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Decision

Matter of: Constructure-Trison JV, LLC

File: B-416741.2

Date: November 21, 2018

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Ann L. Giddings, Esq., Department of the Navy, for the agency.

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DIGEST

Protest that the agency improperly rejected the protester's proposal is denied where the record shows that the protester's proposal failed to conform to the material terms and conditions of the solicitation.

DECISION

Constructure-Trison JV (CTJV),¹ LLC, of Chantilly, Virginia, protests its exclusion from the competitive range under request for proposals (RFP) No. N40080-18-R-0002, issued by the Department of the Navy, Naval Facilities Engineering Command, for construction services. The protester argues that the agency improperly rejected its proposal based on an unreasonable interpretation of the solicitation.

We deny the protest.

BACKGROUND

The RFP, issued on December 22, 2017, as a small-business set-aside, contemplated the award of five or more indefinite-delivery, indefinite-quantity contracts for general construction projects and related services. Agency Report (AR), Exhibit 1, RFP, at 1. The aggregate maximum value for all contracts to be awarded was \$240,000,000. Id.

¹ CTJV is a joint venture between Constructure, Inc., and Trison Constructuion, Inc. Protest, Exhibit 1, Joint Venture Agreement, at 1.

Awards were to be made on a best-value tradeoff basis, using a two-phase evaluation process and considering the following factors: technical approach, experience, safety, past performance, technical solution, and price. RFP at 12-13. The RFP established that technical approach, experience, safety, and past performance would be evaluated during phase one. Id. at 13. Relevant here, under the technical approach factor, the RFP advised offerors that proposals would be rated acceptable or unacceptable. Id. Proposals found unacceptable under the technical approach factor during phase one of the competition would not be considered during phase two. Id.

Under the technical approach factor, the agency was to evaluate the composition and management of the firms proposed as the design-build team. Id. at 14. In order to receive an acceptable rating, offerors were required to provide a narrative describing the primary construction and design firms, the rationale for the proposed arrangement, and the roles, responsibilities, and contractual relationships between the firms. Id. Offerors also needed to provide an organizational chart that clearly identified the lines of authority between the firms. Id. Additionally, and at issue here, offerors were required to provide:

a signed copy of a joint venture agreement, partnership agreement, teaming agreement, approved mentor protégé agreement (MPA), or letter of commitment for each member of the Offeror's team identified above (e.g. joint venture member, partner, team member, subcontractor, parent company, subsidiary, or other affiliated company, etc.).

Id.

The agency received [deleted] proposals in response to the solicitation. AR, Combined Contracting Officer's Statement/Memorandum of Law (COS/MOL), at 2. The technical evaluation team (TET) evaluated proposals and rated CTJV unacceptable under the technical approach factor. AR, Exhibit 4, TET Report, at 12. In this regard, CTJV's narrative had identified its design-build team as consisting of CTJV as the prime contractor, and [deleted] as its designer of record (DOR). AR, Exhibit 8, CTJV Factor 1 Proposal Submission, at 4. While CTJV provided a copy of its joint-venture agreement, as well as the firms' approved mentor-protégé agreement, CTJV did not provide any form of agreement documenting its arrangement with [deleted]. Id. at 6-14.

The agency concluded that CTJV failed to provide all the required information for the technical approach factor because it did not provide an agreement documenting its arrangement with an identified member of its design-build team, rendering its proposal unacceptable under this factor. AR, Exhibit 4, TET Report, at 16. As CTJV was rated unacceptable for technical approach, its proposal was ineligible to proceed to phase two. AR, Exhibit 5, Source Selection Decision Document (SSDD) for Phase 1, at 6. On August 17, the agency notified CTJV that its proposal was not selected to proceed to phase two. AR, Exhibit 6, CTJV Phase I Selection Notice, at 1. After receiving a debriefing, CTJV's protest followed.

DISCUSSION

CTJV alleges that the agency unreasonably found its proposal unacceptable under the technical factor based on an unreasonable interpretation of the solicitation. Protest at 5. CTJV contends that it complied with the terms of the solicitation by providing a copy of its joint venture agreement and that the agency unreasonably interpreted the solicitation to require the firm to provide additional documentation of its teaming arrangements. Protest at 6-7. For the reasons that follow, we find no merit to CTJV's allegations. 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. MSN Services, LLC, B-414900 et al., Oct. 4, 2017, 2017 CPD ¶ 310 at 3.

