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Decision

Matter of: Harmonia Holdings Group, LLC

File: B-417465

Date: July 16, 2019

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DIGEST

Protest challenging the issuance of a noncompetitive logical follow-on order under a Federal Supply Schedule contract is denied where the order was reasonably issued to the incumbent in the interest of economy and efficiency pursuant to the authority of Federal Acquisition Regulation § 8.405-6(a)(1)(i)(C).

DECISION

Harmonia Holdings Group, LLC (Harmonia), of Blacksburg, Virginia, protests the issuance of a sole-source order to The MIL Corporation, of Bowie, Maryland, under request for quotations (RFQ) No. 1331L5-19-S-1350-0001, issued by the Department of Commerce, International Trade Administration, for the completion of ongoing application development services.¹ Harmonia contends that the agency's decision to issue the order on a noncompetitive basis as a logical follow-on to a previously issued order was unreasonable.

We deny the protest.

¹ The International Trade Administration is a bureau within the Department of Commerce that seeks "to strengthen the competitiveness of U.S. industry, promote trade and investment, and ensure fair trade through the rigorous enforcement of [] trade laws and agreements." Contracting Officer's Statement (COS) at 1.

BACKGROUND

Regulatory Framework

Harmonia challenges an order issued on a time-and-materials basis to The MIL Corporation under Information Technology (IT) Schedule 70 of the General Services Administration's (GSA) Federal Supply Schedule (FSS). Agency Report (AR), Tab 2, Follow-On Order, at 4. Pursuant to the Federal Acquisition Regulation (FAR), orders and blanket purchase agreements (BPAs) placed under the FSS are exempt from the competition requirements of the Competition in Contracting Act (CICA) and its implementing regulations in FAR part 6. FAR § 8.405-6; Noble Supply & Logistics, B-417269, Apr. 30, 2019, 2019 CPD ¶ 167 at 8. Rather, such acquisitions are subject to the specific competition rules set forth in FAR subpart 8.4. Id.

Subpart 8.4 of the FAR establishes several authorities pursuant to which a sole-source order placed under the FSS may be justified. See FAR § 8.405-6(a), (b). Here, the agency's decision to issue the order to The MIL Corporation on a noncompetitive basis was made pursuant to the authority set forth in FAR § 8.405-6(a)(1)(i)(C).

This authority provides that a noncompetitive order is justified if:

In the interest of economy and efficiency, the new work is a logical follow-on to an original Federal Supply Schedule order provided that the original order was placed in accordance with the applicable Federal Supply Schedule ordering procedures. The original order or BPA must not have been previously issued under sole-source or limited-sources procedures.

FAR § 8.405-6(a)(1)(i)(C).

In other words, to issue an order on a noncompetitive basis under this authority, three criteria must be met: (1) the new work must be a logical follow-on to the prior order; (2) the prior order may not have been issued under sole-source or limited-sources procedures; and (3) the decision to issue the follow-on order on a noncompetitive basis must be made in the interest of economy and efficiency. Harmonia does not dispute that the first two criteria have been met.² Accordingly, we focus our attention on the reasonableness of the agency's conclusions regarding the final criterion.

² Based upon our review of the record, we have no basis to question that the follow-on order issued to The MIL Corporation is logically related to the prior order and that the prior order was issued pursuant to competitive procedures.

Previously Issued Order

In 2014, the International Trade Administration began the process of modernizing, migrating, and replacing outdated legacy applications with modern scalable solutions.³ COS at 1, 13; Memorandum of Law (MOL) at 1-2. To support this effort, an order was issued in March 2014 to The MIL Corporation on a competitive basis under GSA's IT Schedule 70.⁴ AR, Tab 3, Order No. D14PD00310, at 1, 3; Tab 4, Federal Procurement Data System Report, at 1-2. Hereinafter, we refer to this order as the "2014 order."

The 2014 order required The MIL Corporation to provide application development services on a time-and-materials basis to the International Trade Administration in order to support the agency's modernization effort. AR, Tab 3, 2014 Order, at 3. The order's period of performance consisted of a base year and four option years. AR, Tab 3, 2014 Order, Statement of Work (SOW), at 30. The order, inclusive of all option periods, was scheduled to expire on March 31, 2019. COS at 2; AR, Tab 3, 2014 Order, at 4.

