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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Brand Consulting Group, Inc.

File: B-410152

Date: October 22, 2014

Leigh A. Brand, Brand Consulting Group, Inc., for the protester.
Mark Machiedo, Esq., Department of Veterans Affairs, for the agency.
Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that contracting agency included unrelated requirements in its solicitation is denied where the record shows that the solicitation reasonably articulates the agency's needs; allegations that elements of the evaluation criteria are unnecessary and overly restrictive are dismissed as lacking a valid basis.

DECISION

Brand Consulting Group, Inc., of Waccabuc, New York, protests the terms of request for quotations (RFQ) No. VA243-14-Q-1368 issued by the Department of Veterans Affairs (VA) for ISO 9001-2008 sterile processing consulting services. Brand argues that various aspects of the RFQ's evaluation scheme are overly restrictive and unnecessary to perform the work successfully.

We deny the protest in part and dismiss it in part.

The RFQ, issued on July 18, 2014, contemplated the issuance of an order utilizing the General Services Administration's (GSA) e-Buy system to obtain ISO 9001-2008 sterile processing consulting services.¹ Legal Memorandum at 1. The RFQ

¹ "ISO" stands for the International Organization for Standardization. ISO website, available at <http://www.iso.org/iso/home/about>. As explained by ISO, because "International Organization for Standardization" would have different acronyms in different languages, its founders decided to give it the short form ISO. ISO is derived from the Greek "isos," meaning equal. Id.

set forth an evaluation scheme where past performance and technical approach were to be considered along with price in the context of a best-value tradeoff decision. RFQ at 29-30. The past performance factor included five elements and the technical approach factor included six elements to be considered in evaluating quotations. Id.

Brand argues that “[m]any of the requirements” stated in the RFQ are based upon “an apparent need for Information Technology (IT) support services. . . . that are totally unrelated to Lean Six Sigma and should not be included in any Lean Six Sigma solicitation.” Protest at 4. Brand also argues that all five elements under the past performance factor, and two elements under the technical approach factor, are “totally unnecessary and will make no material difference to the success and outcome of the project.” Protest at 2-4. We address each argument in turn.

As a general rule, the determination of a contracting agency’s minimum needs and the best method for accommodating them are matters primarily within the agency’s discretion. Tucson Mobilephone, Inc., B-250389, Jan. 29, 1993, 93-1 CPD ¶ 79 at 2. Brand’s sole argument in this regard is that since this is a “Lean Six Sigma solicitation,” it should not include IT support services. Protest at 4. The protester provides us no basis to question the agency’s statement of its needs.

The record shows that while the scope of work (SOW) involves consultant support to assist the agency in obtaining ISO 9001:2008 certification readiness for its sterile processing services (SPS), those processes involve use of various information technology systems. RFQ at 5-7. In fact, our review of the SOW shows that a considerable portion of the requirements involve the development, improvement and transition of information technology systems related to the agency’s SPS requirement.² Id. Consequently, we have no basis to agree with the protester that the solicitation should not include IT support services because it is a “Lean Six Sigma solicitation”; to the contrary, it is evident that IT support services are an integral part of the agency’s overall need, as stated in the RFQ.³

² For example, the RFQ requires the contractor to expand the current dashboard used in monitoring and measuring data, review functionality and create new functionality for the agency’s “e-QMS” system that will allow for future transition and sustainability by IT support. RFQ at 5. The RFQ also requires the contractor to develop a mobile SPS e-QMS application to enhance SPS workflow and efficiency, assist in the transition of SPS SharePoint to SharePoint 2010, and create management tools, such as advanced e-QMS tracker/logs to facilitate real-time management of operations, quality and safety. Id. at 6.

