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Decision

Matter of: BCF Solutions, Inc.

File: B-413287

Date: September 27, 2016

Kenneth B. Weckstein, Esq., and Andrew C. Crawford, Esq., Brown Rudnick LLP, for the protester.

John W. Chierichella, Esq., Keith R. Szeliga, Esq., and Katie A. Calogero, Esq., Sheppard, Mullin, Richter & Hampton LLP, for the intervenor.

Mark Golden, Esq., and Agu K. Onuma, Esq., Department of the Navy, for the agency.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of awardee's technical proposal is sustained where the record shows that the awardee failed to comply with the solicitation's requirement that offerors provide detailed information to substantiate the acceptability of their proposed products.

DECISION

BCF Solutions, Inc., of Chantilly, Virginia, protests the award of a contract to N2 Imaging Systems, LLC, of Irvine, California under request for proposals (RFP) No. N00164-16-R-JQ16, issued by the Department of the Navy for the development and production of a next-generation crew served day/night weapon sighting system. BCF maintains that the agency miscalculated proposals and unreasonably failed to award it a contract.

We sustain the protest.

BACKGROUND

The RFP provided for the award, on a best-value basis, of up to two contracts for the development and eventual production of the sighting systems. Firms were advised that, if the agency did award two contracts, it would perform a "down select" between the two contractors after evaluation of prototypes later to be fabricated

during phase one of the contract effort, and would select one firm for production of an estimated quantity of sighting systems during phase two of the contract. Firms were advised that the agency would make award based on price and three non-price considerations: technical/risk capability, management approach, and past performance. RFP at 110-11. Technical/risk capability was significantly more important than management approach, past performance and price; management approach was more important than past performance and price; past performance was more important than price; and the non-price factors in combination were significantly more important than price. Id. The technical/risk capability and management approach factors also included several subfactors. Id. Relevant to the protest, the technical/risk capability factor included three subfactors: written performance specification compliance, statement of work compliance and small business participation.¹ Id. at 111. The written performance specification compliance subfactor was deemed significantly more important than the other two subfactors which, in turn, were listed in descending order of importance.² Id. at 110.

The RFP advised that the agency would evaluate price for realism and reasonableness. Id. at 115-16. In submitting price proposals, firms were required to provide prices for the engineering and manufacturing design of the sighting system, along with the fabrication of two prototype units, during phase one of the acquisition. RFP at 2. In addition, for phase two, firms were required to provide prices for a quantity of six devices during a low-rate initial production of the sighting

¹ The RFP included a statement of work and a performance specification. The statement of work required offerors to explain how they would perform the various elements of the acquisition (for example, design of the prototype, production of the approved units and performance of quality control activities). Agency Report (AR), exh. 3A, Statement of Work. The performance specification included threshold and objective parameters that the device was required to meet (for example, operating parameters of the device expressed as discrete numeric or verbal values, along with a list of military and other specifications that the device was required to meet). AR, exh. 3B Performance Specification. The “threshold” parameters were described in the performance specification as “minimum requirements” while the “objective” parameters were described as parameters exceeding the minimum requirements. Id. at 2.

² The RFP advised that the technical/risk capability and management factors and subfactors would be assigned adjectival ratings of outstanding, good, acceptable, marginal or unacceptable, and would also be assigned risk ratings of low, moderate or high. RFP at 112. The RFP provided that past performance would be assigned relevancy ratings of very relevant, relevant, somewhat relevant or not relevant, and adjectival ratings of substantial confidence, satisfactory confidence, limited confidence, no confidence or unknown confidence (neutral). RFP at 113-14.

systems, and also provide prices for full-scale production units. RFP at 3-4.³ Firms also were required to provide prices for various other requirements such as testing, spare parts, non-warranty repairs and technical data.

In response to the solicitation, the agency received four initial proposals. The agency evaluated the initial proposals, included all four firms in the competitive range, engaged in discussions with all of the firms and solicited, obtained and evaluated final proposal revisions. The agency assigned the following ratings to the proposals:

	BCF	N2	Offeror A	Offeror B
Technical/Risk Capability	Good/Moderate	Good/Moderate	Outstanding/Low	Outstanding/Low
Management Approach	Acceptable/Low	Acceptable/Low	Acceptable/Low	Acceptable/Low
Past Performance	Somewhat Relevant/Satisfactory	Relevant/Satisfactory	Relevant/Substantial	Very Relevant/Satisfactory
Price	\$57,301,161	\$42,304,368	\$124,928,557	\$60,471,942

AR exh. 8, Source Selection Evaluation Report (SSER), at 16. On the basis of these evaluation results, the agency decided to award just a single contract to N2. After being advised of the agency's award decision and requesting and receiving a debriefing, BCF filed the instant protest.

DISCUSSION

BCF argues that the agency unreasonably assigned a good/moderate rating to the N2 technical proposal because the record shows that the agency could not determine whether N2's proposal met a number of the RFP's threshold performance specification requirements. In this connection, BCF points out that the RFP required offerors to provide detailed information regarding the acceptability of their proposed sighting system and expressly advised offerors that general statements of compliance were insufficient to demonstrate that the proposed system complied with all requirements of the performance specification.

