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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Computers Universal, Inc.

File: B-296501

Date: August 18, 2005

Peter L. Cannon for the protester.

Michael R. Rizzo, Esq., McKenna Long & Aldridge LLP, for abcISP, Inc., an intervenor.

Dennis Foley, Esq., Philip Kauffman, Esq., and Phillipa L. Anderson, Esq., Department of Veterans Affairs, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging solicitation's personnel experience requirements as unduly restrictive of competition is denied where record shows requirements are reasonably related to agency's needs for higher level expertise.

DECISION

Computers Universal, Inc. protests the terms of request for quotations (RFQ) No. 600-134-05, issued by the Department of Veterans Affairs (VA) for information technology services for the Naval Medical Center in San Diego, California.¹ The vendor selected under the RFQ will provide continuous day-to-day operational, technical, software design and development, and programming support for the medical center and its many programs and clinics. Computers Universal, a vendor that previously was issued a task order for performance of the services from April 2003 to September 2004, contends that the current RFQ's personnel experience requirements are excessive and unduly restrictive of competition. Specifically, the protester alleges that the experience requirements, which exceed those it was required to meet under its predecessor task order, were developed solely to favor

¹ The agency explains that it is conducting the procurement on behalf of the Navy under a VA/Department of Defense agreement providing for contracting services to the Medical Center, a major medical training and treatment facility with an extensive framework of research, educational, and clinical programs.

another firm, abcISP, Inc., the firm that performed the services under the protester's prior task order as a subcontractor to Computers Universal.

We deny the protest.

As noted above, Computers Universal was issued a task order for these services in 2003, and subcontracted with abcISP for performance of the services. In 2004, shortly after the protester received a follow-on task order for the services, abcISP protested the selection of Computers Universal; the agency suspended the procurement in light of abcISP's assertion that the protester had improperly submitted the qualifications of abcISP personnel for evaluation. The agency granted Computers Universal an opportunity to submit substitute personnel; having determined that the protester's substitute personnel failed to meet the RFQ's experience requirements, however, VA ultimately terminated the protester's task order in February 2005.² On March 4, after the agency issued a new solicitation for the requirement, Computers Universal protested its terms; that protest was dismissed as academic, however, after the agency discovered errors in the solicitation and cancelled the procurement. The current solicitation, issued on May 2, seeks quotations for a task order for a base period through September 30, 2005, plus 4 option years. Vendors were advised that in evaluating quotations for selection, the three non-price factors, as a group, would be of equal weight to price. The non-price factors were listed in descending order of importance, as follows: evaluation of personnel resumes for compliance with stated qualifications and experience requirements; consideration of the firm's service-disabled veteran-owned status; and past performance. RFQ at 4.

The protester primarily contends that the RFQ's personnel experience requirements exceed the agency's needs and thus are unduly restrictive of competition.³

² To the extent the protester challenges the evaluation of its substitute personnel, and the termination of its 2004 task order, actions that occurred months before the firm filed its current protest, the challenges are untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2005) (protests based upon other than apparent improprieties in a solicitation must be filed within 10 days of when the protester knew or should have known the basis of protest).

³ While the protester also alleges that the agency improperly included an evaluation factor in the RFQ for consideration of the vendors' service-disabled veteran-owned status, that abcISP may have participated in the development of the RFQ's technical requirements, and that the agency has acted in bad faith by favoring abcISP for selection under the RFQ, the protester has neither rebutted the agency's detailed responses in each of these areas, nor provided any evidence to support its continued speculation of improper action in these areas. Accordingly, since a protester's mere inference and speculation is insufficient to establish a valid basis of protest, we will
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Specifically, the firm challenges the requirement that the personnel proposed have more than 5 years experience in specific software and systems environments; Computers Universal essentially argues that more than 5 years of experience is unnecessary, and speculates that the requirements for more experience were included in the RFQ merely to favor abcISP. According to the protester, abcISP has employees with the breadth and diversity of experience to meet the requirements, unlike previous vendors which were not required to meet such standards under prior task orders.

While the determination of an agency's actual needs and the best method of accommodating them is primarily within the agency's discretion, a contracting agency must specify its needs and solicit offers or quotations in a manner designed to achieve full and open competition; restrictive provisions or conditions may be included only to the extent necessary to satisfy those needs. Quality Lawn Maint., B-270690.3, June 27, 1996, 96-1 CPD ¶ 289 at 2. When, as here, a protester alleges that a requirement is unduly restrictive of competition, we will review the record to determine whether the requirement has been justified as necessary to satisfy the agency's actual needs. See Sunbelt Indus., Inc., B-246850, Mar. 31, 1992, 92-1 CPD ¶ 325 at 3. Our Office has recognized that where solicitation requirements relate to health and safety concerns, an agency has the discretion to set its minimum needs so as to achieve not just reasonable results but the highest possible reliability and effectiveness. See Atlantic Coast Contracting, Inc., B-270491, B-270590, Mar. 13, 1996, 96-1 CPD ¶ 147 at 3. Here, the record shows that the RFQ's personnel experience requirements are reasonably related to the agency's needs.

The agency explains that the information technology services sought under the RFQ are critical to the operation of the medical center's complex network of health care facilities, services, and programs, and thus are vital to the protection of the health and safety of the many patients served by medical personnel and programs relying on the vendor's development, operation and maintenance support of the network system. Moreover, the agency explains that it needs the RFQ's additional experience requirements to ensure a higher level of technical expertise than is currently available from agency personnel associated with the network's information technology systems and services. The agency reports that the medical center already has a staff of junior level programmers with 3-5 years experience. The agency explains that it needs the more experienced information technology personnel solicited (some with as much as 8-10 years of specialized information technology experience) because of their understanding and knowledge of the wide scope of software, systems and technical support to be provided under the RFQ, as well as their maturity and ability to work independently and think strategically, while also

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not give further consideration to these unsupported allegations of impropriety. See LSS Leasing Corp., B-259551, Apr. 3, 1995, 95-1 CPD ¶ 170 at 5, n.6.

dealing effectively with the non-technical medical personnel to be serviced under the task order. The agency further reports that in surveying the market for appropriate experience levels for the technical expertise and services it requires, it found that industry employment data showed that advertised job descriptions and responsibilities typically included experience requirements of 8-10 years of relevant experience for software engineering manager, project manager-engineer, and database analyst positions similar to the requirements included in the RFQ.

Since the protester has not responded to the agency's reasonable and detailed support for the challenged personnel experience requirements, we have no basis to question the requirements. Further, the protester has not provided, nor does our review of the record provide, any support for the contention that the higher level of experience required under the RFQ is only intended to favor abcISP, or to disfavor Computers Universal, for selection under the RFQ. Rather, as set forth above, since the agency has adequately demonstrated that the experience requirements are directly related to its needs, the record supports the reasonableness of the challenged requirements. A protester's mere disagreement with an agency's assessment of its needs or solicitation requirements related to those demonstrated needs does not show they are unreasonable. See Purification Indus., Inc., B-261984, Sept. 20, 1995, 95-2 CPD ¶ 143 at 5.

The protest is denied.

Anthony H. Gamboa
General Counsel