



Decision

Matter of: Assured Performance Systems Inc.

File: B-418233.2

Date: March 10, 2020

Dr. Jerry Bell Jr., Assured Performance Systems Inc., for the protester.
Scott N. Flesch, Esq., Nicholas Lucchetti, Esq., and Robert B. Neill, Esq., Department of the Army, for the agency.
Christine Milne, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that offerors bear unreasonable risk because they lack sufficient information to prepare proposals and, as a result, the agency will not be able to conduct an adequate price reasonableness analysis is denied where the record shows that the agency has provided sufficient information to offerors, there is a reasonable level of risk, and the agency expects to use multiple appropriate methods of assessing price reasonableness.
 2. Protest that the incumbent contractor has an unfair competitive advantage is denied where the record does not show any unfair action or preferential treatment by the agency.
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DECISION

Assured Performance Systems Inc. (APS), a small business of Plainfield, Illinois, protests the terms of request for proposals (RFP) No. W9124D19R0031, issued by the Department of the Army for administrative recruiter support services at 268 locations across the United States. The protester contends that the solicitation's failure to include specific information about the incumbent employees places undue risk on prospective offerors, prevents the agency from being able to conduct an adequate price reasonableness analysis, and gives the incumbent contractor an unfair competitive advantage.

We deny the protest.

BACKGROUND

The RFP, issued on September 24, 2019, contemplates the award of a fixed-price contract to a small business participating in the Small Business Administration's 8(a) business development program. Agency Report (AR), Tab 8, RFP at 11, 44. The RFP is to be performed over a 1-year base period and up to four 1-year option periods. Id. The contractor is to provide general clerks to work 30 hours per week at all of the Army's 268 U.S. Recruiting Command locations for administrative support services. Id. at 44. Award is to be made to the firm with the lowest-priced, technically acceptable offer. Id. at 11. The closing date for submissions was December 13, 2019.

On October 21, APS emailed the contracting officer to advise that the RFP omitted the anniversary dates of employment for all incumbent employees, and to assert that this information was necessary for offerors to determine the amount of vacation time their pricing models should include. AR, Tab 13, Email 2 at 1-2; Contracting Officer's Statement of Facts (COS) at 3. As a result of this informational omission, APS argued that the incumbent contractor had an unfair competitive advantage because only the incumbent would be able to determine the exact amount of vacation time to include in its pricing model and therefore could, presumably, offer a low price and bear less risk. Id.

In determining how to respond to APS's request, the contracting officer consulted the Federal Acquisition Regulation (FAR), and the contract specialist. COS at 2. The contracting officer concluded that the agency was not required by the FAR or other regulation to provide this information. Id. at 2-3. However, based on information received from the contract specialist, and because the contracting officer could find nothing in the FAR that prohibited her from doing so, the contracting officer provided a table ("Technical Exhibit 8") with a list of the range of years of employment of the incumbent's employees and the number of full-time employees within each range, along with current wage determinations listed separately. Id. On October 23, the agency issued amendment 0003 to the solicitation which incorporated Technical Exhibit 8 as follows:

Year Range	FTE's
0 to 1	78
2 to 5	112
6 to 10	14
11 to 15	30
15 to 20	20

AR, Tab 14, RFP, amendment 0003 at 41. The contracting officer explained that she provided the table in an effort to accommodate offerors, but did not provide the exact dates. COS at 1-3. She explained that the agency did not have this information, did not

plan to assemble it, and that this information could quickly become outdated because of employee turnover.¹ Id.

On October 28, APS sent two additional emails, the first asserted that Technical Exhibit 8 was insufficient because, while “better than having nothing,” it still did not provide enough detail for the protester to prepare a competitive offer. AR, Tab 16, Email 3 at 1; COS at 2. The second email requested an extension of the submission deadline. AR, Tab 17, Email 4 at 1. The contracting officer did not respond to either email. Id. On December 11, APS filed this protest.

DISCUSSION

APS contends that the solicitation’s failure to include the specific information about incumbent employees places undue risk on prospective offerors, prevents the agency from being able to conduct an adequate price reasonableness analysis, and gives the incumbent contractor an unfair competitive advantage. We disagree.

Risk and Price Reasonableness

The protester first contends that, because the agency did not provide the anniversary dates of employment for every incumbent employee at all 268 locations, offerors cannot calculate the vacation budget portion of their proposals exactly, and therefore offerors bear unreasonable price risk and the agency will not be able to conduct an adequate price reasonableness analysis. Protest at 1, 3; Comments (Electronic Protest Docketing System, Docket Entry No. 7) at 2. The agency responds that it has provided offerors with sufficient pricing information and argues that it is not required to provide information that would eliminate all risk for the prospective offerors.² AR, Tab 1, Legal Memorandum at 7. The agency further argues that it expects to employ multiple methods sufficient to establish an adequate price reasonableness analysis because it has prepared an independent government estimate, has access to historical pricing, and expects bids from multiple offerors. Id. at 12.

