GAO U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Amoje Food System Ltd.

File: B-413794.2

Date: April 6, 2017

Kenneth A. Martin, Esq., The Martin Law Firm, PLLC, for the protester.
Katherine B. McCulloch, Esq., Defense Logistics Agency, for the agency.
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DIGEST

1. Determination that offeror's proposal was no longer in the competitive range was proper where agency reasonably determined that the proposal was unacceptable for failing to provide evidence of sufficient financial resources to perform the contract.

2. Protest challenging agency's conduct of discussions is denied where the record provides no basis to conclude that discussions were not meaningful or were otherwise improper.

DECISION

Amoje Food System Ltd, of Seoul, Korea, protests the Defense Logistics Agency's (DLA) elimination of its proposal from the competitive range under request for proposals (RFP) No. SPE300-16-R-0001 for a food distributor in Korea. Amoje challenges the agency's determination that the firm failed to demonstrate sufficient resources to perform the contract.

We deny the protest.

BACKGROUND

The RFP, issued on February 19, 2016, sought to establish an indefinite-delivery, indefinite-quantity fixed-price contract for a food distributor to act as a prime vendor for the supply and delivery of food items, and related services, in the Republic of Korea for a period of 60 months. The RFP provided that the estimated dollar value of the contract was $150,500,000, with a minimum value of $15,050,000 and a maximum value of $301,000,000.[1] RFP at 23. Award was to be made on a best-value basis, considering price and the following four technical evaluation factors: warehouse location and capacity; experience; quality control, assurance and warehouse management system/procedures; resource availability (cash flow, equipment, and carrier agreements); and past performance. RFP, SOW at 166.[2] The RFP stated that the technical evaluation factors, when combined, were more important than price. Id.

Relevant to this protest, the resource availability evaluation factor provided that offerors were to describe their "financial capability to perform during the 6-month contract implementation period and throughout the life of the contract (i.e. bank commitment letters, financial strength of your firm, etc.)." RFP, SOW, at 151. Offerors were informed that the agency would evaluate the offeror's resources, including financial resources, to successfully perform the requirements of the solicitation. Id. at 168. The RFP further stated that the government reserved the right to verify any information contained in the technical proposal, including "[s]ite visits to assess the accuracy of the information provided in an offeror's proposal [which] may be conducted by the Defense Contract Management Agency [DCMA] . . . ." RFP, SOW, at 145.

The agency received 5 proposals, including Amoje's, by the RFP's April 15, 2016 closing date. Under the "resources available" portion of its proposal, Amoje explained that the firm had a monthly credit line of $971,741, and that the "monthly credit line will be increased to over $1,500,000.00 upon award of any resultant contract." Agency Report (AR), Tab 8, Amoje Proposal, at 139. The firm also submitted two "verifications of debt balance" statements (both from the same bank). AR, Tab 8, Amoje Proposal, at 397-398. One showed a credit line of $3,000,000, with a balance of $971,741, and the second showed a credit line of $2,823,719. The second "verification of debt balance" showed a "date of commitment" of September 9, 2009, and an "expiry date of loan" as September 9, 2016. It also showed a 0 balance, a total amount of 0, and an equivalent amount of 0 dollars.[3]
Id. at 398.

On approximately July 7, the agency requested that the Defense Contract Management Agency (DCMA) conduct a preaward survey of all offerors in order to confirm the firms

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[1] The RFP also required the new contractor to procure, subject to certain exclusions, the residual inventory (with an estimated value of $15.4 million) from the incumbent contractor. Agency Legal Memorandum at 22; RFP, Statement of Work (SOW), at 25.

[2] The SOW provided that the agency would make a technical merit assessment, and "any offeror that receives an Unacceptable rating under any individual evaluation factor will not be eligible for award." Id.

[3] Both "verifications of debt balance" statements contained amounts in South Korean won. The U.S. dollar equivalent is obtained from the exchange rate on the first verification of debt form. Id. at 397.

had the resources available to perform the contract. AR, Tab 9, Amoje Preaward Survey Results, at 3.

After requesting and receiving an extension from DCMA to submit its financial information, Amoje submitted by email an "itemized financial response" on August 11, 2016. AR, Tab 9, email 4. This email included 17 attachments with additional financial information pertaining to the firm. Id. DCMA and Amoje then engaged in several email exchanges in which DCMA sought various pieces of information pertaining to Amoje's financial status. AR, Tab 9, emails 1-6. For example, the DCMA auditor specifically asked Amoje to reconcile several of its documents, and stated that the auditor needs

> to know what you currently have as lines-of-credit with financial institutions, including the total amount of the line of credit, what has been currently borrowed/outstanding against those lines, the remaining amount available for borrowing, the interest rates, and maturity dates.

