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Decision

Matter of: Protect the Force, Inc.

File: B-411897.2; B-411897.4

Date: November 24, 2015

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DIGEST

Protest challenging an agency's evaluation of awardees' technical proposals is sustained where the evaluation was not reasonable and not consistent with the solicitation's evaluation criteria.

DECISION

Protect the Force, Inc. (PTF), of Alpharetta, Georgia, protests the award of indefinite-delivery/indefinite-quantity (ID/IQ) contracts to Point Blank Enterprises, of Pompano Beach, Florida; Short Bark Industries, of Vonore, Tennessee; and Carter Enterprises, of Brooklyn, New York, under request for proposals (RFP) No. W91CRB-15-R-0027, issued by the Department of the Army for ballistic combat shirts. PTF alleges several improprieties in the agency's conduct of the procurement, including that the agency unreasonably evaluated all of the awardees' technical proposals.

We sustain the protest.

BACKGROUND

The RFP was issued on May 20, 2015, for the procurement of ballistic combat shirts (BCS) with torso and extremity protection. The RFP contemplated award of up to

three fixed-price, indefinite-delivery/indefinite-quantity (ID/IQ) contracts with an ordering period of 3 years, based on the lowest-priced, technically acceptable offers received. RFP at 79.

The RFP described the requirement as a flame-resistant Army combat shirt worn under body armor (either as a tactical vest or plate carrier) in combat operations. Agency Report (AR), Tab 21a, RFP, Original Purchase Description (PD), at 1. The BCS is made up of ballistic and non-ballistic materials. The non-ballistic materials, used in the torso and sleeves, are equal to the Army combat shirt in weight and functional characteristics, including flame resistance and moisture wicking. RFP at 6. The deltoid and other upper thoracic portions of the BCS contain ballistic materials consisting of soft armor that provides protection from fragmenting munitions as well as handgun threats. Id. The RFP included five contract line-item numbers (CLINs) which provided for a technical data package (CLIN 1); first-article test items (CLIN 2); complete samples of BCSs after first-article test approvals, for live-fire testing (CLIN 3); manufacture and delivery of a potential maximum quantity of 72,414 BCSs (CLIN 4); and finally, a production process package (CLIN 5). RFP at 3-5.

Offerors were instructed to submit the following proposal volumes: technical, workmanship, quality assurance, small business subcontracting, and delivery and price. Section L of the RFP listed the following submission requirements for technical proposals: (a) product samples; (b) test documentation; (c) technical narrative; and (d) statement of compliance with the Buy American Act and Berry Amendment. RFP at 69-71. Of particular relevance here is the requirement for test documentation, which stated:

Test documentation, which demonstrates that their [BCS] meets the requirements defined in Table 1, shall be provided by the Offeror.

RFP at 69. Also relevant here is the requirement for a technical narrative, which stated the following:

Offerors shall submit a Technical Narrative that clearly addresses and demonstrates the thirteen (13) [key performance attributes] listed in Table 1 below.

Id. at 71.

The referenced "Table 1" appeared in Section M of the RFP, listing 13 key performance attributes (KPAs) and the respective minimum requirements for each

attribute in order to be eligible for award.¹ Id. at 80. The minimum requirements referred to various characteristics, such as areal density (weight per unit area of dry fabric²) or thickness and type of weave, and referred to specific tests that were also identified in the purchase description. Id., AR, Tab 21a, Original PD. Three KPAs of particular relevance here were set out in Table 1 as follows:

Table 1 BCS Protection

KPA	Minimum Requirement
8. Ballistic Durability	Durability of Ballistic Material will be tested in accordance with the PD using ASTM D-3886 ³
9. Material Durability	Durability of Elbow Pad Material will be tested in accordance with the PD using ASTM D-3886
10. Air Permeability	Air Permeability of Outer Facing Cloths will be tested in accordance with the PD using ASTM D 737 ⁴

RFP at 80-81 (excerpt of Table 1).

Section M also stated that technical proposals would be evaluated based on narratives offerors submitted concerning each KPA, and that to be eligible for award, a proposal was required to be found acceptable for all 13 KPAs. RFP, § M, at 79.

