



Decision

Matter of: CWTSatoTravel

File: B-404479.2

Date: April 22, 2011

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DIGEST

1. Protest that solicitation seeking fixed prices for electronic travel management service imposes excessive risk on offerors is denied where solicitation does not have an unlimited scope of work and provides sufficient information on which offerors can base their prices.
 2. Protest that solicitation requirements for updates to electronic travel management system in response to changes in pertinent federal regulations and policy are unduly restrictive is denied where agency establishes that requirements are reasonably related to agency's needs.
 3. Protest that agency improperly conducted procurement using commercial item procedures and policies is denied where protester does not show that use of those procedures and policies will cause it competitive prejudice.
 4. Protest that certain terms of solicitation do not clearly communicate whether objectives are optional or required—rendering solicitation ambiguous—is sustained; remaining challenges to terms of solicitation are denied where those terms were not susceptible to more than one reasonable interpretation, and where solicitation contained sufficient information to allow offerors to compete intelligently and on a relatively equal basis.
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DECISION

CW Government Travel, Inc., d/b/a CWTSatoTravel, of Arlington, Virginia, protests the terms of request for proposals (RFP) No. QMAD-JM-100001-N, issued by the

General Services Administration (GSA) for an end-to-end travel management service that automates and consolidates federal travel processes in a secure, web-based environment.

We deny the protest in part and sustain it in part.

BACKGROUND

In November 2003, the agency awarded three indefinite-delivery/indefinite-quantity (ID/IQ) performance-based contracts for web-based, electronic travel management services (ETS) to civilian federal executive agencies. Contracting Officer's Statement ¶ 4. Each contract had a period of performance of 10 years, including options. *Id.* One of the three contracts was awarded to the protester. *Id.* In anticipation of the expiration of these three contracts, which collectively were known as the ETS1 contracts, the agency in late 2009 began to prepare for the procurement of a follow-on ETS service, known as E-Gov Travel Service 2.0, or ETS2. *Id.* ¶ 6. Like ETS1, ETS2 is to be used by federal civilian agencies to obtain various travel services, such as travel, lodging, and rental car booking services and travel voucher services. Agency Report (AR), Tab 17, Sources Sought Notice, at 1.

On August 23, 2010, the agency issued the ETS2 solicitation. The solicitation contemplated the award of one or two fixed-price ID/IQ contracts, each with a base period of 3 years and three 4-year option periods. RFP §§ B.2.1, B.2.2, D.4. The solicitation included a lengthy statement of work (SOW) calling for the provision of a secure, web-based, end-to-end travel management service that “includes all aspects of official Federal business travel, including travel planning, authorization, reservations, ticketing, fulfillment, expense reimbursement, and travel management reporting.” *Id.* § C.1. Offerors were to propose fixed prices for specific ETS2 service transactions, such as domestic or international travel reservation assistance and issuance of tickets and vouchers.¹ *Id.* §§ B.2.1, B.2.2. Separate pricing was requested for the base period and for each option period. *Id.*

The solicitation included several standard Federal Acquisition Regulation (FAR) provisions associated with acquisitions of commercial items or services, including FAR § 52.212-4, Contract Terms and Conditions—Commercial Items (June 2010). *Id.* § D.1; see also *id.* §§ D.2, D.3, E.1. One of the terms within FAR § 52.212-4 relates to changes and states: “Changes in the terms and conditions of this contract may be made only by written agreement of the parties.” *Id.* § D.1; FAR § 52.212-4(c). The solicitation also included other provisions associated with acquisitions of commercial items and services, such as FAR § 52.212-1, Instructions to Offerors--

¹ For example, offerors were to provide fixed fees for different types of agent-assisted travel reservation service transactions and different types of online travel reservation service transactions. RFP §§ B.1, B.2.1, B.2.2.

Commercial Items (June 2008),² and FAR § 52.212-2, Evaluation–Commercial Items (Jan 1999). RFP §§ E.1, F.1.

