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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Phoenix Environmental Design, Inc.

File: B-411746

Date: October 14, 2015

Colin-Chad Gill, Phoenix Environmental Design, Inc., for the protester.
Elyse M. Griffiths, Esq., Department of Veterans Affairs, for the agency.
Katherine I. Riback, Esq., and Jonathan L. Kang, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the terms of a solicitation for fertilizers are ambiguous and do not adequately communicate the agency's requirements is denied where the solicitation provides sufficient information on which vendors can compete intelligently and on a relatively equal basis.

DECISION

Phoenix Environmental Design, Inc., of Newman Lake, Washington, a service-disabled, veteran-owned small business (SDVOSB), protests the terms of request for quotations (RFQ) No. VA786-15-Q-0287 (RFQ-0287) issued by the Department of Veterans Affairs (VA). Phoenix contends that certain terms of the solicitation are ambiguous and do not adequately communicate the agency's requirements.

We deny the protest.

BACKGROUND

On April 10, 2015, prior to the issuance of the solicitation challenged here by Phoenix, the agency published RFQ No. VA-786-15-Q-0161 (RFQ-0161) for fertilizer, pesticides, fungicides, herbicides and pre-emergents at the Florida National Cemetery. The solicitation contained contract line item numbers (CLINs) 0001-0003 for fertilizer with a nitrogen, phosphorous, and potassium (NPK) rating of

(15-0-15)¹ and stated, in the salient characteristics sections of these CLINs, that the fertilizer must contain 15 percent total nitrogen (2 percent ammoniacal nitrogen and 13 percent urea nitrogen) and 15 percent soluble potash, and be derived from ammonium phosphate, muriate of potash, polymer coated urea, and urea. Agency Response to GAO Questions (Oct. 5, 2015), at 1-2. CLIN 0004 was for a 0-0-15 fertilizer and stated, in the salient characteristics section of the CLIN, that it was to contain 15 percent soluble potash and that it had to be derived from ammonium phosphate, muriate of potash and polymer coated urea. Id. at 3. Phoenix protested the terms of the solicitation as ambiguous. The agency subsequently cancelled the solicitation, and our Office dismissed the protest as academic. Phoenix Envtl. Design, Inc., B-411381.2, June 10, 2015.

On June 18, the VA posted the current solicitation, RFQ-0287, on the Federal Business Opportunities website for the same fertilizer requirements at the Florida National Cemetery. The solicitation includes 23 CLINs. This protest concerns CLINs 0001 through 0004. CLINs 0001-0003 for the current solicitation are for a 15-0-15 fertilizer, and state in the salient characteristics that they must contain 15 percent total nitrogen (2 percent ammoniacal nitrogen and 13 percent urea nitrogen) and 15 percent soluble potash; as compared to the prior solicitation, these CLINs state that the fertilizer must be derived from muriate of potash and polymer coated urea, and do not require a derivation from ammonium phosphate. RFQ at 7-8. CLIN 0004 is for a 0-0-15 fertilizer, which must be comprised of 15 percent soluble potash; as compared to the prior solicitation, this fertilizer must be derived from muriate of potash.² Id. at 4. This protest, filed on July 8, followed.³

DISCUSSION

Phoenix argues that the terms of RFQ-0287 are ambiguous and do not provide adequate information regarding the agency's requirements in a manner that allows

¹ NPK is a rating system that describes the amount of nitrogen (N), phosphorous (P), and potassium (K), consisting of three numbers separated by dashes that indicates the chemical content of the fertilizers. Decl. of Agency Agronomist (Aug. 8, 2015) ¶ 4; Protest at 2.

² As relevant to this protest, on July 21, after this protest was filed, the agency issued amendment No. 4 to RFQ-0287, which modified CLIN 0004 by deleting the requirement that the fertilizer had to be derived from "Polymer Coated Urea," and extended the closing date for receipt of quotations. RFQ-0287, Amend. No. 4 (July 21, 2015).