Acquisition Planning for Logical Follow-On Order

The record reflects that, in April 2017, roughly two years prior to the expiration of the 2014 order, the agency recognized that it would likely need ongoing contractor support to complete its application modernization effort, and it began conducting market research to determine how best to complete its requirement. MOL at 2; COS at 2; AR, Tab 5, Market Research Report, at 3. Over the course of the next 18 months, members of the Office of the Chief Information Officer (i.e., the program office) and members of the acquisition office met to assess the progress of the modernization effort and to discuss acquisition strategies. COS at 3; AR, Tab 5, Market Research Report, at 3.

In the summer of 2018, draft requirements documents were prepared and the agency's Chief Information Officer issued a "Strategic Plan" for completion of the modernization effort. MOL at 2; AR, Tab 5, Market Research Report, at 3. Relevant here, the strategic plan included a schedule for the completion of the modernization effort, which the agency characterizes as "aggressive" but "critical" and "necessary." MOL at 2; COS at 2-3; AR, Tab 5, Market Research Report, at 4. Importantly, the agency explains that the modernization, migration, and replacement of all outdated legacy applications must be completed by March 2021. AR, Tab 5, Market Research Report, at 4; Tab 12, Award Decision, at 9. This is because several of the legacy applications exist on platforms that will no longer be commercially supported beyond that date. MOL at 2; COS at 3.

³ For ease of reference, we refer to this effort as the "modernization effort."

⁴ Although the scope of work required the contractor to provide services to support the International Trade Administration, a bureau within the Department of Commerce, the order was issued by the Department of the Interior through an assisted acquisition. COS at 2; Tab 3, 2014 Order, at 2; Agency Response to GAO Request for Information (RFI), July 8, 2019, at 1.

Moreover, the agency has a pressing need to drastically reduce its application support expenditures. AR, Tab 16, Limited Sources Justification, at 2.

At a final planning meeting in August 2018, it became clear that the modernization effort being supported by The MIL Corporation under the 2014 order would not be completed by the time that order expired in March 2019.⁵ COS at 3; AR, Tab 5, Market Research Report, at 3. In this regard, the record reflects that there are currently more than 30 critical application projects still in development. MOL at 2; Tab 16, Limited Sources Justification, at 2, 3-4; Tab 20, Applications Development Pipeline. According to the agency, these remaining projects are “extremely complex,” involving “heavily customized applications” that are “totally unique” to the agency. AR, Tab 16, Limited Sources Justification, at 2.

During the August 2018 meeting, agency personnel discussed the merits of various acquisition strategies and, in particular, the impact each strategy might have upon project costs and scheduling. AR, Tab 5, Market Research Report, at 3. On October 16, 2018, the Chief Information Officer prepared a draft justification for the issuance of a potential follow-on order to the incumbent on a sole-source basis. Id. at 4.

Market Research Report

On October 29, the agency finalized its market research report. MOL at 2; AR, Tab 5, Market Research Report. The report reflects that, in performing its research, the agency considered historical acquisition information, personal knowledge of agency personnel, and government and commercial databases, including GSA’s IT Schedule 70. AR, Tab 5, Market Research Report, at 4.

In the report, the agency concluded that, based upon its review of the GSA schedule, several vendors (including Harmonia) “are capable of performing applications development in its general sense,” but The MIL Corporation was uniquely qualified to provide the applications development support here. Id.; COS at 3. The agency explained that new contractors often experience steep learning curves and, as a result, contract performance can be slow to start until the new contractor gains sufficient knowledge of the organization and the operating environment in which the applications are to function. MOL at 2; AR, Tab 5, Market Research Report, at 4. The agency explained that this is especially true where, as here, the scope of work requires the contractor to continue in-progress development work involving applications that have been significantly customized to support the agency’s mission.⁶ MOL at 3; AR, Tab 5,

⁵ The agency represents that The MIL Corporation timely performed the order in accordance with the statement of work and no delays in performance led to the need for the follow-on order. AR, Tab 16, Limited Sources Justification, at 1.

⁶ In reaching this conclusion, the agency reviewed historical acquisition information, including the 2014 order and other Department of Commerce contracts similar in scope to the requirement here. AR, Tab 5, Market Research Report, at 4. The agency’s
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Market Research Report, at 4. For this reason, the agency concluded that it would be beneficial to issue the order to a contractor that possesses institutional knowledge, exposure to the agency's organization and system, and the ability to seamlessly continue development of the more than 30 in-progress critical application development projects. AR, Tab 5, Market Research Report, at 4; Tab 12, Award Decision at 8.

