



04/19/2019
Procurement Law Control Group
U.S. Government Accountability Office
441 G Street, NW
Washington, D.C. 20548
protests@gao.gov

Protest of Apparent Improprieties in a Solicitation
Violation of Small Business Jobs Act 2010 – Section 44 &
Solicitation Requirements Unduly Restrictive to Participation by Small business Concerns
Solicitation #47QTCA-19-Q-0009 for 2GIT BPA
Issued by the General Services Administration

Dear Sir or Madam:

Contains Coast to Coast Computer Products, Inc. (“CTC”), 4277 Valley Fair Street, Simi Valley, CA 93063; Ph: 805-244-9500, Fax: 805-426-3604 protest of: (a) violation of the Small Business Jobs Act of 2010 (2010SBJA) by the General Services Administration (“GSA”) in reference to GSA e-Buy posted solicitation # 47QTCA-19-Q-0009.

EPDS Submission:

This protest is being submitted via EPDS submission as allowed by the GAO Bid Protest Regulations, 4 C.F.R. Part 21.

Timely:

This protest is timely submitted before the closing date for receipt of proposals scheduled for 9:00 PM EDT on April 26, 2019.

This protest is timely filed.

FAR 33.103(c): (e) Protests based on alleged apparent improprieties in a solicitation shall be filed before bid opening or the closing date for receipt of proposals. In all other cases, protests shall be filed no later than 10 days after the basis of protest is known or should have been known, whichever is earlier. The agency, for good cause shown, or where it determines that a protest raises issues significant to the agency’s acquisition system, may consider the merits of any protest which is not timely filed.

Interested Party:

The protestor, CTC, is an interested party under the requirements of the GAO Bid Protest Regulations 4 C.F.R. § 21.0 and the Tucker Act as construed with the standing requirements of the Competition in Contracting Act (CICA, 31 USC 3551-56). Protester has been a participant in all pre-solicitation and mandatory industry days, and protestor is a potential bidder on this requirement.

The protestor has a direct economic interest in the procurement as defined in 4 C. F. R. § 21.0(a). (a)(1) *Interested party* means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. Protestor is a GSA MAS 70 small business contractor with many items listed on its MAS 70 contract under SINs that will be affected by this procurement activity.

Summary of the Solicitation:

Solicitation #47QTCA-19-Q-0009 was posted to website www.fbo.gov (“FedBizOpps”) on 03/04/2019 with a response date of 04/18/2019. A modification was issued on 03/05/2019 which



limited responses to the GSA e-Buy platform under RFQ# 1352760. On 03/06/2019 a modification was issued to incorporate a new market basket document into the solicitation package, and to update the mandatory pre-bid conference registration link. A pre-bid conference was held on 03/14/2019, and subsequently re-scheduled to 03/21/2019 due to technical difficulties experienced during the 03/14/2019 conference call and webinar presentation. A modification was issued on 03/29/2019 to incorporate a number of changes to RFQ and market basket documents, and to provide an additional Q&A document. Modification 0006 was issued on 04/04/2019, providing additional Q&A responses and extending the RFQ close date to 04/26/2019. Modification 0007 was issued on 04/09/19 containing multiple revisions to the solicitation and attachments. Modification 0008 was issued on 04/12/2019 containing multiple revisions to the solicitation and attachments. Modification 0009 was issued on 04/15/2019 to clarify which specific attachments and versions need to be included within contractor response packages. Modification 0010 was issued on 04/19/2019 to provide additional clarification to contractors regarding minimum elements for a proposal to be considered and reviewed.

