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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: KDH Defense Systems, Inc.

File: B-412951

Date: July 12, 2016

Ruth E. Ganister, Esq., Rosenthal and Ganister, LLC, for the protester.
Michael D. McPeak, Esq., Defense Logistics Agency, for the agency.
Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where the agency reasonably rejected the protester's proposals for tactical vests as unacceptable because they failed to comply with the solicitation's requirements for test data.

DECISION

KDH Defense Systems, Inc., of Eden, North Carolina, protests the exclusion of its proposals from the competitive range by the Defense Logistics Agency (DLA) under request for proposals (RFP) No. SPE1C1-16-R-0002, which was issued for improved outer tactical vests (IOTVs). KDH argues that DLA unreasonably concluded that the ballistics test data submitted in the protester's proposals failed to meet the RFP's mandatory test criteria.

We deny the protest.

BACKGROUND

On November 13, 2015, DLA issued the solicitation, which sought proposals to provide up to 185,000 IOTVs. RFP at 1, 9-17. An IOTV is "a multiple threat body armor system consisting of a base vest and modular components for tailoring protection levels to defeat multiple ballistic hazards across the battlefield continuum and manage armor weight." Agency Report (AR), Tab 3, Purchase Description, at 1.

The RFP, which was set aside for small businesses and conducted using the best-value procedures in Federal Acquisition Regulation (FAR) Part 15, anticipated

award of a single indefinite-delivery, indefinite-quantity contract for a base period of 1 year and three 1-year options. RFP at 2, 10. The solicitation contained fixed-price line items for six sizes of IOTVs and permitted offerors to submit more than one proposal for more than one type of IOTV. Id. at 9-15, 62. The solicitation stated that proposals would be evaluated based on the following three factors: (1) ballistic test results, (2) product demonstration model, and (3) price. Id. at 64-65. For purposes of award, the non-price factors were “significantly more important” than price. Id. at 64. The agency reserved the right to make award based on initial offers. Id. at 17.

The ballistic test results evaluation factor instructed offerors, in relevant part, to provide the following information:

PASSING BALLISTIC TEST RESULTS (First Evaluation Factor)

Offerors shall provide passing ballistic test results in accordance with First Article Test (FAT) criteria with their technical proposal. The results shall demonstrate the offerors['] ability to meet the complete ballistic requirements for FAT found under specification FQ/PD 07/05H while also meeting the aerial density requirement (0.88 lbs./sq. ft.). . . .

RFP at 62-63. If an offeror submitted more than one type of IOTV and therefore more than one proposal, it was required to provide passing ballistics test reports for each system. Id. at 62. An offeror would “pass” if its “ballistic test results [met] the performance requirements of Purchase Description FQ/PD 07-05H” and fail if it did not meet those requirements. Id. at 65. The RFP further instructed that failure to submit passing ballistic test results “at [the] time of initial closing shall result in the rejection of your entire proposal.” Id. at 64 (emphasis omitted).

The purchase description, which was an attachment to the RFP, listed the relevant performance specifications and requirements for the IOTVs. Section 3 of the purchase description addressed the IOTV performance requirements, and section 4 addressed the verification of the performance requirements, including first article tests. AR, Tab 3, Purchase Description, at 5, 27. The first article test criteria at section 4.10 of the purchase description listed a number of mandatory sub-tests, including (but not limited to) the following:

- V50 testing, which measures the average velocity for tests that result in an equal number of complete and partial penetrations of the test sample; and
- Vs/Vr testing, which measures the striking velocity of a projectile before hitting the test sample (Vs) and compares it to the residual velocity of a projectile after leaving the test sample (Vr).

Id. at 38-44.¹ The purchase description stated that failure to meet any sub-test would result in failure of the entire first article test. Id. at 37.

