



GAO

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Sauer, Incorporated

File: B-400709

Date: December 22, 2008

Kent P. Smith, Esq., Smith Currie & Hancock LLP, for the protester.

Peter N. Ralston, Esq., Oles Morrison Rinker Baker LLP, for Oregon Iron Works, Inc., an intervenor.

Kevin M. Finley, Esq., U.S. 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

Protest that contracting agency unreasonably evaluated proposal as technically unacceptable is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's stated evaluation criteria.

DECISION

Sauer, Incorporated of Jacksonville, Florida protests the award of a contract to Oregon Iron Works, Inc. of Clackamas, Oregon under request for proposals (RFP) No. W912QR-08-R-0072, issued by the U.S. Army Corps of Engineers for construction of Markland Lock and Dam miter gates. Sauer challenges the agency's evaluation of its proposal.

We deny the protest.

The RFP was issued on July 29, 2008 for the fabrication and delivery of two miter gates for the 1200 foot chamber at the Markland Lock. The RFP anticipated the award of a fixed-price contract to the lowest-price technically acceptable offeror. The RFP stated that the agency would use a "go/no go" evaluation system and would evaluate proposals using four evaluation factors: technical approach, experience, past performance and price. The experience evaluation factor was comprised of five subfactors: prime contractor experience, welding experience, weld testing experience, large structure handling experience and individual personnel experience. Additionally, there were two subfactors under the past performance evaluation factor: past performance and utilization of small business. RFP § 4.

The RFP advised offerors to include information sufficiently detailed to clearly describe the offeror's capabilities to successfully complete the project. As relevant here, with respect to the welding experience requirement, the RFP required offerors to provide descriptions of up to three similar projects that included fabrication of large welded structures substantially completed or completed within the last 5 years for the prime contractor or subcontractor to be used on the current project. RFP § 5.2.1.B. The RFP also required offerors to provide "documentation showing AWS [American Welding Society] certification for this type of work." *Id.* The RFP had a similar requirement for the weld testing experience evaluation factor.

For the welding experience and the weld testing requirements, the RFP set forth identical requirements. Specifically, the RFP advised that "documentation of completion of projects similar in scope and size to the current requirement and AWS certification for similar work will be considered to have met the minimum requirements of the RFP and will receive a "Go" rating." RFP § 5.2.2.B and C, (emphasis added). Offerors were warned that proposals that did not include substantial evidence that the offeror has experience, qualifications and production capability to successfully perform the work would be considered to not satisfy the minimum requirements of the RFP. *Id.*

Four proposals were received in response to the RFP. After the initial evaluation by the source selection evaluation board (SSEB), all four proposals received an overall rating of "No Go," primarily because of the offerors' failure to satisfy the RFP experience requirements. Agency Report (AR), Tab E, Source Selection Report, at 3. The proposed prices were evaluated as fair and reasonable based on a comparison to the Independent Government Estimate (IGE) and market prices. After the SSEB noticed that all four offerors also failed to meet a requirement for a Site Safety Health Officer, the agency reevaluated the need for this position and eliminated the requirement. As a result, Oregon's proposal became acceptable.

Sauer received an overall rating of "No Go" primarily because its proposal was rated "No Go" under the experience evaluation factor. Specifically, with respect to the welding and weld testing experience subfactors, Sauer was rated "No Go" because Sauer did not provide any documentation demonstrating that AWS certifications were required for performance of its prior projects.¹ The final evaluation results were as follows:

¹ Although the evaluators noted that only two of Sauer's past projects were similar in size to the current project, notwithstanding the RFP's requirement for three similar projects, the evaluators still concluded that Sauer satisfied this requirement of the RFP. AR, Tab E, Evaluation Report, at 7.

NAME	TECHNICAL RATING	PRICE
Offeror A	NO-GO	\$18,040,882.00
Sauer	NO-GO	\$19,100,269.10 ²
Oregon	GO	\$17,438,000.00
Offeror B	NO-GO	\$19,798,500.00
IGE		\$18,541,145.97

AR, Tab E, Source Selection Decision at 17.

The source selection authority (SSA) reviewed the evaluation results and concluded that since Oregon submitted the only offer that received an overall rating of “GO,” and submitted a fair and reasonable price, award should be made to Oregon. AR, Tab F, Source Selection Decision, at 2. After receiving a debriefing, Sauer filed this protest with our Office.

Sauer essentially argues that the agency unreasonably evaluated its proposal. Specifically, Sauer contends that the RFP only required offerors to describe in narrative form how the offeror could meet the contract requirements and that the RFP permits the AWS certification requirement to be met through a narrative description and that Sauer did mention in its narratives that AWS standards were used on prior projects.³

In reviewing a protest against an agency’s proposal evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. National Toxicology Labs., Inc., B-281074.2, Jan. 11, 1999, 99-1 CPD ¶ 5 at 3. An offeror is responsible for submitting an adequately written proposal, and runs the risk that its proposal will be evaluated unfavorably where it fails to do so. Carlson Wagonlit Travel, B-297016, Mar. 6, 2001, 2001 CPD ¶ 49 at 3. Based on our review of the record, the agency’s evaluation of Sauer’s proposal as a “No Go” was reasonable given Sauer’s lack of documentation demonstrating its performance of projects involving AWS certification.

² Sauer’s actual proposed price was \$17,363,881. However, the agency applied a HubZone evaluation preference to the total amount for evaluation purposes.

³ Sauer also argued in its initial protest that the agency improperly applied the HubZone preference to its proposed price on the grounds that Oregon was not a HubZone Small Business Concern. The agency in its report admits that the HubZone preference should not have been applied here, but maintains that award to Oregon at a higher price was proper because Sauer submitted an unacceptable proposal. Given that the issue of the application of the HubZone preference has been rendered irrelevant by the agency’s conclusion that Sauer’s proposal was unacceptable, we will not address this issue.

Although the RFP allowed offerors to describe in narrative form their ability to satisfy the RFP's requirements, the RFP emphasized the importance of providing information sufficiently detailed to clearly describe the offeror's capabilities to successfully complete the project. The RFP also warned that proposals that did not include substantial evidence of the offeror's experience, qualifications and production capability would be considered unacceptable. With respect to the welding and weld testing experience requirements, the RFP clearly required offerors to provide "documentation showing AWS certification for this type of work." Moreover, the RFP specifically provided that offerors providing documentation of completion of projects similar in scope and size and AWS certification for similar work would be considered to have satisfied the minimum requirements of the RFP.

Sauer's proposal did not provide any documentation to demonstrate that its prior experience involved welding work that required AWS certifications. Rather, Sauer merely described its prior projects and stated that "[w]eldment required certified welders and weld testing of full pen welds to AWS standards." Sauer Proposal Section 2, Experience at 1. Sauer's explanation that it performed weld testing to AWS standards is not the same as establishing that it performed welding work that required AWS certifications or documentation to that effect. In contrast, other offerors provided copies of the AWS certification for the individual employees that performed the work on their prior contracts. Given that the RFP was very specific concerning the requirement for documentation showing AWS certification on prior projects, the agency reasonably concluded that Sauer's proposal was unacceptable based on Sauer's lack of documentation concerning AWS certification with respect to any of its prior projects.

To the extent the protester argues that the requirement for documentation demonstrating AWS certification work was improper because only individuals receive AWS certifications not businesses, this issue involves a challenge to the terms of the solicitation impropriety that cannot be raised at this juncture. Bid Protest Regulations, 4 C.F.R. § 21.2 (a)(1) (2008).

The protest is denied.

Gary L. Kepplinger
General Counsel