



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: MDV Nash Finch

File: B-409633; B-409633.2

Date: June 26, 2014

William Hashey for the protester.

R. Zenjiro Schaper, Esq., Defense Logistics Agency, for the agency.

Lois Hanshaw, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's exclusion of protester's proposal is denied where protester's proposal omitted the required capability assessment plan, and any response to the surge and sustainment requirements in the solicitation, which were required for the agency's evaluation.

DECISION

MDV Nash Finch (MDV), of Norfolk, Virginia, protests its exclusion from competition under request for proposals (RFP) No. SPM300-13-R-0047 issued by the Department of Defense (DoD) for garrison feeding. MDV argues that the agency erred in excluding its proposal from competition.

We deny the protest.

The solicitation, issued on April 15, 2013, sought a contractor to provide food, beverage, and non-food items for garrison feeding for DoD and non-DoD customers in the North Carolina region. RFP at 42. The RFP anticipated the award of an indefinite-delivery/indefinite-quantity (ID/IQ) contract for a base period of up to 24 months, followed by one 12-month and one 24-month option period. Id. The estimated contract value was \$125 million. Id. The RFP advised that the award would be made on a lowest-priced, technically-acceptable basis considering price, past performance, and the following technical factors: experience; quality control

and quality assurance procedures; food defense; and surge and sustainment.¹ Id. at 42, 121. The RFP expressly stated that “[a]ll non-price factors must be rated ‘acceptable’ in order for the entire proposal to be rated as acceptable and considered for award.” Id. at 121. The RFP further advised that the “[f]ailure to provide the information requested may cause an offeror’s proposal to be determined unacceptable and eliminated from further consideration for award.” Id. at 107-08 (emphasis in original).

As relevant here, the RFP advised that surge and sustainment requirements were critical to support DoD’s ability to conduct contingency operations. RFP amend. 1, at 3. Thus, offerors were required to submit a capability assessment plan for meeting these requirements. The RFP stated that the agency would evaluate the offeror’s plan, as well as previous surge and sustainment experience, in order to determine its ability to meet the increased quantity and or accelerated delivery requirements using production and or supplier base capabilities in support of DoD contingencies and/or emergency peacetime requirements. Id. at 8-9.

With regard to surge and sustainment, MDV did not provide a capability assessment plan or any response for the surge and sustainment factor. As a result, the agency rated the firm’s proposal unacceptable under the surge and sustainment factor. MDV’s proposal was also rated unacceptable under the experience factor, food defense factor, and past performance factor; and the price proposal was submitted in an unauthorized format and omitted required information. AR, Tab 18, Consolidated Panel Evaluation Report, at 1, 14; Tab 19, MDV Debriefing Letter.

On March 12, 2014, MDV received notification of its exclusion from the competition. The notice provided three reasons for exclusion, including that the proposal was unacceptable under the surge and sustainment factor because MDV failed to respond to the requirements. AR, Tab 19, MDV Debriefing Letter. MDV timely protested this decision to our Office.

MDV challenges the agency’s determination to exclude its proposal from the competition. Among other things, MDV protests the unacceptable rating assigned to its proposal for the surge and sustainment factor.

In reviewing a protest against an agency’s evaluation of proposals, our Office will examine the record to determine whether the agency’s judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. An offeror has the burden of submitting an adequately written proposal, including all information that was

¹ The RFP advised that the agency intended to make award without discussions. RFP at 104.

requested or necessary to demonstrate its capabilities in response to a solicitation. Great Lakes Towing Co. dba Great Lakes Shipyard, B-408210, June 26, 2013, 2013 CPD ¶ 151 at 6. Where a proposal omits or provides inadequate information addressing fundamental evaluation factors, the offeror runs the risk of an adverse agency evaluation. Id. at 6-7.

As noted above, the RFP required that each offeror provide a capability assessment plan and a response to the surge and sustainment factor.² MDV failed to provide the plan or response to the factor, and so the proposal was properly assessed an unacceptable rating. Because the RFP required that all non-price factors be acceptable for the proposal to be eligible for award, the agency properly excluded MDV from further competition.

MDV contends that its proposal should not have received an unacceptable rating under the surge and sustainment factor because the firm acknowledged the RFP amendment that incorporated the surge and sustainment requirements. However, the mere acknowledgement of a solicitation cannot be substituted for providing substantive responses required by the RFP concerning surge and sustainment. Accordingly, we find this argument unpersuasive.

MDV also contends that the agency should have held “communications” with the firm to allow it to correct the omission. However, where, as here, the RFP states that the agency intended to make award without discussions, the agency is not legally required to allow MDV to revise its proposal to include omitted sections.³ Tetra Tech Tesoro, Inc., B-403797, Dec. 14, 2010, 2011 CPD ¶ 7 at 6. Rather, the RFP advised that the failure to provide required information would preclude the offer from further consideration for award. The agency’s action in excluding MDV’s proposal from the competition was reasonable and consistent with the solicitation.

Finally, MDV challenges other evaluation findings (e.g., price and past performance), various solicitation requirements, and the adequacy of the debriefing. We need not address MDV’s challenges to other evaluation findings since, as noted

² The surge and sustainment requirements were material requirements.

³ Because the omissions were material, they could not be corrected through clarifications. Tetra Tech Tesoro, Inc., supra.

above, the unacceptable rating under the surge and sustainment factor renders the firm's proposal ineligible for award. MDV's other challenges either fail to state a basis of protest or are untimely.

We deny the protest.

Susan A. Poling
General Counsel