



## Redacted Version

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VIA GAO EPDS

August 27, 2018

Office of the General Counsel  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

### **AUTOMATIC STAY REQUIRED**

Attention: Procurement Law Control Group

**Re: Protest of Granite Telecommunications, LLC Under Request for Quotations No. 1605DC-18-Q-00080 Issued by the Department of Labor**

Dear Sir or Madam:

Granite Telecommunications, LLC ("Granite"), 100 Newport Avenue Extension, Quincy, MA 02171 [Tel: (617) 933-5500; Fax: (866) 462-1413; e-mail: sana.sheikh@granitenet.com], through its undersigned counsel, respectfully protests the terms of Request for Quotations 1605DC-18-Q-00080 (the "RFQ" or "Solicitation") that the Department of Labor ("DOL" or "Agency") issued to holders of Enterprise Infrastructure Solutions ("EIS" or "EIS Contract") indefinite delivery/indefinite quantity ("IDIQ") contracts with the General Services Administration ("GSA"). The DOL Solicitation for Enterprise IT Infrastructure and Telecommunications: Voice and Data Services seeks to fulfill "a requirement to provide comprehensive telecommunications and information technology services for integrated network connectivity across multiple sites in the United States and authorized territories." RFQ (June 5, 2018) at 2.

### **INTERESTED PARTY STATUS**

Granite is an interested party because it is a prospective bidder whose direct economic interest would be affected by an award or by the failure to make an award pursuant to the RFQ. See 4 C.F.R. § 21.0(a)(1) (definition of "interested party"); § 21.1(a) ("An interested party may protest a solicitation or other request by a Federal agency for offers for a contract for the procurement of property or services[.]").

### **TIMELINESS**

Granite timely files this protest of the terms of the Solicitation prior to October 1, 2018, the deadline for receipt of quotations. See RFQ Amendment 0003 at 1; 4 C.F.R. § 21.2(a)(1) ("Protests based upon alleged improprieties in a solicitation which are apparent prior to bid

opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals.”).

## **JURISDICTION**

GAO has jurisdiction over this protest pursuant to 41 U.S.C. § 4106(f)(1)(B) and FAR 16.505(a)(10)(i)(B).

## **AUTOMATIC STAY**

DOL must not award a task order pursuant to the Solicitation until this protest is resolved. See 31 U.S.C. § 3553(c)(1) (“[A] contract may not be awarded in any procurement after the Federal agency has received notice of a protest with respect to such procurement from the Comptroller General and while the protest is pending.”); FAR 33.104(b)(1).

## **FACTUAL BACKGROUND**

1. The protester, Granite Telecommunications, LLC, is a leading communications services provider for businesses with multiple locations, and one of ten awardees of the GSA EIS contract. Granite is one of six EIS contractors that are “newcomers” to GSA’s government-wide telecommunications contracts—that is, Granite did not perform as a prime contractor on the government’s legacy telecommunications contracts, which included Networx and FTS 2001.

### **THE EIS CONTRACT AND RELATED GSA GUIDANCE TO ORDERING AGENCIES**

2. The EIS Contract is an IDIQ contract, pursuant to which the EIS contractors will compete for the award of fixed-price or time-and-materials task orders. The EIS Contract has a five-year base period and two five-year option periods, and “is the main component of GSA’s telecommunications portfolio.” EIS Fact Sheet<sup>1</sup> at 1. The EIS Contract “is replacing GSA’s current Networx Universal and Enterprise contracts as well as GSA Regional Local Service Agreements for government telecommunications and infrastructure solutions.” *Id.*

3. Among the key objectives for the EIS Contract is the promotion of competition among the vendors. *Id.* According to GSA, “EIS relaxed its geographical coverage requirement from contracts in the past and reduced the number of mandatory services to promote competition.” *Id.* at 3. Specifically, GSA eliminated the Networx contract’s requirement for “ubiquitous” geographic coverage, replacing it with a requirement to provide mandatory services

