



Decision

Matter of: Hardiman Remediation Services, Inc.

File: B-402838

Date: August 16, 2010

Sandy Hardiman for the protester.

Charles E. Williams, Esq., and Chris Paden, Esq., Department of the Army, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably excluded a proposal from the competition under the solicitation's evaluation scheme because the proposal was reasonably found unacceptable under the technical approach factor.

DECISION

Hardiman Remediation Services, Inc. of Ardmore, Alabama protests the elimination of its proposal from the competition under request for proposals (RFP) No. W912DY-09-R-0007, issued by the Department of the Army, Corps of Engineers, Huntsville, Alabama, for commercial demolition services. Hardiman challenges the evaluation of its proposal.

We deny the protest.

The RFP, issued on December 16, 2008, sought proposals for award of at least three and up to five fixed-price, indefinite-delivery/indefinite-quantity (IDIQ) multiple award task order contracts (MATOC) for demolition services for the mid-eastern part of the United States, as part of the Army's Facilities Reduction Program. Competitive fixed-price task orders were to be awarded under the RFP, with the initial task order to be awarded to one of the selected MATOC contractors for demolition of facilities at Fort Bragg, North Carolina. The contract had a shared aggregate value of \$60 million over 5 years (1 base year plus 4 option years) with a shared aggregate value of up to \$12 million per year. RFP at 3.

The RFP identified four evaluation factors listed here in descending order of importance: (1) technical/management approach, (2) past performance¹, (3) price, and (4) utilization of small business. The technical/management approach factor had three equally weighted subfactors: specialized experience, task order technical approach, and management approach. The RFP's proposal instructions and evaluation factors provided that technical/management approach proposals were required to address the performance work statement (PWS) for the Fort Bragg demolition task order. Under the specialized experience subfactor of the technical/management approach factor, the RFP stated that the extent, significance, relevancy and currency of demonstrated experience of the offeror and proposed key subcontractors in performing the government's requirements as identified in the PWS would be considered. The task order technical approach would be evaluated with respect to industry best practices, compliance with all applicable safety/environmental requirements; practicality/feasibility; innovation, efficiency, and effectiveness. According to the RFP, to be considered for award, a proposal had to receive a rating of no less than acceptable for each of the technical/management approach subfactors, and no less than moderate risk or unknown risk for the past performance factor.² RFP at 119-21.

In response to the RFP, the Army received 36 proposals, including Hardiman's. Four awards were made on March 18. Hardiman did not receive an award because its

¹ The past performance evaluation factor had the following subfactors: (a) quality of product service, (b) cost management, (c) schedule management, (d) safety, and (e) customer satisfaction).

² The adjectival ratings for the technical/management approach factor and subfactors were excellent, good, acceptable, marginal and unacceptable, and the risk ratings for the past performance factor were low risk, moderate risk, high risk, and unknown risk. RFP at 120-22. The RFP contained the following definition for an unacceptable rating:

The proposal demonstrates an approach which, based on a very high risk, will very likely not be capable of meeting all requirements and objectives. This approach has numerous disadvantages of substance, and advantages which, if they exist are far outweighed by disadvantages. Collectively, the advantages and disadvantages will not result in satisfactory performance. The risk of unsuccessful performance is very high as the proposal contains solutions which are not feasible and practical. The solutions are further considered to reflect very high risk in that they lack any clarity or precision are unsupported, and do not demonstrate an understanding of the requirement.

RFP at 121.

proposal received an unacceptable rating for specialized experience and task order technical approach subfactors of the technical/management approach factor as well as a marginal rating for the management approach subfactor.³ After a debriefing on May 7, this protest followed.

Hardiman challenges the unacceptable ratings assigned its proposal under the subfactors of the technical/management approach factor.

The evaluation of proposals is a matter within the discretion of the procuring agency, since the agency is responsible for defining its needs and deciding on the best methods of accommodating them. We will question the agency's technical evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the RFP. LOGMET, B-400535, Oct. 30, 2008, 2008 CPD ¶ 199 at 3. Since an agency's evaluation is dependent on the information furnished in a proposal, it is the offeror's responsibility to submit an adequately written proposal for the agency to evaluate. Id. An offeror that fails to do so runs the risk that its proposal will be evaluated unfavorably. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6.

Hardiman's proposal was rated unacceptable under two subfactors of the technical/management approach factor primarily because various requirements of the task order PWS services were not addressed in its proposal. For example, the evaluators noted that Hardiman's proposal did not address the PWS requirements for a site-specific demolition work plan to include an environmental protection plan, an access/egress and security plan, and a waste management and diversion plan; a site-specific plan for debris disposal/waste diversion with specific approaches to be used in recycling/reuse of materials; a plan for contaminant abatement/removal; a specific plan for the demolition process as applied to the Fort Bragg task order task order; the development of an accident prevention plan and quality control plan; obtaining permits; disconnecting, capping and/or rerouting all utilities; and tracking and submitting required submittals and reports. The evaluators also noted that the proposal did not identify completely the hazards and the methods of mitigation, did not identify any specialized expertise required for the project, and exhibited "insufficient geographical dispersion." Agency Report, Tab 6, Source Selection Board Technical Evaluation of Hardiman's Proposal.

