

Office of Dispute Resolution for Acquisition
Federal Aviation Administration
Washington, D.C.

FINDINGS AND RECOMMENDATIONS

Matter: Protest of Rivertown Contractors, Inc.
Under Solicitation No. DTFACN-11-R-21014

Docket No.: 11-ODRA-00573

Appearances:

For the Protester: H. W. Windham
President,
Rivertown Contractors, Inc.

For the FAA Central Region: Gayle E. Townsend, Esq.

I. Introduction

This bid protest (“Protest”) was filed by Rivertown Contractors, Inc. (“Rivertown”) with the Federal Aviation Administration (“FAA”) Office of Dispute Resolution for Acquisition (“ODRA”) on April 12, 2011. The Protest challenges the Contracting Officer’s decision finding Rivertown’s proposal nonresponsive and its subsequent elimination from further competition. The underlying Solicitation, No. DTFACN-11-R-21014 (“Solicitation”) was for services related to the relocation of Localizer and Distance Measuring Equipment at Clinton Municipal Airport in Clinton, Iowa, and was issued by the FAA’s Central Region (“Region”). For the reasons set forth below, the ODRA finds that Rivertown’s proposal failed to satisfy the explicit requirements of the Solicitation regarding detailed past performance information. Therefore, the ODRA recommends that the Protest be denied.

II. Facts

On March 8, 2011, the Region issued the Solicitation for the relocation of Localizer and Distance Measuring Equipment at the Clinton Municipal Airport in Clinton, Iowa. *Agency Response* (“AR”) Tab 2 at 1-3 and 34. Clause L.3 of the Solicitation provided that “Contractors meeting the requirements of the go/no go criteria will receive further consideration.” AR Tab 2 at 34. The Go/No Go criteria provided for the following mandatory submission requirements:

GO/NO GO CRITERIA

Offers received without this information included are considered nonresponsive and will not receive further consideration.

In order to meet the Go/No Go Criteria and receive further consideration, offerors must have the following minimum experience and provide the following information to substantiate the experience:

A listing of at least three (3) past or current contracts/projects on which your firm has performed the construction effort associated with this type project and of the same general size and scope of this project. Contracts/projects must be either in process or completed within the last 5 years. Scope is described in the Specification referenced in Section C. Similar work must include work at FAA facilities, airports, or life-critical facilities. Offeror shall identify the contracting agency, (FAA, Other Federal, State, local governments, and private). [sic] Offeror must provide the contract number or project identifier, which includes a point of contact and correct phone number.

AR Tab 2 at 35 (emphasis in original). Section L.3 further put offerors on notice that any “[f]ailure to submit all the data indicated in this section may be cause for determining a proposal non-responsive and, therefore, not considered for award.” AR Tab 2 at 35.

On March 25, 2011, Rivertown submitted its proposal to the Region. AR Tab 4. With respect to the mandatory criteria for past performance information, Rivertown hand wrote on page 12 of its proposal: “previous NAV-AIDS work for great [sic] Lakes Region” and “Contact Irene Miedema, C/O[;] Diane Ayers, C/O[;] Lupe Gonzales, C/O[.]” AR Tab 4 at 12. Upon review of Rivertown’s proposal, the Contracting Officer, Shirley A.

Hayes, determined that the information provided failed to meet the mandatory requirements of the Solicitation, and found the proposal to be non-responsive. AR Tab 7 at 1. In a letter dated April 1, 2011, Ms. Hayes informed Rivertown's President, H. W. Windham of her determination. AR Tab 10. Subsequently, the instant Protest was filed with the ODRA on April 7, 2011.

III. Discussion

In accordance with the ODRA Procedural Regulations, 14 C.F.R. Part 17, and the FAA's Acquisition Management System ("AMS"), the ODRA will not recommend that a bid protest be sustained where a decision by the source selection official has a rational basis, and is not arbitrary, capricious, or an abuse of discretion. *Protest of New Bedford Panoramex*, 07-ODRA-00414. The Protester bears the burden of proof to demonstrate by substantial evidence that the Agency's decision lacked a rational basis or was otherwise improper. 14 C.F.R. § 17.37(j); *Protest of Evolver*, 09-ODRA-00495.

It is indisputable that the Solicitation here required detailed information regarding past performance references of the same general size and scope as detailed in the Specifications, and, specifically, required offerors to "identify the contracting agency" and "provide the contract number or project identifier, which includes a point of contact and correct phone number." AR Tab 2 at 35. The Solicitation also expressly provided that any failure on the part of an offeror to provide the required information would result in a finding of nonresponsiveness and elimination from the competition. AR Tab 2 at 35. The record demonstrates that Rivertown's proposal only provided the handwritten general statement: "previous NAV-AIDS work for great [sic] Lakes Region" and the names of three contracting officers. AR Tab 4 at 12. Rivertown concedes as much, stating that "[i]n our case we did not list **specific** nav aid projects" and "[w]e listed three Contracting Officers to call and verify who we are and how we have done on FAA projects." *Protest* at 2 (emphasis in original).

In its Comments, Rivertown cites to the language in Section L.3 stating that “[f]ailure to submit all the data indicated in this section **may be cause** for determining a proposal non-responsive” in support of its position that the Contracting Officer’s decision lacked a rational basis. *Comments* at 1 (emphasis in original); *AR Tab 2* at 35. Rivertown asserts that “[t]he term **maybe** [sic] tells the bidders that the Agency has discretion in the review process.” *Id.* (emphasis in original). Rivertown goes on to argue that “[o]ur offer gave the necessary information for the Contracting Officer to call and verify our references.” *Id.*

It is well established in the ODRA that the offeror bears the responsibility of insuring that its proposal conforms to the requirements of the solicitation. *See, e.g., Protest of Team Clean, Inc.*, 09-ODRA-00499. Under the circumstances here, the ODRA concludes that Rivertown’s proposal was not in substantial compliance with the Solicitation’s express requirement for past performance information. *Protest of JDDA Facility Group*, 11-ODRA-00566 (“[I]t is the offeror’s responsibility to ensure that its references are responsive to the Agency’s legitimate request for past performance information.”). Therefore, the Region’s decision to exclude Rivertown from further competition had a rational basis and was not arbitrary, capricious, or otherwise an abuse of discretion. For the reasons enunciated above, the ODRA recommends that the Protest be denied in its entirety.

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C. Scott Maravilla
Dispute Resolution Officer
FAA Office of Dispute Resolution for Acquisition

APPROVED:

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Anthony N. Palladino
Associate Chief Counsel and Director
FAA Office of Dispute Resolution for Acquisition