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Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** KAES Enterprises, LLC

**File:** B-407964

**Date:** April 23, 2013

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Christopher Kaes, for the protester.  
KalMarie Rawald, Esq., Federal Emergency Management Agency, for the agency.  
Noah B. Bleicher, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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### DIGEST

Protest that solicitation's performance work statement requirements are unduly restrictive is denied where agency provided a reasonable rationale for the requirements and the protester has not refuted the agency's explanation.

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### DECISION

KAES Enterprises, LLC, of Puyallup, Washington, protests the terms of request for proposals (RFP) No. HSFE70-13-R-0005, issued by the Federal Emergency Management Agency (FEMA) for generator maintenance services.

We deny the protest.

As part of FEMA's mission, the agency provides large quantities of generators in response to disasters and other emergencies. These generators power critical public facilities, such as hospitals, nursing homes, shelters, and water treatment facilities. Agency Report (AR) at 5. When not being used for emergency response operations, FEMA stores the fleet of approximately 700 generators at four distribution centers.<sup>1</sup>

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<sup>1</sup> The distribution centers are located in Frederick, Maryland; Atlanta, Georgia; Fort Worth, Texas; and Moffett, California. RFP, attach. 2, Performance Work Statement, at § 5.0.

The RFP at issue here, published on January 15, 2013, sought proposals from service-disabled veteran-owned small businesses (SDVOSB) to perform maintenance on FEMA's fleet of generators at the four distribution centers. RFP at Cover Sheet. The RFP contemplated the award of a fixed-price contract with a 1-year base period of performance and two 1-year option periods. Id. at B-3, E-7. Award will be made on a best value basis considering the following four factors: technical approach and understanding, management approach and capabilities, past performance, and price.<sup>2</sup> Id. at E-11.

The RFP, as amended, included a performance work statement (PWS) that described the scope of work required under the contract. Specifically, the PWS identified various maintenance tasks the contractor would be required to perform "approximately every 90 days" at each distribution center.<sup>3</sup> RFP, attach. 2, PWS, § 5.1. The PWS also required that the contractor complete the quarterly maintenance services over an 8 business-day period at each center. Id. Additionally, as relevant here, the PWS required the contractor to maintain the generator fleet at a "minimum level of 90% 'fully mission capable'. . . with 100% being the targeted goal." Id. § 5.1. For a generator to be considered fully mission capable, the PWS identified seven requirements, including, for example, being able to "reliably produce stable current," having fully operational gauges and control panel indicator lights, and being ready for transport by ground, sea, or air. Id. § 4.5.

The RFP was amended to provide for a site visit at the distribution center in Atlanta, Georgia. RFP at E-5. The record shows that KAES representatives attended the site visit on February 26, 2013. AR, exh. 22, Site Visit Attendee Sheet, at 1. No additional site visits were conducted.

Prior to the deadline for the submission of proposals, KAES, an SDVOSB, filed a protest with our Office, objecting to "several issues" with the solicitation. Protest at 2. KAES's primary argument is that the PWS is "overly restrictive." Id. at 3; Comments at 1-2. Specifically, KAES objects to the PWS's requirement that the contractor maintain the generator fleet at a minimum of 90 percent fully mission capable and the requirement that the maintenance services be performed within 8 business days. Comments at 2-3. KAES also complains that it was improper for

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<sup>2</sup> The RFP identified the following past performance subfactors: quality of the offeror's work, customer satisfaction, and timeliness of performance and final completion of the contract. RFP at E-11.

<sup>3</sup> In addition to annual and periodic maintenance services, the PWS required the contractor to perform other repairs when tasked by FEMA and to provide "return to storage" services after "mission completion from disaster response." RFP, attach. 2, PWS §§ 5.2, 5.3.

the agency not to hold a site visit at each of the four distribution centers where the maintenance will occur.<sup>4</sup> Id. at 1.

Where a protester alleges that a requirement is unduly restrictive, the agency must establish that the requirement is reasonably necessary to meet its needs; we will examine the adequacy of the agency's position to ensure that it is rational and can withstand logical scrutiny. JRS Mgmt., B-404022.2, Feb. 15, 2011, 2011 CPD ¶ 42 at 3. The fact that a requirement may be burdensome or even impossible for a particular firm to meet does not make it objectionable if the requirement properly reflects the agency's needs. JBG/Naylor Station I, LLC, B-402807.2, Aug. 16, 2010, 2010 CPD ¶ 194 at 4. A protester's mere disagreement with an 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.

