

D. Ashen



Comptroller General
of the United States
Washington, D.C. 20548

637224

Decision

Matter of: Wade Perrow Construction
File: B-255332.2
Date: April 19, 1994

Lee Curtis, Esq., and Jerone C. Cecelic, Esq., Howrey & Simon, for the protester.
Danielle M. Conway, Esq., Department of the Army, for the agency.
David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly accepted proposal that deviated from solicitation provision limiting site development for guest house (motel) is denied where there is no evidence of resulting prejudice to the protester, i.e., that the protester would have altered its proposal to its competitive advantage had it been given the opportunity to respond to the relaxed requirement; although protester has generally alleged that it "incurred additional costs in both loss of design freedom and evaluated costs" by complying with the solicitation requirement, the protester has not explained, nor is it otherwise evident from the record, how the requirement precluded it from submitting a more advantageous design and what additional costs were allegedly incurred in complying with the requirement.

2. Protest that agency improperly failed to advise protester during discussions that it had not furnished required details concerning subcontract provisions and number and type of tests to be performed to assure quality performance is denied; in evaluating whether there have been meaningful discussions, the focus is on whether sufficient information has been imparted to the offeror to afford it a fair and reasonable opportunity in the context of the procurement to identify and correct the deficiencies in its proposal, and an agency is not required to specifically remind an offeror during discussions to submit information that was specifically requested in the solicitation.

DECISION

Wade Perrow Construction (WPC) protests the U.S. Army Corps of Engineers' award of a contract to F2M, Inc., under request for proposals (RFP) No. NAFFM3-93-R-0001, for

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construction of a guest house at Fort Lewis in Washington. WPC challenges the evaluation of its proposal and the adequacy of discussions.

We deny the protest.

BACKGROUND

The solicitation contemplated award of a fixed-price contract to design and construct a new 39,000-square-foot guest house--installation motel--adjacent to the existing guest house at Fort Lewis. The solicitation provided for proposals to be evaluated on the basis of three evaluation factors: technical, project management plan, and price. The solicitation further provided for assigning quality point scores to the technical (700 of 1,000 available points) and project management plan (300 points) factors and for calculating an overall price per quality point. The RFP stated that award would be made "to the proposal which is considered the best in terms of quality and price and the cost per quality point will be a primary factor in this determination."

WPC, F2M, and two other offerors submitted proposals in response to the solicitation. F2M's proposal offered the lowest cost per quality point (\$11,361.39, based on an overall score of 404 and price of \$4,590,000), while WPC offered the second lowest (\$12,117.03, based on a score of 393 and price of \$4,761,393). Since the costs per quality point offered by the remaining two offerors' proposals were substantially higher, only F2M's and WPC's proposals were included in the competitive range. After several rounds of discussions, the Corps requested the submission of best and final offers (BAFO). Offerors were advised in the request for BAFOs that only \$4.5 million was available, and both F2M and WPC reduced their prices accordingly in their BAFOs.

In its evaluation of WPC's BAFO, the Corps noted that WPC had eliminated or reduced several desirable elements in its initial proposal in order to reduce its price, including: (1) the original all brick exterior, which was replaced with a combination of brick veneer and stucco on three sides and all stucco on the fourth; (2) a porte cochere (covered entryway for the unloading of passengers); (3) a clerestory cupola over the lobby, which would have provided additional natural daylight and was evaluated as adding a point of visual interest to the building; (4) placement of heat pumps in the attic, which would have facilitated maintenance; (5) various other architectural details and amenities; and (6) much of the originally proposed landscaping. In addition, the Corps questioned other aspects of WPC's BAFO, including: (1) WPC's proposal to convert and/or relocate and remodel the existing kitchen, lounge, and laundry on the

first floor of the existing guest house to serve the guests on the first floor of both the new and existing buildings, since the agency believed that this would likely result in overcrowding of the facilities; (2) placement of service facilities (including the dirty linen/receiving and staff rooms) adjacent to guest facilities (including the kitchen, lounge, and arcade); (3) division of the dirty linen space between two locations; and (4) omission of certain information required to be furnished under the solicitation, including details concerning its approach to controlling the quality of the subcontracted work and a test plan for generally assuring the quality of work. As a result of these perceived weaknesses in its approach, and given WPC's elimination in its BAFO of a number of originally proposed features viewed as advantageous, WPC's proposal received a final quality score of only 362, that is, a reduction of 31 points from its initial score. Consequently, even though WPC's BAFO price was reduced to \$4,492,286, the price per quality point offered by its proposal increased to \$12,409.63.

