



Decision

Matter of: Al Baz 2000 Trading & Contracting Company, W.L.C.

File: B-416622.2

Date: December 12, 2018

Udhay Bhasin for the protester.

Patricia Walter, Esq., Department of the Navy, for the agency.

Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency's solicitation unreasonably failed to specify the licenses required for performance is denied where solicitation required generally the contractor to comply with all necessary permits and licenses.
2. Protest that solicitation unreasonably failed to include a requirement that offerors possess required drivers licenses at time of proposal submission, rather than at the time of performance, is denied where the record provides no basis to deviate from the general principle that this Office does not permit a protester to use the protest process to advocate for more restrictive government requirements.

DECISION

Al Baz 2000 Trading & Contracting Company, W.L.C., of Hawally, Kuwait, protests the terms of request for proposals (RFP) No. N33191-18-R-0612, issued by the Department of the Navy, Naval Facilities Engineering Command, for transportation services. Al Baz argues the solicitation contains ambiguities and other defects that preclude a fair competition.

We deny the protest.

BACKGROUND

The RFP, issued on March 12, 2018, contemplates the award of a fixed-price contract for a base year with four 1-year options for transportation services for the Department of Defense activities, installations, and organizations at various locations within the United Arab Emirates (UAE), Sultanate of Oman, Saudi Arabia, Kuwait, and Qatar. Agency

Report (AR), Tab 6, RFP at 70-71; Tab 8, Contracting Officer's Statement at 1. In general terms, the solicitation's performance work statement (PWS) requires the contractor to provide all personnel and equipment necessary to perform the specified services. AR, Tab 6, RFP, PWS (General Information) § 1.1. Contract award is to be made on a lowest-price, technically acceptable basis, based on three evaluation factors: experience, past performance, and price. RFP at 134-137.

On July 26, Al Baz filed a protest with our Office challenging the terms of the RFP. Among other things, Al Baz asserted the solicitation contained discrepancies regarding the applicability of UAE host nation laws which thereby precluded a fair competition. Protest, July 26, 2018, at 5-7. On August 6, the Navy informed our Office of its decision to take corrective action by amending the RFP and clarifying the requirement to comply with host nation laws. Navy Letter to GAO, Aug. 6, 2018, at 1. We subsequently dismissed the earlier protest as academic. Al Baz 2000 Trading & Contracting Co., W.L.C., B-416622, Aug. 6, 2018 (unpublished decision).

On September 17, the Navy issued an amended RFP which stated in pertinent part:

The Contractor shall, without additional expense to the Government, obtain all required permits, licenses, and authorizations to perform services under this contract and comply with all the applicable local laws, regulations, and ordinances. Provide evidence of such permits and licenses to the Contracting Officer before services commence and at other times as requested by the Contracting Officer.

PWS (Management and Administration) § 2.3.3; see also PWS (Base Support Vehicles and Equipment) § 2.2.1 ("[t]he Contractor shall ensure Drivers have . . . the necessary licenses to perform all transportation services in accordance with Host Nation regulations at each project location"); PWS (General Information) § 1.4 ("[t]his solicitation shall provide transportation services at project locations in accordance with applicable Host Nation laws and regulations").

On October 3, prior to the RFP's revised October 9 closing date, Al Baz filed the instant protest.

DISCUSSION

Al Baz alleges the solicitation is ambiguous by failing to specify the required licenses. Specifically, the protester contends that the UAE has very specific laws regarding its transportation industry, such that the services set forth in the RFP require a driver to possess a limousine license. Protest, Oct. 3, 2018, at 5. Al Baz therefore maintains the RFP should not state generally that the contractor shall possess "the necessary licenses to perform all transportation services in accordance with Host Nation regulations," but expressly state that a UAE limousine license, in particular, is required. Id. at 7, citing PWS (Base Support Vehicles and Equipment) § 2.2.1. The protester

argues that “[b]y omitting in the solicitation that a [l]imousine [l]icense is required . . . , the Solicitation is inadvertently inviting unqualified offerors to submit a proposal.” Id.

As a general rule, an agency must provide offerors with a sufficiently detailed solicitation that enables them to compete intelligently and on a relatively equal basis. DocMagic, Inc., B-415702, B-415702.2, Feb. 16, 2018, 2018 CPD ¶ 96 at 3; CWT Sato Travel, B-404479.2, Apr. 22, 2011, 2011 CPD ¶ 87 at 12. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. Colt Def., LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. The mere allegation that a solicitation is ambiguous or otherwise defective does not make it so. See DocMagic, Inc., *supra*; Skyline Indus., Inc., B-257340, Sept. 22, 1994, 94-2 CPD ¶ 111 at 4. Here, as set forth above, the RFP contains the broad, general requirement that the contractor “obtain all required permits, licenses, and authorizations to perform services under this contract and comply with all the applicable local laws, regulations, and ordinances.” PWS (Management and Administration) § 2.3.3. We do not find this requirement to be ambiguous, as the protester contends, because it is not susceptible to more than one reasonable interpretation. See WingGate Travel, Inc., B-412921, July 1, 2016, 2016 CPD ¶ 179 at 7.

