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**Comptroller General
of the United States**

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

Decision

Matter of: Douglass Colony/Kenny Solar, JV

File: B-402649

Date: June 17, 2010

Tiffany D. Stasiak, Esq., Lindquist & Vennum PLLP, for the protester.
James H. Roberts, III, Esq., Van Scoyoc Kelly PLLC, for E Light/Centerre, Joint Venture, LLC, the intervenor.
Leigh Ann Bunetta, Esq., General Services Administration, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly evaluated as unacceptable the protester's proposal for the installation of photovoltaic carport systems is denied where the protester's technical proposal included a concept drawing required by the solicitation that contained information that did not comply with the specifications and was otherwise incomplete.

DECISION

Douglass Colony/Kenny Solar, Joint Venture of Commerce City, Colorado, protests the award of a contract to E Light/Centerre, Joint Venture, LLC, of Denver, Colorado, under request for proposals (RFP) No. GS-08P-10-JA-C-0016, issued by the General Services Administration (GSA), for grid tied, ground mounted carport photovoltaic (PV) systems. Douglass/Kenny contends that its proposal was evaluated improperly and that the award selection was unreasonable.

We deny the protest.

The RFP, issued on January 29, 2010, as a small business set-aside, sought fixed-price proposals to install the PV systems at the Denver Federal Center, Lakewood, Colorado. The statement of work (SOW) required the contractor to provide a turnkey project, including design and installation of a ground mounted PV system, which had various specified characteristics and met all SOW requirements. The minimum capacity of the PV areas is required to be 4,115,000 kilowatt hours per year.

The RFP provided for award on a best-value basis, and explained that the offeror's initial offer should contain the offeror's best terms and a complete technical proposal, since the government intended to award a contract without discussions. The evaluation factors were: (1) past performance on functionally similar projects, (2) experience/qualifications of the offeror, and (3) additional primary evaluation issues. Factor 1 was said to be slightly more important than factors 2 and 3, which were equal in importance and the combination of these two factors were equal in importance to price. RFP, attach. 1, at 73-76.

With regard to the additional primary evaluation issues evaluation factor, each offeror was required to include a summary of its technical proposal to install the PV systems. In this regard, the RFP stated that

Concept Drawings and One-Line Drawing Submissions **must** contain the information described under Section 2 of the specification, stressing the information required under Paragraph 3. Concept drawings for **each area must** include the type of mounted system and major structural and electrical components as well as showing the basic landscape plan.

Id. at 76. Paragraph 3 of section 2 of the specification stated that the technical proposals must include concept drawings as follows:

The drawings must indicate the proposed location and layout of the PV array (with rows, azimuths, tilt and spacing noted) carport PV, mounting and support systems for both ground and carport PV, and single axis tracking system design if used. Provide a one-line electrical diagram showing inverters, transformers, meters, and interconnection locations. For PV Field 1 provide a concept drawing showing landscape and remediation design proposed to meet design guidelines.¹ Indicate any proposed grade adjustments for the land areas. All drawings shall be submitted with dimensions shown in English units.

RFP SOW ¶ 3.2. The SOW also provided the dimensions requirements for the carports.

Seven offerors, including E Light/Centerre and Douglass/Kenny, submitted proposals in response to the RFP. A source selection evaluation board (SSEB) evaluated the proposals and rated E Light/Centerre's proposal, priced at \$18,399,165, 5 out of a possible 7 points and Douglass/Kenny's proposal, priced at \$17,170,000, 4.5 out of

¹ The landscape design was to include a grading plan, landscape plan, and restoration and groundcover plan.

7 points.² The SSEB recommended award on the basis of initial proposals to E Light/Centerre because its proposal received the highest rating with a “very competitive” price and, in contrast to Douglas/Kenny’s proposal, its technical proposal was fully compliant with the solicitation requirements.

The main technical discriminator between the proposals was the additional primary evaluation issues factor where the SSEB considered E Light/Centerre’s proposal to be fully compliant, whereas Douglas/Kenny’s proposal was found to be “significantly unacceptable.” In this regard, the SSEB noted that Douglass/Kenny’s proposal did not include a layout drawing for the Building 53 carports and its layout drawings showed dimensions for carports that were significantly smaller than what was required by the specifications. The SSEB also noted that Douglass/Kenny’s proposal provided no run-off details for the carports and also did not provide a concept drawing showing a landscape and remediation design to meet the specification’s design guidelines. The SSEB found that because of these omissions, discussions would be required before Douglass/Kenny’s proposal could be made susceptible of receiving an award. AR, exh. 7, SSEB Report, at 1214-15. The SSEB thus recommended award to E Light/Centerre on the basis of initial proposals.

