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Decision

Matter of: Modus Operandi, Inc.

File: B-411341; B-411341.2

Date: July 2, 2015

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Christopher S. Cole, Esq., Department of the Air Force, for the agency.

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DIGEST

Protest alleging the agency unreasonably evaluated the protester's technical proposal is denied where the record reflects the protester's proposal lacked adequate detail and the evaluation was otherwise reasonable and consistent with terms of solicitation.

DECISION

Modus Operandi, Inc., of Melbourne, Florida, protests the award of a contract to Connexa, LLC, of Litchfield Park, Arizona, by the Department of the Air Force under request for proposals (RFP) No. FA8730-15-R-0003. Modus alleges, among other things, that the agency's evaluation of its technical proposal was unreasonable because it was based on unstated evaluation criteria, and did not reflect information contained in Modus' proposal.

We deny the protest.

BACKGROUND

The RFP, issued on November 19, 2014, was set aside for small business concerns (under the North American Industrial Classification System code 541511 Custom Computer Programming) for maintenance, updates, and enhancements to the Air Force's Distributed Common Ground/Surface System (DCGS) Integration Backbone

(DIB) Development software and support of the DIB user community.¹ RFP, Cover Letter, at 1. The RFP contemplated award of a time-and-materials contract, with cost-reimbursement contract line items for travel, for a 6-month base period, one 6-month option, and two 1-year options. RFP, attach. 5, § L, at 5. The RFP provided that award would be made on a best-value basis considering the following factors: technical and cost/price.² RFP, attach. 6, § M, at 3-4. The technical factor included two subfactors: technical approach and management approach, both of equal importance. Id. at 4-5. The RFP contemplated two distinct but related assessments for each technical subfactor: the technical rating and the technical risk rating.³ Id. at 5. The technical factor was more important than cost/price, and within the technical factor the subfactors were each of equal importance. Id. at 4-5. The RFP also stated that the technical evaluation subfactors, when combined, would be significantly more important than cost/price. Id. at 5.

Under the technical factor and subfactors, proposals were to be assigned adjectival ratings of outstanding, good, acceptable, marginal, or unacceptable, with risk ratings of low, moderate or high. RFP, attach. 6, § M, at 6. As relevant here, the unacceptable rating was defined as: “[p]roposal does not meet requirements and contains one or more deficiencies and is unawardable.” Id. A deficiency was defined as 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.” Id., citing DoD Source Selection Procedures, dated Mar. 4, 2011, at 25.

With respect to the technical factor, the RFP instructed offerors to provide the “actual methodology [the offeror] would use for accomplishing/satisfying the DIB Statement-of-Work (SOW).” RFP, attach. 5, § L, at 10. As regards the management approach subfactor specifically, the RFP noted that this subfactor “identifies the proposed plan that encompasses integration starting at contract award, through transition, completing with [the offeror’s] team at full operational

¹ The Air Force DCGS system is the Air Force’s primary intelligence, surveillance and reconnaissance collection, processing, exploitation, analysis and dissemination system. Contracting Officer’s (CO) Statement at 5. This weapon system employs global communications architecture to connect to multiple intelligence platforms and sensors. Id. at 5-6.

² Cost/price was to be evaluated using one or more of the techniques defined in Federal Acquisition Regulation (FAR) § 15.404-1 in order to determine if it was reasonable and realistic. RFP, attach. 6, § M, at 8.

³ The technical risk rating was to be an assessment of technical risk which considered the identification of weaknesses, the potential for disruption of schedule, increased costs, degradation of performance, the need for government oversight, or the likelihood of unsuccessful contract performance. RFP, attach. 6, § M, at 6.

capacity (FOC), and beyond in the role as outlined in the [SOW].” RFP, attach. 6, § M, at 5.

As relevant here, the SOW requires offerors to maintain appropriate security clearances for contractor personnel to access various specified facilities and sites, and to register all contractor locations that require export controlled data with the Joint Certification Office (JCO).⁴ See RFP, SOW ¶¶ 4.10 and 6.0, at 12. The SOW also states that the contractor is required to:

[S]upport “flex force” team concept which responds to changes and provides the Government with the flexibility to decrease or increase development velocity. The “flex force” team concept allows the contractor to right size the development team size in response to development priority and workload changes.

