



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Streit USA Armoring, LLC

File: B-408584

Date: November 5, 2013

Eric Carlson for the protester.

Dennis J. Gallagher, Esq., Department of State, for the agency.

Christina Sklarew, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Under solicitation for armored vehicles for use in diplomatic missions overseas, a requirement for factory-armored vehicles, which excludes the protester's process of retrofitting standard vehicles with armor, is not unduly restrictive of competition where the record shows that the requirement reasonably is necessary to meet the agency's needs.

DECISION

Streit USA Armoring, LLC, of Ladson, South Carolina, protests the terms of request for proposals (RFP) No. SGE500-13-R-0007, issued by the Department of State for armored vehicles for use in diplomatic missions in various overseas locations. Streit argues that the solicitation unreasonably restricts competition to factory-built armored vehicles.

We deny the protest.

BACKGROUND

The RFP, issued on March 11, 2013, provided for the award of a fixed-price, indefinite-delivery/indefinite-quantity contract for armored passenger sedans. Detailed specifications were provided for both right-hand and left-hand drive vehicles. The RFP emphasized that the vehicles were to be "specially protected **factory-built**" sedans with the armoring materials integrated as part of the vehicles' structural component design. RFP at 6 (emphasis in original). The specifications concerning the armoring required, among other things, that the vehicles' suspension and brake systems be designed to accommodate the armoring mass of the

vehicles, and to allow positive control of the armored vehicle during acceleration, braking, and cornering. Id. at 9. The RFP also provided that:

[t]he vehicles, with fully integrated armor protection system, shall be armored during the production process with the technical guidance of the original manufacturer. The vehicles must be capable of being warranted and serviced by the original manufacturer. The performance and handling will be evaluated taking into account the increased mass associated with the vehicles armor. The external appearance, performance and handling shall be comparable to that of a production base car of the same make, class, and series

Id. at 6-7.

Following a market survey, the agency limited the competition to three manufacturers (Audi AG, BMW AG, and Daimler AG), which the agency found were the only sources that could satisfy all of the agency's requirements. On March 8, the agency issued a Justification and Approval for Other Than Full and Open Competition (J&A) to support the limited competition.¹ AR, Tab 1, J&A. The J&A explains the basis of the agency's determination to restrict the solicitation to non-American-manufactured brands, to require factory-armored vehicles, and to exclude retrofitted armoring, as follows:

The armored vehicles of U.S.-manufactured brands present a vulnerability as they are readily identifiable as "American-made" and are considered a high-value target of terrorist activities in various parts of the world. Therefore, [the Department of State] has determined the need to acquire armored vehicles of a non-U.S.-manufactured brand whose armoring standards have been vetted and approved by DEAV [Defensive Equipment and Armored Vehicles]. The substantial security and overall performance disparities between factory-armoring and "after-market" armoring further compel DEAV to acquire factory-armored vehicles.

Id. at 2. The J&A also explains the agency's interest in ensuring personnel at U.S. diplomatic missions be provided a level of security that is commensurate with

¹ The RFP and J&A were not initially publicized, in accordance with Department of State Acquisition Regulation § 605.202-70, which provides a blanket waiver for publicizing the State Department's foreign acquisitions awarded by overseas contracting activities, such as this one. The RFP and J&A were posted on FedBizOpps on June 26, after contract award.

armored vehicles that already have established performance records in hostile environments. Id.

On June 1, the agency awarded a contract to BMW AG, of Germany, for right hand and left hand drive, factory-armored vehicles. The estimated maximum value of the contract was not to exceed \$22.5 million. On June 26, the agency posted notice of the award and the J&A for limited competition on FedBizOpps.

Streit timely protested to the agency, arguing that the J&A was “based on erroneous information,” since Streit, an American firm, had “built” Mercedes and BMW armored vehicles and had delivered right-hand drive luxury vehicles to foreign countries after completing the armoring process in its Charleston, South Carolina facility. AR, Tab 5, Agency-Level Protest, at 1. The State Department denied Streit’s agency-level protest, stating that the applicable Diplomatic Security Standard calls for vehicles with a fully-integrated armor protection system, which must be built in the original equipment manufacturer’s factory and not be retro-fitted onto the vehicle subsequent to its manufacture. Agency Report (AR), Tab 6, Agency Denial of Protest, at 1-2. The agency also informed Streit that factory-built armored vehicles are designed from the beginning to accommodate the additional weight of the armor; that no U.S. manufacturer currently makes right-hand drive vehicles; and that a factory-built armored vehicle would be supported under the original manufacturer’s warranty, honored by its authorized dealerships throughout the world. The State Department concluded that Streit, as a retro-fitting or after-armoring source, could not offer the required factory-built armored vehicles.

