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Decision

Matter of: Chronos Solutions, LLC

File: B-418865

Date: September 29, 2020

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DIGEST

Protest that agency improperly awarded a sole-source contract is denied where the record shows that the agency reasonably decided not to solicit a proposal from the protester, which was the incumbent contractor, and where the protester has not established that the agency's award decision was otherwise improper.

DECISION

Chronos Solutions, LLC, of Irving, Texas, protests the award of sole-source contract No. 86614520D0002 to BLB Resources, Inc., of Irvine, California, by the Department of Housing and Urban Development (HUD) to provide asset management services in support of HUD's real estate owned properties in Wisconsin, Iowa, Nebraska and South Dakota (identified by the agency as Area 4D). The protester primarily argues that the agency's decision was improper because HUD did not solicit a proposal from the protester, which was the incumbent contractor.

We deny the protest.

BACKGROUND

By way of background, HUD, through its Federal Housing Administration, is responsible for administering the single-family mortgage insurance program, under which it insures approved lenders against the risk of loss on loans financed for the purchase and

rehabilitation of single-family homes. In the event of default on an insured loan, the lender may acquire title to the property by foreclosure, a deed-in-lieu of foreclosure, or other acquisition method; file a claim for insurance benefits; and convey the property to HUD. As a result, HUD “is one of the largest single sellers of real estate in the [United States]” and “has a need to manage and sell a sizable inventory of single-family homes in a manner that promotes home ownership, preserves communities, and maximizes return to the [agency’s] insurance funds.” Agency Report (AR), Tab 9, Solicitation and Attachments for Area 4D, at 186.¹ HUD relies on a variety of contractors to maintain and sell these properties throughout the country, including asset management contractors that are responsible for marketing and selling these properties. *Id.* at 187.

Through the procurement at issue, HUD seeks to obtain a successor contractor for asset management services for a geographic area identified by the agency as Area 4D. Services for this area are primarily administered through the agency’s Homeownership Center in Denver, Colorado, and cover properties in Wisconsin, Iowa, Nebraska and South Dakota. AR, Tab 9, Solicitation and Attachments for Area 4D at 180, 186, 288. Previously, Chronos had performed the asset management requirement for Area 4D. See, e.g., Protest at 8 (asserting that Chronos has “successfully managed Area 4D and other Denver [Homeownership Center] Areas for more than six years”); AR, Tab 1, Chronos Area 4D Bridge Contract.

In June 2019, the agency issued a separate, overarching solicitation for asset management services for multiple geographic areas, including Area 4D. That procurement, referred to by the agency as the 3.9 asset management (3.9 AM) procurement, was the subject of a separate protest filed with our Office in August 2019, in response to which the agency took corrective action. *Chronos Sol’s., LLC*, B-417870, Sept. 20, 2019 (unpublished decision). Meanwhile, the agency awarded an interim, “bridge” contract to Chronos for the asset management requirement for Area 4D that commenced performance on June 1, 2019 and expired on May 31, 2020. AR, Tab 1, Chronos Area 4D Bridge Contract.

Chronos’s contract contained certain performance requirements and mandatory metrics, including a monthly performance scorecard with seven measures for which the contractor “shall maintain a minimum satisfactory rating.” AR, Tab 1, Chronos Area 4D Bridge Contract at 33. The seven measures were: “marketing strategy promotes sales to actual owner occupants” (percentage); “inspections initial ready to list and ready to close inspections are completed accurately and timely” (percentage); average days to close; percentage of properties under contract; average days to list; average days on market; and a qualitative measure. *Id.* For eight of the first ten months of contract performance, Chronos failed to meet certain metrics of this scorecard and received “unsatisfactory” ratings. See AR, Tab 19, Contracting Officer’s Determination, at 461-462 (explaining that Chronos received unsatisfactory scorecard ratings for the

¹ References to page numbers for documents in the agency report are to the Bates numbers provided by the agency.

months of June, July, October, November, and December in 2019, and January, February, and March in 2020).

On February 28, the contracting officer issued a defective performance letter to Chronos regarding Chronos's declining performance and failure to comply with various requirements. See *id.* at 461. Chronos responded on March 4. AR, Tab 4, Chronos 4D Deficient Performance Letter Resp., Mar. 4, 2020; AR, Tab 7, Email from Contracting Officer's Representative Regarding Chronos 4D Deficient Performance Letter Resp., Apr. 1, 2020.

Prior to the May 31 expiration of Chronos's contract, the agency awarded a sole-source bridge contract to BLB to commence performance on June 1 for up to one year (including a six-month base period and 2 three-month option periods) for a guaranteed minimum amount of \$150,000, up to a maximum amount of \$3,911,216, through which orders would be issued under Federal Acquisition Regulation (FAR) part 16 procedures. AR, Tab 16, BLB Area 4D Bridge Contract, at 343, 446. On June 1, Chronos filed a protest with our Office, challenging the sole-source award to BLB. The agency took corrective action, and we dismissed the protest as academic. *Chronos Sols., LLC*, B-418786, June 19, 2020 (unpublished decision).

