



Decision

Matter of: GlobaFone Inc.

File: B-405238

Date: September 12, 2011

Julie Kendall for the protester.

Timi Nickerson Kenealy, Esq., Peace Corps, for the agency.

Kenneth Kilgour, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation is unduly restrictive because it requires satellite telephone numbers for agency personnel and volunteers to remain unchanged is denied where the record establishes that the requirement is reasonably designed to meet the government's needs.

DECISION

GlobaFone Inc., of Portsmouth, New Hampshire, protests the terms of request for proposals (RFP) No. PC-11-Q-01 issued by the Peace Corps to provide satellite and cellular telephone service to domestic and international staff and volunteers. The protester asserts that the RFP requirement that satellite telephone numbers remain unchanged is unduly restrictive of competition.

We deny the protest.

The RFP, issued on May 9, 2011, with a closing date of June 27, 2011, contemplates the award of an indefinite-delivery/indefinite-quantity contract with a 1-year base period and four 1-year options. RFP at § B.3. In relevant part, the RFP states as follows:

Due to the Peace Corps' critical dependence on Wireless Cellular and Satellite telephone service to support planned emergency response procedures and capabilities, cellular and satellite service must work with existing Government owned equipment. Existing cellular and satellite numbers, which are currently assigned to devices in the field, shall not be changed.

Id. at § C.3.0.

As explained by the parties, Iridium is one of a variety of firms that have made significant investment in the satellite systems on which satellite telephone service depends. The Peace Corps currently owns and supports Iridium satellite telephone equipment, and the RFP calls for continued use and support of this equipment.¹ In particular, the protester states that each Iridium satellite telephone used by the Peace Corps has a subscriber identity module (SIM) card, a portable memory chip that holds, among other data, the device's telephone number. GlobaFone asserts that Iridium owns the SIM cards² and does not reassign them from one service provider to another. Given the requirement to maintain existing phone numbers, GlobaFone maintains that any dealer/reseller wishing to offer under this RFP, such as GlobaFone, would have to use the service provider currently holding the Peace Corps' SIM cards. That constraint, GlobaFone asserts, would place the current service provider at a competitive advantage and generally restrict competition. The protester has therefore challenged the RFP's requirement that satellite numbers assigned to Peace Corps devices in the field shall not be changed.

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 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, 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

¹ A satellite system owner such as Iridium establishes agreements with service partners who serve as the Tier 1 distribution channel. According to the protester, Iridium has hundreds of Tier 1 service providers. Those Tier 1 service providers may then establish Tier 2 service providers. The services are delivered at retail to the public through dealers/resellers, the last step in the distribution chain. Service providers may have relationships with several satellite systems, of which Iridium is but one. Protest at 2.

² The agency claims that it owns the SIM cards and that the RFP does not therefore require that an offeror contract with any particular service provider. Request for Dismissal at 3. Ownership remains in dispute. We have assumed for the purpose of this decision the facts as alleged by the protester, that the current service provider owns the Peace Corps' SIM cards. If, on the other hand, the agency does own them, ownership would not be restricted to those offerors willing to contract with the agency's existing service provider, and the protester's argument would be without merit.

possible reliability and/or effectiveness. Vertol Sys. Co., Inc., B-293644.6 et al., July 29, 2004, 2004 CPD ¶ 146 at 3. To the extent a protester challenges a specification as “unduly restrictive,” that is, challenges both the restrictive nature of the requirement as well as the agency’s need for the restriction, 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. Trident World Sys., Inc., B-400901, Feb. 23, 2009, 2009 CPD ¶ 43 at 3. Once the agency establishes support for the challenged solicitation term, the burden shifts to the protester to show that it is clearly unreasonable. Outdoor Venture Corp.; Applied Cos., B-299675, B-299676, July 19, 2007, 2007 CPD ¶ 138 at 5. 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.

Here, GlobaFone asserts that the agency’s requirement to maintain the same phone number unduly restricts competition. While GlobaFone’s protest sets forth how the agency’s requirement may limit competition, the protest does not explain why the agency’s articulated need (maintaining continuity of satellite telephone numbers) is not legitimate. As explained above, when a protester challenges a solicitation provision as “unduly restrictive,” the protester must establish both how the requirement restricts competition and why the requirement does not constitute a legitimate agency need. Having failed to address the second prong of this analysis, GlobaFone’s protest fails to establish a prima facie case that the challenged requirement is “unduly restrictive” of competition.

In any event, the agency explains that the requirement to maintain telephone numbers is needed to ensure the safety and security of Peace Corps staff. In this regard, the agency explains that the “safety and security of volunteers--wherever they may be serving--is the most important element of the mission of the Peace Corps.” Request for Dismissal at 2. As the protester notes, “[s]atellite communications are used when standard terrestrial (land based) communications become inoperable in the event of a disaster and/or in remote areas where terrestrial communications do not operate.” Protester’s Comments, Aug. 1, 2011 at 1. Because many countries where Peace Corps Volunteers serve do not have reliable communications, the agency determined that the use of cellular and satellite telephones best serves its purpose, especially in the event of an emergency. Request for Dismissal at 2. The Peace Corps maintains that any disruption in satellite telephone service would leave employees and volunteers vulnerable to being isolated during potentially life-threatening emergencies. Request for Dismissal at 4. The requirement that satellite telephone numbers remain unchanged, the agency asserts, is intended to “maximize Peace Corps’ ability to communicate with Volunteers during the most vulnerable time intervals,” including during natural disasters and political unrest. Id. We have no basis to conclude that the Peace Corps’ decision to

maximize the safety of its volunteers and employees by requiring the use of existing satellite telephone numbers is unreasonable.

In responding to the agency's asserted safety needs, the protester merely reiterates its position that the requirement is restrictive because any potential bidder must contract Iridium services through the current Iridium service provider, Response to Request for Dismissal, Aug. 1, 2011 at 4, and that this restriction will presumably increase the protester's costs and the cost to the agency.³ While the protester may be correct that the RFP's terms do not maximize cost-savings, GlobaFone's arguments miss the point. The question for our Office is not whether the agency's requirements maximize cost savings, but rather, as explained above, whether a challenged requirement constitutes a legitimate agency need. As long as an agency reasonably identifies its needs and allows offerors the opportunity to meet those needs, the fact that an offeror may have an advantage based on its ability to more readily meet the government's needs, as compared to the protester, does not mean that the solicitation is unduly restrictive of competition. See HG Props. A, L.P., B-280652, Nov. 2, 1998, 98-2 CPD ¶ 104. The same is true where the advantage is a one of lower costs. See Exec Plaza, LLC, B-400107, B-400107.2, Aug. 1, 2008, 2008 ¶ 143 at 10.

The protest is denied.

Lynn H. Gibson
General Counsel

³ In its comments, the protester suggests that the agency's safety concerns are misplaced since a device's SIM card can be swapped in such a manner that there would be no lapse in coverage. Protester's Comments, Aug. 1, 2011, at 2. While this may be true, the protester's assertion in this regard does not address the agency's concern about the potential disruption associated with changing the phone numbers associated with the devices and Peace Corps staff, which is the basis for the requirement at issue in the protest.