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Decision

Matter of: DJW Consulting, LLC

File: B-408846.3

Date: December 18, 2013

Jerry Alfonso Miles, Esq., and Jennifer L. Banks, Esq., Deale Services, LLC, for the protester.

Johnathan M. Bailey, Esq. and Kristin E. Zachman, Esq., Bailey & Bailey, PC, for Dawson Technical, LLC, an intervenor.

William M. Lackermann, Jr., Esq., Department of the Air Force, for the agency.

Katherine I. Riback, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's rejection of the protester's proposal is denied where the record reflects that the agency reasonably rejected the proposal after concluding that it had not received the protester's organizational conflict of interest plan, which was a material requirement of the solicitation.

DECISION

DJW Consulting, LLC, of Lanham, Maryland, protests the award of a contract to Dawson Technical, LLC, of Boerne, Texas, under request for proposals (RFP) No. FA7014-13-R-3007, which was issued by the Department of the Air Force, for advisory and support services for the Air Force District of Washington Procurement Directorate (AFDW/PK). DJW argues that the agency unreasonably rejected its proposal.

We deny the protest.

BACKGROUND

The services to be provided under the RFP had previously been provided through a sole-source contract awarded under the Small Business Administration's 8(a) program. For the contract here, the Air Force conducted market research and concluded that there were a sufficient number of 8(a) businesses capable of providing the needed services for the RFP to be issued as a competitive 8(a)

set-aside procurement. Contracting Officer's Statement at 1. The solicitation was issued on April 30, 2013, and anticipated the award of a labor-hour contract with fixed-price rates for a 1-year base period and two 1-year options.

The solicitation advised offerors that proposals would be evaluated based on three factors: (1) price, (2) technical, and (3) past performance. RFP at 69-70. The RFP further advised that offerors' proposals would be evaluated under the technical and past performance factors as acceptable or unacceptable, and that award would be made to the lowest-priced, technically acceptable offeror. Id. at 72. With regard to price, the solicitation contained Federal Acquisition Regulation (FAR) clause 52.222-41, "Service Contract Act of 1965," and also included a wage determination. Id. at 9. The RFP advised offerors that the agency intended to make award without discussions. Id. at 72.

As relevant here, prospective offerors were required to submit an organizational conflict of interest (OCI) plan by "no later than two weeks before the RFP closing date." RFP at 68. The initial RFP stated that proposals were due by June 14, and that OCI plans were due by May 31. Although RFP amendment No. 3 revised the proposal due date to June 17, the OCI plan due date was not changed. RFP amend. 2, at 2; Contracting Officer's Statement at 4.

The Air Force received proposals from 25 offerors, including DJW, and Dawson, by the closing date of June 17, 2013. Agency Report (AR), Tab 22, Proposal Analysis Report (Aug. 21, 2013) at 5. The agency ranked the proposals from lowest to highest proposed price. After ranking the proposals by price, the Air Force evaluated whether the lowest-priced proposal was fair, reasonable, balanced and realistic, and was technically acceptable and included all mandatory documents; if that proposal was not acceptable or otherwise eligible for award, the agency evaluated the next-lowest priced proposal. The agency did not conduct discussions with the offerors. Contracting Officer's Statement at 7.

The Air Force reviewed the two lowest-price proposals, and concluded that neither was acceptable. The agency found that the lowest-priced proposal (\$6,772,401) did not demonstrate compliance with the applicable Service Contract Act wage determination, and also did not acknowledge any of the RFP amendments. AR, Tab 22, Proposal Analysis Report (PAR), at 6-7; Tab 23, PAR, attach. 1, Responsiveness Review Checklist, at 1-3; Contracting Officer's Statement at 6-7. The agency found that DJW, the second lowest-priced offeror (\$7,020,914), failed to submit the required OCI plan, and also did not demonstrate compliance with the applicable Service Contract Act wage determination. AR, Tab 22, Proposal Analysis Report (PAR), at 7-8; Tab 23, PAR, attach. 1, Responsiveness Review Checklist at 1-3; Contracting Officer's Statement at 6-7.

The Air Force concluded that Dawson's proposal, which was the third lowest-priced proposal, offered a fair, reasonable, balanced and realistic price of \$7,648,073.

Contracting Officer's Statement at 9; AR, Tab 20, Price Competition Memorandum (Aug. 14, 2013) at 3-5. The agency also found Dawson's proposal to be acceptable under the technical and past performance factors. AR, Tab 22, PAR, at 10-17; Tab 27, Source Selection Decision Document, at 4-8. The agency therefore made award to Dawson based on its lowest-priced, acceptable proposal. This protest followed.