The agency completed its corrective action in response to that protest and, on June 25, reaffirmed the sole-source award to BLB. As part of the corrective action, the agency prepared a justification and approval (J&A) for other than full and open competition based on unusual and compelling urgency, explaining its conclusion that "there are no known sources other than BLB Resources, Inc. that have satisfactory performance history and resources to be able to transition into the required geographic area of 4D without delay." AR, Tab 20, J&A, June 25, 2020, at 517.

The J&A explains that HUD "has a need of unusual and compelling urgency to obtain without delay interim" asset management services for Area 4D, "as a discontinuation in services is expected to result in prolonged unoccupied assets posing increased risk of adverse occupants, theft, and vandalism, which in turn results in blight on the communities in the specified areas." *Id.* at 514. The J&A further explains: "Award to the incumbent contractor in area 4D is not in the best interest[s] of the Government due to incumbent's performance on its area 4D contract. Further, the risk of awarding to the incumbent is greater than the risk of awarding to non-incumbent BLB Resources, Inc. for this contract area." *Id.* at 516.

The J&A concludes:

Due to the delays experienced awarding the 3.9 [AM] follow-on contracts and the Presidential declared pandemic, there was insufficient time to conduct a limited sources competition because HUD had to simultaneously devote its time and resources to the 3.9 AM procurement as well as obtain temporary bridge contracts in areas where award was delayed due to last year's protest and corrective action for the 3.9 AM

[procurement]. Therefore, the Agency has determined an urgent need to award a sole-source contract in area 4D. Delay in awarding the contract will result in significant harm to the Government and the Public. The sole source involves minimal changes in contract services. The period of performance of a six (6) month base and two three-month Options for up to an additional six (6) months provides a reasonable amount of time for the Agency to meet the urgent need for the services while the Agency continues to procure the follow-on contract with a small business set-aside competition.

Id. at 517.

This protest followed.²

DISCUSSION

Chronos primarily argues that, even if the circumstances supported a valid justification for limiting competition, the agency “failed to request an offer from Chronos who is capable of meeting HUD’s needs.” Protest at 7. In this regard, Chronos claims that “no reasonable reading of Chronos’s prior performance in Area 4D could support HUD’s conclusion that Chronos was ineligible to submit an offer for a bridge contract.” *Id.* at 8; see also Protester’s Comments at 3 (“Chronos’s record of performance squarely demonstrates that Chronos was both available and capable of prompt performance of the required work and should have had the chance to compete”).

As a general rule, contracts must be awarded through the use of full and open competition. 41 U.S.C. § 3301. Our review of an agency’s decision to conduct a sole-source procurement focuses on the adequacy of the rationale and conclusions set forth in the written justification. When that document sets forth a reasonable justification for the agency’s actions, we will not object to the award. *McKesson Automation Sys., Inc.*, B-290969.2, B-290969.3, Jan. 14, 2003, 2003 CPD ¶ 24 at 4. When using other than full and open competitive procedures based on unusual and compelling urgency, the agency is required to request offers from as many potential sources as is practicable under the circumstances. FAR 6.302-2(c)(2). The agency has the authority to limit the procurement to the only firm the agency reasonably believes can properly perform the work in the available time. *Colbar, Inc.*, B-230754, June 13, 1988, 88-1 CPD ¶ 562 at 2.

We have fully considered all of Chronos’s arguments, including those that are in addition to, or variations of, those specifically discussed below, and find no basis to

² Citing FAR 33.104(c), the agency notified our Office of its decision to continue with contract performance, stating that “authorizing continued contract performance by BLB, while the protest of Chronos is pending, is in the best interests of the United States Government and will not permit waiting for GAO’s decision on the protest.” Agency Notification of Competition in Contracting Act Stay Override, July 28, 2020, at 9.

sustain its protest. With regard to Chronos's primary argument, we find no basis to question the agency's decision not to solicit a competing proposal from Chronos. As discussed above, the record shows that the agency was concerned about, and had taken measures to address, Chronos's unsatisfactory performance on the predecessor contract. See AR, Tab 19, Contracting Officer's Determination at 461-462; AR, Tab 4, Chronos 4D Deficient Performance Letter Resp.; AR, Tab 7, Email from Contracting Officer's Representative Regarding Chronos 4D Deficient Performance Letter Resp.

Yet, Chronos continues to claim that its "six-year track record of managing Area 4D, and HUD's own views that Chronos was providing superior [asset management] services across the Denver [Homeownership Center], shows that the Agency should have permitted Chronos to compete." Protester's Comments at 5. For example, Chronos points to a Contractor Performance Assessment Reporting System (CPARS) report, covering its performance from June 2019 to November 2019 and prepared in February 2020, which stated that Chronos was rated satisfactorily and the contracting officer "would recommend [Chronos] for similar requirements in the future." *Id.* at 4, *citing* AR, Tab 5, Chronos CPARS Area 4D June 2019 to November 2019, Mar. 7, 2020, at 153-155; see also Protest at 5.

