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Decision

Matter of: Seventh Dimension, LLC

File: B-417630.2; B-417630.3

Date: December 26, 2019

Craig A. Holman, Esq., and Stuart W. Turner, Esq., Arnold & Porter Kaye Scholer, LLP, for the protester.

Colonel Patricia S. Wiegman-Lenz, Lieutenant Colonel Byron Shibata, and Alexis J. Bernstein, Esq., Department of the Air Force; and Daniel V. Peterson, Esq., Department of the Army, for the agencies.

Young H. Cho, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that an amendment to the solicitation does not reflect the agency's actual requirements because it lacks details and is ambiguous is denied where the solicitation provided sufficiently detailed information for offerors to intelligently prepare their proposals on a common basis.

DECISION

Seventh Dimension, LLC, of Mocksville, North Carolina, protests the terms of an amendment to request for proposals (RFP) No. H92239-19-R-0002, issued by the Department of the Army, Special Operations Command (USASOC), for role player and facility support services. The protester argues that the new requirements for contractor-provided training facilities added by the amendment do not reflect the agency's actual needs, and, among other things, does not account for additional costs that the agency would incur.

We deny the protest.

BACKGROUND

The RFP was issued on March 13, 2019 under Federal Acquisition Regulation (FAR) part 15 and set aside for service-disabled veteran-owned small businesses, to provide training exercise management, role player, subject matter expertise and training support for assessment, selection, and training conducted by USASOC's 1st Special Warfare

Training Group.¹ Agency Report (AR), Tab 7, RFP, at 1, 66. The RFP contemplates a single-award indefinite-delivery, indefinite-quantity (IDIQ) contract under which fixed-priced task orders would be issued, with a 30-day phase-in period, an 11-month base period, and four 12-month ordering periods. Id. at 2, 67. Award was to be made on a best-value tradeoff basis considering technical capability, past performance, and price. Id. at 159. The technical capability factor and past performance factor, individually, were significantly more important than price. Id. The technical capability factor was comprised of three subfactors (program management staffing, technical understanding, and corporate competencies) that would each be assessed a color/adjectival rating. Id.

The RFP, as originally issued, contemplated that the government would provide the training facilities (i.e., land and mock villages) required to perform work under the contract. Id. at 89. At the time the solicitation was issued, the agency intended to provide training facilities utilizing the North Carolina Sandhills Gamelands, which are under the authority of the North Carolina Wildlife Resources Commission (NCWRC). Contracting Officer's Statement of Facts (COS) at 10. The solicitation also put offerors on notice of the following:

However, if this approach is not executed, the Contractor may be required to provide training facilities as follows: Provide four (4) village sites/locations with 8 to 10 stick built structures on a sufficient tract of land that can be used to replicate a variety of cultural locations. These facilities will be used as an alternate target/training facility that will provide variety and challenge students in numerous cultural situations, scenarios, and assessments. A surrounding road network is required on the track [sic] of land to facilitate convoy movement procedures for students to utilize in route to specified targets. The village sites/locations and track [sic] of land should be within a 15-mile radius of Camp Mackall. This site may or may not be utilized simultaneously or consecutively and is required to be available from start to finish of each exercise. In some cases there may be a need to run separate exercises simultaneously. Number of students and scenarios will determine the usage. Usage timeline and frequency will be coordinated between Course Manager and Site Manager/Exercise Coordinator.

AR, Tab 7, RFP, at 89 (bold in original).

¹ USASOC is the Army component of the U.S. Special Operations Command and headquartered at Fort Bragg, North Carolina. COS at 2. USASOC's mission is to organize, train, educate, man, equip, fund, administer, mobilize, deploy, and sustain Army Special Operations Forces (ARSOF). Id. The training support to be provided under the contract is for field and situation training exercises and provides the depth and realism necessary to portray an adaptable training environment that focuses on achieving a desired outcome. AR, Tab 7, RFP, at 66

After receipt of initial proposals on April 19, 2019, the agency was informed that NCWRC would not be able to enter into a memorandum of agreement (MOA) with the Army for the use of the Sandhills Gamelands area. COS at 13. As a result, the agency decided to amend the solicitation to require contractor-provided training facilities, and on June 19, informed offerors via email that it intended to amend the solicitation to add this new requirement. Id. at 14. On August 20, offerors in the competitive range, including Seventh Dimension, were provided discussion letters, informing offerors that amendment 6--which would include revisions to the performance work statement (PWS) requirement for training facilities, additional evaluation criteria, and a request for pricing for the training facility--would be issued the same day. Id. at 15; see also AR, Tab 25, Competitive Range Notice to Seventh Dimension. The discussion letter included an "evaluation notice" (EN) informing Seventh Dimension of the weaknesses in its proposal that it needed to address, as well as an EN to address the new requirement for contractor-provided training facilities in amendment 6. AR, Tab 25, Competitive Range Notice to Seventh Dimension, at 2.

