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**United States Government Accountability Office
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Decision

Matter of: Clark/Caddell Joint Venture

File: B-402055

Date: January 7, 2010

Steven L. Reed, Esq., and Douglas P. Hibshman, Esq., Smith, Currie & Hancock, LLP, for the protester.

Susan L. Schor, Esq., and Laurence Schor, Esq., for B.L. Harbert International, Inc., an intervenor.

Charles L. Webster III, Esq., Department of the Army, Corps of Engineers, for the agency.

Linda C. Glass, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably concluded that protester's proposal was technically unacceptable under the performance capability evaluation factor where protester's proposal contained a conflict with regards to contract duration and the contract duration actually listed in the contractually binding schedule was considered to be unreasonably short and posed a high risk that the contract would not be completed successfully.

2. Protest that agency failed to provide meaningful discussions is denied where the protester was advised of the deficiency in its proposal and failed to respond to the agency's concerns.

DECISION

Clark/Caddell Joint Venture of Tampa, Florida, protests the award of a task order to B.L. Harbert (Harbert) International, Inc., of Birmingham, Alabama, under request for task order proposals (RFP) No. W9126G-08-D-0051/0052/0053, Task Order 0002, issued by the Army Corps of Engineers for the design and construction of a barracks complex and related structures, to include a parking garage, at Fort Bragg, North

Carolina.¹ The protester primarily challenges the agency's evaluation of its proposal as unacceptable under the performance capability evaluation factor.

We deny the protest.

BACKGROUND

The subject RFP is the second task order issued under a previously awarded multiple- award task order contract. On June 11, 2009, the RFP was issued to three of the multiple-award contractors, Clark/Caddell, Harbert, and Balfour Beatty Construction, LLC. The RFP contemplated the award of a fixed-price task order for the design and construction of the barracks. Under the RFP, proposals were to be evaluated for "best value" on the basis of the following evaluation factors listed in descending order of importance: "design technical," performance capability, and price. RFP at 4 and 5. The two non-price evaluation factors when combined, were equal to price.

As is relevant to the performance capability evaluation factor, offerors were required to complete the following under the contract line item (CLIN) schedule:

Contract Duration in Calendar Days After the Notice to Proceed is received.*

_____ **DAYS**

*Note: Contract duration for all work shall NOT exceed the duration specified in Section 00 73 10 SUPPLEMENTAL CONTRACT REQUIREMENTS. See Note No.11.

RFP at 1. Note 11 provided the following:

The Offeror shall propose a total integrated contract duration in number of calendar days after the Notice to Proceed (NTP) is received by the Contractor, whether via electronic means or hard copy, whichever is the earliest method of delivery. The total number of proposed calendar days for design and construction through completion, ready for turnover shall not exceed the number of calendar days specified in Section 00 73 10 **Supplemental Contract Requirement**. The proposed duration shall become the required contract duration.

¹ Although this was a task order competition, the agency adopted the nomenclature normally associated with formal negotiated procurements and, for purposes of this decision, we have used these terms in discussing the acquisition.

RFP at 2. As referenced by both quotations, section 00 73 10 of the RFP provided for a maximum contract duration of 690 calendar days including both design and construction. RFP, Supp. Contract Reqs., at 3.

In addition to the entry on the CLIN schedule, offerors were required to submit with their technical proposals a summary level schedule for integrated design and construction. The summary schedule was to be task oriented, indicating the number of calendar days, after notice to proceed, by which milestones would be achieved. The RFP further stated that the summary schedule should reflect the proposed contract duration. Offerors were advised that the proposed contract duration would become the contractually binding completion period and that the agency would evaluate the proposed contract duration for reasonableness. The RFP further advised that in assessing the reasonableness of the proposed contract duration, the agency could take into account how well the summary schedule supported the proposed duration. Offerors were warned that the agency would consider an unreasonably condensed contract duration as raising cost or schedule risk, which could be viewed as creating a risk of performance failure. The RFP also explained that such risk could be viewed as a significant weakness or a deficiency, depending, upon the evaluators' judgment. RFP at 15.

After receiving and reviewing proposals from all three of the solicited contractors, the agency decided that discussions were necessary and established a competitive range consisting of the proposals of Clark/Caddell and Harbert. As a result of the initial evaluation, the source selection evaluation board (SSEB) reached the following conclusions:

Factor	Harbert	Clark/Caddell
Design Technical	Acceptable	Good
Performance Capability	Marginal	Acceptable

Agency Report (AR), Tab 14, Source Selection Report, at 2.

