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Decision

Matter of: AMEC-Gilbane, JV

File: B-413778; B-413778.2

Date: December 22, 2016

Kenneth B. Weckstein, Esq., Brown Rudnick LLP, for the protester.
Melanie L. Braddock, Esq., Department of the Army, for the agency.
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DIGEST

Protest that proposal was unreasonably eliminated from the competitive range is denied where agency reasonably determined that proposal was unacceptable under technical approach to sample task order factor.

DECISION

AMEC-Gilbane, JV, of Alpharetta, Georgia, protests the elimination from the competitive range of the proposal it submitted in response to request for proposals (RFP) No. W912DY-14-R-0100, issued by the Department of the Army, Army Corps of Engineers (Corps), for environmental remediation services. AMEC asserts that the agency unreasonably evaluated its proposal and eliminated AMEC from the competitive range.

We deny the protest.

BACKGROUND

The solicitation, issued on July 18, 2014, contemplated the award of multiple indefinite-delivery/indefinite-quantity, task-order contracts for environmental remediation services. These services could include, for example, preparation of work plans, multiple phases of field investigations, feasibility studies, and remedial design. RFP at 12.

The solicitation stated that award would be made on a best-value basis, considering price and the following five non-price factors: technical capability; technical approach to sample task order; organization management; past performance; and

small business participation.¹ Id. at 153. The technical approach to sample task order factor contained the following five subfactors: discussion of the site, assumptions, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process and required submittals; staffing plan; field work; hazards and safety identification; and performance-based milestones and time schedule. Id. at 151-52.

According to the solicitation, the technical capability factor was a “gatekeeper” factor and was intended to provide an initial down-select of offers; offerors that were not the most highly qualified for this factor would not be permitted to submit a revised proposal. RFP at 150. Therefore, only those proposals that passed the technical capability factor were evaluated under the remaining factors. Id. In addition, a proposal that was rated unacceptable under any technical factor or unsatisfactory for past performance would not be considered for award. Id. Further, the solicitation stated that award would not be made to an offeror whose proposal contains a deficiency, as defined in Federal Acquisition Regulation (FAR) § 15.001.² Id.

The agency assigned AMEC an acceptable rating for the technical capability factor, but rated AMEC unacceptable under the technical approach to sample task order factor. Agency Report (AR), Exh. 3, Source Selection Evaluation Board Report (SSEBR), at 5, 97. In this regard, the agency assigned three significant weaknesses to AMEC’s proposal relating to fieldwork under the technical approach to sample task order factor. Id. at 97. The agency concluded that three significant weaknesses under one factor constituted a deficiency because the risk of unsuccessful performance was high, and merited a rating of unacceptable. Id. As a result, the agency did not include AMEC’s proposal in the competitive range. AR, Exh. 4A, Competitive Range Determination, at 21; Source Selection Authority e-mail, Dec. 9, 2015, at 1. Following a debriefing, AMEC submitted this protest to our Office.³

¹ The non-price factors, when combined, were significantly more important than price. RFP at 151.

² According to FAR § 15.001, a deficiency is a material failure of a proposal to meet a government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

³ AMEC was initially provided with an inaccurate debriefing. Specifically, in preparing AMEC’s debriefing, the agency cut and pasted significant weaknesses that were assigned to another offeror. AMEC was subsequently provided a corrected debriefing, which discussed the significant weaknesses in its proposal that resulted in the evaluated deficiency, and unacceptable rating under the sample
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DISCUSSION

AMEC asserts that the agency improperly assigned one of the three significant weaknesses to AMEC's proposal. In the alternative, AMEC argues that even if its proposal contained three significant weaknesses, they were not all related to the area of field work and therefore, AMEC's proposal did not contain a deficiency. In either case, according to AMEC, its proposal should have been included in the competitive range. The agency argues that its evaluation was reasonable and that it had a reasonable basis to exclude AMEC from the competitive range because AMEC was rated unacceptable under the sample task order subfactor.

Sample Task Order Evaluation Factor

As relevant to this protest, with respect to the sample task order subfactor field work, the solicitation provided that the agency would evaluate whether the "[o]fferor has a good understanding of how to execute the work that needs to be performed . . . as well as whether the work is being carried out in a manner consistent with the assumptions that the offerors discussed. . . ." RFP at 152. In this regard, the solicitation instructed offerors to provide a discussion of the field methods to be used, including the types of equipment and techniques used to locate contamination and map its location, and any other techniques relevant to the field investigations, surveys, or removal/remedial activities. Id. at 140.

AMEC's proposal was assigned three significant weaknesses and four weaknesses under the field work subfactor, which resulted in the assignment of a deficiency to its proposal. With respect to the second significant weakness, the agency identified the following accumulated concerns:

The Offeror implies that geophysics will be addressed as SOP's [standard operating procedures] in appendices to the UFP-QAPP [Uniform Federal Policy-Quality Assurance Project Plan]. The QAPP worksheets are to include the project requirements for geophysics based on Engineering Manual (EM) 200-1-15.