In its market research report, the agency found that only the incumbent "possess[es] the requisite institutional knowledge of all 30+ legacy applications" required to perform the ongoing "multi-application, multi-year development effort [while] maintain[ing] the performance schedule of deliverables occurring between June 2019 and March 2021." AR, Tab 5, Market Research Report, at 4. The agency further found that "[t]his institutional knowledge is the culmination of years working with these applications, gaining an understanding of the specialization employed for the [agency's] use[,] and developing companion applications as part of the holistic objective[,] which could not be obtained by another company without a similar exposure in time and expense." Id.

As a result of its market research, the agency concluded that a sole-source order to The MIL Corporation was justified because such an acquisition strategy would minimize the risk of schedule delay and duplication of effort and costs. Id.

Capabilities Statements

The agency explains that, in an effort to confirm the conclusions detailed in its market research report, it decided to seek comments and/or capability statements from industry. AR, Tab 6, Email Correspondence, at 6. The projected date for the issuance of the first public notice was December 18. AR, Tab 12, Award Decision, at 2. However, the partial government shutdown occurring from December 22, 2018, through January 25, 2019, prevented the agency from taking any further action.⁷ Id.

At the conclusion of the lapse in appropriations, the agency published a notice on FedBizOpps.gov, indicating its intent to issue a follow-on order to The MIL Corporation on a noncompetitive basis. AR, Tab 1, Notice of Intent, Feb. 1, 2019. The notice

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acquisition personnel also consulted internal agency technical experts with personal knowledge of the applications being modernized here, the processes required to accomplish the requirement, and the time it took for The MIL Corporation to acclimate and understand the working environment. Id. These experts indicated that the incumbent required time "to acclimate to and understand the [agency] environment and the customized legacy applications in use"--time that would be duplicated were the agency to change contractors mid-project. MOL at 2.

⁷ The agency represents that, during the week of December 17-21, when it became increasingly apparent that a partial government shutdown was likely, the agency was engaged in pre-shutdown activities. AR, Tab 12, Award Decision, at 2.

invited interested parties to submit comments and/or capability statements by March 21.⁸ Id. at 1.

On February 2, Harmonia responded by email to the notice, contesting the notion that the incumbent was the only contractor capable of performing the work. AR, Tab 6, Email Correspondence, at 7. Rather, Harmonia asserted that it was fully capable of performing the work. Id. Over the course of the next 50 days, the agency and Harmonia exchanged numerous emails regarding the proposed order. See AR, Tabs 6-9, Email Correspondence. We discuss some of the correspondence below.

On February 4, Harmonia sent an email to the contracting officer, arguing that the requirement could, and should, be competed because, among other things: (a) the applications in development were government-owned; (b) presumably the incumbent had well-documented its actions such that a new contractor could easily assume the work; and (c) Harmonia's proposed staffing plan would entail hiring most of the incumbent staff, thus minimizing any loss of institutional knowledge and eliminating any duplication of costs. AR, Tab 6, Email Correspondence, at 4-5.

Regarding this latter point, Harmonia alleged that the majority of the incumbent workforce is comprised of independent contractors and subcontractors, not employees. AR, Tab 9, Email Correspondence, at 2. According to Harmonia, this arrangement increases the likelihood that the incumbent workforce would transition from The MIL Corporation to Harmonia. Id. Harmonia further alleged that a significant number of the personnel are "on H1-B visas," which Harmonia claims violates U.S. Citizenship and Immigration Services' (USCIS) guidelines. Id.

The contracting officer investigated Harmonia's allegations regarding the incumbent workforce, and found Harmonia's allegations to be inaccurate--the overwhelming majority of the incumbent workforce is employed directly by The MIL Corporation.⁹

⁸ As initially published, the notice cited FAR § 6.302-1(a)(2)(ii) as the authority pursuant to which the agency intended to issue the order on a noncompetitive basis. COS at 3. The contracting officer represents that this was an "error," and that he subsequently corrected the notice on March 6 to cite FAR § 8.405-6(a)(1)(i)(C). Id. at 3-4; AR, Tab 12, Award Decision, at 3 n.1.

