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Decision

Matter of: RCR Properties, G.P.

File: B-414590

Date: July 21, 2017

Diana Parks Curran, Esq., John Ringhausen Esq., Curran Legal Services Group, Inc., for the protester.

Jennifer L. Hedge, Esq., Department of Veterans Affairs, for the agency.

Frank Maguire, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. A solicitation requirement that is burdensome, or even impossible for a particular firm to meet, does not make the requirement objectionable if it properly reflects the agency's needs.
 2. In light of the broad discretion afforded contracting agencies in taking corrective action, agency properly cancelled solicitation when it discovered several flaws in the solicitation that needed to be addressed.
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DECISION

RCR Properties, G.P. (RCR), of Lima, Ohio, protests the terms of the Department of Veterans Affairs' (VA) request for lease proposals (RLP) No. VA250-17-R-0273 LIMA/OHIO, for space for a VA medical facility. RCR also protests the VA's decision to cancel an earlier solicitation, RLP No. VA250-15-R-0461, for the same requirement. The protester contends that the terms of the current RLP are restrictive of competition and that the agency lacked a reasonable basis for canceling the earlier solicitation.

We deny the protest.

BACKGROUND

RCR is the incumbent and currently-performing lessor for the VA outpatient clinic in Lima, Ohio. On April 4, 2017, the VA issued request for lease proposals (RLP) No. VA250-15-R-0461 LIMA/OHIO. Award was made to LIMA IV Medical Properties on

September 29, 2016. RCR protested that award to our Office on October 17, 2016. In its protest, RCR asserted that the VA failed to evaluate proposals in accordance with the terms of the solicitation. The VA subsequently advised our Office that it would take corrective action as follows:

After reviewing the protest, VA has determined that it may not have adhered to required procurement regulations and therefore corrective action is necessary. Therefore, at a minimum VA intends to terminate the contract award, amend the solicitation if necessary, re-open discussions and make a new award decision.

Agency Report (AR), Tab 4, Corrective Action Letter, Nov. 8, 2016. We dismissed the protest as academic on November 16, 2016. RCR Properties, G.P., B-414016, Nov. 16, 2016 (unpublished decision).

In implementing the agency's corrective action, the contracting officer noted the following shortcomings in the existing RLP:

While reviewing the old RLP, I noted a major flaw – the RLP failed to require the incumbent to address how the existing clinic could be converted to the Patient Aligned Care Team (PACT)¹ configuration without disrupting clinic operations. In addition, the solicitation did not provide information, other than a conceptual diagram, of the PACT requirement. This RLP was also written as a lowest price technically acceptable procurement; based on my experience, FAR [Federal Acquisition Regulation] 15.101-1, Tradeoff Process, would provide a better opportunity to obtain the best value for the leased property.

Leasing Contracting Officer (LCO) Statement of Facts (LCOS) at 2.

The LCO subsequently determined that rather than amend the solicitation, reopen discussions, and make a new award decision, the agency would issue a new solicitation. In support of his decision to initiate a new procurement, the LCO noted:

A new procurement would permit the LCO to “cleanly address the current needs of the facility and issues not documented in the previous solicitation, to include additional details on PACT, the build out of the incumbent's space and changes to the service's requirements.”

¹ The PACT configuration “requires team rooms be surrounded by patient care rooms to facilitate collaboration between medical team members.” In addition, a PACT clinic “permits care to be brought to the veteran patient in a universal examination room rather than moving the patient between points of care.” RLP No. VA250-17-R-0273 LIMA/OHIO, AR Tab 33, at 9, § 2.01 C.

LCOS at 3.

The VA issued the second RLP on April 4, 2017. The solicitation set the due date for offers as April 24.² RCR protested to our Office on April 14.

DISCUSSION

The protester argues that it was improper for the VA to fail to implement the corrective action set forth in its request for dismissal of RCR's first protest, and instead to cancel the first RLP and issue a new solicitation. The protester also argues that several terms of the new RLP impair its ability to compete. As discussed below, we find that neither argument provides a basis to sustain the protest.

