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Decision

Matter of: Wright Tool Company

File: B-420553

Date: July 20, 2022

James Y. Rayis, Esq., Giarmarco, Mullins & Horton, P.C., for the protester.
Wade L. Brown, Esq., and Russell W. Bottom, Esq., Department of the Army, for the agency.
Hannah G. Barnes, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably evaluated and rejected the protester's proposal as unacceptable where the proposal failed to satisfy a material term in the solicitation.

DECISION

Wright Tool Company, of Warren, Michigan, protests the rejection of its proposal and the award of a contract to Kipper Tool Company, of Gainesville, Georgia. Wright Tool challenges the rejection of its offer and award under request for proposals (RFP) No. W9098S21R0009, issued by the Department of the Army, Army Materiel Command, Army Contracting Command-Rock Island, for various types of tools for its metal working and machining shop set (MWMSS) shelters. Wright Tool contends that the agency improperly rejected its proposal.

We deny the protest.

BACKGROUND

The RFP, issued on April 20, 2021, under Federal Acquisition Regulation (FAR) parts 12 and 15 procedures, contemplates the award of a 5-year fixed-price indefinite-delivery, indefinite-quantity contract for the supply of various types of tools in support of the MWMSS program at the Rock Island Arsenal, Joint Manufacturing and Technology

Center.¹ Agency Report (AR), Tab 4, RFP at 3. Award was to be made based on the following criteria: (1) price analysis, in accordance with FAR section 15.404-1, where price analysis would be used to determine price reasonableness and whether the proposal reflected an understanding of the effort required; and (2) unbalanced pricing. *Id.* at 6. The RFP advised that the total evaluated price would be derived from a pricing matrix. *Id.*

The agency issued a total of six amendments, which extended the closing date of the solicitation, provided missing drawings, and answered solicitation questions. COS/MOL at 2-3. As relevant here, the sixth amendment extended the closing date to January 4, 2022, updated drawings, and stated the following: “In accordance with Note 3 of original solicitation Page 5, ‘Deliveries must begin within 90 days of issuance of a delivery order.’ Please indicate that your firm is able to meet this. If you are unable to meet this, what time frame is achievable?” *Id.* at 4.

Four offerors, including Kipper and Wright Tool, submitted proposals in response to the solicitation. COS/MOL at 5. The protester submitted its proposal via email and included the following statement:

Wright Tool Company, LLC would like to propose 150 day delivery on the first delivery order to account for supply chain disruptions. We do not see issues with any particular item in the tool-load, but we have had many unexpected shortages due to the global pandemic environment and we would caution that unexpected delays are commonplace. We will still strive to meet the 90 day delivery, but adding 60 days is a responsible decision in the current environment.

AR, Tab 29, WTC Revised Quote at 1.

The agency found that Kipper and another offeror had affirmed the ability to meet the solicitation’s delivery timeline, but that Wright Tool had taken exception to the timeline. COS/MOL at 5. The agency rejected the protester’s proposal, which had a total evaluated price of \$6,435,885, determined that Kipper had submitted the “lowest-priced responsive proposal,” and awarded the contract to Kipper at a price of \$7,459,550 on February 14. *Id.* That same day, the agency notified Wright Tool that its offer was unsuccessful. *Id.* at 6. This protest followed on February 22.

¹ The agency describes the metal working and machining shop set as an assemblage of machinist cutting, measuring, and welding equipment integrated into a mobile shelter. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 1. The various tools solicited by the agency consist of over 1,000 parts, to be placed in foam and later inserted into cabinets in the shelters, which would be deployed to sustain maintenance functions in the field. *Id.*

DISCUSSION

The protester argues that the agency unreasonably rejected its proposal, contending that it never repudiated the 90-day delivery timeline. As discussed below, we find that the agency reasonably rejected the protester's proposal because it failed to meet a material solicitation requirement.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals or substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. See *SDS Int'l, Inc.*, B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127 at 5-6. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *MVM, Inc.*, B-407779, B-407779.2, Feb. 21, 2013, 2013 CPD ¶ 76 at 6. Clearly stated solicitation requirements are material to the needs of the government, and a proposal that fails to conform to such material terms is unacceptable, and may not form the basis for award. *Leader Communications, Inc.*, B-413104.9, Mar. 17, 2017, 2017 CPD ¶ 96 at 5. A firm delivery or service commencement date set forth in a solicitation is a material requirement, precluding acceptance of any proposal not offering to meet that date. *SuccessTech Mgt. & Servs.*, B-294174, July 6, 2004, 2004 CPD ¶ 183 at 2. Further, an offeror has the responsibility to submit a well-written proposal with adequately detailed information that clearly demonstrates compliance with the solicitation requirements. *International Med. Corps*, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 8.

Wright Tool argues that its proposal never rejected the solicitation's 90-day delivery deadline, contending that its proposed 150-day delivery schedule was merely a suggestion that takes into account current market and industry realities. Protest at 3; Comments at 2-3. The protester also asserts that the solicitation, as amended, sought such an alternative to "an achievable, but inflexible deadline" which the protester "at no time and in no proper reading repudiated or rejected." Protest at 2.

The agency responds that it reasonably found the protester's proposal to be technically unacceptable because it failed to meet a material requirement of the solicitation. COS/MOL at 5. The agency argues that Wright Tool took exception to the solicitation's delivery deadline when it failed to affirmatively confirm that it would meet the timeline, stating only that it would "strive" to meet the delivery timeline, and instead proposed an alternate delivery timeline. *Id.* at 7. The agency also contends that to the extent the protester believed the amended solicitation's language was ambiguous, Wright Tool should have sought clarification or filed a protest prior to the closing time for submission of proposals. *Id.* at 8.

The protester does not dispute that the 90-day delivery requirement is unambiguous; rather, the protester responds that "Wright Tool has always taken on its face the absolute and unambiguous requirement of a 90-day delivery period from the first order

as originally provided.” Comments at 4. The protester maintains that its proposal essentially affirmed this timeline.² *Id.*

Based upon our review of the record, we find that the agency’s evaluation was reasonable. The protester agrees with the agency that the solicitation’s 90-day delivery requirement is “absolute and unambiguous.” Comments at 4. A firm delivery or service commencement date set forth in a solicitation is a material requirement, precluding acceptance of any proposal not offering to meet that date. *SuccessTech Mgt. & Servs., supra*. This clearly stated solicitation requirement is material. *See Leader Communications, Inc., supra*. The plain language of the solicitation required the protester to affirmatively state its ability to meet this material delivery requirement. AR, Tab 9, RFP amend. 6 at 2. We find persuasive the agency’s argument that the protester’s language indicates Wright Tool would attempt, or “strive,” to meet this deadline, but did not affirmatively commit to the requirement. COS/MOL at 7. Thus, we conclude that Wright Tool did not submit a sufficiently clear proposal demonstrating compliance with the solicitation, and that the agency’s rejection of Wright Tool’s proposal on that basis was reasonable. *See International Med. Corps, supra*.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

² To the extent that the protester argues the agency should have clarified the delivery timeline with Wright Tool after the protester submitted its proposal, we note that the RFP permitted, but did not require that the agency engage in clarifications. Comments at 3; RFP at 3. Further, we conclude that the failure to meet a material solicitation term constitutes more than a “minor or clerical error[],” as contemplated by FAR section 15.306. *See FAR 15.306(a)(2)*. As a result, we find that the agency’s decision to reject the protester’s proposal without first seeking “clarifications” is reasonable.