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Decision

Matter of: Midwest Tube Fabricators, Inc.

File: B-412579

Date: March 30, 2016

Cindy Victor, Esq., Kus Ryan & Associates, PLLC, for the protester.
Colleen T. Loughran, Esq., Defense Logistics Agency, for the agency.
Charles W. Morrow, Esq., and David A. Ashen, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee's proposal was unacceptable is denied where the agency reasonably concluded that the awardee had satisfied the solicitation traceability requirement with respect to a critical part in that the documentation furnished in response to the agency's inquiries reasonably indicated that the part to be furnished could be traced to an approved source or its authorized distributor.

DECISION

Midwest Tube Fabricators, Inc., of Sterling Heights, Michigan, protests the award of a contract to Twin Services, Inc., of Myrtle Beach, South Carolina, under request for proposals (RFP) No. SPE7LX-15-R-0066, issued by the Defense Logistics Agency (DLA), DLA Land and Maritime, for vehicular maintenance kits. Midwest contends that DLA improperly determined that Twin Services' proposal satisfied the solicitation requirement that a critical part in the kits be traceable to the approved source or its authorized distributor.

We deny the protest.

BACKGROUND

The RFP, issued on May 2, 2015, as a service-disabled veteran-owned small business set-aside, contemplated the award on a best-value basis of a fixed-price indefinite-quantity contract, for three base years, for vehicular maintenance kits,

NSN (National Stock Number) 2590-01-496-0055.¹ RFP at 4, 7. Offerors were required to propose unit prices for each base year based on four quantity ranges of kits: (1) 100-1,054 kits, (2) 1,055-2,108, (3) 2,109-3,513, and (4) 3,514-5,620. Id. at 5-6. For the second and third base years, the solicitation required offerors to propose a percentage of increase or decrease, or state no change, to its base year prices. Id.

As relevant here, the RFP included a traceability requirement for the lockwashers required to be included in each kit, providing as follows:

ITEM NO. 11 ON BASIC DWG [drawing] 2590LTST-0001 IS A CRITICAL ITEM, WHICH CAN HAVE SAFETY ISSUES IF PROCURED FROM UNAPPROVED SOURCES. ITEM NO. 11 IS FOR A QUANTITY OF 4 LOCKWASHERS & EACH LOCKWASHER RELATES TO AM GENERAL'S CAGE [Commercial and Government Entity] 34623 & P/N [part/number] 5584462. THESE LOCKWASHERS HAVE 15 TABS ON THE OUTSIDE DIAMETER AND ONE TAB ON THE INSIDE DIAMETER.

TRACEABILITY CERTIFICATION OF COMPLIANCE FROM AM GENERAL IS ALSO REQUIRED FOR THIS COMPONENT I/A/W [in accordance with] DLAD [DLA Directive] 52.211-9014.

RFP at 7.

DLAD 52.211-9014 provides that the contractor shall “retain evidence to document that items furnished under this contract conform to contract requirements,” and states that the:

[e]vidence will generally include information tracing the items back to the manufacturing source or its authorized distributor. At a minimum, evidence shall be sufficient to establish the identity of the item, its manufacturing source, and conformance to the item description.

DLAD 52.211-9014(b)(1). This clause further provides that:

The Contractor shall provide documentation of traceability for review--

(i) Upon request by the Contracting Officer at any time prior to or after award;

¹Although the solicitation described the contract period as three base years, it also stated that the government was not required to exercise the base years two or three. See RFP at 6.

- (ii) At time of Government source inspection, if applicable; and/or
- (iii) During random or directed post-award audits.

DLAD 52.211-9014(b)(4).

Two offerors, Midwest and Twin Services, responded to the RFP by the closing date of June 1. Following two rounds of negotiations, DLA determined the evaluated price of Twin Services' proposal to be \$475,127 and of Midwest's proposal to be \$484,395. Agency Report (AR), Tab 2, Price Negotiation Memorandum, at 2, 4.

On October 1, DLA requested Twin Services to provide documentation establishing the traceability of its proposed lockwasher P/N 5584462 to AM General, the manufacturer and an approved source for the item. As examples of acceptable documentation, the agency advised Twin Services that it could provide the following:

- 1) a copy of a quotation or invoice from an approved source specified in the solicitation;
- 2) a copy of the letter from the approved source stating that your company is an authorized dealer/distributor for the approved source or the approved source's official web site listing your company as an authorized dealer/distributor; or
- 3) a copy of the letter from the approved source specified in the solicitation stating that the company you are procuring the item from is an authorized dealer/distributor for the approved source or the approved source's official web site listing your source as its authorized dealer/distributors, along with a copy of the dealer/distributor's quotation to you for the item.

AR, Tab 5, Letter to Twin Services, Oct. 1, 2015, at 1. DLA cautioned that "[f]ailure to provide traceability documentation deemed acceptable/sufficient by the contracting officer is cause for the rejection of your proposal, without further consideration." Id.

