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Decision

Matter of: VSE Corporation

File: B-414057.2

Date: January 30, 2017

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James Y. Boland, Esq., Venable LLP, for ATAP, Inc., an intervenor.
Robert J. Drone, Esq., United States Marine Corps, for the agency.
Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably rejected protester's proposal as technically unacceptable where protester failed to demonstrate an adequate understanding of the solicitation requirements, including specific requirements regarding welding of hardened steel.

DECISION

VSE Corporation, of Alexandria, Virginia, protests the U.S. Marine Corps's rejection of VSE's proposal, submitted in response to request for proposals (RFP) No. M67004-16-R-0011, for the inspection and repair of certain Marine Corps vehicles. VSE protests that the agency improperly evaluated VSE's proposal as technically unacceptable.

We deny the protest.

BACKGROUND

On May 24, 2016, the agency issued RFP No. M67004-16-R-0011, seeking proposals to "Inspect [and] Repair Only As Necessary" (IROAN) a quantity of vehicles identified as "Category (CAT) 1 Mine Resistant Ambush Protected (MRAP) Cougar Vehicles."¹ Agency Report (AR), Tab 3, Initial Performance Work Statement

¹ As ultimately amended, the solicitation called for proposals to inspect and repair a total of 258 vehicles. Agency Report (AR), Tab 6, RFP amend. No. 2, at 2.

(PWS), at 1. The solicitation contemplated restoration of the vehicles to “Condition Code A.”² The agency explains that the vehicles to be serviced are “mainly constructed of high hardness steel,” and that each vehicle has a “blast resistant underbody and thick layer armored glass that offers unparalleled protection.” Memorandum of Law/Contracting Officer’s Statement (MOL/COS), Nov. 23, 2016, at 2. Further, the agency notes that “[Marine Corps members’] lives are dependent on a fully capable and operational MRAP Cougar.” Id.

Of particular relevance to this protest, the PWS was amended by RFP amendment No. 1 to state:

Hull Crack Inspection and Repair. . . . Welding repair and inspection procedures shall be followed IAW [in accord with] Program Office Document #2016-0002 Cougar Hull Inspection and repair procedures.[³]

AR, Tab 5, Amended PWS, at 7.

The solicitation provided that award would be made on a lowest price technically acceptable (LPTA) basis, and established the following evaluation factors: technical, past performance and price.⁴ AR, Tab 4, RFP at 41-42. Under the heading “Technical Evaluation,” the solicitation identified various go/no-go criteria that proposals were required to meet,⁵ including:

² “Condition Code A” is defined as “new, used, repaired or reconditioned material which is serviceable and issuable to all customers without limitation or restriction.” AR, Tab 3, PWS append. A, at A-1.

³ The reference to Document #2016-0002 replaced a previous reference to a document identified as TB 9-2355-328-40, titled “Inspection and Corrective Repair Action Procedure for Mine Resistant Vehicles.” See AR, Tab 3, Initial PWS, at 7. The agency states that Document #2016-0002 contains more rigorous standards than TB 9-2355-328-40 with regard to inspection, welding, and repair of hardened steel. See Declaration of Technical Evaluation Board (TEB) Chair, Dec. 14, 2016, at 7-9.

⁴ Offerors were required to propose fixed unit prices per vehicle, and these unit prices were used to establish each offeror’s evaluated price.

⁵ The solicitation directed offerors to ensure that each of the criteria “are clearly demonstrated in the offeror’s proposal.” AR, Tab 5, RFP amend. No. 1, at attach. 4. The solicitation also warned offerors that “the failure to effectively demonstrate the ability to IROAN the MRAP CAT I Cougar in accordance with the PWS is without waiver and will result in the Offeror’s proposal receiving a rating of ‘unacceptable’.” AR, Tab 4, RFP at 40.

- Demonstrate an understanding of the Performance Work Statement requirements. Proposal should clearly define the Offerors' response to the requirements of the PWS.

* * * * *

- Demonstrate ability to perform Inspect Repair Only as Necessary (IROAN) the Mine Resistant Ambush Protected (MRAP) CAT 1 Cougar.

* * * * *

- Provide a written plan describing how the Offeror's capability will meet the welding specifications particular of MRAP Armor and high hardness steel.
- Provide welder certifications standards and ensure they are in compliance with DOD [Department of Defense] and industry standards.

AR, Tab 4, RFP at 36-37.

