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Decision

Matter of: Williams Building Company, Inc.

File: B-417210; B-417210.2; B-417210.3

Date: March 29, 2019

Kevin M. Cox, Esq., Camardo Law Firm, PC, for the protester.
Matthew T. Schoonover, Esq., Shane J. McCall, Esq., and Haley E. Claxton, Esq., Koprince Law, LLC, for Monument Construction, LLC, the intervenor.
Deborah K. Morrell, Esq., and Donald C. Mobly, Esq., Department of Veterans Affairs, for the agency.
Evan C. Williams, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the evaluation of the awardee's proposal is denied where record shows that the evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Williams Building Company, Inc. (Williams), a service-disabled veteran-owned small business (SDVOSB), of West Yarmouth, Massachusetts, protests the award of a contract to Monument Construction, LLC (Monument), of Nashua, New Hampshire, under request for proposals (RFP) No. 36E77618R0062, issued by the Department of Veterans Affairs (VA) for construction services at the VA medical center (VAMC) in Jamaica Plain, Massachusetts. The protester argues that the agency unreasonably found the awardee's proposal to be technically acceptable.

We deny the protest.

BACKGROUND

On June 15, 2018, the VA issued the RFP as a SDVOSB set-aside, under the provisions of Federal Acquisition Regulation (FAR) parts 15 and 36, for the construction of an addition to the research facility at the Jamaica Plain VAMC. RFP at 1; Agency Report (AR), Tab 8, Source Selection Decision Document (SSDD), at 1. The RFP contemplated the award of a fixed-price contract to provide all labor, materials,

equipment, transportation, supervision, general demolition, general construction, alterations, mechanical and electrical work, testing and commissioning and certain other items for the construction of the research facility addition.¹ RFP at 1, 6-7.

The RFP stated that award would be made on a lowest-priced, technically acceptable (LPTA) basis, considering the following two evaluation factors: technical, and price. Id. at 53. The technical factor included the following four elements: construction experience, project execution, key personnel experience, and past performance. Id. at 57-60. The RFP further stated that to receive consideration for award, a rating of acceptable must be achieved for the technical factor. Id. at 53.

As relevant to this protest, under the construction experience element, offerors were required to identify a minimum of one, and a maximum of three, construction projects that best demonstrated their experience on relevant projects that are similar in size, scope, and complexity to the project contemplated by the RFP.² Id. at 58. The RFP further provided that the projects must demonstrate construction experience as a prime construction contractor directly responsible to the owner and managing multiple subcontractors. Id.

Additionally, the solicitation required projects identified to have a minimum value of \$2 million and be 100 percent completed within the five years preceding the date of issuance of the RFP. Id.

Under the technical evaluation factor, the RFP established that the agency would review proposals and assign a rating of acceptable or unacceptable. Id. at 61. The RFP defined acceptable as “the Offeror demonstrated the ability to meet the Government’s minimum requirements as identified in the solicitation” and defined unacceptable as “the Offeror failed to demonstrate the ability to meet all of the Government’s minimum requirements as identified in the solicitation.”³ Id.

The agency received three proposals prior to the July 16, 2018 closing date, including proposals from Williams and Monument. Contracting Officer’s Statement (COS) at 1.

¹ Offerors were requested to propose fixed prices for a base contract line item number (CLIN) and for several alternate CLINs, each of which reflected deletions from the required work. RFP at 6. The RFP also informed offerors that a single award would be made on the base CLIN, but in the event the offer exceeds the funds available, a single award would be based on an alternate CLIN that is within the available funding. Id.

² The solicitation did not further define what the agency considered to be similar in size, scope, or complexity. Id. at 58.

³ The RFP defined “[m]inimum requirements” as “the offeror’s experience, methods and approach have adequately and completely considered, defined and satisfied the requirements of the solicitation.” Id.

