



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: GS Engineering, Inc.

File: B-413299.2

Date: January 10, 2017

Pamela J. Mazza, Esq., Michelle E. Litteken, Esq., Julia Di Vito, Esq., and Kelly A. DiGrado, Esq., Piliero Mazza PLLC, for the protester.
Wade L. Brown, Esq., and Kandis C. Gaines, Esq., Department of the Army, for the agency.
Young H. Cho, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that an agency revised a solicitation substantially without providing offerors sufficient time to complete the revised testing requirements is denied where protester was able to complete testing prior to the proposal due date under one of two alternative test conditions specified in the solicitation.

DECISION

GS Engineering, Inc. (GSE), of Houghton, Michigan, protests the terms of request for proposals (RFP) No. W56HZV-16-R-0051, issued by the Department of the Army, U.S. Army Materiel Command, for mine rollers and related spare parts and training. GSE argues that the solicitation amendments issued after the agency's corrective action, taken subsequent to a previous protest, substantially revised the solicitation without providing offerors sufficient time to complete the testing required under the solicitation.

We deny the protest.

BACKGROUND

The agency originally issued the solicitation on April 22, 2016, for 464 mine rollers and 300 brackets for M1151 high mobility multi-purpose wheeled vehicles (HMMWVs), along with spare parts and new equipment training for the Afghanistan

National Security Forces and the Afghanistan National Army.¹ RFP at 1, 56. The solicitation contemplated the award of a single fixed-price contract on a lowest-price, technically-acceptable (LPTA) basis considering a technical factor and price. Id. at 142. The technical factor required offerors to respond to a technical information questionnaire (TIQ), provided as attachment 0002 to the solicitation,² that consisted of two questions concerning the offered item’s capabilities. RFP at 133. Offerors were required to submit substantiating data in the form of government or independent automotive testing data as part of their responses to each of the TIQ questions. Id. at 142; see also id., TIQ.

The solicitation was amended three times. Agency Report (AR), Combined Contracting Officer Statement and Legal Memorandum (COSLM) at 1. The agency received three timely proposals on May 24, 2016, including GSE’s proposal, and made award to Critical Solutions International (CSI) on June 9. Id. at 1-2. GSE filed a protest with our Office challenging the award to CSI. Id. at 2.

The agency took corrective action in response to that protest, proposing to issue an amendment to the solicitation, and to allow the offerors that had submitted proposals to submit revised proposals. Id. at 2; see also AR, Tab 5-2, Corrective Action Letter.

Amendment 0004 was issued on August 31, 2016. This amendment corrected a previously incorrect identifier used in the RFP for the prime mover vehicle³ and made significant revisions to the specifications and the TIQ.⁴ See RFP,

¹ A mine roller is used to detonate and clear certain classes of buried, pressure-activated explosive threats. See DOD Rapid Innovation Program: Some Technologies Have Transitioned to Military Users, but Steps Can Be Taken to Improve Metrics and Outcomes, GAO-15-421 at 22 (May 2015).

² These two questions were: (1) “Is your roller capable of ascending and descending a 30 percent longitudinal grade in forward and reverse on a M1151 [HMMWV]?” and (2) “Is your roller capable of ascending and descending a 12 inch vehicle step on a M1151 HMMWV without causing immobilizing damage to the roller systems?” RFP, attach. 0002, TIQ.

³ During the agency’s review of GSE’s initial protest, the agency discovered that the RFP’s designation of the M1151 HMMWV as the prime mover to be used for the mine rollers was incorrect. AR, COSLM at 2. Amendment 0004 identified the correct prime mover vehicle variant (M1151A1B1 variant or M1151A1 up-armored HMMWV (UAH)). RFP, Amendment 0004 at 2.

⁴ For example, as pointed out by GSE during a solicitation question and answer period conducted by the agency, and as part of GSE’s September 6 request to the agency to extend the proposal due date to October 1, “the specification changes include reducing the total weight requirement of the system by over 30%, the
(continued...)

Amendment 0004 at 2, 3. As relevant here, the following requirement was added to the specifications: “Side Slope: The Track Width Mine Roller combination, tested at a minimum of vehicle curb weight plus driver, shall be capable of traversing a 30 percent unpaved side slope while maintaining straight line tracking with an M1151A1B1 variant or M1151A1 UAH HMMWV variant as the host vehicle. Testing shall be conducted in accordance with TOP [Test Operations Procedure] 2-2-610.” Id., attach. 0001, Solicitation Specification, at 1. The TIQ also included the following additional question: “Is your track width mine roller capable of traversing a 30 percent unpaved side-slope while maintaining straight line tracking with a M1151A1B1 variant or M1151A1 UAH HMMWV variant prime mover?” Id., attach. 0002, TIQ, question 6. In addition, the proposal due date was extended to September 15, 2016. Id. at 3.

Amendment 0005 was issued on September 9. As relevant here, the specification and TIQ were updated to allow offerors to perform side-slope testing on either a paved or unpaved maintained surface. RFP, Amendment 0005 at 3. Any questions about the solicitation, as amended, were due by September 22. RFP, Amendment 0005, at 3. In response to a request by GSE to extend the proposal due date to October 1, the agency extended the proposal due date to October 3. See AR, Tab 5-6, Questions – GSE (Set 1); AR, Tab 5-8, Questions and Answers (Set 1), Question 31; RFP, Amendment 0005, at 4.

