



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Harmonia Holdings Group, LLC

File: B-410633; B-410633.2

Date: January 20, 2015

Antonio R. Franco, Esq., Patrick T. Rothwell, Esq., and Alexander O. Levine, Esq., PiliroMazza PLLC, for the protester.

Steven J. Koprince, Esq., and Amanda M. Wilwert, Esq., Petefish, Immel, Heeb & Hird, LLP, for 22nd Century Technologies, Inc., an intervenor.

Azine Farzami, Esq., Department of Agriculture, for the agency.

Matthew T. Crosby, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency applied unstated evaluation criterion against protester's staffing plan is denied where record reflects agency findings concerned matters logically encompassed in solicitation's evaluation scheme.

2. Protest that agency unreasonably and unequally evaluated relevance of protester's and awardee's past performance is denied where record reflects evaluation was reasonable and consistent with terms of solicitation.

DECISION

Harmonia Holdings Group, LLC, of Blacksburg, Virginia, protests the award of a contract by the Department of Agriculture, Farm Service Agency, to 22nd Century Technologies, Inc., of McLean, Virginia, under request for proposals (RFP) No. AG-3151-S-14-0052 for information technology services. Harmonia alleges that the agency's evaluation of proposals was flawed in various respects.

We deny the protest.

BACKGROUND

The solicitation, issued on August 12, 2014 as a total small business set-aside, contemplated the award of a fixed-price, indefinite-delivery/indefinite-quantity (ID/IQ) contract and initial task order. RFP at 1, 41, 186. The contract was to have

a 1-year base period and four 1-year option periods, while the task order was to have a base period of five months, four 1-year option periods, and one 7-month option period. RFP at 16, 110. Award was to be made based on a best value tradeoff, considering the offerors' technical capability, past performance, and pricing proposal volumes. Id. at 186. Technical capability was stated to be more important than past performance, and technical capability and past performance, when combined, were stated to be significantly more important than price. Id. The agency's independent government estimate of the ID/IQ contract's total value was \$59,556,616.73, with a base year value of \$8,625,000. Agency Report (AR), Tab 5, Acquisition Plan, at 5.

The solicitation established non-price evaluation factors and subfactors, as shown below.

<u>TECHNICAL CAPABILITY</u>
Factor 1 -- ID/IQ Management Capability
Subfactor 1 -- ID/IQ Management Approach
Subfactor 2 -- ID/IQ Staffing Approach
Subfactor 3 -- ID/IQ Key Personnel
Subfactor 4 -- ID/IQ Transition Plan
Subfactor 5 -- ID/IQ Quality Management Plan
Factor 2 -- Task Order Technical Capability
Subfactor 1 -- Task Order Technical Approach
Subfactor 2 -- Task Order Staffing Plan
Subfactor 3 -- Task Order Key Personnel
Subfactor 4 -- Task Order Quality Control Plan
<u>PAST PERFORMANCE</u>
Factor 1 -- ID/IQ Past Performance
Factor 2 -- Task Order Past Performance

RFP at 187-91. The solicitation stated that for these factors and subfactors, ratings of high confidence, significant confidence, confidence, or no confidence would be assigned. Id. at 194. Additionally, the solicitation included descriptions of the evaluation criteria to be used for each factor and subfactor. Id. at 187-93.

As relevant here, the evaluation criteria for the task order staffing plan subfactor stated as follows:

The Offeror shall indicate an understanding of the skills and experience required to accomplish the Performance Work Statement [PWS], and identify the appropriate levels and mix of labor categories for effective and efficient delivery of services.

RFP at 189. As also relevant here, the past performance evaluation criteria provided that the agency would evaluate an offeror's performance on up to two ID/IQ contracts, at least one of which the offeror performed as the prime contractor. Id. at 192. The past performance evaluation criteria also provided that the agency would evaluate an offeror's performance on up to two task orders, at least one of which the offeror performed as the prime contractor. Id. Finally, the past performance evaluation scheme provided that the agency would consider the relevance of an offeror's past performance in terms of scope, magnitude, and complexity. Id. at 191.

The solicitation included one PWS for the ID/IQ contract and another for the initial task order. RFP at 3-11, 92-108. The ID/IQ PWS described the contract's objective as software support services for various agency loan and finance activities. Id. at 5. This PWS also described a modernization effort known as the Farm Loan Program Information Delivery System (FLPIDS). Id. at 3. FLPIDS was said to involve "reengineering redundant processes, centralizing and integrating data, and leveraging modern technology." Id. The PWS listed 28 different agency functional areas as being part of FLPIDS, or "FLPIDS Capabilities," and it stated they were representative of functional areas that may be supported by the contract. Id. at 6-7. Examples included loan services, loan making, and electronic funds transfer. Id.

