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Decision

Matter of: Bannum, Inc.

File: B-411340

Date: July 8, 2015

Nancy M. Camardo, Esq., Camardo Law Firm, PC, for the protester.
William D. Robinson, Esq., and Nihar Vora, Esq., Department of Justice, for the agency.
Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting officer's decision to reject request to extend the closing date for proposals by three weeks was not objectionable where the agency reasonably concluded that further delays (after a prior two week extension) would jeopardize the contract award date required in order to maintain continuity of services.

DECISION

Bannum, Inc., of Odessa, Florida, protests the decision of the Department of Justice, Federal Bureau of Prisons (BOP), to decline to extend the closing date for proposals under request for proposals (RFP) No. 200-1268-ES, for Residential Reentry Center (RRC) and home confinement services for Federal offenders in Savannah, Georgia. Bannum asserts that the agency's decision not to extend the closing date was unreasonable.

We deny the protest.

BACKGROUND

On July 15, 2014, BOP issued a request for information (RFI) regarding the availability of RRC and home confinement services in the Savannah area. AR, Tab 3, RFI. On December 10, the agency issued a presolicitation notice advising potential offerors that the agency would be issuing a solicitation for RRC and home confinement services within the city limits of Savannah "on or about January 12, 2015," with "an estimated closing date . . . on or about March 13, 2015." AR, Tab 4, Presolicitation Notice.

The RFP here was issued on January 12, 2015, with a closing date of March 13. AR, Tab 6, RFP at 1. The RFP provided for award of a single indefinite-delivery/indefinite-quantity (IDIQ) contract to provide in-house RRC and home confinement services in Savannah, for a base year and four options years. RFP at 4. Pertinent here, the RFP anticipated that performance would begin on January 1, 2016, and provided: "The Contractor's facility must be fully operational and ready for performance to begin within 120 days after the date of contract award." RFP at 10. The RFP further advised: "The anticipated period(s) of performance are based on the assumptions that funds are available and the Government will make award by September 2, 2015." Id.

On March 10, three days before the due date for proposals, the contracting officer received from Bannum an email request for an extension of the proposal deadline:

Bannum is respectfully requesting a 3-week extension of the due date for proposals in response to RFP-200-1268-ES . . . in order for Bannum to finalize property negotiations. Your consideration is greatly appreciated.

AR, Tab 7. The contracting officer responded the same day:

Based on the time line I can provide a 2 week extension of the due date for proposal in response to RFP-200-1268-ES Please check FBO [FedBizOps] for updates.

Id. On March 10, RFP amendment No. 003 was issued, extending the due date to March 27. AR, Tab 4, RFP Amendments, at 4.

On March 24, Bannum again emailed the contracting officer, requesting a further extension: "Due to a death in the family of the property owner/seller, we are unable to obtain a response; therefore, Bannum is requesting a short 5-day extension of the proposal due date. AR, Tab 8, at 1-2. The contracting officer responded the same day denying the request: "Due to current demands and milestones we are unable to further extend the closing date of RFP200-1268-ES Savannah, GA." Id.

On March 26, Bannum filed an agency-level protest asserting that the refusal to grant a further 5-day extension was an abuse of discretion and requesting a 3 week extension of the closing date. AR, Tab 9 at 1. In its agency-level protest, Bannum advised that the owner of the property that it intended to buy in order to perform the contract "was no longer interested in selling the property." Id. at 4. In that regard, in an attached March 26 letter to the contracting officer, Bannum further explained:

Despite conducting ongoing negotiations with the owner of property upon which we intended to build our proposed facility, unexpectedly,

on March 26th we were notified that the owner was no longer interested in selling the property. As a result, Bannum is forced to locate an alternate site for our proposed facility. We have already begun our search.

AR, Tab 9, attach., Letter, at 1. On April 2, Bannum filed this protest with our Office.

DISCUSSION

Bannum asserts that the contracting officer's refusal to extend the closing date was an abuse of discretion.

