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Decision

Matter of: Veterans Electric, LLC

File: B-413198

Date: August 26, 2016

Daniel McAuliffe, Esq., and Joseph A. Whitcomb, Esq., Whitcomb, Selinsky, McAuliffe PC, for the protester.
Benjamin M. Diliberto, Esq., Stacey North-Willis, Esq., and Charlma Quarles, Esq., Department of Veterans Affairs, for the agency.
Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency unreasonably found the awardee's proposal to be technically acceptable in a lowest-priced, technically acceptable best value procurement is denied where the record shows that the agency's evaluation was reasonable and in accordance with the terms of the solicitation.

DECISION

Veterans Electric, LLC, of Colgate, Wisconsin, protests the award of a contract to Architectural Consulting Group, Inc. (ACG), of Chicago, Illinois, by the Department of Veterans Affairs (VA) under request for proposals (RFP) No. VA786-16-Q-0129 for electrical services at the agency's Wood National Cemetery in Milwaukee, Wisconsin. Veterans Electric argues that the agency improperly evaluated the awardee's proposal.

We deny the protest.

BACKGROUND

The RFP, issued on March 1, 2016, sought proposals for construction services to upgrade existing electrical service to the monument circle lighting circuit. RFP at 6. The requirement was set aside for service disabled veteran-owned small businesses under North American Industry Classification System (NAICS) code 238210, with a size standard of \$15 million. Id. at 1. Award was to be made on a

lowest-priced, technically-acceptable basis considering technical qualifications, past performance and price. Id. at 11.

With respect to the technical qualifications factor, the RFP stated, “[t]echnical capability will be evaluated to determine the extent to which [the proposal] demonstrates a clear understanding of all features involved in performance of the requirements identified in the [statement of work].” Id. Offerors were instructed to not simply restate the requirements, but to describe, “in detail, how the Offeror intends to meet the requirements.” Id. The factor also gave an illustrative list of five technical qualifications: experience performing this type of work, qualifications of technical/key personnel, sufficiency of personnel/equipment, performance plan, and overall technical acceptability. Id.

Two proposals were received, one from Veterans Electric, and the other from ACG. Contracting Officer’s Statement at 2. Both were evaluated as technically acceptable. Id. ACG’s evaluated price was \$13,400, whereas Veterans Electric submitted a price of \$19,250. Agency Report (AR), exh. 7, Basis of Award at 2. ACG’s proposal was selected as the lowest-priced, technically-acceptable offer. After a debriefing, Veterans Electric filed an agency-level protest, which was denied. This protest followed.

DISCUSSION

Veterans Electric argues that the agency unreasonably found ACG’s proposal to be technically acceptable. According to the protester, ACG’s proposal did not conform to the requirements of the solicitation and ACG was not registered as performing work under the relevant NAICS code. Comments at 1-4. A review of the record shows that the protest is without merit.

The evaluation of an offeror’s proposal is a matter within the agency’s discretion. Kellogg Brown & Root Servs., Inc., B-400614.3, Feb. 10, 2009, 2009 CPD ¶ 50 at 4. In reviewing a protest against an agency’s evaluation of proposals, our Office will not reevaluate proposals, but instead 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. Triple Canopy, Inc., B-310566.4, Oct. 30, 2008, 2008 CPD ¶ 207 at 7.

Veterans Electric alleges that ACG’s proposal did not conform to the RFP’s requirements because it did not contain a detailed performance plan, one of the five technical qualifications under the technical qualification factor. Comments at 2. The VA argues that the protester misconstrues the RFP in that the five technical qualifications “were included as examples of information that offerors can provide to help the agency reach a determination as to technical acceptability” and were not included as subfactors to be evaluated individually. Legal Memorandum at 6.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2.

