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Decision

Matter of: CompTech-CDO, LLC

File: B-409949.2

Date: January 6, 2015

Katherine S. Nucci, Esq., Thompson Coburn LLP, for the protester.
Marvin Kent Gibbs, Esq., Department of the Air Force; Kenneth M. Roth, Esq. and Richard A. Hopkins, Esq., United States Transportation Command, for the agency.
Gary R. Allen, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Solicitation requirement that an offeror possess a Top Secret facility clearance at the time final proposal revisions are submitted does not unduly restrict competition where the record shows that the requirement is reasonably related to the agency's needs.

DECISION

CompTech-CDO, LLC¹ (CompTech), of Dayton, Ohio, protests the terms of amendment No. 3 to request for proposals (RFP) No. HTC711-14-R-D003, issued by the United States Transportation Command (USTRANSCOM) for technical support services for the Automatic Identification Technology (AIT) and In-Transit Visibility (ITV) program for USTRANSCOM and other Department of Defense (DoD) agencies and departments.² RFP at 46. The protester alleges that the RFP, as

¹ CompTech-CDO, LLC is a Small Business Administration-approved, mentor-protégé joint venture between CompTech Computer Technologies, Inc. (an 8(a) small business) and CDO Technologies, Inc. (a large business).

² The Department of the Air Force is defending the protest on behalf of USTRANSCOM, which provides support to the eight other U.S. combatant commands, the military services, defense agencies and other government organizations. AIT is a suite of tools (such as bar codes, optical memory cards, and others) that provides the capability of tracking, documenting, and controlling the
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amended, is unduly restrictive of competition because it requires possession of a Top Secret facility clearance prior to time of award.

We deny the protest.

BACKGROUND

The RFP, issued as a small business set-aside on October 31, 2013, contemplated the award of an indefinite-delivery, indefinite-quantity (ID/IQ) contract for a base year and two 1-year options, and the issuance of the first task order at the time of award. The RFP provided that proposals would be evaluated under the following three non-price factors, listed in descending order of importance: (1) technical, (2) staffing, and (3) past performance; and price. Id. at 18, 46, 48. When combined, all non-price factors are considered approximately equal to price. Id. at 18. Award was to be made on a best-value basis.

The original due date for proposals was December 2, 2013. RFP at 1. As originally issued, the RFP required the awardee to possess a Top Secret facility clearance at time of award. Id. at 41, 107. While the RFP acknowledged that the majority of work under the ID/IQ contract would be performed at the Secret level, it also recognized that approximately 10 percent of the work would be at the Top Secret level. Id. at 54. Further, while the first task order to be issued would not include work at the Top Secret level, the contracting officer was aware that work was being performed under two ongoing Top Secret task orders, set to expire in March, 2014, and that a new task order would need to be awarded under this ID/IQ to continue that work.³ Contracting Officer's (CO) Statement (COS) at 4.

On November 19, 2013, the agency issued amendment No. 1 to the RFP, to permit offerors to possess only a Secret Facility clearance at time of award, and to require that they possess a Top Secret facility clearance by August 31, 2014.⁴ COS at 5;

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deployment of personnel and materiel. ITV relates to the ability to track the identity, status, and location of DoD units, non-unit cargo, passengers, patients, and personal property. RFP at 46-47.

³ The contracting officer states that the two Top Secret task orders have been extended for another year, to expire in March, 2015. According to the CO, this reflects the agency's intention to allow enough time for an awardee under the RFP at issue here to obtain its needed clearance by the next performance start date for a task order requiring Top Secret-level work. Id. at 5.

⁴ The CO explains that this date was chosen based on the understanding that it could take several months to obtain a clearance, and reflects the agency's intention to allow an awardee that did not yet possess this level clearance to obtain the
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RFP, amend. 1, at 8. RFP amendment No. 1 also stated that a failure to obtain the required Top Secret clearance by the August date would result in a bilateral no-cost contract termination. Id.

The agency received nine proposals in response to the RFP, five of which were from firms that already had a Top Secret facility clearance. AR, Tab 8, Source Selection Evaluation Board (SSEB) Report, at 17, 18, 23, 25, and 27. CompTech's proposal stated that the firm was in the process of applying for a Secret clearance.⁵ AR, Tab 11, Notice of Eligibility for Award. CompTech was selected for award and was so notified on March 7.

