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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Great Lakes Towing Company dba Great Lakes Shipyard

File: B-408210

Date: June 26, 2013

Joseph P. Starck, Jr., for the protester.

Thomas Connor, Shipbuilders of Wisconsin, Inc. dba Burger Boat Company, for the intervenor.

Sherry Kinland Kaswell, Esq., and Russell Husen, Esq., Department of the Interior, for the agency.

Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly used unstated evaluation criterion to evaluate proposals is denied where the criterion at issue was logically related to evaluation factor set forth in the solicitation.

2. Protest that agency improperly considered qualitative differences between proposals in making its source selection decision is denied where agency reasonably considered that proposals with the same adjectival ratings are not necessarily of equal quality and looked behind those ratings.

3. Protest challenging agency's failure to consider information concerning protester's experience that was not set forth in the proposal is denied; offerors bear the responsibility to include such information in their proposals and agency is not obligated to consider matters not referenced therein.

DECISION

Great Lakes Shipyard (GLS) protests the decision by the Department of the Interior, U.S. Geological Survey (USGS), to award a contract to Burger Boat Company under request for proposals (RFP) No. G13PS00115 for the detail design, construction and commissioning of the Research Vessel (R/V) Grayling. GLS challenges its technical evaluation as well as the technical evaluation of Burger. GLS also challenges the agency's best value award decision.

We deny the protest.

BACKGROUND

The USGS issued the solicitation on January 23, 2013, for the detail design, construction and commissioning of the R/V Grayling, a research vessel dedicated to fisheries research on Great Lakes Huron, Michigan, and Superior.¹ The RFP sets forth detailed technical specifications for the design and construction of the R/V Grayling, including hull structure, propulsion, electrical, electronics and navigation, ship services, ship systems, safety, mast and rigging, as well as mission support. RFP Attachment 2. The technical specifications also set forth various testing and trials procedures necessary to demonstrate satisfactory compliance with the requirements of the technical specifications prior to final inspection and acceptance. Id. at 13-25.

The RFP contemplated award of a fixed-price contract to the firm whose proposal was determined to be most advantageous to the government, considering price and non-price factors. RFP § M.2.(h). The RFP instructed offerors that overall technical capability was to be significantly more important than evaluated price. Id. Further, the RFP instructed offerors that “[p]rice will become the determining factor between proposals determined by the Government to be essentially equal in overall Technical Capability. Between acceptable proposals with a difference in overall Technical Capability, a determination will be made as to whether the additional technical merit or benefits reflected by a higher priced proposal warrants payment of the additional price.” Id.

Offerors were informed that overall technical capability was comprised of four factors, listed in descending order of importance: experience, past performance, project planning/schedule, and key personnel.² RFP § M.1.(c). At issue here, the experience factor consisted of four subfactors: (1) mission, (2) vessel complexity, (3) detail design, engineering, drawings, vessel documentation, and (4) acceptance

¹ The requirement for the R/V Grayling was previously issued under RFP No. G12PS00585 on July 11, 2012. That solicitation was cancelled after a protest to this office and subsequent corrective action by the agency. See Contracting Officer’s Statement at 1-2. Section L of the current solicitation instructs, “[o]fferors who submitted a proposal in response to G12PS00585 are advised that NO information (experience, past performance, pricing, etc) submitted in response to G12PS00585 will be considered in the evaluation of proposals submitted in response to G13PS00115.” RFP at 38.

² For the non-price evaluation factors, proposals were to be assigned ratings of outstanding, very good, satisfactory, marginal, unsatisfactory, or (for past performance) neutral. RFP § M.2.(d)-(e).

tests and trials.³ Id. The RFP stated that the agency would evaluate the offeror's "demonstrated experience" in its technical proposal with respect to specific requirements related to each subfactor. Id. For example, under the vessel complexity subfactor, the agency was to consider each offeror's "[d]emonstrated experience in the construction of vessels similar to the requirements described in the Technical Specification in terms of the complexity of on-board systems and system integration" including such things as hull material and arrangement, mission support systems, electrical systems, and electronics and navigation systems. RFP § M.1.(c).

