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Matter of: HPLogIT Management, LLC

File: B-412609.3

Date: August 18, 2016

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Richard L. Moorhouse, Esq., and Mark J. Wishner, Esq., Greenberg Traurig, L.L.P., for Oran Safety Glass, Inc., an intervenor.

Wade L. Brown, Esq., and Nichole Cram, Esq., Department of the Army, for the agency.

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DIGEST

Protest is sustained where record does not include documentation showing that the agency inspected awardee's product sample for conformance to terms of the statement of work, as required by the solicitation.

DECISION

HPLogIT Management, LLC (HPL), of Texarkana, Texas, a small business, protests the award of a contract to Oran Safety Glass, Inc. (OSG), of Emporia, Virginia, under request for proposals (RFP) No. W56HZV-15-R-0239, issued by the Department of the Army, Army Materiel Command, for the MRAP M-ATV Transparent Armor Assembly (TAA) Refurbishment Program at Red River Army Depot. The protester argues that the agency's evaluation of the awardee's proposal and product sample, and resulting award, were improper.

We sustain the protest.

BACKGROUND

On September 30, 2015, the agency issued the RFP for the remanufacturing of a total of 9,000 TAAs that consisted of rear doors, passenger doors, driver's doors, passenger windshields, and driver's windshields, as well as an option quantity for

the remanufacturing of a total of 9,000 TAAs. RFP at 2, 18.¹ Under the terms of the solicitation, which was set aside for small businesses, the agency would furnish the contractor used TAAs (as government furnished material) for refurbishment. The RFP contemplated the award of a 1-year, fixed-price contract to the responsible firm whose proposal has the lowest total evaluated price.

The solicitation provided that the evaluation would be conducted in accordance with Federal Acquisition Regulation (FAR) subpart 12.6 (Streamlined Procedures for Evaluation and Solicitation for Commercial Items) using the evaluation factors of price and technical acceptability. After rank-ordering proposals by price, the technical evaluation was to begin with the lowest-priced proposal. If the lowest-priced proposal was determined to be unacceptable then the agency would evaluate the technical acceptability of the next-lowest offeror, and this process would continue until the lowest-priced, technically acceptable proposal was identified. Id. at 56.²

The RFP advised that technical acceptability would be established through the “submission and inspection of [product samples]” and an evaluation of the offeror’s proposed production process. Id. at 2. With regard to the product sample, the offeror was to request one windshield TAA from the agency that it would remanufacture in accordance with the statement of work (SOW) and return to the agency. Id. at 53. The RFP further advised that to be determined technically acceptable, the offeror’s provided product sample had to conform to the requirements of sections C.6 through C.10 of the SOW, and the offeror’s description of its production process had to be “determined by the Government to clearly result in the production of assemblies that consistently meet the inspection requirements.” Id. at 55.

As relevant to the protest here, among the SOW requirements to which the product sample was required to conform were the following:

-Transparent [a]rmor shall be mounted in frames with previously approved adhesive filler. Filler shall seal void between [f]rames and [t]ransparent [a]rmor to prevent water intrusion inside the window frames.

* * * * *

¹ Citations to the solicitation in this decision refer to a “conformed” copy of the solicitation that incorporates the three solicitation amendments.

² The solicitation stated that the agency intended to make award without discussions. RFP at 56.

-Transparent [a]rmor [a]ssembly shall not allow for [t]ransparent [a]rmor to be in direct contact with [f]rame, glass shall be mounted at least 3mm from [f]rame wall.

* * * * *

-Assemblies shall include the required gasket, to be sourced from the same supplier that provides the transparent armor coupons.

* * * * *

Id. at 20.

The agency received four proposals by the November 2 due date for proposals. Agency Report (AR), Tab D-2, Original Contract Review Board Abstract, at 3. On December 22, the agency made award to HPL, which had submitted the lowest-priced proposal determined to be technically acceptable. In this connection, while two other offerors--OSG and JBM Sherman Carmel (JBM)--had provided lower-priced proposals, the agency determined these proposals to be technically unacceptable in that they "did not provide sufficient detail to find that they would clearly result in TAAs that met the requirements of the [SOW]." Id. at 3.

Both OSG and JBM protested the award to HPL. The agency took corrective action in response to those protests, and our Office dismissed the protests as academic. AR, Tab F, OSG Inc., B-412609, Feb. 1, 2016; JBM Sherman Carmel, Inc., B-412609.2, Feb. 1, 2016 (unpublished decisions). The corrective action consisted of amending the solicitation to clarify the technical requirements, requesting revised proposals from the existing offerors based on the amended solicitation, conducting discussions if necessary, and issuing a new award decision. Id.

To this end, on March 24, 2016, the agency amended the solicitation, and invited the offerors to submit revised proposals.³ On April 4, the agency received proposals from HPLogIT, OSG, and JBM. AR, Tab K, Award Decision Document, at 1. OSG was determined to have the lowest total evaluated price, which was \$12,068,800.⁴ Id. at 4. In accordance with the RFP, the agency then evaluated OSG's proposal, and it was determined to be technically acceptable. Id. at 4-5.

³ While the agency was carrying out the corrective action, it awarded a contract to HPLogIT for a two-month supply of remanufactured TAAs. AR, Tab G-1, Urgent Bridge Contract. The agency states that HPL was the only source of supply that had an Army-vetted TAA remanufacturing process since it was the only contractor that had a technically acceptable proposal during the prior evaluation. AR, Tab G, Justification and Approval for Urgent Bridge Award; AR at 4.

⁴ JBM's proposal was second low and HPL's proposal was third low. AR, Tab K, Award Decision Document.

OSG's proposal was found to provide the best overall value and award was made to that firm.⁵ Id. at 5.

