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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: CE Support Services JV

File: B-406542.2

Date: September 28, 2012

J. Hatcher Graham, Esq., for the protester.
Col. Mark S. Teskey and Christina M. Wenzel, Esq., Department of the Air Force,
for the agency.
Linda C. Glass, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest of the agency's evaluation of the protester's past performance is denied where the agency reasonably assessed the protester's past performance in accordance with the solicitation's evaluation criterion.

DECISION

CE Support Services JV, of Kathleen, Georgia, protests the award of a contract to Solution One Industries, of Killeen, Texas, under request for proposals (RFP) No. FA8501-11-R-0017, issued by the Department of the Air Force for base-wide civil engineering support at Robins Air Force Base (AFB), Georgia.¹ CE challenges the agency's evaluation of its past performance and the selection decision.

We deny the protest.

BACKGROUND

The RFP, issued on May 5, 2011, provided for the award of an indefinite-delivery/indefinite-quantity contract for civil engineering support for the operation, maintenance, and repair of facilities at Robins AFB for a base year and four option years (with an additional option for a 6-month contract extension).

¹ CE is a joint venture of CE Support Services, LLC, Advanced Core Consulting (ACC) and F3 Solutions (F3).

Offerors were informed that award would be made on a best value basis considering the following two evaluation factors: past performance and price. The past performance factor was stated to be more important than price. RFP at 45.

With respect to the past performance factor, offerors were required to submit past performance information for themselves and any joint venture partner. Id. at 42. All Offerors/joint venture partners were required to complete a questionnaire about their past performance, labeled by the agency as FACTS sheets, for each active contract (with at least one year of performance history) or contracts completed within the past three years. Id. The FACTS sheet responses were required to clearly correlate past performance with the requirements of the RFP. Id. at 43. Offerors were also required to send past performance questionnaires to each of the points of contacts (POCs) identified in each FACTS sheet.

The RFP advised offerors that the agency would assess the offeror's ability to successfully accomplish the effort based on the offeror's demonstrated past performance record. This would include an evaluation of the offeror's demonstrated record of contract compliance in supplying products and services that meet users' needs, including cost and schedule. Id. at 45. The recency and relevancy of the information, the source of the information, the context of the data, and general trends in the contractor's performance would also be considered. Id. The RFP defined recency as active or completed efforts performed within the 3 years prior to issuance of the RFP. The RFP stated that more recent and relevant performance would usually have a greater impact in the confidence assessment. The RFP also stated that the agency would perform an independent determination of relevancy using the following criteria:

VERY RELEVANT: Effort must have included operation of a real property system (for example, boiler, wastewater or chiller operator, etc.) and/or maintenance of real property and/or repair of real property associated with an industrial complex facility or facilities (for example, a military depot, university campus, commercial airport, etc.) and must have used at least 8 of the 26 labor categories listed in RFP Attachment 11.

RELEVANT: Effort must have included operation of a real property system (for example, boiler, wastewater or chiller operator, etc.) and/or maintenance of real property and/or repair of real property associated with an industrial complex facility or facilities (for example, a military depot, a university campus, commercial airport, etc.) and must have used from 3 to 7 of the 26 labor categories listed in RFP Attachment 11.

SOMEWHAT RELEVANT: Effort must have included operation of a real property system (for example, boiler, wastewater or chiller

operator, etc.) and/or maintenance of real property and/or repair of real property and must have used from 1 to 2 of the 26 labor categories listed in RFP Attachment 11.

NOT RELEVANT: Present/past performance efforts did not involve any of the magnitude of effort and complexities this solicitation requires.

Id.

The RFP provided that the agency would evaluate offerors' past performance as substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. Id. at 46.

The agency received 6 proposals, including CE's and Solution One's. CE identified three contracts for its past performance--one contract involved ACC and the other two involved F3. Agency Report (AR), Tab 13, Performance Confidence Assessment Group (PCAG) Report, at 39. The agency determined that the contract performed by ACC was relevant (although only "in the slightest degree possible"). One of the contracts performed by F3 was determined to be somewhat relevant, and the other F3 contract (a 2nd tier subcontract under Contract No. GS-00P-06-BSD-0472) was determined to be not relevant. Id. at 41.

F3's subcontract under Contract No. -0472, which the Air Force found was not relevant, was a fixed-price contract valued at \$80,000 for energy audits at Robins AFB. CE stated in its proposal that "F3 Solutions supplied technical expertise on energy audits for evaluating electrical and mechanical system[s] to gain energy efficiency and water savings."² AR, Tab 7, CE's Proposal, at 8.

The agency conducted discussions with the offerors concerning the agency's relevancy determinations. In response to an evaluation notice (EN) involving the relevancy of F3's subcontract under Contract No. -0472, CE stated that F3 "provided operational support to include an evaluation, assessment and thorough

² F3's performance under the subcontract was also described by the program manager for the 1st tier subcontractor (Tetra Tech) as follows:

Tetra Tech received a contract from Georgia Power to complete energy audits at Robins AFB, GA. Tetra Tech subcontracted to F3 Solution's personnel to supply technical support services and expertise on energy audits Project included engineering evaluation, design and equipment specifications, and completion of construction estimate and Simple Payback.

