



United States Government Accountability Office
Washington, DC 20548

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Decision

Matter of: Victory Procurement Services LLC

File: B-411089

Date: May 12, 2015

J. Andrew Watson, III, Esq., Matthew H. Moore, Esq. and Jon D. Levin, Esq., Maynard Cooper & Gale, PC, for the protester.
Antonio R. Franco, Esq., Kathryn V. Flood, Esq., Patrick T. Rothwell, Esq., and Julia Di Vito, Esq., Piliero Mazza PLLC, for Culmen International, LLC, the intervenor.
Andre Long, Esq., Department of the Navy, for the agency.
Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the technical acceptability of the awardee's proposal is denied where the record shows that the agency reasonably determined that the proposal was technically acceptable.

DECISION

Victory Procurement Services, LLC (VPS), of Huntsville, Alabama, protests the award of a contract to Culmen International, LLC, of Alexandria, Virginia, by the Department of the Navy, U.S. Naval Warfare Center, under request for proposals (RFP) No. N68936-14-R-0142 to procure one new or renovated Digital P18MH2 mobile surveillance radar system. VPS argues that since it has the exclusive right to sell the P18MH2 in the United States, the agency erred in finding Culmen's proposal technically acceptable.

We deny the protest.

BACKGROUND

The RFP, issued on July 15, 2014, sought proposals for one new or renovated "like new" Digital P18MH2 Mobile Surveillance radar system, including two newly manufactured or renovated P18MH2 vehicles (one radar equipment vehicle and one antenna vehicle), and associated training and contract data. RFP at 4-6. The provided system was to be complete and operational, meaning that the vehicles

delivered were to come equipped with all equipment and kits that are integral to the vehicle's operating condition. Id. at 6. As part of their proposals, each offeror was required to submit the name of its proposed supplier and country of purchase (Technical Document #1), which was then to be approved by the government prior to submission of technical proposals (Technical Document #2). Id. at 44.

Award was to be made to the lowest-priced, technically acceptable offeror. Id. at 45. With respect to the non-price factors, proposals were to be evaluated for both technical and past performance acceptability. Id. A technically acceptable proposal was defined as one that clearly meets the minimum requirements of the statement of work. Id. Acceptable past performance, based on an evaluation of each offeror's performance record, was found where the government has a reasonable expectation that the offeror will successfully perform the required effort, or the offeror's performance record is unknown. Id.

Two proposals were received in response to the solicitation, one from the awardee, Culmen, and the other from VPS. Agency Report (AR), exhibit (exh.) Q, Source Selection Decision Document (SSDD), at 1. Culmen's proposal identified the name of its proposed supplier and the country of purchase as, "HM Arzenál Elektromechnaikal ZRt" (Arzenál) located in Hungary. AR, exh. E, Culmen Proposal Documents, at email page 2. The agency approved Culmen's supplier via email dated August 27. Id. Culmen then submitted its technical proposal (Technical Document #2) dated October 22, which confirmed that the firm's supplier remained valid and accurate, and further identified the source of its system being from [DELETED]. Id. at Proposal page 1. The proposal indicated that the firm's supplier had "all base systems in their possession . . . , which will be upgraded to a P18MH2 system that meets [all of] the required items detailed within [the RFP]" and indicated that its supplier additionally had the requisite personnel to meet the RFP's training requirements. Id. VPS' proposal indicated that the firm would provide the P18MH2 system in new condition supplied by Arzenál. AR, exh. F, VPS Proposal Documents, Proposal at 3.

After an initial technical evaluation, the Source Selection Evaluation Board (SSEB) identified three deficiencies in Culmen's proposal and one weakness in VPS' proposal. AR, exh. O, SSEB Memorandum, at 3; see generally exh. G, Initial Technical Evaluations. The agency established a competitive range consisting of both Culmen and VPS, and entered into discussions with both firms. AR, exh. H, Discussion Questions, at 1-2. The record shows that Culmen responded to each of the government's discussion questions to the satisfaction of the government evaluators. AR, exh. H, Discussion Questions, at 2; exh. I, Culmen Response; exh. K, Final Technical Evaluation, at 1. After receipt of final proposal revisions (FPR) the SSEB determined that the proposals of both firms were technically acceptable. AR, exh. O, SSEB Memorandum, at 4. Culmen's final evaluated price was \$2,495,011 and VPS' final evaluated price was \$3,140,000. AR, exh. Q, SSDD, at 2-3.

The source selection authority (SSA) concurred with the SSEB's determination that both proposals were technically acceptable. Id. at 3. Based on this determination, the SSA decided to make award to Culmen as the lowest-priced technically acceptable offeror. Id. VPS requested and received a debriefing. This protest followed.

DISCUSSION

VPS argues that the agency improperly found Culmen's proposal to be technically acceptable because VPS has the exclusive right to sell all equipment designed under the upgraded P18MH2 Mobile Surveillance radar system within the United States. Protest at 7. The protester argues that since its own proposal clearly indicated that it had the exclusive right to sell the P18MH2 system in the United States, the agency was required to consider this extrinsic evidence in evaluating Culmen's proposal. Protester's Comments at 2-3. The agency counters that "Culmen submitted detailed specifications, technical literature, and photographs, which clearly described the P18MH2 it offered to satisfy the solicitation requirements." Agency Legal Memorandum at 9. Further, the agency states that it relied on Culmen's proposal and responses to discussion questions, neither of which evidenced that the firm could not perform the contract, as the protester alleges. Id. at 8-9. As a result, the agency asserts that VPS has not shown that the agency's technical assessment of Culmen's proposal lacked a reasonable basis. Id. at 9.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Halfaker and Assocs., LLC, B-407919, B-407919.2, Apr. 10, 2013, 2013 CPD ¶ 98 at 5. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id. Whether a proposal is technically acceptable is within the discretion of the contracting agency to determine and our Office will not disturb an agency's determination unless that determination is unreasonable. William A. Stiles, Jr.; Piazza Constr., Inc., B-215922, B-215922.2, Dec. 12, 1984, 84-2 CPD ¶ 658 at 3.

Here, the record shows that the agency determined that Culmen's proposal was technically acceptable based on an assessment of the firm's proposal and responses to discussion questions. AR, exh. Q, SSDD, at 3. Specifically, Culmen's proposal identified its supplier as Arzenál, the same supplier identified by VPS in its proposal. AR, exh. E, Culmen Proposal Documents, at email page 2; exh. F, VPS Proposal Documents, Proposal at 3. Culmen's proposal further identified the source of its system being from [DELETED]. AR, exh. E, Culmen Proposal Documents, Proposal at 1. The proposal finally indicated that [DELETED] had all

base systems in its possession which will be upgraded to a P18MH2 system that meets all of the required items detailed within the RFP and could likewise meet the RFP's training requirements. Id. at Proposal page 1.

VPS acknowledges that its exclusive right to sell the P18MH2 system in the United States does not apply to any previously manufactured, renovated system offered for sale by a third party. Protester's Comments at 3. The RFP also states that offerors could propose renovated "like new" P18MH2, a fact the protester acknowledges in its comments. Id. Finally, while VPS recognizes the agency's understanding that Culmen was purchasing a renovated, like-new P18MH2 radar system, the protester's only response in this regard is, "**Culmen's proposal provides no support for the Agency's assertion.**" Id. at 3 n.3 (emphasis in original).

However, as noted above, Culmen's proposal clearly shows that it is proposing to provide a system currently in the possession of [DELETED] and upgraded to a P18MH2 system. AR, exh. E, Culmen Proposal Documents, at proposal page 1. Culmen provided photographs of the system in its proposal, id. at 2-3, and detailed the steps its supplier will take to upgrade the system and ensure that the upgraded system meets the RFP's requirements. Id. 4-7. Finally, the firm's proposal shows that it will provide all required parts and spare parts specified in the RFP. See generally AR, exh. I, Culmen's Response. Our review of the record, including Culmen's proposal, provides us no basis to question the agency's conclusion that Culmen proposed a renovated, like new P18MH2 radar system. As a result, we have no basis to question the agency's determination that Culmen's proposal was technically acceptable.

The protest is denied.

Susan A. Poling
General Counsel