AI Baz does not dispute the RFP requirement to comply with all host nation regulations “is [a] correct” one. Protest, Oct. 3, 2018, at 7. Rather, the protester argues that the solicitation is unclear by failing to state “exactly what the requirement[s] are.” Id. We disagree. There is simply no requirement that a solicitation identify the specific licenses that must be obtained by a contractor. See, e.g., Federal Acquisition Regulation clause 52.236-7 (requiring generally that the contractor obtain “any necessary licenses and permits”). In fact, we have repeatedly explained that “government contracting officers, as a general rule, are not competent to pass upon the question of whether a particular local license or permit is legally required to perform a [federal] government contract and, for this very reason, the matter is made the responsibility of the contractor.”¹ Blue Cross and Blue Shield of Virginia, B-222485, July 11, 1986, 86-2 CPD ¶ 61 at 5; see also Central Virginia Ambulance Serv., Inc., B-225530, Dec. 5, 1986, 86-2 CPD ¶ 651 at 1-2; Cadillac Ambulance Serv., Inc., B-220857, Nov. 1, 1985, 85-2 CPD ¶ 509 at 2. AI Baz essentially disagrees with the assignment of responsibility for determining the necessary licenses to the contractor, which does not make the solicitation improper.

AI Baz also protests that the RFP is defective because it should require that offerors possess the required driver’s licenses at the time of proposal submission. Protest, Oct. 3, 2018, at 8-9. As set forth above, the RFP requires the contractor to provide the

¹ Moreover, compliance with general licensing requirements is a matter to be resolved by the contractor and the local authorities. Mid-South Ambulance Corp., B-214078, Jan. 30, 1984, 84-1 CPD ¶ 133 at 2. Additionally, whether a contractor complies with the contract’s license and permit requirements is a matter of contract administration, which we will not review. 4 C.F.R. § 21.5(a); ThyssenKrupp Elevator Corp., B-410456, Dec. 30, 2014, 2015 CPD ¶ 18 at 5.

contracting officer with evidence that it possesses all required permits and licenses prior to the commencement of performance. PWS (Management and Administration) § 2.3.3. Al Baz argues both that the Navy is taking an unnecessary risk of potentially awarding to an unlicensed offeror, and that “allowing a potential [o]fferor[] to only provide host nation licenses upon commencement of services put[]s a responsible [v]endor [like itself] at a[] huge disadvantage.” Protest, Oct. 3, 2018, at 8. This aspect of Al Baz’ protest is essentially an allegation that the solicitation should be more restrictive of competition, which we will not consider. See New Mexico State Univ., B-409566, June 16, 2014, 2014 CPD ¶ 228 at 5 (“We also decline, as a matter of policy, to allow [protester] to use our Bid Protest function essentially to restrict, rather than promote, competition for [the agency’s] requirements.”).

The role of our Office in reviewing bid protests is to ensure that the statutory requirements for full and open competition are met, not to protect any interest a protester may have in more restrictive specifications. Areaaka Trading & Logistics Co., B-413363, Oct. 13, 2016, 2016 C.P.D. ¶ 290 at 2-3; Supreme Foodservice GmbH, B-405400.1, B-405400.2, Oct. 31, 2011, 2011 CPD ¶ 244 at 14. This Office does not generally permit a protester to use a protest to advocate for more restrictive, rather than more open, competitions for government requirements. DNC Parks & Resort at Yosemite, Inc., B-410998, Apr. 14, 2015, 2015 CPD ¶ 127 at 13; Virginia Elec. & Power Co; Baltimore Gas & Elec. Co., B-285209, B-285209.2, Aug. 2, 2000, 2000 CPD ¶ 134 at 8 (finding that our Office “will not consider contentions that specifications or other terms and conditions should be made more restrictive”); Loral Fairchild Corp.--Recon., B-242957.3, Dec. 9, 1991, 91-2 CPD ¶ 524 at 3 (noting that our Office “will not review a protest that an agency should have drafted additional, more restrictive specifications in order to meet the protester’s perception of the agency’s minimum needs”).²

The protest is denied.

Thomas H. Armstrong
General Counsel

² Al Baz also alleges the RFP requirement here places it at a competitive disadvantage by allowing potential offerors to obtain the required licenses only upon commencement of the services. Protest, Oct. 3, 2018, at 8. Our Bid Protest Regulations require that a protest must include a sufficiently detailed statement of the grounds supporting the protest allegations. 4 C.F.R. §§ 21.1(c)(4), 21.1(f), 21.5(f). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Kodiak Base Operations Servs., LLC, B-414966 et al., Oct. 20, 2017, 2017 CPD ¶ 323 at 3. Here, the protester provides no evidence that an offeror’s cost to obtain the licenses required to perform varies with when the purchase occurs (before or after contract award) or how an offeror would have a competitive advantage as a result of this. We dismiss this assertion for failing to allege a sufficient basis of protest. See AlliantCorps, LLC, B-415744.2, Apr. 4, 2018 CPD ¶ 136 at 4-5.