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# Decision

**Matter of:** Prairie Quest, Inc.

**File:** B-417573.2

**Date:** January 31, 2020

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## DIGEST

Protest that the terms of a solicitation provide insufficient information to justify a fixed-price contract type is denied where the agency's market research reasonably supports the solicitation's pricing terms and the solicitation provides the most recent available historical data for offerors to compete intelligently and on a relatively equal basis.

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## DECISION

Prairie Quest, Inc., of Fort Wayne, Indiana, protests the terms of request for proposals (RFP) No. W81K04-18-R-0002, issued by the Department of the Army for patient appointing, referral management, and clear and legible reporting services. The protester contends that the solicitation is flawed because it fails to adequately detail the agency's requirement to justify a fixed-price contract and unfairly shifts the risk of contract performance wholly to the contractor.

We deny the protest.

## BACKGROUND

On April 4, 2019, the agency issued the solicitation pursuant to Federal Acquisition Regulation (FAR) part 12, Acquisition of Commercial Items. Agency Report (AR), Tab 11, RFP, at 1, 15. The RFP requires that the contractor provide a centralized call center offering patient appointing, referral management, and clear and legible reporting services to TRICARE beneficiaries of military treatment facilities in the Puget Sound

Enhanced Multi-Service Market.<sup>1</sup> Id. at 49-50. The RFP contemplates award of a fixed-price contract with a period of performance that includes a 3-month base and phase-in period, four 12-month option periods, and a 9-month option period. Id. at 3-12, 151. The RFP requires to offerors provide a lump sum monthly price for the base and phase-in period, and a monthly contract line item price for each of the patient appointing, referral management, and clear and legible reporting services for each option period. Id. at 3-12.

Based on the market research performed by the agency prior to issuing the RFP, the agency selected a fixed-price contract type for the procurement. AR, Tab 7, Market Research Summary, at 11; Tab 9, Determination and Findings, at 3. The RFP provided historical monthly figures that indicated the eligible population for services between July and December of 2018 ranged between 283,056 and 285,722 beneficiaries. RFP at 111 (RFP attach. 8). The RFP included patient appointing call volume projections that estimated 75,000 inbound and 25,000 outbound calls per month for a total annual call volume of 1.2 million. Id. at 112 (RFP attach. 9); AR, Tab 14, RFP amend. 0001, at 24. Additionally, the RFP provided projected monthly disposition figures for referral management and clear and legible reporting services. RFP at 129 (RFP attach. 12); RFP amend. 0001, at 40.

Prior to the deadline for receipt of proposals, on May 14, Prairie Quest filed a protest with our Office, and argued, among other things, that the RFP failed to provide reasonably definite specifications to justify a fixed-price contract type. The Army advised that it would take corrective action by reviewing the acquisition, amending the solicitation, and allowing offerors to submit revised proposals; our Office dismissed the protest. Prairie Quest, Inc., B-417573, June 18, 2019 (unpublished decision).

On September 24, the Army issued RFP amendment 0002. As relevant to the protest allegations, the RFP's prior patient appointing call volume projections were replaced with historical data on call volume experienced by the incumbent contractor between April 2018 and March 2019, which indicated 591,113 inbound and 88,529 outbound calls for a total call volume of 679,642 for the 12-month period. AR, Tab 19, amend. 0002, at 25-26 (RFP attach. 9). The amendment also revised the RFP to indicate that the monthly disposition figures for referral management and clear and legible reporting services were based on historical data, rather than projections, and clarified the scope of work related to the slightly revised figures. Id. at 42 (RFP attach. 12).

On October 24, the Army again amended the RFP to provide historical data on patient appointing call volume, this time covering the period between October 2018 and

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<sup>1</sup> The Puget Sound market includes the following medical treatment facilities: Madigan Army Medical Center and its subordinate clinics; Joint Base Lewis McChord and its subordinate clinics; 62nd Medical Squadron; Naval Hospital Bremerton and its subordinate clinics; and Naval Health Clinic Oak Harbor. RFP at 49, 112.

September 2019. AR, Tab 20, RFP amend. 0003, at 13 (RFP attach. 9). Prior to the proposal due date, Prairie Quest filed this protest.

## DISCUSSION

The protester argues that the solicitation and its amendments contain inadequate detail to make a fixed-price contract type reasonable.<sup>2</sup> Protest at 8-10. Specifically, Prairie Quest argues that the RFP is deficient because it fails to provide detail on peak call volume, daily or hourly breakdowns of call volume, and a limit on the number of calls with respect to patient appointing services, referral management services, and clear and legible reporting services. Notice of Withdrawal of Protest Grounds, Dec. 11, 2019, at 2. The protester argues that a fixed-price contract type is inappropriate because “the customary commercial practice is for contractors to develop their pricing and staffing based on detailed historical data, including call volume broken down by hour, day and week” when a fixed-price contract type is contemplated, but the RFP fails to do so. Comments at 4-6.