Five proposals were received by the proposal due date, including proposals from GLS and Burger. After a review of proposals, both GLS and Burger received overall technical capability scores of "very good." GLS's evaluated price was \$5,593,540 and Burger's was \$5,663,856. AR, exh. 7, Source Selection--Price Reasonableness Determination at 39. The contracting officer, acting as the source selection authority, made award to Burger and justified the price premium based on an assessment that Burger's proposal was technically superior to that of GLS.

Specifically, the contracting officer stated that, in considering the technical capabilities represented by the two proposals, there was a slight benefit in Burger's proposal, primarily in the areas of complexity of on-board systems similar to the requirements in the RFP and acceptance tests and trials described in the technical specifications (subfactors 2 and 4, respectively). She explained:

To demonstrate experience with similar on-board systems, Burger highlighted their recent research vessel project for which the mission-essential fisheries equipment and on-board systems were identical to those specified for the Grayling whereas GLS reiterated the list of on-board systems provided in the Evaluation Factor but did not demonstrate their experience with these systems through any of their vessel projects. Likewise, in terms of experience with acceptance tests and trials, Burger discussed the tests and trials process recently performed on vessel build contracts and indicated they will use this process for the Grayling whereas GLS indicated their staff have the requisite experience in this area but did not clearly document that the acceptance trials and test experience of these three personnel was congruent with the Grayling requirements.

Id. at 46.

³ Subfactor 1 was slightly more important than subfactor 2, and both were significantly more important than the equally important subfactors 3 and 4. Id.

In addition, the contracting officer positively noted that Burger “offered an approach to [conduct] a ‘ride-along’ with the crew of the current R/V Grayling to identify any possible improvements that will allow the crew to perform their mission in a safer or more efficient manner, which Burger would then incorporate into design and construction of the new Grayling.” Id. In its proposal, Burger stated that this approach had provided benefits to one of its prior projects.

USGS awarded a contract to Burger on April 5, and sent notice to all unsuccessful offerors, including GLS, on the same date. GLS filed the instant protest after its debriefing.

DISCUSSION

GLS principally argues that the award to Burger violated the terms of the RFP in that price should have been the determining factor when the agency gave both Burger and GLS the same overall technical capability rating. Protest at 2. GLS argues that, by rating both proposals as “very good,” USGS determined that they were essentially equal. Relying on the solicitation language cited above, GLS contends that price was to be the determining factor where proposals were essentially equal in terms of overall technical capability, and that it should have received award because it submitted the lower price. Id. Instead, GLS asserts, the agency improperly utilized an unstated evaluation criterion--the qualitative differences between proposals--in its evaluation and source selection decision. Comments at 1-2.

It is unclear whether GLS is arguing that no qualitative analysis was permitted or that a qualitative analysis was not permitted once an overall technical capability adjectival rating was assigned. In either regard, GLS is simply incorrect. The RFP clearly permits a qualitative review of proposals as part of the price/technical tradeoff set forth in the solicitation. Further, to the extent GLS believes that once an overall technical capability adjectival rating is assigned, the agency is precluded from looking beyond that rating to the underlying merits of each proposal, such an interpretation is incorrect.

When a protester challenges an agency’s award decision, we will review that decision solely to determine if it was reasonable and consistent with the solicitation’s evaluation scheme, procurement statutes and regulations. Vectronix, Inc., B-407330, Dec. 19, 2012, 2013 CPD ¶ 13 at 7. Proposals with the same adjectival ratings are not necessarily of equal quality, and agencies may properly consider specific advantages that make one proposal of higher quality than another. ERC Inc., B-407297, B-407297.2, Nov. 19, 2012, 2012 CPD ¶ 321 at 6-7; McRae Industries, Inc., B-403335, Oct. 20, 2010, 2010 CPD ¶ 266 at 7. In conducting such an analysis agencies may reasonably consider the underlying bases for ratings and assess advantages and disadvantages associated with the content of competing

proposals. CE Support Services JV, B-406542.2, Sep. 28, 2012, 2012 CPD ¶ 265 at 6-7.

A review of the record shows that the agency did not determine that the overall technical capability of GLS and Burger were essentially equal. Quite to the contrary, the agency undertook a reasoned and thorough evaluation of the relative merits and weaknesses of both proposals and, despite assigning the same overall technical capability adjectival rating to both proposals, determined that Burger's technical proposal was superior, albeit slightly. In doing so, the agency appropriately considered the qualitative differences between the proposals notwithstanding the adjectival ratings.

