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**Comptroller General
of the United States**

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

Decision

Matter of: Naval Systems, Inc.

File: B-407090.3

Date: November 20, 2012

Jeb T. Branham, Esq., Deem Branham, Attorneys at Law, for the protester.
Kevin P. Mullen, Esq., and Kristen M. Rogers, Esq., Jenner & Block LLP, for
Precise Systems, Inc., an intervenor.

Theresa M. Francis, Esq., Department of the Navy, for the agency.

Scott H. Riback, Esq., and James A. Spangenberg, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's proposed corrective action in response to an earlier protest is denied where the record shows that the agency's corrective action--revising the solicitation, obtaining revised proposals and making a new source selection decision--is necessary in order for the agency to make award for its actual requirements.

DECISION

Naval Systems, Inc. (NSI) protests proposed corrective action contemplated by the Department of the Navy, Naval Air Warfare Center, Aircraft Division, in connection with the agency's acquisition of various program and life cycle management and support services for the presidential helicopters program office under request for proposals (RFP) No. N00024-10-R-3435. NSI maintains that the agency's proposed corrective action is unnecessary and prejudices the protester.

We deny the protest.

The RFP contemplates the issuance of a cost-plus-fixed-fee task order for a base year with two 1-year options to the contractor submitting the proposal deemed to

offer the government the “best value” for the requirement.¹ The agency previously completed its competition for this requirement and issued a task order to NSI on July 16, 2012. After learning of the agency’s source selection decision and receiving debriefings, two other vendors, Precise Systems, Inc. and AVIAN Engineering, LLC, filed protests with our Office alleging various improprieties with the agency’s issuance of the task order to NSI.

In response to those protests, the agency advised our Office, by letter dated August 3, that it intended to take corrective action. Specifically, the agency advised that it would amend the solicitation, obtain and evaluate revised proposals and make a new source selection decision. After receipt of the agency’s letter, we dismissed Precise’s protest as academic on August 13, and AVIAN withdrew its protest on that same date. NSI’s current protest takes issue with the agency’s proposed corrective action in two areas.

The first area concerns a significant decrease in the estimated level of effort from that contemplated by the solicitation.² The record shows that the solicitation included an estimate of the level of effort the agency anticipated would be required in performing the contract. The RFP provided not only the total estimate of the anticipated level of effort (63.5 full time equivalents (FTEs)), but also provided the offerors detailed information regarding the number of personnel, by labor category, that the agency anticipated would be necessary to meet the RFP’s requirements. RFP at 58-60. The record shows, however, that, shortly before the agency’s issuance of the task order to NSI (but after the agency had made its source selection decision), it was advised that the number of contractor personnel for which the agency could anticipate receiving funding was only 41.5 FTEs, or a level of effort approximately 35 percent lower than the level of effort the agency had advised offerors could be anticipated.³ Contracting Officer’s Statement at 3. As part of its

¹ Competition for the requirement was limited to service-disabled veteran-owned small businesses holding Basic Seaport-e indefinite-delivery/indefinite-quantity contracts.

² Precise’s original protest specifically objected to the agency’s issuance of the task order to NSI at a level of effort substantially below the level of effort specified in the RFP.

³ We note that the original total evaluated value of the task order awarded to NSI was approximately \$20.8 million. Agency Report (AR), exh. 25. A 35 percent reduction in that amount would result in a total evaluated value of approximately \$13.5 million, which is greater than \$10 million. The agency has not argued, and there is no basis on this record for our Office to find, that the value of this task order will be less than \$10 million, the minimum value of a task order award that is subject to our jurisdiction. Serco, Inc., B-406061, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61 at 6-8.

corrective action, the agency intends to advise offerors of the change in the anticipated level of effort, and to afford them an opportunity to prepare revised proposals on that basis.

NSI objects to the agency's proposed corrective action. NSI maintains that all of the offerors competed for the requirement based on the same assumption relating to the anticipated level of effort, so there was no prejudice to any offeror occasioned by the agency's change in the level of effort for actual performance of the task order. NSI also maintains that the RFP contemplated that the agency would specify the actual level of effort at the time the task order was issued, and advised that the anticipated estimate of the level of effort included in the RFP was for informational purposes only. Consequently, according to the protester, the agency's identifying a level of effort different than that specified during the competition was not improper. NSI contends that it has been prejudiced because the other offerors know its proposed price and the technical ratings.

