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888 17th Street NW, 11th Floor
Washington, DC 20006
www.pilieromazza.com
Telephone: (202) 857-1000
Secure Fax: (202) 857-7836

July 2, 2021

VIA EPDS
Office of the General Counsel
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548
Attn: Procurement Law Group

Re: Protest of Mahani Technical Services LLC
Department of Health and Human Services, National Institutes of Health Acquisition and Assessment Center
Request for Proposal No. 75N98121R00001

Dear Sir or Madam:

Mahani Technical Services LLC ("Mahani"), by and through its undersigned counsel, pursuant to 4 C.F.R. Part 21, protests the terms and improprieties related to Request for Proposal No. 75N98121R00001 (the "RFP"), issued by the National Institutes of Health Acquisition and Assessment Center's ("NITAAC" or "Agency"). **This protest is filed prior to the time set for receipt of initial proposals, which is Thursday, July 8, 2021 at 2:00 p.m. Eastern Standard Time. Therefore, this protest is timely pursuant to 4 C.F.R. § 21.2(a)(1), and the Agency is required to implement an automatic stay under 31 U.S.C. § 3553, the Competition in Contracting Act ("CICA"), and suspend award under the RFP.**

As discussed thoroughly below, the RFP is contrary to U.S. Small Business Administration ("SBA") regulations, ambiguous and unduly restricts competition, particularly amongst mentor-protégé arrangements, in a manner that does not serve a legitimate Government need. Further, the Agency has failed to provide offerors with sufficient time to respond to the RFP given the substantive amendments made to the RFP since its released and the terms of the RFP are unduly restrictive of competition.

After the draft RFP was issued in March 2020 and the pre-solicitation notice issued on February 27, 2021, the RFP was finally issued on May 25, 2021. Since the RFP was formally issued, it has been amended four times – Amendment 1 was issued on May 26, 2021, Amendment 2 was issued on June 4, 2021, Amendment 3 was issued on June 22, 2021, and, most recently,

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Amendment 4 was issued on June 24, 2021. Amendments 3 and 4, issued nearly one month after the RFP was originally released, substantially amended the terms and requirements under the RFP and were a significant shift from the evaluation criteria contemplated in the original RFP. Yet, the Agency only extended the due date for proposals from June 28, 2021 to July 8, 2021, a mere 10 days, including a weekend and the Independence Day holiday.

Critically, the terms of the amended RFP are ambiguous, contrary to SBA's regulations and unduly restrictive of competition because it restricts past experience examples submitted by a large business mentor to one example for each task area for corporate experience and one example for each of the leading edge technology experience, federal multiple award experience, and projects that directly supported HBCUs in accordance with Executive Order 13779 (hereinafter collectively "experience examples"). Such restrictions apply only to one type of offeror – large business mentor-protégé arrangements – and is disparate and unduly restrictive of competition. It is also unclear that NITAAC will consider a FAR 9.601(1) Contractor Team Arrangement ("CTA") – otherwise known as a joint venture – as a HUBZone, VOSB, SDVOSB, WOSB, or 8(a) CTA where one member of the CTA is the team lead's SBA-approved mentor. To the extent NITAAC will not recognize a joint venture between a protégé and its SBA-approved mentor as a HUBZone, VOSB, SDVOSB, WOSB, or 8(a) CTA (also known as a joint venture), this is contrary to SBA's regulations and must be clarified. Lastly, the RFP contains a number of errors and misstatements that require clarification.

Mahani therefore, respectfully requests that GAO sustain this protest and grant the relief requested herein.

REQUIRED INFORMATION

PROTESTER CONTACT INFORMATION: Mahani is a mentor-protégé joint venture between Puyenpa Services LLC, a tribally-owned entity and small business and certified participant in SBA's 8(a) business development and HUBZone programs, and its SBA-approved mentor and large business, Serco Inc. Mahani's address is 511 Duckwater Falls Road, Duckwater, NV 89314 and telephone number is (703) 269-8190.

AGENCY AND SOLICITATION: The contracting agency is the NITAAC. On May 25, 2021, NITAAC issued the RFP, seeking to award information technology ("IT") solutions and services indefinite-delivery/indefinite-quantity ("IDIQ") contracts under the Chief Information Officer – Solutions and Partners ("CIO-SP4") Government Wide Acquisition Contract.

