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Decision

Matter of: AAR Airlift Group, Inc.

File: B-412789.2; B-412790.2

Date: June 2, 2016

Joel Singer, Esq., Kyle J. Fiet, Esq., and Patrick K. O’Keefe, Esq., Sidley Austin LLP, for the protester.

David M. Nadler, Esq., and Stephanie Zechmann, Esq., Blank Rome LLP, for Erickson Incorporated, the intervenor.

Cynthia R. Martin, Esq., Department of the Navy, for the agency.

K. Nicole Willems, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that contracting agency unreasonably evaluated proposals--that were in line for award ahead of protester’s proposal--as technically acceptable is denied where the record shows that the evaluation was reasonable and consistent with the solicitation’s stated evaluation criteria.

2. Protest that discussions were not meaningful with regard to the protester’s proposed price, which was higher than the prices of the other competitors, is denied where the agency never considered the protester’s price to be excessive or unreasonably high.

DECISION

AAR Airlift Group, Inc., of Palm Bay, Florida, protests the award of contracts to Erickson Inc., of McMinnville, Oregon, under request for proposals (RFP) No. N62387-15-R-8008 (-8008) and RFP No. N62387-15-R-8009 (-8009), issued by the Department of the Navy, Military Sealift Command, for ship-based and/or shore-based vertical replenishment services. AAR, the incumbent contractor for these

services, challenges the agency's evaluation of technical proposals and argues that the agency failed to engage in meaningful discussions with it regarding price.¹

We deny the protest in part and dismiss it in part.

BACKGROUND

The agency issued the RFPs on April 9, 2015, seeking detachments (each consisting of two commercial aviation helicopters, five pilots, and three maintenance personnel) to provide ship-based and/or shore-based vertical replenishment services.² RFPs § C-2.1. Each RFP provided for award on a lowest-priced, technically-acceptable basis for a one-year base period with four one-year option periods. Proposals were to be evaluated based on the following factors: (1) technical; (2) past performance; and (3) price. RFPs § M-2. Both solicitations sought medium-lift helicopters for the base year, transitioning to heavy-lift helicopters in later years; the heavy-lift helicopters could be sought as early as the first option period for RFP-8008, and the second option period for RFP-8009.³ AR at 2.

Under the technical factor, the RFPs established that proposals would be evaluated to determine whether offerors met the minimum aircraft equipment specifications and capability requirements, minimum certification requirements, and contract performance plan requirements. RFPs, at § M-2.2. The RFPs also established that proposals would be evaluated to determine whether offerors complied with the solicitation requirements. RFPs, at § M-2.5. This included compliance with all of the instructions, conditions, and notices to offerors, as well as all stated terms, conditions, representations, certifications, and other information required by section L of the RFPs.⁴ Id.

¹ AAR is currently the incumbent contractor under a single contract that encompasses the services to be provided under both of the solicitations at issue in this protest. Protest at 4.

² The agency intends to deploy the detachments worldwide for an extensive period of time and assign them to Combat Logistics Force ships to meet the operational requirements of the Navy's 5th and 7th fleets. AR at 1.

³ The agency has represented that the two RFPs are identical except for the option year in which the heavy-lift helicopters might first be required. Agency Report (AR) at 1.

⁴ The RFPs also provided that the agency could waive informalities and minor irregularities. RFPs, at § M.2.5.

In this regard, section L-3.2.1 identified a list of certifications and relevant documentation that an offeror was required to provide “showing that it meets the requirements” of sections C-4.4 and C-4.5. Section C-4.4 of the RFPs detailed the minimum aircraft capabilities for both the medium lift and heavy lift aircraft called for by the solicitation. RFP §§ C-4.4.6 (medium lift helicopter) and C-4.4.7 (heavy lift helicopter). Section C-4.5 established minimum aircraft specifications for all proposed aircraft. RFP at § C-4.5.

