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Decision

Matter of: Zachry Construction Corporation

File: B-405201.2

Date: September 22, 2011

Brad C. Friend, Esq., Kraftson Caudle, LLC, for the protester.
Lewis J. Baker, Esq., and Brian R. Dugdale, Esq., Watt, Tieder, Hoffar & Fitzgerald, L.L.P., for Tug Hill Construction, Inc., an intervenor.
Lloyd R. Crosswhite, Esq., and Martin Chu, Esq., Department of the Army, Corps of Engineers, for the agency.
Linda C. Glass, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that contracting agency unreasonably rejected proposal as technically unacceptable is denied where agency reasonably evaluated protester's proposal as failing to offer a site project superintendent who satisfied the experience requirements of the solicitation.

DECISION

Zachary Construction Corporation, of San Antonio, Texas, protests the award of a contract to Tug Hill Constructing, Inc., of Watertown, New York, under request for proposals (RFP) No. W9126G-09-D-00XX-RFP008, issued by the Army Corps of Engineers for construction of a Digital Multi-Purpose Training Range at Fort Bliss, Texas. Zachary contends that the Army improperly rejected its proposal as technically unacceptable.

We deny the protest.

BACKGROUND

The RFP was issued on January 18, 2011 to firms with indefinite-delivery/indefinite-quantity, multiple-award task-order contracts (MATOC) and provided for the award of a fixed-price task order for construction of the training range. The solicitation provided that the agency would evaluate proposals to determine technical acceptability and make award to the low-priced, technically acceptable offer.

Agency Report (AR), Tab 7, RFP § 00 22 11, at 8. The RFP contained the following technical evaluation criteria, which were to be evaluated on a “go/no-go” basis: experience; personnel; past performance; and past performance of offerors complying with the Federal Acquisition Regulations (FAR) §§ 52.219-8 and 52.219-9.¹ Id. at 8-17. The RFP provided that the failure of a proposal to meet any of the acceptability standards for the non-cost factors would result in a technically unacceptable rating and preclude award. Id.

With respect to the personnel evaluation factor, the RFP stated that offerors were required to provide resume data for the following key personnel: safety officer, quality control, and site superintendent. The RFP further stated that resumes would be evaluated to determine if they demonstrated that the proposed key personnel had “[e]xperience on projects same/similar to the work in this solicitation working in the position they are assigned to under this contract.” Id. at 12. Finally, the RFP warned that failure to demonstrate the minimally acceptability requirements under this factor would result in a “no-go” rating. Id.

As is relevant here, the RFP established the following duties of the site project superintendent:

The site project superintendent will be held responsible for the quality of work on the job and is subject to removal by the Contracting Officer for non-compliance with quality requirements specified in the contract. The site project superintendent in this context shall be the highest level manager responsible for the overall construction activities at the site, including quality and production. The site project superintendent shall maintain a physical presence at the site at all times, except as otherwise acceptable to the Contracting Officer, and shall be responsible for all construction and construction related activities at the site.

AR, Tab 9, RFP § 01 45 04.40 44, at 1.

With respect to the qualifications of the site superintendent, the RFP provided the following:

Construction Project Superintendent shall have a recognized four-year or higher college degree in architecture, engineering, or construction management and 4 years experience as a project superintendent, or

¹ FAR § 52.219-8 is titled “Utilization of Small Business Concerns” and FAR § 52.219-9 is titled “ Small Business Subcontracting Plan.”

have at least 10 years construction experience in which 5 years were experience as a project superintendent.

Id. at 2.

Offerors were advised that the government intended to award a contract without discussions. RFP § 00 22 11, Part II.

Four proposals were received by the February 17, 2011 closing date. As a result of the evaluation of technical proposals, it was determined that clarifications would be necessary and letters were sent to some offerors with responses due on February 28. AR, Tab 16, Source Selection Decision, at 1. No proposal revisions were allowed. Contracting Officer's Statement at 2.

Zachry received acceptable ratings for each of the evaluation factors except the personnel factor. Zachry received a "no go" for the personnel evaluation factor based on its resume for its proposed site superintendent whom the agency determined did not meet the experience requirements established by the RFP. AR, Tab 16, Source Selection Decision, at 2. Specifically, Zachry proposed to provide an individual that it stated "is a construction manager, but will serve as Project Superintendent for this project." AR, Tab 11, Zachry Resume for Site Superintendent. The proposed site superintendent's resume identified several projects on which this individual had performed as a "Project Manager," and listed his prior responsibilities for each project. Id. The agency did not seek clarification from Zachry concerning the resume of its site superintendent because the agency determined that in order to receive an acceptable rating the Zachry proposal would have to be revised. Contracting Officer's Statement at 2.

