



Decision

Matter of: AI Baz 2000 General Trading & Contracting Company W.L.L.

File: B-415353.5

Date: February 12, 2018

Udhay Bhasin, and Jeffry Raji, for the protester.
Jonathan A. Hardage, Esq., and Richard M. Murphy, Esq., Department of the Army, for the agency.

Evan D. Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the inclusion of on-ramp procedures for the potential award of additional blanket purchase agreements is denied where the proposed procedures are consistent with the authority granted under applicable procurement regulations.

DECISION

AI Baz 2000 General Trading & Contracting Company W.L.L., of Hawally, Kuwait, challenges the terms of request for proposals (RFP) No. W52P1J-17-R-0062, issued by the Department of the Army, U.S. Army Materiel Command, for the establishment of multiple blanket purchase agreements (BPA) for the provision of non-tactical vehicle (NTV) leasing and maintenance services in the United States Central Command (CENTCOM) area of responsibility. AI Baz challenges the agency's inclusion of on-ramp procedures for the potential award of additional BPAs.

We deny the protest.

BACKGROUND

The RFP, which was issued on September 8, 2017, and subsequently amended 14 times, sought proposals for the award of up to eight fixed-price BPAs for the provision of NTV leasing and maintenance services in Jordan, Kuwait, Qatar, and the United Arab Emirates (UAE). RFP at 2. The BPAs will be established for a base year, and include six 1-year option periods, and the extension period under Federal Acquisition Regulation (FAR) clause 52.217-8, Option to Extend Services, for up to six months. Id. The RFP explained that the Army would solicit BPA holders when placing

new orders, and the specific evaluation standards for the task order competition would be specified at the task order level. Id. When competing for task orders, offerors can either propose their ceiling unit prices established in their BPAs or provide discounted prices. Id. The RFP provided that the award of a BPA would not guarantee a task order award, and there would be no guaranteed minimum orders. Id.

Relevant here, the RFP also included on-ramp procedures for the purposes of: (1) adding additional contractors to the pool for leases in Jordan, Kuwait, Qatar, and UAE; or (2) creating new pools of vendors in other countries within the CENTCOM area of responsibility. Id. at 3. The RFP specified that the on-ramp procedures could be implemented at any time by reopening the competition and utilizing the same basis of award established in the initial RFP. Id. The RFP further specified that any resulting BPAs awarded would include the same terms and conditions as the initial BPAs, including the same period of performance. Id.

On September 26, Al Baz filed a pre-award protest with our Office challenging the on-ramp procedures for the addition of contractors to the pool for leases in Jordan, Kuwait, Qatar, and UAE. The protester contended that this aspect of the proposed on-ramp procedures would result in unfair competition because new potential offerors would have insight into the initial BPA awardees' unit and total prices. See Protest (B-415353) at 7. On October 23, the Army notified our Office of its intent to take corrective action. Specifically, the agency advised that it had received multiple pre-award protests in connection with the RFP, and, in light of the various issues raised, it intended to revisit its requirements, issue an amendment to address or clarify, as appropriate, the protesters' concerns, and extend the deadline for the receipt of proposals. Based on the Army's proposed corrective action, our Office dismissed the protest as academic. Al Baz 2000 General Trading & Contracting Company W.L.L., B-415353.1, Oct. 26, 2017 (unpublished decision).

In a subsequent set of questions and answers issued as an amendment to the RFP, the Army explained its on-ramp requirement in more detail. In this regard, the Army advised potential competitors for the BPAs that the agency's use of the on-ramp procedures was a Department of Defense best practice and would help to ensure that the agency would obtain adequate competition, prices are established as ceiling prices, and that proposed unit ceiling prices would not be disclosed in any debriefings after award. More specifically, the Army indicated as follows:

One of the mandates of the Pentagon is to increase competition rates for acquisition. On-ramp procedures are a best practice as endorsed by the Pentagon. Therefore, the [government (USG)] will not be revising the On-Ramp procedures.

[The Army] reminds all Offerors that the prices proposed for the BPA competition are ceiling prices. At each and every Order Competition, each BPA holder has the option of proposing the ceiling price or lowering the price for individual orders. This will allow all BPA Holders to be

responsive as economic conditions change throughout the life of the BPAs. The BPAs and the order competition procedures are designed to increase value for the USG as well as promote price competition among vendors.