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<sup>1</sup> The EIS Fact Sheet, which GSA drafted and posted to its public-facing website, is available at <https://www.gsa.gov/technology/technology-purchasing-programs/telecommunications-and-network-services/enterprise-infrastructure-solutions>.

to all government locations in 25 of the top 100 Core-Based Statistical Areas (“CBSAs”). See GSA EIS Fair Opportunity and Ordering Guide (v. 4.0) at 11 n.4.<sup>2</sup>

4. GSA also identified as mandatory only five of the 34 services set forth in the EIS contract solicitation: (i) Virtual Private Network Service (VPNS); (ii) Ethernet Transport Service (ETS); (iii) Circuit Switched Voice Service (CSVS)/Internet Protocol Voice Service (IPVS); (iv) Managed Network Service (MNS); and (v) Access Arrangements (AAs). See EIS Contract § C.1.2. The remainder of the EIS services are optional. The table at Section B.1.2.1.1 of the EIS Contract, attached hereto as Attachment 1, depicts the services individually, and identifies whether each is mandatory or optional.

5. The EIS Contract requires ordering agencies to abide by the “fair opportunity” procedures of FAR Part 16.505. See EIS Contract § G.3.1. Consistent with those procedures, the EIS Contract states that the ordering agency’s contracting officer “must provide each awardee a fair opportunity to be considered for each TO exceeding \$3,500 unless one of the exceptions in FAR 16.505(b)(2) applies.” *Id*; see also FAR 16.505(b)(1)(i). While the ordering agency has broad discretion to develop appropriate order placement procedures under the EIS Contract, the contracting officer must “[n]ot use any method . . . that would not result in fair consideration being given to all awardees prior to placing each order[.]” FAR 16.505(b)(1)(ii)(B).

6. “Fair opportunity” for task orders valued in excess of \$5.5 million must include, at minimum:

- (a) A notice of the [task order] that includes a clear statement of the agency’s requirements[;]
- (b) A reasonable response period (as defined by the [ordering contracting officer] on the [task order])[;]
- (c) Disclosure of the significant factors and sub-factors the agency expects to consider in evaluating proposals, including cost or price, and their relative importance[;]
- (d) If award is made on a best value basis, a written statement documenting the basis for award and the relative importance of quality and cost or price[; and]

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<sup>2</sup> There are 929 CBSAs in total, corresponding to a set of domestic cities in the continental United States and identified in OMB Bulletin No. 13-01, dated February 28, 2013.



- (e) An opportunity for a post-award debriefing.

EIS Contract § G.3.1. The ordering contracting officer “will include the evaluation procedures in the RFQ/RFP and establish the timeframe for responding, giving the contractor a reasonable proposal preparation time while taking into account any unique requirements and circumstances.” *Id.*

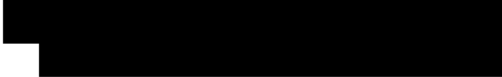
7. In March 2017, approximately four months before announcing the 10 EIS Contract awardees, GSA published the EIS “Fair Opportunity and Ordering Guide” (“Ordering Guide”) “to facilitate the use of the [EIS] contracts and ensure a successful, timely, and orderly transition of telecommunications services from expiring legacy contracts[.]” Attachment 2 at 3.<sup>3</sup> In the Ordering Guide, GSA explains that “[f]air opportunity and ordering activities are organized within three distinct phases – *Acquisition Planning*; *Acquisition Decision and Task Order Award*; and *Administration*. *Id.* (emphasis in original). The first phase “includes key activities that focus on the agency’s inventory and requirements, the acquisition strategy, and the task order solicitation.” *Id.*

8. Among the important elements of an agency’s acquisition strategy is “[d]ividing the agency’s service requirements into logical service groups[.]” *Id.* at 7. In this regard, GSA emphasizes agency discretion to define service groupings that meet agency mission needs, but encourages agencies to consider business-driven tradeoffs and the value of enhanced competition.

