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Decision

Matter of: Harmonia Holdings, LLC

File: B-407186.2; B-407186.3

Date: March 5, 2013

Lee Dougherty, Esq., and Katherine A. Straw, Esq., Fluet Huber + Hoang PLLC, for the protester.

Jonathan D. Shaffer, Esq., Mary Pat Buckenmeyer, Esq., and Armani Vadiie, Esq., Smith Pachter McWhorter PLC, for Ardent Management Consulting, Inc., an intervenor.

Lucinda E. Davis, Esq., Ryan M. Warrenfeltz, Sr., Esq., and Justin A. Coon, Esq., Social Security Administration, for the agency.

Paul N. Wengert, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that solicitation for commercial services lacked information needed to prepare proposals is denied where agency responded to multiple rounds of offeror questions and provided sufficient information in its responses for offerors to prepare competitive offers.
 2. Protest that agency failed to provide adequate time to prepare proposals is denied because, even though amendments were issued in the days before proposals were due, those amendments provided answers to offerors' questions that did not require significant revisions to proposals, and thus, agency's decision not to extend the due date for proposals did not affect the competition adversely.
 3. Protest that incumbent contractor should have been excluded from competition for software development services due to alleged organizational conflicts of interest is denied where protester failed to provide hard facts that incumbent possessed an unfair advantage.
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DECISION

Harmonia Holdings, LLC, of Blacksburg, Virginia, a small business, protested the terms of request for proposals (RFP) No. SSA-RFP-12-1052, issued by the Social Security Administration (SSA), for geographic information system (GIS) services to support the SSA's emergency preparedness mission. Harmonia argued that (1) the

RFP fails to provide adequate information about existing software for prospective offerors to prepare proposals, (2) the SSA did not allow offerors sufficient time to prepare proposals, and (3) the SSA should prohibit the incumbent contractor from competing due to an organizational conflict of interest (OCI).

We deny the protest.

BACKGROUND

Development of the GIS at issue began with the purchase of desktop applications and server platforms in 2007, followed by a pilot project to assess the feasibility of developing a scalable enterprise GIS platform for the SSA. RFP at 8. Ardent Management Consulting, Inc. (ArdentMC) provided software development services for the SSA's GIS services through December 2011.¹ Agency Report (AR) at 2; RFP at 8.

On July 27, 2012, the SSA issued the RFP here to acquire GIS functionality corrections and enhancements, systems operation and maintenance, and surge and exercise support. RFP at 7. The RFP was issued for "commercial items" and contemplated the award of a single indefinite-delivery/indefinite-quantity (ID/IQ) contract to the firm whose proposal provided the best value considering three factors: price, past performance, and relevant experience. RFP at 2, 83-84.

The RFP invited potential offerors to submit questions in advance of the proposal due date. In response, the SSA posted a series of revisions to the solicitation, as well as answers to questions. See generally RFP amend. 1 through amend. 3. Specifically, amendment 1 to the solicitation answered 18 questions, while amendments 2 and 3 provided revisions to the terms of the RFP.

On August 17, Harmonia filed a protest with our Office, arguing that the RFP failed to provide sufficient information to allow offerors to submit competitive proposals, and that the agency failed to mitigate unfair competitive advantages and organizational conflicts of interest of the incumbent contractor, ArdentMC. On September 12, the SSA stated that it would take corrective action, and amend the solicitation to address Harmonia's concerns. Our Office dismissed Harmonia's protest on September 17. Harmonia Holdings, LLC, B-407186, Sept. 17, 2012.

On November 19, the SSA revised the RFP, as promised, and extended the proposal due date to November 27. RFP amend. 4, at 2. Among the revisions to the RFP were the addition of screen shots of the software user interface to illustrate 10 software issues to be corrected, and a requirement that each offeror identify and

¹ Harmonia asserts that ArdentMC supervised the design of the pilot project and determined its specifications and parameters. Protest at 1, 4.

discuss any potential OCIs. RFP amend. 4, at 11-16, 81. On November 26, Harmonia filed this protest.

On the same day that this protest was filed, the SSA posted amendment 5 to the solicitation, which included a revised pricing table spreadsheet, answered 37 more questions from potential offerors, and extended the proposal due date to November 30. RFP amend. 5, at 1 & attach 1.5 (revised pricing table spreadsheet) & Questions and Answers attach.