The USG does recognize concerns that Industry has presented. For that reason, [the agency] will not disclose unit prices in debriefings after award. [The agency] will only disclose the Total Evaluated Price. This practice will allow all Offerors to receive a meaningful debriefing while protecting proprietary information and preserving the competitive environment necessary for the program to be successful. Further, [the agency] wants to be completely clear: the on-ramp and off-ramp procedures are not punitive in any way. These procedures are a way to ensure the USG has meaningful competitions for future NTV requirements that will ensure a continuous supply of NTVs as necessary for mission requirements while rewarding Contractors that consistently support the customer. [The agency] only intends to off-ramp awardees who are not actively participating in order competitions. Similarly, [the agency] only intends to on-ramp participants when the current awardee pool is not providing sufficient competition for government requirements.

RFP, amend. No. 10, Questions & Answers, at 33. This pre-award protest followed.

DISCUSSION

Al Baz reasserts its original protest allegations that the on-ramp procedures are unreasonable because the potential for another round of BPA awards will result in unfair future competitions. In this regard, Al Baz contends that BPA holders would have insight into the initial BPA awardees' total prices. The protester also asserts that the new potential BPA holders would have to account for less risk as compared to the initial BPA holders given that they would only have to account for a shorter period of performance and they would have a better understanding of market conditions at the time the BPAs are established. The Army argues that the protest is without a valid basis because the proposed on-ramp procedures are authorized by the FAR, and because the protester cannot allege a credible likelihood of harm from the release of its total evaluated price or the risk differential between BPA holders receiving an initial award and BPA holders subsequently added through the on-ramp procedures. For the reasons that follow, we agree.

First, we agree with the agency that Al Baz has failed to identify any legal prohibition with respect to the agency's inclusion of on-ramp procurement procedures in the solicitation. Rather, the incorporation of on-ramp procedures is consistent with the authority granted to agencies to add additional BPAs pursuant to FAR § 13.303-5(d). Specifically, that provision authorizes the establishment of additional BPAs to ensure maximum practicable competition. Thus, we find no basis to challenge the agency's inclusion of a provision that, in essence, incorporates this regulatory authority.

Additionally, we can discern no reasonable possibility of competitive prejudice from the disclosure of the initial awardees' total evaluated prices. Competitive prejudice is an essential element of any viable protest, and where none is shown or otherwise evident, we will not sustain a protest, even where a protester may have shown that an agency's actions arguably were improper. DNC Parks & Resorts at Yosemite, Inc., B-410998, Apr. 14, 2015, 2015 CPD ¶ 127 at 12. The total evaluated price is calculated by summing the proposed ceiling prices for more than 1,200 contract line item numbers. RFP, exh. No. 2, Pricing Matrix. Thus, we find no reasonable basis to conclude that a potential offeror on a future on-ramp procurement could reasonably discern confidential proprietary or business pricing information based on the total evaluated price.

Finally, Al Baz argues that allowing for additional BPA holders in the future is fundamentally unfair because the later added BPA holders would have a competitive advantage in terms of assessing risk--they would be providing pricing for a shorter performance period with a superior knowledge of then current market conditions. Setting aside the apparent regulatory authority for the agency's inclusion of the on-ramp procedures discussed above, this allegation is misplaced. Although the protester does not further explain the manner in which the subsequently added BPA holders would enjoy a competitive advantage, we understand Al Baz to be arguing that given their lower exposure to risk, they would be in a better position to establish BPAs with lower ceiling prices. However, because the rates included in the BPAs are ceiling prices only, all BPA holders competing for individual orders are free to provide lower prices based on actual market conditions at the time the agency solicits an order. RFP at 2. Thus, we find no reasonable basis to conclude that initial BPA holders will somehow be disadvantaged by future competitors offering lower BPA ceiling rates.¹

The protest is denied.

Thomas H. Armstrong
General Counsel

¹ Al Baz also specifically identified a concern that countries identified in the BPA may, in the future, implement value-added taxes (VAT), which current BPA holders may have difficulty accounting for when setting their pricing. In response to Al Baz's concerns, the Army represents that it intends to further amend the solicitation to allow BPA holders to make upward adjustments to their ceiling prices under certain circumstances to account for the imposition of VAT, pursuant to FAR clause 52.229-6, Taxes-Foreign Fixed-Price Contracts. See Email from Agency Counsel (Jan. 12, 2018) at 1.