G A O
Accountability * Integrity * Reliability

Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: MFVega & Associates, LLC

File: B-291605.3

Date: March 25, 2003

J. Anthony Bryan, Esq., for the protester.
Dorn C. McGrath III, Esq., and Scott Arnold, Esq., Greenberg Traurig, for Primavera Systems, Inc., an intervenor.
Steven W. Feldman, Esq., and Margaret P. Simmons, Esq., Army Corps of Engineers, for the agency.
Louis A. Chiarella, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of agency's proposed award of a sole-source contract for support and consulting services for a program management information system is denied where the record shows that the agency reasonably concluded that only one firm is capable of meeting the agency's needs.

2. Protest of alleged improper bundling of procurement requirements is denied where the record shows that the requirements that the protester contends should not be bundled are not, in fact, part of the solicitation at issue in the protest.

DECISION

MFVega & Associates, LLC protests the proposed award of a contract on a sole-source basis to Primavera Systems, Inc., under request for proposals (RFP) No. DACA87-03-R-0005, used by the Army Corps of Engineers (COE), Engineering and Support Center, Huntsville (CEHNC), for support and consulting services in furtherance of the agency's program and program management information system 2 (P2) project. MFVega contends that the agency's determination that only one responsible source could satisfy the agency's requirements was flawed and the result of the improper bundling of requirements.

We deny the protest.

The P2 project represents a second-generation program management information system for the COE, and is intended to be the means by which agency employees manage all projects within the COE's three core mission areas: military programs, civil works, and environmental projects. Once complete, the P2 system is envisioned to provide agency project managers with quick and accurate information on all aspects of each project, including the cost of government personnel, scheduling information, and construction contract data pertaining to the project's procurement history. The P2 system will also replace the agency's existing system, PROMIS, which currently serves as the repository for most of the COE's project management information.

The architecture for the P2 system consists of various commercial software products integrated in a manner so as to accomplish the agency's requirements. Specifically, the major components for the P2 system that the COE has selected are certain Oracle databases (i.e., Oracle Projects, Oracle Financial Analyzer, Oracle Discoverer, Oracle Tutor), and Primavera's Project Planner (P3e) and Primavision software.[1] It is the integration of Primavera's P3e and Primavision software with the Oracle project management tools that will together form a fully operational project management information system. Contracting Officer's Statement at 1-2.

The COE has previously conducted several procurements in furtherance of the P2 project. On September 22, 2000, the agency purchased approximately 5,000 P3e licenses from Primavera.[2] The COE has also procured P3e software maintenance from Primavera. In July 2001, the COE awarded Primavera an indefinite-delivery, indefinite-quantity (ID/IQ) contract for consultant services for the design, development, and testing of the P2 system. The agency estimates that the developmental effort for the P2 project is approximately 60 percent complete.

On October 15, 2002, the CEHNC posted a presolicitation notice on the FedBizOpps website, announcing its intent to award a sole-source contract to Primavera for various support services in furtherance of the P2 system project. Specifically, the presolicitation notice contemplated that Primavera would provide (1) annual

---

[1] Oracle Projects serves as the repository for all COE project-related information. Oracle Financial Analyzer is a financial reporting application for project cost information. Oracle Discoverer is a reporting application for non-financial information such as progress schedules. Oracle Tutor is a flow chart application that allows users to chart project processes. P3e is a network analysis tool that allows agency personnel to develop project work plans and schedules. Primavision is the web-based scheduling application that allows users to access project data through the Internet. Contracting Officer's Statement at 1.

[2] The COE estimates that deployment and implementation of the P2 system will require the procurement of an additional 15,000 P3e licenses.

maintenance of the licensed P3e and Primavision software; (2) training for approximately 25,000 COE employees on the P2 system at locations worldwide; and (3) support services for the completion of development, deployment, and maintenance of the P2 system. Agency Report (AR), Tab 1, Presolicitation Notice, Oct. 15, 2002, at 2. While the COE believed that only Primavera could provide these requirements, it solicited responses from other responsible sources for consideration.

On October 22, MFVega submitted a proposal in response to the presolicitation notice, in an attempt to demonstrate its qualifications to support the P2 project. The COE ultimately determined that MFVega was not an acceptable alternate source for the agency's P2 project requirements here.

On November 15, the COE issued an RFP to Primavera for P2 support and consulting services. The solicitation's scope of work stated that the contractor would provide (1) consulting services (e.g., guidance and support as the P3e/Primavision expert to advise the P2 configuration team, technical assistance during system testing, data conversion, and deployment); (2) training services; (3) P3e and Primavision software maintenance; and (4) additional P3e and Primavision licenses. RFP at 2-3. It is important to note that the sole-source RFP to Primavera did not include deployment and implementation-type services (e.g., data loading, data conversion) for the P2 system.[3] On November 27, the agency prepared a written justification and approval (J&A) in support of its sole-source contract to Primavera.

On December 16, after learning that the agency had determined that it was not an acceptable alternative source, MFVega filed a timely protest alleging that the sole-source award to Primavera was improper.

The overriding mandate of the Competition in Contracting Act of 1984 (CICA) is for "full and open competition" in government procurements obtained through the use of competitive procedures. 10 U.S.C. § 2304(a)(1)(A) (2000). It is only when an agency has explicit statutory authority to conduct noncompetitive acquisitions that it is not required to permit all responsible sources from competing in a government procurement. 10 U.S.C. § 2304(c).

When an agency uses noncompetitive procedures (such as 10 U.S.C. § 2304(c)(1), cited here by the COE), it is required to execute a written J&A with sufficient facts and rationale to support the use of the specific authority. See 10 U.S.C.

