



Decision

Matter of: Antico Cantiere Del Legno Giovanni Aprea Di Cataldo S.R.L.

File: B-415549

Date: December 6, 2017

Dr. Matteo Zappile, USCOMED Consulting Services, 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.

DECISION

Antico Cantiere Del Legno Giovanni Aprea Di Cataldo S.R.L. (Antico), of Sorrento, Italy, challenges the terms of request for quotations (RFQ) No. N68171-18-Q-0003, issued by the Department of the Navy for storage and teak deck repair of the *Grazia II*, an Admiral's barge. The protester argues that the agency's requirement for hauling the *Grazia II* using a boat ramp, boat cradle, and winch heaving system is unduly restrictive of competition.

We deny the protest.

BACKGROUND

The RFQ, issued on October 12, 2017, under Federal Acquisition Regulation (FAR) part 13, contemplated the award of a single, fixed-price contract on a lowest-price, technically acceptable basis to remove the *Grazia II* from the water; transport and place the craft into sheltered storage; and repair the existing teak decking and perform a visual inspection of the existing structure. See RFQ at 12-13; Agency Report (AR), Memorandum of Law (MOL) at 1. As relevant here, as part of the RFQ's requirements for dry-docking, the solicitation specifically required the following:

3.1 Remove the Grazie II Admiral Barge from water.

Criteria for removing [c]raft from the water:

1. A boat cradle with suitable dimension to satisfy requirement of 1.3.1 is to be utilized to transfer the craft in designated storage site.
2. Boat ramp with winch heaving system.

3.1.1 The craft will be removed thru the use of a boat ramp and winch heaving system.

RFQ at 12. Section 1.3.1 provided that the *Grazia II* was a “52 Foot Chris Craft, 14-7/8 Inch Beam, Hoisting Weight 40,000 lbs.” Id.

Prior to the solicitation closing date, Antico filed this protest.

DISCUSSION

The protester argues that the solicitation was written around the incumbent contractor’s services and excludes from the competition other vendors with alternate technical approaches for dry-docking.¹ See Protest at 3-4.

In response, the agency acknowledges that its use of a specific haul-out method for the *Grazia II* is restrictive, but asserts that it is reasonably necessary to meet the agency’s needs. AR, MOL at 4. The agency defends the reasonableness of the requirements with a declaration from the *Grazia II*’s captain, who has twenty years of experience as captain of the boat. See AR, Tab 1, Declaration of *Grazia II* Captain. The agency first explains that the *Grazia II* is a 52 foot long boat built in 1964 and is entirely of wooden construction, including the hull, keel, and structural members. Id.; see also Contracting Officer’s Statement (COS) at 1.

The agency next explains that there are a limited number of methods to haul a boat the size of the *Grazia II* out of the water and that each method introduces stresses that can damage the hull and the structure. AR, MOL at 5; AR, Tab 1, Declaration of *Grazia II* Captain at 1. The agency also explains that it has required the use of a cradle and winch heaving system to pull the *Grazia II* up a boat ramp for haul-out and storage for many years.² Id. In this regard, the agency explains that this method ensures that the

¹ The protester states that the incumbent contractor “who meets the requirements [stated in the solicitation] has been awarded the annual storage and repair contract” for the last 10 years. Protest at 3.

² The agency explains that the haul-out and storage of the *Grazia II* is an annual requirement but the repair work that is needed changes from year to year. AR, COS at 1.

Grazia II is in the same cradle during the haul-out, transport, and during its storage at the contractor's facility, which reduces stress to the hull. Id.

The agency further states the only time the *Grazia II* suffered damage during a haul-out was in 2002 when a travel lift, cradle, and slings were used to lift the boat out of the water and a motorized trolley was used to transport the boat into storage. AR, MOL at 5; AR, Tab 1, Declaration of *Grazia II* Captain at 1-2. The agency states that the method used in 2002 caused serious damage to the vessel's hull, structure, and propulsion system, requiring additional repairs, costs, and delay in returning the *Grazia II* to service. AR, MOL at 5; AR, Tab 1, Declaration of *Grazia II* Captain at 2-3. As a result, the agency has been requiring the use of the cradle and winch heaving system, which has resulted in the safe annual movement and storage of the craft every year since 2002. AR, Tab 1, Declaration of *Grazia II* Captain at 3. In this regard, the agency further states that because the *Grazia II* is 15 years older and more fragile than in 2002, the agency's concerns are reasonable. AR, MOL at 5.

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. Remote Diagnostic Techs., LLC, B-413375.4, B-413375.5, Feb. 28, 2017, 2017 CPD ¶ 80 at 3-4. We examine the adequacy of the agency's justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. Coulson Aviation (USA), Inc., B-414566, July 12, 2017, 2017 CPD ¶ 242 at 3. A protester's disagreement with the agency's judgment concerning the agency's needs and how to accommodate them, without more, does not show that the agency's judgment is unreasonable. Protein Sciences Corp., B-412794, June 2, 2016, 2016 CPD ¶ 158 at 2.

We find that the agency has established a reasonable basis for the requirement for a cradle and winch heaving system to haul the *Grazia II* out of the water. Although the protester disagrees with the agency, this disagreement does not show that the agency's judgment is unreasonable. In its comments on the agency report, the protester states that has an alternate solution--which, in addition to using a cradle, travel lift, and motorized trolley, includes a dedicated reinforced steel beam structure--that is different from the one used in 2002. Protester's Comments at 2-3. In this regard, the protester argues that its solution would avoid the type of physical contact, rubbing, stress, or compression that resulted in damage to the boat in 2002. Id. The protester further argues that its alternative solution is innovative and that neither the contracting officer nor the *Grazia II*'s captain have demonstrated that they have naval architectural or structural engineering qualifications, or other capabilities, that establish they can fully understand the technical details and major differences between the two approaches. Id.

Again, the issue is not whether the specification restricts competition, but whether the specification unduly restricts competition; in other words, whether it is reasonably necessary to meet the agency's actual needs. Even where specifications are based on a particular product--or, as Antico alleges here, a particular firm's capabilities or

experience--we have found that this type of requirement is not improper in and of itself; nor will an assertion that a specification was "written around" features offered by a particular firm provide a sustainable basis for protest if the record establishes that the specification is reasonably related to the agency's minimum needs. See Nexagen Networks, Inc., B-411209.7, June 20, 2016, 2016 CPD ¶ 164 at 4. On this record, we find that the agency's explanation for this restrictive solicitation provision withstands logical scrutiny and is rational.

The protest is denied.

Thomas H. Armstrong
General Counsel