

Decision

Matter of: Tidewater, Inc.

File: B-407483; B-407483.2

Date: January 8, 2013

David Morrill for the protester.

Barbara E. Shestko, Esq., Amanda M. Page, Esq., and Jennifer J.S. Smith, Esq.,
Department of the Air Force, for the agency.

Christina Sklarew, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the rejection of the protester's proposal as unacceptable is denied where the agency's evaluation was consistent with the terms of the solicitation and supported by the record.

DECISION

Tidewater, Inc., of Columbia, Maryland, protests the rejection of its proposal as unacceptable under task order request for proposals (RFP) No. FA8903-09-R-9999-R184, issued by the Department of the Air Force for a performance-based environmental remediation effort for sites in Massachusetts, New Hampshire, and New York.

We deny the protest.¹

BACKGROUND

The RFP, issued as a small business set-aside, provided for the issuance of a fixed-price task order under the multiple-award indefinite-delivery/indefinite-quantity, Worldwide Environmental Restoration and Construction contract. Offerors were informed that the task order would provide for environmental remediation activities

¹ Because a protective order was not issued in connection with this protest, our decision is necessarily general.

in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) at Air Force bases and stations in New England. RFP, Statement of Objectives (SOO), at 32. The RFP established a maximum period of performance (including all option periods) of 96 months, and stated that the task order had an estimated value of \$10-13.75 million.² RFP at 1. The SOO identified general and site specific requirements. For example, with respect to the “Joe English Pond” site at the New Boston Air Force Station in New Hampshire,³ the SOO identified as a minimum performance objective the agency’s approval of a remedial investigation/feasibility study report within a year and a half of its notice to proceed.⁴ See RFP amend. 4, SOO, at 8.

The RFP provided that the task order would be issued on a best value basis, considering the following factors, in descending order of importance: technical approach, managerial approach, experience, past performance, and price.⁵ RFP at 22-23. The technical approach factor included two subfactors: understanding of the work and risk management approach. With respect to the understanding of the work subfactor, offerors were informed that the agency would evaluate the offeror’s approach to meeting the objective and requirements of the SOO. Id. at 24. The RFP also identified a number of minimum requirements offerors must satisfy under this subfactor, including, as relevant here, the offeror’s presentation of “an accelerated and technically sound approach to conducting the remedial investigation and feasibility study” at the Joe English Pond site. Id.

² Ultimately, the task order was issued for the amount of \$15.3 million. AR, Tab 27, Award Notice. As a result, this procurement falls within our jurisdiction to hear protests related to the issuance of task orders valued in excess of \$10 million. 10 U.S.C. § 2304c (e)(1)(B).

³ The Joe English Pond site is a 55-acre pond that had been used as an air-to-water bombing target from 1941 to 1956, and which contains munitions/explosives and contaminants.

⁴ The purpose of an remedial investigation/feasibility study report is:

to assess site conditions and evaluate alternatives to the extent necessary to select a remedy. Developing and conducting [a remedial investigation/feasibility study] generally includes the following activities: project scoping, data collection, risk assessment, treatability studies, and analysis of alternatives. The scope and timing of these activities should be tailored to the nature and complexity of the problem and the response alternatives being considered.

See 40 C.F.R. § 300.430(a)(2) (2012).

⁵ The experience and past performance factors were stated to be equally important.

Offerors were warned that an unacceptable rating for any subfactor would result in the offer being considered unacceptable. Id. at 23. An unacceptable rating was defined by the RFP as reflecting a proposal that failed to meet the specified minimum performance or capability requirements and had one or more deficiencies. Id. at 29. In this regard, the RFP defined a deficiency to be a material failure of a proposal to meet a government requirement or a combination of significant weaknesses in a proposal that increased the risk of unsuccessful contract performance to an unacceptable level. Id.

Six firms, including Tidewater, submitted proposals, which were evaluated by the Air Force's technical evaluation team (TET). Four proposals, including Tidewater's, were found to be technically unacceptable. Agency Report (AR), Tab 12, Initial TET Report, at 2. Tidewater's proposal was evaluated as unacceptable under the understanding of the work subfactor and technical approach factor, because the TET found as deficiencies the protester's failure to satisfy the minimum performance objectives at two sites, including the Joe English Pond site.⁶ Id. at 9. With respect to the Joe English Pond site, the TET found that Tidewater had not provided for the remedial investigation phase, which was a prerequisite for a record of decision,⁷ where the RFP required an approved remedial investigation and feasibility study report within a year and a half after notice to proceed. Id. at 15, citing RFP at 37. Tidewater's proposal indicated that immediately after award, it would initiate preparation of the feasibility study. See Tidewater's Proposal at 78.

The contracting officer decided to conduct discussions with all offerors. Tidewater was informed, among other things, that with respect to the Joe English Pond site, its

Technical Approach Pages 36A-36B does not include the necessary Remedial Investigation to reach the MPO [minimum performance objective] RI/FS [remedial investigation/feasibility study] or the proposed stretch goal of Record of Decision.

AR, Tab 14, Tidewater Discussions, at 4. In response, Tidewater informed the Air Force that:

⁶ The TET also expressed doubt that minimum requirements at two other sites could be achieved by the technical approach described by Tidewater in its proposal. AR, Tab 12, Initial TET Report, at 15.

