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Decision

Matter of: URS Federal Services, Inc.

File: B-411024.4

Date: April 30, 2015

Kevin P. Connelly, Esq., Kelly E. Buroker, Esq., Kirsten W. Konar, Esq., and Caroline A. Keller, Esq., Vedder Price, P.C., for the protester. Michael J. Kraycinovich, Esq., and Alex M. Cahill, Esq., Department of the Army, for the agency. Kenneth Kilgour, Esq., and Cherie J. Owen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Challenge to the exclusion of the protester's proposal from the competitive range is denied where the agency reasonably found that the proposal failed to comply with the terms of the solicitation.

DECISION

URS Federal Services, Inc., of Germantown, Maryland, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. W52P1J-13-R-0161, issued by the Department of the Army for logistics support services for the Army Prepositioned Stocks-3 (APS-3) Charleston Afloat program. The protester asserts that the agency unreasonable evaluated its proposal as failing to comply with a material term of the solicitation and therefore unreasonably excluded its proposal from the competitive range.

We deny the protest.

BACKGROUND

The RFP, open to holders of an Enhanced Army Global Logistics Enterprise (EAGLE) basic order agreement (BOA), sought proposals for the issuance of a single combination cost-plus-fixed-fee/price task order with a 12-month base

period and four 1-year options.¹ RFP § M.1.1. The solicitation provided for the task order to be issued to the offeror whose proposal met the following criteria:² has the lowest total evaluated price that is fair and reasonable; is technically acceptable; has a past performance rating of substantial confidence; and is evaluated as at least acceptable for small business participation.³ RFP § M.1.1. To be evaluated as technically acceptable, a proposal was required to achieve at least an acceptable rating in each of the following three technical sub-factors: staffing and management plan; mission essential contractor services; and organizational diagram. RFP § M.5.1.

As relevant here, RFP section L required offerors to submit their proposals through the Army Single Face to Industry (ASFI) Bid Response System (BRS). RFP §§ A.16, L.3.1. If an offeror had teammates or subcontractors who elected to provide their cost/price information to the agency independently from the prime offeror's proposal, the RFP required those firms to submit their cost/price proposals through ASFI BRS. Id. at § L.5.4.2.7.3 at 64. The RFP further advised teammates or subcontractors independently submitting cost/price proposals that they were required to include Attachment 16, which contained information such as the subcontractor's name and CAGE code, the prime contractor (BAO holder) with whom the company was teaming, and the prime contractor's BAO number. AR, Tab 4n, Attachment 16. Specifically, the RFP contained the following instructions:

The proposed teammates(s)/subcontractor(s) who will be performing in any area shall include Attachment 0016, entitled Teammate/Subcontractor Cost Information Submission with its ASFI submission. Attachment 0016 shall include the teammate[']s or subcontractor[']s company name, CAGE code, task order solicitation number, the Offeror[']s name for which it is submitting this particular proposal, and the Offeror[']s corresponding BOA number.

Id. at § L.5.4.2.7.3.1.

¹ The estimated value of the task order, including option years, is \$154,066,783.33. Agency Report (AR) at 2.

² Technical factors would be rated as either acceptable or unacceptable. RFP § M.5.1.1. Past performance would be evaluated as substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. RFP § M.5.2.9. Small business participation would be evaluated as outstanding, good, acceptable, marginal, or unacceptable. RFP § M.5.4.2.

³ A best value trade-off was to be made only in the event that no proposals were evaluated as meeting the minimum standards for past performance or small business participation. See RFP at § M.4.1.

The solicitation also cautioned offerors that failure to comply with the requirement to submit Attachment 16 would render the proposal noncompliant, resulting in the proposal's elimination from the competition. Specifically, the RFP advised:

Failure of any teammates/subcontractors who will be performing in any area, submitting Cost/Price Proposals independently to the Government, to provide Teammate/Subcontractor Cost Information Submission Attachment 0016 and in compliance with L.5.4.2.7.3.1 through L.5.4.2.7.3.1(c) shall render the Offeror[']s proposal non-compliant. The proposal will not be further evaluated and will not be further considered for award.

Note: This attachment shall only be submitted by the teammates/subcontractors.

Id. at § L.5.4.2.7.3.1(d) (emphasis in original).

Due to difficulties with submission of proposals via ASFI BRI, the agency changed the method of submission, notifying all EAGLE BOA holders that offerors could submit their proposal documents by e-mail, rather than ASFI.⁴ AR, Tab 18c, E-mail from Contract Specialist to BOA Holders, at 1.

URS and, as relevant here, its subcontractor DA Defense Logistics HQ (DADL) both submitted their proposals via e-mail. The Army conducted a review of each offeror's proposal to determine whether it complied with the Section L requirements and, during a review of URS' proposal, found that DADL failed to submit the required Attachment 16. AR at 3; AR, Tab 21b, URS Written Debriefing, at 6. As a consequence, the Army determined that the protester's proposal was noncompliant under sections L.5.4.2.7.3.1 and L.5.4.2.7.3.1(d) of the RFP and excluded it from the competitive range. AR, Tab 20, Compliance Review Memorandum, at 8-9. The Army notified URS of its proposal's exclusion, and this protest followed.

