



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: JSR Services, LLC

File: B-401500

Date: August 24, 2009

James A. Rohbock for the protester.
Christopher S. Cole, Esq., Department of the Air Force, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated protester's proposal is denied where record shows that agency's evaluation was reasonable and consistent with terms of solicitation and applicable statutes and regulations.

DECISION

JSR Services, LLC, of Sandy, Utah, protests the award of a contract to Roof Express, LLC, of Greenwood Village, Colorado, under request for proposals (RFP) No. FA7000-09-R-0015, issued by the Department of the Air Force for roof assessment services at the U.S. Air Force Academy. JSR maintains that the agency misevaluated its proposal, and that Roof Express had an improper competitive advantage arising from a conflict of interest.¹

We deny the protest.

The RFP contemplated the award of a 1-year fixed-price contract, and required offerors to provide lump-sum prices for three line items: 1) preparation of a web-based, password-protected roof assessment data base and maintenance plan, along with training for agency personnel in the use of the database; (2) performance of all site preparation work (essentially cleaning and minor repair to all existing roof

¹ JSR also initially asserted that the agency did not adequately consider its price proposal. In its comments responding to the agency report, JSR made no further mention of this assertion. Consequently, we deem it abandoned. See Accumark, Inc., B-310814, Feb. 13, 2008, 2008 CPD ¶ 68 at 2 n.1.

surfaces); and (3) performance of an aerial infrared survey of all roofs (or, in the case of roofs not appropriate for infrared surveying, the photographing of those roofs). RFP at 3-4; Statement of Work (SOW) at 1-3.

Proposal submissions were limited to price and past performance related information, and offerors also were required to send past performance questionnaires to references identified in their proposals for submission by the references directly to the agency. RFP at 27-29. Past performance was to be rated for relevance to the RFP requirements and proposals would be assigned an adjectival past performance rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. RFP at 34-36.

Award was to be made on a “best value” basis considering past performance and price, with past performance deemed significantly more important than price. RFP at 34-36. In making the source selection, the agency would rank the proposals from lowest to highest in terms of price, and then would evaluate the proposals for past performance, in order, starting with the lowest-priced proposal. Where the agency evaluated a proposal as below the substantial confidence rating, it would proceed to evaluation of the next-highest-priced proposal, until it evaluated a proposal as meriting the substantial confidence rating; award would be made to the firm submitting that proposal, without further evaluation of any remaining higher-priced proposals. RFP at 35-36.

The agency received seven proposals. The protester’s proposal was the second-lowest-priced, and the awardee’s fourth-lowest. Agency Report (AR), exh. 16, at 2. The agency assigned satisfactory ratings to the lowest-priced proposal and to JSR’s proposal, rejected the third-lowest-priced proposal, and assigned Roof Express’s proposal a rating of substantial confidence. Id. Consistent with the RFP scheme, the agency made award to Roof Express. Id.

In rating JSR’s past performance satisfactory confidence, the agency determined that JSR had not submitted any past performance examples showing that it had performed an aerial infrared survey, and had not provided past performance examples showing that it had ever provided a web-based, updatable, password protected database.

PAST PERFORMANCE--AERIAL INFRARED SURVEY

JSR asserts that, while it did not provide examples of aerial infrared survey past performance, this is because, it claims, the agency advised—in a list of bidder questions and answers posted to the FedBizOpps website following a preproposal meeting—that “on-roof,” as opposed to aerial infrared surveys, was the preferred method for performing of the contract. JSR concludes that it should not have been penalized in the evaluation for failing to demonstrate aerial infrared survey experience.

In considering protests challenging the evaluation of proposals, we will not reevaluate proposals; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Engineered Elec. Co. d/b/a/ DRS Vermont, B-295126.5, B-295126.6, Dec. 7, 2007, 2007 CPD ¶ 4 at 3-4.

The evaluation here was unobjectionable, because we find that the RFP required aerial infrared surveys. First, in this regard, the agency issued two amendments, labeled as such, during the course of the acquisition, neither of which related to—or changed—the central requirements of the procurement for the performance of an aerial survey and the provision of a web-based, password protected updatable database. AR, exh. 8. In contrast, the questions and answers to which the protester refers were not identified as an amendment to the solicitation but, rather, appear to have been provided only for informational purposes. There thus was no reasonable basis for the protester to assume that the questions and answers were intended to amend the solicitation requirements.

