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Decision

Matter of: Analytical Graphics, Inc.

File: B-413385

Date: October 17, 2016

Seamus Curley, Esq., and Daniel J. Cook, Esq., DLA Piper LLP-US, and Kevin P. Mullen, Esq., Morrison & Foerster LLP, for the protester.
Lt. Col. C. Taylor Smith, Christopher S. Cole, Esq., Maj. David Gilkes, Jason Templin, Esq., Department of the Air Force, for the agency.
Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the solicitation's minimum requirements are too low and do not reflect the agency's actual requirements is denied where the agency had a reasonable basis for the requirements.
 2. Protest challenging the agency's decision to set aside the procurement for small businesses is denied where the agency had a reasonable expectation that offers would be received from at least two responsible small business concerns, and award would be made at a fair market price.
 3. Protest challenging the issuance of the solicitation on a non-commercial item basis is dismissed where the protester, a large business, is not an interested party because the agency's commercial item determination did not affect the analysis of whether small businesses could perform the requirement.
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DECISION

Analytical Graphics, Inc. (AGI), of Exton, Pennsylvania, protests the terms of request for proposals (RFP) No. FA2550-16-R-8002, which was issued by the Department of the Air Force for space situational awareness software and services. AGI argues that the solicitation does not reflect the agency's actual needs, is improperly set aside for small businesses, and improperly designates the procurement as non-commercial.

We deny the protest in part and dismiss it in part.

BACKGROUND

The solicitation seeks proposals to provide space situational awareness capabilities for the Joint Interagency Combined Space Operations Center (JICSpOC). Agency Report (AR), Tab 29, Performance Work Statement (PWS), at 5. The contractor will be required to “augment the Government’s ability to detect and characterize space threats and improve integration between Department of Defense (DoD), intelligence community, interagency, and nongovernmental space assets.” *Id.* Among the requirements relevant to this protest is provision of “near real-time data [concerning] up to 200 tasked objects (as identified in a classified annex), across all orbital regimes, from sensor phenomenology that includes but is not limited to optical, radar, and passive radio frequency (RF).” *Id.* at 6. These objects are also referred to as resident space objects (RSOs) elsewhere in the record. AR, Tab 26, Market Research Report, at 2; Tab 33, Aff. of Agency Program Manager (July 20, 2016), at 1.

On November 4, 2015, the Air Force issued a sources sought notice/request for information (RFI) seeking responses from firms interested in performing a contract to provide space situational awareness data. The RFI stated the data must be validated on “commercial systems outside of the Department of Defense (DoD) network.” RFI (Nov. 4, 2015) at 1.

On March 29, 2016, the Air Force issued an amended RFI setting forth revised “salient characteristics,” which were also described as “minimum requirements.”¹

¹ The 10 minimum requirements were as follows: (1) provide metric, non-metric, and space object identification observations from data collected from a minimum of 10 worldwide sensors outside the control of the [United States Government] USG, at least half of which must not be terrestrial sensors in North America (e.g., sensors in Europe, on orbit); (2) document whether sensors can be utilized on an on-demand basis or if their use must be pre-planned and list the additional costs for on-demand service, if applicable; (3) provide the format and source of the data; (4) ingest authorized DoD data (raw or processed observations) into any contractor event processing or analysis capability; (5) ensure export of data, one-way, to DoD networks of equal or higher classification for additional processing; (6) provide for threat warning assessment by detecting and notifying JICSpOC personnel of a space object entering or projected to enter a user-definable area around specific RSOs within 15 minutes of entering; (7) process and correlate feature-type data (Visual Magnitude (Vmag)), Radar Cross Section (RCS) changes, RF spectrum, etc.); (8) provide ability to detect hostile and non-hostile maneuvers and analyze the change of behavior, to include the revised orbit, within 2 minutes of maneuver detection; (9) augment DoD persistent monitory capabilities by maintaining custody of designated objects (e.g., Super High Interest Objects) to the maximum degree
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AR, Tab 7, RFI amend. 1 (Mar. 29, 2016) at 5. This amended RFI requested responses from interested firms by April 6. The RFI also stated that the agency would invite firms to an industry day meeting on April 15, to provide an opportunity for “a one-on-one briefing with the Government on how their commercial solution may meet Government classified requirements.” Id. at 3. The agency issued amendments to the RFI on April 1 and 5, which addressed questions from interested firms.

