



GAO

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Contract Services, Inc.

File: B-411153

Date: May 22, 2015

Darcy V. Hennessy, Esq., Leslie A. Boe, Esq., and Jody R. Gondring, Esq., Hennessy, Boe & Gondring, P.A., for the protester.

Melissa Lloyd, Esq., and Alex M. Cahill, Esq., Department of the Army, for the agency.

Evan D. Wesser, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Solicitation requirement that an offeror possess a secret facility clearance prior to the due date for proposals does not unduly restrict competition where the record shows that the requirement is reasonably related to the agency's needs.

DECISION

Contract Services, Inc. (CSI), a small business, of Junction City, Kansas, challenges the terms of request for proposals (RFP) No. W52P1J-14-R-0154, issued by the Department of the Army, U.S. Army Materiel Command, for logistics support operations at Fort Riley, Kansas, as part of the Enhanced Army Global Logistics Enterprise (EAGLE) program. The protester alleges that the RFP is unduly restrictive of competition because it requires possession of a secret facility clearance prior to the due date for proposals.

We deny the protest.

BACKGROUND

The RFP, issued as a small business set-aside, sought proposals from EAGLE basic ordering agreement (BOA) holders for logistics support services, including

maintenance, supply, and transportation services at Fort Riley, Kansas. RFP at 2.¹ The RFP anticipates the award of a cost-plus fixed-fee task order with a fixed-fee contract line item number for a 60-day transition period. Id. In addition to the transition period, the RFP contemplated a 1-year base performance period, and four 1-year options. Id.

The RFP required that offerors have a secret facility clearance prior to the RFP's closing date. Id. at 3. A facility clearance is an administrative determination that a facility is eligible for access to classified information or award of a classified contract. AR, Tab 17, National Industrial Security Program Operating Manual, § 2-100. The RFP stated that offerors that did not have a secret facility clearance at the time of proposal submission would be found noncompliant with the RFP's requirements, and noncompliant proposals would not be further evaluated or considered for award. RFP at 52, 67.²

DISCUSSION

CSI argues that the requirement to possess a secret facility clearance by the submission date for proposals is unduly restrictive of competition. The protester argues that the agency has not established any immediate need for an offeror to have a secret facility clearance, as the RFP contemplates a 60-day transition

¹ The Army explains that EAGLE requirements are fulfilled by utilizing a multi-step process which was followed here. In this procurement, during step one, the CO published a pre-solicitation notice that outlined the projected EAGLE requirements and the Army's intent to execute multiple BOAs. Agency Report (AR) at 1. In step two, the CO issued a BOA request for proposals, which resulted in proposals that were evaluated on an acceptable/unacceptable basis with consideration given to technical and past performance factors. Id. The step two process resulted in over 100 contractors becoming EAGLE BOA holders. Id. at 1-2. In step three, here, the CO issued the RFP for the issuance of a task order for the specific requirements at Fort Riley. Id. at 2.

² A firm seeking a facility clearance must be sponsored by the government or a currently cleared contractor. AR, Tab 17, National Industrial Security Program Operating Manual, § 2-102. In a March 25, 2014, announcement unrelated to the specific RFP at issue here, the Army notified all EAGLE BOA holders that a secret facility clearance "will be required at solicitation closing date for many of the EAGLE Task Order Requests for Proposals." AR, Tab 13C, Notice to EAGLE BOA Holders (Mar. 25, 2014), at 1. The notice further provided that "[a]n EAGLE BOA will not facilitate the need for the SECRET Facility Clearance; therefore, if not already in possession of one, BOA Holders will need to obtain the SECRET Facility Clearance via sponsorship from another contractor who has the SECRET Facility Clearance." Id. The notice included as an attachment a Defense Security Service (DSS) brochure addressing clearance sponsorship. Id. at 2-3.

period. See Protest at 4-5; Comments (Apr. 2, 2015) at 2-3. Alternatively, CSI argues that the RFP is unduly restrictive because it effectively excludes offerors, like CSI, who currently have an “inactive” facility clearance, that is, an offeror who previously held a clearance.³ The protester argues that offerors with inactive clearances can secure a reactivation of their clearances more expeditiously than an offeror who never held a clearance could obtain one. The protester argues that it--and other similarly situated EAGLE BOA holders--will not be able to reactivate the required clearance until the award of the order with a clearance requirement, and for this reason, the agency should amend the solicitation to remove the requirement to have a facility clearance at the time of proposal submission. See Protest at 4-5, 6; Comments (Apr. 2, 2015) at 3. For the following reasons, we find that none of CSI’s arguments provide a basis on which to sustain the protest.

