



Decision

Matter of: LOGMET LLC

File: B-420507

Date: May 6, 2022

Wayne Rankin, LOGMET LLC, for the protester.
Erika Whelan Retta, Esq., Isabelle P. Cutting, Esq., Department of the Air Force, for the agency.
Emily R. O'Hara, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging agency improperly bundled requirements in violation of the Small Business Act is denied where the record shows that the requirements do not meet the definitional prerequisites of the bundling restrictions of the Act, *i.e.*, the requirements were not previously performed under two separate, smaller contracts.
 2. Protest challenging terms of the solicitation as unduly restrictive of competition is denied where the solicitation's requirements are reasonably necessary to meet the agency's needs.
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DECISION

LOGMET LLC, of Round Rock, Texas, challenges the terms of the solicitation under request for proposals (RFP) No. FA4897-22-R-0001, issued by the Department of the Air Force for flight operations training and F-15 aircraft maintenance to support the Republic of Singapore Air Force (RSAF) at Mountain Home Air Force Base, Idaho. The protester argues that the agency improperly bundled two requirements and that several solicitation provisions are unduly restrictive of competition.

We deny the protest.

BACKGROUND

The solicitation, issued on January 27, 2022, pursuant to the procedures of Federal Acquisition Regulation (FAR) part 15, contemplates the award of a fixed-price contract

for one base year and four option years. Agency Report (AR), Tab 32, RFP at 1, 3-6¹; AR, Tab 2, Memorandum of Law (MOL) at 1-2. The Air Force provides training support to the RSAF through a Foreign Military Sales program known as Peace Carvin. MOL at 1. The Air Force describes Peace Carvin as a program that ensures “a strong U.S. relationship with Singapore, a critical partner in the region, while helping Singapore project airpower into the next generation.” AR, Tab 1, Contracting Officer’s Statement (COS) at 2. Generally, the solicitation seeks a contractor to provide aircraft maintenance and flight operations training to RSAF personnel on the F-15 Eagle aircraft operated by the U.S. Air Force and the F-15 variant (F-15SG) operated by the RSAF. *Id.* at 1-2; RFP at 100.

The agency states that the RSAF Aircraft Operations and Maintenance Support contract, awarded in 2018, is currently in its third iteration. COS at 3-4. The first iteration of the contract was issued in 2008 as a competitive set-aside under the Small Business Administration’s 8(a) Business Development program.² COS at 2-3. The current solicitation seeks to award the fourth iteration of the contract.³ *Id.* at 4.

The RFP advised offerors that award would be made using a best-value tradeoff process based on the following four evaluation factors: technical, past performance, small business participation, and price. RFP at 88-93. Proposals would first be evaluated for technical acceptability based on three technical subfactors (recruitment/retention, quality management, and prerequisite documentation), which would be assessed on an acceptable/unacceptable basis. *Id.* at 88-90. For those proposals found to be technically acceptable (and to have an acceptable small business participation submission), tradeoffs could be made between past performance and price, with past performance being significantly more important than price. *Id.*

On February 5, 2022, prior to the due date for submission of proposals, the protester filed this protest with our Office challenging the terms of the solicitation.

¹ The agency provided an Adobe PDF file containing the RFP and amendments. For clarity, we identify the page numbers by the sequential numbering of the PDF document.

² Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. FAR 19.800. This program is commonly referred to as the 8(a) Business Development program (or simply “8(a) program”).

³ The contracting officer notes that even though the services for aircraft maintenance and flight operations training have been provided under one contract since the inception of the program, the agency conducted market research before issuing the current solicitation. COS at 13; see AR, Tab 5, Market Research.

DISCUSSION

LOGMET challenges the terms of the solicitation, arguing that the agency improperly bundled two requirements and that several terms are unduly restrictive of competition. Protest at 20-26. We address these allegations in turn.⁴

Bundling

The protester first argues that the agency improperly bundled requirements in the solicitation, and thus violated the Small Business Act.⁵ *Id.* at 26 (citing and referencing definitions found in 15 U.S.C. § 632(o)(2)). We disagree.

The Small Business Act states that, “to the maximum extent practicable,” each agency shall “avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation in procurements as prime contractors.” 15 U.S.C. § 631(j)(3). Bundling, for purposes of the Act, means “consolidating 2 or more procurement requirements for goods or services *previously provided or performed under separate smaller contracts* into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern.” 15 U.S.C. § 632(o)(2) (emphasis added). The term “separate smaller contract” is defined as “a contract that

⁴ As LOGMET elected to proceed with its protest without counsel, no protective order was issued for this protest. Accordingly, our discussion of some aspects of the procurement is, necessarily, general in nature to avoid reference to non-public information.

