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Decision

Matter of: ASFA International Construction Industry and Trade, Inc.

File: B-412337.2

Date: January 21, 2016

Mehmet Soner, ASFA International Construction Industry and Trade, Inc., for the protester.

James H. Roberts, Esq., Van Scoyoc Kelly & Roberts PLLC, for the intervenor.

Joel B. Lofgren, Esq., Department of the Air Force, for the agency.

Stephanie B. Magnell, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's rejection of a proposal as technically unacceptable for failing to respond to certain portions of the solicitation is denied where the protester failed to demonstrate that the agency's evaluation was unreasonable or inconsistent with the terms of the solicitation.

DECISION

ASFA Uluslararası İnşaat Sanayi Ve Ticaret, doing business as ASFA International Construction Industry and Trade Inc. (ASFA), of Adana, Turkey, protests the award of a contract to Kirnak İnş. San. Ve Tic. Ltd. Şti, also of Adana, Turkey, by the Department of the Air Force under request for proposals (RFP) No. FA5685-15-R-0006, for construction of an explosive ordinance facility at Incirlik Air Base, Turkey. The protester challenges the agency's finding that its proposal was technically unacceptable and argues that the agency should have requested clarification regarding any missing information.

We deny the protest.

BACKGROUND

The procurement was conducted under the negotiated procurement procedures of Federal Acquisition Regulation (FAR) part 15. The solicitation stated that the Air Force would make award to the responsible offeror that submitted the lowest-priced, technically acceptable proposal. RFP at 30. Offerors were evaluated under price

and two non-price factors: proposal documentation and technical capability. Id. at 30. The technical capability factor consisted of four subfactors: (1) quality control plan; (2) technical capabilities; (3) progress schedule; and safety plan and safety equipment list. Id. at 24-25.

As relevant to the protest, the RFP required offerors to identify a key person to serve as a LEED¹ commissioning authority “to meet the submittal and reporting requirements of the LEED EA [energy and atmosphere] Prerequisite Requirement for Fundamental Commissioning.” RFP, Specifications § 1.4.2.1. The RFP specified that the individual proposed as the commissioning authority “must be certified as a commissioning professional by with the Association of Energy Engineers (AEE), the Building Commissioning Association (BCA), the National Environmental Balancing Bureau (NEBB), or the University of Wisconsin - Madison (UWM).” Id. at § 1.4.2.2.

The solicitation required offerors “to meet all solicitation requirements, including terms and conditions, representations and certifications, and technical requirements, in addition to those identified as evaluation factors or subfactors.” RFP at 23. The RFP further stated that “[f]ailure to meet a requirement may result in an offer being ineligible for award.” Id. Offerors were informed that “[p]roposals must be rated ‘Acceptable’ for all technical subfactors in order to be determined technically ‘Acceptable.’” Id. at 31. Thus, if a proposal were found to be unacceptable for even one technical subfactor, it was ineligible for award.

The Air Force received nine timely proposals. Contracting Officer’s Statement of Facts at 1. The agency ranked the proposals from lowest- to highest-priced and evaluated their technical acceptability, starting with the lowest in price. AR, Tab 13, Source Selection Decision Document (SSDD), at 1. The agency found the lowest-priced proposal to be technically unacceptable and proceeded to evaluate ASFA’s proposal, which was the second lowest-priced. Id. at 2. The Air Force found ASFA’s proposal to be technically unacceptable on three separate grounds: (1) it failed to state it would use an independent certified LEED commissioning authority; (2) it failed to provide information regarding a domestic line water meter; and (3) the shop drawings for the MDP [main distribution panel] panelboard did not contain sufficient detail. Agency Report (AR), Tab 9, Technical Evaluation, at 7.

On September 30, 2015, the Air Force made award to Kirnak Ins. San. Ve Tic. Ltd. Sti, the offeror with the third highest price, as the lowest-priced technically acceptable offeror. AR, Tab 13, SSDD, at 2-3.

¹ LEED is an acronym for “leadership in energy and environmental design” and relates to construction strategies and practices.

DISCUSSION

ASFA challenges each of the Air Force's three findings that its proposal was technically unacceptable, arguing that the flaws identified by the agency "are either incorrect, or, alternatively, de minimus." Protester's Comments (Nov. 27, 2015), at 1. For the reasons discussed below, we find that the agency reasonably found the protester's proposal to be technically unacceptable with regard to the requirement to propose a certified LEED commissioning authority. Because the terms of the RFP established that a single finding of unacceptability under any evaluation element would render a proposal technically unacceptable, the conclusion above is sufficient to deny the protest. Hughes Grp., LLC, B-410354.2, July 23, 2015, 2015 CPD ¶ 267 at 6. We therefore need not address the agency's other two bases for finding the protester's proposal technically unacceptable.