One day later, on November 27, the SSA issued amendment 6 to the solicitation, which provided answers to two more questions from offerors. RFP amend. 6, Questions & Answers attach., at 1. Two days later, on November 29, the SSA posted amendment 8 to the solicitation, which provided answers to 15 more questions, but nevertheless stated that those answers were immaterial to proposals, and therefore the proposal due date was not extended.²

On November 30, Harmonia filed a supplemental protest, arguing that the amendments posted after its November 26 protest had not resolved the defects in the solicitation, and that the SSA had failed to provide adequate time for offerors to prepare their proposals in response to the RFP revisions. Supplemental Protest at 4. In both its initial and supplemental protest, Harmonia argued that the SSA should have excluded ArdentMC from the competition due to an alleged organizational conflict of interest, arising from the firm's role as the incumbent on the most recent software development contract. Id. at 2-3.

ANALYSIS

Harmonia's protest arguments raise three main topics: (1) that the RFP lacked information that offerors other than the incumbent contractor, ArdentMC, required in order to prepare competitive proposals; (2) that the SSA failed to provide adequate time for offerors to prepare proposals after the series of amendments to the RFP; and (3) that ArdentMC had an OCI which requires the SSA to exclude that firm from the competition. We consider each argument in turn.

Adequacy of Solicitation

Harmonia argues that the solicitation lacks sufficient information for an offeror (other than ArdentMC) to submit a competitive proposal. In its protest, Harmonia identifies 12 specific issues on which the RFP lacks sufficient detail. As explained below, we conclude that the agency has adequately defined its requirements in this RFP and subsequent amendments.

² Amendment 7 notified offerors of the existence of this protest and stated that the proposal due date had not changed. RFP amend. 7, at 1-2.

In assessing a protester's claim that a solicitation is inadequate, our Office will review the solicitation to determine whether it provides sufficient information for offerors to compete intelligently and on a relatively equal basis. Meridian Mgmt. Corp., B-285127, July 19, 2000, 2000 CPD ¶ 121 at 6. The same principles apply with respect to a solicitation for commercial items or services.³ Metfab Eng'g, Inc.; Mart Corp., B-265934, B-265934.2, Jan. 19, 1996, 96-1 CPD ¶ 93 at 3. Thus, a solicitation for commercial services generally should describe the type of service and explain how the agency intends to use it "in terms of function to be performed, performance requirements, or essential physical characteristics." Federal Acquisition Regulation (FAR) § 12.202(b). There is no legal requirement that a solicitation be drafted so as to eliminate all performance uncertainties. Northrop Grumman Tech. Servs., Inc., B-406523, June 22, 2012, 2012 CPD ¶ 197 at 12.

As noted above, the RFP described specific flaws in the operation of the existing software, which the contractor will be required to fix. In addition to describing the history of the development of the software,⁴ the SSA issued multiple rounds of answers to questions from prospective offerors. Further, when Harmonia argued in its protest that the SSA had not provided sufficient information about 12 specific issues, the SSA responded with explanations of how the information in the RFP was adequate. We review two of the issues as examples.

³ Harmonia has not challenged the designation of the services here as commercial, or the consequent use of commercial services procurement techniques.

⁴ More specifically, the RFP explained as follows:

[The] SSA purchased ESRI Geographic Information System . . . ArcEditor Desktop applications and ArcGIS Server platforms in FY07 and began a Proof of Concept (POC) pilot project . . . [T]he POC application [was] operational in the SSA Windows Development Facility (WDF) test labs at [the] SSA HQ. The pilot application is internet browser based[,] the ESRI ArcGIS Server 9.3.1 platform[,] and Adobe Flex API (Application Program Interface).

In 2010 . . . [t]he viewer changed from the Adobe Flex to Microsoft Silver Light [application protocol interface]. . . . [The software] application platform is now operational in the Agency Information Technology . . . production environment at [the] SSA headquarters in Baltimore. . . .

In 2011, [the] SSA built a hardware/software platform to support GIS in the Agency's IT environment. . . . [The software] application finished its initial development cycle and now resides in the Agency Windows Production Environment.

RFP at 8.

First, Harmonia noted that the RFP stated that the software runs in a “virtual environment with 64 GB [gigabytes] to 128 GB of memory.” As one of the 12 specific complaints about the RFP, Harmonia argued that the RFP failed to identify whether other software may be using that environment. Harmonia also argued that, if other software is using that environment, the RFP did not identify the other software. Harmonia also argued that the RFP does not provide the physical and logical configuration of the environment. Protest at 6.