⁵ In its initial protest, LOGMET only argues that the agency bundled requirements in violation of the Small Business Act. Protest at 26. The protester, for the first time in its comments, cites to GAO decisions that discuss bundling of requirements in violation of the Competition in Contracting Act of 1984 (CICA). Comments at 24-25. To the extent the protester now alleges that the agency’s bundling also violated CICA, our regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. *Star Food Serv., Inc.*, B-408535, Nov. 1, 2013, 2013 CPD ¶ 246 at 4-5 (finding that the protester initially only argued the requirements were consolidated in violation of the Small Business Act, and that later arguments about the requirement also violating CICA constituted piecemeal presentation and were untimely); *CapRock Gov’t Sols., Inc. et al.*, B-402490 *et al.*, May 11, 2010, 2010 CPD ¶ 124 at 24. Our Office will dismiss a protester’s piecemeal presentation of arguments that could have been raised earlier in the protest process. *Alfa Consult S.A.*, B-298164.2, B-298288, Aug. 3, 2006, 2006 CPD ¶ 127 at 3 n.2. There is no evidence that this argument could not have been timely asserted in the initial protest. Accordingly, this allegation is untimely and will not be considered. *Id.*; 4 C.F.R. § 21.2(a)(2). Thus, in our discussion, we address the bundling claim only as it pertains to the Small Business Act, which was timely raised.

has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns.” 15 U.S.C. § 632(o)(3); *Star Food*, *supra* at 3.

Here, the Air Force asserts that the inclusion of both maintenance and operations training support in the solicitation does not constitute bundling under the Small Business Act. The agency explains, and the protester does not dispute, that operations training and maintenance services have been solicited under one solicitation from the inception of the Peace Carvin program. COS at 12. Thus, these requirements have not previously been performed under separate, smaller contracts suitable for award to one or more small business concerns, which is a definitional feature of the bundling provisions in the Act. 15 U.S.C. § 632(o)(2); 15 U.S.C. § 632(o)(3) *see Star Food*, *supra* at 3 (“We agree . . . that the . . . requirements do not constitute bundling, as defined by the Small Business Act, because [the agency] is not consolidating requirements that were previously provided under separate contracts into a solicitation for a single contract.”); *Edmond Sci. Co.*, B-410179, B-410179.2, Nov. 12, 2014, 2014 CPD ¶ 336 at 12. As such, we find no violation of the bundling restrictions in the Small Business Act.

Unduly Restrictive Terms

The protester also argues that several terms of the solicitation are unduly restrictive of competition. For example, the protester challenges, among others, the following requirements: the requirement that an offeror submit an Air Force (AF) Form 8⁶ or equivalent document for certain personnel; the requirement that an offeror must contact qualified personnel for four specific positions within 60 days prior to proposal submission; and the requirement that an offeror submit a draft training plan that addresses certain specifications in the performance work statement (PWS). Comments at 27-28, 30. Although we address only these representative examples of the protester’s claims regarding unduly restrictive terms, we have fully considered all of the protester’s arguments and conclude none furnish a basis upon which to sustain the protest.

A contracting agency has the discretion to determine its needs and the best methods to accommodate them. *Simplex Aerospace*, B-414566.2, Aug. 8, 2017, 2017 CPD ¶ 256 at 3. In preparing a solicitation, agencies must specify their needs in a manner designed to permit full and open competition, and may include restrictive requirements only to the extent they are necessary to satisfy legitimate needs or as otherwise authorized by law. *Trailboss Enters., Inc.*, B-415812.2 *et al.*, May 7, 2018, 2018 CPD ¶ 171 at 7. However, an agency is not required to construct procurements in a manner that neutralizes the competitive advantages of some potential offerors. *Staveley Instruments, Inc.*, B-259548.3, May 24, 1995, 95-1 CPD ¶ 256 at 3-4. A specification is not improper merely because a potential offeror cannot meet its requirements. *Id.* at 4. Moreover, a protester’s disagreement with the agency’s judgment concerning the agency’s needs and how to accommodate them, without more, does not establish that

⁶ An AF Form 8 is a standard Air Force certificate of aircrew qualification. COS at 15.

the agency's judgment is unreasonable. *Protein Scis. Corp.*, B-412794, June 2, 2016, 2016 CPD ¶ 158 at 2.

When a specification or requirement is challenged 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. *Nexagen Networks, Inc.*, B-411209.7, June 20, 2016, 2016 CPD ¶ 164 at 4. Our Office will examine the adequacy of the agency's justification for the allegedly restrictive provision to ensure that it is rational and can withstand logical scrutiny. *Remote Diagnostic Techs., LLC*, B-413375.4, B-413375.5, Feb. 28, 2017, 2017 CPD ¶ 80 at 4.