The Offeror states that one of the characteristics for determining an ARAR [Applicable or Relevant and Appropriate Requirement] is that it is related to a law. This will result in an unnecessary number of "laws" being cited as ARAR's when they are not. The Offeror states that MECHA [Munitions and Explosives of Concern Hazard Assessment] scores will be calculated for the baseline as well as from the implementation of the remedial alternatives. The remedial alternatives have not been determined in the RI [Remedial

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task order factor. AMEC then filed a supplemental protest on the corrected debriefing.

Investigation] Report. The MECHA scores for the remedial alternatives should be addressed in the FS [Feasibility Study].

The Offeror states that the preferred alternative will be identified in the FS. The FS only provides the viable alternatives the PP [proposed plan] will identify the selected alternative.

The Offeror states that the PP will be finalized after the public comments are received and that the public meeting transcripts will be summarized and placed in the final PP. This is incorrect. The PP is final before it is sent to the public for comment

The Offeror states that comments received from the public will be included as an appendix to the DD [decision document]. The responses to public comments are not an appendix. They are Part III of the DD, which is the Responsiveness Summary.

AR, Exh. 3, SSEBR, at 103-04. AMEC asserts that this significant weakness was unreasonably assigned because its proposal does not imply that geophysics will be addressed in the SOPs. Comments at 11. To the contrary, argues the protester, in its proposal it states that it will use the 37 optimized UFP-QAPP worksheets to address all facets of the project. Protest at 15; Comments at 11. The protester further notes that its proposal also states that the UFP-QAPP will be prepared in accordance with EM200-15, and will be a standalone document with site-specific SOPs. Id. According to the protester, since geophysics is a requirement of the solicitation it is encompassed in what will be addressed in the worksheets. Id.

In reviewing protests that challenge an agency's evaluation of offerors' technical proposals, our Office does not reevaluate proposals; rather, we review the record to determine if the evaluation was reasonable, adequately documented, and consistent with the terms of the solicitation and applicable statutes and regulations. Alutiiq Tech. Servs. LLC, B-411464, B-411464.2, Aug. 4, 2015, 2015 CPD ¶ 268 at 4. An offeror's disagreement with the agency's evaluation does not demonstrate that the evaluation was unreasonable.

The agency has explained that the QAPP is a formal document describing in comprehensive detail the necessary quality assurance (QA), quality control (QC), and other technical activities that must be implemented to ensure that the results of the work performed will satisfy the stated performance criteria. Agency Response to Request for Information, Nov. 16, 2016. A QAPP presents the steps that should be taken to ensure that environmental data collected are of the correct type and quality required for a specific decision or use. Id. It presents an organized and systematic description of the ways in which QA and QC should be applied to the collection and use of environmental data. Id. A QAPP integrates technical and quality control aspects of a project throughout its life cycle, including planning, implementation, assessment, and corrective actions. Id. One must be approved for all data collection projects.

The agency explains that there are different requirements for the UFP-QAPP worksheets and the SOPs. Agency Response to Request for Information, Nov. 14, 2016, at 1. Specifically, the worksheets are used for planning and establishing the “big picture” objectives for the project, including geophysics and the use of physical data. Id. The worksheets set the path forward that will be implemented by the SOPs. Id. The agency further explains that it is important that the geophysicist be involved in preparing the UFP-QAPP worksheets because he or she is the key to ensuring that proper information is contained within the UFP-QAPP data quality objectives, not just in the SOPs. Id. Thus, the geophysicist should be involved to assist the team in developing worksheets that contribute to the requirements for completing the geophysical survey. Id. Specifically, the geophysicist should be involved in planning worksheets concerning project and data quality objectives; measurement performance criteria; and sampling design and rationale. Id.

The agency notes that in its proposal, AMEC does not mention the participation of the geophysicist in developing the UFP-QAPP. Memorandum of Law (MOL) at 9; see also AR, Exh. 3, SSEBR, at 103. Rather, the proposal states that the project manager, supported by the QC manager and the project chemist, will develop a site specific UFP-QAPP in accordance with the newly published EM 200-1-15. Id., citing to AR, Exh. 2B, AMEC Proposal. In the agency’s view, the lack of participation by the geophysicist in preparing the UFP-QAPP called into question whether geophysics would be addressed in the worksheets, and raised the implication that geophysics would only be addressed in the SOP’s. Agency Response, Nov. 14, at 2; see also AR, Exh. 3, SSEBR, at 103. It also called into question AMEC’s understanding of the UFP-QAPP and raised a concern that the UFP-QAPP would not be properly implemented. MOL at 9. Given the importance of geophysics to the project, and the fact that the offeror did not directly address the role of the geophysicist in preparing the UFP-QAPP, we find that the agency could reasonably come to the conclusion that the geophysicist would not be involved, and evaluate AMEC’s proposal accordingly.

