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Decision

Matter of: C. Young Construction, Inc.

File: B-309740; B-309740.2

Date: October 15, 2007

David T. Ralston, Jr., Esq., and Frank S. Murray, Esq., Foley & Lardner LLP, for the protester.

Damon A. Martin, Esq., Naval Facilities Engineering Command, for the agency.
Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of protester's proposal is denied where evaluation was reasonable and consistent with solicitation's evaluation terms.

DECISION

C. Young Construction, Inc. protests the rejection of its proposal and the award of a contract to Sauer, Inc. under request for proposals (RFP) No. N69450-07-R-1266, issued by the Department of the Navy, Naval Facilities Engineering Command, for the construction of the P333V Fleet Support Facility at Naval Air Station Jacksonville, Florida. The project involves the construction of a sensitive compartmented information facility; optional work includes installation of a parking lot, sidewalks, and sanitary service. C. Young challenges the reasonableness of the agency's evaluation of its proposal, rated as poor, and its subsequent elimination from further consideration for award for proposing a single individual to fill three of the four required key personnel positions. The protester contends that the RFP did not prohibit its proposed staffing approach and that the agency unreasonably determined that its proposal of one individual for multiple key personnel positions failed to meet stated requirements.

We deny the protest.

The RFP, issued on May 10, 2007, contemplated the award of a fixed-price contract to the firm submitting the proposal deemed to offer the best value to the agency; technical merit (evaluated under four equally weighted technical subfactors--past performance, relevant experience, technical qualifications, and small business subcontracting) was approximately equal in importance to price. RFP at 24, 25.

Offerors were advised that, since discussions might not be conducted, their best terms should be included in their initial proposals. Id. at 23. Adjectival ratings (ranging from exceptional to poor) were to be assigned to the proposals under each technical evaluation factor. The rating of “poor” was defined as failing to meet stated requirements of the RFP, indicating an insufficient understanding of the requirements, lacking essential information, presenting an unacceptable level of risk to the government, and containing deficiencies that require a major revision of the proposal. Id. at 25. Offerors were advised that a proposal receiving a technical subfactor rating of poor would be rated poor overall, and that the government reserved the right to not make award to a firm with a technical proposal rated marginal or poor. Id.

Special construction features were noted in the RFP, and project specifications provided detailed staffing requirements and descriptions of the work to be performed. The RFP noted, for example, that the facility was located adjacent to a hangar and apron construction project at the air station, requiring special consideration of the site’s surroundings and coordination of work efforts (for instance, involving flight line fencing work, use of equipment near landing areas and taxiways, and aircraft operating schedules). Id. at 24. Project specifications provided additional requirements regarding, among other things, quality control, airfield operation and safety, and key personnel responsibilities. Project Specification § 013513, ¶ 3.1.1; § 013529, ¶ 1.6.2; § 014500.0020, ¶ 1.5-1.16.

For evaluation under the RFP’s technical qualifications subfactor, each proposal was to include information about the qualifications and experience of the individuals proposed for four key personnel positions: Project Manager; Project Superintendent; Quality Control (QC) Manager; and Safety Specialist (also referred to as the Site Safety and Health Officer (SSHO)). RFP at 29. Key personnel duties were listed in the project specifications, which also set out a general organizational framework in which the QC Manager was to report to an officer of the firm, and was not to be subordinate to the Project Superintendent or Project Manager. Id., § 014500.0020, ¶ 1.4. In addition, the specifications expressly stated that while “the QC Manager is the primary individual responsible for quality control, all individuals will be held responsible for the quality of work on the job.” Id.

Prior to the closing date for the submission of initial proposals, C. Young requested clarification of certain solicitation provisions it apparently found to be conflicting, since one provision allowed the proposal of multiple positions for certain personnel, while another prohibited multiple roles. Specifically, the protester noted that specification § 013529, ¶ 1.6.1.1 provided that the QC Manager could be the SSHO on the project, but that specification § 014500.0020, ¶ 1.5.1.1 provided that the QC Manager “shall not be designated as the safety competent person.” The agency issued amendment No. 4 to the solicitation on June 13, 2007, in response to the inquiry. The amendment expressly deleted in their entirety the only two provisions in the solicitation that had specifically allowed more than one key personnel position

to be held by a single individual. Specifically, the amendment deleted the sentence of specification § 013529, ¶ 1.6.1.1 that, as initially issued, had provided that the QC Manager could be the SSHO on the project. Amendment No. 4, at 2. The amendment also deleted a sentence of specification § 014500.0020, ¶ 1.5.1.1 that, at the time the RFP was issued, had provided that the QC Manager could perform the duties of the Project Superintendent. Id.

Six proposals were received by the scheduled June 15 closing date for the receipt of initial proposals. The protester's proposal received the following technical evaluation ratings: very good for past performance; satisfactory for relevant experience; poor for technical qualifications (for proposing a single individual to perform three of the four key personnel positions of QC Manager, SSHO, and Project Superintendent); acceptable for small business subcontracting; and poor for overall technical merit due to its poor rating under the technical qualifications subfactor.¹ The evaluators noted that the protester's proposal of one individual to fill three of the four required key personnel positions was "not allowed" by the RFP. Business Clearance Memorandum at 20. The evaluators found that the protester's proposal failed to provide adequate staffing to accomplish the work of the RFP, showed a lack of understanding of the specifications, and provided an unacceptable level of risk to the agency; the proposal, rated poor for failing to meet stated requirements, was eliminated from further consideration for award. Id. at 20-21. This protest followed.

