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**Comptroller General
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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Liberty Terminals LLC

File: B-403869

Date: December 21, 2010

Edwin W. Johnson II, Esq., McNair Law Firm, PA, for the protester.

Wade L. Brown, Esq., Vera Meza, Esq., and John Dowling, Esq., Department of the Army, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against evaluation of proposal as technically unacceptable is denied where the record reasonably supports the agency's evaluation of the protester's proposal as unacceptable under various technical evaluation subfactors.

DECISION

Liberty Terminals LLC, of Savannah, Georgia, protests the award of a contract to Marine Terminals Corporation East (MTCE), of Savannah, Georgia, under request for proposals (RFP) No. W81GYE-09-R-0042, issued by the Department of the Army, Surface Deployment and Distribution Command (SDDC), 841st Terminal Transportation Battalion, North Charleston, South Carolina, for stevedoring and related terminal services. Liberty challenges the evaluation of the proposals.

We deny the protest.

The RFP, issued on January 6, 2010, sought proposals for stevedoring and related terminal services at ports located in Charleston, South Carolina; Savannah, Georgia; and Wilmington and Morehead City, North Carolina, under an indefinite-delivery/indefinite-quantity, fixed-price contract. Award was provided for on a best-value basis considering technical factors and price. The technical factors and subfactors were:

Factor 1: Equipment
Subfactor 1a: Types, Mix and Quantities of Equipment
Subfactor 1b: Specialized Equipment
Factor 2: Management Plan
Subfactor 2a: General Management Approach
Subfactor 2b: Productivity Rates
Subfactor 2c: Gang Structure
Subfactor 2d: Equipment Maintenance
Subfactor 2e: Safety
Factor 3: Qualifications of Personnel
Subfactor 3a: Hazardous Material Training
Subfactor 3b: Hazardous Material Handling
Subfactor 3c: Experience
Factor 4: Past Performance

RFP amend. 3, at 6-10. Each subfactor identifies a standard of what constitutes an acceptable response. The RFP stated that “award shall be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors.” RFP at 89. The RFP further stated that “in order to be considered technically acceptable an offeror’s technical proposal must pass all standards” and that “[f]ailure on any one factor shall deem the entire proposal as technically unacceptable.” RFP at 117. The RFP listed the possible proposal ratings as pass (meets requirement on all evaluation factors) or fail (does not meet requirements on all evaluation factors). Id.

SDDC received four proposals in response to the RFP, including those of Liberty and MTCE (the incumbent contractor), by the March 12 closing date. Liberty submitted the lowest-priced proposal priced at \$15,660,794.30. MTCE had the next lowest-priced proposal priced at \$18,204,786.41. A two-member evaluation panel rated the technical proposals. Liberty’s technical proposal was rated unacceptable because it received unacceptable ratings for subfactors 1a, 2b, 2e, 3a and 3b.¹ MTCE’s technical proposal was rated acceptable because it received acceptable ratings under all factors and subfactors. Since MTCE submitted the lowest-priced, technically acceptable proposal, it received the award on August 12. After a debriefing, this protest followed.

¹ The agency also found Liberty’s proposal unacceptable under another subfactor of the equipment factor, but after Liberty pointed out that this subfactor had been removed from the evaluation scheme by an RFP amendment, the agency conceded that Liberty’s proposal could not be found unacceptable under this former subfactor.

Liberty challenges the evaluation of its and MTCE's proposals under each of the subfactors where its proposal received an unacceptable rating, claiming that there was no reasonable basis for these ratings and that the proposals were unequally evaluated. The evaluation of proposals is a matter within the discretion of the procuring agency, since the agency is responsible for defining its needs and deciding on the best methods of accommodating them. We will question the agency's technical evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the RFP. Hardiman Remediation Servs., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3. Since an agency's evaluation is dependent on the information furnished in a proposal, it is the offeror's responsibility to submit an adequately written proposal for the agency to evaluate. Id. An offeror that fails to do so runs the risk that its proposal will be evaluated unfavorably. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6. As illustrated by the examples discussed below, we find that the agency's evaluation of the proposal as unacceptable was reasonable.

Under subfactor 1a of the equipment factor, types, mix and quantities of equipment, Liberty's proposal was rated unacceptable. The standard for this subfactor stated that the offeror must possess all equipment required to perform the performance work statement (PWS), and "[a]t a minimum, . . . must have access to [the specifically identified pieces of equipment listed in the RFP for each port]." RFP amend. 3, at 6-8. The agency evaluators found that Liberty's proposal "did not adequately demonstrate that they had made arrangements for the proper types and amounts of equipment at each site for the duration of the performance period as required by the solicitation." Agency Report (AR), Tab 9, Technical Evaluation Summary, at 1.