We have no basis to object to this aspect of the agency's proposed corrective action. As a general rule where, as here, an agency discovers that its requirements have materially changed, such that the solicitation no longer reflects the agency's actual requirements, the appropriate course of action is for the agency to cancel the original solicitation and issue a new one (or amend the original solicitation) to reflect the agency's actual requirements, and make a new selection decision; agencies may not properly solicit proposals on one basis with the intent of materially altering the contract or task order at, or shortly after, award. Business Computers Applications, Inc., B-406230.3, May 16, 2012, 2012 CPD ¶ 159 at 3. Simply stated, we think that a 35-percent change in the level of effort for the requirement provides an adequate basis for the agency's proposed corrective action here of amending the RFP and obtaining revised quotations based on the agency's actual requirements. Compare id. (agency had a reasonable basis to cancel task order solicitation based upon a 43 percent decrease in the solicitation's contemplated level of effort).

Although NSI is correct that the RFP provided the anticipated level of effort for informational purposes and contemplated establishing the actual level of effort at the time of award, we cannot conclude either that the agency's award on a basis materially different than contemplated by the RFP was proper, or that the offerors were not prejudiced by the agency's actions. In this regard, the RFP contemplates the award of a cost-reimbursement type contract under which the offerors were to provide the agency detailed information relating to their proposed technical approach, including details relating to their proposed workforce configuration and staffing approach. RFP at 50-51. The RFP contemplates a technical evaluation of the adequacy of the offerors' respective proposed personnel and labor mix, as well as a detailed cost realism evaluation of their proposed man hours and labor mix for the requirement. RFP at 64-65. Thus, although the anticipated level of effort may only have been provided for informational purposes, the record shows that the

estimate was used by the offerors in formulating their proposals, and was used by the agency as a baseline or benchmark against which proposals were evaluated. AR, exh. 25. It follows that, during the original competition, the offerors were prejudiced because proposals were not prepared based on an accurate estimate of the agency's actual requirements, and the offerors therefore were led to formulate their proposed staffing approaches and costs in a manner that did not actually meet the agency's needs.

The agency also took corrective action to make another change in the RFP relating to the security clearances and access required by contractor personnel.⁴ In this connection, the RFP contemplates that the contractor will provide, among other things, various security and facility management services. Included in this aspect of the task order is a requirement to provide a security response team that will be responsible for protection of the Presidential Helicopter Support Facility Complex, which includes the presidential helicopter hangar. RFP at 8. Because of the sensitive nature of the facility, the eventual contractor will be required to provide personnel that have been granted "Yankee White" access approval.⁵ However, in preparing the solicitation, the record shows that the agency erroneously omitted any requirement for contractor personnel to obtain Yankee White access.

The agency proposes to amend the RFP to include a requirement that appropriate contractor personnel be required to obtain Yankee White access within a certain period after issuance of the task order. The protester maintains that it is unnecessary to amend the RFP and obtain revised proposals simply because the requirement was not included in the original solicitation because the offerors knew from other provisions of the solicitation--principally those relating to required security clearances--that Yankee White access would be required for certain personnel.

The Yankee White access requirement relates to a matter of national security, specifically, the safety of the President and Vice President. Nothing in the original RFP specifically required the successful contractor to obtain Yankee White access for its personnel, and, as explained by the agency, this is an essential requirement for those personnel that will have access to the Presidential Helicopter Support Facility Complex. Notwithstanding the protester's position that the offerors knew from other solicitation provisions that Yankee White access would be required for

⁴ This also was a subject of Precise's protest.

⁵ "Yankee White" is a short-hand term used to describe a level of access approval granted in accordance with DoD Directive No. 5210.55 and DoD Instruction No. 5210.87. The contractor employees requiring Yankee White access are those that will provide recurring services or who require unescorted access to Presidential support areas, activities or equipment. AR at 2-3; exh. 33.

certain personnel, the simple fact of the matter is that, absent an amendment of the RFP, there would be no enforceable contractual requirement for the successful contractor to obtain Yankee White access for its personnel. In the final analysis, the agency expressly--albeit erroneously--eliminated the Yankee White access requirement from the solicitation, and, under the circumstances, we find it appropriate for the agency to add this important provision back into the RFP to ensure that it is included in the resulting task order, thereby making certain that the successful contractor will meet this essential requirement.⁶

The protest is denied.

Lynn H. Gibson
General Counsel

⁶ NSI asserts that no corrective action should have been taken because Precise's protest was untimely. However, it is within the agency's discretion to take corrective action in connection with a procurement regardless of whether a timely protest was filed or not; all that is required is that the agency have reasonable concerns that errors in the procurement occurred. Optimum Mgmt. Sys., LLC, B-299322.3, May 23, 2007, 2007 CPD ¶ 106 at 3.