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Decision

Matter of: Equa Solutions, Inc.
File: B-409848.2; B-409848.3
Date: November 20, 2014

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Erika L. Whelan Retta, Esq., Department of the Air Force, for the agency.
Paula A. Williams, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging evaluation of protester's price proposal is denied where the record establishes that the agency's evaluation was reasonable and consistent with the stated evaluation criteria.
 2. Protest that agency failed to hold meaningful discussions with the protester regarding specific deficiencies in its price proposal is denied where, contrary to the protester's argument, the agency had not opened discussions when it issued an amendment inviting offerors to submit updated resumes for key personnel, and to verify that unit prices were still valid, or, alternatively, to submit new unit prices with accompanying explanation.
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DECISION

Equa Solutions, Inc., of Salt Lake City, Utah, protests the decision by the Department of the Air Force not to select Equa's proposal for award under request for proposals (RFP) No. FA4887-13-R-0005, for general construction services at various facilities in Arizona including Luke Air Force Base, Gila Bend Air Force Auxiliary Field, and Fort Tuthill Recreation Area.¹

¹ Awards were made to Herman Construction Group, Inc., of San Diego, California; Rore, Inc., of San Diego, California; M&M, of Tempe, Arizona; and Premier Engineering dba Premier Civil Construction Group, of Chandler, Arizona. Agency Report (AR) exh. 28, Unsuccessful Offeror Letter (July 30, 2014).

We deny the protest.

BACKGROUND

The RFP, issued on June 20, 2013 and amended several times, contemplated award of up to five fixed-price, indefinite-delivery/indefinite-quantity contracts, without discussions, for a base year and four option years under which task orders would be issued for work that may consist of multiple disciplines in general construction categories. RFP at 63. The competition was limited to 8(a) Arizona firms or 8(a) firms with a bona fide office in Arizona. Id. at 1, 55.

The RFP established that awards would be made on a best-value basis, considering technical acceptability, price, and past performance. The technical acceptability factor included three subfactors: (1) demonstration project; (2) architect and engineer team plan; and (3) management plan.² Id. at 72. Under each factor and subfactor, the RFP set forth detailed instructions regarding the preparation of proposals. Id. at 57-60. Among other things, the RFP instructed offerors to provide their technical approaches to accomplishing demonstration project NUEX 11-8010, Renovate Server Room B-1130, to include a description of their procedures, processes, and methods for tracing the construction progress. Under their technical approaches, offerors were also instructed to include a discussion of the overall performance time for both the design and construction phases, and the composition of the design-build team, including identifying any major subcontractor and its involvement throughout the process. Id. at 57.

According to the RFP, the technical acceptability factor was to be evaluated on an acceptable/unacceptable basis. Only those proposals evaluated as acceptable would be evaluated under the price factor. Concerning price, the RFP required offerors to provide a price breakdown for the demonstration project by completing attachment 14 of the RFP, the construction cost estimate breakdown form. Price proposals were to be complete, accurate, and sufficiently detailed to demonstrate price reasonableness and realism, a clear understanding of the requirement, and consistency with the offeror's technical approach. Id. at 58.

The solicitation provided that the agency would evaluate the offeror's price proposal for the demonstration project for completeness, price reasonableness, and price

² Offerors were informed that their management plan should address, among other things, management organization, and ability to accomplish at least 15 percent of the required work in-house. The offerors were also directed to submit resumes of all key management personnel, which were identified in the solicitation as the project manager, quality control manager, safety officer, and superintendent. Id. at 58.

realism. In determining whether the price proposal was complete, the RFP established that the agency would consider whether the offeror had submitted all the information required by the solicitation and whether the information received was free of omissions or errors. Id. at 69. Price reasonableness was to be based on a comparison of the offeror's total evaluated price (TEP) to historical prices for similar effort, the independent government estimate, and the proposed prices of competing offerors. Regarding price realism, the agency was to evaluate the individual line item prices of the demonstration project to determine whether prices were realistic for the work to be performed and whether they were consistent with the various elements of the offeror's technical proposal. Id. According to the RFP, unrealistically low or high prices could be grounds for eliminating a proposal from the competition. Id.

Of relevance to this protest, the solicitation established that "each step" of the evaluation process was "codependent upon the step immediately preceding," that is, the agency would only evaluate "those proposals in Step 2" that were evaluated as acceptable "in Step 1." Id. at 72. After evaluation of price proposals, all acceptable proposals with complete, reasonable, and realistic pricing would be ranked by TEP from lowest to highest. Id. The agency would then evaluate the past performance of the remaining offerors and perform a past performance/price tradeoff analysis, with past performance significantly more important than price, to determine which proposals reflected the best value. Id. at 66, 72-73.

The Air Force received twenty-five proposals in response to the solicitation, including proposals from Equa and the four awardees, by the August 5, 2013 closing date. Thirteen proposals, including the proposals submitted by Equa and the four awardees, were evaluated as technically acceptable. Of these thirteen, ten offerors' price proposals were evaluated as complete, reasonable, and realistic. Equa's proposal was not among the ten.

During the price evaluation, Equa's price proposal was evaluated as incomplete and unrealistic, and was eliminated from further consideration. AR exh. 26, Proposal Analysis Report, at 45-46. In the foregoing connection, the evaluators found as follows:

- Equa had modified Attachment 14, the construction cost estimate breakdown by eliminating column 2 and column 3 from the form. In addition, the protester had not entered any unit prices for column 4, column 6, column 7, and column 9. See AR exh. 7, Volume II, Equa's Price Proposal, at 43.
- The agency could not adequately perform cost/price analysis because Equa had only furnished lump sum prices for the construction activities listed on its construction cost estimate breakdown form; agency could

not determine quantity of materials proposed, the number of labor hours required to perform each activity, or the labor rate for each activity.

- It was impossible for the agency to determine whether Equa would actually be self-performing 15% of the work, as required by the RFP, and as proposed in its technical proposal, see AR exh. 7, Volume I, Equa's Technical Proposal, at 9-10, and it was difficult to determine what work would be accomplished by Equa's sub-contractors.
- Equa failed to include prices for certain items that it included in its technical proposal such as Equa's design-build approach for the demonstration project, id. at 6, and work on the fire sprinkler system, id. at 10, each of which were not required by the RFP. This made aspects of its price proposal inconsistent with its technical proposal.
- Equa also failed to include the costs of several other tasks identified in its technical proposal such as network equipment cost elements, and as-built design cost elements in its price proposal.

Contracting Officer's Statement at 6, 14-16; AR exh. 26, Proposal Analysis Report, at 45-46 (July 15, 2014).

Thereafter, on April 23, 2014, due to a lapse of approximately 9 months from the time of receipt of initial proposals, the Air Force issued amendment 9, which provided all twenty-five offerors an opportunity to submit updated resumes for key personnel and current price information. Specifically, in a memorandum transmitting the amendment, the agency requested the following:

- a. Resubmission of all key personnel resumes submitted in response to Factor 1, Subfactor 3 - Management Plan – Section L(B)(1)(c)(2) to account for any offeror changeover in personnel, providing the government with timely and accurate personnel resumes to be performing on Luke AFB. Offerors are further directed to respond in **strict compliance** with the table found at Section M(B)(1)(d)(iii) and will be rated accordingly.
- b. Verify that unit prices in Factor 2 – Price Proposal - Section L(B)(2)(a) are still current. If pricing is not still current, offerors are advised that any changes to the unit prices shall be accompanied by detailed justification outlining the specific changes and the reasoning for the price change.
- c. Offer acceptance period, by virtue of the amended closing date, will be changed to reflect 120 days from 30 April 2014.

RFP amend. 9 (April 23, 2014); Memorandum For All Offerors (emphasis in original) (Apr. 23, 2014).