This protest followed.

DISCUSSION

In its initial protest, HPL argued that OSG's product sample did not conform to the RFP's mandatory technical specifications, and contended that the non-conformity would have been revealed by a reasonable inspection of the product sample by the agency. Following receipt and review of the agency report, HPL filed a supplemental protest in which it argued that the agency had failed to adequately document its evaluation of OSG's product sample. Supp. Protest at 5; RFP at 55.

Interested Party

As a preliminary matter, the intervenor argues that HPL is not an interested party to maintain its protest because the record fails to establish that HPL would be next in line for award if its protest were to be sustained. Because the agency did not evaluate the technical acceptability of any proposals other than OSG's, it is not clear which proposal would be next in line were the protest to be sustained. Furthermore, the protester has argued that the second lowest-priced proposal (submitted by JBM) also should be found technically unacceptable. Under these circumstances, our Office cannot conclude that HPL lacks standing as an interested party to pursue this protest. See 4 C.F.R. § 21.0(a)(1) (2015); Protect the Force, Inc., B-411897.2, B-411897.4, Nov. 24, 2015, 2015 CPD ¶ 369 at 5.

Evaluation of OSG's Product Sample

HPL argues that there is no documentation in the record showing that OSG's product sample was evaluated and determined to conform to sections C.6 through C.10 of the SOW as required by the RFP, or that it was evaluated at all. Supp. Protest at 5; RFP at 55. The protester contends that the award decision document, which stated that the firm's proposal was found to be technically acceptable and that a "[d]etailed technical evaluation [was] located in the contract file," was incorrect because no such evaluation of OSG's product sample was in the record. AR, Tab K, Award Decision Document at 4; Supp. Protest at 5.

⁵ In accordance with the solicitation, once OSG was found to be technically acceptable, no further analysis on technical proposals was conducted. AR, Tab K, Award Decision Document, at 4.

In response, the agency maintains as follows:

The Technical Evaluation Memorandum documented that OSG submitted one (1) LH Windshield Transparent Armor Assembly (NSN 2541-01-600-1887) in reusable dunnage for product sample evaluation in accordance with the requirements in the Statement of Work. In addition, the evaluation included details as to where in OSG's 74-page technical proposal, it met the seven technical requirements in Section L.9. (Tab J, OSG Technical Evaluation Memorandum). The evaluation contains adequate documentation showing the bases for the evaluation conclusions.

Supp. AR at 3. The technical evaluation memorandum referenced by the agency above included the following summary of the agency's evaluation of OSG's product sample:

L.5 Offeror submitted one (1) LH Windshield Transparent Armor Assembly (NSN 2541-01-600-1887) in reusable dunnage for product sample evaluation IAW requirements in the SOW.

AR, Tab J, OSG Technical Evaluation Memorandum, at 4. In connection with the foregoing, the intervenor asserts that a "visual examination" of OSG's product sample could "readily determine" the compliance of its product sample with the specification requirements. Intervenor's Comments at 14.

In reviewing a protest challenging the agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency's discretion. FFLPro, LLC, B-411427.2, Sept. 22, 2015, 2015 CPD ¶ 289 at 7. Rather, we will review the record to determine whether the agency's evaluation was reasonable; consistent with the stated evaluation criteria, applicable procurement statutes, and regulations; and adequately documented. Id. Although we recognize that this procurement was conducted in accordance with FAR subpart 12.6 (Streamlined Procedures for Evaluation and Solicitation for Commercial Items), it is a fundamental principle of government accountability that an agency be able to produce a sufficient record to allow for a meaningful review where its procurement actions are challenged. See Resource Dimensions, LLC, B-404536, Feb. 24, 2011, 2011 CPD ¶ 50 at 6; e-LYNXX Corp., B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 8; Checchi & Co. Consulting, Inc., B-285777, Oct. 10, 2000, 2001 CPD ¶ 132 at 6. An agency which fails to adequately document the rationale for its source selection, bears the risk that its determinations will be considered unsupported, and that absent such support, our Office may lack a basis to find that the agency had a reasonable basis for its determinations. Tiger Enters., Inc., B-293951, July 26, 2004, 2004 CPD ¶ 141 at 2.

As noted above, the solicitation here required each offeror to provide a product sample, which was to be inspected by the agency to verify that it conformed to the requirements of SOW sections C.6-C.10. The contemporaneous evaluation record includes no evidence that an inspection of OSG's product sample was performed; moreover, in responding to the protest here, the agency has never asserted that such an inspection took place. It may be, as the intervenor contends, that a "visual inspection" of OSG's product sample by the agency would suffice, but again, the record includes no documentation of any agency evaluation of OSG's product sample, visual or otherwise.

In sum, the record before us fails to show that the agency conducted an inspection of OSG's product sample, and, based on that inspection, reasonably concluded that the product sample conformed to the requirements of the SOW. On this basis, we sustain HPL's protest.⁶

RECOMMENDATION

We recommend that the Army inspect the product sample, in accordance with the RFP. In the event the sample is found to be compliant with the solicitation's requirements, the agency should document the results of its review. Alternatively, if the sample is not compliant, the agency should document that conclusion and consider the next lowest-priced proposal. 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 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

⁶ The protester also argues that OSG's description of its production process should have been found unacceptable because, among other things, [DELETED]. Protester's Comments at 9. In response, the intervenor maintains that [DELETED] was required in its process. Intervenor's Comments at 12. While based on the record before us, we are unable to conclude that OSG's description of its production should have been found unacceptable, the agency may wish to re-examine the language of the SOW to ascertain whether it accurately and unambiguously reflects the need for a [DELETED] in the production process, and to reconsider whether OSG's production process complies with its requirements in this regard.