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Decision

Matter of: Orion Technology, Inc.

File: B-405077

Date: August 12, 2011

Jerome S. Gabig, Esq., Sirote & Permutt, PC, for the protester.
Robert T. Wu, Esq., Department of the Army, for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected proposal where offeror failed to furnish cost information expressly required by solicitation and necessary for cost evaluation described in solicitation.

DECISION

Orion Technology, Inc., of Huntsville, Alabama, protests the elimination of its proposal from consideration for award by the Department of the Army, Mission and Installation Contracting Command, under request for proposals (RFP) No. W9124J-11-R-0001 for support services at various Army installations.

We deny the protest.

BACKGROUND

On December 7, 2010, the agency issued the solicitation as a total small business set-aside for garrison augmentation support services at various Army installations located in the United States. RFP at 1, 2; Performance Work Statement (PWS) §§ 1, 5.2.1. The solicitation contemplated the award of multiple indefinite-delivery/indefinite-quantity contracts, each with a 12-month base period and four 1-year options. RFP §§ B2, at 3, M.1.2, at 95. Awards were to be made without discussions, although the agency reserved the right to conduct discussions if necessary. *Id.* § M.1.2, at 95. The solicitation described the basis for award as “the best value to the Government,” considering the following three evaluation factors: mission capability, past performance, and cost/price. *Id.* § M.1.1, at 95.

The mission capability evaluation factor included five subfactors. Id. § M.1.3.1, at 96. The first of those subfactors was described as follows:

Subfactor 1A - Response to Scenario: This is an individual task order scenario representing actual services that are required by the Government . . . at Fort Bliss, Texas. One task order will be awarded to one contractor to provide the required services.

Id. § L.4.2.4, at 85. In connection with this subfactor, offerors were to propose a technical approach to accomplish a set of requirements described in a task order scenario PWS that accompanied the solicitation. Id. In addition to proposing a technical approach for the task order scenario, offerors also were to submit a cost/price proposal specific to the task order scenario. Id. § L.4.4.6.1, at 92. The task order scenario cost/price proposal was to include costs and pricing for numerous contract line item numbers (CLINs) listed in a pricing schedule that accompanied the solicitation. Id. For the base period and the final option period individually, the pricing schedule included 3 fixed-price CLINs and 15 cost-type CLINs. Id. § J, attach. 8, at 1-7, 31-37. For the second and third option periods individually, the pricing schedule included 2 fixed-price CLINs and 15 cost-type CLINs. Id. at 9-29. For the base period and all of the option periods, one of the cost-type CLINs was for other direct costs (ODCs). Id. at 7, 15, 22, 29.

Offerors' task order scenario cost/price proposals also were to include detailed supporting information for the proposed costs and pricing. Id. § L.4.4.6.1.1(b), at 92. For example, offerors' proposals were to include a table that listed the following information for each paragraph of the PWS: the labor categories that would perform work connected with the PWS paragraph; the number of hours designated to the labor categories for the work; the offerors' direct labor rate for those labor categories; certain indirect costs for the work, such as fringe benefit and general and administrative (G&A) costs; and the total cost, with fee, for the work. Id. § L.4.4.6.1.2, at 93. With respect to ODCs, offerors were to provide ODC amounts "in total and as separate proposed amounts, and annotated as to the PWS paragraph the cost element supports." Id. With respect to subcontractor cost and pricing information, the solicitation provided as follows:

If a teaming partner does not want to reveal proprietary information to the prime offeror, the Government will accept a direct submission of the pricing spreadsheets from the teaming partner(s) It is . . . the responsibility of prime contractors to ensure their teaming partner's pricing proposal is submitted by the closing date/time. Proposals received that do not contain complete pricing for both the prime and all teaming partner(s) may not be considered for award.

Id. § L.4.4.6.1.1(d), at 93.

The solicitation provided that offerors' task order scenario cost/price proposals would be evaluated for cost realism. Id. § M.4.0, at 101. The solicitation further provided that offerors' proposed costs and prices would be evaluated for reasonableness using cost and price analysis techniques. Id. § M.1.1.2, at 95.

In connection with preparing a proposal in response to the solicitation, Orion teamed with eleven firms with the understanding that if Orion were awarded a contract, those firms would perform portions of the contract as subcontractors to Orion. See AR, Tab 7, Orion Proposal, Vol. I, at 3, 18-98. With respect to the task order scenario, Orion's proposal indicated that eight of Orion's team members would perform tasks required by the task order scenario PWS. Id., Vol. II, at 4-5. As required by the solicitation, Orion's task order scenario cost/pricing proposal included a table that listed the number of hours that Orion and Orion team member personnel were to work in connection with the various PWS paragraphs. Id. Vol. IV, Labor Cost Table. The table also listed the total cost, with fee, for the work. Id. For Orion personnel, the table disclosed the direct labor, fringe benefit, and G&A rates for each labor category. Id. For Orion team member personnel, however, the table included no direct labor, fringe benefit, or G&A rate information. Id.