KDH submitted two proposals by the closing date of February 2, 2016. DLA advised KDH on March 24 that both of its proposals had been rejected because they did not provide acceptable results for the Vs/Vr test. AR, Tab 6, KDH Proposal 1 Test Evaluation, at 2-3; Tab 7, KDH Proposal 2 Test Evaluation, at 2-3; Tab 8, Rejection Letter (Mar. 24, 2016), at 1. Specifically, DLA found that KDH's Vs/Vr data showed that the testing was conducted using an aluminum witness plate,² contrary to the requirements of the purchase description, and was conducted using fewer than the 15 to 20 shots required by the test criteria. AR, Tab 6, KDH Proposal 1 Test Evaluation, at 2 (between 10 and 12 shots); Tab 7, KDH Proposal 2 Test Evaluation, at 2 (between 9 and 12 shots); Tab 8, Rejection Letter (Mar. 24, 2016), at 1-2. The agency provided the protester a telephonic debriefing on March 29. Combined Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 6; AR, Tab 9, Debriefing Minutes. This protest followed.

DISCUSSION

KDH argues that DLA improperly found that its proposals failed to provide acceptable Vs/Vr test results for its proposed IOTVs. The protester raises two primary arguments in support of its contention that offerors were not required to submit data demonstrating that their proposed IOTVs passed the Vs/Vr test: (1) the purchase description did not provide any pass/fail criteria for the Vs/Vr test as it did for other tests (e.g., V50), and therefore it was not possible to demonstrate that the test was passed, and (2) the purchase description stated that the Vs/Vr test was for "Government Reference Only," AR, Tab 3, Purchase Description, at 40, which meant that offerors were to conduct the Vs/Vr tests in a similar manner as the V50 test, but were not required to demonstrate that the test was passed. Protest at 4, 7-9. As a result, KDH contends that DLA unreasonably rejected its proposal. DLA maintains that the RFP required offerors to provide test results that showed the proposed IOTVs passed all of the required tests, that Vs/Vr testing is part of these required tests, and KDH's Vs/Vr test results did not meet the solicitation's requirements. COS/MOL at 8-10. For the reasons discussed below, we find no basis to sustain the protest.

¹ Certain of these terms were not defined in the purchase description, and were clarified by DLA by reference to a paper prepared by the Army Research Laboratory. See DLA Email (June 28, 2016) at 1.

² An aluminum witness plate is a thin piece of aluminum that is used to detect projectile penetration. See AR, Tab 3, Purchase Description, at 40, 50.

Vs/Vr Tests

KDH argues that offerors were not required to provide “passing ballistic test results” for the Vs/Vr test because there were no pass/fail criteria for this test. The protester contends that although the purchase description provided test result criteria for the V50 tests, section 3 of the purchase description does not set forth a minimum performance standard for Vs/Vr test results. The protester also argues that the phrase “Government Reference Only” in the description of the Vs/Vr test meant that there was no requirement to pass the Vs/Vr test. For these reasons, KDH argues that the “VsVr test reports have no bearing on the ballistic test accept/reject standard as set forth in the solicitation” and could not be the basis for rejection of the protester’s proposal. Protester’s Comments (May 19, 2016) at 6. DLA explains that offerors were required to provide passing ballistics test results in accordance with first article testing criteria, that section 4.10 of the purchase description sets forth the criteria for sub-tests for first article testing, and that Vs/Vr testing is one of those sub-tests. COS/MOL at 7-8.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions. See Open Sys. Sci. of Virginia, Inc., B-410572, B-410572.2, Jan. 14, 2015, 2015 CPD ¶ 37 at 5; Raytheon Co., B-404998, July 25, 2011, 2011 CPD ¶ 232 at 17. To be reasonable, and therefore valid, an interpretation must be consistent with such a reading. McLaurin Gen. Maint., Inc., B-411443.2, B-411443.3, Jan. 14, 2016, 2016 CPD ¶ 41 at 3.