As noted above, the RFP required offerors to provide a "joint venture agreement, partnership agreement, teaming agreement, approved mentor protégé agreement (MPA) or letter of commitment for each member of the Offeror's team identified" in the firm's technical approach narrative. RFP at 14. While CTJV provided a joint-venture agreement between the joint-venture members, the firm failed to provide a supporting agreement for its arrangement with [deleted]. Id. Since CTJV failed to provide any documentation for [deleted], who, according to CTJV's narrative, was the firm's proposed DOR, the agency found that CTJV failed to provide all the information required by the factor. AR, Exhibit 4, TET Report, at 16.

CTJV contends that by using the word "or" prior to "letter of commitment" in articulating the requirement, the RFP set out a disjunctive list whereby offerors could provide a copy of any one of the agreements listed to satisfy the requirement to provide supporting documentation for its design-build team. Comments at 5. CTJV then concludes that its "decision not to submit documentation regarding [deleted] was based on a reasonable interpretation that the [RFP] did not require such a submission for its designer of record." Id.

The agency responds that the RFP unambiguously required offerors provide a signed copy of the type of agreement applicable to each team member identified in the offeror's narrative. COS/MOL at 4. As a result, the agency contends that CTJV's interpretation is unreasonable because it ignores the plain language of the solicitation. Id.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Alluvium LLC, B-297280, Dec.15, 2005, 2005 CPD ¶ 223 at 2. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. Colt Def., LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8.

We find that CTJV's interpretation is unreasonable. As noted above, the RFP stated that offerors were required to provide "a signed copy of a joint venture agreement, partnership agreement, teaming agreement, approved mentor protégé agreement (MPA) or letter of commitment for each member of the Offeror's team identified" in the technical approach narrative. RFP at 14 (emphasis added). We read this as unequivocally requiring offerors to provide the applicable type of agreement for each team member identified in the offeror's technical narrative. There is simply no support in the text of the requirement for CTJV's interpretation that it only needed to provide one type of documentation from the list, notwithstanding the fact that it identified relationships with more than one team member in its technical narrative. In sum, we find that CTJV is effectively advancing an interpretation of the RFP that is inconsistent with the plain language of the RFP. Thus, we find CTJV's interpretation of the RFP to be unreasonable. See BICALLIS LLC, B-415639, Feb.1, 2018, 2018 CPD ¶ 90 at 4 (finding protester's interpretation unreasonable where it contradicts the express language of the solicitation).

Having concluded that the protester's interpretation of the RFP was unreasonable, and that no ambiguity existed, we review the agency's evaluation to determine whether it was consistent with the agency's interpretation of the terms of the solicitation. BICALLIS LLC, supra. The agency found CTJV's proposal unacceptable because the firm failed to provide the required documentation for its arrangement with [deleted], despite the fact that CTJV identified [deleted] as a partner in its narrative.² AR, Exhibit 4, TET Report, at 16.

² In its comments, CTJV contends, for the first time, that even if the RFP instructed offerors to provide documentation for its arrangement with each member of its design build team, the assignment of an unacceptable rating for the firm's failure to do so is the application of unstated evaluation criteria. Comments at 8. However, despite being told that this was the reason for its proposal's exclusion in its debrief, AR, Exhibit 7, Affidavit of Contract Specialist, at 2, CTJV's original protest allegation was solely that the agency improperly assigned CTJV an unacceptable rating under the technical approach factor based on an unreasonable interpretation the solicitation. Thus, to the extent that CTJV raised what amounts to a secondary--new--aspect of its challenge to the agency's evaluation of proposals, this new assertion constitutes improper piecemeal presentation of a protest allegation. Vigor Shipyards, Inc., B-409635, June 5, 2014, 2014 CPD ¶ 170 at 5. In any event, we find that the solicitation, when read as a whole, clearly advised offerors that failure to include the applicable agreement for each team member would render the proposal unacceptable under this factor.

Accordingly, our Office has no basis to question the agency's conclusion that CTJV's proposal was unacceptable under the technical factor and thus ineligible to proceed to phase two of the competition.

The protest is denied.

Thomas H. Armstrong
General Counsel