

United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Richen Management, LLC

**File:** B-406750; B-406850

**Date:** July 31, 2012

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Richard McCue for the protester.  
Meaghan Q. LeClerc, Esq., General Services Administration, for the agency.  
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### DIGEST

Protests challenging the terms of solicitations for the provision of services by arguing that the agency improperly failed to provide the names of the incumbent contractor's subcontractors, service call log information and more detailed repair history information--where the agency found the requested information to be proprietary or not subject to release--are denied where the solicitation, along with the agency's answers to offerors' questions, provided sufficient information to allow offerors to compete intelligently and on a relatively equal basis.

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### DECISION

Richen Management, LLC, of Dover-Foxcroft, Maine, protests the terms of request for proposals (RFP) No. GS-01P-12-BW-D-0023 (-0023), issued by the General Services Administration (GSA), for janitorial and maintenance services at the Federal Building & Post Office and the Social Security Administration Office Building in Montpelier, Vermont, and RFP No. GS-01P-12-BW-D-0050 (-0050), issued by the GSA for operations and maintenance services at various U.S. Border Stations in Maine.

We deny the protest.

The GSA issued RFP -0023 and RFP -0050 as small business set-asides. RFP -0023 requested proposals for janitorial, mechanical maintenance, and snow removal services for two federal buildings and RFP -0050 requested proposals for janitorial and mechanical maintenance at nine U.S. Border Stations. The RFPs contemplated the award of contracts to the best value offerors considering the

factors of price,<sup>1</sup> past performance, experience, management plan, and environmental consideration plan.

The statements of work (SOW) in both RFPs provided detailed explanations of the required janitorial services, exterior services, and grounds maintenance services to include the expected quality standards for the services. RFP -0023 SOW at 29-46; RFP -0050 SOW at 20-36. The mechanical maintenance and repair services section of the SOWs detailed the operational requirements and system performance standards/procedures. RFP -0023 SOW at 46-66; RFP -0050 SOW at 36-57. The RFPs also included building information sheets and an equipment inventory list for each building. RFP -0023 SOW at 111-114, Equipment Inventory List, Federal Building, at 1-33, Social Security Administration Office Building, at 1-6; RFP -0050 SOW at 112-128, attach. J-6, Equipment Inventory List. The SOW for each RFP further explained that the contractor would be expected to provide management, supervision, labor, materials, and equipment, and be responsible for the efficient, effective, economical, and satisfactory operation, through scheduled and unscheduled maintenance, of systems located within the property line of the buildings. RFP -0023 SOW at 12; RFP -0050 SOW at 2.

With regard to RFP -0023, a pre-proposal conference letter was published on April 18, notifying potential offerors of a scheduled conference and site visit at the Montpelier Federal Building on April 25.<sup>2</sup> This letter also stated that offerors were required to submit any questions regarding the solicitation at least 2 days prior to the date of the pre-proposal conference. In response to the agency's notice, the GSA received 41 questions on this RFP, including some submitted by Richen. The agency posted answers to the first 15 questions on May 8; answers to the remaining questions were posted on May 11. As relevant here, Richen's questions and the agency's answers with regard to RFP -0023 were as follows:

Question 1: Can you tell me who is currently providing the subcontractor work []?

Answer: It is not the current policy of GSA to publish the names of subcontractors used under the existing contract.

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<sup>1</sup> The RFP included both fixed-priced and indefinite-quantity line items for the various services requested in the statement of work.

<sup>2</sup> A subsequent site visit was held for offerors on May 9. The contracting officer reports that the protester did not attend either site visit. Contracting Officer's Statement at 1.

Question 5: May we review the service request logs for the past 5 years to help determine the level of service expected for this solicitation?

Answer: The records requested may contain proprietary and sensitive information. It is not possible to release those records as part of this solicitation.

Agency Report (AR) (RFP -0023), Tab 5, Questions and Answers, at 1-2.

With regard to RFP -0050, a pre-proposal conference letter was published on May 10, notifying potential offerors of a scheduled conference and site visit at the U.S. Border Station, Calais New Bridge, Maine.<sup>3</sup> During the pre-proposal conference, offerors were told that all questions should be submitted in writing to the contracting specialist. The GSA received a total of 64 questions on this RFP, including some submitted by Richen. The agency posted answers to the first group of questions on May 17; answers to the remaining questions and all follow-up questions were posted between May 31 and June 7. As relevant here, Richen's questions and the agency's answers with regard to RFP -0050 were as follows:

[Question 29]: Will you provide a list of subcontractors working under the current contract?

[Answer]: In accordance with the Freedom of Information Act (FOIA), the requested information is considered proprietary to the current contractor and is therefore not releasable.

[Question 30]: . . . Would it be possible to review the PM [preventive maintenance] records for these sites for the past 5 years?

[Answer]: As stated previously, that data is not releasable. However, we can give you the number of repairs, by Group, that were over and under \$1000.00 during the last year. Those numbers are:

# of REPAIRS	Group A	Group B
Under \$1,000.00	25	17
Over \$1,000.00	15	10

AR (RFP -0050, Tab 5, Questions and Answers (May 31, 2012), at 3.