First, with regard to the protester's complaint that the agency failed to implement its proposed corrective action, the details of corrective action taken in response to a protest are within the sound discretion and judgment of the contracting agency. KNAPP Logistics Automation, Inc.--Protest & Costs, B-404887.2, B-404887.3, July 27, 2011, 2011 CPD ¶ 141 at 3. We generally will not object to a specific corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. Networks Elec. Corp., B-290666.3, Sept. 30, 2002, 2002 CPD ¶ 173 at 3. Because termination of the award to Lima IV and issuance of a new solicitation would remedy several concerns that the LCO had regarding the first solicitation, LCOS at 3, we have no basis to object to the agency's decision to pursue this course of action as opposed to the previously proposed corrective action.

Further, to the extent the protester argues that it was improper for the agency to cancel and resolicit when it could have amended the existing solicitation and made a new award under it, an agency may properly cancel an RLP when it has a reasonable basis for doing so. See e.g., AeroSage LLC, B-410648.2, B-410648.3, Mar. 20, 2015, 2015 CPD ¶ 111 at 3. A reasonable basis exists where the agency finds that the solicitation does not accurately reflect its needs, as happened here. Logistics Solutions Group, Inc., B-294604.7, B-294604.8, July 28, 2005, 2005 CPD ¶ 141 at 3 (agency took corrective action, promising re-evaluation of existing proposals, but ultimately cancelled the solicitation and issued a new solicitation when it reasonably determined that the existing solicitation did not meet its needs).

As noted above, the protester also objects to several provisions of the new solicitation on the basis that they impair its ability to compete. In particular, RCR objects to the RLP's best-value selection methodology, as well as language in RLP §§ 21.0 F and G pertaining to build-out space and phased modification of the incumbent's building.³

² The due date was subsequently extended to May 25.

³ We note that the protester raised a number of additional complaints regarding allegedly restrictive requirements in its protest. The agency responded to these arguments in its report, but the protester did not address the agency's response in its
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RCR further complains that the agency improperly changed the award methodology from lowest-priced technically-acceptable (LPTA) in the first RLP to a best-value tradeoff in the second RLP. According to the protester, this change was “not necessary in meeting the agency’s needs in this procurement,” and therefore was “overly restrictive.” Protest at 6.

It is within an agency’s discretion to decide what type of award methodology will best meet its needs. Olympus Bldg. Servs., B-411474 et al., July 30, 2015, 2015 CPD ¶ 227 at 3. Here, the LCO reasonably determined that a best-value tradeoff evaluation scheme would better meet the agency’s needs than an LPTA scheme. In fact, the LCO explains that, based on his experience, the tradeoff process will provide a better opportunity to obtain the best value for the leased property. LCOS at 2.

The protester also challenges RLP §§ 2.01 F & G, arguing that the language of these sections unfairly disadvantaged it and prevented it, as the incumbent lessor, “from effectively participating in the competition.” Protest at 7-8; Protester’s Comments at 11-12. The sections in question provide as follows:

F. The Offeror must be able to deliver the built-out space within three (3) months of the notice to proceed (issued in the form of a lease amendment) and state such in the proposal

G. If the incumbent submits a proposal to lease the existing space, the following shall apply:

- If increasing the ABOA square footage as outlined in paragraph 2.01.B, the incumbent’s proposal must address the methodology for increasing the offered space. The method undertaken must address how doing so will not interfere with clinic operations, i.e. will not: reduce available parking; reduce clinic entrance or egress; increase noise and dust in the clinic environment; reduce existing clinic space.
- As part of the proposal, the offeror must provide alternate clinic space with a minimum square footage equivalent to the existing clinic so that operations are not affected by the offer of the clinic space. The alternate space must provide at least the same number of rooms as the existing space and must be large enough for clinical operations

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comments. Under such circumstances, we view these arguments as abandoned. Earth Res. Tech., Inc., B-403043.2, B-403043.3, Oct. 18, 2010, 2010 CPD ¶ 248 at 6.

- The offeror must provide the space within ten days of the notice to proceed with build out. The notice to proceed will be issued after approval of construction grade drawings by the VA.
- Costs for movement to the alternate space shall be borne by the offeror. The move must take place over a weekend time period approved by the VA. The government shall bear the responsibility and cost of moving from the alternate space to the offered space.
- Alternate space must be within the delineated area outlined in this RFP.
- A secure, wireless network must be provided by the offeror in the alternate space.
- Because conversion of the current space into one that can accommodate a PACT model would require extensive renovations and because the VA clinic needs to remain fully operational at all times, the government will not entertain an offer which outlines a phased modification to the existing clinic.

