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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Iroquois Bar Corp. & Scrufari Construction Company Joint Venture
d/b/a IBCSCC JV

File: B-409683

Date: July 1, 2014

Arnold Collier III, Iroquois Bar Corp. & Scrufari Construction Company Joint Venture d/b/a IBCSCC JV, for the protester.

Qiana D. Davis, Esq., Department of the Army, Corps of Engineers, for the agency.
Matthew T. Crosby, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of protester's proposal as technically unacceptable is denied where record reflects that proposal omitted or did not clearly convey schedule information required by solicitation.

DECISION

Iroquois Bar Corp. & Scrufari Construction Company Joint Venture d/b/a IBCSCC JV, of Lackawanna, New York, protests the award of a contract to SCMC, LLC, of Salamanca, New York, by the Department of the Army, Corps of Engineers, under request for proposals (RFP) No. W912QR-14-R-0014 for the design and construction of a flight simulator facility at the Niagara Falls Army Reserve Base in New York. IBCSCC asserts that the agency's evaluation of its proposal was unreasonable.

We deny the protest.

BACKGROUND

The solicitation, which the agency issued on December 13, 2013, as a section 8(a) total small business set-aside, contemplated the award of a fixed-price contract for the design and construction of a flight simulator facility. RFP at 1, 7. Award was to be made based on the proposal determined to represent the best value to the government considering price and two factors, listed in descending order of importance: past performance, and technical. Id. at 8. The non-price factors, when

combined, were stated to be equal in importance to price. RFP at 8. The technical factor included two subfactors, also listed in descending order of importance: management plan, and schedule. Id. at 9.

The solicitation included proposal submission requirements and evaluation criteria for each of the non-price factors and subfactors. RFP at 11-13. As relevant to this protest, the proposal submission requirements for the schedule subfactor were as follows:

Demonstrate the construction phasing and durations for all key tasks including: obtaining required permits, submittals, submittal reviews, civil work, building construction, red-zone meeting, furniture installation, pre-final inspection, and final inspection. Show completion, turnover, and as-built submissions.

Id. at 13. The evaluation criteria for the schedule subfactor were “the offeror’s capability to complete the schedule within the proposed contract duration and the realism of the schedule.” Id.

The solicitation stated that adjectival ratings would be assigned to proposals under each of the non-price factors and subfactors. RFP at 9-10. The ratings and their definitions were provided in the solicitation. Id. The ratings for the technical factor and subfactors were: outstanding; good; acceptable; marginal; and unacceptable. Id. at 10. As relevant to this protest, the unacceptable rating was defined as follows: “Proposal does not meet requirements and contains one or more deficiencies and is unawardable.” Id.

The agency received a number of proposals by the solicitation’s closing date. A source selection evaluation board (SSEB) evaluated the proposals and documented the evaluation findings in a report. Agency Report (AR), Tab 6, SSEB Report. IBCSCC’s proposal was evaluated as the lowest-priced proposal. Id. at 15. However, IBCSCC’s proposal was assigned a rating of unacceptable under the technical factor; a rating of marginal under the management plan subfactor; and a rating of unacceptable under the schedule subfactor. Id. at 3, 14. As relevant to this protest, the SSEB documented the basis for the IBCSCC’s unacceptable rating under the schedule subfactor as follows: “The proposal did not include submittal review, furniture installation and turnover information, which was required in accordance with Section 00112 [of the solicitation].”¹ Id. at 14.

The source selection authority, who also was the contracting officer in this procurement, reviewed the SSEB’s findings. AR, Tab 9, Source Selection Decision

¹ The SSEB also found that IBCSCC’s proposed schedule was “too aggressive considering site and weather conditions.” AR, Tab 6, SSEB Report, at 14.

Document, at 1. She then performed a best value analysis among the proposals that were assigned ratings of acceptable or higher under the technical factor. Id. at 2, 4. Thus, she did not consider IBCSCC's proposal in her best value analysis. SCMC's proposal, which offered a price of \$5,242,985.60, was selected for award. Id. at 5.

After IBCSCC was notified of the award to SCMC, IBCSCC filed a protest with our Office.

DISCUSSION

IBCSCC challenges the unacceptable rating assigned to its proposal under the schedule subfactor. As stated above, the SSEB assigned the unacceptable rating based on findings that IBCSCC's proposal did not include three types of schedule information that the solicitation required: furniture installation information; submittal review information; and turnover information. AR, Tab 6, SSEB Report at 14. IBCSCC argues that the agency's findings regarding each type of information were flawed.

Regarding furniture installation information, IBCSCC does not dispute the agency's finding that its proposal omitted this information. See Protest at 1. Rather, IBCSCC claims that such information was not required by the solicitation. Id.; Comments at 1. In this regard, IBCSCC asserts that prior to the solicitation's closing date, the agency established that "furniture was GFGI [government furnished, government installed]," and, therefore, a schedule for furniture installation was not required. See Comments at 1. In support of this assertion, IBCSCC points to the following solicitation question-and-answer exchange between an offeror and the agency:

[Offeror Question:] Furniture Systems - these workstations are indicated on Drawing I-101 - Note 1 indicated GFGI. Please confirm these are not part of this contract.