The current listed close date for solicitation responses remains 04/26/2019, and the primary government point(s) of contact (“govt. POC”) for the solicitation are:

1. Michael P. Williams, Senior Contracting Officer
2. Nicole Harris, Senior Contract Specialist

The Solicitation requests proposals to establish nine multiple award type Blanket Purchase Agreements with award to be made based on a best value decision. All items proposed are subject to the Trade Agreements Act, FAR 52.225-5. The Scope of the contract is for information technology equipment and services. The solicitation was divided into five BPA Line Items (BPA-LIN’s): BPA LIN-0001 for Datacenter Server and Storage Equipment and Services, BPA LIN-0002 for End User/Desktop Equipment and Services including PC’s, printers and other peripheral devices, BPA LIN-0003 for Networking Equipment and Services, BPA LIN-0004 for Mobile Radio and Communication Equipment and Services, and BPA LIN-0005 for Order Level Materials. *(Ref: Attachment #01_2GIT RFQ 47QTCA-19-Q-0009 with Amendment 0001 thru 0010.pdf)*

Summary of CTC Protest Development Activities:

On 03/14/2019 CTC began draft of a formal protest based on internal determination that the terms of the solicitation represented a violation of the 2010SBJA. On 03/21/2019, CTC contacted the SBA Office of Advocacy for additional guidance in advance of submission of a protest. Due to the 2019 federal furlough and ongoing staffing changes at the SBA, the follow up information that the SBA was to send CTC based on our initial discussion on 03/21/2019 was not sent. CTC made a follow up call to the SBA Office of Advocacy on 03/28/2019. This call was returned on 04/01/2019 by Major Clark III, the SBA Office of Advocacy primary POC for Small business Concerns. CTC provided a detailed summary of the acquisition and its concerns surrounding violation of 2010SBJA to the SBA Office of Advocacy on 04/01/2019. *(Ref: Attachment #02.1_2019-04-01_SBAOA_Dialogue1.pdf, and Attachment #02.2_2019-04-01_SBAOA_Dialogue2.pdf)* Major Clark III confirmed receipt of materials on 04/01/2019. On 04/04/2019 CTC provided additional Q&A docs to SBA OA representative Major Clark III, and discussed any activity GSA had engaged in regarding market research. *(Ref: Attachment #03_2019-04-05_SBAOA_Dialogue.pdf)*

On 04/12/2019 CTC contacted the House Committee on Small Business to discuss the 2010SBJA and recent committee activities with regards to federal contract consolidation and bundling, and the negative effects to federal small business contractors. CTC provided phone and e-mail contact information to Max Nard. Max returned CTCs initial call on 04/12/2019, noting that the House Subcommittee on Small Business is looking into concerns surrounding bundling and consolidation, but directing CTC to address this concern with local House Representative Katie Hill. CTC submitted letter regarding this concern to House Representative Katie Hill on 04/15/2019, requesting that we be contacted to discuss the concern in additional detail. On 04/15/2019 CTC



filed FOIA request GSA-2019-000906, requesting copies of any documentation or notes in possession of GSA which relate to small business impacts or small business analysis completed in regards to solicitation 47QTCA-19-Q-0009 or GSA e-Buy RFQ 1352760, and also requesting copies of any documentation or notes provided to GSA by departments and agencies that have committed to utilizing 2GIT BPA's in preparation of the 2GIT solicitation, and that are relative to small business impacts or small business analysis.

On 04/15/2019 CTC provided additional information to Major Clark III at the SBA OA based on modifications to the solicitation, to inform them of the FOIA request that had been submitted, and to provide an update on dialogue between CTC and the House Sub-committee on Small Business. On 04/16/2019, CTC received a reply to this message confirming that an official request had been submitted to have the SBA PCR examine the concern. (*Ref: Attachment #04_2019-04-16_SBAOA_Dialogue.pdf*)

On 04/19/2019 CTC received Agency Acknowledgement of FOIA request GSA-2019-000906 with an estimated completion date of 05/17/2019. (*Attachment #05_U.S. GSA Acknowledgement Notice Letter.pdf*)

On 04/19/2019 protest was electronically filed with GAO via EPDS.

