



Decision

Matter of: Mike Kesler Enterprises

File: B-401633

Date: October 23, 2009

Mike Kesler for the protester.

Adam J. Hermann, Esq., Department of Agriculture, for the agency.

Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that protester's proposal for road reconditioning work did not provide sufficient detail regarding the accomplishment of the work and was therefore technically unacceptable.

DECISION

Mike Kesler Enterprises of Darlington, Idaho protests the award of a contract to Cook & Sons Construction, of White Bird, Idaho, under request for proposals (RFP) No. AG-0295-S-09-0016, issued by the Department of Agriculture, Forest Service, for the Crooked River Road surfacing project in the Nez Perce National Forest in Idaho. The protester argues that its proposal was unreasonably rejected as technically unacceptable.

We deny the protest.

The RFP, issued as a Small Business Historically Underutilized Business Zone (HUBZone) set-aside, contemplated the award of a fixed-price contract for road reconditioning, removal and reinstallation of open top cross drains, and supply and replacement of material and aggregate on approximately 6 miles of Crooked River Road.

The RFP stated that award would "be made to that offeror (1) whose proposal is technically acceptable and (2) whose technical/cost relationship is the most advantageous to the Government." RFP at 101. The equally weighted technical factors were past performance, production schedule, and experience and qualifications. RFP at 100-01. Offerors were advised that the content of their

technical proposals would be used to determine whether the proposals met the government's requirements, and that therefore "the technical proposal must present sufficient information to reflect a thorough understanding of the requirements and a detailed description of the techniques, procedures and program for achieving the objectives of the specifications/statement of work." RFP at 100. The solicitation also cautioned that "[a]ward may be made without further negotiations." RFP at 101.

An amendment, issued on June 17, added information to the specifications regarding a timber bridge on the haul route to the project site. It also requested additional technical proposal information from offerors detailing their plans to deliver aggregate and equipment to the site while adhering to the posted load limit on the timber bridge or, alternatively, to reinforce the bridge in a manner that allowed for delivery of the necessary materials without compromising the structural integrity of the bridge. In the event an offeror planned to reinforce the bridge, it was instructed to "include methods planned to reinforce the bridge" in their proposals. RFP amend. No. 1.

The Forest Service received eight proposals by the amended closing date of June 26. One proposal was eliminated from consideration because it lacked a HUBZone certification. The technical proposals for six of the offerors were found to be technically acceptable, while the technical proposal for Kesler was determined to be technically unacceptable. Specifically, while Kesler's proposal was rated acceptable under the past performance factor, it was rated unsatisfactory under the production schedule factor, and marginal under the experience and qualifications factor. Agency Report (AR), Tab 10, Source Selection Decision, at 4. The Forest Service found "serious problems and deficiencies" in Kesler's production schedule that the agency found indicated a lack of "full understanding of the project requirements," such that it may not be able to successfully perform the work as proposed. *Id.* at 5. The Forest Service also determined that although one member of its proposed crew was rated "good," the other information provided concerning the other crew members was minimal. *Id.*

Based on its evaluation of Kesler's proposal as technically unacceptable, the Forest Service excluded the protester's proposal from award consideration. The agency then selected the proposal of Cook and Sons Construction for award on the basis of initial proposals because its price was the lowest among the technically acceptable proposals. AR, Source Selection Decision, at 6. Kesler received a debriefing and this protest followed.

Kesler argues that the agency's evaluation of its technical proposal as unacceptable was unreasonable. In reviewing protests of alleged evaluations and source selections, our Office examines the record to determine whether the agency judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws. See *Abt Assocs., Inc.*, B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates

compliance with the solicitation and allows a meaningful review by the procuring agency. CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. In this regard, an offeror must affirmatively demonstrate the merits of its proposal and risks the rejection of its proposal if it fails to do so. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5. A protester's mere disagreement with the agency's evaluation provides no basis to question the reasonableness of the evaluators' judgments. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

Under the production schedule factor, the agency rated Kesler's proposal "unacceptable" in part because the agency determined that "the crew size and equipment [proposed by Kesler] were inadequate for the work required and the schedule was unrealistic." AR, Source Selection Document, at 5. In its proposal Kesler stated a time frame of "29 days to haul in aggregate," at a rate of "250/tons/day." AR, Tab 6, Kesler Proposal, at 16. In evaluating Kesler's technical proposal, the agency conducted a detailed analysis of the feasibility of the time frame proposed by the protester based on the equipment and personnel that the protester indicated in its proposal that would be devoted to the project, as well as the road length and road conditions along the haul route and through the project area. Contracting Officer's Statement at 22-23. Due to the lack of clear and consistent language in Kesler's technical proposal regarding its equipment, certain assumptions were made by the agency, for example, the agency's analysis was based on Kesler using the three "belly dumps" identified on its equipment list, none of which listed capacity information. The agency also had to assume that only belly dumps would be used by Kesler, as opposed to end dump trucks, since no end dump trucks were identified or described on the equipment list provided by Kesler, and Kesler's proposal did not indicate that end dump trucks would be purchased or rented.¹ While, as Kesler now argues in its protest, it may be that the hauling time could have been shortened dramatically if end dump trucks were used to create an aggregate stockpile, the agency assumed that Kesler was not going to create an aggregate stockpile because there was no mention of a stockpile in Kesler's proposal and, as stated above, the protester's equipment list included only belly dumps and no end dump trucks.² AR at 33.