TIMELINESS: This protest is timely because it is filed prior to the time set for receipt of initial proposals, in accordance with 4 C.F.R. § 21.2(a)(1). Therefore, the Agency is required to

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implement an automatic stay under CICA and suspend award of any contract under the Solicitation.

INTERESTED PARTY: Mahani is an interested party because it is a prospective offeror under the RFP and will timely submit a proposal in response to the amended RFP; as such, it is a prospective offeror whose direct economic interest is affected by the Agency's unlawful and unduly restrictive terms in the RFP and, but for the Agency's errors, there is a substantial chance Mahani will be eligible for award.

RULING SOUGHT: Mahani requests a ruling by the Comptroller General of the United States that the Agency's restrictions to the experience examples submitted by, and disparate treatment of, large businesses mentors is unreasonable and violates CICA and that the Agency is required to recognize mentor-protégé joint ventures across the socioeconomic categories. Further, Mahani requests a ruling that the Agency failed to provide sufficient time to respond based on substantive changes to the RFP and that the RFP be clarified to remove ambiguities and incorrect attachment references.

RELIEF SOUGHT: Mahani requests the Comptroller General of the United States recommend that the Agency: (i) amend the RFP to revise the unduly restrictive requirements and ambiguous terms noted above; (ii) extend the proposal deadline, allowing offerors adequate time to respond to the RFP given the recent substantial revisions;[1] (iii) award Mahani its costs and expenses, including legal fees, incurred in the preparation and pursuit of this protest; and (iv) any such other recommendations as deemed necessary and proper under 4 C.F.R. § 21.8.

JURISDICTION: GAO has jurisdiction over this protest, which alleges a violation of a procurement statute or regulation by a federal agency. See 31 U.S.C. §§ 3551–3556; see also 48 C.F.R. § 33.104. GAO's regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. §§ 21.1(c)(4), (f). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. CACI Techs., Inc., B-408858.2, at 4 (Dec. 5, 2013). This protest meets those standards.

COPY OF PROTEST TO CONTRACTING OFFICER: In accordance with 4 C.F.R. 21.1(e), Mahani will serve a complete copy of this protest, including all attachments, within one (1) day of its filing at GAO on the Contracting Officer by email:

[1] Indeed, in MCR Federal, LLC, B-416654.2, B-416654.3 (Dec. 18, 2018), GAO sustained a protest challenging the length of time an agency provided offerors to submit a final proposal revision in order to permit offerors a fair opportunity to be considered for award.

[redacted]

Ms. Rose Schultz, Procuring Contracting Officer
National Institutes of Health
Information Technology Acquisition and Assessment Center (NITAAC)
6011 Executive Blvd, Suite 503
Rockville, MD 20852
CIOSP4.NITAAC@nih.gov

LEGAL AND FACTUAL GROUNDS FOR PROTEST, INCLUDING PREJUDICE TO PROTESTER

I. FACTS

A. The RFP

On February 27, 2021, the Agency issued a pre-solicitation notice advising contractors that it intended to issue the solicitation for the CIO-SP4 successor contract on or about March 16, 2021. After several extensions of the initial anticipated release date, the Agency issued the long-awaited RFP on May 25, 2021, seeking to award IDIQ contracts for IT solutions and services including, among other things, IT solutions and services "related to health, biomedical, scientific, administrative, operational, managerial, and information systems requirements[,]" and "general IT services because medical systems are increasingly integrated within a broader IT architecture[,]" which may "require sound infrastructure systems approaches to their implementation and operation." RFP at A.1[2]. The RFP was issued as a negotiated RFP and contemplates awards amongst multiple designations, such as small business, 8(a), women-owned small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, Indian economic enterprise, Indian small business economic enterprise, emerging large business, and other than small business. Id. at L.2.

The Agency's goal under the contracts contemplated by the RFP is "to provide government agencies a mechanism for quick ordering of IT solutions and services at fair and reasonable prices, to give qualified small businesses a greater opportunity to participate in these requirements, and give government agencies a mechanism to help meet their socio-economic contracting goals." Id. at A.1.

The period of performance under the RFP is a five-year base period (May 2022 to May 2027) with a five-year optional period of performance (May 2027 to May 2031). Id. at F.2.

[2] Unless otherwise noted, all RFP references herein are to Amendment 4, the most recent version of the RFP, issued on June 24, 2021.

