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Decision

Matter of: Bashir Najib National Transportation Services

File: B-408308.21

Date: August 20, 2014

Theodore P. Watson, Esq., and Nicole L. Carter, Esq., Watson & Associates, LLC, for the protester.

Paul W. Bowen, Esq., Robert J. Sherry, Esq., Sheila A. Armstrong, Esq., Kirstin D. Dietel, Esq., and Amy M. Conant, Esq., K&L Gates LLP, for an intervenor. Christopher S. Cole, Esq., J. Toby Harryman, Esq., and Willie McAlister, Esq., Department of the Air Force, for the agency.

Glenn G. Wolcott, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation for trucking services in Afghanistan sought fixed unit prices for the services sought, and security was incorporated into the required services, protester's assertion that the agency should have evaluated all offerors' proposals as reflecting the same "standard" security costs constitutes an untimely challenge to the terms of the solicitation.

2. Where the record establishes that agency sought final proposal revisions from the protester after the Afghan security provider had changed its prices, and nothing in that request limited the proposal revisions the protester was permitted to make, protester's assertion that it was not provided an opportunity to revise its proposal to reflect the changed Afghan security costs fails to state a valid basis of protest.

DECISION

Bashir Najib National Transportation Services (BNN), of Kabul, Afghanistan, protests the U.S. Transportation Command's (USTRANSCOM) ¹ award of multiple

¹ USTRANSCOM is one of nine unified commands within the U.S. Department of Defense (DOD). The mission of USTRANSCOM is to provide air, land, and sea transportation for the DOD, both in peace and wartime.

contracts pursuant to request for proposals (RFP) No. HTC711-13-R-R002, for commercial trucking services in Afghanistan.² BNN protests that the agency did not evaluate proposals using a “plug” number for certain security services, and that the agency improperly failed to provide BNN an opportunity to lower its pricing to account for changes in security costs.

We dismiss the protest.

BACKGROUND

The agency issued the solicitation in February 2013, seeking proposals for commercial transportation of various cargoes throughout Afghanistan.³ The solicitation was divided into three “suites,” reflecting three different types of cargo--bulk fuel, dry cargo, and heavy cargo--and offerors were advised that the agency anticipated awarding “approximately twelve” indefinite-delivery/indefinite-quantity contracts for each suite.⁴ AR, exh. 4, RFP at 64. Following the awards, task orders will be issued under the various contracts. Id. Offerors were permitted to submit proposals for each of the three suites, or for any combination thereof. Id. at 64-65.

The solicitation contemplated contract awards for a 1-year base period with two 1-year option periods, and provided that proposals would be evaluated on the basis of two factors: technical capability and price. The solicitation further provided that technical proposals would be evaluated only on an acceptable/unacceptable basis, with awards made to responsible offerors submitting the lowest-priced, technically acceptable proposals. RFP at 62.

With regard to proposed price, the solicitation, as amended,⁵ identified the various types and minimum numbers of trucking assets that would be required for each

² This procurement is a follow-on to USTRANSCOM’s prior national Afghanistan trucking (NAT I) contract, and is generally referred to as NAT II.

³ The solicitation provided that contractors must provide all personnel (drivers, dispatchers), equipment (trucks, straps, binders), tools (winch, self-recovery or repair assets), materials (dunnage, tarps), supervision (managers, accountants), and other items necessary to provide safe, timely, and reliable transportation. Agency Report (AR), exh. 4, Performance Work Statement.

⁴ The solicitation provided that the agency could award fewer than, or more than, 12 contracts for each suite if it was determined to be in the government’s best interest to do so. RFP at 64.

⁵ On March 15, 2013, the agency issued amendment 3, incorporating the requirement to include pricing that reflected security provided by the Afghan Public Protection Force (APPF). AR, exh. 10, RFP amend. 3, at 1.

contract suite;⁶ listed three security environments for which pricing was required;⁷ and provided estimated “mission units” (MU) for each type of asset and security environment, by contract period.⁸ RFP Schedule B at 1-3. Offerors were required to submit fixed MU prices for each identified asset, by security classification, for each contract performance period. An offeror’s total evaluated price was calculated by multiplying its proposed unit prices by the applicable estimated quantities, and summing all of the extended prices. RFP at 63.

On March 20, 2013, BNN submitted its initial proposal, which included BNN’s contract with the APPF for security services. AR, exh. 16, BNN Technical Proposal, appendix III. In July 2013, the APPF established new rates for its security services. Protest at 22. In October 2013, BNN discussed the APPF price changes with the agency. Protest, attach. 6.

On November 13, 2013, the agency requested final proposal revisions (FPRs). The agency request did not limit any aspect of offerors’ proposals that could be changed, noting only that any changes should be substantiated because the agency did not intend to conduct further discussions with offerors. AR, exh. 27, Request for FPR, at 1. BNN responded by submitting its FPR on November 26, but did not change its previously-proposed prices. AR, exh. 28, BNN FPR.

On April 20, BNN was advised that it was not among the lowest-priced offerors for any of the three suites and, accordingly, had not been selected for any contract award. This protest followed.

⁶ For example, for Suite I (bulk fuel) offerors were required to offer a minimum of 50 five-thousand-gallon tanker trucks and 30 ten-thousand-gallon tanker trucks. For Suite II (dry cargo), offerors were required to offer a minimum of 380 flatbed trucks, 10 refrigerated trucks, 10 freezer trucks, 75 container trucks, and 5 refrigerated container trucks. For Suite III (heavy cargo), offerors were required to offer a minimum of 165 lowboy trailers and 10 heavy equipment transports. AR, exh. 4, Asset Capability Matrix.

