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**Comptroller General
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**United States Government Accountability Office
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Decision

Matter of: Palantir USG, Inc.

File: B-412746

Date: May 18, 2016

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DIGEST

Protest that agency failed to implement the statutory and regulatory preference for the acquisition of commercial items, resulting in a solicitation that unduly restricts competition by offerors of commercial items that could partially meet the requirements of the solicitation, is denied where the agency conducted adequate market research into the use of commercial items and had a reasonable basis for its acquisition approach.

DECISION

Palantir USG, Inc., located in Palo Alto California, challenges the terms of request for proposals (RFP) No. W56KGY-16-R-0001, issued by the Department of the Army, Army Contracting Command, Aberdeen Proving Ground, for engineering, manufacturing, and development services in support of the Army's Distributed Common Ground System-Army Increment 2 (DCGS-A2) requirement. Palantir argues that the agency failed to implement the statutory and regulatory preference for the acquisition of commercial items, resulting in a solicitation that unduly restricts competition.

We deny the protest.

BACKGROUND

On December 23, 2015, the agency issued the RFP, in accordance with Federal Acquisition Regulation (FAR) part 15 procedures. RFP at 1-2. The RFP

contemplates the award of a single indefinite-delivery, indefinite-quantity (IDIQ) contract, with the simultaneous issuance of a cost-reimbursement type task order. RFP at 2. The solicitation seeks a single contractor to be the system data architect, developer, and integrator of DCGS-A2, which is the second increment of the DCGS-A. DCGS-A is the Army's primary system for the processing and dissemination of multi-sensor intelligence and weather information to the warfighter.¹ Agency Report (AR), Tab V, Performance Work Statement (PWS), at 10-11.

DCGS-A is intended to combine all intelligence software/hardware capabilities within the Army into one program with the ability to access and be accessed by, not only Army intelligence and command components, but also the other members of the broader distributed common ground/surface system.² It is composed of many software products--commercial, government, and open source--as well as software integration that allows all the different products and components to communicate and operate seamlessly. Agency's Post-Hearing Comments at 3.

DCGS-A Increment 1 (DCGS-A1) is currently deployed worldwide in support of intelligence operations in all theaters of operations. AR, Tab V, PWS, at 11. With regard to DCGS-A2, the PWS explains that the successful offeror will be responsible for, among other things, the development of new data architecture; standards based enhanced visualization and analytical tools; cloud computing and big data analytic capabilities; cyber analytics and data integration; visualization capabilities; cyber operations; interoperability counter intelligence/human intelligence; signals intelligence; weather; geospatial intelligence; and sensor

¹ According to the PWS, DCGS-A contributes to visualization and situational awareness, which enhances tactical maneuver, maximizes combat power, and enhances the warfighter's ability to operate in an unpredictable and changing environment throughout the operational spectrum. AR, Tab V, PWS at 11. The PWS further explains that DCGS-A facilitates the rapid planning, execution, and synchronization of all war fighting functions, resulting in the current and future force's ability to operate within the enemy's decision cycle. Id.

² DCGS-A is part of a larger distributed common ground/surface system, which also includes systems fielded by the Air Force, Navy, Marine Corps, Special Operations Command, the Intelligence Community, and the National Geospatial-Intelligence Agency. AR, Tab CG, DCGS Concept of Operations 2016-2019, at 7. Because the DCGS-A system works in conjunction with these other systems, the PWS requires that the DCGS-A system conform to and leverage the Army common operating environment, DCGS integration backbone, joint information environment, intelligence community information technology enterprise, and defense intelligence information enterprise standards to enhance interoperability of information through the use of common enterprise standards and services. AR, Tab V, PWS, at 12.

management. Id. at 18. These efforts include software development, capability enhancements, integration, limited fielding and training support, maintenance, and support for logistics development. The period of performance is six years from contract award. Id.

Award is to be made on a best-value basis, considering the following factors: (1) technical; (2) cost/price; (3) past performance; and (4) small business participation plan. RFP at 129. The technical factor is divided into the following five subfactors: (1) data architecture; (2) fusion data analytics; (3) interoperability; (4) visualization framework/usability; and (5) data rights. Id. Prior to consideration of the evaluation factors listed above, offerors will be required to provide a software capability demonstration, which will be evaluated on an acceptable/unacceptable basis. Id. Offerors who receive an unacceptable rating for their demonstration will not be considered further for award. Id. The closing date for the submission of quotations was February 16, and this protest was filed on that date, prior to closing.