Offerors were required to “provide passing ballistic test results in accordance with First Article Testing criteria with their technical proposal” and failure to provide passing test results “at the time of initial closing shall result in the rejection of your entire proposal.” RFP at 62, 64 (emphasis omitted). As discussed above, the ballistic test results evaluation factor advised that the ballistic test results “must meet the performance requirements of purchase description FQ/PD 07-05H in order to be eligible for award.” Id. at 64 (emphasis omitted). Section 4.10 of the purchase description addressed first article test criteria, listed a number of sub-tests under the ballistic performance requirements, and stated that failure to meet any sub-test would result in failure of the entire first article test. AR, Tab 3, Purchase Description, at 37.³ One such sub-test under section 4.10 was the Vs/Vr test, which stated as follows:

³ KDH argued that the ballistic test requirements were set forth in section 4.12.2 and no Vs/Vr test is included in those requirements. Protest at 5. However, section 4.12.2 sets forth the ballistic tests “required for Lot Article Testing” and not first article testing. RFP at 47.

4.10.8 Vs/Vr. Vs/Vr testing is for Government Reference Only [sic] shall be conducted in a similar manner as section 4.10.7, V50 ballistic limit calculation, with the exception that no aluminum witness panel shall be used. Testing shall start at the velocities prescribed in Table XV. Velocities shall be dropped by approximately 400 to 500 feet/second increments down to below the V50 where there are no longer any complete penetrations. Additional shots are then taken above and below the V50, in a similar manner to standard V50 test methodology, to characterize the performance of the armor system in this area. This testing will require between 15 and 20 valid shots for each size [right circular cylinder]. Approximately half of the shots should be in the [region] between the starting velocity and just above the V50. Shots that would not be considered valid include: excessive yaw of the striking projectile; incomplete measurement of the residual velocity of a complete penetration; impacts at incorrect obliquity; or impact closer than 2.5 inch to any previous impact.

Id. at 40-41. Further, section 4.11 of the purchase description specified that Vs/Vr tests were required for first article tests. Id. at 45.

As a preliminary matter, we note that the solicitation clearly required offerors to submit Vs/Vr test data results. The ballistics test results evaluation factor required offers to provide “passing ballistic test results” for the first article test requirements in the purchase document. RFP at 62-63. The purchase description’s first article test criteria listed a number of mandatory sub-tests under Ballistic Performance, section 4.10, including the V50 and Vs/Vr tests. AR, Tab 3, Purchase Description, at 40-41. KDH evidently interpreted the solicitation in the same manner, as the protester conducted Vs/Vr tests and submitted the test results with its two proposals. AR, Tab 4, KDH Proposal 1 Test Report; Tab 5, KDH Proposal 2 Test Report. See also Protester’s Comments (May 19, 2016) at 7 (describing the Vs/Vr tests conducted by a certified and qualified laboratory retained by the protester).

In addition, the purchase description stated that an offeror must demonstrate that it met the purchase description’s requirements for each sub-test under section 4.10. See AR, Tab 3, Purchase Description, at 37. The Vs/Vr test at section 4.10.8 of the purchase description was clearly such a sub-test. Id. The agency explains that the Vs/Vr test is to “allow the Government to compare different ballistic packages, and model the probability of protection and/or incapacitation given a specific injury.” AR, Tab 10, Decl. of DLA Quality Assurance Specialist, at 1. The agency contends that although the purchase description required offerors to conduct the Vs/Vr tests “in a similar manner” to the V50 test, the purchase description contained additional requirements that required offerors to generate data for the agency’s review. COS/MOL at 8-9. For example, the Vs/Vr tests specified that an aluminum witness plate should not be used, and also required different types of shot tests than

required for other tests, such as the V50. AR, Tab 3, Purchase Description, at 41, 45-46.

We find that DLA's interpretation of the purchase description's requirements regarding the Vs/Vr test is reasonable. In this sense, a "passing" result would be data showing that the Vs/Vr tests were conducted in the manner set forth in the purchase description, e.g., without use of an aluminum witness plate and using the specified number of shots.