The source selection authority (SSA) made an independent assessment of the proposals and agreed with the SSEB’s recommendation. Consistent with the SSEB’s findings, the SSA found that Douglass/Kenny’s proposal was noncompliant with the RFP regarding carport heights, and that this noncompliance was a major deficiency that would require discussions to correct. The lack of any landscaping detail was also regarded as a major concern. The SSA further stated his belief that Douglass/Kenny’s price could increase if, through discussions, it modified its proposal to offer compliant carports and to address landscaping. On the other hand, the SSA found that award to E Light/Centerre without discussions was in the government’s best interest, given its documented technical superiority. This protest followed.

Douglass/Kenny contends that the evaluation of its proposal was unreasonable. In reviewing an agency’s technical evaluation, we consider whether it was reasonable and in accord with the evaluation criteria listed in the solicitation. An offeror has the obligation to affirmatively demonstrate that its proposal will meet the government’s needs, and has a duty to establish that what it is proposing will meet the solicitation requirements where required to do so. See TRS Research, B-274845, Jan. 7, 1997, 97-1 CPD ¶ 6 at 3; Discount Machinery & Equip., Inc., B-253094, Aug. 2, 1993, 93-2 CPD ¶ 68 at 4. Where, as here, a solicitation requires offerors to furnish information necessary to establish compliance with the specifications, an agency may reasonably find a proposal that fails to include such information technically unacceptable. Discount Machinery & Equip., Inc., *supra*.

² The remaining proposals received 3 or fewer points and were not considered for award.

Douglass/Kenny does not dispute that its concept drawings did not meet the express RFP dimension requirements for the carports and otherwise did not provide the detail required by the agency in various areas, such as landscaping, mounting systems, and storm water drainage. Instead, the protester argues that the concept drawings were simply a sample depiction, which were not intended for use in construction or to take exception to the requirements. In this regard, Douglass/Kenny asserts that because its drawing specifically referenced another project, it should have been obvious that the drawing was not intended for this project. Douglass/ Kenny also states that it could not have provided any more meaningful detail regarding landscaping and storm water drainage because the site was still undergoing modifications.

While it may be that Douglass/Kenny did not intend for its concept drawing to illustrate the dimensions of the carports it would build, the fact remains that the drawings did not meet the material requirements of the solicitation, which required the concept drawing to meet the carport design guidelines, including the specific dimensions. Since the drawing showed dimensions that did not meet the design guidelines, the agency here reasonably found that the proposal was unacceptable in this respect, and could not be selected for award without discussions. In addition, based on our review of Douglass/Kenny's proposal, the agency could reasonably conclude that it did not include required details about other aspects of the design, such as landscaping.

Douglass/Kenny nevertheless argues that the agency unreasonably disregarded the commitment in its offer to comply with the material requirements of the solicitation, as evidenced by its submission of standard form (SF) 1442. Douglass/Kenny argues that by simply signing the SF-1442 a party agrees to and is obligated to perform, all material requirements of the RFP. However, simply submitting an SF-1442 is insufficient to comply with an RFP requirement to provide the detailed technical information necessary for evaluation purposes. See Sabre Commc'ns Corp., B-233439, Mar. 2, 1989, 89-1 CPD ¶ 224 at 5. Where a proposal contains a blanket offer of compliance to meet specifications, such as by signing an SF-1442, and also contains conflicting provisions which call that offer of compliance into question, the offer is ambiguous and may properly be rejected as technically unacceptable. TRS Research, supra. Under such circumstances, there is no requirement that the agency conduct discussions so as to allow the offeror to correct the deficiencies in its proposal, where, as here, the solicitation expressly advised that it intended to make

award without discussions.³ See DynCorp Int'l LLC, B-294232, B-294232.2, Sept. 13, 2004, 2004 CPD ¶ 187 at 8.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

³ Contrary to the protester's contentions, the source selection decision was adequately documented and justified the award, particularly given that the protester's proposal was reasonably found to be unacceptable. Sabre Commc'ns Corp., supra.