During its evaluation, the Source Selection Evaluation Board (SSEB) concluded that all three proposals were technically acceptable. AR, Tab 5, SSEB Technical Evaluation, at 3-4. After establishing a competitive range, including all three offerors, the agency conducted discussions and received best and final offers. COS at 2; AR, Tab 8, SSDD, at 5. On December 13, 2018, award was made to Monument, the LPTA offeror, on CLIN 0002 in the amount of \$15,587,619. COS at 3; AR, Tab 8, SSDD, at 6; Req. for Dismissal Supplement, Exh. 1, Unsuccessful Offeror Notice.

After receiving notice that it was an unsuccessful offeror, Williams requested a debriefing, which was conducted on December 17. This protest was filed with our Office on December 21.

DISCUSSION

Williams challenges the agency's evaluation of the awardee's proposal, contending that Monument lacks the construction experience necessary to be rated acceptable under the technical factor.⁴ The protester asserts there is no evidence in the record that the agency compared Monument's past projects to the requirements of the instant RFP. Thus, according to the protester, had the agency properly considered the projects identified by the awardee, it would have found that they do not qualify as similar in size, scope, and complexity to the construction project contemplated by the solicitation. For example, Williams argues that Monument's performance on contract no. VA241-12-J-1128 (the "1128 contract") could not have been considered similar because it involved the replacement of exterior building panels rather than the precise construction work being sought by the RFP. Protester's Comments at 9. The protester also contends that Monument could not receive an acceptable technical rating because none of its past projects demonstrated Monument was responsible for managing multiple subcontractors as required by the solicitation. Id. at 10.

In response, the agency maintains that its evaluation of Monument's construction experience was reasonable and consistent with the terms of the solicitation. In this regard, the agency contends that Monument's projects demonstrated the required relevant experience to achieve an acceptable rating. COS at 7.

The evaluation of an offeror's proposal is a matter within the agency's discretion. L & J Bldg. Maint., LLC, B-411827, Oct. 27, 2015, 2015 CPD ¶ 344 at 3. A protester's disagreement with the agency's judgment in its determination of the relative merit of competing proposals, without more, does not establish that the evaluation was

⁴ Despite being the third lowest-priced offeror, Williams is an interested party because it timely protested the agency's evaluation of both the second lowest-priced and the lowest-priced technically acceptable offerors. However, as discussed herein, because we find reasonable the agency's evaluation of Monument, the lowest-priced offeror, as technically acceptable, we need not address the protester's challenge to the technical acceptability of the second lowest-priced offeror.

unreasonable. Id. 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. Herve Cody Contractor, Inc., B-404336, Jan. 26, 2011, 2011 CPD ¶ 27 at 3.

As stated above, with respect to construction experience, offerors were required to submit a minimum of one, and maximum of three, construction projects that best demonstrated their experience on relevant projects that are similar in size, scope, and complexity to the effort anticipated by the solicitation. RFP at 58. The RFP further defined a relevant project for the purposes of evaluation as "construction, alteration, or repair of completed clinical, hospital or other medical related use space similar in size and scope" to the RFP's requirements. Id.

Monument's proposal identified two projects to be considered by the agency as its construction experience. AR, Tab 9, Monument Technical Proposal, at 7-8. The agency evaluated the projects submitted by Monument and determined that both projects met the solicitation's minimum requirements, resulting in an acceptable rating under the technical factor. AR, Tab 5, SSEB Technical Evaluation, at 3; AR, Tab 8, SSDD, at 3-4. Based on our review of the record, we find no basis to question the agency's evaluation of Monument's proposal with regard to construction experience.

As relevant here, Monument's proposal identified its performance on the 1128 contract, which involved the replacement of exterior panels on a building at the Jamaica Plain VAMC. AR, Tab 9, Monument Technical Proposal, at 7. Monument's proposal described the project as a "complex, multi-trade, multi-phase project [that] took place at an occupied-and-active medical center without disrupting ongoing operations." Id. The proposal further described the scope of the 1128 contract as including the following:

[A]ll labor, material, equipment, transportation, supervision, general demolition, construction, alterations, renovations, testing, and commissioning.

