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## Decision

**Matter of:** Trigent Solutions, Inc.

**File:** B-419801

**Date:** August 6, 2021

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### DIGEST

1. Protest that solicitation for commercial services lacks information needed to prepare quotations is denied where the solicitation provided sufficiently detailed information to allow vendors to compete intelligently and on a relatively equal basis with respect to the solicitation requirement for services to support the proposed software solution.
  2. Protest that agency failed to provide adequate time to prepare quotations is denied because, even though amendments were issued in the days before quotations were due, those amendments provided answers to vendors' questions that did not materially change the solicitation requirements, and thus, agency's decision not to extend the due date for quotations did not adversely affect the competition.
  3. Protest that solicitation terms unduly restrict competition and result in a *de facto* brand name sole-source procurement is denied where the record shows that the terms of the solicitation are reasonably necessary to meet the agency's needs and the agency reasonably established its acquisition approach based on market research.
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### DECISION

Trigent Solutions, Inc., a small business of Chantilly, Virginia, protests the terms of request for quotations (RFQ) No. 36C10B21Q0171, issued by the Department of Veterans Affairs (VA), to procure an integrated commercial off-the-shelf (COTS) software-as-a-service (SaaS) solution implemented as a common operating platform to support the agency's operational decision-making capability. Trigent contends that several terms of the RFQ are ambiguous and unduly restrict competition.

We deny the protest.

## BACKGROUND

On April 2, 2021, the agency issued the RFQ, using the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4, to the holders of the multiple-award schedule contract under Schedule 70 (Information Technology (IT)) for special item numbers (SIN) 54151S (IT Professional Services) and 518210C (Cloud and Cloud-Related IT Professional Services).<sup>1</sup> RFQ at 52.<sup>2</sup> The RFQ contemplates the issuance of a fixed-price task order with a 1-year base period and three 1-year options. *Id.* at 7, 17, 54. The solicitation seeks to acquire an integrated SaaS<sup>3</sup> solution to be implemented on a common operating platform to support the VA's operational decision-making capability. *Id.* at 12.

The solicitation describes the requirement as a COTS product with related services to include "software licenses, cloud hosting, and implementation support (including installation, integration, configuration, testing, and deployment) necessary to replicate the data environment." *Id.* The solicitation also requires the vendor to provide commercially available virtual training/workshops on a weekly schedule for up to 20 agency personnel, addressing user needs, for the life of the contract. *Id.* The RFQ provides a list of salient characteristics of the SaaS solution that include capabilities to: ingest and analyze unstructured and disaggregated data from a wide variety of sources and formats; provide operational decisional support to the VA and its stakeholders; create a comprehensive analytics framework that associates data to questions and decisions to rapidly expand data utility; promote architectural interoperability through open data architecture; maintain data origin and reproducibility of all integrated data sources; allow VA individuals or VA data teams to create and use workflows; and provide proven granular security control for data owners to easily control all downstream use of originating data and conform to VA security policies. *Id.* at 13-17.

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<sup>1</sup> The Federal Supply Schedule program is also known as the General Services Administration (GSA) schedules program or the multiple-award schedule program. See FAR 8.402(a).

<sup>2</sup> Unless otherwise noted, citations to the RFQ in this decision are to the RFQ, amendment 7, provided by the VA at Tab 4g of the agency report (AR).

<sup>3</sup> The RFQ defines SaaS as follows:

Software as a Service (SaaS) as used here means Commercial-off-the-Shelf (COTS) software that is hosted on vendor-owned or procured cloud infrastructure and made available to VA users and other authorized users via web interface. The operation and maintenance of the software is the responsibility of the vendor and is included in the total price. The Government shall be able to use the software without engaging separate third-party engineering or other technical help.

RFQ at 12 n.1.

