



Decision

Matter of: Glenn Defense Marine-Asia PTE, Ltd.

File: B-402687.4; B-402687.5

Date: November 19, 2010

David S. Black, Esq., Gregory R. Hallmark, Esq., and Jacob W. Scott, Esq., Holland & Knight LLP, for the protester.

Mark W. Golden, Esq., Department of the Navy, for the agency.

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DIGEST

Price evaluation scheme included in a solicitation for husbanding logistics services that used notional orders to evaluate price, which were not disclosed in the solicitation, was reasonable, where the estimates for the required services were not reasonably available, the solicitation contained substantial detail as to how the notional orders would be developed and employed, and the agency was reasonably concerned that the disclosure of the actual notional orders may cause prices for items not included in the notional order (but evaluated for price reasonableness) to be inflated or unbalanced.

DECISION

Glenn Defense Marine-Asia PTE, Ltd., of Singapore, protests the terms of request for proposals (RFP) No. N62649-09-R-0041, issued by the Department of the Navy, United States (U.S.) Fleet and Industrial Supply Center, for maritime husbanding support¹ to United States Navy and other ships visiting ports in any of four regions of the Western Pacific and Indian Ocean–South Asia, Southeast Asia, Australia and the Pacific Islands and East Asia. RFP amend. 27, at 3. The protester contends that the price evaluation scheme of the RFP is flawed.

¹ Husbanding logistics services include, among other things, forklift services, providing shore power, trash and sewage removal, refueling arrangements, force protection for ships, transportation for ship members, the provision of fresh food and water, and payment of port dues.

We deny the protest.

The RFP, issued on November 3, 2009, contemplates the award of four separate fixed-price, indefinite-delivery/indefinite-quantity (IDIQ) contracts for a base year, with four 1-year options. Offerors were instructed to submit separate proposals for the four regions, and were advised that the agency would evaluate proposals and make a separate award for each region.

The solicitation includes 82 lots covering a total of 132 ports. Each lot seeks supplies and services for one or more designated ports, and is comprised of line items for the various supplies and services to be provided under the lots. With limited exceptions, offerors are required to provide a fixed price for each line item of each lot.² While estimates are provided for many of the line items, in those cases where there was no historical information for a specific supply or service listed on the price schedule, the phrase “no estimate” was inserted in the estimated quantity column. The solicitation identified 36 lots as “targeted” lots and 46 as “non-targeted” lots. The targeted lots are the lots upon which the agency will calculate each offeror’s total evaluated price for purposes of the award selections.

With respect to the targeted lots, the RFP explains that “[t]he total evaluated price will be calculated by applying the offerors’ proposed unit prices for ‘targeted lots’ to a sample of logistical requirements (LOGREQs) based upon historical port visit data for those ‘targeted lots.’” RFP amend 27, at 156. This historical port visit data is detailed in an attachment to the RFP.³ The actual notional or sample LOGREQ orders that will be used in the price evaluation of the targeted lots were not disclosed in the RFP. However, the solicitation explained that the price evaluation for the targeted lots will be accomplished by applying the line item prices to the estimated quantities listed on the applicable schedules to the sample LOGREQs. In response to the protester’s inquiries, a “Narrative Explanation of Sample LOGREQ Development,” which explained in some detail how the sample LOGREQs were

² Some line items are not required to be priced because they are annotated as “port tariff,” “to be determined,” or “not separately priced.” The RFP advised that the evaluated prices would not include “port tariff” or “to be determined” items. RFP amend. 27, at 156.

³ The historical information describes port visits by U.S. Navy vessels in the Western Pacific and Indian Ocean for 2½ years (fiscal years 2007 and 2008, and the first half of fiscal year 2009) and provides information regarding the type and frequency of port visits and the specific items and quantities that were ordered during the visit. The contracting officer states that this “is the most accurate information available for forecasting the supplies and services that will be required under the contracts.” Contracting Officer Statement at 2.

developed from the historical information, was provided as an attachment to the RFP.⁴ The RFP also explains that the sample LOGREQs may not necessarily include all the supplies and services included on the schedule for each lot. Items that are included in the sample LOGREQs will be included as part of the RFP's "total evaluated price," but items that are not included in the sample LOGREQs will only be evaluated to determine whether they are offered at fair and reasonable prices. RFP amend. 27, at 156.

With respect to the non-targeted lots, the RFP explains that these lots will only be evaluated to determine whether they have fair and reasonable pricing. The agency specifically reserved the right to withhold award of any non-targeted lot where the prices cannot be determined to be fair and reasonable. To facilitate the price evaluation for the non-targeted lots, the agency provided a different notional LOGREQ; this notional LOGREQ—unlike the LOGREQs for the targeted lots—was disclosed as an attachment to the RFP. RFP amend. 27, at 156.

Glenn protests the terms of the solicitation.⁵ Glenn first contends that the planned price reasonableness evaluation of the non-targeted lots will be flawed because the 700 "no estimate" line items not included in the notional LOGREQ will not be evaluated.

The agency acknowledges that there were no estimates for the various line items included in the schedule for the non-targeted ports because it lacked historical data. However, it was the agency's "educated guess" that if there were visits to non-targeted ports, they would most likely involve a Class II vessel and, therefore, the agency included a sample LOGREQ in the RFP to evaluate price reasonableness based on this assumption.⁶ According to the agency, the notional price evaluation for non-targeted lots has a "direct relationship to the actual costs of performance" because it focuses the price evaluation on those line items that have a greater likelihood of being ordered. Supplemental Agency Report at 3. The agency argues

⁴ The sample LOGREQs were developed by ship class and mooring configuration (mooring at pierside or mooring at anchor [in the harbor, away from a pier]), so that they can be applied for price evaluation for any of the targeted lots. Contracting Officer's Statement at 2. Sample LOGREQs will be applied for the price evaluation of the targeted lots based on the annual number of visits by the class of vessel and mooring configuration as determined from the historical information.

