



Decision

Matter of: Security Logistics Intelligence Construction Engineering Company

File: B-422390

Date: May 28, 2024

Cecil Avery for the protester.

Jared M. Levin, Esq., Department of Veterans Affairs, for the agency.

Christopher Alwood, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging solicitation requirements as unduly restrictive of competition is denied where the record supports the agency's position that the requirement is reasonably necessary to meet the agency's needs.

DECISION

Security Logistics Intelligence Construction Engineering Company (SLICE), a service-disabled veteran-owned small business (SDVOSB) of Moline, Illinois, protests the terms of request for quotations (RFQ) No. 36C25024Q7572, issued by the Department of Veterans Affairs (VA) for ambulette transportation services supporting the Columbus, Ohio VA Ambulatory Care Center (VAACC). The protester contends that the RFQ is unduly restrictive of competition.

We deny the protest.

BACKGROUND

On February 9, 2024, the VA issued the RFQ as a set-aside procurement for SDVOSB concerns, pursuant to the simplified acquisition procedures of Federal Acquisition Regulation part 13, seeking quotations to provide ambulette transportation services for the Columbus VA Ambulatory Care Center in Ohio. Agency Report (AR), Exh. 1, RFQ at 1, 5, 48. The RFQ contemplates the award of a single indefinite-quantity, indefinite-delivery contract for a 1-year base period and four 1-year option periods. *Id.* at 1. The RFQ provides for award on a best-value tradeoff basis considering price and three non-price factors: technical, past performance, and veterans involvement. *Id.* at 75.

As relevant to this protest, the RFQ's performance work statement (PWS) requires that the transportation services be provided in accordance with all "certifications, licenses, and training required" by federal, state, and city laws and guidelines.¹ RFQ at 5. The RFQ specifically requires vendors to submit proof of an Ohio emergency medical, fire, and transportation services (EMFTS) license. The PWS also requires that all drivers:

have a current [cardiopulmonary resuscitation (CPR)] certification and have successfully completed the Standard and Advanced First Aid Course of the American Red Cross or U.S. Bureaus of Mines or equivalent and be capable of providing necessary medical assistance to the attending medical care specialist.

Id. at 25.

Quotations were due on February 27, 2024.² RFQ at 107. SLICE filed this protest with our Office on February 26.

DISCUSSION

SLICE argues that the RFQ's requirements are unduly restrictive of competition. Specifically, the protester contends that the requirement that vendors possess an Ohio EMFTS license is unnecessary to meet the agency's needs. Protest at 3-5. SLICE further argues that the EMFTS licensing requirement is unreasonable because VA contractors who do not otherwise serve the general public are not bound by Ohio licensing requirements and because the VA has not required similar state licensing in other procurements.³ *Id.* at 3-4; Comments at 2-5.

The agency responds that the Ohio EMFTS license requirement is necessary to meet its needs because the VA relies on the EMFTS certification process for quality assurance and safety oversight. MOL at 5. The VA also states that the license is necessary to avoid performance disruptions that could be caused by the state attempting to enforce its licensing requirements on a noncompliant contractor. *Id.* at 6.

¹ The PWS identifies Columbus and 10 Ohio counties as local jurisdictions "affiliated" with the Columbus VAACC, but notes that required trips are not restricted to these counties. RFQ at 5.

² The agency states that it received four quotations from SDVOSB firms. Memorandum of Law (MOL) at 7; AR, Exh. 2, Decl. of Contracting Officer at ¶ 3.

³ SLICE makes several collateral arguments. While our decision does not specifically address every argument, we have reviewed all the arguments and conclude that none provides a basis to sustain the protest.

When 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. *eReceivables, Inc.*, B-416773, Dec. 12, 2018, 2018 CPD ¶ 423 at 5; *Remote Diagnostic Techs., LLC*, B-413375.4, B-413375.5, Feb. 28, 2017, 2017 CPD ¶ 80 at 3-4. Where an agency reasonably identifies its needs and allows vendors the opportunity to meet those needs, the fact that a solicitation's requirements may be burdensome or even impossible for a particular vendor to meet does not make them objectionable, if the requirements properly reflect the agency's needs. See *TransAtlantic Lines, LLC*, B-411846.2, Dec. 16, 2015, 2015 CPD ¶ 396 at 9. The determination of an agency's minimum needs and the best method of accommodating them is primarily within the contracting agency's discretion, and we will not question such a determination unless it has no reasonable basis. *American Int'l Movers, Inc.*, B-419756, July 20, 2021, 2021 CPD ¶ 269 at 4. Where matters of human life and safety are involved, our Office affords considerable deference to the judgments of the agency's technical experts. *Complete Parachute Sols., Inc.*, B-415240, Dec. 15, 2017, 2018 CPD ¶ 2 at 4.