As relevant here, the RFQ requires the SaaS solution to be “fully configurable, deployed and ready for VA use within 14 days of award so that the SaaS solution can digest data, metadata, transformations, and allow user configurations.” *Id.* at 12. The RFQ also provides that the vendor must “deploy and configure the software, onboard and train users and provide technical support to fully replicate the current data environment” within 3 months following award. *Id.* In addition, the RFQ states that VA will provide the current common operating platform related elements, such as data, transformations, and metadata, exported from the current solution. *Id.*

Award is to be made on a lowest-price, technically acceptable basis, where technical acceptability will be determined in two steps: (1) evaluation of a written proposal; and (2) technical demonstration validating the vendor responses in the written proposal. *Id.* at 55. For the written proposal, vendors are instructed to describe the product that meets the listed salient characteristics and the “configuration and enablement services that are provided along with product installation.” *Id.* at 54. For the technical demonstration, the RFQ instructs vendors to be prepared to demonstrate “the full breadth of their SaaS solution as it will be installed (*i.e.*, without any VA specific customization or configuration) 14 days from award.” *Id.* at 56. The RFQ further informs vendors that, 24 hours prior to the designated time, vendors will be provided with a list of operations to be performed during the demonstration and that the demonstration would be limited to 3 hours. *Id.* The RFQ also advised vendors not to propose any products or services that have not been awarded on their multiple-award schedule contract.<sup>4</sup> *Id.* at 55.

For price, vendors are asked to complete the schedule of supplies and services listed in the solicitation, providing for fixed monthly subscription fees for the SaaS solution for the base and all option periods. *Id.* at 7, 54. The RFQ required the all-inclusive monthly fee to include the “software licenses, cloud hosting, implementation support, and all [Operations & Maintenance (O&M)] and professional services required; 3500 Users; 350 Power Users/76 [terabytes]/360 Cores.” *Id.* at 7.

The RFQ invited vendors to submit questions in advance of the quotation due date. In response to vendor questions, the VA posted a series of revisions to the solicitation, as well as several rounds of answers to questions.<sup>5</sup> Contracting Officer’s Statement (COS)

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<sup>4</sup> The RFQ instructed vendors to submit their quotations electronically through GSA’s e-Buy website. RFQ at 52-53.

<sup>5</sup> The agency notes that the last deadline for vendor questions was April 13, and that it responded to vendor questions submitted on April 13 through amendment number 4, which was posted on April 15. COS at 4-5. According to the agency, Trigent submitted follow-up questions on April 19, 6 days past the deadline for questions, and the agency, acting in good faith, further extended the due date to April 30, responded to the follow-up questions on April 27, and added clarifying edits to the solicitation terms on April 29. *Id.* at 6.

at 4-6; *see generally* RFQ amend. 1 through amend. 7. The agency twice extended the deadline for submission of quotations, first to April 23, then again to April 30, through amendments 2 and 5, respectively. See RFQ amend. 2 at 1; RFQ amend. 5 at 1. This protest was filed on April 30, prior to closing.

## DISCUSSION

Trigent argues that the solicitation's requirement for professional services is ambiguous and insufficiently defined. Protest at 28-29. The protester also contends that the agency did not provide sufficient time for vendors to submit quotations despite materially amending the solicitation just a few days before the submission due date. *Id.* at 18-20. In addition, the protester asserts that the terms of the RFQ unduly restrict competition by providing only 24 hours for vendors to prepare for the technical demonstration portion of the evaluation and requiring vendors to install and configure the solution within 14 days of award. *Id.* at 20-23. Moreover, underpinning all of the protester's challenges is the allegation that these solicitation terms result in a *de facto* brand name sole-source acquisition, where only the incumbent contractor would be able to provide a COTS product satisfying all of the requirements within the prescribed time limits. *Id.* at 25-26, 29-31. For the reasons discussed below, we find no basis to sustain the protest.<sup>6</sup>

We note at the outset that in FSS buys, as in other procurements, a contracting agency has the discretion to determine its needs and the best method to accommodate them. 41 U.S.C. §§ 3306(a)(1)(A), (2)(B) (2012); *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 procuring agency must establish that the provision is reasonably necessary to meet the agency's needs. See *Total Health Res.*, B-403209, Oct. 4, 2010, 2010 CPD ¶ 226 at 3. We examine the adequacy of the agency's justification for a restrictive solicitation provision to ensure