On November 10, 2010, CWT timely filed a protest with our Office challenging the numerous terms of the ETS2 solicitation. CWT’s protest asserted that the solicitation’s pricing structure improperly exposed offerors to excessive risk; that in conducting the ETS2 procurement, the agency had improperly utilized FAR policies and procedures for the acquisition of commercial items; that the solicitation contained provisions that were unduly restrictive; and that various solicitation provisions were overly vague or ambiguous. We dismissed the protest as academic after the agency notified our Office that it was taking corrective action by amending the solicitation to address issues raised in the protest and by extending the deadline for the submission of offers. See CTWSatoTravel, B-404479.1, Dec. 7, 2010. The agency implemented its corrective action through issuance of two solicitation amendments that revised the solicitation in numerous respects.

Like the original solicitation, the amended solicitation established numerous “mandatory requirements” and “objectives.”³ Mandatory requirements were defined as “essential functionalities, capabilities, and characteristics that must be provided.” SOW § C.3.1.1. A failure to “meet or exceed” the mandatory requirements, the solicitation cautioned, “may result in an offer being excluded from further evaluation.” Id.

Objectives were defined as “functionalities, capabilities, and characteristics” that improve the overall quality of ETS2, address deliverables specific to one or more user agency, or contribute to the achievement of ETS2 goals. Id. § C.3.1.2. Objectives were said to include “enhanced technology functions, preferred or best business practices, or special management needs of customer agencies.” Id. The

² This provision, at section (g), states:

The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror’s initial offer should contain the offeror’s best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary.

RFP § E.1.

³ Throughout this decision, descriptions of the solicitation refer to the amended solicitation.

solicitation explained that “[o]bjectives offered by the Contractor and accepted by the Government become mandatory requirements under any resulting contract.” Id. The solicitation further explained that “the government may consider exceptions taken to [SOW] objectives.” RFP § E.6.3.1. In this regard, the solicitation included an attachment in which offerors were to list and describe any “[e]xceptions taken to the objectives.” Id., attach. E-4. The attachment advised offerors as follows: “There is no guarantee that GSA will accept exceptions proposed. Exceptions taken to objectives may be considered into the overall best value award determination.” Id.

The SOW grouped requirements into broad categories of ETS2 functions—e.g., technology capabilities, security capabilities, customer support, and training. For each category, the solicitation included a list of mandatory requirements followed by a list of objectives. One of the categories, usability, included the following objective: “The Contractor should provide, support and maintain a version of the ETS2 application that is available on various mobile platforms that include government approved smartphones, tablets and other emerging platforms.” SOW § C.3.3.2(2).

With respect to mandatory requirements, the solicitation provided, among other things, that the ETS2 contractor would be responsible for updating the ETS2 system to comply with changes in federal information technology (IT) security regulations and policy, and with changes in federal travel regulations and policy.⁴ Id. §§ C.4.1.1(2), C.6.1.1(1)(e). The cost of providing the system updates was to be included in fixed prices offered for the various ETS2 service transactions.⁵ Although the solicitation established that the ETS2 contractor, rather than the government, generally would be responsible for the costs of updating the ETS2 system, the solicitation also stated that “[i]n the event that these changes exceed the accepted/awarded proposal(s) for technology refreshment, are a change in commercial travel services (Section C.3.4), and/or are a market adjustment (Section

⁴ The updates were to be made through “service release management processes” which would “advance the [ETS2] service to include innovation, modernization, enhancement, and policy changes.” SOW § C.3.1.

⁵ In this regard, the solicitation provided that pricing “shall be inclusive of the requirements of the SOW, including technological refreshes, change to regulations, security, etc.” RFP § E.6.3.5.

D.41), the Contractor may clarify this impact and prepare appropriate rationale for the Government to consider a revision to price.”⁶ Id. § C.3.1.

With respect to the security of the ETS2 system, the solicitation required compliance with designated federal IT security standards.⁷ Id. § C.6.1.1. With respect to changes in federal IT security standards, the solicitation provided that the ETS2 program management office would establish a security governance process that “ensures the [ETS2] service remains current with OMB directives” regarding IT security. Id. § C.6. The solicitation further provided that:

[a]s Government laws, regulations, policies and guidance on security change[], the ETS2 PMO will notify the Contractor . . . and the Contractor shall assure compliance with these changes through their service lifecycle management processes The ETS2 Contractor shall incorporate these changes without additional cost to the government

Id. § C.6.1.1(1)(e).

