



Decision

Matter of: Helionix Systems, Inc.

File: B-404905.2

Date: May 26, 2011

Gary L. Rigney, Esq., for the protester.
Leigh Ann Bunetta, Esq., General Services Administration, for the agency.
Paula J. Haurilesko, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Solicitation requirements that key personnel have minimum experience levels and provide personal references, and that the contractor obtain the consent of the contracting officer to replace key personnel, are not unduly restrictive where the agency establishes that the requirements are reasonably necessary to meet the agency's needs.
 2. Protester's contention that a solicitation requires that the costs for a program manager be charged as an indirect cost is denied where the solicitation includes no such requirement; instead the solicitation provides that the program manager cannot be charged as a billable item, but does not dictate how the contractor should account for the program manager's costs.
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DECISION

Helionix Systems, Inc., of Huntsville, Alabama, protests the terms of request for proposals (RFP) No. GS-08P-11-JE-D-0006 issued by the General Services Administration (GSA), Public Buildings Service (PBS), for administrative and technical support services for GSA's Rocky Mountain Region.

We deny the protest.

BACKGROUND

PBS provides workspace for millions of federal employees in government-owned buildings and privately-owned, leased facilities across the nation. Agency Report (AR) at 2. In addition, PBS repairs, alters, renovates, and maintains these facilities.

Id. PBS's Rocky Mountain Region leases, manages, and owns 650 properties in Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. Id.

The RFP, issued as a service-disabled, veteran-owned small business set-aside, provides for the award of an indefinite-delivery/indefinite-quantity contract for administrative and technical support services for the Rocky Mountain Region for a base period and four option years. The solicitation states that contractor staff will assist GSA in "improving processes, streamlining work, and accomplishing the work in the most efficient manner while still providing quality service to GSA and its customer agencies." See RFP amend. No. 5, at 59. In this regard, the RFP estimates a need for 110 employees in a variety of labor categories, such as contract specialist, building operations program specialist, graphics artist, realty specialist, project manager, accounting clerk, computer programmer, security specialist, secretary, and video production specialist. See id. at 69-123, 206. Pricing information is requested for each of these labor categories. See RFP amend. 2, Section E, Attach. A, Price Breakdown Worksheet.

The RFP provides that award will be made on a best value basis, considering price and four non-price factors: key personnel qualifications/experience; past performance; staffing plan; and management and quality control plan. RFP amend. No. 5, at 204-07. The following three required key personnel are identified under the key personnel qualifications/experience factor: program manager, contract administrator, and human resources manager. Id. at 205. The RFP requires that these key personnel must each have at least 5 years experience and submit three personal references. In addition, the RFP informs offerors that the agency will consider the experience and qualifications of key personnel relative to employment management, recruitment efforts, developing questions for interviews, experience with the interview process, experience in resolving performance problems, communication skills, and management style. Id. at 204. The RFP also advises that changes in key personnel during the contract must be approved by the contracting officer. Id. at 59.

With respect to the program manager position, the RFP informs offerors that the program manager will generally oversee the contractor's staff and be the primary interface with government personnel for contract management to ensure satisfactory performance with contract requirements. Id. As relevant here, the RFP provides that the contractor's costs for the program manager "are not a billable item on the [pricing] schedule; therefore GSA anticipates the Program Manager's costs being an overhead expense." See RFP amend. 1, Questions and Answers No. 2.

Prior to the due date for proposals, Helionix filed this protest with our Office.

DISCUSSION

Helionix complains that the solicitation's requirements for key personnel are unduly restrictive of competition and violate procurement laws and regulations.¹ Specifically, Helionix challenges the requirement that offerors provide personal references for their human resources managers and contract administrators, that these key personnel have minimum experience levels, and that key personnel changes must be approved by the contracting officer. Helionix argues that these requirements unduly restrict the protester's corporate operations as these positions are internal corporate support staff. Protest at 7.

As an initial matter, GSA argues that Helionix is not an interested party because the company did not submit a proposal in response to the RFP. AR at 5. Helionix responds that it was unable to submit a proposal because the agency's final solicitation amendment did not address all of the protester's concerns and provided less than two weeks to submit proposals. Comments at 2. We find that Helionix is an interested party to challenge the RFP's terms. Whether a protester is an interested party is determined by the nature of the issues raised and the direct or indirect benefit or relief sought. Apex Support Servs., Inc., B-288936, B-288936.2, Dec. 12, 2001, 2001 CPD ¶ 202 at 2. Where, as here, the protester challenges the terms of a solicitation that allegedly deterred it from competing, and the remedy sought is the opportunity to compete under a revised solicitation, the protester is an interested party to protest the terms of the solicitation, even if it did not submit an offer under the challenged solicitation.² Id.

