



Decision

Matter of: ARI Phoenix, Inc.

File: B-416878

Date: October 24, 2018

Tekla Goodwin, for the protester.
Brian C. Habib, Esq., and Scott N. Flesch, Esq., Department of the Army, for the agency.
Paula J. Haurilesko, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the awardee cannot provide a certified technician is dismissed, where the solicitation language requiring that equipment maintenance and inspection services be provided by a technician certified by the equipment manufacturer is a performance specification and not a definitive responsibility criterion.

DECISION

ARI Phoenix, Inc., of Lebanon, Ohio, protests the award of a contract to Atlantic Hoist & Crane, Inc., of Atlantic Beach, North Carolina, under request for quotations (RFQ) No. PANNGB-18-P-0000-075873, issued by the Department of the Army, National Guard Bureau, for ARI-Hetra lift system maintenance and inspection services. ARI Phoenix contends that the awardee will not be able to comply with the terms of the solicitation.

We dismiss the protest.

BACKGROUND

The RFQ, issued as a combined synopsis/solicitation, was posted on the Federal Business Opportunities (FedBizOpps) web site on August 24, 2018, under the commercial item provisions of Federal Acquisition Regulation (FAR) subpart 12.6. FedBizOpps Notice, Aug. 24, 2018, at 1. The procurement was set aside for small businesses. Id. The RFQ contemplated the award of a contract for preventative maintenance and safety inspection of ARI-Hetra 4 post mobile lifting systems at various maintenance facilities throughout New Jersey. Id.

The RFQ stated that price was the basis for award. Id. In the description of the requirement, the RFQ stated the following:

A certified ARI-Hetra service technician will perform the following operations at each Surface Equipment Maintenance Facility (SEMF), while conducting a preventive maintenance and safety inspection on ARI-Hetra Mobile Column Lift Systems.

Id. at 2.

The Army received three quotations in response to the RFQ, including quotations from ARI Phoenix and Atlantic Hoist & Crane. Army Request for Dismissal at 2. The Army awarded the contract to Atlantic Hoist & Crane as the lowest-priced vendor. Id. After ARI Phoenix was notified of the award, the company protested to our Office.

DISCUSSION

ARI Phoenix challenges the award to Atlantic Hoist & Crane on the basis that the awardee is not affiliated with the protester and therefore cannot obtain ARI-Hetra parts or a certified ARI-Hetra service technician. Protest at 1. ARI Phoenix states that it is the only company that can provide a certified ARI-Hetra service technician because it is the sole manufacturer of the ARI-Hetra mobile column lifting systems. Id. The Army asks that we dismiss the protest because it is a challenge to the contracting officer's affirmative determination of responsibility and concerns a matter of contract administration. Army Request for Dismissal at 3.

ARI Phoenix appears to be challenging Atlantic Hoist & Crane's ability to meet contract obligations--that is, questioning the awardee's responsibility and the agency's determination that the awardee is responsible. See generally FAR subpart 9.1; Specialty Marine, Inc., B-292053, May 19, 2003, 2003 CPD ¶ 106 at 2. Because the affirmative determination that a bidder or offeror is capable of performing a contract is largely committed to the contracting officer's discretion, our Office generally will not consider a protest challenging such a determination. The exceptions are protests that allege that definitive responsibility criteria in the solicitation were not met and those that identify evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. Bid Protest Regulations, 4 C.F.R. § 21.5(c). Neither exception applies here.

Definitive responsibility criteria are specific and objective standards established by an agency as a precondition to award, which are designed to measure a prospective contractor's ability to perform the contract. FAR § 9.104-2. These special standards of responsibility limit the class of offerors to those meeting specified qualitative and quantitative qualifications necessary for adequate contract performance, e.g., unusual expertise or specialized facilities. Id.; NEIE Med. Waste Servs., LLC, B-412793.2, Aug. 5, 2016, 2016 CPD ¶ 213 at 4. Thus, definitive responsibility criteria involve a

vendor's eligibility for award and not its performance obligations under the contract. See Hettich GmbH & Co. KG, B-224267, Oct. 24, 1986, 86-2 CPD ¶ 457 at 3.

The language upon which the protester relies is not, in our view, a definitive responsibility criterion. The RFQ states that award would be based on price. FedBizOpps Notice, Aug. 24, 2018, at 1. Moreover, the language to which ARI Phoenix refers is included in the solicitation's description of the requirement, not as part of the evaluation criteria, and the RFQ contains no language otherwise requiring vendors to establish their qualifications prior to award. See id. at 2. Thus, the RFQ provision in question here is not a definitive responsibility criterion, but rather part of the general specifications concerning contract performance. See Johnson Controls, Inc., B-200466, Feb. 20, 1981, 81-1 CPD ¶ 120 at 2-3 (performance specification requiring repair and maintenance services be provided by certified manufacturer's representative does not constitute definitive responsibility criterion). In this regard, whether Atlantic Hoist & Crane actually performs under the contract with employees possessing the appropriate certification required by the RFQ is a matter of contract administration which we do not review. 4 C.F.R. § 21.5(a); Hettich GmbH & Co. KG, supra.

The protest is dismissed.

Thomas H. Armstrong
General Counsel