Liberty's proposal included a specific list of equipment to be provided under the contract and identified the various equipment that it already had. The proposal also stated that it could move equipment between locations, and that it would lease or purchase equipment that it did not already have to provide the expected level of service to the government. The proposal included various letters of commitment from equipment and other companies to supply various items of equipment.

However, as noted by the agency, Liberty's proposal did not provide for certain equipment required by this subfactor: eight passenger vans and one "MAFI peter with stand."² See RFP amend. 3, at 6-8. Instead, the SDDC evaluator testified, and the record confirms, that the list of equipment in Liberty's proposal provided for only four passenger vans and did not specifically identify a MAFI peter. VT at 9:03-9:05. In addition, the agreements that Liberty had with equipment suppliers, which

² The MAFI peter is a name of a particular manufacturer's coupling unit designed to be used with the manufacturer's MAFI trailer, which is used to move MAFI trailers on to and off ships. See Hearing Video Transcript (VT) at 9:04:11-9:04:21.

designated the equipment that could or would be provided by those suppliers, did not reference this missing equipment.³ Thus, we find reasonable the agency's rating of Liberty's proposal as unacceptable with regard to subfactor 1a.⁴

Liberty's proposal was also found unacceptable under subfactor 2e, safety, of the management plan factor. The standard for this subfactor stated, "[d]oes the Offeror's plan include an effective safety program that demonstrates knowledge of all required safety procedures and standards?" RFP amend. 3, at 9. The evaluators found that: (1) Liberty's proposal failed to satisfy the standard, since its proposal only "briefly mentions that they have an in-house safety program and a Safety Answer Book but fails to provide specifics on how they intend to assure a safe operating environment while dealing with potentially dangerous . . . cargo"; (2) Liberty provides a picture handbook of their employee forklift safety training handbook but fails to provide any further explanations or plan; and (3) although "[r]eferences to safe operations are scattered throughout Liberty's . . . proposal. . . no specific safety plan for U.S. Government operations is included." AR, Tab 9, Technical Evaluation Summary, at 2-3.

Here again, we find no basis to question the reasonableness of the agency's evaluation of the protester's proposal as unacceptable under this subfactor. As explained by the SDDC evaluator, Liberty's proposal only generally discussed safety by referencing the provisions in the RFP related to the requirements and referencing its in-house safety program and Safety Answer Book, but did not describe a safety program in any detail.⁵ VT at 9:44-9:49:06. Although the protester correctly notes

³ The protester now maintains that its proposal elsewhere indicated that seven "service truck vans" were to be purchased outright, and that the term "service truck vans" meant passenger vans and was intended to respond to the RFP requirement for passenger vans. Protester's Hearing Comments at 2. However, the SDDC evaluator reasonably explained that she interpreted the protester's reference to service truck vans to mean the service trucks, which were also required to be provided by the RFP; that is, the referenced "service truck vans" seemingly identified vans that were configured to serve as service trucks, rather than passenger vans. See VT at 9:19:42-9:20:24. In view of the RFP requirement for offerors to provide both service trucks and passenger vans, we cannot conclude that the agency unreasonably read Liberty's proposal as not offering the requisite number of passenger vans, particularly given that the specific equipment list included in Liberty's proposal designated only four "passenger vans." As noted above, it is the offeror's responsibility to submit an adequately written proposal. Recon Optical, Inc., supra.

⁴ In contrast, the record shows that MTCE's proposal addressed all of the equipment requirements of subfactor 1a. See VT at 9:05-9:10:50.

⁵ By contrast, the record reflects that MTCE's proposal included much more detailed information with regard to its safety program. For example, MTCE's proposal, in
(continued...)

that the evaluation standard for this subfactor did not require a written safety plan, in our view, the agency had a reasonable basis for determining that MTCE's generic discussion of its safety program was insufficient to demonstrate an "effective safety program," as contemplated by the RFP evaluation standard for this subfactor. See Hardiman Remediation Servs., supra, at 5.

In sum, the record reasonably supports the agency's conclusion that Liberty's proposal was unacceptable.⁶

The protest is denied.

Lynn H. Gibson
Acting General Counsel

(...continued)

addition to referencing the pertinent provision of the solicitation regarding safety, also included its safety program with regard to health, safety, and the environment, as well as its hurricane plan and drug free workplace plan.

⁶ We note that under the RFP's evaluation scheme an unacceptable rating under any subfactor renders the entire proposal unacceptable. RFP at 117.