Amendment 6 revised the solicitation's requirements for the training facilities by removing the language regarding the government's intent to provide the land and villages at the onset of contract performance, and, instead, required the contractor to provide them. AR, Tab 24, RFP, amend. 6, at 4. It further stated that the guaranteed minimum is one year of facility use, and the government would determine its continuing need for a contractor-provided facility on an annual basis. Id. It also provided the following specific details about the land, village, and structure requirements:

4.3.2. Training Facility Land Requirements: The Contractor shall provide a tract of land located no farther than a 15-mile straight line radius from the 1st Battalion Headquarters (building # T-3460, geo coordinates 35°02'51.5"N 79°29'19.0"W), Rowe Training Facility, Camp Mackall, North Carolina.

4.3.2.1. Training Facility total land area will be at least 25 acres in size with varied topography to include a combination of open and wooded areas with multiple avenues of approach (ingress/egress).

4.3.3. Training Facility Village Requirements: The Contractor shall provide a minimum of four (4) village sites/locations.

4.3.3.1. Each village site shall have a minimum of 8 stick-built structures.

4.3.3.2. Village sites shall have a minimum of 500 feet between them.

4.3.3.3. Each village shall have a mixture of both single and two-story structures.

4.3.3.4. Each village shall have a mixture of single-room and multiple room structures.

4.3.3.5. Each village shall have at least one structure that has multiple rooms, multiple floors, a hallway, and a stairwell.

4.3.4. Training Facility Structure Requirements:

4.3.4.1. Structures shall be a minimum of 24 feet by 24 feet.

4.3.4.2. Each structure shall have an all-weather roof.

4.3.4.3. Each structure shall have a constructed floor. A dirt floor is not acceptable.

4.3.4.4. Interior ceiling height shall be at least 8 feet.

4.3.4.5. Each structure shall have at least one exterior entrance with a functional door.

4.3.4.6. Each structure shall have at least two window openings with functional shutters or an operational window with glass.

Id. The amendment also added a fourth subfactor (training facilities) under the technical capability factor, stating that each offeror's proposed training facilities were required to meet the minimum requirements described in the PWS on a pass/fail basis. Id. at 73.

Between August and September, four additional amendments to the solicitation were issued, including amendment 8, which revised the period of performance and clarified that full performance (with fully functional training facilities) would begin on January 1, 2020. AR, Tab 27, RFP, amend. 8, at 2. The due date for the submission of final proposal revisions was extended to September 20. Id. On September 19, Seventh Dimension filed this protest with our Office.

DISCUSSION

Seventh Dimension argues that the solicitation, as amended: (1) does not reflect the agency's actual need for training facilities; (2) arbitrarily assesses the training facility on a pass/fail basis; (3) fails to consider the cost impact to the government of a remote training facility; and (4) does not consider National Environmental Policy Act (NEPA) requirements. In filing and pursuing this protest, Seventh Dimension has made arguments that are in addition to, or variations of, those discussed below. While we do not address every issue raised, we have considered all of the protester's arguments and conclude that none furnishes a basis on which to sustain the protest.²

² For example, along with its comments to the agency report, the protester raised what it captioned as a supplemental protest ground alleging that the record demonstrated that the agency performed a materially flawed planning process by failing to document multiple aspects of the procurement challenged by the protester. See Comments &

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Inadequate Details and Ambiguous Terms

