Decision

Matter of: Wolverine Services LLC

File: B-409906.3; B-409906.5

Date: October 14, 2014

Dorn C. McGrath III, Esq., William M. Jack, Esq, and Amba M. Datta, Esq., Barnes & Thornburg LLP, 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

Challenge to the rejection of the protester's proposal is denied where the agency reasonably found that the proposal failed to comply with a material requirement to provide a past performance questionnaire.

DECISION

Wolverine Services LLC, of Anchorage, Alaska, protests the elimination of its proposal from the competition under request for proposal (RFP) No. W52P1J-14-R-0105, issued by the Department of the Army, U.S. Army Materiel Command, for logistical support services. Wolverine contends that its proposal was improperly eliminated based on what the protester contends were three minor and correctable clerical or administrative errors.

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.1.1.1 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, RFP section L stated that an offeror must complete a performance questionnaire (RFP attachment 0003) for itself and each proposed teammate expected to perform 20 percent or more of the total proposed price. RFP § L.5.3.5. The questionnaire required the offeror's proposed teammates performing 20 percent or more of the total proposed price to provide performance information for the timeframe from the date of the BOA RFP to the closing date of this task order RFP.2 Id. The solicitation advised that “[f]ailure to provide a completed Performance Questionnaire - Attachment 0003 . . . shall render the Offeror's proposal non-compliant. The proposal will not be further evaluated and will not be further considered for award.” RFP § L.5.3.5(c)(4).

As also relevant here, the RFP required offerors to propose at least a minimum number of labor hours. The solicitation required offerors to propose two categories of labor, functional labor category (FLC) 1 and FLC2.3 Id. at § L.5.2.1.1(c)(5). The solicitation instructed offerors to complete RFP attachment No. 0002 by listing their proposed hours for the FLC1 labor categories. The RFP set forth the following minimum requirements for FLC1 labor hours: 244,000 hours for maintenance,

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

2 The questionnaire required the teammate to answer whether it had any relevant contracts where it experienced performance problems and whether it had any recent/relevant contracts terminated for default or terminated for cause. If the question was answered in the affirmative, then the teammate was required to provide more detailed performance information on these contracts. See AR, Tab3n, Attach. 0003.

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 § L.5.2.1.1(c)(5)(ii). 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. at § L.5.2.1.1(c)(5)(iii).
184,010 hours for transportation, and 295,519 hours for supply.  Id. §§ L.5.2.1.1(c)(6)(ii), M.3(c); 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 RFP stated that 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 award.  Id. at § M.3(c)(2).

Wolverine, which holds an Eagle BOA, submitted a proposal by the May 28 closing date.  The Army reviewed Wolverine’s proposal and found that it identified a teammate to perform [DELETED] percent of the work, but failed to provide a separate past performance questionnaire for that teammate.  AR, Tab15e, Memorandum for Record, at 42-43.  The Army also found that Wolverine proposed 182,997.20 hours for the transportation function and 294,156 hours for the supply function, which were less than the minimum hours for these functions.  Id. at 43-44.  Finally, the Army determined that Wolverine’s staffing and management plan failed to appropriately identify certain functions as maintenance, supply, or transportation, as required.  Id. at 44.  The Army determined that the proposal was noncompliant for these reasons and removed it from the competition on June 30.  This protest followed.

DISCUSSION

Wolverine contends that the Army unreasonably found its proposal noncompliant based on what the protester characterizes as minor clerical or administrative errors.  Specifically, Wolverine argues that each of the areas where its proposal was non-compliant represented a minor problem or clerical error, and that the agency unreasonably rejected its proposal for these reasons.  The protester also contends that the agency improperly failed to seek clarifications or discussions with Wolverine to address the errors in its proposal.  For the reasons discussed below, we find no basis to sustain the protest.

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.\textsuperscript{4} \textit{LOGMET LLC, B-405700, Dec. 14, 2011, 2011 CPD ¶ 278 at 3.}

First, Wolverine challenges the Army’s rejection of its proposal based on the failure to provide a required performance questionnaire. As noted above, the RFP required offerors to provide a separate questionnaire for certain proposed teammates containing pertinent performance information on the teammate. See RFP § L.5.3.5; AR, Tab 3n, Attach. 0003. The Army found that Wolverine’s proposal was noncompliant because it failed to provide a completed questionnaire for a teammate who it proposed to perform more than 20 percent of the work. AR, Tab 15e, Memorandum for Record, at 42-43. The protester does not dispute that it was required under the solicitation to provide a questionnaire for its teammate, nor does it dispute that it failed to provide the required questionnaire.\textsuperscript{5} Instead, it contends that the agency unreasonably concluded that the failure to meet this RFP requirement merited rejection of its proposal.