This interpretation also gives meaning and context to the purchase description's statement that "Vs/Vr testing is for Government Reference Only," in that it requires the offeror to provide data in the manner specified by the Vs/Vr test for purposes of government's ability to compare different ballistic packages and model injury and incapacitation probabilities. See AR, Tab 3, Purchase Description, at 40-41; Tab 10, Decl. of DLA Quality Assurance Specialist, at 1. This interpretation is therefore consistent with the mandate to interpret a solicitation in a manner that gives effect to all its terms. See Open Sys. Sci. of Virginia, Inc., supra; Raytheon Co., supra; McLaurin Gen. Maint., Inc., supra. Therefore, to the extent KDH argues that the term "Government Reference Only" meant that there were no criteria for assessing whether the test results were acceptable, we conclude that the protester's interpretation is not reasonable.

Evaluation of KDH's Test Results

Next, KDH argues that its Vs/Vr test results did not provide a basis to reject its proposals as unacceptable. As discussed above, DLA concluded that KDH's test results were unacceptable because they were conducted using an aluminum witness plate, and with fewer than the specified number of shots. AR, Tab 6, KDH Proposal 1 Test Evaluation, at 2; Tab 7, KDH Proposal 2 Test Evaluation, at 2. We address the first of these issues, regarding the aluminum plate.⁴

⁴ Because we conclude that the protester's test data failed the aluminum plate requirement, we need not address the protester's arguments concerning the purchase description's statement that the Vs/Vr test "will require between 15 and 20 valid shots for each size [right circular cylinder]." AR, Tab 3, Purchase Description, at 41. KDH argues that although it did not perform between 15 and 20 valid shots for each test, it should have been found to have passed the test because "as few as 6 shots may be sufficient to provide required V50 test results." Protester's Comments (May 19, 2016) at 7. Although we need not address this matter in detail, we note that the protester's interpretation of the purchase description as permitting fewer than 15 to 20 shots does not appear to be consistent with the plain language of the purchase description requirement. See AR, Tab 3, Purchase Description, at 40-41.

KDH does not dispute that the Vs/Vr test criteria instructed that the tests not use an aluminum plate, nor does the protester dispute that it submitted test results showing it used an aluminum plate for testing. Instead, the protester argues that use of an aluminum plate was not a basis for rejection because passing the Vs/Vr test was not required. Protest at 8; Protester's Comments (May 19, 2016) at 10. As discussed above, however, we conclude that offerors were required to submit Vs/Vr test results that demonstrated compliance with the requirements set forth in the purchase description.

KDH also contends that although its Vs/Vr test results show that an aluminum plate was used, the results were in error and that a plate was not in fact used. Protest at 6, 8. The protester states that after it was notified of the rejection of its proposals, it consulted with the laboratory that had conducted the tests. Id. at 6. The laboratory advised KDH that the test results mistakenly indicated that a plate was used for the Vs/Vr tests. Protest, Exh. 4, Letter from Laboratory (Mar. 24, 2016). Despite the letter provided by the laboratory, KDH's proposals clearly included test results that showed that a plate was improperly used for the Vs/Vr tests. For this reason, we conclude that DLA reasonably found that the test results did not meet the purchase description's requirements, and therefore properly rejected KDH's proposals.⁵

The protest is denied.

Susan A. Poling
General Counsel

⁵ KDH also argues that the reference to the use of an aluminum plate was a matter that could have been addressed in clarifications. Clarifications are limited exchanges between the agency and offerors that may occur where, as here, contract award without discussions is contemplated. RFP at 17; FAR § 15.306(a)(2). 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)(2); Future Techs. Consulting Grp., Inc., B-409867, Aug. 13, 2014, 2014 CPD ¶ 240 at 5; Savvee Consulting, Inc., B-408623, B-408623.2, Nov. 8, 2013, 2013 CPD ¶ 265 at 6. To the extent the protester argues that the agency should have provided KDH an opportunity to explain that the references to the use of an aluminum plate were in error, there was no requirement for the agency to do so. Id.