The Air Force received RFI responses from 15 firms, 9 of which were large businesses, and 6 of which were small businesses. AR, Tab 26, Market Research Report, at 3. Based on these responses, the agency invited eight firms to the industry day meetings. Id. at 2. On May 11, the agency issued an RFI amendment which requested that interested firms provide comments regarding a draft PWS and also address questions regarding the possibility of setting aside the procurement for small businesses. AR, Tab 19, RFI (May 11, 2016) at 1. The agency received responses from five interested firms, two of which had not submitted responses to the initial RFI: two large businesses, including AGI; and three small businesses, including ExoAnalytic Solutions and Applied Defense Solutions, Inc. (ADS). AR, Tab 26, Market Research Report, at 2-3.

The Air Force evaluated the RFI responses and industry day discussions and concluded that two of the small business firms that had responded to the RFI, ExoAnalytic and ADS, were capable of performing the agency’s requirements as prime contractors.² AR, Tab 26, Market Research Report, at 4-5, 9-10. On June 15, the agency issued a justification and approval (J&A) that set aside the procurement for small businesses and further limited the competition to the two small business firms identified as capable of performing the work. AR, Tab 25, J&A, at 1. The J&A stated that the limitation of sources was required under 10 U.S.C. § 2304(c)(6), which provides that procedures other than full and open competition may be used where “the disclosure of the agency’s needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.” Id. at 2.³ The J&A was not made publically

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possible; and (10) provide telemetry data on the orbits of all detectable objects. AR, Tab 7, RFI amend. 1 (Mar. 29, 2016) at 5.

² The Air Force concluded that a third small business could meet the agency’s requirements, based on its RFI response and discussions during an industry day meeting, but also noted that this firm stated that it would not be interested in performing as a prime contractor. AR, Tab 26, Market Research Report, at 8, 10.

³ The Air Force provided classified and unclassified versions of certain documents to our Office and protester’s counsel, including the J&A. Although we reviewed the
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available due to national security concerns, as authorized by Federal Acquisition Regulation (FAR) § 6.305(f), which states that publication of a J&A is not required if “the justification would disclose the executive agency’s needs and disclosure of such needs would compromise national security or create other security risks.” Id. at 1.

The agency issued the RFP on July 1 to ExoAnalytic and ADS. AGI then filed its protest with our Office. The RFP anticipates the award of a fixed-price contract, with cost-reimbursement contract line items for travel and other direct costs, for a base period of 1 year and two 1-year options. RFP at 2-4. The RFP states that proposals will be evaluated on the basis of two factors, which, for purposes of award, are of approximately equal weight: (1) technical/ technical risk, and (2) cost/price. Id. at 44. The agency assigned North American Industry Classification System (NAICS) code 511210, Software Publishers, to the solicitation. Id. The agency received proposals from ADS and ExoAnalytic by the July 28 closing date.

DISCUSSION

AGI raises three primary challenges to the terms of the solicitation: (1) the Air Force unreasonably set the requirement to track RSOs at a level that was below the agency’s actual needs, (2) the agency unreasonably set aside the solicitation for small businesses, and (3) the agency unreasonably concluded that the solicitation requirements are non-commercial in nature, and therefore failed to use the streamlined commercial acquisition procedures of FAR part 12.⁴ For the reasons discussed below, we deny the first two arguments, and dismiss the third. First, we conclude that the protester’s challenge to the agency’s definition of its requirements does not provide a basis to sustain the protest. Next, we conclude that the agency reasonably set aside the procurement for small business. Finally, we conclude that the protester, as a large business, is not an interested party to challenge the agency’s designation of the RFP’s requirements as non-commercial because, even if the protester were correct that the requirement should be designated as commercial in nature, such a finding would not affect the agency’s basis for setting aside the procurement for small businesses.

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classified record, our decision here does not specifically rely on this information; all citations to the record are to unclassified documents.

⁴ AGI raises other collateral issues. Although we do not address every argument in detail, we have reviewed each issue and find no basis to sustain the protest.

RSO Tracking Requirements

AGI argues that the solicitation's minimum requirement to track RSOs is unreasonably low and does not reflect the agency's needs. As discussed above, the solicitation requires the successful contractor to "provide near real-time data of up to 200 tasked objects (as identified in a classified annex). . . ." AR, Tab 29, PWS at 6. The protester contends that by requiring the contractor to track only 200 RSOs, the agency will not be able to adequately track the large number of potential objects that could pose threats. Protest at 16-17. The protester argues that it is "capable of providing information on hundreds of thousands of RSOs," and that there are no "credible or rational reasons for setting this requirement so low." Id. at 17. For the reasons discussed below, we find no basis to sustain the protest.

