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Decision

Matter of: Global Engineering & Construction LLC

File: B-413079

Date: August 10, 2016

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DIGEST

Protest challenging the evaluation of protester's technical proposal is denied where record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Global Engineering & Construction, LLC, a small business of Renton, Washington, protests its nonselection for award pursuant to request for proposals (RFP) No. W9127S-15-R-6007, issued by the Department of the Army, Corps of Engineers, for construction services throughout the United States.¹ The protester argues its proposal was unreasonably evaluated.

We deny the protest.

¹ Awards were made to the following small businesses: Blue Cord, of Orlando, Florida; Doyon Project Services, LLC, of Federal Way, Washington; Herman JCG JV, of San Diego, California; and Synergy-Kirlin Joint Venture, LLC, of El Paso, Texas. Agency Report (AR), Tab 12, Award Decision, at 1.

BACKGROUND

On June 26, 2015, the agency issued the RFP as a total small business set-aside, seeking proposals for construction services in support of the U.S. Army Medical Command's medical sustainment, restoration, and modernization mission. RFP at 1. The solicitation contemplated the award of multiple, fixed-price, indefinite-delivery, indefinite-quantity (IDIQ) task order contracts, each for a 3-year period of performance. Id.

The agency used a two-phase solicitation and selection process as provided for by Federal Acquisition Regulation (FAR) subpart 36.3. Id. at 4. Awards were to be made on a best-value basis, considering price and the following six non-price factors: (1) technical/management approach; (2) specialized experience; (3) past performance; (4) technical design; (5) key personnel qualifications and competency for seed project; and (6) schedule.² RFP amend. 8, at 7-8. For phase one of the solicitation, offerors were required to submit proposals addressing the first three non-price factors. RFP amend. 1, at 5. During this phase of the competition, proposals were evaluated to determine which offerors would be invited to submit proposals in response to the next phase of the solicitation.³ RFP at 27.

For phase two, offerors had to identify how they would address the solicitation's statement of work (SOW), which contemplated as a seed project the renovation of an existing health clinic located at Fort McNair, building 58, in Washington D.C. Id. at 180; RFP amend. 8, at 7. Proposals submitted in response to phase two were to be evaluated under the RFP's remaining three evaluation factors, as well as proposed prices for the seed project. RFP amend. 8, at 7, 14. The RFP provided that the non-price evaluation factors, when combined, were significantly more important than price.⁴ Id. at 8.

With regard to the technical design factor, the RFP required offerors to submit conceptual level presentation drawings, technical approach narratives, and information related to material and system quality. Id. at 9. Additionally, proposals

² Proposals could be assigned a rating of outstanding, good, acceptable, marginal, or unacceptable under the solicitation's non-price evaluation factors. AR, Tab 7, Source Selection Evaluation Board (SSEB) Report, at 7-8.

³ Proposals submitted in response to phase one of the competition were evaluated based on the offeror's ability to perform the overall program requirements. RFP amend. 1, at 5. The solicitation's first three technical evaluation factors for phase one were listed in descending order of importance. Id.

⁴ The first three non-price factors, when combined, were significantly less important than the last three factors. RFP amend. 8, at 7. Factors four, five, and six were listed in descending order of importance. Id. at 8.

were to demonstrate an understanding of the project objective as described in the solicitation's SOW and attachments, while also describing how the offeror would achieve a technical solution. Id. Of relevance to this protest, a project description, which was among the attachments to the RFP, informed offerors, in part, that "[t]he existing capacity of the chilled water and heating water systems should be determined such that the load from the addition of building 58 does not overload the existing systems." RFP, Revised Project Description, at 10.

The evaluation of the technical design factor was to be based on an assessment of over 19 different criteria to determine whether an offeror understood and demonstrated the ability to meet or exceed the solicitation's requirements. RFP amend. 8, at 10-11. For example, and as relevant here, one of the criterion to be evaluated was whether a proposal demonstrated a strategy to correctly apply methodologies and procedures for estimating and comparing certain federal building life cycle costs. Id.

With regard to the key personnel factor, the solicitation identified nine different key personnel positions, and listed minimum experience requirements for each position, including the minimum number of years each individual had to have in various fields.⁵ RFP, SOW, at 14-17. Almost every key personnel position required a minimum number of years of experience in the healthcare design and construction industry, as well as the general construction industry. Id. at 17. The RFP instructed offerors to provide: (a) the names and titles of their key personnel; (b) the number of years these individuals had with the firm; (c) their education; (d) active registrations; and (e) key personnel qualifications. RFP amend. 8, at 12. The solicitation's SOW also required offerors to propose key personnel who:

have extensive knowledge of the construction marketplace and turnkey services relative [to] furniture, furnishings, medical equipment and low voltage systems. Key personnel also shall have a fundamental understanding of integrated project delivery processes and integrated design-build and the application of design assumptions, principles, and specifications during construction and operation. Key Personnel are to be both knowledgeable and experienced in construction sequencing; and understand how sophisticated medical systems are integrated. Impact of any site utility disruption must be fully understood. All Key Personnel shall

⁵ For example, the RFP required offerors to propose a prime program manager who had at least 15 years of experience in the healthcare design and construction industry. RFP, SOW, at 14. Offerors also had to propose an architect of record who had a minimum of 5 years of experience in the healthcare design and construction industry, a minimum of 10 years in the general construction industry, and a minimum of 5 years of experience as an architect of record. Id. at 15.

have current knowledge on all industry practices, public laws, codes, and methods. Consistent with integrated services, they shall be involved in the project from solicitation through project closeout.

RFP, SOW, at 14. Furthermore, the key personnel proposed by an offeror had to demonstrate the ability to: provide quality results; meet performance periods; manage subcontractors including mitigation of conflicts/resolution of disputes; control costs and institute corrective action to contain costs; provide customer satisfaction, remain responsive, and maintain quality documentation/reports; and maintain safety by effectively implementing and maintaining an accident prevention program. Id. The RFP provided that proposals were to be evaluated under this factor to determine whether an offeror's key personnel met or exceeded the SOW's minimum requirements. RFP amend. 8, at 12.

The agency received 25 proposals in response to the RFP, which were evaluated under phase one of the solicitation. Contracting Officer (CO) Statement at 2. Based on the phase one results, which are not at issue here, the agency selected nine offerors, including Global, to participate in phase two of the solicitation. Id. All nine offerors submitted phase two proposals, which were then evaluated by the agency's SSEB. Id. at 2-3. After the initial evaluations were completed, the agency opened discussions and obtained revised proposals. Id. at 3.

During discussions, the agency asked Global to address several concerns with its proposal.⁶ Protest, exh. 3, Negotiation Letter, at 1-3. Of relevance here, the Corps asked Global why its proposal contained only one mention of a life cycle cost analysis (relating to water efficiency). Id. at 1. The Corps raised this issue during discussions because it was concerned that if Global did not conduct "further research," the Corp could incur costs shortly after any warranties expired. Id.

Global responded to the concern by informing the Corps that:

Additional energy conservation and water conservation life cycle cost analysis principles will also be applied to material selection for insulation type and thicknesses to be used in exterior walls and roofing. Also, new mechanical system components, such as motors and coil selections will be analyzed. **Overall mechanical system analysis will not be performed, since existing central**

⁶ The agency identified a total of five concerns with regard to Global's proposal under technical design factor of the solicitation, and two concerns under the schedule factor. Protest, exh. 3, Negotiation Letter, at 1-2. The discussion letter sent by the Corps did not raise any concerns with regard to the key personnel factor. See id. at 1-3.

plant heating hot water and chilled water service is to be used.

Analysis will be performed during the initial design of the project in order to determine material and equipment selections to be incorporated into the overall project design. 10 CFR 436 and UFC 1-200-02 guidance will be used in performing the analysis.^[7]

AR, Tab 5, Global's Discussion Responses, at 6 (emphasis added); Tab 6, Global's Final Revised Proposal, at 6 (emphasis added).

After discussions concluded, the SSEB evaluated Global's revised proposal and assigned it one strength and one significant weakness under the technical design factor. AR, Tab 7, SSEB Report, at 16-17. The SSEB assigned the significant weakness because it interpreted Global's proposal to mean that the protester was not going to perform an overall mechanical systems analysis, as contemplated by the RFP, to specifically determine the existing capacity of chilled and heated water systems. Id.; RFP, Revised Project Description, at 10. Based on this assessment, the SSEB assigned a marginal rating to Global's proposal under the technical design factor. AR, Tab 7, SSEB Report, at 16.

The SSEB assigned an acceptable rating to Global's proposal under the key personnel factor after determining that it contained two strengths and no weaknesses or deficiencies. Id. The SSEB assigned the strengths based on its determination that the experience of Global's medical planner and mechanical engineer exceeded the solicitation's requirements. Id.

The SSEB rated Global's phase two proposal marginal overall based on the marginal rating it received under the technical design factor, the acceptable rating it received under the key personnel factor, and the acceptable rating it received under the schedule factor.⁸ Id. at 17. The SSEB's evaluation conclusions and ratings were adopted by the agency's source selection advisory council (SSAC) and then by the source selection authority (SSA). AR, Tab 9, SSAC Report, at 18; Tab 10, Initial Source Selection Decision Document (SSDD), at 7.

On April 8, 2016, after considering the offerors' responses to the discussion questions and evaluating the revised proposals, the agency selected Blue Cord,

⁷ Global's discussion response letter and its final proposal addressed the other concerns that were identified by the agency. AR, Tab 5, Global's Discussion Responses, at 6; Tab 6, Global's Final Revised Proposal, at 6.

⁸ As discussed above, the technical design factor was the most important non-price evaluation factor in the phase two evaluation. RFP amend. 8, at 8. The non-price factors were listed in descending order of importance. Id.

Doyon, Herman, and Synergy-Kirlin, for award.⁹ AR, Tab 10, Supplemental SSDD, at 3-5. Global's proposal, which priced the seed project at \$7,274,993, was not selected for award. AR, Tab 10, Initial SSDD, at 5. In addition, the Corps awarded the seed project to Synergy-Kirlin, which had one of the highest overall technical ratings (good) and the lowest price (\$6,399,524). AR, Tab 10, Supplemental SSDD, at 3-5.

The protester received a written debriefing from the Corps on April 21, 2016. Protest, exh. 1, Debriefing Letter, at 1. Global filed its protest with our Office on May 2.

DISCUSSION

Global contends that the Corps unreasonably evaluated its proposal under the solicitation's technical design and key personnel factors. With regard to the technical design factor, the protester argues that its discussion response was taken out of context, since the response was intended to solely apply to the specific concern raised by the agency during discussions. With regard to the key personnel factor, Global alleges that the agency failed to credit its proposal for offering key personnel who exceeded the solicitation's requirements for minimum years of experience.

In response, the agency explains that it properly assigned Global's proposal a significant weakness because Global unambiguously stated that it would not perform a requirement of the RFP. The agency also explains that Global's acceptable key personnel rating was reasonable because the evaluation considered more than just whether an offeror's key personnel exceeded the minimum number of years of experience required by the RFP for their positions.

After reviewing the record, we find no basis to sustain Global's protest.

The evaluation of an offeror's technical proposal is a matter within the agency's broad discretion and our Office will not substitute our judgment for that of the agency; rather, we will examine the record to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Nuclear Prod. Partners LLC; Integrated Nuclear Prod. Solutions LLC, B-407948 et al., Apr. 29, 2013, 2013 CPD

⁹ The Corps initially made five awards. AR, Tab 10, Initial SSDD, at 12; CO Statement at 3. On March 3, 2016, one of the offerors withdrew its proposal and requested that it no longer be considered for award. AR, Tab 10, Supplemental SSDD, at 2-3; CO Statement at 3. The agency subsequently revised its initial award decision and made award to four offerors. AR, Tab 10, Supplemental SSDD, at 4.

¶ 112 at 21. A protester's disagreement with the agency's judgment does not establish that the evaluation was unreasonable. WAI-Stoller Servs., LLC; Portage, Inc., B-408248.13 et al., May 29, 2015, 2015 CPD ¶ 201 at 7. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. ACC Constr.-McKnight JV, LLC, B-411073, Apr. 30, 2015, 2015 CPD ¶ 147 at 5; Mike Kesler Enters., B-401633, Oct. 23, 2009, 2009 CPD ¶ 205 at 2-3. An offeror runs the risk that a procuring agency will evaluate its proposal unfavorably where it fails to do so. ACC Constr.-McKnight JV, LLC, supra; Int'l Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7.

Technical Design Factor

Here, we find reasonable the agency's decision to assign a marginal rating to Global's proposal under the RFP's technical design factor. After reviewing Global's initial proposal, the SSEB was concerned that the protester did not adequately demonstrate the ability to correctly apply certain methodologies and procedures for life cycle cost analyses that were required by the RFP. The Corps then relayed this concern to Global during discussions.

Global responded to the agency's discussion letter by stating, in part: "[o]verall mechanical system analysis will not be performed, since existing central plant heating hot water and chilled water service is to be used." AR, Tab 5, Global's Discussion Responses, at 6; Tab 6, Global's Final Revised Proposal, at 6. Based on this part of Global's response, the SSEB believed that the protester was not going to perform an overall mechanical systems analysis, which ran counter to the work contemplated by the RFP to determine the capacity of the existing water systems. AR, Tab 7, SSEB Report, at 16; See RFP, Revised Project Description, at 10.

