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Decision

Matter of: The McKinley Group, LLC--Advisory Opinion

File: B-413156.22

Date: October 14, 2016

James Y. Boland, Esq., Venable LLP, for the protester.
Christopher Murphy, Esq., and Kristen M. Nowadly, Esq., General Services Administration, for the agency.
Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency unreasonably rejected protester's proposal for incorrectly numbering relevant experience projects where solicitation required offerors that included one collection of task orders as a relevant experience project to list it as project number 6, and protester listed it as project number 5, but all other required information was submitted, and agency does not allege that the evaluation results could change or that other offerors would be prejudiced.

DECISION

The McKinley Group, LLC, a small business of Rockville, Maryland, challenges the elimination of its proposal from consideration for award under request for proposals (RFP) No. GS02Q15CRR0002 (frequently referred to as the Human Capital and Training Solutions Small Business (HCaTS SB) solicitation), issued by the General Services Administration (GSA) to provide training and development services across the federal government. McKinley submitted a protest to our Office on May 26, 2016, in which it asserted that its proposal was unreasonably rejected because it incorrectly numbered its relevant experience projects. McKinley also argued that, in any case, it should have been allowed to clarify the matter.

On July 19, we dismissed McKinley's protest, and several others, when another offeror under the solicitation submitted a protest to the United States Court of

Federal Claims.¹ Bid Protest Regulations, 4 C.F.R. § 21.11(b) (2016). On August 10, the parties (McKinley and the Department of Justice) filed a joint motion with the court requesting an advisory opinion from our Office. The court granted the motion and requested that our Office provide an advisory opinion regarding the merits of the protest McKinley filed with our Office. See id. Our opinion here is issued in response to the court's request, and is presented in the same general format as we normally employ to issue decisions responding to bid protests. As explained below, we conclude that the agency unreasonably rejected McKinley's proposal, and we would sustain this protest.

BACKGROUND

On August 17, 2015, the agency published the HCaTS SB solicitation as a small business set-aside seeking proposals for "customized training and development services, customized human capital strategy services, and customized organizational performance improvement services." RFP at 15. HCaTS SB comprised two separate, government-wide multiple-award indefinite-delivery/indefinite-quantity (IDIQ) contracts, referred to as "pools," which covered eight North American Industry Classification System (NAICS) codes.² Id. at 62. Offerors could submit proposals for one or both pools. The solicitation contemplated that the agency would award up to 40 IDIQ contracts for each pool. Id. at 156. Awards were to be made to the offerors that submitted proposals that were the "Highest Technically Rated with Fair and Reasonable Prices." Id.

The HCaTS SB required offerors to demonstrate their small business eligibility, responsibility, experience, and past performance. RFP at 108-16. As relevant to this protest, offerors were required to have performed six relevant experience projects, which met minimum requirements for dollar value, period of performance, and performance in at least one of three key service areas (KSAs). Id. at 133, 139, 140. To demonstrate this experience, offerors could submit single projects, single task orders, or a collection of task orders performed under one contract vehicle. Id. at 134. Only two out of the six projects submitted could be for a collection of task orders. Id.

Offerors were required to list their relevant projects and to demonstrate that the projects met the minimum solicitation requirements by completing the following attachments, as relevant to this protest: J.5.2 (self-scoring worksheet small

¹ The Arbinger Co., et al., B-413156.4 et al., July 19, 2016 (unpublished decision).

² GSA assigned three NAICS codes with corresponding size standards of \$11 million to pool 1, and five NAICS codes with corresponding size standards of \$15 million to pool 2. RFP at 62.

business);³ J.12.2 (relevant experience projects supplemental form small business); and J.12.4 (supplemental form small business--collection of task orders).⁴ Specifically, offerors entered points on attachment J.5.2 (self-scoring worksheet small business) for past performance, relevant experience, and accreditations and substantiated these scores by submitting various attachments and documentation. RFP at 108-16, 142-43. With respect to relevant experience, the offeror would assign itself points for each of the six relevant experience projects for which it was claiming credit under the relevant experience element. Id., Attachment J.5.2. Offerors were then required to complete attachment J.12.2 (relevant experience projects supplemental form small business) for each of the six relevant experience projects identified on attachment J.5.2, and provide more detailed information about each of them. Id., Attachment J.12.2. For example, the offeror was required to provide a detailed explanation as to which KSAs the listed relevant experience project related. Id. at 2. If one of the relevant experience projects was a collection of task orders, then offerors were required to complete attachment J.12.4 (supplemental form small business--collection of task orders) and provide detailed information with respect to the task orders it performed. Id., Attachment J.12.4.

