



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** JRS Management

**File:** B-404022.2

**Date:** February 15, 2011

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Jacqueline R. Sims for the protester.

William D. Robinson, Esq., and Christine M. Hinkle, Esq., Department of Justice, Federal Bureau of Prisons, for the agency.

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### DIGEST

Protest against solicitation requirement that vendors provide written certification for Spanish GED instructors at the time of quotation submission is denied where the record establishes that the requirement for such certification at the time of quotation submission is necessary to meet the needs of the agency.

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### DECISION

JRS Management of Lawrenceville, Georgia, protests the terms of request for quotations (RFQ) No. P06111000019, issued by the Department of Justice, Federal Bureau of Prisons (BOP), for educational support services at the Federal Detention Center (FDC) in SeaTac, Washington. JRS contends that certain requirements incorporated in the solicitation by amendment unduly restrict competition.<sup>1</sup>

We deny the protest.

BOP issued the RFQ for the purpose of acquiring Spanish GED Instructor/Tutor services in order to assist Mexican citizen inmates, housed at the FDC SeaTac, achieve the educational equivalent of a GED certificate using the online curriculum

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<sup>1</sup> This is JRS' second protest in connection with this procurement. In response to JRS' first protest (also alleging various solicitation improprieties), the BOP took corrective action by amending the solicitation. Based on the agency's actions, we dismissed that protest as academic. JRS Mgmt., B-404022, Oct. 13, 2010.

provided by the Institute National Education Adult (INEA). RFQ at 27. The INEA curriculum is distributed, accessed, and managed by using the Consejo Nacional de Education Para la Vida (CONEVyT) Portal—an online, web-based, educational program. Agency Report (AR) exh. 9, Education Scope of Work, at 3; exh. 10, State of Washington’s CONEVyT Portal Program. As explained by the agency, Spanish GED instructors are required to attend and satisfactorily complete the CONEVyT Portal training offered by the State of Washington in order to be certified by the Mexican International Adult Education Administration.<sup>2</sup> Once certified, the Spanish GED instructor is provided password access to the INEA curriculum materials on the CONEVyT Portal program. Contracting Officer’s (CO) Statement at 2. Thus, without this certification, an instructor will not be able to teach or administer the INEA curriculum. The Yakima school district, a regional district within Washington, had been the entity responsible for providing CONEVyT Portal training. This responsibility, however, was subsequently transferred to the Washington Office of Superintendent of Public Instruction (OSPI).<sup>3</sup> Id.

The RFQ, as amended, contemplates the award of a fixed-price requirements contract for a base year with two 1-year options to the firm submitting the lowest-priced, technically acceptable quotation. Technical acceptability will be based on the vendor’s compliance with the statement of work (SOW) requirements, including the specified educational requirements. RFQ at 17; RFQ amend. 2, at 6.

As it relates to the protest, the RFQ’s SOW initially provided that the selected vendor will be required to receive a satisfactory security clearance prior to award. RFQ, SOW, at 2. It also indicated that the contractor must attend three days of training with the Yakima school district to gain certification from the Mexican International Adult Education Administration. Id.

BOP, however, amended the solicitation (amendment No. 2) to reflect the fact that the Yakima school district, as explained above, no longer offered CONEVyT Portal training to Spanish GED instructors. Vendors were instead instructed to provide proof of CONEVyT Portal certification with their quotation. Specifically, the amended solicitation states, in relevant part, as follows:

As the ability to train through the previously designated Yakima Education Department is no longer available, the Offeror shall be required to possess the CONEVyT Portal educational certification

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<sup>2</sup> The protester maintains that OSPI offers training for two CONEVyT Portal programs, the INEA and Colegio de Bachilleres. Protest at 2.

<sup>3</sup> Scheduling for the CONEVyT training and certification is done through arrangements between the Mexican government, the State of Washington, and the OSPI. Agency’s Memorandum of Law at 5.

through the State of Washington prior to making their offer. . . . Those submitting a bid are required to provide written certification of this training with their offer. (Emphasis in original).

RFQ amend. 2 at 6.

JRS protests the terms of the amended solicitation, primarily contending that the above-quoted requirement—that the instructor be trained and certified at the time of quotation submission—is unduly restrictive of competition. According to the protester, requiring proof of certification at the time of quotation submission effectively restricts the competition to those firms that had such proof as of October 26—the date amendment No. 2 was issued because the CONEVyT Portal training is offered by OSPI at randomly selected times. Since JRS is not currently certified, and there is no possibility of it becoming certified before quotations are due, it is effectively precluded from submitting a quotation in response to the RFQ. Protester’s Comments, Dec. 23, 2010, at 2-3.

