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Decision

Matter of: RKE Contractors

File: B-421465.3

Date: July 6, 2023

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Kimberly L. Cohen, Esq., Department of Homeland Security, for the agency.

Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably concluded that protester’s proposal failed to comply with the solicitation’s requirements; determined that the proposal was not among the most highly rated; and eliminated the proposal from further consideration.

DECISION

RKE Contractors, of Dexter, Missouri, protests the rejection of RKE’s proposal by the Department of Homeland Security, U.S. Customs and Border Protection (CBP), pursuant to request for proposals (RFP) No. 70B01C22R000001113, to provide border infrastructure and technology. Protest at 1.¹ RKE challenges the agency’s determination that RKE’s proposal failed to comply with the solicitation’s requirements.

We deny the protest.

BACKGROUND

On December 20, 2022, the agency issued the RFP, seeking proposals to provide border infrastructure and technology along the southern border of the United States.²

¹ Page number citations in this decision refer to the Adobe PDF page numbers in the referenced documents.

² More specifically, the solicitation stated that the agency “seeks to contract for design and construction of border infrastructure and border infrastructure technology

The solicitation stated that the agency intended to award several indefinite-delivery, indefinite-quantity (IDIQ) contracts³ under which task orders will subsequently be competed. The solicitation further provided that the procurement would be conducted in two phases; stated that, in phase one, each offeror must demonstrate an acceptable level of “specialized experience and technical competence”;⁴ and provided that “[o]nly the most highly qualified (rated) offerors from Phase I (up to 5 Offerors) will be invited to proceed into Phase Two.” AR, Tab 3, Initial RFP at 64-65.

Initial proposals were submitted on January 10, 2023. In evaluating those proposals, the agency found that “many offerors . . . failed to follow” the solicitation instructions. AR, Tab 1, Contracting Officer’s Statement at 1. Accordingly, the agency amended the solicitation, “underlining requirements . . . to emphasize the information that offerors needed to include in their proposals” and, thereafter, requested submission of revised proposals. *Id.*

As amended, the solicitation elaborated on the requirement that offerors demonstrate their experience, and the experience of their proposed key personnel, stating:

It is important to the Government that the Offeror have acceptable specialized experience and technical competence on design-build construction projects similar in nature to the SOW [statement of work]. To show the required specialized experience and technical competence, the offeror must propose Key Personnel^[5] who have the number of years of

requirements including border barriers, anti-climb features, enforcement zones, roads, gates, bridges, drainage control, cattle guards, lighting, detection systems, cameras, towers, and communication fiber.” Agency Report (AR), Tab 3, Initial RFP at 21.

³ The solicitation stated: “The Government intends to award up to four (4) Multiple Award Indefinite Delivery, Indefinite Quantity (MAIDIQ) contracts, unless CBP determines that awarding more than 4 would be in the best interest of the Government.” *Id.* at 64.

⁴ The solicitation also provided that, in phase one, each offeror must demonstrate its capability to comply with the solicitation’s bonding requirements. Compliance with the bonding requirements is not at issue in this protest and is not further discussed.

⁵ Of relevance here, the solicitation identified the proposed project manager as one of two key personnel.

relevant experience that meet or exceed the minimum requirements below. The Offeror is to provide Point(s) of Contact (Name/Address/Phone/Email address) that can be used by the Government to verify each work experience listed:

1. Project Manager: The Project Manager (PM) shall have a minimum 8-years of work experience specifically as a “Project Manager.” The work experiences must state the start and end dates as “Month/Year.” The work experiences Months/Years that overlap with other work experiences will not count toward the required 8 years of experience.^[6]

AR, Tab 5, RFP amend. 2 at 72.

The amended solicitation further provided that each offeror must submit a resume for its proposed project manager, stating that the resume: “must show” that the proposed manager met the work experience requirements described above, and must “state the Point of Contact for each work experience.” *Id.*

On January 24, the agency received revised proposals from **[redacted]** offerors, including RKE. RKE’s proposal included the resume for its proposed project manager and, under the heading “Relevant Project Experience/Technical Competence,” the resume listed several specific projects, identifying the start and end dates by month/year for each project, and providing the required point of contact information for each project. AR, Tab 8, RKE Revised Proposal at 108-110. However, the total period of time reflected in the listed projects was less than four and one-half years.⁷ *Id.*

Under the heading “Professional History,” the resume for RKE’s proposed project manager also stated: “Director of Preconstruction/Senior Project Manager,” preceded by the words “April 2014 to Date.” *Id.* at 108. In this regard, the resume further stated:

[The proposed project manager] is Director of Preconstruction and Senior Project Manager for RKE Contractors. In this capacity he

⁶ The solicitation also provided that the proposed project manager must have experience as a project manager on “at least two federal design-build projects similar in scope or complexity to projects under this IDIQ,” and on “at least 2 projects with each having a construction value of \$10 million, or more.” AR, Tab 5, RFP amend. 2 at 72.

