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## Decision

**Matter of:** Information Innovators, Inc.; NARTEch Inc.; 22nd Century Technologies, Inc.

**File:** B-418405; B-418405.2; B-418405.3; B-418405.4

**Date:** April 14, 2020

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### DIGEST

1. Protests challenging a solicitation as unduly restrictive of competition are denied where the agency's justification for the restrictive solicitation provision is rational and reasonably necessary to meet the agency's needs.
  2. Protesters are not interested parties to challenge other solicitation provisions or aspects of the procurement where the firms are unable to meet a solicitation requirement.
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### DECISION

Information Innovators, Inc., of Fairfax, Virginia, NARTEch, Inc., of Bethesda, Maryland, and 22<sup>nd</sup> Century Technologies, Inc. (22<sup>nd</sup> Century), of McLean, Virginia, protest the terms of request for quotations (RFQ) No. ID11190052, issued by the General Services Administration (GSA) on behalf of the Department of Housing and Urban Development (HUD) for information technology (IT) support services. All three protesters assert that the requirement that their current Federal Supply Schedule (FSS) contracts extend through the 10-year performance period of the Blanket Purchase Agreements (BPAs) the RFQ seeks to establish is unduly restrictive of competition. The protesters also challenge various other aspects of the solicitation.

We deny the protests.

## BACKGROUND

GSA issued the solicitation via the agency's e-Buy website on November 8, 2019, seeking quotations to provide IT support services for a number of initiatives to modernize HUD's IT infrastructure, primarily to provide operations and maintenance services, with additional task areas of program management support, including modernization, enhancement, and transition support. Agency Report (AR), Exh. 1, RFQ at 8; Contracting Officer's Statement (COS) at 1. The RFQ was issued under GSA's FSS, utilizing Federal Acquisition Regulation (FAR) subpart 8.4 procedures, and was limited to vendors holding contracts under schedule No. 70, special item number (SIN) 132-51 for IT Professional Services. RFQ at 1-3. The RFQ contemplated the establishment of at least eight BPAs on a lowest-priced technically acceptable basis, with at least five of the eight BPAs set aside for small businesses. RFQ at 93.

As relevant here, the period of performance for the BPAs was to be 10 years. RFQ at 35. The RFQ also required vendors' quotations to include "evidence that their IT Schedule 70 contract contains option periods in their GSA schedule contract that, if exercised, will cover the BPA's period of performance." *Id.* at 88. The RFQ provided that the agency would reject any quotation that did not provide evidence that the vendor's FSS contract's period of performance was sufficient to cover the entire 10-year BPA period of performance. *Id.* at 95.

The closing date for receipt of quotations was January 13, 2020. RFQ at 2. On or before January 13, Information Innovators, NARTech, and 22<sup>nd</sup> Century filed these protests.

## DISCUSSION

All three protesters challenge the requirement that their current FSS contracts cover the 10-year performance period of the BPAs the RFQ seeks to establish. Information Innovators contends that the 10-year schedule contract period of performance requirement is unduly restrictive of competition because the agency would not also consider quotations from vendors eligible for "continuous" FSS contracts.<sup>1</sup> Information

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<sup>1</sup> In October 2015 and as revised in February 2016, the GSA Federal Acquisition Service (FAS) established policies and procedures regarding the award of overlapping FSS contracts, which GSA terms "continuous" FSS contracts. FAS Policy and Procedure (PAP) 2016-04, Guidelines for the Award of Overlapping FSS Contracts, Feb. 4, 2016; see also 41 U.S.C. § 152(3). A contractor may request a new FSS contract under the same schedule prior to the expiration of its existing FSS contract. The contractor may then hold two continuous FSS contracts by which, generally speaking, it may only use the first FSS contract for existing business and the second FSS contract for new business. See FAS PAP 2016-04, Feb 4, 2016 at 2-3; see also NCS Technologies, Inc., B-417956, B-417956.2, Dec. 13, 2019, 2019 CPD ¶ 427 at 2.

