



Decision

Matter of: OMNIPLEX World Services Corporation

File: B-415988.2

Date: December 12, 2018

William F. Savarino, Esq., John J. O'Brien, Esq., and Daniel Strouse, Esq., Cordatis LLP, for the protester.

Michael Greene, Esq., Administrative Office of the United States Courts, for the agency. Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging solicitation's requirement relating to background investigations of prospective security guard contractor personnel is denied where record established a reasonable basis for the agency's requirement.

DECISION

OMNIPLEX World Services Corporation (OWS), of Chantilly, Virginia, protests the terms of request for quotations (RFQ) No. ADM180023, issued by the Administrative Office of the United States Courts (AOUSC) for on-site physical security staff and services at the Thurgood Marshall Federal Judiciary Building (TMFJB) in Washington, D.C. OWS argues that the solicitation is unduly restrictive of competition because it requires contractor personnel to successfully complete a public trust tier 4/high-risk background investigation prior to being able to work on the resulting contract.

We deny the protest.

The only issue in this protest is whether the agency's requirement for contractor personnel to successfully complete a tier 4/high-risk background investigation is reasonably related to the agency's requirements. In this connection, the RFQ, as amended, provides as follows:

The Contractor's on-site personnel (including all subcontractors) shall not report for work at the TMFJB until each has cleared a public trust, **tier**

4/high risk background investigation mandated for Special Police Officer applicants in accordance with **Clause 7-20 (Deviation August 2018)**.¹

RFQ, Amend. No. 0004, at 8 (emphasis in original). In addition, the RFQ instructed firms to include, as part of their management organization plan, a list of all potential security officers, along with the respective date of adjudication and type of background investigation for each prospective officer, in order to confirm that the proposed staff have successfully completed a tier 4/high-risk background investigation within 2 years. Id. at 36.

This is OWS's second protest relating to this requirement. On February 2, 2018, OWS filed a protest in our Office challenging these same requirements. In response to that protest, the agency advised our Office that it intended to take corrective action. Specifically, the agency advised as follows:

This letter is to inform you and protest counsel that the Administrative Office of the U.S. Courts (AOUSC) shall be taking corrective action in response to subject protest. An amendment will be issued to the interested parties that shall clarify certain matters in the solicitation and allow more time for vendors to recruit and obtain security guard personnel with the needed, heightened background investigation requirement.

Agency Dismissal Request, Feb. 21, 2018. Based on the agency's corrective action, we dismissed OWS's first protest as academic. OMNIPLEX World Services Corp., B-415988, Feb. 21, 2018 (unpublished decision).

Subsequent to OWS's first protest, the agency issued an amendment to the RFQ that clarified some, but not all, of the requirements objected to by OWS. OWS filed an agency-level protest with the AOUSC, essentially reasserting the arguments made in its first protest to our Office. The agency then issued two additional amendments to the

¹ Clause 7-20, in turn, requires the successful contractor to provide the names of all employees and the date of and type of clearance or background investigation adjudication for each employee. RFQ, Amend. No. 0003, at 2.

We point out that clause 7-20 previously required firms to provide information from either the joint personnel adjudication system or the central verification system (JPAS/CVS). RFQ at 26. In responding to an earlier protest filed by OWS, the agency deleted this requirement and inserted the current requirement for just the names and date/type of clearance for each employee. In its current, initial protest, OWS argued that this relaxed requirement was still improper. Protest at 7. The agency provided a detailed response to this allegation, and in its comments responding to the agency report, OWS made no further mention of this allegation. We therefore conclude that this aspect of OWS's protest is abandoned. Batelco Telecomms. Co. B.S.C., B-412783 et al., May 31, 2016, 2016 CPD ¶ 155 at 4 n.5.

RFQ to make additional clarifications to the agency's requirements. Before the deadline for submission of quotations, OWS filed the current protest.

In both of its protests to our Office, OWS argues that the requirement for personnel to have successfully completed tier 4/high risk background investigations is unnecessary to meet the agency's requirements. OWS points out that, under the predecessor contract for security guard services at the TMFJB, only tier 2/moderate risk background investigations were required for security officers, as is evidenced by the fact that none of the incumbent personnel have successfully completed tier 4/high risk background investigations. OWS further argues that the requirement is virtually impossible for it to meet because there are no current incumbent employees with the necessary completed background investigations to recruit, and because any firm wanting to submit a quotation would essentially have to recruit its entire workforce before submitting a quotation. In this latter regard, OWS argues that the RFQ contemplates a phase-in period of only 45 days, but, according to the protester, the period of time required to complete a tier 4/high risk background investigation is 6-8 months. OWS further argues that it is impracticable for it to essentially retain its entire staff for the contract prior to the deadline for submitting quotations.

We find no merit to the protest. Where a protester challenges a specification or requirement, the procuring agency has the responsibility of establishing that the specification or requirement is reasonably necessary to meet the agency's needs. Complete Parachute Solutions, Inc., B-415240, Dec. 15, 2017, 2018 CPD ¶ 2 at 4. We examine the adequacy of the agency's justification for a challenged solicitation provision to ensure that it is rational and can withstand logical scrutiny. Id. Where matters of human life and safety are involved, our Office affords considerable deference to the judgments of the agency's technical experts. Id.

