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Decision

Matter of: Advanced Communication Cabling, Inc.

File: B-410898.2

Date: March 25, 2015

Steven J. Koprince, Esq., Petefish, Immel, Heeb & Hird, LLP, for the protester. Tiffany Alford, Esq., Desiree A. DiCorcia, Esq., Frank V. DiNicola, Esq., and Lea E. Duerinck, Esq., Department of Veterans Affairs, for the agency. Brent Burris, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that solicitation's prohibition on the use of consultants to assist with proposal preparation is unduly restrictive is denied where the provision is reasonably related to the agency's desire to reduce performance risk by assessing the understanding and capabilities of the actual offeror and its proposed team, as opposed to those of a consultant, which has not been proposed to perform the contract.
 2. Protest that solicitation is ambiguous is denied where protester's reading of the solicitation is not reasonable.
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DECISION

Advanced Communication Cabling, Inc. (ACCI), of Spring Arbor, Michigan, a small business, protests the terms of request for proposals (RFP) No. VA118-15-R-0558, issued by the Department of Veterans Affairs (VA) for information technology (IT) services.

We deny the protest.

BACKGROUND

The RFP, issued on November 19, 2014, anticipates the award of up to 20 indefinite-delivery/indefinite-quantity (IDIQ) contracts, each with a 5-year base

period and one, 5-year option period.¹ RFP at 19. According to the RFP, anticipated task orders will be issued on a fixed-price, time-and-materials, or cost-reimbursement basis. Id. at 3. The RFP seeks total IT services solutions, including the following major functional areas: program management, strategy, enterprise architecture and planning; systems/software engineering; software technology demonstration and transition; test and evaluation; independent verification and validation; enterprise network; enterprise management framework; operations and maintenance; cyber security; training; IT facilities; and other solutions encompassing the entire range of IT requirements for the agency. Id. at 16. The RFP establishes a maximum total value of \$22.3 billion for all orders placed under the awarded contracts, to include the base and option period. Id. at 11.

The RFP provides that the agency will make awards on a best-value basis, using six evaluation factors: technical, past performance, veterans involvement, veterans employment, small business participation commitment, and price. RFP at 120. According to the RFP, the non-price factors, when combined, are significantly more important than price in the tradeoff decision. Id.

As relevant here, the technical evaluation factor is comprised of two subfactors-- sample tasks and management. Id. With regard to the sample tasks subfactor, the RFP directs offerors to describe their approach to performing three hypothetical tasks, to include identifying the labor categories the offerors would use to perform the tasks. AR, Tab 5, RFP Attachment 16. The RFP provides that the sample tasks “are designed to test the Offeror’s expertise and innovative capabilities to respond to the types of situations that may be encountered in performance of a contract resulting from this solicitation.” RFP at 121. The RFP further provides that in evaluating each sample task, the VA will consider the offeror’s understanding of the problem and the feasibility of the offeror’s proposed approach. Id. at 122. As to the latter, the RFP provides that “[t]he evaluation will also consider the realism of the labor categories being proposed in the Offeror’s response to the sample tasks.” Id.

Notably, the RFP expressly prohibits offerors from using consultants to assist them in preparing their sample task responses. Id. at 119. In this regard, the RFP requires an offeror to certify, using a form provided with the RFP, that its sample task responses were prepared only by the offeror and its subcontractors, provided that any such subcontractor has entered into a contractor team arrangement (CTA) with the offeror and is identified in the offeror’s management proposal. Id. The RFP provides that the agency will not consider proposals which do not include the certification or which provide a falsified certification. Id.

¹ The RFP and all other pre-solicitation documents discussed in this decision were posted by the VA on the Federal Business Opportunities (FBO) website, <https://www.fbo.gov/>.