Innovators Protest at 3-5; Information Innovators Comments and Supp. Protest at 3-5. NARTech contends that the 10-year BPA performance period overstates the agency's actual needs and is unduly restrictive of competition because some schedule contractors are currently unable to obtain sufficient extensions to their FSS contracts. NARTech Protest at 5-7; NARTech Comments at 2-5. 22<sup>nd</sup> Century argues that the 10-year BPA performance period violates section 8.405-3(d)(1) of the FAR because it is not necessary to meet the agency's requirements. 22<sup>nd</sup> Century Protest at 4-6; 22<sup>nd</sup> Century Comments at 2-10. The protesters also challenge various other aspects of the solicitation.<sup>2</sup>

The agency responds that a vendor's FSS contract must have sufficient period of performance to cover the entire period of performance of a resulting BPA. Memorandum of Law (MOL) at 9. The agency further notes that the FAR allows multiple-award BPAs to exceed five years in length in order to meet program requirements. MOL at 7. In light of the above, the agency argues that the 10-year duration of the anticipated BPAs and the requirement that a vendor's underlying FSS contract contain at least a 10-year period of performance are reasonable because the agency has a program requirement for a 10-year term. Id. at 7-9. For the reasons discussed below, we agree with the agency.

In FSS buys, as in other procurements, an agency has the discretion to determine its needs and the best method to accommodate them. Veterans Healthcare Supply Solutions, Inc., B-409888, Sept. 5, 2014, 2014 CPD ¶ 269 at 3. Where a protester challenges a solicitation provision as unduly restrictive of competition, the agency must establish that the provision is reasonably necessary to meet the agency's needs. See Diversity Marketing & Commc'ns, LLC, B-412196.2, Mar. 9, 2016, 2016 CPD ¶ 84 at 4. We examine the adequacy of the agency's justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. HealthDataInsights, Inc.; CGI Fed. Inc., B-409409 et al., Apr. 23, 2014, 2014 CPD ¶ 134 at 8. The determination of a contracting agency's needs is primarily within the agency's discretion. Diversity Marketing & Commc'ns, LLC, supra.

As an initial matter, we see no basis to question the agency's requirement for a 10-year BPA performance period. Section 8.405-3(d)(1) of the FAR allows multiple-award BPAs to exceed five years in length in order "to meet program requirements." Here, the agency explains that HUD is "currently engaged in a number of initiatives to modernize its sprawling and outdated [IT] infrastructure" and "antiquated systems" over the next 10 years. COS at 1. The record shows that the agency was concerned that the various integrated applications undergoing multi-year development efforts are subject to

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<sup>2</sup> For example, NARTech challenges the solicitation's corporate experience reference dollar value threshold, NARTech Protest at 5-6; NARTech Comments at 5-7; and Information Innovators contends that the agency failed to conduct sufficient market research. Information Innovators Comments & Supp. Protest at 1-2; Information Innovators Supp. Comments.

legislative changes whose timelines for implementation are unknown. AR, Exh. 5, HUD 10-Year BPA Term Justification at 1.<sup>3</sup> The agency also argues that long-term access to a small and stable group of contractors will provide a variety of benefits which increase the likelihood of success of the overall modernization effort.<sup>4</sup> COS at 5. The agency also describes a series of future procurements for which it anticipates utilizing the BPAs, with various expected performance periods through 2029. COS at 2-4. While the protesters argue that the 10-year BPA performance period is not necessary to meet program requirements,<sup>5</sup> they do not meaningfully challenge the agency's planned use of the BPAs for requirements through 2029 or the agency's stated need for an efficient and adaptable contract vehicle with which to respond to the changing needs of its IT modernization effort. We find the agency reasonably selected a 10-year BPA performance period to meet its program requirements.

Further, we find the agency's justification for the requirement that vendors have at least 10 years, including option periods, remaining on their current FSS contracts to be rational. An FSS contract must have a sufficient period of performance to cover the entire performance period of a resulting BPA because a BPA cannot survive the expiration of the underlying FSS contract. FAR § 8.405-3(d)(3);<sup>6</sup> see also GBK Partnership, LLC-Constant Assocs., Inc., B-417039, Jan. 24, 2019, 2019 CPD ¶ 30

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<sup>3</sup> 22<sup>nd</sup> Century argues that the limited contemporaneous documentation of the agency's justification for a 10-year BPA performance period is procedurally flawed and insufficient under section 8.405-3(d) of the FAR. 22<sup>nd</sup> Century Comments at 4-7. However, 22<sup>nd</sup> Century fails to point to any specific documentation requirements in FAR § 8.405-3(d). Accordingly, these arguments do not provide a basis to sustain a protest.

