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**Comptroller General
of the United States**

**United States Government Accountability Office
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Decision

Matter of: Northrop Grumman Information Technology, Inc.

File: B-404263.6

Date: March 1, 2011

John W. Chierichella, Esq., Anne B. Perry, Esq., and Keith R. Szeliga, Esq., Sheppard Mullin Richter & Hampton LLP, for the protester.

Nathan C. Guerrero, Esq., Michael D. Tully, Esq., and Maria G. Bellizzi, Esq., General Services Administration, for the agency.

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DIGEST

Protest objecting to proposed corrective action taken in response to earlier protests is denied where agency reasonably determined that the proposals received in earlier acquisition indicated that the solicitation did not provide adequate information for offerors to compete intelligently and on a relatively equal basis.

DECISION

Northrop Grumman Information Technology, Inc., of McClean, Virginia, protests the corrective action taken in connection with task order request (TOR) No. NP4700100979, issued by the General Services Administration (GSA) to acquire, on behalf of the Department of Homeland Security (DHS), information technology support services. Northrop maintains that the agency's proposed corrective action is unreasonable.

We deny the protest.

The TOR was issued in connection with the consolidation and relocation of 22 component DHS units to the St. Elizabeth's campus in southeast Washington, D.C. The solicitation, which was issued to all contract holders under GSA's Alliant Government-Wide Acquisition Contract, sought the services of a single contractor to design, procure, configure/install, test, and maintain a seamless, integrated transport infrastructure. TOR, at C-2. In essence, the successful contractor for this requirement will design, build, operate, and maintain a comprehensive information technology enterprise for the entire Saint Elizabeth's campus. Additionally, the TOR contemplated certain optional operations and maintenance services that may be

performed at locations outside of the St. Elizabeth's campus. The TOR provided for the issuance of a task order for an initial 5-year base period, followed by a 2-year option period and a second, 3-year, option period. TOR at B-3-B-9. The estimated value of the task order was between \$2.63 billion and \$2.72 billion.

GSA received five proposals in response to the solicitation. The agency evaluated those proposals and, on the basis of initial offers, selected Northrop for the issuance of a task order with a total value of \$2,630,233,543. Agency Report (AR), exh. 7, at 55.

After being advised of the agency's selection decision and receiving debriefings, the four unsuccessful contractors filed protests with our Office alleging various improprieties in connection with the agency's conduct of the acquisition. In response to those protests, by letter dated November 12, 2010, GSA advised that it intended to take corrective action. Specifically, GSA advised that it was terminating the task order issued to Northrop and preparing a revised solicitation that would include any updates to the agency's requirements. AR, exh. 8, at 1. In response to the agency's corrective action, we dismissed the protests as academic (B-404263, et al, Nov. 15, 2010). After learning of the agency's corrective action and our dismissal of the protests, Northrop filed the instant protest.

Northrop asserts that the agency's corrective action is overly broad and unreasonable given the prior protest allegations and the fact that its price has been exposed. In this regard, the earlier protests challenged the adequacy of the agency's evaluation of proposals and its failure to conduct discussions. Northrop maintains that, because the agency took its corrective action prior to submitting an agency report in the earlier protests, none of the protest allegations have been shown to be meritorious, nor was there a showing that the alleged evaluation errors were prejudicial to the other offerors. Northrop further asserts that there has been no showing that the agency's requirements have changed so significantly that cancellation of the earlier solicitation and issuance of a new solicitation is warranted.

Northrop requests that we recommend that the agency reinstate the task order previously issued to it. In the alternative, Northrop requests that we recommend that the agency tailor its corrective action and limit it to only that which is necessary to remedy any demonstrable errors in the earlier acquisition. In this regard, Northrop proposes various graduated levels of corrective action, including, for example, a limited reevaluation of the proposals, limited discussions with the offerors, or the issuance of a separate solicitation for some of the agency's requirements while leaving the remainder of the requirement under Northrop's previously issued task order.

