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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: HERA Constructive S.A.

File: B-310119

Date: November 7, 2007

Constantinos Fotiadis for the protester.

Kate Bazylewicz, Esq., and Tracy M. Humphrey, Esq., Department of the Navy, for the agency.

Paul N. Wengert, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where provision in solicitation requiring offerors to present a certificate issued by the Greek government authorizing construction of “projects of the cost value, type, and magnitude” of the solicitation was reasonably interpreted in accepting certificate submitted by awardee.

DECISION

HERA Constructive S.A. protests the award of a contract to Michael M. Tsontos S.A. under request for proposals (RFP) No. N33191-05-B-1204 by the Department of the Navy, Naval Facilities Engineering Command, for construction and renovation of the Navy Exchange buildings (known as the “NEXMART”) at the Naval Support Activity Souda Bay in Crete, Greece. HERA argues that Tsontos was ineligible for award because it does not possess the appropriate construction license, which the RFP required.

We deny the protest.

BACKGROUND

The Navy issued the RFP on June 8, 2007, seeking proposals to renovate the existing NEXMART building and to construct a new NEXMART building. The RFP provided that the contract would be awarded “to the offeror whose offer represents the best value to the Government,” and listed four equally-weighted non-price evaluation factors: organizational experience, organizational past performance, schedule, and safety. The non-price factors, taken as a whole, were to be approximately equal in importance to the fifth factor, price.

Price proposals were to be figured in euros, and consistent with this, the RFP provided an “estimated cost range” for the scope of work, also priced in euros. The RFP cost estimate was between 2 million and 4 million euros. RFP at 1. The Navy’s internal government cost estimate (which was not released to offerors) was €2,274,952. Contracting Officer’s (CO) Statement at 2.

The RFP provided that technical proposals should also include a certified copy of a particular type of Greek construction license:

The offerors must be bearers of, and submit a certified copy of an updated Certificate of Classification issued by the Greek Ministry of Environment, Planning and Public Works covering the classification category under which they are licensed to undertake the construction of projects of cost value, type, and magnitude as this request for proposal. The certified copy must be provided with their proposal package.

RFP at 11.

HERA and the Navy agree that, under Greek law, the required certificates come in several classes, and that a class 3 certificate authorizes a firm to perform construction work valued up to €3,750,000, while a class 4 certificate permits work valued up to €7,500,000. Protest at 3; CO Statement at 2.

The Navy received three proposals for the NEXMART construction and renovation project. The lowest price was proposed by Tsontos, with a total price of €1,709,000. Tsontos was also ranked highest by the technical evaluation panel under the non-price evaluation factors. CO Statement at 2. Tsontos submitted a copy of its class 3 certificate with its proposal. HERA’s proposal was ranked third by the technical evaluation panel, and offered a price of €2,250,000. HERA submitted a class 4 certificate with its proposal. Id. at 3.

Overall, the Navy’s source selection board ranked Tsontos first, and HERA second. Since Tsontos was rated highest technically, and offered the lowest price, the CO selected Tsontos for award on that basis. After a requesting and receiving debriefing, HERA filed this protest.

DISCUSSION

HERA argues that the class 3 certificate provided by Tsontos does not meet the RFP’s certificate requirement, and that Tsontos’s proposal should have been rejected as unacceptable for that reason. HERA’s argument is based on the cost estimate for this project in the RFP. Since the cost estimate was stated as a range from 2 million to 4 million euros, HERA argues that offerors had to have a certificate covering the entire range. Since a class 3 certificate has an upper limit of €3,750,000, HERA argues that a class 4 (or higher) certificate was required, and that Tsontos must be found unacceptable.

The Navy responds that the estimated cost range in the RFP was required by Federal Acquisition Regulation (FAR) § 36.204, and was provided only as a general description of the magnitude of the project. The RFP did not state that either the prices proposed—or more importantly, the certificates of classification—had to cover the entire range specified. In short, the Navy contends that there is no basis for arguing that an offeror had to have a certificate covering the entire estimated range, as opposed to one covering the offeror's actual price.

The Navy also argues that the government estimate of €2,274,952—and even the highest price offered, at €2,948,000—were well within the ceiling of €3,750,000 applicable to a class 3 certificate, and that these facts further confirm the reasonableness of the decision to accept Tsontos's certificate.

In considering the meaning of a solicitation provision, we will read it in the context of the solicitation and in a reasonable manner. Burns & Roe Servs. Corp., B-251969.4, Mar. 1, 1994, 94-1 CPD ¶ 160 at 7. We will not adopt a restrictive interpretation of a solicitation provision where it is not clear from the solicitation that such a restrictive interpretation was intended by the agency. M & M Ret. Enters, LLC, B-297282, Dec. 15, 2005, 2005 CPD ¶ 224 at 3; International Data Prods., Commax Techs., Inc., B-275480.2 et al., Apr. 3, 1997, 97-1 CPD ¶ 179 at 4.

The purpose of supplying offerors with a range of costs or prices is merely to describe the relative magnitude of the construction project. Western Ventures, Inc., B-210611, Mar. 1, 1983, 83-1 CPD ¶ 218 at 1; McCain Trail Constr. Co., B-196856, July 8, 1980, 80-2 CPD ¶ 16 at 5. The cost range establishes the general parameters of the acquisition, and even if an estimated cost range were inaccurate, it is without effect since prices offered are not limited to the confines of the estimated cost range. RNJ Interstate Corp., B-241946, Feb. 26, 1991, 91-1 CPD ¶ 219 at 3 (agency reasonably determined that bid prices were excessive, even though bids were within estimated range specified pursuant to FAR § 36.204).

Here, we agree with the Navy that the RFP requirement for a certificate that covers “projects of cost value, type, and magnitude as this request for proposal” was a reference to the scope of work set forth in the RFP, rather than the upper limit of the estimated cost range. In light of the fact that the awardee's price was well within the limits of a class 3 certificate, the Navy reasonably concluded that an offeror holding a class 3 certificate was eligible for award.

The protest is denied.

Gary L. Kepplinger
General Counsel