Dividing the agency’s service requirements into logical service groups is a key element of the acquisition strategy and will set the course of the fair opportunity activity and ultimately determine the number and scope of EIS task orders. Agencies have broad flexibility to define a wide variety of groupings that meet their mission needs. Service groupings may take the form of site-based requirements, network-based/enterprise-wide requirements, service/technology-based requirements, or a combination of these forms. Groups may be based on service clusters (internet protocol services, dedicated services), technology (voice, data), geographic location (Core Based Statistical Areas (CBSAs)), or any logical clustering of requirements as determined by individual agency needs – such as diversity, redundancy, or unique performance measures.

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<sup>3</sup> GSA has published four versions of the Ordering Guide to date. References herein are to the most recent version (Version 4.0), published June 5, 2018, unless otherwise indicated.



[\* \* \*]

How an agency's service requirements are grouped may impact the proposed prices, workload to evaluate offers, and resources to implement task orders. More groups will generally equate to more complex evaluations, more task orders, a longer transition timeline, and greater administrative burden. Fewer groups may streamline the fair opportunity process and simplify transition to EIS. Agencies should consider the tradeoffs. For example, more service groups will likely attract more vendor interest, a wider variety of potential solutions, and possibly better pricing. *With more groups, niche service providers can selectively choose where to compete and large providers can propose across multiple groups and offer economies of scale. Fewer service groups will lead to fewer awards and fewer contractors to oversee – resulting in a more manageable operational life cycle.*

*Id.* at 7-8 (emphasis added). Thus, as GSA understands the EIS contracts (which it awarded and administers), “[e]ach service group will undergo an independent fair opportunity competition and will result in the award of one or more task orders.” *Id.* at 7 (emphasis in original).

9. The EIS Contract contemplates the possibility of task order solicitations that request CBSAs and/or optional services that not all contractors will offer at the time of the solicitation's release. In either situation, however, the EIS Contract allows contractors to submit a proposal in response to the solicitation, provided it also seeks to modify its EIS contract to add the missing CBSA(s) or service(s):

If a contractor is missing a CBSA, the contractor may respond to a solicitation and then submit a modification for the missing CBSA in accordance with clause H.30 Expansion of Core Based Statistical Areas. In addition to the CBSA requirement, if a contractor does not have a particular optional service on its contract, and an agency issues a solicitation including that service as a requirement, the contractor may submit a proposal or quote for the requirement provided it also submits a modification proposal to GSA to add the necessary services to its contract and so indicates in the solicitation. The contractor shall not accept a TO or service order or provision services not on its contract.

In both cases (a missing CBSA or missing service), the contractor shall include a clear notice of the pending modification in its response to the solicitation.

EIS Contract § G.3.2.5. The EIS Contract does not contemplate illogical groupings of services in task order solicitations, nor does it address circumstances in which a contractor that wishes to compete for a task order is unable to secure from GSA an EIS contract modification to add services within an arbitrary time period established by the ordering agency.

10. The Ordering Guide echoes the EIS Contract, and instructs ordering agency contracting officers to wait until a contract modification is complete before awarding a task order for the services and/or CBSAs that are subject to an EIS Contract modification request:

An EIS contractor may respond to a task order solicitation when there is a modification pending but are [sic] required to specify in its proposal that a modification has been submitted to GSA to add the service or the CBSAS to their EIS contract. Agencies should note that the submission of the contract modification to GSA is not sufficient to allow the OCO to proceed with the issuance of a task order award, where the contractor is missing a CBSA, service or service/CBSA combination. The OCO must wait until the contract modification is complete before making an award.

Attachment 2 § 4.3.2.

