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Decision

Matter of: Mare Island Dry Dock, LLC

File: B-410821

Date: February 26, 2015

Theodore P. Watson, Esq., Nicole L. Carter, Esq., and Leanna Ajour, Esq., Watson & Associates, LLC, for the protester.
Kevin C. Dwyer, Esq., Ethan E. Marsh, Esq., and Charles L. Capito, Esq., Jenner & Block LLP, for Vigor Marine, LLC, an intervenor.
Andrew Ainsworth, Esq., Department of the Army, for the agency.
Matthew T. Crosby, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Allegation that agency unreasonably evaluated protester's proposal is denied where record reflects that proposal did not clearly provide information required by solicitation and that evaluation was otherwise reasonable and consistent with solicitation terms.

DECISION

Mare Island Dry Dock, LLC (MIDD), of Vallejo, California, protests the award of a contract to Vigor Marine, LLC, of Portland, Oregon, by the Department of the Army, Corps of Engineers, under request for proposals (RFP) No. W9127N-14-R-0029 for ship repair services. MIDD asserts that the agency's evaluation of its proposal was unreasonable.

We deny the protest.

BACKGROUND

The solicitation, issued on August 29, 2014, contemplated the award of a fixed-price, indefinite-delivery/indefinite-quantity contract with a 1-year period of performance. RFP at 3-7. Award was to be made to the offeror that submitted the lowest-priced, technically acceptable proposal. *Id.* at 230.

The solicitation established the following non-price evaluation factors: capabilities; recent relevant experience; safety; environmental compliance; and past performance. RFP at 230. The capabilities factor included two subfactors: pier and wet berth; and drydock. Id. The solicitation provided that a proposal would be deemed acceptable only if it was evaluated as meeting all of the minimum requirements specified under the evaluation factors and subfactors. See id. Additionally, the solicitation cautioned that “[p]roposals must set forth full, accurate and complete information as required by this RFP,” and that the “[a]bsence of information will be deemed as if no support for that criterion was provided.” Id. at 217. The solicitation also cautioned that the agency intended to make award without holding discussions. Id. at 230.

Under the pier and wet berth subfactor, the solicitation listed the following “[m]inimum requirements”:

- a. Low water level of 25 feet;
- b. 380 feet between fore and aft tie off kevels;
- c. 50’-0” x 16’-0” clear dock working area;
- d. Documented pounds per square foot load capability;
- e. 1200A, 480V AC, 3-phase, 60 cycle electrical service with GFCI and phase protection[.]

RFP at 231. Hence, under section (d) above, the solicitation required that proposals include “[d]ocumented pounds per square foot load capability” for the proposed pier and wet berth.

The agency received two proposals in response to the solicitation--one from MIDD, and one from Vigor. Contracting Officer’s Statement at 4. A technical evaluation board (TEB) convened and evaluated the proposals. As relevant here, the TEB found that MIDD’s proposal failed to include the “[d]ocumented pounds per square foot load capability” for MIDD’s proposed pier and wet berth. Agency Report (AR), Tab 4, MIDD Technical Proposal Evaluation, at 4-5, 7. Because, as stated above, this was a minimum requirement under the pier and wet berth subfactor, the TEB assigned a rating of unacceptable to MIDD’s proposal under that subfactor. Id. at 7.

After reviewing the TEB’s findings, the contracting officer, who also served as the source selection authority in this procurement, directed the contracting specialist to submit a clarification request to MIDD regarding whether the firm’s proposal included information documenting the pounds per square foot load capability of

MIDD's proposed pier and wet berth.¹ Contracting Officer's Statement at 6. Thereafter, the contracting specialist sent the following communication to MIDD:

This e-mail is a request for clarification per FAR [Federal Acquisition Regulation] 15.306(a). This e-mail **does not** constitute discussions per FAR 15.306(b).

[T]he subject RFP, Sub-factor 1 (Pier and Wet Berth) requests for Offerors to document pounds per square foot load capability. After reading through and evaluating [MIDD's] proposal, requested information could not be located for the wet berth pier. Please identify where in [the] proposal, the information can be found. Make reference to the applicable tab and/or appendix.

AR, Tab 9, Agency/MIDD Correspondence, at 2 (emphasis in original).

MIDD responded by providing a one-page "design memorandum" with the subject line "Berth bearing load capacity--Clarification of Appendix I quay wall plans and sections." AR, Tab 9, Agency/MIDD Correspondence, at 3. The memorandum described the construction of MIDD's pier and wet berth, including the extensive use of concrete. See id. The memorandum also provided the load capacity of MIDD's proposed pier and wet berth, as extrapolated from the "average shear capacity for asphalt concrete." Id. Although it generally referenced appendix I in the subject line, the memorandum did not identify any specific information in MIDD's proposal providing the pounds per square foot load capability of the proposed pier and wet berth. See id.

After reviewing MIDD's submission, the contracting specialist informed the firm as follows: "Unfortunately, what has been presented was not in the proposal submitted by [MIDD]; therefore, I cannot accept it." AR, Tab 9, Agency/MIDD Correspondence, at 4.

Following these communications, a source selection evaluation board (SSEB) prepared a report for the contracting officer. AR, Tab 7, SSEB Report. The report established the total evaluated price for MIDD's proposal as \$6,309,383 and the total evaluated price for Vigor's proposal as \$6,406,900. Id. at 1. However, the report designated MIDD's proposal as technically unacceptable based on the finding that it failed to meet the requirement for providing a pounds per square foot load capability under the pier and wet berth subfactor. Id. at 1, 7. Vigor's proposal, on the other hand, was designated as technically acceptable. Id. at 1.

