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Comptroller General
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United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: LOGMET

File: B-409906.2

Date: October 10, 2014

Wayne C. Rankin, LOGMET LLC, for the protester.
Michael J. Kraycinovich, Esq., and Alex Cahill, Esq., Department of the Army, for the agency.
Charles W. Morrow, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly rejected the protester's proposal as unacceptable is denied where the record shows that the agency reasonably found that the protester failed to propose the minimum number of labor hours.

DECISION

LOGMET, of Round Rock, Texas, protests the elimination of its proposal from the competition under request for proposals (RFP) No. W52P1J-14-R-0105, issued by the Department of the Army, Army Materiel Command, for logistical support services. LOGMET challenges the evaluation of its proposal and the agency's failure to conduct discussions.

We deny the protest.

BACKGROUND

The Army currently procures certain requirements for logistics services through the Enhanced Army Global Logistics Enterprise (EAGLE) Program. See Agency Report (AR) at 1. Under this program, the Army procures material maintenance services, retail/wholesale supply services, and transportation support services by entering into basic ordering agreements (BOAs) with contractors. Id.

The Army issued the RFP on April 28, 2014, as a total small business set aside, to procure logistics support services at Fort Bliss, Texas, including maintenance, transportation, and supply support. The solicitation contemplated the award of a

combination cost-plus-fixed fee/fixed-price requirements task order with a 60-day transition-in period, a 10-month base period, and four 1-year options. See RFP § M.¹ Award was to be made to the responsible offeror whose proposal complied with the RFP requirements, was found to be technically acceptable with at least a substantial confidence rating for past performance, and was the lowest cost/price. Id.

As relevant here, section M.3 of the RFP stated as follows:

The Government will compare the Offeror's proposal to Section L in order to perform a compliance review. Any Offeror's proposal determined non-compliant per the terms noted in Section L or determined non-compliant [with] paragraphs a. through c. below will not be evaluated and will not be further considered for award.

Id. at 62. This section also stated that "[o]nly Offerors whose proposals are determined to be compliant will move to Step 1 of the evaluation process."² Id. Section L contained similar language advising offerors that "[f]ailure to provide proposals in compliance with the instructions specified in this RFP shall render the Offeror's proposal non-compliant" and that the proposal would not be further evaluated for an award. See RFP § L.2.1.

With regard to the compliance review discussed above, the RFP required offerors to propose two categories of labor, functional labor category (FLC) 1 and FLC2.³ RFP § L.5.2.1.1(c). The RFP instructed offerors to complete RFP attachment No. 0002 for FLC1 labor, based on the following minimum requirements: 244,000 hours for maintenance, 184,010 hours for transportation, and 295,519 hours for supply. Id. §§ L at 51, M, at 62; AR, Tab 4C, exh. AB TE 5-M-102; Tab 4f, exh. AE TE 5-S-202; Tab 4h, exh. AG TE 5-T-302. The solicitation stated if an offeror's proposed FLC1 hours were not equal to or greater than the minimum FLC1 hours for each function listed in the RFP, then the agency would consider the proposal to be noncompliant and would no longer evaluate the proposal for the award. Id. § M.3.

¹ Citations to the RFP are to the conformed copy provided by the agency.

² Offerors whose proposals were found compliant with the requirements of RFP section L were to be evaluated in a four-step process which included consideration of the technical, past performance, and cost/price factors. RFP at 63.

³ The FLC1 category was defined as contract or task order level employees required to directly accomplish the task/function of the workload provided, e.g., a mechanic in support of the maintenance effort. RFP at 52. The FLC2 category was defined as contract or task order level employees required for the completion of the RFP requirements, but who do not directly perform the tasks/functions of the workload. Id.

LOGMET, which holds an EAGLE BOA, submitted a proposal by the May 28 closing date. The Army reviewed LOGMET's proposal for compliance with RFP sections L and M, and found that LOGMET proposed less than the minimum 244,000 hours for the maintenance function. See AR, Tab 15, Memorandum for Record, at 19-21. Specifically, based on the information in LOGMET's proposal, attachment No. 0002, the Army found that LOGMET proposed only 242,361.6 hours for maintenance. Id. at 20. In addition, the Army determined that LOGMET also erroneously included hours for its shop stock supervisor and quality control supervisor as part of its FLC1 maintenance hours, rather than the FLC2 labor category. Id. at 20-21. The Army found that when the hours for these positions were properly allocated, LOGMET proposal contained 238,521 hours for maintenance. Id. at 20. The Army determined LOGMET's proposal to be noncompliant, and removed it from the competition on June 30. See AR, Tab 17, LOGMET Removal Letter. This protest followed.