As a general rule, agencies have broad discretion to take corrective action where the agency has determined that such action is necessary to ensure fair and impartial competition. Greentree Transp. Co., Inc., B-403556.2, Dec. 10, 2010, 2010 CPD ¶ 293 at 2. The details of implementing the corrective action are within the sound discretion and judgment of the contracting agency, and we will not object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. Partnership for Response and Recovery, B-298443.4, Dec. 18, 2006, 2007 CPD ¶ 3 at 3. Additionally, we have recognized that the possibility that a contract may not have been awarded based on a fair determination of the most advantageous proposal has a more harmful effect on the integrity of the competitive procurement system than does the possibility that the original awardee will be at a disadvantage in a reopened procurement because its price has been exposed. Id. at 4.

We have recognized a limited exception under which we will object to an agency's corrective action if the record establishes either that there was no impropriety in the original evaluation and award decision, or where there was an actual impropriety, but it was not prejudicial to any of the offerors. Security Consultants Group, Inc., B-293344.2, Mar. 19, 2004, 2004 CPD ¶ 53 at 2-3. In comparison, where, for example, an agency's proposed corrective action goes beyond what our Office originally may have recommended in connection with sustaining a protest, the agency's decision to pursue such a course of action does not, by itself, provide a basis for protest, absent some showing that the agency's actions are contrary to procurement law or regulation, or otherwise are improper. See C2C Solutions, Inc.; Trust Solutions, LLC, B-401106.6, B-401106.7, June 21, 2010, 2010 CPD ¶ 145 at 3; see also NavCom Defense Elec., Inc., B-276163.3, Oct. 31, 1997, 97-2 CPD ¶ 126 at 3.

On the record here, we have no basis to object to GSA's proposed corrective action. The agency explains that it determined from the results of the original competition that its requirements may not have been adequately defined. In this regard, after it issued the original TOR, the agency amended the solicitation to add a significant requirement for optional operations and maintenance (O&M) work to be performed outside of the St. Elizabeth's campus. Specifically, section B of the solicitation was amended to add optional CLINs 004B, 1004B and 2004B (each of these CLINs has several sub-CLINs representing annual requirements for each year of the multi-year periods of performance). While the CLINs included ceiling dollar value amounts (totaling \$1,080,000,000), there was no further narrative description of the requirement in this section of the TOR. TOR, at B-4, B-6 and B-8.

Elsewhere in the TOR, there were two brief narrative references to the added services. First, the overview section of the statement of work provided, in relevant part, as follows: "Operations and Maintenance for DHS Headquarters personnel that do not move onto the campus are within the scope of this task order." TOR, at C-3. Second, the service desk section of the statement of work provided:

In addition, on an optional basis the Government may have the contractor support approximately 7,000 DHS HQ employees operating outside of the St. Elizabeth's campus in the National Capitol Region.

TOR, at C-11. The TOR included an additional reference to this added requirement; firms were instructed to submit a performance work statement that was structured around seven broad tasks, and task 4 included a reference to the optional O&M requirement. TOR, at C-15. Aside from these references to the optional O&M requirement, the TOR did not include any specific details concerning the nature of the services, the location where they would be performed, or any other details relating to the operating environments where the services were to be provided.

The lack of detail in this regard resulted in two bidder questions and answers, but the agency's answers did not provide any further specific elaboration concerning the agency's substantive requirements. The first question provided:

Q. The government in amendment 1 added the optional requirements of providing Operations and Maintenance (O&M) support to the residents of DHS that would not be moving to the St. Elizabeth's campus. By doing so they added an additional \$1B[illion] in contract ceiling to the TOR. However the government didn't provide any information that would be needed to support those customers such as the locations and number of employees by facility. What their current O&M environments are; additional systems requirements analysis and design for those off campus; installation and testing requirements for those off campus.

A. Government will evaluate the proposed concept of how the O&M requirement will be handled. The ceiling (plug) number to bid to (\$1B[illion]) is provided, so that won't affect pricing.

TOR, amend. 6, May 25, 2010, question No. 257. The second question related to how the offerors should bid what the agency described as the \$1B ceiling value (and specifically was concerned with what would be required during performance should the ceiling amount be exceeded), but this second question provided no additional discussion concerning the substantive details of the agency's requirements, and again directed firms simply to "bid to the plug number." *Id.*, question No. 261.

