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Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** AXIS Management Group, LLC

**File:** B-408575.2

**Date:** May 9, 2014

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Venkat Reddy, AXIS Management Group, LLC, for the protester.  
Sarah T. Zaffina, Esq., Department of the Interior, for the agency.  
Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

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### DIGEST

1. Protest of agency corrective action taken to implement our recommendation in a prior decision is denied where the record shows the agency's decision to amend the solicitation and seek revised price proposals as part of its corrective action was reasonable and within the ambit of the agency's broad discretion in this area.
  2. Challenge that the agency's corrective action unfairly favors the current awardee is denied where there is no evidence that the release of price information resulted from preferential treatment or any improper action on the part of the agency.
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### DECISION

AXIS Management Group, LLC, of McLean, Virginia, protests the corrective action undertaken by the Department of the Interior, U.S. Geological Survey (USGS), under request for proposals (RFP) No. G12PS00932 for laboratory operational support at the agency's National Water Quality Laboratory, taken in response to our decision sustaining a prior protest filed by AXIS. AXIS argues that the agency's corrective action is untimely, does not comply with our prior recommendation, and prejudicially favors the awardee, Cherokee Nations Technology Solutions, Inc., of Lakewood, Colorado.

We deny the protest.

The corrective action at issue in this protest was undertaken by the USGS in response to our Office's decision sustaining a prior protest filed by AXIS challenging the agency's price evaluation. See generally AXIS Management Group LLC, B-408575, Nov. 13, 2013, 2013 CPD ¶ 247. In that decision, we concluded that the

agency's price evaluation unreasonably normalized offerors' labor hours and labor mix, which had the effect of ignoring the potential for differing labor hours and labor mix based on the offerors' differing technical approaches. Id. at 7. We recommended that the agency reevaluate price proposals consistent with the terms of the solicitation and conduct a new price/technical tradeoff analysis. Id. at 9.

On February 6, 2014, the agency issued Amendment 000001 to the solicitation. Agency Report (AR), Exh. 5, Amendment 000001. The amendment changed the submission instructions for price proposals, mandating use of a revised price spreadsheet included with the solicitation. Id. at Attachments 1 and 3. It also defined full-time equivalent as 1,920 hours, and incorporated two sample task orders for evaluation purposes. Id. at 1-2; Statement of Work (SOW) at 2, 9; Attachments 4 and 5. The agency explains that the amendment reflects its need for additional pricing information so proposals can be uniformly evaluated in accordance with the solicitation's terms. Contracting Officer's Statement at 4. The agency will permit both offerors in the competitive range to submit new price proposals. Id. at 2

AXIS first argues that the corrective action is untimely as it was not completed within 60 days of our prior decision, and because the agency issued an amended solicitation on February 6, instead of on January 31, as it represented it would in a letter to our Office dated January 22, 2014. Protest at 5-6.

Where, as here, our Office issues a bid protest decision with a recommendation for agency corrective action, the Competition in Contracting Act (CICA) requires that the agency inform our Office if it fails to fully implement our recommendation within 60 days after receiving our decision. 31 U.S.C. § 3554(b)(3). This statutory provision only establishes an agency reporting requirement which is procedural in nature and has no bearing on the propriety of the corrective action itself. Hence, contrary to the protester's position, we do not interpret CICA as requiring full implementation of our recommendations within 60 days under all circumstances. C2C Solutions, Inc.; TrustSolutions, LLC, B-401106.6, B-401106.7, June 21, 2010, 2010 CPD ¶ 145 at 6. Rather, we recognize that implementation within that period may not be practicable, and we therefore read the reporting requirement set forth in 31 U.S.C. § 3554(b)(3) as requiring agencies to exert their best efforts to implement our recommendations within 60 days, and to notify our Office within 60 days if full implementation is not possible within that period. Id.

We find no basis to question the agency's diligence in pursuing corrective action to implement our recommendation. The USGS has fully complied with its notification obligation. While the USGS has not fully implemented its corrective action within 60 days, at this juncture we have no basis to conclude that the agency's proposed corrective action has been unduly delayed or is otherwise improper.

AXIS next argues that the corrective action favors Cherokee because it gives the firm the opportunity to revise its price proposal after both offerors' initial prices were released. AXIS argues that since it was the lower-priced offeror, permitting Cherokee to adjust its price is prejudicial. Protest at 9. We find no basis to object to the agency's proposed corrective action on this basis.

