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Decision

Matter of: Cooperativa Muratori & Cementisti, C.M.C. di Ravenna Società Cooperativa

File: B-413308

Date: September 30, 2016

Enrico Raengo, Esq., and Cristina Bergamo, Esq., Studio Raengo, for the protester. Kenneth Jerome Rich, Sr., Esq., and Patricia J. Battin, Esq., Department of the Navy, for the agency.

Pedro E. Briones, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of protester's experience is denied where the record establishes that the evaluation was reasonable and consistent with the solicitation criteria.

DECISION

Cooperativa Muratori & Cementisti, C.M.C. di Ravenna Società Cooperativa (CMC) of Ravenna, Italy, protests the award of a contract to M+W LOTUS ITALY S.C.A.R.L. (LOTUS), of Agrate Brianza, Italy, under request for proposals (RFP) No. N33191-16-R-1007, issued by the Department of the Navy, Naval Facilities Engineering Command, for construction of a new satellite communications (SATCOM) facility. CMC challenges the agency's evaluation of CMC's experience.

We deny the protest.

BACKGROUND

The Navy issued the solicitation on January 11, 2016, seeking proposals for award of a fixed-price, design-bid-build contract to construct a new SATCOM facility and relay pads at U.S. Naval Air Station Sigonella, Italy. RFP at 1, 11. The RFP stated that proposals would be evaluated under five evaluation factors (experience, safety, schedule, past performance, and price) and that award would be made on a lowest-price, technically acceptable basis. Id. at 11. Offerors were advised that the non-price factors would be evaluated on an acceptable/unacceptable (i.e., pass/fail)

basis and that a proposal found unacceptable under any of these factors would be unacceptable overall. Id. at 11.

Under the experience evaluation factor, offerors were to submit three to five construction projects completed within 7 years of the RFP issue date, which were similar in size, scope, and complexity to the requirement and best demonstrated the offeror's relevant experience. Id. at 13. A relevant project was defined as construction of a new facility of at least 800 square meters (8,611 square feet) with an initial contract value of at least \$6,000,000. Id. Offerors were to clearly describe the scope and relevance of each project using a project data sheet included with the RFP. Id.; attach. A, Constr. & Design Experience Project Data Sheet. The RFP stated that the agency would evaluate an offeror's depth of demonstrated experience performing relevant construction projects and assess the offeror's capability to successfully meet the solicitation requirements. Id.

The Navy received proposals from seven offerors, including CMC and LOTUS. Agency Report (AR), Tab 5, Bus. Clearance Mem. (BCM), at 8-10. Proposals were evaluated by a source selection evaluation board (SSEB), which included a technical evaluation team (TET) that evaluated proposals under the non-price factors. See id. at 9, 15; AR, Tab 10, Source Selection Plan, at 9-14. The TET prepared a detailed report of its evaluation findings and assessments of strengths, weaknesses, and deficiencies in proposals. AR, Tab 3, TET Report, at 1-37.

Four proposals, including CMC's proposal, were evaluated as unacceptable under the experience factor and, therefore, unacceptable overall. AR, Tab 5, BCM, at 9-10, 15. In regards to CMC, three of its experience projects (Nos. 2, 3, and 5) were evaluated as not relevant to the requirement. AR, Tab 3, TET Report, at 13-15. With respect to CMC's project No. 2, the TET found that it involved repair and renovation of an existing building, to include installing a new communication system, new internal walls, and replacing windows, which was not similar in scope to construction of a new facility as required by the RFP. Id. at 14. With respect to project No. 3, the TET found that the project was completed more than 7 years before the RFP was issued, contrary to the terms of the solicitation. Id. at 13-15. With respect to project No. 5, the TET noted that CMC's data sheet described the type of work as "completion" and repair of an existing hangar structure, which the evaluators also found was not new construction. Id. at 15.

The Navy awarded the contract to LOTUS for \$7,723,700, and this protest followed.¹ See AR, Tab 4, Award Notification.

¹ LOTUS's was the third lowest-priced proposal. AR, Tab 5, BCM, at 9-10. CMC submitted the lowest-priced proposal (\$7,217,000), and the proposal of the second lowest-priced offeror (\$7,690,914) was found technically unacceptable.

DISCUSSION

CMC protests the evaluation of its experience, arguing that the Navy unreasonably found that three of CMC's projects were not relevant to the requirement.² First, CMC maintains that, contrary to the RFP's evaluation criteria and definition of relevant project, the Navy found that CMC projects Nos. 2 and 5 did not involve new construction. With respect to project No. 2, CMC asserts that "elements of the project [] leave no doubt" that the project involved new construction, because it involved completely demolishing, rebuilding, and converting a World War II-era building into an entirely new facility. Protest at 12. CMC argues that 10 U.S.C. § 1801(a), which defines "military construction" to include "conversion or extension of any kind carried out with respect to a military installation," should be dispositive in determining whether CMC's projects were relevant under the terms of the solicitation. See id. at 12-13, citing 10 U.S.C. § 1801(a) (emphasis added). In this respect, CMC contends that project No. 2 entailed "conversion" of a military installation as defined by statute. Id. at 13. With respect to project No. 5, CMC explains that it took over what was otherwise a new construction project from a defaulting contractor. See Comments at 6. However, CMC argues that although a portion of the work was already performed by the defaulting contractor, CMC, as the new contractor, was responsible for the entire scope of work under the project. Id. at 7-8.