DISCUSSION

DJW argues that the Air Force unreasonably rejected its proposal. First, the protester contends that, contrary to the agency assertion, it submitted an OCI plan. Second, DJW argues that the agency should have provided the protester an opportunity to address its failure to propose prices that complied with the applicable Service Contract Act wage determination. For the reasons discussed below, we conclude that the Air Force reasonably rejected DJW's proposal based on its failure to submit an OCI plan; we therefore need not address the protester's challenge to the agency's rejection of its proposal for failing to demonstrate compliance with the applicable Service Contract Act wage determination.¹

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time. FAR § 15.208; Lakeshore Eng'g Servs., B-401434, July 24, 2009, 2009 CPD ¶ 155 at 4. We have found an agency's rejection of a proposal is reasonable where, notwithstanding a protester's claim that it emailed its proposal to the agency, the record does not show that the proposal was actually received. See Latvian Connection Trading and Constr., LLC, B-402410, Feb. 25, 2010, 2010 CPD ¶ 58 at 3.

As discussed above, the RFP required offerors to provide OCI plans in advance of their proposals. RFP at 68. The agency states, and the protester does not dispute, that submission of an OCI plan was a material requirement of the solicitation. See AR at 4; Contracting Officer's Statement at 8-10.

DJW states that its representative submitted the protester's OCI plan via email on May 31 to the two contracting officers responsible for the solicitation. Affidavit of DJW Representative (Nov. 1, 2013) at 2. The protester states that this individual

¹ We note for the record that DJW does not dispute the Air Force's finding that the protester proposed burdened rates (for the base and option years) for the administrative assistant position that were lower than the unburdened wage rate for that position under the wage determination. See Protest at 1. The protester argues that its failure to propose an appropriate wage rate was a "minor irregularity" that the agency could have resolved through clarifications or a unilateral adjustment to the protester's proposal. Id.

requested an automated confirmation of delivery of that email through “our company email system.” Id. The DJW representative received the following response through the company’s email system: “Delivery to these recipients or group is complete, but no delivery notification was sent by the destination server.” Protester’s Comments, attach. 1, Receipt for email delivery (May 31, 2013).²

DJW contends that the delivery receipt demonstrates it timely delivered its OCI plan. Although the documentation provided by the protester states that “no delivery notification was sent by the destination server,” id., the protester speculates that problems with the agency’s mail servers could have resulted in the failure to provide receipt confirmation. Affidavit DJW Representative (Nov. 1, 2013) at 3.

We find that the circumstances here do not provide a basis to sustain the protest. Although the protester provided an automated notice from its own email system concerning the transmission of its OCI plan, the notice, on its face, does not demonstrate that the proposal was received by the agency. See Protester’s Comments, attach. 1, Receipt for email delivery (May 31, 2013). Moreover, the Air Force states that, in response to the protest, it conducted a search of the server that supports the email accounts for the two contracting officers to see if either had received an email from DJW’s representative on May 31. Email from Agency Technical Representative to Agency Counsel (Nov. 4, 2013). This search did not identify an email from DJW during the relevant time frame, nor did the search identify any email concerning DJW’s OCI plan.³ Id. The agency also submitted statements from the two contracting officers explaining that their email and file records were searched for DJW’s OCI plan, but that the document was not found. Contracting Officer’s Statement at 12; Decl. of Second Contracting Officer (Oct. 31, 2013). Under the circumstances here, where the agency represents that it has made reasonable efforts to search its email system for a particular email, and states that the message was not received, and where the protester does not provide any

² The record does not show that DJW otherwise attempted to obtain a government acknowledgement of its receipt of DJW’s OCI plan. In contrast, Dawson transmitted its OCI plan via email and requested acknowledgment of receipt, which the agency provided. AR, Tab 16, Dawson email to Air Force (May 30, 2013); AR, Tab 17, Air Force email to Dawson (May 31, 2013).

³ DJW notes that the email from the agency technical representative describing the search performed by the agency contaminated a misspelling of the DJW representative’s name. See Email from Agency Technical Representative to Agency Counsel (Nov. 4, 2013). The search, however, was based on the exact email address provided by the protester for its representative, rather than her name. See id. attachs. 1-6. We therefore find no basis to conclude that the search was flawed.

basis to question the agency's representations, we find no basis to sustain the protest. See Latvian Connection Trading and Constr., LLC, supra.

In the alternative DJW argues that the Air Force should have contacted the protester to inquire about the missing OCI plan. As discussed above, however, the RFP advised that the agency intended to make award without discussions, and the agency did not conduct discussions with the offerors. An agency is not required to provide an opportunity for discussions or clarifications under such circumstances. See Kiewit Louisiana Co., B-403736, Oct. 14, 2010, 2010 CPD ¶ 243 at 3; Satellite Servs., Inc., B-295866, B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n.2. To the extent DJW contends that the agency should have provided the protester an opportunity to submit its missing OCI plan, this argument provides no basis to sustain the protest.

The protest is denied.

Susan A. Poling
General Counsel