³ The agency states that three quotations were received by the July 28 amended closing date. Contracting Officer's Statement at 1.

offerors to submit compliant proposals. In this regard, the protester argues that although the previous solicitation, RFQ-0161, provided information concerning the required derivation for the fertilizers required under CLINs 0001-0004, the present solicitation, RFQ-0287, lacks such information and is, therefore, ambiguous or otherwise defective.⁴ For the reasons discussed below, we find no basis to sustain the protest.

Generally, a contracting agency must provide offerors with sufficient detail in a solicitation to enable them to compete intelligently and on a relatively equal basis. AirTrak Travel et al., B-292101 et al., June 30, 2003, 2003 CPD ¶ 117 at 12-13. There is no requirement that a competition be based on specifications drafted in such detail as to completely eliminate all risk or remove every uncertainty from the mind of every prospective offeror; to the contrary, an agency may provide for a competition that imposes maximum risks on the contractor and minimum burdens on the agency, provided the solicitation contains sufficient information for offerors to compete intelligently and on equal terms. CW Gov't Travel, Inc.--Recon.; CW Gov't Travel, Inc., et al., B-295530.2 et al., July 25, 2005, 2005 CPD ¶ 139 at 7.

CLINS 0001-0003

Both solicitations, RFQ-0161 and RFQ-0287, specify that for CLINs 0001 to 0003, the fertilizer must contain 2 percent ammoniacal nitrogen. Agency Response to GAO Questions (Oct. 5, 2015), at 1-2 (quotes RFQ-0161, Amendment No. 1); RFQ-0287 at 7-8. Phoenix contends that although RFQ-0161 specified that the fertilizer must be derived from ammonium phosphate, muriate of potash, polymer coated urea, and urea, the current RFQ-0287 does not list ammonium phosphate. The protester argues, therefore, that the solicitation is ambiguous or otherwise defective because it does not list the source from which ammoniacal nitrogen must be derived. Protest at 5; Phoenix's Response to GAO Questions (Oct. 7, 2015) at 3.

⁴ The protester also challenged the terms of CLINs 0005 and 0006 on the grounds that they involved items that were currently under a proprietary patent and therefore no business could provide an equal product. Protest at 6-7. Although the VA addressed these issues in its report on the protest, AR at 4, Phoenix did not address these issues in its comments on the agency report. Thus we find that the protester abandoned these issues. IntelliDyne, LLC, B-409107 et al., Jan. 16, 2014, 2014 CPD ¶ 34 at 3 n.3. The protester also requested an investigation into the contracting activities of the National Cemetery Authority. Protest at 8. Our Office does not conduct such investigations as part of our bid protest function. Coast to Coast Computer Prods., Inc., B-409528.33, Dec. 3, 2014, 2014 CPD ¶ 346 at 6 n.8.

The agency responds that the current solicitation deleted the prior solicitation's reference to ammonium phosphate in CLINs 0001-0003 because the required 15-0-15 fertilizer does not contain phosphorus. Agency Response to GAO Questions (Oct. 5, 2015), at 5; Decl. of Agency Agronomist (Oct. 5, 2015) ¶ 3. In this regard, the agency explains that the "0" in the NPK rating for the 15-0-15 fertilizer to be provided under CLINs 0001 through 0003 indicates that there is no phosphorous in the fertilizer. Id. The agency contends that the fertilizers to be provided under CLINs 0001 through 0003 must be derived from muriate of potash and polymer coated urea. RFQ at 7-8. The agency states that this requirement is in accordance with agency standards and gives sufficient information for vendors to submit a bid. Agency Response to GAO Questions (Oct. 5, 2015), at 5; Decl. of Agency Agronomist (Oct. 5, 2015) ¶ 5. The agency concedes that the previous solicitation for the same fertilizer required that it be derived from ammonium phosphate, but stated that this was in error, and was part of the reason why that solicitation was cancelled. Id. at ¶ 3.

On this record, we find no merit to Phoenix's argument that the deletion of ammonium phosphate as a derivation source for CLINs 0001-0003 renders the solicitation ambiguous or otherwise defective. In this regard, as explained above, the agency reasonably explains that the inclusion of ammonium phosphate in RFQ-0161 was in error.