GLS also asserts that USGS diverged from the stated evaluation scheme by "counting the number of strengths in each bidder technical evaluation." Protest at 2. We find this allegation unsupported by the record. The source selection documents clearly show that the agency reasonably conducted a best value tradeoff, weighing the merits of each proposal as permitted by the RFP in making its ultimate award determination. There is no evidence that the agency's award decision was based on the mechanical counting of strengths in each proposal as GLS alleges.

GLS next argues that USGS "employ[ed] undisclosed, newly developed subjective criteria" when it positively evaluated Burger's offered "approach to increase their understanding of the vessel's mission and crew operations in order to further enhance their design and construction of the Grayling." Id. The agency responds that the offered "ride-along" was demonstrated in Burger's proposal to be a practice that was successfully utilized on a recent/relevant project. Contracting Officer's Statement at 9. Thus, the agency explains, "[t]his practice – and the demonstrated successful implementation of this practice on its recent R/V build – enhances Burger's experience in terms of mission, knowledge of on-board systems (notably mission support systems), and design." Id. Consequently, the agency concludes (and the record shows) that this approach was evaluated favorably under the RFP's experience evaluation factor. Id. We find the agency's evaluation to be unobjectionable.

Agencies may properly evaluate a proposal based on considerations not expressly stated in the RFP where those considerations are reasonably and logically encompassed within the stated evaluation criteria and where there is a clear nexus between the stated and unstated criteria. Exelis Systems Corp., B-407111 et al., Nov. 13, 2012, 2012 CPD ¶ 340 at 18. Here, the agency positively evaluated Burger's experience conducting a ride-along on a prior recent and relevant project and, as an extension, Burger's offer to utilize the same approach in the construction of the R/V Grayling. While the forward-looking aspect of Burger's offer, i.e., to utilize on the instant project the same approach successfully implemented on a previous project, is not in itself experience (which looks to whether an offeror has performed similar work before), we find that this aspect of Burger's proposal was

logically encompassed within the stated experience evaluation factor. Further, we find a clear nexus between the evaluated prior experience successfully implementing this approach on a prior project with the agency's expectation that the evaluated experience would be utilized on the instant project.

Finally, GLS raises various concerns about the agency's evaluation of both its and Burger's technical proposals.⁴ The concerns raised by GLS generally question the agency's decision to award Burger the same overall technical capability rating as GLS given what GLS alleges to be Burger's lack of prior relevant experience and GLS's wealth of prior relevant experience. Protest at 3-4; Comments at 3-4. While we will not address each argument raised by GLS here, we have considered each argument and find they have no merit.⁵ We address GLS's primary argument below.

With respect to its own technical proposal, GLS argues that since 2007 it has built eight highly technical and sophisticated vessels all of which required detailed design, construction and testing equal to or significantly more technically demanding than the instant project. Protest at 3. Further, GLS asserts that two of the vessels were research vessels built to USGS specifications for the same mission to be performed by the R/V Grayling. Id. at 4. GLS states that these vessels were included in its technical proposal, but concludes they "were apparently not taken into consideration during the evaluation process." Id.

⁴ Because a protective order was not issued in connection with this protest, our discussion is necessarily general. Our Office was provided a complete copy of the AR for our in-camera review.

⁵ For example, GLS argues that Burger could not receive the same technical adjectival rating as it because Burger does not have the same quantity of relevant vessel construction experience as GLS. However, a review of the solicitation shows that the agency emphasized the quality, not quantity, of such experience. Further, in its comments on the agency report GLS makes various allegations concerning Burger's boat building capacity. We view these allegations as untimely since it appears that GLS was aware of the basis of its allegations when it filed its protest. Threat Management Group, B-407766.5, Mar. 28, 2013, 2013 CPD ¶ 84 at 5 n.3 (GAO's Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues). Further, as a determination that an offeror is capable of performing a contract is largely committed to contracting officer's discretion, our Office generally will not consider a protest challenging an affirmative determination of responsibility except under limited circumstances, which are not present here. 4 C.F.R. § 21.5(c); ESCO Marine, Inc., B-401438, Sept. 4, 2009, 2009 CPD ¶ 234 at 3.

