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United States Government Accountability Office
Washington, DC 20548

Comptroller General
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Decision

Matter of: Ponsford, Ltd.

File: B-410379

Date: December 11, 2014

Theodore P. Watson, Esq., Nicole L. Carter, Esq., and Leanna Ajour, Esq., Watson & Associates, LLC, for the protester.

MAJ James W. Nelson and Scott N. Flesch, Esq., Department of the Army, for the agency.

Susan K. McAuliffe, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation requirement for professional level membership in the American Institute for the Conservation of Historic and Artistic Works improperly restricts competition is denied where the protester has not shown that the membership requirement is not rationally related to the agency's achievement of its objectives.

DECISION

Ponsford, Ltd. protests the terms of request for proposals (RFP) No. W91QV1-14-R-0087, issued by the Department of the Army for historical monument conservation and cleaning services at Arlington National Cemetery. The protester contends that a qualification requirement of the RFP, for professional level membership in the American Institute for the Conservation of Historic and Artistic Works (AIC), is unduly restrictive of competition.

We deny the protest.

The RFP, issued on August 14, 2014 as a small business set-aside, sought proposals for the award of a fixed-price contract for a 12-month period to provide conservation and cleaning services of historic monuments and memorials at Arlington National Cemetery. RFP at 1. The selected contractor is required to provide, among other things, all qualified expert personnel necessary to clean and conserve selected statutes, monuments, and objects to assure the unimpaired longevity and stability of "our nation's most sacred shrine and the final resting place

for our most revered military and civilian leaders.” RFP, Performance Work Statement (PWS), at ¶ 1.2.

Award was to be made on a best-value basis considering the following factors: (1) technical capability (including management approach and key personnel); (2) past performance; and (3) price. Id. at 4-6. Relevant to this protest, among the key personnel required by the RFP, offerors are to propose a conservator who is responsible for completing the cleaning and conservation work to the standards set forth in the solicitation. Offerors are also required to demonstrate that their proposed conservator meets the professional qualification level of AIC Professional Associate (to include at least 2 years of basic conservation training and 3 years of field experience). PWS ¶ 1.6.10.3.2. The protester, which apparently does not currently have personnel who meet the AIC requirement, contends that the agency should have alternatively required a professional standard that Ponsford could currently meet, such as Secretary of the Interior (SOI) professional standards for monument conservation work. According to the protester, SOI reflects higher standards because they require a graduate degree in conservation (or a related field of study with a certificate in conservation).

Ponsford had initially filed its challenge with the agency; that protest was denied by decision of September 5. In its decision, the agency explained that the AIC membership requirement was added to this RFP because Arlington National Cemetery had recently been included in the National Register of Historic Places. Agency Protest Decision, Sept. 5, 2014 at 4. The agency reported that this presented additional conservation responsibilities, including the use of the gentlest conservation techniques, reversible treatments, and full documentation of all conservation work performed. Id. According to the agency, in order for a conservator to have reached the required AIC Professional Associate level, the individual would have been subjected to a comprehensive assessment of, for instance, the member’s training, internships, experience, and work quality--all of which was validated by an industry peer-review process. This peer-review qualification process provided the agency with confidence that a contractor’s conservator would have the necessary background to successfully perform the conservation work at the historic location. Id. Moreover, the agency considered AIC’s endorsement of SOI conservation treatment standards, and its review of contractor ethics, core competencies, professionalism, training, experience, and qualifications to be meaningful benefits and performance protections. The agency further considered the fact that requiring AIC membership could potentially increase competition since it involved a less restrictive education requirement than the SOI conservation personnel guidelines. Id.

Following receipt of the agency’s decision, Ponsford filed its current protest with our Office. The protester alleges that the AIC membership requirement is unreasonably restrictive where the solicitation does not alternatively allow for offerors to meet, in the protester’s view, the more rigorous SOI criteria. Ponsford, which purports to

have successfully performed monument cleaning and conservation work for the agency without having to use AIC member personnel in the past, essentially claims that the benefits cited by the agency in requiring AIC membership unreasonably exceed the agency's needs.¹

A procuring agency has the responsibility of establishing that its requirements are reasonably necessary to meet its needs. Air USA Inc., B-409236, Feb. 14, 2014, 2014 CPD ¶ 68 at 5. Our Office 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. Id. A protester's mere disagreement with the agency's judgment concerning the agency's needs and how to best accommodate them does not show that the agency's judgment is not rationally supported. USA Fabrics, Inc., B-295737, B-295737.2, Apr. 19, 2005, 2005 CPD ¶ 82 at 5.

Here, the agency reports, as initially explained in its agency-level protest decision, that it has incurred new obligations as a consequence of the cemetery's recent inclusion in the National Register of Historic Places. As noted above, such responsibilities include, among other things, retaining historic materials, utilizing the most gentle of conservation methods, ensuring treatment reversibility, and requiring thorough documentation of all conservation work performed. Consequently, the agency included several new performance requirements in the RFP, as well as personnel qualifications, like the one at issue here.

Regarding the conservator AIC membership qualification requirement, specifically, the agency has detailed why it believes such membership best assures the agency's ability to successfully perform the conservation requirements at Arlington National Cemetery. Membership at the AIC Professional Associate level provides the agency with confidence that a contractor's conservator has the necessary knowledge and level of experience to perform the critical conservation tasks at the cemetery, where the individual's qualifications and work have been validated through a peer-review process. Although the educational requirements of the SOI standards may be more stringent, the agency contends that the standards lack the validation of a conservator's qualifications and record of performance on prior work, as provided by the AIC peer-review process, and therefore fail to provide the same level of confidence of a conservator's abilities. Agency Report, Tab 7, Justification

¹ The protester also generally contends that the agency failed to conduct adequate market research to be able to consider the sufficiency of the SOI standards, which Ponsford reports it can currently meet. For the reasons discussed below, we have no basis to question the agency's decision to require AIC membership. Additionally, while the protester alleges that the RFP is deficient for failing to require AIC-related past performance information, as the agency reports, AIC compliance is to be assessed under the technical capability factor. Id.; see Pacific Photocopy and Research Servs., B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4.

for AIC Membership, at 4. We find each of the agency's reported benefits of the AIC membership requirement to be reasonable and rationally reflective of the agency's stated needs. Ponsford's disagreement with the requirement provides no persuasive basis to question its propriety.

The protest is denied.

Susan A. Poling
General Counsel