RFP, SOW ¶ 3.2.1, at 6.

The RFP stated that the offeror’s management approach would be evaluated to assess how well it demonstrated the offeror’s understanding of the work objectives in the SOW and specific tasks, as well as the thoroughness of the integration plan, specifically transition, as required by the SOW. RFP, attach. 6, § M, at 7.

The agency received three proposals in response to the RFP. Agency Report (AR), Tab 13, Proposal Analysis Report (PAR), at 5. A source selection evaluation board (SSEB) evaluated the proposals. *Id.* at 1. The SSEB identified strengths, weaknesses, and deficiencies, and assigned ratings under each of the factors and subfactors. The technical subfactor-level ratings for Modus’ and Connexa’s proposals, together with their total evaluated prices, are shown in the table below.

⁴ This requirement necessitates a contractor employee, as a data custodian, at the location where the work is to be performed.

	Modus Operandi	Connexa
Technical Approach		
Technical	Acceptable	Good
Technical Risk	Low	Low
Management Approach		
Technical	Unacceptable	Good
Technical Risk	Moderate	Low
Cost/Price		
Proposed Price	\$1,432,835	\$1,805,857
Evaluated Price	\$1,441,042	\$1,805,857

Id. at 8-17.

The agency stated that Modus' unacceptable management approach rating, referenced above, was based on its failure to provide information required by the RFP; accordingly, the proposal was ineligible for award.⁵ CO Statement at 5. More specifically, the agency identified two deficiencies (as well as another weakness) in the proposal: (1) failure to account for applicable security clearance procedures and JCO registration procedures, as required by SOW sections 4.10 and 6.0; and (2) failure to account for DIB access procedures required by SOW section 7.0. AR, Tab 13, PAR, at 15-16.⁶ Id.

⁵ The RFP reserved the right to hold discussions if the agency decided that doing so would be in the best interest of the government. RFP, attach. 6, § M, at 4. Here, the agency did not conduct discussions. CO Statement at 23. Although Modus complains about the agency's decision not to open discussions, there generally is no obligation for an agency to conduct discussions where, as here, the solicitation specifically instructs offerors that award may be made on the basis of initial proposals. FAR § 15.306(a)(3); Colmek Sys. Eng'g, B-291931.2, July 9, 2003, 2003 CPD ¶ 123 at 7. Further, an agency is not precluded from making award on the basis of initial proposals merely because an unacceptable lower-priced offer might be made acceptable through discussions. Integration Techs. Group, Inc., B-274288.5, June 13, 1997, 97-1 CPD ¶ 214 at 6.

⁶ In this decision, we address the merits of only the first challenged deficiency, because, as discussed below, we have concluded that the agency's assessment, in this regard was reasonable. The protester also alleges that the agency improperly assigned weaknesses to its proposal under the technical and management approach subfactors. In addition, Modus complains that the agency assigned strengths to the awardee's proposal, but did not recognize equivalent or better strengths in Modus' proposal. Finally, in a supplemental protest (B-411341.2), the protester contends that the agency conducted flawed price reasonableness and price realism evaluations. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556, only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective
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After reviewing the SSEB's evaluation, the source selection authority selected Connexa for award. CO's Statement at 23. Following a debriefing, Modus filed this protest with our Office.

DISCUSSION

Modus challenges the deficiency assigned to its proposal under the management approach subfactor for failing to account for applicable security clearance procedures and JCO registration procedures in its integration plan, as required by SOW sections 4.10 and 6.0. Protest at 4-5; Comments at 3. Specifically, Modus contends that the RFP did not require this information to be included in its integration plan. Protest at 4. Alternatively, Modus contends that because its proposal stated that it already met these requirements, it had no obligation to further discuss them in its integration plan. Id.

More specifically, Modus argues that its proposal contained sufficient information for the Air Force to determine that it had the requisite security clearances and JCO registrations because its proposal stated as follows:

Our team already meets or exceeds SOW sections 5 & 6 requirements or will upon award of the DIB contract. The participating members of our team have the security clearances required for community support, and Modus Operandi has a SCIF with TOP SECRET storage capability.

