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Decision

Matter of: Omnicell, Inc.

File: B-417941

Date: December 16, 2019

Julie M. Nichols, Esq., Roeder, Cochran, Phillips, PLLC, for the protester.
Scott N. Flesch, Esq., Major Gregory O'Malley, Department of the Army, for the agency.
Christopher Alwood, Esq., and Christina Sklarew, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging solicitation requirements as unduly restrictive of competition is denied where the record supports the agency's assertion that the requirements are reasonably necessary to meet the agency's needs.
2. Protester is not an interested party to challenge other solicitation provisions or aspects of the procurement where the firm is unable to provide a product satisfying the solicitation's specifications.

DECISION

Omnicell, Inc., of Mountain View, California, protests the terms of request for quotations (RFQ) No. W81K00-19-Q-0209, issued by the Department of the Army, United States Army Medical Command (Army), for automated medication dispensing cabinets. Agency Report (AR), Tab 2, Contracting Officer's Statement (COS) at 1. The protester argues that the solicitation requirement that vendors provide proof of risk management framework/authority to operate (RMF/ATO) accreditation and certification is unduly restrictive of competition. The protester also challenges various other aspects of the solicitation.

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

BACKGROUND

On July 17, 2019, the agency issued the RFQ for several automated medication dispensing cabinets and parts for use at the Brooke Army Medical Center in Fort Sam Houston, Texas, with a due date for quotations of July 31. AR, Tab 21, RFQ at 1; COS

at 2.¹ The cabinets are used to securely store, dispense, and safely administer medications within the medical center's wards and clinics. The agency states that automated medication dispensing systems "support decentralized medication management, increase safety, and increase security of medication." COS at 1. The RFQ provides for the award of a fixed-price contract, to be made on a lowest-priced, technically acceptable basis. RFQ at 57.

As relevant here, the solicitation required the cabinets to utilize the Military Health System Application Access Gateway, a Department of Defense information technology system. Id. at 33, 74-75. The agency states that in order to operate on Department of Defense (DOD) information technology systems, a vendor's product must be RMF/ATO accredited and certified by DOD. COS at 5. The Army explains further that RMF/ATO authorizes the automated dispensing cabinets to access the Army network, without which capability the cabinets would not meet the medical center's requirement.² Id. at 5. Accordingly, in order to be evaluated as technically acceptable, the RFQ required vendors to provide in their quotation proof of RMF/ATO accreditation and certification. RFQ at 57.

On July 29, the protester, through its counsel, sent questions to the agency questioning why the solicitation referenced Becton Dickinson (BD) CareFusion Pyxis equipment without any reference or supporting documentation for a brand-name procurement. COS at 2. In response to the protester's concerns, on August 24, the agency issued amendment 0004, which revised the RFQ to a brand name or equal procurement based on the "Pyxis product schedule from BD". Id. at 2-3; AR, Tab 16, Amendment 0004 at 2. As a result, the revised RFQ now included a justification and approval (J&A) for a brand name or equal procurement as required by Defense Federal Acquisition Regulation Supplement § 206.302-1(c). See AR, Tab 17, J&A. The J&A noted that the Defense Health Agency was standardizing its automated dispensing cabinet maintenance and support contracts to the "BD CareFusion Pyxis ES platform or equivalent." Id. at 2.

On September 6, 2019, before the closing date for the receipt of quotations, Omnicell filed this protest.

¹ The agency amended the solicitation six times. All citations to the RFQ are to the conformed copy provided by the agency in its report.

² The Army states that the RMF is applicable to all DOD information technology that receives, processes, stores, displays, or transmits DOD information, and therefore was a mandatory requirement for this acquisition. COS at 5.

DISCUSSION

Omnicell argues that the RFQ's requirement to possess RMF/ATO accreditation and certification is unduly restrictive of competition. Protest at 16-17; Comments at 6-8. Specifically, Omnicell contends that this requirement is unduly restrictive because Omnicell cannot obtain RMF/ATO accreditation and certification until it is sponsored by a Department of Defense agency, and Omnicell has been unable to obtain an agency sponsor. Id. The protester also challenges various other aspects of the solicitation.³ Protest at 10-16.