This protest is based on the following grounds:

1. There is no justification provided for limiting the procurement of IT commodity products on MAS 70 in such a way that it will make it more difficult for small businesses currently holding GSA MAS 70 contracts to compete for business, and make it more difficult for new small business IT contractors to enter the federal marketplace or gain value from the investment required to earn a MAS 70 contract under the standing solicitation.
 - a. Under 2010SBJA regulations, both Defense and Civilian Department/Agency procurement leadership is required to complete a small business impact analysis prior to implementing an acquisition strategy involving consolidation which may affect small businesses. (*Ref: Attachment #06_Excerpt2010SBJA_Section-44.pdf*)
 - i. GSA has not provided any evidence of having conducted a 2010SBJA compliant small business impact audit/analysis relative to agency or interagency utilization of potential 2GIT awards issued as a result of this solicitation.
 - ii. GSA has not shown any evidence of having evaluated alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements.
 - iii. No Defense or Civilian Department/Agency, which has committed to using 2GIT once awarded, has provided evidence of having completed a 2010SBJA compliant audit/analysis relative to their current acquisition strategy and the impact to small business resultant from a change in acquisitions strategy and policy that would mandate or encourage the use of a 2GIT BPA in preference to the use of the existing pool of MAS 70 contractors.
 - iv. No Defense or Civilian Department/Agency, which has committed to using 2GIT once awarded, has shown any evidence of having evaluated alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements at the Department/Agency level.



2. GSA's proposed consolidation under 2GIT will negatively impact a significant number of small businesses which currently provide Defense and Civilian Departments/Agencies, as well as State, Local, and Tribal governments, with information technology equipment and services under GSA MAS 70 SINs 132-8, 132-100, 132-12, 132-33, and 132-34, as well as small businesses who provide information technology supplies currently through their MSA MAS 75 contracts under SIN 75-200.
 - a. GSA MAS 70 and MAS 75 provide all Defense and Civilian Departments/Agencies with access to precompeted pricing for TAA compliant information technology equipment, services, and supplies.
 - b. GSA e-library lists 724 contractors as small businesses under MAS 70. 161 of these small businesses are woman owned, 59 of these small businesses are service disabled veteran owned, 191 of these small businesses are certified as disadvantaged, and 46 of these small businesses are certified HUB Zone contractors. All of these small business contractors stand to be negatively impacted by a consolidation acquisitions strategy designed to limit future competitions for information technology equipment and services, commonly competed on GSA MAS 70 under SINs 132-8, 132-12, 132-33, 132-34, 132-100 to a specific subset of GSA MAS 70 contract holders through the 2GIT BPA's.
 - c. GSA e-library lists 232 contractors as small businesses under MAS 75. 75 of these small businesses are woman owned, 21 of these small businesses are service disabled veteran owned, 32 of these small businesses are certified as disadvantaged, and 15 of these small businesses are certified HUB Zone contractors. Many of these small business contractors stand to be negatively impacted by a consolidation acquisitions strategy designed to limit future competitions for information technology supplies commonly competed on GSA MAS 75 under SINs 75-200 to a specific subset of GSA MAS 70 contract holders through the 2GIT BPA's.
 - i. In 2011 there were greater than 800 small business contractors on MAS 75 under SIN 75 200. The contractor database was decimated between 2011 and 2016 by a GSA commodity management program named the federal strategic sourcing initiative which is very similar to 2GIT in structure.
 - d. GSA e-Buy is an online tool which provides all Defense and Civilian Departments/Agencies with access to easily solicit all MAS 70 and MAS 75 contract holders for additional discounts from GSA MAS contract prices in order to satisfy requirements for TAA compliant information technology equipment, services, and supplies.
 - e. GSA intends to advise government customers to limit competitions on e-Buy for RFQ's under SIN 132-8 and 132-12 and to seek responses only from 2GIT BPA holders. These requirements would otherwise be open for competition amongst all small businesses with an active GSA MAS 70 contract under SIN 132-8 and 132-12, and 132-33, and 132-34.
 - f. GSA is actively soliciting Defense and Civilian Departments/Agencies to mandate use of the 2GIT BPA's in advance of awards being issued.
 - g. GSA intends to market 2GIT for use by State, Local, and Tribal governments through cooperative purchasing, in direct competition to the cooperative purchasing program available through the standard MAS 70 and MAS 75 contracts.