Regarding price, proposals were to be evaluated to determine whether an offeror’s proposed price was fair and reasonable. RFP at § M-2.4. The RFPs also provided that the agency would determine whether proposed prices were materially unbalanced. Id. Materially unbalanced offers would be ineligible for award. Id.

The agency received four proposals in response to each solicitation, including one from Erickson, two from Air Center Helicopters, Inc. (ACHI), and one from AAR. After reviewing the proposals, the agency established a competitive range that included all four. AR at 2. The agency issued separate written discussion questions to the offerors under each RFP, and, subsequently, all offerors submitted revised final proposals. Id. The agency evaluated revised final proposals and found that all the proposals were technically acceptable. Id. AAR had the highest-priced proposal under each of the solicitations. Id. This table shows the results of the evaluation of proposals under solicitation -8008:

Offeror	Technical Rating	Past Performance	Price
Erickson	Acceptable	Acceptable	\$36,634,581
ACHI (submission one)	Acceptable	Acceptable	\$55,028,722
ACHI (submission two)	Acceptable	Acceptable	\$50,152,895
AAR	Acceptable	Acceptable	\$60,301,046

AR, Tab K, Price Evaluation Report at 14.

This table shows the results of the evaluation of proposals under solicitation -8009:

Offeror	Technical Rating	Past Performance	Price
Erickson	Acceptable	Acceptable	\$32,550,667
ACHI (submission one)	Acceptable	Acceptable	\$40,837,235
ACHI (submission two)	Acceptable	Acceptable	\$50,490,307
AAR	Acceptable	Acceptable	\$59,383,184

AR, Tab M, Source Selection Decision, at 5; Protest at 8.

The agency notified the protester on February 12, that it had made award to Erickson, the lowest-priced, technically-acceptable offeror under each solicitation.

The agency provided AAR with a debriefing on February 22. Protest at 2. This protest followed on February 26.

DISCUSSION

AAR challenges the agency's evaluation of Erickson's technical proposal, past performance, and price. AAR also challenges the agency's evaluation of ACHI's proposals, both of which are in line for award ahead of its proposal. In addition, the protester argues that the agency failed to engage in meaningful discussions regarding its proposed price. Because AAR was the highest-priced offeror and is currently fourth in line for award, AAR must prevail in its challenge to the agency's evaluation of both of ACHI's proposals, or its argument regarding discussions, in order to qualify as an interested party with respect to its protest grounds pertaining to Erickson's proposal. Here, as explained below, the record does not support a finding that the agency's evaluation of ACHI's proposals was unreasonable or that the agency discussions with AAR were inadequate. As such, AAR is not an interested party with regard to its challenges to the evaluations of Erickson's proposal.

ACHI's Proposals

As discussed above, ACHI submitted two proposals (submission one and submission two) under each RFP.⁵ In its initial evaluation, the agency identified fifteen instances in each of ACHI's proposals where ACHI failed to demonstrate that its proposed equipment met the solicitations' requirements, and concluded that, based on its findings, both of ACHI's proposals were unacceptable. AR, Tab J, Agency Technical Evaluation Report, at 2-5. The agency subsequently issued discussion questions to ACHI, asking ACHI to "provide documentation" addressing the unacceptable aspects of its proposals.⁶ See AR, Tab R, ACHI Discussion

⁵ In submission two, ACHI proposed the same medium-lift and heavy-lift helicopters as AAR and Erickson--the [DELETED] medium-lift helicopter and the [DELETED] heavy-lift helicopter. AR at 4-5. In submission one, ACHI proposed the same medium-lift helicopters as AAR and Erickson, but proposed the [DELETED] helicopter to satisfy the heavy-lift requirements. Id.

⁶ For two of the questions, the agency did not include the generic directive that ACHI "provide documentation." Those questions concerned requirements for electronic copies of documentation specifically requested by § L-3.2.1, and the agency was specific as to what information or documentation ACHI was expected to provide. ACHI Discussion Questions and Responses for Submission Two, at 2. In response to these questions, ACHI indicated that it had provided the information on a compact disc, which accompanied its proposal, but speculated that the disc had not been made available to the evaluators. Nonetheless, ACHI provided another electronic copy of the required documents in response to the discussions.

