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Decision

Matter of: JSR, Inc.

File: B-405463

Date: November 8, 2011

David F. Barton, Esq., and Elizabeth Haws Connally, Esq., Gardner Law, for the protester.

Michael G. McCormack, Esq., and Maj. Kristine R. Hoffman, Department of the Air Force, for the agency.

Paula J. Haurilesko, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably found the protester's proposal unacceptable where the proposal included information that caused the agency to question whether the protester complied with the solicitation requirements.

DECISION

JSR, Inc., of Schertz, Texas, protests the rejection of its proposal and the award of contracts to R-Con Construction, Inc. of Las Cruces, New Mexico; Creative Times Inc., of Ogden, Utah; NAE/Imperial JV, of Weatherford, Texas; and Pace-Amtex Joint Venture, of San Antonio, Texas, under request for proposals (RFP) No. FA4661-11-R-0001, issued by the Department of the Air Force for construction services.

We deny the protest.

BACKGROUND

The RFP, which was set aside for service-disabled, veteran-owned small business concerns, historically underutilized business zone (HUBZone) small businesses and participants in the Small Business Administration's 8(a) program, provided for the award of multiple indefinite-delivery/indefinite-quantity contracts to provide construction services at Dyess Air Force Base, Texas. RFP at 1, 3. The RFP provided, as attachments, statements of objectives (SOO) for four seed projects. For example, seed project no. 3 was for the replacement and retrofitting of power line

feeder conductors on existing electrical poles to protect birds from electrocution. Seed project no. 4 was to provide new horizontal air break switches on existing power lines and poles. See RFP, attachs., SOO for Seed Project No. 3, SOO for Seed Project No. 4.

Offerors were informed that up to four awards would be made, each accompanied by a task order for one of the four seed projects, to offerors whose proposals provided the best value to the government, considering technical, past performance, and price. RFP at 65. In this regard, the RFP stated that proposals, including offerors' seed project responses, would first be evaluated on a pass/fail basis under the technical factor. Id. at 66, 67. Proposals that were found acceptable under the technical factor would then be evaluated under the past performance factor and considered for award. Id. Offerors were informed that the past performance factor was significantly more important than price. Id. at 66.

Instructions for the preparation of proposals under each factor were provided. See RFP amend. 6, at 2-11.¹ Offerors were advised that technical proposals would be evaluated for conformance with the minimum RFP criteria, and that proposals must provide adequate detail for effective evaluation. Id. at 3. With regard to the seed projects, offerors were required to provide their design concept for performing the work, as well as drawings, specification outlines, catalog cut sheets, manufacturer/supplier recommendations, schematics, process flow diagrams, and other supporting data. Id. at 8. Also with respect to the seed projects, the RFP required offerors to discuss, among other things, the existing site conditions and the rationale behind the design and selection of proposed systems, materials and equipment. Id. at 8-9. Offerors were also instructed to provide supporting data for the design of the seed projects, including construction materials, products, equipment, and systems. Id. at 9.

With respect to the preparation of price proposals, the Air Force required offerors to set forth all pricing information necessary to provide a meaningful basis for the agency's "analysis and evaluation of price and technical acceptance." Id. at 9. In amendment 6, the agency deleted the original requirement for "100 [percent] design" drawings and added the requirement that offerors provide a detailed bill of materials. Id.

The Air Force received proposals from 20 offerors, including JSR, R-Con, Creative Times, NAE/Imperial, and Pace-Amtex. Contracting Officer's (CO) Statement at 5. As relevant here, JSR's submission for seed project no. 3 provided narrative discussion of its methodology and design approach and four pages of drawings. See JSR Proposal Vol. 5, Seed Project No. 3. One page contained two tables, one listing

¹ Although the RFP was amended only twice, the second RFP amendment was designated amendment 6.

the depths required for setting poles of various lengths, and the other entitled, “Pole Line Demolition and Construction Schedule,” which listed the 12 poles included in the SOO for seed project no. 3. Id., Drawings at 4. Similarly, JSR’s submission for seed project no. 4 provided narrative discussion of its methodology and design approach and a number of drawings. See JSR Proposal Vol. 6, Seed Project No. 4.

The Air Force’s technical evaluation team found that JSR’s proposal was insufficient and technically unacceptable. See AR, Tab 15, Simplified Source Selection Report, at 5. Specifically, the agency found that JSR had not provided sufficient information to allow the agency to determine the type and quantity of materials the firm would be using to perform seed project nos. 3 and 4. See CO’s Statement at 7, 9. In this regard, JSR’s drawings were found to be incomplete and inconsistent, such that the agency could not determine what work JSR would be performing (and what materials it would provide) for 6 of the 12 existing poles. The evaluators also found that, although the RFP stated that for seed project no. 3 contractors would be using 12 existing electrical poles, it was unclear from JSR’s proposal (given its reference to pole depths) whether the firm would be using the existing poles or replacing them. Id. at 8-9.

The Air Force rejected JSR’s proposal and awarded contracts to R-Con Construction, Creative Times, NAE/Imperial JV, and Pace-Amtex Joint Venture. Following a debriefing, JSR filed an agency-level protest. The Air Force denied the agency-level protest, and this protest to our Office followed.

