



Decision

Matter of: JJ Global Services, Inc.

File: B-418318

Date: February 7, 2020

Luis Bustamante, JJ Global Services, Inc., for the protester.
Ryan M. Johnson, Esq., Blair Sterling Johnson & Martinez, P.C., and Brian A. Darst, Esq., Odin, Feldman, and Pittleman, for Pacific Federal Management, Inc., the intervenor.

Laura Whitten, Esq., Department of the Navy, for the agency.

Christine Milne, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of proposal as technically unacceptable is denied where the record shows that certain required information in proposal was in pages that exceeded the solicitation's page limits, and the agency's decision not to consider that information was reasonable and consistent with the solicitation's terms.

DECISION

JJ Global Services, Inc. (JJG), of Tamuning, Guam, protests the award of a contract to Pacific Federal Management, Inc., of Tumon, Guam, under request for proposals (RFP) No. N40192-19-R-9200, issued by the Department of the Navy, Naval Facilities Engineering Command, for grounds maintenance and tree trimming services at various military installations on Guam and the Northern Mariana Islands. The protester argues that the agency improperly evaluated its proposal as technically unacceptable because the agency did not review pages containing requisite information that exceeded the solicitation's page limitations. The protester also argues that the agency failed to waive the informational omissions in the proposal, or allow the protester to correct them.

We deny the protest.

BACKGROUND

The RFP, issued on July 19, 2019, as a set-aside for historically underutilized business zone (HUBZone) concerns, contemplated the award of a fixed-price indefinite-delivery,

indefinite-quantity contract to perform these ground maintenance services. Agency Report (AR), Tab 2, RFP at 2-8. Award was to be made without conducting discussions to the firm whose proposal conformed to the solicitation and represented the best value to the agency. Id. at 55. The solicitation required the evaluation of price and five non-price factors, including technical approach, and management plan and quality control. Id. at 54. The non-price factors were to be assigned ratings of outstanding, good, acceptable, marginal, or unacceptable. Id. at 57. An unacceptable rating would be assigned where the proposal did not meet the requirements of the solicitation and, thus, contained one or more deficiencies. Id. Any proposal found to have a deficiency would be considered ineligible for award. Id. at 54.

The RFP set forth various page limitations for the proposals. As relevant here, the solicitation limited, to a maximum of five pages each, the narratives provided to respond to the solicitation's requirements related to technical approach, and management plan and quality control. Id. at 48, 50. The solicitation cautioned that "[i]f the offeror submits more than five (5) pages for evaluation [for either narrative], the Government will evaluate the first five (5) pages and will not evaluate information that follows the first five (5) pages." Id. The solicitation stated that "unnecessarily elaborate" presentation beyond that sufficient to "present a complete and effective response to the solicitation [is] not desired." Id. at 44.

The agency received proposals from two firms, JJG and Pacific. The agency found that JJG's proposal narratives for the technical approach and the management plan and quality control factors each exceeded five pages. AR, Tab 3, JJG Proposal at 1-7; 12-19. As discussed below, some information required by the solicitation did not appear within the first five pages of the narratives for either factor. As a result, one deficiency was assessed under the technical approach factor, and two deficiencies were assessed under the management plan and quality control factor. AR, Tab 5, Source Selection Report at 15, 18-19. Therefore, both factors received unacceptable ratings and JJG's proposal was considered ineligible for award. Id.; Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 7. On November 16, the agency awarded the contract to Pacific for \$48,494,710.88. This protest followed.

DISCUSSION

JJG argues that all of the information required by the solicitation was contained in its proposal and that a layout and printing error caused portions of its proposal to inadvertently exceed five pages. Protest at 2. The protester further argues that the omissions were a minor informality that could have been easily cured by removal of unnecessary pictures, and therefore the agency should have either waived the omissions or allowed the firm to correct them. Id. The Navy responds that it properly determined that the informational omissions amounted to material failures and that it properly excluded JJG's proposal from consideration for award consistent with the solicitation terms. COS/MOL at 12. The Navy also asserts that it was under no legal obligation to waive, or allow for the cure of, these deficiencies. Id. at 10, 13.

Specifically, the Navy found that the first five pages of JJG's narrative related to its technical approach did not, as required, address any risks or risk mitigation; this was deemed a deficiency. AR, Tab 3, JJG Proposal at 1-7; AR, Tab 5, Source Selection Report at 15; COS/MOL at 3. The Navy also found that the first five pages of JJG's narrative related to its management plan and quality control did not address, as required, any resource management strategies to adequately monitor and measure contract performance, or a contingency plan to detail the substitution of personnel shortfalls; these were also deemed deficiencies. AR, Tab 5, Source Selection Report at 18-19; COS/MOL at 5-6. In light of these deficiencies, the firm's proposal was rated unacceptable under these two factors and ineligible for award. Id.

As a general matter, offerors must prepare their proposals within the format limitations set out in an agency's solicitation, including any applicable page limits. Techsys Corp., B-278904.3, Apr. 13, 1998, 98-2 CPD ¶ 64 at 6. As discussed above, the RFP in this case set forth clear, unambiguous page limitations for each of these narrative sections, and provided that the agency would not consider any excess pages. It also clearly provided that deficiencies would be assessed where required information was lacking and such deficiencies would render a proposal ineligible for award. Clearly stated solicitation technical requirements are considered material to the needs of the government, and a proposal that fails to conform to such material terms is technically unacceptable and may not form the basis for award. See, e.g., Stewart Distributors, B-298975, Jan. 17, 2007, 2007 CPD ¶ 27 at 3-4. Accordingly, we have no basis to disturb the agency's refusal to consider any pages beyond page five in assessing this proposal under either factor. IMPRES Technology Solutions, Inc.; et al., B-409890, et al., Aug. 5, 2014, 2014 CPD ¶ 234 at 5; see also Facility Services Management, Inc.--Advisory Op., B-414857.9, Aug. 23, 2018, 2019 CPD ¶ 35.

Although JJG contends the agency still should have allowed it to clarify because the information missing within the first five pages was contained in later pages, it is up to the agency whether or not to seek clarifications or corrections from offerors. FAR part 15 offerors have no automatic right to clarifications regarding proposals, and such communications cannot be used to cure proposal deficiencies or, as here, correct material omissions. A. G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 5-6; see also STG, Inc., B-411415, B-411415.2, Jul. 22, 2015, 2015 CPD ¶ 240. In those instances where a solicitation has established clear page limitations, we have held that an agency is not obligated to sort through an offeror's proposal to decide which pages should or should not be counted toward that limitation. See IMPRES Technology Solutions, Inc., et al., B-409890, et al., Aug. 5, 2014, 2014 CPD ¶ 234. By choosing to format its proposal as it did, JJG assumed the risk that portions of its proposal would be rejected for noncompliance with the limits. See Infotec Development, Inc., B-238980, Jul. 20, 1990, 90-2 CPD ¶ 58.

The protest is denied.

Thomas H. Armstrong
General Counsel