



**GAO**

Accountability \* Integrity \* Reliability

**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

## Decision

**Matter of:** BayFirst Solutions LLC

**File:** B-405072

**Date:** August 11, 2011

---

Lawrence P. Block, Esq., Stinson Morrison Hecker, LLP, for the protester.

Luisa M. Alvarez, Esq., Department of State, for the agency.

Mary G. Curcio, Esq., and Scott H. Riback, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Protest that agency misevaluated protester's and awardee's proposals is denied, where record shows that agency's evaluation was reasonable and consistent with the terms of the solicitation, as well as applicable statutes and regulations.

---

### DECISION

BayFirst Solutions, LLC, of Washington, D.C., protests the award of a contract to Veteran's Solutions, Inc. (VSI), of Arlington, Va., under Department of State (DOS) solicitation No. SAQMMA-10-R-0331, for support services for the Bureau of Diplomatic Services mission to upgrade security at overseas locations. BayFirst argues that the agency unreasonably evaluated the proposals of BayFirst and VSI.

We deny the protest.

The solicitation provided that the contract would be awarded on a "best value" basis considering, in descending order of importance, technical (which included management plan and transition plan subfactors) and past performance; the non-price considerations, combined, were deemed significantly more important than price. RFP, §§ M.2, M.5.2. Seven offerors, including BayFirst and VSI responded to the solicitation. Following the evaluation of proposals, VSI, with a proposed price of \$17,981,903, was rated excellent for the technical and past performance factors, while BayFirst, with a proposed price of \$15,169,594.20, was rated marginal for the technical and past performance factors. Award Recommendation at 7. The agency performed a best value analysis and selected VSI for award. After being advised of the agency's award decision and receiving a debriefing, BayFirst filed this protest.

BayFirst raises numerous challenges to the evaluation of both proposals under the technical and past performance factors. We note at the outset that, in reviewing a protest against an agency's proposal evaluation, we do not reevaluate proposals, but, rather, review the agency's evaluation to ensure that it was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Phillips Med. Sys. Of N. Am., B-293945.2, June 17, 2004, 2004 CPD ¶ 129 at 2. We have carefully considered all of BayFirst's allegations and find them to be without merit. We discuss several of its assertions below.

### BayFirst--Management Plan

As noted, BayFirst's proposal was assigned a marginal rating under the technical evaluation factor. The record shows that this rating was based on a lack of detailed information in BayFirst's proposal relating to its management plan, and in particular, the interrelationship between BayFirst and its apparent subcontractor, Harding Security Associates (HSA), as well as a lack of information relating to BayFirst's proposed key employees. Agency Report (AR) at 5. Our review shows that the agency's evaluation conclusions were reasonable.

The solicitation required that offerors proposing a subcontractor to perform more than 10 percent of the labor hours listed in schedule B clearly state the tasks that each entity would perform, and explain how the overall responsibility for the contract would be allocated. RFP, § L.10.1. BayFirst was assigned a weakness under the management plan subfactor because, in its proposal, BayFirst indicated that it would subcontract more than 10 percent of the labor hours to HSA, but did not identify which tasks would be performed by BayFirst and which by HSA. Id. BayFirst argues that it complied with this requirement by discussing the roles and responsibilities of all program staff positions, discussing the roles and responsibilities of BayFirst and HSA program management personnel, and defining the roles and responsibilities of BayFirst corporate management.

While the record confirms that BayFirst provided certain information with respect to the roles and responsibilities of staff, it did not, as instructed by the solicitation, specify the tasks for which BayFirst and HSA were each responsible. Given that the solicitation specifically asked for this breakdown, we conclude that the agency reasonably assigned BayFirst's proposal a weakness for failing to provide the required information.

The agency also assigned a risk to BayFirst's proposal because, of the 18 key employees it proposed, only 2 were employed by BayFirst, while the remaining 16 were employed by HSA. AR at 6. BayFirst argues that it was unreasonable for the agency to assign this risk to its proposal because it specifically provided that 4 HSA employees would be "transitioned" to BayFirst during the first 15 days of contract performance.