[redacted]

Of relevance to this protest, the RFP states that the Government will "accept offers from the two types of CTAs as defined in FAR 9.601." L.3.7.1. Notably, a FAR 9.601(1) CTA is defined as "Two or more companies from a partnership or joint venture to act as a potential prime contractor." The RFP explains that this "type of CTA will receive one contract award (for all members of the CTA)." L.3.7.1. For clarity, a FAR 9.601(1) CTA is a joint venture, which can take the form of a partnership or other separate legal entity. The other type of CTA, a FAR 9.601(2) CTA, is merely a prime/subcontractor relationship and is defined as a "potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified government contract or acquisition program."

B. The RFP Amendments

To-date, the RFP has been amended four times. On May 26, 2021, Amendment 1 was issued to clarify the due date for questions was June 1, 2021 at 12:00pm EST, a mere seven days after issuance and the first business day after the Memorial Day holiday weekend. Amendment 1 also removed comments that had been left in the final PDF once the RFP was released. On June 4, 2021, Amendment 2, which amended the language contained in Section L.5.2 – purportedly to try to clarify further – was issued.

While the Agency did not extend the timeline for prospective offerors to submit questions,[3] it failed to adhere to its own deadline to respond to questions, which it set as close of business June 11, 2021. In any event, and on June 22, 2021, the Agency issue Amendment 3, responding only to some of the "large amount of questions [] received" and substantively changing the terms of Sections L and M of the RFP, to the detriment of many offerors, including Mahani. As is relevant here, the requirements and amendments contained in Section L, as amended though Amendment 3, are as follows:

> **L.5.2.1 Row 8 Corporate Experience:**
>
> For each task area the offeror is proposing, the offeror must provide corporate experience examples relevant to those task areas. Offerors must provide a minimum of three corporate experience examples. Up to 30 examples may be provided, with no more than three examples per task area.
>
> * * *

[3] The Agency has noted on sam.gov that the "question and answer period for this solicitation has passed and NITAAC does not intend to open another question and answer period."

[redacted]

> The examples may come from members of an offeror's CTA / JV, and/or Mentor-Protégé as identified in section L.3.7. If provided, work done by each partner or member of the contractor teaming arrangement will be considered. **However, for mentor-protégé arrangements, large business is limited to one example for each task area.**

Amend. 3 at L.5.2.1 (emphasis added). Identical language and limitation is found in Sections L.5.2.2, L.5.2.3, and L.5.2.4.

Further, in a complete 180 degree shift from the original RFP, the RFP was amended to state the "Government will not consider the members of a 'Contract Team Arrangement' defined under FAR 9.601(2) for evaluation purposes for the contract except in the limited context of evaluating an Offeror's proposal under paragraph L.5.6.2, Resources." Id. at M.1.1 (emphasis added). Similar language regarding consideration of a subcontractor under past performance was also struck. Id. at M.4.3. And, Section L.3.7.1 in Amendment 3 stated that while offerors were permitted to enter into prime/subcontractor arrangements pursuant to FAR 9.601(2), "in this type of arrangement, only the prime will be considered in the evaluation for award of the GWAC except as specified under M.4.3 Contract Team Arrangements (CTAs)."

In spite of these significant revisions, the due date for proposals was only extended a mere 10 days, including a weekend and the Independence Day holiday, from June 28, 2021 at noon EST to July 8, 2021 at 2:00 p.m. EST. Id. at L.3.1.

The next day, NITAAC again shifted gears and issued a letter to potential offerors explaining that, among other items, "[i]t is not NITAACs intent to remove the ability of offerors to utilize first tier subcontractors that are part of a CTA as defined in FAR 9.601." Accordingly, an amendment would be forthcoming to "remove anything that contradicts this intent in the solicitation."

Consistent with the June 23 letter, on June 24, 2021, the Agency issued Amendment 4, to "address the concerns pertaining to Contractor Team Arrangements (CTA)." Yet, Amendment 4 did not remove all unduly restrictive terms in Amendment 3 or the ambiguous and unlawful terms. We recognize and appreciate that Amendment 4 removed the restriction on consideration of the experience and qualifications of a subcontractor – a FAR 9.601(2) CTA member – yet it did not go far enough and is contrary to SBA's regulations and intent. Specifically, the Agency continues to disparately treat large business mentor-protégé arrangements by unduly restricting the number of experience examples these offerors are permitted to submit.

