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## Decision

**Matter of:** ISC International, Ltd.

**File:** B-409471.2

**Date:** June 20, 2014

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Michael J. Gardner, Esq., and Erik M. Ideta, Esq., Troutman Sanders LLP, for the protester.

Alexander W. Fichtel, Esq., and Sheryl L. Rakestraw, Esq., Department of the Interior, for the agency.

Louis A. Chiarella, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protest that an agency was required to set aside for small businesses a solicitation for the award of a contract for the design, support, and management of the required cloud-based content management system is denied where the agency reasonably determined that there were not two small businesses that could perform all of the requirements.

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### **DECISION**

ISC International, Ltd., of Milwaukee, Wisconsin, protests the terms of request for quotations (RFQ) No. D14PS00158, issued by the Department of the Interior (DOI) for a cloud-based, Drupal platform as a service web content management system. ISC argues that the solicitation should have been set aside for small businesses.

We deny the protest.

### **BACKGROUND**

The RFQ was issued on January 22, 2014, using commercial item and simplified acquisition procedures contained in Federal Acquisition Regulation (FAR) Parts 12 (commercial items) and 13 (simplified acquisition procedures).<sup>1</sup> The solicitation

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<sup>1</sup> The solicitation was amended a number of times.

provides for the issuance of a fixed-price purchase order for a base year with four 1-year options. The estimated value of the procurement is \$762,300. Agency Report (AR), Tab 1, Acquisition Plan, Jan. 22, 2014, at 2.

The RFQ informs vendors that the agency is seeking a cloud-based Drupal<sup>2</sup> platform as a service (PaaS) web content management system (CMS), in support of the agency's public websites. RFQ at 3. In general terms, the agency "intends to implement an externally hosted, managed and administered Drupal PaaS environment . . . . Once completed, this project will provide the modern, flexible, scalable, secure, stable, highly available, and survivable web hosting environment the [agency] requires." RFQ attach. 1, Statement of Work (SOW), at 1.

The scope of the effort involves two principal components. First, the contractor will provide discovery/design workshops to "appropriately determine the configuration of the Drupal instance(s), implementation of the chosen configuration and modules, and all cloud computing and support services required to operate, maintain, safeguard and manage the Drupal CMS PaaS as specified herein. The Contractor shall provide a comprehensive management approach for managing the PaaS." Id. at 1-2; AR, Apr. 17, 2014, at 2. Second, "[t]he Contractor shall provide labor, materials and software for the design and implementation of DOI's Drupal CMS configuration as well as the platform's hosting." RFQ attach. 1, SOW at 2.

The RFQ also identifies the minimum performance levels and features that a vendor's cloud-based Drupal PaaS offering would be required to have to be considered for award. See id. at 6-11; RFQ attach. 2, Information Technology (IT) Security and Privacy Requirements, at 1-30. In this regard, the SOW states that the vendor's platform must provide, at a minimum:

- 99.9 percent availability, or higher, to web site visitors and content publishers with a financially backed penalty schedule
- a secure platform that prevents loss of, or tampering with, DOI data, service degradation, and/or service disruption
- a capability that ensures immediate and uninterrupted service of web sites to the public
- 24/7/365 proactive monitoring and support for resolution of any outages that affect availability of content to visitors

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<sup>2</sup> Drupal is a free, open-source, content management platform. It is used as the framework for approximately 2.1 percent of all websites worldwide, ranging from personal blogs to corporate, political, and government sites (e.g., [whitehouse.gov](http://whitehouse.gov), [data.gov.uk](http://data.gov.uk)). See <https://drupal.org/about>; <http://en.wikipedia.org/wiki/Drupal>.

- compliance with all federally-mandated requirements for public facing services and DOI specific security requirements as specified in the solicitation.

RFQ attach. 1, SOW at 6.

The solicitation also informs vendors that the purchase order will be issued on a best-value basis, considering the following evaluation criteria: technical approach; organizational experience; past performance; and price. RFQ at 9-10. The nonprice factors are of equal importance and, when combined, are significantly more important than price. Id. at 10.

The RFQ was initially issued as a small business set-aside under North American Industry Classification System (NAICS) code 541512 (computer system design services), which states a small business size standard of \$25.5 million annual revenue. RFQ at 1. The agency's set-aside determination was based on market research conducted by the DOI requiring activity, which identified two small businesses as having the technical capability to meet the agency's requirements.<sup>3</sup> AR, Tab 2, Market Research Memorandum, Jan. 22, 2014, at 3. Subsequent to the issuance of the solicitation, however, the contracting officer learned that one of the two identified small businesses was no longer a small business concern. Contracting Officer's Statement, Apr. 16, 2014, at 3. The contracting officer also took into account that several of the questions submitted by prospective vendors inquired about the degree to which a large business could participate in performing the requirement, which indicated to the contracting officer that setting the RFQ aside for small businesses may limit small business participation. Id. at 2-3; Memorandum for Record, Jan. 31, 2014, at 2. As a result, the solicitation was amended to provide for unrestricted competition. RFQ amend. 0001.