The agency argues that the prior contracting history for the patient appointing services and its market research support its finding that a fixed-price contract is appropriate for this requirement. Contracting Officer’s Statement (COS) at 1-2, 4; Memorandum of Law (MOL) at 10-12. Regarding peak calling and daily or hourly breakdowns of call volume, the agency states that it does not have the detailed information that the protester seeks, but argues the solicitation nonetheless provides adequate information for offerors to compete intelligently and on a common basis. COS at 4-5; MOL at 12-15. The agency also argues that it would be inappropriate to place a limit on the number of calls given the nature of the required services, and unnecessary because the information on the number of eligible beneficiaries and historical data is adequate to enable offerors to use their judgment and expertise to meet the requirements despite any fluctuation in call volumes. MOL at 15-16.

The FAR requires that agencies use fixed-price contracts or fixed-price contracts with economic price adjustment for the acquisition of commercial items, FAR §§ 12.207(a) and 16.201(a), and states that contracts for the acquisition of commercial items “shall, to the maximum extent practicable, include only those clauses . . . [d]etermined to be consistent with customary commercial practice.” FAR § 12.301(a)(2). In establishing

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<sup>2</sup> On December 9, prior to submission of the agency report, the Army issued RFP amendment 0004, which provided updated data concerning the performance requirements and phase-in plan of action and milestones. AR, Tab 22, RFP amend. 0004. As a result of the amendment, the protester withdrew its allegations that challenged the adequacy of the information provided in the RFP regarding call abandonment requirements, government-offered training, and the phase-in scope of work. Notice of Withdrawal of Protest Grounds, Dec. 11, 2019, at 2. While our decision here does not specifically discuss each and every argument and/or variation of the remaining arguments, we have considered all of Prairie Quest’s arguments and find no basis to sustain the protest.

acquisitions for commercial items, FAR § 10.002(b)(1)(iii) requires market research by the acquiring agency to address, among other things, customary practices regarding the provision of the commercial items. See also Northrop Grumman Tech. Servs., Inc., B-406523, June 22, 2012, 2012 CPD ¶ 197 at 14-15. A fixed-price contract is suitable for acquiring commercial items when the contracting officer can establish fair and reasonable prices at the outset, such as when there is adequate price competition; the available cost or pricing information permits realistic estimates of the probable costs of performance; or the performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a fixed price representing assumption of the risks involved. FAR §16.202-2; see Northrop Grumman Tech. Servs., Inc., supra, at 11.

Here, the record shows that the agency's patient appointing services requirements have been satisfied under a series of fixed-price contracts since December 2010. COS at 1-2. Specifically, the incumbent contract was competitively awarded as a fixed-price, indefinite-delivery, indefinite-quantity contract with a period of performance from December 1, 2010 through November 30, 2015; since then, three additional sole-source contracts have been awarded on a fixed-price basis. Id. at 1; see AR, Tab 23, Bridge Contract W81K04-16-P-0014, at 3; Tab 24, Bridge Contract W81K04-17-P-0017, at 3; Tab 25, Bridge Contract W81K04-19-C-0002, at 3-4.

Prior to issuing the solicitation, the agency performed market research by issuing a request for information (RFI) and provided a draft performance work statement (PWS) to industry. AR, Tab 3, RFI No. W81K04-18-R-PAS. As relevant to the protest allegations, the RFI included the following questions:

1. What historical/workload data (i.e., number of beneficiaries, call volume, call duration, etc.) would be helpful in preparing a technical and price proposal?
11. Are there industry pricing arrangements for these types of services? If so, please provide them.
12. Would your company be willing to provide a fixed price arrangement for these services on a monthly basis? If not, what type of pricing arrangement?

Id. at 2. The agency received 11 responses to the RFI. AR, Tab 7, Market Research Summary, at 3.

Regarding question 1, concerning helpful historical/workload data, all RFI respondents stated that they would require a variety of data that would typically be used to manage performance and plan for workload, such as the number of beneficiaries, call volume, average call duration, and peak call times. See AR, Tab 4, Consolidated RFI Responses. Like the protester, some respondents specified that they would require data based on a daily or hourly basis. E.g., id. at 61 ("For at least 2 previous years and

current year to date: . . . Number of calls received by location by month, by day of week, by hour of day across all duty hours.”). However, not all respondents indicated that they would require such specific detail; one respondent requested only monthly data while others did not specify a particular period of time for the associated data. See, e.g., id. at 5 and 11 (failing to specify a period of time); id. at 106 (stating “[a]verage call volume by month” and “[n]umber of dropped calls by month” would be helpful to prepare a technical and price proposal).