⁹ The record reflects that the contracting officer requested a by-name list of all MIL Corporation employees who are performing under the 2014 order. AR, Tab 9, Email Correspondence, at 1. The list shows that the incumbent's workforce is comprised almost entirely of employees, not independent contractors or subcontractors. AR, Tab 10, Verification of Incumbent Personnel Employment Status. Moreover, the record confirms that the agency investigated Harmonia's allegation that contractor personnel working on H1-B visas--to the extent there are any--would violate USCIS guidelines. AR, Tab 11, Verification of H1-B Visa Eligibility. Although not relevant to the issues pending before our Office, we note that the issue was resolved to the agency's satisfaction. Id. See also AR, Tab 12, Award Decision, at 6-7.

COS at 4; AR, Tab 12, Award Decision, at 6. In light of this information, the contracting officer concluded that Harmonia's representations regarding the ease with which it could hire the incumbent workforce were speculative. COS at 4; AR, Tab 6, Email Correspondence, at 4; Tab 12, Award Decision, at 7.

On February 4, the contracting officer responded to Harmonia's points and clarified some misinformation. AR, Tab 6, Email Correspondence, at 3-4. The contracting officer invited Harmonia to submit a capabilities statement articulating its ability to perform the requirement on schedule and without duplication of effort or costs. Id. at 4. Harmonia declined to do so, stating that it required additional information regarding the agency's systems and applications. Id. at 3.

On March 15, the contracting officer provided Harmonia with an advance copy of the limited sources justification. AR, Tab 8, Email Correspondence, at 2; Tab 21, Draft Justification. The contracting officer explained that the advance copy was being provided to Harmonia "[i]n the interest of continued transparency and to further our discussion." AR, Tab 8, Email Correspondence, at 2. The contracting officer also explained that the justification included additional, salient details that Harmonia had indicated were necessary for it to provide a capabilities statement, including a list of the 30+ applications still in development, details on the efforts already undertaken by The MIL Corporation regarding several of these remaining applications, and delivery dates. Id.; AR, Tab 21, Draft Justification, at 2-3; Tab 12, Award Decision, at 5, 8. The contracting officer, once again, invited Harmonia to submit a capabilities statement.

That same day, Harmonia requested an extension of time to submit a capabilities statement. AR, Tab 8, Email Correspondence, at 1. The contracting officer suggested a deadline of March 25, explaining that any further extension would not afford the agency sufficient time to evaluate any statements received. Id. Harmonia agreed to the deadline. Id. Harmonia also asked the agency to confirm that its submission would "get an honest shake[.]" AR, Tab 9, Email Correspondence, at 4.

On March 18, the contracting officer reassured Harmonia that its submission would be given "due consideration." Id. at 3. The contracting officer reiterated, however, that although the agency believed that Harmonia and others possess the technical capabilities to perform applications development work generally, the agency's rationale for the proposed sole-source order is that the applications development work here is in progress and, in this specific context, it is unlikely that a new contractor could "step in and take on such a program without a disruption in schedule and potential duplication of some costs to account for on-ramping and [a] learning curve." Id.

On March 21, Harmonia notified the contracting officer of its intention to file a protest.¹⁰ Id. at 1. On March 25, Harmonia submitted a timely capabilities statement. AR, Tab 13,

¹⁰ The parties do not contend that Harmonia filed an agency-level protest.

Harmonia Capabilities Statement. Harmonia was the only contractor that expressed an interest in the procurement. AR, Tab 16, Limited Sources Justification at 5.

The contracting officer forwarded Harmonia's capabilities statement to the program office for its assessment, which the Chief Information Officer provided on March 26. COS at 5; AR, Tab 14, Internal Agency Correspondence. Of relevance here, the program office acknowledged that Harmonia possesses "some outstanding capabilities" and demonstrated "previous work deliveries that are quite impressive." AR, Tab 15, Assessment of Capabilities Statement, at 1. The program office further acknowledged that "Harmonia is well equipped to service our major strategic platforms in future efforts[.]" Id. However, the program office did not find Harmonia to be as well-positioned as the incumbent to continue in-progress work involving "extremely complex and heavily customized applications that are totally unique" to the International Trade Administration and that must be completed within "extremely aggressive" deadlines. Id. The program office maintained, however, that "[u]pon completion of this crucial set of migration efforts," the agency would be in a position "to open all of its development contracts to any well qualified" contractors. Id.

