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Decision

Matter of: ThyssenKrupp Elevator Corporation

File: B-410456

Date: December 30, 2014

Terry E. Thomason, Esq., Corianne W. Lau, Esq., and Jessica Y. K. Wong, Esq., Alston Hunt Floyd & Ing, and Calvert G. Chipchase, Esq., Cades Schutte LLP, for the protester.

Theodore Watson, Esq., Nicole L. Carter, Esq., John Scorsine, Esq., and Leanna Young, Esq., Watson & Associates, LLC, for Centric Elevator Corporation, the intervenor.

Ron Ashlock, Esq., Department of the Navy, Naval Facilities Engineering Command, for the agency.

Young S. Lee, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of awardee's corporate experience is denied where the evaluation was reasonable and consistent with the solicitation's evaluation criteria.

DECISION

ThyssenKrupp Elevator Corporation of Honolulu, Hawaii, protests the award of a contract to Centric Elevator Corporation (CEC), of Denver, Colorado, under request for proposals (RFP) No. N62478-14-R-2424, issued by the Department of the Navy, for vertical transportation maintenance and repair services at various locations throughout Oahu, Hawaii. The protester contends that the agency's evaluation of CEC's corporate experience was flawed because CEC does not have a current physical or legal presence in the state of Hawaii and lacks the licenses and permits necessary to perform the contract.

We deny the protest.

BACKGROUND

The RFP, issued on May 16, 2014, contemplated the award of an indefinite-delivery, indefinite-quantity (ID/IQ), fixed-price contract. RFP at 69. The solicitation established that award would be made to the offeror submitting the lowest-priced, technically acceptable proposal based upon the agency's evaluation of price and the following three non-price factors: corporate experience, safety, and past performance. RFP at 75; RFP amend. 1, at 2.

As relevant to this protest, with respect to the corporate experience evaluation factor, the RFP instructed offerors to provide a list of relevant vertical transportation equipment maintenance and repair contracts and subcontracts, which were completed no more than seven years prior to the issuance date of the solicitation, or which were in progress. RFP at 71. Relevant contracts and subcontracts were limited to only those that were similar in scope, i.e., for both vertical transportation equipment maintenance and repair, and which were valued in the aggregate of over \$320,000 or more per year. RFP amend. 1, at 3. The solicitation advised that offerors may include contracts entered into with any local governmental agency (federal, state, or local), as well as contracts with commercial entities. RFP at 71.

In response to the RFP, the agency received proposals, including ThyssenKrupp's and CEC's. Agency Report (AR), Tab 9, Initial Business Clearance Memorandum at 16. Discussions were held with all offerors, and after the receipt of final proposal revisions, all proposals were found to be technically acceptable. AR, Tab 15, Final Business Clearance Memorandum at 5. CEC submitted the lowest-priced, technically acceptable offer, and ThyssenKrupp submitted the second lowest-priced offer. Id. at 4. The agency made award to CEC, and this protest followed.

DISCUSSION

ThyssenKrupp contends that the agency failed to properly evaluate CEC's proposal under the corporate experience factor, alleging that the awardee does not have a current physical or legal presence in Hawaii, and lacks the necessary qualifications to perform in the state. Specifically, with respect to the awardee's qualifications, ThyssenKrupp argues that CEC is not appropriately licensed in Hawaii and that CEC lacks the necessary local permits and authorizations to perform the contract requirements.¹ The protester contends that, based on these failures, the agency

¹ The initial protest also alleged that CEC could not comply with certain other solicitation requirements and that the Navy improperly evaluated CEC's price proposal. In response to the protester's allegations, the agency provided a detailed rebuttal in its agency report. ThyssenKrupp's comments on the agency report, however, failed to address the agency's responses. Consequently, we consider the protester to have abandoned these arguments and will not consider them further.

(continued...)

should have concluded that CEC's proposal was unacceptable under the corporate experience factor.

The evaluation of an offeror's proposal is a matter largely within the agency's discretion. Frontline Healthcare Workers Safety Found., Ltd., B-402380, Mar. 22, 2010, 2010 CPD ¶ 91 at 5. In reviewing a protest that challenges an agency's evaluation of proposals, our Office will not reevaluate proposals; rather, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Ocean Servs., LLC, B-406087, B-406087.2, Feb. 2, 2012, 2012 CPD ¶ 62 at 5. With regard to the protester's assertion that the agency's evaluation of the awardee's corporate experience was unreasonable because it failed to consider that CEC lacks a legal and physical presence in the state of Hawaii, we find the agency's evaluation unobjectionable.

