that is deemed valid for Task Area 1 plus the minimum number of task areas indicated in L.5.2.1.

Id. at 138. Furthermore, the amendment included that, for administrative information, offerors must include "[i]nformation pertaining to subcontracts that are being submitted for consideration as federal experience under section L.5.2 of the RFP." Additionally, the amendment added:

> If a subcontract is being submitted for federal experience, then the federal prime contract number must be provided in addition to the subcontract number. Contact information for the government contracting officer assigned to the prime contract must also be provided. This information shall be included in Volume I Section 1 of the offerors proposal.

Id. at 151. The amendment further edited the provisions regarding Small Business Teaming Agreements, this time making it expressly clear that offerors seeking a small business award cannot utilize large subcontractors. See id. at 143. The Amendment also added a consideration for evaluation of proposals, noting that, for "Factor 2 Subfactor 2: Resources", NIH would now also evaluate "[t]he offeror's plan of action to address situations during which the Program Manager may not be immediately available. Offerors that propose a Contractor Program Manager with a proven track record of managing programs similar to CIO-SP4 in scope and magnitude will be evaluated more favorably." Id. at 171. Additionally, price evaluation was modified to note that:

> In no event will the Government agree to an individual labor rate that is unrealistic or unreasonable. Labor rates that are significantly higher or lower than the average may be rejected as being too high or too low, and a single unreasonably high or unrealistically low maximum labor rate is sufficient to remove the rate from inclusion into any resulting contract award.

Id. at 172. The amendment further stated that "[t]he overall responsibility determination will be made on a pass/fail basis." Id. at 173. Despite Amendment 10 being released on August 17, 2021, proposal submissions remain due on August 20, 2021. See id. at 143.

This protest follows.

VI. Discussion.

Though the Government is required to seek out a broad pool of contractors to determine which can offer the most beneficial services or goods, the Solicitation is needlessly restrictive. The Solicitation limits teaming agreements between small businesses and large businesses to those with MPAs, which can take months to receive approval, but only gives offerors a couple of weeks to submit their proposal. In addition, many of the Solicitation's provisions are vague or otherwise ambiguous with regards to providing information on past work. It is extremely difficult, if not impossible, for offerors to properly calculate the value of past work they have done considering no guidance is given for what NIH wants to see in terms of such calculations, and there are additional vague terms that raise questions as to just how proposals will be evaluated. The Solicitation needs to be retracted and rewritten.

A. CIO-SP4 is unreasonably restrictive of competition.

Typically, the Competition in Contracting Act requires federal agencies to "obtain full and open competition through the use of competitive procedures" when soliciting goods and services. 41 U.S.C. § 3301(a). To best facilitate competition, GAO has long held that the terms of a solicitation may include restrictive requirements only to the extent necessary to satisfy an agency's legitimate needs. See Total Health Res., B-403209, 2010 CPD ¶ 226 (Comp. Gen. Oct. 4, 2010). Generally, the determination of the government's needs and the best method of accommodating them is primarily the responsibility of the procuring agency, since its contracting officials are most familiar with the conditions under which supplies, equipment, and services have been employed in the past and will be utilized in the future. Pitney Bowes, Inc., B-413876.2, 2017 CPD ¶ 56 (Comp. Gen. Feb. 13, 2017) (citing Columbia Imaging, Inc., B-286772.2 et al., 2001 CPD ¶ 78 (Comp. Gen. Apr. 13, 2001)).