11. Granite's EIS Contract, as awarded, includes 12 services: (i) CSVS; (ii) Audio Conferencing Service (ACS); (iii) AA; (iv) Cable and Wiring (CW); (v) Service Related Equipment (SRE); (vi) Service Related Labor (SRL); (vii) National Security and Emergency Preparedness (NS/EP); (viii) Ethernet Transport Service (ETS); (ix) Internet Protocol Voice Service (IPVS); (x) Managed Network Service (MNS); (xi) Virtual Private Network Service (VPNS); and (xii) Internet Protocol Service (IPS).

Granite's EIS Contract does not include Managed Trusted Internet Protocol Service (MTIPS) or Dark Fiber Service (DFS), among other optional EIS services.

## THE DEPARTMENT OF LABOR RFQ

12. On June 7, 2018, the U.S. Department of Labor's ("DOL") Office of Procurement Services issued a solicitation for task order proposals from EIS contractors to transition, by May 2020, all of DOL's "legacy telecommunications and information technology services and associated equipment from its expiring Networx, Washington Interagency Telecommunications System (WITS3), and Local Service Agreements (LSA) contracts[.]" RFQ (July 11, 2018)<sup>4</sup> at 25.

<sup>4</sup> DOL issued three amendments to the solicitation, the last of which (dated July 18, 2018) consisted of a cover sheet and a conformed copy of the final version of the solicitation. All references herein are to that final version of the solicitation except where noted otherwise.

DOL's "requirements include the design, engineering, provisioning, management, transition, maintenance and evolution of existing and new telecommunications services used by DOL to support its mission." *Id.* at 29.

13. The solicitation lists the following 25<sup>5</sup> distinct EIS services that DOL seeks in order "to replace or upgrade the current environment in an orderly phased approach":

- Access Arrangements (AAs)
- Audio Conferencing Service (ACS)
- Circuit Switched Data Service (CSDS)
- Circuit Switched Voice Service (CSVs)
- Cable and Wiring Service (CWS)
- Contact Center Service (CCS)
- Dark Fiber Service (DFS)
- Ethernet Transport Service (ETS)
- Internet Protocol Service (IPS)
- Internet Protocol Voice Service (IPVS)
- Managed Network Service (MNS)
- Managed Security Service (MSS)
- Managed Trusted Internet Protocol Service (MTIPS)
- National Security and Emergency Preparedness (NS/EP)
- Private Line Service (PLS)
- Service Related Labor (SRL)
- Service Related Equipment (SRE)
- Toll Free Service (TFS)
- Unified Communications (UC) (Optional)
- Virtual Private Network Service (VPNS)
- Web Conferencing Service (WCS)
- Cloud Services (Optional):
  - Infrastructure as a Service (IaaS)
  - Platform as a Service (PaaS)
  - Software as a Service (SaaS)
  - Content Delivery Network Service (CDNS)

*Id.* at 29-30.

14. Of those 25 services, only five are identified in the Solicitation as optional. The Solicitation identifies MTIPS, for example, as mandatory, though it was optional under the EIS Contract, and fewer than half of the EIS contractors can currently deliver MTIPS. The Office of Management and Budget ("OMB") first introduced MTIPS in November 2007 in OMB Memorandum 08-05. GSA and the Department of Homeland Security ("DHS") jointly developed

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<sup>5</sup> This number counts four distinct types of Cloud Services rather than a single "Cloud Service" that contains four sub-categories of service.

the requirement for MTIPS, which allows federal agencies to connect to the public Internet and other external connections in compliance with OMB's Trusted Internet Connection ("TIC") initiative.

