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Comptroller General
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United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Cooperativa Maratori Riuniti-Anese

File: B-294747

Date: October 15, 2004

Reed L. von Maur, Esq., for the protester.

Damon Martin, Esq., Naval Facilities Engineering Command, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's proposal to complete one of three construction projects 5 days after date specified in solicitation rendered proposal unacceptable for failure to comply with material solicitation requirement.

DECISION

Cooperativa Maratori Riuniti-Anese (CMR/Anese) protests the award of a contract to Impresa Costruzioni Giuseppe Maltauro S.p.a. (ICGM) under request for proposals (RFP) No. N33191-02-R-1076, issued by the Department of the Navy for construction of airplane parking areas at the Aviano Air Base, Italy. CMR/Anese challenges the agency's evaluation of proposals and source selection.

We deny the protest.

The RFP sought proposals to construct three airplane parking pads--South Ramp, North Ramp, and Zulu Arm/Dearm Pad. Proposals were to be evaluated under three technical factors--organizational experience, organizational past performance, and schedule--and price. The RFP warned that a marginal rating under any factor would result in the overall proposal being rated marginal (unless corrected through discussions), and that a proposal had to be rated at least satisfactory in order to be eligible for award. The RFP contemplated a "best value" award of a fixed-price contract.

The RFP set a specific performance period for each of the three projects--540 days for the South Ramp, and 360 days each for the Zulu Pad and North Ramp projects. RFP at 00710-16. As to schedule, proposals were required to include the total

number of days proposed for completion from the date of award. For purposes of evaluation, offerors were to base their proposed schedule(s) on the assumption that all options would be awarded and exercised with the award, which offerors were to assume would be September 15, 2004. RFP at 00202-4. Proposals were also to include a computer-generated critical path method (CPM) schedule with the number of days to complete the projects.

Eight offerors, including CMR/Anese and ICGM, submitted proposals, which were evaluated by a technical evaluation board. CMR/Anese's proposal, at an offered price of €7.5 million, was rated marginal overall based on satisfactory ratings under the experience and past performance factors and a marginal rating under the schedule factor. ICGM's proposal, at an offered price of €7.9 million, was rated as good-plus overall. The agency determined that ICGM's proposal represented the best value and awarded it the contract without conducting discussions.

At its debriefing, CMR/Anese learned that its marginal schedule rating was based on the agency's (erroneous) finding that its North Ramp schedule exceeded the allowed schedule by 5 days. When CMR/Anese showed the agency that, in fact, its North Ramp schedule was fully compliant with the RFP, the agency acknowledged its mistake and suspended the debriefing to reevaluate the protester's proposed schedule. Protest at 4. Upon further review, the agency recognized that it was CMR/Anese's schedule for the Zulu Pad that exceeded the completion date. Specifically, based on the RFP-required assumptions of a start date of September 15, 2004, the 360 days allotted for performance would expire on September 10, 2005. Although CMR/Anese proposed to perform the work in 324 days, a shorter period than the 360 days allowed by the RFP, its CPM schedule showed a start date of October 26, 2004 and a completion date of September 15, 2005, that is, 5 days beyond the assumed completion date. Based on this review, the Navy notified CMR/Anese that its proposal rating remained at marginal. The protester maintains that this evaluation conclusion was unreasonable.

In reviewing a protest of an agency's evaluation of proposals, our review is confined to a determination of whether the agency acted reasonably and consistent with the terms of the solicitation and applicable statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11.

The evaluation here--and resultant rejection of the protester's proposal--was reasonable. Under the schedule factor, the RFP provided that proposals would be evaluated on the basis of standards of acceptability, including "[t]he extent to which the offeror presents a comprehensive, logical and feasible approach to finish the construction within the time frame for each project specified . . . [and] will include a determination of the probability that the proposed schedule will successfully meet the required completion time." RFP at 00202-3 to 00202-4. Relevant to this standard were four subfactors, the first of which related to the number of days proposed for completion based on a start date of September 15, 2004. It is undisputed that CMR/Anese's CPM schedule identified a completion date of September 15, 2005,