Items for negotiations (IFNs) were sent to the protester and Harbert on September 2, 2009. The protester's original proposal identified a contract duration of 450 calendar days in its CLIN schedule. However, in its summary schedule included in its technical proposal, the protester indicated a contract duration of 671 calendar days. One of the IFNs issued to the protester asked the following question about its proposed contract duration:

On the CLIN schedule the offeror indicated project completion 450 days which conflicts with the information provided in Vol 2 Tab A1. Please confirm the correct number of days proposed for construction duration.

AR, Tab 16, IFNs to Clark/Caddell, at 9.

The agency acknowledges that its IFN referenced construction duration, rather than contract duration, but explains that the point was that the duration in the CLIN schedule did not match the duration indicated by the summary schedule. Contracting Officer's (CO) Statement at 8. The protester responded as follows:

Clark/Caddell's proposed schedule is intended to be in accordance with Solicitation section 00 73 10.1.2. 52.211-10 Commencement, Prosecution and Completion of Work.

In short: Design NTP anticipated within 14 calendar days after award

Construction NTP to be issued on January 31, 2010. February 1, 2010 is the first day of the 450 calendar day construction duration.

Installation of Turfing and Landscaping will occur in the first planting season after Substantial Completion and will have a 45 calendar day maintenance period for turfing and a 120 calendar day maintenance period for landscaping.

Id.

The protester's response did not satisfy the agency's concerns, consequently the source selection authority (SSA) decided to conduct a second round of discussions. On September 16, the following IFN was sent to the protester:

Duration indicated on CLIN schedule appears to be for construction duration only as opposed to contract duration as required. While the 450 calendar days indicated on the CLIN schedule matches the construction duration proposed in Vol 2 it does not match the overall contract duration from design NTP.

AR, Tab 19, IFN No. 4 to Clark/Caddell.

In response Clark/Caddell stated the following:

Clark/Caddell's proposal is revised to reflect a total duration for Design and Construction of 560 calendar days from Design NTP.

Id.

The agency reports that prior to receipt of the protester's response to the second round of IFNs, on September 18, the contract specialist spoke to a protester's representative and informed the protester that the duration entered in the CLIN should be the complete contract duration beginning from the notice to proceed to being off-site. The contract specialist also advised Clark/Caddell that the duration

entered in the CLIN schedule should match the duration set forth in the summary schedule. AR, Tab 17, Contract Specialist Declaration, at 3.

In its final proposal, the protester revised its CLIN schedule entry to reflect 560 calendar days but made no change to the summary schedule in its technical proposal, which reflected a contract of duration of 671 days. The agency states that because the contract duration entered in the CLIN schedule was binding, and because the protester had not provided any explanation or schedule which demonstrated how it could successfully perform the requirement in so short a period of time, the risk of unsuccessful performance was very high. As a result, the agency evaluated the protester's proposal as unacceptable under the performance capability evaluation factor. AR, Tab 21, Final Source Selection Report, at 4. The final evaluation ratings were as follows:

Factor	Harbert	Clark/Caddell
Design Technical	Good	Excellent
Performance Capability	Good	Unacceptable
Price	\$32,947,000	\$32,456,000

AR, Tab 22, Task Order Decision, at 3.

While the SSA recognized that Clark/Caddell's proposal was assessed as excellent under the design technical evaluation factor, he determined that the protester's unreasonably short and unsupported contract duration period, entered on the CLIN schedule, created a very high risk that the contract would not be successfully completed. Consequently, the SSA concluded that award to Harbert represented the best value to the government. Award was made to Harbert on September 28. The protester was given a debriefing and this protest followed.

DISCUSSION

Performance Capability Evaluation

Clark/Caddell challenges the agency's evaluation of its proposal under the performance capability evaluation factor. The protester argues that its proposed contract duration and its design and construction schedule were consistent with the requirements of the RFP. The protester maintains that the agency failed to evaluate its proposed schedules in their entirety.

The evaluation of technical proposals is a matter within the discretion of the contracting agency. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 5. In reviewing an agency's evaluation, we will not reevaluate technical proposals; instead, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria. MAR, Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367 at 4. An offeror's mere disagreement

with the agency's evaluation does not render the evaluation unreasonable. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18.

