



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: FP&C Consultants, Inc.

File: B-249614

Date: December 9, 1992

Frank Van Overmeiren for the protester,
William E. Thomas, Jr., Esq., Department of Veterans
Affairs, for the agency.
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Agency reasonably imposed a geographic limitation as a prerequisite for consideration of responses to a solicitation for architect and engineer services based on the nature of the project which required prompt site coordination.

DECISION

FP&C Consultants, Inc. protests the rejection of its response to solicitation No. 578-86-92, issued by the Department of Veterans Affairs (VA) for architectural and engineering (A/E) services relating to the installation of a fire protection sprinkler system in the Edward Hines Jr. VA Hospital, Hines, Illinois. FP&C argues that VA improperly used a geographical limitation as a pre-qualification requirement for consideration of responses.

We deny the protest.

This procurement of A/E services is governed by the Brooks Act, 40 U.S.C. § 541 et seq. (1988). VA advertised the solicitation in the Commerce Business Daily (CBD) on June 29, 1992. VA requested experienced A/E firms, who were fire protection engineers and who were "located within [a] 100 mile radius" of Hines, Illinois, to respond to the solicitation by sending Standard Form (SF) 254 "Architect-Engineer and Related Services Questionnaire" and SF 255 "Architect-Engineer and Related Services Questionnaire for Specific Project" to VA by July 30. FP&C timely protested to our Office on July 30, asserting that the announced geographical limitation could only function as an evaluation criterion, not as a pre-qualification requirement.

FP&C and 16 other firms responded by the due date. VA returned FP&C's submission without considering it for award because FP&C was located outside of a 100-mile radius of Hines.

FP&C argues that the geographical restriction authorized by the VA Acquisition Regulation, 48 C.F.R. § 805.207(b) (1992), is inconsistent with Federal Acquisition Regulation (FAR) § 36.602-1(a)(5). The VA regulation states in pertinent part:

"(b) At such time as an architect-engineer evaluation board is ready to advertise for architect-engineer services, it must establish the geographic area within which architect-engineer firms (including joint ventures) will be considered. The area determined must be large enough to assure selection of three to five firms highly qualified for the particular project involved, but not so large as to make the evaluation process unduly burdensome.

"(1) For large projects, the area will generally be Statewide

"(2) For small projects, the geographic area of consideration is appropriately local, but will be wide enough to assure the selection of at least three highly qualified firms."

FAR § 36.602-1(a)(5) states in pertinent part:

"Agencies shall evaluate each potential contractor in terms of its . . . [l]ocation in the general geographical area of the project and knowledge of the locality of the project; *provided*, that application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project." (Emphasis in original.)

The protester points out that the VA regulation requires specific geographic limitations, while the selection scheme required by the FAR provides for consideration of all firms responding to a solicitation, regardless of location, with geographic location being an evaluation factor, not an absolute exclusion. Although FP&C raises a substantial issue, we need not decide the matter here. Agencies may include solicitation requirements necessary to meet their needs. Irrespective of whether the VA regulation is inconsistent with the FAR, the VA may properly impose a geographical limitation on firms responding to an A/E requirement where it reasonably determines that only firms

within the designated area can satisfy its needs. Bartow Group, B-217155, Mar. 18, 1985, 85-1 CPD ¶ 320.

In imposing the 100-mile requirement here, the contracting officer determined that the A/E contractor receiving an award under this solicitation would be required to work closely with the engineering staff on work being performed in patient rooms and other direct patient care areas. In order to avoid delays, the contractor would have to be available close to the site to attend impromptu meetings and to coordinate design decisions with VA engineering staff, who must accommodate the hospital's medical requirements. As a result, the contracting officer concluded that the A/E contractor would need to be located within 100 miles of the project site in order to limit travel time that could delay completion of the project due to postponement of meetings and design decisions. Finally, the contracting officer determined that there were 125 qualified A/E firms within the designated area so that competition would not be unduly inhibited.

FP&C argues that it has successfully performed similar sprinkler design services even where it was not located within 100 miles of the job site. FP&C has not, however, established why the particular reasons for the geographical restriction imposed for this design effort are not reasonable. In our view, the VA has presented a reasonable basis for the geographical restriction here.¹ See Bartow Group, supra.

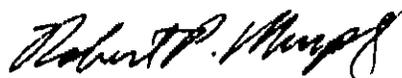
FP&C argues that the geographical restriction was unduly restrictive of competition. However, the VA identified 125 potential sources for these services within the geographical area and received 16 responses to the CBD announcement. See Blaine Hudson Printing, B-247004, Apr. 22, 1992, 92-1 CPD ¶ 380. FP&C nevertheless contends that the 100-mile limitation did not allow for an adequate number of qualified firms to respond to the solicitation. FP&C references a VA construction standard that requires the services of a qualified fire protection engineer for all construction projects involving fire protection or life safety, and states that one qualification of such a fire protection engineer be that he or she possess "[p]rofessional registration as a fire protection engineer with 4 years of experience, or 'Member' status in the National Society of Fire Protection Engineers with at least 6 years of experience in

¹Since the agency had a reasonable basis for this requirement, it properly advertised the limitation so that A/E firms unable to satisfy the requirement would not incur the expense of submitting a response that had no chance of being found acceptable.

fire protection engineering." FP&C alleges that only 2 of the 16 responding firms were affiliated with a fire protection engineer listed in the National Society of Fire Protection Engineers Directory and that the geographical restriction was therefore improper because it did not allow for an adequate number of responses from qualified firms.

The VA determined that, at the time it assessed the impact of the limitation, at least 125 qualified firms were included in that geographical area. Except to the extent noted above, FP&C does not otherwise challenge the qualifications of the 125 firms and the record provides us with no reason to doubt their qualifications. Even assuming that the referenced VA construction standard is applicable to this procurement and that only 2 of the respondents were affiliated with individuals listed in the National Society of Fire Protection Engineers Directory, the VA construction standard can be satisfied not only by membership in the National Society of Fire Protection Engineers (with 6 years of experience in fire protection engineering), but also by registered fire protection engineers with 4 years of experience. The record contains nothing that evidences that the respondents to this procurement, or other potential sources within the geographical area, cannot provide qualified fire protection engineers under that provision of the VA construction criteria.

The protest is denied.


for James F. Hinchman
General Counsel