With respect to changes in federal travel policy, the solicitation provided that the ETS2 service must comply with “any . . . amendments” to certain chapters and “other

⁶ The referenced commercial travel services provision listed examples of “emerging [travel] services/enhancements for which commercial availability is currently limited.” SOW § C.3.4. This provision stated that the government may order such services in the future by “modifying the contract to incorporate the change within the scope of the contract and in accordance with the applicable Changes clause.” Id. The referenced market adjustment provision stated:

The Government recognizes the potential impact of unforeseeable major changes in market conditions. For those cases where such changes do occur, the contracting officer will review requests to make adjustments, subject to the Government’s examination of industry-wide market conditions and documents requested by the contracting officer to support the reasonableness of the price adjustment. If adjustments are accepted, the contract will be modified accordingly. The determination of whether or not extra-ordinary circumstances exist rests with the contracting officer. The determination of an appropriate mechanism of adjustment will be subject to negotiation.

RFP § D.41.

⁷ The standards included specific Office of Management and Budget (OMB) and National Institute for Standards and Technology publications regarding IT security. See, e.g., SOW § C.6.1.1(5)(a), (c).

applicable” portions of both the federal travel regulation and the Department of State foreign affairs manual “at no additional cost on their effective date unless otherwise specified by the government.”⁸ SOW § C.4.1.1(2), (3). The ETS2 contractor also would be responsible for “refresh[ing] and maintain[ing] their ETS2 service to address . . . government policy updates over the life of the contract as part of routine operations and maintenance of the service.” Id. § C.5.1.1(9).

In the area of technology capabilities, the solicitation provided that the “goals for ETS2” included the “alignment [of ETS2] with the Federal Enterprise Architecture (FEA) framework at the time of implementation and over the life of the service.” Id. § C.5. In connection with the FEA alignment, the solicitation required that the ETS2 contractor “remain aware of and incorporate applicable [FEA] standards” into the ETS2 system.⁹ Id. § C.5.1.1(1).

The solicitation also provided that the ETS2 contractor may be required to conform the ETS2 system to support certain activities of the federal agencies using the ETS2 system and services, *i.e.*, the customer agencies. For example, the solicitation required the ETS2 contractor to support: bi-directional integration to customer agency business systems, SOW § C.4.2.4.1(11); compliance with customer agency-configured travel policies during the reservation process, id. § C.4.2.5.1(17); accommodation of travel management centers (TMCs) utilized by the customer agencies,¹⁰ id. § C.4.2.12; administration of customer agency policy limits on travel advances, id. § C.4.2.15.1(3); administration of customer agency business rules regarding traveler retention of excess travel advances, id. § C.4.2.15.1(9); configuration of “line of accounts” to customer agency financial system requirements, id. § C.4.2.18.1(3); audits of travel documents by customer agencies with agency-selected audit sampling parameters, id. § C.4.2.20.1(1); and accommodation of customer agency SmartPay vendor transitions, id. § C.4.2.26.1.

The deadline established for the submission of proposals was January 18, 2011. RFP amend. 0010. On January 12, CWT filed a protest with our Office objecting to the terms of the amended solicitation on the same grounds raised in the firm’s previous protest.

DISCUSSION

⁸ The solicitation also required compliance with amendments to certain components of the joint federal travel regulation for uniformed service members. SOW § C.4.1.1(4).

⁹ Regarding FEA standards, reference was made to FEA requirements published on the OMB website. SOW § C.5.1.1(1).

¹⁰ The ETS2 service was to include an embedded TMC. SOW § 4.2.11. For various policy reasons, however, customer agencies have the option of using TMCs other than the embedded ETS2 TMC. Id. § 4.2.12; Contracting Officer’s Statement ¶ 59.