³ The agency points out that while Brand references Lean Six Sigma in its protest, the requirement of the RFQ is for consulting services to assist the agency in obtaining ISO 9001:2008 certification readiness. Legal Memorandum at 5. Brand acknowledges that it incorrectly referred to Lean Six Sigma instead of ISO

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We next consider the protester's argument that the challenged evaluation factors are "totally unnecessary and will make no material difference to the success and outcome of the project." Protest at 4. The record shows that Brand has failed to state a valid basis of protest.

Our Bid Protest Regulations require that protests include a detailed statement of the legal and factual grounds of protest and that the grounds be legally sufficient. Systems Dynamics Int'l, Inc.--Recon., B-253957.4, Apr. 12, 1994, 94-1 CPD ¶ 251 at 3; see also 4 C.F.R. § 21.1(c)(4) and (f) (2014). This requirement contemplates that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action. Id. Protesters must provide more than a bare allegation; the allegation must be supported by some explanation that establishes the likelihood that the protester will prevail in its claim of improper agency action. Federal Computer Int'l Corp.--Recon., B-257618.2, July 14, 1994, 94-2 CPD ¶ 24; see also Coffman Specialties, Inc., B-400706.2, Nov. 12, 2008, 2008 CPD ¶ 211 (bare assertions that an award was improper, with neither evidence nor explanation of the protester's theory regarding the alleged violation, are insufficient to satisfy this Office's requirements).

As discussed above, Brand's protest consists of identifying seven evaluation elements and arguing that they "are totally unnecessary and will make no material difference to the success and outcome of the project." Protest at 4. Brand also argues that the statement of work reflects "overly restrictive and unnecessary requirements to perform the work successfully." Id. at 1. The protester provides no argument as to why the challenged aspects of the evaluation criteria are unnecessary, and no argument as to why any particular element of the evaluation scheme is "overly restrictive." See generally id. As a consequence, we conclude that this aspect of Brand's protest amounts to nothing more than unsupported bare allegations, which do not meet our Office's standards for further consideration.⁴

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9001:2008 in its protest, but argues that the error has no bearing on its basis of protest. We agree with the protester to the extent that the agency's statement of need for IT support services does not depend on whether Lean Six Sigma or ISO 9001:2008 certification readiness services were sought. The distinction also does not impact our analysis of Brand's challenge that the RFQ was unduly restrictive because, as discussed below, its protest is legally and factually deficient under either formulation.

⁴ The protester's comments provide some new arguments on this issue by providing a chart that shows proposed revised language for each of the challenged evaluation elements. Comments at 2-3. Of the seven evaluation elements challenged, four are based on Brand's objection to the inclusion of IT support services requirements

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Nevertheless, our review of the challenged evaluation elements provides us no basis for objection. In this regard, we will not object to the agency's selection of particular evaluation criteria so long as they reasonably relate to the agency's needs in choosing a contractor that will best serve the government's interests. SML Innovations, B-402667.2, Oct. 28, 2010, 2010 CPD ¶ 254 at 2. Four of the evaluation elements challenged by Brand relate to IT support services, which as addressed above, are reasonably included in this RFQ. The remaining three evaluation elements relate to minimum experience and knowledge requirements relevant to healthcare facilities, and sterilization processing systems. RFQ at 29-30.

The record shows that these evaluation elements clearly relate back to specific requirements articulated in the SOW. Without the benefit of argument from the protester to the contrary, they do not appear to be so onerous as to unduly restrict competition. For example, one challenged element requires expert knowledge and extensive experience with healthcare facilities, sterilization processing systems, and related operations. RFQ at 29. Given the type of specialized work contemplated under this RFQ, Brand has given us no basis to question the propriety of requiring demonstration of such experience.

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel

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in the RFQ, which we have already considered and rejected. The remaining three challenged elements relate to knowledge and experience requirements; to the extent that the chart can be construed as new arguments they are untimely. Our Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues, where, as here, the protester raises arguments for the first time in its comments that could and should have been made in its protest. Cedar Electric, Inc., B-402284.2, Mar. 19, 2010, 2010 CPD ¶ 79 at 4.