On February 5, ISC protested to our Office, challenging the agency's decision not to set aside the procurement for small business concerns. The following day, DOI received six quotations from both large and small business vendors, including ISC. On February 7, DOI informed our Office and ISC that the agency would take corrective action by reviewing its acquisition strategy, market research, and its determination that the solicitation be issued on an unrestricted basis. We dismissed the protest as academic. ISC Int'l Ltd., B-409471, Feb. 10, 2014.

Following the dismissal of ISC's protest, DOI reviewed its decision to not set the RFQ aside for small businesses. The contracting officer reviewed (and extended)

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<sup>3</sup> The contracting officer, using the Small Business Administration's (SBA) dynamic small business search (DSBS) tool, also found 27 small businesses under NAICS code 541512 whose capability statements contained either the wording "web design" or "Drupal." Contracting Officer's Statement, Apr. 16, 2014, at 2.

the market research of potential Drupal PaaS providers prior to the RFQ's issuance. The agency had information exchanges with various prospective vendors between May and October 2013, and then conducted various market research and surveys of identified small businesses using the SBA DSBS tool and the System for Award Management (SAM).<sup>4</sup> AR, Tab 13, Supplemental Market Research Memorandum, Feb. 27, 2014, at 2-3, 6-7. The contracting officer also conducted an internet search of various vendors, including a search of the Drupal website. AR, Tab 14, DOI Small Business Advocate Review, Feb. 28, 2014, at 7. The contracting officer reviewed information regarding ISC's capabilities by examining the vendor's website, and found nothing to indicate that ISC offered, or had experience in, Drupal design and consulting services as required by the SOW.<sup>5</sup> Contracting Officer's Statement, Apr. 16, 2014, at 6. From the available information, the contracting officer determined that ISC was not technically capable of performing the RFQ. Id. The contracting officer then reviewed the quotations submitted by the three small business vendors, including ISC, to determine whether any were technically capable of performing all SOW requirements.<sup>6</sup> As a result, the contracting officer

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<sup>4</sup> The contracting officer conducted several DSBS searches using different criteria to identify vendors having the capability to perform all aspects of the SOW, including cloud hosting support. In her last search, the contracting officer searched for small businesses whose capability statements contained all the SOW's key words (using the connector "and" rather than "or"). AR, Tab 13, Supplemental Market Research, Feb. 27, 2014, at 5.

<sup>5</sup> ISC's homepage states, "[w]hether your organization is in need of internet fax services, fax broadcasting services, application faxing, message archiving, SMS (text message) broadcasting, telex communications or overnight document processing, we'll get you up and running in a matter of hours." AR, Tab 18, DOI Market Research Information, at 1. The contracting officer's review of ISC's technical information also indicated that its two data centers were located "over 20 miles apart from each other," while the RFQ requires geographic separation of the vendor's primary and backup data centers of at least 250 miles. Contracting Officer's Statement, Apr. 16, 2014, at 6; AR, Tab 18, DOI Market Research Information, at 3; RFQ, attach. 2, IT Security and Privacy Requirements, at 19.

<sup>6</sup> The agency's review of ISC's quotation found that the vendor lacked capability in providing the Drupal design and consulting services required by the solicitation; did not demonstrate organizational experience building a Drupal PaaS or managing a large-scale Drupal project; did not demonstrate experience delivering design and architecture workshops in support of tailored Drupal configuration; failed to discuss of Drupal taxonomic configuration, data cataloging, tagging and other relevant CMS configuration items; and did not demonstrate an understanding of the purpose for the design workshops. Contracting Officer's Statement, Apr. 16, 2014, at 6. The agency also determined that the quotations submitted by the other small business vendors did not evidence the required technical capabilities. Id.

concluded that the RFQ should not be set aside for small businesses because there was no evidence that two or more small businesses could perform all SOW requirements.<sup>7</sup> AR, Tab 13, Supplemental Market Research Memorandum, Feb. 27, 2014, at 7-8.

## DISCUSSION

ISC complains that the RFQ should have been set aside for small businesses, arguing that there are numerous small businesses (including itself) that can provide the desired services at fair market prices. Protest at 4-7; Comments at 3-8. In this regard, the protester contends that the agency's market research was inadequate because it unreasonably found ISC not to be a capable small business concern, reached a conclusion that differed from its initial findings, and employed overly-restrictive search criteria. Comments at 3-8.

