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Decision

Matter of: Sparkle Warner Joint Venture, LLC

File: B-405240

Date: September 27, 2011

Carolyn Callaway, Esq., for the protester.
Robert W. Schlattman, General Services Administration, for the agency.
Paul E. Jordan, Esq., and Scott H. Riback, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly evaluated proposal using undisclosed criteria is denied, where all matters were clearly encompassed by solicitation evaluation provisions.

DECISION

Sparkle Warner Joint Venture (SWJV) LLC, of Albuquerque, New Mexico, protests the award of a contract to Alcazar Trades, Inc. (ATI), of San Antonio, Texas, under request for proposals (RFP) No. GS-08P-11-JA-C-0009 issued by the General Services Administration (GSA) for janitorial services at the Denver Federal Center in Lakewood, Colorado. SWJV challenges the agency's evaluation of its proposal.

We deny the protest.

The RFP contemplated the award of a contract, on a "best value" basis for a base year, with 4 option years. Proposals, which were limited to eight pages, were to be evaluated under four factors, listed in descending order of importance--past performance, experience, management controls, and price. Together, non-price factors were considered slightly more important than price.

Twenty-two offerors, including SWJV and ATI, submitted proposals which were evaluated by a source selection evaluation board (SSEB). SWJV's and ATI's proposals received the same ratings under the past performance factor (very good) and the experience factor (excellent). Under the management controls factor, ATI's proposal was rated excellent, while SWJV's proposal was rated satisfactory based on the following evaluation:

The SSEB noted that [SWJV] provided a full-time Contract Manager to manage the contract, as well as planning for frequent customer meetings and daily inspections. The SSEB noted that [SWJV] was not clear regarding its plan for communication with the GSA COR [contracting officer's representative], planned response time for service calls, training for employees, and approach to green cleaning.

SSEB Report at 8. Based on ATI's stronger technical proposal, the agency awarded it the contract for \$4,882,692, even though ATI's price was approximately \$135,000 higher than SWJV's price. After receiving a debriefing, SWJV filed this protest.

SWJV asserts that none of the identified weaknesses involved matters disclosed in the RFP's evaluation criteria and thus, it was unreasonable for the agency to downgrade its proposal on these bases. It further argues that its proposal addressed all identified areas, with the exception of green cleaning.

In evaluating proposals, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by, or related to, the stated evaluation criteria. Independence Constr., Inc., B-292052, May 19, 2003, 2003 CPD ¶ 105 at 4. We have considered each of SWJV's assertions and find that none has merit; we discuss two of the weaknesses identified by the agency for illustrative purposes.

With regard to SWJV's lack of clarity on communication with the contracting officer's representative (COR), the RFP identified the COR as the primary government representative for administration of the contract (RFP § C.1.0.5) and required the contractor to keep the COR informed of the current status of the work being performed and to provide work schedules, inspection reports, submittals, and other pertinent information needed by the COR. RFP § C.2.2. The management controls evaluation factor provided for consideration of an offeror's plans for maintaining good tenant relations/customer satisfaction and its procedures for monitoring and following up on GSA/tenant agency complaints and requests. RFP § M.2(1)(c). In view of the role of the COR and the contractor's responsibilities in keeping the COR informed, an offeror's plans for communicating with the COR represents a necessary component of maintaining good tenant relations/customer satisfaction. Thus, a clear plan for communication with the COR was reasonably encompassed by the stated evaluation criterion.

SWJV asserts that its proposal did address communication with the COR. In this regard, the past performance segment of its proposal identified its work on the predecessor contract and discussed the agency's quality assurance person (QAP) as the one responsible for daily monitoring and verification of SWJV's work. Proposal, ¶ 1.1. In its management controls, customer relations section, SWJV's proposal identified its contract manager as the day-to-day contact with the QAP, noting that the

contract manager was directly responsible for “maintaining channels of communication to ensure smooth working relationships.” Id. ¶ 3.1. SWJV asserts that it was clear that its proposal’s reference to the QAP was intended to be the same as the COR identified in the solicitation. The agency explains, however, that this reference was confusing and that the agency interpreted the QAP as an SWJV--not GSA--employee. Supplemental Agency Report (SAR) at 5, n.2. Further, the agency found SWJV’s discussion on this point to be general and conclusory, without any detailed explanation about how SWJV would accomplish and meet this RFP requirement. Id. In this regard, the SSEB recognized and credited SWJV’s proposal of a contract manager who planned frequent customer meetings and daily inspections. SSEB Report at 8. However, since SWJV identified the person to whom its contractor manager would report as the “QAP,” its proposal simply did not make clear its plans for communicating with and keeping the COR informed. The SSEB’s assignment of the weakness, thus, was reasonable.

As another example, with regard to SWJV’s failure to make clear its planned response time for service calls, SWJV asserts that the evaluation factor did not tell offerors that they would be evaluated on response times and that SWJV should not be downgraded for failing to restate what was already required by the statement of work. Comments at 4. We disagree. The RFP identified service calls as part of contract performance and specified a response time of 30 minutes from receipt of a regular call and “immediately” for emergencies. RFP § C.6. Further, the management controls evaluation factor provided for consideration of an offeror’s procedures for monitoring and following up on GSA and/or tenant agency complaints and requests. RFP § M.2(1)(c). As with communications with the COR, an offeror’s responsibility for responding to service calls within specified times represents a matter reasonably encompassed by the management controls factor’s consideration of the firm’s procedures regarding complaints and requests. While SWJV assumed that it was unnecessary to repeat this specific requirement, it was responsible for submitting an adequately written proposal, and the SSEB could reasonably consider the lack of clarity for this aspect of performance to justify downgrading SWJV’s proposal.¹ See Carlson Wagonlit Travel, B-287016, Mar. 6, 2001, 2001 CPD ¶ 49 at 3.

The protest is denied.

Lynn H. Gibson
General Counsel

¹ SWJV also maintains that, due to the page limitation on proposals, it was not reasonable for the agency to downgrade it for not covering every possible matter identified in the RFP. Since performance of the contract required, among other things, keeping the COR informed and meeting specified response times, offerors were on notice to adequately address these aspects of the requirement in their proposals. See Carlson Wagonlit Travel, supra.