For the evaluation of the management factor, the RFP provides that the agency will consider offerors' understanding of the work required and the feasibility of their approach. Id. at 122. In assessing the feasibility of an offeror's approach, the RFP provides the following:

The Government may evaluate the Offeror's proposed blended labor rates to determine if the proposed blended rates are unrealistically low in order to assess the ability of the Offeror to meet the PWS [performance work statement] requirements and whether the proposal provides the Government with a high level of confidence of successful performance. Unrealistically low blended labor rates proposed for a labor category(ies) and its associated hours may indicate a high-risk approach to contract performance. Since the proposed blended labor rates are binding, the Government's price evaluation shall not be adjusted as a result of this analysis due to the fact that the Government is not performing a cost realism analysis. This analysis, if undertaken, is solely for the limited purpose of aiding the agency in measuring the performance risk of the Offeror's approach to meeting the PWS requirements.

Id.

With regard to price, the RFP provides that an offeror's total evaluated price will be comprised of three components: labor, travel, and materials and other direct costs (ODCs). Id. at 124. As to labor, the RFP directs offerors to propose loaded, blended labor rates for 175 labor categories for the first year of the base period.² Id. at 117. Offerors are also to propose escalation rates for labor for the subsequent years of the base and option periods. Id. Those escalation rates are then applied to the offerors' first-year labor rates to calculate the labor rates for the remaining years of the contract. Id. The RFP provides that offerors' proposed labor rates will be incorporated into any resultant contract, as binding, not-to-exceed ceiling rates, although offerors may propose lower labor rates in future task order competitions. Id. The evaluated price for each labor category is then calculated by multiplying an offeror's proposed labor rate for a given year by the agency's estimated number of hours for that position. Id. at 124. The total evaluated price

² Depending on the labor category, the RFP requires offerors to propose labor rates for government owned-or-operated locations, contractor owned-or-operated locations, and locations owned or operated by the government outside the continental United States. RFP at 143.

for labor is calculated by summing together the cost of all labor categories for all years of the base and option periods. Id.

With regard to travel and materials/ODCs, the RFP provides a plug number for both categories for each year of the contract. Id. at 118. Offerors are directed to provide their indirect rates for travel and materials/ODCs for each year of the contract, which are then multiplied by the corresponding agency plug numbers to calculate offerors' indirect costs. Id. The total evaluated price for travel and materials/ODCs is calculated by adding the VA's plug numbers and offerors' indirect costs for each year of the base and option period. Id. at 124.

Prior to the closing time for receipt of proposals, ACCI timely filed this protest.

DISCUSSION

ACCI challenges the terms of the RFP on three bases.³ First, ACCI protests that the VA's prohibition on using consultants to assist with the preparation of the sample task responses is unduly restrictive of competition. Second, the protester argues that the RFP is ambiguous as to whether or not the agency will conduct a cost realism analysis. Third, ACCI contends that the RFP is ambiguous with regard to whether the VA's answers to contractor questions regarding the draft RFP are also applicable to the RFP. For the reasons discussed below, we deny the protest.

Use of Consultants

According to the VA, it prohibited offerors from using consultants to assist in the preparation of the sample task responses in order to help ensure that the responses received by the agency would reflect the technical abilities of the offerors and their subcontractors, and not that of outside experts who would not be involved in performing the contract. CO's Statement at 3. The VA reasons that this restriction reduces the risk of unsuccessful performance because it makes it more likely that its technical evaluation will be based on the knowledge and abilities of the individuals who would actually be involved in performing under an awarded

³ In its initial protest, the protester also claimed that the RFP's PWS and description of the sample tasks were impermissibly vague. Protest at 3-5. Following receipt of the agency report, ACCI expressly withdrew these bases for protest. Protester's Comments at 1. ACCI further alleged in its initial protest that the RFP's evaluation scheme did not provide for a meaningful evaluation of price. Protest at 5-7. The agency responded to this argument in its report and the protester did not take issue with, or otherwise seek to rebut, the agency's response in its comments. Under such circumstances, we view this argument as abandoned. Earth Res. Tech., Inc., B-403043.2, B-403043.3, Oct. 18, 2010, 2010 CPD ¶ 248 at 6.

contract.⁴ Id. The protester challenges the agency's rationale on several bases, however, as discussed below, we find the agency's restriction on consultants unobjectionable, and the protester's arguments unavailing.