The Navy maintains that it properly found that these CMC projects did not involve new construction, but only required renovation, repair, and/or completion of work on preexisting structures. For example, the Navy asserts that project No. 2 required repair and renovation of a three-story building, which the agency argues does not require new construction from the ground up, regardless of whether CMC's repair and renovation work featured new materials.³ See Agency Mem. of Law (MOL) at 15-19, citing CTI-NAN JV, LLC, B-400979, Apr. 6, 2009, 2009 CPD ¶ 118.

² Although our decision here does not specifically discuss each of CMC's arguments, we have considered all of the protester's assertions and find none furnishes a basis for sustaining the protest. For example, CMC, in its protest, argued that project No. 2 should have been considered new construction under the Federal Acquisition Regulation (FAR) definition of "construction." Protest at 12, citing FAR § 2.101. However, CMC, in its comments on the agency report, did not discuss this argument further. See Comments. Accordingly, we conclude that the protester abandoned these protest grounds and will not consider them further. See Lynxnet, LLC, B-409791, B-409791.2, Aug. 4, 2014, 2014 CPD ¶ 233 at 4 n.3.

³ CMC maintains that project No. 2 required a "[n]ew additional reinforced concrete wall" and new emergency exits, stairs, elevators, partitions, doors, windows, and ceilings, as well as demolition and replacement of the utilities, among other things. Protest at 12; see AR, Tab 8, CMC Proposal, at 6-7.

Moreover, the Navy points out that CMC's data sheet for project No. 5 described the project as involving an "existing structure" (an aircraft hanger), which the agency contends is also not new construction because the hangar's foundation and structural components were built by the previous contractor, not by CMC. See MOL at 23. The Navy states that it does not question whether CMC has experience with military construction as that term is defined by 10 U.S.C. § 1801(a); rather, the agency's position is that projects Nos. 2 and 5 simply failed to satisfy the RFP's stated evaluation criteria for new construction. See id. at 20.

Based on our review of the record, we agree with the Navy that it reasonably found that two of CMC's experience projects did not involve new construction and were therefore not relevant to the requirement, as specified by the solicitation. Our Office examines an agency's evaluation of experience to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable statutes and regulations. Herve Cody Contractor, Inc., B-404336, Jan. 26, 2011, 2011 CPD ¶ 27 at 3. An agency has broad discretion, when evaluating offerors' experience, to determine whether a particular contract is relevant to an evaluation of experience. See All Phase Envtl., Inc., B-292919.2 et al., Feb. 4, 2004, 2004 CPD ¶ 62 at 3. A protester's disagreement with the agency's evaluation judgments about experience ratings does not establish that the evaluation or the source selection decision was unreasonable. See A & D Gen. Contracting, Inc., B-409429, Apr. 17, 2014, 2014 CPD ¶ 130 at 2.

Here, the RFP explicitly defined relevant construction projects as construction of a new facility. RFP at 13 (emphasis added). In contrast, nothing in CMC's data sheet for project No. 2 reflects that the protester constructed the three-story building from the ground-up. Rather, the record indicates that while CMC may have completely replaced and installed a number of new building systems, CMC also "repaired and restored" the existing building's external walls. See AR, Tab 8, CMC Proposal, at 6-7. Moreover, the contractor performance assessment reporting system (CPARS) report for project No. 2--which was prepared by the client--repeatedly describes the work as "renovation" or "restoration" of an existing building and indicates that the U.S. Army had already designed the building's transformation. See id. at 34-35. Similarly, with respect to CMC project No. 5, CMC's proposal described the project as requiring completion of "work which had been previously executed by the defaulted contractor" and that "a portion of the works were existing[.]" Id. at 12-13.

On this record, we have no reason to object to the Navy's determination that CMC projects No. 2 and 5 were not new construction projects as defined by the RFP, and thus, were not relevant to the requirement. As the Navy points out, we have previously found that while a protester may well have experience in different construction areas involved in a requirement, an agency may reasonably conclude that there is a significant qualitative difference between renovating preexisting

structures and constructing complete new structures. See MOL at 15-19, citing CTI-NAN JV, LLC, supra, at 3.

Finally, we dismiss CMC's objection to the Navy's evaluation of CMC's project No. 3, which the agency properly found was performed more than 7 years before the RFP was issued. The RFP explicitly stated that projects shall be completed within the past 7 years of the date of issuance of this RFP--that is, not prior to January 11, 2009. RFP at 1, 13. Although CMC's data sheet for project No. 3 states that the project was completed on June 24, 2008, CMC argues that the 7-year project period should be counted from the date that a previous--but since cancelled--solicitation was issued for this procurement on January 13, 2015.⁴ AR, Tab 8, CMC Proposal, at 8; Protest at 14; Comments at 3-5. CMC also complains that all three of its projects now at issue were previously found acceptable under the earlier solicitation. The fact that CMC's proposal, including project No. 3, were found acceptable under the earlier solicitation does not excuse the protester's failure to satisfy the requirements in this RFP since each procurement stands alone in this regard. See Discount Mach. & Equip., Inc., B-248321, July 22, 1992, 92-2 CPD ¶ 44 at 3 n.1.

In sum, CMC has not shown that the agency's evaluation of its experience was unreasonable or inconsistent with the RFP, and the protester's disagreement with the agency's judgment does not establish that the agency acted unreasonably. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

The protest is denied.

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General Counsel

⁴ The Navy evaluated proposals and made award under the previous solicitation, but subsequently terminated the award and cancelled the solicitation as part of corrective action taken in response to a protest of the award. See MOL at 4 n.9. The agency explains it made significant changes to the instant RFP, including changing the basis of award and requiring experience with new construction. Id. at 3 n.4. The previous solicitation did not define relevant construction projects as construction of a "new" facility for purposes of offerors' experience projects. See AR, Tab 11, RFP No. N33191-15-R-0802, at 12-13.