But when a protester challenges a specification as unduly restrictive, the procuring agency has the responsibility of establishing that the specification is reasonably necessary to meet its needs. Id. (citing Smith and Nephew, Inc., B-410453, 2015 CPD ¶ 90 (Comp. Gen. Jan. 2, 2015)). When it comes to solicitation notices, "the fundamental purpose of these notices…is to enhance the possibility of competition." Info. Ventures, Inc., B-293541 (Apr. 9, 2004). GAO will determine adequacy of the agency's justification through examining whether the agency's explanation is reasonable, that is, whether it can withstand logical scrutiny. Pitney Bowes, supra. And though an agency enjoys some discretion in determining how to accommodate its needs, it must do so "in a manner designed to achieve full and open competition, and may include restrictive requirements only to the extent they are necessary to satisfy its legitimate needs." Global SuperTanker Servs., LLC, B-414987 et al., 2017 CPD ¶ 345 (Comp. Gen. Nov. 6, 2017) (citation omitted). Thus, GAO requires solicitations to be written as non-restrictive as possible and will require an agency to demonstrate, when challenged, why the restriction is necessary to meet its needs. Id.

1. The Solicitation unreasonably restricts the usage of large business subcontractors.

Agencies are required to afford offerors an adequate amount of time in which to prepare proposals. Tennier Indus., Inc., B-299624, 2007 CPD ¶ 129 (Comp. Gen. July 12, 2007). The latest iteration of the Solicitation was issued on August 17, 2021, with proposals due August 20, 2021. See Amendment 10, p. i, 138. On July 19, 2021, NIH, through the seventh amendment to CIO-SP4 introduced a specification, L.3.7.3, that, in effect, disallows small businesses seeking a small business award from using large businesses as first-tier subcontractors unless they have a MPA together. Amendment 7, p. 147. This prohibition was made express in Amendment 10 on August 17, 2021. See Amendment 10, p. 143. The specification requires that offerors seeking a small business award "must establish a Small Business Teaming Arrangement as defined in (FAR) 52.207-6(a)" if they want to use any subcontractors. Amendment 7, p. 147. Naturally, such a Small Business Teaming Arrangement can only be made between small business concerns. FAR 52.207-6. There is one exception in that regulation: where the businesses are in a mentor/protégé relationship and they have received an exception to affiliation pursuant to 13 C.F.R. § 121.103(h)(3). Id. Prior to Amendment 7, there was no specification prohibiting the use of large businesses as subcontractors in any way.

As a result of this amendment, any small business offerors that had plans to utilize large business subcontractors for small business task orders now were left with two options: find a small business subcontractor or enter a MPA with the large business. However, for some work, offerors may need to utilize the resources and abilities of larger businesses, or simply may not be able to locate a small business subcontractor by the rapidly approaching proposal deadline. This would leave the MPA option. However, proposals are due on August 20, 2021, and the Solicitation requires that the MPA be approved by SBA at the time of proposal submission. See id. But, as SBA's official website notes, the MPA approval process takes 105 days. See U.S. Small Business Administration Website, "SBA Mentor-Protégé Program" (July 29, 2021).[2] This is a problem for multiple reasons.

The FAR requires agencies to allow at least 30 days for response to a solicitation for services if the proposed contract is expected to exceed the simplified acquisition threshold. FAR 5.203(c). The simplified acquisition threshold at the time the Solicitation was issued was and is $250,000. 48 C.F.R. § 2.101. Each awarded contract alone has a ceiling value of $50 billion. Amendment 9, p. 44. The current deadline of August 20, 2021 is a mere three days from the date the most recent amendment, Amendment 10, was issued, August 17, 2021. This is in violation of FAR 5.203(c). Therefore, the Solicitation needs retracted and revised.

Even if FAR 5.203 was not violated by NIH, the Solicitation still is overly restrictive as it makes it practically impossible for an offeror to utilize a large business subcontractor. The only means by which a small business offeror can utilize a large business subcontractor for small business awards, under the terms of the Solicitation, is to form a MPA with the large business subcontractor. But the deadline for proposals isn't even one week from the date the latest amendment was issued, let alone the 105 days needed to get a MPA approved by SBA as also required by the Solicitation. Small business offerors planning on using large business subcontractors—and until recently, were fine doing so here—are now stuck between attempting to find a suitable small business subcontractor substitute by August 20, 2021 (not even accounting for time to draft, negotiate, and execute the required agreements to do so) or simply having to give up submitting an offer at all. This goes against the very point of government contract solicitations: "the fundamental purpose of these notices…is to enhance the possibility of competition." Info. Ventures, supra. As such, NIH needs to cancel and rewrite the Solicitation so as to allow small business offerors a reasonable amount of time to adjust to the recently added specifications—or at least, provide yet another amendment that resolves all of these concerns.

