



Decision

Matter of: Armstrong Elevator Company

File: B-415809

Date: March 28, 2018

Roy Armstrong, for the protester.
Claire Watkins, Esq., General Services Administration, for the agency.
Lois Hanshaw, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest challenging the terms of a solicitation for elevator and escalator modernization as unduly restrictive of competition is denied where the agency demonstrates a reasonable basis for the required approach.

DECISION

Armstrong Elevator Company (Armstrong), a small business of Largo, Florida, protests the terms of request for proposals (RFP) No. 47PM0218R0001, issued by the General Services Administration (GSA) for elevator and escalator modernization and maintenance at the Federal Aviation Administration (FAA) headquarters building in Washington, D.C. Armstrong contends that aspects of the RFP are unduly restrictive of competition and defective.

We deny the protest.

BACKGROUND

GSA issued the RFP on November 21, 2017, on an unrestricted basis.¹ Exh. A, Contracting Officer's Statement, at 3; AR, Tab 10, RFP at 15. The statement of work

¹ Prior to the release of the solicitation, GSA issued a sources-sought notice to small business concerns to ascertain their capability to perform the requirement. Agency Report (AR), Tab 2, Sources Sought, at 1. Armstrong submitted a capability statement in response to the notice. AR, Tab 3, Market Analysis, at 1. Based on the responses received, the agency concluded that none of the small businesses met the requirements (continued...)

(SOW) stated that all of the vertical transportation (16 passenger traction elevators, 2 freight traction elevators, 2 hydraulic freight elevators, and 6 escalators) and support equipment in the FAA headquarters building are outdated and have reached the end of their useful lifespan.² AR, Tab 12, RFP SOW at 1. Accordingly, GSA sought a contractor to perform a fixed-price design-build contract for a vertical transportation modernization project. RFP at 20; AR, Tab 11, Elevator Agreement, at 2.³ The scope of work also included upgrading, replacing, surveying, designing, and constructing selected building conveyance systems. Id. The price range for the project was estimated to be between \$15 and \$20 million. RFP at 5.

As relevant here, the contract would consist of a base contract, five option contract line item numbers (CLINs), and five alternate CLINs. AR, Tab 11, Elevator Agreement, at 2. The base contract sought a contractor to provide all requirements to replace eight passenger traction elevators⁴ and one freight traction elevator, along with all specified support functions, such as electrical service and machine room painting. Id. The RFP also identified five option CLINs to: (1) replace a second set of eight passenger traction elevators and one freight traction elevator along with all specified support functions; (2) modernize six escalators and all specified support functions; (3) modernize two hydraulic freight elevators with all specified support functions; (4) provide maintenance and call-back contract services for all vertical transportation (16 passenger traction elevators, 2 traction freight elevators, 2 hydraulic freight elevators, and 6 escalators) beginning on the date that the construction starts until all base contract and awarded options are substantially completed;⁵ and (5) provide a full five years of maintenance

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for performance of the project. AR, Tab 4, Market Research Summary, at 2. The agency therefore determined not to set aside the RFP for small business. Id.

² A study conducted by the agency explains that the elevators were originally installed in 1962 and were modernized between 1992 and 1993. AR, Tab 14, Ashland Elevator Study, at 2.

³ The RFP incorporated an elevator agreement document and required offerors to read the solicitation and the agreement to be fully aware of all requirements. RFP at 15. For ease of reference hereinafter, we will refer to this document as the RFP.

⁴ The RFP noted that passenger elevators are configured in four-car banks and that servicing of the elevators for modernization required that no more than four passenger elevators could be taken out of service at any one time, and that the four elevators taken out of service must be in the same bank. AR, Tab 11, Elevator Agreement at 2. The passenger elevators were required to be completely modernized, tested, and inspected before the next four passenger elevators could be removed from service. Id.

⁵ The period of performance was identified in three phases: (1) commencement (10 days after the contractor received notice to proceed); (2) substantial completion (for the base period, 420 calendar days from the issuance of notice to proceed, assuming
(continued...)

and call-back contract services that would start immediately after the one-year warranty period ends. Id. The RFP stated that unless otherwise specified, all options could be exercised within 90 days of contract award. Id. at 5. The alternate CLINs provided for either various accelerations to the work schedule for completing work under the base contract or certain options, or identified alternate tasks for the contractor to perform.⁶ Id. at 3.

