



Decision

Matter of: Western State Design

File: B-404921

Date: June 27, 2011

Dennis Mack for the protester.

David W. Altieri, Esq., Department of Veterans Affairs, for the agency.

Paula A. Williams, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's award decision and evaluation of firm's own proposal is denied where the record reflects that the selection decision and evaluation were consistent with the terms of the underlying solicitation.

DECISION

Western State Design (WSD) of Hayward, California protests the award of a contract to G. A. Braun, Inc. (Braun), of North Syracuse, New York under request for proposals (RFP) No. VA528-11-RP-0105, issued by the Department of Veterans Affairs (VA) to furnish and install commercial laundry equipment at the VA Medical Center in Buffalo, New York. WSD generally challenges the agency's evaluation of its proposal and the selection of a higher-priced proposal for award.¹

We deny the protest.

On February 3, 2011, the agency issued the subject solicitation contemplating the award of a fixed-price contract to deliver and install laundry equipment described as a "medium production folder cross folder with large piece stacker machine" within 14 days of contract award. *Id.* at 38, 47. Among other requirements, the offered

¹ The protester is not represented by counsel therefore our discussion of some aspects of the procurement is general in nature in order to avoid disclosure of non-public information. Our conclusions, however, are based on our review of the entire record, including non-public information.

equipment had to be compatible with the existing laundry equipment, had to be suitable for installation in the available space, and had to include lock-out and tag-out devices. Id. at 38.² Award was to be made to the offeror whose proposal was determined to be most advantageous to the government, considering four evaluation factors: (1) technical capability; (2) price; (3) quality/past performance; and (4) work plan. Id. at 46. The solicitation advised that “the individual factors are considered to be of equal importance; therefore the non-price factors of technical capability and past performance, when combined, are significantly more important than price.” Id. at 46-47.

The VA received timely proposals from WSD and Braun. Proposals were evaluated under the technical capability factor using the following adjectival rating system (which was not disclosed in the solicitation): outstanding; excellent; acceptable; marginal; and unacceptable.³ Agency Report (AR) exh. 6, Evaluation Scoring Sheets. The past performance evaluation contemplated a risk assessment of very low risk, low risk, moderate risk, high risk, or neutral risk. Id. After completing an initial evaluation, the VA held discussions with each offeror. WSD and Braun submitted revised proposals and the agency completed its evaluation.

In the final consensus evaluation, the agency rated WSD’s proposal as marginal overall, with marginal ratings for the technical capability and work plan factors, as well as a very low performance risk rating for the past performance factor. The marginal ratings resulted from WSD’s failure to adequately address several solicitation requirements. As it relates to the protest, the agency found that WSD failed to establish how its equipment would be compatible with the existing Braun laundry equipment. AR exh. 6, Evaluation Scoring Sheets, at 1-7; exh. 7, Source Selection Decision, at 4-5.

² The solicited equipment is part of a large, three component integrated laundry system manufactured and installed by Braun. Contracting Officer Statement at 1.

³ As relevant here, acceptable was defined as:

Proposal demonstrates acceptable understanding of requirements and approach that meets performance or capability solution. Has few or no strengths.

AR exh. 7, Source Selection Decision, at 2. Marginal was defined as:

Proposal demonstrates shallow understanding of requirements and approach that only marginally meets performance or capability standards necessary for minimal but acceptable contract performance.

Id. at 3.

Braun's proposal was rated satisfactory overall, and, like WSD, received a very low performance risk rating under the past performance factor. With regard to price, WSD's proposal was low, with a total price of \$76,250, whereas Braun's price was \$79,602.65. AR exh. 7, Source Selection Decision, at 2-3. The agency concluded that Braun's higher-rated, higher-priced proposal constituted the best value and selected Braun for award. Id. at 5. After receiving a debriefing, WSD filed this protest.

WSD argues that the agency's selection decision and evaluation of its proposal were improper. According to WSD, because the solicitation did not specify the weights to be attributed the evaluation factors, "there is no clear acquisition mechanism to [determine]" that Braun's higher-priced proposal offers the best value to the government. Protest at 1; Protester's Comments at 1-2. WSD also challenges the agency's finding that its proposal failed to establish the compatibility of its equipment with the existing Braun equipment.

First, WSD's suggestion that the agency's selection decision was illusory because the RFP failed to establish the weight to be given each factor, is factually erroneous and therefore without merit.⁴ As described above, the RFP specifically established that the evaluation factors were equally-weighted, and that the technical capability and past performance factors, when combined, were significantly more important than price for the purpose of making a best value decision. RFP at 46-47.

Second, WSD's challenge of the agency's technical evaluation, is also without merit. In reviewing a protest against the propriety of an evaluation, it is not our role to independently evaluate proposals and substitute our judgment for that of the contracting activity. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. Rather, we will review an evaluation to ensure that it was reasonable and consistent with the evaluation criteria in the solicitation and applicable procurement statutes and regulations; a protester's mere disagreement with the evaluation does not show it lacked a reasonable basis. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

Here, the underlying record supports the agency's evaluation. In this regard, under the technical capability factor, the solicitation stated that each proposal would be evaluated as to whether the offered equipment was compatible with the existing Braun laundry equipment. RFP at 38. Notwithstanding repeated requests during discussions asking the protester to explain "how [its] equipment is compatible with

⁴ The issue is also untimely. A protest based on alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of proposals, such as the issue raised by WSD, must be filed before the closing time. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2011); e.g., General Dynamics--Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 6 (dismissing as untimely a post-award challenge to evaluation scheme that could produce a misleading result).

and will interface with the existing Braun equipment” see, AR exh. 4, WSD’s Proposal, at 22 and 24, WSD failed to demonstrate that this was in fact the case, as determined by the agency’s evaluators. Id. exh. 6, Evaluation Scoring Sheets. In its comments responding to the agency report on this issue, WSD does not meaningfully rebut the agency’s assessments regarding its failure to satisfy this requirement; rather, the protester simply repeats the general assurance it provided to the agency during discussions that its equipment “would be fully compliant.” Protester’s Comments at 1; see also, AR exh. 4, WSD’s Proposal, at 22 (stating in response to an additional discussion question on this issue that its equipment “is compatible with the existing Braun equipment and will function per the specifications set out by the VA”).

An offeror is responsible for demonstrating affirmatively the merits of its proposal and risks rejection if it fails to do so. See John Blood, B-402133, Jan. 15, 2010, 2010 CPD ¶ 30 at 3-4; HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5. No matter how competent an offeror may be, the technical evaluation must be based on information included in the firm’s quotation. See Watson Indus., Inc., B-238309, Apr. 5, 1990, 90-1 CPD ¶ 371 at 3-4. Having failed to demonstrate that its equipment met the agency’s requirements, the agency properly downgraded WSD’s proposal on this basis.

Based on our review of the entire record, we see nothing unreasonable in the agency’s evaluation of WSD’s proposal as marginal. WSD’s complaints constitute mere disagreement with the agency’s evaluation and, as such, do not provide a basis for sustaining the protest. In sum, the VA’s selection of Braun’s higher-priced, higher-rated proposal was reasonable and consistent with the terms of the solicitation.

The protest is denied.⁵

Lynn H. Gibson
General Counsel

⁵ WSD raises other collateral arguments. For example, the protester contends that the VA communicated with Braun regarding early delivery of the solicited equipment (14 days after contract award) before the RFP was actually issued. Protest at 2. WSD has provided nothing in support of these claims and there is nothing in the record to indicate that the agency improperly communicated with Braun.