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Decision

Matter of: APEX-MBM, JV

File: B-405107.3

Date: October 3, 2011

Ronald Shaw, Esq., for the protester.
Cpt. Elizabeth Kadlub, Department of the Army, for the agency.
Pedro E. Briones, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency used unstated evaluation criteria when it rejected protester's proposal for failure to propose site-specific staff deployments and supplies and equipment is sustained where the solicitation did not require, and its general instructions and 15-page limitation for submissions did not suggest, that offerors propose staff deployments or supplies and equipment, and instead requires such details to be coordinated with, and approved by, the agency after contract award.

DECISION

APEX-MBM, JV, of San Antonio, Texas, protests the award of a contract to Wilson Technologies, Inc., of Silver Spring, Maryland, under request for proposals (RFP) No. W91YTZ-11-R-0033 issued by the Department of the Army for hospital housekeeping services.¹

We sustain the protest.

BACKGROUND

The RFP, issued as a small business set-aside under the commercial item acquisition procedures of Federal Acquisition Regulation (FAR) Part 12, provided for the award of a fixed-price, indefinite-delivery/indefinite-quantity contract for hospital

¹ The protester is an approved section 8(a) joint venture between Apex Limited, Inc., and Main Building Maintenance, Inc. (MBM). MBM is the incumbent contractor for these services. Protest at 17.

housekeeping services for Army medical facilities at Aberdeen Proving Ground, Fort Detrick, and Fort Meade (all located in Maryland) for a 1-year base period and 4 option years. See RFP at 3, 123.

Offerors were informed that award would be made on a lowest-price, technically acceptable basis considering the following factors: technical acceptability, past performance, and price. Id. at 129. The technical and past performance factors were of equal weight, and, when combined, were less important than price. Id.

Instructions for the preparation of proposals required, among other things, submission of separate technical, past performance, and price proposals. Id. at 118-21. With regard to technical proposals, offerors were required to describe their proposed plans, processes, procedures, and systems, and provide all supporting data and documentation describing their technical response to the requirements.² See id. at 119. With regard to price proposals, offerors were required to provide a unit price per square foot for each of the eight types of cleaning services, as well as overall, for each performance period. See id. at 120-21; Schedule.

A detailed Performance Work Statement (PWS) was provided that describes eight types of required cleaning services and states performance standards and other general tasks. PWS at 16-26. The PWS identified key contract personnel (an executive housekeeper and shift supervisors/shift leaders), who were required to meet various certification, experience, and training requirements. See id. at 1-2. Within 30 days of award, the contractor was required to submit for agency approval a quality control plan, a housekeeping policy and procedures manual, and other plans. See id. at 6. The PWS also required the contractor to provide an annual list of all supplies and equipment needed to perform these services,³ as well as monthly work schedules, periodic cleaning schedules to be coordinated with the agency, and detailed staffing reports. See id. at 7, 13, 16.

With respect to the technical acceptability factor, the RFP provided that the agency would evaluate the following subfactors on a pass/fail basis:

1. Clearly and comprehensively presents [the] technical basis of [its] response to the [RFP].

² Technical proposals were not to exceed 15 pages or include company-identifying information. RFP at 119.

³ The PWS also stated that the contractor shall not use any supplies, chemicals, or equipment without written approval from the agency. See PWS at 14.

2. Provides sufficient details for the Government to determine whether the proposal satisfactorily meets the requirements of the [PWS].
3. Clearly demonstrates that the Offeror fully understands and is capable of performing the cleaning requirements for the price indicated in its proposal.
4. Describes in [its] technical presentation a technical capability in hospital housekeeping cleaning that is adequate to accomplish the scope of work.

See id. at 131. With respect to the price factor, the RFP stated that price would be evaluated for realism, reasonableness, and fairness. Id. at 133.