Furthermore, if NIH is concerned about large business subcontractors taking up the primary work under a small business contract, there are already regulations addressing such a concern to ensure NIH's needs are met. 13 C.F.R. § 125.6 prohibits subcontractors for full or partial set-aside contracts from performing more than 50% of the value of any contract for non-construction services, as well as a similar limitation for contracts for products. The prohibition on the utilization of large subcontractors is pointless and only serves to hamstring small business offerors who may have little option but to use large subcontractors considering the nature of a task order or their business contacts.

[2] *https://www.sba.gov/federal-contracting/contracting-assistance-programs/sba-mentor-protege-program*.

2. The Solicitation's ban on the usage of large business subcontractors makes compliance with accounting system requirements impossible for many small businesses.

As noted above, L.5.3.1 requires that an offeror have an audited accounting system and document it in their proposal, otherwise NIH will find its proposal ineligible for award. This requirement in and of itself is fine, however, [redacted] These systems are very efficient both in terms of their productivity and their cost. While such arrangements are indeed subcontracts, it can hardly be said these subcontracts have any actual influence on the work of any awarded contracts.

However, the Solicitation as it is written prohibits offerors from using large business subcontractors, as explained above. [redacted]. This is a difficult enough request on by itself, regardless of the timeframe, but coupled with the fact that the amendment adding this requirement, released on July 19, 2021, has a deadline of August 20, 2021, it makes bidding under the Solicitation impossible. [redacted].

3. Amendment 10 adds multiple requirements and considerations for offerors only three days out from the proposal due date but does not extend the due date.

Proposals are due on August 20, 2021, a due date that already is overly restrictive as explained above in light of the existing requirements of the Solicitation prior to the issuance of Amendment 10. Amendment 10 only adds to the problem by including multiple new provisions that materially affect what information offerors must include in their proposals. But despite the new requirements of Amendment 10, the proposal due date remains August 20, 2021. Within a mere three days, offerors are expected to adjust their proposals—and any and all additional agreements and documents required for submissions as a team—to account for new factors in terms of evaluations, which includes a new strength in the form of having a Contactor Program Manager, provide prime contract numbers for contracts they performed as subcontractors for, as well as contact information for the contracting officer for the prime contract, and other requirements.

While such changes are not a concern when offerors are given a reasonable amount of time to respond to them, no one can reasonably expect offerors to make the needed changes within three days. Acquiring the prime contract information might require contacting the prime contractor, and there is no assurance the prime contractor will respond in that time. The addition of a new strength in factor evaluation could completely change how offerors approach the Solicitation, and indeed many might have already submitted proposals. Combined with the numerous other issues with the Solicitation, it is clear at this point the NIH needs to simply cancel it and rewrite it. NIH has amended it ten times and still there are numerous issues with it. Cancellation is the most efficient thing to do at this time.

4. The Number and Volume of Amendments Discourages Bidding.

In addition, the Solicitation has now received ten separate amendments since its initial issuance on May 25, 2021, up until the most recent amendment on August 17. See generally Solicitation; Amendments 1-10. That is roughly one amendment per week. This constant changing of requirements and specifications is costly for offerors. Each proposal requires time, effort, and resources that cannot go towards other work. Each time an amendment is made, offerors must review and modify their proposals to align with the new requirements. While a few amendments are anticipated by offerors, the constant amending of the Solicitation is imposing serious difficulties on offerors. Nothing indicates the amendments are done, either. At this point, offerors are seriously considering foregoing submission of any proposals under the Solicitation as the constant amendments make it a waste of time and resources. As a result, competition is harmed by the constant amendments, resulting in an effect akin to an overly restrictive specification. NIH should retract and reissue the Solicitation after making needed changes to allow small business offerors a reasonable amount of time and the sense of confidence to properly bid on this solicitation.