RLP, Tab 33, at 9.

A contracting agency has the discretion to determine its needs and the best method to accommodate them. General Electrodynamics Corp., B-298698, B-298698.2, November 27, 2006, 2006 CPD ¶ 180 at 3. A protester's disagreement with the agency's judgment concerning the agency's needs and how to best accommodate them, without more, does not show that the agency's judgment is unreasonable or not rationally supported. USA Fabrics, Inc., B-295737, B-295737.2, Apr. 19, 2005, 2005 CPD ¶ 82 at 5. Where a protester challenges a specification or requirement as unduly restrictive of competition, however, the procuring agency has the responsibility of establishing that the specification or requirement is reasonably necessary to meet the agency's needs. See, e.g., Northrop Grumman Technical Servs., Inc., B-406523, June 22, 2012, 2012 CPD ¶ 197 at 8. Our Office will examine the adequacy of the agency's justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. Id. Furthermore, 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. Y&K Maint., Inc., B-405310.2, Oct. 17, 2011, 2011 CPD ¶ 239 at 5.

RCR argues that because phased modifications are prohibited under the second RLP, it is "only permitted to offer alternate space." Protest at 7; see Comments at 12-13. The protester maintains that the alternative space requirements "are so unduly restrictive that they render the incumbent a nonviable candidate." Id. The protester asserts that this means that, as the incumbent, it would be required to build out an equivalent alternate space in its entirety, move all VA operations there while the original space is renovated, and then move the VA back to the renovated original space upon

completion. Id. The protester asserts that this is “clearly engineered to force the incumbent out of competition.”⁴ Id.

The agency responds that it “had specific discussions on whether phasing was permitted for this lease and determined that it would disrupt patient care and was not a viable option.” MOL at 11; see Tab 7 at 2; Second RLP at 6. A memorandum dated Mar. 31, 2017, from the VA Acting Chief of Primary Care Services, advised:

Simply put, clinical operations [at the current location] cannot be done while this work is on-going. Clinical operations will need to be conducted at an off-site location during the project.

AR, Tab 26, Continuity of Operations Memorandum, Mar. 31, 2017, at 1.

The VA points out that “incumbent lessors may face unique and unequal burdens as compared to non-incumbent offerors when solicitations require demolition and renovations,” but that “such disadvantages are not necessarily unreasonable or unduly restrictive of competition.” MOL at 11-12, citing Exec Plaza, LLC, B-400107, B-400107.2, Aug. 1, 2008, 2008 CPD ¶ 143 at 10. In Exec Plaza, as here, the solicitation included terms that applied only to the incumbent lessor, including demolition requirements and the requirement of “swing space.” The protester in Exec Plaza challenged these terms as restrictive of competition since they were “burdensome” and applied only to it. Id. at 2. We explained that while “we recognize that potential non-incumbent lessors may receive a competitive advantage by not having to address the need for swing space in their offers, we think an agency is not required to remove the advantage unless it results from preferential treatment or other improper actions by the government.” Id. at 10.

We find the agency’s explanations to be reasonable here. The LCO received an unambiguous memorandum from the Chief of Primary Care Services, advising that clinic operations would need to function at existing capacity during necessary renovation work, but “could not be maintained alongside any construction/renovation.” AR Tab 26. We acknowledge that these restrictions could have a significant impact on the protester, which must “construct the identical space twice” to comply with the government’s requirements. Protest at 7. As indicated above, however, the fact that a

⁴ In its April 14 protest, RCR also complained that the three-month time frame for build-out of the PACT was unreasonable given that the PACT design requirements “are extensive and have specific requirements for everything from exam room sizes and corridor spaces to the overall layout of the facility.” Protest at 8. In response, the agency noted that it was “in need of additional space for its clinic,” and explained that it had previously, on larger leases, successfully identified three months as appropriate for build out. Memorandum of Law (MOL) at 14. We find the agency’s explanation reasonable; we also note that the protester did not seek to rebut the agency’s explanation in its comments.

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. See Y&K Maint., Inc., supra.

The protest is denied.

Susan A. Poling
General Counsel