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Decision

Matter of: Phantom Products, Inc.

File: B-283882

Date: December 30, 1999

Wendy Nevett Bazil, Esq., Law Offices of John J. Fausti, for the protester.
Robert E. Korroch, Esq., United States Coast Guard, for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation for buoy lanterns failed to advise offerors that detailed technical evaluation would be conducted is denied where solicitation contained 10 technical, management, and past performance evaluation factors and required proposals to include sufficient information for the agency to evaluate compliance with solicitation requirements; it should have been clear to protester that some amount of detailed information addressing the characteristics of its offered item was required, and since its failure to provide such information precluded evaluation of its proposal, agency reasonably rejected the proposal as unacceptable.

DECISION

Phantom Products, Inc. protests the rejection of its proposal as technically unacceptable, and the award of contracts to Zeni Lite Buoy Company, Limited and Vega Industries Limited, under request for proposals (RFP) No. DTTCG23-99-R-T43010, issued by the U.S. Coast Guard for medium-intensity light emitting diode (LED) buoy lanterns.

We deny the protest.

The Coast Guard conducted this procurement under the procedures set forth in part 12 of the Federal Acquisition Regulation (FAR), "Acquisition of Commercial Items." The independent government cost estimate stated that the "market review indicated that no commercial off the shelf item [met] all of the requirements of the [solicitation, but] there [were] several lanterns that [met or exceeded] many of the requirements." Agency Report (AR), Tab 8, Government Estimate Medium-Intensity LED Buoy Lanterns, at 1. That document further stated that development costs were

anticipated to be relatively minor, as compared to typical costs to design and develop new optics. Id. at 1.

On June 30, 1999, the agency issued the RFP as a combined synopsis/solicitation in a Commerce Business Daily announcement. AR, Tab 9. The announcement stated that it would constitute the only solicitation, that proposals were being requested, and that a written solicitation would not be issued. The RFP stated that the government may make multiple awards and that any award would be made to the responsible offeror whose offer conforming to the solicitation was the most advantageous to the government, price and other factors considered. AR, Tab 9, Solicitation, at 2. The following technical evaluation criteria were identified: Technical Approach (optical performance, power performance, control system performance, service life and maintenance performance, and mechanical performance); Management Approach (corporate experience, quality assurance, and production facilities); Past Performance (design and manufacture of marine aids to navigation lighting hardware or experience in LED technology, and experience on comparable projects within the past 3 years); and Price. Id. at 2-3. The RFP incorporated FAR § 52.212-1, "Instructions to Offerors—Commercial Items," which stated that offers must show, among other things, "[a] technical description of the items being offered in sufficient detail to evaluate compliance with the requirements of the solicitation." Id. at 2.

The technical specification included in the RFP set forth the minimum optical performance requirements of the system, stating that:

- (1) the lanterns must provide a peak intensity of 60 candela and an effective intensity, with a 0.3 second flash duration, of 36 candela;
- (2) the light output must be uniform around the horizontal (focal) plane;
- (3) the light signal must have a minimum vertical divergence, between the 50 [percent] intensity points . . . of 8 degrees, and
- (4) signal colors must conform to the recommendations for signal colors issued by the International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA).

AR, Tab 9, Solicitation, at 1-2. On July 1, the protester requested and was furnished the Coast Guard Ocean Engineering Division's Statement of Work for the buoy lanterns. The protester also received the Coast Guard's detailed specification G-SEC 498 for the buoys, which was technical in nature with, for example, provisions about vertical divergence, power requirements, optical performance and the control system.

Eleven proposals were received on July 30, 1999. The evaluators found Phantom's proposal to be technically unacceptable due to serious informational deficiencies. The agency, in a letter to Phantom dated September 29, stated as follows:

The proposal provides a claim that the product “. . . will fully comply with the required Coast Guard specification . . .” but does not provide any details on the size and mass of the proposed product. The proposal does not provide sufficient information to ensure that selection of materials and finishes will meet the requirements of the specification. It does not address how the light signal characteristic control function will be incorporated into the proposed product. The proposal does not provide sufficient information on key personnel. The proposal does not specifically address the requirement for a separable, external power lead, or the requirement to maintain watertight integrity. The proposal does not address the technical approach to meet the requirement for low-voltage disconnect. The proposal does not address the technical approach to ensure proper operation at nominal and extreme input voltages.¹

AR, Tab 18, Notification of Award, at 1. Awards were made to Zeni and Vega on September 30 based on initial proposals, without discussions. AR, Tab 17, Award Memorandum, at 8; AR, Tab 1, Contracting Officer’s Statement (COS), at 3. This protest followed.

The crux of Phantom’s protest is that the agency, in rejecting Phantom’s proposal for detailed technical reasons, required a higher degree of specificity and design analysis for technical information in the proposals than a reasonable offeror would have believed was required from the terms of this commercial item RFP. According to Phantom, had the RFP properly identified the need for detailed technical information, Phantom would have provided the specificity required by the agency.²

¹ The agency evaluators also found other informational deficiencies in Phantom’s proposal, in addition to those detailed in the contracting officer’s letter to Phantom. For example, they found that Phantom’s proposal did not provide sufficient information to ensure that the requirements for minimum vertical divergence and beam positioning would be met, and did not address the processes that would be used in the development and manufacture of the product.