Award was to be made on a best-value tradeoff basis considering the following factors, listed in descending order of importance: past experience on similar projects, past performance, key personnel, technical/management approach and schedule, and price. RFP at 25-26. The solicitation stated that non-price factors when combined were to be significantly more important than total evaluated price. Id. at 26.

As relevant to the past experience factor, the solicitation required offerors to demonstrate successful experience as a contractor responsible for design and construction of three “similarly complex” elevator projects that were substantially completed in the last five years. Id. at 9. The solicitation stated that projects would be considered similarly complex if they met all five of the following characteristics:

- The project included 10 or more traction elevators;
- The project included a follow-on maintenance and call-back contract services of at least three years;
- The project included fire recall replacement, electrical service revisions/upgrades, and emergency power interface, all in support of elevators;
- The total elevator project construction cost at award was at least \$4 million; and
- The project was performed in an occupied and functioning building.

RFP at 9.

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there is not an alternate acceleration schedule); and (3) contract completion (within 30 calendar days of substantial completion). Tab 11, Elevator Agreement, at 3.

⁶ Alternate CLINs Nos. 1 and 2 would accelerate the work schedule for all elevators and freight elevators to be completed in 122 calendar days under the base contract and option No. 1, respectively. AR, Tab 11, Elevator Agreement, at 3. Alternate CLINs Nos. 3 and 4 would accelerate the work schedule for all elevators and freight elevators to be completed in 45 calendar days under the base contract and option No. 1, respectively. Id. Additionally, alternate CLIN No. 5 required the contractor to retain the existing 328 passenger elevator hoist-way doors; repair, clean, and paint (rather than replace) the 292 painted doors and frames on the upper floors; and clean and repair the 16 stainless steel doors and frames. Id.

Proposals were to be submitted by December 21. Armstrong timely filed this protest on December 20.

DISCUSSION

The protester challenges the terms of the solicitation, alleging that the requirements for the past experience factor are overly restrictive of competition and that the terms of the price factor are defective.⁷ We have reviewed the protester's arguments and conclude that none provides a basis to sustain the protest. We discuss a few examples below.

The protester alleges that requirements of the past experience factor are overly restrictive. In this regard, the gravamen of the protester's challenges is that the requirements for this factor, taken as a whole, are unduly restrictive because Armstrong could "satisfy each and every separate minimum qualifying characteristic if they stood alone or separate . . . just not combined on a single contract, let alone three." See Protest at 2; Comments at 15.

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

⁷ The protester also asserted various challenges that are not legally cognizable. For example, Armstrong contends that GSA failed to use advance procurement planning and market research under 10 U.S.C. § 2305(a)(1)(A)(ii) and failed to solicit proposals in a manner that achieved full and open competition under 10 U.S.C. § 2305(a) and 41 U.S.C. § 3306(a). Protest at 2. We dismiss these aspects of Armstrong's challenges for failing to state a valid basis of protest. Our Bid Protest Regulations contemplate that we may dismiss any allegation that fails to state a legally sufficient basis for protest. See 4 C.F.R. § 21.5(f). In this regard, we note that GSA, a civilian agency, is not subject to the requirements of Title 10, which governs the Armed Forces. See 10 U.S.C. §§ 101(a)(4); 2302(1). Even if we were to consider the advance planning and market research challenges under Armstrong's argument that the agency failed to solicit proposals in a manner designed to achieve full and open competition under 41 U.S.C. § 3306(a), these allegations would still be legally and factually insufficient. In this regard, Armstrong alleges no facts to support these challenges and the RFP was open to both large and small businesses. Additionally, to the extent we were to interpret the protester's generalized challenge to the agency's market research as a challenge to the agency's decision not to set aside the procurement for small business, the protester specifically states that it is "not protesting that the subject solicitation [was] not set aside for small business." See Comments at 4. As another example, the protester asserts for the first time in its January 29 comments that the sources-sought notice, issued on October 4, 2017, was vague and contradictory. Comments at 4. This challenge is untimely and will not be considered further. See 4 C.F.R. § 21.2 (a)(1).

