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Decision

Matter of: APRO International

File: B-415149.2

Date: November 29, 2017

John J. O'Brien, Esq., and Daniel J. Strouse, Esq., Cohen Mohr LLP, for the protester. Debra J. Talley, Esq., and Kenneth C. Gilliland, Esq., Department of the Army, for the agency.

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DIGEST

Protest challenging the terms of the solicitation as being unduly restrictive of competition is denied where the record shows that the terms of the solicitation were reasonably necessary to meet the agency's needs.

DECISION

APRO International, of Vienna, Virginia, protests the terms of request for proposals (RFP) No. W15QKN-17-R-1051, issued by the Department of the Army for tactical water distribution system and water storage and distribution systems training. APRO, the incumbent contractor, argues that the terms of the solicitation are unduly restrictive of competition and reflect an agency bias against the firm.

We deny the protest.

BACKGROUND

The RFP, issued on June 30, 2017, as a small business set-aside, contemplated the award of a contract with fixed-price and cost-reimbursable contract line item numbers for a 1-year base period and two 1-year option periods. Agency Report (AR), Tab 8, RFP at 1-3. The RFP sought the provision of all equipment, supplies, facilities, and non-personnel services necessary to train water purification teams in the operation of tactical water distribution systems and water storage and distribution systems. Performance Work Statement (PWS) at §1.1. Award was to be made to the lowest-priced, technically acceptable (LPTA) offeror, considering two factors: technical/mission capability and price. RFP, Evaluation Factors for Award, §1.1.

The technical/mission capability factor was comprised of two subfactors: technical approach and management approach. Id. at § 2.1. To be considered technically acceptable overall, offerors needed to receive an acceptable rating for each subfactor. Id. at § 1.1. The agency was to assign a rating of acceptable or unacceptable for each subfactor based on the offeror's ability to demonstrate an understanding of the requirements for all task areas described in the PWS. Id. at § 2.2. Additionally, in response to the price factor, offerors were required to complete a labor category matrix as part of their price proposal submissions. Id. at § 1.1.

On August 22, the agency issued RFP Amendment 0003, which clarified that an "acquired degree" under the qualification tab of the labor category matrix could be a bachelor's degree earned at a 4-year institution or an associate's degree at a 2-year institution. AR, Tab 12, RFP amend. 0003 at 1. The amendment provided that all fields of study were acceptable to satisfy the degree requirement. Id.

On August 24, APRO protested the terms of the RFP on the grounds that they were ambiguous and contained unduly restrictive specifications. APRO Protest, B-415149, at 9. Relevant to the instant protest, APRO alleged that the requirement for the program manager to have a bachelor's or associate's degree "in any field" was irrational and not reasonably related to the agency's minimum needs. Id. In response to the protest, the agency stated that it would take corrective action by re-examining its requirements, amending the solicitation to eliminate ambiguities and accurately reflect its needs, and allowing offerors to submit revised proposals. Notice of Corrective Action, B-415149, at 1. Our Office then dismissed APRO's protest as academic.

On September 12, the agency issued RFP Amendment 0004, which clarified the personnel duty descriptions contained in the PWS, including amending the required qualifications for the program manager. AR, Tab 14, RFP amend. 0004; PWS § 1.6.11.2.1. The amendment required that the program manager have a bachelor's degree and a minimum of 10 years of demonstrated technical experience in water purification training, water operations, and knowledge of water force structures and systems. Id. The amendment also added the requirement that the program manager be on-site on a full-time basis. Id. Amendment 0004 provided that offerors could submit revised proposals in response to the amendment by September 19.¹ On September 13, the agency issued RFP Amendment 0005, which removed the labor category matrix, as well as all references to the matrix, from the solicitation in its entirety. AR, Tab 16, RFP amend. 0005, at 1. APRO's instant protest to the terms of the RFP followed on September 18.

¹ APRO did not submit a revised proposal in response to the amendments issued by the agency. AR, Contracting Officer's Statement/Memorandum of Law (COS/MOL), at 5.

DISCUSSION

APRO argues that the terms of the RFP are unduly restrictive of competition. In this regard, APRO argues that requiring the program manager to have a bachelor's degree, but allowing that degree to be in any field of study, is irrational and not reasonably related to the agency's minimum needs. Protest at 6. APRO also alleges that the agency added the new requirement that the program manager be on-site on a full-time basis specifically to prevent APRO from submitting a compliant proposal because it was biased against the firm. Protest at 7-8. We address both allegations and find that neither provides a basis to sustain the protest.²

Unduly Restrictive Specification

As noted above, the RFP, as amended by RFP amendment 0004, required that the program manager have a bachelor's degree and a minimum of 10 years of demonstrated technical experience in water purification training, water operations, and knowledge of water force structures and systems. AR, Tab 15, RFP amend. 0004; PWS § 1.6.11.2.1. Additionally, and at issue here, the RFP stated that any field of study was acceptable for satisfying this degree requirement. AR, Tab 12, RFP amend. 0003 at 1.