On or before the July 29 closing date, four offerors--VSE, General Dynamics Lands Systems (GLDS), Raytheon, and ATAP, Inc.--submitted proposals, which were subsequently evaluated. VSE's proposal was evaluated as technically unacceptable for failure to meet various PWS requirements, including those regarding welding of hardened steel in compliance with Document #2016-0002. AR, Tab 13, Initial TEB Report, at 5-9.

The agency states that, at the time it completed the evaluation of initial proposals, the agency intended to make award without discussions.⁶ MOL/COS, Nov. 23, 2016, at 6. However, thereafter, the agency determined that it was necessary to amend the solicitation by, among other things, changing the period of performance and stating the agency's intent to make multiple awards.⁷ Accordingly, the agency concluded that revised proposals would be necessary and, on September 27, the

⁶ The solicitation advised offerors that the agency intended to make award without discussions, but reserved the right to conduct discussions if the agency so chose. AR, Tab 4, RFP at 38.

⁷ Offerors were permitted to offer to inspect/repair all or some portion of the 258 vehicles. The agency explained that if the lowest-priced technically acceptable proposal did not offer to perform the total quantity sought, award would be made for the quantity offered, and the agency would then move to the next-lowest-priced technically acceptable proposal to make another award, repeating that process until awards had been made for the total requirement. AR, Tab 9, RFP amend. No. 5, at 2.

agency opened discussions with each offeror, advising them that responses would be due on September 28.⁸

Specifically, the agency sent VSE discussion questions that identified various areas of its proposal that needed to be addressed, including the following:

[VSE] provided no specific procedures to demonstrate its understanding or usage of high hardened steel. The crack repair illustrations in figure 3 are not in compliance with the PWS^[9]. . . .

. . . [T]here is no discussion of proper welding technique according to PM welding guidance 2016-0002. The proposal references TB 9-2355-328-40 which are welding procedures and methods but it is not the primary guidance for welding.^[10] The lack of this understanding and use of these references will not allow the proper performance of welding with high hardened steel.^[11]

AR, Tab 22B, Discussion Document for VSE, at 4-5.

On September 28, VSE provided its response, stating, among other things:

The crack repair illustrations provided in Figure 3 are provided as an example of VSE's experience conducting Battle Damage Repair of High Hardened Steel. The vehicle shown in Figure 3 started as a MRAP Cougar from the factory that was converted to a JERRV [joint explosive ordnance disposal rapid response vehicle] under the Route Clearance

⁸ Throughout its protest submissions, VSE complains about the limited period of time the agency provided the offerors to respond to the agency's discussion questions. To the extent VSE's protest challenges the agency's discussions in that regard, its protest is not timely filed. 4 C.F.R. § 21.2(a)(1); Armorworks Enters., LLC, B-400394, B-400394.2, Sept. 23, 2008, 2008 CPD ¶ 176 at 6-7.

⁹ Figure 3 in VSE's proposal depicted what the agency describes as a "cut and weld of a cover plate over a crack," and states that Document #2016-0002 "does not allow for cover plate repairs on high hardness steel." MOL/COS, Nov. 23, 2016, at 10.

¹⁰ The agency has stated that "[t]he difference in the two documents [Document #2016-0002 and TB 9-2355-328-40] would resemble the difference in performing surgery versus applying a bandage depending on the size and depth of the crack or puncture." Protest, exh. C, Post-Award Debriefing Questions and Answers, at 2.

¹¹ The agency also directed VSE's attention to other areas of its proposal, including VSE's demonstration of its compliance with the PWS's painting requirements.

Vehicle Modernization Program in Kuwait for TACOM. During execution of this program, TACOM identified an inherent factory weakness that was causing cracks around the door opening and developed a procedure to apply a patch to that area to eliminate the stress, while enhancing the ballistic integrity, and allowing these vehicle[s] to quickly return to the battlefield. VSE is currently involved in all types of weld repair under our Red River Army Depot Maintenance contract.

* * * * *

VSE's proposal included a general overview of our welding experience of High Hardened Steel developed over repairing thousands of MRAP vehicles for the Army and Marine Corps. Our proposal did not reference the PM Welding Guidance 2016-0002 that is specific to the MRAP Cougar, as many of the repair procedures in PM Welding Guidance 2016-0002 reference TB 9-2335-328-40 as the actual repair instruction. VSE intends to utilize both documents in our Hull Inspection and Repair and will utilize the Cougar Hull/Weld Crack Inspection Checklist that is included as Attachment "A" of PM Welding Guidance 2016-0002. VSE, the prime maintenance contractor at Red River Army Depot, is currently supporting the repair of High Hardened Steel for the USMC on MRAP Cougars. To further illustrate our complete understanding of welding techniques required with High Hardened Steel, we are including a copy of a completed Cougar Hull Inspect and Repair Check Sheet that VSE personnel use under that program.