The Competition in Contracting Act of 1984 requires that agencies specify their needs and solicit offers in a manner designed to achieve full and open competition, so that all responsible sources are permitted to compete. 10 U.S.C. § 2305(a)(1)(A)(i). The determination of a contracting agency’s needs and the best method for accommodating them is a matter primarily within the agency’s discretion. Gallup, Inc., B-410126, Sept. 25, 2014, 2014 CPD ¶ 280 at 5. A protester’s disagreement with the agency’s judgment concerning the agency’s needs and how to accommodate them does not show that the agency’s judgment is unreasonable. CompTech-CDO, LLC, B-409949.2, Jan. 6, 2015, 2015 CPD ¶ 62 at 4. Moreover, the fact that a requirement may be burdensome or even impossible for a particular firm to meet does not make it objectionable if the requirement properly reflects the agency’s needs. Allied Protection Servs., Inc., B-297825, Mar. 23, 2006, 2006 CPD ¶ 57 at 3. Specific to the issues in this protest, our Office has previously found that an agency’s requirement for an offeror to possess a required facility clearance at the time of proposal submission is not unduly restrictive of competition where the agency demonstrates a reasonable basis for the requirement. E.g., CompTech-CDO, LLC, supra (finding a similar requirement for a top secret facility clearance at the time of proposal submission was not unduly restrictive of competition based on the agency’s reasonable concerns regarding potential performance delays attendant to offerors obtaining the clearance); Allied Protection Servs., Inc., supra (same, with regard to a similar secret facility clearance requirement).

The Army states that the RFP requirement that an offeror have a facility clearance at the time it submits its proposal is reasonably necessary to ensure timely and compliant performance of the resulting order. The RFP identifies seven key positions that will require maintenance of a secret personnel security clearance because of the need to participate in classified operational and deployment

³ CSI represents that it previously had an active secret facility clearance, but the clearance expired a year after the expiration of CSI’s last contract requiring a facility clearance. See Protest at 4.

meetings, or because of the need to access classified information, including troop deployment, security system, and ammunition-related information. AR, Tab 14A, Memo. for Record (Dec. 24, 2014), at 2; RFP, exh. F, TE 1G-005 Key & Specified Non-Key Requirements, at 1-3; Performance Work Statement (PWS), at 11. The project manager and alternate project manager positions will require personnel security clearances at the start of the transition period, while the other five positions will require clearances by the start of the work. RFP, PWS, at 7, 11. In order for an individual to be submitted for a personnel security clearance, the company the individual works for must have a facility clearance at an equal or higher level. See AR, Tab 14A, Memo. for Record, at 2; AR, Tab 13B, Contracting Officer's Response to CSI Letter (Dec. 24, 2014), at 1. The Army, therefore, argues that the requirement for offerors to possess the requisite facility clearance prior to the closing date for proposals is reasonably necessary in order to ensure timely staffing of the key positions.

The Army also states that the period of time necessary to obtain or reactivate a previously obtained, but now inactive, facility clearance can range anywhere from a few weeks to several months. See AR, Tab 14B, Email from DSS Special Agent (Dec. 22, 2014), at 2. The agency acknowledges that DSS approval to reactivate an inactive facility clearance may only take a few weeks if: (1) a facility clearance has been terminated in the last two years; (2) the contractor's key management personnel (KMP) have stayed the same and maintained current KMP investigations; and (3) there have been no substantive changes with the company's ownership or foreign ownership, control, or influence. AR, Tab 14A, Memo. for Record, at 3. The Army, however, concluded that the requirement to possess the facility clearance at the time of proposal submission was necessary because it could not "anticipate at an early stage of this procurement as to whether an offeror may be able to receive a Clearance within a few weeks or a few months." Id. The agency, therefore, asserts that the requirement is reasonably necessary to ensure timely performance and to avoid delays and increased costs in the event the offeror is delayed in obtaining or reactivating, or unable to obtain or reactivate, the required clearance.

We find that both of the bases for the timing of the RFP's facility clearance requirement advanced by the Army are reasonable. In this regard, CSI does not argue that the requirement for the awardee to have a facility clearance, or the agency's concerns regarding potential delays attendant to the awardee obtaining or reactivating a facility clearance, are unreasonable. Rather, CSI argues, in essence, that the Army should have narrowly tailored the facility clearance requirement so as to accommodate CSI's unique circumstances, i.e., CSI's inactive facility clearance status and ability to staff the project manager and alternative project manager positions with cleared personnel by the start of transition. An agency, however, is not required to tailor a solicitation to accommodate an offeror's unique circumstances. Here, the agency has articulated reasonable bases for the RFP's requirement, and the fact that it may be burdensome or impossible for the protester to meet does not make the requirement unreasonable. See Allied Protection

Servs., Inc., supra. In sum, we find that CSI has failed to demonstrate that the RFP's facility clearance requirement was unreasonable, and therefore we deny the protest.⁴

The protest is denied.

Susan A. Poling
General Counsel

⁴ We also note that the Army represents that it received more than 30 proposals in response to the RFP. AR at 3. This further demonstrates that the facility clearance requirement is not unduly restrictive of competition. See CompTech-CDO, LLC, supra, at 5 (finding agency's receipt of five proposals demonstrated that a similar facility clearance requirement was not unduly restrictive of competition).