Equa responded to this amendment by resubmitting the key personnel resumes that it had previously furnished, and verifying that its unit prices were still current. AR exh. 13, Protester's Response (Apr. 30, 2014). Two of the four awardees--Herman Construction, and M&M--also resubmitted resumes for their key personnel that each had previously submitted, and each verified that their unit prices were still current. AR exh. 14, Herman Construction's Response (Apr. 30, 2014); exh. 15, M&M's Response (Apr. 30, 2014). In its response, Premier made two changes to its key personnel--it replaced its quality control manager and its construction superintendent. In doing so, Premier provided resumes for these two replacements and resubmitted resumes for the other key personnel proposed in its initial proposal. AR exh. 16, Premier's Response (Apr. 30, 2014). The fourth awardee, Rore, resubmitted the previously provided resumes for its key personnel, increased its unit prices as a result of changed economic conditions, and provided detailed support for its increased unit prices. AR exh. 17, Rore's Response (Apr. 30, 2014).

The source selection authority (SSA) reviewed the evaluators' findings as set forth in their proposal analysis report and documented her past performance/price tradeoff analysis. The SSA concluded that the proposals of Herman, Rore, M&M, and Premier represented the best value to the government, and selected these firms for award. AR exh. 27, Source Selection Decision Document, at 7-8 (July 23, 2014). On August 12, 2014, Equa received a debriefing, which specifically delineated the weaknesses described above. See AR exh. 29, Equa's Debriefing Slides. The protester filed its initial protest with our Office on August 15, and a supplemental protest on August 22.

DISCUSSION

Equa raises numerous challenges to the agency's evaluation and selection decisions. We have considered all of Equa's arguments in resolving the protest, and although we only discuss the primary issues, we find that none of the arguments raised provides a basis to object to the agency's evaluation of Equa's proposal as unacceptable and the elimination of Equa's proposal from further consideration per the terms of the RFP.

Evaluation of Equa's Price Proposal

The protester challenges the agency's evaluation of its price proposal, arguing that the evaluation was inconsistent with the stated evaluation criteria and unreasonable. Specifically, Equa alleges that the agency's completeness analysis

was flawed and that the agency failed to perform a proper price realism analysis.³ Supp. Protest at 4-10.

Regarding the evaluation of Equa's price proposal for completeness, as noted above, one of the agency's primary concerns was the fact that Equa failed to submit a completed construction cost estimate breakdown form, attachment 14. In this regard, the agency found, and the record reflects, that Equa modified the form by eliminating various columns, to include column 2 (unit of measure) and column 3 (quantity), and failed to enter any cost information for columns 4, 6, 7, and 9. Columns 4, 6, 7, and 9 were to include cost information for materials, labor, and other direct costs. Without this information, the agency concluded that it did not have sufficient information to adequately analyze Equa's price proposal.

Equa asserts that because the firm intended to use subcontractors to perform a significant portion of the work, its price proposal was "mostly made up of subcontractor costs under specific trades." Supp. Protest at 5. Therefore, in completing the required construction cost estimate breakdown form, the protester explains that it only entered the total material labor costs associated with each subcontract and trade in columns 5 and 8. According to the protester, by using subcontractors, the firm did not possess the quantities, manhours and rates needed to complete columns 4, 6, and 7 of the form. Equa also argues that the limited instructions on how to complete the form did not "prohibit Equa from completing the form in the manner in which it was completed." Id. We disagree.

It is an offeror's responsibility to submit a proposal that responds to, and demonstrates a clear understanding of, the solicitation requirements; where an offeror fails to do so, the offeror runs the risk that the agency will evaluate its proposal unfavorably. United Contracting, LLC, B-408279, June 25, 2013, 2013 CPD ¶ 150 at 3; International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7. In reviewing protests of alleged improper evaluations, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws. CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5; HDL Research Lab., Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5. A protester's disagreement with an agency's evaluative judgments is insufficient to establish that the agency acted unreasonably. See VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4; Citywide Managing Servs. of Port

³ The protester also argued that the agency failed to perform a proper price reasonableness evaluation to the extent the agency found its price unreasonable. Subsequent to the filing of this protest, the agency conceded that Equa's proposed price was reasonable. See Agency Memorandum of Law, at 12-13 (Sept. 15, 2014).

Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

Here, we find unavailing the protester's contentions that it did not "possess" the information necessary to fully complete the construction cost estimate breakdown form. See Supp. Protest at 5. Although the protester maintains that its prices were "mostly made up of subcontractor costs," id., the protester does not explain why it could not, or did not, obtain the needed information from its own subcontractors. As noted previously, the solicitation required offerors to submit a completed construction cost estimate breakdown and established that the agency would evaluate whether the offeror's submission included all information/data required by the solicitation. Nothing in this, or any other solicitation provision, including the instructions on how to complete the construction cost estimate breakdown, supports Equa's position that listing only its subcontractors' costs under specific trades would satisfy the solicitation's express requirement for offerors to enter all information/data required by the solicitation. Under these circumstances, we have no basis to question the reasonableness of the agency's concerns regarding Equa's failure to complete attachment 14 as instructed by the solicitation.⁴

Next, the protester alleges that the agency's price realism evaluation was inadequate. This argument is not supported by the record.

Where a fixed-price contract is to be awarded, a solicitation may provide, as here, for a price realism analysis for such purposes as measuring an offeror's understanding of the solicitation requirements and assessing the risk inherent in an offeror's proposal. See STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 10; Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 4. The Federal Acquisition Regulation (FAR) identifies a number of price analysis

⁴ Equa also argues that the evaluation of its price proposal for failing to complete attachment 14 as unacceptable was unfair because Rore failed to sign attachment 14, and Herman Construction failed to provide information on the form regarding other overhead costs, and profit. Equa is simply wrong regarding Rore's price proposal; Rore's attachment 14 was in fact marked as signed. AR exh. 11, Rore's Price Proposal, at 2. As to Herman Construction's price proposal, the agency considered the fact that Herman Construction had neglected to provide information about its profit and other overhead costs, but concluded that it was sufficiently detailed to assess the price proposal for reasonableness and realism where Herman Construction provided the primary cost information in attachment 14, to include detailed material and labor cost information, all of which was missing from Equa's proposal. AR exh. 21, Evaluation of Herman Construction's Price Proposal. We have no basis to conclude that the agency's evaluation in this respect was unequal or unfair, as argued by Equa, given the relative difference in the level of cost information provided by Herman Construction as compared to Equa.

techniques that may be used to determine whether prices are reasonable and realistic, including analysis of pricing information provided by the offeror. FAR § 15.404-1(b)(2). The depth of an agency's realism analysis is a matter within the sound exercise of the agency's discretion, which we will review only to determine whether it was reasonable and consistent with the terms of the solicitation. CC Distributions, Inc., B-406450, B-406450.2, May 12, 2012, 2012 CPD ¶ 177 at 7; American Techs., Inc., B-401445, Aug. 28, 2009, 2009 CPD ¶ 178.

The contemporaneous evaluation record reflects that the agency reasonably evaluated Equa's price proposal for realism, which, as provided by the RFP, included determining whether Equa's proposed prices were consistent with its proposed technical approach. In evaluating Equa's price proposal, the agency found, and the protester does not dispute, that Equa's technical proposal was based on performing the demonstration project as a design-build effort yet, Equa failed to identify any design costs in its price proposal. Similarly, the protester included fire sprinkler system work in its technical proposal but did not include any cost information for the fire sprinkler system work in its price proposal. Given the disconnect between Equa's proposed technical approach and the information set forth in Equa's price proposal, together with the other deficiencies in its price proposal, the agency concluded that Equa's price proposal could not be evaluated as realistic. Given the record in this case, we find no basis to question the agency's realism analysis. See Pemco Aeroplex, Inc., B-310372.3, June 13, 2008, 2008 CPD ¶ 126 at 8 (protest challenging price realism evaluation in fixed-price contract denied where protester failed to demonstrate that agency's actions, inactions, or analyses were inconsistent with the terms of the solicitation).

Discussions

Equa also contends that the agency initiated discussions with offerors when, on April 23, 2014, the agency issued amendment 9 and the accompanying memorandum. According to the protester, once the agency opened discussions via the issuance of amendment 9, the agency was obligated to inform the protester of the deficiencies in its proposal, and having failed to do so, Equa complains that the agency's discussions were inadequate, misleading, and not meaningful. Because we conclude that the agency's issuance of amendment 9 did not constitute discussions, as that term is understood under the FAR, Equa's entire line of argument in this regard is without merit.