AR, Tab 25, VSE Response to Discussions, at 1, 5.

Upon receipt and review of VSE's response, the agency concluded that the proposal was still technically unacceptable for failing to meet various solicitation requirements, including an inadequate demonstration of VSE's understanding of, and/or intent to comply with, the PWS's welding requirements in Document #2016-0002.¹² More specifically, the agency concluded that VSE's proposal reflected "battlefield maintenance repair procedures," but that the PWS sought more rigorous standards and procedures, and further noted that "battlefield welding does not inherently correlate to experience or understanding in IROAN welding procedures." AR, Tab 16, Final TEB Report, at 4. Finally, the agency referenced

¹² As noted above, the solicitation specifically provided, under the heading "Hull Crack Inspection and Repair," that: "Welding repair and inspection procedures shall be followed IAW [in accord with] Program Office Document #2016-0002 Cougar Hull Inspection and repair procedures," AR, Tab 5, Amended PWS, at 6-7, and this provision was issued in an amendment to the solicitation, replacing an earlier reference to TB 9-2355-328-40. See AR, Tab 3, Initial PWS, at 7.

VSE’s reliance on TB 9-2335-328-40, rather than Document #2016-0002, as “show[ing] a clear lack in understanding of the differences in these two documents and overall requirements of the welding procedures.” Id. at 5.

Following submission of the offerors’ final revised proposals on September 28, the proposals were evaluated as follows:

	Technical	Past Performance	Overall Rating	Price per Vehicle
VSE	Unacceptable	Acceptable	Unacceptable	[redacted]
GDLS	Acceptable	Acceptable	Acceptable	\$119,550
Raytheon	Unacceptable	Acceptable	Unacceptable	[redacted]
ATAP	Acceptable	Acceptable	Acceptable	\$143,700

MOL/COS, Nov. 23, 2016, at 5.

Thereafter, the agency notified VSE that its proposal had been rejected as technically unacceptable and that contract awards had been made to GDLS and ATAP.¹³ This protest followed.

DISCUSSION

VSE protests that the agency unreasonably determined that VSE’s proposal was unacceptable for failing to adequately demonstrate VSE’s understanding of, and/or intent to comply with, the PWS welding requirements. More specifically, VSE asserts that, because its proposal “acknowledged the applicability of both documents,” (that is, TB 9-2355-328-40 and Document #2016-0002) it was unreasonable for the agency to consider VSE’s reference to TB-9-2355-328-40 as a basis for rejecting the proposal.¹⁴

The agency responds that the solicitation’s specific reference to Document #2016-0002 was critical to understanding the solicitation requirements, and that VSE’s reference to TB 9-2355-328-40 as “the actual repair instruction” was one of

¹³ Award was made to GDLS for 198 vehicles, and to ATAP for the remaining 60 vehicles.

¹⁴ In filing and pursuing this protest, VSE has raised arguments that are in addition to, or variations of, those discussed above, including assertions of unequal treatment. We have considered all of VSE’s arguments and find no basis to sustain its protest.

several considerations in rejecting VSE's proposal as unacceptable.¹⁵ More specifically, the agency first notes that the PWS expressly provided that Document #2016-0002 established the welding repair and inspection procedures that "shall be followed." AR, Tab 5, Amended PWS, at 7. Further, the agency specifically explains that this document established "the requirements that must be followed for welding high hardness armor, some of which [are] contradictory to the requirements of TB 9-2355-328-40." Declaration of TEB Chair, Dec. 14, 2016, at 8. The TEB Chair adds that agency personnel were responsible for the development of Document #2016-0002, and that "it was specifically written to address issues with the procedures in TB 9-2355-328-40 that caused cracks." Id. The TEP Chair notes that the applicability of Document #2016-0002 was called to VSE's attention during discussions, and that VSE responded by stating that it would "weld in accordance with both #2016-0002 and TB 9-2355-328-40." Id. The TEB Chair states that VSE's approach "is incorrect," elaborating that the contractor "must weld" in accordance with Document #2016-0002, and must use TB 9-2355-328-40 "as supplemental information only," concluding: "[y]ou do not weld to both" because failure to rely on document #2016-0002 as the primary document would be "detrimental" to contract performance. Id.