⁵ Glenn has previously filed several protests of the terms of this RFP, in response to which the agency has amended the solicitation to address the protester's concerns.

⁶ This sample LOGREQ included estimates for the various supplies and services based upon a Class II vessel visit to a non-targeted port. By applying the sample LOGREQs to the offerors' pricing for the non-targeted ports, an estimated price for each non-targeted lot would be calculated.

that there is no requirement that a sample or notional order used for price evaluation purposes require prices for each item that can possibly be ordered under the contract.

Where estimates for various types of required services are not reasonably available, an agency may establish a reasonable hypothetical, consistent with the RFP requirements, to provide a common basis for comparing the relative costs of the proposals. Aalco Forwarding, Inc., et al., B-277241.15, Mar. 11, 1998, 98-1 CPD ¶ 87 at 11. Here, the agency was not required to include in the hypothetical, or notional, order every line item for which estimates were not provided since the absence of historical data indicates that there is little possibility that the services for a particular non-targeted lot will be needed. We find that the agency's approach of using a notional LOGREQ "to facilitate fair and reasonable price determinations" was a reasonable tool for reviewing the lot prices for the non-targeted ports; we know of no requirement that the agency include in its notional pricing all of the possible line items that could be ordered under the contract or that does not permit the agency to evaluate price reasonableness at the lot level. RFP amend. 27, at 156; see SmithKline Beecham Corp., B-283939, Jan. 27, 2000, 2000 CPD ¶ 19 (agency's price evaluation scheme did not consider dosing levels where the agency had no historical information to enable it to provide estimates for the other dosage levels of these drugs).

We also note that the RFP states that "[p]rices for 'non-targeted lots' will be reviewed for fair and reasonable pricing," and that the "Government reserves the right to withhold award of non-targeted lots from the regional award if prices for those lots cannot be determined fair and reasonable." RFP amend. 27, at 156. Thus, the RFP allows the agency to determine that particular prices included in the non-targeted lots were not fair and reasonable, regardless of whether they were included in the notional LOGREQ.

Turning to Glenn's challenges to the planned evaluation scheme for the targeted lots, Glenn argues that the agency should either provide estimates for all line items of the targeted lots or disclose the specific sample LOGREQs that will be used in the price evaluation of the targeted lots. The protester contends that the agency's refusal to provide estimates for all line items and "refusal to disclose its hypothetical [to] offerors to provide a relatively equal basis for offerors to intelligently prepare their firm-fixed price proposals is unreasonable." Protester's Comments at 5.

As explained above, where the agency cannot provide estimates for items of work, it may establish a reasonable hypothetical consistent with the RFP requirements to evaluate price. Aalco Forwarding, Inc., et al., *supra*. Here, while the agency explained in some detail how its notional LOGREQs were developed from the historical information, the agency did not disclose the actual notional LOGREQs it planned to use to evaluate the price of the targeted lots. The agency asserts here that there is no requirement that the LOGREQs used in the price evaluation be fully disclosed in the solicitation, and that disclosure of the actual notional LOGREQs

would not provide any additional substantive information to the offerors. On the other hand, the agency states that disclosure of the notional LOGREQs may encourage offerors to inflate their prices for those items for which the disclosed LOGREQs make clear would only be reviewed for fair and reasonable pricing. The agency contends that providing offerors with the methodology and historical data used to prepare the notional LOGREQs will allow offerors to intelligently compete on a common and equal basis. Supplemental Agency Report at 4.

We find reasonable the agency's explanation that not disclosing in the solicitation the actual notional LOGREQs to be used in the price evaluation will mitigate the risk that offerors may inflate or unbalance their offered prices. Based on our review, notwithstanding that there were numerous line items for which no estimates were provided, we find that the RFP provides sufficient information for offerors to prepare intelligent proposals; there is no requirement that an agency structure a solicitation to impose risk on the government instead of on the contractor. Braswell Servs. Group, Inc., B-278521, Feb. 9, 1998, 98-1 CPD ¶ 49 at 5. In any case, the protester has not shown that the failure to disclose to the offerors the notional LOGREQs that will be used for the price evaluation of the targeted lots will undercut the reliability of the agency's price evaluation in any significant way.

Finally, the protester contends that the solicitation does not provide for the reimbursement of port fees at Malaysian ports, RFP at 148, even though such ports are charging fees. The protester acknowledges an international agreement that exempts the U.S. from paying port fees in Malaysian ports, but contends that the privatization of the ports in Malaysia means that visiting U.S. vessels are expected to pay port fees. The protester is concerned because the solicitation does not provide that the Navy will cancel all ship visits at Malaysian ports which require payment of fees/payments or that it will reimburse the contractor for paying such dues.

The agency responds that while the solicitation does not provide for the reimbursement of port fees at Malaysian ports--because such payments are prohibited by an international agreement--the solicitation advises that if a port nonetheless imposes a fee, the contractor need only advise the agency of the port's actions. RFP amend. 27, at 148. In this regard, the agency cites a recent instance where it canceled a port visit in Malaysia when the port insisted on charging fees. Despite Glenn's objections, we find no requirement that the solicitation be further clarified to address this issue.

The protest is denied.

Lynn H. Gibson
Acting General Counsel