² In its written comments on the agency report, the protester discusses what it believes to be a misapplication of the agency’s internal proposal evaluation plan. Specifically, Phantom asserts that the plan contained a “minimum requirements checklist” based on factors not specified in the solicitation, and that the agency improperly applied these undisclosed requirements in evaluating the proposals. This argument is without merit. The plan’s checklist did not specify “minimum requirements”; rather, it had spaces for a comparative color rating of proposals (green/acceptable, yellow/marginal and red/unacceptable) under items that corresponded to the evaluation factors contained in the solicitation. For example, the checklist had a listing for the optical performance factor with subfactors of

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An agency reasonably may reject a proposal for informational deficiencies that are so material that the agency is unable to evaluate the technical acceptability of the proposal. Advanced Am. Diving Serv., Inc., B-274766, Jan. 2, 1997, 97-1 CPD ¶ 1 at 3-7. In reviewing whether a proposal was properly rejected as technically unacceptable for informational deficiencies, we examine the record to determine, among other things, whether the RFP called for detailed information and the nature of the informational deficiencies, for example, whether they tended to show that the offeror did not understand what it would be required to do under the contract. American Body Armor & Equip., Inc., B-241517.2, Apr. 30, 1991, 91-1 CPD ¶ 423. We will not reevaluate a proposal but, rather, will consider only whether the agency's evaluation was reasonable and consistent with the evaluation scheme in the RFP. Id. at 2-3.

While the RFP here certainly could have been more explicit as to the extent of detailed technical information required to be included in the proposals, the RFP placed offerors on adequate notice that detailed technical information concerning the offered item was required. The RFP announced that proposals would be evaluated under 10 technical, management and past performance factors—among them optical performance, power performance and control system performance—and required the submission of two volumes encompassing the technical approach, the management approach and past performance areas. Further, as noted, FAR § 52.212-1 required a description of the items being offered in sufficient detail to evaluate compliance with requirements. We think it should have been clear to Phantom and other offerors from the informational requirements, together with the agency's intention to conduct a technical evaluation, that some amount of detailed technical information about their proposed product would have to be provided in order that the agency could assess the merits of the product.

Our review of the protester's proposal shows that Phantom submitted virtually no technical information showing compliance of its product with the requirements. For example, in response to the technical evaluation factor, optical performance, the protester stated only as follows:

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meeting or exceeding the minimum requirements of peak and effective intensity, technical approach to meeting uniformity of peak output in the focal plane, technical approach to meeting the vertical divergence and beam positioning, and technical approach to fulfilling the requirements for signal colors. Since these evaluation items were directly related to the optical performance requirements set forth in the solicitation, the agency properly considered them in the evaluation. See MCA Research Corp., B-278268.2, Apr. 10, 1998, 98-1 CPD ¶ 129 at 8.

Phantom already has two optical systems which it has tested and which have been found to comply with the intensity and the beam pattern required in the Coast Guard specification.

This one sentence was the sum and substance of Phantom's proposal with respect to the optical performance factor. As another example, under the power performance factor, Phantom only stated as follows:

Both of the above mentioned optical systems fall within the 9 watt maximum power requirement of the current specification.

Again, this one sentence was Phantom's entire response to the power performance factor. As a final example, with respect to the mechanical performance factor, Phantom stated as follows:

Compliance with the shock and vibration tests required in the Coast Guard specification can be achieved using the optical systems already designed by Phantom Products. The entire lantern would be reviewed for compliance with these tests.

This is all that Phantom provided for evaluation under the mechanical performance factor. In our view, this is nothing more than a blanket offer of compliance. Certainly, this information was not sufficient to enable the agency to understand the characteristics of Phantom's product, or to determine how the product compared to the other offerors' products. A blanket offer of compliance to specifications is not sufficient to comply with a solicitation requirement for more detailed technical information necessary for evaluation purposes. JEOL USA, Inc., B-277160, July 2, 1997, 97-2 CPD ¶ 3 at 2-3.³

In its comments on the agency report, Phantom argues that the agency reduced the number of deficiencies that resulted in the rejection of its proposal to three, and improperly applied an undisclosed key personnel factor in evaluating its proposal.

³ In contrast to the generalities in Phantom's proposal, Zeni's stated, for example, as follows with respect to the electrical power lead:

Each lantern will be supplied with a separable and jacketed power lead. Total power lead length will be 1 metre. The power lead will have two conductors of stranded wire, equal conductor equal to 12 AWG. The conductors will be colour-coded black for positive [+] and white for negative[-]. Voltage rating 600 Volt.

Protester's Comments at 2, 5. There is no support in the record for this contention--the agency stands on all informational deficiencies found, even though it devoted more discussion to certain issues than to others. AR, Tab 1, COS, at 3-4. In any case, as discussed above, we find that Phantom's proposal clearly omitted material information necessary for the evaluation, such that the agency properly rejected the proposal; any other deficiencies, whether or not disputed, made no difference in the rejection of the proposal.

We conclude that Phantom failed to provide the information required by the RFP to evaluate its proposal. Accordingly, the agency reasonably rejected the proposal as unacceptable.⁴

The protest is denied.

Comptroller General
of the United States

⁴ In its comments, the protester argues that the agency failed to give proper weight to price in comparison to technical matters. Since a firm whose proposal has been found to be technically unacceptable has no chance for award, we need not consider the agency's cost/price evaluation. Global Eng'g & Constr. Joint Venture, B-275999.4, B-275999.5, Oct. 6, 1997, 97-2 CPD ¶ 125 at 13. The protester also argues that the agency had improper contacts with the other vendors. However, the record shows only that an agency representatives attended international trade shows in 1994 and 1998; there is nothing improper in the agency's attendance at these trade shows. The protester advances other miscellaneous arguments in its comments which we do not address because they could not have had any impact on the determination that the firm's proposal was technically unacceptable. For example, the protester argues that by attempting to acquire "free" technical information for future use, the agency was improperly engaging in research and development. We fail to see how this affected the informational deficiencies found by the agency in Phantom's proposal.