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C. Proposal and Award Criteria

Proposals are to be comprised of six (6) volumes and organized as follows:

Volume	Phase	Title
I	I	Section 1 – Administrative Information Section 2 – Self-scoring Sheet Section 3 – Self-scoring Sheet Documentation
II – Go / No-Go Requirements	II	Section 1 – Go / No-Go Requirements • Verification of adequate accounting system • SF 1407 (REV 1/2014) • Small business subcontracting plan (OTSBs and ELBs only) Section 2 – Completed Reps and Certs from Section K • 52.204-8, • 52.204-24, • 52.209-7, • 52.209-12, • 52.209-13, • 52.219-1, • 52.225-18, and • 52.229-11. In addition to the above, OTSBs and ELBs must complete the following representations and certifications. • 52.230-1and • 52.230-7.
III – Health IT Capability	III	Health IT
IV – Management Approach	III	Subfactor 1 – Program Management Subfactor 2 – Resources (Resumes shall be submitted in a separate file. Resume file has no page limit) Subfactor 3 – Corporate Commitment
V – Past Performance	III	Section 1 – Past Performance References Section 2 – Past Performance Narratives

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Volume	Phase	Title
		Section 3 – Responses to any unacceptable ratings for CPARS (if applicable)
VI – Price	III	Section 1 – Pricing Tables (completed tables 2 and 3)

Id. at L.5.

Proposals are to be evaluated in three phases: Phase 1: self-scoring sheet; Phase 2: go / no-go requirements; and Phase 3: written proposal. Id. at M.1. For Phase 1 Self-Scoring Sheet, offerors are to complete column E for each of the RFP proposal requirements contained its proposal and total the amount of points the offeror received therefrom. Id. at L.5.2. The Agency would then use the score received in phase I "to determine if an offeror would advance to phase II or [if] it was eliminated from competition." Id. Clearly, the more points an offeror is able to claim and the Agency validates, the more likely such offeror will move on the Phase 2. As is relevant here, large business mentor-protégé arrangements are not permitted to submit the same number of experience examples as other non-mentor CTA partners.

Award will be made using selection methodology to "offerors whose proposals represent the best value to the government at fair and reasonable prices." Id.

This protest follows.

II. GROUNDS FOR PROTEST

A. The Experience Examples Requirements are Unduly Restrictive Against Mentor-Protégé Arrangements and Unreasonably Limit Competition

As explained in more detail below, the RFP is unduly restrictive of competition, particularly among mentor-protégé arrangements. GAO has long held that, "[u]nder [the Competition in Contracting Act] an agency is required to specify its needs and solicit offers in a manner designed to achieve full and open competition, so that all responsible sources are permitted to compete." Navajo Nation Oil & Gas Co., B-261329 (Sept. 14, 1995) (citing 10 U.S.C. § 2305(a)(1)). For this reason, an agency "may include restrictive requirements only to the extent necessary to satisfy the agency's legitimate needs." Total Health Resources, B-403209 (Oct. 4, 2010). When a solicitation provision is challenged as restrictive, "the procuring agency must provide support for the belief that the challenged provision is necessary to satisfy its needs."

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Navajo Nation, supra. The agency's explanation must be "reasonable," and able to "withstand logical scrutiny." Id.

In its current form, the RFP fails to meet these standards because it includes unduly restrictive requirements for the experience examples. Not only does the RFP disparate treat mentor-protégé arrangements, but it also unreasonably and unduly restricts how much consideration the Agency will give to a mentor's experience examples, which is contrary to SBA's regulations and policy. NITAAC must remove or alter these unduly restrictive terms, which are unreasonable, unnecessary for successful performance, and hinder full and open competition.

1. The RFP is Only Restrictive Against Mentor-Protégé Arrangements

The RFP's treatment of mentor-protégé arrangements is unduly restrictive and must be removed or, at minimum, revised. Failure to remove or revise these restrictive terms, which serve no legitimate agency need, will dampen competition and limit the Agency's ability to obtain the best value. See Navajo Nation, supra.

As noted above, for sections L.5.2.1, L.5.2.2, L.5.2.3, and L.5.2.4, the RFP limits the number of examples that may be submitted for "mentor-protégé arrangements" and further limits this to the "large business" mentor. Critically, there is no similar limitation on offerors who are not submitting as part of a mentor-protégé arrangement or where the mentor happens to be a small business. As a result, the RFP unreasonably and impermissibly limits the consideration of a large business mentor's experience to one example, where no such limitation exists for other offerors who are involved in any other form of CTA under FAR 9.601 (whether that be a joint venture or a prime/subcontractor relationship). This is unduly restrictive and serves no legitimate need as it meets the literal definition of an arbitrary requirement.

