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## Decision

**Matter of:** Financial Asset Management Systems, Inc.

**File:** B-409722.9

**Date:** April 24, 2015

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### DIGEST

1. Protest that the solicitation's past performance evaluation period is unreasonably narrow, because the agency allegedly lacks reliable incumbent contractor data for the evaluation period, is denied where the record supports the reasonableness of the past performance evaluation criteria.

2. Protest that the agency failed to provide sufficient time to respond to the solicitation amendment and address past performance information is denied where the record shows that offerors were given a reasonable amount of time to prepare their proposals.

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### DECISION

Financial Asset Management Systems, Inc. (FAMS), of Atlanta, Georgia, protests the terms of request for proposals (RFP) No. ED-FSA-13-R-0010, which was issued by the Department of Education for student loan debt collection and administrative resolution services. FAMS challenges the past performance evaluation period stated in the solicitation and contends that the agency failed to provide sufficient time to prepare proposals.

We deny the protest.

## BACKGROUND

The Department of Education, Office of Federal Student Aid, contracts with private collection agencies to support its collection and administrative resolution activities for debts resulting from non-payment of student loans under several federal financial aid and loan programs. Memorandum of Law at 2. The solicitation, issued on July 30, 2013, provided for a 2-phase procurement for the award of multiple indefinite-delivery/indefinite-quantity contracts for a 5-year base period and a 5-year option period for student debt collection and administrative services. RFP amend. No. 19 at 3. Phase I was completed in April 2014; 42 firms were selected to submit phase II proposals. This protest concerns phase II of the procurement. Contracting Officer (CO) Statement at 1.

As relevant, the agency issued amendment No. 17 to the solicitation on December 19, 2014, which revised the evaluation criteria.<sup>1</sup> At that time, the closing date for receipt of proposals was January 16, 2015. On January 13, the agency issued amendment 20, which provided answers to 359 questions submitted by the offerors; the January 16 closing date, however, remained unchanged. Thirty-seven firms, including FAMS, an incumbent contractor, submitted timely proposals.

The RFP, as amended, provides that awards are to be made to offerors whose proposals are deemed to be the most advantageous to the government under the following three technical evaluation factors, listed in descending order of importance: (1) inventory balance; (2) recovery rate/past performance; and (3) subcontracting commitment to small business. RFP amend. No. 19 at 57-58. The terms of the evaluation of the recovery rate/past performance factor are at issue in this protest. For this factor, the RFP explains that “[o]fferors will be evaluated based on their ability to recover on defaulted student loans, as demonstrated by Recovery Rates for the period of April 2013 through September 2014.” *Id.* at 57. Recovery rate is defined in the RFP as “dollars collected on defaulted loans during April 2013 through September 2014 divided by the total Inventory Balance on defaulted debt during April 2013 through September 2014.” *Id.* Dollars collected is defined as “regular collections, administrative wage garnishment payments, and final sale and transfer value of all debts rehabilitated.” *Id.* Under this factor, the RFP provides for consideration of

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<sup>1</sup> Another offeror, The CBE Group, Inc., filed protests challenging the terms of the solicitation prior to issuance of amendment 17. The agency took corrective action and revised the solicitation via the issuance of amendment 17. Ultimately, the protests were withdrawn. See The CBE Grp., Inc., B-409722.6, B-409722.7, Sept. 17, 2014, and B-409722.8, Oct. 23, 2014.

offeror recovery rate information as well as past performance reference questionnaires.<sup>2</sup>

Offerors were advised that the agency may supplement its evaluation with additional relevant information such as the firm's performance on any federal government contract. Id. Of relevance, the agency maintains a performance appraisal system for its incumbent student loan debt collection contractors referred to as the Competitive Performance and Continuous Surveillance (CPCS) system. Among other things, the system reports data regarding the contractors' recovery rates for a particular period.<sup>3</sup> Memorandum of Law at 2; CO Statement at 7. Each offeror will also be afforded the opportunity to include in its proposal a narrative explanation of the firm's past performance and its relevance to the current requirements, including performance trends. Id. at 55.

## DISCUSSION

FAMS challenges the terms of the recovery rate/past performance evaluation factor, contending that the agency has unreasonably restricted the relevant past performance period (i.e., from April 2013 to September 2014). In this regard, the protester contends that the performance data for incumbent contractors during the stated performance period is not reliable. The protester also argues that the agency was required to extend the closing date for the receipt of proposals in order to afford offerors adequate time to prepare their proposals after issuance of amendment No. 20 and the release of past performance information to the incumbent contractors. For the reasons discussed below, we deny the protest.

