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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Brickwood Contractors, Inc.

File: B-290305

Date: July 8, 2002

James J. Tansey, Esq., for the protester.

Marilyn Walter Johnson, Esq., and Robert E. Little, Jr., Esq., Naval Facilities Engineering Command, for the agency.

Glenn G. Wolcott, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably evaluated protester's proposal as "unacceptable" where record clearly establishes that protester's proposal failed to comply with solicitation requirements under three of four non-price evaluation factors.

DECISION

Brickwood Contractors, Inc. protests the award of contract No. N62467-02-C-8805 to Roy F. Weston, Inc. by the Naval Facilities Engineering Command. The contract was awarded pursuant to request for proposals (RFP) No. N62467-01-R-8828 to perform upgrades and repairs to certain fuel systems at the Naval Air Station in Fort Worth, Texas. Brickwood protests that the agency improperly evaluated Brickwood's proposal as being unacceptable.

We deny the protest.

The Navy issued the RFP on September 29, 2001, seeking proposals to perform tasks associated with repairing and upgrading various fuel systems and fuel tanks at the Fort Worth Naval Air Station. In addition to providing that the successful offeror would be required to perform pipeline, equipment and control modifications, the solicitation stated that the project would require tank repairs and coating of the tanks, along with repairs to the concrete containment of the tanks.

The solicitation contemplated award of a fixed-price contract and stated that proposals would be evaluated on the basis of price and the following non-price factors: management approach, small business subcontracting effort, technical qualifications, and past performance.¹ The solicitation stated that all of the non-price evaluation factors were of approximately equal importance, and that price was of equal importance to the combined non-price factors.

Four offerors, including Weston and Brickwood, submitted proposals by the December 3 closing date; thereafter, the proposals were evaluated by the agency. Weston's proposal was rated as "exceptional" under each of the non-price factors. Brickwood's proposal was rated as "unacceptable"² with regard to management approach, small business subcontracting effort, and technical qualifications.³ Award was made to Weston without discussions on March 12. This protest followed.

Brickwood asserts that its proposal should have been evaluated as offering the best value to the government. We disagree.

With regard to the "management approach" evaluation factor, the solicitation identified only two elements for consideration. Specifically, the RFP advised offerors that they must "[s]ubmit Experience Modifier Rate (EMR) for each of the past three years," and must "[p]repare a computerized critical path method (CPM) schedule . . . for the total requirement." RFP at 11. Brickwood's proposal failed to comply with either of these directives. Accordingly, the agency evaluated the proposal as "unacceptable" under this evaluation factor. In responding to the agency report, Brickwood states: "It is correct that Brickwood did not submit EMR reports with its proposals." Comments on Agency Report at 4. Similarly, Brickwood acknowledges, "Brickwood did not submit a computerized CPM schedule." Protest at 4.

With regard to the "small business sub-contracting effort" evaluation factor, the RFP advised offerors that their proposals would be evaluated on the basis of their commitment to subcontract with various types of small business concerns. Specifically, the RFP provided:

¹ Offerors were advised that, in evaluating the non-price factors, the agency would use the adjectival ratings of "exceptional," "acceptable," "marginal," and "unacceptable." RFP at 7.

² The solicitation defined an "unacceptable" rating as applicable where "[t]he proposal fails to satisfy the RFP's stated requirements." RFP at 7.

³ Brickwood's proposal was rated "marginal" with regard to the fourth evaluation factor, past performance.

The Naval Facilities Engineering Command has established sub-contracting goals of at least 65% of the sub-contracting effort to small businesses. Of the total sub-contracted effort, the goals are a minimum of 2.5% to HUBZone [historically underutilized Business Zone] firms, 12% to SDB [small disadvantaged business] firms, and 5% to WOSB [woman-owned small business] firms.

RFP at 9.