DISCUSSION

JSR complains that the Air Force did not evaluate proposals in accordance with the stated evaluation criteria.² More specifically, JSR contends that its drawings for seed project nos. 3 and 4, which JSR terms “100 [percent] drawings,” sufficiently document the materials it intends to use and satisfy the RFP’s requirements. Protest at 9. In this regard, JSR has provided an affidavit from the professional engineer who prepared its drawings, asserting that the drawings are sufficient. See Comments, Affidavit of Engineer, at 2. JSR also argues that the RFP did not provide for the evaluation of a bill of materials under the technical evaluation factor nor

² JSR asserts without support that the agency also misevaluated the awardees’ proposals. Protest at 11. JSR’s bare assertions, without substantive support or evidence, do not satisfy, however, the requirement that the protester provide a sufficiently detailed statement of the legal and factual grounds to state a valid basis for protest. See 4 C.F.R. §§ 21.1(c)(4) and (f) (2011); Maybank Indus., LLC, B-403327, B-403327.2, Oct. 21, 2010, 2010 CPD ¶ 249 at 5-6.

specify any required content for the bill of materials.³ Comments at 11. JSR also states that it did not propose to replace any of the poles. Id. at 15.

In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP evaluation criteria. EEC-Insight, JV, B-404959; B-404959.3, July 12, 2011, 2011 CPD ¶ 169 at 4. A protester's mere disagreement with an agency's judgment is not sufficient to establish that an agency acted unreasonably. Trofholz Tech., Inc., B-404101, Jan. 5, 2011, 2011 CPD ¶ 144 at 3-4. Moreover, it is an offeror's responsibility to submit an adequately written proposal that demonstrates the merits of its approach; an offeror runs the risk of having its proposal downgraded or rejected if the proposal is inadequately written. Id. at 4-5.

Here, the record supports the Air Force's determination that JSR's responses to seed project nos. 3 and 4 were insufficient.⁴ With respect to JSR's response to seed project no. 3 (replacing line feeder conductors on existing electrical poles), the agency found that although JSR provided a "Pole Line Demolition and Construction Schedule," which listed all 12 existing poles, neither this schedule nor the drawings provided with JSR's proposal identify any work to be done on 6 of the poles. See AR, Tab 14b, Statement of Technical Evaluator, at 2-3.⁵ JSR has not shown that the agency's judgment in this regard was unreasonable. The affidavit that JSR has provided from its engineer does no more than state the protester's disagreement

³ JSR complains that offerors were not required to provide a bill of materials with their technical proposals. Although it is true that the RFP only specifically requested that a bill of materials be provided in the price proposals, RFP amend. 6, at 9, offerors were nevertheless required to sufficiently identify their proposed materials for the seed projects, and were given latitude as to the form this identification would take. Id.

⁴ We have reviewed the parties' arguments concerning seed project no. 4, but only specifically address their arguments concerning seed project no. 3, because we find that JSR's proposal was reasonably found unacceptable considering only the deficiencies assigned to its proposal with respect to seed project no. 3.

⁵ JSR generally challenges the handwritten evaluation notes provided by the Air Force for one member of its evaluation team, questioning whether the notes are contemporaneous with the evaluation and complaining that they are "cryptic." Comments at 10. Although the handwritten evaluation notes are not dated, the evaluator has submitted a statement that these were his contemporaneous notes. AR, Tab 14b, Statement of Technical Evaluator, at 1. We do not agree that the notes, as explained, are cryptic. We had no problem reading the handwritten notes and verifying that the technical evaluator's more complete explanation of his evaluation reasonably reflects the substance of the handwritten notes.

about the acceptability of its drawings. For example, with respect to the “Pole Line Demolition and Construction Schedule” chart, the engineer merely asserts without explanation that the chart “identifies in detail the installation of the assemblies by pole and cross references to the drawings.” Comments, Affidavit of Engineer, at 2. The chart, however, does not address, as the Air Force has noted, 6 of the 12 poles. We agree with the Air Force that the lack of information pertaining to 6 of the 12 poles identified under the SOO for seed project no. 3 raises a question as to whether JSR’s proposal satisfies the requirements of the RFP.

JSR also does not show to be unreasonable the agency’s concern that the protester intended to replace 6 of the 12 poles without supporting information in its proposal. Although the protester now states in its comments that it did not intend to replace the existing poles in seed project no. 3, it does not explain why its proposal provided a table for seed project no. 3 showing the depths at which the electrical poles should be set into the ground.

We also do not agree with JSR that the Air Force’s concerns with its proposal reflected the consideration of unstated evaluation criteria. As noted above, the RFP required offerors to provide supporting data as needed to clearly present the contractor’s proposed design concept, including material proposed, to comply with the government’s requirements for the seed projects. RFP amend. 6, at 3, 8-9. All of the agency’s concerns with the protester’s submissions for seed project nos. 3 and 4 are specifically encompassed by the solicitation requirements for preparation of the seed project proposals.

The protest is denied.⁶

Lynn H. Gibson
General Counsel

⁶ JSR also complained in its initial protest that the Air Force improperly evaluated proposal pricing prior to the technical evaluation in violation of the RFP’s stated evaluation scheme. JSR did not address the agency’s response to these complaints in its comments on the agency report, and we therefore deem these protest grounds to have been abandoned. Cedar Elec., Inc., B-402284.2, Mar. 19, 2010, 2010 CPD ¶ 79 at 3 n.4.