The record reflects that the contracting officer also conducted his own review of Harmonia's capabilities statement, specifically considering whether Harmonia could seamlessly transition into an ongoing project. COS at 5; AR, Tab 12, Award Decision, at 7. Of note, the contracting officer concluded that, although Harmonia provided numerous examples of its ability to successfully transition into a project that is in the operations and maintenance (O&M) phase, it did not demonstrate past experience transitioning into a project in the developmental phase, like the one here. Id. Next, the contracting officer concluded that Harmonia's plan to capture the incumbent workforce could not be guaranteed. AR, Tab 12, Award Decision, at 8. Therefore, he examined the feasibility of Harmonia's proposed alternative plan, a plan that Harmonia describes as "a mature transitioning-in process that . . . requires significant knowledge transfer in a short time period (as short as 2 weeks) for systems modernization and application development." AR, Tab 13, Harmonia Capabilities Statement, at 2. The contracting officer concluded that, although Harmonia claimed to have used this process successfully in other agencies, it provided few details to permit the contracting officer to assess whether the process would be feasible in the current context. AR, Tab 12, Award Decision, at 7. Finally, the contracting officer concluded that Harmonia did not address its familiarity with the majority of the agency's legacy applications despite being provided with a list of the applications. Id. at 7-8; AR, Tab 21, Draft Justification, at 3.

Limited Sources Justification

On March 27, the agency executed a limited sources justification for the noncompetitive acquisition of application development services as a logical follow-on to The MIL Corporation's 2014 order. The justification indicated that the agency intended to issue an order with a period of performance of 30 months and a total estimated value of \$28 million. AR, Tab 16, Limited Sources Justification, at 4.

As explained above, the agency's decision to issue the order on a noncompetitive basis was made pursuant to the authority set forth in FAR § 8.405-6(a)(1)(i)(C). Id. In accordance with the requirements of that authority, the agency's justification indicated that the prior order was competitively awarded and that the new work is a logical follow-on to the prior order's scope of work. Id. at 1, 2-3.

With respect to the regulatory requirement that the order be issued "in the interest of economy and efficiency," the agency's justification echoed the concerns expressed in the market research report and in its evaluation of Harmonia's capabilities statement--namely, that the transition of a time-sensitive, in-progress development project, involving extremely complex and heavily customized applications that are totally unique to the agency, to a new contractor will result in schedule delays and a duplication of effort and costs.

In this regard, the agency's justification provided, in part, as follows:

The nature of the work in progress, the [agency's] IT and program environment institutional knowledge[,] and intellectual capital gained through performance of the original contract cannot be transferred to a new contractor without a substantial duplication of time[,] resulting in a duplication of costs, missed milestone deliveries[,] and delays in obtaining efficiencies and effectiveness for the [agency's] globally dispersed workforce. MIL Corporation's current workforce supporting this effort possess[es] extensive and detailed knowledge about the described complex set of applications and are uniquely positioned to deliver the planned migration within the established delivery schedule. In light of the substantial work already performed under the Task Order by MIL Corporation in support of the migration process and application development work required under [the] Strategic Plan, utilizing another contractor to complete these efforts would adversely impact the economy and efficiency of [the agency's] modernization effort.

Id. at 4. The agency's justification also maintained that the incumbent's management of the agency's infrastructure and service desk operations "deliver[s] the necessary institutional knowledge to complete the modernized applications development," which will "eliminate redundancy" and allow it to "focus resources on high impact projects." Id.

To support the conclusion that leveraging the incumbent's institutional knowledge would eliminate redundancy and allow resources to be allocated in the most economical and efficient manner, the agency described the "substantial work" already performed by the incumbent regarding six of the remaining 30+ application development projects. Id. at 2-4. For instance, to complete the "Section 232 Investigations" application, the incumbent has begun conducting "significant cross-bureau coordination and infrastructure integration to ensure operability" in the operating environments of two separate agency bureaus. Id. at 2. To complete the "Tasking and Tracking" application, The MIL Corporation has been working with agency business and

administrative units to capture and analyze essential requirements for a phase 2 development, having just completed phase 1. Id. at 3. To complete the SharePoint migration, the incumbent has undertaken “detailed engagement with every [agency] HQ, domestic, and global office for cleanup, validation and migration of their critical data.” Id.