The agency received nine proposals, including those of APEX and Wilson Technologies.⁴ CO's Statement at 6. APEX proposed to account for materials, labor, tools, equipment, and scheduling with a name-brand automated work management and quality control system software, which would be submitted for agency approval prior to implementation. See Protester's Technical Proposal at 2-3. APEX also described its quality control manual, including a list of various procedures, guidelines, inspection techniques, corrective action programs, and 14 categories of mandatory training. See id. at 6-7, 12-13. APEX further stated that the manual would be tailored for each facility and submitted to the agency within 30 days of award. Moreover, APEX proposed to submit for approval within 30 days of award, a housekeeping policy and procedures manual unique to the facilities, and, in this regard, identified over 60 categories of area-specific, task-specific, and recurring cleaning procedures that would be adapted to the various tasks and performance standards identified in the PWS. See id. at 13-14.

APEX also identified six staff categories, including key personnel, and stated that its staffing plan was formulated based on the tasks, standards, square footage, and types of services described in the PWS. See id. at 3-5. The proposal further described a proposed management structure, provided an organizational chart, and stated that APEX would provide the names, qualifications, and contact numbers for key personnel to the agency upon contract award. See id. APEX's proposal also included a chart listing time frames for submission of required reports and stated that any future report requirements would be incorporated into the chart. Id. at 15.

The proposals were evaluated by the agency's technical evaluation board (TEB), which found APEX's and four other offerors' proposals technically unacceptable. CO's Statement at 6. Specifically, the TEB found that APEX's proposal was

⁴ One proposal was rejected as untimely submitted. Contracting Officer's (CO) Statement at 6.

unacceptable under the technical acceptability evaluation factor, noting that APEX had not identified proposed staff deployments for each of the three installations; processes or procedures for quality control; or tools, supplies, and/or equipment. See Agency Report (AR), Tab 10, APEX Evaluation, at 2. Based on these findings, the TEB concluded that APEX's proposal failed to satisfy subfactors 1, 3, and 4, under the technical acceptability factor. Id. at 3.

The agency determined that award should be made to Wilson Technologies on the basis that it submitted the lowest-priced offer among the technically acceptable offers; Wilson's offer was priced at \$16,377,798.⁵ AR, Tab 12, Price Negotiation Memorandum, at 5. In this regard, the agency determined that Wilson Technologies' price was fair and reasonable as compared to the price of the current bridge contract and to the independent government estimate (IGE) for the procurement.⁶ Id. at 6. Award was made to Wilson Technologies, and this protest followed.

DISCUSSION

APEX protests the agency's technical evaluation, arguing that the agency did not evaluate its proposal in accordance with the RFP's stated evaluation criteria and, in this respect, complains that the RFP did not require offerors to identify staff deployments at each installation or propose tools, supplies, and equipment. See Protest at 17; Comments at 15-17.

The Army argues that APEX's technical proposal was found unacceptable because it did not comply with the RFP's requirements and did not adequately address the technical acceptability factors. See AR at 10-11. In this regard, the agency asserts that the protester failed to provide adequate details for evaluation, specifically, a staffing plan, proposed supplies and equipment, or quality control procedures. See id. at 7, 9-10.

In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency, but examine the record to determine whether the agency's judgment was reasonable and in accord with the solicitation's evaluation criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. Where a protester challenges the agency's evaluation

⁵ APEX proposed an overall price of \$7,581,383 for all performance periods. Protester's Price Proposal at 30. The agency did not evaluate the price of the proposals that were found to be technically unacceptable. See AR, Tab 12, Price Negotiation Memorandum, at 5.

⁶ The agency estimated the 5-year annualized price of the current bridge contract to be \$16,019,147; the IGE for this procurement was \$16,679,465. AR, Tab 12, Price Negotiation Memorandum, at 6.

and source selection, we will review the evaluation and award decision to determine if they were reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. See, e.g., Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6; S4, Inc., B-299817, B-299817.2, Aug. 23, 2007, 2007 CPD ¶ 164 at 9.