---

[3] On December 12, the COE issued a second presolicitation notice, seeking responses to its intent to competitively procure P2 system deployment, implementation, and maintenance services from among section 8(a) small businesses. See Protester's Comments, Jan. 22, 2003, at 65-66 (Presolicitation Notice DACA87-03-R-0008, Dec. 12, 2002, at 1-2).

§ 2304(f)(1)(A), (B); Federal Acquisition Regulation (FAR) §§ 6.302-1(d)(1), 6.303, 6.304. Our review of an agency's decision to conduct a sole-source procurement focuses on the adequacy of the rationale and conclusions set forth in the J&A. When the J&A sets forth a reasonable justification for the agency's actions, we will not object to the award. McKesson Automation Sys. Inc., B-290969.2, B-290969.3, Jan. 14, 2003, 2003 CPD ¶ 24 at 3; National Aerospace Group, Inc., B-282843, Aug. 30, 1999, 99-2 CPD ¶ 43 at 5. A sole-source award is justified where the agency reasonably concludes that only one known source can meet its needs within the required time, except where the noncompetitive situation arises from a lack of advance procurement planning. Metric Sys. Corp., B-279622, July 2, 1998, 98-2 CPD ¶ 4 at 6. We have examined each of the protester's arguments in detail and find no basis to question the agency's determination that only Primavera could satisfy the requirements for P2 project support and consulting services as defined by the RFP.

MFVega first argues that the agency failed to prepare a statement of work (SOW) as part of its presolicitation notice. An agency must adequately apprise other prospective sources of its needs so that the prospective sources have a meaningful opportunity to demonstrate their ability to provide what the agency seeks to purchase; there is no requirement that an agency express its needs by any particular means. Lockheed Martin Sys. Integration--Owego, B-287190.2, B-287190.3, May 25, 2001, 2001 CPD ¶ 110 at 14-15. Here, the COE's presolicitation notice provided sufficient notice, notwithstanding the absence of an SOW in it, so that other prospective sources had a meaningful opportunity to demonstrate their capability to satisfy the agency's needs.

MFVega also contends that the COE failed to comply with the FAR requirements in preparing its J&A. In its protest report the agency specifically addressed and fully explained how its J&A complied with applicable procurement regulations. Because MFVega's comments did not contain any rebuttal to the agency's response, we consider this allegation abandoned. Shinwha Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 4.

MFVega also argues that the agency unreasonably determined that MFVega was not an acceptable alternate source for the P2 project requirements here. We disagree. In our view, the RFP here demonstrates the need for the contractor to have access to P3e and Primavision software source codes to perform the full scope of work. An agency may properly take into account the existence of software data rights and licenses when determining whether only one responsible source exists. FAR § 6.302-1(b)(2); see AAI ACL Techs. Inc., B-258679.4, Nov. 28, 1995, 95-2 CPD ¶ 243 at 6; Marconi Dynamics, Inc., B-252318, June 21, 1993, 93-1 CPD ¶ 475 at 5. MFVega has not demonstrated that it has access to the P3e and Primavision software source codes, and essentially admits that it cannot perform the software- and training-related tasks associated with the P2 project. Protest at 6; Protester's Comments, Jan. 22, 2003, at 1, 6. Accordingly, we find the agency's determination that MFVega was not an acceptable alternative source to be reasonable.

Lastly, MFVega argues that the reason it cannot perform the RFP's scope of work, and only Primavera can fulfill the agency's needs, is that the agency improperly bundled its P2 project requirements. Protest at 6. MFVega contends that many of the information technology tasks associated with P2 system deployment and implementation, such as data loading and conversion, are generic in nature, and can be performed by contractors who do not have access to P3e and Primavision source codes.[4]

MFVega's allegation of improper bundling is premised on a factual misunderstanding as to the scope of P2 support and consulting services that the agency intends to procure on a sole-source basis from Primavera. The P2 project services related to system deployment and implementation that MFVega believes are improperly bundled (and that it has the ability to perform) are not part of the intended sole-source contract to Primavera. The RFP here clearly demonstrates that its scope of work does not extend to P2 deployment and implementation services. Additionally, the agency report explains in great detail that, while Primavera will provide the COE with expert advice and consulting services in support of the P2 project, actual P2 system deployment, implementation, and maintenance services will be procured competitively from among 8(a) contractors.[5] Supplemental AR, Mar. 17, 2003, at 1-3. Therefore, the bundling that MFVega challenges does not in fact exist.[6]

Additionally, as to the support and consulting services that are actually part of the RFP to Primavera, we find that MFVega has either acknowledged it cannot provide, or failed to demonstrate that it can provide, those functions. Accordingly, MFVega is not an interested party to challenge whether those requirements here are improperly

---

[4] In fact, MFVega has proposed a "division of responsibility" to the agency in which Primavera would continue working on P2 development while the protester performs P2 deployment and implementation services. Protester's Comments, Jan. 22, 2003, at 9-10, 18.

[5] MFVega, a historically underutilized business zone (HUBZone), but not an 8(a) contractor, would be unable to compete should the agency limit competition to only 8(a) firms. Protester's Comments at 30-31 (MFVega Letter, July 14, 2001, at 1-2).

[6] Our Office conducted an "outcome prediction" alternative dispute resolution and informed MFVega that the solicitation it was protesting did not include the services that the protester claimed were improperly bundled; the protester, however, declined to withdraw its protest.

bundled into the solicitation. See Sales Res. Consultants, Inc., B-284943, B-284943.2, June 9, 2000, 2000 CPD ¶ 102 at 5.

The protest is denied.

Anthony H. Gamboa
General Counsel