



Decision

Matter of: Diversified Construction

File: B-415312

Date: November 21, 2017

Paul Adams, for the protester.
Colonel C. Taylor Smith, Christopher M. Judge, Esq., and Major Jeffrey A. Davis, Jr.,
Department of the Air Force, for the agency.
Charmaine A. Stevenson, Esq., and Laura Eyester, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably evaluated protester's proposal as technically unacceptable on the basis that the proposal did not adequately address the stated requirements.

DECISION

Diversified Construction, of Doha, Qatar, protests the award of a contract to Rahman Group, Inc., of Doha, Qatar, under request for proposals (RFP) No. FA5702-17-R-0011 issued by the Department of the Air Force for the renovation of building 5492, Desert Depot Warehouse, at Al-Udeid Air Base, Qatar. The protester contends that the agency unreasonably concluded that its proposal was technically unacceptable, and made an improper award to a higher-priced offer.

We deny the protest.¹

BACKGROUND

The RFP, issued on July 15, 2017, contemplated the award of a fixed-price indefinite-delivery, indefinite-quantity contract using Federal Acquisition Regulation (FAR) parts 13 (simplified acquisition procedures) and 15 (contracting by negotiation) to the lowest-priced, technically-acceptable offer. Agency Report (AR), Tab 4, RFP, at 53, 63. The

¹ Because a protective order was not issued in connection with this protest, our discussion is necessarily general.

RFP specifically advised: “Only those proposals determined to be technically acceptable, either initially or as a result of discussions, will be considered for award.... [T]he Government reserves the right to award this effort based on the initial proposal, as received, without discussions.” Id. at 64.

The RFP established the following evaluation factors: cost/price and technical. RFP at 63. To evaluate proposals under the technical factor, the RFP included as an attachment a technical evaluation template which provided the subfactors against which offers would be evaluated as acceptable or unacceptable. Id. at 63-64; see also AR, Tab 6, RFP attach. 6, Technical Evaluation Template. The technical evaluation template listed questions regarding whether the offeror had demonstrated technical capability for each of the following subfactors: general requirements; management; design; schedule, site/civil; structural; building services (mechanical); electrical; and communications. AR, Tab 6, RFP attach. 6, Technical Evaluation Template.

The RFP also included a statement of work (SOW) which, as relevant here, stated the following requirements:

4.2.1. The CONTRACTOR shall have at least one (1) qualified superintendent, or competent alternate, capable of reading, writing and conversing fluently in the English language, on the job-site at all times during the performance of contract work. The CONTRACTOR shall have at least one (1) qualified Quality Control (QC) and one (1) Safety Manager (SM). This can be the same person. The QC must have a minimum of 5 years of experience as a QC. The SM must have a minimum of 5 years of experience as a SM. Both the QC and SM must have fluent English communication skills.

4.2.2. The Project Superintendent must be familiar with the requirements of EM 385-1-1² and have [a] minimum five (5) years of experience in the areas of hazard identification and safety compliance.

AR, Tab 5, SOW at 17.

The management subfactor of the technical evaluation template included the following three of four evaluation questions:

² Department of the Army Corps of Engineers Manual No. 385-1-1 prescribes the safety and health requirements for all Corps of Engineers activities and operations, and is applicable to occupational exposure for missions under the command of the Chief of Engineers, whether accomplished by military, civilian, or contractor personnel. See http://www.publications.usace.army.mil/Portals/76/Publications/EngineerManuals/EM_385-1-1.pdf (last visited Nov. 15, 2017).

1. Does the technical proposal include evidence of the Project Superintendent's experience, qualifications, Commercial Licenses and number of projects [in accordance with] IAW SOW para 4.2.2?
2. Does the technical proposal include evidence of the Safety Manager's experience, qualifications, Commercial Licenses IAW SOW para 4.2.1?
3. Does the technical proposal include evidence of the Quality Control Manager's experience, qualifications, Commercial Licenses IAW SOW para 4.2.1?

AR, Tab 6, RFP attach. 6, Technical Evaluation Template, at 2. Diversified utilized the technical evaluation template to prepare its proposal by including the questions in the template in its proposal and then providing responses. In its proposal, Diversified provided a consolidated response to the above three questions as follows:

Mr. [NAME REDACTED] - P.E.E, Project Manager/Safety Manager
Mr. [NAME REDACTED] - P.E.E., Project Electrical Engineer/Safety Supervisor-MEP
Mr. [NAME REDACTED] - Project Mechanical Supervisor
Mr. [NAME REDACTED] - Project Civil Engineer/Safety Supervisor-Civil/Arch[itectural]/Struct[ural]

Please see attached the list of projects completed by this management group at Al Udeid Air Base [AUAB]. Almost 40 years combined experience on AUAB.