The agency concluded that the “intellectual capital” gained through this prior work cannot be transferred to a new contractor without some duplication of effort, increased costs, and schedule delays. Id. at 4. In this regard, the agency determined the following:

The multiple applications in progress[,] with required dependencies, interaction points, hand-offs, stakeholder coordination requirements and institutional ramp-up time[,] could not be assumed by a new Contractor without substantial delays in schedule, missing required deliveries[,] and significant duplication in costs. The elevated risk of changing Contractors in the middle of development is significant, jeopardizing timely completion of milestone objectives, and increasing costs to the Government along with an increased performance risk in meeting required deliverables.

Id. at 5.

Finally, regarding potential delays, the agency explained that the modernization project is time-sensitive, i.e., the remaining 30+ critical application development projects must be completed and delivered between June 2019 and March 2021. Id. at 3. Any slip in the delivery schedule will “result in substantial duplication of cost, lost time and elevated risks of . . . global interoperability” within the agency.¹¹ Id.

Based upon the totality of the above considerations, the agency determined that issuing a logical follow-on order to the incumbent would be in the interest of economy and efficiency. Id. at 5.

¹¹ In its market survey report, the agency explained that any delay, especially at the outset of performance, could jeopardize the agency’s ability to complete the modernization effort by March 2021. This is because certain in-progress applications must be delivered in June and July of 2019. AR, Tab 5, Market Research Report, at 4. The agency described these deliverables as “critical path applications,” i.e., applications that must be delivered on time in order for work on the remainder of the effort to be accomplished by the March 2021 deadline. Id. Failure to meet the deadlines for these deliverables “would result in significant schedule delays,” which, according to the agency, translate into additional costs and inefficiencies. MOL at 3; AR Tab 5, Market Research Report, at 4; AR, Tab 16, Limited Sources Justification, at 3.

Award

On March 29, the contracting officer executed a lengthy award decision document, summarizing the status of the agency's requirement; the chronology of the procurement; and the agency's decision to award the follow-on order to the incumbent. AR, Tab 12, Award Decision. This document reiterates the agency's conclusions previously detailed in its market research report, assessment of Harmonia's capabilities statement, and limited sources justification.

In short, the contracting officer explained that, due to the nature of the requirement, "institutional knowledge is valuable and necessary." Id. at 8. He found that such knowledge is "gained through years of contract performance working in the [agency] environment, with the applications subject to the developmental requirements" and can only be achieved by a contractor having a "similar exposure" to the agency." Id. at 8. Performance by a contractor without such institutional knowledge "would result in a substantial duplication of effort and costs." Id.

In his assessment of Harmonia's experience, the contracting officer found that Harmonia did not establish its "familiarity or expertise with the majority of the legacy applications, some of which are highly customized for the [agency's] mission," nor did Harmonia demonstrate experience "in taking over a developmental activity that is in-progress." Id. at 7-8. Furthermore, the contracting officer found to be speculative Harmonia's claim that it could easily capture the incumbent workforce. Id. at 8. In any event, he concluded that "[r]eliance on the capture of incumbent employees is a risk that is not merited" where the incumbent workforce is currently available through the incumbent. Id.

The contracting officer concluded by stating, as follows:

Based on the information provided, it is clear should a new contractor be awarded the work in its current state of multi-application development, and not capture a sizeable portion of the incumbent resources, significant time will need to be devoted to bringing the knowledge base up to the current level of MIL Corp[,] which is necessary for successful and timely completion. This allocation of time will result in substantial duplication of effort translated to additional costs for knowledge gain[,] which have already been incurred through performance of the original contract; and a corresponding slip in delivery schedule that makes meeting the 2021 fully modernized IT environment unattainable.

Id. at 9.

On April 1, the agency issued the follow-on order to The MIL Corporation. AR, Tab 2, Follow-On Order, at 1. The order requires the contractor to provide application development services on a time-and-material basis to the International Trade Administration in order to support the completion of the agency's modernization effort.

Id. at 4. On April 2, the agency posted the final version of the limited sources justification on FedBizOpps.gov. AR, Tab 17, Posting of Justification. That same day, the contracting officer sent an email to Harmonia notifying it of the agency's decision and rationale.¹² AR, Tab 18, Notice to Harmonia.

This protest followed on April 9.