For a small business like Brickwood, the RFP requested detailed information concerning past subcontracting to SDBs and HUBZone firms. RFP at 10. Further, with regard to performance of this contract, the solicitation directed small business offerors to “[s]tate the extent of work, including type and percentages, you plan to sub-contract to LB [large business firms] HUBZone [firms], SB [small business firms, and] WOSB [firms]. RFP at 11. Brickwood’s proposal failed to discuss any subcontracting effort. Accordingly, the agency evaluated Brickwood’s proposal as unacceptable under this factor. In its protest and in responding to the agency report, Brickwood does not dispute that its proposal failed to discuss any subcontracting efforts, but asserts it was not required to comply with the solicitation provisions in this regard because Brickwood is a woman-owned small business.”⁴ Comments at 4.

With regard to the “technical qualifications” evaluation factor, the RFP required that offerors “[s]ubmit key personnel staffing . . . that demonstrates technical qualifications required to perform work similar” to that contemplated under this solicitation, and identify the experience of key personnel regarding projects “similar in size, scope and complexity to the project described in this document.” RFP at 8. As noted above, the solicitation included requirements to perform modifications to the fuel system pipelines, equipment and controls, along with repair and coating of the fuel tanks and the repairs to the concrete containment of the tanks.

Brickwood’s proposal contained resumes for certain proposed key personnel. However, these resumes did not discuss any qualifications or experience relating to fuel storage tank repair or to the installation and/or repair of piping and equipment for fueling systems.⁵ Accordingly, the agency rated Brickwood’s proposal as “unacceptable” under this evaluation factor.

⁴ To the extent Brickwood is protesting the terms of the solicitation, its post-award protest is not timely filed. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1).

⁵ The resumes discussed prior experience performing work on water tanks. The agency states that such work was not sufficiently similar to constitute qualifications to perform the required modifications to the fuel systems and fuel storage tanks contemplated by this solicitation.

In reviewing protests challenging an agency's evaluation of proposals, we will not substitute our judgment for that of the agency regarding the merits of proposals; rather, we will examine the agency's evaluation and selection decision to ensure that they are reasonable and consistent with the solicitation's stated evaluation factors and applicable statutes and regulations. Citywide Managing Servs. of Port Wash., Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10. The protester bears the burden of proving that an evaluation was unreasonable; mere disagreement with the agency does not render the evaluation unreasonable. Ogden Support Servs., Inc., B-270354.2, Oct. 29, 1996, 97-1 CPD ¶ 135 at 3.

Here, based on our review of the record, including Brickwood's proposal and the agency's documentation supporting the evaluation of Brickwood's proposal, it is clear that Brickwood's proposal failed to comply with multiple solicitation requirements. Indeed, Brickwood does not dispute that its proposal failed to respond to the solicitation requirements regarding management approach and proposed subcontracting effort. With regard to the evaluation of Brickwood's proposal under technical qualifications, we have no basis to question the agency's position that the demonstrated qualifications/experience of Brickwood's proposed key personnel concerning work on water storage tanks was not sufficiently similar to the work contemplated under this solicitation to constitute the necessary qualifications/experience. On this record, we cannot question the agency's overall rating of Brickwood's proposal as "unacceptable." Since award was made on the basis of initial proposals without discussions,⁶ Brickwood's unacceptable proposal was properly rejected.⁷

The protest is denied.

Anthony H. Gamboa
General Counsel

⁶ The solicitation advised offerors that "[t]he Government may choose to award based on initial proposals without discussions." RFP at 5.

⁷ Brickwood also asserts that, because its proposal offered a somewhat lower price than Weston's proposal, Brickwood's proposal should have been selected for award on the basis of a cost/technical tradeoff. Brickwood is mistaken. The price associated with a technically unacceptable proposal is not a proper basis for performing a cost-technical tradeoff, since a technically unacceptable proposal is not eligible for award. See, e.g., Allenhurst Indus., Inc., B-256836, B-256836.2, July 8, 1994, 94-2 CPD ¶ 14.