



## Decision

**Matter of:** Chenega Federal Systems, LLC

**File:** B-414478

**Date:** June 26, 2017

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### DIGEST

1. Protest challenging the agency's use of a lowest-priced, technically-acceptable evaluation scheme is denied where the record shows that the agency reasonably exercised its judgment in establishing the solicitation's source selection methodology.
  2. Protest challenging solicitation provisions as favoring the incumbent is denied where there no evidence of preferential treatment or other improper action.
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### DECISION

Chenega Federal Systems, LLC, of Lorton, Virginia, protests the terms of request for proposals (RFP) No. FA4890-16-R-0040, issued by the Department of the Air Force, to provide the Air Force's 57<sup>th</sup> Wing aircrew training and courseware development. The protester challenges the Air Force's use of a lowest-priced, technically-acceptable (LPTA) evaluation scheme to obtain the required services, as well as a number of the solicitation provisions that the protester contends were drafted in a manner that favors the incumbent. Chenega also challenges a number of solicitation provisions as vague and undefined, and claims that this vagueness prevents offerors from competing on a common basis.

We deny the protest.

### BACKGROUND

The solicitation was issued on January 25, 2017, as a small business set-aside. The RFP contemplates the award of a fixed-priced contract with separate line items for cost

reimbursable government-directed travel and reproduction for a 1-year base period and four 1-year options in accordance with Federal Acquisition Regulation (FAR) parts 12 and 15. RFP at 78 and 102; Agency Report (AR), Tab C, Source Selection Plan, at 1.<sup>1</sup> The procurement is a performance based acquisition, fifth generation follow-on effort to procure commercial services for the 57<sup>th</sup> Wing. Contracting Officer's Statement (COS)/ Memorandum of Law (MOL) at 2. The services to be provided under the solicitation include conducting academic instruction in support of formal course syllabi and training plans at the Air Force Weapons School at Nellis Air Force Base, Nevada. Performance Work Statement (PWS) § 1.5.1. Additionally, the contractor shall produce, update and review all of the courseware materials required to support academic instruction and flight phases of the training covered under the contract as well as provide an Air Force Weapons School academic/training database. PWS §§ 1.6, 1.7.6.

The RFP incorporated a PWS that identified a variety of tasks to be performed under the contract, and workload estimates. The RFP states that a contract will be awarded to the responsible offeror whose proposal is technically acceptable and offers the lowest evaluated price. RFP at 102. In addition to price, proposals will also be evaluated under a technical factor that is divided into the following four subfactors: manning requirements and analysis, training management and approach, courseware development approach and instructional systems development plan, and all other plans and contractor-furnished equipment. Id. at 103. Subfactors are equal in importance with regard to technical acceptability. Id. The solicitation provided that each technical subfactor would be rated as either "acceptable" or "unacceptable," and that to be eligible for award offerors are required to receive an "acceptable" rating for each subfactor. Id. The solicitation also provided that proposals that receive weaknesses or deficiencies in an aspect under a subfactor would receive an "unacceptable" rating. Id.

The agency held a pre-proposal conference on February 1, at which attendees, including Chenega, were given an opportunity to review samples of courseware and a demonstration of the database operation. COS/MOL at 2; Tab E-2, Pre-Proposal Conference Slides, at 2 and 14. On February 23, prior to the due date for proposals, the protester filed an agency-level protest in which it contested the agency's use of a LPTA evaluation scheme and alleged that a number of the solicitation provisions were drafted in a manner that favored the incumbent. Chenega Agency-Level Protest (Feb. 23, 2017). Chenega also challenged a number of solicitation provisions as vague and undefined, and claimed that this vagueness prevented offerors from competing on a common basis. Id. The agency denied Chenega's agency-level protest on March 10. This protest to our Office followed.

## DISCUSSION

Chenega challenges several aspects of the RFP in its protest. First, the protester challenges the agency's use of an LPTA evaluation scheme to obtain the required

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<sup>1</sup> Page citations to the RFP are to the Bates numbers provided by the agency.

services. The protester also contests a number of solicitation provisions that it contends were drafted in a manner that favor the incumbent. Finally, Chenega contends that certain solicitation provisions lack sufficient detail and are so vague as to prevent offerors from competing on a common basis.<sup>2</sup>

Chenega first argues that the agency is improperly using an LPTA evaluation scheme to obtain the required services, rather than a trade-off process. The protester contends that the use of an LPTA evaluation scheme is not appropriate in this instance because the solicitation calls for “significant development work,” and, according to Chenega, “real differentiators exist in the quality of products that offerors will propose.” Protest at 22-23. The protester also argues that Air Force guidelines provide that the activities to be performed under the RFP are not the kind of “well-defined requirements,” deemed appropriate for the use of LPTA procurement methods.<sup>3</sup> Id. at 9.