With respect to completing attachments J.12.2 and J.12.4, the solicitation instructed as follows:

The offeror shall fill out Relevant Experience Projects 1-6 in Attachment(s) . . . J.12.2. . . . and/ or J.12.4.

* * * * *

NOTE: If submitting one “collection of task orders”, the Offeror shall only fill out Relevant Experience Projects 1-5 in Attachment(s). . . J.12.2 (Relevant Experience Projects Supplemental Form SB Pool 2) and shall fill out Attachment(s) . . . J.12.4 (Relevant Experience Projects Supplemental Form SB Pool 2-Collection of Task Orders) in lieu of Relevant Experience Project 6. If submitting two “collection of task orders”, the Offeror shall only fill out Relevant Experience Projects 1-4 in Attachment(s) . . . J.12.2 (Relevant Experience Projects Supplemental Form SB Pool 2) and shall fill out two

³ On the self-scoring attachment, offerors claim points in accordance with the RFP’s scoring table for various elements under the relevant experience, past performance, and certifications factors. RFP at 132, 150.

⁴ McKinley submitted a proposal for pool 2, so we have referenced the attachments, by number, for pool 2. Identical attachments, with different numbers, were submitted with proposals for pool 1.

Attachment(s) . . . J.12.4 (Relevant Experience Projects Supplemental Form SB Pool 2-Collection of Task Orders) in lieu of Relevant Experience Projects 5 and 6.

RFP at 142, 143. The instructions for completing attachment J.12.2 provided that “[f]or any Relevant Experience Project(s) submitted as a ‘collection of task orders’ . . . the Offeror shall submit Attachment J.12.4 (Relevant Experience Projects Supplemental Form Pool 2 Collection of Task Orders) in lieu of completing Project 5 and/or 6 in Attachment J.12.2 (Relevant Experience Projects Supplemental Form SB Pool 2).” Id., Attachment J.12.2, at 1. The instructions for attachment J.12.4 instructed that “when submitting a ‘collection of task orders’ . . . complete Attachment J.12.4 in lieu of Relevant Experience Projects 5 and/or 6 within Attachment J.12.2.” Id., Attachment J.12.4, at 1.

The solicitation provided for a multi-phased evaluation. First, the agency would identify the top 40 proposals using the offeror’s self-scoring worksheets. RFP at 157. Next, the agency would perform an initial screening of the top 40 proposals to determine whether the offeror stated that all attachments and documents listed on the solicitation checklist were included in the proposal and that the attachments and documents were in fact submitted. Id. at 158-59. If an offeror submitted all required attachments and documents, the agency would then validate the offeror’s self-scoring worksheet. Id. at 159, 161. Specifically, the top 40 proposals were then evaluated on a pass/fail basis under the eligibility and responsibility factors. Id. at 160.

The solicitation cautioned offerors that the agency intended to make award without holding discussions, and that offerors “will not be allowed to resubmit or revise any document(s) related to the Relevant Experience Projects.” RFP at 159. The solicitation stated, however, that the agency could allow an offeror to respond to clarifying questions in an effort to validate minimum requirements and scored elements. Id. The solicitation also stated that the agency “intends to strictly enforce all of the proposal submission requirements” and that failure “to comply with these requirements may result in an Offeror’s proposal being rejected as being non-conforming to solicitation requirements.” Id. at 156.

The agency received 95 proposals, including a proposal from McKinley for pool 2, by the December 3, 2015 closing date for the receipt of proposals. Contracting Officer’s Statement at 2. GSA notified McKinley on May 16 that its offer was eliminated from competition because McKinley did not correctly complete attachments J.5.2, J.12.2, and J.12.4. Agency Report (AR), Exh. 4, McKinley Debriefing. Although GSA determined during the initial screening phase that McKinley had submitted all of the required attachments and documents, the agency discovered an error during the evaluation and validation phase. AR at 7. Specifically, GSA rejected McKinley’s proposal because McKinley elected to identify a collection of task orders as one of its relevant experience projects, and it labeled

the collection of task orders relevant experience project number 5, rather than relevant experience project number 6. AR, Exh. 4, McKinley Debriefing, at 1.