A contracting agency has the discretion to determine its needs and the best method to accommodate them. JRS Mgmt., B-402650.2, June 25, 2010, 2010 CPD ¶ 147 at 3. However, those needs must be specified in a manner designed to achieve full and open competition. Exec Plaza, LLC, B-400107, B-400107.2, Aug. 1, 2008, 2008 CPD ¶ 143 at 5. Solicitations may include restrictive requirements only to the extent necessary to satisfy the needs of the agency or as authorized by law. 10 U.S.C. § 2305(a)(1)(B)(ii). Generally, our Office will not consider contentions that specifications should be made more restrictive because our role in reviewing bid protests is to ensure that the statutory requirements for full and open competition are met, not to protect any interest a protester may have in limiting competition through more restrictive specifications. Platinum Servs., Inc.; WIT Assocs., Inc., B-409288.3 et al., Aug. 21, 2014, 2014 CPD ¶ 261 at 5.

Here, the Air Force explains that although there are more than 22,000 trackable man-made objects in orbit around Earth, the purpose of this solicitation is to obtain "augmented analysis for a limited number of space objects, including US satellites." AR, Tab 33, Aff. of Agency Program Manager (July 20, 2016), at 1. As discussed above, the solicitation stated that the agency's requirements concern up to 200 objects that are identified in a classified annex to the PWS. PWS § 1.3.2; see also AR, Tab 7, RFI amend. 1 (Mar. 29, 2016) at 5 (minimum requirement No. 9 concerns "Augment DoD persistent monitory capabilities by maintaining custody of designated objects (e.g. Super High Interest Objects) to the maximum degree possible.").

On this record, we find no basis to conclude that the agency has violated any procurement law or regulation by establishing a requirement to track up to 200 RSOs. See 31 U.S.C. § 3552(a) (GAO reviews alleged violations of procurement laws and regulations). In this regard, the protester does not demonstrate why the agency's stated requirements are inconsistent with the statutory and regulatory requirements to achieve full and open competition and to use restrictive requirements only to the extent necessary or as authorized by law. See Exec Plaza, LLC, supra; 10 U.S.C. § 2305(a)(1)(B)(ii). To the extent the

protester argues that the agency's needs are greater than those reflected in the solicitation, we find no basis to sustain the protest. See Platinum Servs., Inc.; WIT Assocs., Inc., supra.

Set-Aside Determination

Next, AGI argues that the Air Force unreasonably set the procurement aside for small businesses. For the reasons discussed below, we find no basis to sustain the protest.

Pursuant to FAR § 19.502-2(b), a procurement with an anticipated dollar value of more than \$150,000 must be set aside for exclusive small business participation when there is a reasonable expectation that offers will be received from at least two responsible small business concerns, and award will be made at a fair market price. See also 13 C.F.R. § 125.2(f)(2). No particular method of assessing the availability of capable small businesses is required; rather, the assessment must be based on sufficient facts so as to establish its reasonableness. Mountain W. Helicopters, LLC; Trans Aero, Ltd., B-408150, B-408150.2, July 1, 2013, 2013 CPD ¶ 152 at 2-3. The decision whether to set aside a procurement may be based on an analysis of factors such as the prior procurement history, the recommendations of appropriate small business specialists, and market surveys that include responses to sources sought announcements. Commonwealth Home Health Care, Inc., B-400163, July 24, 2008, 2008 CPD ¶ 140 at 3.

The RFP incorporated by reference FAR clause 52.219-14, Limitations on Subcontracting. RFP at 13. This clause provides, in relevant part:

(c) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for--

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(2) Supplies (other than procurement from a nonmanufacturer of such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

FAR clause 52.219-14(c)(2).