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<sup>6</sup> Trigent's initial protest also alleged that the agency improperly introduced past performance as an evaluation factor in its response to vendor questions without including it as an evaluation criterion in the solicitation. Protest at 27-28. Following receipt of the agency report, the protester withdrew this protest ground. Comments at 33. Additionally, Trigent raises a number of collateral arguments. Although our decision does not specifically address all of the protester's arguments, we have carefully reviewed all of them and find that none provides a basis on which to sustain the protest. For example, Trigent argues that the RFQ's requirement for "360 Cores" unduly restricts competition to the advantage of the incumbent because, according to the protester, the incumbent is the only vendor that prices its SaaS service by "cores." Protest at 24-25; see RFQ at 7. We find this argument to be without any factual basis, as the RFQ does not require vendors to price their services by "cores." Rather, the RFQ provides "360 Cores" as one of the metrics--along with 3500 users, 350 power users, and 76 terabytes--for vendors to estimate the size of the SaaS solution in arriving at the monthly subscription fee. RFQ at 7.

that it is rational and can withstand logical scrutiny. *SMARTnet, Inc.*, B-400651.2, Jan. 27, 2009, 2009 CPD ¶ 34 at 7. Our Office will not sustain a protest challenging an agency's determination of its needs unless the protester presents clear and convincing evidence that the requirements are in fact impossible to meet or unduly restrict competition. *ACME Endeavors, Inc.*, B-417455, June 25, 2019, 2019 CPD ¶ 224 at 2.

#### Requirement for Professional Services

The protester contends that the solicitation requires professional services without providing adequate information for vendors to compete intelligently and equally. Protest at 28-29. Specifically, the protester argues that the pricing schedule lists "professional services" as included with the pricing for the SaaS solution without providing any additional detail as to the volume and type of services required.<sup>7</sup> *Id.*

In response, the agency maintains that the solicitation contains sufficient detail for vendors to compete intelligently and on a relatively equal basis. In this regard, the agency asserts that the solicitation unambiguously describes the required services as support services for the agency's use of the vendor-proposed COTS SaaS solution, including installation, configuration, operation and maintenance, training, and help-desk services. Memorandum of Law (MOL) at 20-23.

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<sup>7</sup> Trigent also argues that the RFQ improperly fails to require a separate price for supplies and services, as required by FAR subsection 8.405-2(d). Protest at 23-24. We agree with the agency that FAR subsection 8.405-2(d) is not applicable here because the RFQ describes services required to support the agency's use of the proposed SaaS solution. These services are reasonably considered "services that are listed in the schedules contracts at a fixed price for the performance of a specific task, where a statement of work is not required (e.g., installation, maintenance, and repair)" under FAR subsection 8.405-1, as opposed to "services requiring a statement of work" of "services priced at hourly rates" under FAR subsection 8.405-2. FAR 8.405-1(a), 8.405-2(a).

Although the protester argues that the solicitation's description of services constitutes a statement of work (an argument we find to be inapposite to the protester's argument that the RFQ insufficiently describes the agency's requirement for services), we find that the RFQ properly includes "a description of . . . services to be performed" as required by FAR subsection 8.405-1. FAR 8.405-1(d)(2); see RFQ at 5-6, 12. Therefore, there is no requirement here that the agency consider pricing of services separately from the pricing for supplies. Moreover, in fixed price contracts, firms must use their professional expertise and business judgment in anticipating a variety of influences affecting performance costs. *AirTrak Travel et al.*, B-292101 *et al.*, June 30, 2003, 2003 CPD ¶ 117 at 14. Even though vendors may bear some risk in pricing the professional support services as part of a fixed monthly fee for the SaaS solution, that fact alone does not demonstrate that the RFQ is defective or insufficient. As a result, we deny this aspect of Trigent's protest.

We have consistently stated that a procuring agency must give sufficient detail in a solicitation to enable vendors to compete intelligently and on a relatively equal basis. *Kingdomware Techs.*, B-407628, Jan. 9, 2013, 2013 CPD ¶ 27 at 3; *Technosource Info. Sys., LLC; TrueTandem, LLC*, B-405296 *et al.*, Oct. 17, 2011, 2011 CPD ¶ 220 at 11. Further, specifications must be free from ambiguity and describe the minimum needs of the procuring activity accurately. *Kingdomware Techs.*, *supra*; *American Overseas Book Co., Inc.*, B-276675, July 10, 1997, 97-2 CPD ¶ 12 at 2. However, 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 vendor. *Kingdomware Techs.*, *supra*; *ACME Endeavors, Inc.*, *supra* at 3. A protester's disagreement with the agency's judgment concerning the agency's needs and how to accommodate them, without more, does not show that the agency's judgment is unreasonable. *Gallup, Inc.*, B-410126, Sept. 25, 2014, 2014 CPD ¶ 280 at 5.