The record shows, however, that the protester's proposal did not meet the solicitation's requirements relating to demonstrating that proposed key employees actually were willing and available to work for BayFirst. Specifically, the solicitation required offerors to submit resumes for individuals that it expected to perform on the contract. RFP, § L.10.1(a)(3)(ii). Further, if the offeror submitted resumes for individuals it did not currently employ, the offeror also was required to provide employment agreements that included a specific salary quotation. RFP, § L.10.1(a)(3)(iii).

Here, the 4 employees at issue were not BayFirst employees and BayFirst did not submit employment agreements showing that they had agreed to work for BayFirst. The agency therefore reasonably concluded that, as submitted, the proposal only provided that 2 of the 18 proposed key employees were BayFirst employees, and the agency downgraded the proposal on that basis.

We think the agency's evaluation was reasonable. As the prime contractor, BayFirst is responsible for ensuring successful contract performance; a key element of demonstrating its ability to perform was demonstrating that it actually had its proposed key employees available. It was therefore reasonable for the agency to question how BayFirst would perform when only 2 of 18 key employees were employed by BayFirst.

#### BayFirst--Past Performance

BayFirst also challenges its marginal past performance rating, arguing that the agency did not adequately consider its own past contracts or the past performance of its subcontractor HSA. The solicitation required offerors to list all contracts performed over the past three years for the contractor and each subcontractor. RFP, § L.10.1. The agency received responses from one BayFirst reference for a Department of Homeland Security (DHS) contract and from two HSA references, one for an Army contract and one for the predecessor DOS contract for the current requirement.<sup>1</sup> BayFirst Past Performance Evaluation. The DHS reference rated BayFirst excellent, but the agency found that BayFirst did not perform most of the tasks required by the current solicitation under that contract. With respect to HSA, the Army reference rated its performance excellent, but the contract was not considered very relevant to the current solicitation. In contrast, HSA's contract was

---

<sup>1</sup> During the protest, BayFirst alleged that it had an additional reference that was never reviewed by the agency. The record shows that the agency's contract personnel never actually received a response from this reference because the e-mail transmitting the response was quarantined because it contained an executable file. Washington/Baicar e-mail, July 12, 2011.

viewed as highly relevant, but the reference rated HSA marginal. Based on this information the agency rated BayFirst marginal overall for past performance. Id.

According to BayFirst the DHS contract for security support services is relevant to the professional security management, administrative staff, and financial management requirements outlined in the statement of work. The record shows, however, that the agency concluded that, although those services were rated excellent, BayFirst did not perform under its DHS contract the bulk of services that would be required here. We point out in this regard that, in its proposal, BayFirst itself recognizes that its DHS contract does not cover all areas of the current solicitation, including, among other things, the requirements relating to financial management and acquisition management. Proposal at 30. The firm's proposal represents that its DHS contract was principally limited to providing security management and security policy maintenance and enhancement, along with risk assessment. Id. at 36-37.

The record also shows that the DHS official that prepared the reference described the earlier contract as limited to programmatic consulting support for the development and integration of risk analytics for the agency's security management division's risk management program. DHS Past Performance Questionnaire at 1. The record thus supports the agency's conclusion that BayFirst's past performance under the DHS contract was not particularly relevant to the current requirement.

BayFirst also questions the rating assigned to HSA's performance of the incumbent contract. According to BayFirst, the overall quality of HSA's performance was rated marginal based on two comments, first, that 90 percent of the contract was administrative in nature and HSA provided minimal quality checks or inspection of written projects; and second, that over the last option year and current contract extension, HSA has not provided professional or continuing training opportunities that would assist its personnel in exceeding contract requirements. BayFirst maintains that a marginal rating under the solicitation was reserved for situations where the area of evaluation contains "an existing problem for which there is doubt whether the identified solution is adequate but the problem appears to be within the contractor's ability to solve." Past Performance Questionnaire Definitions. According to BayFirst, since neither of these criticisms fall into this category, HSA's past performance should not have been rated marginal.

There is no merit to this aspect of BayFirst's protest. First, the record shows that the rater here did not conclude that the problems referenced by BayFirst were minor in nature, and in any case there is no indication that they had been satisfactorily resolved. Further, these were not the only areas where HSA was rated less than satisfactory. Rather, the rater found that HSA's project manager only marginally satisfied the contract requirements; that the agency had to provide recommendations to fill vacancies; and, overall, that he would not recommend

contracting with the company again. HSA Department of State Past Performance Questionnaire.