<sup>4</sup> The agency argues that the 10-year BPA term will "minimize disruption, ensure the provision of a high level of expertise and knowledge, reduce loss of critical knowledge, enhance responsiveness to unforeseen changes, . . . allow for more efficient fair opportunity solicitation and award procedures, . . . and an ability to adapt quickly as HUD proceeds" with its IT modernization. COS at 5. The agency also notes that HUD will be able to access this pool for previously unanticipated tasks or projects that are required to address within-scope operations and maintenance requirements associated with the HUD applications and be able to better project annual administrative costs and utilize better discretion in allocating funds towards other efforts. Id.

<sup>5</sup> For example, NARTech and 22<sup>nd</sup> Century question the need for a 10-year BPA when the RFQ's current anticipated task orders are all 5 years in length. NARTech Comments at 4; 22<sup>nd</sup> Century Comments at 6. However, the RFQ provides that the agency anticipates awarding "at least six Task Orders" under the BPAs and the currently anticipated task orders include only those the agency planned to issue by the second quarter of 2020. RFQ at 5.

<sup>6</sup> Section 8.405-3(d)(3) of the FAR states that "Contractors may be awarded BPAs that extend beyond the current term of their GSA Schedule contract, so long as there are option periods in their GSA Schedule contract that, if exercised, will cover the BPA's period of performance."

at 3-4 (denying a protest where the agency found the protester to be ineligible for award because its underlying FSS contract was set to expire before the end of the BPA's period of performance). Given our conclusion, above, that the agency reasonably selected a 10-year BPA performance period, we find the RFQ's requirement that vendors have at least 10 years remaining on their current FSS contracts to be reasonable and consistent with applicable procurement law and regulation.

Despite the above, the protesters argue that the FSS contract duration requirement is unduly restrictive of competition because, due to events unrelated to this procurement, GSA will not issue FSS contract extensions or new "continuous" FSS contracts before the deadline for submission of quotations. 22<sup>nd</sup> Century Protest at 3-5; NARTech Protest at 7. However, the fact that a requirement may be burdensome, or even impossible for a particular firm to meet, does not make it objectionable if it is reasonably necessary to meet the agency's needs. Diversity Marketing & Commc'ns, LLC, B-412196.2, Mar. 9, 2016, 2016 CPD ¶ 84 at 4 (citing Advanced Commc'n Cabling, Inc., B-410898.2, Mar. 25, 2015, 2015 CPD ¶ 113 at 6-7). Accordingly, we deny the various challenges to the RFQ's requirement that vendors have at least 10 years remaining on their current FSS contracts.

#### Remaining challenges

The protesters, in their objections to the 10-year FSS contract requirement, acknowledge that they are not currently eligible for award unless the 10-year requirement is removed. Information Innovators Protest at 2; NARTech Comments at 3; 22<sup>nd</sup> Century Protest at 4. Under our Bid Protest Regulations, a protester must be an actual or prospective offeror whose direct economic interest would be affected by the award of a contract. 4 C.F.R. § 21.0(a). Because we have concluded that the RFQ's requirement that vendors have at least 10 years remaining on their current FSS contracts is reasonable, and because the protesters acknowledge that they cannot meet this solicitation requirement, the protesters are not interested parties to maintain the various additional protest grounds they have raised. The protesters lack the requisite legal interest in this regard because, even were we to sustain these protests on other bases, the agency would still be unable to establish a 10-year BPA with the protesters, and therefore the protesters remain ineligible for award. See Remote Diagnostic Techs., LLC, B-413375.4; B-413375.5, Feb. 28, 2017, 2017 CPD ¶ 80 at 5. Accordingly, the protesters' remaining protest grounds are dismissed.

The protests are denied.

Thomas H. Armstrong  
General Counsel