Where 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. See Total Health Res., B-403209, Oct. 4, 2010, 2010 CPD ¶ 226 at 3. We examine the adequacy of the agency's justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. SMARTnet, Inc., B-400651.2, Jan. 27, 2009, 2009 CPD ¶ 34 at 7. The determination of a contracting agency's needs, including the selection of evaluation criteria, is primarily within the agency's discretion and we will not object to the use 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.

Here, the RFP's sample tasks evaluation subfactor is "designed to test the Offeror's expertise and innovative capabilities to respond to the types of situations that may be encountered in performance of a contract resulting from this solicitation." RFP at 121. Likewise, offerors' responses to the sample tasks are to be used to evaluate their understanding of the problems presented and the feasibility of their proposed approaches. Id. at 122. Since the fundamental purpose underlying the sample tasks is to gauge an offeror's ability to successfully perform the contract, it is reasonable to require that the sample task responses be prepared by the firms proposed to perform the contract, as opposed to outside consultants who have not been identified as members of the offeror's team. In this regard, the provision is analogous to an agency's decision to consider only the experience and past performance of contractors with which the agency will have contractual privity. In such cases, we have found that the government's desire to reduce the risk of unsuccessful performance was rationally achieved by restricting its consideration of experience and past performance to the firms contractually obligated to meet the agency's requirements. See Valor Constr. Mgmt., LLC, B-405365, Oct. 24, 2011, 2011 CPD ¶ 226 at 3; HK Consulting, Inc., B-408443, Sept. 18, 2013, 2013 CPD ¶ 224 at 2-3. Similarly here, the VA's restriction on consultant assistance with the sample task responses is directly related to the government's legitimate interest in focusing its technical evaluation on the abilities of firms actually proposed to perform the contract.

⁴ The VA notes that in its experience, offerors' use of consultants to prepare sample task responses has resulted in the agency receiving identical responses from multiple offerors, despite the fact that the offerors' teams were comprised of entirely different members. CO Statement at 3.

ACCI challenges the VA's rationale for restricting the use of consultants on the basis that the RFP does not actually require the individuals who prepare the sample tasks to also perform under the contract. Protest at 8. The protester notes that an offeror's employees (or its subcontractor's employees) who prepare the sample task responses may only be involved in the preparation of proposals, or may no longer work for the offeror (or its subcontractor) at the time of performance. *Id.* Thus, according to the protester, the agency's restriction on consultants is not rational, as it provides no guarantee that the same individuals who prepare the sample tasks will also perform services under an awarded contract. Our decisions recognize, however, that the government's interest in simply reducing the risk of unsuccessful performance is a legitimate basis for including a restrictive solicitation provision. See *Valor Constr. Mgmt., LLC*, *supra*, (denying challenge to solicitation provision where agency was concerned with "limiting the risk of unsuccessful performance") (emphasis added); *Aljucar, Anvil-Incus & Co.*, B-408936, Jan. 2, 2014, 2014 CPD ¶ 19 at 5 (denying protest where challenged solicitation provision was included to address "the possibility of increased performance risk from newly-formed joint ventures without prior experience operating as a joint entity.") (emphasis added). Although we agree with the protester's observation that the provision at issue in this protest does not guarantee that the same individuals who prepare the sample task responses will also perform under the contract, the provision eliminates the possibility that an offeror will submit sample task responses that do not reflect its own technical ability because the responses were prepared by an outside consultant. As such, we find that the agency reasonably concluded that the restriction on consultants would reduce risk to the government.