Based on our review of the record here, we agree with the protester that the agency evaluated its technical proposal and rejected it as unacceptable based on unstated criteria. As set forth above, the RFP required technical proposals to describe--in no more than 15 pages--the offeror's proposed plans, processes, procedures, and systems, and provide all supporting data and documentation. RFP at 119. No further substantive instructions were provided in this regard. More specifically, the RFP did not request that offerors identify their proposed staff deployments at each installation or the tools, supplies and equipment that would be used. Id. at 118-33. Rather, the PWS requires the contractor to submit--after award--work schedules and a list of all supplies and equipment needed to perform the requirements.⁷ See PWS at 13-14, 16. Moreover, the PWS requires the contractor to coordinate cleaning schedules with the agency and, in this regard, requires the contractor to provide work schedules at least 30 calendar days prior to the month of performance. Id. at 7, 16. Under these circumstances, we do not think that an offeror would reasonably understand that it was required to propose staff deployments for each of the three medical facilities, as well as tools, supplies and equipment, particularly here where the PWS requires such details be coordinated with, or approved by, the agency after contract award.

Accordingly, we find that the agency's determination that APEX's proposal was unacceptable because it failed to propose staff deployments at each installation or supplies and equipment, was based on unstated evaluation criteria, and we sustain the protest. See, e.g., DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 10-11 (agency applied unstated evaluation criteria when it assessed a technical weakness based on protester's failure to identify and address specific threats and technologies for future systems upgrades, and offerors would not reasonably realize that they should submit such information, where RFP only required offerors to address how the "architecture" of their proposed systems would accommodate upgrades and systems growth); RJO Enter., Inc., B-260126.2,

⁷ As we state above, APEX proposed a name-brand automated work management and quality control system software to account for materials, labor, tools, equipment, and scheduling, and stated that the system would be submitted to the agency for approval prior to its implementation. Protester's Technical Proposal at 2. APEX's technical proposal also stated that it would submit a housekeeping policy and procedures manual unique to the PWS tasks and facilities within 30 days after contract award for agency approval. See id. at 13-14.

July 20, 1995, 95-2 CPD ¶ 93 at 13-16 (agency applied unstated evaluation criteria when it downgraded protester's proposal for failure to submit resumes for certain labor skill levels where RFP did not require resumes for every skill level and contemplated that contractor would propose staffing plans and labor mixes for future task orders).

RECOMMENDATION

We recommend that the agency either reevaluate proposals under the stated evaluation criteria consistent with this decision, or amend the solicitation to clarify the factors that the agency will consider in evaluating technical proposals and solicit and reevaluate revised proposals accordingly.⁸ If another firm is found to offer the lowest-price, technically acceptable offer, then the Army should terminate Wilson Technologies' contract for convenience of the government and make award to that other firm. We also recommend that APEX be reimbursed the costs of filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2011). APEX should submit its certified claims for costs directly to the contracting agency within 60 days after receipt of this decision. Id., § 21.8(f)(1).

The protest is sustained.⁹

Lynn H. Gibson
General Counsel

⁸ APEX also contends that, to the extent that the agency found APEX's proposal unacceptable on a pass/fail basis using a traditional responsibility factor, the agency actually made a non-responsibility determination that should have been referred to the Small Business Administration. See Protest at 16-17; see, e.g. Frontier Sys. Integrators, B-298872.3, Feb. 28, 2007, 2007 CPD ¶ 46 at 6. We find nothing in the record here that shows that the agency found APEX's proposal unacceptable based on a non-responsibility determination. Rather, as we discuss above, the agency's determination that APEX's proposal was unacceptable was based on unstated evaluation criteria.

⁹ APEX also protests the agency's price reasonableness and realism analyses. See id.; Comments at 18-22. We do not address the protester's arguments in this regard because, as we discuss above, we recommend that the agency reevaluate proposals.