¹ The contracting officer states this action was taken to "eliminate the possibility that the evaluators overlooked this information in [MIDD's] proposal." Contracting Officer's Statement at 6.

The contracting officer reviewed the evaluation record and agreed with the SSEB's determination that Vigor had submitted the lowest-priced, technically acceptable proposal. AR, Tab 8, Source Selection Decision Document, at 1, 8-9. Accordingly, the contracting officer selected Vigor for award. Id. at 9. After award was made, MIDD filed a protest with our Office.

DISCUSSION

MIDD asserts that the agency's determination that its proposal was unacceptable under the pier and wet berth subfactor was unreasonable, arguing that the agency failed to properly review a drawing in appendix I to the proposal. See Protest at 3-7; Comments at 2-3. According to MIDD, if the agency had adequately reviewed this drawing, it would have determined that the proposal met or exceeded the solicitation's requirements. See Protest at 3-7; Comments at 2-3. More particularly, MIDD argues that the drawing depicts the use of concrete in the firm's pier and wet berth and that concrete "is commonly understood in the commercial sector as providing a minimum of 400 psf [pounds per square foot] load capabilities." Protest at 5, 8; Comments at 2-3. Based on this, MIDD asserts that its proposal met or exceeded the solicitation's requirement for "[d]ocumented pounds per square foot load capability" of the pier and wet berth. For the reasons discussed below, we disagree.

It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. Int'l Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7; CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. A 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.

As stated above, the solicitation cautioned that "[p]roposals must set forth full, accurate and complete information as required by this RFP," and that the "[a]bsence of information will be deemed as if no support for that criterion was provided." RFP at 217. As also stated above, under the pier and wet berth subfactor, the solicitation expressly required that proposals include "[d]ocumented pounds per square foot load capability" of the proposed pier and wet berth. Id. at 231. The contracting officer explains that the solicitation included this requirement so the agency "could assess the contractor's knowledge of the load capability of its chosen pier and wet berth." Contracting Officer's Statement at 5. The contracting officer further explains that

this knowledge is particularly important to determine how to distribute the Agency's equipment when unloading at the contractor's pier. The Agency's equipment is heavy and could be damaged if the pier fails

because the weight of the equipment is not distributed properly in light of the load capability of the pier.

Contracting Officer's Statement at 5.

It is not apparent from our review of the record that MIDD's proposal presented the pounds per square foot load capability of the firm's proposed pier and wet berth. Further, in its protest and comments on the agency report, MIDD does not cite any specific proposal content that expressly provides the pounds per square foot load capability of the proposed pier and wet berth. Rather, MIDD in essence argues that the agency should have inferred the pounds per square foot load capability for the proposed pier and wet berth because the drawing in appendix I depicted the use of concrete in the pier and wet berth. However, the solicitation explicitly called for offerors to provide the pounds per square foot load capacity. MIDD's proposal failed to provide this information. We therefore find the challenged evaluation finding to be reasonable.

MIDD also alleges that the agency improperly failed to consider the information provided in the firm's response to the clarification request. Protest at 7-8; Comments at 4-6. Had the agency considered this information, MIDD argues, the firm's proposal would have been deemed acceptable under the pier and wet berth subfactor. Protest at 7-8; Comments at 4-6. Alternatively, MIDD argues that the agency should have opened discussions with the firm. Protest at 8-9; Comments at 6-7. We see no merit in these claims.

As discussed above, we find that the agency reasonably determined MIDD's proposal to be technically unacceptable on the basis that it did not include documentation of the pounds per square foot load capability of the proposed pier and wet berth. Had the agency considered the information in MIDD's clarification response and determined the proposal to be technically acceptable based on that information, the agency would have in effect opened discussions with MIDD. See FAR § 15.306(b)(2); Sletten Cos./Sletten Constr. Co., B-402422, Apr. 21, 2010, 2010 CPD ¶ 97 at 7; Battelle Mem'l Inst., B-299533, May 14, 2007, 2007 CPD ¶ 94 at 4. However, there generally is no obligation for an agency to conduct discussions where, as here, the solicitation specifically instructs offerors that award may be made on the basis of initial proposals. FAR § 15.306(a)(3); Colmek Sys. Eng'g, B-291931.2, July 9, 2003, 2003 CPD ¶ 123 at 7. Further, an agency is not precluded from making award on the basis of initial proposals merely because an unacceptable lower-priced offer might be made acceptable through discussions. Integration Techs. Group, Inc., B-274288.5, June 13, 1997, 97-1 CPD ¶ 214 at 6. Moreover, a contracting officer has broad discretion in deciding whether to hold discussions, id., and an agency's decision not to initiate discussions is a matter we generally will not review, Kiewit La. Co., B-403736, Oct. 14, 2010, 2010 CPD ¶ 243 at 3. Based on the record here, we see nothing to call into question the agency's decision not to engage in discussions.

Finally, MIDD alleges, without substantive elaboration, that the award was improper because the agency purportedly “set Vigor Marine’s proposed approach as the only approach that could satisfy the Agency’s requirements.” Protest at 10; Comments at 8. Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for protest. 4 C.F.R. § 21.1(c)(4), (f) (2014). This requirement contemplates that protesters will provide, at a minimum, either allegations or evidence sufficient for our Office to reasonably conclude that a violation of procurement statute or regulation has occurred. See View One, Inc., B-400346, July 30, 2008, 2008 CPD ¶ 142 at 3. Bare assertions that an award was improper, with neither evidence nor explanation of the protester’s theory regarding the alleged violation, are insufficient to satisfy this Office’s requirements. MIDD’s allegation fails to meet these threshold requirements, and we therefore will not further consider it.

The protest is denied.

Susan A. Poling
General Counsel