Questions and Responses for Submission One; and AR, Tab S, ACHI Discussion Questions and Responses for Submission Two. ACHI provided a response to each question and the contents of the responses varied. In some instances, ACHI's responses were accompanied by diagrams, photographs, charts, and other information, while, in other instances, ACHI simply provided explanations as to how its proposed equipment satisfied the requirements. After discussions were complete, the agency evaluated final proposals, which included ACHI's responses to the discussion items, and found both of ACHI's proposals acceptable. AR, Tab C, Contracting Officer's Statement, at 3; Tab J, Agency Technical Evaluation Report, at 103.

AAR argues that the discussion responses provided by ACHI were not sufficient to meet the documentation requirements of the RFPs and, as a result, both of ACHI's proposals should have been rejected as technically unacceptable. The protester contends in this regard that section L-3.2.1 required offerors to provide documentation showing that their proposed aircraft met the solicitation's equipment specifications and minimum capability requirements, and that the types of explanations and supporting information provided by ACHI in its discussion responses did not properly constitute "documentation" in that context.

It is not the function of our Office to review proposals *de novo*. In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Jacobs Technology, Inc., B-411784, B-411784.2, October 21, 2015, 2015 CPD ¶ 342 at 6-7. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id. Where the reasonableness of the evaluation turns on the agency's interpretation of a solicitation provision, the agency's interpretation of the provision must be consistent with the solicitation when read as a whole and in a reasonable manner. Solec Corp., B-299266, March 5, 2007, 2007 CPD ¶ 42 at 2.

Here, when read as a whole and in a reasonable manner, the plain language of the solicitation supports a finding that the agency reasonably interpreted the RFP's requirements pertaining to documentation as encompassing statements and other explanations showing compliance. The solicitation clearly requires offerors to provide a list of documents, specified in section L-3.2.1 of the RFP, to show that the offered equipment meets the requirements of the solicitation. The record reflects that ACHI satisfied that requirement with regard to both of its proposals. The solicitation also anticipates that additional documentation may be needed, although it does not establish affirmative requirements for specific documents or define what constitutes documentation in that context. Similarly, the discussion items did not specify the documents or types of documents ACHI was expected to provide. As such, the agency's willingness to accept explanations and other information as sufficient documentation in response to discussion questions is not inconsistent with

the requirements of the solicitations, because, in this regard, the type of required documentation was not specified.

Further, the documentation of the TET's initial evaluation illustrates that, in many cases, the TET based its finding of acceptability on whether a proposal included a statement that the offeror's proposed aircraft satisfied the requirements. For example, in its initial evaluation of ACHI's submission two, the TET determined that ACHI's proposal was unacceptable with regard to the requirement that offerors show that proposed aircraft are capable of performing scheduled missions for at least ten continuous flight hours between each scheduled maintenance and inspection interval. AR, Tab J, Technical Evaluation Report, at 39. In particular, the TET noted that the "proposal does not state" that the proposed aircraft meet this requirement. Id. During discussions, the agency requested that ACHI provide documentation showing that its proposed aircraft would meet the requirement. AR, Tab S, ACHI Discussion Questions and Responses for Submission Two, at 6. ACHI provided the following response:

[DELETED]

Id.

Based on ACHI's response, the TET concluded that, because the "proposal states" that the aircraft can perform missions for ten continuous hours, ACHI's submission two proposal was rendered acceptable with regard to that requirement. AR, Tab J, Technical Evaluation Report, at 134. While AAR contends that the agency should not have been satisfied with ACHI's response, the record shows that, during its initial evaluation, the TET similarly concluded that AAR satisfied the above requirement based on a statement in AAR's proposal that no special inspections were required that would preclude it from performing its assigned missions for a minimum of ten continuous flight hours.⁷ Id. at 62.