As discussed above, the RFI listed 10 minimum requirements and requested responses from interested firms. The RFI also requested that the firms address issues such as their size status, how small businesses would comply with the limitation on subcontracting requirement at FAR clause 52.219-14, and whether their products are commercial in nature. AR, Tab 7, RFI amend. 1 (Mar. 29, 2016),

at 6. The Air Force's set-aside determination was based on its evaluation of firms' responses to the RFI and exchanges with the firms during the industry day. The agency concluded that ADS was capable of meeting all 10 of the minimum requirements, and that ExoAnalytic could meet 9 of 10 requirements. AR, Tab 17, Evaluation of RFI Responses, at 2-3; Tab 26, Market Research Report, at 4-5.

In the J&A limiting the competition and setting aside the procurement for small businesses, which was signed by the contracting officer (CO), the agency stated as follows:

The CO finds a reasonable expectation exists for receiving proposals from two responsible small business concerns, and that award can be made at fair market prices. For this acquisition, the two small businesses that have emerged from the Requests for Information (RFI) and Industry Day processes appear to be uniquely qualified at this time in terms of security qualifications and possessing the capabilities required, or ability to obtain them, to facilitate the objectives contemplated in the Performance Work Statement (PWS). The two small businesses are ExoAnalytic and Applied Defense Solutions (ADS).

AR, Tab 25, J&A, at 3.

AGI first argues that the Air Force unreasonably concluded that the two small business firms were capable of performing the work. For this reason, the protester argues that the agency did not have a reasonable basis to expect proposals from at least two responsible offerors, as required by FAR § 19.502-2(b).

With regard to ExoAnalytic, the Air Force found that the firm's RFI response did not demonstrate that it could meet minimum requirement No. 7: "Process and correlate feature-type data (Visual Magnitude (Vmag), Radar Cross Section (RCS) changes, RF spectrum, etc.)." AR, Tab 7, RFI amend. 1 (Mar. 29, 2016) at 5. The agency found that ExoAnalytic's RFI response did not demonstrate an ability to meet this requirement, based on the following concern: "Respondent stated they can provide feature-type data from Vmag and RCS changes however there was no mention of RF spectrum capabilities." AR, Tab 17, Evaluation of RFI Responses, at 3. AGI argues that the Air Force's analysis that this firm could meet only 9 of the 10 minimum requirements meant that the agency could not reasonably expect this firm to be a responsible offeror.

As our Office has held, agencies need not make either actual determinations of responsibility or decisions tantamount to determinations of responsibility in determining whether to set aside a procurement. Ceradyne, Inc., B-402281, Feb. 17, 2010, 2010 CPD ¶ 70 at 4. Rather, agencies need only make an informed business judgment that there is a reasonable expectation of receiving acceptably

priced offers from small business concerns that are capable of performing the contract. ViroMed Labs., B-298931, Dec. 20, 2006, 2007 CPD ¶ 4 at 3-4.

The Air Force here argues that it was not required to find that ExoAnalytic's RFI response reflected full technical compliance with all requirements. Instead, the agency was required to exercise its business judgment to determine whether it could reasonably expect that ExoAnalytic would submit a proposal that met the agency's requirements. In this regard, the Air Force notes that part of the contracting officer's analysis relied upon the presumption that a small business need not perform all of a solicitation's requirements, but instead must perform the requirements without violating the limitation on subcontracting clause. Contracting Officer's Statement (COS) at 10.

Here, ExoAnalytic stated that it could perform the requirements, and there is no allegation of misrepresentation in this regard. With regard to the RF spectrum capabilities requirement, the record shows that the agency clearly understood that ExoAnalytic's RFI response did not address this part of the minimum requirements. See AR, Tab 17, Evaluation of RFI Responses, at 3. Nonetheless, the agency concluded that, overall it expected to receive an acceptable proposal from that firm. AR, Tab 17, Evaluation of RFI Responses, at 3; Tab 26, Market Research Report, at 5.

Neither FAR § 19.502-2(b) nor the decisions by our Office require an agency to request, or a prospective small business offeror to provide, a complete technically-acceptable approach in response to market research. In explaining the difference between an agency's exercise of business judgment regarding the expectation of receiving a proposal from a firm capable of performing the work, and a responsibility determination in connection with the evaluation of proposals prior to award, our Office has held that an agency may reasonably anticipate receiving an acceptable proposal from a small business even where that firm had previously submitted an unacceptable proposal for the same requirements under an unrestricted version of the solicitation. See KNAPP Logistics Automation, Inc., B-406303, Mar. 23, 2012, 2012 CPD ¶ 137 at 3-4 (agency reasonably concluded that small business would be able to correct deficiencies in its unacceptable proposal in response to unrestricted solicitation). Under the applicable standards for making a set-aside determination, we find no basis to conclude that the agency's judgment here regarding ExoAnalytic was unreasonable.