Under FAR § 15.306(d), discussions are exchanges with offerors after the establishment of a competitive range. Such exchanges are supposed to be tailored to each offeror's unique proposal, with the intent of obtaining proposal revisions through bargaining, give and take, attempts at persuasion, the alteration of assumptions and positions, and negotiations. FAR § 15.306(d). When agencies conduct discussions with competitive range offerors, they are required to address, at a minimum, deficiencies, significant weaknesses, and adverse past performance

information to which an offeror has not previously had an opportunity to respond. FAR § 15.306(d)(3). Moreover, once an agency initiates discussions, those discussions should be meaningful. Stone & Webster Eng'g Corp., B-255286.2, Apr. 12, 1994, 94-1 CPD ¶ 306 at 10-11. In order for discussions to be meaningful, the agency must advise offerors of deficiencies in their proposals and afford them an opportunity to revise their proposals to satisfy the government's requirements. Id.; see FAR §§ 15.610(c)(2), (5).

Here, the record shows that amendment 9 and the accompanying memorandum, uniformly allowed offerors to resubmit resumes of their key personnel, to verify that unit prices were still current, and if not, to provide a detailed justification of changes, and to extend the proposal acceptance period. The record further shows that the agency had not communicated with offerors regarding the contents of their proposals prior to issuing amendment 9; nor had the agency asked questions or sought information from any offeror regarding areas of concern in its proposal.

We recognize that, generally, the “acid test” for deciding whether discussions have been held is whether it can be said that an offeror was provided the opportunity to modify or revise its proposal, ERIE Strayer Co., B-406131, Feb. 21, 2012, 2012 CPD ¶ 101 at 5, and that amendment 9 invited offerors to submit revised proposals by providing updated resumes of key personnel and unit prices, and extending the acceptance period of their proposals. The situation here, however, is distinguishable from those where the agency communicates with offerors regarding their proposals and then allows proposal revisions, as well as those where an agency allows some, but not all, offerors to revise or modify material aspects of their proposals.⁵

We also note that amendment 9 was not accompanied by any of the ordinary indicia of discussions noted above, *i.e.*, the agency had not established a competitive range; the amendment was issued to all offerors and did not convey information tailored to the offerors' proposals; and the amendment did not involve bargaining, give and take, attempts at persuasion, the alteration of assumptions and positions, or negotiations. Rather, the facts here are akin to those where an agency has

⁵ In support of its position that the agency's issuance of amendment 9 constituted discussions, the protester cites our decision in H. E. Cramer Co., Inc., B-212015.2, Jan. 24, 1984, 84-1 CPD ¶ 111 which includes language indicating that “the submission by offerors of revisions to their offers in response to a solicitation amendment in itself constitutes discussions with offerors.” H. E. Cramer Co., Inc., supra at 6. In that case, however, our Office merely held that discussions to address agency's re-pricing of travel costs were not required where the agency had afforded offerors an opportunity to address the matter via an amendment to the solicitation. Accordingly, the broadly-stated language set forth above constitutes dicta, and is not controlling here.

amended the solicitation to extend the due date for submitting proposals for all offerors. While solicitation amendments ordinarily are issued prior to the closing date for receipt of proposals, agencies may issue amendments extending the closing date after the closing date has passed. Fort Biscuit Co., B-247319, May 12, 1992, 92-1 CPD ¶ 440 at 3; see Micromass, Inc., B-278869, Mar. 24, 1998, 98-1 CPD ¶ 93 at 5. Moreover, we have expressly held that an agency's decision to provide for the submission of revised proposals in order to evaluate the offerors' most up-to-date information, does not constitute discussions. Presidio Networked Solutions, Inc.; Mercom Corp.; Micro Technologies, LLC, B-408128.33 et al., Oct. 31, 2014, 2014 CPD ¶ ___ at 12. Accordingly, we find that the agency's issuance of amendment 9, and the updates provided in response thereto, did not constitute discussions. As a result, the agency was not required to open discussions with the protester or any other offeror.

The protest is denied.

Susan A. Poling
General Counsel