⁷ The resume identified and described specific projects that were performed during the following periods: “February 2022 to Current”; “September 2021 to Current”; “May 2020 to December 2021”; and “May 2016 to November 2017.” AR, Tab 8, RKE Revised Proposal at 108-110.

oversees the Preconstruction activities undertaken by RKE as well as performing Project Management duties on certain RKE projects.

Id. (Underlining added.)

In evaluating RKE's proposal, the agency concluded that the proposal failed to meet the solicitation requirements regarding experience, and rated the proposal "unsatisfactory."⁸ On February 10, the agency notified RKE that its proposal had been eliminated from the competition and would not be further considered. AR, Tab 9, First Unsuccessful Offeror Notice.

On February 16, RKE filed a protest with our Office challenging the agency's evaluation of its proposal. On March 1, the agency stated that it would take corrective action by reevaluating RKE's proposal. Based on the pending corrective action, we dismissed that protest as academic. *RKE Contractors; Posillico Civil, Inc.*, B-421465.1, B-421465.2, Mar. 3, 2023 (unpublished decision).

Thereafter, the agency reevaluated RKE's proposal and, again, concluded that the proposal failed to demonstrate compliance with the solicitation's requirements. Specifically, the agency's technical evaluation team (TET) concluded that "The PM [project manager's] resume does not show that [he] has the minimum 8 years experience as a PM and did not provide a Point of Contact for some of the experience listed, as required by the RFP." AR, Tab 15, TET Report at 174. With regard to the specific projects for which RKE's proposal identified start and end dates and provided points of contact, the agency concluded "The total years/months experience, not overlapping, is 4 years, 5 months." *Id.* at 175. With regard to RKE's general assertion that the proposed project manager had served as RKE's "Director of Preconstruction/ Senior Project Manager" from "April 2014 to Date," the TET noted that, although the resume represented that he "perform[ed] Project Management duties on certain RKE projects" during this period, the resume did not: describe the nature of those projects; identify the number of months spent on each project; or identify points of contact for each project. *Id.*

Following the TET's reevaluation, the contracting officer reviewed the record; noted that **[redacted]** offerors had been rated as excellent with regard to the solicitation's experience requirements; agreed with the TET's determination that RKE's proposal failed to comply with those requirements; and concluded that RKE "[was] not [among] the most highly qualified, and will not be invited to

⁸ In evaluating phase one proposals, the agency assigned adjectival ratings of "excellent," "satisfactory," or "unsatisfactory," and defined a rating of unsatisfactory as "Contractor had one Key Personnel that did not meet the minimum requirements." AR, Tab 2, Source Selection Plan at 11.

participate in Phase Two.” AR, Tab 16, Contracting Officer’s Phase One Decision Memo at 179.

On March 21, the agency again notified RKE that its proposal failed to demonstrate compliance with the solicitation requirements and had been excluded from further consideration. AR, Tab 17, Second Unsuccessful Offeror Notice. This protest followed.

DISCUSSION

RKE asserts that the agency’s evaluation of its proposal was “unreasonable” because it “overlooked information in RKE’s proposal.”⁹ Protest at 11. More specifically, RKE complains that the agency “ignored” the statement in the resume of its proposed project manager that he had served as RKE’s “Director of Preconstruction/Senior Project Manager” from “April 2014 to Date.” RKE maintains that this general statement fulfilled the solicitation’s requirement that the proposed project manager demonstrate 8 years of experience as a project manager. *Id.* With regard to the solicitation requirement that the project manager’s resume must also “state the [p]oint of [c]ontact for each work experience,” RKE notes that the cover letter RKE submitted with its proposal contained the signature and contact information of an RKE vice president, maintaining that this met the solicitation’s requirements regarding points of contact. *Id.* at 15.