An agency need not equalize any competitive advantage afforded to competitors due to the release of price information when its release is not as a result of preferential treatment or any improper action on the part of the agency. See Nova Techs., B-403461.3, B-403461.4, Feb. 28, 2011, 2011 CPD ¶ 51 at 3. Further, we recognize that the possibility that the 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 any disadvantage owing to the occurrence of a reopened competition after the release of price information. Jackson Contractor Group, Inc., B-402348.2, May 10, 2010, 2010 CPD ¶ 154 at 2. Here, we have no reason to question the need for the agency to receive additional price information from offerors, particularly in light of the use of sample task orders as part of the revised price evaluation.

AXIS also argues that, because Cherokee is currently performing the contract, the firm has the opportunity to provide an accurate price reflective of the agency's current need. Protest at 9. In effect, AXIS argues that Cherokee, as the incumbent, has particular knowledge of the agency's current and future needs, which will allow the firm to adjust its price proposal based on that knowledge.

It is well settled that an offeror may possess unique information, advantages, and capabilities due to its prior experience under a government contract, including performance as the incumbent contractor. Our Office has held that the government is not required to equalize competition to compensate for such an advantage, unless there is evidence of preferential treatment or other improper action. United Facility Servs. Corp. d/b/a EASTCO Building Servs., B-408749.2, Jan. 17, 2014, 2014 CPD ¶ 35 at 5 n.6. Here, AXIS professes its disadvantage based on nothing more than Cherokee's status as an incumbent contractor, a situation that the agency need not compensate for in its evaluation. As a result, we deny this aspect of AXIS' protest.<sup>1</sup>

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<sup>1</sup> In a similar vein, AXIS argues that the agency should be required to provide updated historical staffing data to include fiscal year 2013, as this data is the most current representation of the agency's needs. Protest at 9-10. However, the agency explains that this data has not been reported or evaluated, and thus could not be included as part of the solicitation amendment. Contracting Officer's Statement at 4. We find the agency's explanation to be reasonable.

Finally, the gravamen of AXIS' protest is that the agency's corrective action does not address the concerns expressed in our prior decision sustaining the firm's challenge to the agency's evaluation of price proposals. In this regard, AXIS argues that the corrective action does not address "the evaluation, negotiation or discussion flaws in the original solicitation." Protest at 7. Further, the protester asserts that the agency appears to be set to commit the same errors in its new evaluation; that technical and price proposals will be improperly evaluated on a severable basis. Id. In order to address our Office's concerns, AXIS urges that the USGS be required to enter into discussions with offerors in the competitive range, and be required to accept final proposal revisions, including revised technical proposals. Id. at 6-9.

As a general rule, the details of implementing recommendations of our Office are within the sound discretion and judgment of the contracting agency, and we will not question an agency's ultimate manner of compliance, so long as it remedies the procurement impropriety that was the basis for our recommendation. Logistics 2020, Inc., B-408543.4, Feb. 28, 2014, 2014 CPD ¶ \_\_\_ at 4. An agency's discretion generally extends to determining whether it is necessary to reopen discussions and obtain proposal revisions. Id.

As noted, the concern expressed in our prior decision was that the agency's price evaluation did not comport with the terms of the solicitation. In response, the agency amended the solicitation to require additional information so it could conduct a new price evaluation. We have no basis to question the agency's conclusion that additional price information is required in order to properly conduct its evaluation, nor do we find any aspect of the agency's amendment to the solicitation to be inherently improper or otherwise unreasonable. Consequently, we deny AXIS' challenge to the scope of the agency's proposed corrective action.<sup>2</sup>

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>2</sup> Moreover, much of AXIS' complaint as to the scope of the corrective action relates to what the agency may do in the evaluation based on an inference from the solicitation's amendment. However, the fact remains that the agency's evaluation is not before us for review, and award has not been made. Once the USGS has conducted a new price evaluation and made a new award decision, AXIS is free to file a timely protest challenging the agency's actions. Until such time, we conclude that AXIS' challenges in this regard are premature. See Nuclear Production Partners, LLC, B-407948.9, Sept. 24, 2013, 2013 CPD ¶ 228 at 7.