In contrast, while F2M's BAFO price (\$4,488,000) was only slightly lower than WPC's, F2M's price per quality point (\$9,735.36) was significantly lower because F2M's BAFO design was evaluated as offering a number of advantages and accordingly received a correspondingly higher quality score (461 points) than WPC's. For example, the Corps viewed as strengths F2M's proposal of: (1) a classical exterior, similar to many existing historical structures at Fort Lewis; (2) a porte cochere, evaluated as providing protection during inclement weather and "a distinctive entry to the main lobby"; and (3) a service wing totally separate from the guest rooms and guest activities. In addition, the Corps found F2M's approach to providing a first floor community kitchen to be more advantageous than WPC's. While WPC's first floor kitchen was near, and only accessible (for guests in the new building) through, the main lobby, F2M's kitchen was positioned away from the lobby near the guest rooms without kitchens. Furthermore, F2M proposed a new, additional first floor kitchen which, unlike WPC's, was intended to serve only guests in the new building. The Corps also considered it an advantage that F2M, unlike WPC, had placed all of the handicapped guest rooms on the first floor, thereby facilitating evacuation in the event of an emergency. Given the perceived advantages of F2M's design, and the significantly lower price per quality point offered by F2M's proposal, the Corps determined that F2M's proposal offered the best value to the government.

In its protest of the resulting award to F2M, WPC raises a number of arguments concerning the Corps' evaluation of proposals and conduct of discussions. Our review of the record, however, provides no basis for concluding that the

Corps' evaluation of proposals or conduct of discussions were flawed so as to prejudice the protester. We discuss several of the protester's arguments below.

EVALUATION

Parking

WPC argues that F2M's proposal failed to comply with the solicitation provisions concerning required parking. In this regard, the solicitation included a schematic site plan drawing which depicted a possible location for the new guest house west of the existing guest house and indicated a 66-space parking lot east of the existing building. The site plan drawing also indicated an alternative location for the new guest house east of the existing building, that is, where the 66-space parking lot is shown as located in the event the new guest house is located west of the existing building. (The site plan drawing did not show an alternate location for the 66-space parking lot.) The solicitation statement of work (SOW) provided that the:

"[P]arking layout as shown on the schematic site plan is essentially an extension of the existing parking lot and will accommodate 66 additional spaces . . . [r]econfigure the existing parking lot to provide six handicapped spaces . . . and provide additional parking to compensate for stalls displaced by the reconfiguration."

F2M proposed to place the new guest house east of the existing guest house site, a new 67-space parking lot west of the existing building and, in addition, 6 handicapped spaces in front of the new guest house. WPC interprets the solicitation as requiring the contractor to offer not only an additional 66 regular and 6 handicapped parking spaces, but also to replace any parking spaces displaced by the new construction. The protester argues that F2M's plan is inconsistent with this latter requirement because F2M did not propose to replace the parking spaces in an existing gravel parking lot which is located east of the existing guest house and which would be displaced by F2M's placement of the new guest house in that location.

This argument is without merit. As noted by the Corps, the gravel parking lot is neither depicted on the solicitation site plan drawing nor specifically addressed in the SOW. Furthermore, there was no provision in the solicitation that imposed a broad requirement to replace all displaced parking spaces. While the SOW did require replacement of any parking spaces displaced by construction of the new handicapped spaces, F2M's proposed handicapped spaces did not displace any existing parking. Given the absence of

either a specific solicitation requirement to replace gravel parking spaces displaced by the proposed building, or a general requirement to replace any displaced parking spaces, the Corps reasonably found F2M's proposal consistent with the RFP.