This protest followed the State Department’s decision denying Streit’s agency-level protest.²

² To the extent Streit’s protest to our Office raises new grounds of protest, such as its argument that there are capable U.S. vehicle-armoring firms with General Services Administration schedule contracts that include BMW vehicles, these protest grounds are untimely. Our Regulations provide that where, as here, a protest has been filed initially with the contracting agency, we will consider a subsequent protest only if the initial protest to the agency was timely filed. 4 C.F.R. § 21.2(a)(3). Because our Regulations do not contemplate the unwarranted piecemeal presentation of protest issues, where, as here, a protester initially files a timely agency-level protest, and subsequently files a protest with our Office that includes additional grounds of protest, these additional grounds must independently satisfy our timeliness requirements. Research Tech. Int’l, B-243844, Aug. 19, 1991, 91-2 CPD ¶ 165 at 2-3; Armstrong Motorcycles Ltd., B-238436, B-238436.2, June 5, 1990, 90-1 CPD ¶ 531 at 3-4. Streit’s new protest grounds (which are based upon information that Streit knew, or should have known, at the time it filed its agency-level protest) do not satisfy this requirement.

DISCUSSION

Streit complains that the agency's limitation of the competition to factory-armored vehicles is based upon erroneous information and states that the State Department (and other federal government agencies) have previously procured retro-fitted armored vehicles from firms like Streit. In this regard, Streit argues that the agency's J&A supports only the need for "base vehicles" of non-U.S. manufacture, and does not establish the agency's need for factory-armored vehicles. See Protester's Comments at 2-3. Moreover, Streit speculates that the awardee will perform the contract by retro-fitting its standard vehicles with armor, rather than changing the entire manufacturing process to produce a specifically-designed armored vehicle.³ Protest at 3.

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. In preparing a solicitation, a contracting agency is required to specify its needs in a manner designed to achieve full and open competition, and may include restrictive requirements only to the extent they are necessary to satisfy the agency's legitimate needs. 41 U.S.C.A. § 3306(a)(2) (2011); Innovative Refrigeration Concepts, B-272370, Sept. 30, 1996, 96-2 CPD ¶ 127 at 3. 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. A protester's 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 Dynamic Access Sys., B-295356, Feb. 8, 2005, 2005 CPD ¶ 34 at 4. Where, as here, 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, the record supports the reasonableness of the agency's determination that factory-armored, as opposed to retro-fitted armored, vehicles were required to meet its needs. The J&A recognizes the "substantial security and overall performance disparities between factory-armoring and 'after-market' armoring" as a compelling reason for requiring factory-built armored vehicles. AR, Tab 1, J&A at 2. In

³ Streit acknowledges that it has no actual knowledge of BMW's armoring process, and apparently bases its argument on the firm's own understanding of what "makes manufacturing sense." Protest at 3.

response to the agency-level protest and to the protest here, the State Department further explained that:

[w]ith an Original Equipment Manufacturer (OEM) factory-built armored vehicle, the manufacturer designs the vehicle from the beginning to be able to accept the additional weight of the armoring package. This includes key components such as the frame, suspension, drive train, brakes and other major systems. The manufacturer also performs validation of the vehicle and its safety systems (e.g., airbags, anti-lock brakes) after armoring. Testing includes thousands of miles of driving to test the handling, braking and other components of the vehicle. These OEM vehicles are also crash-tested to validate their safety equipment.

AR at 4-5. The agency also states that factory-armoring vehicles allows “armor to be installed in to areas that are not accessible to a retrofitter.” Id. at 4. Although Streit disagrees with the agency’s judgment that factory-armored vehicles are necessary to satisfy the agency’s safety and reliability requirements, it has not shown that the agency’s judgment is unreasonable.

The protest is denied.⁴

Susan A. Poling
General Counsel

⁴ Given our decision, we need not address a number of other complaints that the protester raised concerning the contract awarded to BMW and whether the agency was required to publish the J&A earlier.