In asserting that the solicitation, as amended, does not reflect the agency's actual needs, Seventh Dimension argues that the solicitation contains ambiguous terms and lacks sufficient details to allow for offerors to compete on an equal basis. According to the protester, despite the requirement for sophisticated training support for military special forces, the solicitation, as amended, does not contain sufficient specifications to make clear what the agency requires beyond a facility that "might just as well be a thrown-together paintball site for teenage birthday parties." Protest at 11-12. The protester contends that the amended RFP does not provide adequate details for various required features of the training facility, including parking, storage, usage-related maintenance requirements, road network complexity, and village density. Protest at 11-15; Comments & Supp. Protest at 12-17. The protester further argues that amendment 6 created significant ambiguity regarding the need to support the use of firearms and explosives at the facility. Protest at 15-16; Comments & Supp. Protest at 22-23. Finally, the protester argues that the absence of any requirement to demonstrate a "credible approach to zoning and permit approval" will result in offerors reaching different conclusions regarding whether and when such approvals must be obtained. Protest at 17-25; Comments & Supp. Protest at 18-19.

The agency maintains that the solicitation reflects the agency's needs in full, and that the offerors already possess the information needed to propose on a common basis. In this regard, the agency states that "[t]here is no need to elaborate on the requirements because there is nothing to elaborate--the requirements are purposefully minimalistic because that is all ARSOF requires for this effort." COS at 19. The agency also states that in addition to the information provided in amendment 6, the PWS also provides sufficient information to allow offerors to compete on a level playing field. Id. at 21-22. Finally, the agency explains that the solicitation clearly states that the training facility must be ready for use on January 1, 2020; thus, any compliance with applicable regulatory and legal requirements by this date is inherent in the contractor's overall performance requirement. Id. at 24-25.

As a general rule, a solicitation must be drafted in a fashion that enables offerors to intelligently prepare their proposals and must be sufficiently free from ambiguity so that offerors may compete on a common basis. Raymond Express Int'l, B-409872.2, Nov. 6, 2014, 2014 CPD ¶ 317 at 9. However, there is no requirement that a competition be

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Supp. Protest at 31-33. The agency requested that we dismiss these protest allegations as untimely. See generally Agency Request for Dismissal. Based on our review of the record, however, we determined that these arguments expanded on arguments that had already been raised and addressed by the agency; therefore, the arguments did not require an additional response from the agency. Electronic Protest Docketing System docket entry 21; See AeroSage, LLC, B-417289.2, May 14, 2019, 2019 CPD ¶ 180 at 3 n.5.

based on specifications drafted in such detail as to completely eliminate all risk or remove every uncertainty from the mind of every prospective offeror; to the contrary, an agency may provide for a competition that imposes maximum risks on the contractor and minimum burdens on the agency, provided the solicitation contains sufficient information for offerors to compete intelligently and on equal terms. Phoenix Envtl. Design, Inc., B-411746, Oct. 14, 2015, 2015 CPD ¶ 319 at 3.

Based on our review of the record, we conclude that the RFP, as amended, provides adequate detail for offerors to compete intelligently on equal terms. Here, the agency's land, village, and structure requirements are clearly set forth in amendment 6. The protester appears to believe that because the agency's training needs are sophisticated, the training facility must also be more sophisticated than what has been described in amendment 6. The agency, however, confirms that amendment 6 accurately reflects its needs to have "minimalistic, non-descript structures that can be used as almost fungible commodities for a broad spectrum of training [] purposes." MOL at 18-19.

Similarly, we do not agree that the solicitation's road network requirement for the tract of land was vague. For example, the protester complains that the solicitation does not specify whether the roads should be paved or made to accommodate specific widths or weights of vehicles; or how convoys of vehicles would be brought on to the training site, staged, and parked when not in use. Protest at 13-15. The agency explains that in addition to requiring a road network "to facilitate convoy movement procedures for students to utilize in route to specified targets," and have "multiple avenues of approach (ingress/egress)," the solicitation provided additional information that would allow the offeror to conclude that a road network for foot and vehicle traffic was also required, for all weather conditions, with a capacity to accommodate flows of students in and out of the site, at multiple times, throughout a given training day. MOL at 20-21; see, e.g., AR, Tab 7, RFP, at 74, 99; AR, Tab 24, RFP, amend. 6 at 4, 7, 8. Here, we conclude that the decision not to state all of the agency's requirements, such as the width of the roads, weight of the vehicles, or logistics of how convoys would be brought on to the site, is not improper but establishes certain risks that the agency may reasonably shift to offerors.

Finally, we disagree with the protester that the solicitation, as amended, contained ambiguities regarding whether the contractor was required to support the use of firearms or explosives at the facility and whether the contractor was responsible for complying with the applicable county zoning and permitting requirements. Generally, specifications must be sufficiently definite and free from ambiguity so as to permit competition on an equal basis. Dynamic Corp., B-296366, June 29, 2005, 2005 CPD ¶ 125 at 4. An ambiguity exists if a solicitation requirement is subject to more than one reasonable interpretation when read in the context of the solicitation as a whole. Phil Howry Co., B-245892, Feb. 3, 1992, 92-1 CPD ¶ 137 at 2-3.

Seventh Dimension's complaints do not demonstrate that there are defects in the terms of the RFP. The "ambiguity" alleged by the protester does not stem from a solicitation provision that is subject to more than one reasonable interpretation, but from the

absence of an explicit requirement to possess or maintain firearms or explosives licenses or for a requirement to demonstrate compliance with zoning or permitting requirements. See, e.g., Protest at 15-25. However, we find that the solicitation's requirement that the training facility to be fully operational by January 1, 2020, and additional information in the PWS putting offerors on notice that the training activities in the PWS require the use of firearms and pyrotechnics, provide sufficient details for the offerors to prepare their proposals and are not ambiguous. Accordingly, these protest grounds are denied.

Use of Pass/Fail Evaluation Criteria

Seventh Dimension also argues that the pass/fail evaluation scheme for the training facilities subfactor is unreasonable because it ignores critical differentiation between offerors and prohibits the agency from weighing value differences between proposed facilities, which account for a significant portion of the overall solicited effort. In support of its argument, the protester contends that a pass/fail criterion is akin to a lowest price, technically acceptable (LPTA) contract award, and is appropriate only where an agency reasonably concludes that the agency will receive little or no benefit from performance better than the lowest acceptable level. Protest at 25-29; Comments & Supp. Protest at 8-12.

The agency responds that while the solicitation states that award would be made on a best-value tradeoff basis that allows offerors to be innovative in their approaches to training support, the provision of training facilities is being evaluated on a pass/fail basis because the agency's requirements are minimal in nature and exceeding those minimum requirements would provide no benefit to the government. In this regard, the agency represents that the facilities at issue account only for a small portion ([DELETED] percent) of the requirement. COS at 26.

Contracting agencies have broad discretion to determine their needs and the best way to meet them. URS Fed. Support Servs., Inc., B-407573, Jan. 14, 2013, 2013 CPD ¶ 31 at 4. Agency acquisition officials also have broad discretion in the selection of the evaluation criteria that will be used in an acquisition, and we will not object to the absence or presence of a particular evaluation criterion so long as the criteria used reasonably relate to the agency's needs in choosing a contractor or contractors that will best serve the government's interests. King Constr. Co., Inc., B-298276, July 17, 2006, 2006 CPD ¶ 110 at 3.

Here, we disagree with the protester that the agency's decision to evaluate the training facility on a pass/fail basis was akin to establishing an LPTA basis for award when the solicitation provides for award to be made on a best-value tradeoff basis. We agree with the agency. Contrary to Seventh Dimension's contention that the contractor-provided facilities constituted a significant portion of the overall solicited effort, the facilities requirement is only estimated to be a small portion of the contract value. COS at 26; MOL at 27; see also AR, Tab 33, Requiring Activity Email.

The protester's arguments also provide no basis to second guess the agency's decision to evaluate the training facilities on a pass/fail basis. In this regard, the agency explains that its facilities requirements are minimal in nature to support its needs to support a wide variety of training environments. COS at 26-27 ("[T]he [a]gency purposefully and intentionally wrote the [s]olicitation for basic and minimally adequate facilities. . . . The [a]gency requested stick built structures with minimal characteristics that can be used to accommodate different cultural scenarios as shown in the RFP."); see, e.g., AR, Tab 7, RFP, at 66, 95; AR, Tab 24, RFP, amend. 6, at 6-18. The contracting officer further explains that because the agency's requirements are minimal in nature, exceeding those requirements would provide no benefit to the agency. COS at 26. Based on our review of the record, we conclude that the protester's disagreement with the agency's judgement about its needs, and how to accommodate them, does not show that those needs are unreasonable. See Grant Thornton, LLP, B-408464, Sept. 25, 2013, 2013 CPD ¶ 238 at 5. Accordingly, this protest ground is denied.

