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Decision

Matter of: Hawk Institute for Space Sciences

File: B-409624

Date: June 20, 2014

Frederick P. Hink, Esq., for the protester.

Richard J. McCarthy, Esq., National Aeronautics and Space Administration, for the agency.

Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of the evaluation of a protester's proposal is denied where the agency reasonably found, consistent with the stated evaluation criteria, that the protester's proposal was technically unacceptable.

DECISION

Hawk Institute for Space Sciences, of Pocomoke City, Maryland, protests the rejection of its proposal under request for proposals (RFP) No. NNK13ZLS004Q, issued by the National Aeronautics and Space Administration (NASA) for launch related services. Hawk challenges the evaluation of its proposal.

We deny the protest.

BACKGROUND

The RFP, issued on December 5, 2013 as a set-aside for small businesses under the commercial acquisition procedures of Federal Acquisition Regulation (FAR) Part 12, provided for the award of multiple indefinite-delivery, indefinite-quantity contracts for services related to the launch of pico-, nano-, and micro-satellites into earth orbit.¹ A detailed statement of work (SOW) was provided that described the

¹ These type of satellites, known as "CubeSats," are "miniaturized space research satellite[s] that typically [use] commercial, off-the-shelf electronic components." Legal Memorandum at 1.

services to be performed. In addition to describing standard and non-standard launch services, see SOW §§ 4 and 5, at 76-81, the SOW also informed offerors that the government may task the contractor to perform special studies and analyses, provide materials, or fabricate hardware in support of the contract.² See SOW § 6, at 81.

The RFP identified the following evaluation factors and subfactors:

Technical acceptability	
	Management approach
	Technical approach
	Compliance with solicitation requirements
Past performance	
Price	

RFP at 72. Offerors were informed that the technical acceptability and past performance factors would be evaluated on an acceptable/unacceptable basis. Id. The RFP also stated that an unacceptable proposal was one that “fails to meet the requirements of the RFP” and that “[a] proposal that contains a deficiency will be determined to be unacceptable.” Id. at 73.

Proposal preparation instructions were provided that directed offerors to respond separately to each evaluation factor. Id. at 69. With respect to the technical acceptability factor, the RFP instructed offerors to describe their “technical and management approach to the requirements of the work to be performed, without simply mirroring the content of the Statement of Work.” Id. Offerors were warned that merely stating that an offeror understood and would comply with the SOW, or merely paraphrased the RFP, would be “inadequate.” Id. Offerors were further required to “provide the detail necessary to substantiate their approach.” Id. Also, offerors were instructed that their technical proposals “shall be numbered to correspond with the section the Offeror is proposing to in the SOW.” Id.

The RFP identified the closing time for receipt of proposals as noon, Friday, January 24. On the morning of January 24th, the agency amended the solicitation to extend the closing time to noon, Monday, January 27th.³ RFP amend. 4, at 231-232.

² Our page citations to documents in the agency report (AR) are to the Bates numbers provided by NASA.

³ The agency extended the closing time for receipt of initial proposals because of severe winter storms that were affecting the central and eastern United States. Contracting Officer’s Statement at 1.

The agency received six proposals, including Hawk's, which were evaluated by the agency's technical evaluation team (TET). Contracting Officer's Statement at 2. Hawk's proposal was found to have numerous deficiencies and to be technically unacceptable. AR, Tab 5, Memorandum for Record, at 369-371. The agency found, among other things, that Hawk's proposal did not address certain SOW requirements (such as how it would satisfy the SOW's hardware requirements) and had not provided any narrative response describing its approach for section 6 of the SOW (regarding task assignments). In this regard, the agency noted that Hawk's proposal "mirror[ed the SOW] with no clear delineation as to how [Hawk] proposes to fulfill the requirements" and that the proposal provided "no clear understanding . . . of how the hardware is to either be provided or how it fulfills the Government's requirements." Id. at 371.

Hawk's proposal was rejected as technically unacceptable, and this protest followed a debriefing and NASA's denial of Hawk's agency-level protest.

DISCUSSION

Hawk objects to the evaluation of its proposal, arguing generally that its proposal sufficiently responded to the solicitation requirements.⁴ See Protest at 11-14.