Recovery Rate/Past Performance Factor

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<sup>2</sup> Past performance questionnaires were to be completed by an offeror's references and returned to the offeror for inclusion with its proposal. RFP, Attach. 7, Past Performance Questionnaire Form.

<sup>3</sup> For a period of time from October 2011 into 2013, as the agency transitioned to an updated debt management collection system, CPCS data reports were unavailable and contractor performance was self-reported. The protester notes that the agency's Office of Inspector General and the Government Accountability Office issued reviews critical of the agency's oversight of its debt collection contractors at that time. See Protest, Exh. A, U.S. Department of Education, Office of Inspector General, Federal Student Aid Paid Private Collection Agencies Based on Estimates, ED-OIG/L02N0002, May 15, 2013; Protest, Exh. B, U.S. Government Accountability Office, Federal Student Loans: Better Oversight Could Improve Defaulted Loan Rehabilitation, GAO-14-256, Mar. 2014. The agency states, however, that it subsequently reviewed all performance data for that period and fully reconciled it for each contractor. Id.; Memorandum of Law at 11-13.

The protester complains that the 18-month period of time (April 2013 to September 2014) for consideration of an offeror's recovery rate information is too narrow. The protester does not, however, identify a particular window of time for which the agency should be required to consider offerors' recovery rate past performance information. Rather, the protester generally contends that the particular period of time selected by the agency, during which the protester was ranked last for recovery rate performance of the 17 incumbent contractors listed in the agency's CPCS reports, is unreasonable.<sup>4</sup>

The determination of an agency's needs, including the selection of evaluation criteria, is primarily within the agency's broad discretion; we will not object to the use of a particular evaluation criterion so long as it reasonably relates to the agency's needs in choosing a contractor that will best serve the government's interests. See HK Consulting, Inc., B-408443, Sept. 18, 2013, 2013 CPD ¶ 224 at 2. Moreover, neither the fact that it may be difficult for a protester to compete under an evaluation factor nor a protester's disagreement with the agency's evaluation scheme demonstrates that it is not reasonably related to the agency's needs. See SML Innovations, B-402667.2, Oct. 28, 2010, 2010 CPD ¶ 254 at 2.

In responding to the protest, the agency explains it selected the period at issue because it reflects a period of time when the requirements being performed by the incumbent contractors, many of which are in the phase II competition, most closely mirror the requirements of the current solicitation, and for which the agency has reliable performance data. In particular, the agency cites changes in its income-based rehabilitation (IBR) program introduced in July 2012 to provide rehabilitation for defaulted loans for eligible debtors at low monthly payments. Memorandum of Law at 9-10; CO Statement at 5-6. The agency explains that 9 months after those IBR changes were introduced (*i.e.*, by April 2013), incumbent contractor recovery rates were substantially impacted by the changes. Further, as the agency reports, and the protester acknowledges, the impact of additional IBR-related requirements first instituted in July 2014 (*e.g.*, requiring documentation of debtor eligibility) will not be known for several more months. Memorandum of Law at 10, n.9; Protest at

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<sup>4</sup> The 17 contractors listed on the CPCS reports in the record represent the unrestricted pool of incumbents, of which FAMS was a part; there were also 5 additional firms in a small business pool of incumbent contractors. In support of its argument, the protester provided CPCS reports for the 17 incumbent contractors in the unrestricted pool that include performance data from 2010 and 2011 that rank FAMS higher in terms of relative recovery rates than the firm has achieved in more current performance periods. Protest, Exh. D, CPCS Performance Indicator Summaries. The protester, however, has not persuasively explained why older performance data, from 2010 or 2011, for instance, should be considered more relevant to or more reliable for the evaluation of proposals under the RFP.

12, n.2. The agency thus explains that the RFP's stated 18-month past performance period reflects recent and relevant work reflective of RFP performance requirements and is a reasonable indicator of potential successful performance after award. Memorandum of Law at 10-11; CO Statement at 7. The agency also reports that it has validated its data for the time period and that it is confident in its accuracy. Id.

In challenging the period, FAMS argues that the data for the period is unreliable because the incumbent contractors were performing without the benefit of access to the CPCS reports. According to FAMS, had it known its relative standing among the incumbent contractors, it would have performed differently. This argument, however, does not pertain to the reliability of the actual performance data; rather, it concerns the circumstances of FAMS' performance and the business decisions made by FAMS during performance, and the agency's administration of the incumbent contracts.<sup>5</sup> In any event, as the agency explains, not only are offerors provided in their proposals an opportunity to address the circumstances of their performance, but all incumbent contractors experienced the same lack of contemporaneous CPCS performance reports.