which did not meet the completion deadline--September 10--implied by the 360-day schedule set forth in the RFP. A firm delivery schedule or completion date set forth in a solicitation is a material requirement, precluding acceptance of any proposal not offering to meet that date. See Hercules Constr. Corp., B-271872, July 26, 1996, 96-2 CPD ¶ 46 at 2. In a negotiated procurement, any proposal that fails to conform to material terms and conditions of the solicitation is unacceptable and may not form the basis for an award. SuccessTech Mgmt. & Servs., B-294174, July 6, 2004, 2004 CPD ¶ __ at 2; Plessey Elec. Sys. Corp., B-236494, Sept. 11, 1989, 89-2 CPD ¶ 226 at 2. Since CMR/Anese's proposal did not provide for timely completion of the project, the agency reasonably rated the proposal marginal under the schedule factor; under the terms of the RFP, this rating made the proposal ineligible for award. RFP at 00202-2.

CMR/Anese asserts that the marginal rating was undeserved because the agency focused on only one of four relevant schedule subfactors. However, since the schedule was a material requirement and CMR/Anese's proposal ratings under the other subfactors could not alter its failure to meet that requirement, the ratings under the other subfactors are irrelevant. The agency reasonably could rate the proposal marginal under the schedule factor.

Noting that its Zulu Pad schedule had been designated a strength in the evaluation, CMR/Anese asserts that, once the Navy identified the completion date problem and evaluated the proposal as marginal, it was required to open negotiations with the firm.¹ In this regard, the protester states that the perceived problem could have been easily corrected by adjusting the start date for the Zulu Pad. This argument is without merit. There generally is no obligation that a contracting agency conduct discussions where, as here, the RFP specifically instructs offerors of the agency's intent to award a contract on the basis of initial proposals. FAR § 15.306(a)(3); Colmek Sys. Eng'g., B-291931.2, July 9, 2003, 2003 CPD ¶ 123 at 7. The contracting officer's discretion in deciding not to hold discussions is quite broad. Our Office will review the exercise of such discretion only to ensure that it was reasonably based on the particular circumstances of the procurement. Colmek Sys. Eng'g., *supra*. We find no circumstances that call into question the agency's decision not to engage in discussions here. Contrary to the protester's assertions, the fact that it may have

¹ In fact, CMR/Anese asserts that the agency "essentially" engaged in discussions with the firm during its debriefing when it resolved its mistake regarding CMR/Anese's North Ramp schedule. Response to Dismissal Request at 6. This assertion is without merit. Discussions or negotiations are exchanges between the government and offerors that are undertaken prior to award with the intent of allowing offerors to revise their proposals. Federal Acquisition Regulation (FAR) § 15.306(d). The debriefing here, held after award, was conducted for the purpose of advising CMR/Anese of the reasons for its failure to receive the award, not to permit the firm to revise its proposal to improve its chances of being selected for award.

erroneously entered the wrong start date in its CPM schedule does not give rise to an obligation on the agency's part to hold discussions where discussions are not otherwise necessary. See Omega World Travel, Inc., B-283218, Oct. 22, 1999, 2002 CPD ¶ 5 at 6.

Our conclusion is not changed by CMR/Anese's characterization of correcting its "clerical error" in its start date as a matter of clarification. Response to Dismissal Request at 5, n.2. "Clarifications" are limited exchanges between the government and offerors that may occur when award without discussions is contemplated. Such communications with offerors are not to be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, or otherwise revise the proposal." FAR § 15.306(a). Since the completion schedule date in the RFP was a material requirement, correction through clarification would not have been proper.

CMR/Anese asserts that the agency's evaluation of its proposal under the organizational experience and organizational past performance factors was flawed, and also challenges any higher ratings given to ICGM's proposal under these factors. We do not reach the merits of these arguments because--based on the terms of the RFP and our prior decisions--CMR/Anese's failure to propose a compliant schedule rendered its proposal ineligible for award, notwithstanding any other errors in the evaluation. Since CMR/Anese thus would not have received the award even if we agreed that the evaluation was flawed, this aspect of the protest is academic. See Galen Med. Assocs., Inc., B-288661.4, B-288661.5, Feb. 25, 2002, 2002 CPD ¶ 44 at 4.

The protest is denied.

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General Counsel