¹ The belly dump is a truck pulling a trailer with a dump gate in the belly of the trailer that can be opened to dump its contents in a linear heap. A belly dump is capable of handling larger quantities than a standard dump truck, and of dumping the material quickly. Agency Submission (Oct. 14, 2009) at 1; Protester's Submission (Oct. 15, 2009) at 1, 3. An end dump truck is a truck with a heavy duty box that can be raised so that the load is discharged by gravity and dumped behind the truck. Agency Submission (Oct. 14, 2009) at 1; Protester's Submission (Oct. 15, 2009) at 3.

² The agency was also concerned about the size of Kesler's work crew in particular because the protester planned to work on another contract at some distance, using the same or similar crew. AR at 38.

We find that the agency's analysis of Kesler's proposal is supported by the record and is based on a fair reading of Kesler's proposal. For example, Kesler's proposal did not list any end dump trucks on its equipment list and its proposal made no mention of its intent to create an aggregate stockpile, despite the solicitation instructions to "[a]ddress who, what, where, when and how you plan to do the work, from beginning to end." RFP at 53. Kesler concedes that its proposal lacked information regarding its proposed method to haul the aggregate. The protester states that "I did not want to commit my company to stockpile material in case no land was available." Protester's Comments at 12. Thus, the protester stated that he would "do the project the most efficient method possible[.] Thus determining an exact method is unnecessary at this point." Protester's Supp. Comments at 5. As the agency points out, Kesler's decision to list its hauling rate, without describing in detail how it would achieve such a rate, was directly contrary to the express language of the RFP, which, as quoted above, required that the proposal include "sufficient information to reflect a thorough understanding of the requirements and a detailed description of the techniques, procedures and program for achieving the objectives of the specifications/statement of work."³ RFP at 100.

We are also not persuaded by the protester's attempt to justify its hauling rate by citing its performance on a contract that it performed in 2008 in the Clearwater National Forest. The contracting officer was personally familiar with the Clearwater project, and discussed Kesler's performance on that contract with the contracting officer for that project. The contracting officer determined that it was not reasonable to use the production rate that Kesler achieved on that Clearwater project, as a basis for comparison to the Crooked River project, given that the performance of work on the Clearwater project and the nature of the haul route were, in the contracting officer's opinion, logistically much less complex than the work to be done on the Crooked River project. Contracting Officer's Statement at 16. While the protester disagrees with this opinion, it has not shown it was unreasonable.

The agency also found that the lack of information in Kesler's proposal regarding its plan to reinforce the timber bridge made it impossible to determine if the plan would

³ The protester argues that rather than making assumptions regarding its proposal, that the contracting officer should have contacted him to "clear up all the confusion very quickly." Protester's Supp. Comments at 4. Where, as here, an RFP provides for award on the basis of initial proposals without discussions, an agency may make award without discussions, unless discussions are found to be necessary. Federal Acquisition Regulation (FAR) § 15.306(a)(3); Synectic Solutions, Inc., B-299086, Feb. 7, 2007, 2007 CPD ¶ 36 at 11. Since the agency concluded that six of the eight offerors were technically acceptable, it reasonably decided that no discussions were required.

function as required. In this regard, the only detail provided by the protester in its technical proposal was the following statement: “[w]e are going to reinforce the existing bridge by using large timbers and/or steel I beams as supports.” AR, Tab 6, Kesler’s Proposal, at 16. From this, the agency could not determine exactly how the protester planned to reinforce the bridge. Contracting Officer’s Statement at 20. In fact, during the evaluation of the protester’s bridge plan, each of the two evaluators envisioned Kesler reinforcing the bridge using different methods, given the limited description in Kesler’s proposal. Id. In light of the proposal instructions to include detailed information and methods planned for reinforcing the bridge, we find this agency evaluation judgment was reasonable.

The agency rated Kesler’s proposal as “marginal” under the experience and qualifications of the work crew factor. For this factor, the solicitation required offerors to “[i]dentify the proposed workers” and, “[f]or each, list relevant licenses, certifications and experience in the type of work to be done under the contract.” RFP at 54. The protester’s proposal listed only three of its five crew members and only identified one crew member, who the agency believed had good qualifications, as having a relevant license. For the other two crew members, Kesler did not list any specific relevant licenses, certifications or experience; rather, it listed only broad types of work with no specific examples of relevant experience. AR at 40; see AR, Tab 6, Kesler Proposal, at 18. Based on our review, the agency’s evaluation under this factor was reasonable.

In sum, we find that the agency reasonably evaluated Kesler’s proposal as technically unacceptable consistent with the stated evaluation criteria. For this reason, we agree with the agency that the protester’s proposal was reasonably excluded from the competition.⁴

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁴ Because Kesler’s unacceptable proposal was not eligible for award, we need not address the protester’s arguments concerning the evaluation of its proposed price and the reasonableness of the selection decision.