



Decision

Matter of: Wittenberg Weiner Consulting, LLC

File: B-413457; B-413458; B-413459

Date: October 31, 2016

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Scott E. Miller, Esq., and Robert Kois, Esq., Department of the Navy, for the
agency.

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GAO, participated in the preparation of the decision.

DIGEST

1. Protests challenging the six-month period of performance for calls issued under a blanket purchase agreement are denied where the agency plans to issue a solicitation for a longer-term contract that will expand the number of potential competitors.
 2. Protests challenging the agency's decision to award a call under a blanket purchase agreement on a lowest-priced, technically-acceptable basis are denied where the record shows that the agency reasonably determined that the approach met its needs.
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DECISION

Wittenberg Weiner Consulting, LLC (WWC), of Tampa, Florida, protests the terms of request for quotations (RFQ) Nos. N68171-16-T-0141 (-0141), N68171-16-T-0142 (-0142), and N68171-16-T-0143 (-0143), issued by the Department of the Navy, Naval Supply Systems Command, for professional non-personal services. WWC challenges the 6-month period of performance for the RFQs, as well as the lowest-priced, technically acceptable (LPTA) basis for award.¹

We deny the protests.

¹ WWC also challenged the terms of another RFQ for analyst services, docketed as B-413460, which we address in a separate decision.

BACKGROUND

The RFQs, issued under the procedures of Federal Acquisition Regulation (FAR) § 8.405, each provide for the issuance of a fixed-price call (order) under the successful vendor's blanket purchase agreement (BPA) to provide program management and future requirements planning support for the Commanders of Isa Air Base, Bahrain; Navy Region Europe Africa Southwest Asia in Naples, Italy; and Camp Lemonnier, Djibouti.² The RFQs contemplate a 6-month period of performance.³

The performance work statements (PWS) state that the vendor will provide technical, analytical, subject matter, and programmatic expertise to the Officer-in-Charge, and that the services that will be provided under the RFQ will not be applied directly to the integral effort of the Commander, Navy Region Europe, Africa, and Southwest Asia. RFQ -0141, PWS, at 1.⁴ The PWS identifies a variety of tasks to be performed under the BPA calls, such as:

- Providing strategic planning support, assistance and coordination;
- Participating in the development, refinement and promulgation of program management tools, standards, and metrics to aid in the assessment of program performance and progress related to program measures;
- Participating in process improvement activities;
- Recommending communications plans as required and assisting with preparation, coordination and publication of strategic communications on a monthly basis;
- Providing data collection expertise and analytical support including assistance in preparing and printing updates, briefs and reports;
- Providing meeting support, including developing and editing presentations, handouts, and support in all aspects of running and documenting meetings-- including tracking action items and taskings, and performing other related requirements;

² On September 25, 2015, BPAs were issued to four holders of General Services Administration's Mission Oriented Business Integration Service (MOBIS) contracts, including WWC. Contracting Officer's Statement at 2.

³ RFQs -0141 and -0143 provide for one full-time analyst; RFQ -0142 specifies two full-time analysts.

⁴ Because the RFQs contain substantially similar terms and conditions, we will cite to RFQ -0141 unless otherwise indicated.

- Performing special studies or developing models to support the development of future business plans and Program Objective Memorandum (POM) input; and
- Performing other administrative duties as assigned.⁵

Id. at 1-2.

The RFQs state that a call will be issued to the BPA holder that offers the lowest-priced, technically acceptable quotation, considering three factors: technical capability, past performance, and price. See RFQ at 4. The technical factor is comprised of two subfactors: (1) country clearance status and (2) resumes and letter of intent. Under the country clearance status subfactor, vendors are required to submit a country clearance report that demonstrates an understanding of the documentation requirements and process for obtaining country clearances for the personnel; a statement indicating whether or not proposed personnel currently possess the required country clearance; and if the proposed personnel do not have country clearance, the vendor's proposed timeline for obtaining the clearance. RFQ at 2.

Under the resumes and letter of intent subfactor, the RFQs require vendors to submit resumes for each proposed person demonstrating that the following qualifications are met for the analyst I position:

- Bachelor of Arts/Bachelor of Science degree;
- Minimum of 8 years of experience that is relevant to the work to be performed; and
- A secret security clearance.

⁵ RFQ -0142 also includes the following tasks:

- Perform research and data gathering and analysis for business case analyses to develop conclusions and provide useful recommendations for process improvements;
- Assist in instituting formal process improvement programs ensuring improvement projects follow a prescribed mandate and structure;
- Perform data mining using a variety of Department of Defense databases; and
- Design and manage data tools using various software programs.

RFQ -0142, PWS, at 2.