C. Young contends that the evaluators acted improperly in concluding that the firm's proposal was materially deficient for proposing a single individual to fill multiple key personnel positions. The protester acknowledges that amendment No. 4, issued in response to its own inquiry regarding whether multiple positions could be assigned to key personnel, deleted all of the provisions in the specifications that had expressly allowed the firms to propose a single individual for multiple positions. Nonetheless, the protester argues that the amendment's deletion of provisions that had allowed the proposal of multiple positions for key personnel does not constitute an express prohibition against such a proposal. Since there is no express prohibition against the proposed use of a single individual to fill multiple key personnel positions, the protester argues, the agency improperly used an unstated evaluation criterion in concluding that its staffing approach was unacceptable for failing to meet key personnel requirements.

¹ Sauer's technical proposal was rated substantially higher than the protester's; the Sauer proposal received a rating of very good for overall technical merit based on ratings of exceptional for past performance, very good for relevant experience, satisfactory for technical qualifications, and acceptable for small business contracting. C. Young offered a slightly lower price (approximately 2 percent lower) than Sauer offered.

The agency responds that the solicitation, read as a whole, contemplated that each key personnel position was to be filled by a separate individual in order to accomplish key personnel performance requirements identified in the project specifications. The agency also contends that even without an express prohibition against proposing multiple positions for key personnel, the protester should have realized from the express deletion of the original RFP provisions allowing the proposal of individuals to fill multiple key personnel positions, and from provisions in the project specifications requiring individual participation by each key personnel position, that the proposal of multiple positions for key personnel would not meet the agency's personnel performance requirements; several of those requirements, for instance, clearly require various key personnel to participate both individually and collectively at meetings with other key personnel. The agency asserts that it was therefore reasonable to evaluate the protester's proposal of a single individual for three of the four required key personnel positions as deficient, for failing to meet solicitation requirements, indicating a lack of understanding of the requirements, and increasing the agency's risk in the performance of the work. We agree.

In reviewing protests against an agency's proposal evaluation, we will consider whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. National Toxicology Labs, Inc., B-281074.2, Jan. 11, 1999, 99-1 CPD ¶ 5 at 3. Where a dispute exists as to the actual meaning of a solicitation requirement, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions. See Sea-Land Serv., Inc., B-278404.2, Feb. 9, 1998, 98-1 CPD ¶ 47 at 5. Here, when the solicitation is read as a whole, it is clear that proposing a single individual for three key personnel positions simply will not meet the terms of numerous personnel performance requirements set out in the project specifications which contemplate a coordinated work effort by a team of individuals holding distinct key personnel positions.

Our review of the record confirms the agency's position that numerous performance requirements in the project specifications require attendance and participation by multiple individuals in key personnel positions, including the Project Manager, QC Manager, Project Superintendent, and SSHO. For instance, the Project Superintendent, SSHO, and QC Manager are each to approve the contractor's accident prevention plan, which provides multiple levels of review of the plan. Project Specification § 013529, ¶ 1.7. A single individual representing three of the four required key personnel positions, as the protester proposed, would effectively eliminate the benefit of the multi-tiered input and review process contemplated by that provision. Similarly, both the Project Superintendent and the QC Manager are to prepare and approve daily construction operations documentation (*id.* at § 014500.0020, ¶ 1.16.1); each referenced key personnel position is to be represented at the preconstruction conference (*id.* § 013529, ¶ 1.6.3.1); and quality control meetings are to be attended by all relevant key personnel, (*id.* § 014500.0020,

¶ 1.8.3), as are preparatory phase meetings (id. § 014500.0020, ¶ 1.10.1) and final acceptance inspections (id. § 014500.0020, ¶ 1.14.3). Clearly, the project specifications here contain material requirements which will not be met by the attendance or participation of a single individual, when instead the collaboration of a team of individuals acting in their respective positions is contemplated.²

While C. Young generally alleges that an unstated evaluation criterion (in essence, a prohibition against the proposal of multiple-position personnel) was used by the evaluators, there is nothing objectionable in the agency considering the protester's proposal of key personnel with multiple positions under the technical qualifications subfactor, as the protester's staffing approach is reasonably related to, and encompassed by, that subfactor. In sum, our review of the record confirms the reasonableness of the agency's evaluation of the protester's proposal as poor under the technical qualifications subfactor for failing to meet stated requirements, and, consequently, rating it as poor overall and excluding it from further consideration for award.³ See RFP at 25.

The protest is denied.

Gary L. Kepplinger
General Counsel

² Additionally, contrary to the specifications' express statement that "while the QC Manager is the primary individual responsible for quality control, all individuals will be held responsible for the quality of the work on the job," id. § 014500.0020, ¶ 1.4, the protester's proposal of fewer individuals to perform all key personnel positions effectively increases the performance risk to the agency, as fewer individuals would be accountable to the agency.

³ Given the reasonableness of the agency's evaluation and elimination of the protester's proposal under the technical qualifications factor, we need not discuss the remaining evaluation challenges. We do note, however, that the protester is mistaken in arguing that clarifications or discussions were required here. Clarifications would have been inappropriate to cure the material deficiency of failing to provide a sufficient number of personnel to perform the work, and the solicitation, as stated above, did not contemplate discussions. See National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 11. Similarly, there is no support in the record for the protester's claim of unequal evaluations. C. Young's proposal contained a material deficiency (its failure to propose an adequate staffing level, including all required key personnel); the Sauer proposal, on the other hand, was cited for a minor weakness regarding whether the firm's SSHO had the qualifications for that position, a matter that subsequently was resolved through consideration of agency personnel's knowledge that the individual in fact possesses the requisite skills and experience from his work on prior projects.