A series of delays ensued. After a pre-award notice was issued, CompTech's size was challenged to the SBA, and SBA subsequently determined that CompTech qualified as small under the applicable size standard. The CO learned, following the award, that CompTech did not yet have a Secret facility clearance, and notified CompTech on April 24, 2014, that it was ineligible for award on that basis. Memorandum of Law (MOL) at 3. The agency then selected Analytic Strategies, Inc., to receive the award; however, another offeror protested that award. Id. In response to the protest of the award to Analytic, the agency proposed to take corrective action by re-opening discussions, and our Office dismissed the protest as academic on July 21.

One day after our Office dismissed the protest, CompTech received a Secret facility clearance. As a result of receiving the Secret facility clearance, CompTech was restored to the competition, and was invited to submit its final proposal revisions (FPR) by September 17. At the time FPRs were due, the August 31 deadline in the RFP for possessing a Top Secret facility clearance had already passed.

On September 27, the agency re-opened discussions and advised offerors, by a third amendment to the RFP, that the August 31 deadline for possessing a Top Secret facility clearance was being extended until the due date for submitting second final proposal revisions, which CompTech understood to be September 29.⁶ Id. at 3-4; AR, Tab 16, Discussions Letter and RFP amend. 3, at 3.

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clearance by the next performance start date for a task order requiring Top Secret-level work. COS at 5.

⁵ CDO, CompTech's large-business joint venture partner, possesses a Top Secret facility clearance, and both its owner and business management and facilities security officer have personal Top Secret clearances. Comments at 6, n.3. The RFP, however, requires that the offeror itself have the appropriate clearance. RFP, amend. No. 1.

⁶ The record shows that the due date for second FPRs, which was not yet established when amendment No. 3 was issued, was eventually set for

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CompTech filed this protest on September 29, challenging the new deadline for satisfying the Top Secret facility clearance requirement as overly restrictive of competition.

DISCUSSION

CompTech argues that the requirement to possess a Top Secret facility clearance by the submission date for new FPRs is unduly restrictive of competition. The protester argues that the agency has not established any immediate need for an offeror to have the Top Secret facility clearance in order to perform the first task order; and that, further, CompTech will not be able to obtain a Top Secret facility clearance until it has been awarded a contract with this clearance requirement. Protest at 9. These arguments provide no basis to sustain the protest.⁷

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 Streit USA Armoring, LLC, B-408584, Nov. 5, 2013, 2013 CPD ¶ 257 at 4. We 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 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, B-400107, B-400107.2, Aug. 1, 2008, 2008 CPD ¶ 143 at 5.

Here, it is undisputed that access to classified information at the Top Secret level is required to perform some of the work under the contract; the RFP indicated from the beginning that the requirements included Top Secret-level work. RFP at 10-11; Comments at 7. The agency points out that, after awarding the first task order (which requires only a Secret facility clearance), it intends to issue task orders in March, 2015 that will require performance at the Top Secret level. COS at 12. It is also undisputed that the process of obtaining a Top Secret facility clearance can take several months. AR, Tab 4, Clearance Question E-mails, at 3; MOL at 6.

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November 19, 2014. CompTech filed its protest on September 29 based on its understanding that the due date for submission of second FPRs would be September 29. Protest at 1.

⁷ CompTech raises a variety of arguments to challenge amendment No. 3 as overly restrictive. Although we have considered all of the protester's arguments, we address only the most significant. We find that none of CompTech's arguments provide a basis to sustain the protest.

The record shows that amendments Nos. 1 and 3 each extended the time within which offerors could obtain the required clearance. Further, we note that the time from when the RFP was issued (on October 31, 2013) until the ultimate date for submission of FPRs (November 19, 2014) spanned more than a year. Given these undisputed facts, we find reasonable the agency's conclusion that it could not further delay the requirement for the Top Secret facility clearance without jeopardizing its ability to obtain the services it will need. The fact that CompTech disagrees with the agency's judgment concerning those needs does not show that the agency's judgment is unreasonable. Exec Plaza, LLC, supra. Accordingly, we deny this aspect of the protest.

CompTech further contends that it cannot obtain a Top Secret facility clearance unless/until it has been awarded a contract that requires a Top Secret facility clearance. Protest at 9. Given our conclusion, above, that the agency's clearance requirement is reasonably necessary to meet its needs, the protester's inability to satisfy that need does not render the agency's need improper. 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. See JBF/Naylor Station I, LLC, B-402807.2, Aug. 16, 2010, 2010 CPD ¶ 194 at 4. In fact, the record here shows that five firms responded which hold a Top Secret facility clearance, undercutting CompTech's argument that the requirement is unduly restrictive.

The protest is denied.

Susan A. Poling
General Counsel