



Decision

Matter of: ARTi, Inc.

File: B-420699

Date: July 6, 2022

Robert M. Holmes, Jr., ARTi, Inc., for the protester.
Weston E. Borkenhagen, Esq., and Jill B. Wiley, Esq., Department of the Army, for the agency.
Elizabeth R. Walsh, Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation improperly provides for award on a lowest-price, technically acceptable basis when it also invites offerors to submit alternate proposals is denied because, contrary to the protester's argument, the solicitation of alternate proposals does not mean the agency cannot evaluate those proposals on a binary basis.

DECISION

ARTi, Inc., of Hampton, Virginia, protests the terms of request for proposals (RFP) No. W911S022R0012, issued by the Department of the Army to provide support services for its Army Training Information System. The protester contends that the solicitation improperly provides for award on a lowest-price, technically acceptable (LPTA) basis when it also invites offerors to submit alternate proposals.

We deny the protest.

BACKGROUND

The RFP contemplates the award of a fixed-price contract for a base year and four 1-year options to provide support services for the Army Training Information System. Agency Report (AR), Exh. 8, Conformed RFP at 4. The agency seeks contractor support for system continuity, information documentation and maintenance, help desk support, and system engineering services. Contracting Officer's Statement at 1. The RFP contemplates the award of the contract on an LPTA basis. RFP at 92. In this connection, proposals were to be evaluated under three factors: mission capability, past performance, and price. *Id.* at 93. Under the mission capability factor, the agency

would consider the proposals' technical capability, quality control program, recruitment and retention, and organizational management, with acceptable ratings for proposals meeting the solicitation requirements. *Id.* at 94.

The record shows that the agency determined that making award on an LPTA basis was the most appropriate method for meeting its requirements. In this connection, the record shows that the agency executed a determination and finding (D&F) as required by Defense Federal Acquisition Regulation Supplement (DFARS) subsection 215.101-2-70 (a)(1)(viii) in arriving at its decision to solicit the requirement using LPTA procedures.¹ AR, Exh. 4, LPTA D&F. ARTi timely submitted its protest to our Office, arguing that award should be based on a best-value tradeoff, rather than an LPTA basis.

DISCUSSION

The protester argues that the agency's use of LPTA source selection procedures is improper. The protester largely does not take issue with the agency's substantive conclusions made in its D&F. Instead, ARTi principally argues that, because the RFP invites offerors to submit alternate proposals,² the agency necessarily will be evaluating proposals and making its source selection on a comparative basis which, according to the protester, is inconsistent with making award on an LPTA basis. We find no merit to the protest.

The determination of a contracting agency's needs and the best method of accommodating them are matters primarily within the agency's discretion. *Crewzers Fire Crew Transp., Inc.*, B-402530, B-402530.2, May 17, 2010, 2010 CPD ¶ 117 at 3. A protester's disagreement with the agency's judgment concerning its needs and how best to accommodate them, without more, does not establish that the agency's judgment is unreasonable. *Chenega Fed. Sys., LLC*, B-414478, June 26, 2017, 2017 CPD ¶ 196 at 3.

¹ This provision of the DFARS includes a list of seven enumerated factors that must be considered and addressed by the agency before it can solicit its requirements on an LPTA basis. The record here shows that the agency's D&F addresses each of the seven factors. AR, Exh. 4, LPTA D&F.

² The RFP, in pertinent part, provides as follows:

Multiple offers. Offerors are encouraged to submit multiple offers presenting alternative terms and conditions, including alternative line items (provided that the alternative line items are consistent with FAR subpart 4.10), or alternative commercial products or commercial services for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

RFP at 72.

As an initial matter, the agency explains that it is required by Federal Acquisition Regulation (FAR) section 12.301(b)(1) to include the provision inviting alternate proposals in the solicitation because the solicitation is for the acquisition of commercial products and services. This section of the FAR requires agencies to include the “instructions to offerors” clause at FAR 52.212-1 in all solicitations for commercial products and services, and also largely precludes the agency from tailoring those instructions. ARTi has not alleged or shown that the agency is conducting other than an acquisition for commercial products and services, or that the agency was not required, as a consequence, to include the provision at issue.

Second, and more fundamentally, the record shows that the agency executed its D&F in accordance with DFARS section 215.101-2-70, and concluded that use of LPTA procedures are appropriate for this acquisition. The agency’s D&F specifically justifies the use of LPTA procedures based on the seven enumerated factors outlined in the DFARS provision.

For example, one of the enumerated factors requires the agency to determine that: “No, or minimal, value will be realized from a proposal that exceeds the minimum technical or performance requirements.” DFARS 215.101-2-70(a)(1).

In addressing this consideration, the agency’s D&F explains that the execution of contract tasks requires little or no discretion on the part of the contractor; that the solicitation will incorporate the minimal requirements for the contractor’s personnel to execute the required tasks; that the technical functions to be performed will be stated in the performance work statement in clear, objective and measurable outcomes; and that the performance work statement and technical requirements have been successfully executed in previous contracts using only minimum qualifications to produce the needed outcomes.³ AR, Exh. 4, LPTA D&F, at 1-2. The agency made similarly detailed findings with respect to the remaining six enumerated factors, *id.* at 1-3, and ARTi has not argued or demonstrated that those findings are unreasonable or otherwise improper.

ARTi’s objection is based on its view that use of LPTA procedures cannot be reconciled with the RFP’s invitation for offerors to submit alternate proposals. In effect, the protester argues that any consideration of alternate proposals necessarily requires the agency to comparatively evaluate the terms of the alternative offers, and that correspondingly, the use of LPTA procedures necessarily is improper. We disagree.

Merely because the agency is soliciting alternate proposals does not mean the agency cannot evaluate those proposals on a binary basis. For example, an offeror could submit two proposals with two different technical approaches to accomplishing the performance requirements, one of which ultimately is found technically acceptable while another is found technically unacceptable. An offeror could submit two proposals that

³ The record shows that the agency has successfully met this requirement since 2014 using LPTA procedures. AR, Exh. 5, Agency Market Research Report, at 2-3.

both offer largely indistinguishable technical approaches but provide different pricing strategies or different line items based on the offeror's business judgment. As noted, this is a fixed-price requirement, and offerors may assume varying degrees of risk in their pricing strategies. Thus, the underlying premise of ARTi's protest--that the use of LPTA procedures is fundamentally inconsistent with an invitation for alternate proposals--does not withstand logical scrutiny.

As discussed above, the agency was required by the FAR to include in the solicitation the provision inviting alternate proposals and the protester has not challenged the conclusions set forth in the agency's D&F concluding that the use of LPTA procedures are appropriate for this acquisition. In a word, the agency determined that there are no additional benefits to be gained from evaluating proposals comparatively, or seeking proposals that exceed the agency's minimum requirements. Because ARTi has not shown that the agency's conclusion is inherently unreasonable or otherwise improper, there is no basis to question the agency's use of LPTA procedures to obtain its requirements.

The protest is denied.

Edda Emmanuelli Perez
General Counsel