



Decision

Matter of: Ronald L. Glass

File: B-417855

Date: November 21, 2019

Ronald L. Glass, for the protester.
Tudo N. Pham, Esq., Department of State, for the agency.
Andrew J. Smith, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest challenging the terms of the solicitation as unduly restrictive of competition is denied where the agency has demonstrated that the requirements for a personal services contractor to have a law degree and legal work experience is reasonably necessary to meet the agency's needs.

DECISION

Ronald L. Glass protests the terms of solicitation No. PSC-19-060-INL, issued by the Department of State (DoS), Bureau of International Narcotics and Law Enforcement Affairs (INL), for a personal services contractor to serve as the Justice Advisor in San Jose, Costa Rica. The protester contends that the terms of the solicitation requiring applicants to have a law degree from an American Bar Association (ABA) accredited law school and two years of work experience as a lawyer or judge are unduly restrictive of competition.

We deny the protest.

BACKGROUND

On July 22, 2019, DoS issued a solicitation that contemplated the award of a personal services contract for a U.S. citizen to serve as the Justice Advisor to support INL's mission in Costa Rica.¹ Agency Report (AR), Tab 4, Solicitation (Sol.) at 1. INL's

¹ Personal services contracts create an employer-employee relationship between the agency and the contractor but the contractor is not regarded as a United States

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mission is to “keep Americans safe at home by countering international crime, illegal drugs, and instability abroad.” Id. at 4. As part of this mission, INL “helps countries deliver justice and fairness by strengthening their police, courts, and correction systems.” Id. The successful Justice Advisor applicant will serve as INL’s senior rule of law expert within Costa Rica, providing comprehensive technical support and training to various justice sector programs. Id. at 5-6. The resulting personal services contract would be for a 1-year base period, with four 1-year option periods. Id. at 7.

The solicitation details the duties and responsibilities of the Justice Advisor, which include facilitating “high-level interagency coordination among elements of the U.S. Embassy, Costa Rican Law enforcement agencies, Justice Sector support services, NGOs [Non-Governmental Organizations], and other participating agencies.” Id. at 5. Relevant to this protest, the solicitation requires the Justice Advisor to be responsible for “mentoring and training legal practitioners” and “legal education promotion.” Id. at 5. The solicitation states that the Justice Advisor will “serve as a resource to other SMS [Subject Matter Specialists] program managers” and will be “frequently called upon to perform other tasks or duties on an ad hoc basis, particularly those requiring strong drafting skills or legal analysis.” Id. at 6. The solicitation contains ten minimum qualifications for the Justice Advisor position, including the two qualifications at issue here that require applicants to have a law degree from an ABA-accredited law school and two years of work experience as an attorney or judge. Id. at 7.

The solicitation was amended once to extend the closing date for receipt of applications from August 5 to August 15 at 3:00 p.m. AR, Tab 8, amend to Sol. at 1. Prior to the solicitation closing, the protester requested that the agency amend the solicitation’s minimum qualifications to allow non-lawyers with relevant rule of law and justice sector experience to compete. Protest at 2, 8. On August 14, DoS denied the protester’s request. Protest at 3. After receiving the agency’s decision, the protester filed this protest with our Office on August 15 prior to the 3:00 p.m. closing time.

DISCUSSION

The protester challenges the terms of the solicitation, arguing that the minimum Justice Advisor qualifications are unduly restrictive of competition and are not reasonably necessary to meet the agency’s needs.² Protest at 3. The protester contends that

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government employee for the purpose of any law administered by the Civil Service Commission. See 22 U.S.C. § 2396(a)(3); Federal Acquisition Regulation (FAR) § 37.104(a). Agencies are prohibited from awarding personal services contracts unless specifically authorized by statute to do so. See FAR § 37.104(b).

² The protester presented arguments that are in addition to, or variations of, those discussed below. While we do not discuss all of the protester’s arguments, we have considered them all and find none provide a basis to sustain the protest.

there is little correlation between being a lawyer with two years of legal work experience and successful performance of this Justice Advisor requirement. Id. at 2. In this regard, the protester states that there is no requirement in the solicitation for the awardee to practice law or litigate cases and that he has previously performed similar justice advisor positions as a non-lawyer. Id. at 2-3. The protester contends that the agency's position that only a lawyer can perform the work with the "requisite gravitas" is illogical and claims that a non-lawyer with "deep justice sector experience and ability" can also be successful. Comments at 3.

