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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Crewzers Fire Crew Transport, Inc.

File: B-402530; B-402530.2

Date: May 17, 2010

Pilgrim Guinn for the protester.

Azine Farzami, Esq., Department of Agriculture, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's issuance of a solicitation for crew carrier bus services, which provides for the selection of vendors for the establishment of blanket purchase agreements on a low-priced, technically acceptable basis, rather than on a best value basis, is unobjectionable, given the agency's broad discretion to determine its needs and the best way to meet them.
 2. Provisions in a solicitation for the establishment of blanket purchase agreements for crew carrier bus services that allow for the establishment of one blanket purchase agreement at one geographic area for each piece of equipment offered and do not allow for the establishment of multiple blanket purchase agreements at multiple locations for the same piece of equipment, are unobjectionable, where the agency has reasonably explained its need for such provisions.
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DECISION

Crewzers Fire Crew Transport, Inc., of Apache Junction, Arizona, protests the terms of request for quotations (RFQ) No. AG-024B-S-10-7000, issued as a total set-aside for Historically Underutilized Business Zone (HUBZone) small business concerns as well as small business concerns by the Forest Service, Department of Agriculture, for crew carrier bus services.

We deny the protest.

The RFQ provides for the establishment of multiple fixed-price blanket purchase agreements (BPA) for the use of crew carrier buses to transport personnel to and from fire lines during "fire suppression and all-hazard incidents." RFQ, Contract

Requirements, at 7. The agreement period for the BPAs was 3 years. Under the terms of the solicitation's contract requirements, contractors will be "responsible for all equipment, materials, supplies, transportation, lodging, personnel, and supervision and management of those personnel" necessary to meet or exceed the specified requirements. Id. The contract requirements includes certain "equipment requirements," for example, that the crew carrier buses be "[s]chool-bus type with capacity to carry a minimum of 22 passengers," and have cargo storage areas "that can safely and securely hold a minimum of 5,100 pounds of firefighting gear." Id. The "equipment requirements" section of the RFQ also refers to a number of United States Department of Transportation (DOT) regulations as applicable and for which documentation showing compliance may be requested at any time during contract performance, and adds that each bus shall be licensed with the appropriate department of motor vehicles or other appropriate agency. Id. at 8. This section of the solicitation sets forth a number of other contract requirements regarding the equipment quoted, such as "[a]ll transportation vehicles shall be in sound mechanical condition with sufficient horsepower and mainframe configurations to ensure successful performance on roads and highways, or in terrains described in these specifications," including "mountainous roads with gravel or native surfaces, narrow, unimproved roads, off roads in mountainous, rangeland and timbered areas." Id. at 7, 9.

The solicitation requires that vendors submit their quotations using the Forest Service's "Virtual Incident Procurement" system (VIPR).¹ Id. at 2. The agency explains that in accordance with the terms of the solicitation, "one BPA is [established] for each piece of equipment to avoid duplication of the equipment in the inventory list," and that "vendors may choose to bid on any of the dispatch zones nationwide."² AR at 2; RFQ, Contract Requirements, at 2; AR, Tab 9, VIPR Vehicle Company Information Form and VIPR Resource Category Crew Carrier Bus.

The RFQ provides that BPAs will be established with vendors whose quotations include "a reasonable price and resources that are technically acceptable." RFQ § E.2. The solicitation explains that technical acceptability "will be determined on a pass/fail basis," and that "[a]n offer will 'pass' if the offered resource meets the

¹ The agency explains that "VIPR is a web-based application designed by the Forest Service to administer preseason Incident BPAs, known as 'I-BPAs,'" and is used by the agency "to solicit, award, and manage preseason I-BPAs for all fire-related equipment and services." Agency Report (AR) at 5.

² The record includes VIPR "Appendix I – List of Host Dispatch Centers," that lists numerous dispatch centers for each region and area. For example, the Northern Rockies area in Region 1 lists 14 dispatch centers, such as the Billings Dispatch Center in Billings, Montana, and the Bozeman Interagency Dispatch Center in Bozeman, Montana. AR, Tab 12, VIPR app. I – List of Host Dispatch Centers.

minimum requirements stated in the specifications and has acceptable past performance.” Id. The RFQ adds, with regard to the past performance aspect of acceptability, that “[p]ast performance is a measure of the degree to which the customer(s) has been satisfied in the past, and complied with Federal, state, and local laws and regulations, and will be based on the evaluations received for the quoter on incidents and other related experience in the past 36 months.” Id.

Once the BPAs are established, the solicitation provides that orders will first be placed with HUBZone small business concerns, and then with the remaining small business concerns. Within this context, the BPAs will be ranked generally according to price for dispatch purposes, with the result being that generally “the cheapest buses are on the top of the list, and are, therefore, dispatched first.” An exception to this rule would be for cases where the dispatch is related to an “initial attack” on the incident where the closest locally-available resources would be dispatched first. AR at 2; RFQ, Contract Requirements, at 2, 10.

