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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Cherokee Chainlink & Construction Inc.

File: B-408979

Date: January 3, 2014

John Brewer for the protester.

Sohil Karimy for American Maintenance and Engineering, Inc., dba AME West, the intervenor.

Charles Chambers, Esq., Department of the Navy, for the agency.

Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of the rejection of the protester's proposal is denied where the agency reasonably found, consistent with the stated evaluation criteria, that the protester's proposal was technically unacceptable.

DECISION

Cherokee Chainlink & Construction Inc., of Hemet, California, protests the award of a contract to American Maintenance and Engineering, Inc., dba AME West, of Escondido, California, under request for proposals (RFP) No. N62473-13-R-0601, issued by the Department of the Navy, Naval Facilities Engineering Command Southwest, for installation and repair of fencing and related tasks at various locations at the Marine Corps Base Camp Pendleton and Naval Weapons Systems Annex, Fallbrook, California. Cherokee challenges the evaluation of its technical proposal.

We deny the protest.

BACKGROUND

The RFP, issued as a Historically Underutilized Business Zone (HUBZone) small business set-aside, provided for the award of a fixed-price, indefinite-delivery/indefinite-quantity contract for the installation and repair of various types of fences and gates at Camp Pendleton and the Fallbrook Naval Weapons Systems Annex for a base year and four option years. Offerors were informed that award

would be made on a lowest-priced, technically acceptable basis considering price and the following four technical evaluation factors: management approach and capabilities; experience; past performance; and safety. RFP at 11-16. The RFP provided that a proposal that did “not clearly meet the minimum requirements of the solicitation” under any evaluation factor would be deemed technically unacceptable. RFP at 10.

Under the safety evaluation factor, offerors were instructed to submit their experience modification rate (EMR) for the previous three years. RFP at 15. As explained by the RFP, the EMR “compares your company’s annual losses in insurance claims against its policy premiums over a three (3) year period.” Id. Offerors were also instructed to submit their “Days Away from Work, Restricted Duty, or Job Transfer” (DART) rate, as defined by the U.S. Department of Labor, Occupational Safety and Health Administration, for the previous 3 years.¹ See RFP at 15. Offerors were further instructed that, if they were not able to provide the required information, the offeror was required to “affirmatively state so, and explain why.” Id. The RFP provided that the agency would evaluate offerors’ EMR and DART rates to determine “if the Offeror has demonstrated a history of safe work practices taking into account any upward or downward trends and extenuating circumstances that impact the rates.” RFP at 16.

The Navy received 10 proposals, including Cherokee’s and AME West’s, which were evaluated by the agency’s source selection evaluation board (SSEB). Cherokee’s proposal was found to be unacceptable under each of the non-price evaluation factors. See Agency Report (AR), Tab 5, Business Clearance Memorandum, at 18. The SSEB’s ratings were supported by a narrative explanation that identified weaknesses and deficiencies in Cherokee’s proposal under each evaluation factor.² See AR, Tab 6, SSEB Report, at 13-17.

With respect to the safety factor, the SSEB identified as a deficiency Cherokee’s failure to provide DART rates for 2010 and 2012, and identified as a weakness Cherokee’s failure to provide an EMR for the previous 3 years because, as explained by Cherokee’s proposal, the firm’s “premiums were too low to generate an EMR.” See id. at 16; see also AR, Tab 4, Cherokee Technical Proposal, at 21. Although the SSEB was concerned as to how Cherokee would be able to perform the work, given the size of the contract, if it had not been able to generate an EMR,

¹ The DART rate represents the total non-fatal injuries and illnesses resulting in days away from work, restricted work activity, and/or job transfer per 100 full-time employees for a given period of time (usually 1 year). See 76 Fed. Reg. 59,952 (Sept. 28, 2011).

² Deficiencies were noted under each evaluation factor. See AR, Tab 6, SSEB Report, at 13-17.

the SSEB found that this failure was only a minor weakness. The SSEB concluded, however, that Cherokee's failure to provide its DART rates (or an explanation for why it wasn't providing the rates) rendered the proposal unacceptable. AR, Tab 6, SSEB Report, at 16.

Cherokee's proposal was not included in the competitive range, which consisted of technically acceptable offers from three other firms. Contracting Officer's Statement at 4. Following award to AME West and a debriefing, Cherokee protested to our Office.

DISCUSSION

Cherokee objects to the evaluation of its proposal as technically unacceptable, arguing that the deficiencies assessed in its proposal were unreasonable. For example, the protester contends that, although the firm "should have listed zero for 2010 and 2012" for its DART rates, this was not necessary because "it was apparent that Cherokee had zeros for every year as the EMR was zero and the [firm's] EMR is a rolling value of zero" Protest at 3.

As explained below, we find that the Navy reasonably evaluated Cherokee's proposal under the safety factor. Because the evaluation of Cherokee's proposal under this factor results in the protester's proposal being unacceptable under the terms of the RFP, we do not address Cherokee's remaining objections to the Navy's evaluation.

In reviewing protests challenging the evaluation of proposals, 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 RFP evaluation criteria. Panacea Consulting, Inc., B-299307.4, B-299308.4, July 27, 2007, 2007 CPD ¶ 141 at 3. An offeror has the burden of submitting an adequately written proposal, and it runs the risk that its proposal will be evaluated unfavorably when it fails to do so. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6. A protester's disagreement with an agency's judgment is not sufficient to establish that an agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3.

Here, the record shows, and Cherokee does not contest, that the protester failed to provide DART rates for 2010 or 2012, although the RFP required that these rates be provided. See RFP at 15. While Cherokee argued in its protest that the Navy should have otherwise known that the protester's DART rates were zero based upon its statement in its proposal that its premiums were too low to generate an EMR, see Protest at 3, the Navy explained in its report that it could not presume Cherokee's DART rates for 2010 and 2012 based upon this statement concerning the firm's EMR. See Agency Legal Memorandum at 13. In its comments, the protester did not respond to the agency's explanation or otherwise provide its own

explanation as to why the agency should have known the firm's DART rates for those years were zero. Accordingly, we conclude that Cherokee's proposal was deficient under the safety factor because the protester failed to provide information required by the RFP.³

The protest is denied.

Susan A. Poling
General Counsel

³ Cherokee also complains that the agency acted unreasonably because "Cherokee has been on camp Pendleton for a decade performing quality fence work." Protester's Comments at 1. Cherokee's proposal was found to be technically unacceptable under the safety factor because Cherokee failed to provide required information. It is an offeror's responsibility to submit an adequately written proposal. Recon Optical, Inc., supra.