We sustain this aspect of BCF's protest. We note at the outset that, in reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. FP-FAA Seattle, LLC, B-411544, B-411544.2, Aug. 26, 2015, 2015 CPD ¶ 274 at 7.

³ Amendment No. 4 of the RFP advised offerors that the agency anticipated purchasing a not-to-exceed quantity of 1,000 units. RFP, Amendment No. 4 at 3.

The RFP instructions required offerors to provide detailed information regarding how their proposed sighting system would meet all of the RFP's performance specification requirements. In this connection, the RFP provided in general that offerors should not assume that the government has any knowledge of their proposed product or experience, and that the agency would base its evaluation on the information presented in the firm's proposal. RFP at 96. The RFP went on to provide generally as follows:

General statements such as "the Offeror understands the method for performing the Systems Engineering efforts (or any portion thereof) and can or will comply with the requirements of the solicitation" will not be considered sufficient. Generic statements such as "straight forward engineering techniques" and the "highest quality control procedures" will not be considered to be sufficient to demonstrate that the proposal meets the requirements of the solicitation.

Id. The RFP also specifically required offerors to provide a detailed description of how the offeror intended to meet the requirements of the solicitation's performance specification, and also required submission of a "matrix" demonstrating compliance with all of the requirements of the performance specification as follows:

The Offeror shall provide as an attachment a matrix to summarize compliance with the technical requirements to the paragraph in the Offeror's written technical proposal that demonstrates the Offeror's ability to meet the requirements listed in the Performance Specification. The matrix shall be cross referenced to the Performance Specification by paragraph number and title to facilitate Government verification that all items have been addressed.

RFP at 97 (emphasis supplied).

In addition to these RFP instructions, as noted, the technical/risk capability evaluation factor had three subfactors, the first, and most important of which, was written performance specification compliance. RFP at 110.

The record shows that, in evaluating the N2 proposal, the agency evaluators assigned six weaknesses. In particular, the agency was unable to determine whether the N2 proposal met the performance specification requirements in the areas of: range finder and laser safety; relative humidity, temperature and atmospheric pressure measurements; video output; external power; operating temperature, humidity, dust, salt fog, transportation vibration, gunfire and water immersion; and electromagnetic interference/electromagnetic vulnerability. AR, exh. 8 SSER, at 47-49. In some instances (for example, the weakness assigned in connection with the requirements for range finder and laser safety requirements),

the evaluators found that the proposal failed to state whether the proposed devices would be compliant with military or other safety-related specifications identified as requirements in the performance specification. Id. at 47. In other instances (for example, the weakness assigned in connection with the requirements for relative humidity, temperature and atmospheric pressure measurement), the evaluators found that the proposal did not contain adequate detail regarding how N2 would meet the requirement (in this example, the evaluators found that N2 did not include detailed information about the sensors it intended to use that would enable the evaluators to establish whether those sensors complied with the specifications). Id. at 48.

Significantly, in each instance where the agency identified a weakness, the record shows that the evaluators relied on a blanket statement of compliance found in the N2 proposal, and concluded that the weakness either could be resolved during contract performance, or, if not, would result in a limitation associated with the fielded system. For example, in connection with the weakness assigned based on the external power performance specification requirement, the evaluators found as follows:

External Power (PS [performance specification] paragraph 3.4.7): N2 was given a weakness for this requirement because the proposal does not explicitly state that the system can be powered externally by a BA5590 battery. However, the proposal indicates that the proposed system is “fully compliant or exceeds Threshold performance specification requirements” and does not take exception to this requirement. The risk associated with this weakness is that the system may not be compatible with BA5590 batteries which would mean warfighters have less power options when using the M2WS [sighting system]. It is expected that this weakness can be resolved during Phase I contract performance. (N2 amended compliance matrix page 36)

AR, exh. 8, SSER, at 48.

We note as well that, although the evaluators characterized their findings as “weaknesses” the record shows that they identified 15 discrete performance specification paragraphs relating to their concerns. AR, exh. 8, SSER, at 47-49. As noted, the performance specification differentiated between “threshold” parameters that were deemed minimum requirements and “objective” parameters that were deemed to exceed the minimum requirements. Each of the 15 performance specification elements of the N2 proposal that the evaluators were unable to determine compliance with were identified as “threshold” or minimum requirements. AR, exh. 8, SSER, at 47-49; exh. 3B, Performance Specification at 7, 9, 11, 13, 15-16. Notwithstanding these considerations, the evaluators assigned the N2 proposal an adjectival rating of good under the written performance specification compliance

subfactor, and for the overall technical/risk capability factor. AR, exh. 8, SSER, at 11. The evaluators' explained:

The weaknesses were assigned because N2 did not provide detailed narrative to confirm compliance with standards or provide quantitative numbers to indicate parts of requirements such as accuracy or resolution although it did include an affirmatory statement in its proposal that its offer was fully compliant or exceeds all of the threshold performance specification requirements.

