



Decision

Matter of: SML Innovations

File: B-402667.2

Date: October 28, 2010

Sheryl M. Long for the protester.

Maj. Christine Fontenelle, Department of the Army, for the agency.

Eric M. Ransom, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation's past performance criteria are unduly restrictive is denied where the record shows that the provisions are reasonably related to the agency's needs.

DECISION

SML Innovations protests the terms of request for proposals (RFP) No. W91QUZ-10-R-0017, issued as a total small business set-aside by the Department of the Army for Enterprise Resource Planning (ERP) Enterprise Application Services (EAS) in support of the Army Enterprise Systems Integration Program. SML challenges the relevancy criteria for offerors' past performance references.

We deny the protest.

The Army issued the RFP on July 22, 2010, for the purpose of awarding multiple indefinite-delivery/indefinite-quantity contracts for EAS services to include analysis, design, development, deployment, fielding, and sustainment of enterprise applications. The RFP set forth four evaluation factors, technical, past performance, management, and price, in descending order of importance. RFP at 127. With respect to past performance, the RFP stated that the "prime offeror shall submit one (1) but may submit up to three (3) past performance references." *Id.* at 118. Past performance references were required to be current and relevant. The RFP defined current work as work performed not more than 3 years prior to the date of the RFP's issuance, and relevant work as work that is the "same or similar in scope, complexity, [and] magnitude as the work identified in the PWS [Performance Work

Statement] and has an annual dollar value of at least \$2,000,000.00, held as either a prime or major subcontractor, with performance of at least twelve months.” Id.

SML asserts that the \$2 million annual minimum value for past performance reference contracts will exclude from competition the majority of small business firms with Army ERP experience and the requisite technical and management capabilities. SML contends that the RFP renders most small businesses ineligible for positive past performance ratings and thus discounts the past performance of firms that may not have individual contracts valued at \$2 million per year, but have performed \$2 million or more of ERP work under multiple contracts. SML argues that small businesses, such as itself, that perform \$2 million of ERP work annually under multiple contracts demonstrate strong management capabilities, coordination, and management resources, and should be considered for positive past performance ratings.

The fact that an aspect of the RFP’s evaluation criteria may prevent a number of small firms from obtaining positive past performance ratings is not dispositive of whether the provision is unduly restrictive. Rather, agencies enjoy broad discretion in the selection of evaluation criteria, and we will not object to the use of particular evaluation criteria so long as they reasonably relate to the agency’s needs in choosing a contractor that will best serve the government’s interests. Leon D. DeMatteis Constr. Corp., B-276877, July 30, 1997, 97-2 CPD ¶ 36 at 4. The determination of a contracting agency’s needs and the best method for accommodating them are matters primarily within the agency’s discretion. Tucson Mobilephone, Inc., B-250389, Jan. 29, 1993, 93-1 CPD ¶ 79 at 2. Where a protester alleges that a solicitation provision is unduly restrictive, we will review the record to determine whether the provision is reasonably related to the agency’s needs. See Systems Application & Techs., Inc., B-270672, Apr. 8, 1996, 96-1 CPD ¶ 182 at 3.

Here, we think the record supports the agency’s position that the \$2 million annual minimum for relevant past performance references is reasonably related to its needs. The total amount of all orders placed against all contracts awarded under the RFP may exceed \$240 million, RFP at 3, with each individual order likely to exceed \$2 million. Contracting Officer’s Statement of Facts, at 6. In fact, based on historical records of ERP-EAS requirements, the average task order under the awarded contracts is expected to be \$2.8 million. Id. Further, any awardee may be issued multiple concurrent task orders to perform at any given time. Id.

Given the total amount to be expended under contracts resulting from the RFP, the average estimated amount of individual task orders, and the fact that each awardee will likely be required to perform multiple concurrent task orders, we find the Army’s selection of a \$2 million minimum per contract for past performance references to be unobjectionable. In this context, in which awardees may be

required to manage multiple concurrent task orders in excess of \$2 million annually, it is reasonable for the Army to limit the examination of past performance to other contracts valued at \$2 million annually.

The protest is denied.

Lynn H. Gibson
Acting General Counsel