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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: G. Koprowski

File: B-400215

Date: August 12, 2008

G. Koprowski, the protester.
Julia P. Hatch, Esq., Department of the Navy, for the agency.
Lauren I. Grossman and Christine S. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation for medical research services requiring the work to be performed on-site at agency violates statute barring agencies from discouraging government contractors from allowing their employees to telecommute is denied where the record shows that the agency reasonably determined that on-site performance was necessary to meet its needs because, among other reasons, the contractor will need to use highly specialized government equipment located on-site to conduct the research, as well as interact with research subjects and other government personnel.

DECISION

G. Koprowski protests the terms of request for quotations (RFQ) No. N0025908T0135, issued by the Naval Medical Center San Diego (NMCS D) for ophthalmologic research services. Mr. Koprowski asserts that the solicitation, which requires the proposed work to be performed on-site, violates certain provisions relating to employee telecommuting in the Services Acquisition Reform Act of 2003 (SARA), Pub. L. No. 108-136, § 1428, 117 Stat. 1392, 1670 (2003).

We deny the protest.

BACKGROUND

NMCS D is a medical treatment facility in San Diego that provides health care services and conducts medical research for military personnel and other eligible individuals. According to the agency, NMCS D needs critical research and

development (R&D) services relating to optical care for active duty personnel, especially for test pilots and others in specialized fields.

The solicitation, issued as a total small business set-aside on May 23, 2008, seeks a senior R&D associate for the Navy Refractive Surgery Center (NRSC) at NMCSO. The RFQ requires the contractor to perform a number of R&D services, including developing research protocols, collecting and analyzing data, interfacing with a team of doctors and technicians, and actively participating in clinical research trials. The RFQ requires the contractor to work 30 hours per week, between 7 a.m. and 6 p.m., at NMCSO and the Branch Medical Clinic Naval Training Center in San Diego, using government-furnished facilities, equipment, and supplies. The RFQ contemplates the issuance of a fixed-price order for an estimated 12 months; quotations were due by June 2.

On May 27, Mr. Koprowski contacted the agency to inquire about the solicitation requirement for on-site services. Citing SARA, discussed in more detail below, Mr. Koprowski challenged the solicitation's limitation on telecommuting proposals. The agency responded that contractors were required to work on-site to meet its requirements, including ensuring data security. Mr. Koprowski subsequently filed this protest with our Office on May 30.

DISCUSSION

Mr. Koprowski challenges the solicitation requirement that the work be performed on-site in San Diego. Mr. Koprowski asserts that the RFQ violates the SARA provisions which prohibit agencies from discouraging contractors from allowing their employees to telecommute in the performance of government contracts. In relevant part, SARA provides as follows:

. . . [S]olicitations for the acquisition of property or services may not set forth any requirement or evaluation criteria that would—

(1) render an offeror ineligible to enter into a contract on the basis of the inclusion of a plan of the offeror to permit the offeror's employees to telecommute, unless the contracting officer first determines that the requirements of the agency, including security requirements, cannot be met if the telecommuting is permitted and documents in writing the basis for that determination; or

(2) reduce the scoring of an offer on the basis of the inclusion in the offer of a plan to permit the offeror's employees to telecommute, unless the contracting officer first determines that the requirements of the agency, including security requirements, would be adversely impacted if telecommuting is permitted and documents in writing the basis for that determination.

Pub. L. No. 108-136, § 1428(b), 117 Stat. at 1670. See also Federal Acquisition Regulation § 7.108 (incorporating statutory provision). Thus, under the plain

statutory language, an agency can exclude or unfavorably rate offerors with a plan to telecommute if the agency's requirements would not be met as a result. Here, the agency asserts that on-site services are integral to the R&D associate's role, and thus it reasonably determined that its requirements could not be met by an offeror with a plan to telecommute. We agree.

A contracting agency has the discretion to determine its needs and the best method to accommodate them. Mark Dunning Indus., Inc., B-289378, Feb. 27, 2002, 2002 CPD ¶46 at 3-4. An agency's justification is considered reasonable if it can withstand logical scrutiny. Chadwick-Helmuth Co., Inc., B-279621.2, Aug. 17, 1998, 98-2 CPD ¶ 44 at 3. A protester's mere disagreement with the agency's judgment concerning the agency's needs and how to accommodate them does not show that the agency's judgment is unreasonable. See AT&T Corp., B-270841 et al., May 1, 1996, 96-1 CPD ¶ 237 at 7-8.

Here, the agency has set forth a number of reasonable explanations for its determination that its requirements would not be met if the contractor worked from a remote location. First, the agency explains that data security will be implicated if the contractor does not work on-site. Specifically, the contractor will need to collect data on-site at NRSC using highly specialized and unique equipment. Additionally, the contractor will need to personally interact with active duty research subjects and government personnel. Further, the agency notes that the research equipment cannot be relocated without compromising data safety and disrupting other critical research. The agency also explains that the solicitation requires the contractor to be on-site for several other reasons, including the need for the contractor to participate in on-site clinical research trials, present research at government facilities, and manage entire research protocols in San Diego. While the protester disagrees generally with the agency's position, he does not respond to or attempt to rebut any of the specific factors the agency relies on to support its position that the work cannot be performed at a remote location.

In sum, while the agency agrees that some work could be performed remotely,¹ we conclude that the agency reasonably determined that the majority of the work called for under the solicitation needs to be performed on-site. As a result, we see no basis to conclude that the RFQ violates the statutory provisions regarding telecommuting which, as noted above, specifically recognize that the provisions do not apply where

¹ The agency states that no more than 10 percent of the specifications could be performed conveniently from a remote location, and no more than 20 percent could be performed without the assistance of a local clerk on-site. Agency Report, Tab 4, Affidavit of NRSC Research Director, June 24, 2008, at ¶ 3.

the agency determines that its requirements cannot be met if telecommuting is permitted.

The protest is denied.

Gary L. Kepplinger
General Counsel