The solicitation, as amended, established February 8 as the closing date for receipt of proposals. RFP amend. 3, at 1. On February 7, the agency received cost/price proposals from three Orion team members that were to perform tasks under the task order scenario PWS. Contracting Officer's Statement ¶ 8. All three cost/price proposals provided detailed supporting information, including direct labor, fringe benefit, and G&A rate information. AR, Tabs 8, 9, 10, Orion Team Member Cost/Price Proposals. On February 8, the agency received Orion's proposal. Contracting Officer's Statement ¶ 9. On February 16, the agency received two additional proposal packages from Orion. Id. ¶ 10. Because the packages arrived after the time set for receipt of proposals, the contracting officer returned the unopened packages to Orion as late. Id.

Based on an initial review of Orion's proposal, the agency determined that the proposal did not include required cost/pricing information for five Orion team members that were to perform tasks under the task order scenario PWS. Id. ¶ 11. From the initial review, the agency also determined that Orion's proposal did not include an allocation of ODCs to the task order scenario PWS CLINs, as required by the solicitation. Id.

By letter dated April 8, the agency informed Orion that the firm's proposal would not be considered for award for two reasons. AR, Tab 12, Orion Proposal Rejection Letter, at 1. The first reason was that Orion's proposal did not include cost/pricing information for five team members, and "[w]ithout these submissions, the proposed productive hours, labor mix, and direct labor rates cannot be verified and evaluated." Id. The letter noted that one team member for which cost/pricing information was missing was proposed to perform 20 percent of the requirement. Id. The second reason for elimination of the proposal was that it did not include the required

allocation of ODCs to the task order scenario PWS CLINs, and “[c]onsequently, your ODCs cannot be evaluated for cost realism.” Id.

By letter dated April 11, Orion filed a protest with the agency challenging the elimination of the firm’s proposal from the competition. AR, Tab 13, Agency-Level Protest. On April 27, the contracting officer denied the protest. AR, Tab 14, Agency-Level Protest Decision Letter. On May 5, Orion filed this protest with our Office.

DISCUSSION

Orion asserts that its proposal included sufficient information for the agency’s evaluation, and, therefore, the agency’s determination to eliminate the proposal from consideration for award was unreasonable.¹ Protest at 8. The agency responds that because certain information regarding Orion team member costs was not included in Orion’s proposal or submitted by the team members to the agency, as required by the solicitation, the agency could not evaluate the proposal for cost realism as contemplated by the solicitation’s evaluation scheme and the Federal Acquisition Regulation (FAR). Contracting Officer Statement ¶ 15, at 4-5. According to the agency, examples of missing but required and necessary information include the direct labor rates, indirect cost rates, and ODCs of five Orion team members that were to perform work under the task order scenario PWS. Id. at 5. The agency also asserts that the missing information precluded a determination as to whether Orion team member ODCs were included in Orion’s proposal. Id.

In its comments on the agency’s report, Orion argues that the agency could have evaluated the realism of Orion team member costs using information contained in Orion’s proposal. Comments at 6. As described above, the information regarding team member labor in the labor cost table of Orion’s cost/price proposal was limited to the number of hours to be performed under a given labor category for a PWS paragraph, and the total cost, with fee, for the work. AR, Tab 7, Orion Proposal, Vol. IV, Labor Cost Table. Orion contends that the agency could have derived Orion team member labor rates by dividing the number of hours by the total cost, with fee, and then used the derived rates for its cost realism analysis. Comments at 7.

In reviewing protests challenging allegedly improper evaluations, or, as here, the rejection of a proposal based on the agency’s evaluation, it is not our role to reevaluate proposals; rather, our Office examines the record to determine whether the agency’s judgment was reasonable, and in accordance with the solicitation criteria and applicable procurement statutes and regulations. Ira Wiesenfeld &

¹ Orion does not challenge the agency’s determination to reject as late the Orion proposal packages that the agency received after the time specified in the solicitation for receipt of proposals.

Assocs., B- 293632.3, June 21, 2004, 2004 CPD ¶ 132 at 2. A protester's mere disagreement with the agency's judgment does not establish that an evaluation, or rejection, was unreasonable. Id.

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-296945, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. Any proposal that fails to conform to material terms of the solicitation may be considered unacceptable and not form the basis for an award. Gordon R.A. Fishman, B-257634.3, Nov. 9, 1995, 95-2 CPD ¶ 217 at 2. Even where individual deficiencies may be susceptible to correction through discussions, the aggregate of many such deficiencies may preclude an agency from making an intelligent evaluation, and the agency is not required to give the offeror an opportunity to rewrite its proposal. Jack Faucett Assocs., B-253329, Sept. 7, 1993, 93-2 CPD ¶ 154 at 4, aff'd, Jack Faucett Assocs.-Recon., B-253329.2, Apr. 12, 1994, 94-1 CPD ¶ 250. Further, communications with offerors before the establishment of the competitive range "shall not be used to cure proposal deficiencies or material omissions, or materially alter the technical or cost elements of the proposal." FAR § 15.306(b)(2).