CWT's protest essentially raises four broad objections to the solicitation. First, CWT asserts that the solicitation improperly exposes the ETS2 contractor to excessive risk by requiring that an offeror's fixed fees include various updates to the ETS2 system over this contract's term of up to 15 years, including options. Second, CWT asserts that the solicitation provisions requiring updates to the ETS2 system over the term of the contract are unduly restrictive. Third, CWT asserts that the agency improperly utilized FAR policies and procedures for the acquisition of commercial items. Finally, CWT asserts that a significant number of this solicitation's provisions are overly broad and ambiguous. We find that all of CWT's protest bases lack merit, with the exception of one of its assertions regarding the ambiguity of the solicitation.

Excessive Risk

As indicated above, CWT asserts that various solicitation provisions impose excessive risk on the ETS2 contractor. Protest at 35. The objectionable provisions, according to CWT, include those requiring the ETS2 contractor, throughout the term of the contract, to update the ETS2 system to comply with changes in federal IT security regulations and policy, and changes in federal travel regulations and policy, at no additional cost to the government. Protest at 13-15, 18-19, 35. CWT objects on the same basis to certain provisions that require compliance with federal IT security standards and that require accommodation of various customer agency functions. Id. at 16, 21-22, 28-32, 35-36. CWT similarly objects to provisions regarding compatibility with emerging mobile platforms and the alignment of the ETS2 system with the FEA framework. Id. at 17, 20, 36. In CWT's view, these groups of provisions potentially involve "an unlimited number of unknown updates and refreshments to the[] ETS2 System, at a fixed price." Id. at 35. CWT asserts that because the nature and extent of future updates is uncertain, the ETS2 contractor is faced with "an unreasonable risk of loss." Id. As a related ground of protest, CWT objects to the term of the contemplated contract, which is fifteen years, including options. Id. at 23, 35.

In its report to our Office, the agency responds that the first group of challenged provisions reflects the agency's decision to "shift the risk for changes that will be necessary to remain current in two primary areas; IT security and Federal travel policy." Memo. of Law at 6. The agency explains that it adopted this strategy after concluding that "the administrative burden of dealing with requests for price adjustments [in connection with ETS1] was eating into the savings and efficiencies that ETS1 was established to facilitate." Id. at 6; see also Supp. Contracting Officer's Statement ¶ 2. The agency acknowledges that this strategy involves a risk of higher pricing, but asserts that this risk is mitigated by the likelihood that the potential offerors in this procurement have a high level of sophistication as to the formulation of pricing. Memo. of Law at 7, 9. In this regard, the agency asserts that "[t]he sophisticated contractors that provide end-to-end travel management services in the commercial sector have to 'stay current' in the course of performing those contracts, and are in a position, based on their expertise, to 'price' that risk into their

proposals.” Id. at 6; see also Supp. Contracting Officer’s Statement ¶ 4 (describing specific ETS2 market research indicating that potential ETS2 offerors or team members typically incorporate research and development costs into their pricing). The agency further asserts that offerors can mitigate risk by applying historical trends regarding the number and significance of changes in federal IT security policy and federal travel policy when they develop their pricing.¹¹ Memo. of Law at 7. Finally, the agency argues that the solicitation mitigates risk by permitting price adjustments for “unforeseeable major changes in market conditions.” Contracting Officer’s Statement ¶ 46 (citing RFP § D.41).

With respect to the protester’s objection to solicitation provisions regarding compliance with federal IT security standards, the agency asserts that it “expects offerors to price said compliance into [the] transaction fee over the life of the contract.” Id. ¶ 63. The agency maintains that many of the federal standards in question align with commercial security standards. Id. ¶ 65. The agency also points out that the provisions at issue reflect the necessity that the agency itself comply with the security standards in question. Id.

Regarding the solicitation provisions that require the ETS2 system to support various customer agency functions, the agency suggests that the risk to offerors is reduced because the solicitation encourages offerors to offer an ETS2 system that is “configurable,” meaning a system in which updates are made through changes to “business rules and policy” rather than through custom software development.¹² Id. ¶ 58. The agency states that it understands that certain system integration activities related to customer agency functions “may be more costly for some vendors,” but maintains that meeting customer agency needs is a “key component of ETS2.”¹³ Id. ¶¶ 59, 61.