On September 9, GSE completed testing on an unpaved side slope at the [DELETED] Technological University [DELETED] Research Center ([DELETED]) using an M1151A1B1 HMMWV to which GSE had access through a cooperative research and development agreement in place with [DELETED] and the Army. Protest, exh. E, Declaration of [DELETED] at 1; AR, Tab 4-3, [DELETED] Test Report (GSE). The side-slope testing for GSE’s mine roller was unsuccessful. AR, Tab 4-3, [DELETED] Test Report (GSE) at 6. GSE subsequently made attempts to perform the side-slope testing on a paved surface; however, it was unable to gain access to a M1151A1B1 HMMWV in order to perform the test. See Protest, exh. E, Declaration of [DELETED] at 1; id., exh. F-I, various email communications between September 13 and September 29.

On September 22, GSE submitted three questions about the solicitation, including a request that the agency recommend a test facility with access to a M1151A1B1 and

(...continued)

tongue weight by nearly 25%, removing the electrical system entirely as well as increasing the required Government or Independent Automotive testing by a factor of 3X.” See AR, Tab 5-6, Questions – GSE (Set 1); compare RFP, attach 0001, Solicitation Specifications with RFP, Amendment 0004, attach. 0001, Solicitation Specifications. The TIQs were also significantly changed and increased from two questions to six questions. See RFP, Amendment 0004 at 3; id., attach. 0002, TIQ.

a paved side slope; and inquiring how to gain access to a M1151A1B1 prior to the proposal due date. See AR, Tab 5-7, Questions GSE (Set 2) (Questions 2 and 3). The agency responded that it could not recommend test facilities, and that it was the responsibility of the offeror to research the means available for obtaining either type of test data in a timely manner in order to submit a responsive proposal. Id.

GSE also contacted the contracting officer (CO) for the procurement, requesting assistance to obtain a HMMWV variant to perform testing on a paved surface prior to the solicitation closing date. See AR, Tab 5-10, CO Memorandum for the Record Discussion with GSE on Sept. 23, 2016. GSE informed the agency that testing had already been performed on an unpaved surface at [DELETED], with unsuccessful results. Id. The CO advised that she was unable to assist GSE in locating another HMMWV to be used for additional testing. Id. GSE informed the CO that additional options were being pursued, as well as additional testing. Id. at 2.

On October 3, GSE filed this protest with our Office.

DISCUSSION

GSE argues that the agency did not afford offerors sufficient time to respond to Amendments 0004 and 0005, which the protester contends substantially revised the solicitation. Specifically, the protester argues that the agency did not provide the offerors sufficient time to complete the side-slope testing required by the solicitation.

Contracting officers are required to establish solicitation response times that will afford potential offerors a reasonable opportunity to respond. Federal Acquisition Regulation (FAR) § 5.203(b). What constitutes a reasonable opportunity to respond will depend on “the circumstances of the particular acquisition, such as complexity, commerciality, availability, and urgency.” Id. Agencies generally must allow at least 30 days from the date of issuance of the RFP for the receipt of proposals. FAR § 5.203(c). Where a protester contends that the agency allowed insufficient time for preparation of proposals, we require a showing that the time allowed was inconsistent with statutory requirements or otherwise unreasonable, or that it precluded full and open competition. See Coyol Int’l Group, B-408982.2, Jan. 24, 2014, 2014 CPD ¶ 40 at 2. We will not disturb a contracting officer’s decision in this regard unless it is shown to be unreasonable or the result of a deliberate attempt to exclude the protester from the competition. Bannum, Inc., B-411340, July 8, 2015, 2015 CPD ¶ 213 at 3; Systems 4, Inc., B-270543, Dec. 21, 1995, 95-2 CPD ¶ 281 at 3.

As relevant here, the amended solicitation required offerors to submit government or independent automotive test data for side-slope testing on a “paved or unpaved maintained surface.” RFP, Amendment 0005 at 3 (emphasis added). Offerors were allowed a total of 33 days from the issuance of Amendment 0004--which first introduced the side-slope testing requirement--to submit their final proposal

revisions. The requirement for side-slope testing did not change between Amendment 0004 and Amendment 0005; rather, Amendment 0005 allowed the side-slope testing to be performed on paved or unpaved maintained surfaces instead of an unpaved side-slope. Compare RFP, Amendment 0004, attach. 0001, Solicitation Specification at 1; TIQ, Question 6 with RFP, Amendment 0005 at 3. It did not require that testing be performed on both paved and unpaved surfaces. See RFP, Amendment 0005 at 3.

The record belies GSE's contention that the agency did not afford offerors sufficient time to respond to Amendments 0004 and 0005. It is undisputed that GSE completed side-sloping testing in September on an unpaved surface, prior to the proposal due date, albeit unsuccessfully. Accordingly, GSE's argument that the agency did not afford offerors sufficient time to respond to Amendments 0004 and 0005 is without merit.⁵

The protest is denied.

Susan A. Poling
General Counsel

⁵ In its comments, GSE argues for the first time that testing a mine roller on an unpaved side slope is significantly more challenging than testing on a paved side slope; and alleges that, had it been able to test its mine roller on a paved slope, it would have satisfied the solicitation's requirements. Compare Protest at 7-9 with Comments at 2-4. The protester also argues for the first time that the agency impeded its ability to test its mine roller on a paved surface. Id. GSE's arguments in this regard are untimely, as the protester knew the basis for these arguments prior to filing this protest. See, e.g., Lanmark Tech., Inc., B-410214.3, Mar. 20, 2015, 2015 CPD ¶ 139 at 5 n.2 (piecemeal presentation of protest grounds, raised for the first time in comments, are untimely).