



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Speegle Construction, Inc.

File: B-286063

Date: November 1, 2000

G.R. Erick Mead, II, Esq., Clark, Partington, Hart, Larry, Bond & Stackhouse, for the protester.

Wilson J. Campbell, Esq., Naval Facilities Engineering Command, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency decision to exclude proposal for renovation of barracks from the competitive range was reasonable where offeror failed to include mechanical systems in its floor plans, did not provide required narratives of specified systems, but merely offered to provide systems in accordance with solicitation requirements, and did not offer the required number of beds for two barracks.

DECISION

Speegle Construction, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. N62467-99-R-0893, issued by the Department of the Navy for the design and renovation of barracks 313 to 318 at the Naval Construction Battalion in Gulfport, Mississippi.

We deny the protest.

The solicitation provided for a best value award based on an evaluation of past performance, small business subcontracting effort, technical qualifications, technical solutions and price. Technical proposals were due on June 5. Speegle submitted its technical proposal on June 2. Speegle also submitted a modification to its technical proposal on June 16, but the agency did not consider it because it was submitted after the June 5 closing date. A technical evaluation board evaluated the technical proposals and rated Speegle's unacceptable under the technical solutions factor because Speegle's floor plans did not include space for mechanical systems, and the proposal did not provide required narratives with respect to the plumbing, HVAC, electrical, telecommunication and fire protection systems and did not offer the

required number of beds for barracks 316 and 318. Technical Evaluation Report (TER) at 15. As a result, the Navy excluded Speegle's proposal from the competitive range. Speegle protests this action, arguing that the agency unreasonably found its proposal to be deficient.

The competitive range consists of the most highly rated proposals (except where the range is reduced for purposes of efficiency), based on evaluation of the information submitted in each proposal against the stated evaluation criteria. United Housing Servs., Inc., B-281352.14, May 7, 1999, 99-1 CPD ¶ 80 at 3. An offeror runs the risk of having its proposal downgraded and excluded from the competitive range if the proposal is inadequately written. Id. In reviewing protests of competitive range determinations, we will not reevaluate proposals; rather, we will review the record to ensure that the evaluation and competitive range determination were reasonable and consistent with the terms of the solicitation. SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 4.

The evaluation of Speegle's proposal was reasonable; the record supports the agency's conclusion that the proposal was deficient in the three respects noted above. We discuss each deficiency below.

MECHANICAL SYSTEMS

The Navy concluded that Speegle's proposal was unacceptable under the technical solutions factor because, among other reasons, the floor plans in its proposal did not include space for mechanical systems. TER at 15. Speegle maintains that the Navy's conclusion was incorrect because it addressed mechanical systems in its proposal, and its floor plans do show mechanical rooms for the various barracks. We initiated a conference call with the Navy and Speegle on September 26, 2000 to determine the basis for the Navy's finding, since our review of the record showed that the drawings Speegle cited did in fact include mechanical rooms. The Navy explained that the floor plans that Speegle referenced did not address the deficiency, because they showed only mechanical rooms that already existed and did not provide space for mechanical systems that had to be provided under the RFP. For example, the Navy cited RFP § D 3000, paragraph 1.2, under which offerors were required to include a water source heat pump for each module in buildings 313, 315, 316 and 318; the Navy found that Speegle's floor plans did not include space for these heat pumps. Speegle was given the opportunity to respond to the agency's explanation, but did not do so. Accordingly, based on the Navy's explanation, and our review of the record, we conclude that the Navy reasonably determined that Speegle's proposal did not provide space for the required mechanical systems.

MECHANICAL SYSTEMS NARRATIVE

The Navy also found Speegle's proposal deficient under technical solutions because Speegle did not provide a narrative in its proposal with respect to plumbing, HVAC, electrical, telecommunications and fire protection systems. TER at 15. Under the technical solutions factor, Proposal Requirements at 7, the RFP states:

Provide a narrative of the design solutions. Include a complete description of the . . . plumbing systems, HVAC, electrical, telecommunications, fire protection systems, etc. . . . Demonstrate that sound architectural/engineering practices, materials and principles are employed Narrative shall include a description of sustainable design features to minimize energy consumption, conserve resources, and minimize adverse effects on the environment.

Despite this specific instruction to provide a detailed description of the listed systems, Speegle's proposal, as relevant, stated only that "[t]he building will be provided with new plumbing, piping, water heater and fixtures. All systems and equipment will meet program requirements," and that "[c]omplete new lighting, power, fire alarm, data, telecom and cable TV systems will be installed, in accordance with program requirements." Speegle Proposal, Technical Solutions, at 11. This response was deemed unacceptable because it did not provide sufficient information for the Navy to evaluate whether Speegle understood the requirements of the solicitation and would meet its needs. TER at 15.

Speegle does not dispute that its proposal did not provide details with respect to the specified systems. Rather, Speegle asserts that the detailed specifications in the RFP made the required information unnecessary; the Navy could determine from Speegle's agreement to provide systems that complied with the specifications that Speegle would meet the agency's needs. In this regard, Speegle avers that it should be unnecessary for offerors to restate detailed solicitation requirements in their proposals.

Under our Bid Protest Regulations, protests based on alleged solicitation deficiencies must be filed prior to the time set for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (2000). The RFP here specifically asked for detailed descriptions of the listed systems. If Speegle believed that this requirement was unnecessary, and that offerors should not be required to comply with it given the detailed specifications for each system, Speegle was required to protest on this basis prior to the June 5 closing date. Because it did not do so, and chose instead to simply ignore the requirement, this allegation is untimely.

In any case, the Navy does not agree that the only possible response to the narrative was a recitation of the specifications. Rather, as the Navy explained during the conference call that our Office conducted, it expected offerors to discuss the various aspects of the systems. For example, it was looking for offerors to elaborate on the

two components--the alarm and the sprinkler--of the fire protection system that would be installed, discussing such things as the size of the water pump required, if any, available pressure, and where fire detectors would be placed.

NUMBER OF BEDS

The Navy also found Speegle's proposal unacceptable because Speegle offered to provide 256 beds for barracks 316 and 318, fewer than the 288 beds required by the RFP. TER at 15. Speegle asserts that its offer of 256 beds in its June 2 technical proposal was a mistake, and that its June 16 revised proposal, which increased the number of beds to 288, should have been accepted as a mistake correction.

This argument is without merit. Even if we accepted Speegle's assertion that the reduced number of beds constituted a mistake, rather than a purposeful exception to the requirements, Speegle merely submitted what appeared to be a late proposal revision, never notifying the agency that it had made a mistake. Thus, while the agency would have had discretion to hold pre-competitive range communications with Speegle to clarify the alleged mistake, Federal Acquisition Regulation (FAR) § 15.306(b)(2) and (3), it had no reason to do so here.

On this record, we have no basis to question the Navy's conclusion that Speegle's proposal was unacceptable, or the agency's determination not to include the proposal in the competitive range.

The protest is denied.

Anthony H. Gamboa
Acting General Counsel