In response to question 11, concerning industry pricing arrangements for these services, while many respondents stated that pricing arrangements varied depending on certain factors, some specifically indicated that fixed-price arrangements were used (and even preferred) to provide the services. Id. at 6, 76, 110, and 137. Regarding question 12, concerning the willingness of offerors to provide these services on a fixed-price basis, over half of the RFI respondents stated affirmatively that they would be willing to provide a fixed-price arrangement on a monthly basis. Id. at 7, 17, 35, 53, 76, 97, and 110. For example, one respondent explicitly stated that it “currently provides and has priced these types of services for various clients based on a firm fixed per month price. This firm fixed pricing includes all overhead (system, facility, etc.) and staffing costs in a monthly fee and is based on call volumes/historical workload data and facility requirements provided by the government.” Id. at 76.

On this record, we find reasonable the agency’s decision to use a fixed-price contract type for the procurement. As noted, the agency has procured patient appointing services on a fixed-price basis since 2010. The RFI responses from industry demonstrate that the agency has a reasonable expectation that fair and reasonable prices can be established through adequate competition and that many prospective contractors are willing to accept the risk associated with entering into a fixed-price arrangement. Further, the protester has not demonstrated that customary commercial practice, when a fixed-price type contract is contemplated, requires that the agency provide significantly more detail than the RFP here currently provides.

Underpinning the protester’s challenge to the fixed-price contract type is its complaint that the RFP does not provide the level of detail, specifically peak call volume, daily or hourly breakdowns of call volume, or a limit on the number of calls, to justify a fixed-price contract. As a general rule, a solicitation must be drafted in a fashion that enables offerors to intelligently prepare their proposals and must be sufficiently free from ambiguity so that offerors may compete on a common basis. Raymond Express Int’l, B-409872.2, Nov. 6, 2014, 2014 CPD ¶ 317 at 9. However, there is no requirement that the specifications in a solicitation be so detailed that they completely eliminate all risk, or remove every uncertainty from the mind of every prospective offeror. Owl, Inc.; MLB Transportation, Inc., B-414962, B-414962.2, Oct. 17, 2017, 2017 CPD ¶ 322 at 4. Risk is inherent in most types of contracts, especially fixed-price contracts, and firms must use their professional expertise and business judgment in anticipating a variety of influences affecting performance costs. JRS Mgmt., B-402650.2, June 25, 2010, 2010 CPD ¶ 147 at 5.

Here, as amended, the RFP provides offerors with the precise information previously requested by many of the RFI respondents. The record shows that the agency has progressively provided the most recent historical data that is available from the incumbent contractor and its in-house performance of the requirements. For example, RFP amendment 0001 provided prospective offerors with the following questions and answers:

[Question:] For offerors to effectively form a staffing plan, will the Government provide the average calls of all types into the appointing line by hour by day of week?

[Answer:] The government is unable to predict call volumes as there are numerous variables that drive call volume. Call volumes related to Patient Appointing represent the largest proportion of total calls. Generally, call volumes tend to be highest early and late in the week with peak daily volume typically in the morning, as well as [experiencing] seasonal variability.

. . . .

[Question:] So, that Offerors can accurately price each [contract line item number] in the price schedule (base and all option periods), will the government provide the projected call volumes/anticipated workload by month and year for each functional area (patient appointing, referral management and [clear and legible reports]) defined in the price schedule over each contract period of performance (base year, option year 1, etc.)?

[Answer:] See Attachment 9 and 12 for projections.

AR, Tab 15, RFP amend. 0001, Questions and Answers, at 13 (Question No. 85) and 25 (Question No. 165).

Thereafter, as noted, the agency issued RFP amendment 0002 and replaced the prior projections with monthly historical data. AR, Tab 19, amend. 0002, at 25-26, 42 (RFP attachs. 9 and 12). The agency then issued RFP amendment 0003 and provided an additional six months of historical data for the patient appointing services. AR, Tab 20, RFP amend. 0003, at 13 (RFP attach. 9). Thus, the RFP now provides 18 months of the historical monthly call volume for patient appointing services between April 2018 and September 2019. Indeed, when again asked for hourly and daily call volume information, the agency responded that “historical call volumes by month, day, and hour as well as call processing times are not available. The Government currently requires the incumbent contractor to report only monthly inbound and outbound call volume.” AR, Tab 21, RFP amend. 0003, Questions and Answers, at 1-2 (Question 5).

On this record, we agree with the agency that the RFP contains sufficient information for offerors to compete on a relatively equal basis. As issued, the RFP included much of

the information RFI respondents indicated would be required to prepare a responsive and competitive proposal, such as the number of beneficiaries. In each amendment, the agency progressively refined the RFP requirements, and replaced its initial static projections with its most recent and available historical data. The solicitation now provides 18 months of historical inbound and outbound monthly call volume for the patient appointing services experienced by the incumbent contractor, as well as historical information about the government's performance of referral management, and clear and legible reporting services. Although the protester argues that this information is insufficient and contrary to commercial practice, the record shows otherwise. We find that Prairie Quest has not adequately explained why the monthly data is insufficient, and its desire for greater detail does not render the solicitation deficient such that an offeror could not prepare a competitive and responsive proposal.

The protest is denied.

Thomas H. Armstrong  
General Counsel