AR, Tab 7b, Modus Technical Proposal, at 1 (cited in part by Protest at 4-5; Protester's Comments at 3).

The agency responds that Modus' proposal does nothing more than state that Modus' team already meets or exceeds the requirements for security clearances and JCO registration, but nowhere describes the procedures it would use for maintaining appropriate security clearances or obtaining JCO registration, as required by the RFP. CO's Statement at 26-30. The agency further notes that Modus' proposal identifies several subcontractors needed to execute its proposed

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bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. See 4 C.F.R. § 21.0(a)(1). Since, as noted above, and discussed below, we have concluded that the agency's assessment of a deficiency in Modus' proposal was reasonable, its proposal was ineligible for award. In addition, because the agency received at least one other proposal that was evaluated as acceptable or better, Modus is not an interested party to further challenge the procurement. Tetra Tech Tesoro, Inc., B-403797, Dec. 14, 2010, 2010 CPD ¶ 7 at 6.

integration plan, and cites at least six locations nationwide for performance of work, but fails to address how it will meet the security clearance and JCO registration requirements for all of these team members.⁷ CO's Statement at 29-30, citing AR, Tab 7b, Modus Technical Proposal, at 1.

In reviewing a protest against an agency's evaluation of proposals, our Office will not re-evaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13; Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. It is an offeror's obligation to submit an adequately-written proposal for the agency to evaluate. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 19. An offeror, including an incumbent contractor, must furnish, within its proposal, all the information that a solicitation requests regarding its capabilities to perform the contract. Wegco, Inc., B-405673.3, May 21, 2012, 2012 CPD ¶ 161 at 3. An offeror's technical evaluation is dependent on the information furnished, and an offeror that fails to submit an adequately written proposal runs the risk of having its proposal rejected as unacceptable. Healthstar VA, PLLC, June 22, 2007, 2007 CPD ¶ 114 at 2. Proposals with significant informational deficiencies properly may be excluded from further consideration, whether the deficiencies are attributable to either omitted or merely inadequate information addressing fundamental factors. American Gov't Servs., Inc., B-292242, Aug. 1, 2003, 2003 CPD ¶ 163 at 4.

Here, the RFP informed offerors that their technical proposals must include the actual methodology offerors intended to use to meet the requirements of the SOW. RFP, attach. 5, § L, at 10. The SOW requirements included obtaining and maintaining security clearances for contractor personnel, and JCO registrations for certain locations, as well as maintaining the flexibility to increase or decrease personnel depending on needs and priorities. RFP, SOW ¶¶ 3.2.1, 4.10, 6.0, at 6, 12. Offerors were further warned that, with respect to the management approach, a proposal would be evaluated on the basis of its proposed integration plan starting at contract award, through transition, completing with the offeror's team at full operational capacity, and beyond in the role as outlined in the SOW. RFP, attach. 6, § M, at 5.

Although Modus' proposal included numerous subcontractors and other team members, and referenced multiple locations nationwide for performance of work, it

⁷ In its protest, Modus concedes that, at the time of proposal submission, only it and one of its subcontractors, Cohesive Integrations, met the security clearance and JCO registration requirements. Protest, exh. A, at 9. Modus also recognizes that its proposal provides for additional qualified and available staff to be used as a "flex force" at multiple locations as development priority and workload changes. Protester's Comments at 4, citing AR, Tab 7b, Modus Technical Proposal, at 1.

failed to provide any methodology, procedures, or plans concerning obtaining and maintaining security clearances for personnel, or JCO registrations for the various locations. Instead, Modus, referring only to itself and one subcontractor, asserted that its team “already meets or exceeds SOW sections 5 & 6 requirements, or will upon award” AR, Tab 7b, Modus Technical Proposal, at 1.

On this record, we find no basis to question the agency’s assessment of a deficiency, nor do we find the evaluation to be unreasonable or inconsistent with the evaluation criteria set forth in the RFP.

The protest is denied.

Susan A. Poling
General Counsel