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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Muller Environmental Consulting Services

File: B-413827

Date: December 14, 2016

Jessica Belfit Muller, Muller Environmental Consulting Services, for the protester. Debra J. Talley, Esq., and Joseph S. Beazley, Esq., Department of the Army, for the agency.

K. Nicole Willems, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's rejection of protester's proposal is denied where proposal lacked required option period pricing.

DECISION

Muller Environmental Consulting Services, of Forest Hill, Maryland, protests the issuance of a purchase order to Osage of Virginia, Inc., of Manteo, North Carolina, under request for proposals (RFP) No. W56ZTN-16-T-0011, issued by the Department of the Army, Army Contracting Command, Aberdeen Proving Ground, for technical assistance associated with the Army's environmental compliance program. The protester argues that the agency improperly rejected its proposal, and that the terms of the solicitation were ambiguous.

We deny the protest.

BACKGROUND

The RFP was issued on August 24, 2016, and was set aside for woman-owned small businesses. RFP at 1. The RFP contemplated the issuance of a fixed-price purchase order for a twelve-month base period, with an option for an additional six months, to the responsible offeror whose offer conforming to the solicitation would

be most advantageous to the government, considering technical and price factors.¹ Id. at 26. Regarding the technical factor, the solicitation required that proposed key personnel have a Bachelor's of Science or Master's degree in engineering, environmental sciences or other sciences, and a minimum one year of experience in solid waste projects. Id. Regarding the price factor, the RFP provided that the government would evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Id.

The schedule included in the RFP contained three contract line items (CLINs): CLIN 0001, environmental program technical support; CLIN 0002, contractor manpower reporting; and CLIN 1001, option to extend for six months. RFP at 3-4. The RFP was amended three times, in order to answer industry questions. Agency Report (AR), Tabs 5, 6, and 7, RFP Amendments 0001, 0002, and 0003. Among the questions addressed were requests for clarification regarding the information to be provided by offerors. In this regard, the agency clarified that the solicitation did not contain a separate section with instructions to offerors, and advised offerors to look at Federal Acquisition Regulation (FAR) § 52.212-2 for the factors used to evaluate proposals. Id. Regarding instructions to offerors, the RFP also included by reference FAR § 52.212-1(g) which provides that, among other things, the agency intended to evaluate offers and award a contract without discussions, and advised offerors that initial offers should contain the offeror's best terms from a price and technical standpoint. RFP at 25.

The agency received seven proposals in response to the solicitation, including proposals submitted by the protester and the awardee. AR at 3. Both the protester and the awardee were found to satisfy the agency's criteria under the technical factor. Id. Regarding price, however, the agency concluded that the protester was ineligible for award because it failed to submit prices for the contract manpower reporting requirement and the 6-month option, which precluded the agency from conducting an overall price evaluation of its proposal in accordance with FAR § 52.212-2. Id. at 4.

Based on the results of its evaluation, the agency selected Osage for issuance of the purchase order. AR at 5. The protester was notified of the agency's decision on September 21, and this protest followed on September 27.

DISCUSSION

¹ Because the record contains references to both the award of a contract and the issuance of a purchase order, our decision includes both terms as consistent with the record.

The protester argues that it was improper for the agency to exclude its proposal for failure to include pricing information, because the RFP failed to adequately explain what offerors were expected to include in their proposals.² In this regard, the protester contends that there was no mention in FAR § 52.212-2 of the requirement to include pricing for a 6-month option. As explained below, we deny the protester's contention because we find that the solicitation's requirement was clear.³

Here, we find that the requirement for offerors to submit a price for the 6-month option was not ambiguous, and the protester should have known that the information was required. In this regard, we first note that the solicitation, on its face, required offerors to provide unit prices/amounts for the listed supplies/services, which included a CLIN for the six month option. Specifically, the standard form (SF) 1449 directed offerors to complete certain blocks on the form, including blocks for unit price/amount. When viewed as a whole, the unit price and amount information was clearly meant to correspond with the three CLINS listed on the schedule. RFP at 1. Additionally, FAR § 52.212-2, which was included in the RFP, informed offerors that the agency would "evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement." RFP at 26. In sum, we see no ambiguity with regard to this requirement.

² The protester also argues that the agency should have requested the missing price information prior to making award. As noted above, however, the solicitation contemplated making an award without discussions, so the agency was under no obligation to engage in discussions with the offeror regarding the information that was omitted from the protester's proposal. See Incident Catering Services, LLC, B-296435.2 et al., Sept. 7, 2005, 2005 CPD ¶ 193 at 9 (agency not generally obligated to conduct discussions where RFP instructs offerors of intent to make award on the basis of initial proposals).

³ The protester also challenged the lack of clarity in the solicitation with respect to CLIN 0002, contract manpower reporting. As discussed in this decision, the agency reasonably found the protester's proposal unacceptable because the protester failed to propose pricing for the option period. Thus, the protester is not an interested party to raise challenges related to CLIN 0002. See Allied Technology Group, Inc., B-402135 et al., Jan. 21, 2010, 2010 CPD ¶ 152 at 11-12. Additionally, to the extent the protester believes the solicitation was ambiguous, the protester was required to protest the terms of the solicitation before closing. In this regard, our timeliness rules specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1); see AmaTerra Env'tl. Inc., B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3.

As a result, the failure to include the pricing for the option period renders the protester's proposal unacceptable. Since offerors were required to provide option period prices, and those prices were to be evaluated for purposes of determining the total evaluated price, option prices were a material solicitation requirement. Manthos Engineering, LLC, B-401751, Oct. 16, 2009, 2009 CPD ¶ 216 at 2. 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. Id. Since the protester's proposal did not provide the required option price, the proposal did not conform to the material terms of the RFP, and therefore could not be accepted for award. Id.

The protest is denied.

Susan A. Poling
General Counsel