B. The Solicitation cannot be intelligently bid upon as it contains terms that are crucial to understanding for submitting an acceptable proposal, but said terms are ill-defined and vague.

GAO has consistently held that solicitations "must contain sufficient information to allow offerors to compete intelligently and on an equal basis." See Gov't & Military Certification Sys., Inc., B-411261, 2015 CPD ¶ 192 (Comp. Gen. Jun. 26, 2015); Tennier Indus., Inc., B-299624, 2007 CPD ¶ 129 (Comp. Gen. Jul. 12, 2007). "Specifications should be free from ambiguity and should describe the agency's minimum needs accurately." Newport News Shipbuilding & Dry Dock Co., B-221888, 86-2 CPD ¶ 23 (Comp. Gen. July 2, 1986) (citing Klein-Seib Advertising and Public Regulations, Inc., B-200399, 81-2 C.P.D. ¶ 251 (Comp. Gen. Sept. 28, 1981).

The uncertainties described below means the Solicitation lacks the minimum information needed for offerors to bid intelligently.

1. Definition of Total Value

Amendment 9 of the Solicitation includes a specification that states: "The dollar value of the corporate experience example is the total obligated value of the contract including options. The same examples may be used for corporate experience, leading edge technology relevant experience, and federal multiple award experience." Amendment 9, p. 156. However, the phrase "total obligated value" has received no definition in the Amendment.

The aforementioned answer to Question 55 stated that "[d]ollar values are calculated for federal multiple award experiences, by combining all the awarded Task Orders' obligated dollar amounts under a single multiple award contract." However, in response to Question 56, which is basically the same as Question 55, NIH replied, "[d]ollar values are calculated for Leading Edge Technology experiences, by calculating the obligated up to the date of submission - obligated not contract ceiling, options, NTE, etc. - dollar amounts for each experience." Amendment 3, Response to Questions and Comments, p. 17. This creates confusion: the Solicitation as amended

states "[t]he dollar value utilized for experience in sections L.5.2.1, L.5.2.2, and L.5.2.3 is determined by the total dollars that were obligated." Amendment 9, p. 156. Nothing is said regarding options. But the answer to Question 56 states options are not to be included. It is not clear whether the answer to Question 56 still applies. The calculation requirements are unclear.

The matter only becomes more discombobulated when considering the answer to Question 87. That question asked, for point values, "[i]s an example defined as an individual task order or the entire multiple awards or IDIQ effort accumulated together (such as all task orders performed)?" Id. at 23. NIH responded: For Self-Scoring rows 8-11 point values are assigned per example; examples are defined as all eligible awards (terminating within 3-years of the proposal close date) for the entire multiple award or IDIQ effort accumulated together (all task orders performed). Award amounts are calculated as all obligated dollars, not awarded amounts." Id. The same questions as to how to calculate award amounts arise. Determining which contracts are proper to submit and how to calculate them is a guessing game.

The looming question for the Solicitation is "What does 'obligated' mean?" Not only for "total obligated value" but every other instance of the use of "obligated" with regards to contract values or awards. There is no definition for "obligated" in FAR 2.101. In light of how contract values can change over the course of a project, the phrase "obligated value" is amorphous. Is it the value that the government is obligated to pay at the time of award? Is it the value that the government is obligated to pay at the end of the entire project, after all the equitable adjustments and various other changes are made that are common to this type of project? The lack of definition or explanation for the term "obligated" results in another guessing game for offerors. Some offerors might submit contracts based on the original value at award; others might use the final amount they were actually paid for their contracts.

