

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ACCELGOV,)	
<i>et al.,</i>)	
)	
Plaintiff,)	No. 23-1079
)	(Judge Schwartz)
v.)	
)	
THE UNITED STATES,)	
<i>et al.</i>)	
Defendant.)	

DEFENDANT’S NOTICE OF CORRECTIVE ACTION

Defendant, the United States, respectfully provides notice that the Defense Health Agency (DHA) intends to take corrective action in this case. The Defense Health Agency intends to reconsider its decision to proceed without conducting discussions, establish a competitive range and conduct discussions; evaluate proposal changes; and then make awards to each and all qualifying offerors pursuant to the solicitation. Undersigned counsel has informed each plaintiff’s counsel in these consolidated cases of DHA’s corrective action. To that end, DHA has provided its draft notice of corrective action in the attached exhibit (Exhibit A). In it, DHA indicates that all of the plaintiffs in this case will be included in the competitive range and that DHA intends to commence discussions under FAR 15.306(d)-(e).¹

We await each counsel’s response on whether plaintiffs will file a voluntary motion to dismiss its complaint in light of this corrective action. Plaintiffs’ counsel have the opportunity to share the United States’ decision with each of their clients. If the plaintiffs do not voluntarily file such a motion, the Government will file a motion to dismiss these protests for lack of subject matter jurisdiction due to mootness.

¹ To the extent that the attached notice reveals that the DHA does not intend to include two offerors within the competitive range, these two offerors are not parties to this case, or any other directly related case filed with the Court. The basis of these two offerors status as non-qualifying was explained within the debriefing materials, and the plaintiffs and defendant-intervenors have been made aware.

Additionally, DHA has indicated that in anticipation of the dismissals, and therefore, the resulting dissolution of the voluntary stay, DHA has agreed to not request task order proposals under this contract, not award any task orders, and not conduct a post-award conference until additional qualifying offeror determinations and awards are made.

Accordingly, the United States respectfully requests that the scheduling order in this matter be stayed in light of the notice of corrective action.

Respectfully submitted,

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Director

s/ Deborah A. Bynum
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August 11, 2023



DEFENSE HEALTH AGENCY
 CONTRACTING OPERATIONS BRANCH - SAN ANTONIO
 4130 STANLEY ROAD, SUITE 208
 JOINT BASE SAN ANTONIO, FORT SAM HOUSTON, TEXAS 78234

August 14, 2023

Sent by Email:

[Offeror's Point of Contact (Offeror's or Point of Contact's Email Address)]
 [Offeror's Name]
 [Offeror's Address Line 1]
 [Offeror's Address Line 2]
 [(Additional Points of Contact's Email Addresses, if applicable)]

Re: Notice of Corrective Action and Inclusion Within Competitive Range
 Offeror [XX], [Offeror's Name]
 Pursuant to Request for Proposal No. HT001522R0030

Dear [Requester's Point of Contact],

I am writing to inform you that the Defense Health Agency (DHA or Agency) has decided to take corrective action in the Military Health System (MHS) Enterprise Information Technology Systems (EITS) Geographic Service Provider (GSP) acquisition, Request for Proposal (RFP) No. HT001522R0030 (GSP RFP). You were informed in your July 3, 2023 Postaward Notification to Unsuccessful Offeror that the Agency had received 39 proposals in response to the GSP RFP, of which the Agency had found only six to be **Qualifying Offerors** pursuant to FAR 2.101(b) and 15.304(c)(1)(ii) and Section 2.4 of the FAR 52.212-2 Addendum. If you received a debriefing, you were also informed that two of the remaining offerors shared a common subcontractor in direct violation of the strict cross-teaming prohibition in Section 1.0 of the FAR 52.212-1 Addendum and, in accordance with the terms of the solicitation, those two proposals were rejected without further evaluation and will receive no further consideration for award. The remaining 31 offerors, including you, were found to be *non-qualifying* offerors.

If you received a debriefing, you were further informed of the Agency's determination that awarding without discussions was in the Agency's best interests because enough **Qualifying Offerors** had been found to satisfy the GSP Program's minimum needs and the Agency had no reasonable expectation that improving 31 technically unacceptable offers through discussions would improve their expected value to the Government. Following award, several protests were filed at the U.S. Government Accountability Office and at the U.S. Court of Federal Claims, including several challenges to the reasonableness of the Agency's determination.

After careful consideration of the specific protest grounds alleged and the procurement record, the Agency has decided to take corrective action. Specifically, the Agency has reconsidered its decision to proceed without conducting discussions and, in accordance with FAR 15.306(c), has established a competitive range consisting of all 31 *non-qualifying* offerors whose initial proposal submissions were found to be Technically Unacceptable. The Agency will conduct discussions in accordance with FAR 15.306(d)-(e), evaluate proposal changes, and then make awards to each and all "qualifying offerors" pursuant to the solicitation. Although the Agency does not intend to cancel any of the six contracts already awarded, no task order

proposals or task orders will be issued to any awardee, and no post-award conferences will be conducted, until all “qualifying offerors” have been determined and all additional contracts have been awarded. The Agency may also take any other corrective action that it deems appropriate.

CONGRATULATIONS!

YOUR PROPOSAL HAS BEEN SELECTED FOR INCLUSION IN THE COMPETITIVE RANGE.

In accordance with FAR 15.306(c) and 10 U.S.C. section 3206(c)(3)-(4), FAR 2.101(b), FAR 15.304(c)(1)(ii), and section 2.4 of the solicitation’s FAR 52.212-2 Addendum, your proposal is one of 31 proposals selected for inclusion in the competitive range. You will be provided with an opportunity to participate in *discussions*, which are exchanges between the Government and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. Discussions will be tailored to each offeror’s proposal and will be conducted with each of the 31 offerors within the competitive range. At a minimum, any deficiencies found in your initial proposal submission will be identified. At the conclusion of discussions, offerors will be given an opportunity to submit a final proposal revision in accordance with FAR 15.307. Further instructions will follow. The Agency currently intends to open discussions on **August 25**, 2023.

Thank you for your continued participation in the MHS EITS GSP acquisition, and **congratulations on your selection for inclusion in the competitive range**. If you have any questions, I am reachable by email at (stephani.n.preusser.civ@health.mil). Please confirm your receipt of notice of corrective action and inclusion in the competitive range by response email.

Very Respectfully,

Stephani N. Preusser
DHA EMS-CD Contracting Officer