¹¹ The agency asserts that significant changes to federal travel policy are rare. Memo. of Law at 7. The agency also contends that the ETS1 contractors, including the protester, “performed to comparable refresh requirements under ETS1.” Contracting Officer’s Statement ¶ 57.

¹² In this regard, the agency references a published analysis of emerging trends in corporate travel and detailed responses from firms in the travel industry to a December, 2009 survey regarding system configurability versus software customization. AR, Tab 51, NORMAN L. ROSE, CORPORATE TRAVEL TECHNOLOGY: TODAY AND TOMORROW (TravelTech Consulting 2007); AR, Tab 52, Survey on Configurations and Customizations (Dec. 17, 2009).

¹³ The agency adds that any customer agency functions beyond the SOW’s mandatory requirements are to be separately negotiated and priced under task orders. Contracting Officer’s Statement ¶ 61.

As for the provisions regarding ETS2 system alignment with the FEA framework, the agency asserts that several pertinent industry standards are consistent the FEA framework. Id. ¶ 62. The agency defends the solicitation provision regarding ETS2 system compatibility with emerging mobile platforms on grounds that the provision is an SOW objective, and therefore is not a mandatory requirement. Id. ¶ 66. Finally, the agency explains that consistent with GSA Acquisition Manual § 517.204(c), the contracting officer sought and obtained approval from the head of the contracting authority to exceed the 5-year limitation on service contracts found at FAR § 17.204(c). Id. ¶ 42; see also AR, Tab 46, Determination and Finding to Exceed Five-Year Performance Limitation for ETS2 RFP. The agency also asserts that commercial contracts of similar complexity as ETS2 typically involve terms of 15 years or longer. Contracting Officer's Statement ¶ 42.

In its comments on the agency report, the protester renews its arguments that solicitation imposes excessive risk on the ETS2 contractor. Comments at 29-36; see also Comments at 6-7, 9-10, 17-29. At base, the protester's position remains that the provisions at issue improperly "require the Contractors to estimate the future costs and investment necessary to meet undefined demands for the next fifteen years." Id. at 30-31.

The mere presence of risk in a solicitation does not make the solicitation inappropriate or improper. It is within the administrative discretion of an agency to offer for competition a proposed contract that imposes maximum risks on the contractor and minimum burdens on the agency, and an offeror should account for this in formulating its proposal. JRS Mgmt., B-402650.2, June 25, 2010, 2010 CPD ¶ 147 at 5; TN-KY Contractors, B-291997.2, May 5, 2003, 2003 CPD ¶ 91 at 3. There is no requirement that a competition be based on specifications drafted in such detail as to completely eliminate all risk or remove every uncertainty from the mind of every prospective offeror. Abba Int'l, Inc. et al., B-311225.4, Feb. 2, 2009, 2009 CPD ¶ 28 at 7; AirTrak Travel et al., B-292101 et al., June 30, 2003, 2003 CPD ¶ 117 at 14. Risk is inherent in most type of contracts, especially fixed-price contracts, and firms must use their professional expertise and business judgment in anticipating a variety of influences affecting performance costs. JRS Mgmt., supra; AirTrak Travel et al., supra.

While we appreciate that the solicitation here imposes risk on the contractor by requiring pricing to include the cost of updating the ETS2 system over a potentially lengthy term, we do not find, on the record before us, that the solicitation exposes offerors to unacceptable or undue risk. CWT has identified certain system updates for which there may be uncertainty regarding the required effort or cost. CWT, however, has not shown that offerors cannot minimize the risk attendant to such

uncertainty through, among other things, the measures suggested by the agency.¹⁴ Nor has CWT shown that there is a significant likelihood that the cost of complying with the solicitation provisions in question will greatly exceed that which can be reasonably anticipated. The protester also has not shown that the solicitation places no limit on the required work. To the contrary, there are distinct parameters around the scope of work; e.g., offerors must update the ETS2 system to comply with changes within a distinct set of federal regulations and policies and must conform the system to support a number of distinct customer agency functions.¹⁵ In this regard, the solicitation provides offerors with adequate information to factor risk into pricing using business judgment.