Here, we conclude that the RFQ provides sufficiently detailed information to allow vendors to compete intelligently and on a relatively equal basis with respect to its requirement for services.

Initially, as a general matter, the RFQ indicates clearly and repeatedly that the agency's requirement is for a COTS SaaS solution, inclusive of services required to support the agency's use of the solution. For example, the RFQ includes a section entitled "Software License, Maintenance and Technical Support," where the term "technical support" is defined as "the range of services providing assistance for the software via the telephone, email, a website or otherwise." RFQ at 5. In this section, the RFQ also provides as follows:

The Contractor shall provide software support services, which includes periodic updates, enhancements and corrections to the software, and reasonable technical support, all of which are customarily provided by the Contractor to its commercial customers so as to cause the software to perform according to its specifications, documentation or demonstrated claims.

*Id.* at 5-6. Moreover, the requirements section of the solicitation also describes the various services that are ancillary to the SaaS solution, such as "implementation support (including installation, integration, configuration, testing, and deployment) necessary to replicate the data environment" and commercially available training and workshops addressing the needs of the software users throughout the life of the contract. *Id.* at 12. Thus, contrary to the protester's argument that the solicitation lacks information about the professional services included in the pricing schedule's contract line item number (CLIN) description, the RFQ, on its face, appears to provide a clear explanation of the requirement.

In its protest, Trigent maintains that the solicitation's requirement for services is ambiguous because the agency's response to a vendor question--stating that 15 full-time engineers support the current incumbent SaaS solution--is inconsistent with the agency's descriptions of the required services as ancillary to and dependent upon the SaaS solution offered. Comments at 33-35; see RFQ amend. 6 at no. 3. In support of this contention, however, the protester fails to explain why the number of incumbent personnel is inconsistent with the requirement other than to speculate that so many full-time engineers must be performing professional services beyond those ancillary to the agency's use of the SaaS solution. *Id.*

As a general matter, where a dispute exists as to the meaning of a particular solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of the provisions; to be reasonable, an interpretation must be consistent with such a reading. *Competitive Range Solutions, LLC*, B-415274.2, Apr. 4, 2018, 2018 CPD ¶ 137 at 5. Here, the solicitation consistently and unambiguously stated that the agency is acquiring a COTS SaaS product with support services. In this regard, we find that the agency's response to the vendor question disclosing the incumbent level of effort--15 full-time engineers--is not inconsistent with the rest of the solicitation. RFQ amend. 6 at no. 3. In fact, at the end of the agency's response to this vendor question, the agency advises vendors that they "should calibrate help-desk requirements based upon their experience and number of users at other agencies," further reinforcing the requirement of professional services as ancillary to and dependent upon the SaaS solution being offered. RFQ amend. 6 at no. 3.

On this record, we find the description of services required here to be subject to only one reasonable construction, even when read together with clarifications provided in later amendments. See *Competitive Range Solutions, LLC, supra*. Contrary to the protester's contention that the solicitation does not state that professional services are ancillary to the software product, the solicitation *only* discusses the requirement for services in terms of those needed to support the agency's use of the software solution and describes those support services in some detail. See RFQ at 5-6, 7, 12. As stated above, a solicitation need not be drafted as to remove all uncertainty from the mind of every prospective vendor. See *Kingdomware Techs., supra*. Thus, even though the eventual contractor will undoubtedly need additional information to perform the requirement, Trigent has not shown that vendors needed any additional detail in the RFQ in order to prepare quotations and compete intelligently on a relatively equal basis.

In summary, Trigent has failed to establish that the RFQ is inadequate to allow offerors to compete intelligently and on a relatively equal basis for the anticipated order for a COTS SaaS solution and ancillary support services. Accordingly, we deny this protest ground.