DISCUSSION

Palantir argues that the agency failed to conduct market research in accordance with the statutory and regulatory preference for the use of commercial items. According to the protester, this resulted in an unduly restrictive solicitation that prevents offerors of commercial products, such as Palantir, from competing for a prime contract. While the protester does not argue that it could provide a commercial solution that would meet all of the agency's needs, the protester argues that the agency should have used a phased approach for this procurement, whereby the agency would acquire a commercial data integration, visualization, and analytics platform from an offeror like Palantir, followed by separate procurements for integration and development services needed to obtain, integrate, and/or enhance individual capabilities in the DCGS-A2 system. Based on our review of the record, as well as information gathered during a hearing convened by our Office on April 26, 2016, we find the protester's argument to be without merit.³

The Federal Acquisition Streamlining Act of 1994 established, among other things, a preference and specific requirements for the acquisition of commercial items that are sufficient to meet the needs of an agency.⁴ Federal Acquisition Streamlining

³ The protester also argues that the agency's use of a cost-reimbursement type contract is unjustified, and that the solicitation will result in the award of an unlawful IDIQ contract. While we do not address these arguments in our decision, focusing instead on the protester's principal arguments, we have considered all the arguments proffered by the protester and find that they do not form a basis for sustaining the protest.

⁴ The definition of "commercial item" can be found in section 2.101 of the FAR.

Act of 1994 (FASA), Pub. L. No. 103-355 § 8104, 108 Stat. 3243 (codified, as amended, at 10 U.S.C. § 2377). This section of FASA is implemented in FAR part 12, and allows agencies to use solicitation terms, and other procedures, that more closely resemble the commercial marketplace when procuring commercial items. Section 12.101 of the FAR directs agencies to, among other things, conduct market research to determine whether commercial items or nondevelopmental items are available that could meet the agency's requirements.⁵ Section 2377 of Title 10 of the United States Code directs agencies to use the results of market research to determine whether there are commercial items that: (1) meet the agency's requirements; (2) could be modified to meet the agency's requirements; or (3) could meet the agency's requirement if those requirements were modified to a reasonable extent. 10 U.S.C. § 2377(c)(2). Determining whether a product or service is a commercial item is largely within the discretion of the contracting agency, and such a determination will not be disturbed by our Office unless it is shown to be unreasonable. Aalco Forwarding, Inc., et al., B-277241.8, B-277241.9, Oct. 21, 1997, 97-2 CPD ¶ 110 at 11.

Prior to the issuance of the solicitation here, the agency conducted market research to inform its acquisition strategy. The market research included consideration of the availability of commercial items to meet the agency's needs. There were two studies completed that addressed DCSG-A2 requirements in relation to commercially available solutions: (1) the Data Integration, Visualization and Analytics (DIVA) market study; and (2) a trade space analysis (TSA).⁶ The DIVA study was intended to provide situational awareness and information about market trends regarding the "state-of-the-practice" within the commercial DIVA software

⁵ Section 12.101 of the FAR also requires agencies to acquire commercial items or nondevelopmental items when they are available to meet the needs of the agency, and requires prime contractors and subcontractors at all tiers to incorporate, to the maximum extent practicable, commercial items or nondevelopmental items as components of items supplied to the agency.

⁶ The TSA identified and evaluated technical functionality, cost, usability, schedule risk, and technical risk trade space for the following technical and operational capabilities that went beyond DCGS-A1: mission command support for the processing, exploitation, and dissemination of intelligence surveillance and reconnaissance; standard sharable geospatial framework-Army geospatial enterprise; data enterprise architecture; and intelligence support. Representative systems were assessed for the following software option alternatives: commercial off the shelf (COTS), government off the shelf (GOTS), and hybrid. AR, Tab AP, TSA, at 3. While both the DIVA study and the TSA addressed various aspects of the DCGS-A2 program, including the possibilities for the use of commercial software, neither of these studies looked at the entire breadth and scope of the DCGS-A2 procurement. Transcript (Tr.) at 42.

platform landscape, and possible uses of commercial DIVA software in the DCGS-A2 context. AR, Tab AQ, DIVA Study, at 2. The study described a number of potential approaches involving the use of commercial DIVA software, including the approach favored by the protester, whereby the agency could first acquire the commercial software platform necessary for DCGS-A2 data integration, visualization, and analysis capabilities, and could then acquire, separately, the systems integration and development or enhancement work necessary to provide or supplement other DCGS-A2 requirements. Id., at 30. In addition to the two studies mentioned above, the agency performed market research by reaching out to industry, including Palantir, through requests for information, industry day events, and industry government one-on-one meetings.⁷ AR at 9.

While the market research revealed that commercial items were available to meet some of the DCGS-A2 requirements, the agency concluded that there was no commercial solution that could meet all the requirements of DCGS-A2. As the agency explained in its report, the DCGS-A2 contractor will need to do a great deal of development and integration work, which will include importing capabilities from DCGS-A1 and designing mature interfaces for them. AR at 44. Because the agency concluded that significant portions of the anticipated DCSG-A2 scope of work were not available as a commercial product, the agency determined that the DCGS-A2 development effort could not be procured as a commercial product under FAR part 12 procedures.⁸ AR, Tab AG, Market Research Report, at 50. The protester has failed to show that the agency's determination in this regard was unreasonable.⁹

⁷ The results of these efforts are summarized in a market research report that was issued on July 13, 2015. AR, Tab AG, Market Research Report. While Palantir complains that the requests for information did not directly solicit information about commercial solutions, Palantir nonetheless provided the agency with information and recommendations regarding potential solutions that would involve the use of commercial software for data integration, processing, visualization, and analysis. AR, Tab AJ, Palantir's Response to Request for Information Number One, at 5.