AF Form 8 or Equivalent

The protester first argues that requiring an AF Form 8 unduly restricts competition, and that the agency should require offerors to submit resumes or letters of intent from proposed personnel. Comments at 27. According to LOGMET, requiring the use of an Air Force form restricts competition solely to offerors that can acquire personnel who were in "the Air Force exclusively." *Id.*

Under the first technical subfactor (recruitment/retention), the solicitation stated that offerors must identify what the agency terms "qualified contacts" for the following positions: three instructor-pilots; two weapon systems officer (WSO) instructors; three simulator/platform instructors; and two training instructor/managers. RFP at 88-89. A "qualified contact" is defined as an individual who, at the time of proposal submission, was fully qualified to perform the duties set forth for each position as described in the PWS, and had been contacted by the offeror within 60 days prior to the submission of the proposal. *Id.* at 89. Except for the training instructor/manager positions, the RFP noted that identification of the qualified contacts "shall be made" by "[p]rovision of the individual's most recent AF Form 8, or equivalent document." *Id.*

The agency states that requiring an AF Form 8, or equivalent documentation, is not unduly restrictive of competition, as the requirement is reasonably necessary to meet the agency's needs. As explained in the question and answer (Q&A) portion of the solicitation, the Air Force requires personnel to have specialized experience with the F-15 aircraft in order to accomplish the prescribed mission. *Id.* at 306. According to the agency, it is unlikely that aircrew from other platforms would have adequate training to operate and train personnel to operate F-15 aircraft. *Id.* Only Air Force, Air Force reserve, and Air National Guard personnel in certain states have access to F-15 aircraft. COS at 14. As such, nearly all qualified personnel, *i.e.*, personnel who have experience working with the F-15s used for the Peace Carvin program, will have an AF Form 8 certificate of qualification or equivalent documentation. RFP at 306.

Moreover, because safety is paramount to the requirements of the Peace Carvin mission, the Air Force requires offerors to demonstrate that personnel have received high-quality training. *Id.*; MOL at 14. The Air Force explains that the AF Form 8 certificate contains all the information necessary to evaluate personnel capabilities, as

the form provides the following information on an individual's qualifications: the date the qualifications were received; the qualification levels achieved; and a section to note any discrepancies or additional comments by the examiner certifying the individual's qualifications. MOL at 14; COS at 15. As the solicitation elaborates in the Q&As, AF Form 8s are a reliable way of ascertaining qualifications and ensure that the contractor will be able to fill the positions quickly, as "[p]ast experience has demonstrated that a contractor can fill an aircrew position with a candidate who is current and qualified faster than it would have taken to qualify aircrew from another platform." RFP at 306. The solicitation further explains that reviewing resumes and converting non-F-15 aircrew qualifications to F-15 aircrew qualifications would require extensive resources and place a burden on the program. *Id.*

The agency asserts that requiring these qualified contacts to have AF Form 8s, or equivalents, allows the agency to quickly verify qualifications. MOL at 14. We agree. We find that the agency's rationale for including the requirement to provide AF Form 8s is reasonable and does not unduly restrict competition.⁷

Contact within 60 Days Prior to Submission

As noted above, the RFP also defined a "qualified contact" as one that the offeror contacted within 60 days prior to proposal submission. *Id.* at 89. The protester argues that the agency, in "condens[ing] the days," hinders competition, as some offerors will have made contact with candidates outside of the 60-day window. Comments at 27.

The protester suggests that the 60-day timeframe is too stringent and does not provide sufficient flexibility to potential offerors. We note, however, that the solicitation was issued on January 27, 2022, with a proposal due date of March 18--less than 60 days from the issuance of the solicitation. See RFP at 1. The Air Force explains that it is reasonable to require that offerors have contacted their potential hires within two months prior to proposal submission to ensure that the selected contractor will be able to quickly fill these hard-to-fill positions once award is made. MOL at 13. As the agency explains, even one vacancy will diminish the level of service provided to the RSAF and reduce the success of the Peace Carvin mission. COS at 14. According to the Air Force, qualified pilots are in short supply, and the 60-day contact requirement is necessary to show that an offeror has current connections in the F-15 aircrew community. *Id.* at 13, 16.