ACCI also challenges the logic of prohibiting consultant assistance in preparing sample task responses because it is possible for an offeror to contract with a consultant firm not only for the preparation of the sample tasks, but also to assist the offeror in performing under the government contract if the offeror receives an award. Protester's Comments at 3. Thus, the protester argues, the VA's blanket prohibition on consultant assistance with the sample tasks responses is unduly broad. *Id.* The protester's argument is misplaced, however, as it ignores the fact that the RFP allows for an offeror's subcontractors to participate in the preparation of the sample task responses, so long as the subcontractors are part of a CTA and identified in the offeror's proposal. RFP at 119. As such, under ACCI's hypothetical, a consultant could in fact assist with the sample task responses, provided the consultant was part of a CTA for the contract and identified in the offeror's proposal.

Finally, the protester challenges the RFP's prohibition on consultants on the basis that it may require a small business offeror to rely on a large business subcontractor to assist in the preparation of the sample task responses, and thereby jeopardize the offeror's status as a small business for the purposes of the procurement. Protest at 8-9. The fact that a requirement may be burdensome or even impossible for a particular firm to meet, however, does not make it objectionable, so long as the

requirement properly reflects the agency's needs. See Valor Constr. Mgmt., LLC, supra, at 2-3 (denying protest where protester alleged that it might lose its small business status if it entered into a joint venture with a large business in order to have the experience/past performance of the large business considered in the agency's evaluation). As discussed above, the agency's limitation on the use of consultants is reasonably related to the agency's goal of reducing the risk of unsuccessful performance. Accordingly, the protester's argument provides no basis to sustain the protest.

Ambiguities in the RFP

Next, ACCI argues that the RFP is not clear as to whether the agency will perform a cost realism analysis of offerors' proposed labor rates. The protester also contends that the RFP is unclear as to whether the VA's responses to vendors questions posted prior to the issuance of the RFP, and which focus largely on the content of the draft RFP, are applicable to the RFP itself. As discussed below, we deny these bases of protest because the protester's arguments are based on unreasonable interpretations of the RFP.

As a general rule, a procuring agency must give sufficient detail in a solicitation to enable offerors to compete intelligently and on a relatively equal basis. Richen Mgmt., LLC, B-406750, B-406850, July 31, 2012, 2012 CPD ¶ 215 at 4; AirTrak Travel et al., B-292101 et al., June 30, 2003, 2003 CPD ¶ 117 at 13. Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. See Raytheon Co., B-404998, July 25, 2011, 2011 CPD ¶ 232 at 17; Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2.

Here, ACCI argues that the solicitation is ambiguous as to whether the agency will perform a cost realism evaluation.⁵ RFP at 122. In this regard, the protester cites a provision in the RFP indicating that the agency will consider "the realism of the labor

⁵ The protester also alleges that the RFP is ambiguous as to whether the agency will conduct a price realism analysis. Protest at 7. The RFP, however, unambiguously describes a price realism analysis under the management approach subfactor, as it provides that the agency may evaluate whether offerors' proposed labor rates are so low as to pose a performance risk. See Advanced Alliant Solutions Team, LLC, B-410207, B-410207.2, Nov. 18, 2014, 2015 CPD ¶ 4 at 8-9 (solicitation for fixed-price or time-and-materials contract "may provide for a price realism analysis for purposes of measuring an offeror's understanding of the solicitation requirements or assessing risk").

categories being proposed in the Offeror's response to the sample tasks." RFP at 122; Protest at 7. This argument is without merit.

The sample tasks evaluation section of the RFP cited by the protester provides that the agency will evaluate the realism of offerors' proposed "labor categories" in responding to the sample tasks subfactor. Given the plain language of the phrase "labor categories," and the context in which it is used, there is no reasonable basis to conclude that the agency will conduct a cost realism analysis of offerors' labor rates, as the protester's argument seems to suggest. Indeed, ACCI's interpretation is particularly unreasonable given that: (1) the agency plainly states under the management approach subfactor that it is not conducting a cost realism analysis; (2) the price evaluation criteria does not provide for a cost realism analysis; and (3) the agency informed offerors in response to contractor questions that it will not conduct a cost realism analysis at the IDIQ level, but that it may conduct such an analysis at the task order level.⁶ RFP at 122, 124; AR, Tab 9, Q&As dated Oct. 30, 2014, at 43.