It is also arbitrary and without any legitimate basis to limit the examples of a large business mentor, when such relationship has necessarily been reviewed and blessed by SBA, but then provide no such limitation where the mentor is either a small business or where the CTA member is not the offeror's mentor or joint venture managing member's mentor. Stated another way, the RFP limits consideration of a mentor's experience to one example, but places no limitation on consideration of examples from a subcontractor or other CTA member – large or small. The result is such that an offeror may use multiple examples from its subcontractor(s) or joint venture partner(s), but is inexplicably limited to one example for a large business mentor.

Simply stated, the Agency will not be able to explain why it has limited the experience examples from a large business mentor to one, but not for other arrangements. In order to correct this and to promote competition, GAO should direct the Agency to remove the limitation on the

number of examples that may be submitted for large business mentors so that this arrangement is treated on equal footing as all other CTA types.[4]

2. The RFP Should Permit Consideration of Additional Mentor Examples

As detailed above, the RFP has not applied the limitation of one example from a large business mentor uniformly across the RFP and types of offerors, particularly those with large business subcontractors or small business mentors. While we recognize that an agency may arguably limit the number of examples provided by a large business mentor, there is no reason that of the maximum of three examples per experience section, that this limit should not be increased to at least two or not limited as in the case of a small business mentor, rather than one example.

At the outset, SBA's regulations regarding joint ventures require agencies to consider the work done and qualifications held individually by each partner to the joint venture – whether involved in a mentor-protégé arrangement or not. See e.g., 13 C.F.R. § 124.513(f) (8(a) joint ventures) and 13 C.F.R. § 126.616(f) (HUBZone joint ventures). To be clear, and as noted above, we recognize that, as GAO has previously held, this language does not mean that agencies have to consider solely the qualifications of one party to a joint venture.

However, we submit that limiting consideration to one of the three examples per evaluation area to a large business mentor – as opposed to two – is not only unduly disparate as explained above, but also is unduly restrictive and not reasonably necessary to meet NITAAC's needs. Indeed, SBA's mentor-protégé program is "designed to enhance the capabilities of protégé firms by requiring approved mentors to provide business development assistance to protégé firms and to improve the protégé firms' ability to successfully compete for federal contracts." 13 C.F.R. § 125.9(a) (emphasis added). By the very nature, mentors are "required" to provide assistance so that protégés may improve their ability to compete and this includes "performing prime contractors with the Government through joint venture arrangements." Id. By limiting the examples to one out of three, this is contrary to the requirements under SBA's mentor-protégé program.

[4] It would be in clear violation of SBA's regulations for NITAAC to limit – in any way – consideration of a small prime's small business subcontractor. See 13 C.F.R. § 125.2(g) ("When an offer of a small business prime contractor includes a proposed team of small business subcontractors and specifically identifies the first-tier subcontractor(s) in the proposal, the head of the agency must consider the capabilities, past performance, and experience of each first tier subcontractor that is part of the team as the capabilities, past performance, and experience of the small business prime contractor if the capabilities, past performance, and experience of the small business prime does not independently demonstrate capabilities and past performance necessary for award.") (emphasis added).

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NITAAC cannot show any legitimate reason why this limit on consideration of a large business mentor's experience has to be one, rather than two, or even three. If the concern is that the protégé must control performance of the contract, this concern is unfounded as there is no reason that a protégé cannot successfully oversee the contract, particularly where, in a joint venture arrangement, the protégé could perform only 40% of the contract. In limiting consideration of a mentor's experience where the mentor may actually be performing the majority of the work, is unreasonably and unduly restrictive. This unduly restrictive term is even worse when you consider that, as explained above, offerors could rely on the qualifications of a large business subcontractor under FAR 9.601(2) without limitation.

It would actually provide NITAAC further assurance that the contract will be performed successfully were it to consider at least two examples from an SBA-approved mentor, rather than a subcontractor and which the RFP requires no additional information regarding.[5] See AES UXO, LLC, B-419150 (Dec. 7, 2020) (sustaining pre-award protest where solicitation did not achieve agency's objective).