The agency argues that the minimum qualifications are reasonably necessary to meet its needs. The agency contends that the successful candidate should have the "same credentials" as the lawyers, prosecutors, and judges who the Justice Advisor will be responsible for mentoring, training, and advising. AR, Tab 2, Contracting Officer's Statement (COS), at 2. Specifically, the agency asserts that the law degree and legal work experience qualifications are reasonably necessary because the Justice Advisor will "directly work with prosecutors and judges in case-based mentoring." Id. at 2. According to the agency, due to the limited size and scope of INL's funding in Costa Rica, the Justice Advisor will be expected to act as the "subject matter expert" in multiple roles while executing the "full breadth of responsibilities for their programs." Id. The agency also argues that the law degree and legal work experience qualifications are reasonable because they ensure "experience in the rule of law continuum, from education to professional accreditation, to practice" and provide a "backdrop for making recommendations and planning." Id. at 2-3. Finally, the agency notes that the Justice Advisor will be viewed as a legal expert within INL and will be required to perform duties that require strong drafting skills and legal analysis, which justify the specialized legal qualifications. Id. at 2, citing Sol. at 6.

Agencies must specify their needs in a manner designed to permit full and open competition, and may include restrictive requirements only to the extent they are necessary to satisfy the agency's legitimate needs or as otherwise authorized by law. Organs for Life, B-416248.2, July 30, 2018, 2018 CPD ¶ 254 at 3, citing 41 U.S.C. § 3306(a). A contracting agency has the discretion to determine its needs and the best method to accommodate them. AdaRose, Inc., B-299091.3, Mar. 28, 2008, 2008 CPD ¶ 62 at 3. Where a protester challenges a specification or requirement as unduly restrictive of competition, the procuring agency has the responsibility of establishing that the specification or requirement is reasonably necessary to meet the agency's needs. Remote Diagnostic Techs., LLC, B-413375.4, B-413375.5, Feb. 28, 2017, 2017 CPD ¶ 80 at 3-4. Moreover, GAO will examine the adequacy of the agency's justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. Coulson Aviation (USA), Inc., B-414566, July 12, 2017, 2017 CPD ¶ 242 at 3. A protester's disagreement with the agency's judgment concerning the agency's needs and how to best accommodate them, without more, does not establish that the agency's judgment is unreasonable. Protein Scis. Corp., B-412794, June 2, 2016, 2016 CPD ¶ 158 at 2.

Based on our review of the record, we conclude that the agency has articulated a reasonable basis for the requirement for the Justice Advisor to have a law degree and two years of work experience as a lawyer or judge. A requirement for specialized experience is not unduly restrictive of competition where the agency reasonably concludes that the experience is necessary for the performance of the agency's requirements. Organs for Life, *supra* at 5. Here, the requirement for applicants to have specialized legal education and work experience is reasonably necessary for the Justice Advisor to be able to effectively accomplish all required tasks and duties. In this regard, the Justice Advisor will conduct case-based mentoring of legal practitioners in Costa Rica and conduct other tasks and duties required by the solicitation, such as providing legal analysis and acting as a legal subject matter expert in Costa Rica, each of which reasonably require a law degree and legal experience to be effective.

To the extent that the protester argues that a non-lawyer could effectively supervise or delegate these legal tasks and duties, the agency reasonably concluded that the Justice Advisor would have to personally accomplish these responsibilities because the rule of law program in Costa Rica may not otherwise include an attorney on staff due to funding constraints. While the Justice Advisor will not be required to practice law in Costa Rica, we find it reasonable for the agency to require the Justice Advisor to have a law degree and to demonstrate two years of legal work experience because these minimum qualifications are reasonably necessary to perform the specialized services here, which include legal tasks and duties.³ Finally, the protester's reliance on his previous experience performing similar positions as a non-lawyer as the basis for demonstrating that the minimum qualifications are unreasonable is misplaced.⁴ The fact that the protester may have sufficient experience and skills to successfully perform as the justice advisor, by itself, does not render the law degree or legal work experience requirements unreasonable. See APRO International, B-415149.2, Nov. 29, 2017, 2017 CPD ¶ 368 at 5. As discussed above, the agency articulated a reasonable basis for the minimum qualification, which reasonably ensures that the Justice Advisor has the

³ The solicitation's minimum qualifications do not include a requirement for the applicant to be a licensed attorney in good standing with a state bar. AR, Tab 4, Sol. at 7.

⁴ With regard to the protester's argument that other procurements for justice advisors have not required applicants to have a legal degree or legal work experience, our Office has long stated that each procurement stands on its own. See Lionhart Group, Ltd., B-257715, Oct. 31, 1994, 94-2 CPD ¶ 170 at 4; Cobra Technologies, Inc., B-249323, Oct. 30, 1992, 92-2 CPD ¶ 310 at 3. The protester's argument does not establish the unreasonableness of the agency's imposition of the requirement here, given our conclusion that the agency was justified in requiring the Justice Advisor to have a law degree and at least two years of work experience as a lawyer or judge. We further note that the procurements relied on by the protester were factually distinct from this procurement in various respects.

requisite education and experience necessary to personally accomplish all of the solicitation's required legal tasks and duties. Consequently, we have no basis to conclude that these requirements are overly restrictive.

The protest is denied.

Thomas H. Armstrong
General Counsel