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Decision

Matter of: All Phase Services, Inc.

File: B-406856

Date: August 17, 2012

J. Hatcher Graham, Esq., for the protester.

Andrew Bramnick, Esq., and Marina M. Kozmycz, Esq., Department of Defense, for the agency.

Noah B. Bleicher, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's proposal was reasonably excluded from the competitive range where the agency found that the proposal was technically unacceptable and would require major revisions to be made acceptable.

DECISION

All Phase Services, Inc., of Delray Beach, Florida, protests the elimination of its proposal from the competitive range under request for proposals (RFP) No. HQ0034-12-R-0003, issued by the Department of Defense, Washington Headquarters Services (WHS), for demolition and site restoration of the Navy Annex office buildings in Arlington, Virginia.

We deny the protest.

BACKGROUND

On February 7, 2012, WHS published the solicitation seeking proposals for the demolition of the Navy Annex office buildings and the restoration of the site to be used for the expansion of Arlington National Cemetery. RFP at 1-2. The RFP's statement of work (SOW) advised offerors to submit a base bid and seven priced bid options for various related work. RFP, attach. J.1.C, SOW, at § C-1.4. Award would be made to the offeror who submitted the lowest-priced, technically acceptable proposal. RFP at 43.

With regard to evaluation of technical proposals, the RFP identified the following four “technical capability factors” which would be evaluated to determine technical acceptability: experience; concept plan; management team and philosophy; and quality assurance and control programs. RFP at 46. The RFP also advised that an unacceptable rating under any one of the technical factors would “render the entire proposal unacceptable and ineligible for award.” Id.

As relevant here, with respect to the concept plan, the RFP required offerors to “address [their] approach in accomplishing each of the proposal options. . . .” RFP at 48. An offeror’s concept plan had to demonstrate a “clear understanding of how the Offeror will address the [solicitation’s] criteria and data. . . .” Id. Specifically, the RFP identified 14 criteria offerors were to use in developing their concept plans, which included, for example, the demolition of the building structures, removal of debris and development of haul routes, and development of a viable security program. Id. The RFP further informed offerors that the agency would review the concept plans “according to any solicitation requirement and the stated SOW requirements as referenced below:

1. use of the physical site (Ref SOW C-2.2)
2. proposed layout areas (Ref SOW C-2.2)
3. haul routes (Ref SOW C-2.4.2, C-2.8, C-2.8.4)
4. identify all major elements of each phase of operations (Ref SOW C-2.2)
5. Operations and Management Plan for use as a coordination for methods employed in each phase (Ref SOW C-2.2)
6. systematic approach in addressing the technical requirements (Ref SOW C-1).”

Id. With regard to the operations and management plan specifically, the SOW stated that the plan should address, at a minimum, certain elements, including a phasing plan, a construction site plan, and a traffic management plan. RFP, attach. J.1.C, SOW, at § C-2.2.

In evaluating a technical proposal’s concept plan, the RFP stated that the government would “evaluate how adequately the Offeror has addressed explaining its operational concept” based on the six components outlined above. RFP at 48. The solicitation also stated that “any offeror who submits [a] proposal that does not include all the required information . . . may be considered ineligible for award” and “[n]on-conformance with the instructions provided may result in an unfavorable proposal evaluation.” RFP at 39.

The agency received five proposals by the RFP's deadline, including one from the protester. Contracting Officer's Statement at 2. A source selection evaluation board (SSEB) reviewed the proposals and determined that All Phase's proposal was technically unacceptable. Specifically, the agency rated all subsections of All Phase's concept plan as unacceptable because the firm did not meet "the requirements stated in the SOW which needed to be addressed under this factor and has presented a plan that has conflicting methodologies." Agency Report (AR), Tab 4, Technical Evaluation Report, at 11.

In this regard, the agency identified several deficiencies and a number of weaknesses in All Phase's concept plan. For example, the SSEB assigned a deficiency on the basis that All Phase's proposal did not include a site plan or plans for staging and closeout, site security, or traffic. Id. at 8. The evaluators also found All Phase's concept plan deficient because it failed to address layout areas or haul routes and did not include an operations and management plan. Id. at 8-10. With respect to weaknesses, the SSEB expressed a concern regarding All Phase's proposed use of a concrete crusher for concrete recycling, as well as a concern that certain proposed lead-based paint operations were "out of sequence." Id. at 8, 9. The SSEB also assigned a weakness on the basis that the proposal's plan for asbestos abatement of floor tile was "inconsistent and confusing," and that All Phase is not a licensed asbestos abatement contractor in Virginia. Id. at 10.