Failure to Consider Cost Impact of Selecting a Remote Training Facility

Seventh Dimension also argues that the solicitation as amended does not provide a basis to accurately compare prices because it does not consider the additional costs that would be incurred by the agency in selecting a training facility located remotely from Camp Mackall. Protest at 29-31; Comments & Supp. Protest at 22-27. The agency responds that it considered all logistical costs such as necessary transportation and supplies when determining that a location within a 15-mile radius of Camp Mackall was suitable for the contractor-provided facilities. COS at 29; MOL at 28-29. In essence, the agency decided that the potential cost impact would be nominal in the context of the overall training program.

Again, a contracting agency has the discretion to determine its needs and the best method to accommodate them; the responsibility for drafting proper specifications that reflect the government's needs rests with the contracting agency. Pride Mobility Products Corp., B-405371, Oct. 25, 2011, 2011 CPD ¶ 227 at 4-5. A protester's disagreement with the agency's judgment concerning the agency's needs and how to accommodate them, without more, does not show that the agency's judgment is unreasonable. See Gallup, Inc., B-410126, Sep. 25, 2014, 2014 CPD ¶ 280 at 5.

On this record, the protester's arguments do not provide a basis to sustain the protest. Here, the agency explains that it considered the logistical costs when determining the 15-mile radius to be suitable for contractor-provided facilities, which would have a nominal cost impact as transportation is a normal recurring element of training events and the agency contemplated utilizing a wide variety of locations as part of training. Further, the protester's reliance on our decisions in R&G Food Serv., Inc., B-296435.4, B-296435.9, Sept. 15, 2005, 2005 CPD ¶ 194 and 6K Sys., Inc., B-408124.3, B-408124.4, Dec. 9, 2013, 2014 CPD ¶ 347 is misplaced, because in those cases our Office sustained the protest based on the agency's flawed methodology utilized in its price evaluation. For example, in R&G Food Serv., Inc., our Office found unreasonable the agency's decision that the protester's prices were not fair and reasonable where the

agency's evaluation considered only offerors' unit prices, which did not provide a reasonable basis for comparing the relative costs to the government of the competing proposals. That is not the situation here where the protester has not shown that the agency's price evaluation methodology was unreasonable and the agency has represented that the costs that the protester alleges are not being considered nominal. Accordingly, this protest ground is denied.

Failure to Consider NEPA

Finally, Seventh Dimension argues that the amended solicitation does not require offerors to describe how they would comply with any required NEPA assessments. Because of this, the protester contends that the agency may award to a contractor that cannot meet the amended RFP's specific deadlines. Protest at 32; Comments & Supp. Protest at 28-30. The agency responds that the contractor will be required to comply with all regulatory requirements to provide the necessary land and contractor-built facilities. COS at 29-30; MOL at 23-25.

As set forth above, 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. However, those needs must be specified in a manner designed to achieve full and open competition. Exec Plaza, LLC, B-400107, B-400107.2, Aug. 1, 2008, 2008 CPD ¶ 143 at 5.

Contrary to Seventh Dimension's description that the amended solicitation allows offerors only to present plans to build the required facilities, the solicitation, in fact, requires offerors to provide a detailed description of their ability to provide the training facilities in accordance with the solicitation's revised requirements. AR, Tab 24, RFP, amend. 6 at 73. Here, the agency confirmed that the requirement to have fully functioning training facilities by January 1, 2020, meant that all required village structures "must be built and fully functional" by January 1, 2020. AR, Tab 29, RFP, amend. 9, attach. 1, Gov't Response to Industry Questions, at 6. To the extent Seventh Dimension desires more restrictive terms, such as demonstrating that the facilities and villages exist, our Office will not consider contentions that specifications should be more restrictive; our role in reviewing bid protests is to ensure that the statutory requirements for full and open competition are met, not to protect any interest a protester may have in limiting competition through more restrictive specifications. Platinum Servs., Inc.; WIT Assocs., Inc., B-409288.3 et al., Aug. 21, 2014, 2014 CPD ¶ 261 at 5.

Moreover, to the extent that Seventh Dimension desires for the solicitation to include a requirement that offerors demonstrate their capability to satisfy NEPA requirements, it

has not provided any support that the agency was required to do so. Accordingly, this protest ground is denied.

The protest is denied.

Thomas H. Armstrong
General Counsel