



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Noble Excavating, Inc.

File: B-401273.2

Date: August 11, 2009

Chris Noble for the protester.

Azine Farzami, Esq., Department of Agriculture, Forest Service, 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

Protest challenging agency's evaluation of protester's proposal is denied where the record establishes that the evaluation was reasonable and consistent with the solicitation's evaluation criteria.

DECISION

Noble Excavating, Inc. of Libby, Montana, protests the evaluation of its proposal under request for proposals (RFP) No. AG-03R6-S-08-0027A, issued by the Department of Agriculture, Forest Service for road construction and related services in the Northern Region of the Forest Service.

We deny the protest.

BACKGROUND

The RFP contemplated the award of multiple fixed-price, indefinite-delivery/indefinite-quantity (ID/IQ) contracts for a base period and 4 option years, for road construction, road and trail bridge construction, road decommissioning, and aquatic passage or culvert installations on Forest Service lands. RFP at 22. The project location is the Northern Region of the Forest Service, which includes northern Idaho, Montana, North Dakota, and northwest corner of South Dakota. Id.

The RFP identified three evaluation factors and several subfactors under the three main factors; the RFP also identified the relative weights of each of the factors and subfactors. The three evaluation factors were technical, business, and past performance, and they were assigned relative weights of 35 percent, 35 percent, and

30 percent, respectively. RFP at 39. While there were three subfactors each under the technical and business evaluation factors, only one of those subfactors is relevant here—*i.e.*, a subfactor under the business evaluation factor called “technical approach and price on the example project”; this subfactor was assigned a weight of 25 percent of the total weight, making it the most heavily-weighted subfactor under the business evaluation factor.¹ *Id.* The RFP further provided that the determination of the number of awards to be made would be based on the ranking of offers and the location of businesses. RFP at 56.

The RFP-identified sample task was explained with plans and specifications. Potential offerors were to use the assumptions outlined on the drawings to prepare an outline and schedule describing how the sample task would be completed. RFP at 53. Among other things, offerors were to identify if footings were to be pre-cast or cast in-place; include a soil erosion pollution control plan (including a de-watering plan); and prepare a price proposal for the sample task. RFP, attach B.

The agency received 83 responses to the RFP; 10 were determined to be non-responsive and 1 was submitted late. The remaining proposals were evaluated by a technical evaluation board (TEB) which assigned adjectival ratings to each of the evaluation factors and subfactors. These ratings were used to determine an overall final rating. Contracting Officer’s (CO) Statement at 5. The final ratings were then used to rank the proposals from the highest-rated to the lowest-rated. The top 3 offers received an overall rating of “excellent,” and the remaining 17 highest-rated offerors, including Noble, received an overall rating of “superior.” At the conclusion of this review, Noble was ranked 18th among the top 20 offerors. The agency reports that since it intended to make between 9 and 15 awards, only the top 20 offers were considered in the final selection decision. Agency Report (AR), Tab 6, Source Selection Decision, Matrix F, Top 20 Offers.

The TEB then created a matrix summarizing each firm’s interest in specific areas. AR, Tab 6, Source Selection Decision, Matrix D. The TEB reviewed the top 20 proposals against the matrix of availability and recommended the top 15 proposals for award. Taking into account the geographic distribution of the offerors, and their respective construction expertise, the CO concurred with the recommendations of the TEB that awarding to 15 of the offerors would provide sufficient coverage in terms of construction services, and sufficient geographic distribution of the contractors to meet the requirements of the RFP. *Id.* at 2.

On March 30, 2009, notice of award was provided to unsuccessful offerors. Noble filed an agency-level protest on April 4, which was denied on May 15. This protest to our Office followed.

¹ The solicitation here uses the term “example project” in a manner synonymous with the more-widely known term, sample task. We will use the term sample task here.

DISCUSSION

Noble questions the agency's evaluation of its proposal and maintains that it submitted a technical approach that addressed everything required by the RFP. Noble argues that the RFP only required an outline and schedule explaining how the sample task would be performed, and that the agency unfairly downgraded its proposal for not providing additional detail beyond what the solicitation required. In this regard, Noble maintains that the RFP did not require offerors to include a list of equipment and personnel as part of the sample task, and argues that the agency's evaluation of Noble's soil erosion control plan was unreasonable.

In reviewing protests of alleged improper evaluations and source selections, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws. See Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. In this regard, an offeror must affirmatively demonstrate the merits of its proposal and risks the rejection of its proposal if it fails to do so. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5. A protester's mere disagreement with the agency's evaluation provides no basis to question the reasonableness of the evaluators' judgments. See Citywide Managing Servs. Of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

As part of addressing this protest, we have reviewed all of the evaluation materials, the agency-level protest decision, Noble's proposal, and all of Noble's arguments challenging the award decision. While we address here only a few examples of Noble's challenges, we have reviewed them all, and conclude that none of them have merit. In short, we think that the record supports the rating given to the proposal under the business evaluation factor.

As an initial matter, although Noble complains that the agency improperly rejected its proposal, its proposal was not rejected, it was simply not rated as highly as the 15 proposals that were selected for award. As set forth above, the record here shows that the agency received 83 proposals, evaluated and ranked them, and concluded that Noble's proposal was one of the better proposals received—i.e., the agency included Noble's proposal in its ranking of the 20 highest-rated proposals. Although Noble was not selected for award, it is not accurate to suggest that this proposal was rejected, or did not receive meaningful consideration.

For example, among other issues, Noble complains about the agency's assessment of the adequacy of the proposal's response to the sample task, and in particular, the lack of detail regarding the equipment that would be used to perform the specific

sample task. The CO explains that although Noble included an equipment list in its proposal, Noble did not explain which of the items would be used during performance. In the CO's view, a proposal that clearly identifies the type and size of equipment to be used to perform the sample task better demonstrates an offeror's understanding and expertise. Thus, the CO reasonably expected to see such evidence of expertise in the proposal. Moreover, many of the other offerors provided this type of information, and were ranked higher as a result.²

The CO also explains that Noble did not provide information describing the number and type of personnel it was proposing to perform the specific sample task. As a result, the agency concluded that Noble had made less of a showing about whether it actually understood what resources were necessary to accomplish the task.

In sum, given the relative lack of details in Noble's response to the sample task, the agency's evaluation was reasonable and consistent with the evaluation criteria. Furthermore, given the reasonableness of the evaluation, the record provides no basis to question the agency's decision not to select Noble for award of a contract under the RFP here.³

The protest is denied.

Daniel I. Gordon
Acting General Counsel

² We note that while Noble emphasizes the solicitation language calling for an outline of its response to the sample task, it ignores the language in amendment 1, which explained that the business proposal should demonstrate that the offeror can plan and price a project realistically. RFP, Amend. 1, at 6.

³ We note for the record that the protest before us raised no challenge to the agency's consideration of prices.