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Decision

Matter of: Raytheon Company

File: B-414057

Date: January 31, 2017

Richard O. Wolf, Esq., and Casey J. McKinnon, Esq., Moore & Lee, LLP, for the protester.

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's discussions with protester were meaningful and not misleading where, during discussions, the agency directed protester's attention to specific aspects of its proposal that needed to be addressed.

DECISION

Raytheon Company, of Dulles, Virginia, protests the U.S. Marine Corps's rejection of Raytheon'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. Raytheon asserts that the agency failed to conduct meaningful discussions with Raytheon.

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. The agency further notes that “[Marine Corps members’] lives are dependent on a fully capable and operational MRAP Cougar.” Id.

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.³ 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,⁴ including:

- Demonstrate an understanding of the Performance Work Statement requirements. Proposal should clearly define the Offeror’s response to the requirements of the PWS.
- Discuss the processes and facilities that will be used to meet the PWS requirements. . . .
- Discuss how the offeror will comply with the Ballistic Glass requirement of the PWS. . . .
- Appropriate storage space for GFE [government furnished equipment]. Sufficient shop space, equipment and appropriate climate controlled spaces for specific work process. . . .
- Demonstrate ability to perform Inspect Repair Only as Necessary (IROAN) the Mine Resistant Ambush Protected (MRAP) CAT 1 Cougar. . . .
- Demonstrate[] the Offeror’s capability to meet the required Repair Cycle Time (RCT) of 120 days by providing a timeline and steps to bring the MRAP CAT I Cougar to Condition Code “A.” . . .

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

⁴ 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.

- 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 Land Systems (GDLS), Raytheon, and ATAP, Inc.--submitted proposals, which were subsequently evaluated. Raytheon's proposal was evaluated as technically unacceptable for failure to meet the multiple PWS requirements listed above. AR, Tab 13, Initial TEB Report, at 3-5.

The agency states that, at the time it completed the evaluation of initial proposals, the agency intended to make award without discussions.⁵ MOL/COS, Nov. 23, 2016, at 6. However, the agency thereafter 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.⁶ Accordingly, the agency concluded that revised proposals would be necessary and, on September 27, the agency opened discussions with each offeror, advising them that responses would be due on September 28.⁷

Specifically, the agency sent Raytheon a letter, stating: "The purpose of this letter is to initiate discussions so that you may clarify or change your proposal as relates to the technical issues noted below." AR, Tab 22A, Discussions Document for

⁵ The solicitation advised offerors that the agency intended to make award without discussions, but reserved the right to conduct discussions if it so chose. AR, Tab 4, RFP at 38.

⁶ 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.

⁷ Throughout its protest submissions, Raytheon has complained about the limited period of time the agency provided offerors to respond to the agency's discussion questions. Indeed, prior to submission on September 28, Raytheon requested an extension of the due date; the agency denied that request. To the extent Raytheon's protest, now, challenges the time period for responding to the agency's discussions, 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.

Raytheon, at 5. The discussion questions directed Raytheon's attention to the multiple areas of its proposal that needed to be addressed, advising Raytheon of, among other things, the following:

[Raytheon] outlines specifics for welding in their IROAN procedures but do[es] not provide any details about the usage of high hardened steel. . . . [Raytheon] outlines a [redacted] as the primary method to cut and handle the usage of high hardened steel but this method is not applicable to welding procedures. [Raytheon] does not mention any welding procedures specifically in accordance with PWS documents. . . .

. . . [Raytheon] outlines [its] ability to hold GFE however [the] dimensions outlined in the proposal at figure 1-2 only provide [redacted] [square feet] which is not adequate to hold the number of kits and GFE that LOGCOM would be providing for equipment repair. [Raytheon's] plan to deal with these GFE kits is to provide [redacted] at an unidentified location and with an unidentified timeline. . . .

In the proposal at section 1.4, [Raytheon] identifies that they will replace the ballistic glass in accordance with the PWS[;] however their detailed procedures for how to implement ballistic glass replacement is not in accordance with the PWS and follows completely incorrect procedures. . . .

In the proposal at figure 1-1, the offeror outlines [its] personnel for the IROAN[;] however, [it] only has one welder listed. . . . [A] welder cannot inspect his own welding. . . .