the adequacy of the agency's justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. Air USA, Inc., B-409236, Feb. 14, 2014, 2014 CPD ¶ 68 at 5. The determination of a contracting agency's needs, including the selection of evaluation criteria, is primarily within the agency's discretion and we will not object to the use of particular evaluation criteria so long as they reasonably relate to the agency's needs in choosing a contractor that will best serve the government's interests. SML Innovations, B-402667.2, Oct. 28, 2010, 2010 CPD ¶ 254 at 2. 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. Caduceus Healthcare, Inc., B-414965; B-414965.2, Nov. 1, 2017, 2017 CPD ¶ 329 at 7.

We find no basis to sustain the protest. The fact that a requirement may be burdensome, or even impossible for a particular firm, does not make it objectionable if it meets the agency's needs. Advanced Comm. Cabling, Inc., B-410898.2, Mar. 25, 2015, 2015 CPD ¶ 113 at 6-7.

To the extent the protester challenges specific requirements of the past experience factor--to show that the projects included 10 or more traction elevators, follow-on maintenance and call-back contract services for three years, and a total construction cost at award of \$4 million--we conclude the agency has reasonably explained that the minimum requirements are related to its needs. See Memorandum of Law (MOL) at 5-14.

For example, the protester asserts that the requirement to have experience on a project with 10 or more elevators is restrictive because the base contract requires modernization of only nine elevators, and, even if any of the several options were to be exercised, there would never be more than nine elevators included in the project. Protest at 2. The protester additionally asserts that the project is "essentially" for work on five elevators. Protest at 3.

The agency responds that the protester's characterization of the scope of work is incorrect. MOL at 7. In this regard, the agency explains that the entire scope of work would cover the modernization of 20 elevators and 6 escalators, and that the minimum requirements for this factor were developed in accordance with GSA's practice to develop its technical evaluation based on a project's full requirements. Id. at 8 n.3; Contracting Officer's Statement, at 2. The agency further states that due to funding restrictions, GSA had to move portions of work initially included in the base contract into option CLINs, but did not revise the minimum requirements because it needed assurances that the contractor would be able to perform the project's entire scope of work if funding became available and the options were exercised. Id. The agency states that in order to balance the need for assurance of contractor capability to perform the full scope of the modernization project and the need for adequate competition, GSA determined that the minimum requirements should represent approximately half of the project's actual size and complexity. Id. at 12.

Based on our review of the record, we find that the terms of the RFP are not unduly restrictive. Although the protester may disagree with the agency's assessment of its needs, its disagreement with the agency's solicitation approach and assessments, without more, does not render the agency's determination unreasonable.

The protester also contends that options CLINs Nos. 4, and 5 are defective because offerors cannot determine a fair and reasonable price.⁸ Protest at 4. Specifically, the protester asserts that because it is unclear whether optional CLINs requiring modernization will have been exercised at the time option CLINs Nos. 4 or 5 may be exercised, the contractor may be spending "several hundred thousand dollars between maintaining new . . . and old equipment" or "saving' hundreds of thousands of dollars in cost that the government cannot get back." Comments at 6-7.

Here, option CLINs Nos. 4 and 5 clearly identify the work that an offeror is required to price. While we appreciate that the solicitation here imposes risk on the contractor by requiring pricing to include the cost of maintaining old and new elevators and escalators over a potentially lengthy term, risk is inherent in most 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 CWTSatoTravel, B-404479.2, Apr. 22, 2011, 2011 CPD ¶ 87 at 9. We do not find, on the record before us, that the solicitation exposes offerors to unacceptable or undue risk.

The protest is denied.

Thomas H. Armstrong
General Counsel

⁸ Option CLIN No. 4 states that on the date that the construction starts, the contractor will provide maintenance and call-back contract services for all vertical transportation (16 passenger traction elevators, 2 traction freight elevators, 2 hydraulic freight elevators and 6 escalators) until all base contract and awarded options are substantially completed. AR, Tab 11, Elevator Agreement, at 2. Option CLIN No. 5 requires a contractor to provide a full five years of maintenance and call-back contract services that will start immediately after the one-year warranty period ends. Id.