We further assert that, to the extent NITAAC does not revise the RFP to permit examples of up to three from a large business mentor, the point scale as it relates to small business protégés that are bidding as a joint venture with its large business mentor should be revised to provide more points for lesser dollar values. Indeed, SBA's joint venture regulations further state that a "procuring activity may not require the [protégé] to individually meet the same evaluation or responsibility criteria as that required of other offerors generally. The partners to the joint venture in the aggregate must demonstrate the past performance, experience, business systems, and certifications necessary to perform the contract." 13 C.F.R. § 124.513(f). If, because of the limitation on the large business mentor's experience, a joint venture offeror involved in a mentor-protégé agreement does not move to Phase II because of the inability to claim corporate experience points it otherwise would have been able to claim due to the limitation on large business mentors, we submit that this limitation has the effect of requiring the protégé to individually meet the same, or even more stringent, evaluation criteria as other small business offerors in order to move on in the evaluation process. See Innovate Now, LLC, B-419546 (Apr. 26, 2021) (sustaining protest where solicitation required protégé to have the same level of experience as other offerors). This effectively discriminates against large business participating mentor-protégé joint ventures, in favor of those who do not and simply form FAR 9.601(2) CTAs with small businesses.

[5] The RFP includes a long list of requirements as it relates to FAR 9.601(1) CTAs (i.e., joint ventures) to detail items such as team lead, specific duties/responsibilities, workshare, etc., see L.3.7.2, but expressly states that "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." L.3.7.3.

[redacted]

NITAAC can maximize competition amongst offerors and still be assured that the offeror has demonstrated experience and its ability to perform by increasing the number of references a large business mentor may provide and/or by providing a different point scale for protégés bidding as part of a mentor-protégé joint venture. If NITAAC does not take such action on its own, GAO should sustain this protest and recommend that the RFP's terms be amended to include less restrictive terms which serve no legitimate purposes.

B. The RFP is Ambiguous and Contrary to SBA's Joint Venture Regulations

As a whole, the RFP confusingly uses the term "CTA," when this is a term of art that has been coined by the U.S. General Services Administration. In any event, while we understand offerors may submit as a joint venture under FAR 9.601(1) or prime/subcontractor under FAR 9.601(2), the RFP incorrectly describes "HUBZone, VOSB, SDVOSB, WOSB, and 8a CTAs."

Section L.3.7.2(11) explains that in order for the FAR 9.601(1) CTA to be a small business, the "other members of the CTA must be small businesses, some other socioeconomic category of a small busines, or an other than small business that has an SBA-approved mentor-protégé agreement with the eligible socio-economic business whose status the CTA is relying upon to compete for award." This is consistent with SBA's regulations.[6] However, Section L.3.7.2(12) states that to "be considered a HUBZone, VOSB, SDVOSB, WOSB, or 8a CTA, the prime contract / team lead must be a HUBZone, VOSB, SDVOSB, WOSB, or 8a business. The other members of the CTA must be all small businesses or some other socioeconomic category of small business." (emphasis added). The underlined language is contrary to SBA's regulations.

Indeed, and as is applicable to Mahani, SBA's regulations state a "joint venture between a[n] [8(a)] protégé firm and its approved mentor . . . will be deemed small provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the contract. . . ." 13 C.F.R. § 124.513(b)(2). Similarly, as it relates to HUBZone joint ventures, SBA's regulations state a "joint venture between a protégé firm and its SBA-approved mentor . . . will be deemed small provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned . . . . " 13 C.F.R. § 126.616(b)(2). Accordingly, to the extent the RFP does not intend to recognize a socioeconomic joint venture (i.e., 8(a) or HUBZone) that is comprised of a small business protégé that holds such socioeconomic status(es) and its large business mentor, any other will recognize this as a small business joint venture, this is contrary to SBA's regulations and is improper. See Innovate Now, supra (sustaining protest where solicitation violates SBA regulation).

[6] The RFP, however, incorrectly refers to a "FAR 9.601(1) CTA that is not a joint venture. . ." Indeed, there is no such thing.

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If this was not NITAAC's intent, then the RFP is ambiguous and must be revised so that socioeconomic joint ventures comprised of all small businesses and those comprised of a small business protégé and large business mentor are treated equally.

