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Decision

Matter of: American International Movers, Inc.

File: B-419756

Date: July 20, 2021

William Selinsky, Esq., Whitcomb Selinsky, P.C., for the protester.
Colonel Patricia S. Wiegman-Lenz, Erika Whelan Retta, Esq., Nicholas T. Iliff, Esq., Alexis J. Bernstein, Esq., Willie J. McAlister, Esq., and Bradley E. Richardson, Esq., Department of the Air Force, for the agency.
Hannah G. Barnes, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging solicitation requirements as unduly restrictive is denied where the record supports the agency's position that the requirement is reasonably necessary to meet the agency's needs.

DECISION

American International Movers, Inc. (AIM), a small business of Forsyth, Georgia, challenges the terms of request for proposals (RFP) No. HTC711-21-R-R009, issued by the United States Transportation Command (USTRANSCOM) for the storage of household goods and other personal property of Department of Defense service members, civilians, and their dependents, pursuant to a permanent change of station. AIM argues that the solicitation is unduly restrictive of competition and inaccurately reflects the agency's needs and objectives.

We deny the protest.

BACKGROUND

USTRANSCOM administers the Defense Personal Property Program, the transportation program that the Department of Defense uses for moving and storing the household goods, vehicles, and other personal property of service members, and Department of Defense civilians and their dependents, pursuant to a permanent change of station. Contracting Officer's Statement (COS) at 2.

This RFP, issued on March 19, 2021, and set aside for small businesses under Federal Acquisition Regulation parts 12 and 15, contemplates the award of a fixed-price, indefinite-delivery, indefinite-quantity contract with a base year and four option years. Agency Report (AR), Tab 36, RFP at 1, 3-13, 36. The solicitation also contemplates a sunset period, up to three years, during which the stored inventory will remain “with the contractor until handled-out according to the customer’s entitlement.” AR, Tab 43, Performance Work Statement (PWS) § 1.3.1.2.

The RFP seeks proposals for the storage of contained household goods and unaccompanied baggage belonging to customers of the Defense Personal Property Program, specifically for those customers whose baggage and goods are to be shipped from outside the continental United States into the continental United States. PWS §§ 1.1-1.2. The solicitation provides for award on a lowest-priced, technically acceptable basis, considering three factors: business proposal, technical proposal, and price. RFP at 36.

As relevant here, under the technical approach factor, the RFP directs offerors to submit proposals for warehouses capable of storing up to 30 million gross pounds of household goods and unaccompanied baggage annually. RFP at 35. The solicitation also requires that proposals include warehouse facilities “equipped with remote climate sensor monitoring technology.” *Id.* The RFP advises that the purpose of this monitoring technology is to ensure that “all shipments are not exposed to vermin, dust, mold, mildew, moisture, hazardous chemicals,” or other elements like heat, cold, humidity, and sunlight that would damage the containerized household goods and unaccompanied baggage. PWS § 1.3.2.1. In order to avoid such damage, the solicitation directs offerors to ensure that their proposed facilities maintain a temperature no lower than 35 degrees Fahrenheit and no higher than 75 degrees Fahrenheit, as well as a humidity range between 30 percent and 55 percent. PWS § 1.3.2.3.

The RFP advised offerors that the deadline for submission of proposals was April 20, 2021. RFP at 1. Prior to this deadline, on April 16, AIM filed this protest.

DISCUSSION

The protester argues that the solicitation is unduly restrictive of competition, places a burden on small businesses, and inadequately reflects stated agency needs and objectives. We have reviewed all of the protester’s arguments and discuss below a few representative examples of AIM’s assertions, the agency’s responses, and our conclusions. Based on our review, we find no basis to sustain AIM’s protest.

The protester argues that the solicitation is unduly restrictive because it requires a large amount of storage, as well as “climate-controlled” storage facilities, without a guaranteed 5-year contract. Protest at 5. Specifically, the protester contends that no small businesses operating in the non-temporary storage market possess climate-controlled storage facilities of the size required by the RFP, and as a result, “they would

have to lease or buy additional facilities just to submit a proposal.” *Id.* AIM argues that the solicitation “shifts virtually all risk of contract performance to the contractor with no guaranty of any return,” and contends that small businesses are incapable of meeting the solicitation requirements. *Id.* at 6. The protester also argues the solicitation does not accurately reflect the agency’s actual needs and objectives because the solicitation requires 30 million gross pounds of “empty climate-controlled storage space . . . [but] USTRANSCOM estimated that it would use less than a third of that in the base year of the contract.” *Id.* at 5.

