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Decision

Matter of: Active Deployment Systems, Inc.

File: B-419696

Date: April 26, 2021

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DIGEST

Protest that the solicitation unreasonably contemplates the establishment of a single blanket purchase agreement and not multiple such agreements is denied where the record shows that the agency's decision was reasonably made in accordance with applicable procurement statutes and regulations.

DECISION

Active Deployment Systems, Inc. (ADS), of San Marcos, Texas, protests the terms of request for quotations (RFQ) No. 70B01C21Q00000009, issued by the Department of Homeland Security, Customs and Border Protection (CBP), for operational supplies and services in support of the agency's Emergency Operations Center. ADS argues that the RFQ unreasonably contemplates the establishment of a single blanket purchase agreement (BPA) instead of multiple BPAs.

We deny the protest.

BACKGROUND

On January 29, 2021, CBP issued the RFQ, pursuant to the procedures set forth under Federal Acquisition Regulation (FAR) subpart 8.4, to procure "turnkey" (*i.e.*, immediately usable) portable personal care facilities and shelters, as well as installation, repair, maintenance, water supply, and waste disposal services. Agency Report (AR), Tab R,

RFQ at 5, 13-16, 53.¹ These portable structures and services are needed when the agency's facilities are compromised due to temporary disruptions, including natural disasters or surges in border security and immigration enforcement.² *Id.* at 50. As a result, the goods and services must be delivered rapidly after the agency issues an order against the BPA. *Id.* at 53. For example, the selected contractor must deliver services to locations inside the continental United States within 24 hours when responding to an emergency, or within 72 hours when responding to non-emergency situations. *Id.*

The RFQ contemplated the establishment of a single BPA, issued against the selected contractor's federal supply schedule contract, with orders to be performed over a 1-year base period, and four 1-year option periods. RFQ at 67. The RFQ had an estimated value of \$24,600,000. *Id.* at 27. Establishment of the BPA would be made on a best-value tradeoff basis, considering technical, past performance, and price factors. *Id.* at 20-23. The RFQ closed on March 22, 2021. AR, Tab S, RFQ, amend. 1 at 1. ADS filed this protest prior to the closing date.³

DISCUSSION

ADS argues that the RFQ unreasonably contemplates the establishment of a single BPA, as opposed to multiple BPAs. Protest at 2. Specifically, ADS argues that the agency's market research dictated that establishing multiple BPAs was preferable because no single contractor surveyed indicated that it could perform all of the requisite services. Comments at 2-7. ADS also argues that the agency did not undertake the requisite analysis under FAR section 8.405-3(a)(3) to determine that a single BPA was preferable. Protest at 3; see also Comments at 7-10. CBP responds that establishing a single BPA was the best method of accommodating its needs. Memorandum of Law (MOL) at 4.

When drafting a solicitation to obtain goods and services under a schedule contract, the determination of a contracting agency's needs and the best method of accommodating them are matters primarily within the agency's discretion. *BHB Ltd. P'ship & Indiana Assocs. Ltd. P'ship*, B-417760 *et al.*, Oct. 9, 2019, 2019 CPD ¶ 356 at 4; accord *Encompass Grp., LLC*, B-410726, Feb. 2, 2015, 2015 CPD ¶ 93 at 2. Moreover, where a requirement relates to human health and safety, an agency has the discretion to define solicitation requirements to achieve not just reasonable results, but the highest possible results with regard to reliability and/or effectiveness. *Open Spirit, LLC*,

¹ All references to the RFQ utilize the Adobe PDF page numbers.

² Many CBP facilities and associated infrastructures charged with border security and immigration enforcement have been strained and overwhelmed because of the recent increase in activity at CBP borders, particularly at ports of entry on the southern border of the United States. RFQ at 50.

³ In response to a request from the agency, our Office reviewed this protest under the express option procedures set forth in 4 C.F.R. § 21.10.

B-410428, B-410428.2, Dec. 15, 2014, 2014 CPD ¶ 373 at 9 n.8; *see also* AAR *Airlift Grp., Inc.*, B-409770, July 29, 2014, 2014 CPD ¶ 231 at 3.

Additionally, as applicable here, FAR section 8.405-3(a)(3)(i) provides that “[t]he ordering activity contracting officer shall, to the maximum extent practicable, give preference to establishing multiple-award BPAs, rather than establishing a single-award BPA.” Further, when determining whether establishing a single BPA is appropriate, the FAR requires the agency to consider the following factors:

- (A) The scope and complexity of the requirement(s);
- (B) The benefits of on-going competition and the need to periodically compare multiple technical approaches or prices;
- (C) The administrative costs of using BPAs; and
- (D) The technical qualifications of the schedule contractors.

FAR 8.405-3(a)(3)(iv)(A-D).