Specifically, Wolverine asserts that the Army already possessed the required performance information concerning its proposed teammate, as a result of a past performance questionnaire it submitted under the BOA competition in September 2012, as well as past performance information that was submitted in connection with the BOA on April 29, 2014. See Protest at 3-4. In this regard, the protester notes that RFP section L.5.3.1 stated that the agency would consider recent and relevant past performance references that were provided with the offeror’s BOA proposal, as well as task order proposals to date. RFP § L.5.3.1. For this reason, Wolverine argues that not submitting a questionnaire should have been deemed a minor, non-disqualifying error because the performance information was effectively in the Army’s possession.

The requirement to submit the questionnaire, however, did not provide an exception for offerors to rely on prior performance submissions in connection with the EAGLE BOA. See RFP § L.3.5, at 54. To the contrary, as noted above, RFP section L.5.3.5(c)(4) advised that failure to provide a completed questionnaire shall render the offeror’s proposal noncompliant. To the extent the protester contends that failure to provide the past performance questionnaire was a minor, excusable mistake, this interpretation of the RFP would render meaningless the

\textsuperscript{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.

\textsuperscript{5} Wolverine provided a questionnaire concerning its own performance.
admonishments that failure to submit the questionnaire would render a proposal
noncompliant and result in its rejection.\(^6\) RFP §§ L.5.3.5, M.3.

Clearly stated requirements are considered material to the needs of the
government, and, as noted above, 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. See Mission1st Group, Inc., B-404811.3, B-404811.6,
June 2, 2011, 2011 CPD ¶ 115 at 4. Here, the Army explains that the questionnaire
requirement reflected the agency’s need to consider an offeror’s most current
performance information for each task order competition. See AR at 8-9. As the
record here shows, the protester’s latest submission concerning the past
performance for its teaming partner was April 29, 2014, whereas the proposal was
not submitted until May 28. In light of the plain and unambiguous requirement set
forth in the solicitation to submit past performance questionnaires, and the equally
clear statement that the failure to provide a required questionnaire would result in
rejection of an offeror’s proposal, we conclude that the agency reasonably
eliminated Wolverine’s proposal from the competition.

Next, as noted above, Wolverine also argues that the Army unreasonably found its
proposal noncompliant based on the protester’s failure to propose the minimum
level of hours for the transportation and supply functions, and for failing to
adequately identify certain functions within its staffing and management plan. We
need not address these specific issues because, even if Wolverine were to prevail
on these remaining issues, we find that the agency reasonably rejected the
protester’s proposal based on the failure to submit a past performance
questionnaire for its proposed teaming partner.

Finally, Wolverine argues that the Army should have provided an opportunity for
clarifications or discussions regarding the bases for rejecting its proposal. The
protester contends that the problems with its proposal concerning compliance with
Section L were clerical mistakes, which the Army unreasonably refused to address
through clarifications or discussions. As discussed above, however, RFP sections L
and M made compliance with these provisions a prerequisite to further evaluation.
With regard to past performance, the RFP advised that “[f]ailure to provide a
completed Performance Questionnaire - Attachment 0003 . . . shall render the
Offeror’s proposal noncompliant. The proposal will not be further evaluated and will
not be further considered for award.” RFP § L.5.3.5(c)(4).

\(^6\) Wolverine also contends that the RFP required offerors to include a “consent
letter” from proposed teammates which authorized release of the teammate’s
performance information for review, and that submission of this letter satisfied the
requirement to provide a past performance questionnaire under RFP section
L.5.3.5. See RFP § L.5.3.1.2, at 54. This provision, however, does not address or
otherwise affect an offeror’s obligations to provide a questionnaire.
The solicitation also expressly advised that the agency contemplated making award without discussions. RFP §§ L.1.2, L.5.1.5, M.2, M.4.4.1. To the extent Wolverine argues that the Army should have provided an opportunity for discussions, an agency is not required to do so where it states that award will be made without discussions. See Kiewit Louisiana Co., B-403736, Oct. 14, 2010, 2010 CPD ¶ 243 at 3-4. To the extent the protester contends that the agency should have provided a opportunity for clarifications, such an opportunity could not have addressed the failure to provide the required performance questionnaire. Clarifications are limited exchanges between the agency and offerors that may occur where, as here, contract award without discussions is contemplated. Federal Acquisition Regulation § 15.305(b). An agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. Id.; Future Techs. Consulting Group, Inc., B-409867, Aug. 13, 2014, 2014 CPD ¶ 240 at 5; Savvee Consulting, Inc., B-408623, B-408623.2, Nov. 8, 2013, 2013 CPD ¶ 265 at 6. Clarifications, however, cannot be used to cure deficiencies or material omissions in a quotation, or materially alter the technical or cost elements of the quotation, and/or otherwise revise the quotation. Id. Here, to become acceptable, Wolverine would have had to provide the missing questionnaire; this information exchange would have constituted discussions, not clarifications. See Environmental Quality Mgmt., Inc., B-402247.2, Mar. 9, 2010, 2010 CPD ¶ 75 at 5.

In sum, the record shows that the Army properly determined Wolverine’s proposal to be noncompliant and eliminated the proposal from the competition.

The protest is denied.

Susan A. Poling
General Counsel