As previously stated, the RFP clearly required offerors to enter a contract duration period in the CLIN schedule, specifically stated that the contract duration period entered would be binding, and advised that the agency would evaluate the proposed contract duration for reasonableness. The RFP also had a requirement for a summary schedule for the design and construction of the project and provided that the agency would evaluate to see how well the proposed summary schedule supported the proposed CLIN duration.

The record shows that after two rounds of written discussions, and oral advice from the contract specialist, the protester entered a contract duration of 560 days on its CLIN schedule. The agency's evaluation of the protester's proposed schedule not only noted that this was inconsistent with the longer contract duration in the summary schedule contained in the technical proposal, but concluded that 560 calendar days was an unreasonably short schedule and posed a high risk of unsuccessful performance. Moreover, the agency found the duration of 560 days to be unsupported by the technical proposal and not reflective of an understanding of the RFP requirements.

The protester maintains that had the agency reviewed its proposal in the entirety, rather than conducting a piecemeal review, it would have recognized that Clark/Caddell proposed to perform all contract work within 671 days.

We find nothing improper about the agency's evaluation here. As explained above, the RFP specifically stated that the contract duration entered in the CLIN schedule would be evaluated for reasonableness. The protester's proposed 560-day contract duration (entered, as required in the CLIN schedule), was reasonably found to be too short, and inexplicably inconsistent with the 671 days identified in the summary schedule provided in its technical proposal. Even examining the entire proposal, as the protester suggests, there was a conflict between the two schedules that the agency--on three occasions--suggested the protester correct. On this record, we think the agency reasonably found the protester's proposal to be unacceptable under the performance capability evaluation factor.

Meaningful Discussions

Clark/Caddell also argues that the agency failed to engage in meaningful discussions regarding the performance capability evaluation factor issue in that the agency asked misleading questions and failed to provide meaningful responses. Specifically, the protester contends that the agency did not provide meaningful guidance to remedy the purported discrepancy between the protester's CLIN schedule and its summary schedule.

Discussions, when conducted, must be meaningful; that is, discussions may not mislead offerors and must identify deficiencies and significant weaknesses in each offeror's proposal that could reasonably be addressed in a manner to materially enhance the offeror's potential for receiving award. PAI Corp., B-298349, Aug. 18, 2006, 2006 CPD ¶ 124 at 8. Agencies are not required to "spoon-feed" an offeror during discussions; agencies need only lead offerors into the areas of their proposals that require amplification. LaBarge Elecs., B-266210, Feb. 9, 1996, 96-1 CPD ¶ 58 at 6.

As a preliminary matter, we recognize that the first IFN erroneously directed Clark/Caddel to confirm the correct number of days proposed for construction duration, as opposed to contract duration. On the other hand, the words of the schedule were clear, *i.e.*, the CLIN entry (identified in the discussion question) was preceded by the words "Contract Duration in Calendar Days After the Notice to Proceed is received." RFP at 1.

That said, we think that by holding two rounds of discussions, the agency guidance was ultimately sufficient to put the protester on notice that the agency wanted the CLIN schedule to include the total contract duration. As discussed above, the agency's concerns that the protester's summary schedule in its technical proposal for contract duration was different from the enforceable contract duration listed in the CLIN schedule was reasonable, especially given the liquidated damages provisions of the RFP.²

Furthermore, we note evidence in the record that suggests the protester understood the agency's concerns. In a declaration submitted by a representative of Clark/Caddell describing his conversation with the contract specialist on September 18, the representative stated that he asked the contract specialist "how Clark/Caddell could commit to a fixed duration when Clark/Caddell had no control over the actions of others." Clark/Caddell Response to Agency Dismissal Request, Nov. 2, 2009, Exh. 10, at 2. The Clark/Caddell official explained that his "was an attempt to get [the contract specialist] to understand that the longest fixed duration in the solicitation is the 450-day duration for construction, which would be the only reasonable and enforceable entry on the CLIN Schedule." *Id.* Thus, it appears that the protester was concerned about being bound to an overall contract duration period as opposed to the construction duration period.

² The RFP contained the Federal Acquisition Regulation (FAR) liquidated damages provision for construction which provide, among other things, that if a contractor fails to complete work within the time specified in the contract, the contractor shall pay liquidated damages in the amount of \$5,000.00 to the government for each calendar day of delay until site work is completed or accepted. RFP at 4.

In conclusion, we see no support for the protester's arguments that the discussions here were misleading.

The protest is denied.

Lynn H. Gibson
Acting General Counsel