⁷ A "Record of Decision" is a public document that explains the cleanup alternative selected to clean a CERCLA superfund site, and summarizes the information generated during the remedial investigation and feasibility study. CO's Statement at 10 n.2.

Tidewater determined that sufficient data was available to prepare the Remedial Investigation/Feasibility Study (RI/FS) Report. Therefore, additional field investigation activities were not included in our proposed technical approach.

AR, Tab 17, Tidewater Discussion Response, at 3.

The agency amended the RFP to provide a revised SOO (none of the terms of which are at issue here), and the contracting officer invited offerors to submit final proposal revisions. Tidewater was specifically informed that its proposal was still considered deficient and unacceptable, and provided a copy of the discussion points that had been raised previously.⁸ Tidewater was informed that it could revise any part of its proposal or choose to make no revisions. See AR, Tab 22, Tidewater Request for Final Proposal Revisions.

In its final proposal revision, Tidewater did not further address the concerns the agency had raised with respect to its approach to the Joe English Pond site or otherwise change its approach to this requirement in any way. The TET found Tidewater's final proposal revision to be technically unacceptable because the protester had not met the minimum requirements for the remedial investigation phase with respect to the Joe English Pond site. See AR, Tab 25, Final TET Report, at 13.

The task order was issued to Versar, Inc., and this protest followed a debriefing.

DISCUSSION

Tidewater objects to the Air Force's evaluation of its proposal as unacceptable with respect to its proposed approach to the Joe English Pond site. The protester contends that its approach of immediately beginning preparation of the feasibility study should have been found acceptable for this site, because Tidewater based its approach upon its conclusion that the Air Force itself already had the necessary data and that Tidewater's approach would avoid expensive duplicative work. See Protest at 3-4; Supp. Protest at 2-3. In this regard, Tidewater contends that another contractor was already performing remedial investigation of this site for the agency. See Tidewater Proposal at 77. Tidewater also contends that its proposal provided

⁸ The Air Force's request to Tidewater for its final proposal revision does not refer specifically to the deficiency associated with the Joe English Pond site. The Contracting Officer states that she believed that, after being notified of its deficiency and acknowledging the requirement for a remedial investigation/feasibility study report in its response to discussion questions, Tidewater would address this requirement in its final proposal revision. The protester does not protest that agency failed to conduct meaningful discussions.

for additional remedial investigation work, if it was necessary, and that its approach was based upon its professional experience on other, similar work reporting to the same region of the Environmental Protection Agency. Protest at 4.

The agency responds that it expected, in accordance with the solicitation's requirements, that the successful vendor would perform its own remedial investigation under the task order prior to beginning the feasibility study.⁹ In this regard, the CO states that the Military Munitions Response Program Remedial Investigation being conducted by the contractor identified by the protester does not address the Joe English Pond site. See CO's Statement at 14.

Our Office reviews challenges to an agency's evaluation of proposals only to determine whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 5. A protester's disagreement with the agency's judgment is, by itself, 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 that the agency reasonably assessed as a deficiency Tidewater's failure to propose a remedial investigation at the Joe English Pond site. As the agency notes, the RFP expressly required that offerors "[p]resent an accelerated and technically sound approach to conducting the remedial investigation and feasibility study" at the Joe English Pond site. AR at 4, citing RFP at 24.

In its initial proposal, Tidewater indicated to the agency that it intended to immediately commence preparation of the feasibility study without conducting a remedial investigation. In response to discussions raising this concern, Tidewater explained that it had not provided for any field investigation based upon its belief that sufficient data already existed. Although Tidewater also stated in its proposal that it would conduct remedial investigation, if necessary, the agency reasonably

⁹ The CO explains that a remedial investigation report addresses the nature and extent of contamination by describing the sampling activities conducted and the results of that sampling (that is, the levels of contaminants present in various media, such as soil, sediment, surface water, or groundwater). Where, as here, the site is a military munitions response program site, the remedial investigation would also describe the condition, estimated amount, and type of munitions remaining on the site; for example, the munitions could be on the shoreline surface, or buried, or underwater. The remedial investigation report would also assess, among other things, the human health risk and ecological risk from the contaminants, and determine the hazard level associated with the remaining munitions. CO's Statement at 12.

concluded that this statement alone did not provide a sound approach to conducting the remedial investigation and feasibility study for the Joe English Pond site.

Tidewater nevertheless argues that contractors involved here have provided “almost all of the necessary data required to prepare a ‘desktop [remedial investigation]”, and what little data may be missing was accounted for in our proposal.” Id. In this regard, Tidewater contends that its proposal adequately informed the agency that, to the extent that additional remedial investigation was required to fill in data gaps, the protester would perform this investigation.

Tidewater’s proposal, however, does not discuss the firm’s approach to providing a “desktop” remedial investigation or otherwise explain its approach to conducting a remedial investigation, “if required.” It is an offeror’s responsibility to submit an adequately written proposal, and an offeror’s disagreement with the agency’s judgment concerning the adequacy or merits of that proposal is not sufficient to establish that the agency acted unreasonably. See Caldwell Consulting Assocs., B-242767, B-242767.2, June 5, 1991, 91-1 CPD ¶ 530 at 6. Although Tidewater insists that it will adequately perform the required work at the Joe English Pond site, it failed to adequately explain this approach in its proposal, as required by the RFP.

The protest is denied.

Susan A. Poling
General Counsel