Here, we conclude that the agency has established that the Ohio EMFSTS licensing requirement is reasonably necessary to meet the VA's needs. The VA states that the challenged requirement is necessary to ensure that the ambulette operator provides safe transportation for VA patients. MOL at 6. The agency explains that Ohio EMFSTS license holders for ambulette services are subject to initial and renewal application processes and must meet requirements including vehicle safety inspections, documentation of periodic vehicle maintenance, and driver training and qualification reviews. *Id.* at 3-6 (*citing* Ohio Admin. Code 4766-3). The contracting officer's representative states:

While the subject contract assures that VA can review and inspect the contractor's record, vehicles, and regulatory compliance, the Columbus VAACC does not have the infrastructure to continually monitor safety compliance by all types of transportation contractors. As such, the Columbus VAACC relies secondarily on a satisfactory EMFSTS certificate from the Ohio State Board as part of quality assurance due to the scope of operations and limited in-house resources. This is an essential element of VA's ability to ensure the safest operation of veteran transportation (from vehicles to driver requirements), the lack of which could negatively affect the safety, health, and wellbeing of our veteran patients.

AR, Exh. 3, Decl. of Contracting Officer's Representative at ¶ 5.

On this record, we find that the agency has established that its inclusion of the Ohio EMFSTS licensing requirement was reasonable. Although the protester raises several arguments disagreeing with the agency, we see no basis to conclude that the agency's judgements as to its needs are unreasonable.

For example, SLICE contends that the EMFTS licensing requirement is not reasonable because other VA facilities contract for ambulance services without requiring compliance with similar state certification, permit, or licensing requirements. Comments at 4. In this regard, the protester argues that vehicle safety inspections do not require a large level of effort and are performed by VA personnel for other contracts. *Id.* SLICE also alleges that it is unreasonable for the agency to outsource these functions to the state of Ohio because the VA is not required to force its contractors to comply with state licensing requirements. *Id.*

We find that SLICE's arguments here do not provide a basis to sustain the protest. Specifically, the protester's arguments focus on whether the VA was required to include the Ohio EMFTS license requirement in the RFQ rather than the controlling issue here-- whether the RFQ's requirements are unduly restrictive of competition. In this regard, the protester does not allege that vehicle safety inspections, driver background checks, and documentation of periodic vehicle maintenance are unreasonable needs for an ambulance services contract, rather, SLICE merely disagrees that the EMFTS license requirement is a reasonable method to meet these requirements. As discussed above, we see no basis to object to the agency's explanation that the Columbus VAACC has limited in-house resources to conduct quality assurance and the EMFTS licensing requirement provides a manner for the agency to ensure continually monitored safety compliance. See AR, Exh. 3, Decl. of Contracting Officer's Representative at ¶ 5.

Further, our Office has explained that it is reasonable for an agency to, as here, impose non-mandatory local licensing requirements to avoid potential disruption of services by a locality's enforcement attempts against an unlicensed contractor. *Lifeline Ambulance Servs., Inc.*, B-277415, Sept. 22, 1997, 97-2 CPD ¶ 83 at 2 (denying protest challenging the inclusion of a city licensing requirement for ambulance services). On this record, we find the contracting officer could reasonably conclude that the inclusion of the EMFTS license requirement in the RFQ was the best method to meet the VA's stated needs.⁴

In addition, SLICE maintains that the cost of obtaining an Ohio EMFTS license, which it estimates at \$350,000, demonstrates that the requirement is unduly restrictive of

⁴ The protester also argues that the RFQ's requirement that drivers be CPR certified is unduly restrictive of competition because the contractor's drivers are not required to perform CPR. Comments at 4-5. In this regard, the protester notes that the PWS does not require the contractor to provide basic life support services in addition to transportation services, so any CPR provided by a driver would be a voluntary service not covered by the contract. *Id.* at 5. The agency responds by noting that Ohio Administrative Code 4766-3-13(A)(3) requires Ohio EMFTS license holders to maintain documentation that each of its drivers possess a current and valid adult CPR certification. MOL at 12 (*citing* Ohio Admin. Code 4766-3-13(A)(3) (2022)). Given our conclusion above regarding the reasonableness of the agency's EMFTS license requirement, we see no basis to object to the agency's inclusion of the portion of the EMFTS license requirement requiring CPR certification.