Id. Features of the project included "selective exterior and interior demolition, asbestos abatement, masonry restoration, new structural steel framing, formal commissioning requirements (roofs, exterior rain screen exterior windows, louvers and vents)" Id.

Similarly, the instant RFP described the contemplated effort as requiring a contractor to provide, in pertinent part, the following construction services:

[A]ll labor, materials, equipment, transportation, supervision, general demolition, general construction, alterations, mechanical and electrical work, testing and commissioning and certain other items for the Research Addition at the VA Boston Healthcare System

RFP at 6-7. The agency evaluated Monument's proposal with regard to the 1128 contract and determined that the project "demonstrated relevant experience as it pertains to the project that is being constructed." AR, Tab 5, SSEB Report, at 3. In this regard, the contracting officer explains that the evaluators determined that while Monument's projects were not specific to construction of a research addition, they demonstrated similar work elements to the project that is being solicited. COS at 7. The agency further determined that the 1128 contract, valued at \$11,449,845.86 exceeded the \$2,000,000.00 minimum value required by the RFP. Id.; AR Tab 9, Monument Technical Proposal, at 7. Finally, the project, which was completed in 2016, complied with the recency requirements of the solicitation, which required projects to be completed within five years of the date of issuance of the RFP. Id.

While the contemporaneous record does not include a robust explanation of the agency's conclusions, our review of the record demonstrates that the 1128 contract provided a scope of work for a "construction, alteration, or repair of completed clinical, hospital or other medical related use space similar in size and scope" to the instant solicitation. In this regard, the 1128 contract project description's similarity to the instant RFP is readily apparent. In addition, the project exceeded the minimum dollar value required, and was completed within the required recency period. While the protester asserts that the scope of the 1128 contract is not for the same scope of work as the work identified in the RFP, it has not demonstrated that this contract fails to meet the solicitation's acceptability requirements, which did not require projects be for the exact same services as that solicited by the instant RFP. Our office will not read a provision restrictively where the terms of the solicitation do not indicate that such a restrictive interpretation was intended. NCS/EML JV, LLC, B-412277 et. al., Jan. 14, 2016, 2016 CPD ¶ 21 at 6-7.

The protester next argues that Monument's construction experience proposal fails to demonstrate that it was responsible for managing multiple subcontractors as required by the solicitation. In this regard, the protester alleges that Monument's proposal only indicated that subcontractors performed certain portions of the work, but failed to name the subcontractors, or state whether it was contractually responsible for managing the subcontractors. Protester's Comments at 10. The agency responds that the solicitation did not require offerors to include subcontractor names or indicate contractual responsibility in their proposals. Supp. COS at 2. The agency argues that the projects submitted by Monument demonstrated that they were the prime contractor directly responsible to the owner as required by the solicitation. Id. We agree with the agency that Monument's proposal clearly indicates that it was the prime contractor for the 1128 contract and that there were multiple subcontractors working under its supervision on this project. AR, Tab 9, Monument Technical Proposal, at 7. On this record, we find no basis to question the agency's evaluation of the 1128 contract.

The solicitation required offerors to identify at least one project under construction experience that met the relevance requirements of the solicitation. Because we find reasonable the agency's evaluation of the 1128 contract, we need not address the protester's challenges to the other project provided by Monument.

Williams also argues that the agency improperly accepted a revision, submitted after the deadline for receipt of proposals, to Monument's lowest-priced proposal, which offered a lower proposed price. Under FAR 15.208(b)(2), an agency is permitted to accept a late modification of an otherwise successful proposal if it makes the terms more favorable to the government. In this regard, Williams contends that the agency's actions were improper because Monument's proposal was not otherwise successful. However, because the protester has not demonstrated that the agency's evaluation of Monument's technical proposal was unreasonable, we find no basis to sustain this protest ground.

The protest is denied.⁵

Thomas H. Armstrong
General Counsel

⁵ While we do not address each of the protester's arguments, we have reviewed them all and find that none provide a basis to sustain the protest.