



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: WKF Friedman Enterprises

File: B-410827

Date: February 23, 2015

Matthew Lyon for the protester.
Darin Morency, Esq., Defense Logistics Agency, for the agency.
Mary G. Curcio, Esq., and David A. Ashen, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that requirement to submit offer on an “all or none” basis is unduly restrictive of competition is denied where approach is necessary due to the uncertainty of the agency’s requirements and protester does not demonstrate that the solicitation requirement is clearly unreasonable.

DECISION

WKF Friedman Enterprises, of Clayton, California, protests the terms of request for proposals (RFP) No. SPRDL1-14-R-0221, issued by the Defense Logistics Agency for track pads for the Abrams tank. WKF asserts that the solicitation the requirement for offers to be submitted on an “all or none” basis is unduly restrictive of competition.

We deny the protest.

The solicitation requested offers for 74,274 track pads with an option to purchase 74,274 additional units. RFP at 5, 8. The solicitation required offerors to submit proposals on an “all or none” basis. *Id.* at 3. WKF, which submitted an offer for 28,040 track pads, protests that the requirement to propose on an “all or none” basis is unduly restrictive of competition.

In preparing a solicitation, a contracting agency is generally required to specify its needs and solicit offers in a manner designed to achieve full and open competition, so that all responsible sources are permitted to compete. 10 U.S.C. §§ 2304(a)(1), 2305(a)(1)(A). A solicitation may include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs or as authorized by law.

10 U.S.C. § 2305(a)(1)(B)(ii). To the extent that a protester challenges a specification as unduly restrictive, that is, it 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. Nova Constructors, LLC, B-410761, Jan. 21, 2015, 2015 CPD ¶ 51 at 3. Once the agency establishes support for the provision, the burden shifts to the protester to show that the requirement is clearly unreasonable. J. Squared Inc., d/b/a Univ. Loft Co., B-408388, Aug. 27, 2013, 2013 CPD ¶ 201 at 5; Outdoor Venture Corp; Applied Cos., B-299675, B-299676, July 19, 2007, 2007 CPD ¶ 138 at 5.

Here, DLA explains that its requirement for track pads for the Abrams tank is uncertain. The agency notes in this regard that the track pads that are being purchased support multiple programs, including requirements for the Anniston Army Depot, various Marine Corps programs, and foreign military sales. There is also inherent uncertainty in the mission requirements for the Abrams tank. The agency maintains that, given the uncertainty and volatility in demand for the track pads, it needs a single source of supply with a 100% option quantity to ensure that any mission requirements are satisfied. Supplemental Agency Report at 1.

While WKF disagrees with the agency's position, the protester has not demonstrated that it is unreasonable for the agency to choose to procure the entire quantity from one source in order to deal with the uncertainty in its requirements. WKF would like the agency to make multiple awards, instead of procuring the track pads on an all or none basis. Specifically, of the 74,272 track pads currently required, WKF would like to provide 28,040 because this is the number it has available. In our view, however, the statutory mandate to conduct procurements on the basis of full and open competition does not require agencies to modify their mission-related needs to accommodate the limited capabilities of a particular offeror.

The protest is denied.

Susan A. Poling
General Counsel