While the determination of an agency’s actual needs and the best method of fulfilling them is primarily within the agency’s discretion, a contracting agency must specify its needs and solicit offers or quotations in a manner designed to achieve full and open competition; restrictive provisions or conditions may be included only to the extent necessary to satisfy those needs. Instrument Control Serv., Inc.; Science & Mgmt Resources, Inc., B-289660, B-289660.2, Apr. 15, 2002, 2002 CPD ¶ 66 at 6. Where, as here, a protester alleges that a requirement is unduly restrictive, the agency must establish that the requirement is reasonably necessary to meet its needs; we will examine the adequacy of the agency’s position to ensure that it is rational and can withstand logical scrutiny. Chadwick-Helmuth Co., Inc., B-279621.2, Aug. 17, 1998, 98-2 CPD ¶ 44 at 3. The fact that a requirement may be burdensome or even impossible for a particular firm to meet does not make it objectionable if the requirement properly reflects the agency’s needs. Micromass, Inc., B-278869, Mar. 24, 1998, 98-1 CPD ¶ 93 at 4.

In support of the RFQ provision at issue here, the contracting officer explains

that [BOP] intended on issuing award shortly after offers are due. . .to ensure continuity of services to inmates who had begun the curriculum and were awaiting a certified instructor to administer tests to them.

[Since] the CONEVyT Portal training to instructors. . .is being managed by OSPI [and] OSPI has not issued its calendar of upcoming training dates [BOP] could not wait for the State to make its training schedule to proceed forward with contract award. A contractor who failed to possess the CONEVyT Portal Educational certificate would be unable

to teach the INEA curriculum, and . . . [BOP] couldn't issue award to a contractor who lacked the certification, and then wait months for OSPI to offer the CONEVyT Portal training.

CO Statement at 3.

The agency further explains that if the vendor is allowed to wait until after award to obtain the needed certification, the possibility exists that the vendor could fail or not successfully complete the CONEVyT Portal training. In that case, the agency would be without a qualified instructor to perform the contract services until the vendor either took the course again, or the contract was terminated and the requirements re-solicited. Id. To ensure the most effective and efficient method of obtaining the solicited services, the agency determined that vendors should be certified Spanish GED instructors at the time quotations were due.

JRS argues that the agency's requirements could be met by simply requiring certification at the time of award. In this regard, the protester contends that a vendor such as itself could complete the training and certification requirements after selection for award when it was fulfilling the security requirements, which are a predicate for award, and would then be able to submit proof of certification prior to actual contract award. Protester's Supplemental Comments, Jan. 14, 2011, at 2-3. As the agency explains, however, the need for the selected vendor to comply with the security procedures prior to award in fact further supports the need for vendors to maintain the appropriate certification when they submit their quotations. Proceeding with a security clearance for a vendor which is ultimately unable to receive an award because it is not able to obtain CONEVyT Portal certification, would be extremely inefficient and further delay the agency's ability to ensure continuity of services to the inmates at FDC SeaTac--BOP would again have to begin the time consuming process of obtaining the necessary security approvals for the next vendor in line for award, which also may or may not ultimately obtain the necessary certification in a timely manner. Agency's Supplemental Report, Jan. 11, 2011, at 2-3. Given BOP's undisputed need to ensure continuity of services, there is no basis for BOP to assume the type of program risk advanced by JRS.

Based on the record here, it is clear that the agency considers proof of certification at the time of quotation submission as necessary to accomplish its legitimate minimum needs. We find this position to be reasonably supported and well within the scope of discretion properly afforded to the agency. Accordingly, we find no merit in JRS' assertion that the challenged requirement is unduly restrictive.<sup>4</sup>

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<sup>4</sup> The protester also asserted, in its January 14, 2011 supplemental comments, that proof of CONEVyT Portal certification is a matter of responsibility. Where, as here, a protester initially files a timely protest, and later supplements it with independent grounds of protest, the later-raised allegations must independently satisfy the

(continued...)

Finally, the protester argues that the amended solicitation is ambiguous with regard to the type of CONEVyT Portal training and certification program required, *i.e.*, the INEA or the Colegio de Bachilleres. *See*, note 2, *supra*; Protester's Comments, Dec. 23, 2010, at 5. According to JRS, the agency needs to specify which program it desires, or clarify the fact that it will accept certification from either program.

The agency reports that the INEA and the Colegio de Bachilleres provide the same CONEVyT Portal instructor training and certification. CO Statement at 3. As a consequence, the agency anticipated accepting proof of certification from either the INEA or the Colegio de Bachilleres and therefore did not perceive a need to further address the matter in the solicitation. Agency's Supplemental Report, Jan. 11, 2011, at 3.

Given the solicitation's silence as to a preference for one of the two programs, the only reasonable interpretation of the RFQ is that the agency would accept certification from either program—the interpretation BOP intended. In short, we find that the amended RFQ is not subject to more than one reasonable interpretation when read in the context of the solicitation as a whole, thus the solicitation does not contain a defect that needs to be further addressed. *Phil Howry Co.*, B-245892, Feb. 3, 1992, 92-1 CPD ¶ 137 at 2-3.

The protest is denied.

Lynn H. Gibson  
General Counsel

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timeliness requirements, since our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2010); *FR Countermeasures, Inc.*, B-295375, Feb. 10, 2005, 2005 CPD ¶ 52 at 9. Thus, JRS' assertion is untimely and will not be considered.