Here, we find that the agency has established a reasonable basis for the solicitation's requirements. In this regard, FEMA has shown that the PWS requirements objected to by the protester are critical to meeting the agency's rapid response to national disasters and emergencies. The agency explains that in response to an emergency, "large quantities" of generators are deployed within 24 to 48 hours of notification. AR, exh. 3, Statement of FEMA Generator Fleet Manager, at 1. In these situations, FEMA reports that it cannot "delay its response [to an emergency] in order to determine which generators are up to date on their maintenance." Contracting Officer Statement at 2. The PWS requirement that a minimum of 90 percent of the generator fleet be fully mission capable allows the agency to "immediately move to dispatch the fleet" without having to first "cobble together" generators that are ready to deploy. AR, exh. 3, Statement of FEMA Generator Fleet Manager, at 1; AR at 6. The agency further asserts that the requirement that the contractor complete the maintenance services in 8 business

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<sup>4</sup> KAES also objects to the omission of certain information and clauses in the solicitation, including, for example, wage determination information and information related to a post-award orientation conference. Protest at 2. Subsequent to the filing of the protest, the agency amended the RFP to include much of the information requested by the protester. See, e.g., RFP, attach. 6, Wage Determinations, at 1. Additionally, the agency reevaluated all of the contract clauses and eliminated any that conflicted, as requested by the protester. AR, exh. 5, Updated Notice of Corrective Action, at 1; see Protest at 2. The solicitation amendments and the agency's actions related thereto render these protest grounds academic. See Dyna-Air Eng'g Corp., B-278037, Nov. 7, 1997, 97-2 CPD ¶ 132. Accordingly, these protest grounds will not be considered further. To the extent the protester raises other challenges to the solicitation not discussed in this decision, we have reviewed them and conclude that they do not provide a basis to sustain the protest.

days allows the agency to be “certain of the status of the generator fleet as a whole.” AR, exh. 3, Statement of FEMA Generator Fleet Manager, at 1.

These considerations support the reasonableness of the PWS requirements. Although KAES argues generally that the 90 percent fully mission capable rate is a “fundamental flaw” and complains that the 8-day requirement is “impracticable” and “extremely costly,” it has not shown that these PWS requirements lack a rational basis or that the agency’s position with respect to the requirements is otherwise unreasonable. See Protest at 3; Comments at 2.

KAES also protests the agency’s decision not to hold a site visit at each of the four distribution centers, arguing that each location is “fundamentally different.” Supplemental (Supp.) Comments at 1; Comments at 1. Here, as explained above, the agency hosted a site visit on February 26—which the protester attended—at FEMA’s distribution center in Atlanta. The agency explains that the site visit at the Atlanta distribution center was “sufficient to afford[] the prospective offerors the opportunity to see the condition under which the work will be performed at all four sites.” AR, exh. 21, Supp. Contracting Officer Statement, at 1. In this regard, the agency reports that the four distribution centers are “virtually identical”; the maintenance work will be performed at an “outside area on a concrete pad” at each of the distribution centers.<sup>5</sup> Id.; Supp. AR at 3; see AR, exh. 20, Images of the Four Work Sites, at 1-4 (showing photographs of the “open space on concrete” where the work will be performed). Moreover, FEMA included as an attachment to the solicitation an inventory of all of the generators to be serviced, which included each generator’s location, size (kilowatt rating), make, and model, among other things. RFP, app. 1, List of Generator Fleet.

On this record, we agree with the agency that the Atlanta distribution center was sufficiently representative of the other sites such that it was reasonable for the agency not to conduct additional site visits.<sup>6</sup> Moreover, we find that the Atlanta site visit, combined with the solicitation’s detailed generator inventory, provided offerors enough information to enable them to compete intelligently and on a relatively equal basis. See AirTrak Travel et al., B-292101 et al., June 30, 2003, 2003 CPD ¶ 117

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<sup>5</sup> The agency explains that the only difference at the distribution centers is “how the generators are stored.” AR, exh. 21, Supp. Contracting Officer Statement, at 1. However, the movement of the generators to and from the location where the contractor will perform the maintenance is the responsibility of FEMA. Id.

<sup>6</sup> In a related argument, KAES contends that it needs to visit each distribution center to inspect “unique government furnished property.” Comments at 2. However, to the extent that FEMA is making equipment available for the contractor, the PWS clearly states that the contractor should “not rely on these for purposes of performance.” RFP, attach. 2, PWS § 6.3.

at 12-13; see also Dellew Corp., B-407159, Nov. 16, 2012, 2012 CPD ¶ 341 at 5 n.2 (agency decision not to conduct a site visit was reasonable where solicitation provided sufficient information on which offers could base their proposals).

The protest is denied.

Susan A. Poling  
General Counsel