



## Decision

**Matter of:** Security Logistics Intelligence Construction Engineering Company

**File:** B-422229

**Date:** February 20, 2024

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Cecil Avery for the protester.

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### 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.

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### DECISION

Security Logistics Intelligence Construction Engineering Company (SLICE), a service-disabled veteran-owned small business (SDVOSB) of Moline, Illinois, protests the terms of request for quotations (RFQ) No. 36C26024Q0033, issued by the Department of Veterans Affairs (VA) for security guard services at facilities within the agency's health care system in Oregon. The protester contends that the RFQ is unduly restrictive of competition.

We deny the protest.

### BACKGROUND

The VA issued the RFQ, as a set-aside procurement for SDVOSB concerns, pursuant to the procedures of Federal Acquisition Regulation (FAR) part 12, on November 6, 2023, seeking a contractor to provide security guard services at five clinics and a community resource and referral center in Oregon.<sup>1</sup> Agency Report (AR), Tab 3, RFQ

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<sup>1</sup> Before issuing the RFQ, the agency issued a sources sought notice, which advised potential offerors that the VA was seeking security guard services for various VA clinics in Oregon. Req. for Dismissal, exh. 1, Sources Sought Notice. The sources sought

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at 1.<sup>2</sup> The RFQ contemplates the award of a contract with a 1-year base period and four 1-year option periods. *Id.*

The RFQ provides that the agency will make award to the vendor whose quotation is most advantageous to the VA, with the following factors to be used in the evaluation: technical, past performance, and price. RFQ at 80-81. The RFQ establishes that the nonprice factors, when combined, are significantly more important than price. *Id.* at 81.

As relevant to this protest, the RFQ's performance work statement (PWS) requires that the contractor possess a private security entity license from the state of Oregon, be registered as a business with the secretary of state for the state of Oregon and have an agency executive manager in accordance with state law. RFQ at 14. The RFQ also requires that all security guards be certified by the state of Oregon and pass a criminal background check.<sup>3</sup> *Id.*

Quotations were due on December 4, 2023.<sup>4</sup> AR, Tab 3a, amend. 1. SLICE filed this protest with our Office on November 28.

## DISCUSSION

SLICE argues that the RFQ's requirements are unduly restrictive of competition. Specifically, the protester contends that the requirements for offerors to possess an Oregon private security entity license, be registered as a business with the Oregon secretary of state, have an agency executive manager, and utilize only security guards that hold Oregon security guard certificates and that have satisfied a criminal background check are unnecessary to meet the VA's needs.<sup>5</sup> The protester primarily

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notice stated that security guards would need to hold security guard licenses from the state of Oregon. *Id.* at 4. The VA states that it received responses from multiple potential offerors, including a "significant number" of SDVOSB firms. Req. for Dismissal at 1; Req. for Dismissal, exh. 3, Decl. of Contracting Officer ¶ 2.

<sup>2</sup> The agency issued one amendment to the RFQ, which provided answers to questions received from potential vendors and extended the deadline to submit quotations. AR, Tab 3a, amend. 1.

<sup>3</sup> The RFQ requires vendors to submit proof of registration with the secretary of state and proof of an agency executive manager as part of the technical quotation. RFQ at 73. The PWS requires the contractor to submit state guard certifications for every guard 5 days prior to the guard's first shift. *Id.*

<sup>4</sup> The agency states that it received numerous quotations from SDVOSB firms. Contracting Officer's Statement (COS) at 1.

<sup>5</sup> The protester also complains that the agency failed to comply with FAR subpart 9.2, which prescribes policies and procedures regarding qualification requirements. Protest at 1, 3, and 6. In its report to our Office responding to the protest, the agency

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contends that requiring vendors to comply with Oregon licensing, certification, training, and background check requirements is unreasonable because the requirements do not apply on federal property and are therefore unnecessary for contract performance.<sup>6</sup> Protest at 1, 5-6; Comments at 1.

The agency counters that the requirements are necessary to meet its needs because the VA relies on state licensing, certification, training, and background checks to ensure that contracted security guards are qualified and capable of contract performance. MOL at 4; COS ¶¶ 2. The VA also states that because the agency leases facilities, the state maintains jurisdiction, and contract performance could be disrupted if the state were to enforce the requirements on a non-compliant contractor. MOL at 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. *American Int'l Movers, Inc.*, B-419756, July 20, 2021, 2021 CPD ¶¶ 269 at 4. Where matters of human life and safety are involved, our Office affords considerable deference to the judgments of the agency's technical experts. *Complete Parachute Sols., Inc.*, B-415240, Dec. 15, 2017, 2018 CPD ¶¶ 2 at 4.