AR, Tab 9, Diversified Technical Proposal, at 8. The next four pages of the proposal provided a list of approximately 200 projects under the heading "PRIME CONTRACTOR PREVIOUS EXPERIENCE," and for each project identified the client name, location, project description, currency and original contract amount, and remarks indicating whether the contract had been completed, cancelled, or was ongoing.³ Id. at 9-12. In addition, the proposal included a certificate awarded to the proposed project manager/safety manager for successfully completing a "Managing Safely" course approved and validated by the Institution of Occupational Safety and Health in association with The Key Consultancy Limited, and two certificates presented to the proposed project electrical engineer/safety supervisor and the proposed project civil engineer/safety supervisor for successfully completing a "Risk Assessment" course by the Venture Gulf Training Centre. Id. at 13-15.

³ The proposal indicated that almost all of the projects had been completed. AR, Tab 9, Diversified Technical Proposal, at 9-12.

The agency received six timely proposals, ranked them from lowest to highest total price, and performed its technical evaluations beginning with the lowest-priced proposal. Contracting Officer Statement (COS) at 3. When the lowest-priced proposal was determined to be technically unacceptable, the next lowest-priced proposal was evaluated. Id. The four lowest-priced proposals, including the proposal submitted by Diversified, were evaluated and determined to be technically unacceptable. Id.

In its evaluation, the agency rated Diversified's proposal as unacceptable under multiple subfactors included in the technical evaluation template. AR, Tab 10, Technical Evaluation of Diversified Proposal. On September 6, 2017, Diversified was notified that it had not been selected for award. AR, Tab 11, Unsuccessful Offeror Notice to Diversified. Prior to providing Diversified with a written debriefing, the agency reevaluated the Diversified proposal and determined that some, but not all, of the areas in which the proposal had been rated unacceptable were in error, but that the proposal overall had nevertheless been properly rated unacceptable.⁴ AR, Tab 12, Email from 379th ECES to Contracting Officer dated Sept. 12, 2017. On September 14, the agency provided Diversified with a written debriefing, and this protest followed.

DISCUSSION

The protester argues that the agency awarded the contract to a higher-priced, less-experienced offeror, based on an incorrect assessment of Diversified's technical proposal. Protest at 2. More generally, the protester challenges each of the bases identified by the Air Force in its written debriefing for finding Diversified's proposal unacceptable. Id. Although we do not address all of Diversified's arguments, we have fully considered all of them and find that none provides a basis on which to sustain the protest.

The evaluation of proposals is primarily a matter within the agency's discretion, since the agency is responsible for defining its needs and identifying the best method for accommodating them. VSE Corp., B-414057.2, Jan. 30, 2017, 2017 CPD ¶ 44 at 8. In reviewing protests challenging an agency's evaluation of proposals, our Office will not reevaluate proposals, but rather will examine the record to determine whether the

⁴ The agency explains that it contracted with Oneida Total Integrated Enterprises (Oneida), a third party vendor that provided 65 percent design of the project, to assist in performing the technical evaluation. COS at 3. However, when preparing a written debriefing for Diversified, the contracting officer discovered some errors in the evaluation, and requested that the 379th Expeditionary Civil Engineer Squadron (ECES) review the evaluation completed by Oneida. Id. at 4. The results of the reevaluation performed by the 379th ECES concluded that Diversified had been improperly rated as unacceptable under some subfactors because the required information had been provided elsewhere in the proposal, but that the proposal had nevertheless been properly rated as unacceptable. AR, Tab 12, Email from 379th ECES to Contracting Officer dated Sept. 12, 2017, at 2.

agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement statutes and regulations. Id. A protester's disagreement with the agency's judgments is not sufficient to render the evaluation unreasonable. NCS/EML JV, LLC, B-412277 et al., Jan. 14, 2016, 2016 CPD ¶ 21 at 8. An offeror is responsible for demonstrating affirmatively the merits of its proposal and risks rejection of its proposal if it fails to do so. Energy Eng'g & Consulting Servs., LLC, B-407605, Jan. 15, 2013, 2013 CPD ¶ 33 at 5.

As set forth above, the management subfactor of the technical evaluation template informed offerors that the agency would evaluate whether the technical proposal included evidence of the project superintendent's experience, qualifications, commercial licenses and number of projects per SOW paragraph 4.2.2. AR, Tab 6, RFP attach. 6, Technical Evaluation Template, at 2. Paragraph 4.2.2 of the SOW required that the project superintendent to be familiar with EM 385-1-1 and have a minimum of five years of experience in hazard identification and safety compliance. AR, Tab 5, SOW, at 17. The technical evaluation template also informed offerors that the agency would evaluate the safety manager's and quality control manager's experience, qualifications, and commercial licenses per SOW paragraph 4.2.1. AR, Tab 6, RFP attach. 6, Technical Evaluation Template, at 2. Paragraph 4.2.1 of the SOW required that the quality control manager and safety manager have a minimum of 5 years of experience in quality control and safety management, respectively. AR, Tab 5, SOW, at 17.