DISCUSSION

LOGMET contends that the Army's evaluation was flawed because it asserts the RFP amendment No. 0001 increased minimum hours for maintenance, but failed to revise RFP attachment No. 0002, which was used to evaluate the offerors' proposals, to reflect this change. The protester also contends that the Army's evaluation incorrectly found that its shop stock supervisor and quality control supervisor were improperly included in its FLC1 hours. Finally, the protester contends that the agency should have conducted discussions to address the classification of its FLC1 staff. For the reasons discussed below, we find no merit to the protester's allegations.

In reviewing protests challenging the evaluation of an offeror's proposal, or as here, the rejection of a proposal based on the agency's evaluation, it is not our role to reevaluate proposals; rather our Office examines the record to determine whether the agency's judgment was reasonable, and in accordance with the solicitation criteria and applicable procurement statutes and regulations. Orion Tech., Inc., B-405077, Aug. 12, 2011, 2011 CPD ¶ 159 at 4. In a negotiated procurement, a proposal that fails to conform to the material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award.⁴ LOGMET LLC, B-405700, Dec. 14, 2011, 2011 CPD ¶ 278 at 3.

First, the protester argues that RFP amendment No. 0001, which was issued May 8, changed the number of labor hours required for maintenance from 244,000 to

⁴ Although the solicitation anticipated the issuance of a task order under a BOA, the solicitation was issued as an RFP and specifically stated that it was conducted as a "negotiated procurement." RFP at 1.

244,100, but did not change RFP attachment No. 0002, which required offerors to propose a minimum of 244,000 hours. The protester contends that this discrepancy rendered the agency's use of attachment No. 0002 for evaluation of proposals unreasonable.

RFP amendment No. 0001, however, merely changed the distribution of estimated labor hours to support the automotive repair shop portion of the maintenance requirement. See AR, Tab 4c, exh. AB, TE 5-M-102A and Tab 6b, exh. AB TE 5-M-102A, as amended. The minimum hours for the automotive labor category prior to amendment No. 0001 were 4,450, 70,500, 6,200, and 10,450, which results in a total of 91,600 minimum hours. See AR, Tab 4c, TE 5-M-102A. The hours after the amendment were 4,350, 69,500, 6,540, and 11,210 which also results in the same 91,600 total. See AR, Tab 6b, exh. AB TE 5-M-102A. No other changes were made to the minimum hour requirements. Thus, there is no merit to the protester's contention that amendment No. 0001 changed the total minimum hours to 244,100 hours.

Moreover, even if the protester was correct that RFP amendment No. 0001 created an inconsistency with RFP attachment No. 0002, such an inconsistency could not have affected the evaluation of the protester's proposal. As discussed above, the agency found that the protester proposed 242,361.6 labor hours for the maintenance requirements. See AR, Tab 15, Memorandum for Record, at 20. LOGMET does not specifically dispute or challenge the agency's calculations of its proposed FLC1 labor hours. Instead, the protester merely argues that RFP attachment No. 0002 should have been amended to reflect what the protester believes was increase of 100 hours to the maintenance requirements, that resulted from RFP amendment No. 1.

As discussed above, the RFP stated that any proposal determined non-compliant per the terms noted in Section L or determined non-compliant with Section M.3 would not be evaluated and would not be further considered for award. Because the information in LOGMET's proposal, attachment No. 0002, shows that the protester proposed only 242,361.6 hours for maintenance, we conclude that the agency reasonably found that LOGMET's proposal failed to meet a material requirement and removed the proposal from award consideration.⁵ See RFP §§ L.5.2.1(c), M.3.

⁵ Additionally, to the extent the protester believed that the RFP attachment No. 0002 should have been revised to reflect the change in RFP amendment No. 0001, this is an untimely challenge to the terms of the solicitation that must have been filed prior to the time for receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1).

Next, LOGMET argues that the Army unreasonably evaluated its shop stock supervisor and quality control supervisor as FLC2 staff, and therefore improperly reduced the number of FLC1 labor hours for the maintenance requirements from 242,361.6 to 238,521. See AR, Tab 15, Memorandum for Record, at 20-21. We need not address the protester's argument here because, regardless of how the agency classified the protester's staff, LOGMET's proposal failed to propose the minimum 244,000 hours under the FLC1 category for the maintenance requirements.

Finally, LOGMET argues that the Army should have held discussions to allow it to correct any errors regarding its proposed staffing. The solicitation, however, expressly advised that the agency contemplated making award without discussions. RFP §§ L.1.2, L.5.1.5, M.2, M.4.4.1. An agency is not required to provide an opportunity for discussions or clarifications under such circumstances. See Kiewit Louisiana Co., B-403736, Oct. 14, 2010, 2010 CPD ¶ 243 at 3.

The protest is denied.

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General Counsel