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Decision

Matter of: Navarre Corporation

File: B-414505.4

Date: January 4, 2018

William Weisberg, Esq., Law Offices of William Weisberg, PLLC, for the protester. Melody A. Goldberg, Esq., and Donald C. Mobly, Esq., Department of Veterans Affairs, for the agency.

Joshua R. Gillerman, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that solicitation is unfairly tailored to a competitor's proposal is denied where the record supports the agency's position that the requirement is reasonably necessary to meet the agency's needs.
 2. Protest that agency improperly consolidated and bundled requirements is dismissed as untimely where the protester failed to challenge these alleged improprieties before the solicitation's initial closing date.
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DECISION

Navarre Corporation, of Navarre, Florida, protests the terms of request for proposals (RFP) No. VA256-16-R-0642, issued by the Department of Veterans Affairs for the provision of all ground transportation services for the G.V. (Sonny) Montgomery Veterans Affairs Medical Center in Jackson, Mississippi. The protester contends that the terms of the RFP are tailored to benefit a particular firm and that the agency improperly bundled and consolidated requirements.

We deny the protest in part and dismiss in part.

BACKGROUND

The RFP, issued on August 8, 2016, as a service-disabled veteran-owned small business (SDVOSB) set-aside, contemplated award of a fixed-price, indefinite-quantity contract for the provision of all ground transportation services for the Sonny Montgomery Veterans Affairs Medical Center. Agency Report (AR), Tab 4, RFP at 1.

The maximum value of the contract over the five-year period of performance was to be \$12,500,000.00. Id. at 21. Relevant here, the RFP stated that offerors would be required to provide both wheelchair and gurney and litter, i.e., stretcher, transportation services. Id. at 16, §§ 2.1.13, 2.1.14. Proposals were initially due by August 31, 2016. Id. at 1.

On March 15, 2017, the agency made award to a firm other than Navarre. AR, Tab 1, Contracting Officer's Statement (COS) at 1. Navarre protested the award of the contract to the other firm, alleging that the agency misevaluated both proposals, and made an unreasonable best-value tradeoff determination. Protest, B-414505.1, at 4-7. In response to Navarre's protest, the agency took corrective action, noting that it would reevaluate all proposals. Amended Notice of Corrective Action, B-414505.1, at 1. Our Office dismissed Navarre's protest as academic.

The agency reevaluated all proposals and, on July 17, again made award to the same firm. COS at 1. Navarre protested and, relevant here, alleged that the firm had failed to satisfy a go/no-go evaluation factor which required that offerors demonstrate in their proposal submissions that all of their drivers had completed a first-aid certification course titled "Standard and Advanced First Aid Course" from the American Red Cross. Comments and Supp. Protest, B-414505.2, B-414505.3, at 2-4. In response, the agency gave notice of its intent to take corrective action by amending the solicitation to clarify its driver licensing or training requirements and permitting offerors to submit new/and or revised proposals. Notice of Corrective Action, B-414505.2, B-414505.3, at 1. Our Office dismissed Navarre's protest as academic.

On September 28, the agency issued amendment No. A00005 to the RFP, which required that offerors provide evidence that all of their drivers have completed certification of the American Red Cross course titled "Adult First Aid/CPR/AED", or an industry recognized equivalent, prior to the start of contract performance. RFP, amend. No. A00005. The amendment also added a requirement that offerors' drivers have a current Commercial Driver's License (CDL). Id. New or revised proposals were due in response to the amendment by October 20. Id. Navarre filed the instant protest to the terms of the RFP, as amended by amendment No. A00005, on October 5.¹

DISCUSSION

Navarre alleges that amendment No. A00005 provides an unfair competitive advantage to the previous awardee. In this regard, Navarre argues that the amendment was

¹ Both the agency and Navarre requested that our Office conduct alternative dispute resolution (ADR) in the form of outcome prediction. Agency Email, Nov. 20, 2017. On December 22, the GAO attorney assigned to the protest advised the parties that he would draft a decision denying the protest in part and dismissing the protest in part, and that the protest was likely to be denied by GAO. Navarre elected not to withdraw its protest.

improperly written to conform to the other firm's previously non-compliant proposal as it gives its drivers an opportunity to satisfy the revised certification requirements prior to the commencement of performance, as opposed to having to demonstrate satisfaction of this requirement with submission of proposals. Protest at 4.²

A contracting agency has the discretion to determine its needs and the best method to accommodate them. JRS Mgmt., B-402650.2, June 25, 2010, 2010 CPD ¶ 147 at 3. A protest that a specification was "written around" features of a competitor's proposal fails to provide a valid basis for protest where the record establishes that the specification is reasonably related to the agency's minimum needs. Fisons Instruments, Inc., B-261371, July 18, 1995, 95-2 CPD ¶ 31 at 2. The relevant inquiry, therefore, is whether the amended specifications here reasonably reflect the agency's needs.

