



Decision

Matter of: JRS Management

File: B-402650.2

Date: June 25, 2010

Jacqueline Sims, JRS Management, for the protester.
David B. Cook, Esq., Department of the Navy, 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. Protest that a solicitation requirement that the contractor have prior experience in a correctional setting is unduly restrictive is denied where the agency establishes that the requirement is reasonably related to the agency's needs.
 2. Request for quotations seeking a fixed price for services does not impose an unreasonable risk upon vendors, where the solicitation does not have an unlimited scope of work and provides sufficient information upon which vendors can base their price quotations.
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DECISION

JRS Management, of Lawrenceville, Georgia, protests the terms of request for quotations (RFQ) No. N68836-10-T-0111 issued by the Department of the Navy, Fleet and Industrial Supply Center Jacksonville, for a sail loft instructor at the Navy Consolidated Brig in Charleston, South Carolina.

We deny the protest.

The Navy Consolidated Brig is an adult correctional facility that holds up to 400 prisoners from all branches of the military services to serve sentences for rape, murder, and other serious crimes. RFQ at 22. The sail loft, traditionally the place where sails were made, is used to train Brig inmates to produce embroidered, upholstered, and other fabric products.

The solicitation was issued on March 15, 2010, as a small business set-aside. The RFQ contemplates the award of a single year, fixed-price contract to the vendor

submitting the lowest-priced, technically acceptable quotation. RFQ at 8. As originally issued, the RFQ contained one contract line item number (CLIN), for which vendors were required to provide a unit hour price for a total quantity of 1,992 hours (249 days at 8 hours per day) for a sail loft instructor for the Brig. Id. at 3. The solicitation's statement of work identified a maximum of 1,992 hours to be performed between 7:30 a.m. and 4:30 p.m., with a 30-minute lunch break. Id. at 22.

Vendors were informed that the primary duties of the instructor would be to manage the sail loft, train and supervise approximately eight prisoners, and assist security personnel in maintaining security. Id. at 23. The RFQ also states that "there is no career corrections track for Navy" officers and sailors, and thus the sail loft instructor provides consistency of operations in the face of normal rotational staff changes. Id. at 22. The solicitation also cautions that the sail loft instructor could be at risk from prisoners and therefore must be trained and prepared for unarmed self-defense. Id. at 26.

The RFQ, as originally issued, also required that the instructor have at least two years correctional experience and have supervised at least eight prisoners. In addition, the instructor was required to have American Correctional Association (ACA) experience and to have experience with at least one ACA audit.¹ Id. at 25. JRS protested these experience requirements to our Office, and the Navy agreed to review its requirements and amend the solicitation. We dismissed the protest as academic.

As relevant here, the Navy amended the RFQ to require that the instructor have at least 2 years experience in the control and use of keys, tools, and toxic, caustic, and flammable materials in a correctional setting and have at least a year of experience in supervising, moving, and teaching at least eight prisoners in a correctional setting. RFQ amend. 1 at 5.

The Navy also amended the solicitation's schedule of supplies and services to change the unit quantity from hours to months. Vendors were requested to provide a monthly unit price for the sail loft instructor for a total of 12 months. The RFQ, as amended, provided that the sail loft instructor would perform services Monday through Friday from 7:30 a.m. to 4:30 p.m., with a 30-minute lunch break and would receive 10 federal holidays off. In addition, the amendment stated that the instructor could be required to work additional hours not exceeding 5 percent of the total contract hours. Id. at 2-3.

JRS protests that that the requirements for experience in a correctional setting are unduly restrictive.

¹ The ACA is a professional association that provides professional certification as well as standards and accreditation for correctional facilities. See www.aca.org.

The determination of a contracting agency's needs and the best method of accommodating them are matters primarily within the agency's discretion. Systems Application & Techs., Inc., B-270672, Apr. 8, 1996, 96-1 CPD ¶ 182 at 3. However, where a protester challenges a specification as unduly restrictive of competition, we will review the record to determine whether the restrictions imposed are reasonably related to the agency's needs. Id.; LBM Inc., B-286271, Dec. 1, 2000, 2000 CPD ¶ 194 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. COB EventLizenz GmbH, B-401999.2, Jan. 12, 2010, 2010 CPD ¶ 24 at 4. Further, when a contractor will be operating in a unique work setting, an agency may require that the contractor's personnel possess prior experience in operating in the same type of work setting. Marine Transport Lines Inc., B-224480.5, July 27, 1987, 87-2 CPD ¶ 91 at 4.