In response to DLA's request, Twin Services initially only provided a copy of the quotation that it received from its supplier, [Deleted], for the four quantity ranges of maintenance kits. AR, Tab 6, Email From Twin Services to DLA, Oct. 1, 2015. DLA, finding this documentation to be inadequate, requested Twin Services to provide acceptable evidence of the traceability of the lockwasher. AR, Tab 6, Email From DLA to Twin Services, Oct. 1, 2015. When Twin Services then asked [Deleted] to respond to the agency's request, [Deleted] advised DLA with respect to solicitation SPE7LX-15-R-0066 as follows:

We do not wish to share this information with Twin Services so I am forwarding your requested information for the above referenced solicitation.

We purchase P/N 5584462 through AM General's authorized distributor [Deleted]. Attached please find [Deleted] quote to [Deleted] and letter from AM General stating that [Deleted] is their authorized distributor.

Id. AR, Tab 7, Email From [Deleted] to DLA, Oct. 7, 2015. The contracting officer concluded that this documentation satisfied the solicitation traceability requirement and, on November 30, award was made to Twin Services, whose proposal was found to offer the best value. AR, Tab 2, Price Negotiation Memorandum, at 5; AR, Tab 3, Contract; AR, Tab 8, Declaration of Contracting Officer. After Midwest's agency-level protest of the award was denied, Midwest filed this protest with our Office.

DISCUSSION

Midwest contends that DLA unreasonably evaluated Twin Services' documentation as establishing the traceability of its proposed lockwasher to AM General, the manufacturer and an approved source for the item. For the reasons discussed below, we deny the protest.

In reviewing an agency's assessment of technical acceptability, we will not substitute our evaluation for the agency's, but will examine the agency's assessment to ensure that it was reasonable and consistent with the stated evaluation factors. ManTech SRS Techs., Inc., B-408452, B-408452.2, Sept. 24, 2013, 2013 CPD ¶ 249 at 8; Daniel Tech., Inc., B-288853, Dec. 13, 2001, 2001 CPD ¶ 203 at 3. The procuring agency is responsible for evaluating the data supplied by an offeror and ascertaining if it provides sufficient information to determine the acceptability of the offeror's item; we will not disturb this technical determination unless it is shown to be unreasonable. Inframetrics, Inc., B-257400, Sept. 30, 1994, 94-2 CPD ¶ 138 at 3.

Here, the agency reasonably concluded that Twin Services had established the traceability of lockwasher P/N 5584462, included in the required vehicular maintenance kit to be furnished by Twin Services, from AM General, an approved source for the item. In this regard, in the space provided in the solicitation for entering the "Offered CAGE and P/N" for the kit, Twin Services entered its CAGE code, the part number for the lockwasher ("5584462"), and a notation "mfg [Deleted]," which appears to be a reference to the manufacturer of the kit, [Deleted]. Email from DLA to GAO, Mar. 25, 2016, attach., Proposal of Twin Services. Then, in response to the agency's request to establish the traceability of the

lockwashers P/N 5584462 included in the kit, Twin Services furnished [Deleted] quotation to Twin Services for the kit. AR, Tab 6, Email From Twin Services to DLA, Oct. 1, 2015. Finally, in response to the agency's request for further documentation of the source of the lockwashers, [Deleted] informed DLA that "[w]e purchase P/N 5584462 through AM General's authorized distributor [Deleted]," and furnished the agency with [Deleted] quotation to [Deleted] for lockwasher P/N 5584462 and a letter from AM General indicating that [Deleted] is an authorized distributor for AM General spare parts.

In these circumstances, we agree with the agency that the record supports the contracting officer's conclusion that the documentation furnished in connection with Twin Services' proposal reasonably indicated that Twin Services would purchase the kit containing lockwasher P/N 5584462 from [Deleted], which would obtain the lockwashers from [Deleted], an authorized distributor for parts from AM General, the approved source, such that it reasonably appeared that the lockwashers included in the kits to be furnished by Twin Services would be AM General parts. While the protester may be correct that these documents did not establish the existence of binding commitments, Comments at 5, 7, neither the terms of the solicitation, including the provisions of the incorporated DLAD 52.211-9014, nor the agency's October requests for traceability documentation, expressly required the submission of binding contractual agreements from the supply chain prior to contract award.

The protester further objects that [Deleted] quotation to Twin Services for the maintenance kits did not expressly refer to lockwasher P/N 5584462. Comments at 3-4, 7. However, the fact that the required kits were to include lockwasher P/N 5584462, and that [Deleted] responded to the agency's inquiries regarding the source of these lockwashers by furnishing the quotation it received for lockwasher P/N 5584462 from AM General's authorized distributor, reasonably indicated that the kits to be furnished to Twin Services by [Deleted] would include AM General's lockwasher P/N 5584462. In sum, we find that the agency reasonably determined that the documentation furnished in connection with Twin Services' proposal satisfied the solicitation traceability requirement for the lockwashers.

The protest is denied.

Susan A. Poling
General Counsel