A contracting agency has the discretion to determine its needs and the best method to accommodate them. JRS Mgmt., B-402650.2, June 25, 2010, 2010 CPD ¶ 147 at 3. However, those needs must be specified in a manner designed to achieve full and

¹ Helionix also protested the requirement that offerors be registered or certified in the Department of Veterans Affairs VetBiz database. GSA amended the solicitation to remove this requirement, and therefore we consider this aspect of Helionix's protest to be academic.

² With regard to the protester's argument that GSA did not provide sufficient additional time to submit proposals after amending the RFP, we note that there is no per se requirement that the closing date in a negotiated procurement be extended following a solicitation amendment. Holmes & Narver Servs., Inc., B-242240, Apr. 15, 1991, 91-1 CPD ¶ 373 at 3. The decision as to the appropriate preparation time lies within the discretion of the contracting officer. See USA Info. Sys., Inc., B-291488, Dec. 2, 2002, 2002 CPD ¶ 205 at 4. Here, GSA removed a solicitation requirement--which lessened the burden on offerors--and Helionix has not demonstrated that the time established for submission of proposals in response to the solicitation amendment was unreasonable.

open competition. Exec Plaza, LLC, B-400107, B-400107.2, Aug. 1, 2008, 2008 CPD ¶ 143 at 5. Solicitations may include restrictive requirements only to the extent they are necessary to satisfy the agency's legitimate needs. 41 U.S.C. § 3306(a)(2) (2011). Where a protester challenges a specification or requirement as unduly restrictive of competition, the procuring agency has the responsibility of establishing that the specification or requirement is reasonably necessary to meet the agency's needs. See Total Health Resources, B-403209, Oct. 4, 2010, 2010 CPD ¶ 226 at 3. We will examine the adequacy of the agency's justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. SMARTnet, Inc., B-400651.2, Jan. 27, 2009, 2009 CPD ¶ 34 at 7. 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. Exec Plaza, LLC, *supra*. 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. Eisenhower Real Estate Holdings, LLC, B-402807, July 27, 2010, 2010 CPD ¶ 172 at 3.

Here, GSA states that the key personnel requirements are necessary given the size and complexity of this procurement. AR at 6. In this regard, the agency points out that the contract potentially will provide \$30 million in support services over the 5-year contract period, and will involve an estimated 110 contractor employees. *Id.* These requirements are intended to ensure that the contractor will be able to recruit, provide, train, and manage staff with appropriate qualifications and experience. *Id.* In addition, GSA argues that requiring references for key personnel is necessary to allow the agency to verify the experience of the key personnel. *Id.* Finally, GSA states that the requirement for the contracting officer's approval of key personnel substitutions is necessary to allow the agency to ensure that key personnel are replaced with qualified individuals. *Id.* at 7.

Helionix responds that these key personnel requirements are inconsistent with the agency's decision to procure these services under a performance-based contract. Comments at 3-6. The protester contends that the agency should not be concerned with "how" the contractor accomplishes the contract requirements, particularly where these key personnel are not directly assigned to the contract but are part of its corporate staff.

We disagree with Helionix that these requirements are unduly restrictive of competition. GSA explained why it needed to ensure that its contractor's management and oversight would be adequate to ensure successful contract performance, and Helionix has not shown that it was unreasonable of the agency to require such assurances. Rather, the crux of its objection to these requirements is Helionix's belief that the agency should simply accept its promise that it would adequately perform. As noted above, contracting agencies are accorded considerable discretion to determine the best method to accommodate its needs, *see JRS Mgmt.*, *supra*, at 3, and a protester's disagreement with an agency's judgment in this regard does not demonstrate that the agency abused its discretion.

Helionix also complains that the RFP's restriction on billing the costs of the program manager directly to the agency violates the Federal Acquisition Regulation (FAR) and Defense Contract Audit Agency (DCAA) guidelines for cost allocations. Specifically, Helionix argues that the program manager will perform services under the contract that will result in costs "identified specifically with a particular cost objective" and therefore the costs must be billed directly to the contract as a direct cost. Comments at 2-3. Helionix contends that GSA's instruction to offerors to charge the program manager's costs to overhead violates FAR § 31.202 and section 6-501 of the DCAA Contract Audit Manual. Id.

We disagree that the solicitation dictates to offerors how they must conduct their cost accounting for government contracts. Although the solicitation provides that the program manager's costs are not a billable item on the RFP's pricing schedule, it does not instruct offerors as to how they are to account for these costs.³ That is, the contractor can, where appropriate and consistent with regulations, treat the costs of the program manager as a direct cost in its accounting system, even where the contractor cannot directly bill the agency for these costs.

The protest is denied.

Lynn H. Gibson
General Counsel

³ We recognize that offerors were informed that "GSA anticipates the Program Manager's costs being an overhead expense." See RFP amend. No. 1, Questions and Answers No. 2. This is not, however, a direction that the contractor will be required to account for the program manager's costs as an indirect cost.