C. The RFP Contains Incorrect Internal References and is Ambiguous

The RFP must also be revised to correct internal references to attachments that are not correct and provide confusion to offerors. As an example, Section J of the RFP examples that Attachment J.6 is Self Scoring Sheet Experience Template. However, Section L.3 of the RFP references this attachment as J.7. And, the title of Attachment J.6 is the Self Scoring Sheet Template, but when you open the document, it is titled J.7.

Further, the RFP has several patent ambiguities which NITAAC did not answer at all or answer fully. When the Agency issue Amendment 3, responding only to some of the "large amount of questions [] received," it failed to answer several important questions. Without answers to these questions, no offeror can respond knowing that it has appropriately followed the requirements of the RFP.

A number of questions remain unanswered or unclarified through the RFP, which must be answered in order for offerors to ensure they are able to submit a compliant response such as:

(i) What is and is not included in page count which is an essential element to every proposal. Indeed, Amendment 3 amended Section L.5 of the RFP to state "Anything not specifically excluded from any page limit are counted against the total number of pages for each section. Any cover page, table of contents, or table of figures included within a proposal section is included within any applicable page limitation of the respective section." (emphasis added). At the same time, however, in the Amendment 3 Q&A, Question 40, the question was asked to confirm that title pages, table of contents, etc. were excluded from all page limits and NITAAC responded: "Yes, all administrative information is excluded from all page limits." (emphasis added). This is clearly ambiguous and must be clarified.

(ii) Clarification regarding written responses to "unacceptable" CPAR ratings. As part of Section L.5.7, Volume 5, offerors are required to "provide a written response to questionnaires or CPARS ratings that are unacceptable. Failure to do so could result in the offeror being disqualified from the competition." As an initial matter, it is entirely unclear what an "unacceptable" CPAR rating is, as the only possible ratings under a CPAR are Unsatisfactory, Marginal, Satisfactory, Very Good, and Exceptional. FAR 42.1503. Without clarification, offerors do not know what to include in their proposal. Second, it is not clear whether this requirement applies to any CPAR

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ever received or whether this only applies to references the offeror includes in its proposal. Without clarification, offerors run the risk of being disqualified from the competition.

D. Prejudice

Mahani is prejudiced by the RFP because, as currently written, prevents it from relying on experience of its SBA-approved mentor to enhance its ability to compete for and win an award.

REQUEST FOR DOCUMENTS

Mahani requests the following specific documents that are relevant to the issues raised in this protest:

(1) Copies of "all relevant documents," as are required to be produced in accordance with 4 C.F.R. section 21.3(d).

(2) All source selection plans, selection guidelines, and evaluation criteria pertaining to the RFP.

(3) Written communications, including email, between or among the source selection officials pertaining to the changes the Agency made to the experience examples requirements. These documents are relevant to Mahani's argument that the experience examples requirements for large business mentor-protégé arrangements are unduly restrictive of competition.

(4) All documents related to the Agency's basis, if any, for limiting the number of experience examples that can be submitted by large business mentor-protégé arrangements. These documents are relevant to Mahani's argument that the experience examples requirements for large business mentor-protégé arrangements are unduly restrictive of competition.

REQUEST FOR PROTECTIVE ORDER

Mahani requests that a protective order be issued in this case. See 4 C.F.R. § 21.4.

REQUEST FOR HEARING

Mahani reserves the right to request a hearing on all factual issues in dispute that may arise during the course of the protest. See 4 C.F.R. § 21.7.

[redacted]

CONCLUSION

For the reasons stated above, GAO should sustain Mahani's protest and, pursuant to 4 C.F.R. 21.8(d), (e) and (f), recommend that the Agency pay Mahani all other applicable costs, including but not limited to its attorneys' fees, and costs of bid and proposal preparation.

Respectfully submitted,

Isaias "Cy" Alba, IV
Katherine B. Burrows
Meghan F. Leemon

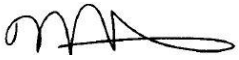
Counsel for Mahani Technical Services LLC

[redacted]

CERTIFICATE OF SERVICE

I, Meghan F. Leemon, do hereby certify that a copy of the foregoing protest is being served, via email, on this 2nd day of July, 2021, for receipt on the same date as filing with the GAO, upon:

Ms. Rose Schultz, Procuring Contracting Officer
National Institutes of Health
Information Technology Acquisition and Assessment Center (NITAAC)
6011 Executive Blvd, Suite 503
Rockville, MD 20852
CIOSP4.NITAAC@nih.gov



Meghan F. Leemon

[redacted]