Moreover, the solicitation permits offerors to account for risk by escalating their pricing in each of the three 4-year option periods, see RFP §§ B.2.1, B.2.2, and by permitting the negotiation of price adjustments in the event of “unforeseeable” changes in market conditions.¹⁶ Id. § D.41. Finally, the agency is willing to accept the risk of higher prices because it expects a reduction in the administrative burden of negotiating change orders for ETS2 system updates. The agency’s decision to accept this risk is not improper. See Braswell Servs. Group, Inc., B-278521, Feb. 9, 1998, 98-1 CPD ¶ 49 at 5 n.6. CWT’s protest regarding the solicitation’s alleged imposition of excessive risk is denied.¹⁷

Overly Restrictive Terms

¹⁴ With respect to CWT, the risk also is mitigated by CWT’s ability to draw on the firm’s experience of more than 7 years as an ETS1 contractor.

¹⁵ Further, the risk complained of by CWT relates to a few limited areas of the otherwise wide-ranging ETS2 service.

¹⁶ The record reflects that under ETS1, the agency worked with ETS1 contractors to adjust fees in response to a significant change in the travel industry market. Contracting Officer’s Statement ¶¶ 47-48.

¹⁷ In CWT’s view, many of the solicitation provisions that purportedly impose excessive risk also are objectionable because they “completely negate[]” the solicitation’s changes clause. Comments at 3; see also Protest at 11-21; Comments at 6-13. CWT argues that the solicitation improperly “grant[s] the Government the right to order unilateral changes without limitation,” when instead any changes must occur “via bilateral agreements pursuant to 52.212-4(c) or via a standard fixed-price changes clause, 52.243-1.” Comments at 3, 4-5. In essence, the protester’s argument is that the changes clause should apply because the services to be priced in the ETS2 offerors’ fixed transaction fees impose excessive risk, and, therefore, those services should be eliminated from the solicitation or priced separately. As discussed above, this basis of protest is denied.

CWT asserts that the provisions regarding compliance with changes to federal IT security regulations and policy, and federal travel regulations and policy, are unduly restrictive because “*no* Offerors can comply.” Protest at 39 (emphasis in original). Where a protester alleges that a requirement is unduly restrictive, the agency must establish that the requirement is reasonably necessary to meet its needs; we will examine the adequacy of the agency’s position to ensure that it is rational and can withstand logical scrutiny. JRS Mgmt., B-404022.2, Feb. 15, 2011, 2011 CPD ¶ 42 at 3. 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. JBG/Naylor Station I, LLC, B-402807.2, Aug. 16, 2010, 2010 CPD ¶ 194 at 4. A protester’s mere disagreement with an agency’s judgment concerning the agency’s needs and how to accommodate them does not show that the agency’s judgment is unreasonable. Dynamic Access Sys., B-295356, Feb. 8, 2005, 2005 CPD ¶ 34 at 4.

In its report to our Office, the agency asserts that the ETS2 system must be “policy compliant” in order to “facilitate a consistent application of travel policies” and to permit travelers to be reimbursed the amounts to which they are legally entitled. Contracting Officer’s Statement ¶¶ 53, 57. The agency further asserts that the solicitation provisions regarding IT security updates relate to specific federal statutory, regulatory, and policy requirements with which the agency must comply. Id. ¶¶ 63, 65. CWT’s comments on the agency report do not refute the agency’s position that updates to the ETS2 system are reasonably necessary to meet the agency’s needs, see Comments at 49-51, but instead challenge the manner that these updates are to be priced under the solicitation. As discussed above, this argument is without merit. Since the protester has not convincingly refuted the agency’s showing of need, we deny this aspect of the protest.

Commercial Item Terms

CWT contends that the agency improperly utilized FAR policies and procedures for the acquisition of commercial items and services. Protest at 7. As stated above, the solicitation incorporated several provisions that the FAR prescribes for use in acquisitions of commercial items or services. RFP §§ D.1–D.3, E.1, F.1. CWT does not take issue with the use of these provisions. Rather, CWT asserts that the solicitation incorporates terms that CWT believes are not commercial in nature or customary in the travel services industry. Protest at 9-10; Comments at 14. On this basis CWT challenges, among others, the provisions that require: fixed prices over a period of up to fifteen years, including options, Comments at 17-20; compliance with federal IT security requirements, id. at 20-22; accommodation of customer agency TMCs, id. at 23-26; and alignment of the ETS2 system with the FEA framework, id. at 26-27.