DISCUSSION

Harmonia contends that the agency's decision to issue the follow-on order to The MIL Corporation lacked a reasonable basis. Protest at 3. Although Harmonia raises various complaints, the crux of Harmonia's argument is that the agency relied upon "suppositions and assumptions" regarding the expected economy and efficiency associated with issuing a follow-on order to the incumbent--assumptions that Harmonia claims are undermined by the capabilities statement it submitted to the agency. Id. at 3-4.

As explained above, orders placed under the FSS are exempt from the competition requirements of CICA and FAR part 6. FAR § 8.405-6. Nevertheless, an agency must justify its decision to issue an order on a noncompetitive basis. Id. Our Office will review an agency's use of a limited sources justification under FAR subpart 8.4, including a decision to issue a noncompetitive logical follow-on order pursuant to FAR § 8.405-6(a)(1)(i)(C), for reasonableness. Noble Supply & Logistics, supra, at 7; Federal Working Grp., B-416464, B-416464.2, Sept. 19, 2018, 2018 CPD ¶ 324 at 4; XTec, Inc., B-405505, Nov. 8, 2011, 2011 CPD ¶ 249 at 5. Upon review of the record, we conclude that the agency's decision to issue the award to the incumbent was reasonable and in the interest of economy and efficiency.

The agency's position is simple and well-documented in the record. The agency concluded that changing contractors in the middle of an extremely complex project with impending critical and mandatory programmatic deadlines poses unnecessary risk to both project schedule and cost, and cannot be justified. Instead, permitting the incumbent, which is already immersed in the project and which possesses the requisite institutional knowledge, to continue the work it began over five years ago would conserve time and other resources, thus making the award to the incumbent an economical and efficient choice. We agree.

We have consistently stated that an agency's limited sources justification is reasonably made in the interest of economy and efficiency where it is based upon documented concerns regarding disruption of service, duplication of efforts, transition delays, and/or

¹² The contracting officer told Harmonia that it had been determined to be capable of performing the type of work required here, but that changing contractors in the middle of a complex development project was not in the interest of economy and efficiency. AR, Tab 18, Notice to Harmonia.

increased costs. In XTec, Inc., B-405505, Nov. 8, 2011, 2011 CPD ¶ 249, the protester challenged GSA's establishment of a logical follow-on BPA with the incumbent for the "continued development or production of a major system, USAcces," created for the purpose of producing identity credentials for government employees. Id. at 6. The agency in XTec, Inc. cited, among other concerns, that transition to another contractor was likely to result in the substantial duplication of costs and unacceptable delays in service. Id. The agency elected to establish a follow-on BPA with the incumbent because the incumbent was "the most familiar with the customer population, operational considerations, and technical challenges." Id. In this regard, the agency explained that "[t]he primary reason for pursuing [a sole-source] strategy is to reduce risk." Id. Our Office denied the protest, concluding that the agency's desire to reduce transition and programmatic risk by issuing a logical follow-on award was reasonable and in the interest of economy and efficiency. Id. at 6-8. See also Noble Supply & Logistics, supra, at 8 (denying protest where the establishment of a follow-on BPA with the incumbent "would result in the avoidance of the duplication of material costs and efforts"); Federal Working Grp., supra, at 5 (denying protest where the institutional knowledge gained by an incumbent under a prior contract has "the potential to positively impact" the performance of an agency's ongoing requirements).

Similarly here, the agency's desire to avoid the risk and duplication of efforts and costs associated with onboarding a new contractor provides a reasonable justification for the award to The MIL Corporation. As explained above, more than 30 critical application development projects already in progress must be completed prior to March 2021. Because these projects involve applications that are heavily customized and unique to the agency, the agency's decision to reduce program risk by employing a contractor with institutional knowledge is eminently logical. Moreover, there is no dispute that The MIL Corporation possesses the requisite institutional knowledge. See Comments at 3 (conceding that only The MIL Corporation possesses knowledge of all 30+ legacy applications). Accordingly, we find nothing unreasonable in the agency's conclusion that an award to The MIL Corporation would be economical and efficient.