AR, Tab 9, email 5, at 2. Amoje submitted several documents on August 24 in response to this inquiry. AR, Tab 9, email 5. In order to show lines of credit, Amoje provided, in chart form, the information from its two verification of debt balance statements. AR, Tab 9, email 5, Revised Tab 4. The chart stated that Amoje's "total dollar amount" was $6,118,596, and that Amoje had $3,964,882 available to borrow.[4] Id.

The agency's source selection evaluation board (SSEB) conducted an initial evaluation of the five offerors' proposals.[5] AR, Tab 10, Pre-Negotiation Briefing Memorandum/Competitive Range Determination, at 1-54. With regard to Amoje's proposal, and as relevant to this protest, the SSEB found that Amoje's proposal was marginal under the fourth factor, resource availability (cash flow, equipment, and carrier agreement).[6] Id. at 6.

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[4] The document also stated that $3,118,596 of the available $3,964,882 was for a line of credit that matured on September 9, 2016, and that Amoje had no existing financial commitment letters. Id.

[5] The agency rated the offerors' proposals under the technical evaluation factors as outstanding, good, acceptable, marginal, or unacceptable. AR, Tab 7, Source Selection Plan, at 7-8. An unacceptable proposal was a "proposal that does not meet requirements and contains one or more deficiencies." Id. at 8.

[6] The SSEB found that Amoje's proposal was unacceptable under the first two technical evaluation factors (warehouse location and capacity; and experience). Under the third evaluation factor, quality control, assurance and warehouse management system/procedures, Amoje was rated acceptable. Finally, under the fifth evaluation factor, past performance, Amoje was rated unknown confidence.

On September 8, the agency opened discussions with Amoje and the other offerors in the competitive range. The offerors were informed that "each of the following items must be addressed" in the firm's revised technical proposal. AR, Tab 11, Round 1, Amoje Discussions Letter, at 1. Under the resources availability evaluation factor, Amoje was informed that the firm had failed to submit a bank letter of commitment or support; that Amoje had provided two verifications of debt balance but "bank documentation does not confirm line of credit increase;" that the credit line statement from one of its banks did not include the credit line increase mentioned in its proposal, and that "a $1.5 [million] monthly line of credit, combined with a net of income for 2014 of $196 [thousand] did not appear to be sufficient to cover implementation period of the contract." Id. at 2-3.

Amoje responded to the discussion questions on September 23. In its response, Amoje stated that it had provided, as part of DCMA's review of Amoje's financial capability, an updated debt balance showing a credit line of approximately $6.2 million. AR, Tab 14, email 1, Amoje Discussion Response, at 13. According to Amoje, since this was a "revolving fund on a monthly basis," the firm had a "yearly credit line of $74.4 Million USD available." Id. The firm also stated that it had provided letters of credit (LOC) to DCMA from 6 different banks "with credit lines totaling over $30 Million USD in credit." Id. Amoje explained that it had, "[f]rom all 7 banks, . . . over $100 million USD in credit lines available for the ramp-up period or surge need." Id. Amoje requested that DLA obtain the LOCs from DCMA, and that Amoje "could provide copies of the letters if needed." Id.

Following the first round of discussions, the agency received and considered DCMA's financial survey. DCMA concluded that Amoje was not financially capable of performing the contract. AR, Tab 9, Amoje Preaward Survey Results, at 1. Specifically, DCMA found that Amoje's working capital deficit as of June 30, 2016, the firm's availability of funds from its lines of credit as of August 24, 2016, and other factors detailed in the narrative of the report, were insufficient to support a contract under this solicitation. Id.

After considering the protester's response to the first round of discussion, the agency changed several of Amoje's evaluation ratings. As relevant to this protest, the agency downgraded the firm's rating under the resource evaluation factor, from marginal to unacceptable due to

> Amoje's pre-award survey performed by DCMA who recommended that NO AWARD be made to this offeror based on their failure to demonstrate that "…it has the financial resources, or the ability to obtain them, to fund additional contracting requirements…" The extended monthly credit line alone is not sufficient evidence that Amoje possesses sufficient resources to execute the requirements of this solicitation.

AR, Tab 12, Supplemental Competitive Range Determination, at 11.

On November 15, the agency opened a second round of discussions relating to the offerors' technical proposals. Under the resources availability evaluation factor, Amoje was informed that its "[p]roposal fails to demonstrate that Amoje possesses adequate financial resources to execute this contract." AR, Tab 11, Round 2, Amoje Discussion Letter, Technical Proposal, at 2.

