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Decision

Matter of: InfraMap Corp.

File: B-405167.6

Date: February 6, 2012

David T. Ralston, Jr., Esq., and Frank S. Murray, Esq., Foley & Lardner LLP, for the protester.

Tina M. Pixler, Esq., Department of the Army, for the agency.

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DIGEST

Protest of agency's estimate of requirements for underground utility location work is sustained where record shows that agency's inclusion of a 10% escalation factor for future work did not reasonably encompass significant future work associated with recently-awarded utility privatization contract which will require location services prior to burial of more than 150 miles of electric cable.

DECISION

InfraMap Corporation, of Glen Allen, Virginia, protests the terms of request for proposals (RFP) No. W91ZLK-11-R-0003, issued by the Department of the Army for underground utilities location (UUL) services at Aberdeen Proving Ground, Maryland. InfraMap asserts that the RFP fails to accurately reflect the level of work to be performed under the contract.

We sustain the protest.

BACKGROUND

The RFP, issued on March 23, 2011, provided for the award of a fixed-price requirements contract for a base year, with 4 option years, to perform UUL services and surveys at Aberdeen in accordance with the RFP's statement of work (SOW). According to the SOW, UUL work involves electronically locating, physically marking, and mapping buried utilities, new and existing, prior to issuing excavation permits. SOW ¶ C.1.1. With regard to existing underground utilities, the UUL contractor is responsible for providing the exact horizontal locations by way of

electromagnetic, sonic, and other geophysical location techniques. Id. ¶ C.1.1.1. The UUL contractor uses the government's Geographical Information System, a computerized mapping system containing all known utilities--gas, water, sewer, storm, electrical, heating, cooling and communications--within Aberdeen's boundaries. Declaration (Decl.) 3 of Chief, Engineering Services Division, Construction Branch, hereinafter Chief Engineer), Jan. 5, 2012, at 1. UUL services are required for projects in the design phase, as well as during construction. SOW ¶ C.1.1.

Offerors were required to propose a fixed annual price for performing all UUL work. In this regard, the SOW included a month-by-month listing of the average number of excavation permits processed in calendar year 2010, which totaled 1,101 permits, and advised offerors to anticipate an annual 10% increase in permits. RFP at 25-26. Award was to be made to the offeror with the lowest-priced, technically acceptable proposal.

The agency initially awarded a contract under the solicitation to Accumark, Inc. When InfraMap, the incumbent contractor, protested, the agency decided to take corrective action, including clarifying its price analysis requirements, requesting final proposal revisions (FPR), and reevaluating proposals. We dismissed its protest as academic (B-405167, B-405167.2, July 29, 2011). When the agency again awarded the contract to Accumark, InfraMap again protested. We dismissed InfraMap's second protest as academic (B-405167.4, Sept. 23, 2011) after the agency agreed to amend the solicitation, request FPRs, and reevaluate proposals. During the course of the agency's second corrective action, Accumark protested the agency's amendments to the solicitation, and the agency agreed to further amend the RFP to remove a labor data requirement. Accumark's protest was then dismissed as academic (B-405167.5, Oct. 31, 2011).

On October 27, the agency issued amendment 0007 to the RFP which eliminated the labor data requirement and extended the closing date to October 31. Also on October 27, a representative of InfraMap spoke with the agency's Chief Engineer at Aberdeen, who informed InfraMap that the RFP's workload would encompass underground utilities location work in connection with an electrical privatization (UPP) contract to be performed at Aberdeen. Since the UPP work will entail burial of more than 154 miles of electrical cable, InfraMap indicated that this extra work would represent a significant increase in the number of digging permits and associated UUL work. The Chief Engineer responded that the anticipated UPP workload had been considered and included in the RFP's estimated workload. Decl. 1 of Chief Engineer, Nov. 22, 2011. Prior to the closing time, InfraMap sought official clarification from the agency as to whether the electrical privatization workload was to be included under the RFP. When the agency did not answer its questions prior to closing, InfraMap filed this protest.

DISCUSSION

InfraMap asserts that the RFP is flawed because the workload estimates fail to provide an accurate basis on which to calculate future work. Specifically, it argues that, in light of the magnitude of the upcoming electric cable burial work to be performed, the agency's instruction simply to anticipate an annual 10% increase in excavation permits fails to adequately convey the magnitude of the likely work under the contract.

As a general rule, a contracting agency must give sufficient detail in a solicitation to enable bidders to compete intelligently and on a relatively equal basis. Crown Contract Servs., B-288573, Oct. 31, 2001, 2001 CPD ¶ 179 at 2. When an agency solicits offers for a requirements contract on the basis of estimated quantities, the agency must base its estimates on the best information available. While the estimates need not be absolutely correct, the estimated quantities must be reasonably accurate representations of anticipated needs. Inventory Accounting Serv., Inc., B-271483, July 23, 1996, 96-2 CPD ¶ 35 at 2-3.

Here, the record shows that the agency's estimates are not based on the best information available. With regard to the upcoming electric cable burial work, the agency states that it does not expect that the workload will vary significantly from current RFP estimates. Decl. 2 of Chief Engineer, at 1. In this regard, the agency maintains that the "workload generated under the [UPP] is considered to be similar in kind to the process of how excavation permits are issued under the multiple award minor construction contracts; designed, planned, scheduled and executed." Id. at 3. Accordingly, while the agency included the 10% annual increase, based on the agency's projection "of a gradual increase over the 2010 level," Decl. 2 of Chief Engineer at 3, the Chief Engineer acknowledges that the "10% factor was not based on any indication that the workload would in fact increase." Id. Indeed, the 10% annual increase offerors were to assume under the solicitation is the same escalation percentage the agency used in the last solicitation for these services in 2005. RFP No. W91ZLK-06-D-0002 at 20.