As discussed above, the solicitation here provided that offerors' task order scenario cost/price proposals would be evaluated for cost realism and that proposed costs would be evaluated for reasonableness using cost analysis techniques. RFP §§ M.1.1.2, M.4.0. The FAR describes cost analysis as follows:

Cost analysis is the review and evaluation of any separate cost elements and profit or fee in an offeror's or contractor's proposal, as needed to determine a fair and reasonable price or to determine cost realism, and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

FAR § 15.404-1(c)(1). With respect to cost realism analysis, the FAR provides as follows:

Cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal.

Id. § 15.404-1(d)(1). The FAR also provides that cost realism analyses "shall be performed on cost reimbursement contracts." Id. § 15.404-1(d)(2)

Although application of the methodology advocated by Orion would have permitted the agency to derive the fully loaded labor rates of the Orion team members for which cost information was missing, such methodology would not have permitted the agency to review the specific elements of the team members' costs to determine whether those elements were realistic or reasonable. For example, using Orion's methodology, the agency could not have derived the team members' direct labor rates or indirect costs, such as fringe benefit or G&A costs. Accordingly, application of Orion's methodology would not have permitted the agency to evaluate Orion's proposed costs as contemplated by the FAR. See FAR § 15.404-1(c)(2)(i)(A), (d)(1). Further, the informational deficiencies in Orion's proposal relate to specific and detailed cost evaluation criteria in the solicitation,² RFP §§ M.1.1.2, M.4.0, and the solicitation expressly cautioned offerors that failure to submit the information in question could result in the elimination of a proposal from consideration for award, id. § L.4.4.6.1.1(d). We therefore conclude that the agency reasonably excluded Orion's proposal from the competition.³ See Robotic Sys. Tech., B-278195.2, Jan. 7, 1998, 98-1 CPD ¶ 20 at 9-10; Jack Faucett Assocs., supra; see also FAR § 15.306(b)(2).

Orion alternatively argues that because Orion's overall cost/price was "higher than the average proposal received" by the agency, the realism of Orion's cost/price should have been evident to the agency. Comments at 4. This argument is unavailing because, as discussed above, regardless of whether Orion's overall cost/price was higher than the overall cost/price of the average proposal received, the incompleteness of Orion's cost/price proposal precluded an analysis of whether material elements of Orion's costs were realistic or reasonable.

² As noted above, one of the team members for which cost information was missing was to perform 20 percent of the requirement. AR, Tab 12, Orion Proposal Rejection Letter, at 1. The combined direct labor and indirect costs of the team members for which information was missing thus was not an insignificant portion of Orion's overall proposed cost. For this reason, the realism and reasonableness of the direct labor and indirect costs of the team members for which information was missing was a material evaluation consideration.

³ We note that the circumstances here differ substantively from those in Safeguard Servs., LLC, B-404901, June 28, 2011, 2011 CPD ¶ __, a decision cited by Orion. Specifically, in Safeguard, our Office found that an agency improperly rejected a protester's final proposal revision in connection with the failure of a subcontractor to timely submit its revised business proposal spreadsheets because the record demonstrated that the information contained in the subcontractor's late submission also was reflected in the protester's final proposal revision, which was timely received. Safeguard Servs., LLC, supra, at 5. Further, unlike here, the record in Safeguard showed that the subcontractor in question was to perform a very minimal portion of the requirement. Id.

Orion also asserts that the agency's rejection of the firm's proposal was unreasonable because the proposal provided information sufficient for the evaluation of price reasonableness. Protest at 8; Comments at 3, 5. The question of whether Orion's proposal included information sufficient for a price reasonableness analysis, however, is immaterial to the basis for the agency's rejection of Orion's proposal. As previously described, the vast majority of the task order scenario CLINs were cost-type CLINs. RFP § J, attach. 8, at 1-7, 31-37. In connection with those CLINs, the solicitation required offerors to provide supporting information so that the agency could evaluate the realism and reasonableness of the proposed costs. See id. § L.4.4.6. As discussed above, the record reflects both that Orion's proposal did not include certain required supporting information and that the omission of this information precluded the agency from evaluating the proposal as contemplated by the solicitation. Accordingly, Orion's argument that the agency had sufficient information to analyze the reasonableness of the firm's proposed pricing does not provide a basis to sustain the protest.⁴

Finally, Orion challenges the agency's determination that Orion's proposal failed to allocate ODCs to individual CLINs. Protest at 10-11; Comments at 13-17. Given our finding that the agency reasonably eliminated Orion's proposal because it did not include information that was both required by the solicitation and necessary for the evaluation described in the solicitation, we do not address this ground of protest.

The protest is denied.

Lynn H. Gibson
General Counsel

⁴ As separate grounds of protest, Orion contends that the contracting officer's decision to eliminate the firm's proposal from consideration for award was an abuse of discretion. Protest at 9; Comments at 9-12. Orion also argues that an offeror's failure to meet requirements set forth in section L of a solicitation is not a valid basis for an agency's rejection of a proposal. Protest at 3-5, 7; Comments at 1-2. We have reviewed all of Orion's arguments in support of these protest grounds, and none have merit. As discussed above, we find the basis for elimination of the proposal to be reasonable.