As discussed above, under the technical design factor, proposals had to demonstrate that offerors had an understanding of the project objective as described in the solicitation's SOW and attachments, while also describing how the offeror would achieve a technical solution. RFP amend. 8, at 11. Furthermore, the solicitation's revised project description stated that "[t]he existing capacity of the chilled water and heating water systems should be determined such that the load from the addition of building 58 does not overload the existing systems." RFP, Revised Project Description, at 10. The agency explains that a mechanical investigation would be "key" to ensure that the system would not be overloaded by any changes during renovation of the facility. CO Statement at 4.

Here, the record is clear that Global's revised proposal unambiguously stated that an overall mechanical system analysis would not be performed. AR, Tab 6, Global Revised Proposal, at 6. While the protester may have intended its statement to apply only in the context of a life cycle cost analysis, and not an assessment of the

capacity of the existing system, see Protest at 15, Global was responsible for submitting a well-written proposal that clearly demonstrated compliance with the solicitation. ACC Constr.-McKnight JV, LLC, supra. Given that Global expressly advised in its proposal that it would not perform an overall mechanical system analysis, and because such an analysis was contemplated by the solicitation, we find reasonable the agency's evaluation of the protester's proposal as marginal under the technical design factor.

Key Personnel Factor

Next, Global objects to the evaluation of its proposal under the key personnel factor. The protester mainly argues that it was not properly credited for offering key personnel who exceeded the minimum years of experience required by the solicitation. Specifically, Global asserts that all of its key personnel had significantly more general construction experience than was required by the RFP's SOW for their respective positions. The agency counters that extensive general construction experience by itself was not sufficient to warrant a strength.

Here, we find unobjectionable the agency's evaluation of Global's proposal under the key personnel factor. In this regard, the minimum number of years required for general construction experience was but one of many different considerations to be evaluated under the key personnel factor. RFP, SOW, at 14-17. Indeed, the RFP's SOW identified numerous requirements that applied to all key personnel positions, including, for example, the ability to provide quality results, meet performance periods, manage subcontractors, control costs, provide customer satisfaction, and maintain safety. Id. at 14. Furthermore, in addition to these requirements that applied to all key personnel, the RFP also identified numerous minimum requirements that applied uniquely to each of the nine different key personnel positions. Id. at 14-17.

We also note that the RFP required all key personnel to have extensive knowledge of the construction marketplace. Id. at 14. As such, our review of the record confirms that there was nothing unreasonable about the Corps' decision not to assign Global's proposal a strength based solely on the years of general construction experience offered by the protester's key personnel.¹⁰ Rather, the record reflects that the agency reasonably assigned the protester's proposal with

¹⁰ In its comments, the protester also argues that its proposal should have been assigned a strength because Global's medical planner exceeded the RFP's requirements. Comments at 5. Notwithstanding this complaint, we note that the agency did assign the protester's proposal a strength for the experience of that individual. AR, Tab 7, SSEB Report, at 16.

strengths for its key personnel when merited.¹¹ Here, Global's challenges to the agency's evaluation of its proposal under the key personnel factor reflect only the protester's disagreement with the agency's evaluation and provides no basis to sustain the protest.¹² WAI-Stoller Servs., LLC; Portage, Inc., supra.

The protest is denied.

Susan A. Poling
General Counsel

¹¹ As noted above, the SSEB identified two strengths and no weaknesses or deficiencies in Global's proposal under the key personnel factor. AR, Tab 7, SSEB Report, at 16. Specifically, the agency assigned a strength to Global's medical planner because that individual had 40 years of experience in healthcare, which the SSEB determined exceeded the RFP SOW requirements by 33 years. Id. The SSEB also credited Global for its mechanical engineer, because that individual had "many more years of experience" than required by the RFP. Id.

¹² The protester also argues that the agency unreasonably failed to credit its proposal with a strength because more than half of Global's proposed team exceeded the minimum requirement for healthcare design and construction industry experience. We note that the experience of the individuals identified in Global's comments exceeded the RFP's requirement for healthcare design and construction industry experience by anywhere between 2 to 5 years. Comments at 5. For example, the solicitation required an offeror's mechanical engineer to have a minimum of 5 years of healthcare design and construction industry experience, and the individual offered by Global had 7 years of experience. We find nothing unreasonable about the agency's decision not to credit Global's proposal with strengths for offering key personnel who only modestly exceeded the minimum experience requirements for their respective positions.