The SSA’s response pointed to technical information that, in the agency’s view, should have resolved the issue sufficiently for offerors to prepare proposals. The SSA described the system architecture, described its database configuration, and provided an overview of the software application environment. See Supplemental AR at 10. The SSA also informed offerors that the software had 20 user functions; 61 code files; 6,036 lines of code with 184 code-generated lines; 743 user-entered blank lines; and 999 user-entered comments. RFP amend. 5, Questions & Answers attach., at 9. In addition, the SSA provided specific information about the virtual environment and the server in response to a similar question from an offeror, where the SSA answered the question as follows: “4 GB virtual memory is available for [the software,] and no other application is utilizing the resources.” Supplemental AR at 6 (quoting RFP amend. 5, Questions & Answers attach., at 3). Finally, the SSA explained that amendment 5 to the solicitation had provided an unredacted and complete breakdown of the software on the virtual server including the file names, the number of lines of code, and the number of blank lines, designer lines, and comments. Id. at 10 (citing RFP amend. 5, Questions & Answers attach., at 2-3).

Harmonia acknowledged that this information was responsive, but argued that the responses raised even more questions. Notwithstanding Harmonia’s desire for more information, in our view the SSA’s answers show that offerors had sufficient information to prepare proposals. Even though the eventual contractor will undoubtedly need additional information to perform the contract, Harmonia has not shown that offerors needed any additional detail in the RFP in order to prepare proposals.

As a second example of the agency’s responses to Harmonia’s 12 specific complaints about the adequacy of the RFP, Harmonia complained that the RFP did not provide “the current hardware and database configuration,” and that this information was needed for offerors to determine how to improve the speed of the software when applying new map services, as required by one of 28 issues requiring correction that were listed in the RFP. RFP at 10-12. Harmonia argued that without that configuration it cannot determine whether speed improvements are “related to a memory issue, a network (hardware) issue, or a database table structure, database indexes (database) or a combination of several factors.” Protest at 6. Without such information, Harmonia complained that “offerors cannot estimate the cost to fix this issue.” Id.

The SSA responded by noting that in an answer to an offeror's request to clarify the agency's "common hardware, software, and network infrastructures," the SSA provided an overview of the equipment utilized in the current GIS environment. Supplemental AR at 11 (citing RFP amend. 5, Questions & Answers attach., at 7-8). The SSA noted that the RFP provided information about the agency's hardware and database configuration, and that offerors were expected to use their own resources to understand the functionality of the commercial software applications identified in the RFP, such as ArcGIS and Silverlight. Supplemental AR at 11-12.

In reply, Harmonia did not specifically explain why the information provided was inadequate, but rather, argued that the offerors will bear too much risk in proposing a fixed price to perform this element of the work.⁵ See Protest at 6 ("... the solution could be a number of different things and prospective offerors other than ArdentMC cannot accurately estimate the cost"). We disagree.

The mere presence of risk in a solicitation does not make the solicitation inappropriate or improper. An RFP may impose maximum risks on the contractor and minimum burdens on the agency, in which case an offeror should account for this in formulating its proposal. JRS Mgmt., B-402650.2, June 25, 2010, 2010 CPD ¶ 147 at 5; TN-KY Contractors, B-291997.2, May 5, 2003, 2003 CPD ¶ 91 at 3. There is no requirement that the specifications in an RFP be so detailed that they completely eliminate all risk, or remove every uncertainty from the mind of every prospective offeror. AirTrak Travel et al., B-292101 et al., June 30, 2003, 2003 CPD ¶ 117 at 14. In short, especially in fixed-price contracts, firms must use their professional expertise and business judgment in anticipating a variety of influences affecting performance costs. JRS Mgmt., supra; AirTrak Travel et al., supra. Even though we agree that offerors bear some risk in pricing the requirement for increasing the software speed (because the resolution could require any or all of several approaches suggested by Harmonia), that fact alone does not demonstrate that the RFP is defective.

In summary, Harmonia has not shown that the RFP is inadequate to allow offerors to compete intelligently and on a relatively equal basis in this procurement for commercial services.

Time to Submit Proposals

Next, Harmonia argued that the SSA failed to allow sufficient time for offerors to revise their proposals following the issuance of amendments 6 and 8 to the RFP. The SSA responded that the solicitation was issued in July, giving offerors 4 months

⁵ The RFP required offerors to propose fixed prices for resolving each of the 28 issues included in the software corrections and enhancements. RFP amend. 5, attach. 1.5, Revised Pricing Table Spreadsheets, at 1.

to prepare proposals. The SSA further argued that the time permitted to prepare any needed revisions to address the requirements of amendments 6 and 8 was sufficient, because only minimal revisions were necessary to respond to the amendments

In its comments, Harmonia did not respond specifically to the SSA's explanation; Harmonia argued only generally that the SSA was attempting to "sneak the reissued solicitation by offerors during a holiday week." Protester's Comments at 8. Thus, Harmonia did not meaningfully challenge the SSA's conclusion that offerors should have been able to prepare responses to the solicitation over 4 months, beginning when the original RFP was issued in July. Harmonia also did not meaningfully challenge the SSA's argument that any proposal revisions necessitated by amendments 6 and 8 were so minor that no further extension of the proposal due date was required.