Id. The RFQs also require vendors to submit a letter of intent signed by each proposed analyst who is not already employed by the vendor. Id. at 3.

For past performance, the RFQs require vendors to identify no more than three contracts that have the same or similar scope, magnitude or complexity, and which are ongoing or were completed within the last three years. Vendors are required to explain how the contracts are similar to the RFQ requirements. The RFQ informed vendors that the government may independently obtain and evaluate past performance information from a variety of sources, such as past performance questionnaires and the Past Performance Information Retrieval System (PPIRS). Id. at 3.

Prior to the closing date for each of the RFQs, WWC filed these protests.

DISCUSSION

WWC raises a variety of arguments challenging the 6-month period of performance of the RFQs and the lowest-priced, technically acceptable basis for award. We have considered all of the protester's arguments and find no basis to sustain the protests.

A contracting agency has the discretion to determine its needs and the best method to accommodate them, and we will not question an agency's determination of its needs unless that determination has no reasonable basis. See Womack Mach. Supply Co., B-407990, May 3, 2013, 2013 CPD ¶ 117 at 3. The adequacy of the agency's justification of its needs is ascertained through examining whether the agency's explanation is reasonable; that is, whether the explanation can withstand logical scrutiny. KAES Enters., LLC, B-411225 et al., June 18, 2015, 2015 CPD ¶ 186 at 4.

Period of Performance

WWC argues that the 6-month period of performance is unreasonable given the long-term nature of the requirement and will substantially hurt the agency's mission because it provides insufficient time to place personnel in-country, transition the work, and begin working effectively.⁶ Protester Comments at 7.

The Navy states that, based on discussions with the Commander, Navy Region Europe and Southwest Asia liaison concerning near and long term requirements for analyst services, the contracting officer determined that a 6-month period of performance will give it time to develop a longer term solution for analyst services

⁶ We note that WWC maintains that it alone maintains qualified staff ready to perform upon award. Protest at 8.

that would be competed among the more than 2,200 vendors under the General Services Administration's MOBIS schedule. The Navy further stated that such a long-term solution based on a greater scope of competition than the current BPA holders would provide the services on a more cost-effective basis. Agency Report (AR) Legal Memorandum at 6-7.

The protester has not demonstrated that the agency's judgment is unreasonable. Here, the Navy chose a 6-month period of performance for the BPA calls to allow time to develop a solicitation for a longer period of performance that would be competed among a larger pool of vendors. AR at 7. Since the purpose of our bid protest function is to ensure that agencies obtain full and open competition to the maximum extent practicable, we will generally favor otherwise proper actions--like this one--which are taken to increase competition. Northrop Grumman Tech. Servs., Inc., B-286012; B-286012.2, Nov. 1, 2000, 2000 CPD ¶ 181 at 8. While the protester maintains that the Navy has obtained ample competition from the four BPA holders, the 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. Grant Thornton, LLP, B-408464, Sept. 25, 2013, 2013 CPD ¶ 238 at 5.

LPTA Basis for Award

WWC maintains that the Navy is improperly using an LPTA evaluation scheme to obtain the required services. WWC argues that the activities to be performed under the RFQs are not the types of activities that are deemed appropriate in Defense Department directives and memoranda concerning the use of LPTA. WWC contends that the work to be performed is complex, specific to the Navy, and requires the exercise of judgment, and thus an LPTA evaluation scheme is not appropriate. Protester Comments at 2-4. WWC also contends that the Navy's prior use of LPTA has resulted in the selection of vendors that could not provide qualified personnel in the timely manner. Id. at 6. WWC states, for example, that a prior awardee was unable to perform the requirements because one of the two proposed personnel was not available for performance. Id. at 7.

The Navy states that the services to be acquired under the RFQs are not directly applicable to the integral effort of the Commander, Navy Region Europe and Southwest Asia, and consist of providing assistance and support, reviewing, coordinating, analysis, model development, and participating in planning conferences, printing materials, collecting data, participating in future planning and studies. Contracting Officer's Statement at 3. The Navy acknowledges that some of the past procurements have experienced difficulties, but stated that contractors other than WWC have successfully provided analyst services under contracts and BPA calls awarded on an LPTA basis. Id. at 1.

The Navy also states that the RFQs contain evaluation criteria that address the problems that WWC claims resulted from using LPTA in the past. AR Legal Memorandum at 6. The agency states, for example, that the country clearance, resume, and letter of intent requirements, as well as the past performance requirements, address the issue of whether a vendor can successfully provide staff in a foreign environment. Id.