Crewzers protests the terms of the solicitation pertaining to the establishment of the BPAs and the ranking of the BPAs for dispatch purposes. Specifically, Crewzers argues that the solicitation, rather than providing for the establishment and ranking of BPAs on a technically acceptable, low-priced basis, should provide for an evaluation of the quality of the equipment offered by each vendor. In this regard, Crewzers states that its crew carrier buses are diesel-engine powered and have been retrofitted with features, such as front and rear flood lights, tail pipe protection, cooler carriers with tie downs, and off road terrain tires, whereas other vendors have significantly inferior, less safe, and/or older buses. Protest at 5.

The agency responds that its determination to establish and rank BPAs for dispatch purposes on a low-priced, technically acceptable basis resulted from recommendations from various “cooperating agencies and included subject matter experts with contracting, technical, dispatch and on the ground fire experience with these specific resources.” Contracting Officer’s Statement at 7. The agency states that it “considered attributes related to the quality of the equipment, such as vehicle age, mileage, useful life, and mechanical condition,” but determined that “none of these attributes were deemed to be a definitive or objective indicator as an advantage.” Id. at 8. The agency explains that, as reflected in the solicitation, it thus “developed minimum equipment requirements that would be needed to meet the Agency’s needs, taking safety into consideration.” Id.

An agency has the discretion to determine its needs and the best way to meet them. USA Fabrics, Inc., B-295737; B-295737.2, Apr. 19, 2005, 2005 CPD ¶ 82 at 4. Agency acquisition officials have broad discretion in the selection of the evaluation criteria that will be used in an acquisition, and we will not object to the absence or presence of a particular evaluation criterion so long as the criteria used reasonably relate to the agency’s needs in choosing a contractor or contractors that will best serve the government’s interests. King Constr. Co., Inc., B-298276, July 17, 2006, 2006 CPD ¶ 110 at 3.

In our view, the record reflects that the agency reasonably considered the alternative methods by which it could establish and rank BPAs for dispatch purposes, and reasonably determined that it could meet its needs using a low-priced, technically acceptable approach, with a number of minimum requirements set forth in the solicitation, including certain equipment attributes, an acceptable record of past performance, and compliance with certain regulations (such as certain specified DOT regulations). While the protester clearly disagrees with the agency's conclusions, the protester's disagreement does not render the agency's determinations unreasonable.

The protester contends that the provisions of the solicitation, which provide for the establishment of one BPA per Forest Service dispatch zone per piece of equipment quoted, are unreasonable. Specifically, Crewzers contends that because of these provisions it "will no longer be able to offer the same crew carrier to different regions throughout the country," and that if its "crew carrier fleet happen to be contracted in geographic regions of the country where there are no fires during the fire season," its crew carriers "will sit dormant," and Crewzers "will go out of business." Protest at 6.

The agency explains that the solicitation includes the "one equipment per zone rule" in order to ensure that a sufficient number of equipment would be available in each dispatch zone or geographic area." AR at 5; see Contracting Officer's Statement at 8. The agency states that its intent, as reflected by the solicitation, is to establish multiple BPAs at each dispatch center, and as explained previously, to develop a "dispatch priority list" for each center to use should the crew carrier buses be needed. Contracting Officer's Statement at 8. The agency adds that "[i]f the buses are allowed to move from one dispatch center to another at the Contractor's discretion, as proposed by the Protester, the dispatchers would not be able to utilize the dispatch priority lists as intended." Id. The agency further notes that a vendor may offer its bus at any dispatch center it chooses, and that vendors, such as Crewzers, that have multiple crew carrier buses, "may offer their buses at various host dispatch centers throughout the country."³ Id. Again, given the agency's explanation and the discretion afforded an agency in determining its needs and the best way to accommodate them, we cannot find this aspect of the solicitation to be unreasonable. USA Fabrics, Inc., supra.

³ Crewzers' argument that the agency's "one equipment per zone rule" as reflected in the solicitation, constitutes a geographic restriction is misplaced. Geographic restrictions preclude an award to an offeror or bidder that is not located in the designated geographic area. See Armor Group Int'l Training, Inc., B-298401, Aug. 31, 2006, 2006 CPD ¶ 132 at 2. Here, vendors may offer and, if appropriate, establish BPAs for their equipment in any dispatch center they choose, but are precluded from offering the same piece of equipment to multiple dispatch centers.

The protester argues that the agency unreasonably will establish BPAs with vendors whose submissions are unacceptable, with vendors who will not comply with the applicable DOT regulations, or with vendors who are nonresponsible. This contention is pure speculation. The agency has not yet conducted its evaluation of vendor submissions, or established BPAs under this solicitation. Since Crewzer's protest anticipates improper agency action it is speculative and premature. Paramount Group, Inc., B-298082, June 15, 2006, 2006 CPD ¶ 98 at 6-7. Our Office will not assume in advance that an agency will conduct its procurements improperly. Id.

The protester also argues that the agency will fail to properly administer these contracts, in that the agency will allow performance by vendors with crew carrier buses that do not comply with certain of the solicitation's provisions, such as those pertaining to DOT regulations and licensing requirements. Whether vendors will comply with the terms of the solicitation is a matter of contract administration for consideration by the contracting agency, not our Office. Standard Mfg. Co., Inc., B-236814, Jan. 4, 1990, 90-1 CPD ¶ 14 at 3. 4 C.F.R. § 21.5(a) (2010).

The protest is denied.

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