There is no per se requirement that the closing date in a negotiated procurement be extended following a solicitation amendment. The decision as to the appropriate preparation time for the submission of offers lies within the discretion of the contracting officer. We limit our review of such determinations to the questions of whether the refusal to extend the closing date adversely impacted competition and whether there was a deliberate attempt to exclude an offeror. Holmes & Narver Servs., Inc., B-242240, Apr. 15, 1991, 91-1 CPD ¶ 373 at 3; see also Lanier Worldwide, Inc., B-249338, Nov. 12, 1992, 92-2 CPD ¶ 343 at 3 (protest challenging decision not to extend proposal due date after amendment is denied where proposal preparation should have been well underway and amendment did not impose new requirements).

Here, Harmonia did not show that the substance of amendment 6 to the solicitation should have required more than 3 days (which was the time allotted) to make any corresponding revisions to its proposal. As noted above, amendment 6 to the solicitation principally answered only two questions.⁶ The first question asked whether the software used internal or external data feeds, and asked for a "list" of those feeds. The SSA responded that "the feeds are all external, and include (1) NOAA [National Oceanographic and Atmospheric Administration] NexRad; (2) NOAA Weather Watches & Warnings; and (3) [United States Geological Survey] Shake Map." RFP amend. 6, Questions & Answers attach., at 1. The second question asked whether offerors were required to provide hardware for the software development environment, to which the SSA responded that it would provide all licenses and hardware for the development environment. Id. Harmonia has not

⁶ Amendment 6 to the solicitation also updated information provided in response to an earlier question with additional version numbers of Microsoft ".NET framework" software. RFP amend. 6, Questions & Answers attach., at 1.

shown that it needed more than 3 days to address either of these pieces of information.

Harmonia also failed to show that amendment 8 to the solicitation made changes that required an extension to the proposal due date. Even though the amendment was issued the day before the proposal due date, the 15 questions were answered by pointing to information that had already been released or to industry standard terminology. The response also indicated that the additional details being requested were not necessary for the preparation of a proposal.

We conclude that the RFP provided sufficient information for offerors to prepare proposals, and we see no basis to conclude that the SSA's decision not to extend the closing date affected the competition adversely here. Accordingly, we deny this ground of protest.

Organizational Conflict of Interest

Finally, Harmonia argues that ArdentMC's role as the incumbent contractor developing the SSA's software created an unfair competitive advantage due to an organizational conflict of interest. Protest at 4; Protester's Comments at 3-4. As explained below, we conclude that Harmonia identified little support for its allegations of an OCI; furthermore, the SSA has considered these issues and, in our view, reasonably determined that any risk of an OCI has been mitigated.

The SSA first sought dismissal of this ground of protest, arguing that the protest was premature because the agency had not yet expressed a view about whether ArdentMC was eligible for award. Agency Dismissal Request at 1. In general, a protest arguing that a competitor has an impermissible organizational conflict of interest is premature if filed before award. REEP, Inc., B-290688, Sept. 20, 2002, 2002 CPD ¶ 158 at 2. However, where an agency has stated in a solicitation that a firm is eligible for award, any objection to that determination must be filed as a challenge of the terms of the solicitation, before the closing time for receipt of proposals. Id.

Here, a potential offeror asked whether "the incumbent contractor (Ardent Management Consulting) is eligible to submit" a proposal. The SSA's answer stated that "[a]ny responsible HUB Zone small business may submit a proposal." RFP amend. 5, Q&A attach., at 9 (Answer to Question 37). The agency's response to a specific question about ArdentMC's eligibility placed offerors on notice that ArdentMC was allowed to compete. Therefore, under our decision in North Wind, Inc., B-404880.7, Nov. 5, 2012, 2012 CPD ¶ 314 at 4, Harmonia was required to file this protest before the closing date for submission of proposals. Harmonia did so

and, accordingly, its protest challenge to the eligibility of ArdentMC is not premature.⁷ We turn to the merits of this issue.

The responsibility for determining whether an OCI exists rests with the procuring agency. Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 12. In making the determination, the FAR expressly directs contracting officers to examine the particular facts associated with each situation, giving consideration to the nature of the contracts involved. FAR §§ 9.504, 9.505. OCI determinations must be based on hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. Diversified Collection Servs., Inc., B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 6. The identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. Id. Our Office reviews a contracting officer's consideration of an OCI for reasonableness and, where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. Id.

Harmonia's protest arguments lack the hard facts required for our Office to sustain the protest on the basis that ArdentMC should be excluded from the competition. Although cast as an OCI argument, Harmonia generally only contended that ArdentMC was the incumbent contractor, and thus, that ArdentMC had a competitive advantage in the competition here. Harmonia did not provide any evidence that ArdentMC prepared the RFP or set its ground rules, had unequal access to non-public information of the nature that gives rise to an OCI, or otherwise had impaired objectivity in its performance of this contract. Its arguments are steeped in suspicion, which is insufficient to demonstrate the existence of an OCI.

With regard to ArdentMC's status as an incumbent contractor, we have long held that an offeror may possess unique information, advantages, and capabilities due to its prior experience under a government contract--either as an incumbent contractor or otherwise; further, the government is not necessarily required to equalize competition to compensate for such an advantage, unless there is evidence of preferential treatment or other improper action (which Harmonia did not show here). CACI, Inc.--Fed., B-403064.2, Jan. 28, 2011, 2011 CPD ¶ 31 at 10; MASAI Tech. Corp., B-298880.3, B-298880.4, Sept. 10, 2007, 2007 CPD ¶ 179 at 8. Thus, the existence of an advantage in and of itself does not constitute preferential treatment

⁷ The RFP, as amended, set November 30 at 5:00 p.m. as the due date for proposals. Harmonia filed its initial protest on November 26, 2012, and filed its supplemental protest on November 30 at 3:57 p.m. Since both protests were filed before the proposal submission deadline, there is also no basis to conclude that this protest was filed untimely.

by the agency, nor is such a normally occurring advantage necessarily unfair. Council for Adult & Experiential Learning, B-299798.2, Aug. 28, 2007, 2007 CPD ¶ 151 at 6; Government Bus. Servs. Group, B-287052 et al., Mar. 27, 2001, 2001 CPD ¶ 58 at 10.

In any event, the agency's written acquisition plan documents the agency's resolution of OCI concerns with respect to ArdentMC:

Organizational Risk: One potential risk is that the incumbent, Ardent, may have a potentially unfair competitive advantage pursuant to [FAR §] 9.505. Under its previous contract with the agency, Ardent created and implemented the [the software] application. As part of that implementation, it gained knowledge of the agency's system architecture; advanced knowledge of the issues with the present [software] application; and has access to the [software] source code. Other firms would likely not have this information available.

As part of this risk, and pursuant to FAR Section 9.506, we will take strides to mitigate a potential unfair advantage by providing as much information within the solicitation as possible balancing public disclosure of information with security restrictions (see Security Risk below).⁸ We anticipate providing system details for the agency's GIS application, including hardware and software configurations. While we will not provide the source code, we plan to provide details on the source code, including the number of functions and lines of source code. Further, we anticipate providing screenshots of the [software] application to demonstrate functionality issues where applicable. Lastly, we anticipate providing the [software] source code to the winning Offeror.

We believe that by providing this information, we can mitigate a possible unfair competitive advantage and ensure that all potential Offeror's have all necessary information to compete. We will also incorporate a solicitation provision pursuant to FAR 9.507-1 that will request Offerors' input on whether a potential conflict of interest exists and how the Offeror will mitigate that risk. We do not feel that a contract clause limiting the Offeror's involvement in future contracts is appropriate.

AR, Tab A, Written Acquisition Plan, at 5.

⁸ The "security risk" analysis explained that some of the data in the software could not be released to the public: building layouts, escape routes, "property data," and "personally-identifiable information." AR, Tab A, Written Acquisition Plan, at 5.

In our view, the agency's determination to permit ArdentMC to compete for this contract--together with the absence of evidence of any preferential treatment or unfair action by the agency--reflects the agency's conclusion that ArdentMC has only the normally-occurring advantage that any incumbent may possess. See CACI, Inc.--Fed., supra; Council for Adult & Experiential Learning, supra. Since the SSA has considered the possibility of an OCI, has determined that any OCI has been mitigated, and since Harmonia's arguments to the contrary lacked hard facts, we find no reason to sustain the protest on the basis of either unequal access to information or biased ground rules OCIs. Accordingly, we deny this ground of protest.

The protest is denied.

Susan A. Poling
General Counsel