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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: A-1 Service Company, Inc.

File: B-291568

Date: January 16, 2003

J. Hatcher Graham, Esq., McManus & Graham, for the protester.
John D. Inazu, Esq., and Capt. Christopher L. McMahon, Department of the Air Force, for the agency.
Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's evaluation of the protester's proposal as technically unacceptable is unobjectionable where the proposal failed to adequately address solicitation requirements even after protester had been apprised of the concerns repeatedly during discussions.

DECISION

A-1 Service Company, Inc. (A-1) protests the award of a contract to L.C. Gaskins Construction Company, Inc. (LCG) under request for proposals (RFP) No. F09650-02-R-0010, issued by the Department of the Air Force, Warner Robins Air Logistics Center (WR-ALC), to repair the compressed air system and to construct a building addition to house the compressor plant at Robins Air Force Base in Georgia. A-1 contends that the agency's evaluation of its proposal as technically unacceptable was unreasonable.

We deny the protest.

The RFP provided for the award of a fixed-price contract to the offeror whose technically acceptable proposal represented the best value to the government, considering past performance and price. The requirements were divided among three contract line items (CLIN). CLIN 0001, to repair the compressed air system in Building 83; CLIN 0002, to construct the addition in Building 83; and CLIN 0003, to dispose of contaminated soil. Included with the RFP, as amended, were a number of drawings which depicted the work to be performed under the contract, and the successful offeror was to perform the project in accordance with the statement of

work, specifications and drawings. RFP § B, RFP Schedule, at 3-4; RFP Specifications, as amended by addendum Nos. 1-5.

To be considered technically acceptable, offerors were instructed to submit proposals in sufficient detail to demonstrate their full understanding of the solicitation requirements and not to simply restate or rephrase the government's requirements. RFP § L-900(c)(a), at 31. Trade-offs would be made between past performance and price with offerors whose proposals were evaluated as technically acceptable. Id. As relevant here, the solicitation stated that the proposal should demonstrate appropriate approaches to stormwater protection and responding to unforeseen soil contamination during horizontal directional drilling. RFP § L-900(c)(b), at 31. The referenced RFP provisions also required offerors to address air monitoring at point of soil removal, testing of soil samples, providing separate roll-off or drums for containing any contaminated soil, and delivering the soil to the DRMO (Defense Reutilization Marketing Office) contractor for disposal. Cost for disposal only was to be reimbursed under the unit price line item. RFP Drawing Plate C-103, Note 2, as amended by addendum No. 2 ¶ I(c), June 27, 2002, at 1.

The agency received initial proposals from A-1, LCG, and a third offeror (not relevant here) by the July 29 extended closing date. The agency evaluators determined that both proposals were technically unacceptable but were nevertheless capable of being made acceptable. Contracting Officer's Statement at 2. The agency conducted discussions using written evaluation notices (EN) to inform the offerors of the specific deficiencies and weaknesses identified in their respective proposals. Agency Report (AR), exh. 6(a), ENs. The deficiency relevant to this protest was that A-1's technical proposal "failed to address the directional drill requirements." The protester specifically was informed that it needed to provide "all information required by Section L-900(c)(b)(1), first unnumbered sub-paragraph." AR, exh. 6(a), EN No. A1-T-01 (Aug. 28, 2002). The referenced subparagraph required offerors to demonstrate "appropriate approaches to unforeseen soil contamination" during the drilling process. RFP § L-900(c)(b)(1), at 31.