DISCUSSION

URS contends that the Army unreasonably found its proposal noncompliant based on DADL's failure to include Attachment 16 with its independently-submitted cost proposal, which the protester contends was not required when submitting via e-mail. See Protest at 11-13. Specifically, URS asserts that the requirement to include Attachment 16 applied only to submissions through ASFI and since DADL

⁴ However, offerors that were successful in submitting their proposals via ASFI were not to re-submit their proposals via e-mail. AR, Tab 18c, E-mail from Contract Specialist to BOA Holders, at 1.

submitted its cost proposal via e-mail, Attachment 16 was not required. Protest at 17-18. For the reasons discussed below, we find no basis to sustain the protest.

In reviewing protests challenging the rejection of a proposal for consideration for award, 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. Wolverine Servs. LLC, B-409906.3, B-409906.5, Oct. 14, 2014, 2014 CPD ¶ 325 at 3; 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.⁵ Wolverine Servs. LLC, *supra*; LOGMET LLC, B-405700, Dec. 14, 2011, 2011 CPD ¶ 278 at 3.

URS asserts that the RFP's requirement that a subcontractor "shall include Attachment 0016 . . . with its ASFI submission" indicated to offerors that Attachment 16 was required to be included with subcontractors' cost proposals only if they were submitted through ASFI. In this regard, URS asserts that the requirement to submit Attachment 16 was "tied" to the requirement to submit cost proposals through ASFI. Protest at 18. Therefore, the protester argues that when the agency changed the submission method to e-mail, the requirement to include Attachment 16 was eliminated.

The solicitation's requirement to include Attachment 16 with all independently-submitted cost proposals, however, was clear and unambiguous. In this regard, we section L of the RFP warned offerors, with underscored text, and without restriction as to the method of submission, that failure to provide Attachment 16 "shall render the Offeror[']s proposal noncompliant." RFP § L.5.4.2.7.3.1(d). Thus the plain language of the RFP required teammates and subcontractors to include Attachment 16 with their independent cost/price proposals.

Moreover, we note that URS' other teammates and subcontractors submitting independent cost proposals did include Attachment 16 with their proposals, notwithstanding the change to e-mail submission, and DADL itself included Attachment 16 with its independent cost proposal for another prime offeror. AR at 10 n.3. In fact, the protester itself, in addition to submitting a proposal as a prime contractor, also submitted an independent cost proposal as a subcontractor to another prime offeror; in that instance, URS included Attachment 16 as part of its submission. *Id.* at 10. Therefore, the protester's suggested reading of the solicitation's language is contradicted by its own actions and the actions of its

⁵ 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.

subcontractors and teammates. In our view, the agency's instructions to the BOA holders that they could submit their independent cost proposals via e-mail did not expressly revoke what was a clear, unequivocal requirement of the RFP, and that the parties' actions are consistent with the agency's assertion that the requirement was not, in fact, revoked. We are therefore in agreement with the agency, that the change in submission method was not intended to, and did not, revoke the Attachment 16 requirement.

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. Wolverine Servs. LLC, *supra* at 5; see Mission1st Group, Inc., B-404811.3, B-404811.6, June 2, 2011, 2011 CPD ¶ 115 at 4. Here, the Army explains that there are 146 EAGLE BOA holders, all of whom had the opportunity to submit a proposal in response to the RFP. Decl. of Contracting Officer, Mar. 13, 2015, at ¶ 3. In the past, the number of offerors responding to solicitations under the EAGLE BOA has been in the double digits. *Id.* In addition, many firms submit cost proposals as subcontractors or teammates to more than one prime, or a firm may submit a proposal as a prime and also submit as a subcontractor to another prime. *Id.* at ¶ 2-3. The agency explains that Attachment 16 "serves as a tool to enable the Army to match the correct teammate's or subcontractor's independent cost submission with the corresponding proper prime contractor's proposal." *Id.* at ¶ 2. Therefore, the Army states that Attachment 16 would be used to match independently submitted cost proposals to the prime contractor's proposal regardless of whether proposals were submitted through ASFI or via e-mail. *Id.* at 3.

In light of the plain and unambiguous requirement set forth in the solicitation to submit Attachment 16 as part of a subcontractor or teammate's independently submitted cost proposal, and the equally clear statement that the failure to provide Attachment 16 would result in rejection of an offeror's proposal, we conclude that the agency reasonably eliminated URS's proposal from the competition.

Next, URS asserts that the information required by Attachment 16 was available elsewhere in URS' and DADL's submissions.⁶ Protest at 18-20. However, it is not a contracting agency's responsibility to search for information to establish the acceptability of an offeror's proposal. Superior Gunite, B-402392.2, March 29, 2010, 2010 CPD ¶ 83 at 4. Rather, it is the offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly

⁶ As noted above, Attachment 0016 contained the teammate's or subcontractor's company name, CAGE code, task order solicitation number, the offer's name for which it is submitting this particular proposal, and the offeror's corresponding BOA number.

demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. Moreover, to the extent the protester contends that failure to provide Attachment 16 was a minor, excusable mistake, this interpretation of the RFP would render meaningless the admonishments that failure to submit Attachment 16 would render a proposal noncompliant and result in its rejection. See Wolverine Servs. LLC, supra at 4-5.

The protest is denied.

Susan A. Poling
General Counsel