For five of the 28 functional areas listed as FLPIDS capabilities, the ID/IQ PWS provided background information regarding their integration into FLPIDS. RFP at 3-4. As relevant to this protest, such background information was provided for a system known as the Program Loan Accounting System (PLAS). Id. at 4. Regarding this system, the PWS stated that the agency would continue a strategy of "retir[ing PLAS's] online subsystems," but that "more emphasis will be placed . . . on the design and development of the replacement of non-accounting functions in the PLAS Cobol based system."¹ Id.

As stated above, in addition to the ID/IQ PWS, the solicitation also included a PWS for the initial task order. The task order PWS described the "nature of work" under the task order as "support of the FLPIDS." RFP at 94. Like the ID/IQ PWS, the task order PWS listed 28 functional areas as FLPIDS capabilities, and it stated they were representative of areas that may be supported by the contract. Id. at 93-94.

The task order PWS also included estimated staffing levels for each of the task order labor categories. RFP at 98-100. As relevant here, the hours for one labor category--COBOL developer--comprised slightly less than 10 percent of the total estimated hours. See RFP at 98-100. As stated above, the solicitation referred to PLAS as a "Cobol based system." Id. at 4.

¹ "Cobol" (or COBOL) is an acronym for a computer programming language known as "Common Business Oriented Language." See RFP at 4.

Prior to the solicitation's closing date, the agency posted responses to questions it received regarding the solicitation. As relevant to this protest, one of the questions asked for clarification regarding the solicitation's statement that in connection with the migration of PLAS to FLPIDs, "more emphasis will be placed . . . on the design and development of the replacement of non-accounting functions in the PLAS Cobol based system." AR, Tab 9, RFP Questions and Answers, at 2. In response, the agency stated: "All accounting functions in PLAS are planned to be migrated to the department's approved accounting system." Id.

As also relevant, another question referenced the background information provided for PLAS and stated:

The description seriously underestimates the size, risks, and complexity of PLAS. Suggest the addition of the following items to reflect the nature of PLAS:

- the number of lines of code exceed 2+ million,
- PLAS currently supports over 2,500 service centers and Finance Office with a portfolio of approximately 285,000 loans with an outstanding principle balance in excess of \$16 billion.
- Modifications will continue to PLAS to comply with the Farm Bill.
- PLAS is an operational production system and support must be provided.
- A major update, Focal Interest is scheduled for release in November 2014.
- Knowledge of PLAS is critical for the success of FLPIDS.
- FSA institutional knowledge of PLAS is extremely limited due to retirements.

AR, Tab 9, RFP Questions and Answers, at 1-2. The agency responded as follows: "No addition required." Id. at 2.

The agency received four responsive proposals by the solicitation's closing date, including proposals from Harmonia and 22nd Century. AR, Tab 58, Source Selection Decision Document (SSDD), at 3. A technical evaluation panel (TEP) convened, evaluated the proposals, identified proposal strengths, weaknesses, and deficiencies, and assigned ratings under the factors and subfactors. See AR, Tab 50, TEP Report. Following the TEP's evaluation, the contracting officer, who

also served as the source selection authority, established a competitive range consisting of Harmonia and 22nd Century. See AR, Tab 56, Competitive Range E-Mail (Sept. 25, 2014), at 1. The contracting officer then conducted discussions with Harmonia and 22nd Century and requested and received final proposal revisions from both firms. AR, Tab 58, SSDD, at 5. Both firms' final proposal ratings and total evaluated pricing are shown in the table below.

	<u>HARMONIA</u>	<u>22ND CENTURY</u>
Technical Capability²	Significant Confidence	High Confidence
Subfactor 1 -- ID/IQ Management Approach	Significant Confidence	High Confidence
Subfactor 2 -- ID/IQ Staffing Approach	Significant Confidence	High Confidence
Subfactor 3 -- ID/IQ Key Personnel	Significant Confidence	Significant Confidence
Subfactor 4 -- ID/IQ Transition Plan	Significant Confidence	Significant Confidence
Subfactor 5 -- ID/IQ Quality Management Plan	High Confidence	High Confidence
Subfactor 1 -- Task Order Technical Approach	Significant Confidence	Significant Confidence
Subfactor 2 -- Task Order Staffing Plan	Significant Confidence	Significant Confidence
Subfactor 3 -- Task Order Key Personnel	Confidence	High Confidence
Subfactor 4 -- Task Order Quality Control Plan	High Confidence	High Confidence
Past Performance	Significant Confidence	High Confidence
Factor 1 -- ID/IQ Past Performance	Significant Confidence	High Confidence
Factor 2 -- Task Order Past Performance	Significant Confidence	High Confidence
Total Evaluated Price³	\$41,457,184.61	\$39,997,993.40

AR, Tab 58, SSDD, at 4-6. As reflected above, 22nd Century's proposal was assigned higher overall technical capability and past performance ratings than Harmonia's proposal, and 22nd Century's total evaluated price was approximately \$1.5 million lower than Harmonia's total evaluated price. Id.

² While the TEP assigned overall technical capability ratings and technical capability subfactor ratings, it did not assign ratings at the technical capability factor level.

³ Total evaluated price was the total price proposed for the initial task order, including the option periods. See AR, Tab 19, 22nd Century Proposal, Vol. III, Price (Revised), at 14; Tab 26, Harmonia Proposal, Vol. III, Price (Revised), at 12.

The contracting officer reviewed the evaluation results and determined that 22nd Century's proposal represented the best value to the government. AR, Tab 58, SSDD, at 6. In making this determination, he noted that 22nd Century's proposal had been evaluated as technically superior and lower-priced and, therefore, a price/technical tradeoff analysis was not required. Id.

On September 29, the agency awarded the ID/IQ contract to 22nd Century. Contracting Officer's Statement at 14. One day later, the agency issued the initial task order to 22nd Century. Id. The task order's value was \$39,997,993.40, with a base year value of \$6,094,613.40. Id.

On October 3, the agency provided Harmonia a debriefing. Contracting Officer's Statement at 14. On October 9, Harmonia filed a protest with our Office, which was followed by an amended protest filed five days later.

DISCUSSION

Harmonia first challenges weaknesses assigned to its technical capability volume. The weaknesses concern the firm's task order staffing plan. The first challenged weakness was documented as follows:

The Offeror depicts [DELETED]. Over 90% of the work is for FLPIDS/DLS [Direct Loan System] work and brings concern to the evaluation team that the Offeror does not understand the work expected.

AR, Tab 50, TEP Report, at 28. The second weakness was documented as follows:

The Offeror states "[DELETED] is the primary location for PLAS work, which is the largest share of the contract work." PLAS is not the largest share of the contract work and is less than 10% of the overall effort.

Id. Additionally, in comments summarizing the evaluation of Harmonia's technical capability, the TEP included the following statement:

Offeror believes PLAS makes up the largest share of the contract work. PLAS actually makes up a small share of the work to be performed, which indicates a lack of understanding on the part of the Offeror.

AR, Tab 50, TEP Report, at 30.

Harmonia argues that these evaluation findings reflect the application of an unstated evaluation criterion because, in Harmonia's words, the agency "did not inform Harmonia that 90% of the contract effort was for FLPIDS, and only 10% of the contract effort was for PLAS," and because "Harmonia did not understand (and could not have understood) this aspect of the procurement until it received its Debriefing." Amended Protest at 7-9; Comments at 10-14.

While agencies are not permitted to use unstated evaluation factors, an agency properly may take into account specific matters that are logically encompassed by, or related to, the stated evaluation criteria, even when they are not expressly identified as evaluation criteria. MINACT, Inc., B-400951, Mar. 27, 2009, 2009 CPD ¶ 76 at 3; USGC Inc., B-400184.2 et al., Dec. 24, 2008, 2009 CPD ¶ 9 at 6.

At base, the evaluation findings at issue reflect the agency's concern that Harmonia's task order staffing plan overemphasized the level of effort for PLAS. In our view, this consideration was logically (if not inherently) encompassed by the evaluation criteria for the task order staffing plan subfactor. As stated above, the evaluation criteria for this subfactor included consideration of whether an offeror identified "the appropriate levels and mix of labor categories for effective and efficient delivery of services" and whether the offeror understood "the skills and experience required to accomplish the [task order PWS]." RFP at 189. Thus, we see no basis to conclude that the agency applied an unstated evaluation criterion when it considered whether Harmonia's staffing plan overemphasized work in one functional area.

As a related claim, Harmonia contends that the weaknesses arose because the solicitation was misleading with respect to the level of effort required for PLAS. See Amended Protest at 8; Comments at 11-13. In this regard, Harmonia argues that because technical attachments to the solicitation included documentation for PLAS, but not FLPIDS, the attachments "misle[d]" and "hampered" Harmonia's development of a technical approach. Amended Protest at 8; Comments at 12. Harmonia also points to the agency's statement in a solicitation question/answer exchange that "[a]ll accounting functions in PLAS are planned to be migrated to the department's approved accounting system." Amended Protest at 8 (quoting AR, Tab 9, RFP Questions and Answers, at 2); Comments at 12 (same). According to Harmonia, this suggested that PLAS work, rather than FLPIDS work, was the solicitation's primary focus. Amended Protest at 8; Comments at 12. Finally, Harmonia points to the statement in the solicitation that regarding the migration of PLAS to FLPIDS, "more emphasis will be placed . . . on the design and development of the replacement of non-accounting functions in the PLAS Cobol based system." Comments at 11-12 (quoting RFP at 4). Harmonia claims this statement indicates there would be a greater emphasis on the PLAS effort than the FLPIDS effort. Id.

As a general rule, solicitations must contain sufficient information to allow offerors to compete intelligently and on an equal basis. Tennier Indus., Inc., B-299624,

July 12, 2007, 2007 CPD ¶ 129 at 2; Triple P Servs., Inc., B-271629.3, July 22, 1996, 96-2 CPD ¶ 30 at 5 n.2. However, there is no legal requirement that a solicitation contain such detail as to completely eliminate all risk or remove all uncertainty from the mind of every prospective offeror. Tennier Indus., Inc., supra; Triple P Servs., Inc., supra.

Based on the record here, we do not agree with Harmonia that the solicitation was misleading with regard to the PLAS level of effort. As stated above, the weaknesses assigned to Harmonia's proposal that allegedly were caused by misleading aspects of the solicitation concern Harmonia's task order staffing plan. See AR, Tab 50, TEP Report at 28. As also stated above, the task order PWS described the task order as being for the "support of the FLPIDS," and, like the ID/IQ PWS, it listed PLAS as just one of 28 functional areas or systems within FLPIDS. RFP at 6-7, 93-94. Additionally, in a solicitation question/answer exchange wherein an offeror stated that the solicitation's background information for PLAS "seriously underestimates the size, risks, and complexity of PLAS" and suggested revisions showing an increased scope of work for PLAS, the agency responded: "No additions required." AR, Tab 9, RFP Questions and Answers at 1-2. Finally, the solicitation referred to PLAS as a "Cobol based system," and it included a task order staffing level estimate of less than 10 percent for the COBOL developer labor category. See RFP at 4, 98-100. Given all this information, we are not prepared to conclude--as Harmonia urges us to do--that the solicitation misleadingly conveyed that the PLAS effort constituted a majority of the work.⁴ Harmonia's claims regarding the agency's evaluation of the firm's staffing are denied.

Next, Harmonia alleges that the agency misevaluated 22nd Century's past performance. In particular, Harmonia claims that the substantial confidence rating assigned to 22nd Century's proposal under the task order past performance factor was unreasonable because it was based on 22nd Century's performance of a task order that was lower in value than the initial task order awarded under this solicitation. Comments at 14. As related to this claim, the record reflects that the 22nd Century task order evaluated by the agency had a value of approximately

⁴ Harmonia argues that it could not discern the PLAS level of effort from the COBOL developer staffing level estimate because "the Solicitation did not make clear whether the actual PLAS source code was to be converted to the FLPIDS code base, or whether entirely new code was to be written for FLPIDS." Amended Protest at 8; Comments at 12-13. To be timely, a protest based on alleged solicitation improprieties that are apparent prior to the closing date for receipt of proposals must be filed before that date. 4 C.F.R. § 21.2(a)(1) (2014). Thus, to the extent Harmonia considered the solicitation unclear or ambiguous regarding the treatment of the PLAS source code, it was required to protest before the solicitation's closing date. Since it did not do so, this argument is untimely.

\$25.6 million, with a 5-year period of performance. See AR, Tab 16, 22nd Century Proposal, Vol. II, Past Performance, at 9. As stated above, the value of the initial task order awarded to 22nd Century here was approximately \$40 million, with a 5-year period of performance. Contracting Officer's Statement at 14.

The evaluation of past performance, including an agency's determination of the relevance and scope of the offeror's performance history to be considered, is a matter of agency discretion, which we will not find improper unless unreasonable or inconsistent with the solicitation criteria or with procurement statutes or regulations. National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4; Command Enters., Inc., B-293754, June 7, 2004, 2004 CPD ¶ 166 at 4.

The agency responds to Harmonia's claim as follows:

The evaluation team concluded that the work performed by [22nd Century] under the previous FLPIDS contract was comparable to the proposed effort in size and scope because the previous year's FLPIDS contract totaled \$5,515,367.54 and the previous year's PLAS contract totaled \$1,162,742.92 for a total of \$6,678,110.46, which is comparable to the \$6,094,613.40 for [the base year of] this award. The number of resources for both the PLAS and FLPIDS contracts was 41 which is comparable to the 46 resources proposed.