#### Time to Submit Quotations

Trigent argues that VA did not provide a reasonable amount of time to respond to the solicitation. Specifically, the protester alleges that the agency failed to allow sufficient

time for vendors to revise their quotations following the issuance of later amendments to the RFQ. Protest at 18-19. VA responds that the solicitation was issued on April 2, giving offerors 28 days to prepare quotations, which is reasonable time for a COTS solution from products and services listed on the vendors' FSS schedule contracts. MOL at 10. The agency further argues that the amendments issued after the last extension of the quotation submission deadline only provide clarifications without changing the material requirements of the solicitation. *Id.* at 11-13.

A contracting officer must establish a solicitation response time that will afford potential vendors a reasonable opportunity to respond to each proposed contract action, considering the circumstances of the individual acquisition, such as complexity, commerciality, availability, and urgency. FAR 5.203(b); *Richen Mgmt., LLC*, B-410903, Mar. 10, 2015, 2015 CPD ¶ 105 at 2. While agencies generally must allow at least 30 days from the date of issuance of the solicitation for the receipt of quotations, an agency acquiring commercial items, as here, may allow fewer than 30 days for vendors to respond to a solicitation. FAR 5.203(c); FAR 12.205(c).

There is no *per se* requirement that the closing date be extended following a solicitation amendment. The decision as to the appropriate preparation time for the submission of quotations lies within the discretion of the contracting officer. We limit our review of such determinations to the questions of whether the refusal to extend the closing date adversely impacted competition and whether there was a deliberate attempt to exclude a vendor. See *Harmonia Holdings, LLC*, B-407186.2, B-407186.3, Mar. 5, 2013, 2013 CPD ¶ 66 at 7; see also *USA Information Systems, Inc.*, B-291488, Dec. 2, 2002, 2002 CPD ¶ 205 at 4 (finding that the protester has not demonstrated that the contracting officer abused her discretion in establishing a short timeframe in which to respond to an amendment when the changes made by the amendment were relatively minor).

Trigent contends that RFQ amendment 6, issued on April 27 to respond to 22 additional vendor questions, materially changed the solicitation requirements in such a way that the agency's refusal to further extend the quotation deadline was unreasonable. Protest at 18-20. While the protester refers by number to several vendor questions and answers in RFQ amendment 6, it only discusses the substance of two of them in its initial protest.<sup>8</sup> We discuss each in turn.

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<sup>8</sup> In its protest, the protester alleges that several other responses to vendor questions--numbers 1, 4, 9, 15, 16, 19, 20, 21, and 22--provided in the April 27 amendment were also substantive and required material quotation revisions. See Protest at 19. However, other than to list those questions and answers by numbers, the protester does not provide any additional facts or arguments as to why those amendments require an extension of the quotation due date. The protester, for the first time in its response to the agency's report, provides the facts and legal arguments to support its contention that these specific responses to vendor questions were material. See Comments at 14-21. Likewise, in its initial protest, the protester makes reference to the agency's final solicitation amendment issued on April 29 as containing material amendments, but  
(continued...)



First, Trigent argues that the agency's response to vendor question number 2 provided additional information on the type of activity of a "power user" in a way that affected the "proper pricing of the required fixed-price solution." Protest at 19. The RFQ uses the term "power user" in its schedule of supplies and services to describe what is to be included in the monthly SaaS subscription: "software licenses, cloud hosting, implementation support, and all O&M and professional services required; 3500 Users; 350 Power Users/76TB/360 Cores." RFQ at 7.

It is worth noting that the foregoing RFQ provision on the number of power users remains unchanged since the issuance of the initial RFQ on April 2. See AR, Tab 4, Initial RFQ at 7. In responding to a vendor question received after the April 15 posting of vendor questions and answers, requesting the distinction between power users and regular users, the agency provides as follows:

The term Power User was intended to indicate a user who spends the majority of their time working on the platform, running complex or processing-intensive data cleansing, data refinement and curation, and transformations. A regular user creates analytic reports, bringing data together, views products that have been created by power users.

RFQ amend. 6 at 2.