Next, AGI argues that the Air Force unreasonably found that ADS would be capable of meeting the agency's requirements. As discussed above, the agency found that ADS could meet all 10 of the minimum requirements. AR, Tab 17, Evaluation of RFI Responses, at 2. The protester does not specifically challenge the agency's conclusion regarding ADS's ability to meet the minimum requirements. Rather, the protester argues that the agency should have questioned ADS's ability to provide

the required software for the contract without violating the limitation on subcontracting clause.

In support of its argument, the protester notes that the agency used a NAICS code for software publication and estimated that the costs of “commodity” would constitute up to 71 percent of the total cost of the contract, and that the remaining 29 percent would be “non-personal services.” AR, Tab 31, Acquisition Plan, at 7. The protester argues, therefore, that the solicitation anticipates that 71 percent of the contract costs will be for software. Protester’s Comments (Aug. 24, 2016) at 19.

For these reasons, the protester contends that the following statement by ADS in its RFI response regarding the limitation on subcontracting clause demonstrates that the firm will not be able to perform the contract:

When considering the entirety of our effort, ADS as the small-business prime will focus on providing a wide variety of engineering services and analysis capabilities that will equal at least 50% of the total effort while subcontractors will provide the required data products with the remaining funds. We expect that through our experienced and certified program management protocols, we will be able to ensure compliance with FAR 52.219-14 in conjunction with the government contracting officer technical representative (COTR).

AR, Tab 11, ADS RFI Response (Apr. 6, 2016), at 18. The protester argues that because ADS described the requirements as “engineering services and analysis capabilities” rather than software publishing, as described in the NAICS code, this characterization implies that ADS will not be able to perform at least 50 percent of the contract requirements.⁵

To the extent the protester argues that the software represents 71 percent of the anticipated work, the record does not support this contention. As discussed above,

⁵ The RFI invited interested firms to address the following question: “The Government is considering NAICS code 511210, Software Publisher. Do you believe this is an appropriate NAICS code? If not, please provide the NAICS code you consider to be most appropriate and why.” AR, Tab 19, RFI amend. 4 (May 11, 2016) at 1. AGI notes that ADS argued in its RFI response that the applicable NAICS code should be for 541330, Engineering Services, rather than 511210, Software Publisher. Protester’s Comments (Aug. 24, 2016) at 19-20 (citing AR, Tab 20, ADS RFI Response (May 20, 2016), at 1). To the extent the protester argues that ADS’s response to the RFI is an admission that the firm cannot meet the minimum requirements, we find no basis to draw this inference, as ADS otherwise stated that it could meet the minimum requirements of the RFI.

the agency's acquisition plan stated that "commodity" represented 71 percent of the anticipated contract costs. AR, Tab 31, Acquisition Plan, at 7. The acquisition plan does not state, as the protester contends, that the only commodity provided is software; rather, the plan states that the agency seeks "a nongovernmental situational awareness (SSA) data, software, hardware, and services solution." *Id.* at 1; see also RFP at 2-4 (contract lines items for services, data, travel/other direct costs, data line, software fee, historical data subscription fee, and hardware and software installation). Thus, to the extent the protester's argument is premised on software comprising 71 percent of the costs of the requirement, the record does not provide a factual basis to support this argument.

Further, nothing in the record supports the protester's argument that the Air Force unreasonably concluded that ADS could meet the agency's requirements. As discussed above, an agency is not required to make either actual determinations of responsibility or decisions tantamount to determinations of responsibility in determining whether to set aside a procurement; rather agencies need only make an informed business judgment that there is a reasonable expectation of receiving acceptably priced offers from small business concerns that are capable of performing the contract. See Ceradyne, Inc., supra; ViroMed Labs., supra.

As also discussed above, small business firms generally may not subcontract more than 50 percent of the work required for contract.⁶ AGI essentially speculates that ADS will not be able to provide the required software itself and would therefore violate the limitation on subcontracting clause. Nothing in the record, however, shows that the ADS could not meet the requirements and would violate the limitation on subcontracting clause. In fact, another part of ADS's RFI response states as follows:

2. Will you be performing this requirement as a prime/joint venture or as a subcontractor? If you will be performing this requirement as a prime, can you perform 50% of the contract value? The Government is anticipating a base period of 12 months and four 12-month option periods.

