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Decision

Matter of: Commercial Design Group, Inc.--Costs

File: B-400923.3

Date: June 10, 2009

Patricia Meagher, Esq., Rossi & Meagher LLP, for the protester.
Isaac Johnson, Jr., Esq., United States Coast Guard, for the agency.
Eric M. Ransom, Esq., and Christine S. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest is clearly meritorious and reimbursement of costs of filing and pursuing protest is recommended where reasonable agency inquiry into initial protest allegations would have revealed insufficient basis for technical evaluation results related to awardee's proposed technical personnel.

DECISION

Commercial Design Group, Inc., (CDG) of San Francisco, California, requests that our Office recommend that it be reimbursed the costs of filing and pursuing its protest against the award of a contract to Symtech Corporation, of Sarasota, Florida, under request for proposals (RFP) HSCG88-08-R-623190, issued by the United States Coast Guard for computer-aided design (CAD) services.

We grant the request.

The Coast Guard issued the RFP on October 20, 2008, for the acquisition of labor, material, equipment, and supervision necessary to provide CAD services for the Coast Guard Civil Engineering Unit in Oakland, California (CEUO). Six proposals were received by the November 7 closing date of the RFP. The Coast Guard found that five of the six proposals were technically unacceptable for failure to adequately address the requirements of the RFP. Source Selection Memorandum at 2-3. Specifically, the Coast Guard found that each of the five unacceptable submissions failed to demonstrate that the proposed personnel met the experience requirements in the solicitation. *Id.* CDG's proposal was among the five rejected proposals. *Id.* In relevant part, the experience requirements stated:

In order to pass, all of the offeror's personnel must meet the following qualifications (Items #1 and #2):

1. Minimum of Intermediate AutoCAD skill level as demonstrated by certificate from an AutoCAD certified training center or 6 years full-time working experience with Autodesk AutoCAD and Graphisoft ArchiCAD, and
2. Minimum 4 years experience in drawing architectural, civil, mechanical, **and** electrical AutoCAD drawings (**experience in all four disciplines**)

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RFP at 34 (emphasis in original).

CDG received notice that Symtech was the apparent successful offeror on November 24, received a pre-award debriefing on December 2, and filed its initial protest on December 11. In that protest CDG asserted, as relevant here, that Symtech's proposed CAD manager did not meet the minimum requirement of 6 years experience with ArchiCAD or training from a certified facility.¹ CDG went on to more specifically identify the individual in question, stating that "the resume of this particular candidate will show that he finished work with Symtech at CEUO five years ago" and that after "nine years on the prior CAD Services contract . . . was not able to perform ArchiCAD services." Protest at 2.

In its agency report, the Coast Guard asserted that there was no evidence to indicate that its evaluation was inconsistent with the stated evaluation factors.² With respect to the challenge to Symtech's proposed CAD manager, the contracting officer stated only that "[t]he requirement was clearly stated in the solicitation that the proposed personnel shall have six years of full-time working experience with 'ArchiCad

¹ ArchiCAD is a software package developed by the company Graphisoft for use in building information modeling CAD.

² In its agency report, the Coast Guard also asserted that CDG's allegations were unsupported and requested that our Office dismiss the challenge for failure to set forth a detailed statement of the legal and factual basis for the protest. While our Office regularly entertains requests for dismissal, the more appropriate time for filing such a request is as soon as possible after the protest is filed, rather than as a part of the agency report itself. See 4 C.F.R. § 21.3(b) (2009). In any event, our Office already had concluded that CDG's challenge to Symtech's proposal identified the proposed Symtech employee with sufficient particularity to rise above mere speculation and present a valid basis of protest.

Service.’ The proposed individual submitted by Symtech clearly met this requirement.” Contracting Officer’s Statement at 6.

In its comments, CDG submitted the affidavit of an outside consultant who reviewed the CDG and Symtech resumes included within the agency report. This consultant concluded that several of the resumes submitted by Symtech failed to meet the minimum experience requirements of the RFP, including the resume of Symtech’s proposed CAD manager. With regard to the proposed CAD manager’s resume, the consultant determined that it set forth 16 years of experience, but did not set forth ArchiCAD training or experience or demonstrate the required minimum 6 years of experience. Consultant Declaration at 2. CDG’s comments also included a supplemental protest asserting that, based on its consultant’s review of the resumes included in the agency report, the agency failed to conduct a consistent evaluation of all offerors’ proposals. Specifically, CDG alleged that, when judged by the evaluation standard applied to the CDG proposal, all of Symtech’s proposed resumes should have been found technically unacceptable.