The TEB Chair further refers to figure 3 in VSE's proposal as additional support for the agency's determination that VSE's proposal was technically unacceptable, noting that this portion of VSE's proposal was specifically brought to VSE's attention during discussions and described as "not in compliance with the PWS."¹⁶ See AR, Tab 22B, Discussion Document for VSE, at 4-5. The TEB Chair elaborates that "[t]he weld repair shown by VSE [in figure 3] meets the requirements of TB 9-2335-328-40, but it does not meet the requirements of welding high hardness steel in accordance with [Document] #2016-0002,"¹⁷ explaining that the type of repair shown by VSE's proposal "is considered a temporary repair or battle field maintenance repair, which will have to be corrected when the vehicle is brought in for Depot level repair." Declaration of TEB Chair, Dec. 14, 2016, at 9. The TEB

¹⁵ The agency notes that its contemporaneous evaluation record reflects multiple considerations that supported the conclusion that VSE's proposal was unacceptable. In light of our determination that the agency reasonably rejected VSE's proposal for failing to demonstrate an understanding of, and/or intent to comply with, the welding requirements, we do not address the other bases for rejecting VSE's proposal.

¹⁶ As noted above, the agency describes figure 3 as depicting a "cut and weld of a cover plate over a crack," stating that Document #2016-0002 "does not allow for cover plate repairs on high hardness steel." MOL/COS, Nov. 23, 2016, at 10.

¹⁷ As noted above, the agency has stated that "[t]he difference in the two documents would resemble the difference in performing surgery versus applying a bandage." Protest, exh. C, Post-Award Debriefing Questions and Answers, at 2.

Chair continues that “[t]his type of repair has been known to cause additional cracking and permanent damage to the hull” and “is only authorized in the field in order to restore ballistic integrity when depot repair is not viable.” Id. Finally, the TEB Chair states that the type of repair shown in figure 3 of VSE’s proposal “creates stress on the hardened surface, which creates crack[s],” and concludes Document #2016-0002 “was written to eliminate this exact issue.” Id.

The evaluation of proposals is primarily a matter within the contracting agency’s discretion, since the agency is responsible for defining its needs and the best method of accommodating them. Wyle Labs., Inc., B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 6; Optimal Solutions & Techs., B-407467, B-407467.2, Jan. 4, 2013, 2013 CPD ¶ 20 at 6. In reviewing protests challenging an agency’s evaluation of proposals, GAO will not reevaluate proposals, but rather will examine the record to determine whether the agency’s judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. Pioneering Evolution, LLC, B-412016, B-412016.2, Dec. 8, 2015, 2015 CPD ¶ 385 at 7. A protester’s disagreement with an agency’s judgment, by itself, is insufficient to establish that the agency acted unreasonably. STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 7. Further, where matters of human life and safety are involved, our Office will afford considerable deference to the judgments of the agency’s technical experts. See, e.g., Siq Sauer, Inc., B-402339.3, July 23, 2010, 2010 CPD ¶ 184 at 2; Ultra Electronics Ocean Systems, Inc., B-400219, Sept. 8, 2008, 2008 CPD ¶ 183 at 9.

Based on our review of the record, we find no basis to question the reasonableness of the agency’s determination that VSE’s proposal was technically unacceptable. As noted above, the solicitation was amended to specifically provide that the welding repair and inspection procedures established in Document #2016-0002 “shall be followed.” AR, Tab 5, Amended PWS, at 7. VSE acknowledges that its initial proposal “did not reference” Document #2016-0002, and, when this matter was called to its attention during discussions, VSE responded by referring to TB 9-2335-328-40 as “the actual repair instruction.” See AR, Tab 25, VSE Response to Discussions, at 1, 5. Further, even though the “cut and weld of a cover plate over a crack” depicted in figure 3 of VSE’s proposal was identified by the agency during discussions as “not in compliance with the PWS,” see AR, Tab 22B Discussion Document for VSE, at 4-5, VSE’s response neither acknowledged that this approach was improper, nor disputed the agency’s characterization of it as such. See AR, Tab 25, VSE Response to Discussions, at 1, 5. On this record, it appears that VSE either failed to understand the significant difference between the requirements of the two documents, or was intentionally ambiguous in addressing whether it intended to perform the contract by using what the agency describes as “battle field maintenance repair procedures” pursuant to TB 9-2335-328-40.

In short, we view the record as reflecting the agency’s reasonable concern that VSE’s low-priced proposal for inspecting and repairing the armor that is critical for

protecting the lives of U.S. Marines was based on either a limited understanding of the contract requirements, or a deliberate intent to avoid committing to the more rigorous standards the agency incorporated into the solicitation through Document #2016-0002. In either event, we find no basis to question the agency's rejection of VSE's proposal.

The protest is denied.

Susan A. Poling
General Counsel