In sum, we have no basis to conclude that the agency's interpretation of the solicitation, or its evaluation of ACHI's proposals, was unreasonable.

⁷ The relevant portion of AAR's proposal was found in a summary table that addressed the detachment aircraft requirements in section 4.0 of the RFP. This was provided by AAR in addition to the data required by section L-3.2.1 of the RFP. AR, Tab G, AAR's Proposal, at 7-8.

Discussions

AAR next argues that the agency failed to conduct meaningful discussions by failing to inform it that its price was higher than other offerors' prices and the independent government estimate (IGE). We disagree and find no basis to conclude that the agency failed to conduct meaningful discussions with AAR.

When an agency engages in discussions with an offeror, the discussions must be "meaningful," that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision. Southeastern Kidney Council, B-412538, March 17, 2016, 2016 CPD ¶ 90 at 4. Although discussions must address deficiencies and significant weaknesses identified in proposals, the precise content of discussions is largely a matter of the contracting officer's judgment. FAR § 15.306(d)(3); Southeastern Kidney Council, supra. Where an offeror's price is high in comparison to competitors' prices or the government estimate, the agency may, but is not required to, address the matter during discussions. IAP World Services, Inc. B-297084, November 1, 2005, 2005 CPD ¶ 199 at 4. That is, there is no requirement that an agency inform an offeror during discussions that its price may be too high where the offeror's price is not considered excessive or unreasonable. Southeastern Kidney Council, supra. Thus, if an offeror's price is not so high as to be unreasonable and unacceptable for contract award, the agency reasonably may conduct discussions without advising the offeror that its prices are not competitive. IAP World Services, Inc., supra.

Here, there is nothing in the record to indicate that the agency considered the protester's price to be excessive or unreasonable. As such, the agency was under no obligation to inform AAR that its price was high in comparison to the prices proposed by ACHI or Erickson. In this regard, the record indicates that the agency's price evaluation of initial proposals included: (1) a comparison of the prices submitted by all four offerors; (2) a comparison to an independent government estimate; and (3) a comparison to historical prices for the services sought by the solicitation.⁸ AR, Tab K, Price Evaluation Report, at 3, 8, and 10. Based on its findings, the record reflects that the agency informed AAR, during discussions, that it considered its prices high in certain areas. Specifically, the agency advised AAR that its delivery and redelivery price for heavy lift appeared high in comparison to the IGE. AR, Tab P, AAR Discussion Items and Responses, at 1. The agency also informed AAR that its escalation rate from the base period to option period one for per diem was unbalanced and appeared high. Id. In response, AAR made adjustments to its prices proposed in those areas.

⁸ The IGE for total evaluated price for proposal -8008 was \$46,601,723.45. AR, Tab K, Price Evaluation Report, at 9. The IGE for total evaluated price for proposal -8009 was \$45,120,079.22. Id. at 58.

Additionally, although the agency did not conclude that AAR's total evaluated price was excessive or unreasonable, it did find that AAR's overall price was high, and mentioned during discussions that "this is a competitive procurement" and that AAR "should provide its best and final offer." Id. at 2; AR, Tab K, Price Evaluation Report, at 3. In response, AAR acknowledged the message, and confirmed that it was revising its proposed price to provide its best and final offer. Id. In sum, the record shows that the agency conducted meaningful discussions, and went beyond what is required with regard to the protester's proposed price.

Interested Party

As the offeror fourth in line for award, AAR is not an interested party to pursue its challenges to the awardee's proposal. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556, only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. RELM Wireless Corp., B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. Id. Since the protester has not successfully challenged ACHI's proposals, which precede the protester's in eligibility for award under this solicitation, and has not shown that the agency's discussions regarding AAR's price were improper, the protester lacks the direct economic interest required to pursue its challenges to the evaluation of the Erickson's proposal. As such, the remaining protest grounds are dismissed.

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel