



## Decision

**Matter of:** WILLCOR Inc.

**File:** B-422358

**Date:** May 22, 2024

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### DIGEST

Protest challenging solicitation as unduly restrictive of competition because it sets a specific minimum dollar threshold for organizational experience references is denied where agency provides a rational explanation for the threshold and demonstrates that the threshold reasonably relates to the agency's needs.

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### DECISION

WILLCOR Inc., a historically underutilized business zone small business, of College Park, Maryland, protests the terms of fair opportunity proposal request (FOPR) No. N00039-24-R-3001, issued by the Department of the Navy, Naval Information Warfare Systems Command (NAVWAR), for a multitude of support services for the multifunction information distribution system (MIDS) program office (MPO) in San Diego, California. WILLCOR argues that the FOPR is unduly restrictive of competition because it sets a \$40 million threshold for organizational experience references.

We deny the protest.

### BACKGROUND

The FOPR, issued in accordance with Federal Acquisition Regulation (FAR) subpart 16.5 under the Navy's SeaPort-NxG multiple-award contract, is a total small

business set-aside. Agency Report (AR), Tab 1, Conformed FOPR at 2.<sup>1</sup> The FOPR, for award of a “follow-on” contract, seeks proposals to provide acquisition and program management; configuration and data management; engineering, test and evaluation; logistics; cyber security/information assurance; contract support; third party sales support; and risk and opportunity management support services for the MIDS MPO. *Id.* The Navy conducted market research that indicated sufficient small business participation for this procurement. COS/MOL at 10-12. The Navy’s market research considered the responses to a request for information and compared this procurement to other similar procurements. AR, Tab 5, Market Survey Report; AR, Tab 6, Declaration of Contracting Officer.

The FOPR contemplates the award of a task order with cost-plus-fixed-fee, level of effort, and cost-reimbursement line items, and a 1-year base period of performance and four 1-year option periods. Conformed FOPR at 32. The solicitation provides for a three-phase evaluation. *Id.* at 44. First, the Navy will evaluate whether offerors have an appropriate facility clearance; proposals not demonstrating the appropriate clearance will be rated unacceptable and will be ineligible for award. *Id.* Second, the Navy will evaluate proposals under the following three non-cost factors: technical approach, management approach, and organizational experience.<sup>2</sup> *Id.* at 44-47. Third, the Navy will perform a comparative analysis of the non-cost proposals, identify the offeror with the highest technically rated proposal, and then evaluate only that firm’s cost proposal. *Id.* at 44. The Navy will not rank proposals and it will not conduct a cost/benefit tradeoff. *Id.* at 44. In sum, the FOPR provides that the task order will be issued to the highest-technically rated offeror “with a fair and reasonable price.” *Id.*

As germane to WILLCOR’s protest, the FOPR instructs offerors to provide no fewer than two and no more than three references under the organizational experience factor, each of which “must be for an individual contract/task order with a total individual contract or task order value of at least \$40 [million].” Conformed FOPR at 38. The FOPR explains that the Navy will consider each offeror’s recent and relevant organizational experience references to assess the offeror’s ability to successfully perform the solicitation’s requirements. With regard to the evaluation of organizational experience, the solicitation advises that:

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<sup>1</sup> Citations to the record use the tab number of the document and the agency-assigned bates number as produced in the agency report. The solicitation was amended one time and all references to it are to the conformed version included in the agency report at tab 1. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 5.

<sup>2</sup> The Navy will evaluate the three non-cost factors “holistically with a confidence rating assigned representing the [g]overnment’s level of confidence the [o]fferor understands the requirement and will be successful in performing the requirement.” Conformed FOPR at 46-47. The proposals will be assigned a rating of high, moderate, or low confidence, which will be used in the comparative analysis. *Id.* at 47.

The Government will only evaluate those individual contract/task order references that meet the total individual contract/task order value of at least \$40 [million] and have been performed within the past three years from the date the FOPR is released.

*Id.* at 45.

Multiple potential offerors submitted questions to the agency about the organizational experience factor. Specifically, multiple offerors questioned the \$40 million minimum requirement and asked the Navy to consider reducing the dollar value threshold. AR, Tab 3, MIDS Question and Answer at 56-59, 62, 66-67. The agency consistently responded that the “\$40 [million] minimum was set to ensure the contractor has the relevant experience managing a large, complex [t]ask [o]rder such as this.” *Id.* at 56; *see also id.* at 57-59, 62 (referring offerors the agency’s answer to question 13). The agency explained that the minimum threshold is significantly less than the anticipated \$100 million to \$250 million value of this procurement to encourage maximum competition. *Id.* at 66.

Prior to the deadline for receipt of proposals, WILLCOR sent a letter to the contracting officer expressing its concerns about the contract threshold and an alleged organizational conflict of interest (OCI) involving another prospective offeror. Protest at 5. WILLCOR received no response from the agency and this timely protest followed.<sup>3</sup>

## DISCUSSION

WILLCOR argues that the agency’s requirements are unduly restrictive of competition.<sup>4</sup> According to the protester, the \$40 million threshold for organizational experience references is unrelated to an offeror’s ability to perform the requirements and fails to support a fair opportunity for firms to compete in accordance with FAR subpart 16.5 principles. Protest at 3-5. WILLCOR asserts that the requirement arbitrarily reduces competition when the average small business award is \$2.5 million. *Id.* at 4 (citing National Defense Magazine, Feb. 13, 2023).<sup>5</sup> WILLCOR also argues that the \$40 million threshold for references favors one of its potential competitors. *Id.* at 5. Although we do not specifically address all the protester’s arguments about the

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<sup>3</sup> Because the value of the contracting action at issue exceeds \$25 million, the protest is within our jurisdiction to hear protests of task order awards under multiple-award indefinite-quantity, indefinite-delivery contracts established within the Department of Defense. 10 U.S.C. § 3406(f)(1)(B).

<sup>4</sup> As WILLCOR elected to proceed with its protest without counsel, no protective order was issued for this protest and our discussion of some aspects of the procurement is necessarily general in nature to avoid reference to non-public information.

<sup>5</sup> See National Defense Magazine, Feb. 13, 2023 at <https://www.nationaldefensemagazine.org/articles/2023/2/13/muddled-process-hampers-defense-small-business-contracts-study-shows> (last visited Apr. 29, 2024).

solicitation, we have considered all of them and find they provide no basis on which to sustain the protest.<sup>6</sup>

Where a protester challenges a solicitation provision as unduly restrictive, the acquiring activity has the responsibility of establishing that the provision is reasonably necessary to meet the agency's requirements. *Flight Support, Inc.*, B-417637.2, Oct. 3, 2019, 2019 CPD ¶ 375 at 3; *OMNIPLEX World Servs. Corp.*, B-415988.2, Dec. 12, 2018, 2018 CPD ¶ 424 at 3. We examine the agency's justification for a challenged provision to ensure that it is rational, and can withstand logical scrutiny. *Flight Support, Inc.*, *supra*; *OMNIPLEX World Servs. Corp.*, *supra*. Our Office has determined that when deciding whether a solicitation's evaluation criteria are unduly restrictive, the fact that an aspect of the solicitation's evaluation criteria may prevent a number of firms from obtaining a positive, or the best possible, rating is not dispositive. See *AAR Mfg. Inc., d/b/a AAR Mobility Sys.*, B-418339, Mar. 17, 2020, 2020 CPD ¶ 106 at 13 (denying protest challenging solicitation's past performance evaluation rating scheme as unduly restrictive of competition where the agency provided a rational explanation for its specific requirements and demonstrated that they reasonably relate to the agency's actual needs). A protester's disagreement with the agency's judgment concerning the agency's needs and how to accommodate them does not show that the agency's judgment is unreasonable. *Emax Fin. & Real Estate Advisory Servs., LLC*, B-408260, July 25, 2013, 2013 CPD ¶ 180 at 4.

The agency maintains that the FOPR reflects its needs to have a contractor capable of performing the solicitation's requirements, and that the threshold value for organizational experience references reasonably ensures that the small business awarded the contract will have sufficient experience, infrastructure, and resources to manage the large, complex task order. COS/MOL at 10-12; AR, Tab 4, Declaration of Contract Specialist at 69-70.<sup>7</sup> The Navy also notes that while the \$40 million threshold is comparatively stringent, "it is not a gate criteri[on] that would make an offeror automatically unawardable." COS/MOL at 17. The Navy explains that an offeror without the organizational experience will still be evaluated under the other non-cost factors and that the proposal would not be ineligible for award even if the offeror lacks the relevant organizational experience. *Id.*

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<sup>6</sup> During the course of the protest, we dismissed the protester's allegation that another potential offeror has an OCI. Electronic Protest Docketing System No. 11. Generally, a protester is not required to protest that another firm has an impermissible OCI until after that firm has been selected for award. *Deque Sys., Inc.*, B-415965.4, June 13, 2018, 2018 CPD ¶ 226 at 5; *REEP, Inc.*, B-290688, Sept. 20, 2002, 2002 CPD ¶ 158 at 1-2. At present, the agency is evaluating proposals and has not yet made an award. Accordingly, until such time as the agency completes its evaluation and selects the firm for award, the protester's OCI allegations are premature.

<sup>7</sup> The contract specialist for this procurement is the Special Assistant to Director of Contracts for NAVWAR and is the ombudsman for the task order. AR, Tab 4, Decl. of Contract Specialist at 68; Conformed FOPR at 16.

In developing the organizational experience evaluation criteria for the FOPR, agency personnel reviewed a similar enterprise services task order, No. N00039-22-R-3006, issued under the SeaPort-NxG multiple-award contract to procure professional services in support of another Navy program office--the Tactical Shore and Expeditionary Integration Program Office. AR, Tab 4, Declaration of Contract Specialist at 70. They found that N00039-22-R-3006 is similar to the FOPR's requirements in size, scope, and magnitude, and that both have similar dollar values. *Id.* In addition, the solicitations for both task orders used the same highest-technically rated offeror source selection process, and both were set aside for small businesses. *Id.*

The Navy explains that agency personnel discussed how the agency used an organizational experience dollar threshold of \$45 million in N00039-22-R-3006 to ensure the successful small business awardee would have "sufficient infrastructure and resources in place to manage the entire award effort upon award of the task order." *Id.* Specifically, they discussed the market research for N00039-22-R-3006, which included review of task orders issued under the SeaPort-NxG contract. This award data indicated that the Navy could anticipate substantial small business participation with an organizational experience threshold of \$45 million. *Id.* at 70-71. Task order N00039-22-R-3006 uses the same North American Industry Classification System (NAICS) code as the instant FOPR. *Id.* at 71. Taking into account its discussion of N00039-22-R-3006 and the responses from the request for information issued for the instant FOPR, which indicated adequate small business participation, the Navy decided to include a \$40 million threshold for organizational experience. *Id.* at 71. The Navy determined that even though \$40 million was significantly less than the anticipated contract value, it would still ensure potential offerors had relevant experience managing a large and complex task order such as the one anticipated under the FOPR while encouraging robust small business competition. *Id.*

Based on our review of the record, we are not persuaded that the solicitation unduly restricts competition. The solicitation does not restrict WILLCOR's ability to submit an acceptable proposal; there is no requirement that to be eligible for award, an offeror's proposal include organizational experience references for contracts valued at \$40 million or more. The protester contends that the dollar threshold will inhibit small business competition and, in particular, the protester's ability to compete. While a proposal without a \$40 million reference may be less competitive than a proposal with such a reference, the agency "would still conduct a comparative analysis of all proposals to determine the [highest technically rated offeror]." COS/MOL at 17. The fact that an evaluation criterion may be burdensome, or otherwise makes a firm's offer less competitive, is not objectionable, provided the agency's criteria have a reasonable basis and are not otherwise contrary to law or regulation. *AAR Mfg. Inc., d/b/a AAR Mobility Sys., supra.*

Additionally, WILLCOR has not demonstrated that the agency arbitrarily or unreasonably set the dollar value threshold for references at \$40 million. The record shows that multiple small businesses have been issued task orders valued at over \$40 million under the SeaPort-NxG for the same NAICS code as the instant solicitation.

AR, Tab 7, NAVWAR SeaPort-NxG Contracts List. The agency explains that the requirement being solicited is valued at approximately \$100 million to \$250 million, and that it set the \$40 million threshold based on market research showing that there had been a recent and similar solicitation that used a threshold amount of \$45 million. AR, Tab 4, Declaration of Contract Specialist at 70. The agency further explains that it set that threshold with the expectation that multiple small businesses would be able to compete for this procurement, while also ensuring that the small business issued the large and complex task order will have the ability and resources to successfully perform it. The agency also notes that the \$40 million minimum for references allows consideration of contracts valued between 16 percent and 40 percent of the anticipated value of the solicited requirement. COS/MOL at 13. We find that the agency's explanation for its \$40 million minimum reference for organizational experience is reasonable. Accordingly, we find that the solicitation is not unduly restrictive of competition.

WILLCOR also maintains that the \$40 million organizational experience evaluation criterion favors the incumbent contractor's team, which WILLCOR believes includes one of its potential competitors.<sup>8</sup> Protest at 5. That evaluation criteria provide an advantage--possibly even a dispositive advantage--to incumbent contractors that have the precise experience called for in the evaluation criteria does not provide a basis for our Office to object to the requirement. *Flight Support, Inc., supra*. An agency is not required to equalize or otherwise eliminate a competitive advantage enjoyed by incumbent contractors by virtue of their having previously performed the agency's requirements. *Id.*; *Emax Fin. & Real Estate Advisory Servs., LLC, supra* at 6. In addition, to the extent the protester is alleging that the agency set the threshold where it did to give one of its competitors an advantage, this is essentially an allegation of bad faith, and the protester has provided no evidence of such bias, other than its arguments disagreeing with the agency's judgments. Government officials are presumed to act in good faith, and a protester's contention that contracting officials are motivated by bias or bad faith thus must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. *Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8.*

The protest is denied.

Edda Emmanuelli Perez  
General Counsel

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<sup>8</sup> The initial awardee for the previous contract was a small business that a large business has since acquired and is ineligible to compete for this procurement. COS/MOL at 10 n.6; Conformed FOPR at 2.