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency’s actions, that is, unless the protester demonstrates that, but for the agency’s actions, it would have had a substantial

chance of receiving the award. Armorworks Enters., LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3; Cogent Sys., Inc., B-295990.4, B-295990.5, Oct. 6, 2005, 2005 CPD ¶ 179 at 10. In the context of a protest challenging the terms of a solicitation, competitive prejudice occurs where the challenged terms place the protester at a competitive disadvantage or otherwise affect the protester's ability to compete. Pond Sec. Group Italia JV-Costs, B-400149.2, Mar. 19, 2009, 2009 CPD ¶ 61 at 4; Crane & Co., Inc., B-297398, Jan. 18, 2006, 2006 CPD ¶ 22 at 9. With respect to a procurement for services that allegedly do not meet the definition of a commercial item, our Office will deny a protest where the protester does not claim that any of the provisions or procedures unique to commercial item procurements put it at a competitive disadvantage, and does not show that the use of commercial item procedures otherwise prejudiced the protester's competitive position. Global Solutions Network, Inc., B-298682, Nov. 27, 2006, 2006 CPD ¶ 179 at 3; Johnson Controls World Servs., Inc., B-285144, July 6, 2000, 2000 CPD ¶ 108 at 3.

Here, CWT does not claim that any of the provisions or procedures unique to commercial item procurements put it at a competitive disadvantage, nor has CWT shown that the use of commercial item provisions or procedures otherwise prejudices the firm's competitive position. Because CWT has not demonstrated that the firm was prejudiced by the agency's use of commercial item procedures, and prejudice is not otherwise apparent from the record, we deny this ground of protest. See Global Solutions Network, Inc., *supra*; Johnson Controls World Servs., Inc., *supra*.

Ambiguous Terms

CWT's final broad set of protest contentions assert that a significant number of the solicitation's provisions are overly broad and ambiguous. Generally, a contracting agency must provide offerors with sufficient detail in a solicitation to enable them to compete intelligently and on a relatively equal basis. AirTrak Travel et al., *supra*, at 12-13. A solicitation ambiguity exists where two or more reasonable interpretations of the terms of the solicitation are possible. Ashe Facility Servs., Inc., B-292218.3, B-292218.4, Mar. 31, 2004, 2004 CPD ¶ 80 at 10.

We have reviewed the solicitation provisions in question and conclude that, with one exception, discussed below, none of CWT's contentions has merit. CWT generally does not posit two or more reasonable interpretations of the challenged provisions. Rather, CWT argues that "it is not clear what is actually being required of the Offerors" and that this will "create great uncertainty for Offerors attempting to develop a reasonable fixed price and will lead to many disputes during the course of contract performance." Protest at 41. For example, CWT complains that the difference between an agent-assisted travel reservation service transaction and an online travel reservation service transaction is ambiguous because, according to

CWT, the difference could depend on the intent of the government traveler involved with the transaction.¹⁸ Protest at 43.

The solicitation contains separate definitions for agent-assisted and online travel reservation service transactions that distinguish the two types of transactions. RFP § B.1. The solicitation also includes an appendix that provides guidance regarding the difference between the two types of transactions through eight illustrative examples. RFP app. B-1. CWT has not advanced two or more reasonable meanings of the definitions, and, in our view, the solicitation provides offerors with adequate information to distinguish between the two types of transactions for the purpose of preparing a response to the solicitation. This basis of protest, along with all but one of the other protest bases regarding alleged solicitation ambiguities, is denied.

The aspect of the solicitation that, in our view, presents an ambiguity relates to whether or not the SOW objectives are optional. As described above, the solicitation defined objectives as “functionalities, capabilities, and characteristics” that improve the overall quality of ETS2, and it stated that “[o]bjectives offered by the Contractor and accepted by the Government become mandatory requirements under any resulting contract.” SOW § C.3.1.2. The solicitation also instructed offerors that “the Government may consider exceptions taken to [SOW] objectives” and included an attachment in which any exceptions taken were to be listed. RFP § E.6.3.1, attach. E-4. CWT argues that these solicitation provisions reasonably may be interpreted to mean either that objectives are optional or that objectives are mandatory. Protest at 46-48. We agree.