2. Amendment 5

Possibly anticipating the above concerns, NIH issued Amendment 5 on July 2, 2021. See Amendment 5. A cover letter for the amendment noted that "Amendment 0005 takes precedence over any inconsistency or conflicting information that was provided in the Questions & Answers that were posted for Amendment 0003." Amendment 5 Cover Letter. Turning to Amendment 5, the amendment addresses Section L.5.2.1, "Corporate Experience." Amendment 5, p. 153. Again, in this section, it states, "[t]he dollar value of the corporate experience example is the total value of the contract including options." Id. Of course, as mentioned above, now Amendment 9 has made that "the total obligated value of the contract including options." Amendment 9, p. 156. But, despite Amendment 9, no similar explanation is given for Leading Edge Technology experiences or federal multiple award experiences. See generally id. at 158-61 On page 156, it does state "[t]he dollar value utilized for experience in sections L.5.2.1, L.5.2.2, and L.5.2.3 is determined by the total dollars that were obligated." Id. at 156. But it is still unclear what is meant here.

Offerors are left with a myriad of questions regarding Leading Edge Technology experiences and federal multiple award experiences. Apparently for federal multiple award experiences—per the responses to Questions 55 and 87—dollar values are calculated by combining all the awarded task orders' obligated dollar amounts under a single multiple award contract, but also by combining all eligible awards for the entire multiple award accumulated together (all task orders performed) in terms of obligated dollars. It is difficult to discern what is

meant in any event. Three calculation procedures might be the one required by the Solicitation: A) Total obligated value of the multiple award task order, B) Total obligated value of all task orders awarded on the vehicle, or C) Total obligated value of task orders awarded to date? Or is the meaning something else entirely?

Likewise, for Leading Edge Technology experiences, Question 56 states dollar values are calculated by using the "obliged up to the date of submission…dollar amounts." Amendment 3, Response to Questions and Comments, p. 18. This does not speak to such experiences with task orders. Therefore, the question is whether the value is the total value of all task orders, the obliged value of task orders awarded to date, or something else. In any event, it is difficult to tell, and offerors cannot reasonably be expected to discern the distinctions, or the intended meaning as it stands.

3. Self-Scoring

NIH provided a self-scoring sheet experience template with Amendment 3. See Amendment 3, Attachment J.7 (listed on SAM.gov as J.6). While the template in and of itself is straightforward enough, no instructions are given as to whether the same experience template will cover the experience if it is submitted under multiple categories (for example, corporate experience and Leading Edge Technology experience) or if each reference to experience requires a unique, dedicated self-scoring sheet. As such, offerors are left playing a guessing game as to what NIH wants.

4. Evaluation of Proposals

Finally, Section L.5.2.1, regarding the corporate experience section of the Self-Scoring Sheet, provides that small businesses must provide examples for at least eight of the ten task areas the Solicitation will award under. Amendment 10, p. 151. The same section also provides that businesses that fall under certain socio-disadvantaged categories (8(a), WOSB, HUBZone, etc.) must only provide examples for at least five task areas. Id. at 152.

But nothing in the amendment or any other documentation provides for how the score of a small business proposing against eight task areas is normalized against another small business that proposes against all ten task areas, or how the score of a socio-disadvantage business is normalized against another business that proposes all ten. It is not clear if this presents an intended disadvantage for small businesses that don't have experience in all ten task areas, or if such differences will receive adjustments to account for the fact that even qualified offerors may not have experience in all task areas, yet still present a good opportunity for the government.

VII. Document requests.

NIH's production of "all relevant documents," see 4 C.F.R. § 21.3(d), should include but not necessarily be limited to:

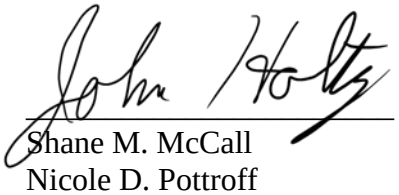
1) All documents relating to the NIH's acquisition planning related to the Solicitation; and

2) All documents and information responsive to Solicitation concerns raised in this Protest.

VIII. Conclusion and relief requested.

The Solicitation is missing information necessary for bidding and contains other terms overly restrictive to offerors. GAO should sustain this protest and recommend NIH amend the Solicitation to correct the errors and missing information. GAO should also grant IGS its attorneys' fees and costs and any other relief it deems appropriate.

Respectfully submitted,



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