On September 9, the agency conducted a second round of discussions only with A-1 to request additional information because in response to the initial EN the firm had not adequately addressed the unforeseen soil contamination requirements during directional drilling as set forth in Sections L-900(c) and M-900(b) of the RFP. The new EN stated that the protester's "proposal [was] technically unacceptable" because its "[o]riginal proposal and response to [the August 28] EN fails to address unforeseen soil contamination (Plate C-103) during the directional drilling process." AR, exh. 6(c), EN No. A1-T-05 (Sept. 9, 2002). A-1's response was that its personnel "will be trained to become familiar with handling of the contaminated soil. There will be a roll off placed on site to handle these soils. Once the roll off is filled they will be sent to DRMO for disposal. Soil will be monitored as defined in the specifications." Id., exh. 6(d), Protester's Response to EN No. A1-T-05. However, the agency concluded that the proposal remained unacceptable because the firm had not provided any approach to determining if the soil was contaminated and instead had

merely offered to perform "as defined in the specifications." Contracting Officer's Statement at 8. By letters dated September 20, the agency requested final proposal revisions (FPR) from the competing firms. In the letter to A-1, the agency stated "[y]our proposal remains technically unacceptable in the directional drilling process as it relates to unforeseen soil contamination during the drilling" and added "[n]either your original proposal nor responses to Evaluation Notices A1-T-01 and A1-T-05 adequately addressed this issue." The letter further advised A-1 that the offeror's failure to cure this deficiency would render its proposal ineligible for award. AR, exh. 6(e), Request for FPR (Sept. 20, 2002).

The offerors submitted FPRs by the September 24 closing date, which were reviewed and evaluated. A-1 did address in more detail its approach to the unforeseen soil contamination issue, proposing to ensure that "all of the soil has been consolidated into a [20 yard] roll off" from which a composite sample would be taken. The sample would be analyzed and sent to the Warner Robins project manager to determine whether the soil would be disposed of as contaminated soil. Once the project manager made the decision, A-1 would schedule transportation of the soil to the appropriate landfill. AR, exh. 6(f), Protester's FPR at 1-2.

Despite this explanation, the agency concluded that:

> A-1's final proposal remains unacceptable with respect to unforeseen soil contamination. First, they fail to explain how they intend to segregate non-contaminated soil and contaminated soil. Instead they apparently intend to treat all soil as potentially contaminated. This contradicts paragraph 02951-2.4.2.d and Plate C-103, Note 2. Second, the process says, "Disposition of affected soil will be determined by [the Warner Robins project manager]" and "A-1 will schedule transportation/delivery of the soils to the appropriated [sic] type landfill." This indicates that the offeror has <u>not</u> read Plate C-103 and the several amendments sent out during the solicitation, since they specifically say how the soil is to be disposed. Third, the proposal states "20-yd rolloffs", while Addendum 2, item III.b.ii, states "25-yd rolloffs." This indicates that the offeror does not understand that for the potentially contaminated soil, the offeror must use DRMO's contractor for these roll-offs.

AR, exh. 8, Final Evaluation Rating Worksheet, Sept. 24, 2002, at 3. Based on this evaluation, A-1's proposal was eliminated from further consideration for award. The agency thereafter determined that LCG's proposal represented the best value to the government, and the contract was awarded to that firm. <u>Id.</u>, exh. 14, Source Selection Decision.

The protester essentially argues that the agency failed to properly evaluate its FPR and that the rejection of its proposal as technically unacceptable was therefore unreasonable. A-1 argues that all the Air Force's concerns were addressed in its

FPR, which included an unforeseen contaminated soil management "plan" that was previously approved and is currently in use at Robins AFB. Protest at 1-2.

The evaluation of technical proposals is primarily the responsibility of the contracting agency. Fishermen's Boat Shop, Inc., B-287592, July 11, 2001, 2001 CPD ¶ 123 at 2-3. In reviewing an agency's technical evaluation, we will not reevaluate the proposals; we will only consider whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria and with all applicable procurement statutes and regulations. B. Diaz Sanitation, Inc., B-283827, B-283828, Dec. 27, 1999, 2000 CPD ¶ 4 at 6. A protester's mere disagreement with the agency's judgment, standing alone, is not sufficient to establish that the agency acted unreasonably. Fishermen's Boat Shop, Inc., supra. As the following examples indicate, A-1 has not provided any valid basis to question the reasonableness of the agency's evaluation.