The protester also argues that the agency's performance data for the incumbent contractors during the relevant period is unreliable because the incumbent contractors allegedly inflated their recovery rates. According to the protester, they accomplished this by improperly offering IBR assistance to ineligible debtors prior to July 2014 when documentation requirements of debtor eligibility for the rehabilitation program were initiated. FAMS provides no proof of this allegation and only generally asserts that this was known in the student loan debt collection industry. See Protest, Exh. C, Declaration of FAMS Official. The protester's speculation is not supported by evidence, however, and therefore provides no basis to sustain its protest.<sup>6</sup> In our view, the protester provides no basis to question the

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<sup>5</sup> The agency reports that its CPCS performance data has been fully reconciled and that it is confident in its accuracy. Memorandum of Law at 10-11; CO Statement at 6-7. The protester has provided no basis for our Office to question the sufficiency of the agency's reported comprehensive review and reconciliation of the incumbent contractors' performance data for the relevant period.

<sup>6</sup> We find unpersuasive FAMS contention that a recent agency press release concerning the termination of five incumbent contractors' contracts, three of which were in the unrestricted pool of contractors with the protester and were ranked ahead of FAMS for recovery rate, is proof of such improprieties by numerous incumbents. Comments, Exh. 2, U.S. Department of Education to End Contracts with Several Private Collection Agencies, Feb. 27, 2015. The information in the press release is limited to the terminated contractors and indicates that the agency conducted a comprehensive review of every incumbent contractor's practices, yet no improprieties supporting contract termination were reported for the other firms.

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reasonableness of the recovery rate past performance consideration period selected by the agency.<sup>7</sup> To the contrary, the record supports the reasonableness of the selected period as it reflects the period for which the agency reports it has the most relevant and reliable data for a significant number of contractors in phase II of the competition.

#### Solicitation Closing Date

Lastly, the protester contends that the agency was required to extend the closing date for the receipt of proposals in order to afford offerors adequate time to prepare their proposals, but failed to do so. In this regard, the protester points to the fact that amendment No. 20 included agency answers to 359 offeror questions only 3 days before the RFP's closing date, and that the agency provided incumbent contractors with completed past performance questionnaires for their incumbent contracts with the agency only 2 days before the closing date.

The determination of what constitutes a sufficient amount of time for proposal preparation is a matter committed to the discretion of the contracting officer; we will not object to that determination unless it is shown to be unreasonable. See USA Info. Sys., Inc., B-291488, Dec. 2, 2002, 2002 CPD ¶ 205 at 4.

FAMS generally suggests that the "type and quantity of questions" that were answered in amendment No. 20 required additional proposal preparation time. Comments at 10. The protester, however, has not identified specific questions or answers that required additional proposal response time, nor has it identified any

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Id. The agency also reports that it takes information about improper contractor practices seriously and will consider such information in making its responsibility determinations. Memorandum of Law at 13, n.11.

<sup>7</sup> In its comments to the agency report, FAMS contends that the change in IBR requirements in 2012 is an insufficient basis to have narrowed the RFP's past performance evaluation period since non-incumbent offerors may not have had to perform the same requirements. In this regard, the agency reports that it intends, consistent with the requirements of Federal Acquisition Regulation § 15.305(a)(2)(i), to evaluate all offerors on an equal basis for currency and relevance of past performance information. Memorandum of Law at 5. The protester has not shown that this cannot be achieved through the RFP's provisions for the review of past performance questionnaires and explanatory narratives of work experience similar to the RFP's performance terms. Further, to the extent the protester maintains that the agency may consider other relevant information, as permitted by the RFP, and may do so on an unequal basis, we view the contention as premature insofar as it speculates how the agency will evaluate proposals. See HK Consulting, Inc., supra, at 4, n.5.

change to the solicitation's terms effected by the amendment. Moreover, we fail to find the sheer number of questions and answers alone to be persuasive proof of a need for more than 3 days of proposal preparation time, especially where, as here, the answers did not revise solicitation terms and several questions were repetitious (e.g., regarding the number of contracts to be awarded, the procurement timeline, the calculation of inventory, and contracting with small businesses). See generally, Agency Report, Tab H, Questions and Answers.

Similarly, regarding the fact that FAMS--along with all other incumbent contractors--received its completed past performance questionnaire from the agency only 2 days prior to the closing date, the protester fails to identify information in that questionnaire that the firm did not already have from the agency and its CPCS data months earlier. The protester has failed to show that it could not have reasonably prepared its proposal, including an explanatory narrative of its past performance, within the 28 days between amendment No. 17's provision of the revised past performance evaluation terms and the closing date for the receipt of proposals. In sum, the protester has provided no basis to establish that the agency acted unreasonably by not extending the solicitation closing date due to the issuance of answers to offeror questions or the release of past performance questionnaires to the incumbent contractors.

The protest is denied.

Susan A. Poling  
General Counsel