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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Robert F. Hyland & Sons, LLC

File: B-408940

Date: December 19, 2013

Michael Zink, Robert F. Hyland & Sons, LLC, for the protester.
Dennis J. Kulish, Esq., Department of Veterans Affairs, for the agency.
Mary G. Curcio, Esq., and David A. Ashen, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably rejected proposal that did not adequately respond to solicitation requirements.

DECISION

Robert F. Hyland & Sons LLC, of Rochester, New York, protests the Department of Veterans Affairs (VA) rejection of the offer it submitted in response to request for proposals (RFP) No. VA 244-13-RP-0010, for construction at the Erie VA Medical Center. RFH asserts that its offer was improperly rejected.

We deny the protest.

BACKGROUND

The solicitation provided for award on a best-value basis considering the following factors: technical (with seven subfactors),¹ past performance, and price. RFP at 44. Offerors were to respond to the technical subfactors by completing exhibit D, which included a separate section for each subfactor with questions offerors were required to address. RFP at 41, 289-94. In this regard, the solicitation cautioned offerors that:

¹ The technical subfactors were: capability and experience, organization, specific personnel, scheduling methodology, quality control, safety, and infection control. There was an eighth subfactor for offerors that chose to submit a proposal for a design-build option.

The technical proposal shall be prepared in accordance with the instructions and format given in this section and on Exhibit D. Failure to provide a Technical proposal in accordance with Exhibit D and the solicitation may render an offeror's proposal incomplete and ineligible for award. Offerors are strongly cautioned to follow the format of Exhibit D in preparing their proposals. Include the question before each narrative. This will allow for ease of evaluation.

RFP at 41. The solicitation further advised offerors that if a response referenced another document or part of the proposal, the offeror should be clear as to where the relevant information could be found. RFP at 290. Finally, the solicitation noted that the contracting officer would review the proposal for compliance with the requirements before providing it to the board for evaluation, and that failure to provide a complete proposal could result in the proposal being removed from further consideration for award. RFP at 44.

As relevant to this protest, with respect to the safety subfactor, exhibit D provided as follows:

6. SAFETY

6C: Provide a certification that the offeror has no more than three (3) serious, or one (1) repeat, or one (1) willful OSHA [Occupational Safety and Health Administration] or any EPA [Environmental Protection Agency] violation(s) in the past three years. If the number exceeds the criteria listed, explain why?

6D: Offerors shall submit their current EMR [experience modification rates²] rating. EMR rating should be less than or equal to 1.0. If the number exceeds the criteria listed, explain why?

RFP at 292-93. Hyland's proposal was rejected because the contracting officer could not locate the required EMR information, and because Hyland failed to furnish a certification regarding OSHA and EPA violations.

Hyland protests that the evaluation was unreasonable because its surety company provided its EMR rating, which was enclosed in a separate envelope sent with its

² The EMR, or experience modification rate, is an indicator of a contractor's past safety performance, comparing a company's annual losses in insurance claims against its policy premiums over a three-year period. See IAP World Services, Inc.; EMCOR Government Services, B-407917.2 et al., July 10, 2013, 2013 CPD ¶ 171 at 3 n.5.

procurement package. Hyland further asserts that the OSHA/EPA information was included elsewhere in its proposal.

In response, the agency notes that in both cases the information was not included in the proposal where it was required to be included, that is, in the exhibit D responses to the safety subfactor. Further, with respect to the OSHA/EPA certification, the agency maintains that the proposal language Hyland cites did not provide the required certification.

Offerors bear the burden of submitting adequately written proposals, and contracting agencies evaluating one section of a proposal are not obligated to go in search of needed information which the offeror has omitted or failed to adequately present. Carolina Satellite Networks, LLC; Nexagen Networks, Inc., B-405558 et al., Nov. 22, 2011, 2011 CPD ¶ 257 at 3; Sam Facility Mgmt., Inc., B-292237, July 22, 2003, 2003 CPD ¶ 147 at 5.

Here, as noted, the RFP required that the EMR rating certification be provided in exhibit D as an answer to a question under the safety subfactor. The RFP further instructed offerors to specifically reference information that was included elsewhere. Hyland failed to follow these instructions. Instead, Hyland claims to have included its EMR rating in an envelope from its surety,³ and moreover, did not reference its availability there in the required section of exhibit D. As a result, the agency did not discover the EMR information when evaluating Hyland's proposal. See Agency Report at 4-5. Under these circumstances, the agency reasonably found Hyland's proposal lacked required information and was technically unacceptable. Given our conclusion in this regard, we need not consider whether Hyland's proposal also was unacceptable for failure to meet the exhibit D OSHA/EPA certification requirement.

The protest is denied.

Susan A. Poling
General Counsel

³ The agency reports that the EMR information was not included in the surety envelope. Agency Report at 4-5.