15. For Granite and other similarly situated EIS contractors, the process for implementing the requirements for MTIPS and obtaining the necessary and related DHS and GSA approvals is expensive and time consuming. Such implementation and approval would require far more than the 60 days the DOL has allotted for offerors to accomplish EIS contract modifications without risk of an adverse effect on their technical evaluation rating. In this regard, the Solicitation allows contractors to modify their EIS Contracts to add services and/or CBSAs not currently offered, but warns that "a proposal requiring Task Order modifications (such as the addition of Core Base Statistical Area (CBSA) coverage not on the Offeror's Task Order as of submission of the proposal) may receive a lower technical evaluation." Solicitation at 137. The only way to avoid the possibility of such a "lower technical evaluation" is to: (1) submit service modifications to GSA prior to submitting proposals to DOL; and (2) receive approval of such modifications from GSA "within 60 calendar days of the service modification submission date[.]" *Id.*

16. Twelve of the 20 mandatory services listed in the DOL solicitation can be delivered to DOL entirely independent of MTIPS, as depicted in the following table:

DOL Service	Relationship to MTIPS
Dark Fiber Service (DFS)	Independent
Circuit Switched Data Service (CSDS)	Independent
Circuit Switched Voice Service (CSVs)	Independent
Toll Free Services (TFS)	Independent
Audio Conferencing Service (ACS)	Independent
Web Conferencing Service (WCS)	Independent
Access Arrangements (AA)	Independent
Cable and Wiring (CW)	Independent
Service Related Equipment (SRE)	Independent
Service Related Labor (SRL)	Independent
National Security and Emergency Preparedness (NS/EP)	Independent
Internet Protocol Voice Service (IPVS)	Independent

Of those 12 services, [REDACTED]. Like MTIPS, [REDACTED] were optional services for the EIS contract, and have no logical or technical relationship to other services such that an agency would need to acquire them together and from the same contractor.

17. Though DOL reserves the right to award multiple task orders to satisfy requirements at various DOL locations, the solicitation makes plain the Agency's intent to award a single task order for all of the mandatory and optional services described in the solicitation.

DOL intends to conduct a single Fair Opportunity competition in accordance with the procedures set forth in Federal Acquisition Regulation (“FAR”) Part 16. DOL has determined that a single award total solutions approach is most likely to ensure competition and economies of scale followed by a non-disruptive transition and manageable operational phase. While DOL envisions a single task order award for all the work contemplated herein, DOL reserves the right to make task order awards to multiple EIS Contractors to meet the requirements at the various DOL locations or make no awards at all.

The Contractor selected for the award shall provide all personnel, transportation, equipment, tools, materials, supplies, installation, management, supervision, engineering, maintenance, testing, and services necessary to make circuits/services fully operational and to perform all tasks and functions as defined in this solicitation. The resultant [task order] will enable DOL to achieve its vision and to ensure that DOL network operations remain current with best networking practices and incorporate new technologies and services.

*Id.* at 25; see also *id.* at 29 (“The Contractor must have the capability to provide all necessary and relevant services, equipment and supplies to meet the growing network connectivity needs.”). The value of such a single task order, as currently contemplated, likely would exceed \$340 million.

18. The amended Solicitation requires offerors to submit proposals no later than October 1, 2018.

## **GROUND OF PROTEST**

### **THE DOL SOLICITATION UNLAWFULLY DENIES GRANITE A FAIR OPPORTUNITY TO COMPETE FOR THE CONTEMPLATED TASK ORDER.**

As an ordering agency under the EIS Contract, DOL must abide by the “fair opportunity” procedures of FAR 16.505. The EIS Contract states that the ordering agency’s contracting officer “must provide each awardee a fair opportunity to be considered for each TO exceeding \$3,500 unless one of the exceptions in FAR 16.505(b)(2) applies.” EIS Contract § G.3.1; see also FAR 16.505(b)(1)(i). While the ordering agency has broad discretion to develop appropriate order placement procedures under the EIS Contract and FAR 16.505(b)(1)(ii), the contracting officer is expressly required to “[d]evelop placement procedures that will provide each awardee a fair opportunity to be considered for each order,” and is prohibited from “us[ing] any method . . . that would not result in fair consideration being given to all awardees prior to placing each order[.]” FAR 16.505(b)(1)(ii)(A)-(B).