After conducting additional research in response to Navarre's protests, the agency determined that the first-aid certification that it had previously required was not an actual course provided by the American Red Cross. COS at 2. To address this mistake, the agency issued amendment No. A00005, which required completion of the "Adult First Aid/CPR/AED" course, which the agency represents is an actual course provided by the Red Cross. COS at 2. The agency also determined that it was in its best interest to allow offerors to demonstrate compliance with this requirement prior to the start of contract performance. Id. The agency notes that doing so will ensure all offerors have an equal opportunity to have their drivers satisfy the new requirements. Id. at 2-3.

We find that the revised driver certification requirements reasonably reflect the agency's needs. While the agency needed drivers to be certified in first aid and emergency training, the certification it previously required did not actually exist. It is certainly reasonable then for the agency to remedy this mistake by amending the RFP to require that offerors' drivers complete an emergency training certification that is actually available. We also find it reasonable that the agency would allow offerors to complete the requirement prior to the start of contract performance. As the agency notes, allowing offerors to demonstrate compliance with the revised certification requirements prior to the start of contract performance would "ensure[] a level playing field" as it provides all offerors with additional time to have their drivers complete the revised requirements. COS at 2-3. The agency's actions also serve to enhance competition. By advocating that offerors be required to demonstrate compliance with the revised requirements with submission of proposals, Navarre is essentially alleging that the RFP should be more restrictive of competition, which is inconsistent with our Office's role in reviewing bid protests. See Areaka Trading & Logistics Co., B-413363, Oct. 13, 2016, 2016 CPD ¶ 290 at 2-3 (GAO does not generally permit a protester to use a protest to

² Navarre also initially alleged that the agency's requirement that all drivers have a CDL license overstated the agency's needs. Protest at 5. The agency took corrective action in response to this protest ground by removing this requirement and substituting a requirement that all drivers have a "Class D" license. Agency Email, Oct. 30, 2017. Navarre then withdrew this protest ground. Navarre Email, Oct. 30, 2017.

advocate for more restrictive, rather than more open, competitions for government requirements.). Accordingly, our review of the record provides us with no basis to object to the agency's amended driver certification requirements.

Navarre also argues that the agency improperly bundled and consolidated its requirements for wheelchair and stretcher transport. Protest at 5-6. Under our Bid Protest Regulations, protests based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of proposals are required to be filed before that time. 4 C.F.R. § 21.2(a)(1). The solicitation as originally issued clearly contemplated procuring both wheelchair and stretcher transport, and none of the successive amendments to the solicitation changed the agency's consolidation of these requirements. RFP at 16, §§ 2.1.13, 2.1.14. As proposals were originally due on August 31, 2016, in order to have been timely, Navarre was required to challenge these alleged improprieties prior to that date. As Navarre first raised these allegations on October 5, 2017, we dismiss them as untimely. 4 C.F.R. § 21.2(a)(1); see Specialty Marine, Inc., B-293871, B-293871.2, June 17, 2004, 2004 CPD ¶ 130 at 6 (dismissing as untimely allegation of improper bundling where agency's consolidation of requirements was clearly apparent on the face of the solicitation and protester failed to raise its allegations prior to the closing time for receipt of proposals).³

The protest is denied in part and dismissed in part.

Thomas H. Armstrong
General Counsel

³ To the extent Navarre argues GAO should still consider this protest ground pursuant to 4 C.F.R. § 21.2(c), the "significant issues" exception, Comments at 5, our Office declines to do so. GAO has limited this exception to protests that raise issues of widespread interest to the procurement community and that have not been considered on the merits in a previous decision; our Office has previously had occasion to consider allegations of both improper consolidation and bundling. See, e.g., 2B Brokers et al., B-298651, Nov. 27, 2006, 2006 CPD ¶ 178 at 9-15; Major Contracting Services, Inc., B-406980, Oct. 10, 2012, 2012 CPD ¶ 288 at 4. We also note that Navarre's argument that the agency improperly bundled these requirements fails to state a valid basis for protest, where, as here, Navarre, a small business, has not been precluded from competing. Manus Medical LLC, B-412331, Jan. 21, 2016, 2016 CPD ¶ 49 at 10; see also Future Solutions, Inc., B-293194, Feb. 11, 2004, 2004 CPD ¶ 39 at 6-7 (GAO will not consider bundling allegations where small business protesters represent that they are capable of performing the allegedly bundled requirements).