To the extent that the protester also contends that the solicitation fails to explain how offerors must meet the requirement to provide 15-0-15 fertilizer with 2 percent ammoniacal nitrogen, we also find no merit to this argument. The agency appears to agree that there is not a specified source of ammoniacal nitrogen in the solicitation. See Agency Response to GAO Questions (Oct. 5, 2015), at 5. However, an agency agronomist explains that ammonium nitrate is a commercially-available source of ammoniacal nitrogen, and therefore that vendors have sufficient information on which to submit their quotations. Decl. of Agency Agronomist (Oct. 5, 2015) ¶ 1.

Phoenix states that, assuming ammonium phosphate is not allowed, the available derivation sources for ammoniacal nitrogen are ammonium nitrate or ammonium sulfate. Protester's Response to GAO's Questions (Oct. 7, 2015), at 2. To the extent the protester acknowledges that ammonium nitrate is a source of ammoniacal nitrogen, as required by the solicitation, the protester fails to demonstrate that the solicitation is ambiguous or defective. In this regard, the solicitation requires fertilizer with a 2 percent ammoniacal nitrogen component, but does not specify its derivation; put differently, the solicitation does not exclude any specific derivations, provided the 2 percent ammoniacal nitrogen composition is met. On this record, we conclude that the RFQ at CLINs 0001 through 0003 provides sufficient information to allow vendors to intelligently prepare their quotations and to allow the agency to fairly and equally evaluate those quotations.

CLIN 0004

Next, Phoenix contends that the requirement in CLIN 0004 is ambiguous or defective because fertilizers other than 0-0-15 can also be derived from muriate of potash. Protester's Comments (Aug. 14, 2015), at 5. The protester thus contends that it cannot make an intelligent decision concerning the correct commercial product to offer because it is aware that fertilizers with differing NPK ratings can also be derived from muriate of potash. Protester's Response to GAO Questions (Oct. 7, 2015), at 4. The protester also notes that while the agency has, in connection with other solicitations, provided specific product labels which allowed offerors to know which specific commercial products to supply, the agency has not done so here.

The VA responds that CLIN 0004 requires a 0-0-15 fertilizer, and therefore the fertilizer does not contain any nitrogen or phosphorous, only potassium. Agency Response to GAO Questions (Oct. 5, 2015), at 6. The agency states that the solicitation requests a fertilizer derived from the muriate of potash form of potassium. Id. The agency notes that although the previous solicitation stated that the same fertilizer was required to be derived from ammonium phosphate, muriate of potash, and polymer coated urea, the inclusion of the additional derivation sources was in error, and was part of the reason that the previous solicitation was cancelled by the agency. Decl. of Agency Agronomist (Oct. 5, 2015) ¶ 4.

We find that the RFQ provides sufficient information to allow vendors to intelligently prepare their quotations and to allow the agency to fairly and equally evaluate those quotations. Although the protester requests specific product labels that would provide more information to offerors, and that such labels were provided in connection with previous solicitations, the agency responds that the requirements of CLIN 0004 are industry standard. Agency Response to GAO Questions (Oct. 5, 2015), at 6; Decl. of Agency Agronomist (Oct. 5, 2015) ¶ 5. Indeed, in response to this protest, the agency had a different agency agronomist independently review the solicitation requirements and he concluded that the solicitation listed "sufficient salient characteristics" for the CLINs, and that the requirements are industry standard. Agency Response to GAO Questions (Oct. 5, 2015), at 6; Decl. of Second Agency Agronomist (Oct. 2, 2015) ¶ 5. In addition, we are not persuaded by the protester's persistent references to information that was provided to vendors in a previous procurement for the same items. As we have repeatedly observed, each procurement stands alone, and an action taken under a prior procurement is not necessarily relevant to the reasonableness of the action taken under the present procurement. JRS Mgmt., B-402650.2, June 25, 2010, 2010 CPD ¶ 147 at 4.

The protest is denied.

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General Counsel