

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Maritime Institute Inc.

File: B-407254

Date: November 20, 2012

Harry G. Laragione for the protester.
Sebastian B. Vaneria, Esq., Department of the Navy, 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

Requirement in a solicitation for logistics training for mariners, that proposals include the resumes and signed employment letters of intent for key personnel, is unobjectionable, where the agency has provided a reasonable explanation for the requirement.

DECISION

Maritime Institute Inc. protests the terms of request for proposals (RFP) No. N00033-12-R-8012, issued by the Department of the Navy, for logistics training services for civilian mariners.

We deny the protest.

The RFP, issued as a small business set-aside, provides for the award of a fixed-price contract for a base period of 1 year with two 1-year option periods. In accordance with the terms of the solicitation, the contractor will be required to provide “an effective, accessible, responsive and high-quality training program to maintain and increase the professional knowledge and skills of civil-service merchant mariners.” RFP at 10. This includes the provision of “educational and related services, including course instruction and administration.” Id.

The solicitation states that award will be made to the responsible small business offeror whose proposal is determined to represent the best value to the government based upon the evaluation factors of technical, past performance, and price. The solicitation adds that in determining which proposal represents the best value, the results under the technical factor will be considered more important than past

performance, and that the technical and past performance factors combined will be considered significantly more important than price. The solicitation further advises offerors that the technical factor is comprised of the following subfactors: (1) staffing plan and key personnel experience, and (2) technical and management approach. Offerors are informed that evaluation of proposals under the staffing plan and key personnel experience subfactor will include the consideration of the “overall qualifications, education, and experience of key personnel assigned to the contract.” RFP at 51.

In order to facilitate the evaluation of the offerors’ key personnel, the solicitation provides minimum qualifications for 13 “Key Personnel” positions, such as Program Manager, Certified Executive Chief Instructor, and Instructor, and requires that the proposals include information demonstrating that the proposed key personnel meet the minimum qualifications set forth in the RFP. RFP at 18-19, 49. Offerors are advised that proposals are to include resumes for all proposed key personnel, and “a signed employment letter of intent” from the individuals proposed as key personnel who are “not currently employed by the Offeror.” RFP at 49.

The protester objects to the RFP’s requirement that offerors submit signed letters of intent from, and the resumes of, individuals proposed as key personnel. The protester notes here that “[w]hen we reached out to the current incumbent staff, we received emails stating they were unable to provide letters of intent or resumes as it would be in direct violation of their employment contracts.” The protester continues by explaining that “[w]hile prospective bidders could recruit staff who met the qualifications of the solicitation, they would not be qualified in the courses currently taught, making them less desirable than the instructors employed by the incumbent contractor.” The protester concludes that “[w]ithout the ability to acquire letters of intent from the current staff, prospective bidders [will be] unable to demonstrate best value,” and “ask[s] that the requirement for resumes and letters of intent be removed from the solicitation requirements until 30 days after award or that the incumbent contractor be directed to waive their employment agreements with incumbent staff with respect to resumes and letters of intent.” Protest at 1-2.

A contracting agency has the discretion to determine its needs and the best method to accommodate them. Ocean Servs., LLC, B-292511.2, Nov. 6, 2003, 2003 CPD ¶ 206 at 3. In preparing a solicitation, a contracting agency is required to specify its needs in a manner designed to achieve full and open competition, and may include restrictive requirements only to the extent they are necessary to satisfy the agency’s legitimate needs. 10 U.S.C. § 2305(a)(1)(B) (2006); Ocean Servs., LLC, supra. Where a protester challenges a specification as unduly restrictive, the procuring agency has the responsibility of establishing that the specification is reasonably necessary to meet its needs. The adequacy of the agency’s justification is ascertained through examining whether the agency’s explanation is reasonable, that is, whether the explanation can withstand logical scrutiny. Ocean Servs., LLC, supra.

The agency explains that the evaluation of proposed key personnel “is a major component of the [t]echnical evaluation” for these instructional services, and that the “requirement for resumes provides the Agency with a means for evaluating whether offerors have proposed key personnel who meet or exceed the minimum requirements outlined in the solicitation.” Agency Report (AR) at 5-6. The agency adds that the “requirement for signed employment letters of intent allows the Agency to assess the likelihood that proposed key personnel will actually agree to work for [the] offeror,” and that without that requirement, the agency would have “limited assurance that it will actually receive what is offered.” Id. at 6-7.

Although the protester asserts that the requirement that it submit resumes and signed letters of intent for its proposed key personnel will be difficult to meet and will provide the incumbent contractor with a competitive advantage, it has not shown that the agency’s rationale for the requirements--to ensure that proposed key personnel, such as the instructors, are qualified, and then to ensure that the key personnel on whom the evaluation is based are in fact available for contract performance--is unreasonable.¹ Atlantic Coast Contracting, Inc., B-291893, Apr. 24, 2003, 2003 CPD ¶ 87 at 2.

The protest is denied.

Lynn H. Gibson
General Counsel

¹ The protester also argues that the requirement is inconsistent with the policy of Exec. Order No. 13495, Displacement of Qualified Workers Under Service Contracts (Jan. 30, 2009). We dismiss this aspect of the protest. Compliance with an executive order is a matter concerning executive branch policy, which we do not review under the circumstances here. 901 North Fifth Street, LLC, B-404997, B-404977.2, July 22, 2011, 2011 CPD ¶ 152 at 8.