



Decision

Matter of: COB EventLizenz GmbH

File: B-401999.2

Date: January 12, 2010

Georg Schreckhaase for the protester.

Paul D. Reinsdorf, Esq., for SST GmbH, an intervenor.

Capt. John J. Pritchard, Department of the Army, for the agency.

Katherine I. Riback, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Under a solicitation for Civilians on the Battlefield (COB), which requires that the contractor provide role-playing actors that interact with United States armed forces in various training scenarios, the requirement that the COBs be “fully vetted,” which excludes the protester, is not unduly restrictive of competition where the record supports the reasonableness of the agency’s determination that “fully vetted” COBs are necessary to meet its needs.

DECISION

COB EventLizenz GmbH (COB Event) of Stuttgart, Germany, protests as unduly restrictive the terms of request for proposals (RFP) No. W912PB-09-R-0054, issued by the Department of the Army, for Civilians on the Battlefield (COB) for the Joint Multinational Readiness Center in Hohenfels, Germany.

We deny the protest.

The COB role players are part of a training program that plans, manages, and executes all mission rehearsal exercises for units training in the 7th Army Joint Multinational Training Command in Hohenfels, Germany. The COB role players replicate recent scenarios seen in the specific area of operations to which the unit will soon be deployed. For example, the COBs live in mock villages on the military installation and, based on scripted scenarios, interact with soldiers during security operations, searches, and other missions; and they portray various individuals from ordinary citizens, government officials, and insurgent sympathizers who challenge and stress United States armed forces as a simulation of the current operating

environment. As the agency explains, the COB role players are a “critical and Army-mission essential requirement . . . in support of training soldiers preparing for deployment in order to better accomplish the [United States] missions . . . throughout the world. Soldiers must be trained in a realistic training environment which reflects the real worldwide conditions of the complex battlefields of current operations and conflicts.” Contracting Officer’s Statement at 4-5; Agency Legal Memorandum at 1-2.

SST GmbH is the incumbent contractor that provided COB role players under a contract that expired on January 15, 2009; however, the final task order placed under this contract expired on September 30. In anticipation of contract expiration, the agency began acquisition planning for a follow-on contract in late February 2008, issued a solicitation in February 2009, conducted a competition for a replacement contractor during the next several months, and forwarded its evaluation for internal review in early May of 2009. That review revealed solicitation flaws that led to the cancellation of the solicitation on or about September 4. Contracting Officer’s Statement at 11-12.

With the incumbent task order about to expire and to ensure continuity of COB services, the agency sought and received approval to proceed with a bridge contract to be issued on a sole source basis. Contracting Officer’s Statement at 3, 12. On September 6, the agency published a synopsis on Federal Business Opportunities (FedBizOpps) of its intent to award a sole source bridge contract to SST GmbH, the incumbent contractor, in accordance with Federal Acquisition Regulation (FAR) § 6.302-1, due to the contracting officer’s belief that only the incumbent could provide the required management and role players for the exercises beginning on October 1. Agency Report (AR), Tab D, Synopsis, at 1-2. The agency received four responses from firms, including the protester, stating that they could perform the same services as the incumbent without interruption or excessive cost. Contracting Officer’s Statement at 6.

Based on these responses, on September 17, the agency amended the FedBizOpps synopsis to reflect that the agency would conduct a limited competition for the COB services. The agency stated in the amended synopsis that it “plan[ned] on conducting a limited competition among only those firms who can provide an affirmative and unequivocal statement of their capability to provide 400 role players on site at Hohenfels, Germany, beginning on 1 October 2009, so that there is no interruption of services.” AR, Tab F, Amended Synopsis, at 1. Five additional firms, plus the protester, responded to the amended notice indicating their capability of performing. Agency Legal Memorandum at 3.

Based on these responses, on September 25, the contracting officer issued the RFP for the bridge contract to the 10 firms (the 9 firms that responded to the synopses plus the incumbent) that claimed that they could provide these services. The RFP provided for the award of a bridge contract for a 6-month base period, with one

3-month option period, on a time-and-materials basis with fixed-price, fully burdened hourly rates for 400 COB role players performing various roles under the contract. RFP at 4. The RFP stated that award would be made “to the lowest priced offeror who is found to be technically acceptable.” *Id.* at 55. As part of technical acceptability, offerors were required to self-certify that their firms could provide “vetted COBs in place for the start [of the contract] on October 1, 2009.” According to the solicitation, “[f]ully vetted’ COBs means that the COBs have undergone a German Polizi and Military Intelligence investigation within the last 180 days and it is still valid.” *Id.* Of the 400 total COBs, 23 were to be “fully vetted” by October 2, and the remaining 377 COBs were to be “in process” by October 4. RFP, amend. 2, at 2.

The RFP established a proposal due date of 8:00 a.m. Central European Time on September 29. RFP at 1. The agency received three timely proposals from among the 10 firms solicited. The protester did not submit a proposal and, instead, protested the terms of the solicitation to the agency on September 28. In its agency-level protest, that protester complained that the vetting requirement for COBs was unduly restrictive of competition, and that the solicitation should have required compliance with German law pertaining to temporary employment. The agency dismissed the protest on September 29 because SST GmbH had filed a protest with our Office involving the same solicitation (B-401999).

