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Decision

Matter of: Repaintex Company

File: B-415390.4; B-415390.5

Date: June 21, 2018

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DIGEST

Protest that terms of solicitation for cleaning services inaccurately state the agency's requirements is denied where the agency provided a detailed explanation of its cleanable square footage calculation and the protester has not provided a comparable explanation of its calculation; moreover, the protester, the incumbent contractor, has not demonstrated that it was prejudiced by any miscalculation of the requirement.

DECISION

Repaintex Company, of Leesburg, Virginia, protests the terms of request for proposals (RFP) No. GS-11-P-17-ZG-D-0005, issued by the General Services Administration (GSA) for custodial and related services at two Federal Aviation Administration buildings. The protester asserts that the RFP's square footage requirement is significantly understated.

We deny the protest.

BACKGROUND

The solicitation sought proposals for the issuance of a fixed-price contract, with a 1-year base period and four 1-year options, to the firm with the lowest-priced offer whose proposal is evaluated as acceptable under the two equally-weighted evaluation factors: corporate experience and past performance. Agency Report (AR), Exh. D, RFP at 12, 145-49. The estimated value of the 5-year requirement is \$12,830,807.56. AR, Exh. O, Acquisition Plan Information at 1. Repaintex is the incumbent contractor.

The RFP advised offerors of a scheduled site visit, which, the agency stated, “is vital to the preparation of the competitive proposal, and to understand the total result desired by the Government.” RFP at 2. The solicitation included Federal Acquisition Regulation (FAR) provision 52.237-1, Site Visit, which states, in part, that offerors “are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions” that may affect the cost of performance. Id.; FAR provision 52.237-1. Twenty-six firms, including Repaintex, were included on the site visit list. See RFP, amend. 0002, attach. A, Site Visit List.

The agency issued an award to Teya Services LLC and Repaintex challenged that award, arguing in part that the large disparity in the two offerors’ prices must have resulted from the awardee’s use of inappropriate square footage. Protest, B-415390.2, Nov. 13, 2017, at 9.¹ We dismissed the protest following the agency’s notice that it intended to take corrective action, which was to include revising and clarifying the RFP. See Repaintex Co., B-415390.2, Dec. 6, 2017 (unpublished decision).

The agency issued amendment 0006 on January 12, 2018, to clarify the building information sheet containing estimated square footages, and to revise the corporate experience evaluation factor. See AR, Exh. N, RFP amend. 0006, at 2. The protester filed another protest with our Office challenging the terms of the revised solicitation, asserting that the area required to be cleaned was “significantly understated.” Protest, B-415390.3, Jan 18, 2018, at 1. Again, GAO dismissed the protest after the agency notified our Office that GSA would take corrective action, namely revising the solicitation’s estimate of square footage to accurately reflect the agency’s requirement. Repaintex Co., B-415390.3, Feb. 2, 2018 (unpublished decision).

The agency then issued amendment 0011, which revised the building information sheet for both buildings and established a revised proposal deadline of March 22, 2018. See AR, Exh. I, RFP amend 0011. This protest of the terms of the revised solicitation was timely filed on March 20, 2018.

DISCUSSION

Repaintex asserts that the RFP underestimates the cleanable square footage requirement.² Protest at 6-8. Repaintex asserts that, based on a survey it conducted,

¹ The agency made a prior award to Teya, and Repaintex protested that award decision to this Office on September 28, 2017, challenging the awardee’s size status. Protest, B-415390, Sept. 28, 2017, at 4. The protester withdrew protest B-415390 the following day. See Email from Repaintex to GAO, Sept. 29, 2017.