On May 31, award was made to Tug Hill, the lowest-priced, technically acceptable offeror. After receiving a debriefing, Zachry filed this protest, contending that it submitted a resume for the key personnel position of site superintendent which clearly demonstrated the requisite experience for that position. Protest at 3. Zachry maintains that its proposal should have been considered technically acceptable and, since its price was lower than the awardee, it should have received the award as the lowest-priced technical acceptable offeror. Protest at 7.

The evaluation of technical proposals is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them. Encorp-Samcrete Joint Venture, B-284171, B-284171.2, Mar. 2, 2000, 2000 CPD ¶ 55 at 4. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. Id. The offeror has the burden of submitting an adequately written proposal, and an offeror's mere disagreement with the agency's judgment

concerning the adequacy of the proposal is not sufficient to establish that the agency acted unreasonably. PEMCO World Air Servs., B-28240.3, et al., Mar. 27, 2000, 2000 CPD ¶ 71 at 15.

Here, the record establishes that the agency reasonably evaluated Zachry's proposal as technically unacceptable with respect to its proposed site superintendent. Specifically, since the individual Zachary proposed as site superintendent did not have a 4 year college degree, the solicitation required that his resume demonstrate that he had at least 5 years experience as a site project superintendent. As explained above, the solicitation specifically stated that the site project superintendent is "the highest level manager responsible for the overall construction activities at the site," "shall maintain a physical presence at the site at all times," and "shall be responsible for all construction and construction related activities at the site." AR, Tab 9, RFP § 01 45 04.40 44, at 1.

The resume of Zachry's proposed site superintendent listed several projects in which he had served as a project manager. The narrative description of his responsibilities for many of these projects indicates that his basic function was to maintain client and home office liaison and ensure compliance with contractual obligations. Further, Zachry acknowledges that, in previously performing as a project manager, this individual was responsible for managing more than one site at a time. Protest at 4. Nonetheless, Zachry maintains that the prior responsibilities as a project manager "include[d] all of the same duties and qualifications of a site superintendent," that the position was "superior" to that of site superintendent and, thus, that the agency was required to consider the project manager experience as constituting the requisite site superintendent experience. Id.

The agency states that project manager and site superintendent experience are not equivalent. In this regard, the agency explains that the role of a project manager is to handle the planning, direction and budgeting of a project, and to handle communications with the customer. AR, Tab 20, Project Coordinator Affidavit, at 1. In contrast, a site superintendent is the most experienced on-site construction worker who oversees construction activities on a daily basis and is the first point of contact for installers and subcontractors. Id. Consistent with this description, the solicitation at issue provided that the site superintendent "shall maintain a physical presence at the site at all times" and "shall be responsible for all construction and construction related activities at the site." AR, Tab 9, RFP § 01 45 04.40 44, at 1. In short, the agency maintains that the project manager experience reflected in the resume of Zachry's proposed site superintendent failed to meet the solicitation requirements.

Based on our review of the record, we find no basis to question the reasonableness of the agency's determination. In this regard, even viewing the resume in a light most favorable to the protester--that is, giving credit for projects where the resume indicates responsibility for all on-site construction activities--the resume reflects less

than 5 years of such experience. Accordingly, the protester has not demonstrated that its proposed site superintendent's experience met the solicitation requirements, or that the agency's determination in this regard was unreasonable.

Finally, Zachry complains that the agency accepted the resume of the individual it proposed for a site superintendent under another RFP with the same job description. Protest at 6. The protester maintains that the agency's decision to reject this individual's resume in this instant is arbitrary since the agency had prior knowledge and was fully aware that the individual had prior experience as a site superintendent. Id. However, each procurement stands alone, and an evaluation and selection decision made under another procurement does not govern the selection under a different procurement. Renic Corp., Gov't Sys. Div., B-248100, July 29, 1992, 92-2 CPD ¶ 60 at 5.

The protest is denied.

Lynn H. Gibson
General Counsel