The written debriefing provided to Diversified identified three reasons why the proposal was found to be technically unacceptable. With respect to the management subfactor, the debriefing stated that "licenses were not included for Project Superintendent and the Quality Control Manager."⁵ AR, Tab 13, Diversified Written Debriefing, at 1. Diversified argues that there is no license that could have been submitted with its proposal because no such license exists. Comments at 1; see also Protest, attach. 6, Email from Diversified to the Contracting Officer, dated Sept. 15, 2017, at 1 ("The State of Qatar does not issue a 'license' for individual companies['] project managers. We did include the list of over 200 projects completed on AUAB by our proposed management team, to demonstrate their competence.").

We find no merit to Diversified's argument that no license could be submitted with its proposal because no such license exists. The RFP did not require a license issued by the government of Qatar. To the contrary, the RFP explicitly stated: "Proposal must provide documentation of a Professional Engineer License for Electrical Engineering recognized by the United States' National Society for Professional Engineers or any other accredited engineering licensure that is recognized by the International

⁵ The debriefing also stated that "[p]lumbing was not addressed within your proposal concerning tasks to be completed," and that "[d]emolition procedures your firm was expecting for the interior of the building was not included." AR, Tab 13, Diversified Written Debriefing, at 1.

Professional Engineers Agreement (<http://www.ieagreements.org/agreements/ipea/>).” RFP at 60. The protester did not submit any such licenses in its proposal.

In addition, the agency concluded that Diversified addressed many of the requirements in a cursory manner that failed to meet the minimum solicitation requirements. Memorandum of Law (MOL) at 5; see also AR, Tab 12, Email from 379th ECES to Contracting Officer dated Sept. 12, 2017, at 2. For example, the agency explains that the proposal did not specify which individuals were to act as the project superintendent, quality control manager, and/or safety manager, and failed to demonstrate at least five years of experience in their respective areas of expertise for any of the individuals proposed. MOL at 5, 7; see also AR, Tab 10, Technical Evaluation of Diversified Proposal, at 1; Tab 12, Email from 379th ECES to Contracting Officer dated Sept. 12, 2017, at 2 (“We don’t know who occupies which position (is one of these a project manager, or the quality control manager?”).

Further, the agency argues that the proposal did not demonstrate that any of the proposed personnel were familiar with the requirements of the Army Corps of Engineers Manual No. 385-1-1, or had at least five years of experience in the areas of hazard identification and safety compliance. MOL at 4, 6; see also AR, Tab 10, Technical Evaluation of Diversified Proposal; Tab 12, Email from 379th ECES to Contracting Officer dated Sept. 12, 2017, at 2 (project supervisor’s experience and certifications were not provided). Additionally, the agency argues that the list of projects provided in the proposal only showed that Diversified performed the work; they did not indicate when the projects occurred, or whether any of its proposed personnel had in fact worked on the projects. MOL at 5.

We find reasonable the agency’s conclusion that the Diversified proposal was unacceptable because the experience and certifications for a project superintendent and quality control manager were not provided. See AR, Tab 12, Email from 379th ECES to Contracting Officer dated Sept. 12, 2017, at 2. Our review of the record confirms that the Diversified proposal did not identify which individual it proposed to perform as the project superintendent, safety manager, and quality control manager, and provided no detail to demonstrate that any of the proposed individuals had the required minimum five years of experience. Specifically, we note that nowhere in its response to the management subfactor does the proposal even mention a quality control manager.

In its comments, Diversified argues that “the exact same format and information [was] accepted in six (6) other contracts submitted to the same agency (379 ECONS) at the same time,” in response to solicitation requirements and a technical evaluation matrix that are exactly the same as the requirement in this procurement. Comments at 1. We find this argument unpersuasive. Our Office has recognized that it is not unusual for different evaluators, or groups of evaluators, to reach different conclusions and assign different scores or ratings when evaluating proposals, since both objective and subjective judgments are involved. See MILVETS Sys. Tech., Inc., B-409051.7,

B-409051.9, Jan. 29, 2016, 2016 CPD ¶ 53 at 7. That other evaluators within the same contracting activity have found the same proposal submitted by Diversified to be acceptable does not render the evaluation conclusions here unreasonable.

Finally, as noted, the RFP provided that only proposals determined to be technically acceptable would be considered for award. RFP at 64. Because we find that the agency reasonably concluded that Diversified's proposal was technically unacceptable under the management subfactor, we need not address the protester's remaining challenges to the agency's evaluation of its proposal under other technical subfactors, since its proposal would still be ineligible for award.

The protest is denied.

Susan A. Poling
General Counsel