3. This contract is not a direct follow on to any existing contract vehicle.
 - a. 2GIT is a new bundling program designed to obtain offers for a multiple award contract to satisfy hundreds of requirements of multiple Federal agencies for goods and services that have been provided or performed for multiple Federal agencies under hundreds of separate contracts lower in cost than the total cost of the contract for which the offers are solicited, and this consolidation must adhere to regulations outlined in the SBJA2010 under section 44.
4. The terms and conditions of the solicitation are unduly restrictive to small business concerns.
 - a. 2GIT is not set-aside for small business, and the go/no-go decision will be based on a tabulation of points scored across three categories. The 200 point preference allotted to small business teams and small business concerns, or 100 point preference allotted to teams consisting of a combination of large business and small business concerns that are composed of greater than 40% small business concerns, under the socio-economic category does not compare to the disadvantage to small business concerns and small business teams inherent to solicitation Attachment B - Breadth of OEMs Self Scoring Assessment - V2.
 - i. Under Attachment B - Breadth of OEMs Self Scoring Assessment - V2 it becomes apparent that two large business concerns, Promark and Immix Group, who are the sole letter of supply holders for a significant subset of OEM's listed within the attachment, control 1820 points of the available score between them. Immix alone controls 1540 points of the available points for this section of the response. *(Ref: Attachment #07_GSA Schedule holders with Exclusive MFG.pdf, & Attachment #08_Attachment B - Breadth of OEMs Self Scoring Assessment - V2.xlsx)*
 1. Promark and Immix Group have both limited the number of business partners they will support for this response.
 2. If a small business concern does not have a teaming agreement with both Promark and Immix Group, it will be impossible for them to score competitively against the limited subset of contractors who are receiving support from these two large business concerns.
 - b. All of the items requested under the proposed BPA-LINs listed within the solicitation are regularly provided by a significant number of small business concerns through GSA MAS 70 contracts under SINs 132-8, 132-100, 132-12, 132-33, and 132-34.
 - c. Items that will fall within the BPA-LINs, but that are not contained in the solicitation market basket, are regularly provided by a significant number of small business concerns through GSA MAS 70 contracts under SINs 132-8, 132-100, 132-12, 132-33, and 132-34.
 - d. No small business concern can provide all of the items in the market basket for all proposed BPA-LINs.
 - i. All small businesses concerns will have to team with multiple large business concerns in order to submit a competitive response.



1. If a small business concern teams with a large business concern, the small business concerns offer will be evaluated as an offer from a large business concern unless the team is composed of greater than 40% small business concerns, and unless the small business concern will perform 40% or greater of the activities under a potential award.
- e. Many small businesses regularly provide some of the items requested under each individual proposed BPA-LIN contained within the market basket.
 - f. Large business concerns exist that can provide many more of the items in the market basket with a direct letter of supply than any existing small business concern or small business team.
 - i. Based on the self-scoring assessment tools provided by GSA, large business concerns that have a larger product portfolio of direct letters of supply, or a number of divisions dedicated to communications projects, datacenter and network infrastructure projects, and office equipment and supply projects, will have a significant advantage over small business concerns and small business teams who will be forced to engage in a number of certified teaming arrangements in order to submit a complete response.
 - g. The solicitation contains a requirement that awardees, and all teaming members under any award, obtain formal ISO 9001:2015 certification within 10 months of award, without any commitment of revenue volumes.
 - i. Obtaining this ISO certification within 10 months will require the use of third party consultant, and significant investment in third party auditing services.
 1. ISO 9001 cost estimates for a company with 25 or fewer employees and working out of a single office range between \$15000.00 - \$20,000.00, and costs increase significantly as the number of employee's increases.
(Ref: Attachment #09_ISO Cost Estimates.pdf)
 - ii. The ISO 9001 certification process affects an entire organization's standard practices for both commercial and federal sales and order management. For small business value added resellers, a documented formal quality management system should only be required for activities specifically related to performance under an award against this solicitation, and the award of a BPA against this solicitation should not require a company to alter its commercial sales or order management practices in order to meet formal ISO 9001:2015 requirements across the organization.
 - iii. This solicitation gives preference to quoters who currently hold an ISO 9001:2015 certification, with no preference given to quoters who provide a federal order management narrative detailing an internal quality management system that is similar to or based on ISO 9001 standards.
 - iv. The solicitation, by default requires that all awardees, and all teaming members under any award, also obtain ISO 2001:9018 certification by 2021, without any commitment of revenue volumes.
 1. ISO certifications expire every three years, and must be renewed.