⁷ Pricing was required for each type of trucking asset pursuant to each of the following security environments: (1) no security or U.S. government security (provided at no cost to the contractor); (2) private security company; or (3) Government of the Islamic Republic of Afghanistan (GIROA) security. RFP Schedule B. GIROA-provided security is synonymous with APPF (Afghan Public Protection Force)-provided security, since APPF is a GIROA state-owned enterprise.

⁸ The solicitation defined an MU as a 25 kilometer increment, and provided that contractors “will be paid based on the number of MUs between the origin and destination.” RFP Schedule B at 3.

DISCUSSION

BNN raises various arguments challenging the agency's source selection process and its failure to award a contract to BNN. As discussed below, none of the protester's arguments provide a basis for questioning the agency's source selections.

First, BNN makes multiple arguments based on the premise that the solicitation contemplated a plug number for APPF-provided security, and that offerors were not required to incorporate their costs for such security into their fixed unit prices.⁹ BNN's assertions, however, are contrary to the terms of the solicitation and constitute untimely challenges to those solicitation terms.

As discussed above, offerors were required to submit fixed unit prices for each required trucking asset, under each of three differing security environments, one of which was APPF-provided security. RFP Schedule B. Further, the solicitation provided that an offeror's total evaluated price would be calculated by multiplying its fixed unit prices by the solicitation's estimated requirements for each trucking asset under each security environment, for all of the contract performance periods. RFP at 63. Given the solicitation's clear pricing requirements to include the offeror's costs for security under each of the three security environments, there simply is no basis for concluding that the solicitation contemplated a normalized, plug number for APPF-provided security costs.¹⁰ To the extent BNN believed that use of such a plug number was more appropriate, under our Bid Protest Regulations, it was required to challenge the terms of the solicitation prior to the closing time for receipt of proposals.¹¹ Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2014). Since BNN

⁹ For example, BNN asserts that the solicitation required all offerors to submit "a set, standard APPF security rate," see Protester's Comments at 2; Protest at 19-20, and complains that the agency "permitted variations from [offerors] in APPF price calculation." Protest at 19. Similarly, BNN asserts that the agency's evaluation was flawed because it permitted "variation between [offerors'] rates [regarding APPF security]." Protest at 22.

¹⁰ The agency's response to an offeror question regarding APPF security costs, in which the agency reiterated that the cost of APPF-provided security was a "standard cost that all offerors are expected to account for," see AR, exh. 17 at 1, does not provide a basis for BNN to assert that it reasonably understood the cost of APPF-provided security would be treated as a plug number. To the contrary, in its response, the agency specifically noted that offerors' proposed costs were subject to the "natural operation of market forces." Id.

¹¹ Even if we were to view the terms of the solicitation as ambiguous, such ambiguity was patent. Accordingly, BNN was required to file any protest in this

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did not challenge the terms of the solicitation prior to submitting its proposal, but instead, waited until after notice of its nonselection to protest, its assertions are untimely and will not be considered.

Next, BNN asserts that, after the APPF changed its price list for security services in July 2013, BNN was “never provided . . . an opportunity” to revise its pricing “based on the APPF change.”¹² Protest at 25. The record is to the contrary.

Specifically, on November 22, 2013, the agency issued a request for a final proposal revision (FPR) to BNN, stating:

Pursuant to Federal Acquisition Regulation (FAR 15.307(b)), Proposal Revisions, you are allowed the opportunity to submit final “proposal revisions to clarify and document understandings reached during negotiations” with the Government. Offerors are cautioned against unsubstantiated changes because no discussion will be held after request for final proposal revisions.

AR, exh. 27 at 1.

It is well-settled that, in response to an agency’s request for submission of proposal revisions, an offeror may generally revise any aspect of its proposal it sees fit. See, e.g., American K-9 Detection Servs., Inc., B-400464.6, May 5, 2009, 2009 CPD ¶ 107 at 7; Partnership for Response and Recovery, B-298443.4, Dec. 8, 2006, 2007 CPD ¶ 3 at 3. Here, the agency offered BNN an opportunity to submit revised proposals in November 2013, that is, after the APPF’s July 2013 revision of its prices. Nothing in that FPR request limited the proposal revisions that BNN was permitted to make. Accordingly, this opportunity permitted BNN to revise any aspect of its proposal, including any changes necessitated by the prior change in APPF pricing. On this record, BNN’s assertion that the agency failed to provide

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regard before the date set for receipt of proposals. 4 C.F.R. § 21.2(a)(1); see, e.g., Env’tl Sys. Research Inst., Inc., B-408847.2, Jan. 17, 2014, 2014 CPD ¶ 53 at 5.

¹² We note that BNN’s arguments regarding an opportunity to change its pricing to reflect revised APPF pricing are directly contrary to BNN’s arguments discussed above. That is, if BNN had, in fact, understood that the solicitation contemplated a plug number for the cost of APPF-provided security, the APPF’s changes to its prices would have had no bearing on BNN’s proposal.

BNN an opportunity to revise its proposal to reflect the revised APPF prices fails to state a valid basis.

The protest is dismissed.

Susan A. Poling
General Counsel