Five days after receiving CDG’s comments and supplemental protest, on January 27, 2009, the Coast Guard informed our Office that it had decided to take corrective action consisting of reopening discussions and evaluating revised proposals. As a result, our Office dismissed the protests on February 2. CDG then filed this request for reimbursement of its protest costs.

Where an agency takes corrective action in response to a protest, our Office may recommend reimbursement of protest costs where, based on the circumstances of the case, we determine that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest, thereby causing the protester to expend unnecessary time and resources to make further use of the protest process in order to obtain relief. Bid Protest Regulations, 4 C.F.R. § 21.8(e); AAR Aircraft Servs.–Costs, B-291670.6, May 12, 2003, 2003 CPD ¶ 100 at 6. A protest is “clearly meritorious” where a reasonable agency inquiry into the protester’s allegations would reveal facts showing the absence of a defensible legal position. Overlook Sys. Techs., Inc.–Costs, B-298099.3, Oct. 5, 2006, 2006 CPD ¶ 184 at 6. With respect to the promptness of the agency’s corrective action under the circumstances, we review the record to determine whether the agency took appropriate and timely steps to investigate and resolve the impropriety. See Chant Eng’g Co., Inc.–Costs, B-274871.2, Aug. 25, 1997, 97-2 CPD ¶ 58 at 4; Carl Zeiss, Inc.–Costs, B-247207.2, Oct. 23, 1992, 92-2 CPD ¶ 274 at 4. As a general rule, so long as the agency takes corrective action by the due date of its protest report, we consider the action to be prompt. CDIC, Inc.–Costs, B-277526.2, Aug. 18, 1997, 97-2 CPD ¶ 52.

CDG asserts that because several of the resumes in Symtech’s proposal, including the resume of Symtech’s proposed CAD manager, did not meet the RFP’s requirements, a reasonable review of CDG’s initial protest should have revealed that the protest was clearly meritorious. Additionally, CDG argues that the Coast Guard unduly delayed corrective action by submitting an agency report defending its

evaluation before ultimately conceding that it “carefully reviewed the proposal submitted by Symtech Corporation and has determined that their proposal failed to meet the minimum requirements of the solicitation.” Discussions Letter, Feb. 2, 2009, at 1.

We agree. The Coast Guard took corrective action in this protest due to its recognition that some of the resumes supplied by Symtech did not meet the requirements of the solicitation, but contends that CDG’s initial protest was not clearly meritorious because the initial allegations concerned only Symtech’s proposed CAD manager, whose resume the Coast Guard continues to insist “clearly indicates he meets the minimum requirements.” Agency Response to Request for Costs, at 3. Our review of the record, however, does not support that conclusion. Rather, we conclude that CDG’s initial protest was clearly meritorious and that, had the agency conducted a reasonable review of the allegations in CDG’s initial protest, it would have discovered that Symtech’s proposed CAD manager’s resume did not provide a sufficient basis to conclude that he meets the RFP requirements. Specifically, the proposed CAD manager’s resume did not include a certificate from an AutoCAD certified training center, and while the resume did set forth 16 years of general experience, nothing in that work history demonstrated ArchiCAD training or 6 years of full-time ArchiCAD working experience. In fact, the only reference to ArchiCAD in the entire resume was the listing “ArchiCAD 8.0” in a section of the resume stating “software applications include”

In sum, we conclude that a reasonable inquiry into CDG’s initial protest would have revealed that it was clearly meritorious, as Symtech’s proposed CAD manager’s resume was insufficient to demonstrate the level of experience required by the solicitation. Thus, by failing to take corrective action before submitting an agency report to rebut the initial protest, the Coast Guard unduly delayed corrective action in the face of a clearly meritorious protest. Accordingly, we recommend that the Coast Guard reimburse CDG for the reasonable costs of filing and pursuing its protests of the award to Symtech. CDG should submit its claim for costs, detailing and certifying the time expended and costs incurred, directly to the Coast Guard within 60 days of receipt of this decision.

Daniel I. Gordon
Acting General Counsel