Hardiman contends that the information required by the RFP was included in its proposal. Specifically, Hardiman asserts that it provided procedural descriptions of its processes; that it offered a notional schedule; that it stipulated its adherence to federal, state, and local laws and ordinances; and that it only generally addressed the

³ Under the remaining factors, Hardiman's proposal was rated low risk for past performance, excellent for utilization of small business, and its price was considered fair, reasonable, and realistic.

requirement for hazardous materials because the activity is site dependent. Hardiman argues that the agency unreasonably considered whether the proposal was site specific to Fort Bragg, even though a site-specific plan was not required to be submitted prior to contract award.

We find that the Army reasonably evaluated Hardiman's proposal as unacceptable. The RFP here expressly provided that under the specialized experience subfactor the offeror would be required to demonstrate the breadth and depth of experience in performing the work described in the Fort Bragg PWS. RFP at 106. Under the task order technical approach subfactor, the RFP stated that the offeror was required to demonstrate its "approach to execute each phase of the project in its entirety" to include the following elements:

1) A background discussion of the work, including the coordination required, relevant regulations or guidance. The offeror should also discuss their understanding of the project with respect to assessing and abating environmental issues (i.e. asbestos, PCB's, lead, mercury, energetics); 2) A discussion of field means and methods, including particular resources and expertise; 3) material processing such as reuse, and any other means of reducing project cost and quantities and materials to be landfilled; 4) Identification of hazards including mitigation efforts; 5) A brief discussion of any specialized expertise required; and 6) A plan of work including a schedule of beginning and completion for all major task tasks shall be provided.

Id.

While the protester points to several areas in its proposal that it argues showed procedural descriptions of its processes and that Hardiman's 17 years of successful performance without incident should have shown its ability to comply with the plans, Protester's Comments at E-2, our review of the record confirms that the agency reasonably found that the proposal only reflected a generic discussion of how it would accomplish the demolition work at Fort Bragg.⁴ In our view, the

⁴ For example, instead of including a site specific demolition work plan with its proposal, Hardiman's proposal stated:

[Hardiman] prepares its [demolition work plan] using a standardized company template. The template is designed to ensure that all common facets of demolition operations are addressed such as: permits and notifications; site preparation and security; utility identification, disconnect, capping and/or rerouting; Asbestos Containing Material (ACM) and hazardous material removal and disposal; material recycling, wastewater/drainage control; planned methodology to demolish the identified facility; and; site restoration.

(continued...)

agency could reasonably find that Hardiman's generic discussion of its processes and standard approach was not what the RFP required and was insufficient to demonstrate that firm's depth and breadth of experience and technical approach to execute each phase of the task order project in its entirety.

The protester also takes issue with the agency evaluators' observation that the proposal "suggests that they will use track excavators to accomplish above slab demolition, but no specifics are given with respect to any detailed action for the demolition process as applied to the Ft. Bragg task order," which the agency stated was inappropriate. Agency Report, Tab 6, Source Selection Board Technical Evaluation of Hardiman's Proposal; Contracting Officer's Statement at 2. While the protester initially denied that its proposal makes any such suggestion, Protest at E2-8, the proposal in fact specifically makes this statement. Agency Report, Tab 5, Hardiman Proposal, at I-34. In its comments on the agency report, Hardiman now explains that it proposed a track excavator because this is the industry standard and best practice for demolition of the types of structures at Fort Bragg, and that if another excavation method were required based on a site evaluation it would take appropriate action. Protester's Comments at E-8. Based on our review of the proposal, we have no basis to find the agency's concern was invalid, particularly given the lack of specificity in Hardiman's proposal as to its means and methods for accomplishing the task order work.

Hardiman also takes issue with the agency's concern that its proposal exhibited insufficient geographical dispersion. The RFP stated, with regard to the specialized experience subfactor of the technical/management approach factor, that "[t]he degree of geographical dispersion of the projects provided as experience will be considered as an indicator of ability to perform at varied locations across the region." RFP at 106. As noted by the agency, despite Hardiman's proposal's inclusion of a map showing geographical dispersion across the mid-east region as evidence of geographical dispersion, the relevant contracts, including subcontracts, that Hardiman referenced in its experience matrix and past performance volume of its proposal, are confined to Alabama, Tennessee, and Florida. See Agency Report, Tab 5, Hardiman's Proposal, at I-14-29, II-2-24. Thus, the record supports the agency's concerns regarding Hardiman's geographical dispersion over the entire mid-east region.

(...continued)

This plan is reviewed internally and externally for approval as appropriate, including Professional Engineer (PE) certification, with final approval reserved to the [contracting officer] or his designated representative.

Agency Report, Tab 5, Hardiman Proposal, at I-32.

In sum, we find that the record reasonably supports the Army's determination to not select Hardiman for an award, due to the unacceptable ratings that Hardiman's proposal received under the technical/management approach factor.⁵

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁵ It is true, as acknowledged by the Army, that the statement made by the evaluators that Hardiman's proposal only reflected Hurricane Katrina recovery work was in error. However, we agree with the Army that the numerous other problems found with Hardiman's proposal under the technical/management approach factor reasonably supported the unacceptable ratings under specialized experience and task order technical approach subfactors.