A contracting agency has the discretion to determine its needs and the best method to accommodate them, and we will not question an agency’s determination of its needs unless that determination has no reasonable basis. See Womack Mach. Supply Co., B-407990, May 3, 2013, 2013 CPD ¶ 117 at 3. Disagreement with the agency’s judgment concerning the agency’s needs and how to accommodate them does not show that the agency’s judgment is unreasonable. Grant Thornton, LLP, B-408464, Sept. 25, 2013, 2013 CPD ¶ 238 at 5.

The record reflects that prior to the issuance of the solicitation the agency considered the use of an LPTA source selection scheme. AR, Tab C, Source Selection Plan, at 3. The agency listed the services to be provided under the contract, and stated that “[n]o variations are permitted.” Id. The agency further stated that the LPTA process does not permit tradeoffs between price and non-price factors, and therefore determined to utilize the LPTA source selection scheme for this procurement because “there is no value added in pursuing a full tradeoff source selection process.” Id. The agency also chose to use the LPTA source selection scheme for this procurement “given the maturity of this requirement.” Id.

The Air Force also states that this solicitation is for a fifth-generation follow-on contract and the contract currently in place to provide these services was awarded using an LPTA source selection methodology. COS/MOL at 7; Tab K, RFP for Current Contract, at 110. The agency indicates that the work under the RFP consists mainly of revising

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<sup>2</sup> Chenega’s protest raised numerous allegations. While our decision here does not specifically discuss each and every argument and/or variations of the arguments, we have considered all of the protester’s assertions and find none furnish a basis for sustaining the protest.

<sup>3</sup> Chenega also argues that by using LPTA in this solicitation the agency is not complying with a March 4, 2015, memoranda issued by the Under Secretary of Defense. Protest at 9.

and reviewing existing course materials, providing instruction for weapons school courses, and maintaining and updating a database of course materials. COS/MOL at 8. The agency notes that while offerors may propose different business solutions to provide the services under the contract, the required results permit no variations. Id. at 7. The agency adds that the proposed technical approaches of the various vendors would require no subjective judgment by the source selection authority as to the desirability of one vendor's approach over a competing proposal, and that cost would be the differentiating factor between technically acceptable proposals. Id. at 7-8; RFP at 102.

The protester has not shown that the agency's use of an LPTA evaluation scheme was unreasonable. The RFP indicates that the services to be provided are commercial in nature. The agency maintains that the work under the RFP consists mainly of revising and reviewing existing course materials, providing instruction for Weapons School courses, and maintaining and updating a database of course materials. COS/MOL at 7. We view Chenega's arguments to be mere disagreement with the agency's judgment regarding how best to accommodate its needs because, while the protester disagrees with the agency's characterization of the work to be performed under the contract, none of the information provided by the protester demonstrates that the agency's judgment is unreasonable. See PDL Toll, B-402970, Aug. 11, 2010, 2010 CPD ¶ 191 at 2; Crewzers Fire Crew Trans., Inc., B-402530, B 402530.2, May 17, 2010, 2010 CPD ¶ 117 at 4. With regard to Chenega's argument that the Air Force is not complying with internal agency guidelines, these documents are internal agency policy rather than mandatory procurement regulations. As such, the Air Force's compliance with these policies is not subject to our review. Grant Thornton, LLP, supra at 5 n.4. As a result, we find no basis to sustain this protest ground.

Next, the protester challenges multiple solicitation provisions that it argues are skewed in favor of the incumbent because only the incumbent has first-hand knowledge of the government's requirements. According to the protester, the RFP places Chenega at a disadvantage because the incumbent possesses certain deliverables and has gained certain historical knowledge by virtue of its performance of the current contract. Chenega complains further that the agency refuses to provide to all offerors information and knowledge gained by the incumbent which would enable prospective offerors to better define their requirements and compete on a more equal basis. Comments at 10.

The agency responds that to the extent the incumbent may have some degree of historical knowledge regarding certain agency requirements that this is a natural advantage of incumbency that the agency is not required to equalize. COS/MOL at 11. Regarding deliverables, the agency states that under the current contract all deliverables, to include data and a database, were developed with government funding and therefore the government has unlimited rights to all items delivered under the contract. Id. at 13. The agency notes that rather than provide the database as a government furnished product, it opted to require offerors to address and price the transition of the data to the next contractor. Id. The agency explains that requiring the offeror to directly transition the data to the next contractor increases efficiency and

removes unnecessary interaction with the government. Id. at 12. We find the agency's determinations in this regard to be reasonable.

For example, one area in the solicitation that the protester argues unfairly benefits the incumbent is the requirement in the PWS that the contractor must "[c]reate and maintain a Master Schedule database utilizing SharePoint." PWS § 1.7.6.15. The database will track squadron and individual course schedules, currencies, evaluation and qualifications. Id. According to the protester, the "only viable solution" to perform this PWS specification is to use the current academic database developed by the incumbent contractor.<sup>4</sup> Protest at 11. The protester states that the agency allows no other competitor access to or use of the existing database, but instead non-incumbent contractors must develop their own database with the assistance of the agency. Id.