The record here establishes that the requirement for tier 4/high risk background investigations is reasonably related to the agency's requirements. In this connection, the record shows that, as part of its effort to determine the appropriate background investigation level, the agency began by using a tool provided by the Office of Personnel Management known as the "position designation tool."² Agency Report (AR), exh. 7, Position Designation Record. That tool is designed to provide an agency with the appropriate designation of a position based on input regarding the activities to be performed by the employees, the type of facility, and potential risks that could arise. For example, the record shows that the security officers here will be responsible for physical security, controlling the facility or physical access to information technology assets, and/or will have access, or controlled access, to firearms, ammunition, or explosives. Id. at 1-2. Based on the information provided by the agency, the position

² See <https://www.opm.gov/suitability/suitability-executive-agent/position-designation-tool/#url=Automated-Tool> (last visited Dec. 12, 2018).

designation tool identified the appropriate level of background investigation as tier 4/high risk. *Id.* at 3.³

The record also shows that the agency's security specialist consulted with the agency's human resources division, which initially indicated that a tier 5 level background investigation requirement was appropriate, but ultimately concluded that the tier 4/high risk designation was appropriate. AR, exh. 8, Intra-Agency E-mail exchange, Jan. 25, 2018; exh. 10, Declaration of the Security Specialist, at 2. In addition, the agency's own manual for establishing security requirements designates any position involving services in a law-enforcement position, or any other position requiring using or carrying firearms, as a "high risk" position requiring a tier 4 level background investigation. AR, exh. 9, AOUSC Security Manual, selected portions, at 2, 4.

Finally, the agency's security specialist points out that the nature of the facility and the interactions with the public also weighed in his recommendation for a tier 4/high risk background investigation requirement. He states as follows:

The security guard contract is vitally important as the contractor protects the Thurgood Marshall Federal Judiciary Building (TMFJB), which is a Federal Security Level (FSL) 4 Building (with more than 1,053,000 sq. ft., 1600 occupants, and high volume public contact with judicial offices), as well as the high-level visitors that frequent the facility.

The TMFJB also has a Child Development Center, which many federal employees in the immediate area utilize, for caring for their children from newborns up to 5-years-old. (The sensitive nature of child care centers located in Federal facilities requires the facility to receive a facility population score of "very high" according to the *Interagency Security Committee Standards*).

AR, exh. 10, Declaration of the Security Specialist, at 1.

The above discussion demonstrates that the agency has a reasonable basis for its requirement, and the protester has not made any showing that the solicitation's

³ The protester argues that the agency "mechanically" relied on the results of the position designation tool to arrive at the conclusion that the tier 4/high risk background investigation requirement would be appropriate. However, as discussed below, the agency's efforts went beyond simply using the position designation tool. In any event, use of the tool is prescribed to uniformly identify the appropriate background investigation required for any position, including contractor employee positions, when the investigation will be conducted under the Federal Investigative Standards prescribed by the Office of Personnel Management and the Office of the Director of National Intelligence. *See* <https://www.opm.gov/suitability/suitability-executive-agent/position-designation-tool/#url=Automated-Tool> (last visited Dec. 12, 2018).

requirements are unnecessary to meet the agency's legitimate minimum needs. Instead, the protester's objection is based largely on its claim that it is not practicable to assemble a roster of qualified individuals in the amount of time contemplated by the RFQ's transition-in period.

However, as noted, the agency identified its requirements in January, 2018. Even though OWS protested those requirements, the agency's corrective action letter expressly made clear that the agency was only acting to allow more time for vendors to recruit and obtain security guard personnel that could comply with the heightened background investigation requirement. The agency's corrective action letter was clear that it was not making a change to its underlying requirements. Thus, no later than February 21, the protester was aware that the agency would require the heightened security requirements included in the RFQ. By OWS's own calculation, the amount of time that has elapsed between dismissal of its last protest and the filing of its current protest was adequate to perform the necessary background investigations for any prospective employees.

In the final analysis, we conclude that the agency has demonstrated a reasonable basis for its requirements. The fact that a requirement may be burdensome or even impossible for the protester to meet does not make it objectionable if the requirement properly reflects the agency's needs. Allied Protection Servs., Inc., B-297825, Mar. 23, 2006, 2006 CPD ¶ 57 at 3. Accordingly, we have no basis to object to the agency's solicitation for the reasons advanced by the protester.⁴

The protest is denied.

Thomas H. Armstrong
General Counsel

⁴ As a final matter, we note that, in its comments responding to the agency report, OWS alleged for the first time that a requirement relating to the proposed employees' not having a break in federal service also is unduly restrictive of competition. Because OWS raised this allegation for the first time in its comments responding to the agency report--which were filed on October 24, 2018, after the September 20 deadline for submitting quotations--this aspect of OWS's protest is untimely, and not for our consideration on the merits. 4 C.F.R. § 21.2(a)(1) (protests challenging the propriety of a solicitation's provisions must be filed before the deadline for submitting bids, proposals, or quotations).