The agency responds that the RMF/ATO accreditation and certification requirement is not unduly restrictive because it reasonably represents the agency's actual needs for the automated dispensing cabinets to access DOD information technology systems. MOL at 9-10. The agency further contends that because Omnicell cannot meet the RMF/ATO accreditation and certification requirement, it is not an interested party to challenge the remainder of the solicitation. MOL at 10. For the reasons set forth below, we conclude that the protester's arguments provide no basis to sustain the protest.

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. See Streit USA Armoring, LLC, B-408584, Nov. 5, 2013, 2013 CPD ¶ 257 at 4. We examine the adequacy of the agency's justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. SMARTnet, Inc., B-400651.2, Jan. 27, 2009, 2009 CPD ¶ 34 at 7.

Here, the protester does not meaningfully dispute that the RMF/ATO accreditation and certification requirement is reasonably necessary to meet the agency's needs. See Comments at 7-8; see also Protester's Response to Agency Supplemental AR at 9. Instead, Omnicell argues that the requirement is "unduly restrictive on its face" because Omnicell has been unable to obtain an agency sponsor for the certification process.⁴ Comments at 7. The protester complains that it is in a "Catch-22" situation, where no office is willing to invest the time and manpower to sponsor Omnicell under its current contracts, which do not require RMF/ATO accreditation and certification, so that it is effectively unable to compete for any contract where the RMF/ATO accreditation and certification is required. See Id.

³ For example, Omnicell argues that the solicitation is ambiguous as to what type of anesthesia system the agency seeks to procure; the justification and authorization executed by the agency is not compliant with regulation; and the independent government estimate is deficient. Id.

⁴ The process to receive RMF/ATO accreditation and certification can take up to 6 to 9 months. See COS at 4. Omnicell alleges that it has made unsuccessful efforts to find a sponsor within the Department of Defense. Comments at 5, n.1.

The relevant issue here is whether the agency has shown that the challenged requirement is necessary to meet the agency's actual needs, and not, as the protester suggests, whether it is burdensome or even impossible for a particular vendor to meet that requirement. See CompTech-CDO, LLC, B-409949.2, 2015 CPD ¶ 62 at 5 (citing JBG/Naylor Station I, LLC, B-402807.2, Aug. 16, 2010, 2010 CPD ¶ 194 at 4). Here, the record demonstrates that the procuring activity has a need for the automated dispensing cabinets at issue in this procurement to connect to Department of Defense information technology systems. RFQ at 33, 74-75; AR, Tab 17, J&A at 2-3. Further, the agency has explained, and the protester does not dispute, that in order for the automated dispensing cabinets to connect to these systems, they must hold RMF/ATO accreditation and certification. COS at 3, 5; see also MOL at 10. On this record, we find the agency's justification reasonable and the RMF/ATO accreditation and certification requirement to be reasonably necessary to meet the agency's needs.⁵ Accordingly, the protester's disagreement does not render the agency's judgment unreasonable. Exec Plaza, LLC, B-400107, B-400107.2, Aug. 1, 2008, 2008 CPD ¶ 143 at 5-6. We deny this ground of protest.

Interested Party Status

Omnicell, in its objections to the RMF/ATO accreditation and certification requirement, acknowledges that its own product cannot currently meet the specification. Protest at 2; Comments at 5, n.1. Under our Bid Protest Regulations, a protester must be an actual or prospective offeror whose direct economic interest would be affected by the award of a contract. 4 C.F.R. § 21.0(a). Because we have concluded above, that the RMF/ATO accreditation and certification requirement is reasonably necessary to meet the agency's minimum needs, and because Omnicell acknowledges that it cannot provide automated dispensing cabinets that meet all of the specifications as they are currently written, Omnicell is not an interested party to maintain the various additional protest grounds it has raised. Omnicell lacks the requisite legal interest in this regard because, even were we to sustain its protest on another basis, Omnicell would not be able to offer a compliant product and would therefore be ineligible for award. See Remote Diagnostic Techs., LLC, B-413375.4; B-413375.5, Feb. 28, 2017, 2017 CPD ¶ 80 at 5. Accordingly, Omnicell's remaining protest grounds are dismissed.

Thomas H. Armstrong
General Counsel

⁵ The protester also briefly argues that the RMF/ATO accreditation and certification requirement is arbitrary because it has not been utilized in prior similar Department of Defense procurements. See Comments at 14. Because we find the requirement reasonably reflects the agency's actual minimum needs, we dismiss this argument for failure to state a valid basis for protest. See 4 C.F.R. § 21.1(c)(4), (f).