The SOW’s structure of mandatory requirements coupled with objectives, together with the solicitation’s statement that “[o]bjectives offered by the Contractor and accepted by the Government become mandatory requirements under any resulting contract,” suggest that the objectives are optional and, therefore, a proposal that takes exception to one or more objectives would not be eliminated from consideration for award on that basis alone.¹⁹ See SOW § 3.1.2. However, because the solicitation provides that “[t]here is no guarantee that GSA will accept exceptions” taken to objectives, the solicitation also suggests that objectives are not optional. See RFP § E.6.3.1, attach. E-4. It appears, therefore, that if the agency decides to reject an offeror’s exception to an objective, then the offeror’s proposal may be eliminated from consideration for award on that basis alone or, if award is made to an offeror that takes exception to one or more objectives, the agency may

¹⁸ The difference would be material if an offeror proposed different prices for these two types of transactions.

¹⁹ The agency apparently agrees with this interpretation; among other assertions, it states that objectives are “definitionally, optional.” Supp. Memo of Law at 2; see also Contracting Officer’s Statement ¶ 55 (objectives “are at the offeror’s option to bid”).

unilaterally require that offeror to meet the excepted objectives, notwithstanding the likelihood that the offeror's proposal would not have included a technical solution or pricing for those objectives.

During the course of the protest, the agency advised our Office that it has several options if it decides not to accept an offeror's exception to one or more objectives. Supp. Contracting Officer's Statement ¶ 1. We have reviewed the agency's explanation of its options and conclude that much of the explanation sheds little, if any, light on the question.²⁰ See id. One portion of the explanation states that the agency may open discussions regarding any exception taken to an objective and negotiate regarding the objective(s) and associated pricing.²¹ However, if no agreement is reached during such discussions, the agency states, "the Government would not award the contract." Id. In our view, this response confirms the protester's argument that the solicitation may reasonably be interpreted to communicate that compliance with these objectives may not an option, but a prerequisite for award—i.e., a requirement of the solicitation. Accordingly, we sustain this basis of protest.

Recommendation

We sustain the protest on the ground that the solicitation is ambiguous about whether the stated objectives are optional or may be requirements for award. We recommend that the agency revise the solicitation to clearly communicate whether the SOW objectives are optional. For example, if the agency intends objectives to be optional, then the solicitation should be amended to eliminate the suggestion that the agency may unilaterally reject an exception taken to an objective. On the other hand, if the agency wishes to retain the flexibility of determining, after the receipt of proposals, that an objective will be mandatory rather than optional, then the solicitation should be amended to notify offerors that notwithstanding an exception taken to an objective, an offeror, pursuant to discussions, may be required to offer a technical solution and pricing for one or more of the objectives.

²⁰ For example, in response to the efforts of our Office to obtain an answer to the allegation, the agency has repeatedly stated that offerors' responses to the objectives may be used in the agency's best value determination to differentiate between the competing proposals. See Contracting Officer's Statement ¶ 66; Supp. Contracting Officer's Statement ¶ 1.c. Use of the objectives for this purpose does not resolve the question of whether or not objectives are optional.

²¹ The agency's reliance on discussions to resolve the question of whether objectives are optional is somewhat at odds with the solicitation's notification to offerors that the agency intended to evaluate offers and award a contract without opening discussions. See RFP § D.1 (incorporating FAR § 52.212-1(g)).

We also recommend that CWT be reimbursed its costs of filing and pursuing the protest, including reasonable attorneys' fees, but that this reimbursement be limited to the costs associated with the issue on which the protest was sustained. 4 C.F.R. § 21.8(d)(1) (2011). In accordance with 4 C.F.R. § 21.8(f)(1), the protester's certified claim for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained in part and denied in part.

Lynn H. Gibson
General Counsel