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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Allied Protection Services, Inc.

File: B-297825

Date: March 23, 2006

Richard D. Lieberman, Esq., McCarthy, Sweeney & Harkaway, P.C., for the protester. Janet N. Repka, Esq., and Andrew Bramnick, Esq., Department of Defense, for the agency.

Kenneth Kilgour, Esq., and Christine Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Solicitation requirement that offerors have a secret facility clearance prior to the due date for proposals, and agency's decision that it will not sponsor potential offerors for the required security clearance, do not unduly restrict competition where the record shows that the requirement and the agency's decision not to sponsor are reasonably related to the agency's need to ensure that contract performance begins as scheduled.

DECISION

Allied Protection Services, Inc. (APS) protests as unduly restrictive the requirement that offerors have a secret facility clearance prior to the due date for proposals, and the refusal of the agency to sponsor potential offerors for that security clearance, under request for proposals (RFP) No. HQ0034-06-R-1005, issued by the Department of Defense (DOD), Washington Headquarters Services, Acquisition and Procurement Office, for guard services for the Pentagon Force Protection Agency (PFPA). APS argues that the clearance requirement effectively eliminates APS from competition and asserts that offerors without a clearance should be permitted to submit proposals, with the agency then sponsoring the awardees for the required clearance.

We deny the protest.

The RFP, issued on December 21, 2005, anticipates the award of up to five contracts to provide force protection, security, and law enforcement for DOD activities in the National Capitol Region. According to the agency, the RFP contains standards and

security requirements more strenuous than those under the existing contract, reflecting the increased security needs at the Pentagon and other DOD facilities following the September 11, 2001 terrorist attacks. As relevant here, the RFP provides as follows:

The contractor shall hold, at a minimum, an interim secret facility clearance as granted by [the District Industrial Security Clearance Office (DISCO)] prior to the RFP closing date. PFPA will not sponsor offerors for DISCO Security Clearances.

Agency Report (AR), Tab 11, RFP at 60. The facility clearance referred to is an administrative determination that a facility is eligible for access to classified information or award of a classified contract. See National Industrial Security Program Operating Manual, AR, Tab10, § 2-100. The firm seeking a facility clearance must be sponsored by the government or a currently cleared contractor, id. § 2-102; as stated in the RFP, the agency here will not sponsor potential offerors for the facility clearance. In order to implement the new, heightened security standards as soon as possible, the RFP provided for a 30-day transition period immediately after contract award, after which performance would begin. AR, Tab 12, RFP amend. 1, at 2. The agency received 16 offers by closing time on January 18, 2006.

APS argues that the solicitation's facility clearance requirement, coupled with the agency's refusal to sponsor offerors, unduly restricts competition.¹ APS contends that the agency should permit offerors without an existing clearance to submit proposals and agree to sponsor the awardees for the required clearance. APS asserts that, given that it is highly unlikely that a contractor with a clearance would be willing to sponsor a potential competitor, the agency's refusal to sponsor potential awardees makes it virtually impossible to obtain a facility clearance, which in turn eliminates firms without existing clearances from the competition.

The Competition in Contracting Act of 1984 requires that agencies specify their needs and solicit offers in a manner designed to achieve full and open competition, so that all responsible sources are permitted to compete. 10 U.S.C. § 2305(a)(1)(A)(i) (2000). The determination of a contracting agency's needs and the best method for accommodating them is a matter primarily within the agency's discretion. Tucson Mobilephone, Inc., B- 250389, Jan. 29, 1993, 93-1 CPD ¶ 79 at 2, recon. denied, B-250389.2, June 21, 1993, 93-1 CPD ¶ 472. Where a requirement relates to national defense or human safety, as here, an agency has the discretion to define solicitation requirements to achieve not just reasonable results, but the highest level of reliability

¹ APS also protested that the RFP was ambiguous because it did not specify the period of performance for the base or option year periods. The agency, by amendment, took corrective action with respect to this protest ground, which was then withdrawn.

and effectiveness. Caswell Int'l Corp., B-278103, Dec. 29, 1997, 98-1 CPD ¶ 6 at 2; Industrial Maint. Servs., Inc., B-261671 et al., Oct. 3, 1995, 95-2 CPD ¶ 157 at 2. Generally, 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. Computer Maint. Operations Servs., B-255530, Feb. 23, 1994, 94-1 CPD ¶ 170 at 2.

In support of the RFP provision at issue here, the agency states that the lengthy process involved in obtaining a facility clearance, and the possibility of a negative outcome that would render a potential awardee unable to perform the contract, could make the agency vulnerable to delays in contract performance. Given the agency's need to implement increased security for the Pentagon and other facilities as soon as possible, which requires minimizing delays in awarding the contract and expeditiously completing the transition to the heightened security standards, we think that the record establishes that the facility clearance requirement and the agency's refusal to sponsor potential awardees for the facility clearance are reasonably related to the agency's needs. Id. Even assuming that the agency's plan to award multiple contracts mitigates some of the risk inherent in sponsoring awardees, as the protester asserts, the agency, in furtherance of its national security interest, has made a reasonable decision to optimize efficiency by ensuring that each of the multiple awardees is able to begin contract performance immediately upon contract award.

The protester also asserts that the agency should have issued the RFP sooner, so that there would have been more time for firms to obtain the facility clearance in time for performance to begin as scheduled. We find this argument unpersuasive. There is no evidence that the agency unduly delayed issuing the RFP, nor is the agency required to assume the risk that firms without the security clearance that might be selected for award will in fact be unable to obtain the clearance in time for performance to begin as required.

The protest is denied.

Anthony H. Gamboa
General Counsel