Although the agency's response provides additional information that may assist a vendor in its preparation of a quotation, we do not see here how it materially changes the solicitation so as to require an extension of time for quotation submissions. There is no requirement that the specifications in an RFQ be so detailed that they completely eliminate all risk, or remove every uncertainty from the mind of every prospective vendor. See *Kingdomware Techs., supra*.

Next, the protester contends that the agency's response to vendor question number 3 provided, for the first time, information about the level of effort the protester argues it needed in order to competitively price its quotation. Protest at 18-19. Specifically, the agency's response provided that the incumbent service level is 15 full-time engineers and forecasted an increase to 20-25 engineers with expansion of data use cases. RFQ amend. 6 at question no. 3. The protester contends that the information disclosed by

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(...continued)

fails to allege any facts or legal arguments related to such contention until after the agency filed its report. See Comments at 11-12. Therefore, we dismiss these contentions as untimely piecemeal presentation of arguments. See *Metasoft, LLC--Reconsideration*, B-402800.2, Feb. 17, 2011, 2011 CPD ¶ 47 at 3 ("Our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety.").

the agency's response to vendor question number 3 was new and material. Protest at 18. Therefore, Trigent argues, the agency should have provided additional time for vendors to revise their quotations.

As discussed, the RFQ requires services in support of, and ancillary to, the COTS SaaS solution being procured and, as such, the risk is on the vendor to include the appropriate level of service required to support the solution it would offer. See RFQ at 5-6, 7, 12. Contrary to the protester's contention, the incumbent information did not require vendors to price their solutions for 15 full-time engineers. See Protest at 19. Rather, as noted, the agency's response advises that vendors should "calibrate help-desk requirements based upon their experience and number of users at other agencies." *Id.* On this record, we agree with the agency that the historical level of effort information for services in support of the incumbent SaaS solution did not materially change the solicitation in a way that would require a further extension of the quotation due date.

Based on this record, and given that the requirement is for a COTS product and related services to be ordered from an existing multiple-award contract, we see no basis to conclude that the VA's decision not to extend the closing date affected the competition adversely. Indeed, the reasonableness of the response time provided to vendors is supported by the fact that the agency received multiple offers by the RFQ's closing date. See COS at 2 n.2 ("At the close of the solicitation, VA received 5 timely proposals"). As a result, we deny this protest ground.

#### *De Facto* Brand Name Sole-Source

Next, Trigent alleges that terms of the RFQ are unduly restrictive so as to create a *de facto* brand name sole-source contract to the incumbent that provided the SaaS solution. Specifically, the protester argues that, given the amount of VA-specific data and requirements in the salient characteristics, no one but the incumbent can offer the SaaS solution that meets all of the requirements as a truly "off-the-shelf" product within the timelines prescribed by the solicitation, *i.e.*, 24 hours to prepare for the demonstration portion of the evaluation, and 14 days to configure and deploy the solution. Protest at 20-24. The protester also contends that these unreasonable timelines show that the agency failed to conduct proper acquisition planning and market research. *Id.* at 25-26.

The agency responds that the protester misstates clear solicitation requirements that simply call for the vendor to provide the out-of-the-box capabilities of its commercially available solution--before any customization or configuration--for the demonstration portion of the evaluation and the installation portion of the contract. MOL at 3-9. The agency argues that, because it seeks a COTS product from the FSS schedule without any development or modification, a 24-hour notice to prepare for an out-of-the-box demonstration and 14 days for installation of the software are not unreasonable. *Id.* The agency also contends that it conducted sufficient market research, which showed

that there were several schedule vendors who may be able to meet its requirements. MOL at 23-24.

Although a potential vendor may be at a disadvantage because it is currently working on assembling the necessary component to meet the agency's needs, the fact that a requirement may be burdensome or even impossible for a particular firm to meet does not make it objectionable if the requirement properly reflects the agency's needs. *JRS Staffing Servs.*, B-410098 *et al.*, Oct. 22, 2014, 2014 CPD ¶ 312 at 7. Our Office has consistently stated that a vendor 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. *Millennium Corp. Inc.*, B-412866, B-412866.2, June 14, 2016, 2016 CPD ¶ 168 at 10; see *Lovelace Sci. & Tech. Servs.*, B-412345, Jan. 19, 2016, 2016 CPD ¶ 23 at 12. Thus, 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. *Id.*