In response, the agency argues that its requirements for 30 million gross pounds of climate-monitored storage capacity are reasonable. The agency asserts that the required amount of storage capacity is “based on historical data and accounts for the necessary flexibility needed to accommodate troop realignments.”¹ Memorandum of Law (MOL) at 6. The agency also notes that it requires extra capacity in case of large demands “during surge and/or peak season,” particularly given the uncertainty regarding how many future pounds of household goods and unaccompanied baggage will require storage. COS at 6. The agency argues that the humidity range and temperature requirements are necessary to protect customers’ household goods and unaccompanied baggage from mold or other types of climate-based damage. *Id.* With respect to the protester’s complaint that meeting the capacity and climate-control requirements would be too difficult without the guarantee of a 5-year contract term, the agency asserts that excluding the option years would reduce flexibility, which the agency needs “to determine whether the awardee is adequately performing” its duties. COS at 13-14.

The protester reiterates its previous contentions and argues that it is not merely the storage requirement by itself, or the option years, or the climate-control requirement, but the combination of all three that renders the solicitation unduly restrictive.² Comments at 1. The protester reiterates its contention that the solicitation “unnecessarily shifts the entire risk of contract performance on the contractor,” and argues that a 5-year contract,

¹ The agency explains that the maximum storage capacity for the contract at issue is based on a previous contract, awarded on December 14, 2014, as a small business set-aside. COS at 5. The agency states that for the lifecycle of that contract, from August 2015 through March 2021, the monthly average of utilized storage was 19,120,593 gross pounds, and the highest monthly total was 21,457,838 gross pounds. *Id.* The agency also notes that the awardee of that contract “has had no issues meeting this requirement.” *Id.*

² In fact, AIM acknowledges that it “does not take issue with the agency’s decision to finally require climate-controlled storage space, which would obviously benefit its customers.” Comments at 2.

rather than a contract with four option years, would better mitigate this risk.³ *Id.* at 1, 4-5.

The determination of an agency's minimum needs and the best method of accommodating them is primarily within the contracting agency's discretion, and we will not question such a determination unless it has no reasonable basis. *Salient Fed. Sols., Inc.*, B-410174, Nov. 6, 2014, 2014 CPD ¶ 350 at 2. A protester's disagreement with the agency's judgment concerning the agency's needs and how to accommodate them does not show that the agency's judgment is unreasonable. *LexisNexis*, B-413612, Nov. 29, 2016, 2016 CPD ¶ 356 at 4-5.

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. *eReceivables, Inc.*, B-416773, Dec. 12, 2018, 2018 CPD ¶ 423 at 5; *Remote Diagnostic Techs.*, B-413375.4, B-413375.5, Feb. 28, 2017, 2017 CPD ¶ 80 at 3-4. Where an agency reasonably identifies its needs and allows offerors the opportunity to meet those needs, the fact that a solicitation's requirements may be burdensome or even impossible for an offeror to meet does not make them objectionable, if the requirements properly reflect the agency's needs. *TransAtlantic Lines, LLC*, B-411846.2, Dec. 16, 2015, 2015 CPD ¶ 396 at 9.

Here, we conclude that the agency has established that its requirements for storage capacity, temperature control, and humidity range are reasonable. Although the protester raises arguments disagreeing with the agency, this disagreement does not show that the agency's judgment as to the agency's need is unreasonable.

For example, in its comments on the agency's report, AIM asserts that the highest capacity the incumbent contractor has handled since 2014 was approximately 21.5 million gross pounds of household goods and unaccompanied baggage, and as a result, the solicitation's storage capacity requirements do not reflect the agency's needs. Comments at 2. The agency provided this information in its agency report and emphasizes that this historical data, combined with the inherent uncertainty of predicting future surges or troop realignments, supports the agency's argument that the solicitation's storage capacity requirements are reasonable. MOL at 6; COS at 6.

We find that the agency's explanation for its solicitation provisions regarding temperature, humidity, and storage capacity withstand logical scrutiny. We note the agency's argument that it requires flexibility in order to accommodate unforeseeable

³ To the extent that the protester complains the solicitation unfairly shifts risk to small business offerors, there is no requirement that an agency eliminate all risk from a solicitation; to the contrary, an agency may provide for a competition that imposes maximum risks on the contractor and minimum burdens on the agency. *Veterans Choice Med. Equip., LLC*, B-415583, Dec. 12, 2017, 2017 CPD ¶ 382 at 4.

surges in demand, despite a historical usage that has been lower than the maximum capacity required by the solicitation. In addition, as the agency explains, the use of option periods preserves the agency's ability to deal with any potential poor performance. Accordingly, we deny the protester's argument that the solicitation does not accurately reflect the agency's needs and objectives.

The protest is denied.

Edda Emmanuelli Perez
General Counsel