In any case, even viewing the questions and answers as an amendment to the RFP, we find that the protester's interpretation of the agency's response was unwarranted. The relevant questions and responses were as follows:

Q: The documents are not asking for verification of the readings found in the aerial infrared scan. Most images taken with aerial infrared are accurate, however there can be a number of "ghost images" that can appear from mechanical units, piled gravel, debris and the likes. Are you going to require an on roof verification of the results of the aerial scan?

RESPONSE: If aerial indicates a potential problem, then on roof verification is required.

Q: Would the Air Force accept an on roof infrared scan in place of an aerial scan?

RESPONSE: This is the preferred method, therefore yes.

AR, exh. 10, at 5. The protester's interpretation that on-roof scans were actually preferable to aerial scans is based on the agency's response to the second part of the question. However, reading the two questions together and in conjunction with the balance of the RFP, we think it is sufficiently clear that the agency's second response was intended to refine its answer to the first part of the question; that is, where the results of an aerial scan indicate a problem, then an on-roof infrared scan is the preferred method of verification. Reading the agency's response as the protester suggests would essentially render one of the two central requirements of the solicitation—the requirement for an aerial infrared scan—superfluous. There is no indication in the questions and answers or elsewhere in the record that the agency

ever intended to eliminate the requirement for an aerial infrared scan. See Northrup Grumman Info. Tech., Inc., B-401198, B-401198.2, June 2, 2009, 2009 CPD ¶ 122 at 2 (in order for an interpretation to be reasonable, solicitation must be read as a whole and in a manner that gives effect to all of its provisions).² We conclude that the agency reasonably downgraded JSR's proposal for not including aerial infrared survey past performance information.

PAST PERFORMANCE--DATABASE

JSR asserts that the agency unreasonably found that it had not previously provided a web-based, password protected, updatable database, along with training. According to the protester, one of its past performance examples was for a contract that included the provision of such a database.

The evaluation in this area was unobjectionable. JSR's proposal included four past performance projects (plus two projects performed by its proposed subcontractor). AR, exh. 12, at 61-72. The agency received past performance questionnaires for only two of the projects, neither of which was the project under which JSR claims it provided a web-based, password protected updatable database, plus training. AR, exh., 14, at 1-2, 6-11. The record shows that the agency telephonically contacted the reference for which JSR claims to have furnished a qualifying database. The reference provided answers to a number of questions, and stated that, although his concern's contract had included a database, it was kept current not by his organization, but by JSR; that he did not know whether the database was interactive or web-based; that he did not know whether it was a commercial, off-the-shelf software product or one adapted to his company's needs; that he did not know whether it could be easily updated; and that JSR had not provided training for use of the database to personnel within his organization. AR, exh. 14, at 24. Given this information, the agency could reasonably conclude that JSR had not demonstrated that it had provided a qualifying database. It follows that the agency reasonably downgraded JSR's proposal in this area.

CONFLICT OF INTEREST

JSR maintains that Roof Express has a conflict of interest. In support of this assertion, JSR points to the fact that the agency engaged in a series of pre-

² We note, moreover, that JSR's interpretation of the agency's response would, at best, render the RFP patently ambiguous in requiring an aerial infrared scan, while also providing that an on-roof infrared scan was the preferred method of performance. Where such an ambiguity exists, an offeror cannot merely adopt one of the possible interpretations in preparing its proposal and then protest after award when the agency adopts a different interpretation. Rather, any such ambiguity must be protested prior to the deadline for submitting proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2009); Northrup Grumman Info. Tech., Inc., supra, at 3.

solicitation capabilities briefings with potential sources for its requirement, and that Roof Express was among the firms that participated in these briefings.

There is no merit to this aspect of JSR's protest. The record shows that the agency met with seven local concerns, including Roof Express, to conduct capabilities briefings prior to its issuance of the RFP, and that each concern was provided a list of identical questions designed to establish the availability of the agency's required services. The agency's actions were entirely appropriate and consistent with the terms of the Federal Acquisition Regulation's (FAR) provisions concerning the conduct of market research. FAR § 10.002 (b)(2)(viii) (techniques for conducting market research may include conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process). Beyond the agency's meetings with prospective offerors, JSR has advanced nothing more than innuendo and supposition in support of this aspect of its protest; this is inadequate to support an allegation of conflict of interest. Robert Clay, Inc., B-292443, Aug. 14, 2003, 2003 CPD ¶ 152 at 4-5.

The protest is denied.

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