² Repaintex had also argued that the solicitation was ambiguous regarding the garage area to be cleaned. Protest at 6-10. The agency issued amendment 0013 on April 12, 2018, which deleted the garage cleaning requirement and was intended to correct the corporate experience factor, but failed to do so because of an error in the cleanable square feet (SF) of the building required for relevant experience. Contracting Officer’s
(continued...)

the two buildings have a combined cleanable area of 1,205,301.69 SF. Id. at 7. In support of its calculation, Repaintex provided a statement that its Director of Operations led a survey team that used a laser tape measure to measure the square footage of all interior cleanable areas; excluded non-cleanable spaces such as elevators and mechanical rooms; and referenced floor plans. Protest, Exh. B, Decl. of Director of Operations ¶¶ 3-10. Repaintex also surveyed one building twice using different methodologies; those surveys produced calculations of 1,205,301.69 SF and 903,777.44 SF, a difference of 19,965.94 SF. Id. ¶¶ 9-10.

In response to the protest, the agency again recalculated the cleanable square footage, obtaining an estimate of 1,005,404.15 SF, or 199,897.54 SF less than Repaintex's. AR, Exh. B, Statement of Senior Building Manager at ¶¶ 18, 20; see also AR, Exh. J, RFP amend. 0013, Exh. 1, Building Information Sheet. The agency asserts that it used and has provided "extensive supporting backup" information--surveys, drawings, and spatial management resource tools--in support of its estimate. Memorandum of Law (MOL) at 4, 7; Contracting Officer's Statement (COS) ¶¶ 14-28. The agency asserts that the protester bears the burden of proving the accuracy of its calculations and that Repaintex has not met that burden, because it has failed to provide any evidence for its estimate other than a declaration setting forth the methodologies used to measure the buildings. MOL at 7-8.

As a general rule, the contracting agency must give offerors sufficient detail in a solicitation to enable them to compete intelligently and on a relatively equal basis. C3, Inc., B-241983.2, Mar. 13, 1991, 91-1 CPD ¶ 279 at 3. There is no legal requirement that a competition be based on specifications drafted in such detail as to completely eliminate all risk or remove every uncertainty from the mind of every prospective offeror. Sunbelt Properties, Inc., B-249469 et al., Nov. 17, 1992, 92-2 CPD ¶ 353 at 4. The determination of the agency's needs and the best method of accommodating them is primarily within the agency's discretion. Premiere Vending, B-256437, June 23, 1994, 94-1 CPD ¶ 380 at 7.

As relevant to this protest, the RFP advised offerors that the figures provided for the total estimated cleanable square footage "are estimates only." AR, Exh. J, RFP

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Statement (COS) at ¶ 38. Prior to the due date for the agency report, on April 17, the protester filed a supplemental protest challenging the reasonableness of the corporate experience factor requirement and asserting that the price sheets are ambiguous. On April 18, the agency issued amendment 0014, which revised the price sheets and the corporate experience factor, and set a new deadline for proposals of April 26, 2018. AR, Exh. L, RFP amend. 0014, at 2. Repaintex concedes that amendments 0013 and 0014 mooted all but the protester's challenge to the amount of cleanable interior space. See Comments at 2.

amend. 0013, Exh. 1, Building Information Sheet (emphasis in original). It also informed offerors that “[w]hen necessary, the CO [contracting officer] or their designee will provide access to assignment drawings and blueprints.” AR, Exh. J, RFP amend. 0014, Exh. 1, Building Information Sheet. Further, the solicitation stated that, notwithstanding the square footage estimates provided, the contractor shall:

[f]urnish all personnel, labor, equipment, materials, tools, supplies, supervision, management, training/certifications, and services, except as may be expressly set forth as Government furnished, and otherwise accomplish all actions necessary to or incident to, perform and provide the work efforts described in this contract.

AR, Exh. E, RFP amend. 0005, at § C.2.0.

Here, a GSA senior building manager, working with GSA’s Spatial Data Management office,³ calculated the cleanable space for both buildings. See AR, Exh. B, Statement of GSA Senior Building Manager. As noted, the agency described the methodology used to calculate the cleanable space, and the agency produced the documents that substantiate that calculation. See id.; see also AR, Exhs. F1-F34.

Specifically, GSA has a team that conducts surveys of buildings to create architectural drawings using AutoCAD software. AR, Exh. C., Statement of Acting Tools Program Branch Chief ¶ 9. The resulting drawings and data are loaded into GSA’s electronic Spatial Management and Reporting Tool (eSMART). Id. ¶ 10. The agency utilized eSMART documents, which provided a floor-by-floor breakdown of the calculated square feet of the buildings, to identify and calculate the cleanable square footage of the buildings. AR, Exh. B, Statement of GSA Senior Building Manager ¶¶ 7, 8 (citing AR, Exh. F1-F35). Those calculations yielded the estimate noted above--1,005,404.15 cleanable SF for both buildings. Id. ¶ 18. The senior building manager was unable to identify discrepancies between GSA’s and Repaintex’s estimates because Repaintex had not provided a detailed breakdown of its figures to allow for a comparison. Id. ¶ 21.

Repaintex does not refute the agency’s claim that the protester has failed to provide a detailed breakdown of its calculation. See Comments. Instead, without providing an analysis of its calculations, the protester insists that agency blueprints contain different square footages than those contained in the eSMART reports utilized in the agency’s calculations. Comments at 5-6. Those discrepancies represent a small portion of the roughly 200,000 SF disparity between the agency’s calculation and Repaintex’s. For example, the protester argues that, according to the agency’s blueprints, the two buildings have 4,526.88 and 3,588.78 SF, respectively, of child care facilities. Id. at 5. However, Repaintex contends the eSMART reports show square footages of 5,589.81 and 4,868.32, respectively. Id. The protester identifies a similarly small discrepancy in the reported square footage of the fitness and health center. See id. at 6.

³ The Spatial Data Management office is responsible for calculating the square footage of buildings. AR, Exh. B, Statement of Senior Building Manager ¶ 6.

Repaintex had argued that without blueprints an offeror would not know whether it had accurate information regarding the size of the areas they are servicing. Comments at 4. When provided with blueprints and with the agency's methodology for calculating cleanable square footage, Repaintex failed to provide the agency with information regarding Repaintex's own calculations, such that the agency could identify the reasons for the discrepancy between the competing calculations. See Comments. On this record, we find that the protester has provided insufficient evidence to challenge the reasonableness of the agency's calculation of the cleanable square footage requirement, and we see nothing unreasonable in the agency's calculations.

Moreover, the protester has not demonstrated that it was prejudiced by any inaccuracy in the solicitation's terms. Repaintex states that its advocacy is on behalf of itself and all other potential offerors. Comments at 1 (asserting that "offerors are left with insufficient and incorrect information to compete intelligently"); id. at 2 (asserting that the RFP "must be revised to allow offerors to submit sufficient price proposals"); id. (arguing that "all offerors are prejudiced" by the inaccurate data and that the agency must revise the requirement so that Repaintex "and the other offerors" can submit price proposals that reflect actual needs); and id. at 3 (asserting that "GSA's actions have prejudiced all offerors"). We entertain challenges to the terms of a solicitation, however, where the protester itself is directly prejudiced by a defect in the solicitation. McDermott Shipyards, Div. of McDermott, Inc., B-237049, Jan. 29, 1990, 90-1 CPD ¶ 121 at 6. An incumbent contractor that is fully aware of the requirements and can submit an appropriate price is not prejudiced by any defect in the solicitation's description of the requirement. See id.

Here, as in McDermott Shipyards, Div. of McDermott, Inc., the protester's concern appears to be not that Repaintex was prejudiced, but that the other offerors, not understanding the actual requirement, will underbid Repaintex, the incumbent contractor. Id. at 6-7. We think the agency has reasonably mitigated that risk. As noted above, RFP amendment 0013 advised offerors that, when necessary, the contracting officer would provide access to assignment drawings and blueprints, and the agency conducted a site visit for all interested offerors.

On this record, we see no prejudice to the protester from the allegedly inaccurate square footage data. While the protester may only bring its own claims, we also see no unreasonable risk to the other potential offerors.

The protest is denied.

Thomas H. Armstrong
General Counsel