A review of the record shows that the agency reasonably considered and evaluated the information presented in GLS' technical proposal. However, the concern expressed by the agency evaluators and the source selection authority was that GLS did not clearly demonstrate this experience within its proposal, particularly with respect to experience with on-board systems. AR, exh. 7, Source Selection – Price Reasonableness Determination at 42.⁶ For example, with respect to the two research vessels GLS built for the USGS the source selection authority recognized that “[t]hese R/V’s have the same mission and on-board system requirements as the Grayling.” Id. However, the agency’s concern was that GLS did not clearly demonstrate this experience within its technical proposal. Instead, GLS provided “a brief reiteration of the on-board systems listed in the subfactor” and broad statements of “recent experience in on-board systems and system integration similar to the Technical Specification requirements, followed by a listing of the systems exactly as presented in the evaluation factor. No specific examples were provided to demonstrate this experience.”⁷ Id.

GLS responds that the same contracting officer who is responsible for the instant procurement was also responsible for administering a contract for research vessels GLS previously built for the USGS, and that she is well aware of its performance under the prior contract. Comments at 3. GLS states, “[t]he CO and the USGS evaluation team have firsthand knowledge of our technical capabilities, including our past performance, quality assurance, trials and tests procedures, our facilities, and our personnel. . . .” Id. at 4.

It is the offeror’s burden to submit an adequately written proposal, including all information that was requested or necessary to demonstrate its capabilities in response to a solicitation. Palmetto GBA, LLC; CGS Administrators, LLC, B-407668 et al., Jan. 18, 2013, 2013 CPD ¶ 53 at 21-22; Wegco, Inc., B-405673.3, May 21, 2012, 2012 CPD ¶ 161 at 2. An offeror may not rely on its prior experience with an agency as a substitute for including required information in its proposal. See ASPEC Engineering, B-406423, May 22, 2012, 2012 CPD ¶ 176 at 3 n.5. Where the proposal omits or provides inadequate information addressing

⁶ The consensus evaluation for subfactor 2, vessel complexity, notes as a weakness, “1.2 Vessel Complexity: The proposal did not provide sufficient detail to determine if the level of complexity is comparable to the R/V Grayling requirements. USGS owns the R/V Kaho and R/V Muskie, and is aware of the similarity to vessel complexity, but information was not provided in the proposal.” AR, exh. 6a, Proposal Evaluation Worksheet, at 2.

⁷ The source selection authority also noted the same lack of demonstrated experience by GLS with respect to trials and testing similar to the requirement for the R/V Grayling.

fundamental evaluation factors, the offeror runs the risk of an adverse agency evaluation. Id.

A review of GLS' proposal confirms the conclusions reached by the evaluators and the source selection authority. We take no exception with the agency's conclusion that GLS failed to fully demonstrate its experience in some aspects of its technical proposal. The record shows that the agency recognized its institutional knowledge of GLS' experience on other projects for the USGS, but nonetheless assigned a weakness to GLS, particularly in the area of vessel complexity, for failing to demonstrate that experience in its technical proposal. See e.g., supra note 6. Our review of the firm's proposal affords us no basis to find the agency's evaluation unreasonable.

We have recognized that in certain limited circumstances, an agency has an obligation (as opposed to the discretion) to consider "outside information" bearing on the offeror's past performance when it is "too close at hand" to require offerors to shoulder the inequities that spring from an agency's failure to obtain and consider the information. See e.g., International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. This doctrine, however, is not intended to remedy an offeror's failure to include information in its proposal, FN Manufacturing LLC, B-407936 et al., Apr. 19, 2013, 2013 CPD ¶ 105 at 3, and the circumstances in those cases are not present here. Unlike a past performance evaluation where an offeror often must rely on the submission of information from third parties, here GLS was in control of what it included in its proposal and exercised its own judgment not to include details concerning its experience, particularly with respect to on-board systems. Thus, there was no inequity in the agency's decision to base its evaluation on GLS's proposal – as written – instead of supplementing it with the agency's understanding of the firm's experience under prior projects. Id.; L-3 Servs., Inc., B-406292, Apr. 2, 2012, 2012 CPD ¶ 170 at 12 n.10.

The protest is denied.

Susan A. Poling
General Counsel