DISCUSSION

McKinley protests that the agency unreasonably rejected its proposal. According to McKinley, an offeror submitting one relevant experience project that was a collection of task orders was permitted to identify that experience as project 5 or project 6. McKinley argues that, in any case, incorrectly numbering the relevant experience projects was a minor error that could have been clarified and should not have resulted in the rejection of its proposal.

The agency responds that the solicitation clearly required offerors that submitted one experience project that was a collection of task orders to list that experience as project number 6. AR at 7. The agency asserts that it properly rejected McKinley's proposal because it did not follow the instructions, and instead, listed its one relevant experience project that was a collection of task orders as project number 5. In this regard, the agency explains that the solicitation clearly advised offerors that the government intended to strictly enforce all proposal solicitation requirements, and that failure to adhere to the requirements could result in rejection. Id. at 4-5. The agency additionally notes that the solicitation specifically prohibited the resubmission or revision of any document related to the relevant experience projects, or any scored elements, to cure proposal deficiencies or material omissions, materially alter scored elements of the proposal, and or otherwise revise scored elements of the proposal. Id. at 6.

In reviewing protests of alleged improper evaluations, it is not our role to reevaluate proposals; rather, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement laws and regulations. IN2 LLC, B-408099 et al., June 18, 2013, 2013 CPD ¶ 149 at 5. In this regard, an offeror has the burden of submitting an adequately written proposal, and 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.

Here, the solicitation instructions stated that if an offeror was submitting one collection of task orders, the offeror was required to "only fill out Relevant Experience Projects 1-5 in Attachments . . . J.12.2 (Relevant Experience Projects Supplemental Form SB Pool 2)" and complete attachment "J.12.4 (Relevant Experience Projects Supplemental Form SB Pool 2-Collection of Task Orders) in lieu of Relevant Experience Project 6." RFP at 143. This language provided notice

to offerors that were submitting only one relevant experience project that was a collection of task orders to list it as project number 6 on attachment J.12.4.⁵

We find, however, that the agency's decision to reject McKinley's proposal because it offered only one relevant experience project as a collection of task orders, and listed it as project 5, rather project 6, was unreasonable. The solicitation stated that the agency "intends to strictly enforce all of the proposal submission requirements" and that failure "to comply with these requirements may result in an Offeror's proposal being rejected as being non-conforming to solicitation requirements." RFP at 156. Further, the solicitation stated that offerors "will not be allowed to resubmit or revise any document(s) related to the Relevant Experience Projects." Id. at 159. Therefore, it was clear that offerors could not resubmit or revise documents to cure proposal deficiencies or material omissions, materially alter scored elements or otherwise revise scored elements. Id.

Here, GSA determined during the initial screening phase that McKinley had submitted all of the required attachments and documents, but discovered the paragraph numbering error during the evaluation and validation phase. AR at 7. During this evaluation, GSA did not find any missing information relating to relevant project experience. Therefore, this is not a case where McKinley submitted the wrong form and needed to revise or resubmit it, or where information required to evaluate the proposal was missing or could not be located. In other words, there was no proposal deficiency or material omission in this case. Rather, all the information was submitted on the correct form; the experience project was simply numbered incorrectly.

Further, the agency has not alleged that it could not validate McKinley's self-reported score because McKinley's collection of task orders was listed as project 5 rather than project 6, nor has the agency argued that McKinley's score could in some way change had it considered the information. Moreover, the agency has not provided any argument or information indicating that other offerors would be prejudiced if it accepted McKinley's proposal with the mistake in numbering. Given

⁵ We disagree with McKinley that the language in the instructions for attachments J.12.2 and J.12.4, which states that when submitting a collection of task orders offerors must complete Attachment J.12.4 in lieu of Relevant Experience Projects 5 and/or 6 within Attachment J.12.2, allowed offerors to list one collection of task orders as project 5 or project 6. When read with the solicitation, we agree with the agency that this language in the attachments was intended to acknowledge that an offeror could submit two past experience projects that were a collection of task orders, in which case they would be projects 5 and 6.

these factors, we conclude that the agency has not provided a reasonable basis for its decision to reject McKinley's proposal.

On the record presented to our Office, and in response to the court's request for an advisory opinion, we would sustain this protest.

Susan A. Poling
General Counsel