APRO argues that the requirement for the program manager to have a bachelor's degree, but allowing the degree to be in any field of study, is irrational and not reasonably related to the agency's minimum needs. Protest at 6. APRO notes that an individual with a degree in music would qualify to be program manager under the terms of the solicitation, even though the work contemplated here relates to training individuals in the operations of water purification and distribution systems. Id. APRO then concludes that this requirement is irrational because a degree in an unrelated field, such as music, bears no reasonable relationship to the work contemplated by the solicitation. Id. APRO also proffers evidence that its "deputy" program manager,³

² APRO also initially argued that amendment 0005, which removed the labor category matrix and all references to the matrix from the RFP in its entirety, rendered the RFP's pricing requirements and price evaluation ambiguous. Protest at 12. On September 19, the agency issued amendment 006, which was issued with the express purpose of "correct[ing] [a]mendment 0005" and adding back the labor category matrix. AR, Tab 17, RFP amend. 0006, at 1. APRO concurred with the agency that the issuance of amendment 0006 rendered this issue moot and withdrew this protest ground.

³ The agency disputes APRO's characterization that this individual served as a "deputy" program manager. AR, COS/MOL, at 9. The agency states that the "deputy" title is a "contrivance of APRO and has no consequence or bearing on the current effort." Id.

currently serving on the incumbent contract, has over 30 years of technical experience in water training and water operations systems, but does not hold a bachelor's degree. Id. As a result, this individual could not serve as the program manager, but an individual with less technical experience and with a degree in an unrelated field would be an acceptable program manager under the terms of the RFP. Id. Therefore, according to APRO, the requirement unduly restricts competition without providing any benefit to the agency. Id.

Where a protester challenges a specification as unduly restrictive, that is, challenges both the restrictive nature of the specification and the agency's need for the restriction, the agency has the responsibility of establishing that the restrictive specification is reasonably necessary to meet its legitimate needs. GlobaFone, Inc., B-405238, Sept. 12, 2011, 2011 CPD ¶ 178 at 2. The adequacy of the agency's justification is ascertained through examining whether the agency's explanation is reasonable, that is, whether the explanation can withstand logical scrutiny. Id. Once the agency establishes support for the challenged solicitation term, the burden shifts to the protester to show that it is clearly unreasonable. Id.

The agency contends that the degree requirement is reasonable given the complexity of the services being procured. AR, COS/MOL, at 7. The agency notes that the program manager must control funding, write programs of instruction, and coordinate the water purification and distribution training program requirements. AR, Tab 7, Education Requirement Justification, at 1. According to the agency, the program manager must have the ability to read and write correspondence and brief complex issues to senior leaders. Id. The agency further notes the program manager is entrusted with safeguarding over \$100 million in government equipment. Id. Additionally, the agency highlights the critical nature of the work being procured. It states that soldiers trained under this requirement are tasked with providing potable drinking water to military members and civilians, including in emergency situations. AR, COS/MOL, at 8. As a result, the agency states that the program manager must have, at minimum, the professional skills necessarily developed by virtue of obtaining a bachelor's degree in any field, including critical thinking and writing skills. Id.

After considering the agency's arguments and supporting evidence, we find its justifications for requiring the program manager to have a bachelor's degree are reasonable. In particular, we agree with the agency that a bachelor's degree requirement is reasonable given the professional expectations contemplated by the contract. The program manager position has numerous professional skill expectations which necessitate a degree of competence in critical thinking and writing. AR, MOL, at 5, 8. We think it is reasonable for the agency to use a bachelor's degree requirement as a proxy for such skills.

Further, while APRO predicates its challenge to this specification on the fact that the required degree could be in any field, importantly, the RFP coupled the degree requirement with an experiential requirement. The RFP mandated that the program manager also have a minimum of 10 years of technical experience in water training,

water operations, and management and operational knowledge of water force structure and systems. AR, Tab 15, RFP amend. 0004, at 1; PWS § 1.6.11.2.1. As a result, contrary to APRO's assertions, a degree in music or art, by itself, would not be sufficient to satisfy the qualifications for the program manager position. Rather, the program manager would need a bachelor's degree--a proxy for professional skills--as well as a minimum of ten-years of water training and water operations experience. As the experiential requirement ensures the individual has directly relevant experience, we find that the bachelor's degree requirement is reasonably related to the agency's needs of ensuring the program manager also has the requisite professional skills to successfully perform the services contemplated by the contract.