Finally, ACCI argues that the RFP is ambiguous as to whether the VA's responses to questions posted prior to the issuance of the RFP, focusing on the content of the draft RFP, apply to the final RFP. Protest at 9-10. The record reflects that on October 30 and November 19, after issuing a draft RFP and holding an industry day, the agency issued responses to interested vendor questions in two separate documents, each of which was entitled "Industry Day Questions and Answers." AR, Tab 9, Questions and Answers (Q&As) dated Oct. 30, 2014; AR, Tab 10, Q&As dated Nov. 19, 2014. After releasing the RFP on November 19, the agency posted several additional sets of Q&As. In the first set of responses, issued on November 25, the VA included the following statement: "For efficiency purposes, the Government removed duplicative questions and questions that have been

⁶ ACCI also claims that the agency is required to conduct a cost realism analysis because the RFP provides that the VA may issue task orders on a cost-reimbursement basis. While it is generally true that an agency must conduct a cost realism analysis when evaluating offers for a cost-reimbursement contract, see FAR 15.404-1(d)(2), here the VA explains that based on prior procurement history, it anticipates a de minimis number of task orders will be issued on a cost-reimbursable basis. Rather, almost all of the orders will be issued on a fixed-price or time-and-materials basis. Moreover, the agency informed offerors that when appropriate, it may perform a cost realism analysis at the task order level where the government is issuing an order on a cost-reimbursable basis. Under these circumstances, we have no basis to question the agency's price evaluation scheme, since it provides a reasonable basis on which to consider the comparative cost to the government of offerors' proposals. See Labatt Food Service, LP, B-408790, Nov. 25, 2013, 2013 CPD ¶ 279 at 3.

previously answered. Please review the RFI and Industry Day Questions and Answers previously posted to FBO.” AR, Tab 11, Q&As dated Nov. 25, 2014, at 1.

While acknowledging that the agency’s November 25 Q&A response expressly references the pre-solicitation industry day Q&As, ACCI contends that interpreting the final RFP based on the Q&A’s for the draft RFP conflicts with the decisions of this Office holding that an agency’s comments made in connection with a draft solicitation cannot be used as a basis to interpret a subsequently issued solicitation. Protest at 9-10 (citing Dell Federal Systems, L.P., B-404996, B-404996.2, July 22, 2011, 2011 CPD ¶ 151 at 5-6; McNeil Techs., Inc., B-278904.2, Apr. 2, 1998, 98-1 CPD ¶ 96 at 5-6). The protester’s reliance on these cases is misplaced.

In the decisions cited by ACCI, the pre-solicitation communications relied on by the protesters were not incorporated by reference into the subsequently issued solicitations and in fact directly conflicted with the solicitations. See Dell Federal Systems, L.P., *supra*; McNeil Techs., Inc., *supra*. By contrast, in the instant protest, the VA clearly communicated to offerors in its November 25 Q&As that the Q&As issued on October 30 and November 19 are applicable to the RFP, and thus the RFP is not ambiguous in this regard.

ACCI further argues that even if the agency’s pre-solicitation Q&As are considered applicable to the RFP, an ambiguity still exists because the draft RFP and the RFP are not identical. Protest at 10. As such, ACCI contends that the pre-solicitation Q&As may not be applicable to those portions of the RFP that differ from the draft RFP. *Id.* The protester, however, has failed to identify an actual example of an agency response to a question regarding the draft RFP that creates an ambiguity in the RFP. Moreover, the agency informed offerors that if a conflict occurs between the RFP and the Q&As, the RFP is to take precedence. AR, Tab 15, Q&As dated Dec. 18, 2014. Under these circumstances, we have no basis to conclude that the RFP is ambiguous.

The protest is denied.

Susan A. Poling
General Counsel