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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Trident World Systems, Inc.

File: B-400901

Date: February 23, 2009

Richard D. Adams, Trident World Systems, Inc., for the protester.

MAJ Walter R. Duke and Polly H. Chatham, Esq., Department of the Army, for the agency.

Linda C. Glass, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation requirement for Aerial Remotely Piloted Vehicle Target System including scoring hardware and services is unduly restrictive is denied where record established that the requirements were reasonably designed to ensure that the agency's actual needs would be met, and the protester failed to establish either that it is incapable of meeting specifications or is otherwise competitively harmed by them.

DECISION

Trident World Systems, Inc. (TWS) of Huntsville, Alabama, protests the terms of request for proposals (RFP) No. W31P4Q-08-R-0311, issued by the Department of the Army for Aerial Remotely Piloted Vehicle Target System (RPVT) to include scoring hardware and services. TWS contends the specifications are restrictive and requests that the requirement for the scoring hardware and services be broken out for a separate award.

We deny the protest.

The RFP was issued as a small business set-aside on August 6, 2008 and contemplated the award of a contract with fixed-price, cost-plus-fixed-fee and cost reimbursable line items for a base period with four 1-year options. The RPVT requirement includes support services, related support equipment, mission payload system devices and training to be provided by the contractor in support of demonstrations, simulation and live fire training and testing at designated locations, installations, and ranges worldwide. RFP at 5. The RFP also contained a

requirement for scoring hardware and services for the RPVT the purpose of which is to provide accurate bullet counting and miss distance data for bullets/missile engagements on targets. RFP at 17. The RFP specifically listed three qualified scoring systems vendors but also stated that other scoring sources may exist and would be considered. RFP App. E.

The initial closing date for receipt of proposals was September 19, 2008. The agency amended the RFP several times to respond to questions and concerns raised by the protester and other vendors and subsequently extended the closing date on several occasions. The final amended closing date was December 2, 2008. According to the agency, several timely proposals were received, including a proposal from the protester.

The protester initially filed an agency-level protest with the contracting activity on October 14, 2008. In that protest, TWS expressed concerns about the requirement for the scoring systems and requested that this requirement be removed from the RFP. TWS also maintained that the information provided by the agency concerning the government furnished equipment (GFE) list was inadequate and asked for an extension of 30 days to submit proposals. However, prior to receiving a response from the contracting activity, TWS filed a protest with agency headquarters on November 24, 2008. In that protest, TWS raised the same issues as in its initial protest and additionally argued that certain revisions to the statement of work (SOW) should be removed from the RFP, that there should be a phase-in period, and that an operational ready date milestone should be established relative to the phase-in period. Prior to receiving a response from the agency, TWS filed this protest with our Office on November 28, 2008 and raised the same issues.

In preparing a solicitation, a contracting agency must specify its needs and solicit offers in a manner designed to obtain full and open competition and may include restrictive provisions or conditions only to the extent that they are necessary to satisfy the agency's needs. 10 U.S.C. § 2305(a)(1) (2000). A contracting agency has the discretion to determine its needs and the best method to accommodate them. Because any specification or solicitation requirement is restrictive in the sense that something is required of offerors, we only consider protests of restrictions that have an effect on competition, such as where a restriction precludes a firm from competing or works to its disadvantage in a competition. A.T. Kearney, Inc., B-225708, May 7, 1987, 87-1 CPD ¶ 490 at 3.

As a preliminary matter, we note that TWS' contentions regarding agency bias, are woven into all its challenges. In essence, the protester asserts that contracting officials are deliberately altering specifications and requirements to benefit the incumbent contractor, and to discourage prospective offerors. In our view, government officials are presumed to act in good faith and a protester's claim that contracting officials were motivated by bias or bad faith must be supported by convincing proof; our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Shinwa Elecs.,

B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 5 n.6. Here, TWS has not provided convincing proof to support these allegations.