Richen protested the terms of both RFPs. Richen contends that the agency's failure to provide answers to its pre-proposal questions regarding subcontractor

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<sup>3</sup> Subsequent site visits were held on May 16 and May 17.

information, service call logs and more detailed repair history data prevented Richen from submitting a proposal and demonstrated bias in favor of the incumbent contractor.

As a general rule, a procuring agency must give sufficient detail in a solicitation to enable bidders to compete intelligently and on a relatively equal basis. AirTrak Travel et al., B-292101 et al., June 30, 2003, 2003 CPD ¶ 117 at 13; Service Technicians, Inc., B-249329.2, Nov. 12, 1992, 92-2 CPD ¶ 342 at 2. Specifications must be free from ambiguity and describe the minimum needs of the procuring activity accurately. However there is no legal requirement that a competition be based on specifications drafted in such detail as to eliminate completely any risk for the contractor or that the procuring agency remove all uncertainty from the mind of every prospective offeror. American Contract Servs., Inc., B-256196.2, B-256196.3, June 2, 1994, 94-1 CPD ¶ 342 at 2. In this regard, proposals for service contracts, by their very nature, often require the computation of prices based on visual inspections, and the presence of some element of risk does not mean that fair competition is precluded or that a solicitation is improper. Ronald E. Borello, B-232609, Jan. 11, 1989, 89-1 CPD ¶ 28 at 3-4.

Here, we find that the agency provided sufficiently detailed information to allow offerors to compete intelligently and on a relatively equal basis under both RFPs. The agency's performance-based commercial item solicitations requested offerors to submit proposals for janitorial and maintenance services. The RFPs set forth a detailed list of all services required by the agency. The agency held multiple pre-proposal conferences with the potential offerors and gave responses to the questions received from the offerors. These answers provided further information regarding the services requested in the statement of work. With regard RFP -0023, this information included the current contractor's name and address; the annual contract costs for janitorial, snow removal, and mechanical maintenance services; a listing of the number of repairs over \$2,500 and under \$2,000; and the total number of emergency call-backs conducted in the last year. AR (RFP -0023), Tab 5, Questions and Answers, at 4, 8. With regard to RFP -0050, the information provided included the current contractor's name and address; the value of the current contract; and a listing of the number of repairs over \$1,000 and under \$1,000. AR (RFP -0050), Tab 5, Questions and Answers (May 31, 2012), at 3-4. All potential offerors were provided the same information.

We do not agree with the protester that the agency's decision to withhold the incumbent's subcontractor's names, the service call log information and more detailed repair history data, hindered Richen's ability to submit an intelligent proposal. As our Office has previously stated, proposals for service contracts, by their very nature, often require the computation of prices based on visual inspections, and the presence of some element of risk does not mean that fair competition is precluded or that a solicitation is improper. Ronald E. Borello, supra. While Richen has provided evidence that the GSA has released subcontractor

information in response to potential offerors' requests on at least some previous procurements, we think the agency acted reasonably in declining to do so here, given its determination that this information as it pertains to these procurements is proprietary or not subject to release.<sup>4</sup> Moreover, we note that knowledge as to the nature of the incumbent contractor's work force is strictly an advantage of incumbency, and the government thus has no obligation to disseminate that information to other offerors. See Master Security, Inc., B-232263, Nov. 7, 1998, 88-2 CPD ¶ 449 at 3-4. Thus, the agency's refusal to provide subcontractor information, service call logs or more detailed repair history data here did not prevent offerors from competing intelligently and on a relatively equal basis.

Richen also argues that the agency's failure to provide this information shows bias towards the incumbent and an intent to harm Richen. Because government officials are presumed to act in good faith, we do not attribute unfair or prejudicial motives to them on the basis of inference or supposition. Dynamic Aviation-Helicopters, B-274122, Nov. 1, 1996, 96-2 CPD ¶ 166 at 4. Therefore, where a protester alleges bias on the part of government officials, the protester must provide credible evidence clearly demonstrating a bias against the protester or for the awardee and that the agency's bias translated into action that unfairly affected the protester's competitive position. Id. We have no basis on which to conclude that the GSA has demonstrated a preference for the incumbent or acted unfairly so as to favor that firm, or disfavor the protester here. The agency provided answers to questions posed by potential offerors and published those results to all offerors. While the agency chose to withhold certain information, this information--as stated above--did not prevent any offeror from submitting an intelligently written proposal or prevent offerors from competing on a relatively equal basis.

Accordingly, the protest is denied.

Lynn H. Gibson  
General Counsel

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<sup>4</sup> The GSA received FOIA requests from Richen in January 2012 seeking, among other things, copies of contract amounts, staffing, and a list of subcontractors for the incumbent contracts covered by these RFPs. The GSA responded to the requests by stating that subcontractor information was being withheld under exemption four of the FOIA since release would reveal to competitors commercially sensitive information concerning the incumbent contractor's internal operations and business practices. The requester did not appeal this decision. Our Office has no authority to review agency decisions under FOIA regarding the release of documents in the possession of the agency, and therefore, will not resolve the issue of whether the information was properly withheld by the GSA under FOIA. All Am. Moving and Storage, B-243630, B-243804, July 8, 1991, 91-2 CPD ¶ 32 at 2 n.1.