Seven offerors, including PTF and the three awardees, submitted proposals by the proposal due date. AR at 2. After initial evaluations, the contracting officer

¹ These included design, sizing, area of coverage, weight, ballistic areal density/thickness, ballistic insert cover, ballistic protection, ballistic durability, material durability, air permeability, laundering, donning/doffing, and outer facing cloth. RFP at 80-81.

² The PD describes areal density as a measure of the weight of the armor per unit area, usually expressed in pounds per square foot (lb./sq. ft.) or kilograms per square meter of surface area. AR, Tab 21a, Original PD, at 39. As relevant here, the collar of the BCS was originally paired with the deltoid portion of the BCS, requiring ballistic materials with an areal density of 0.88 lb./sq. ft., and a thickness of ¼ inch. Id. at 13-14.

³ “ASTM” is the acronym for American Society for Testing and Materials, and ASTM D-3886 is for “Abrasion resistance of textile fabrics (inflated diaphragm).” AR, Tab 21a, Original PD at 3.

⁴ ASTM D 737 is for “Standard Test Method for Air Permeability of Textile Fabrics.” AR, Tab 21a, Original PD at 3.

conducted discussions with all seven offerors, four of which, including PTF, had been found to be technically unacceptable. AR, Tab 5, Pre-Negotiation Memorandum, at 5. Offerors submitted revised proposals, all of which were evaluated as technically acceptable, and the contracting officer requested that the offerors submit final proposal revisions (FPRs). Id.; see also, AR, Tab 4, Revised Tech. Eval. Report, at 4.

The offerors' prices were evaluated in accordance with the RFP. The protester submitted the second highest-priced proposal. The total evaluated prices were as follows:

Offeror	Total Evaluated Price
Point Blank	\$17,063,153.51
Short Bark	\$17,877,235.24
Carter	\$18,875,522.73
Offeror 4	\$23,587,050.00
Offeror 5	\$28,308,127.69
PTF	\$28,345,908.48
Offeror 7	\$36,059,651.30

AR, Tab 7, Price Negotiation Memorandum, at 19.

All three awardees and PTF included in their proposals a blanket statement of compliance, asserting that they would, if awarded a contract, provide materials that were compliant with all of the PD requirements. See, e.g., AR, Tab 8a, Carter Initial Tech. Proposal, at 3; Tab 9a, Point Blank Initial Tech. Proposal, at 4; and Tabs 11a, 15a, Short Bark, Initial and Revised Tech. Proposals, at 2; Tab 10a, PTF Initial Tech. Proposal, at 9-10.

By e-mail of July 27, 2015, after FPRs had been submitted, the contracting officer informed the offerors that the contract maximum amount had been changed from a quantity basis to a maximum dollar amount. AR at 2. Because of the change, the agency asked all of the offerors to confirm their prices, which they all did, including PTF.⁵

⁵ The agency report does not contain copies of the agency's and the protester's e-mails related to such price confirmation; however, they were attached as exhibit E to PTF's initial protest, which PTF filed on August 10, 2015, challenging this announced change, and which we dismissed as untimely. See Protect the Force, Inc., B-411897, Sept. 4, 2015 (unpublished decision). Prior to dismissal of the initial protest, the protester filed this supplemental protest (B-411897.2), which is referenced herein as "Protest." PTF then sought reconsideration of the dismissal of the initial protest, which we denied. See Protect the Force, Inc.--Recon., B-411897.3, Sept. 30, 2015, 2015 CPD ¶ 306. After the AR was submitted in

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Awards were made to Point Blank, Short Bark, and Carter, with notice by e-mail on July 30, 2015. AR, Tabs 24a, 24b, 24c, Agency e-mails to Awardees. The e-mails also included a revised PD (Award PD) as an attachment, with certain other changes to the original requirements. Id.

On August 6, the Agency held a post-award teleconference with the awardees. AR, Tab 23g(1), Minutes of Post-Award Teleconference. As relevant here, the minutes of this teleconference make reference to reductions in the collar, which the agency says were made for comfort and user acceptance reasons.⁶ Id.

PTF was debriefed on August 10, 2015, and filed its protest with our Office on August 17.⁷

DISCUSSION

Interested Party

PTF raises multiple challenges to various aspects of the Army's technical evaluation of both its own and the awardees' proposals. Before turning to the challenges, we first consider whether PTF is an interested party for purposes of challenging these awards. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1). Here, although PTF's price made its proposal sixth in line for award, and PTF has not challenged the intervening offers, we think there is a substantial possibility that PTF's proposal would be in line for award, if its protest was sustained. This is so because PTF has challenged all three awards, and the

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response to this protest, the protester filed a supplemental protest (B-411897.4), which is referenced herein as "Supp. Protest."

⁶ As noted above, the original PD grouped the collar portion of the BCS with the deltoid portion. AR, Tab 21a, Original PD, at 14. In this PD, the maximum areal density requirement for both the deltoid and collar was 0.88 lb./sq. ft. with a maximum thickness of ¼ inch, and did not have a requirement for abrasion resistance. Id. The Award PD grouped the collar with the yoke, reducing the maximum areal density and thickness requirements to 0.36 lb./sq. ft., and 8/100ths of an inch, respectively. The Award PD also included an abrasion resistance requirement for the collar that was identical to that for the yoke. AR, Tab 21d, Award PD, at 19.

⁷ The protester did not learn of the collar reduction changes in the Award PD until August 10. PTF Response to Questions, Decl. of PTF President, Oct. 12, 2015, at 1. Therefore, this protest, unlike the initial protest, is timely.

solicitation provided for awarding up to three contracts. Thus, if PTF is correct in its assertion that none of the three awardees are eligible for award, PTF would be in line for one of the three awards. Therefore, we conclude that PTF has the requisite legal interest to maintain the protest.

Evaluation of KPAs

PTF raises two essential challenges to the agency's evaluation of the awardees' proposals as technically acceptable for non-ballistic materials under the KPAs. Supp. Protest at 2. First, with respect to KPAs 8, 9, and 10, PTF asserts that the language of Section L of the RFP, as set out above, required offerors to provide test documentation for all 13 KPAs demonstrating that their BCSs met all of the requirements defined in RFP, section M, Table 1. Supp. Protest at 6-12. In addition to its contentions regarding test documentation, PTF argues the awardees failed to otherwise meet the requirement of KPA 10, air permeability. Id. at 7-12. PTF also contends that the agency improperly changed certain requirements during award without amending the RFP. Protest at 10-13.

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. Computer World Servs. Corp., B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. However, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id.

In answering this protest, the agency disputes PTF's understanding of the RFP's terms, arguing that Section L must be "read in full context to fully understand what test documentation was required to be provided." Supp. AR at 3. The agency contends in this regard that the RFP did not require test documentation for KPAs 8, 9, and 10; rather, the agency argues that "test data for most of the non-ballistic requirements in the PD are to be determined during First Article Testing"; and that section L instructs offerors to provide "a technical narrative that clearly addresses and demonstrates" the 13 KPAs. Id. at 1, 3. The agency explains, further, that this means offerors were "required to submit clear declarative statements for each of the thirteen KPAs" Id. at 3-4.

On this record, even adopting, for purposes of this discussion, the agency's reading of the RFP concerning test documentation,⁸ we find that the agency's evaluation of

⁸ We recognize that there is much disagreement in the record as to whether the RFP required offerors to submit test results showing compliance with all 13 KPAs, based on differing interpretations of the language in the RFP. However, here, our analysis is not dependent upon resolving that dispute. We note that, to the extent
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the awardees' narratives addressing the requirements for KPA 10 was unreasonable and not consistent with the stated evaluation criteria.

Again, section L of the RFP required offerors to provide a narrative that clearly addressed and demonstrated compliance with each KPA. RFP, § L, at 71. Section M stated that each KPA would be rated as acceptable or unacceptable, and that, to be considered for an award, a proposal had to be rated as acceptable for all 13 KPAs. Id., § M, at 79.

As shown above, for KPA 10, air permeability, Table 1 lists as the minimum requirements that the product will be tested, and that (1) it will meet the PD requirements, and (2) the testing will be performed using the identified ASTM method. RFP at 80. To address compliance with the KPAs, Carter included a table that reproduced Table 1, with an additional column titled "Requirement Met?" For the air permeability KPA, Carter inserted, as its narrative, a statement that its product had been tested using ASTM D 737, with a reference to attached test results. However, the attachment showed that its product, in fact, did not comply with the PD requirements.⁹ AR, Tab 8a, Carter Initial Tech. Proposal, at 7, 230.