In its protest, Harmonia does not challenge the agency's conclusion that an award to the incumbent would be economical and efficient. Rather, Harmonia argues that the agency failed to adequately verify and quantify its conclusions regarding the benefits of avoiding transition by issuing the order to the incumbent. Protest at 3; Comments at 3. We find no merit to this argument. In this respect, FAR § 8.405-6(a)(1)(i)(C) does not require an agency to quantify the potential economic and efficiency benefits of a logical follow-on order, or otherwise find that such a follow-on award would definitively result in the most significant potential cost savings to the government. Noble Supply & Logistics, supra, at 7-8. Nor does this provision require that an agency consider and rule out all

possible alternatives to a follow-on order, as Harmonia seems to suggest.¹³ See Comments at 3.

Harmonia also argues that the agency was biased in favor of The MIL Corporation and, therefore, “structured” its market research from the outset to support an award to the incumbent. Comments at 3. To support its argument, Harmonia points to the agency’s desire for a contractor with institutional knowledge of the 30+ legacy applications in development, claiming that “[n]aturally, only the Mil Corporation would satisfy that criteria, as it is the only company to perform the work during the past five years.” Id. Far from demonstrating any bias on the part of the agency, such a desire represents a logical consideration in an ongoing application development project involving applications that have been significantly customized for the agency. Harmonia’s allegations of bias are unpersuasive.¹⁴

Finally, Harmonia contends that the agency’s concerns regarding schedule delays are overblown because Harmonia intends to hire as much of the incumbent workforce as possible. Protest at 4. By doing so, Harmonia claims it “will substantially ameliorate or completely eliminate any risk of potential delays, while preserving the institutional knowledge so important to the Agency.” Id. To support this claim, Harmonia continues to assert that the majority of the incumbent workforce is comprised of independent contractors and subcontractors, not employees, which allegedly will increase the likelihood of incumbent capture. Id. at 4 n. 1. As noted above, however, the record

¹³ Harmonia suggests that, prior to issuing the follow-on order, the agency was required to exhaust other competitive options, e.g., to “search[] for contractors with experience taking over developments in progress;” “consider an acquisition strategy with a long transition period to allow MIL Corp and its personnel to share their knowledge of the project and work side-by-side with an incoming contractor[;]” and “consider whether some portion of the work could be competitively procured, while retaining enough MIL Corp staff to carry forward institutional knowledge the Agency so highly valued[.]” Comments at 3. We do not find that FAR § 8.405-6(a)(1)(i)(C) imposes such a burden on an agency. Rather, a follow-on award is permissible under this authority if it is “in the interest of economy and efficiency,” despite the existence of alternative acquisition strategies. In this regard, there is no requirement that an agency consider competitive acquisition strategies prior to issuing a logical follow-on order. Nor is there a requirement that an agency consider whether the logical follow-on order is the most economical or efficient acquisition strategy. In this regard, the question is not whether another strategy or another source could satisfy the agency’s needs, but whether the agency would likely conserve time and other resources by issuing the follow-on order.

¹⁴ Harmonia also argues that our Office should give little weight to the agency’s market research because the market research allegedly “played absolutely no role in the Agency’s sole-source decision.” Comments at 2. To the contrary, in the award decision document, the contracting officer expressly cites to the agency’s market research. See AR, Tab 12, Award Decision, at 9.

shows that Harmonia's assertions are inaccurate. We, therefore, agree with the agency that incumbent capture is not guaranteed and that reliance on such a strategy poses a risk that is not merited where the incumbent contractor is available to continue the work.¹⁵

In sum, based upon our review of the record, we have no basis to question the reasonableness of the agency's determination that performance of the ongoing requirements related to the agency's application modernization effort is likely to be enhanced--both in terms of economy and efficiency--by The MIL Corporation's recent performance of the 2014 order. That is, taking into consideration the unique nature of the agency's applications development effort, the impending deadline for completion of the effort, the similarity and interrelationship of the responsibilities under the two orders, and the fact that The MIL Corporation's prior order was competitively awarded, we find nothing unreasonable in either the agency's limited sources justification or its subsequent issuance of a logical follow-on order to The MIL Corporation.

The protest is denied.

Thomas H. Armstrong
General Counsel

¹⁵ Harmonia points out that its capabilities statement also proposed a solution that was not dependent on incumbent capture. Comments at 4. As noted earlier in our decision, the agency evaluated this solution and found it to be lacking in detail. AR, Tab 12, Award Decision, at 7, 8. Harmonia does not challenge the agency's findings in this respect. See Comments at 4.