Yes, ADS is planning on performing as a prime. We have performed a preliminary cost estimation to meet the PWS: we anticipate staffing and software support being performed by ADS will outweigh the data services and surge support from our subcontractors.

AR, Tab 20, ADS RFI Response (May 20, 2016), at 1.

⁶ This does not take into account other exceptions, such as the nonmanufacturer rule. See FAR clause 52.219-14(c)(2).

On this record, given the discretion afforded to agencies in exercising their business judgment to determine whether to set aside a requirement for small businesses, we conclude that the record here does not show that the agency's determination regarding ADS was unreasonable.

Next, AGI argues that the record does not show that the Air Force reasonably concluded that award was likely to be made at a fair and reasonable price, as required by FAR § 19.502-2(b). In response to our Office's request for supplemental briefing on this matter, the Air Force states that the contracting officer relied upon the expectation of competition to establish a fair market price. Agency Response to GAO Questions (Sept. 6, 2016) at 5-6; see also AR, Tab 25, J&A, at 4-5.

Our Office has held that an agency may, for purposes of determining whether it is reasonable to anticipate award at a fair market price, rely on an expectation of adequate price competition. Planet Depos LLC, B-411142, May 26, 2015, 2015 CPD ¶ 165 at 4-5; Walden Sec., B-407022, B-407022.2, Oct. 10, 2012, 2012 CPD ¶ 291 at 7. In this regard, the FAR provides that adequate price competition exists where two or more responsible offerors submit proposals that satisfy the government's requirements, award is based on a best-value determination where price is a substantial factor, and the price of the successful offeror is not unreasonable. FAR §§ 15.403-1(c)(1); 15.404-1(b)(2)(i). On this record, we find the agency reasonably concluded that it was likely to receive proposals from at least two responsible small business offerors, and that this gave rise to a reasonable expectation that award would be made at a fair market price. In sum, we find no basis to conclude that the agency improperly set the procurement aside for small businesses.

Determination that the Requirements are Non-Commercial

Finally, AGI argues that the Air Force improperly designated the solicitation requirements as non-commercial. We conclude that the protester is not an interested party to raise this challenge.

The Federal Acquisition Streamlining Act of 1994 established, among other things, a preference and specific requirements for the acquisition of commercial items that are sufficient to meet the needs of an agency. Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. No. 103-355 § 8104, 108 Stat. 3243 (codified, as amended, at 10 U.S.C. § 2377). This section of FASA is implemented in FAR part 12, and allows agencies to use solicitation terms, and other procedures, that more closely resemble the commercial marketplace when procuring commercial items. Section 12.101 of the FAR directs agencies to, among other things, conduct market research to determine whether commercial items or nondevelopmental items are available that could meet the agency's requirements. Determining whether a

product or service is a commercial item is largely within the discretion of the contracting agency, and such a determination will not be disturbed by our Office unless it is shown to be unreasonable. Palantir USG, Inc., B-412746, May 18, 2016, 2016 CPD ¶ 138 at 4.

As discussed above, we conclude that the Air Force reasonably set the procurement aside for small businesses. AGI argues that the Air Force's commerciality determination is intertwined with its determination that the agency was likely to receive proposals from two or more responsible offerors at a fair and reasonable price. Protester's Comments (Aug. 24, 2016) at 13. The protester, however, does not demonstrate why the agency's evaluation of the commerciality of the services affects the assessment of the capabilities of the two potential small business offerors. In this regard, aside from the issue of the minimum number of RSOs discussed above, the protester does not challenge the agency's requirements--only their designation as non-commercial. Thus, even if the requirements were deemed commercial, the protester has not demonstrated that such a designation would affect the agency's conclusion here that the two small business firms are capable of meeting those requirements.

Because AGI, a large business, is ineligible to compete for the award, we conclude that it is not an interested party to challenge the terms of the solicitation, and dismiss its remaining arguments. See Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1) ("Interested party means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract."); Creative Computing Solutions, Inc., B-408704, B-408704.2, Nov. 6, 2013, 2013 CPD ¶ 262 at 3; Technica Corp., B-413339, Sept. 19, 2016, 2016 CPD ¶ 264 at 4-5. We therefore dismiss this part of AGI's protest. 4 C.F.R. § 21.1(i).

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel