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Decision

Matter of: Israel Aerospace Industries

File: B-417681

Date: August 16, 2019

Howard J. Stanislawski, Esq., Patrick K. O’Keefe, Esq., and Robin Wright Cleary, Esq., Sidley Austin LLP, for the protester.

Marcia G. Madsen, Esq., and David F. Dowd, Esq., Mayer Brown LLP, for Sikorsky Aircraft Corporation, the intervenor.

Jonathan A. Hardage, Esq., and Matthew A. McNease, Esq., Department of the Army, for the agency.

Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest allegation that the solicitation contained an unduly restrictive provision is denied where the agency explained that the provision was reasonably necessary to meet its needs.

DECISION

Israel Aerospace Industries (IAI), of Ben Gurion International Airport 70100, Israel, protests the terms of request for proposals (RFP) No. W58RGZ-19-R-0198, issued by the Department of the Army, Army Contracting Command, Redstone Arsenal, Alabama, for helicopter maintenance and overhaul services. IAI alleges that the RFP’s terms are unduly restrictive of competition.

We deny the protest

BACKGROUND

The RFP, issued on April 5, 2019, contemplated the award of a fixed-price indefinite-delivery, indefinite-quantity contract to be performed over a 1-year base period and four 1-year option periods. Agency Report (AR), Tab 7, RFP at 2-3. The work to be performed involves the maintenance and overhaul of the UH-60 Main Rotor Blade Assembly. *Id.* at 19. The solicitation specified that, in addition to providing the maintenance and overhaul services, the selected contractor was expected to provide all

necessary parts to overhaul the main rotor blades because the agency would not provide any government-furnished material (GFM) other than repairable assets and reusable containers. Id. at 3, 19. Significantly, the overhaul and repair must satisfy critical characteristics because the main rotor blades are a critical safety item, meaning that failure of the main rotor blades could lead to catastrophic failure resulting in the loss of life. Id. at 19; Combined Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 7.

On February 8, 2019, the agency limited the competition to approved sources under Federal Acquisition Regulation § 6.302-1(a)(2). COS/MOL at 2. The Justification and Approval for Other Than Full and Open Competition (J&A) listed Sikorsky Aircraft Corporation (Sikorsky) and another firm as approved sources. AR, Tab 5, J&A at 3, 5. IAI was approved as a source on February 19, 2019. COS/MOL at 2. According to the agency, the source approval process does not address logistics related information, including whether a source is actually able to acquire the required parts. Id. at 3, n.1.

Sikorsky is the original equipment manufacturer of the UH-60 and the main rotor blades. Protest at 3. Sikorsky is the only supplier for some of the necessary parts required for overhaul. AR, Tab 11, Email from IAI to Agency at 1. During the solicitation period, IAI notified the agency that Sikorsky was unwilling to sell it the necessary parts, and requested that the agency provide the parts as GFM. AR, Tab 10, Army Response to IAI Email at 2. The agency declined to amend the solicitation because it concluded that it was not in a position to provide the parts as GFM. Id. at 1-2. Prior to the close of the solicitation period on June 17, 2019, the protester filed the instant protest with our Office.

DISCUSSION

The protester argues that the solicitation's requirement that the selected contractor must provide all of the parts and equipment is unduly restrictive in light of Sikorsky's unwillingness to enter into agreements to supply the parts to other offerors. Protest at 7. IAI further argues that the agency conducted a de facto sole-source procurement because the agency is aware that only Sikorsky can provide the parts and therefore perform the contract. Protester's Comments at 3, 8.

In preparing a solicitation, a contracting agency must solicit offers in a manner designed to achieve full and open competition, and include restrictive provisions only to the extent necessary to satisfy the agency's minimum needs. 10 U.S.C. §2305(a)(1)(A). A contracting agency has the discretion to determine its needs and the best method to accommodate them. Streit USA Armstrong, LLC, B-408584, Nov. 5, 2013, 2013 CPD ¶ 257 at 4. Where a protester challenges a specification or requirement as unduly restrictive of competition, the procuring agency has the responsibility of establishing that the specification is reasonably necessary to meet the agency's needs. Id. Moreover, GAO 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. However, where, as here, a requirement relates to national defense or human safety, an agency

has the discretion to define solicitation requirements to achieve not just reasonable results, but the highest possible reliability and/or effectiveness. Id.