Here, proposals were to demonstrate a clear understanding of the requirements stated in the RFP, including how the offeror intended to meet the requirements. RFP at 11. This language was followed by the term “for example,” which was itself followed by the five technical qualifications discussed above. Id. We agree with the VA that the use of the term “for example” prior to delineating the technical qualifications indicates that the qualifications were illustrative and not compulsory in nature. Thus, ACG’s failure to provide a detailed performance plan, a matter recognized by the VA in its evaluation,¹ does not support the conclusion that its proposal did not meet a material solicitation requirement. A review of ACG’s proposal shows that it met other aspects of the technical qualifications such as showing the company’s experience, work history and capabilities. See generally AR, exh. 4, ACG Proposal. Based on this record, we are provided no basis to question the reasonableness of the agency’s evaluation in this regard.

Veterans Electric next argues that ACG’s proposal should have been found technically unacceptable because it did not include NAICS code 238210 in its System for Award Management (SAM) registration or its proposal, which the protester asserts shows the awardee “per se” did not possess the technical experience required by the solicitation. Protest at 5. The protester also argues that by the terms of the solicitation, ACG’s failure to certify that it met the relevant size standard for this NAICS code, renders its proposal technically unacceptable. Protest at 5; Comments at 3-4.

¹ ACG’s proposal was found to be technically acceptable by two evaluators, and was assigned two strengths for good experience and a work history at Wood National Cemetery. AR, exh. 6, ACG Technical Evaluation, at 1-4. While ACG’s proposal did receive a weakness for subcontracting work, and a deficiency for providing few details in its performance plan, Veterans Electric has not shown why, on this record and under the stated evaluation scheme, such an evaluation would necessarily render ACG’s proposal unacceptable. Id. Nothing in the RFP or the evaluation documents requires a determination of unacceptability based on the assignment of a deficiency. Moreover, the record shows that, despite the assignment of a deficiency, both the technical evaluators and the contracting officer viewed ACG’s proposal as technically acceptable despite concluding that the firm’s proposal lacked a detailed performance plan, which, as discussed, was not a material requirement under the stated evaluation scheme.

The Small Business Administration (SBA) establishes small business size standards on an industry-by-industry basis. Federal Acquisition Regulation (FAR) § 19.102(a)(1). The SBA identifies the size standards using NAICS codes. 13 C.F.R. § 121.201. The FAR provides that size standards are "applied" by classifying the product or service being acquired under the NAICS code that best describes it; identifying the size standard SBA established for that industry; and specifying the size standard in the solicitation so that offerors can appropriately represent themselves as large or small. FAR § 19.102(b). So long as a company meets the applicable size standard, we are aware of no statutory or regulatory requirement that it have the particular NAICS code identified in the solicitation as its primary code. High Plains Computing, Inc. d/b/a HPC Solutions, B-409736.2, Dec. 22, 2014, 2014 CPD ¶ 379 at 6-7.

We are provided no basis to conclude that the lack of a particular NAICS code means that ACG lacks the technical experience required by the solicitation. Moreover, a review of the record provides us no basis to question the agency's evaluation of ACG's technical proposal or its determination that the firm's proposal was technically acceptable. Our review also shows that the protester's second allegation--that ACG's failure to certify that it met the relevant size standard renders the firm's proposal technically unacceptable--is without merit.

The VA appears to acknowledge that neither ACG's proposal nor its SAM registration affirmatively mentions NAICS code 238210. However, the agency argues that the awardee's proposal listed other NAICS codes with size standards at or below the \$15 million size standard for NAICS code 238210. Legal Memorandum at 4-5. The protester does not challenge the agency's position that ACG listed other NAICS codes at or below the relevant size standard, but instead argues that ACG was required to certify that it was small under the specific NAICS code relevant to the solicitation. Comments at 3-4.

The record shows that ACG listed one primary NAICS code and 27 secondary NAICS codes in its SAM registry. AR, exh. 14, Responsibility Determination, at 24-25. The contracting officer explains that while he observed that ACG did not have the specified NAICS code listed in its SAM profile, he "verified that several of the NAICS codes they did have listed, including 238110, 238220, and 238990, had the same size standards as NAICS code 238210 of 15 million dollars." Contracting Officer's Supp. Statement at 1. Based on this, he "determined that this was sufficient evidence to support that ACG met the applicable size standard for NAICS code 238210." Id. The protester has not provided us with any basis to question the reasonableness of the agency's evaluation in this regard.

The protest is denied.

Susan A. Poling
General Counsel