¹ The contracting officer explained that her approach reasonably balanced the lack of an express legal requirement to provide the specific information about each incumbent employee, with the offeror’s concern that it would be difficult to make an accurate vacation time budget estimation. COS at 2.

² While the agency argues that it would incur significant expense to obtain this information from the incumbent contractor, AR, Tab 1, Legal Memorandum at 10-11, APS responds that the agency already has this information because “the contractor is supposed to provide a monthly contractor report” with this information. Comments at 2. Based on our review of the record, nothing in the description of this monthly report suggests that it contains the anniversary dates of employment for the incumbent employees. Moreover, APS has not provided any evidence that the requirement to produce this report exists in the incumbent’s contract. Id.

Solicitations must be drafted to enable offerors to intelligently prepare their proposals and must be sufficiently free from ambiguity so that offerors may compete on a common basis. WorldWide Language Resources, Inc., B-412495.2, Mar. 23, 2016, 2016 CPD ¶ 97 at 3 (citing Raymond Express Int'l, B-409872.2, Nov. 6, 2014, 2014 CPD ¶ 317 at 9). There is no requirement, however, that a competition be based on specifications drafted in such detail as to completely eliminate all risk or remove every uncertainty from the mind of every prospective offeror. Rather, the solicitation must contain sufficient information for offerors to compete intelligently and on an equal basis. WorldWide Language Resources, Inc., *supra* at 3.

Here, the protester in essence challenges the agency's allocation of risk. However, while offerors do face some risk without the exact anniversary dates, it is within the agency's discretion to impose risks upon the contractors and reduce burdens upon the agency. OMNIPLEX World Services Corp., B-295698; B-295698.2, Mar. 18, 2005, 2005 CPD ¶ 43 at 3. In addition, the agency made an effort to accommodate offerors and decrease the risk by providing Technical Exhibit 8. We find that the agency's explanation for not providing further detail establishes a reasonable basis to shift the risk of the vacation time budget estimation to offerors, and that this risk itself is not unreasonable, given that offerors can adjust their pricing to address the risk.

Further, in evaluating proposals for price reasonableness, section 15.404-1(b)(2) of the FAR permits the use of various price analysis techniques and procedures to ensure fair and reasonable pricing. These techniques include the comparison of proposed prices to each other, to prices found reasonable on previous purchases, or to an independent government estimate. FAR § 15.404-1(b)(2); Comprehensive Health Servs., Inc., B-310553, Dec. 27, 2007, 2008 CPD ¶ 9 at 8. The agency has outlined these exact techniques as the methods it intends to utilize in accordance with the FAR and decisions of our office. Although the protester argues that the mere receipt of multiple proposals will not establish price reasonableness, Comments at 5, citing our conclusions in Technatomy Corp., B-414672.5, Oct. 10, 2018, 2018 CPD ¶ 353, the protester misapplies that decision. In Technatomy, the agency failed to compare the prices of the proposals at all, and relied solely on the receipt of multiple proposals as evidence of price reasonableness. *Id.* Here, as previously stated, the agency has not indicated that it will rely only on adequate competition to establish price reasonableness; rather, the agency has listed multiple methods it plans to use. Therefore, we find that the solicitation is reasonably crafted to obtain information to utilize these price techniques, and that these techniques are sufficient to conduct an adequate price reasonableness analysis.

Unfair Competitive Advantage

APS also contends that the incumbent contractor has an unfair competitive advantage because only it will have the exact anniversary dates of employment for the incumbent employees, and therefore it will be able to provide a competitive offer; that is, impliedly, a low offer with less risk than the other contractors. Protest at 1. The agency responds that no unfair competitive advantage exists because there has been no preferential

treatment or unfair action, and further that the agency is not required to equalize natural advantages that arise as a product of being an incumbent contractor. AR, Tab 1, Legal Memorandum at 14-16. The protester did not respond to the agency's argument in its comments, and therefore we consider the protester to have abandoned this argument. Yang Enterprises, Inc., B-415923, Mar. 12, 2018, 2018 CPD ¶ 109.

In any event, a competitive advantage of an incumbent contractor, which was gained by virtue of that contractor's performing the incumbent contract, is not an unfair or improper competitive advantage, and an agency is not required to attempt to equalize competition to compensate for that advantage unless there is evidence of preferential treatment or other improper action. PRC, Inc. --Recon., B-274698.4, July 10, 1997, 97-2 CPD ¶ 10 at 2. Here, the incumbent naturally has the anniversary dates of employment for its current employees and the agency is not required to neutralize this advantage. Further, the record shows no unfair action or preferential treatment by the agency that would establish the incumbent has received an unfair competitive advantage. Therefore, we find that the protester has not demonstrated evidence of an unfair competitive advantage.

The protest is denied.

Thomas H. Armstrong
General Counsel