As described above, the RFQ provides for a two-step technical evaluation where the agency will first evaluate written quotations to determine whether they conform to the requirements, and then will use the technical demonstrations to validate vendors' written quotations. RFQ at 55. With respect to the technical demonstrations, the RFQ informs vendors that they are "only expected to demonstrate out of the box capabilities, that is, without any VA specific customization or configuration" and that they "shall be prepared to demonstrate the full breadth of their SaaS solution as it will be installed (*i.e.*, without any VA specific customization or configuration) 14 days from award." *Id.* at 55-56. The RFQ also states that the agency will provide "a list of operations to be performed during the technical demonstration" 24 hours prior to the designated time and that the demonstration will be limited to a maximum of 3 hours. *Id.* at 56.

As to the installation and configuration of the SaaS solution, the RFQ requires that the solution be "fully *configurable*, deployed and ready for VA use within 14 days of award so that the SaaS solution can ingest data, metadata, transformations, and allow user configurations." *Id.* at 12 (emphasis added). The RFQ also provides as follows:

The Contractor shall deploy and configure the software, onboard and train users and provide technical support to fully replicate the current data environment described above supporting an operational decision-making capability within 3 months following award. The VA will provide current [common operating platform (COP)] related elements (e.g. data, transformations, meta-data) exported from the current solution. The Contractor shall import data, meta-data, and transformations from the current platform and/or the VA environment.

*Id.*

As an initial matter, while the protester argues that the RFQ requires vendors to deliver the SaaS solution configured with VA data within 14 days of award and to demonstrate configured capabilities of the SaaS with a 24-hour notice, see Protest at 22-23, there is no factual basis in the record to support this argument. Rather, the RFQ plainly informs vendors that no VA-specific data, configuration, or customization is required or expected for the technical demonstration or at the time of installation within 14 days of award, and instead, provides for 3 months after award for the vendor to configure and customize the installed software with VA-specific data. *Id.*

Based on this unambiguous solicitation language, and the agency's express interest in procuring a commercially available software solution without additional development or modification, we find nothing objectionable about the agency's judgment that a 24-hour notice to prepare for the technical demonstration and 14-day installation were reasonably necessary. We agree with the agency's position that a vendor with a COTS solution meeting the requirements should be able to demonstrate such solution's out-of-the-box capabilities with a 24-hour notice and install such out-of-the-box software within 14 days of award.<sup>9</sup>

Trigent frames its objections to the 24-hour demonstration notice and 14-day installation as an allegation of *de facto* brand name procurement to argue that a provider of the incumbent SaaS product is the only one who can meet all of the RFQ requirements as an out-of-the-box COTS solution. However, the protester does not point to any specific salient characteristic or requirement that only the incumbent's (*i.e.*, Palantir Technologies, Inc.) name brand software can provide; instead, it essentially argues that the incumbent, by virtue of its prior experience in meeting VA's current needs, has an advantage over other vendors. Moreover, there is nothing in the record to indicate preferential treatment or other improper government action.

On this record, we find that any advantage that Palantir may have as the current provider of the VA's SaaS solution is a normally occurring advantage of possessing information and capabilities due to its prior experience performing a government contract as the incumbent contractor. The agency is not required to equalize competition to compensate for such an advantage, and its failure to do so, absent any evidence of preferential treatment or other improper action, does not constitute an improper *de facto* sole-source procurement.

Finally, Trigent bases a number of arguments--in fact all of its arguments to some degree--on its apparent belief that the VA's approach of using COTS technology was

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<sup>9</sup> To the extent the protester alleges that the agency will require vendors to demonstrate SaaS capabilities that require VA-specific configuration, we find that such allegation is premature. See *Wittenberg Weiner Consulting, LLC*, B-413457 *et al.*, Oct. 31, 2016, 2016 CPD ¶ 320 at 7 (a protester's contention in a challenge to solicitation terms that the agency will fail to consider the past performance of vendors in its evaluation is speculation about future events that does not form a valid basis for protest).

contrived in bad faith to exclude Trigent and other vendors from the procurement. Protest at 20-23, 25-26. In this regard, Trigent contends that the agency's market research shows that no vendor, other than the incumbent, has the capability to offer a COTS item that will meet the RFQ's stringent requirements. Protester's Response to Market Research Documents at 3-7.

