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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: AdaRose, Inc.

File: B-299091.3

Date: March 28, 2008

George Holt for the protester.

Vera Meza, Esq., Department of the Army, for the agency.

Eric M. Ransom, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of this decision.

DIGEST

Under solicitation for armaments software engineering support, requirement that offerors have knowledge of and experience with agency software design processes is not unduly restrictive of competition where the record shows that the requirement is reasonably necessary to meet the agency's needs.

DECISION

AdaRose, Inc. protests the decision of the Department of the Army Joint Armaments Contracting Center to amend request for proposals (RFP) No. W15QKN-05-R-0229, for armaments software engineering center support, to enhance certain knowledge and experience requirements. AdaRose alleges that the enhanced knowledge and experience requirements unduly restrict competition. AdaRose also argues the agency's technical rating of its original proposal, a copy of which was provided by the agency as an aid in preparing a revised proposal, in fact was an improper evaluation of its original proposal against the amended solicitation.

We deny the protest.

BACKGROUND

The protest concerns the agency's ongoing attempt to acquire indefinite-delivery/indefinite-quantity contracts for various software engineering, infrastructure, technologies, and equipment support requirements. The RFP represents the first time that ten functional areas representing various weapons

system and infrastructure support requirements have been combined into a single solicitation.¹

AdaRose's original protest of the acquisition, on November 1, 2006, concerned the agency's award decision under the original RFP and alleged among numerous grounds of protest that the agency's rejection of its proposal was inconsistent with the published evaluation criteria, that the agency incorrectly rated AdaRose's past performance as neutral, and that the agency failed to reveal the seriousness of identified weaknesses during discussions. After reviewing that protest, the contracting officer determined that it was in the best interest of the government to take corrective action consisting of setting aside the source selection decision, amending the RFP to provide the clarity needed with regard to the agency's requirements, and requesting revised proposals from the offerors. On that basis, we dismissed the protest on November 29.

Within a month after our Office dismissed that protest, the contracting officer began to detail deficiencies in the original solicitation and to draft amendments. More than 10 months later, however, the agency had not released an amended solicitation or requested revised proposals from the offerors. On October 15, 2007, AdaRose filed a second protest with our Office, alleging that the agency had unduly delayed implementation of its proposed corrective action based on the length of time that had elapsed since our Office had dismissed the original protest, the agency's failure to maintain communication with AdaRose, and AdaRose's view that the agency had demonstrated that it had no intention of allowing AdaRose to obtain work with the requiring activity.

On December 10, 2007, while our Office was in the process of considering AdaRose's second protest, the agency released the amended solicitation in accordance with its proposed corrective action.² The agency also, on the same date, forwarded to each offeror a copy of the agency's technical rating of that offeror's original proposal, as evaluated under the original solicitation. The agency stated that the technical rating was forwarded to each offeror as an aid in submitting a revised proposal under the amended solicitation. Agency Report (AR), Part 1, at 1. Following the release of the amended solicitation, AdaRose, on December 19, filed this, its third protest, challenging the terms of the amended solicitation and the technical rating of its original proposal.

¹ The ten functional areas are: Chemical/Biological Defense; Munitions; Mortars and Common Fire Control; Virtual Trainers; Artillery and Tank Weapon Systems; Department of Defense (DOD) and Army Initiatives; Information Systems and Infrastructure Support; Configuration Management and Library Systems Management Support; Software Process Assurance Support; and ProcessMax System Support.

² We subsequently issued a decision on AdaRose's second protest on January 14, 2008, denying that protest in part and dismissing it in part.

ANALYSIS

AdaRose first contends that the enhanced knowledge and experience requirements incorporated into the amended solicitation are unduly restrictive of competition and improperly favor incumbent contractors. Specifically, AdaRose takes issue with the agency changing phrases in the solicitation such as “extensive knowledge of the organization’s policies and procedures is ‘highly desired’ to ‘is required’ and from ‘knowledge is required’ to ‘experience is required.’”³ Protester’s Comments at 2. AdaRose argues that these changes have the effect of “locking out” outside contractors and providing substantial advantages to incumbents. *Id.* AdaRose states that it believes that the agency is changing the requirements to “handicap a non-incumbent like AdaRose, to justify their original [evaluation],” rather than “acknowledge that their original evaluation was grossly unfair,” and that the agency’s corrective action has not addressed the grounds of AdaRose’s original protest. *Id.*

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit offers in a manner designed to obtain full and open competition and may include restrictive provisions or conditions only to the extent that they are necessary to satisfy the agency’s needs. 10 U.S.C. § 2305(a)(1) (2000). A contracting agency has the discretion to determine its needs and the best method to accommodate them. *Parcel 47C, LLC*, B-286324, B-286324.2, Dec. 26, 2000, 2001 CPD ¶ 44 at 7. Where a protester challenges a specification as unduly restrictive, the procuring agency has the responsibility of establishing that the specification is reasonably necessary to meet its needs. 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. *Chadwick-Helmuth Co., Inc.*, B-279621.2, Aug. 17, 1998, 98-2 CPD ¶ 44 at 3. Where a requirement relates to national defense or human safety, an agency has the discretion to define solicitation requirements to achieve not just reasonable results, but the highest possible reliability and/or effectiveness. *Vertol Sys. Co., Inc.*, B-293644.6 *et al.*, July 29, 2004, 2004 CPD ¶ 146 at 3. Here, we find that the amended requirements are not unduly restrictive.