[Raytheon] has not outlined a monthly schedule and timeline for the entire performance period which demonstrates their ability to meet RCT [repair cycle time]. [Raytheon] has identified several different RCTs which make the RCT unclear. . . .

Id. at 5-6.

On September 28, Raytheon submitted its response, stating "Raytheon Company is pleased to provide its final proposal revision." AR, Tab 24, Raytheon Response to Discussions, at 2. Although Raytheon submitted various responses to the agency's multiple questions, Raytheon states that it "did not make any revisions to its proposal." Protest at 6.

Upon receipt and review of Raytheon's response, the agency concluded that the proposal remained technically unacceptable for failing to meet various solicitation requirements, including: failure to demonstrate an understanding of the solicitation's requirements for high hardened steel; failure to demonstrate that

Raytheon had the necessary facilities in place to meet the performance requirements; failure to demonstrate an accurate understanding of the solicitation’s requirements for ballistic glass; failure to propose an adequate number of welders; and failure to propose a realistic RCT. AR, Tab 16, Final TEB Report, at 6-8.

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 Raytheon that its proposal had been rejected as technically unacceptable and that contract awards had been made to GDLS and ATAP.⁸ This protest followed.

DISCUSSION

Raytheon protests that the agency failed to conduct meaningful discussions.⁹ More specifically, Raytheon asserts the agency “failed to notify Raytheon of defects in its proposal,” maintaining that the agency “did not provide Raytheon with notice that its proposal was technically unacceptable.” Protest at 9-10. Finally, Raytheon complains that the discussions were “misleading,” asserting that, because the agency’s discussion questions did not use the terms “deficiency” or “significant weakness,” they “created nothing but confusion and ambiguity.” *Id.* As discussed below, the protest is without merit.

It is a fundamental principle of negotiated procurements that discussions, when conducted, must be meaningful; that is, the discussions must be sufficiently

⁸ Award was made to GDLS for 198 vehicles, and to ATAP for the remaining 60 vehicles.

⁹ Raytheon has not challenged the multiple, substantive bases on which the agency relied to reject its proposal as technically unacceptable, asserting only that, “[h]ad the Government provided Raytheon with the required notice, Raytheon could have revised its proposal.” Protest at 10-11. That is, Raytheon’s protest is based entirely on the proposition that the agency’s discussions were inadequate.

detailed, identify the deficiencies and significant weaknesses in an offeror's proposal, and cannot be misleading. Federal Acquisition Regulation § 15.306(d)(3); InfoPro, Inc., B-408642.2, B-408642.3, Dec. 23, 2014, 2015 CPD ¶ 59 at 6. The requirement to conduct meaningful discussions is satisfied when an agency leads an offeror into the areas of its proposal that require amplification or revision. ITT Indus. Space Sys., LLC, B-309964, B-309964.2, Nov. 9, 2007, 2007 CPD ¶ 217 at 12; PAI Corp., B-298349, Aug. 18, 2006, 2006 CPD ¶ 124 at 8.

Here, as noted above, the agency's discussions with Raytheon specifically identified the multiple areas in its proposal that had been evaluated as technically unacceptable. Among other things, the agency advised Raytheon that its proposal did not "provide any details about the usage of high hardened steel"; "[did] not mention any welding procedures specifically in accordance with PWS documents"; advised Raytheon that its proposed facilities for storing GFE were "not adequate;" stated that Raytheon's procedures for meeting the solicitation requirements regarding ballistic glass were "not in accordance with the PWS" and were "completely incorrect"; pointed out that Raytheon had proposed only one welder, noting that a welder "cannot inspect his own work"; and advised Raytheon that it had proposed "several different RCTs [repair cycle times]," making its proposal "unclear." Id. at 5-6. On this record, we reject the assertion that the agency's discussions failed to lead Raytheon into the areas of its proposal that it needed to address.¹⁰ Rather, the record indicates that the agency provided Raytheon with a virtually verbatim copy of the agency's initial technical evaluation of Raytheon's proposal. On this record, we find it difficult to imagine how the agency could have been more clear, forthright, and unambiguous in directing Raytheon's attention to the multiple evaluated flaws in its proposal.

The protest is denied.

Susan A. Poling
General Counsel

¹⁰ We note that where, as here, a procurement is conducted on a lowest-price technically acceptable basis, the agency's identification of any technical issue during discussions would appear to be an indication that the acceptability of the matter identified is in question.