Where, as here, an agency issues a solicitation under the FSS for supplies or services (that does not require a statement of work and exceeds the simplified acquisition threshold), the agency is required to provide the RFQ to as many schedule contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that quotations will be received from at least three vendors that can fulfill the requirements. FAR 8.405-1(d)(3)(ii). Our Office has explained that disagreement with an agency's judgment concerning how market research results should inform an agency's acquisition strategy does not provide us with a basis to sustain a protest. See *Active Deployment Systems, Inc.*, B-419696, Apr. 26, 2021, 2021 CPD 177 at 4 (citing *Encompass Grp., LLC*, B-410726, Feb. 2, 2015, 2015 CPD ¶ 93 at 4). Moreover, procurement authorities are presumed to act in good faith and in order for our office to conclude otherwise, the record must show that procuring officials intended to injure the protester. *Quality Support, Inc.*, B-296716, Sept. 13, 2005, 2005 CPD ¶ 172 at 3.

The agency explains that, on May 4, 2020, it procured the Palantir Foundry SaaS solution under the National Aeronautics and Space Administration (NASA) Solutions for Enterprise-Wide Procurement (SEWP) governmentwide acquisition contract (GWAC), on a sole-source basis. The agency explains that the solution was needed to support the urgent need for a data analytic software capability in support of VA's response to the 2019 novel coronavirus (COVID-19) pandemic. COS at 2. In an effort to competitively procure a more comprehensive enterprise-wide data analytic solution, VA conducted market research that included posting two requests for information (RFI) in September 2020 and January 2021. *Id.*; see AR, Tab 7, RFI Notice, September 2020; AR, Tab 8, RFI Notice, January 2021.

Of the 12 vendors that submitted responses to the January 2021 RFI, the agency concluded that 5 were capable of submitting quotations responsive to the draft performance work statements and 2 additional vendors may be capable of submitting a quotation responsive to the requirements. AR, Tab 8c, Market Research Summary at 2. The agency also determined that 6 of these 7 vendors were holders, or had resellers who were holders, of FSS schedule contracts for information technology categories 54151S, Information Technology Professional Services, or 518210C, Cloud and Cloud-Related IT Professional Services, and posted this RFQ to holders of those schedule contracts. *Id.*

Based on our review of the market research documents, we find the VA's conduct of market research to be reasonable. As noted above, the VA issued two RFIs containing essentially the same requirements for a COTS SaaS solution being solicited by the RFQ and received expressions of interest from 12 vendors who stated they were able to

meet the requirements. AR Tab 8c, Market Research Summary at 2. After reviewing these responses and documenting its analysis, the agency concluded that 5 vendors with FSS contracts would be capable of submitting quotations that meet the requirements. See *id.* Further, Trigent's objections to the agency's market research consist entirely of its disagreement with the agency's analysis and conclusions. See Protester's Response to Market Research Documents at 3-7. While Trigent disagrees with portions of the agency's analysis, and argues that the agency should have reached a different conclusion, we conclude that the agency's analysis was reasonable. Specifically, the VA reasonably concluded from its market research that several vendors provided information showing that they had the capability to meet the requirements.

In addition, the VA points out that it received five timely submitted quotations. COS at 2. While this fact alone cannot establish that this solicitation was not unduly restrictive or that the market research was free of defect, it does refute any suggestion that the procurement at issue here was effectively a sole-source acquisition; on the contrary, this record shows that the agency achieved competition among multiple vendors with COTS products. See *Dynamic Access Systems*, B-295356, Feb. 8, 2005, 2005 CPD ¶ 34 at 8. Because the protester has not shown that the agency's exercise of its discretion on determining its needs was unreasonable, we find no basis to sustain the protest. See *JLT Group, Inc.*, B-402603.2, June 30, 2010, 2010 CPD ¶ 181 at 2 (A protester's disagreement with the agency's judgment concerning its needs and how to accommodate them, without more, is not sufficient to establish that the agency's judgment is unreasonable).

The protest is denied.

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General Counsel