We conclude that the agency has set forth a reasonable basis for its requirement. An agency's interest in reducing the risk of unsuccessful performance, which here would result in an inability to fill these positions, is a legitimate basis for including a restrictive

⁷ We note also that the RFP required qualified contacts to have an "AF Form 8, or equivalent." RFP at 89 (emphasis added). The agency explains that an offeror's contact could still be "qualified" without an AF Form 8, provided that the offeror verifies the qualifications of the proposed candidate through equivalent documentation. COS at 14-15. The offeror has the burden of establishing such equivalency. RFP at 306.

solicitation provision. *Advanced Commc'n Cabling, Inc.*, B-410898.2, Mar. 25, 2015, 2015 CPD ¶ 113 at 6 (“[T]he government’s interest in simply reducing the risk of unsuccessful performance is a legitimate basis for including a restrictive solicitation provision.”). Here, the agency has elected to require offerors to contact prospective personnel within 60 days prior to proposal submission to show that the offeror will be able to effectively fill positions once awarded the contract. Because we find nothing objectionable with the agency’s reasons for this requirement, we have no basis to conclude that the requirement unduly restricts competition.⁸ See *Trailboss, supra* at 8 (finding reasonable basis for requirement where “the positions are hard to fill, and that offerors must therefore demonstrate their ability to identify individuals who meet the PWS requirements”).

Draft Training Plan

Lastly, LOGMET contends that the solicitation’s requirement for a draft training plan unduly restricts competition because to prepare a plan offerors will be required to address PWS provisions that will apply to the training instructors. Comments at 30. The protester argues that only the incumbent can adequately address the PWS requirements because the incumbent is the only offeror able to “show” that it can perform the requirements listed in the PWS. *Id.* at 31-32 (“[Incumbent] contractor has access to all the data needed to create the required deliverable.”). The protester also claims that the provision is unduly restrictive because the plan is required to be included with the proposal at the time of submission, rather than filed after contract award. Protest at 26.

Again, the protester misconstrues the purpose of the draft training plan. The solicitation requires an offeror to submit a draft training plan, which the agency will assess during the technical evaluation. RFP at 309. The plan, along with the responses to other technical requirements, will be rated overall as acceptable or unacceptable and will be used by the Air Force to determine “if the offeror provides a sound, compliant approach

⁸ The protester also misconstrues this requirement in arguing that only the incumbent can contact proposed personnel because the incumbent is the only offeror who has staff in place. Comments at 27. The solicitation only requires that an offeror “contact” the proposed personnel; an offeror is not required to hire personnel before the agency makes award. RFP at 304 (“Offerors are not required to utilize their ‘qualified contact(s)’ in performance of the contract nor do offerors need to state any such intent.”). Although it may be easier for an incumbent contractor to contact proposed personnel, it is not impossible for other offerors to contact qualified individuals in the field, including the existing workforce that is performing the current contract. *Id.* (“The awardee will be expected to fill all positions necessary to perform the contract with qualified people. Offerors are free to submit any ‘qualified contact’ who fits the criteria.”). Moreover, as our Office has stated, an agency is not required to construct its procurements in a manner that neutralizes the competitive advantages some potential offerors may have over others by virtue of their own particular circumstances. *Staveley Instruments, supra*.

that meets the requirements of the [PWS], and demonstrates a thorough knowledge and understanding of those requirements and their associated risks.” *Id.* More specifically, subfactor three (prerequisite documentation) requires an offeror to submit a draft training plan that meets all specifications noted in PWS paragraphs 2.1.3.1, 2.1.3.1.1, 2.1.3.1.2, and 2.1.3.2. These specific provisions describe the requirements for the maintenance training instructor--such as modifying the curriculum, creating lesson plans, testing, and monitoring progress--and permits the agency to assess the number of hours to be spent by qualified personnel providing classroom instruction as well as curriculum development. RFP at 89-90; see RFP at 108-109 (PWS sections 2.1.3.1 to 2.1.3.2).

The Air Force explains that it anticipates that offerors will consider matters like workforce size and the amount of time needed to conduct training, and use their experience, consistent with industry standards, to develop the training plan. COS at 22. While an incumbent already performing this requirement likely has a training plan in effect, nothing prevents the protester, or any other offeror, from developing a training plan, drawing upon experience providing similar training services. Here, we find nothing unreasonable about the agency’s decision to require an offeror to submit a draft training plan that addresses how that offeror will implement the PWS requirements of modifying the curriculum, creating lesson plans, testing, and monitoring progress. See RFP at 108-109.

Additionally, the RFP instructs the agency to use the draft training plan to assess an offeror’s proposal under the technical evaluation factor. RFP at 88. Such requirement allows the agency to assess how the offeror intends to manage training services. Accordingly, we find this requirement reasonably necessary to meet the agency’s needs. Further, since the purpose underlying the draft training plan is to gauge the offeror’s ability to successfully perform the contract--and is part of the agency’s technical evaluation of the offeror’s proposal--it is reasonable to require the draft to be prepared by an offeror at the time of submission, rather than after award is made.

The protest is denied.

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General Counsel