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Decision

Matter of: CeReTechs Ltd.

File: B-406873.3

Date: September 25, 2012

Gerald H. Werfel, Esq., Pompan, Murray & Werfel, PLC, for the protester.
Brian Bentley, Esq., Department of the Army, for the agency.
Gary R. Allen, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of the exclusion of the protester's proposal from the competitive range is denied where protester's proposal was reasonably found to be unacceptable.

DECISION

CeReTechs LTD, of Kabul, Afghanistan, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. W91B4M-12-R-4002, issued by the Department of the Army, Kabul Regional Contracting Center, for expansion of information technology networks supporting the Afghan Ministries of Interior and Defense.

We deny the protest.

BACKGROUND

The RFP provided for the award, on a lowest-priced, technically-acceptable basis, of two indefinite-delivery/indefinite-quantity contracts for a base year and 3 option years. A detailed performance work statement (PWS) was provided that described the required work for particular regions in Afghanistan. PWS ¶ 8.2. Offerors were informed that the agency would issue fixed-price task orders for work under the contract, and that each performance period had an estimated value of \$60 million. RFP amend. 2, at 17.

The RFP also provided instructions for the preparation of proposals. Offerors were instructed to submit their proposals in three volumes for technical support, past performance and price, and were informed that "[c]omprehensive responses to the requirements" were required. RFP amend. 2, at 21. With respect to their price

proposals, offerors were required to submit proposed prices for three tables. Table 1 requested offerors' pricing for providing design and network installation and for providing various amounts of bandwidth across different networks in specified regional areas and the capitol. RFP, amend. 2, Table 1, at 2-3. For example, with respect to bandwidth pricing, Table 1 requested offerors' bandwidth pricing for the Afghan National Optional Ring (ANORN) and Kabul City Fiber Ring areas, and for microwave communication as follows:

Engineering Solution					
Bandwidth	Unit of Measure	CLIN 0003	CLIN 1003	CLIN 2003	CLIN 3003
ANORN	2 Mbps				
North					
East					
South					
Southwest					
West					
Capitol					
Kabul City Fiber Ring	2 Mbps				
North					
East					
South					
Southwest					
West					
Capitol					
Microwave	2 Mbps				
North					
East					
South					
Southwest					
West					
Capitol					

Id. Table 2 requested offerors' pricing for equipment and material, including installation. Id. at 3-16. Table 3 requested pricing differences per region. Id. at 16-17. Offerors were advised that the tables should be "fully completed and error free," and were "cautioned to complete all blanks to identify any [Contract Line Item] CLIN or table not priced as 'Not Separately Priced' or 'N/A.'" Id. at 26.

The agency answered a number of vendor questions related to pricing. For example, the Army was asked, with respect to bandwidth pricing for the Afghan National Optical Ring (ANORN) and Kabul City Fiber Ring, how pricing should be provided or “is there a specific distance we should assume?” The Army responded that the offerors should “[p]lease use kilometer per month pricing.” See Agency Report (AR), Tab 8, Questions/Answers, Set 2, No. 6 (a), (c). The agency was also asked “[w]ith regard to Point to Point and Microwave pricing] [w]e do not understand how you expect the vendors to price this without site specifics or additional [United States Government] assumptions.” The Army responded that “[s]ervice provider should provide cost breakdown for BW [bandwidth] and distance calculations.” AR, Tab 14, Questions/Answers, Set 6 (revised), No. 1a.

The agency received 10 proposals, including the protester’s. Contracting Officer’s Statement at 4. In its price proposal, CeReTechs modified Table 1 to provide multiple bandwidth prices based on distances, rather than, as sought by the RFP, a single price per kilometer per month for each region under each CLIN. AR, Tab 15, CeReTechs’ Price Proposal, app. A. For example, CeReTechs provided [deleted] different prices for microwave communication based upon distances, and not regions, as follows:

Bandwidth	Unit of Measure	CLIN 0003	CLIN 1003	CLIN 2003	CLIN 3003
Microwave	2 Mbps				
For All Regions					
0-5 kilometers (km)		[prices deleted]			
0-10 km					
0-15 km					
0-20 km					
0-25 km					
0-30 km					
31-200 km					
201-300 km					
301-400 km					
401-600 km					

AR, Tab 15, CeReTechs Price Proposal, app. A, at 1. For the ANORN area, CeReTechs also provided pricing based upon distance (0-200 km and 201-600 km), and conditioned its offer as follows: “FOR ALL REGIONS WHERE AVAILABLE.” Id. With respect to the Kabul City Filter Ring, CeReTechs entered “N/A” and provided no price for the north, east, south, southwestern, and western regions and provided a distance-based price (“up to 50 km”) for the capitol region. Id.