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., LLC*, 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 a particular 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. 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. *American Int'l Movers, supra*.

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specifically responded to these arguments. Memorandum of Law (MOL) at 3. The protester, however, failed to rebut or otherwise address the agency's responses. Consequently, we consider these arguments abandoned and we will not consider them further. *Olgoonik Global Security, LLC*, B-414762, B-414762.2, Sept. 8, 2017, 2017 CPD ¶¶ 282 at 3-4 n.2.

<sup>6</sup> SLICE presents arguments that are variations of, or additions to, those discussed below. While we do not specifically address all of the protester's arguments, we have fully considered them all and find no basis to sustain the protest.

Here, we conclude that the agency has established that the state licensing, certification, registration, training, and background check requirements in the RFQ are reasonably necessary to meet the VA's needs.

The VA states that the challenged requirements are necessary to ensure that contracted security guards are qualified and capable of addressing safety concerns. MOL at 4; COS ¶ 2. The agency notes that the VA does not have a standard training program for security guards. MOL at 4. The Deputy Chief of Police for the Portland VA Health Care System states:

The license and training requirements in the RFQ provide classroom instructions to potential guards on Regulations and Laws applicable to private security professionals, civil law, criminal law, communications, decision making and problem solving, patrol procedures, post orders, identity checks, crime scene management, medical and fire emergencies, dealing with current trends in threats (active shooter / bomb threats, as examples), and report writing. . . . With these requirements, VA has assurance that it will receive a consistent level of professional security guard staff who have the same skills and can adequately address any issues that may impact patient safety.

AR, Tab 4, Decl. of Deputy Chief of Police ¶ 2.

We find that the agency has established that its inclusion of the state licensing, certification, training, and background check requirements is reasonable. Although the protester raises a number of 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, while the protester's contention that the VA facilities are not subject to the Oregon laws and regulations governing security guard services might be relevant to whether the VA was *required* to include the license and training requirements here, it is not controlling with respect to the issue here: whether the RFQ's requirements are unduly restrictive of competition--*i.e.*, whether the inclusion of these requirements was permissible.<sup>7</sup> In this regard, our Office has denied protests challenging the inclusion of licensing requirements in solicitations for security guard services. See *William B. Jolley, supra* at 2-3 (citing *International Business Investments*, B-204547, Mar. 4, 1982, 82-1 CPD ¶ 194; *Washington Patrol Serv., Inc.*, B-195900, Aug. 19, 1980, 80-2 CPD ¶ 132; *James B. Nolan Co.*, B-192482, Sept. 26, 1978, 78-2 CPD ¶ 232). In *William B. Jolley*,

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<sup>7</sup> Moreover, our Office has found that whether a state ultimately would have jurisdiction in this circumstance is not dispositive because it is reasonable for a contracting officer to be more concerned with whether the contract will be carried out properly and without interference than whether the contractor would ultimately prevail in litigation with the state. *Lifeline Ambulance Servs., Inc.*, B-277415, Sept. 22, 1997, 97-2 CPD ¶ 83 at 2; *H.V. Allen Co.*, B-225326, B-225327, B 225879, Mar. 6, 1987, 87-1 CPD ¶ 260 at 5; *William B. Jolley*, B-208443, Nov. 17, 1982, 82-2 CPD ¶ 455 at 2-3.

our Office observed that the nature of a procurement for security guard services could cause an agency to reasonably believe that only a licensed contractor could safely and effectively perform the contract. *Id.* On this record, we find the contracting officer could reasonably conclude that only a licensed contractor providing trained and licensed guards could meet the VA's actual needs.

We find that the terms of the RFQ are not unduly restrictive. The VA has established that including the state licensing, certification, training, and background check requirements in the RFQ is reasonably necessary to meet the agency's need of having well-trained security guards capable of addressing safety concerns. Although the protester may disagree with the agency's assessment of its needs, its disagreement with the VA's approach and assessments, without more, does not render the agency's determination unreasonable.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel