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Decision

Matter of: C&S Corporation

File: B-411725

Date: October 7, 2015

Song Yong Eui, Esq., Chung Jin Law Office, for the protester.
Maj. Michael G. Pond, Capt. Harry M. Parent, and Scott N. Flesch, Esq.,
Department of the Army, for the agency.
Kenneth Tae Kim, Esq. and James Jin Chung, Esq., Yoon & Yang LLC, for
KF&S Corporation, the intervenor.
Heather Weiner, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency should have found the awardee's proposal technically unacceptable is denied where the agency's interpretation of the solicitation's terms was reasonable.
2. Protest alleging bias and bad faith on the part of an agency is denied where protester does not support its allegations with convincing proof, and the record does not otherwise reflect bias or bad faith.

DECISION

C&S Corporation, of Seoul, Korea, protests the award of a contract to KF&S Corporation, also of Seoul, Korea, under request for proposals (RFP) No. W91QVN-15-R-0036, which was issued by the Department of the Army, Army Contracting Command, for contract security guard services. C&S argues that KF&S's proposal should have been found unacceptable for failing to meet the solicitation's prime contractor corporate experience requirements. The protester also asserts that KF&S included forged labor union documents in its proposal, which should disqualify that firm from award. In addition, C&S challenges the veracity of the agency's statements responding to the forgery allegation, which we view as an assertion that the agency was motivated by bias and bad faith.

We deny the protest.

BACKGROUND

On March 18, 2015, the Army issued the solicitation for contract security guard services at Army and other Department of Defense installations in the Republic of Korea. RFP at 1, 24. The solicitation anticipated the award of a fixed-price contract, with requirements-type contract line item numbers (CLINs) for fixed-price task orders, for a base year and three 1-year options. Id. at 24, 100.

The solicitation provided for award on a lowest-priced, technically-acceptable basis, considering the following four factors: (1) technical capability, (2) management approach, (3) past performance, and (4) price. Id. at 103-11. To receive consideration for award, proposals had to receive a rating of acceptable under all non-price factors and subfactors. Id. at 111-12.

As relevant here, the technical capability factor consisted of three subfactors: (1) prime contractor's permission certification and validation, (2) prime contractor's corporate experience, and (3) key personnel qualifications. Id. at 112-15. With respect to the evaluation of the prime contractor's corporate experience under the second subfactor, the solicitation stated:

The offeror shall provide verifiable information demonstrating that the prime contractor has a minimum of two (2) years of experience in security guard services in [the Republic of Korea] with relevant experience in installation or facilities (military or non-military) access control and management of security guard forces totaling 500 or more security guards during a single time period. An installation is a grouping of facilities located in the same vicinity that support particular functions

Id. at 113.

The Army received proposals from six offerors, including C&S and KF&S. Agency Report (AR) at 2. Both C&S and KF&S were rated acceptable under all evaluation factors and subfactors. Id. Because KF&S's proposal was the lowest-priced proposal, the Army awarded the contract to that firm. Id. This protest followed.

DISCUSSION

C&S asserts that KF&S's proposal should have been found unacceptable under the technical capability factor for failing to meet the prime contractor corporate experience subfactor requirements. C&S also argues that KF&S included forged labor union documents in its proposal, which should disqualify that firm from award. In addition, C&S challenges the veracity of the agency's statements responding to the forgery allegation, which we view as an assertion that the agency was motivated by bias and bad faith. For the reasons discussed below, we find that the Army

reasonably evaluated KF&S's proposal, and therefore, find no basis to sustain the protest.¹

Previously Dismissed Protest Arguments

As an initial matter, we previously dismissed three of C&S's protest arguments in response to the agency's dismissal request because they involved issues that were either not subject to consideration by our Office, or were untimely.² In this regard, C&S argued that one of its employees provided KF&S with confidential information regarding the protester's security guard wages, which assisted KF&S in obtaining the award. We dismissed this portion of the protest because the allegation concerned a private dispute that our Office does not review. See, e.g., The GEO Group, Inc., B-405012, July 26, 2011, 2011 CPD ¶ 153 at 6. C&S also asserted that, even if KF&S's proposal was technically acceptable, its inexperience and potential problems with labor unions and ethical issues, would prevent the awardee from "provid[ing] service commensurate with [the agency's] expectation and standard." Protest at 7. We previously dismissed C&S's contentions regarding this matter because the question of whether the awardee will be able to perform in accordance with the terms of the solicitation is a matter of contract administration, which is not for consideration by this Office. 4 C.F.R. § 21.5(a); Rotech Healthcare, Inc., B-410203, B-410203.3, Nov. 5, 2014, 2014 CPD ¶ 333 at 4. Finally, we also

¹ C&S also raises other arguments, which we have considered and find are either untimely or provide no basis to sustain the protest. For example, the protester asserts that the awardee's proposal exceeded the RFP's page limitations. In response, the agency explains that it interpreted the RFP's page limitations as applying only to the substantive portions of an offeror's proposal, and not to introductory material, such as the cover pages or table of contents which are described in other areas of the instructions that are not subject to page limits. See RFP at 103. The agency states that, applying this interpretation, the awardee's proposal complied with the solicitation's page limitations. Supplemental AR (Aug. 21, 2015), at 2-3; AR, Tab 7, KF&S Technical Proposal, at 1-95; Tab 18, KF&S Past Performance Proposal, at 1-8. We think the Army's interpretation of the RFP was reasonable. In addition, the protester points to other solicitations which include express language stating that certain portions of the proposal, such as title pages, are exempt from the solicitation's page limits. The protester asserts that, because the RFP at issue here did not contain similar language, the agency's interpretation is unreasonable. Our Office has held that each federal procurement stands on its own. See Wego, Inc., B-405673.3, May 21, 2012, 2012 CPD ¶ 161 at 3. Accordingly, the agency's use of different language in other solicitations does not provide a basis for concluding that the agency's interpretation regarding page limitations was unreasonable here.

² C&S also sought clarification of the awardee's proposed price, but withdrew this allegation. See Protester's Response to Agency Request for Dismissal, at 1.

dismissed as untimely the protester's argument that the solicitation contained a discrepancy between the number of labor hours listed in the master schedule and those specified under the corresponding CLINs, because this issue was apparent on the face of the solicitation,³ but C&S failed to challenge it prior to the time set for initial receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals shall be filed prior to the time set for receipt of initial proposals). We next address the protester's remaining arguments.

Technical Evaluation

C&S contends that KF&S's proposal failed to satisfy the prime contractor's corporate experience requirements under the second technical capability subfactor, and therefore, should have been evaluated as unacceptable. Specifically, the protester argues that the RFP required an offeror to demonstrate corporate experience gained while performing as a prime contractor, but that KF&S failed to meet this requirement. In addition, C&S asserts that, although the solicitation required corporate experience at facilities "located in the same vicinity that support particular functions," KF&S's proposal demonstrated corporate experience at "facilities which are scattered throughout Korea." Protest at 4. The Army maintains that its evaluation of KF&S's proposal as acceptable was proper because the RFP neither specified that demonstrated experience must be gained while performing as a prime contractor, nor precluded offerors from demonstrating corporate experience at facilities across Korea. For the reasons discussed below, we find that the Army's interpretation of the RFP, and evaluation of KF&S's proposal as acceptable under this subfactor, was reasonable, and therefore find no basis to sustain the protest.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Alliance Technical Servs., Inc., B-410307, B-410307.3, Dec. 1, 2014, 2014 CPD ¶ 345 at 3.

As discussed above, with respect to the evaluation of the prime contractor's corporate experience under the second subfactor, the RFP specified the following:

The offeror shall provide verifiable information demonstrating that the

³ We note that C&S concedes in its protest, however, that it knew about the purported discrepancy, and actually raised the issue with the agency, prior to submitting its proposal. Protest at 8 ("When C&S . . . pointed out the problem [to the agency] . . . , the Agency informed [it] that it will be no problem since man hours can be increased after the award of the contract.").

prime contractor has a minimum of two (2) years of experience in security guard services in [the Republic of Korea] with relevant experience in installation or facilities (military or non-military) access control and management of security guard forces totaling 500 or more security guards during a single time period. An installation is a grouping of facilities located in the same vicinity that support particular functions Only the Prime Contractor's experience providing security guard services will be considered for this experience requirement. The Prime Contractor shall ensure that any and all of its subcontractors meet the same experience requirements stated above. Proposals will not be considered technically acceptable if the proposal attempts to meet this requirement through the experience of Subcontractors, Joint Ventures or other types of partnerships.

RFP at 113.

C&S first argues that this provision required an offeror to demonstrate corporate experience gained while performing as a prime contractor, and that KF&S's proposal did not meet this requirement because it reflected experience as a subcontractor, rather than a prime contractor.⁴ C&S concedes, however, that the solicitation did not specifically state that this experience had to be gained while performing as a prime contractor. Protester's Comments (Aug. 12, 2015), at 21; Protest at 4 ("[I]t is not specifically stated in Subfactor 2 . . . that each offeror's past performance experience should be experience gained while performing as a prime contractor."). Nonetheless, the protester argues that, although the RFP did not specifically require experience as a prime contractor, the U.S. government has imposed a similar requirement for other U.S. military projects in Korea. Protester's Comments (Aug. 12, 2015), at 21. For this reason, the protester argues that the solicitation here should have included such a requirement in this solicitation, and that by failing to do so, that Army has ignored a "standard and long lasting primary contractor experience requirement." Id. The Army disagrees with the protester's interpretation of the RFP, asserting that its evaluation of offerors' proposals was reasonable because the solicitation neither stated, nor required, "experience as a prime contractor." Contracting Officer (CO) Statement at 2.

⁴ We note that the parties also dispute whether the awardee's experience was in fact performed as a prime contractor or a subcontractor. Compare AR at 9 (stating that awardee's corporate experience was obtained while serving as a prime contractor), with Protester's Comments (Aug. 12, 2015), at 21-22 (disagreeing with agency that awardee's experience was as a prime contractor). Because we conclude, as discussed above, that the RFP did not include a requirement to demonstrate experience gained as a prime contractor, and because this factor was evaluated by the agency on a pass/fail basis, we need not resolve this aspect of the protester's argument.

We conclude that the Army's interpretation of the RFP, when read as a whole, was reasonable. With regard to the assertion that the RFP should be interpreted as requiring the proposed prime contractor to demonstrate corporate experience gained while performing as a prime contractor, the plain language of the solicitation does not support the protester's argument. Rather, as discussed above, to be acceptable under the prime contractor's corporate experience subfactor, the RFP required that an offeror provide information demonstrating "a minimum of two (2) years of experience in security guard services . . . with relevant experience in installation or facilities (military or non-military) access control and management of security guard forces totaling 500 or more security guards during a single time period." RFP at 113. In addition, the solicitation specified that "[o]nly the Prime Contractor's experience providing security guard services will be considered for this experience requirement." Id. Although the solicitation also restricted offerors from meeting this requirement "through the experience of Subcontractors, Joint Ventures, or other types of partnerships," this sentence does not limit demonstrated experience to experience performed as a prime contractor, as the protester asserts. Rather, this sentence merely limits the offeror from relying upon the experience of other entities. In fact, as discussed above, the protester acknowledges that the RFP did not specifically state that experience had to be gained in such a manner. Protester's Comments (Aug. 12, 2015), at 21; Protest at 4.

In addition, to the extent C&S argues that the Government has imposed a similar requirement in other procurements, the solicitation here, as discussed above, clearly included no such requirement. To the extent the protester believes that the solicitation should have contained different requirements, this argument was required to be filed prior to the submission of proposals. 4 C.F.R. § 21.2(a)(1) (protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals shall be filed prior to the time set for receipt of initial proposals). Accordingly, we find no basis to sustain the protest.

C&S also contends that the above-quoted provision precluded an offeror from demonstrating corporate experience at "facilities which are scattered throughout Korea." Protest at 4. In this regard, C&S interprets the solicitation as restricting an offeror to demonstrating experience at "a grouping of facilities located in the same vicinity that support particular functions." RFP at 113. The agency disagrees with C&S's interpretation. The agency notes that, while the RFP defined "installation" as "a grouping of facilities located in the same vicinity that support particular functions," the solicitation did not limit qualifying corporate experience to that provided on an "installation." AR at 9. The agency asserts that the solicitation also permitted experience obtained on "facilities." Id.; RFP at 113 (requiring offerors to demonstrate "relevant experience in installation or facilities (military or non-military) access control").

We agree with the Army that it reasonably interpreted the RFP as providing that qualifying corporate experience was not limited to that provided on an "installation," but also included experience obtained on "facilities." As relevant here, the

solicitation asked for “relevant experience in installation or facilities (military or non-military) access control and management.” RFP at 113 (emphasis added). In addition, although, the RFP defined “installation” as “a grouping of facilities,” we do not agree with the protester that this definition meant that all facilities must be on an installation. In this regard, we note that the RFP did not define the term “facilities.” Id. More importantly the interpretation advanced by C&S requires reading the phrase “or facilities” out of the RFP, whereas the agency’s interpretation gives effect to all of the solicitation’s provisions. See Alliance Technical Servs., Inc., supra (resolving matter by reading solicitation as a whole and in a manner that gives effect to all of its provisions). Accordingly, we conclude that the agency’s reading of the solicitation was reasonable.

Allegations of Forged Documents and Agency Misconduct

C&S asserts that KF&S may have submitted three forged agreements between it and Korean labor unions. The protester bases this argument on statements allegedly made by Army personnel during an in-person meeting between C&S and the agency’s Contracting Officer’s Representative (COR) after contract award. C&S also challenges the veracity of statements made by the COR in response to the protest, which refute the protester’s allegations. We view the protester’s argument in this regard as, in essence, alleging that the agency was motivated by bias or bad faith. For the reasons discussed below, we find no merit to either of the protester’s arguments.

Government officials are presumed to act in good faith, and a protester’s contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not consider allegations based on mere inference, supposition or unsupported speculation. BAE Sys. Tech. Solutions & Servs., Inc., B-409914, B-409914.2, Sept. 16, 2014, 2014 CPD ¶ 322 at 11.

As relevant here, under the phase-in plan subfactor of the management approach factor, the solicitation required offerors to submit any “labor union agreements/memorandums of agreement/understanding (MOA/MOU)” upon which the offeror relied as part of its phase-in plan. RFP at 107, 116.

On June 29, four days after contract award, C&S’s managing director met with the COR, at the COR’s office. Response to Dismissal Request, exh. A, Statement of C&S Managing Director (July 20, 2015), at 1. C&S’s managing director states that he expressed his concerns to the COR “about the possible problems that the [government] may face when [KF&S] commences performance of the newly awarded security guard contract,” because “the four unions related to the [contract] and their members are worried about the possible reduction of their present wages because of the low contract price submitted by [KF&S].” Id. The managing director states that, in response, the COR explained that “it won’t be a problem because [KF&S] submitted in their bid package four separate memorandums of understanding executed by all four labor unions” Id. at 2. C&S argues,

however, that three of the four labor unions told C&S that they had entered into MOUs only with C&S, and therefore, to the extent KF&S provided MOUs with those three labor unions, those MOUs must be forged. Id.

In response to the protest, the contracting officer confirmed that KF&S's proposal, as originally submitted, contained only a single MOU. CO Statement (July 30, 2015), at 2-3; AR, Tab 8, Army Single Face to Industry (AFSI) Screenshot (May 4, 2015), at 1. Specifically, the contracting officer states: "KF&S submitted one (1) labor union agreement which was properly signed and executed in the technical proposal" and "did not submit any documentation from the three labor unions indicated by the Protest[e]r." Id. The contracting officer also explains that the "RFP did not require a specific number of labor union agreements," but rather only "required submission of any labor union agreements upon which the offeror relied as part of the phase-in plan." Id. at 3; RFP at 107, 116; Enclosure 3, KF&S Proposal, at 28-29. Accordingly, to the extent the protester asserts that the awardee's proposal contained three forged MOU agreements, based on this record, we find no merit to the protester's argument.

In addition, in responding to the protest, the Army provided a declaration that directly refutes the protester's allegations. Decl. of COR (July 30, 2015), at 1. Specifically, in response to the protester's assertion that the COR told C&S that KF&S's proposal contained four labor union agreements, the agency provided a declaration from the COR for the U.S. Army Installation Management Command Pacific at Yonsan, Republic of Korea, stating that he "recall[ed] his conversation with [protester's employees]," and that he told them only that "the Solicitation requirements . . . were the same for all offerors," but that he "could not tell them the specifics of any other companies' proposals. . . ." Id.

The protester, in responding to the agency report, challenges the veracity of the COR's statement, and raises additional untimely arguments. Where, as here, a protester submits declarations alleging agency bias, and the agency directly and reasonably refutes those allegations, we will conclude that the protester has not established bias on the part of the agency. See BAE Sys. Tech. Solutions & Servs., Inc., supra, at 12. In addition, there is no indication in the record, nor does the protester point to any, that demonstrates that the awardee, in fact, submitted forged documents with its proposal. To the contrary, as discussed above, the record reflects that KF&S submitted only 1 labor union agreement with its proposal. CO Statement (July 15, 2015), attach. 2, KF&S Proposal, at 28-29; CO Statement (July 30, 2015), at 2-3; AR, Tab 8, AFSI Screenshot (May 4, 2015), at 1. Based on this record, we conclude that C&S has failed to produce credible evidence of bias or bad faith on the part of any agency officials.

The protest is denied.

Susan A. Poling
General Counsel