Following the evaluation of proposals, the contracting officer determined that six proposals, including the protester’s, would not be included in the competitive range. Contracting Officer’s Statement at 4. In this regard, the agency determined that CeReTechs’ proposal was unacceptable because CeReTech failed to provide fixed

prices in accordance with the RFP, conditioned some of its pricing, and failed to provide prices for all regions for the Kabul City Fiber Ring area. Id.; see also AR, Tab 14, Pre-Negotiation Objective Memorandum, at 3.

This protest followed a debriefing.

DISCUSSION

CeReTechs objects to the exclusion of its proposal from the competitive range, arguing that it prepared its price proposal in accordance with the instructions provided by the agency. Specifically, CeReTechs contends that the agency's answers to vendors' questions conflicted with the RFP, providing for distance-based pricing, and indicating that the bandwidth may not be available in some of the ANORN regions. Protest at 9-11.

Our Office will review an agency's evaluation and exclusion of a proposal from the competitive range for reasonableness and consistency with the solicitation criteria and applicable statutes and regulations. Outreach Process Partners, LLC, B-405529, Nov. 21, 2011, 2011 CPD ¶ 255 at 3. In this regard, contracting agencies are not required to retain in the competitive range proposals that are not among the most highly rated or that the agency otherwise reasonably concludes have no realistic prospect of being selected for award. Federal Acquisition Regulation (FAR) § 15.306(c); Wahkontah Servs., Inc., B-292768, Nov. 18, 2003, 2003 CPD ¶ 214 at 4. Proposals with significant informational deficiencies may be excluded, whether the deficiencies are attributable to omitted or merely inadequate information addressing fundamental factors. American Med. Depot, B-285060 et al., July 12, 2000, 2002 CPD ¶ 7 at 6-7. The determination of whether a proposal is in the competitive range is principally a matter within the judgment of the procuring agency. Dismas Charities, Inc., B-284754, May 22, 2000, 2000 CPD ¶ 84 at 3. A protester's mere disagreement with the agency's evaluation does not show that it lacked a reasonable basis. Government Telecomms., Inc., B-299542.2, June 21, 2007, 2007 CPD ¶ 136 at 4.

Here, the record shows that CeReTechs' proposal deviated materially from the pricing requirements set forth in the RFP and was therefore unacceptable. Specifically, CeReTechs' provision of multiple, overlapping prices for microwave communications made it impossible for the agency to calculate a fixed-price for CeReTechs or compare CeReTechs' prices with those of other offerors. Furthermore, CeReTechs proposed conditional prices for the ANORN bandwidth, while the RFP called for award of fixed-price task orders for all of the listed regions. Where a solicitation requests offers on a fixed-price basis, an offer that is conditional, and not firm, cannot be considered for award. Omega World Travel, Inc.; Sato/Travel, Inc., B-288861.5 et al., Aug. 21, 2002, 2002 CPD ¶ 149 at 6.

Because the agency reasonably found CereTechs' proposal unacceptable, the proposal was properly excluded from the competitive range. See NSR Solutions, Inc., B-406337, B-406337.2, Apr. 18, 2012, 2012 CPD ¶ 154 at 2 ("It is well settled that a technically unacceptable proposal cannot be considered for award, and thus properly may be excluded from the competitive range.")

We deny the protest.¹

Lynn H. Gibson
General Counsel

¹ To the extent that CeReTechs contends that the RFP, or the agency's answers to vendors' questions, were ambiguous with respect to the preparation of pricing proposals, this concern is untimely. Our Bid Protest Regulations require challenges to apparent alleged solicitation improprieties to be filed prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (2012). Offerors may not make unilateral assumptions regarding the meaning of patently ambiguous aspects of a solicitation and then expect relief when the agency does not act in a manner the offeror assumed. Rather, where a solicitation contains a patent ambiguity, an offeror must seek to resolve it--and must protest if it is unable to obtain clarification--prior to the time for submission of offers. See NCS Technologies, Inc.-Recon., B-404047.3, May 16, 2011, 2011 CPD ¶ 110 at 4.