



Decision

Matter of: Integrity National Corporation

File: B-417545

Date: July 24, 2019

Ruth E. Ganister, Esq., Rosenthal and Ganister, LLC, for the protester.
Alanna B. Whybrew, Esq., Department of the Navy, for the agency.
April Y. Shields, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that a solicitation does not contain sufficient information for offerors to calculate required health benefits is denied where the solicitation provides offerors with sufficient information to compete intelligently and on a relatively equal basis.
 2. Protest that a solicitation should be set aside for small businesses is dismissed where the protester has not established that it is an interested party.
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DECISION

Integrity National Corporation of Silver Spring, Maryland, protests the terms of request for proposals (RFP) No. N40085-19-R-9047, issued by the Department of the Navy, Naval Facilities Engineering Command, for custodial services at the Portsmouth Naval Shipyard in Kittery, Maine. Integrity contends that the solicitation does not provide sufficient information for offerors to calculate the health benefits that are part of the labor costs required under the solicitation. Integrity also contends that the procurement should have been set aside for small businesses.

We deny the protest in part and dismiss it in part.

BACKGROUND

The RFP, issued on March 11, 2019 on an unrestricted basis, seeks a contractor to provide custodial services, to include “all labor, supervision, management, tools, materials, equipment, facilities, transportation, incidental engineering, and other items necessary” for the Portsmouth Naval Shipyard in Kittery, Maine. Agency Report (AR), Tab 2, RFP, at 16. The RFP contemplates the award of a combination fixed-price and

indefinite-delivery, indefinite-quantity (IDIQ) contract for a base period of 1 year with four 1-year options to the firm that provides the lowest-priced, technically acceptable (LPTA) offer. RFP at 3-4.

Prior to issuing the solicitation, the agency posted a sources sought notice to determine the availability and capability of small businesses to perform its requirements. The notice instructed interested parties to submit a capability package to address, among other requirements, “[e]xamples of projects worked within the last five years of similar size, scope and complexity as the work indicated[,]” and whether they worked as the prime or subcontractor, with the following specifications:

Size: A maintenance service contract with a yearly value of at least \$700,000.00 or greater for recurring services. [IDIQ] values for infrequent work will not be considered similar in size.

Scope: Demonstrate the ability to provide all labor, management, supervision, tools, materials, [and] equipment to provide custodial services and other items necessary as defined by the RFP. Demonstrate the ability to perform various miscellaneous services including, but not limited to high and low cleaning, exterior and interior window cleaning services, and other services that may be typical of a custodial services contract.

Complexity: Demonstrate the ability to respond simultaneously to service call and maintenance requirements for various locations and buildings throughout the installation and supporting annexes. Demonstrate the ability to manage competing priorities in order to support customer demands.

AR, Tab 11, Sources Sought Notice, Nov. 15, 2018, at 1-2.

On or before November 30, the agency received capability packages from nine interested small businesses¹ and determined that none of the submissions met the requirements in the sources sought notice. AR, Tab 12, Market Research Report, Jan. 10, 2019, at 1-3;² AR, Tab 3, Contracting Officer’s Statement (COS), at 1; Memorandum of Law (MOL) at 6. The contracting officer also conducted a dynamic small business search and prepared a small business coordination record that discussed the prior procurement history and market research results. AR, Tab 12, Market Research Report at 3; AR, Tab 13, Small Business Coordination Record, Jan. 10, 2019, at 1-2. The contracting officer acknowledged that the previous contract was awarded after a historically underutilized business zone (HUBZone) small business

¹ Integrity did not respond to the sources sought notice.

² This protest is not subject to a GAO protective order. GAO reviewed the unredacted version of the agency’s market research report in camera in preparing our decision.

set-aside competitive procurement, with a total value of \$18 million, and also noted that the total estimated value of the current procurement is \$29 million. AR, Tab 13, Small Business Coordination Record at 1-2. The contracting officer determined, “based on the market research conducted, that there is not a reasonable expectation that two small business firms could successfully respond or be able to perform the specialized requirements of this procurement.” Id. at 1. The contracting officer then recommended full and open competition, with a HUBZone evaluation preference and a subcontracting plan requirement with a goal of subcontracting 65 percent to small businesses. Id. The agency’s small business professional and the Small Business Administration’s (SBA) procurement center representative concurred with the decision. Id. at 2.