In reviewing protests of allegedly improper evaluations and source selection decisions, it is not our role to reevaluate submissions; rather, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. Panacea Consulting, Inc., B-299307.4, B-299308.4, July 27, 2007, 2007 CPD ¶ 141 at 3. An offeror has the burden of submitting an adequately written proposal, and it runs the risk that its proposal will be evaluated unfavorably when it fails to do so. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6. A protester's disagreement with an agency's judgment is not sufficient to establish that an agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3.

Here, the record shows, contrary to Hawk's general disagreement, that NASA's evaluation of Hawk's proposal was reasonable. For example, as noted above, NASA evaluated as a deficiency Hawk's failure to provide any narrative response

⁴ Hawk also complains that the agency did not characterize its "omissions" as deficiencies in denying its agency-level protest. See Comments at 3. There is no merit to this complaint. Not only does NASA's agency-level protest decision identified Hawk's proposal failings as deficiencies, see AR, Tab 8, Agency-Level Protest Decision, at 3, but the contemporaneous evaluation record also recognized that these were deficiencies. See AR, Tab 5, Memorandum for Record, at 371.

describing its approach to performing the tasks assigned under section 6 of the SOW. Hawk concedes that its proposal did not specifically respond to this SOW section. Protest at 13. Given the solicitation requirement that firms provide “the detail necessary to substantiate their approach,” we agree with NASA that the protester’s failure to provide any response to this SOW section was a deficiency. While Hawk contends that it “covered this area in our cost proposal” (presumably by providing labor rates), we do not agree that the mere proposal of labor rates satisfies the solicitation’s requirement that offerors describe their approach to performing the work. We also do not agree with Hawk that its identification of past performance information satisfies the requirement to describe its approach.

Hawk also complains that the agency acted unreasonably in not seeking clarifications from Hawk under Federal Acquisition Regulation (FAR) § 15.306. Hawk maintains that, had it been asked, the firm could have easily resolved any of these issues, which would have allowed the agency to award a contract to Hawk and increase the competition at the task order level. Protest at 16.

FAR § 15.306 describes a spectrum of exchanges that may take place between a contracting agency and an offeror during negotiated procurements. Clarifications are limited exchanges between the agency and offerors that may occur when contract award without discussions is contemplated; an agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. FAR § 15.306(a); Satellite Servs., Inc., B-295866, B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n.2. Although agencies have broad discretion as to whether to seek clarifications from offerors, offerors have no automatic right to clarifications regarding proposals, and such communications cannot be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal.⁵ A. G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 5-6.

We find no merit to Hawk’s contention that NASA was required to seek clarifications from the protester with respect to Hawk’s various deficiencies. As noted above, an agency is permitted, but not required, to obtain clarifications from offerors. In any event, to become acceptable, the protester would have to provide additional, substantive proposal information, including a narrative response to section 6 of the SOW. Although the protester views its proposal omissions to be minor or clerical, correction of these discrepancies would have required the agency to conduct discussions. See FAR § 15.306(d) (discussions occur when an agency communicates with an offeror for the purpose of obtaining information essential to

⁵ The RFP included FAR § 52.212-1, which informed offerors that that the agency intended to make awards without conducting discussions. RFP at 66.

determine the acceptability of a proposal, or provides the offeror with an opportunity to revise or modify its proposal in some material respect); see also Environmental Quality Mgmt., Inc., B-402247.2, Mar. 9, 2010, 2010 CPD ¶ 75 at 5.

Hawk further complains that NASA considered three proposals that were received after noon on January 24, 2014. The agency explains in its report, however, that prior to the initial closing time for receipt of proposals NASA extended the closing date for submission of proposals until noon on January 27, and that NASA received these three proposals by the amended closing time. Contracting Officer's Statement at 1-2. Contrary to Hawk's apparent belief, an agency has the discretion to extend the closing time for receipt of proposals in order to enhance competition. See Fort Biscuit Co., B-247319, May 12, 1992, 92-1 CPD ¶ 440 at 3.

The protest is denied.

Susan A. Poling
General Counsel