In evaluating the acceptability of Carter's proposal with respect to this KPA, the agency's evaluation record simply states "acceptable." AR, Tab 3a, Carter Tech. Eval., at 3. The agency ignored the test data Carter submitted, stating in the agency report that it did not consider the data because, according to the agency, the data was not required under the RFP. Supp. AR, at 4. We find the agency's evaluation unreasonable. Given that here, (1) test results are provided, and (2) the proposal's narrative on which the agency based its evaluation relies on that test data, we do not find reasonable the agency's determination to ignore such evidence in reaching its determination of acceptability. Moreover, the agency has not explained, in this regard, how a mere statement that the product "was tested"--the only thing left in the narrative addressing this KPA, after test results are ignored--satisfied the requirement for a narrative that "clearly addresses and demonstrates" the performance attributes.

Similarly, we find unreasonable the agency's evaluation of both Point Blank's and Short Bark's proposals for KPA 10. As with Carter, the agency's evaluation of both of these offerors' narratives for KPA 10 simply contained the notation "acceptable,"

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that the RFP language could reasonably be construed in more than one way, it would present an issue of patent ambiguity.

⁹ For air permeability, the PD required 100 cu. ft./min./sq. ft., whereas the attachment to Carter's proposal showed only 89.2 cu. ft./min./sq. ft. AR, Tab 8a, Carter Initial Tech. Proposal, at 230.

with no rationale given. AR, Tab 3b, Point Blank Initial Tech. Eval., at 3; AR, Tab 3d, Short Bark Initial Tech. Eval., at 3. Neither of these offerors' proposals provided a meaningful narrative for this KPA. Point Blank's proposal simply stated that its product had been tested using the prescribed method, without any narrative concerning compliance with the PD requirements.¹⁰ AR, Tab 9a, Point Blank Initial Proposal, at 11. Short Bark stated that [deleted]. However, there is no mention of any method of testing, whether past or future. AR, Tab 11a, Short Bark Initial Tech. Proposal, at 16. Accordingly, it does not appear that either Point Blank or Short Bark provided narratives that "clearly address[ed] and demonstrate[d]" compliance with the minimum requirements for KPA 10.

An offeror has the obligation to affirmatively demonstrate that its proposal will meet the government's needs, where required to do so. See TRS Research, B-274845, Jan. 7, 1997, 97-1 CPD ¶ 6 at 3; Discount Machinery & Equip., Inc., B-253094, Aug. 2, 1993, 93-2 CPD ¶ 68 at 4. Although all of the awardees provided a blanket statement that their products would comply with the RFP, it is well-established that such statements are not enough to demonstrate technical acceptability. See United Satellite Sys., B-237517, Feb. 22, 1990, 90-1 CPD ¶ 201 at 4.

In sum, the awardees' proposals did not demonstrate how their products met the requirements set forth in KPA 10, as required by the evaluation criteria. Further, the agency provided no explanation of its rationale for finding that these offerors' proposals were technically acceptable for this KPA. Accordingly, we find that the agency's evaluations of the awardees' narratives for KPA 10 were unreasonable and not consistent with the RFP's evaluation criteria. We sustain the protest on this ground.¹¹

¹⁰ Moreover, we note that the evaluation form for Point Blank's proposal states that the BCS proposed "consists of a carrier produced by Carter Enterprises and soft ballistic inserts produced by PBE [Point Blank]." AR, Tab 3b, Point Blank Initial Tech. Eval., at 5. If accurate, this statement draws into question whether the test results would be the same as the noncompliant results that Carter submitted, and the agency ignored, as discussed above.

¹¹ Because we sustain PTF's challenge to the agency's evaluation of the awardees' technical proposals, the protester's additional protest ground alleging that the agency was required to amend the solicitation when it revised the PD, and that it failed to do so, has been superseded by this decision. Because we consider that issue now academic, we do not address it.

RECOMMENDATION

We recommend that the Army either: (1) reasonably re-evaluate the proposals in accordance with the RFP as written, and make new source selection decisions; or (2) re-examine the RFP's minimum requirements and evaluation criteria, to determine whether they accurately and unambiguously reflect the agency's needs, and, if appropriate, amend the RFP, re-open discussions, obtain and evaluate revised proposals, and make new source selection decisions.

We also recommend that the protester be reimbursed its reasonable costs of filing and pursuing this protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protester's certified claim for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling
General Counsel