After issuing the solicitation, the agency conducted a site visit and amended the RFP nine times. Of relevance here, the RFP requires pricing for labor to include health benefits for employees and their families based on a collective bargaining agreement, which represents the terms of the applicable wage determination between the incumbent contractor and a workers union. AR, Tab 4, RFP amend. 0004, Apr. 25, 2019, at 19 (the contractor “shall provide the employees covered by this agreement with health insurance equal to or greater than the policies now being offered at no cost to the employees” and “to the family members of these employees where applicable at no cost to the employees”). In response to pre-proposal inquiries and after coordination with the incumbent contractor, the agency also provided a list of the incumbent contractor’s 31 employees and a breakdown of the medical, dental, and vision insurance rates currently being provided by the incumbent contractor. AR, Tab 5, RFP amend. 0007, May 3, 2019, at 3-4.

Before the May 9, 2019 closing date for proposals, Integrity filed this protest with our Office.

DISCUSSION

Integrity raises two challenges to the terms of the solicitation. First, Integrity argues that the agency has not provided sufficient information to enable potential offerors to calculate the required health benefits. Second, Integrity contends that the solicitation should have been set aside for small businesses. We have considered all of the protester’s arguments and find that none provides a basis on which to sustain the protest.

Health Benefits Requirement

First, Integrity argues that the agency has not provided sufficient information to enable potential offerors to calculate the health benefits that are part of the labor costs required under the solicitation. Integrity contends that the agency should be required to provide more specific information regarding which medical, dental, and vision insurance plans have currently been selected by each of the incumbent’s employees. Based on the information already provided in the RFP, Integrity states that it has calculated the differences in monthly premium payments on the various plans, and asserts that the

total potential difference amounts to \$666,709.56 per year. Protest at 2. While Integrity notes that it is “[a]ssuming that the real health care costs are a blend of [plan] selections[,]” the protester complains that only the incumbent contractor knows the actual costs. Comments at 5; Protest at 2. In this regard, Integrity alleges that, unless the agency provides the current plan selection information, “it is impossible for any offeror other than the incumbent to offer a realistic price” and compete under the RFP’s LPTA selection criteria. Protest at 2-3.

In response, the agency first asserts that “[t]here is no federal regulation that requires disclosure of such information.” MOL at 3. The agency then explains that it has provided the collective bargaining agreement, which represents the terms of the applicable wage determination; a list of the incumbent contractor’s 31 employees; and the rate schedule for the insurance plans currently being provided by the incumbent.³ MOL at 2-3; see RFP amend. 0004 at 19; RFP amend. 0007 at 3-4. Finally, the agency contends that any current plan selection information is “of limited value” because the collective bargaining agreement provides for employees to have the opportunity to change plans every year. MOL at 4; see RFP amend. 0004 at 19. In this regard, the agency argues that “all prospective offerors will have to estimate projected costs and balance risks.” MOL at 4.

Generally, a contracting agency must provide offerors with sufficient detail in a solicitation to enable them to compete intelligently and on a relatively equal basis. CWTSatoTravel, B-404479.2, Apr. 22, 2011, 2011 CPD ¶ 87 at 10. There is no legal requirement that a competition be based on specifications drafted in such detail as to eliminate completely any risk for the contractor or that the procuring agency remove all uncertainty from the mind of every prospective bidder. Salient Fed. Sols., Inc., B-410174, Nov. 6, 2014, 2014 CPD ¶ 350 at 2. Risk is inherent in most types of contracts, especially fixed-price contracts, and firms are expected to allow for that risk, and use their professional expertise and business judgment, in preparing their proposals. See, e.g., Katmai Info. Techs., LLC, B-406885, Sept. 20, 2012, 2012 CPD ¶ 227 at 5; PacOrd, Inc., B-253690, Oct. 8, 1993, 93-2 CPD ¶ 211 at 11.

³ The agency notes that it also obtained the applicable wage determination from the Department of Labor (DOL) but, due to a clerical error, did not include this document in previous amendments. The agency explains, however, that the DOL-issued wage determination merely references parties to the collective bargaining agreement, which the agency has already provided. The agency asserts that it is preparing to issue an amendment to provide the DOL-issued wage determination. MOL at 3; see AR, Tab 10, DOL Wage Determination No. CBA-2019-12433. Because this document merely provides a reference to the collective bargaining agreement, and because Integrity has demonstrated that it can calculate the differences between the various plans based on the information already provided, we do not find that the protester was prejudiced by this error.