In assigning an overall technical rating of unacceptable, the SSEB concluded, "The firm has not submitted documentation which demonstrates a[n] understanding of the requirements for this project," and the proposal "did not provide a clear understanding on how the firm would accomplish the project." Id. at 13. Additionally, the agency concluded that "any discussions . . . that could make All Phase acceptable would necessarily involve a substantial re-write of its proposal." AR, Tab 5, Competitive Range Determination, at 18.

On May 17, the agency informed All Phase that its proposal was excluded from the competitive range. Following a debriefing by WHS, All Phase protested to our Office.

DISCUSSION

All Phase generally objects to the agency's evaluation of its technical proposal and its exclusion from the competitive range. Specifically, All Phase challenges the assignment of deficiencies and weaknesses in its concept plan, and argues that the agency unreasonably interpreted various aspects of the RFP "over and above the requirements of the solicitation." Protest at 2-4. In this respect, All Phase complains that some of the omitted information, for which its proposal was found deficient, was "not required to be presented in the proposal." Protest at 3. Finally,

All Phase maintains that any “discrepancy” in its proposal was “minor,” and could have been resolved through discussions with the agency.¹ Protest at 2.

In reviewing protests challenging the evaluation of proposals and exclusion of proposals from a competitive range, we do not conduct a new evaluation or substitute our judgment for that of the agency, but examine the record to determine whether the agency’s judgment was reasonable and in accord with the solicitation’s evaluation criteria. Information Sys. Tech. Corp., B-291747, Mar. 17, 2003, 2003 CPD ¶ 72 at 2; Northwest Procurement Inst., Inc., B-286345, Nov. 17, 2000, 2000 CPD ¶ 192 at 5. Where a proposal is technically unacceptable as submitted and would require major revisions to become acceptable, exclusion from the competitive range is generally permissible. CMC & Maint., Inc., B-290152, June 24, 2002, 2002 CPD ¶ 107 at 2. Moreover, proposals with informational deficiencies are properly excluded whether the evaluated deficiencies reflect complete omissions or merely inadequacies with regard to the information submitted. American Gov’t Servs., Inc., B-292242, Aug. 1, 2003, 2003 CPD ¶ 163 at 4.

Here, the record supports the agency’s conclusion that All Phase’s technical proposal contained material deficiencies. Specifically, as discussed above, the RFP required that an offeror’s concept plan “provide the government a clear understanding” of how the firm would address six specific SOW requirements. RFP at 48. All Phase’s proposal failed to provide adequate information for any of these requirements. For example, the proposal acknowledged that an operations and management plan was necessary, but All Phase did not submit one; instead the proposal stated that the firm “will prepare and submit the plan to the Contracting Officer for approval” and that the plan “will identify all major elements of each phase of work.” AR, Tab 3, All Phase Proposal, at 23.

With respect to the agency’s assessment of deficiencies, All Phase argues that the various plans contemplated by the solicitation were to be “presented and approved by the contracting officer after award.” Protest at 4. All Phase further asserts that details of such plans cannot be “predetermined,” and to provide detailed plans in its proposal would be a “waste of time, effort, and money.”² Id.; Protester’s Reply

¹ The protester also asserted that the agency treated offerors disparately by conducting exchanges with other offerors but not with the protester. Protest at 2, 4. We dismissed this aspect of the protest as legally insufficient because the protest included no factual support for the allegation of unequal treatment. A protest must include a detailed statement of the legal and factual grounds of protest. 4 C.F.R. §§ 21.1(c)(4), (f) (2012). The protester’s assertion here failed to meet GAO’s threshold requirements for consideration. See American Ordnance, LLC, B-292847 et al., Dec. 5, 2003, 2004 CPD ¶ 3 at 6 n.3

² With regard to the requirement for submission of a traffic plan, All Phase maintains that such plan was “to be presented after award”--but further asserts that its
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(July 18, 2012) at 4. All Phase's assertion regarding the solicitation requirements is not supported by the record.