Under the RFP, offerors were required to collect contaminated soil separately from non-contaminated soil generated during the drilling process and to provide a separate roll-off or drum for any contaminated soil. RFP, Drawing Plate C-103, Note 5, added by addendum No. 1 ¶ 1(f), at 1. In its FPR, A-1 stated, "once all of the soil has been consolidated into the roll off, a composite sample will be collected." AR, exh. 6(f), Protester's FPR, at 1. The Air Force found that A-1's FPR did not meet the requirement that soil be segregated, and was unacceptable, because the protester did not describe a method of separately collecting contaminated soil and non-contaminated soil; thus, the agency concluded that A-1 intended to treat all soil as potentially contaminated, in contravention of the RFP. Contracting Officer's Statement at 5-6. We agree. The protester simply failed to address how it would separately collect contaminated and non-contaminated soil as required by the RFP; in fact, its protest comments essentially concedes this point. The protester argues that the spoils from the drilling procedure will be in slurry form and "there is no physical way to separate . . . contaminated from non-contaminated soil" in slurry form. Protester's Comments at 7-8. To the extent A-1 now complains that it could not separate the contaminated and non-contaminated soil retrieved during the drilling process because the soil would be in a form that makes it impossible to do so, its argument is untimely. The solicitation, as amended, specifically required offerors to separately collect contaminated and non-contaminated soil. If A-1 objected to this requirement, it was required to protest on this ground prior to the deadline for submitting initial proposals. 4 C.F.R. § 21.2(a)(1) (2002).

As another example, the amended solicitation required that "if tests show soil is contaminated, provide test results to [Warner Robins] and transport soil to DRMO for final disposal." RFP, Drawing Plate C-103, Note 5, added by addendum No. 1 ¶ 1(f) (May 23, 2002) at 1-2; and addendum No. 2 ¶ III(b), June 27, 2002, at 3. The Air Force found A-1's proposal unacceptable in this area because its FPR indicated that the disposition of affected soil would be determined by the agency's project manager after the analytical sampling results were forwarded to the project manager to determine whether the soils will be disposed of as contaminated soil.

AR, exh. 6(f), Protester's FPR, at 1. As the agency explains, under the terms of the amended solicitation quoted above, the successful offeror was responsible for the decision to dispose of the soil by transporting the soil to DRMO based upon the sampling results without further direction from the agency. Contracting Officer's Statement at 5. A-1 asserts that it reasonably believed that the agency itself would make the final decision, based on the sample soil testing which would determine whether the soil was contaminated. Protester's Comments at 5-7. According to the protester, the solicitation provisions are confusing and conflicting and provide no specific direction to the offeror in preparing its proposed unforeseen contaminated soil removal plan. Id.

We think the RFP language quoted above makes it reasonably clear that it is the successful offeror, not the agency, who was responsible for the decision to transport the soil for disposal based on the test results. There was nothing in the specifications that even suggested that Warner Robins needed to approve of the successful offeror's decision to transport contaminated soil for final disposal. Since the protester's approach was not consistent with the RFP requirement, the agency reasonably found the protester's FPR unacceptable in this area. Even if the protester were correct that the quoted solicitation provisions are ambiguous or unclear, we think any ambiguity in this regard was apparent from the face of the solicitation. An offeror may not simply make unilateral assumptions regarding the meaning of patently ambiguous solicitation terms and then expect relief when the agency does not act in the manner the offeror assumed; rather, offerors must challenge apparent ambiguities prior to the time set for receipt of initial proposals. 4 C.F.R.§ 21.2(a)(1); American Connecting Source d/b/a/ Connections, B-276889, July 1, 1997, 97-2 CPD ¶ 1 at 3.

Finally, as the agency notes, the protester proposed to containerize the soil in lined 20 cubic yard roll-offs, while the RFP called for 25 cubic yard roll-offs. Overall, the record shows that despite repeated requests to address the RFP requirements concerning unforeseen soil contamination during the drilling process, the protester failed to provide information that adequately addressed these requirements. Accordingly, the agency reasonably found A-1's proposal unacceptable.

The protest is denied.

Anthony H. Gamboa
General Counsel