On September 30, the agency overrode the Competition in Contracting Act (CICA) stay of performance and awarded the contract to Optronics.¹ Later that same day, the agency terminated the contract for convenience, after Optronics advised it could not provide the required COBs. On October 1, the agency awarded the contract to SST GmbH, whose proposal was next in line for award, in the amount of €12,070,897.40. SST GmbH subsequently withdrew its protest with our Office on October 2.

On October 9, the protester filed its protest with our Office, asserting that the vetting requirement for COBs was unduly restrictive of competition.²

A contracting agency has the discretion to determine its needs and the best method to accommodate them. *Parcel 47C LLC*, B-286324, B-286324.2, Dec. 26, 2000, 2001 CPD ¶ 44 at 7. In preparing a solicitation, a contracting agency is required to specify

¹ The agency overrode the stay “due to the urgent need for COB services for units training for imminent deployment.” Agency Legal Memorandum at 4.

² The protester also initially protested that the solicitation should have required compliance with German law pertaining to temporary employment. However, the protester abandoned this argument when it failed to address in its comments the agency’s substantive response to this issue in the agency report. *Knowledge Connections, Inc.*, B-297986, May 18, 2006, 2006 CPD ¶ 85 at 2 n.2.

its needs in a manner designed to achieve full and open competition, and may include restrictive requirements only to the extent they are necessary to satisfy the agency's legitimate needs. 10 U.S.C. § 2305(a)(1) (2006); Innovative Refrigeration Concepts, B-272370, Sept. 30, 1996, 96-2 CPD ¶ 127 at 3. Where a protester challenges a specification as unduly restrictive, the procuring agency has the responsibility of establishing that the specification is reasonably necessary to meet its needs. The adequacy of the agency's justification is ascertained through examining whether the agency's explanation is reasonable, that is, whether the explanation can withstand logical scrutiny. Chadwick-Helmuth Co., Inc., B-279621.2, Aug. 17, 1998, 98-2 CPD ¶ 44 at 3. A protester's mere 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. Dynamic Access Sys., B-295356, Feb. 8, 2005, 2005 CPD ¶ 34 at 4. Where, as here, a requirement relates to national defense or human safety, an agency has the discretion to define solicitation requirements to achieve not just reasonable results, but the highest possible reliability and/or effectiveness. Vertol Sys. Co., Inc., B-293644.6 et al., July 29, 2004, 2004 CPD ¶ 146 at 3.

According to the agency, "fully vetted" COBs are necessary under the terms of the solicitation and the resultant contract because "COB role players are considered to have special security issues and risks due to their access and involvement in military operations and training." Agency Legal Memorandum at 9; see also Contracting Officer's Statement at 5. The COB role players are non-government personnel who will have special access to military installations and to sensitive information concerning United States armed forces' "tactics, techniques, and procedures in the current combat operating environment." Agency Legal Memorandum at 9; Contracting Officer's Statement at 5. It is therefore "essential to ensure the safety of the service members" to require that COBs undergo background checks and be properly screened prior to their participation in training exercises. Agency Legal Memorandum at 6, 9. In addition, the vetting requirement existed in "all previous solicitations/contracts." Contracting Officer's Statement at 4.

The protester does not dispute the Army's determination that fully vetted COBs are necessary to meet the agency's needs. Rather, the protester focuses on the compressed time period that was available to offerors in which to prepare their proposals, and it contends that there was too little time for any company other than the incumbent to obtain fully vetted COBs prior to the start of contract performance. The protester contends that Optronics inability to perform is evidence of the unduly restrictive nature of the vetting requirement.³

³ For the first time in its comments, the protester contends that the agency failed to comply with Executive Order 13495 concerning the right of first refusal provided to incumbent contractors. Protester's Comments at 3. However, this allegation is untimely as it was not raised in the protester's agency-level protest or its initial

(continued...)

We think that the agency has reasonably established a legitimate need for the COBs to be fully vetted by the start of the contract. Given the special security issues presented by COBs due to their access to the military installation and to sensitive information concerning the tactics, techniques and procedures of United States armed forces, and given the agency's discretion to define its requirements in contracts involving national defense, we see no basis to object to a requirement that COBs be fully vetted by the start of the contract. Although the protester objects to the short time to acquire fully vetted COBs, the agency has explained that the short response time was because the agency needed COBs to train its service members scheduled for "imminent deployment" and the existing contract was about to expire, coupled with unanticipated problems with the prior procurement.⁴ See Agency Legal Memorandum at 2-4. Given the imminent need for these services and the fact that the agency received a responsive offer from at least one other offeror in addition to Optronics and the awardee, we do not find the response time unreasonable. See Crowley Am. Transport, Inc., B-259599.2, June 19, 1995, 95-1 CPD ¶ 277 at 6.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

(...continued)
protest here. Comprehensive Health Servs., Inc., B-292858.3 et al., Apr. 27, 2004, 2004 CPD ¶ 165 at 8 n.2 (piecemeal presentation of protest grounds is untimely).

⁴ Some of the delay in issuing the bridge contract was related to the agency's efforts to promote competition, rather than a lack of advance planning.