The record shows that the offerors diverged widely in their responses to the O&M requirement, and that the agency viewed the responses from three of the five competitors in this area as so deficient as to render their proposals technically

unacceptable and, thus, ineligible for further evaluation or award consideration.¹ Specifically, the agency had developed an independent government cost estimate (IGCE) for the O&M requirement which was based on an agency staffing estimate of 22,530,909 labor hours. Using the IGCE staffing estimate as a standard against which to evaluate the offerors' proposals, the agency found three of the proposals unacceptable for having offered inadequate staffing to perform the requirement. One of the three offerors proposed to perform the O&M requirement using [deleted] labor hours; a second offeror proposed [deleted] labor hours; and a third offeror proposed [deleted] labor hours. (In comparison, [deleted]; Northrop proposed [deleted] hours and the other firm proposed [deleted] hours. AR, exh. 5, at 63, 120.) The record shows that, once the agency found the proposals technically unacceptable for failing to offer adequate staffing, it discontinued its evaluation, and did not give consideration to the price proposals of the unacceptable offerors. AR, exh. 7, at 38.

Having found that four of the five competitors submitted technically unacceptable proposals, the agency made award on the basis of initial proposals to Northrop, notwithstanding the fact that its proposed price was [deleted] among the competitors (and exceeded the low price by more than \$[deleted] million). In making its award decision, the agency did not perform a cost/technical tradeoff because it had eliminated the other offers from consideration. AR, exh. 7, at 38. The record also shows that, although these four proposals were found technically unacceptable for offering inadequate staffing, they otherwise received relatively high, closely ranked, scores under the evaluation criteria not related to adequacy of proposed staffing. AR, exh. 7, at 17.

We find the agency's decision to take corrective action in these circumstances reasonable. As noted, the proposed levels of effort for the O&M requirement varied significantly from one another, with a low proposed level of effort of [deleted] labor hours ([deleted] percent fewer hours than used for the IGCE); a second proposal of [deleted] labor hours ([deleted] percent fewer hours than used for the IGCE); and a third proposal of [deleted] labor hours ([deleted] percent fewer hours than used for the IGCE). Given the wide divergence in proposed levels of effort for the O&M requirement, as well as the relative lack of detail in the solicitation regarding this work, the agency reasonably concluded that it had failed adequately to convey its requirements to the offerors in a manner that would allow them to compete intelligently, and on a relatively equal basis.

Northrop suggests that it was the offerors' business judgment, rather than a lack of information relating to the agency's requirements, that led them to deviate so

¹ A fourth offeror's proposal also was found technically unacceptable for failing to propose adequate staffing under another of the TOR's requirements, task 7, optional logistics support. AR, exh. 5, at 120.

dramatically in their proposed staffing for the optional O&M requirement. Northrop maintains that, because the agency included in the solicitation a \$1 billion “plug” price for purposes of preparing their proposals, firms were on notice of how the agency wanted to have this requirement staffed. We disagree.

The TOR characterized this and the other pricing information included in section B as ceiling prices, rather than as “plug” prices. TOR, section B. (Each of the CLINs included a ceiling price, not just the optional O&M requirements CLINs). There is nothing in the solicitation that indicated that the agency expected the offerors to submit technical responses based on the maximum level of effort possible under the ceiling prices, or that the ceiling prices were anything other than an upper, not-to-exceed limit on contractor compensation. In fact, the agency specifically described the ceiling prices in a bidder question and answer as follows: “The ceiling price is the maximum that may be paid to the contractor except for any adjustment under other contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.” TOR, amend. 6, May 25, 2010, question No. 19.

In contrast, insofar as the relationship of the ceiling prices to the optional O&M requirements were concerned, the agency advised offerors (in its answer to a bidders’ question) that the “Government will evaluate the proposed concept of how the O&M requirement will be handled.” TOR, amend. 6, May 25, 2010, question No. 257. Such an evaluation approach presupposes that different concepts or approaches (including different staffing approaches and levels of effort) to meeting the O&M requirement were anticipated by the agency and would be evaluated.² Simply stated, the agency’s inclusion of the ceiling prices provided no meaningful information or guidance relating to the agency’s desired staffing levels.