AR, exh. 8, SSER, at 23.⁴

Where, as here, a solicitation requires offerors to provide detailed information to demonstrate compliance with the specifications, blanket statements of compliance on the part of an offeror are insufficient to demonstrate that the offered item meets the requirements of the specifications. Export 220Volt, Inc., B-412303.2, Jan. 20, 2016, 2016 CPD ¶ 25 at 6.

We conclude that the agency's evaluation was inconsistent with the requirements of the RFP. As noted, the RFP expressly instructed offerors that general, or blanket statements would not be sufficient to demonstrate compliance with the RFP's performance specification, and firms were required to submit a matrix that would enable the evaluators to establish compliance of the proposed system with each element of the performance specification. In addition, the most important evaluation subfactor of the most important evaluation factor expressly required the agency to evaluate proposals to determine whether or not they demonstrated written compliance with each element of the performance specification.

As discussed, there were 15 threshold--or minimum--performance specification requirements where the evaluators could not determine whether or not the N2 proposal was compliant, and in each instance, the evaluators relied on a general or blanket statement of compliance found in the N2 proposal. We therefore sustain this aspect of BCF's protest.

As a final matter, BCF alleges that the agency miscalculated its total evaluated price. In submitting price proposals for both the low-rate initial production quantities and the full-scale production quantities, firms were required to propose graduated

⁴ The record shows that, in making the agency's source selection decision, the source selection authority acknowledged the weaknesses identified by the evaluators and also concluded that the weaknesses were not a concern because N2's proposal did not "take any exceptions" to the requirements of the performance specification. AR, exh. 11, Source Selection Decision Document at 6.

pricing based on the number of units to be produced during each year of contract performance. RFP at 7-8, 105. The RFP included a table that identified particular quantity ranges for purposes of submitting prices, and required offerors to provide a unit price for each quantity range during each year of contract performance (1-10 units, 11-50 units, 51-100 units, and 101-200 units during each of year of performance). However the RFP allowed offerors to propose different quantity ranges in the event the offeror believed that using alternative quantity ranges would be beneficial to the government. Id.

Both BCF and N2 proposed alternative pricing ranges that differed from those specified in the RFP. BCF Final Price Proposal at 4; N2 Price Proposal at 4. BCF's price proposal included a quantity range of 1,000 units. In calculating the offerors' total evaluated prices, and in light of the fact that the RFP specified a maximum quantity of 1,000 production units over the life of the contract, the agency used the unit prices in each firm's price matrix for 250 units during each of 4 years of contract performance to arrive at total evaluated prices. BCF, however, claims that the unit prices in its 1,000-unit quantity range should have been used because the RFP contemplated a maximum quantity of 1,000 units over the life of the contract, and it intended that its unit prices in the 1,000-unit category would be its price for that number of units to be purchased over the life of the contract.

We need not resolve this aspect of BCF's protest. The agency properly may seek clarification from BCF regarding its intended unit prices (provided BCF is not afforded an opportunity to revise its prices) in order to ensure that it is making an apples-to-apples comparison of the offerors' prices. Federal Acquisition Regulation § 15.306(a); see also Ricoh USA, B-411888.2, Nov. 18, 2015, 2015 CPD ¶ 355 at 6 (agency's request for information relating to formula and calculations used to arrive at proposed prices constituted clarifications, not discussions).⁵

⁵ As a final matter, BCF also alleges that the agency improperly failed to award two contracts, rather than just one. As noted, the RFP contemplated the award of up to two contracts, and, assuming two awards were made, provided for a "down select" between the contractors after fabrication and evaluation of the prototype units to determine which contractor would receive a delivery order for the production quantities. BCF alleges that it was unreasonable for the agency to award just one contract in light of the fact that the RFP contemplated award of up to two contracts.

We deny this aspect of BCF's protest. The RFP provided as follows:

The Government intends to award up to two vendors a contract as a result of this RFP for Phase I to the responsible Offerors whose proposals represent the best value to the Government after evaluation in accordance with the factors in the solicitation.

(continued...)

RECOMMENDATION

We recommend that the agency reevaluate proposals in a manner consistent with the terms of the RFP and the discussion above and make a new source selection decision after performing that reevaluation. In the alternative, we recommend that the agency reopen discussions before performing its reevaluation in order to allow revision of the proposals, and thereafter reevaluate proposals and make a new source selection decision. Should the agency select an offeror other than N2, we recommend that the contract awarded to N2 be terminated for the convenience of the government, and that one or more contracts be awarded to the selected offeror or offerors, if otherwise proper. We also recommend that BCF be reimbursed the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). BCF should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting 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

(...continued)

RFP at 109. The agency also issued an amendment to the solicitation that expressly reserved to the agency the right to make only one award if doing so was in the best interests of the government. RFP Amendment No. 1 at 2. Simply stated, nothing in the RFP required the agency to award two contracts. Rather, because the solicitation provided only that the agency intended to award "up to two" contracts, but also reserved to the agency the right to make just one award, it was entirely within the agency's discretion and business judgment to elect to award one, rather than two, contracts.