In our view, the protester has not shown that the agency's judgment is unreasonable. The solicitations appear to address the potential for a vendor's inability to supply qualified individuals by requiring resumes that demonstrate the necessary educational and experience requirements, and requiring vendors to submit a signed letter of intent from potential analysts to ensure that qualified individuals are committed to employment. The RFQs also appear to address WWC's concern that vendors cannot place staff in-country quickly by requiring vendors to submit the country clearance status of each proposed analyst, to demonstrate an understanding of the country clearance process, and to provide a timeline for obtaining country clearance for those personnel not already cleared. See RFQ at 2-3.

Similarly, the RFQs' requirements under the past performance factor also appear to address the protester's concerns. The solicitations require each vendor to provide past performance information on contracts similar in scope, magnitude, and complexity, and to explain how the contracts are similar to the RFQs' requirements. The RFQs also indicate that the Navy may look to other sources of past performance information. Id. at 3. To the extent that the protester argues that the Navy has not entered related negative past performance information into the Contractor Performance Assessment Reporting System (CPARS) or PIPRS, a firm's performance of a contract is a matter of contract administration that is not for our review. 4 C.F.R. § 21.5(a); see ProActive Techs., Inc.; CymSTAR Servs., LLC, B-412957.5 et al., Aug. 23, 2016, 2016 CPD ¶ 244 at 11 n.6 (contents of past performance ratings are matters of contract administration).

With respect to the protester's argument that tasks to be performed under the resulting calls are inappropriate for award based on an LPTA evaluation scheme, we find no basis to sustain the protest. Under the BPA calls, the successful vendors will be required to provide meeting support, including preparing and printing briefs and reports and tracking action items; providing strategic planning support; participating in process improvement activities; and performing special studies and developing models. See PWS at 1-2. Although WWC disagrees with the agency's characterization of the types of tasks to be performed under the BPA calls, none of the information provided by the protester demonstrates that the agency's judgment

is unreasonable.⁷ Finally, to the extent that WWC argues that the Navy is not complying with Defense Department directives and memoranda, these documents are internal agency policy, rather than mandatory procurement regulations; accordingly, the Navy's compliance with these policies is not subject to our review. Grant Thornton, LLP, supra, at 5 n.4.

Other Issues

WWC raised additional protest grounds which we previously considered and dismissed. WWC complained that the agency failed to sanction firms that misrepresented the availability of key personnel in prior procurements. Protest at 2. This is a matter of contract administration not for our review. 4 C.F.R. § 21.5(a); see ProActive Techs., Inc.; CymSTAR Servs., LLC, supra. To the extent that WWC contended that the Navy will not consider the past performance of vendors in evaluating proposals under the instant procurements, Protest at 2, speculation about future events does not form a valid basis for protest. Cox & Assocs. CPAs, PC, B-287272.2; B-287272.3, June 7, 2001, 2001 CPD ¶ 102 at 4. To the extent that WWC argued that, in prior procurements the agency did not consider vendors' poor past performance in evaluating proposals, each procurement is a separate transaction, and an agency's practices or actions under one procurement do not bind its practices or actions on others. Ideal Fastener Corp., B-404206, Jan. 11, 2011, 2011 CPD ¶ 19 at 4.

WWC complained that the Navy violated an agreement reached in response to a prior protest, in which the protester alleges the Navy agreed that it would "preference" the use of a tradeoff best-value selection process for future competitions. Protest at 5. Our Bid Protest Regulations, 4 C.F.R. §§ 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Id. Here, this requirement has not been met. The e-mail states that the agency will review the award of a BPA to firms and review contractor responsibility, but does not contain any commitment for the Navy to use a tradeoff analysis as the basis for award. WWC E-mail, Nov. 13, 2015, at 2. Moreover, even if the e-mail made such a commitment, our forum's review is limited to violations of procurement statutes and regulations. See U-Tech Servs. Corp.; K-Mar Indus., Inc., B-284183.3, B-284183.4, Oct. 6, 2000, 2002 CPD ¶ 78 at 3-4; American Marketing Assocs., Inc--Recon., B-274454.4, May 14, 1997, 97-1 CPD ¶ 183 at 2-3.

⁷ We note that the protester submitted a statement from a Naval officer who disagreed with the agency's judgment. Protester Comments, Exh. 2A, Capt. B. We find his statement unpersuasive.

WWC also complained that the Navy arbitrarily changed the requirements specified by the government clients in Bahrain, Italy, and Djibouti in a way that undermines operational effectiveness. Protest at 4. This protest ground also does not include sufficient information to establish the likelihood that the agency in this case violated applicable procurement laws or regulations. See Bid Protest Regulations, 4 C.F.R. § 21.5(f).

The protests are denied.

Susan A. Poling
General Counsel