The record, however, shows that the agency's assumption of a 10% escalation rate, without any supporting analysis, failed to account for information indicating the likelihood of a more significant increase in workload. In this regard, we note that while the agency included the 10% escalation rate to account for potential increases in the number of permits, the actual increase under the prior contract from year to year ranged from 17% to 19%, well above the assumed future growth. Aberdeen Annual Permit Data Printout. Although the agency states that it reduced the 2010 baseline permit numbers to account for the completion of a Defense Base Closure and Realignment (BRAC) effort at Aberdeen, the agency has not shown the extent to which the 3-year BRAC effort may have been responsible for the higher than 10% increases during the 5-year prior UUL contract. On the contrary, it appears that the number of permits may not have decreased with the completion of the BRAC work;

rather, in the 2 months since completion of the BRAC work, and before commencement of any electric cable burial work, the number of permits increased relative to the 2010 monthly numbers reported in the RFP--from 85 permits in September 2010 to 97 in September 2011 (an 14.1% increase), and from 88 permits in October 2010 to 110 in October 2011 (an 25% increase). Decl. 1 of InfraMap President ¶ 7. While the agency suggests that the variations in monthly permits are such that any particular month's number is of limited significance, Decl. 2 of Chief Engineer at 3, we think that, at a minimum, the above information available to the agency suggests that the 10% annual escalation figure includes little or no allowance for new, significant additional workload.

The record, however, indicates that just such new, significant additional workload is likely as a result of the electric cable burial work under the electrical privatization contract. In this regard, the agency estimates that approximately 30 miles of electrical line will need to be buried each year. Decl. 2 of Chief Engineer, at 2.

While the agency asserts that the electric cable burial work will result in only an additional 45 permits per year, or approximately 2/3 mile of excavation for each permit, the agency has not explained how it arrived at the estimate of 45 annual permits attributable to electric cable burial, and the historical data strongly suggests that the estimate is significantly understated. In this regard, the agency's assumption of approximately 2/3 mile of excavation for each permit appears inconsistent with InfraMap's overall reported experience over 15 years as the incumbent contractor at Aberdeen, during which time each permit covered from 100 feet to 1,000 feet, and some permits would expire, requiring reprocessing. Decl. 1 of InfraMap President, Dec. 12, 2011, ¶ 6.d; Decl. 2 of InfraMap President, Dec. 29, 2011, ¶ 14. The agency's assumption also appears inconsistent with InfraMap's specific experience processing digging permits, under a separate contract at Aberdeen, for a 22-month BRAC-related project (known as I3MP) for the installation of 20 miles of underground ductwork for a comprehensive network of communication lines servicing Aberdeen and the Edgewood Area. As reported by the agency, I3MP involved 137 permits, Decl. 3 of Chief Engineer at 2, which represents approximately 6.85 permits per mile. Thus, as noted by InfraMap, if this number of permits per mile under the I3MP effort were applied to the 30 miles of electric cable burial work per year that the agency expects, the result would be more than 200 permits per year, well above the 45 permits estimated by the agency.

The agency reports that the significance of any individual permit depends on the nature and timing of the work involved; according to the agency, a "project close to an existing building, intersecting more than one utility, or intersecting utilities in multiple locations will be more difficult than one traversing open fields with no known utilities." Decl. 3 of Chief Engineer at 2-3. While the agency asserts that the electric cable burial work will be "meaningfully different" from that under the I3MP contract, with the accelerated I3MP project including work on communication lines close to buildings on the installation, id., the electrical distribution system to be

buried presumably likewise runs to each of the same buildings as the communications lines under the I3MP contract and thus likewise would appear to involve work in “congested areas.” In any case, the agency has offered no analysis showing that the expected electric cable burial work will be sufficiently different in character from the I3MP effort, requiring significantly less underground utilities location work per mile of excavation, such that the agency could reasonably discount what appears to be very relevant workload metrics from the I3MP excavations.

In sum, the record shows that the agency estimates of future underground utilities location work did not reasonably account for the significant workload to be expected in connection with electric cable burial under the utility privatization contract, and thus did not reflect a reasonably accurate representation of the agency’s anticipated needs. Since offerors are required to propose an annual fixed price for all UUL work, the RFP’s failure to provide reasonably accurate estimates deprived InfraMap and other offerors of the information required to assess the likely cost to perform the contract requirements. Accordingly, we sustain the protest on this basis.

RECOMMENDATION

We recommend that the agency analyze the potential impact of the electric cable burial work on the number of permits anticipated for the performance period covered by the solicitation. This analysis should take into account, but not necessarily be limited to, the number of miles of electrical lines to be buried and where the lines will be buried (whether in remote, congested, or mixed areas). If the electric cable burial work is to be included under the RFP, the agency should amend the solicitation to provide sufficient information to convey the level of work associated with the electric cable burial and other excavation permits, and then obtain revised proposals from the offerors in the competitive range. Finally, we recommend that the protester be reimbursed its costs of filing and pursuing the protest, including reasonable attorneys’ fees. 4 C.F.R. § 21.8(d)(1) (2011). The protester should submit its certified claim, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
General Counsel