Based on our review of the record, we find that the agency has reasonably explained its decision to include the allegedly restrictive requirement. According to the agency, it needs the mandatory parts in order for the main rotor blades to be successfully repaired. COS/MOL at 7. Further, the agency explains that requiring the contractor to provide the parts reduces its risk and shifts a substantial burden of performance to the contractor, as well as reflects the agency's desire for administrative convenience. Id. at 7-8. In this regard, we note that the overhaul of the main rotor blades does not contemplate a standardized process. See AR, Tab 7, RFP at 8, 19. Rather, prior to overhaul and repair, the selected contractor must disassemble and inspect each main rotor blade in order to determine the repair services and specific parts needed to return the item to serviceable condition. Id. at 19. Thus, if the agency provided the parts as GFM, then it would assume substantial contractual responsibilities because it would be required to make available any combination of parts to the contractor following inspection, and potentially make the agency liable for any delay caused by its inability to make the precise parts available in a timely manner. See COS/MOL at 7-8.

Although the protester asserts that the provision is unduly restrictive because the agency could create more competition by providing the parts as GFM, the protester does not provide us with any legal support showing that an agency must expend resources to eliminate market barriers. See Protester's Comments at 6-7; cf. National General Supply, Inc., B-292696, Nov. 3, 2003, 2004 CPD ¶ 47 at 3 ("an agency is not required to construct a procurement to neutralize a competitive advantage that some potential offerors may have over others by virtue of their own particular circumstances"). More importantly, the fact that the agency could create competition does not demonstrate that the restrictive provision lacks a reasonable basis because it does not show that the agency's needs are illegitimate or that the provision is not reasonably designed to meet those needs. See CHE Consulting, Inc., B-297534.4, May 17, 2006, 2006 CPD ¶ 84 at 3-4 ("our Office will not question an agency's determination of its minimum needs--or the best method to meet them--unless there is a clear showing that the determination has no reasonable basis").

Finally, to the extent the protester argues that it would be easy for the agency to acquire the parts and provide them as GFM, we note this allegation constitutes nothing more than disagreement with the agency's judgment and does not provide a valid basis of protest. See USA Fabrics, Inc., B-295737, B-295737.2, Apr. 19, 2005, 2005 CPD ¶ 82 at 5 ("A protester's mere 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."). Accordingly, we deny the protest allegation because we find that the protester has failed to rebut the agency's showing that the provision is reasonably necessary to meet its needs.

Regarding the allegation that the agency conducted a de facto sole-source procurement, we do not find that the protester is an interested party to raise that

argument. Under our Bid Protest Regulations, only an interested party may protest a federal procurement--that is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a). Here, IAI's protest effectively concedes that it is unable to perform the services under the RFP as it is written. Protester's Comments at 2 ("there are no viable sources that can successfully perform the contract, other than Sikorsky"). Thus, IAI is not eligible for award because it cannot submit a responsive proposal. See Protest at 6, 9 n.6 (protester submitted a nonresponsive proposal as it was based on the agency providing the parts as GFM). As a result, IAI is not an interested party to challenge the agency's alleged determination to proceed on a de facto sole-source basis. DAI, Inc., B-408625, B-408625.2, Nov. 6, 2013, 2013 CPD ¶ 259 at 4-5 (protester was not an interested party to challenge a de facto sole-source procurement because it was unable to submit a responsive proposal under the RFP as written); see also Tactical Shipping, LLC, B-416223.4, B-416223.5, Sept. 5, 2018, 2018 CPD ¶ 403 at 4-5 (protester was not an interested party to challenge a de facto sole-source procurement because it did not meet a solicitation requirement). Accordingly, we dismiss this protest allegation.

The protest is denied.

Thomas H. Armstrong
General Counsel