Here, the agency documented its determination and explained why it concluded that establishing a single BPA was preferable. AR, Tab P, Market Research Report at 19. The agency considered the scope and complexity of the requirement as better suited to a single BPA because this requirement called for delivering critical infrastructure related to safeguarding public health within 24 to 72 hours following a disaster event, and that awarding a single BPA was the best method of satisfying this need. *Id.* at 7; *see also* AR, Tab T, Contracting Officer’s Statement (COS) at 1.⁴ CBP explained that issuing a solicitation and evaluating quotations following either emergency or non-emergency disaster events would interfere with the government’s ability to resume operations quickly. COS at 1-2. Indeed, CBP noted that soliciting and evaluating quotations, and making an award decision, could take several days or weeks, which is not practicable for this particular requirement. *Id.*

Similarly, the agency did not consider the benefits of on-going competition as favoring the establishment of multiple BPAs because repeating competitions for these services would increase administrative costs and severely hinder the agency’s ability to respond to disaster events within 24 to 72 hours. COS at 1-2. Additionally, CBP considered

⁴ ADS contends that the contracting officer’s statement is a post-protest explanation that should be afforded little weight in our evaluative process. Comments at 6. In our view, the contracting officer’s statement is consistent with the agency’s market research determinations, and provides more detail helping to explain the agency’s conclusions; to that end, the statement simply fills a gap in the record. *See Wackenhut Servs., Inc.*, B-286037, B-286037.2, Nov. 14, 2000, 2001 CPD ¶ 114 at 5 (“While we generally accord greater weight to contemporaneous evidence, we will consider post-protest explanations that provide a rationale for contemporaneous conclusions, so long as those explanations are credible and consistent with the contemporaneous record.”). As such, we view the contracting officer’s statement to be consistent with the contemporaneous record and will consider it accordingly.

periodically comparing technical approaches and prices as not a significant benefit because delivering portable care facilities and services are customary commercial services (*i.e.*, they are not technically intensive), and the prices are driven by the awardee's competitively based schedule contract. AR, Tab P, Market Research Report at 7, 15; *see also* MOL at 6.

CBP also considered the technical qualifications of the schedule contractors when determining that a single BPA was preferable. AR, Tab P, Market Research Report at 17. The agency determined that its needs could be capably satisfied by a single vendor because the results of the market research survey indicated that interested vendors would likely establish partnering agreements to support all of the acquisition's requirements. *Id.*

Although ADS may argue that establishing multiple BPAs is preferable because the market research results did not identify a single vendor capable of delivering all of the requisite supplies and services, *see* Comments at 5, we do not find that argument provides us with a basis to sustain the protest. First, we do not think the record supports the protester's position. Indeed, the record shows that at least one of the vendors was capable of providing all of the requisite supplies and services because that firm expressed willingness to establish teaming or partnering agreements with other firms. AR, Tab K, Emails Between Agency Officials and Vendor at 1 (identifying a vendor as interested in performing the entire requirement). Additionally, the agency identified other firms as demonstrating strong interest or potential interest in providing all of the services through teaming or partnership agreements. AR, Tab P, Market Research Report at 17; *see also* AR, Tab L, Emails Between CBP and Vendor at 2 (vendor explaining that it is interested in bidding for the requirement); AR, Tab O, Market Research Summary at 1 (identifying four vendors as interested in bidding on the entire scope of services by establishing teaming agreements).

Second, and more importantly, we think ADS's argument simply disagrees with the agency's judgment that a single BPA strategy was the preferred option given the results of the market research. Our decisions explain that disagreement with an agency's judgment concerning how market research results should inform an agency's acquisition strategy does not provide us with a basis to sustain a protest. *See Encompass Grp., LLC, supra* at 4. Thus, we deny this protest allegation because the protester's argument simply disputes the relative worth of the competing considerations (*i.e.*, the agency's need for the rapid acquisition of supplies and services versus the more limited interest from firms in bidding for the entire scope of the requirement). *See* MOL at 5-6

We also do not agree that CBP failed to undertake the requisite analysis under FAR section 8.405-3(a)(3)(iv). *See* Comments at 7-10. While the agency's analysis could have been better organized, we think, as noted above, that CBP's analysis nevertheless encompassed each of the applicable factors. *See* AR, Tab P, Market Research Report at 1-4, 7, 15-19; *see also* COS at 1-2; MOL at 6 (explaining that the agency's market research encompassed the requisite factors). Furthermore, while ADS argues that the

agency unreasonably focused on the “urgency” of the requirement, we do not find ADS’s arguments persuasive. The agency’s urgency analysis included, at a minimum, consideration of the scope and complexity of the requirement, as well as the benefits of on-going competition. See MOL at 6 (explaining how the agency’s consideration of need for the rapid acquisition of these goods and services relates to the scope and complexity of the requirement, benefits of on-going competition, and the technical qualifications of schedule contractors). Accordingly, we deny the protest allegation.

Finally, we note that the regulations only require the agency to give preference to multiple BPAs to the “maximum extent practicable.” See FAR 8.405-3(a)(3)(i). Here, the agency explained that a strategy involving multiple BPAs was impracticable due to the time-sensitive and health-related requirements of this acquisition. MOL at 6; COS at 1. Thus, we agree that, under the circumstances here, the agency was not required to give a preference to establishing multiple BPAs versus a single BPA.

The protest is denied.

Thomas H. Armstrong
General Counsel