Here, we find that the RFP provides sufficiently detailed information to allow offerors to compete intelligently and on a relatively equal basis. As a preliminary matter, Integrity has not pointed to any legal requirement for the agency to provide the information it seeks. Moreover, the record shows that the agency has already provided several documents to potential offerors and, based on this information, Integrity has demonstrated in its various filings to our Office that it can calculate the differences between the various insurance plans. See Protest at 2; Comments at 5. While Integrity contends that the incumbent is benefited by having more information about current plan selections, we note that an agency is not required to compensate for every competitive advantage gleaned by a potential offeror's prior performance of a particular requirement. See Katmai Info. Techs., supra, at 5 (incumbent contractor's functional knowledge of the costs related to a requirement is not generally considered to constitute an unfair advantage that the procurement agency must eliminate).

On this record, we find that the agency has provided sufficient information to enable potential offerors to calculate the required health benefits, and we deny the protest.

Set-Aside

Integrity also contends that the procurement should have been set aside for small businesses and that the agency failed to conduct adequate market research before determining not to set aside the procurement. Protest at 3; Comments at 6. Integrity's argument is primarily based on its assertion that at least three small businesses attended a site visit and, therefore, the agency "should have revisited its determination not to set aside the procurement for small businesses." Comments at 9. We conclude that the protester has not established that it is an interested party to raise these challenges, despite a request from our Office for it to do so.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557, only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. RELM Wireless Corp., B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. Id. Moreover, our Bid Protest Regulations provide that a protest filed with GAO "shall . . . [s]et forth all information establishing that the protester is an interested party for the purpose of filing a protest." 4 C.F.R. § 21.1(c)(5).

Here, under Federal Acquisition Regulation § 19.502-2(b), a procurement with an anticipated dollar value of more than \$150,000 must be set aside for exclusive small business participation when there is a reasonable expectation that offers will be received from at least two responsible small business concerns, and award will be made at a fair market price. While Integrity asserts that it is a small business that has

held other custodial services contracts, see Comments at 8-9, the record shows that Integrity did not submit a capability package in response to the sources sought notice, and has not otherwise established that it can meet the specific size, scope, and complexity of the requirements as defined by the sources sought notice.⁴ In this regard, when our Office requested that Integrity “establish its interested party status, including as defined by AR, Tab 11, Sources Sought Notice[.]” the protester failed to address its ability to meet the requirements as defined by the sources sought notice and instead stated that it has “a serious interest in responding to the solicitation[.]” Electronic Protest Docketing System Docket Entry No. 32; Supp. Response, June 26, 2019, at 2.

On this record, where the protester fails to represent that it can meet the requirements--and therefore be eligible for award--if the solicitation was set aside for small businesses, we find that the protester is not an interested party to maintain a protest that the requirement had to be set aside for small businesses. See, e.g., AeroSage, LLC, B-414640, B-414640.3, July 27, 2017, 2017 CPD ¶ 233 at 5-6 (concluding that the protester was not an interested party to challenge the agency’s decision to not set aside part of a procurement “in light of [its] failure to represent that it could perform the requirements of the contract”).

Further, to the extent Integrity contends that the presence of small businesses at the site visit requires the agency to “revisit” its determination, Comments at 9, such a contention is unfounded. We note that, as discussed above, the record shows that the agency’s determination not to set aside the procurement was based on market research and was a decision with which the agency’s small business professional and the SBA procurement center representative concurred. Moreover, as we have previously explained, the determinative issue is not whether the agency was on notice of small business interest in the requirement; rather, it is whether the agency was aware of interest on the part of small businesses capable of performing the work, which mere presence at the site visit fails to establish. Rice Servs., Inc., B-411540, B-411540.2, Aug. 20, 2015, 2015 CPD ¶ 260 at 3.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong
General Counsel

⁴ As discussed above, the agency posted a sources sought notice to determine the availability and capability of small businesses to perform its requirements. Sources Sought Notice at 1-2. The subsequently issued RFP warns that an offeror will be found unacceptable if it lacks the minimum requisite experience. RFP at 111-113.