As a preliminary matter, to the extent that AdaRose argues that the revisions to the solicitation do not fulfill the agency’s promise to address via corrective action the grounds of the original protest, the agency responds that AdaRose’s original protest

³ For example, in the Mortars and Common Fire Control functional area, the original solicitation stated in section 3.9 that experience in the Armament Software Engineering Center’s (ASEC) testing process was “highly desired” and that extensive knowledge of the ASEC’s Organizational Policies and Procedures was “highly desired for this effort.” In comparison, section 3.9 of the revised solicitation states that experience in the ASEC’s testing process “is required” and that extensive knowledge of the ASEC’s Organizational Policies and Procedures “is required for this effort.” Amended RFP at 19-20.

alleged that the solicitation language was not specific enough to warrant the weaknesses and deficiencies that the evaluators had attributed to AdaRose's proposal. AR, Part 2, at 1. Therefore, the agency argues, one principal goal of the proposed corrective action was to revise the solicitation's language to provide the clarity needed with regard to the requirements of the government, which the government had thought were present from the inception of the procurement. Id. Specifically, the agency decided to resolve ambiguities in the requirements by revising the solicitation's language, replacing the word "will" with "shall," and replacing phrases such as "highly desirable" with more accurate descriptions -- usually "required." AR, Part 1, Exhibit 2, Notification of Amendment, at 1. While AdaRose disagrees with this approach, it clearly is a reasonable response to the issues raised by the original protest. See ICON Consulting Group, Inc., B-310431.2, Jan. 30, 2008, 2008 CPD ¶ 38.

In its challenge to the terms of the amended solicitation as unduly restrictive, AdaRose focuses on specific requirements that offerors have knowledge and experience with certain internal agency policies, procedures, and software design processes. The challenged requirements appear in only 3 of the 10 functional areas-- Mortars and Common Fire Control, Artillery and Tank Weapon Systems, and DOD and Army Initiatives. The agency argues that the software support services in these functional areas must be provided by a contractor with knowledge and experience with ASEC processes because the support relates to Army weapons systems and must be performed effectively and at the highest possible reliability level. According to the agency, offerors lacking such knowledge and experience will require more government oversight during performance of the contract, and the risk of schedule disruption and cost overruns will increase.

In its comments on the agency report, AdaRose generally questions whether an agency can require knowledge and experience with an agency's internal policies and procedures as a pre-condition for award, but fails to present any argument as to why such requirements are unnecessary for the agency's particular purposes here, or respond to the agency's explanation of the relationship between the knowledge and experience requirements and the software support services to be provided. See Protester's Comments at 5-6. Given the breadth of the discretion granted to the agency in selecting solicitation criteria where the requirements relate to national defense or human safety, and the protester's failure to rebut the agency's rationale with any specificity, we see no basis to conclude that the challenged requirements are unduly restrictive. See Vertol Sys. Co., Inc., supra.

Moreover, even assuming, as AdaRose argues, that the challenged requirements favor incumbents who, by virtue of their contract performance, possess the required knowledge and experience, any such advantage is not improper where, as here, the requirements are reasonably related to the agency's needs. Further, there is no requirement that an agency equalize or discount an advantage gained through incumbency, provided that it did not result from preferential treatment or other unfair action by the government. Navarro Research and Eng'g, Inc., B-299981, B-299981.3, Sept. 28, 2007, 2007 CPD ¶ 195 at 4; see also LaQue Ctr. for Corrosion

Tech., Inc., B-245296, Dec. 23, 1991, 91-2 CPD ¶ 577 at 6-7. Neither preferential treatment nor other unfair action is alleged or evident here.

AdaRose also contends that the technical rating forwarded to it by the agency is not an evaluation based on the original solicitation, but must be a new evaluation based on the amended solicitation. Protester's Comments at 4. The agency responds that the technical rating provided to AdaRose was based on the original solicitation and was merely provided as an aid in preparing a new proposal under the amended solicitation. AR, Part1, at 1. The agency therefore argues that the technical rating is not a document related to any evaluation under the current procurement and does not provide a basis for protest. We agree.

In our view, there simply is no support in the record for AdaRose's belief that, because the conclusions contained in the technical rating go beyond the evaluation language in the original solicitation, the technical rating must be a current evaluation document. As noted above, the agency has stated that it made the decision to take corrective action after reviewing AdaRose's original protest because it recognized that the solicitation did not clearly reflect the evaluation criteria that the agency actually used in evaluating the proposals. Specifically, the agency has acknowledged that it evaluated the original proposals in the mistaken belief that its intended knowledge and experience requirements were clearly stated in the solicitation. In light of that, we see no inconsistency whatsoever in the fact that the agency's technical rating of AdaRose's proposal under the original solicitation went beyond the stated evaluation criteria in assigning weaknesses and deficiencies. Likewise, it is reasonable that the clarified language of the amended solicitation would hew closely to the evaluation criteria actually followed in the evaluation of the original proposals, as it was the agency's intent to clarify the criteria that the agency had thought were present from the inception of the procurement. In sum, because the protested technical rating is not a evaluation document under a current procurement, any protest based on that document is of solely academic interest and not for further consideration here. See Dyna-Air Eng'g Corp., B-278037, Nov. 7, 1997, 97-2 CPD ¶ 132.

The protest is denied.

Gary L. Kepplinger
General Counsel