Based on this record we have no basis to question the marginal rating assigned to HSA's prior contract, or the overall marginal past performance rating the agency assigned to BayFirst's proposal.

#### VSI--Management Plan

BayFirst asserts that the agency unreasonably assigned VSI's proposal a strength for providing detailed information regarding the program manager and how VSI will obtain security clearances in its organization and management plans. According to the protester, the solicitation required the management plan to describe the responsibilities of the program manager, and the policies and procedures in place for vetting applicants and ensuring applicants have a high probability of obtaining security clearances. RFP, § L.10.1(a)(i) and (vii). Thus, in the protester's view, VSI was assigned a strength for simply complying with the solicitation requirements.

We find no merit to this aspect of BayFirst's protest. While the solicitation required offerors to describe the responsibilities of the program manager and the policies for vetting applicants and obtaining security clearances, the agency was impressed with VSI's clear, concise and detailed narrative. For example, VSI explained that its program manager would be responsible for the assignment of duties and administrative responsibilities, would act as the liaison between staff and the agency representative, and would provide a monthly status report detailing the quality assurance, progress, status and program reviews applied to the requirements of this contract. VSI Proposal at 3. VSI also listed the specific tasks the program manager would be responsible for, including: initiating the preliminary transition plan upon award; meeting with the incumbent program manager, human resources manager and VSI human resource manager regarding the possible hiring of incumbent employees; maintaining an awards and incentives plan; and, managing team relationships. Id.

Similarly, with respect to vetting candidates, VSI's proposal detailed how VSI would seek and select candidates with existing clearances or the ability to obtain them; would use local resources such as the defense transition assistance program to identify candidates; would maintain a pool of qualified applicants; would review all applicants to verify citizenship, a valid driver's licenses and the ability to read, write speak and understand English; and would conduct a background check of each candidate. VSI proposal at 8.

Given the level of detail with which VSI described its program manager, as well as its process for vetting candidates to ensure they could obtain a security clearance, the agency reasonably could assign the proposal a strength in this area. BayFirst's

disagreement with the agency's evaluation conclusion, without more, is inadequate to demonstrate that the agency's evaluation was unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

#### VSI--Past Performance

Finally, BayFirst protests that the agency unreasonably rated VSI's past performance as excellent. In reviewing VSI's past performance, the agency considered 3 contracts performed by VSI and 1 performed by its subcontractor TSI.<sup>2</sup> VSI Past Performance Evaluation. In each case the contractor was awarded predominantly excellent ratings, along with a few good ratings. The three VSI contracts, while rated good to excellent, were not of the same size, scope or complexity as the current solicitation. Id. The fourth, a contract performed by TSI, was viewed as highly relevant and rated excellent. Based on these contracts the agency rated TSI's past performance as excellent overall. Id.

BayFirst's principal complaint about the past performance evaluation is that VSI received an excellent rating based solely on the performance of its subcontractor TSI, since VSI itself did not perform any relevant contracts. The record here shows, however that the solicitation provided for the evaluation of the past performance of proposed subcontractors. RFP, L.10.1. As a result, the agency reasonably could base its past performance evaluation on the performance of TSI.

In addition, the significance of, and the weight to be assigned to, a prime contractor's versus a subcontractor's past performance is principally a matter of contracting agency discretion. Loral Sys. Co., B-270755, Apr. 17, 1996, 96-1 CPD ¶ 241 at 5. BayFirst has not alleged or demonstrated that the agency's attribution of TSI's past performance to the VSI team was inherently unreasonable because, for example, TSI will not be performing a meaningful portion of the requirements. Moreover, the record shows that the agency acted consistently in evaluating both offerors and their respective subcontractors, attributing the past performance of the subcontractors to the prime contractors in both cases. While BayFirst disagrees with the substance of the agency's assessment of its own subcontractor's past performance, BayFirst has

---

<sup>2</sup> In its summary evaluation report, the agency erroneously stated that it reviewed five contracts in evaluating VSI's past performance. The record shows that, in fact, only four past performance questionnaires were reviewed by the agency. Past Performance Evaluation, VSI.

not alleged that the agency should not have attributed HSA's experience to BayFirst. We therefore find no merit to this aspect of BayFirst's protest.

The protest is denied.

Lynn H. Gibson  
General Counsel