In response, the agency explains that the monthly scorecards "provided more detail, identifying the specific contract requirements/metrics that Chronos was failing to meet each month," and included unsatisfactory ratings for Chronos's performance both before and after the period covered by the CPARS. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 9; AR, Tab 19, Contracting Officer's Determination at 461-462. The agency also explains that "[t]hese ongoing issues raise concerns about both timeliness of performance and ability to meet policy and program/mission goals in area 4D." COS/MOL at 9; see also AR, Tab 20, J&A at 516.

On this record, we think the agency's concerns were reasonable and supported the agency's position that it was not required to solicit a competing proposal from Chronos. Moreover, to the extent Chronos challenges the methodology used by the agency, or the resulting findings, in the evaluation of its performance on the predecessor contract, we note that such challenges involve matters of contract administration that are not for our review as part of our bid protest function. See 4 C.F.R. § 21.5(a); *ProActive Techs., Inc.; CymSTAR Servs., LLC*, B-412957.5 *et al.*, Aug. 23, 2016, 2016 CPD ¶ 244 at 11 n.6.

To the extent Chronos suggests various other improprieties in the agency's sole-source award decision, we also find no basis to object to the agency's decision. For example, Chronos contends that the agency's decision was the result of lack of advance planning and argues that the agency had "ample time to plan for and conduct a limited competition for this work." Protester's Comments at 1-2; Protest at 8 n.1. In this regard, we note that the protester's mere disagreement as to the time period required to conduct a competition does not show that the agency's judgment was unreasonable. See *Systems Integration & Mgmt., Inc.*, B-402785.2, Aug. 10, 2010, 2010 CPD ¶ 207 at 3.

Here, the agency explains, among other things, that holding a competitive procurement after Chronos's bridge contract expired in May 2020 would have been "impracticable" under the circumstances, and that disruption in asset management services in Area 4D risked "serious injury to the Government"--including "financial harm and functional/missional harm to the Government, as well as potential harm to the vacant properties, the communities in which they are located, and individuals and families who would otherwise be able to access housing[.]" COS/MOL at 5; see also AR, Tab 20, J&A. We note that Chronos does not meaningfully dispute the agency's concerns here and, indeed, acknowledges these concerns while it posits that the "risk of damage to HUD-owned properties would be low." Protester's Comments at 8.

Moreover, as discussed above, HUD reasonably attempted to obtain acceptable performance from Chronos on the predecessor contract, which was set to expire on May 31, 2020. See AR, Tab 19, Contracting Officer's Determination at 461; AR, Tab 4, Chronos 4D Deficient Performance Letter Resp.; AR, Tab 7, Email from Contracting Officer's Representative Regarding Chronos 4D Deficient Performance Letter Resp. Furthermore, the record shows that HUD reasonably decided to direct its efforts to preparing, and taking corrective action in response to a protest of, its overarching procurement for asset management services across multiple geographic regions, including Area 4D. See AR, Tab 20, J&A at 517; see *Systems Integration & Mgmt., Inc., supra*, at 3 (explaining that our Office "do[es] not consider an immediate need for services that arises as a result of an agency's implementation of corrective action in response to a protest to be the result of a lack of advance planning").

Under these circumstances, awarding a 1-year contract to BLB was thus a reasonable means to facilitate competition at the earliest feasible opportunity and does not reflect a lack of adequate planning. See, e.g., *CWIS, LLC*, B-416530, Sept. 14, 2018, 2018 CPD ¶ 321 at 1, 5 (denying protest where the record did not support the protester's argument that "the urgent circumstances were invalidated by the agency's lack of reasonable planning").

Chronos also contends that, "[i]n lieu of [a] required competition, the Agency arbitrarily waived critical contractual requirements" for BLB to work from an office outside of the geographic area covered by the contract. Protester's Comments at 5-6. However, other than pointing out that the general purpose of the FAR is to "ensure[] that taxpayer dollars are spent prudently, and that agencies receive the best value," *Id.* at 5, citing FAR 1.102(a)-(b), Chronos has not identified a violation of procurement law or regulation here. We also note that the agency explained in its J&A that, while the performance work statement is "slightly different from what is included" in other asset management contracts, "[t]he sole-source award [to BLB] involves no change to the core services performed under the existing contract." AR, Tab 20, J&A at 514; see also, e.g., AR, Tab 22, Contract Specialist's Decl., July 28, 2020, at 1-2 (further noting this aspect of the procurement). On this record, we see no basis to sustain the protester's challenges.

The protest is denied.

Thomas H. Armstrong
General Counsel