Where a protester contends that the agency allowed insufficient time for preparation of proposals, we require a showing that the time allowed was inconsistent with statutory requirements or otherwise unreasonable, or that it precluded full and open competition. See Coyol International Group, B-408982.2, Jan. 24, 2014, 2014 CPD ¶ 40 at 2; National Medical Staffing, Inc., B-244096, May 22, 1991, 91-1 CPD ¶ 503 at 1. We will not disturb a contracting officer's decision in this regard unless it is shown to be unreasonable or the result of a deliberate attempt to exclude the protester from the competition. Systems 4, Inc., B-270543, Dec. 21, 1995, 95-2 CPD ¶ 281 at 3.

Here, Bannum has not shown that the refusal to further extend the closing date was unreasonable. The Federal Acquisition Regulation (FAR) provides that agencies shall allow at least a 30-day response time for receipt of proposals from the date of issuance of a solicitation, if the proposed contract action is expected to exceed the simplified acquisition threshold. FAR § 5.203(c). As discussed, however, the agency had already granted a two week extension of the initial approximately three month period (from issuance of the solicitation) allowed for submission of proposals. Since the current contract expires December 31, 2015, and the new contractor was permitted 120 days after award for its facility to become fully operational, the agency concluded that award must be made by September 1 in order to ensure continuity of services. Contracting Officer Statement (COS) at 3; see RFP at 10. The contracting officer, expecting that multiple rounds of discussions would be necessary given the complexity of the procurement, states that she was concerned that further extensions of the closing date for submission of initial proposals would jeopardize the required September 1 award date. COS at 2-3; see AR at 5. Bannum has not shown that this concern was unwarranted.

Furthermore, although Bannum advised in its agency protest that it had "already begun a search for another property," Agency-Level Protest at 4, there is no indication that Bannum had or could obtain a suitable property in time to submit a competitive proposal even with the requested three week extension. In this regard, the agency explains that:

Introducing RRCs into a community is a controversial subject that generally encounters many pitfalls. In particular, many problems and delays can arise when trying to build community support and secure zoning. The first step in the process is securing a facility. In this case, Bannum does not have a facility and is now asking for a three week extension to do what the [contracting officer] had initially allowed nine months [--actually 8 months from issuance of the RFI--] to accomplish.

AR at 5.

Bannum argues that failure to grant an extension to Bannum would result in an [deleted] to the incumbent. Protest at 4-5. As discussed, however, the agency reasonably concluded that further extensions of the closing date could jeopardize the continuation of services. In this regard, our Office has repeatedly held that the fact that a particular prospective offeror is unable to compete under a solicitation that reflects the agency's needs does not establish that the solicitation is unduly restrictive. Micromass, Inc., B-278869, Mar. 24, 1998, 98-1 CPD ¶ 93 at 4; AT&T, B-253069, June 21, 1993, 93-1 CPD ¶ 479 at 4 (solicitation not improper merely because a potential offeror cannot meet its requirements).

Finally, Bannum asserts that the contracting officer's denial of its request for a further extension of the closing date was an "unreasonable or deliberate attempt to eliminate Bannum from competition" in order to afford the BOP's "favored" contractor an improper competitive advantage. Protest at 5. We find no evidence of bias in the contracting officer's actions here. As a general matter, government officials are presumed to act in good faith, and a protester's contention that procurement officials were motivated by bias or bad faith must be supported by clear and convincing evidence. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-9. Where a protester alleges bias, it must not only provide credible evidence clearly demonstrating bias against the protester or in favor of the awardee, but must also show that this bias translated into action that unfairly affected the protester's competitive position. Global Integrated Sec. (USA) Inc., B-408916.3 et al., Dec. 18, 2014, 2014 CPD ¶ 375. Our review of the record has found no evidence of bias on the part of the agency against Bannum or in favor of the incumbent contractor. To the contrary, we note that, notwithstanding the extended notice of and opportunity to respond to the agency's requirements already provided to potential offerors, and the agency's reasonable concern with avoiding any break in the continuity of services, the contracting officer nevertheless did grant

Bannum a two week extension in order to afford Bannum an opportunity to submit a proposal. The fact that the agency then denied Bannum's subsequent request for a further extension of the closing date does not demonstrate bias against Bannum.

The protest is denied.

Susan A. Poling
General Counsel