Here, the RFP explicitly informed offerors that the concept plan must address each of the referenced SOW requirements (e.g., use of physical site, proposed layout areas, operations and management plan). See RFP at 48, 50. As the agency explains, the concept plan was intended to provide WHS with sufficient detail about an offeror's approach to assure the agency that the firm understood the project requirements and proposed a reasonable approach for accomplishing the work. AR at 6; Contracting Officer's Statement at 12. All Phase's interpretation of the solicitation left the agency with no basis to evaluate the company's plan to complete the project until after source selection has occurred.³ Because the concept plan in All Phase's proposal failed to address the components required by the RFP, we find the SSEB's assignment of deficiencies and unacceptable ratings for each of the missing components to be unobjectionable. See Data Solutions & Tech., Inc., B-405077.2, Oct. 12, 2011, 2011 CPD ¶ 215 at 5 (agency's assignment of a deficiency due to offeror's failure to provide sufficient detail in a required plan was unobjectionable).

All Phase's protest also fails to meaningfully challenge other evaluated deficiencies in its proposal. For example, the SSEB rated All Phase's proposal as deficient because it incorrectly stated that storage tanks on the construction site had already been removed, which, according to All Phase's proposal, "simplified" the project.⁴

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proposal, in fact, "provided a detailed plan for handling traffic." Protest at 4. The record is to the contrary. The section of the proposal to which All Phase's protest refers includes several sentences indicating that All Phase "will prepare a Traffic Management plan," "will identify locations for temporary construction entrances" and "will . . . locate our operations to ensure the least inconvenience to the public" after contract award. AR, Tab 3, All Phase Proposal, at 18. Accordingly, we reject All Phase's assertion that its proposal, in fact, included a "detailed" traffic plan.

³ To the extent the protester is objecting to the terms of the solicitation when it complains that "[t]he framework of the 'concept plan' was never described" in the solicitation, this allegation is untimely. See Comments at 11. Our Bid Protest Regulations require that protests alleging improprieties in a solicitation be filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1). Because All Phase did not object to the terms of the solicitation prior to the RFP's deadline, its argument that the solicitation did not provide sufficient guidance for the concept plan is untimely and will not be considered.

⁴ The SOW and specifications indicate that the construction site includes three underground storage tanks and nine above ground storage tanks that offerors were required to remove. RFP, attach. J.1.C, SOW, at §§ C-2.7, C-3.4.1; RFP Specification § 02 65 00.

AR, Tab 4, Technical Evaluation Report, at 10; see AR, Tab 3, All Phase Proposal, at 12, 16. In its comments on the agency's report, All Phase acknowledges that its proposal was "incorrect" but argues that the cost of removing the storage tanks was "priced into" its proposed price and is "not relevant." Comments at 19. We are not persuaded by All Phase's justification. In our view, this technical deficiency is material, and sufficient by itself to warrant a determination that All Phase's proposal is technically unacceptable. See LifeCare, Inc., B-291672, B-291672.2, Feb. 20, 2003, 2003 CPD ¶ 95 at 6.⁵

Finally, All Phase complains that any deficiencies or weaknesses "could have been easily rectified by an exchange as authorized by the solicitation" and that any "discrepancies could have been resolved with a short conversation." Protest at 4; Comments at 23. As discussed above, All Phase's proposal contained multiple material deficiencies. Accordingly, we reject the assertion that such deficiencies could have been resolved through limited discussions. In this regard, we find no basis to question the agency's determination that it "would necessarily involve a substantial re-write" to make All Phase's proposal acceptable. See AR, Tab 5, Competitive Range Determination, at 18. Where a proposal is technically unacceptable as submitted and would require major revisions to become acceptable, exclusion from the competitive range is generally appropriate. American Gov't Servs., Inc., supra, at 7; See also Ocean Servs., LLC, B-406087, B-406087.2, Feb. 2, 2012, 2012 CPD ¶ 62 at 5-6 n.6.

In sum, we find nothing objectionable about the agency's determination that All Phase's proposal was unacceptable due to multiple deficiencies. Accordingly, the

⁵ In addition to the evaluated deficiencies, All Phase objects to several weaknesses the agency found in various aspects of All Phase's proposal. We have reviewed each of All Phase's objections regarding the evaluated weaknesses and conclude that, even though some of these complaints have merit, they do not provide a basis for us to sustain the protest in light of the multiple deficiencies in the proposal discussed above.

agency reasonably concluded that All Phase's technical proposal should be excluded from the competitive range.

The protest is denied.

Lynn H. Gibson
General Counsel