In its protest and subsequent submissions, TWS primarily challenges the agency's decision to include the scoring system requirement with the purchase of the RPVT. TWS does not argue that this requirement makes it impossible for TWS to compete but rather contends that complying is difficult and costly. While TWS ultimately concedes that there is no advantage to the government in separating the scoring services from the RPVT, it contends that the government should conduct the testing to determine the qualifications of competing scoring systems. In this regard, TWS argues that procuring the scoring system along with the RPVT--and placing the responsibility for selecting the scoring system on the offerors--puts the acquisition of at least one of these two systems at risk. TWS maintains that the scoring systems should be procured separately because procuring them simultaneously places too much responsibility on the small business contractor for verifying the accuracy and reliability of the scoring system.

Where a protester challenges a specification as unduly restrictive, the procuring agency has the burden of showing that the specification is reasonably necessary to meet its needs; we will review the agency's explanation to determine if it is reasonable, that is, whether it can withstand logical scrutiny. Chadwick-Helmuth Co., Inc., B-279621.2, Aug. 17, 1998, 98-2 CPD ¶ 44 at 3.

As an initial matter, we think TWS has failed to show that the decision to include the scoring system requirement in this procurement does not represent the agency's needs. In any event, the agency here acknowledges that in the past it procured the scoring system under a separate contract, but explains that since the requirement for scoring services has been vastly reduced, the previous method of issuing two contracts to support the training mission was excessively expensive and cumbersome to the government. Agency Report (AR), Tab E, Technical Response at 2. The agency also explains that incorporating the scoring system requirement into the larger RPVT contract will permit a more efficient use of government resources, enable the target services provider to select the most appropriate scoring system, and provide the government a single point of contract for targetry missions. Id. The agency notes that while three qualified scoring system vendors were identified in the RFP, any other scoring systems proposed would be considered by the government if they meet the RFP requirements. Given these facts, and the arguments raised, we conclude the agency has reasonably supported its determination to procure all its target mission requirements under one solicitation.¹

¹ We note for the record that the protester has not alleged that the agency has improperly violated the bundling restrictions in the Small Business Act, 15 U.S.C. § 631(j)(3) (2000). As a result, we do not address these restrictions in this analysis.

To the extent the protester argues that only the incumbent knows which “qualified” scoring systems will meet the RFP specifications, there is no requirement that an agency equalize or discount an advantage gained through incumbency, provided that it did not result from preferential treatment or other unfair action by the government. Navarro Research and Eng’g, Inc., B-299981, B-299981.3, Sept. 28, 2007, 2007 CPD ¶ 195 at 4. Neither preferential treatment nor other unfair action is evident here, especially since the agency identified three potential sources for the scoring system.

TWS has also challenged several other specifications. We have reviewed them and find that the agency has reasonably supported its determination of its minimum needs. For example, TWS objects to the deletion of the sector location requirement from the scoring hardware specification. The agency reports that the removal of this requirement enables more scoring vendors to provide solutions to the requirement and may increase the number of scoring system options that would meet the requirement. TWS also objects to the agency’s position that it expects the awardee to be “mission capable” on the date of contract award, which according to TWS contradicts other portions of the RFP which indicate that there would be a phase-in period.

The record shows that the agency in response to questions, has repeatedly advised offerors that for planning purposes the operational ready date should be considered the date of contract award and that there will be a phase-in period only in the event the contract is awarded while an incumbent is still performing target missions under a previous contract. While the protester objects to this requirement and desires a phase-in period, the agency has specifically stated that training missions are required to be performed by the incoming contractor on the first day of a new contract. We have no basis to conclude that this requirement is unreasonable or does not meet the agency’s need for continuity in its target training mission.

Finally, we note that the agency, in several instances, amended the RFP to clarify or change certain specifications. The agency also extended the original closing date on several occasions from September 19 to the final date of December 2. From this record, we believe the protester had ample opportunity to submit a responsive proposal. While the protester expresses disagreement with the agency’s determination of its needs, the protester has not established that the agency’s requirements were unreasonably stated.

The protest is denied.

Gary L. Kepplinger
General Counsel