⁸ Specifically, the agency concluded that data fusion, intelligence support to cyber, and the DCGS integrated backbone upgrade were not available as a commercial product. AR, Tab AG, Market Research Report, at 50.

⁹ While this is not a commercial item procurement under FAR part 12, we note that the solicitation anticipates that the contractor will use commercial items. For example, the PWS instructs offerors that in the DCGS-A2 effort, they should maximize the use/reuse of COTS and GOTS products currently being used in DCGS-A1, which reflects the fact that there are approximately one hundred commercial-off-the-shelf products in use in DCGS-A1. AR, Tab V, PWS, at 60; Tr. at 84.

The protester next argues that the agency failed to adequately consider whether a commercial product could meet the agency's requirement if those requirements were modified to a reasonable extent. In this regard, the protester contends that, rather than awarding a single-award IDIQ contract in conjunction with a cost-reimbursement type task order, the agency should have sought to meet the DCGS-A2 requirements using a phased approach that would have allowed offerors of commercial solutions, like Palantir, to compete to provide the commercial software platform necessary for DCGS-A2 data integration, visualization, and analysis capabilities, possibly at a fixed-price. The protester argues that the agency could then acquire, separately, the systems integration and development or enhancement work necessary to provide or supplement other DCGS-A2 requirements.

A contracting agency has the discretion to determine its needs and the best method to accommodate them. General Electrodynamics Corporation, B-298698, B-298698.2, November 27, 2006, 2006 CPD ¶ 180 at 3. In preparing a solicitation, a contracting agency is required to specify its needs in a manner designed to achieve full and open competition, and may include restrictive requirements only to the extent they are necessary to satisfy the agency's legitimate needs. Id. When an agency seeks to procure separate and multiple requirements under a single contract, there is potential for restricting competition by excluding firms that furnish only a portion of the requirement; we therefore review challenges to such solicitations to determine whether the approach is reasonably required to satisfy the agency's needs. See Northrop Grumman Tech. Servs. Inc., B-406523, June 22, 2012, 2012 CPD ¶ 197 at 7. A protester's mere disagreement with the agency's judgment concerning the agency's needs and how to accommodate them does not show that the agency's judgment is unreasonable. General Electrodynamics Corporation, supra.

Here, the record shows that the agency reasonably decided on its approach of having a single contractor, who would be responsible for selecting all the components of DCGS-A2, and who would bear the responsibility for making certain that those components are integrated, in contrast to the phased approach favored by Palantir. In the written justification for the agency's use of a single-award IDIQ contract for this procurement, the Senior Procurement Executive explained that the "data integration layer requires unified systems engineering and agile software development activities by a single contractor. Ad hoc or independently developed software activities cause technical risks, concerns and significant schedule risk and cost uncertainty . . . To separate the systems engineering, software development, and integration activities would only undermine the cohesive development of a new data management and software architecture." AR, Tab AT, Determination and Findings for use of Single Source IDIQ Contract, at 2.

At the hearing GAO conducted in connection with this protest, the executive director and principal assistant responsible for contracting (PARC) at Aberdeen Proving Ground provided greater explanation regarding the need to have a single contractor with responsibility for selecting the components that would be assembled to meet the DCGS-A2 requirements, and writing the software that would be needed in order to integrate the different components and make them interoperable. Tr. at 203. According to the PARC, the strategy would require the contractor to “be responsible for ensuring that all of the components that are selected . . . interoperate and to ensure that the code associated with that was made available to the government, because it would have been developed at the government expense, therefore ensuring that we had the capability of supporting it in the post-production environment.” Tr. at 203-204. The PARC further explained that, if the government were to buy some of the components and then provide them to a separate system integrator for integration, it would shift risk to the government that the items might not work or might not be able to be integrated. Id. According to the PARC, that approach “puts the government in the middle of selecting certain components and certain pieces, thereby implicitly warranting not only that they will work but they are able to be integrated by the integrator, who would be separate and different.” Id. at 204.

Here, the agency’s approach is reasonably related to its need for a fully integrated and interoperable system made up of a number of specific capabilities, some of which are commercially available and some of which are not. While the agency considered several potential approaches to this procurement, including the phased approach favored by the protester, the agency ultimately concluded that it would have a greater likelihood of success (in that it could avoid certain technical risks, concerns and significant schedule risk and cost uncertainty) by opting to have a single contractor serve as the system integrator in charge of developing and selecting the components and making sure that they can be successfully integrated. AR, Tab AT, Determination and Findings for Use of Single Source IDIQ Contract, at 2. As such, we have no reason to question the approach chosen by the agency or to conclude that the solicitation is unduly restrictive of competition.

The protest is denied.

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General Counsel