The agency responds that while the academic database is a deliverable under the current contract, it currently runs on contractor-provided servers. Tab F-1, Consolidated RFP and Pre-Proposal Questions, at 3; PWS § 3.3.1. Regarding accessibility, the agency notes that the current system is run on MS Sharepoint which is part of the standard Air Force software package required on contractor computers in PWS § 3.5.1. AR, Tab F, Consolidated RFP and Pre-Proposal Questions, at 3. The agency further explains that it has worked to provide potential offerors with as much technical data as is available on the current database configuration. COS/MOL at 12; Tab F-1, Consolidated RFP and Pre-Proposal Questions, at 3. The agency maintains that the courseware and other information contained in the database will transfer to the incoming contractor, and it is the offeror's management decision regarding how to develop a customer interface. COS/MOL at 13.

We find that Chenega has not demonstrated that the advantage gained by the incumbent provides anything more than ordinary incumbent advantage. In other words, any advantages that may accrue to the incumbent in this procurement, either in experience, knowledge of the requirements, or by the development of certain products, are due to its performance of the requirement, not some special treatment on the part of the agency. On this record we find no basis to sustain the protest. It is well-settled that an offeror may possess unique information, advantages, and capabilities due to its prior experience under a government contract--either as an incumbent contractor or otherwise; further, the government is not necessarily required to equalize competition to compensate for such an advantage, unless there is evidence of preferential treatment or other improper action. See FAR § 9.505-2(a)(3); CACI, Inc.-Fed., B-403064.2, Jan. 28, 2011, 2011 CPD ¶ 31 at 10; MASAI Techs. Corp., B-298880.3, B-298880.4, Sept. 10, 2007, 2007 CPD ¶ 179 at 8. The existence of an advantage, in and of itself, does not constitute preferential treatment by the agency, nor is such a normally occurring advantage necessarily unfair. QinetiQ North America, Inc., B-405008, B-405008.2, July 27, 2011, 2011 CPD ¶ 154 at 12.

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<sup>4</sup> The solicitation provides that the agency will furnish the current courseware materials, also referred to as the academic database. PWS § 3.3.1; COS/MOL at 11.

Finally, the protester asserts that certain solicitation provisions do not include sufficient information for offerors to reasonably estimate the cost of completing the tasks described in the solicitation. For example, the protester contends that the solicitation does not include workload estimates for certain tasks in the PWS, including estimates regarding the number of meetings or briefings it is expected to attend.<sup>5</sup> Protest at 13. The agency responds that given that an offeror's instructors must be graduates of the U.S. Air Force Weapons School (PWS § 4.4.3.3.1), and must have some sense of the frequency of the meetings described the PWS to assist Chenega in crafting a reasonably intelligent estimate. Protest at 14; COS/MOL at 14.

Generally, a contracting agency must provide offerors with sufficient detail in a solicitation to enable offerors to compete intelligently and on a relatively equal basis. CWTSatoTravel, B-404479.2, Apr. 22, 2011, 2011 CPD ¶ 87 at 10. 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. Salient Fed. Sols., Inc., B-410174, Nov. 6, 2014, 2014 CPD ¶ 350 at 2. Indeed, it is within the administrative discretion of an agency to offer for competition a proposed contract that imposes maximum risks on the contractor and minimum burdens on the agency. CWTSatoTravel, supra, at 9, citing JRS Mgmt., B-402650.2, June 25, 2010, 2010 CPD ¶ 147 at 5.

We find no basis for concluding that the agency's failure to identify in the solicitation the specific number of meetings or briefings that the contractor is expected to attend imposes an unacceptable risk on prospective offerors. The RFP provides sufficiently detailed information to allow offerors to compete intelligently and on a relatively equal basis. The PWS includes estimated workloads of numerous tasks, such as the current courseware development workload estimates, and the required number of instructor led lessons and classroom hours. PWS, Appendix 1-Workload Estimates § A1.3.1. See Abba Int'l, Inc. et al., B-311225.4, Feb. 2, 2009, 2009 CPD ¶ 28 at 7. Regarding the protester's remaining allegations in this regard, we have examined them and find that the agency provided adequate information for offerors to understand the agency's requirements and to compete intelligently and on equal terms. We conclude that the fact that the PWS did not specifically state all of the agency's requirements, such as the number of meetings the contractor would be expected to attend, is not a lack of

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<sup>5</sup> According to the PWS the "[c]ontractor personnel shall attend scheduled phase briefings, flight safety meetings, commander calls, crewmember meetings, and intelligence briefings as required." PWS § 1.7.2.5.

definition in the solicitation, but rather is an element of risk that the agency may reasonably shift to offerors.

The protest is denied.

Susan A. Poling  
General Counsel