Amoje responded by email on November 21. In its response, Amoje provided documents purporting to "outline[] Amoje's financial capabilities with a total corporate credit line of $106,212,257.09 USD available." AR, Tab 16, email 1, attach. Amoje final proposal revision (FPR), at 2. In this regard, Amoje provided a preliminary approval letter stating that the firm had a $66 million revolving credit line for 1 year for Amoje's use on this contract. Id. Amoje also requested that DCMA perform an additional review of its information. Id.

The agency's final evaluation concluded that Amoje had failed to demonstrate the firm had adequate financial resources to execute the contract. AR, Tab 18, Final Technical Evaluation, at 33. Specifically, the agency found that while Amoje had submitted a "preliminary approval letter" showing a $66 million line of credit that would be maintained for one year from the date of a signed contract, the agency found both the "preliminary nature" of this credit and the one year period as cause for concern, given that the offer was to describe Amoje's financial capability to perform the contract during the implementation phase and over the life of the 5-year contract. Id. The agency also found that Amoje had essentially resubmitted information that it had already provided (and previously submitted to DCMA), and that Amoje had failed to demonstrate new financial resources. Id. at 34. The agency further found that, with no new substantial financial resources to evaluate, there was no need to request a new DCMA preaward survey. The agency concluded that Amoje's failure to demonstrate that it has or can obtain the financial resources necessary to perform the contract was a deficiency, and rendered the firm's proposal unacceptable. Id.

On December 6, 2016, Amoje was informed that its proposal had been removed from the competitive range. Following a debriefing, Amoje filed this protest.

DISCUSSION

Amoje primarily raises two challenges to the agency's elimination of its proposal from the competitive range. First, Amoje challenges the agency's determination that Amoje's proposal was unacceptable under the resource availability evaluation factor. Second, Amoje asserts that the agency failed to conduct proper discussions with the firm. For the reasons explained below, we find no basis to sustain the protest.[7]

[7] We have considered all of Amoje's arguments, although we address only the primary ones, and find that none provides a basis for questioning the agency's evaluation.

In challenging Amoje's unacceptable rating under the resources available evaluation factor, Amoje raises several protests allegations.[8] For example, Amoje asserts that the agency's rating was not based on the solicitation's evaluation criteria; rather, the agency improperly relied on DCMA's determination that "No Award" should be made to Amoje.

An agency's method for evaluating the relative merits of competing proposals is a matter within the agency's discretion, since the agency is responsible for defining its needs and the best method for accommodating them. The COGAR Group, Ltd., B-413004 et al., July 22, 2016, 2016 CPD ¶ 189 at 4. Where an evaluation is challenged, our Office will not reevaluate proposals, but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Lear Siegler Servs., Inc., Inc., B-280834, B-280834.2, Nov. 25, 1998, 98-2 CPD ¶ 136 at 7. The fact that the protester disagrees with the agency's judgment does not render the evaluation unreasonable. Crofton Diving Corp., B-289271, Jan. 30, 2002, 2002 CPD ¶ 32 at 10.

We find the record establishes that the agency evaluated Amoje's proposal reasonably and in accordance with the RFP's announced methodology for evaluating proposals. As explained above, the RFP specifically stated that the availability of an offeror's financial resources would be evaluated. In order for the agency to evaluate this information, offerors were to describe their financial capability to perform the contract, both during the 6-month contract implementation period and throughout the life of the contract. RFP, SOW, at 151. Furthermore, offerors were informed that the agency may use DCMA to verify any information provided in the technical proposals. Given that the RFP specifically required offerors to provide information demonstrating their financial capability to perform this contract, and that offerors were informed that DCMA may evaluate such information, we find nothing improper with the agency's use of DCMA here in determining that Amoje failed to provide sufficient evidence of its financial capability.

Amoje argues that it was improper for the agency to rely on DCMA's recommendation of "No Award" because DCMA did not limit its review to information contained in Amoje's initial proposal, as required, in Amoje's view, by the RFP. In this regard, Amoje points to the solicitation's evaluation criteria and maintains that DCMA's audit requested, and then subsequently evaluated, a variety of information from Amoje that was not required by the RFP.[9] Protester's Comments at 5-8.

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[8] We note that the protester does not meaningfully allege that, because the protester, in fact, had sufficient financial resources, the Agency's assignment of an unacceptable rating under this evaluation factor was unreasonable.

[9] Amoje points out that DCMA's preaward survey does not list Amoje's proposal as an item reviewed in the course of the survey. Protester's Supplemental Comments at 2.