The agency first responds that it did, in fact, consider the representation in the proposed project manager’s resume that he had served as RKE’s “Director of Preconstruction/Senior Project Manager” from “April 2014 to Date,” noting that the resume’s description of those activities stated that, in addition to “oversee[ing] . . . Preconstruction activities,” he performed project management duties “on certain RKE projects.” See AR, Tab 8, RKE Revised Proposal at 108. The agency further notes that the resume provided no information regarding the nature of the “certain RKE projects” on which he purportedly “perform[ed] Project Management duties;” did not identify the number of months spent on each of these projects; and did not identify points of contact for each project. Accordingly, the agency states that it was unable to determine whether those projects were similar to the projects contemplated by this solicitation;¹⁰ was unable to establish the periods during which the proposed manager “perform[ed] Project Management

⁹ In its various protest submissions, RKE presents arguments that are variations of, or additions to, those specifically discussed below, including assertions that the agency should have conducted “limited exchanges” with RKE, and that the agency improperly “conflated” the solicitation’s experience requirements. We have considered all of RKE’s allegations and find no basis to sustain its protest.

¹⁰ As noted above, the solicitation stated: “It is important to the Government that the Offeror have acceptable specialized experience and technical competence on design-build construction projects similar in nature to the SOW.” AR, Tab 5, RFP amend. 2 at 72.

duties,” rather than “oversee[ing] . . . Preconstruction activities”;¹¹ and was unable to verify the prior performance with a point of contact.¹² AR, Tab 1, Contracting Officer’s Statement at 1-3.

In reviewing protests challenging an agency’s evaluation of proposals, our Office does not reevaluate proposals, but examines the record to determine whether the agency’s judgments were reasonable and in accordance with the stated evaluation criteria and applicable procurement laws and regulations. *Trandes Corp.*, B-411742 *et al.*, Oct. 13, 2015, 2015 CPD ¶ 317 at 6. In this context, an offeror has the burden of submitting a clearly written proposal, and where a proposal fails to clearly convey required information, the offeror runs the risk of an adverse agency evaluation. *G.A. Braun, Inc.*, B-413735, Dec. 21, 2016, 2016 CPD ¶ 374 at 5. Finally, a proposal that fails to conform to the material terms and conditions of a solicitation must be considered unacceptable and may not form the basis for award. *Distributed Sols., Inc.*, B-416394, Aug. 13, 2018, 2018 CPD ¶ 279 at 4.

Based on our review of the record here, we find no basis to question the agency’s conclusion that RKE’s proposal failed to comply with the solicitation’s requirements. As discussed above, the solicitation specifically required that an offeror submit a resume for its proposed project manager that showed at least 8 years of relevant experience as a project manager by identifying the start and end date, and providing points of contact, for each work experience. As also discussed above, the resume that RKE submitted for its proposed project manager listed work experiences that complied with these requirements for a total period of less than four and one-half years. Further, with regard to the general statement that the proposed project manager “perform[ed] [p]roject [m]anagement duties on certain RKE projects” from “April 2014 to Date,” the resume did not describe the nature of those projects; did not identify the number of months spent on each of those projects; and did not identify points of contact for each of those projects.¹³ On this record, we find no basis to question the agency’s determination that it was unable to: assess whether those projects were similar to the projects contemplated by this solicitation; calculate the periods of time that the proposed manager was “performing Project Management duties”; or verify the purported performance of those projects with a point of contact. Finally, as noted above, the solicitation provided that only the most highly qualified offerors would be invited to proceed to phase two of the

¹¹ The agency notes that a “Director of Preconstruction” has responsibilities “only for the first phase of a construction project.” AR, Tab 1, Contracting Officer’s Statement at 2.

¹² As noted above, the solicitation stated that the “the Point of Contact for each work experience” must be listed in the resume, elaborating that “[t]he Offeror is to provide Point(s) of Contact . . . that can be used by the Government to verify each work experience listed.” AR, Tab 5, RFP amend. 2 at 72.

¹³ As noted above, the solicitation specifically stated that the project manager’s resume must identify a point of contract “for each work experience”; accordingly, we reject RKE’s assertion that the signature of an RKE vice president on the cover letter that RKE submitted with its proposal met this requirement.

procurement. Based on our review of the record discussed above, we conclude that the agency reasonably determined that RKE's proposal was not among the most highly rated.

The protest is denied.

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General Counsel