competition where the agency is not otherwise required to include this requirement in the RFQ. Comments at 3-4. However, as we noted above, the fact that a solicitation requirement may be burdensome or even impossible for a particular vendor to meet does not make it objectionable if the requirement properly reflects the agency's needs. *TransAtlantic Lines, LLC, supra*. As discussed above, we find that the license requirement reasonably addresses the agency's need for safety inspections, driver background checks, and vehicle maintenance despite limited VAACC resources. Accordingly, we see no basis to sustain the protest due to the asserted cost of obtaining a license.

SLICE also alleges that market research from another procurement demonstrates that the Ohio EMFTS license requirement was unduly restrictive of competition. SLICE Req. to Introduce New Evidence at 1-2. In support of its argument, the protester points to a recently issued solicitation for the provision of ambulance transportation services for the Cincinnati VA Medical Center in Ohio. *Id.* That solicitation states that the agency's market research did not identify two SDVOSBs or veteran-owned small businesses with Ohio EMFTS licenses that were interested in submitting a quotation. *Id.* at 2 (*citing* SLICE Req. to Introduce New Evidence, exh. 1, RFQ No. 36C25024Q5392, amend. 0001 at 3). SLICE argues that this information is inconsistent with the contracting officer's statement in response to this protest that the agency received four quotations from SDVOSB firms in response to the instant solicitation for services in and around Columbus, Ohio.⁵ *Id.* at 1-2.

We do not see how these arguments provide a basis to sustain the protest. As an initial matter, we note that our Office has stated that "each procurement stands on its own, and an agency's actions during one acquisition have no bearing on its actions in another acquisition." *Sheritech Pharmacy*, B-419069, Oct. 29, 2020, 2020 CPD ¶ 336 at 3. Moreover, the protester does not meaningfully explain why it is inconsistent that several SDVOSB firms with Ohio EMFTS licenses could be interested in performing a contract for ambulance medical transportation in and around Columbus, but not in and

⁵ SLICE also alleges that the agency is using the license requirement to "preserve the performance of non-SDVOSB" firms for this requirement and to "enrich their favorite [non-SDVOSB] contractors" for these types of services. Comments at 7. However, as discussed above, the RFQ is a set-aside procurement for SDVOSB concerns and the agency received quotations from four SDVOSB firms. RFQ at 48; MOL at 7; AR, Exh. 2, Decl. of Contracting Officer at ¶ 3. SLICE's bare assertions, without more, are insufficient to meet the high bar necessary to establish bad faith or bias on the part of government personnel. Government officials are presumed to act in good faith, and to establish bad faith, a protester must present convincing evidence that agency officials had a specific and malicious intent to harm the firm. *See Trailboss Enters., Inc.*, B-415812.2 *et al.*, May 7, 2018, 2018 CPD ¶ 171 at 12. Our Office will not conclude that an agency's actions are motivated by bad faith merely because they are adverse to the protester's interests. *Id.* Here, SLICE submits no evidence--much less convincing evidence--to support its allegation that the agency is acting in bad faith, and therefore, we find no merit to this protest ground.

around Cincinnati. In this regard, as the protester notes, the Cincinnati solicitation differs from the instant requirement in that it requires transportation services to be performed in different states and localities which have their own licensing requirements. See SLICE Req. to Introduce New Evidence at 3-4 (*citing* SLICE Req. to Introduce New Evidence, exh. 1, RFQ No. 36C25024Q5392, amend. 0001 at 4-5). Accordingly, without more, we do not see how this alleged inconsistency between separate procurements with different performance locations and licensing requirements supports the protester's position that the instant license requirement is unduly restrictive.

In sum, we find that the terms of the RFQ are not unduly restrictive of competition. The VA has established that including the Ohio EMFTS licensing requirement in the RFQ is reasonably necessary to meet the agency's need of having proper recurring oversight of vehicle safety inspections, documentation of periodic vehicle maintenance, and driver training and qualification reviews to ensure passenger safety. Although the protester may disagree with the agency's assessment of its needs and approach, its disagreement, without more, does not render the agency's determination unreasonable.

The protest is denied.

Edda Emmanuelli Perez
General Counsel