Contracting Officer's Statement at 16. Thus, while the overall value of 22nd Century's task order past performance reference was lower than the overall value of the initial task order, the agency found the two task orders comparable in scope, based on a similarity in base year values and resource numbers.

We note that in contrast to the 22nd Century task order evaluated by the agency (which, again, was valued at approximately \$25.6 million and involved 46 resources), the task order that Harmonia provided to the agency for evaluation had a considerably lower value--approximately \$17.9 million over a five year period of performance--and involved only [DELETED] resources. AR, Tab 23, Harmonia Proposal, Vol. II, Past Performance, at 9. As stated above, Harmonia's proposal received a lower rating under the task order past performance factor than 22nd Century's proposal (high confidence versus substantial confidence, respectively). AR, Tab 58, SSDD, at 4. Given the agency's explanation of its evaluation of 22nd Century's task order, as well as the lower dollar and resource values of Harmonia's task order, we see no basis to disturb the evaluation findings at issue here.⁵

⁵ Harmonia also challenges the agency's evaluation of 22nd Century's past performance volume on the basis that 22nd Century's past performance references "did not include relevant work experience for PLAS." Comments at 14. However, the past performance volume of 22nd Century's proposal included a statement that
(continued...)

Finally, Harmonia alleges that the agency's evaluation of the size of Harmonia's ID/IQ past performance references was unreasonable and unequal. Amended Protest at 9, 17-18; Comments at 14-16. As relevant to this allegation, Harmonia's proposal provided past performance references for two ID/IQ contracts where it served as the prime contractor. With regard to the first (a contract with [DELETED]), the TEP commented that the size was "about 2/3 of the proposed work." AR, Tab 58, TEP Report, at 31. With regard to the second (a contract with [DELETED]), the TEP commented that the size was "only about one half of one year of the FLPIDS IDIQ." *Id.* For the reasons discussed below, we disagree that these findings reflect an unreasonable or unequal evaluation.

Harmonia's proposal listed its [DELETED] ID/IQ contract as having a value of approximately \$44.9 million over a 5-year period of performance, an average of approximately \$9 million per year. AR, Tab 23, Harmonia Proposal, Vol. II at 5. Harmonia's proposal listed its [DELETED] ID/IQ contract as having a value of \$8.9 million over a 2-year period of performance, an average of approximately \$4.5 million per year. *Id.* at 7. As stated above, the independent government estimate for the 5-year ID/IQ contract being awarded here was approximately \$59.6 million, an average of approximately \$12 million per year. AR, Tab 5, Acquisition Plan, at 9. Hence, the TEP's findings that the [DELETED] contract was "about 2/3" of the size of the ID/IQ contract being awarded and that the [DELETED] contract was about "one half of one year" of the size of the ID/IQ contract being awarded were generally accurate.⁶

With regard to Harmonia's claim that the evaluation was unequal, the record reflects that 22nd Century's proposal listed a prime contract ID/IQ past performance reference with a value of approximately \$960 million over seven years, with \$75 million in task orders having been issued since performance began approximately two and one half years ago. AR, Tab 16, 22nd Century Proposal, Vol. II, at 6. This value is significantly more than the above-discussed values of Harmonia's ID/IQ past performance reference contracts. As stated above, 22nd Century's proposal was assigned a rating of significant confidence under the ID/IQ

(...continued)

the firm had "successfully completed the business analysis phase of PLAS that includes business analysis, business capture, requirement gathering, PLAS modernization strategy, business modeling to migrate millions lines of COBOL code to make a Direct Loan System." AR, Tab 16, 22nd Century Proposal, Vol. II, Past Performance, at 9. Accordingly, we see no merit in Harmonia's claim.

⁶ In actuality, the value of Harmonia's [DELETED] contract is closer to three-quarters of the size of the ID/IQ contract being awarded than the two-thirds cited by the TEP. Based on the record as a whole, however, this relatively minor discrepancy provides no basis on which to sustain the protest.

past performance factor, whereas Harmonia's proposal was assigned a lower rating of high confidence. AR, Tab 58, SSDD, at 4. Given the significant difference in the values of the two firms' ID/IQ past performance reference contracts, we see no merit in Harmonia's claim that the agency treated the offerors unequally with respect to this aspect of the evaluation.

The protest is denied.⁷

Susan A. Poling
General Counsel

⁷ Harmonia raises other allegations in addition to those discussed in this decision. While we have not discussed every allegation raised, instead focusing on what we see as Harmonia's strongest arguments, we have considered all of Harmonia's allegations, and we find, based on the record, that none provides a basis on which to sustain the protest.