

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Womack Machine Supply Co.

File: B-407990

Date: May 3, 2013

Gregg Rupkalvis for the protester.

Alexander T. Bakos, Esq., and Jerry L. Seemann, Esq., National Aeronautics and Space Administration, for the agency.

Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest objecting to an agency amendment of a solicitation to provide additional requirements and testing is denied where the performance requirements and tests are necessary to meet the agency's needs.

DECISION

Womack Machine Supply Co., of Farmers Branch, Texas, protests the terms of request for quotations (RFQ) No. NNM13449183Q, issued by the National Aeronautics and Space Administration (NASA) for hydraulic servo control manifolds.¹ Womack complains that the solicitation's testing requirement is unduly restrictive of competition and was added to prevent Womack from competing.

We deny the protest.

BACKGROUND

On November 5, 2012, NASA posted on an agency website its intent to procure 300 hydraulic servo control manifolds from Charles F. Wheelock on a sole-source basis.

¹ A hydraulic manifold regulates fluid flow. The manifolds are for a hydraulic system that NASA uses to test space flight hardware (such as liquid oxygen tanks) for its manned Space Launch System Program. Contracting Officer's (CO) Statement at 1.

NASA invited interested firms to submit their capabilities and qualifications to perform the required work. Agency Report (AR), Tab A, NASA Acquisition Notice. NASA received a number of responses to its announcement and decided to procure the manifolds competitively. CO's Statement at 2.

On November 21, the agency issued the RFQ, as a combined synopsis/solicitation set aside for small businesses under the streamlined commercial acquisition procedures of Federal Acquisition Regulation Subpart 12.6. AR, Tab B, RFQ, at 4.² Firms were informed that award would be made on a lowest-price, technically acceptable basis. Technical acceptability was to be determined by assessing whether a quotation provided "sufficient detail to show that the product offered meets the Government's requirements." AR, Tab B, RFQ, at 5-6. A statement of work was provided that stated both design and performance specifications. In this regard, firms were informed that their proposed manifolds must be compatible and interchangeable with the agency's existing manifolds. AR, Tab B, RFQ, at 16-20.

NASA received quotations from five firms, including Womack. Following its evaluation of initial quotations, NASA asked Womack to address certain technical requirements that the agency believed were missing from Womack's quotation. In its response, Womack informed NASA where these requirements were addressed in its quotation.³ Womack Email to Agency, Dec. 3, 2012. NASA and Womack also discussed the possibility that Womack would manufacture and provide a manifold for testing purposes. See Womack Email to Agency, Dec. 6, 2012. NASA informed Womack that the agency was in the process of determining the "extent/amount of testing that will be performed." Agency Email to Womack, Dec. 7, 2012. Womack responded that it understood the agency's concerns and also understood that it bore the responsibility to provide a conforming manifold. Womack asked to borrow an existing manifold from the agency as "this would eliminate any doubt in our ability to duplicate these manifolds." See Womack Email to Agency, Dec. 7, 2012. The agency did not respond to this email. Over the next several weeks, Womack inquired as to the status of the procurement and the possibility of getting a manifold, and each time was informed that the agency had not yet made any decisions.

On January 10, Womack again requested the status of the procurement, noting that it "believes that the [agency] has searched for avenues to unfairly disqualify our response to this commercial solicitation." Womack Email to Agency, Jan. 10, 2013.

² Our page citations to documents in the AR are to the Bates numbers provided by NASA.

³ Womack also informed NASA that its manifold "will be a specialty manifold and tooled [in accordance with] the drawings and descriptions provided in the solicitation." Womack Email to Agency, Dec. 3, 2012

NASA informed Womack that the agency was still evaluating quotations. Agency Email to Womack, Jan. 11, 2013.

On February 4, NASA revised the solicitation to provide new performance requirements, including that quotations “shall demonstrate that testing has been conducted to validate Hydraulic Servo Control Manifolds for use in Aerospace Structural Qualification Testing.”⁴ AR, Tab D, RFQ amend. 2, Specifications, at 27. In this regard, the RFQ provided performance and design criteria against which the manifold was to be tested. For example, the manifold was to be tested to verify that it “produce[s] no load spikes during [a] Full-Scale Load Dump Event” and “Load Dump events shall be conducted using unequal area hydraulic cylinders to apply static load.” See id. at 35. Vendors were informed that quotations that “do not adequately demonstrate that testing has already been performed per the performance criteria outlined in this section will be deemed technically unacceptable.” Id. at 35.

Prior to the closing date for receipt of revised quotations, Womack protested to our Office.

DISCUSSION

Womack complains that the revised testing requirement is unreasonable and was added only to exclude the protester from the competition. In this regard, Womack contends that NASA knew that Womack could not comply with the testing requirements without being provided a sample of the manifold. Protester’s Comments at 3.

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit offers in a manner designed to obtain full and open competition and may include restrictive provisions or conditions only to the extent that they are necessary to satisfy the agency’s needs. 10 U.S.C. § 2305(a)(1) (2006). A contracting agency has the discretion to determine its needs and the best method to accommodate them. Parcel 47C LLC, B-286324, B-286324.2, Dec. 26, 2000, 2001 CPD ¶ 44 at 7. Where 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. Vertol Sys. Co., Inc., B-293644.6 et al., July 29, 2004, 2004 CPD ¶ 146 at 3. Mere disagreement with the agency’s judgment concerning the agency’s needs and how to accommodate them does not show that the agency’s

⁴ Vendors were informed that NASA did not have sufficient time or funding to perform its own testing. AR, Tab D, RFQ amend. 2, Specifications, at 35.

judgment is unreasonable. AT&T Corp., B-270841 et al., May 1, 1996, 96-1 CPD ¶ 237 at 7-8.

Here, the record shows that NASA concluded during its evaluation of quotations that the RFQ's failure to include testing requirements would preclude the agency from determining whether the proposed manifolds would be compatible and interchangeable with the agency's existing manifolds. CO's Statement at 2. Although Womack disagrees with this judgment, it does not show that the decision to include the testing requirement was unreasonable or was not necessary to satisfy the agency's needs. Rather, the crux of the protester's argument is that the agency should be required to accept a vendor's promise to provide a compliant product in response to the RFQ.⁵ Given that the manifold is only part of an overall hydraulic testing system and was required to be compatible and interchangeable with the existing manifold, we do not think that it was unreasonable for NASA to require test results to assure that a vendor's products would meet the agency's needs.⁶

We also find no merit to Womack's contention that the agency has "deliberately and maliciously" sought to prevent Womack from contracting with the agency under this solicitation. Protest at 2. As noted above, the record shows that NASA's amendment of the RFQ was required to provide performance requirements and testing to ensure that the agency received a manifold that would meet its needs. We see no support for Womack's contention that the agency acted in bad faith.

The protest is denied.

Susan A. Poling
General Counsel

⁵ Womack's complaint--that NASA has not provided the firm with a sample of the manifold to allow Womack to "reverse engineer" this part--indicates that Womack does not have an existing manifold or existing design for a manifold that would satisfy the agency's requirements. Therefore, we find no merit to Womack's contention that it should have received award on the basis of its initial quotation.

⁶ During the development of the protest record, our Office asked the parties to address whether the testing required by the revised RFQ constituted a qualification requirement subject to section 2319 of Title 10 of the United States Code. NASA responded that the testing required here, which was not to be performed by the government or under government supervision, was not a qualification requirement under that statute. We do not address this matter further because the protester is merely asserting that the agency was biased and failed to "properly partner" with Womack in developing the part. See Womack's Response to GAO Questions, Apr. 1, 2013, at 1.