The evaluation of an offeror's proposal or quotation, including experience, is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing a protest of an agency's evaluation of proposals or quotations, including technical evaluations, our Office will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's disagreement with the agency's judgment, without more, in its evaluation of the relative merit of competing proposals or quotations does not establish that the evaluation was unreasonable. C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4.

As stated above, the Air Force found that ASFA's proposal failed to state that it would use an independent certified commissioning authority for the HVAC system testing, as required by the RFP. AR, Tab 9, Technical Evaluation, at 7. ASFA disputes the Air Force's conclusion that its proposal failed to state it will use an independent certified commissioning authority to test the HVAC system. Protest at 1-2.

The RFP required offerors to propose a commissioning authority who would, among various duties, "meet the submittal and reporting requirements of the LEED EA Prerequisite Requirement for Fundamental Commissioning," including commissioning of the HVAC system. RFP, Specifications § 1.4.2.1. The solicitation required the commissioning authority to satisfy multiple requirements, as described below:

The CA [commissioning authority] must be certified as a commissioning professional by with [sic] the Association of Energy Engineers (AEE), the Building Commissioning Association (BCA), the National Environmental Balancing Bureau (NEBB), or the University of Wisconsin - Madison (UWM). CA resume is required, providing

education, experience and management capabilities on at least two similar size and type contracts. The CA may not have been involved with the project design, construction management, or supervision and must be with a third-party firm that is not on the design team[.]

Id. § 1.4.2.2.²

ASFA's proposal states that "HVAC testing adjusting and balancing will be performed by manufacturer's team together with the University of Çukurova, Mechanical Engineering Department." AR, Tab 24, ASFA Technical Proposal, at 35. ASFA claims that "[t]he agency is fully aware that the University of Çukurova, Mechanical Engineering Department, is qualified in this regard [to be a commissioning authority on the contract] as it has been performing the required tests as the independent testing authority for numerous projects executed at Incirlik AB for many years." Protest, at 2-3.

Regardless of the skills and qualifications of those persons employed in the Mechanical Engineering Department at the University of Çukurova, ASFA has not demonstrated that it provided the Air Force with evidence that this department, or any individual within it, had been certified as a commissioning professional by any one of the four entities specified in the solicitation. Furthermore, in this protest ASFA has not submitted any certification as part of the record nor alleged that the Air Force should otherwise have been aware of any such certification. On this record, the Air Force was reasonable in concluding that ASFA's proposal was not technically acceptable because ASFA had failed to propose a commissioning authority that was certified by one of the four entities listed in the solicitation. ASFA's argument that the solicitation should have also allowed as a commissioning authority those entities previously serving as an independent testing authority on other Incirlik Air Base construction projects is an untimely challenge to the terms of the solicitation. Protest at 2-3; 4 C.F.R. § 21.1(a)(1).³

ASFA also argues that the Air Force should have asked for clarification instead of finding its proposal technically unacceptable. Protest at 5, 6. An offeror has the

² Although the RFP's use of the words "key person" and "resume" (RFP, Specifications § 1.4.2.1) suggests that offerors were required to propose a specific individual for this role, the agency appeared to accept proposals for entities as well as individuals. AR, Tab 9, Technical Evaluation, at 7 (finding ASFA's proposal technically unacceptable because it did not state that ASFA would use "an independent testing agency"). However, the agency shared the protester's interpretation as to the role of this "authority."

³ ASFA claims that it "could not reasonably have been expected to know the importance of these specific criteria." Protest at 4. To the extent that ASFA challenges the terms of the solicitation, this argument is similarly untimely. Id.

burden of submitting an adequately written proposal, and it runs the risk that its proposal will be evaluated unfavorably when it fails to do so. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6. In a negotiated procurement conducted pursuant to FAR part 15, clarifications are “limited exchanges” between the government and offerors that may occur when award without discussions is contemplated, which allow offerors to clarify certain aspects of proposals or to resolve minor clerical errors. FAR § 15.306(a); STG, Inc., B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 8-9. Agencies have broad discretion as to whether to seek clarifications from offerors, and offerors have no automatic right to clarifications regarding proposals. STG, Inc., supra. Furthermore, clarifications cannot be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. Id. Here, we conclude that the Air Force was not required to seek clarification from ASFA because the issue to be addressed concerned a material solicitation requirement.

The protest is denied.

Susan A. Poling
General Counsel