Improvements Outside Project Area

WPC argues that F2M's proposal was noncompliant with a solicitation limitation on making improvements outside the project area. The SOW provided that:

"The contractor shall confine all proposed development to be within the project boundaries indicated on the attached drawings. Under no circumstances shall the contractor contemplate any work off the site except as authorized in the RFP or in writing by the CO [contracting officer]. Tie-in to existing utilities is an exception to the requirement."

The attached site plan drawing in the solicitation as issued included a note which defined the project area as bounded on the east by an 18" storm sewer line and on the north, south, and west by Utah Avenue, Pendleton Avenue, and North 8th Street, respectively. The solicitation subsequently was amended to add to the site plan note the following: "Site development between the 18" storm sewer line and N. 11th Street (which is off the project site [to the east of the sewer line]) shall be restricted to construction of the access road." Both as issued and as amended, however, the solicitation site plan drawing depicted the 66-space parking lot, a walkway and, apparently, landscaping as extending east of the 18" sewer line into the gravel area.

WPC argues that F2M's proposal was inconsistent with the solicitation provisions generally prohibiting site development east of the 18" storm sewer line because it placed a fire hydrant, 6" water line, sewer, storm drain, and landscaping between the 18" storm sewer line and North 11th Street to the east. According to the Corps, on the other hand, since the site plan drawing depicted site developments such as a parking lot as extending east of the 18" storm sewer line, the solicitation could reasonably be read as permitting other site developments, such as a fire hydrant, water line, sewer, storm drain, and landscaping, east of the 18" sewer line as well. In any case, notes the agency, the SOW specifically provided for the possibility

that the contracting officer would authorize site work east of the 18" sewer line.¹

We need not resolve this issue. Even if we agreed with WPC, acceptance of a proposal that deviates from RFP specifications warrants sustaining a protest only if there is evidence of resulting prejudice to the protester, *i.e.*, that the protester would have altered its proposal to its competitive advantage had it been given the opportunity to respond to the relaxed requirements. See General Kinetics, Inc., Cryptek Div., 70 Comp. Gen. 473 (1991), 91-1 CPD ¶ 445; San Diego State Univ. Found., B-250838.3, Apr. 21, 1993, 93-1 CPD ¶ 337. WPC generally alleges that it "incurred additional costs in both loss of design freedom and evaluated costs by complying with the RFP's requirements" regarding site development. However, WPC has not specifically explained, nor is it otherwise evident from the record, how the solicitation provisions in question precluded it from submitting a more advantageous, or less costly, design. In these circumstances, there is no basis in the record for finding a reasonable possibility of prejudice. *Id.*


DISCUSSIONS

WPC challenges the adequacy of discussions with respect to its omission of certain required information from its proposal. In describing the required project management plan to be submitted by offerors with their proposals, section L of the solicitation, "Solicitation Instructions and Conditions," referred to the criteria under the project management plan factor as set forth in section M, "Evaluation Factors for Award." These included criteria for (1) "[p]roposed method for controlling quality of subcontracted work (include contract provisions to be included in subcontracts)," and (2) "[n]umber and type of tests to be performed to assure quality of work segments." Although WPC generally discussed in its proposal its approach to quality control, it did not furnish details concerning subcontract provisions and numbers and types of tests to be performed, which were required by the solicitation, and its BAFO apparently was downgraded accordingly. The Corps did not raise its concerns with respect to subcontract provisions and the number and type of tests to be performed during discussions and WPC argues that this failure was improper. However, where, as here,

¹The Corps does not address the extent to which certain of F2M's proposed site developments--*e.g.*, the water, sewer, and storm drain lines--could reasonably be viewed as coming under the solicitation exception for tie-ins to existing utilities.

certain information is specifically requested in the solicitation, the offeror is already on notice of what it must do to submit an adequate proposal, and the agency is not required to specifically remind an offeror during discussions to submit that information. See Dynamic Sys. Technology, Inc., B-253957, Sept. 13, 1993, 93-2 CPD ¶ 158; Delta Food Serv., B-245804.2, Feb. 11, 1992, 92-1 CPD ¶ 172.

The protest is denied.


for Robert P. Murphy
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