One of the key objectives of the EIS Contract is to promote competition among the awardees. EIS Fact Sheet at 1. In alignment with this goal, the EIS Contract represented a departure from prior contracts in its more “relaxed [] geographical coverage requirement” and its designation of fewer services as mandatory. *Id.* at 3. The Networx contract’s requirement for “ubiquitous” geographic coverage has been replaced by an EIS requirement to provide mandatory services to government locations in 25 of the top 100 CBSAs. See Attachment 2 at 11 n.4. Further, the EIS Contract solicitation identified as mandatory only five of the 34 services set forth in the EIS Contract. The remainder were listed as optional. See EIS Contract §§ C.1.2, C.1.8.1. Thus, by reducing both the geographic coverage requirements and the number of services designated as “mandatory,” GSA set up the EIS Contract in a manner designed to result in more IDIQ contract awards and increased competition for subsequent task orders.

Contrary to the letter and the spirit of the EIS Contract and the applicable regulations, DOL issued a task order solicitation that denies Granite a fair opportunity to compete for the contemplated task order award. As described above, MTIPS is a service that was first introduced in November 2007, and only four of the EIS contractors currently offer MTIPS to federal agency customers. Granite cannot currently offer MTIPS, nor can it reasonably or fairly compete for the award of a single task order that needlessly bundles the services it does currently offer together with MTIPS.

There is neither a logical nor a technical justification for such bundling. As described above, 12 of the 20 mandatory services listed in the Solicitation can be delivered to DOL entirely independent of MTIPS, including:

DOL Service	Relationship to MTIPS
Dark Fiber Service (DFS)	Independent
Circuit Switched Data Service (CSDS)	Independent
Circuit Switched Voice Service (CSVS)	Independent
Toll Free Services (TFS)	Independent
Audio Conferencing Service (ACS)	Independent
Web Conferencing Service (WCS)	Independent
Access Arrangements (AA)	Independent
Cable and Wiring (CW)	Independent
Service Related Equipment (SRE)	Independent
Service Related Labor (SRL)	Independent
National Security and Emergency Preparedness (NS/EP)	Independent
Internet Protocol Voice Service (IPVS)	Independent

Thus, DOL, consistent with the EIS Contract and GSA’s related Ordering Guide, could group these service offerings in a different manner, one that is much less restrictive of competition, and in which the services have a more logical connection between and among each other. For example, DOL might choose to group together voice services—specifically, CSVS, CSDS, IPVS,

and TFS—into a task order competition, separate from secured services related to MTIPS. Such a grouping of voice services logically tracks the same grouping that appears in the EIS contracts. See Attachment 1 (depicting IPVS, CSVS, TFS, and CSDS as components of the EIS Contract’s “Voice Service” service area). DOL also might choose to group together CSVS and AA, the two services that the EIS Contract and the DOL Solicitation identify as mandatory. That grouping would allow all 10 EIS awardees to compete for the award of a task order.

In addition to grouping services in a logical manner, the Agency could allow EIS contractors to submit proposals for one or more of the services already on their EIS contracts, and express an intent and/or a preference to award more than one task order. Such an approach would enable EIS contractors to compete for those services that they are best positioned to deliver, thereby promoting and enhancing competition, and increasing the likelihood that DOL will receive the “best value” that is the goal of the Solicitation.

In this case, however, DOL created a false interdependency among many unrelated services by bundling all of them into a single solicitation with the intent to award only a single task order. Given the presence of MTIPS and DFS in the Solicitation as mandatory services, and DOL’s clear intent to award a single, “winner take all” task order, Granite will not have a fair opportunity to compete for the task order that DOL plans to award. Neither will Granite have a fair opportunity to compete for the right to deliver to DOL any of the individual services that are already on Granite’s EIS Contract, but that are irrationally grouped with MTIPS and DFS, among many other unrelated services. The result is a Solicitation that violates FAR 16.505, and unduly restricts competition among the EIS contractors. See, e.g., *EDP Enterprises, Inc.*, B-284533.6, May 19, 2003, 2003 CPD ¶ 93 at \*5 (sustaining protest where the agency could not demonstrate that bundling of services was necessary to meet its needs and, therefore, was unduly restrictive of competition).