The solicitation established that the agency's evaluation of an offeror's corporate experience would consider the offeror's relevant experience on vertical transportation equipment maintenance and repair contracts and subcontracts completed during the last seven years, or currently in progress, to assess an offeror's qualifications to manage and complete the requirements of the solicitation. RFP amend. 1, at 3. Relevant contracts and subcontracts were limited to only those that were similar in scope, *i.e.*, for both vertical transportation equipment maintenance and repair, and which were valued in the aggregate of over \$320,000 or more per year. Id.

CEC submitted three contracts in accordance with the solicitation's criteria. AR, Tab 9, Initial Business Clearance Memorandum at 17. The agency evaluated CEC's three contracts and found that the awardee presented acceptable corporate experience. Id. at 17-18. The agency's corporate experience evaluation did not consider the location of CEC's prior contracts. See id. The agency also did not consider whether CEC had an office located in Hawaii or if CEC had specific licenses or permits to operate within the state. See id.

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See Organizational Strategies, Inc., B-406155, Feb. 17, 2012, 2012 CPD ¶ 100 at 4 n.3. ThyssenKrupp also questioned whether CEC submitted a valid proposal. Here, the record demonstrates that CEC resolved all ambiguities with regard to its corporate identity and signatory authority during discussions. CEC Negotiation Letter Response dated July 23, 2014. Therefore, we find no merit to this argument. See Dorris, Helen, & William McMurtry, B-275803, B-275803.2, Mar. 31, 1997, 97-2 CPD ¶ 112 at 5 (ambiguity concerning the identity of an offeror may properly be resolved during discussions prior to award).

Here, the solicitation clearly set forth the basis on which an offeror's corporate experience would be evaluated, which did not include consideration of whether an offeror has a physical or legal presence in the state of Hawaii. While the protester argues that the Navy failed to assess an offeror's qualifications to manage and complete the requirements in a state that is not contiguous with the continental United States and contends that the remote location and the scope of the requirements here "present unique risks for the procurement" that were not considered in the agency's evaluation, we do not agree that the solicitation required such a review. Comments at 4. There was no requirement that prior contracts be performed outside the contiguous United States in order to be considered relevant; nor was there a requirement under the solicitation to perform a separate risk assessment related to the geographical location of an offeror's prior corporate experience. On this basis, we conclude that the protester has not shown the agency's evaluation of corporate experience to be unreasonable.²

With regard to the protester's allegations that CEC is not appropriately licensed in the state of Hawaii and that the awardee lacks the necessary local permits and authorizations to perform the contract, we find these matters to be outside of our review.

The solicitation's deliverables section required the contractor to obtain all required permits, licenses, and authorizations necessary to perform work under the contract, and to comply with all applicable federal, state, local, and installation laws and regulations. RFP § F, Deliverables, at 1, 5. These requirements were established within the solicitation as contract deliverables and were to be submitted "[p]rior to commencing work and as subsequent changes occur."³ *Id.* at 1. The RFP also stated that the contractor would be required to maintain an office or place of business on the island of Oahu, Hawaii, which was to be established within fifteen calendar days after award of the contract. *Id.* at 20.

Provisions, such as those in the solicitation here, that require a contractor to obtain necessary licenses and permits, establish performance requirements that must be satisfied by the successful offeror during contract performance; as such, offerors are not required to satisfy the requirements prior to award, and the requirements do not affect the award decision, except as a matter of a contractor's general responsibility. HBC Management Services, Inc., B-407585, Jan. 14, 2013, 2013

² To the extent that ThyssenKrupp believed that the corporate experience factor should have also incorporated a requirement to demonstrate experience outside the continental United States, it was required to protest the solicitation terms by the due date for receipt of proposals. 4 C.F.R. § 21.2 (a)(1) (2014).

³ The solicitation advised that the contractor "shall start work 30 calendar days after award." RFP at 13.

CPD ¶ 32 at 3; Crown Worldwide Moving & Storage, B-406614, July 17, 2012, 2012 CPD ¶ 208 at 2. Our Bid Protest Regulations generally preclude our review of a contracting officer's affirmative determination of a vendor's responsibility, except in circumstances not alleged or demonstrated here. 4 C.F.R. § 21.5(c). Ultimately, whether CEC complies with the license and permit requirements is a matter of contract administration, which we will not review. 4 C.F.R. § 21.5(a). Thus, ThyssenKrupp's contention provides no basis for questioning the agency's evaluation. See Crown Worldwide Moving & Storage, supra.

The protest is denied.

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General Counsel