² The fact that Northrop may have prepared its proposal by using the ceiling prices as guidance for its proposed staffing does not demonstrate that this was what the government necessarily sought. In fact, the agency clearly indicated something very different in describing its requirements:

DHS is looking for responses to this TOR that think outside the box; that are leading edge but not bleeding edge; that clearly show today transitioning into tomorrow; and that support all security levels and technologies. The solutions must be extremely flexible and be able to support the simultaneous life cycles as each phase is executed, along with the inevitable organizational changes and reorganizations that will take place.

TOR, at C-2-C-3. Thus, Northrop’s approach represents nothing more than its bidding strategy in response to the TOR rather than a proposed approach dictated by the terms of the solicitation.

In summary, we find that the record provides an adequate basis for the agency to have taken corrective action. As discussed, the record supports the agency's conclusion that three of five competitors may have been eliminated from the competition because the offerors did not have adequate information to compete intelligently and on a relatively equal basis.³

The only remaining question relates to the appropriateness of the agency's proposed corrective action. As noted, Northrop's starting point is its request that we recommend that its originally issued task order be reinstated. Such a recommendation would only be appropriate, however, if we were to conclude either that there was no impropriety in the agency's initial evaluation and award decision, or that, notwithstanding the existence of an impropriety, no offeror was prejudiced. Security Consultants Group, Inc., supra. Neither conclusion would be consistent with the record here. Given the agency's reasonable determination that the solicitation failed to adequately convey the agency's requirements to the offerors in a manner that would allow them to compete intelligently, and on a relatively equal basis, the record thus shows that there was an impropriety (specifically a lack of adequate information in the TOR relating to the agency's requirements) that prejudiced the unsuccessful offerors. It follows that we have no basis to question the termination of Northrop's task order.

As for Northrop's request that we recommend otherwise limiting the corrective action, we point out that the agency has not actually cancelled the earlier solicitation or, apparently, eliminated from consideration the idea of simply amending that TOR and seeking revised proposals. Counsel for the agency specifically represents that:

As a result of the discussions undertaken in response to the [prior] protests, GSA decided to take corrective action. This corrective action necessitated, at a minimum, the cancellation of NGIT's [Northrop's] award of the task order, in order to address deficiencies in the evaluation. In addition, GSA is going to consider how to amend the TOR to address the lack of appropriate definition of the amended O&M requirement.

Agency Legal Memorandum at 9.

³ Although the agency has not elaborated on the adequacy of the TOR for purposes of another requirement (task 7) for optional logistics support, the record shows that three of the five proposals also were found to have deficiencies in their proposed staffing under this task that caused them to be eliminated from further consideration for that reason as well. AR, exh. 5, at 119-120, 179-180, 235. Thus, it appears that there may be more than one solicitation area where the agency's requirements were not clearly expressed, leading to a majority of proposal responses being considered inadequate.

In any event, we have no basis on this record to object to the agency's decision to reopen the acquisition, obtain new or revised proposals, and make a new source selection decision. The precise form of the corrective action is a matter committed to the sound discretion and judgment of the agency, and we decline to interpose our views between GSA and its exercise of that discretion and judgment, absent some showing that the agency's actions are contrary to procurement law or regulation, or otherwise are improper. See C2C Solutions, Inc.; Trust Solutions, LLC, supra.; NavCom Defense Elec., Inc., supra. Northrop has made no such showing.⁴

The protest is denied.

Lynn H. Gibson
General Counsel

⁴ Northrop also requests in the alternative that we recommend that it be reimbursed the costs associated with preparing its earlier proposal. However, since we conclude that the agency's corrective action here is reasonable, we have no basis to recommend reimbursement of such costs. KAES Enters., LLC--Protest and Costs, B-402050.4, Feb. 12, 2010, 2010 CPD ¶ 49 at 4-5.