As an initial matter, we do not agree with Amoje's characterization that the information DCMA reviewed was information "not required by the RFP." Here, the RFP specifically required offerors to present information demonstrating that the firm has the financial resources to perform this contract. Given that offerors were to provide this information, DCMA's request to provide further financial information, in order to evaluate the financial resources of the firm, is directly supported by the terms of the RFP. In any case, we do not view the solicitation's language as restricting DCMA's review of information to only that information provided in Amoje's initial proposal. Offerors were on notice that they were required to provide financial information to demonstrate their ability to perform the contract, that the agency would evaluate the extent to which this information demonstrates the firm's financial resources, and that the agency may notify offerors that the information they have provided is inadequate and thus request further information (for example, through the process of discussions).[10] Finally, the RFP specifically provided that the agency may use DCMA as a tool in verifying and evaluating this information. Given this, we do not think DCMA was restricted in its review to merely the "four corners" of Amoje's initial proposal. Nor do we think that the terms of the RFP prevented DCMA (rather than the agency) from requesting additional information to verify the firm's financial capability. In sum, we find nothing improper with the agency's use of DCMA in evaluating Amoje's proposal.

Amoje also argues that the agency failed to engage in meaningful discussions. Specifically, Amoje asserts that it was not informed that the agency had evaluated the firm's financial capability as deficient, nor was it given meaningful information as to how to respond to the deficiencies.

In negotiated procurements, whenever discussions are conducted by an agency, they are required to be meaningful, equitable, and not misleading. Metro Mach. Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 19. It is a fundamental precept of negotiated procurements that discussions, when conducted, must be meaningful; that is, discussions must identify deficiencies and significant weaknesses in each offeror's proposal that could reasonably be addressed so as to materially enhance the offeror's potential for receiving award. PAI Corp., B-298349, Aug. 18, 2006, 2006 CPD ¶ 124 at 8.

Here, the agency initially viewed Amoje's proposed available resources as failing to include several items: a failure to submit a bank letter of commitment or support; bank documentation that fails to demonstrate the line of credit increase; and a failure to demonstrate sufficient financial resources (even with the $1.5 million monthly line of credit) to "cover the implementation of the contract." AR, Tab 11, Round 1 Amoje Discussions Letter, at 2-3. Then, after submitting its response to the first round of discussions, Amoje was specifically informed that its "proposal fails to demonstrate that

[10] Here, Amoje's response to discussions specifically stated that the firm's financial information has already been provided to DCMA, and informed DLA that the agency should get the firm's financial information from DCMA.

Amoje possesses adequate financial resources to execute this contract." AR, Tab 11, Round 2 Amoje Discussions Letter, at 2. While the agency did not specifically label its concerns as "deficiencies," the record establishes that the agency engaged in multiple rounds of discussions with Amoje, repeatedly advising Amoje that it viewed its financial resources as inadequate to perform the contract.

Thus, the fact that the agency did not use the label "deficiencies" in describing the agency's concerns is of no consequence, given that the information provided to the protester reasonably put Amoje on notice that the agency, in fact, viewed Amoje's proposal as deficient in this area. See CASE LLC, B-404954, July 7, 2011, 2011 CPD ¶ 167 at 4. On this record, Amoje's complaints regarding the agency's discussions provide no basis for sustaining the protest because the agency properly informed Amoje of its concerns regarding Amoje's financial capabilities and gave the firm an opportunity to modify or supplement its proposal in this regard.

Amoje also argues that second round of discussions were not meaningful because the agency failed to provide enough specificity for Amoje to respond meaningfully to the agency's concerns. We disagree.

To be meaningful, discussions are required to be sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving the award. Federal Acquisition Regulation § 15.306(d); Joint Logistics Managers, Inc., B-410465.2; B-410465.3, May 5, 2015, 2015 CPD ¶ 152 at 3. Here, we conclude that the agency's discussions adequately advised Amoje that its proposal was unacceptable because the proposal did not demonstrate that Amoje had sufficient financial resources to perform the contract. An agency is not required to "spoon-feed" offerors in discussions. ITT Fed. Sys. Int'l Corp., B-285176.4, B-285176.5, Jan. 9, 2001, 2001 CPD ¶ 45 at 7.

The protest is denied.[11]

Susan A. Poling
General Counsel

[11] The protester also argues that the agency failed to evaluate offerors equally because Amoje's proposal was the only proposal in which "DLA delegated to DCMA the responsibility to evaluate" proposals, and then DLA solely relied on DCMA's findings to determine the offeror's financial capability. Protester's Comments at 14. Here, the record shows that DCMA conducted financial reviews of all offerors, and, with regard to Amoje's proposal, DLA took DCMA's views into consideration but continued to perform its own analysis of Amoje's responses during discussions. Consequently, this allegation is not supported by the record.