Government Response. The furniture is government furnished and "for information only." No additional information will be provided, please use the information in the solicitation.

Comments, attach. 1, Bid Inquiry Contractor Report, at 1-2 (emphasis and punctuation as in original).

In considering protests challenging an agency's evaluation, we do not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is consistent with the terms of the solicitation and applicable statutes and regulations. Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6; Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3.

As stated above, the solicitation's proposal submission requirements for the schedule subfactor were: "Demonstrate the construction phasing and durations for all key tasks including . . . furniture installation . . ." RFP at 13. Thus, the solicitation required proposals to include "phasing and duration" (i.e., schedule) information for furniture installation. As discussed below, we do not view the solicitation question-and-answer exchange relied on by IBCSCC to somehow have modified this requirement.

As an initial matter, while the agency's answer in the exchange states that the government will provide the furniture, it is silent with regard to whether the government or the offeror is responsible for installing the furniture. In any event, nothing in the agency's answer suggests that offerors should ignore the solicitation's requirement for "phasing and duration" information (i.e., schedule information) for furniture installation. To the contrary, the agency's answer directs offerors to "use the information in the solicitation." Given that IBCSCC's proposal omitted furniture installation information that the solicitation expressly called for, we view the agency's evaluation finding to be reasonable.

IBCSCC also challenges the agency's finding that the firm's proposal omitted submittal review information and turnover information. Comments at 1-2. Regarding submittal review information, IBCSCC points out that the schedule in its proposal included a line for "documents and submittals." Id. at 1. Regarding turnover information, IBCSCC points out that its schedule included lines for "final cleaning, final punch list, demobilization, O&M Manuals and as built drawings." Id. at 2. IBCSCC asserts that these tasks are "typically considered 'turnover items'" and, therefore, its schedule provided the required turnover information. Id.

An offeror bears the burden of submitting an adequately written proposal, and it runs the risk that its proposal will be evaluated unfavorably where it fails to do so. Tetra Tech Tesoro, Inc., B-403797, Dec. 14, 2010, 2011 CPD ¶ 7 at 5; Int'l Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7. A protester's disagreement with an agency's evaluation judgments does not establish that the agency acted unreasonably. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7; Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

As stated above, the solicitation's proposal submission instructions for the schedule subfactor directed that offerors "[d]emonstrate the construction phasing and durations for all key tasks including . . . submittals, submittal reviews, . . . pre-final inspection, and final inspection." RFP at 13. The schedule subfactor instructions also directed offerors to "[s]how completion, turnover, and as-built submissions." Id.

While IBCSCC maintains that the agency should have interpreted certain lines in its schedule to represent submittal review information or turnover information, IBCSCC acknowledges that its schedule did not include lines designated as the submittal review or turnover phases of the project. Further, IBCSCC's assertion that the

“documents and submittals” line of its schedule satisfied the solicitation’s requirement for submittal review information ignores the solicitation’s separate requirements for submittal information and submittal review information in the schedule. See RFP at 13. In sum, IBCSCC’s schedule did not specifically communicate that the firm had accounted for the submittal review and turnover phases of the project in its schedule. Since the solicitation expressly required this information, we conclude, based on the record, that the agency’s findings were reasonable. IBCSCC’s challenge on this protest issue is denied.

IBCSCC also challenges the agency’s finding that the firm’s proposed schedule was too aggressive, as well as the agency’s best value determination. As stated above, the solicitation provided that a rating of unacceptable would render a proposal “unawardable.” RFP at 10. Because we conclude that the agency reasonably evaluated IBCSCC’s proposal as unacceptable under the schedule subfactor (and, hence, not subject to award), and because the agency received other proposals that were evaluated as acceptable or better, IBCSCC is not an interested party to raise these challenges.² See Tetra Tech Tesoro, Inc., supra, at 6; Resource Title Agency, Inc., B-402484.2, May 18, 2010, 2010 CPD ¶ 118 at 9.

The protest is denied.

Susan A. Poling
General Counsel

² We note that in its protest, IBCSCC also challenged the agency’s evaluation of the firm’s proposal under the management plan subfactor. Protest at 1. The agency in its report responded to IBCSCC’s allegations on this issue. Memorandum of Law at 3-4. In its comments on the agency report, IBCSCC did not address the agency’s response. Accordingly, we consider IBCSCC to have abandoned this ground of protest. See JSR, Inc., B-405463, Nov. 8, 2011, 2011 CPD ¶ 265 at 5 n.6; Tiger Truck LLC, B-310759, B-310759.2, Feb. 7, 2008, 2008 CPD ¶ 44 at 3.