In any case, as noted above, geophysics was just one of five concerns that the agency listed that resulted in the assignment of the significant weakness in issue, and the only concern that AMEC timely challenged.⁴ Even if we accept AMEC’s

⁴ In its comments on the agency report, AMEC asserted that the agency unreasonably was concerned that its proposal stated that one of the characteristics for determining an ARAR is that it is related to the law. Under our bid protest regulations, where, as here, a required debriefing is requested and provided, any basis of protest that was known or should have been known before, or as the result of the debriefing, must be filed within 10 days following the debriefing. 4 C.F.R. § 21.2(a)(2). The debriefing provided to the protester on September 23, 2016 listed all the concerns that resulted in the significant weakness being assigned under the field work subfactor, including the concern with the ARAR. Since AMEC

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view--that by stating it would address all requirements in the worksheets it was including geophysics--the record does not support the conclusion that, given the agency identified four additional concerns here, the evaluation would change.

AMEC next argues that even if it was properly assigned a significant weakness for implying that geophysics would be addressed in the SOPs, and not in the worksheets, the significant weakness did not relate to the area of field work. As a result, it should have been assigned under the assumptions subfactor, not the field work subfactor, because it relates to planning activities, and the contents of CERCLA project submittals and reports, not to field work or technical approach. As noted above, AMEC believes that if this significant weakness were assigned under the assumptions subfactor, it would not have three significant weaknesses relating to field work, and would not have a deficiency.

Our role in resolving bid protests is not to reevaluate proposals; we review the evaluation to ensure that it was reasonable, adequately documented, and consistent with the terms of the solicitation and applicable statutes and regulations. Alutiq Tech. Servs. LLC, *supra*. Here, the solicitation stated that, with respect to field work, offerors were to “provide a discussion of the field methods used, including the types of equipment and techniques used to locate . . . contamination and map its location, and any other techniques relevant to the field investigations, surveys or removal/remedial activities.” RFP at 140. The agency notes that techniques to be used include the sampling that is required to achieve a complete project. MOL at 8, 11.

The agency further notes that the RFP advised offerors that regarding the fieldwork subfactor, it would evaluate whether the offeror has a good understanding of how to execute the work as well as whether the work is being carried out in a manner consistent with the assumptions stated by the offeror. With respect to AMEC, as discussed above, the agency identified several items for this significant weakness under the subfactor. The agency concluded that if AMEC implemented those items as stated, there would be problems with the type, size or amount of the sampling. MOL at 9. For example, the agency raised concerns with AMEC’s proposal as it relates to geophysics and the UFP-QAPP. Given that the UFP-QAPP is critical to the efficient and effective design and execution of the field work in that it sets-up the parameters, breadth and scope of the work to be performed, including the level, type, number and repeated sampling that is required in performing fieldwork, it was reasonable for the agency to consider this issue under the fieldwork subfactor.⁵ As

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did not challenge the evaluation regarding the ARAR until it submitted its comments on the agency report on November 7, it is untimely. Desbuild Inc., B-409009, Jan. 6, 2014, 2014 CPD ¶ 23 at 5.

⁵ AMEC also protests that the agency unreasonably found a deficiency with respect to its cost/price proposal. This basis of protest is academic since we have

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a result, it was reasonable for the agency to assign AMEC an unacceptable rating under the technical approach to sample task order factor because the agency believed the three significant weaknesses constituted a deficiency under this one factor.

Competitive Range Determination

AMEC asserts that even if it had three significant weaknesses under the area of fieldwork, it should have been included in the competitive range because at the time the competitive range was determined, its proposal was evaluated similarly to the proposal of another offeror, identified as offeror A, which was included in the competitive range. Specifically, AMEC notes that at the time the competitive range was determined, it had three significant weaknesses, four weaknesses and two strengths, while offeror A had two significant weaknesses, nine weaknesses, and one strength. AMEC asserts that this demonstrates unequal treatment on the agency's part. We disagree. AMEC's proposal was evaluated as unacceptable under the sample task order factor. Since offeror A's proposal was evaluated as acceptable under that factor, eliminating AMEC from the competitive range, but not offeror A, does not amount to unequal treatment.

AMEC claims that the contracting officer improperly failed to consider its proposed cost which was lower than that proposed by all offerors that were awarded contracts before eliminating its proposal from the competitive range. Comments at 25-28. Here, the solicitation stated that a proposal that was rated unacceptable under any technical factor or unsatisfactory for past performance would not be considered for award. As a result, it was reasonable for the agency to exclude AMEC from the competitive range without considering its proposed cost. See TMC Design Corp., B-296194.3, Aug. 10, 2005, 2005 CPD ¶ 158 at 5 (where the agency reasonably concludes that a proposal is technically unacceptable, it is proper to exclude the proposal from the competitive range without considering price).

The protest is denied.

Susan A. Poling
General Counsel

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concluded that the agency reasonably found AMEC's proposal unacceptable under the sample task order factor, and therefore properly eliminated the proposal from the competitive range.