Here, the Navy explains that the RFQ, as originally issued, did not adequately address the experience and skills necessary to perform in a correctional setting, which the amendment corrected. Supplemental Agency Report (AR) at 2. Specifically, the Navy states that the incumbent instructor required training in the supervision of prisoners and extensive training in the control and use of keys, tools, and toxic, caustic and flammable materials, in a correctional setting. Id. The Navy explains that the amended experience requirements were added to avoid the need for the agency to provide this additional training, and states that requiring experience in a correctional setting increases the safety and security at the Brig. The Navy also explains that correctional experience is important because the prisoners working at the sail loft may be violent offenders such as murderers, rapists, and drug dealers with potential access to dangerous tools and materials. AR at 2; Supp. AR, exh. 1, Declaration of Executive Officer, Charleston Navy Consolidated Brig, at 2. Finally, the Navy states that a failure to comply with mandatory standards related to the management, oversight, issuance, control and inventory of tools, sharps, keys, and toxic, caustic and flammable materials could jeopardize the facility's ACA accreditation, which could result in closure of the Brig. AR at 2-3.

JRS makes numerous arguments contesting the agency's determination that the RFQ's experience requirements are necessary to satisfy the agency's needs.² In this regard, JRS argues that the Navy has not identified any event that resulted in heightened safety concerns requiring the experience requirements and that the ACA accreditation standards do not require contractor personnel to have prior correctional experience. JRS also challenges the Navy's contention that the experience requirements were necessary to avoid the necessity to train a new instructor, arguing that ACA standards already require contractor training in such

² We have considered all of the protester's arguments in resolving the protest, although we only specifically address JRS's primary arguments.

areas as key control, tool/equipment control, and inmate movement. In the protester's view, it is the Navy's responsibility to expend resources to train instructors, regardless of the instructor's prior correctional experience. See Supplemental Comments at 3-4.

We find that the Navy has established a reasonable need for the experience requirements for the sail loft instructor. The record shows that the Brig houses violent offenders, and that the training that occurs in the sail loft potentially places violent offenders in contact with materials that could be used to harm others. Given these circumstances, in our view, it is reasonable for the Navy to increase safety above some minimum standard by requiring the contractor to provide personnel experienced with the challenges that can arise within a correctional facility. Although JRS disagrees with the Navy's judgment in this regard, this disagreement does not show that the agency's judgment is unreasonable. See COB EventLizenz GmbH, supra, at 4 (mere disagreement does not show that the agency's judgment is unreasonable). In this regard, an agency is not required to show an instance of actual damage or injury under a prior contract before imposing a requirement that reduces potential, reasonably perceived risks to life or property. LIPS Propellers, Inc., B-256713, July 15, 1994, 94-2 CPD ¶ 26 at 4.

JRS also states that the prior year's solicitation for the sail loft instructor did not contain these experience requirements and argues that therefore these requirements are unnecessary. The fact that a requirement may not have been included in a prior solicitation or contract does not itself establish that the new requirements are unduly restrictive when included in a subsequent solicitation for similar items. Harris Enters., Inc., B-311143, Mar. 27, 2008, 2008 CPD ¶ 60 at 3. In this regard, each procurement stands alone, and an action taken under one procurement is not necessarily relevant to the propriety of the action taken under another for the purposes of a bid protest.³ Id. Here, as noted above, the record shows that the experience requirements are reasonably necessary to meet the agency's needs.

JRS also protests the Navy's amendment of the RFQ's schedule of supplies and services, arguing that the solicitation should provide a second CLIN for the additional hours (up to 5 percent of the overall contract hours) that the sail loft instructor may be required to work. JRS contends that without another CLIN for these additional hours there would be no way for the vendor to charge the agency for any additional hours performed. Protest at 3. The Navy responds that it expects

³ JRS also challenges these requirements on the basis that none of the Navy's solicitations issued in 2010 for other types of instructors at the Brig included a requirement for correctional experience. This argument is untimely. Although JRS asserted this argument in its original protest, which was dismissed when the agency took corrective action, in this protest JRS did not raise this argument until it filed its supplemental comments.

vendors to account for the possibility of the additional hours when pricing their quotations.

We find no basis to object to the agency's request that vendors provide sail loft instructor pricing under a single CLIN. Although the risk that additional hours (up to 5 percent of the overall contract hours) may be required, the imposition of risk on an offeror or vendor does not make the solicitation inappropriate or improper. It is within the discretion of an agency to offer for competition a proposed contract that imposes maximum risks upon the contractor and minimum burdens on the agency, and an offeror should account for this in formulating its proposal. TN-KY Contractors, B-291997.2, May 5, 2003, 2003 CPD ¶ 91 at 3. Risk is inherent in most type of contracts, especially fixed-price contracts, and firms must use their professional expertise and business judgment in anticipating a variety of influences affecting performance costs. See Sea-Land Serv., Inc., B-278404.2, Feb. 9, 1998, 98-1 CPD ¶ 47 at 11. Here, the RFQ provides sufficient information upon which firms can price their quotations and does not have an unlimited scope of work.

The protest is denied.

Lynn H. Gibson
Acting General Counsel