2. ISO requires adherence to a new standard within three years of a formal change to a previous standard.
 - a. ISO 9001:2018 will fall within the performance period of BPA option year two.
- v. CTC can find no prior example of GSA or any other agency requiring a formal ISO 9001 certification from small business concerns within a solicitation run on GSA MAS 70 under SIN 132-8, 132-12, 132-100, 132-33, or 132-34.

Hearing Requested:

CTC reserves the right to request a hearing under 4 C.F.R. § 21.7 in the event the proceedings, including submission of the Agency Report and documents, raise issues that might best be resolved by a hearing.

Request for Ruling by GAO:

Per 4 CFR §21.1(c)(7), CTC requests a GAO determination of whether the agency's evaluation was reasonable and consistent with the requirements of the 2015BJA¹, CTC requests that the GAO issue a ruling sustaining this protest, and CTC requests a ruling by the GAO on the actions to be performed as redress, as follows:

1. Require the GSA to extend the close of solicitation 47QTCA-19-Q-0009 until at least 30 days beyond delivery of all materials requested under FOIA tracking number GSA-2019-000906 to the requestor, or until such time as GAO has completed its evaluation of this protest and issued an opinion, or until such time as the agency has taken corrective action to address all concerns contained within this protest.
2. Implement a stay on solicitation 47QTCA-19-Q-0009 and any related proposal evaluation or award processes until such time as GAO has completed an evaluation of the grounds of this protest, including documentation produced under FOIA tracking number GSA-2019-000906, and has issued an opinion if agency corrective action has not already been taken to address all concerns contained within this protest.
3. Request guidance from the SBA PCR surrounding minimum required steps, relative to Department/Agency mandated or encouraged use of potential BPAs issued against solicitation 47QTCA-19-Q-0009, for a federal Department/Agency to complete a small business impact audit/analysis and complete all necessary market research to comply with 2015BJA intent and requirements under the codified regulation.
4. Submit an inquiry to the SBA PCR, requesting an opinion on whether documentation obtained under FOIA tracking number GSA-2019-000906 is evidence of GSA having completed minimum market research requirements to move forward with this consolidation and acquisition plan without alteration.
5. Require GSA and any Federal Department/Agency to follow SBA guidance relative to small business market research processes, and adhere to federal acquisition regulation surrounding limitations on the use of acquisitions strategies involving consolidation contained within the 2015BJA, prior to use of any BPA's issued as a result of the 2GIT acquisition process.
6. Implement such other recommendations as the GAO determines to be fair and proper,



7. and CTC requests a ruling that it is entitled to an award of protest costs, including potential attorneys' fees, 4 C.F.R. 21.8(d).
(*Ref: Attachment #10_CTCScheduleofProtestDevelopmentcostsV.1.pdf*)

Copy to Contracting Officer:

A complete copy of the foregoing Bid Protest, including all attachments, will be furnished to the posted primary point(s) of contact at the time of the contract award: Michael P. Williams, Senior Contracting Officer, and Nicole Harris Senior Contract Specialist, GSA Schedule 70/4QTCICA, 77 Forsyth St SW Atlanta, GA 30303, it70acquisitions@gsa.gov

Conclusion:

CTC requests that the GAO sustain this protest on behalf of protestor, and against the actions of the Government.

Dated Friday, April 19th, 2019.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Rick Vogel", is written over a horizontal line.

Rick Vogel
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Endnotes:

ⁱ TRS Research, B-290644 (2002)