It is no answer for DOL to say that EIS contractors may compete for any task order award by adding missing services to their EIS contracts. The Solicitation allows for modifications of the EIS Contracts to add services and/or CBSAs not currently available, but warns offerors that “a proposal requiring Task Order modifications (such as the addition of Core Base Statistical Area (CBSA) coverage not on the Offeror’s Task Order as of submission of the proposal) may receive a lower technical evaluation.” Solicitation at 137. The only way to avoid the possibility of such a “lower technical evaluation” is to: (1) submit service modifications to GSA prior to submitting proposals to DOL; and (2) receive approval of such modifications from GSA “within 60 calendar days of the service modification submission date[.]” *Id.*

The EIS Contract does not require GSA to approve modification requests within a particular timeframe, so DOL has imposed a contract modification requirement that is unreasonably and entirely outside an offeror’s control. For example, offerors without MTIPS

already on their EIS contracts would need significantly more than 60 days to MTIPS as an available service. Furthermore, offerors looking to build their own MTIPS to maintain direct control would need even longer to develop the infrastructure and obtain the necessary approvals. But failing to meet the 60-day requirement, according to the Solicitation as written, means that DOL can penalize an offeror in the evaluation of the most important of all the criteria. Moreover, the 60-day EIS contract modification requirement could pose an undue burden on GSA to assess and approve perhaps dozens of EIS contract modification requests in a very short time period. Thus, DOL “accommodates” Granite and other similarly situated offerors by allowing a 60-day EIS contract modification period, over which the offerors have no control, and by reserving the right to assign those offerors a “lower technical evaluation” when GSA inevitably cannot process the many contract modification requests it receives in the time that DOL allots. This “accommodation” does not cure the unduly restrictive nature of the Solicitation. *See, e.g., National Customer Eng’g*, B-251135, Mar. 11, 1993, 93-1 CPD ¶ 225 at \*\*3 (sustaining the protest and observing that “[t]he issue is not whether there are any potential offerors who can surmount barriers to competition, but rather whether the **barriers themselves**--in this case, the bundling--are required to meet the government’s minimum needs.” (emphasis in original)).

In addition, the Technical Approach evaluation factor, which the solicitation identifies as most important among the factors, provides that “[t]he Government will evaluate the extent to which the technical proposal demonstrates a comprehensive, sound, and reasonable approach to providing Managed Services to the Government as applied to requirements defined in [PWS Sections that include MTIPS, among others.]” *Id.* It is unclear how an offeror like Granite, without MTIPS as a service available on its EIS Contract, would demonstrate a “comprehensive, sound, and reasonable approach to providing” MTIPS—even an approach sufficient only for award of a task order “for particular subsets of services”. The Solicitation provides no answers.

The Past Performance evaluation factor, too, unfairly penalizes contractors that have little or no experience with some of the services described in the Solicitation. In this regard, the Solicitation states, “The past performance evaluation considers each offeror’s demonstrated recent and relevant record of performance in supplying products and services that meet the TO’s requirements.” *Id.* at 141 (emphasis added). The “TO’s requirements,” as discussed above, include many services that the EIS Contract designates as optional, and that few EIS Contractors currently have on contract.

Remarkably, the Agency seems unaware of the harmful effect of its procurement approach on competition among the EIS contractors. In explaining its decision to implement a “single award task order competition” for services that the EIS Contract did not require, and that most EIS contractors cannot currently offer, the Agency asserts that its procurement approach will actually enhance competition. In this regard, the Solicitation states, “DOL has determined that a single award total solutions approach is most likely to ensure competition and economies of scale

followed by a non-disruptive transition and manageable operational phase.” RFQ at 25 (emphasis added). Such a “determination,” if it exists, lacks any rational support.