Contracting officers are generally required to set aside for small businesses all procurements that exceed \$150,000 if there is a reasonable expectation of receiving fair market price offers from at least two responsible small business concerns. FAR § 19.502-2(b); SEK Solutions, LLC, B-406939.2, Feb. 27, 2014, 2014 CPD ¶ 87 at 7; Metasoft, LLC, B-402800, July 23, 2010, 2010 CPD ¶ 170 at 2. An agency must undertake reasonable efforts to ascertain whether it is likely that it will receive offers from at least two responsible small businesses capable of performing the work in question. FAR § 19.202-2; EMMES Corp., B-402245, B-402245.2, Feb. 17, 2010, 2010 CPD ¶ 53 at 5; Rochester Optical Mfg. Co., B-292247, B-292247.2, Aug. 6, 2003, 2003 CPD ¶ 138 at 4. No particular method of assessing the availability of capable small businesses is required; rather, the assessment must be based on sufficient facts so as to establish its reasonableness. See, e.g., SEK Solutions, LLC, *supra*; EMMES Corp., *supra*. Our Office will review a protest to determine whether a contracting officer has made such efforts. DNO Inc., B-406256, B-406256.2, Mar. 22, 2012, 2012 CPD ¶ 136 at 4.

Here, the record shows that DOI as part of its market research considered whether it could reasonably expect to receive quotations from two or more small businesses that could provide all of the solicitation's Drupal PaaS/CMS requirements. Specifically, the agency conducted market research both before and after the solicitation's issuance to identify small businesses with the capability of performing the SOW requirements. Among other things, it considered the available information regarding ISC and found the vendor possessed messaging service capabilities rather than Drupal PaaS/web CMS capabilities. The agency also reviewed the quotations received in response to the RFQ to determine whether there were two or

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<sup>7</sup> The contracting officer also determined that a partial set-aside was not a viable option, Supplemental Market Research Memorandum, Feb. 27, 2014, at 4, which ISC does not challenge.

more small businesses that could fulfill the SOW requirements. Although ISC disagrees with (among other things) the agency's judgment regarding the evaluation of its quotation,<sup>8</sup> it has not shown that the agency's analysis was faulty or could not reasonably be relied upon.<sup>9</sup>

ISC also argues that the agency unreasonably excluded potential small businesses from consideration without explanation. Comments at 4-5. The protester points to the fact that the contracting officer initially identified 27 small businesses under NAICS code 541512 as being capable of providing Drupal technology and web support, but then excluded these vendors from its final "rule of two" analysis. In her initial search of DSBS, the contracting officer identified small businesses that had either Drupal technology "or" web support capability. In her later search, however, the contracting officer sought small businesses with all the SOW's key terms in their capability statements. The agency explains that it employed the more restrictive search criteria because it wanted to ensure that the small businesses could perform all of the SOW requirements, including critical Drupal PaaS hosting capabilities that must also comply with federal IT security requirements. We find the agency's desire to determine whether a small business was capable of performing all requirements rather than selective components was not overly restrictive, and the fact that the agency's search criteria differed from those employed originally does not make the market research unreasonable.

ISC also argues that the agency improperly limited its search to current and former government contractors, and did not properly expand its search to other concerns in the industry that might be able to perform the purchase order. Comments at 7-8. As preliminary matter, we note that a search of DSBS (or SAM) would identify those small businesses which, by virtue of their registration, have expressed an interest in doing business with the federal government. Moreover, the record reflects that in addition to searching DSBS for small business government contractors, the agency did conduct a more general, industry-wide search. AR, Tab 14, DOI Small Business Advocate Review, Feb. 28, 2014, at 7 ("[w]e conducted [a] Google search to visit websites of various vendors. Drupal website . . . was also explored"). While ISC alleges that the record here does not indicate that a broad internet search was conducted to identify potential small businesses in the industry, but was instead used merely to find the websites of already-known federal contractors, ISC fails to

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<sup>8</sup> ISC does not dispute that its website does not evidence the capabilities required by the SOW. See Comments at 3.

<sup>9</sup> ISC also argues that DOI should have sought a certificate of competency from the SBA if the agency had doubts regarding ISC's technical ability to perform the purchase order. Comments at 4, citing FAR § 19.601(a). We know of no requirement, however, that a contracting officer refer a small business to the SBA for a certificate of competency as part of an agency's "rule of two" determination.

identify any small business in the industry that the agency's search overlooked. We find that ISC's assertion amounts to mere disagreement with the agency's search methodology, which does not make it unreasonable. In sum, the agency's determination that there were not two or more small businesses that could provide all the RFQ's requirements was based on sufficient facts so as to establish its reasonableness.

The protest is denied.

Susan A. Poling  
General Counsel