Having considered the agency's rationale for the program manager requirements, and found its rationale to be supported, we now turn to APRO's arguments to determine if it has met its burden to show the agency's specification is clearly unreasonable. We find that APRO has not met its burden.

APRO argues that requiring the program have a bachelor's degree, but in any field of study, is irrational and not reasonably related to the agency's minimum needs. APRO places significant reliance on the fact that its incumbent "deputy" program manager has over 30 years of water purification experience, 28 of which have been in supervisory and management roles.⁴ Comments, exhibit. 1, Declaration of Deputy Program Manager, at 1. Further, APRO asserts that this individual has been successfully performing the function of the program manager role without a college degree. Comments at 3. For example, APRO notes that this individual has briefed complex issues to senior leaders, written programs of instruction, and safeguarded valuable government equipment. Comments at 3-5; Comments, exhibit 1, Declaration of Deputy Program Manager, at 1-3.

APRO's reliance on its "deputy" program manager as the basis for demonstrating the degree requirement is unreasonable is misplaced. The fact that this individual may have sufficient experience and professional skills to successfully perform as the program manager, by itself, does not render the bachelor's degree requirement a clearly unreasonable proxy for the general critical thinking and writing skills necessitated by the contract. Further, as discussed above, the agency has articulated a reasonable basis for why the bachelor's degree requirement is necessary to meet its needs. Consequently, we have no basis to conclude that this requirement is overly restrictive.

⁴ The agency counters that, contrary to APRO's assertions, this individual is not currently performing as a de facto deputy program manager but rather that he lacked decision-making authority and acted as more of a "pass-through" for the off-site program manager. AR, COS/MOL, at 6, 9 (emphasis in original).

Bias

APRO also argues that the agency improperly tailored the RFP to eliminate APRO's ability to submit a compliant proposal when it added the requirement that the program manager be on-site on a full-time basis. Protest at 8. The protester states that, on the incumbent contract, it satisfied the degree requirement by utilizing an off-site program manager, while the "deputy" program manager worked on-site. Protest at 7-8. In support of its accusation of bias, APRO notes that the requirement was added after the agency had taken corrective action and knew that APRO's proposed management structure would be the same that it has used on the current contract. Id. APRO also cites specific instances where agency personnel displayed animosity toward APRO during the performance of the incumbent contract. Id.; Comments at 8-9; exhibit 1, Declaration of Deputy Program Manager at 7 (noting for example, that "[o]n a number of occasions, [he] has gone out of his way to unjustifiably criticize APRO's performance.>").

Government officials are presumed to act in good faith and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Marinette Marine Corp., B-400697 et al., Jan 12, 2009, 2009 CPD ¶ 16 at 29. A protester's contention that procurement officials were motivated by bias or bad faith must be supported by clear and convincing evidence. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-9. APRO's allegations of bias do not meet this standard.

As noted above, where a protester challenges a specification as unduly restrictive of competition, the agency has the responsibility of establishing that the restrictive specification is reasonably necessary to meet its legitimate needs. GlobaFone, Inc., supra. Here, the agency has proffered a reasonable explanation for requiring that the program manager be located on-site. The agency states that the decision to require the program manager be located on-site was based on issues that arose during the course of performance of the current contract. AR, COS/MOL, at 6. In this regard, the agency notes that the "deputy" program manager lacked decision-making authority to promptly respond to day-to-day business decisions and acted as a "pass-through" for the off-site program manager. Id. The agency reexamined its requirements and determined that it needed the program manager to be on-site on a full-time basis in order to be responsive to issues that arose during the course of performance. Id.

Accordingly, we do not view the change in requirements to be merely a pretext by the agency, nor has APRO provided sufficient proof to demonstrate bias. Career Innovations, LLC, supra, (a protester's contention that procurement officials were motivated by bias or bad faith must be supported by clear and convincing evidence). Finally, we note that even if we were to assume that there may have been some personal bias towards APRO on the part of some agency personnel, this does not

provide a basis to conclude that the change in requirements was improper, where, as here, the requirement was reasonably justified. See Starry Assocs., Inc., B-410968.3, Dec. 23, 2015, 2015 CPD ¶ 401 at 6; Bannum Inc., B-411074.5, Oct. 10, 2017, 2017 CPD ¶ 313 at 7.

The protest is denied.

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General Counsel