DOL also might believe that its reservation of the right to award multiple task orders cures the competitive infirmities described above. Such a belief would be wrong. The solicitation acknowledges that not all offerors will be able to offer every service, and states that offerors “will not be excluded solely on the basis of not proposing a solution to every requirement in this solicitation.” *Id.* at 139. The solicitation also provides that “DOL may award separate task orders for particular subsets of services.” *Id.* The evaluation criteria, however—as described above—do not expressly accommodate the award of separate task orders and, collectively, make such an outcome extremely unlikely or impossible.

Thus, the Solicitation provides no basis for EIS Contractors to identify “particular subsets of services” that they wish to offer DOL, and no evaluation criteria that would allow DOL to select contractors that might provide “best value” for some services described in the Solicitation, but not for others. The result is that DOL’s “reservation of rights” to issue multiple task orders is illusory, and fails to cure the unduly restrictive nature of the Solicitation. In any event, the Agency’s obligation under the law is not to issue a solicitation that offers EIS contractors a faint glimmer of hope for the award of a task order of some undefined scope, on a basis that the solicitation does not disclose. Instead, it is to develop and issue a solicitation “that will provide each awardee a fair opportunity to be considered for each order[.]” FAR 16.505(b)(1)(ii)(A). In this regard, the Agency has failed, and this protest must be sustained.

### **REQUEST FOR DOCUMENTS**

Pursuant to 4 C.F.R. § 21.1(d)(2), Granite requests that the Agency produce the following documents in addition to the records required by GAO’s Bid Protest Regulations to be included in the Agency Report, all of which are relevant to the protest grounds identified herein.

- (1) A complete copy of the RFQ and all amendments thereto.
- (2) The Agency Transition Plan, or any similar document that describes the Agency’s transition strategy, priorities, and objectives in conjunction with its approach to making a fair opportunity decision and ordering.
- (3) The Agency’s determination, and any related documents, that the award of a single task order “is most likely to ensure competition and economies of scale followed by a non-disruptive transition and manageable operational phase.” RFQ at 25.
- (4) All documents reflecting, relating to, or constituting the analysis and approval by GSA of the DOL Solicitation, including the PWS.



- (5) All documents reflecting, relating to, or constituting the Agency's acquisition planning, including documents relevant to the grouping of services in the Solicitation, the identification of such services as mandatory or optional, and the decision to award (or favor the award of) a single task order for all services identified in the Solicitation.

### **REQUEST FOR HEARING**

Granite reserves the right to request a hearing, pursuant to 4 C.F.R. § 21.7(a), if the Agency contests any of the factual allegations herein, or if the Agency Report and the documents produced in response to Granite's requests fail to reveal relevant facts or otherwise constitute an incomplete record.

### **REQUEST FOR PROTECTIVE ORDER**

Granite requests that GAO issue a protective order to govern the disclosure and handling of proprietary and source selection sensitive information. See 4 C.F.R. § 21.4(a).

### **REQUEST FOR RULING AND RELIEF**

Granite respectfully requests that the Comptroller General sustain this protest and recommend that the Agency take appropriate corrective action, including the following:

- (1) Amend the Solicitation to allow EIS contractors to submit proposals and fairly compete for award of one or more services already on their EIS contracts;
- (2) Reimburse Granite's costs of pursuing this protest, including attorneys' fees; and
- (3) Award all other relief that GAO deems appropriate.



Office of the General Counsel  
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Respectfully submitted,

A handwritten signature in blue ink, reading "David E. Fletcher", is positioned above the typed name.

David E. Fletcher  
Erin M. Estevez

*Counsel for Granite Telecommunications, LLC*

Attachments

cc: Michael D. Jackson  
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