AR, Tab 8, CE's Past Performance Questionnaires, at 2.

analysis of the real property systems within each facility.” AR, Tab 10, CE EN Responses, at 9. According to CE, “the **operations for each system** was evaluated for hours of operation, requirements for managing setbacks of HVAC, compressed air systems, and manpower for each system.”³ Id. (emphasis in original).

Considering CE’s EN responses, the PCAG concluded that F3’s subcontract under Contract No. -0472 was not relevant. The PCAG concluded that because CE had provided “a Not Relevant effort, a Somewhat Relevant effort, and an effort that was only technically Relevant, the PCAG was hesitant to assign [CE] a Satisfactory Confidence rating.” AR, Tab 13, PCAG Report, at 46. Instead, the agency rated CE’s past performance as unknown confidence.

Solution One identified three contracts for its past performance. The PCAG found one contract very relevant, one relevant, and another not relevant. AR, Tab 13, PCAG Report, at 69-73. Solution One’s very relevant contract, which was for an effort that the PCAG determined was nearly identical to the current requirement, had very good performance ratings. The relevant contract involved an effort that was determined to be similar, and for which Solution One received mostly satisfactory performance ratings. Thus, the PCAG concluded that Solution One had demonstrated relevant past performance showing strengths and no weaknesses and rated Solution One’s past performance as satisfactory confidence. Id. at 74.

The Source Selection Authority (SSA) was briefed by the PCAG and selected Solution One’s proposal as the best value to the agency. Following a debriefing, CE protested to our Office, challenging the agency’s evaluation of its past performance. In response, the agency decided to reevaluate CE’s past performance and make a new best value decision. We dismissed the protest as academic on April 4, 2012.

The PCAG reevaluated CE’s past performance, and in particular its relevancy rating of F3-s subcontract under Contract No. -0472. In this regard, the PCAG again reviewed CE’s proposal and responses to ENs. Also, because CE’s response to the ENs suggested that F3 may have performed repair or maintenance work under Contract No. -0472, the agency contacted a civil engineering shop supervisor, who had knowledge of F3’s work under the subcontract. Contracting Officer’s Statement

³ With respect to the requirement for maintenance and/or repair of real property, CE stated that F3’s services included “a thorough engineering assessment of the **maintenance of those systems.**” AR, Tab 10, CE EN Responses, at 9 (emphasis in original). CE also advised that F3 made recommendations to “improve maintenance, maintenance records and cost saving opportunities for operational changes and maintenance changes were presented to the existing staff.” Id.

at 15. He informed the agency that F3 only provided recommendations on energy saving measures and there was no documentation that any repair or maintenance to the buildings was performed by F3. Id. at 16.

The PCAG again concluded that F3's subcontract was not relevant. Nevertheless, the PCAG determined that CE's past performance rating should be changed from unknown confidence to satisfactory confidence, based upon the firm's one relevant contract and lack of adverse past performance. Id. at 8.

At the conclusion of the reevaluation, the proposals were assessed as follows:

	Past Performance	PRICE
CE	Satisfactory	\$4,987,302.20
Solution One	Satisfactory	\$5,385,730.80

AR, Tab 15, Source Selection Decision, at 17.

The SSA recognized that CE and Solution One had received identical past performance ratings, and reviewed the underlying bases for the ratings. Specifically, the SSA considered the comparative relevance and quality of the two firms' past performance. He found that Solution One had performed efforts that included a scope and magnitude of work nearly identical to the work required under this RFP and had received high performance feedback ratings. AR, Tab 15, Source Selection Decision, at 19. In contrast, the SSA found that CE's past performance was barely relevant and received only satisfactory ratings. Id. at 18-19. The SSA concluded that Solution One's much better past performance outweighed CE's lower price, particularly given that the past performance factor was stated to be more important than price. Id. at 19.

The agency confirmed its award to Solution One, and this protest followed.

DISCUSSION

CE challenges the agency's evaluation of its past performance, arguing that the agency unreasonably found that F3's subcontract performance under Contract No. -0472 was not relevant.

An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of agency discretion which we will not disturb unless the agency's assessments are

unreasonable, inconsistent with the solicitation criteria, or undocumented. See e.g., Yang Enter., Inc.; Santa Barbara Applied Research, Inc., B-294605.4 et al. Apr. 1, 2005, 2005 CPD ¶ 65 at 5; Acepex Mgmt. Corp., B-283080 et al., Oct. 4, 1999, 99-2 CPD ¶ 77 at 3, 5. Since the agency is responsible for defining its needs and the best method for accommodating them, we will not substitute our judgment for reasonably based past performance ratings. See MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10.

The record provides no basis to question the agency's judgment that F3's subcontract was not relevant to the work solicited here. All of the information the agency received with respect to F3's subcontract performance shows that F3's support services were limited to energy audits, and that F3 was not performing relevant facilities maintenance and repair. See AR, Tab 8, CE's Past Performance Questionnaires, at 2; Contracting Officer's Statement at 15-16 (information received from agency's Civil Engineering Shop supervisor).⁴ Although CE continues to disagree with the agency's judgment in this regard, it has not shown that the agency acted unreasonably.

CE also challenges the selection of Solution One's proposal as reflecting the best value to the agency. Specifically, CE contends that, because both firms received identical past performance ratings, the agency's determination that Solution One had better past performance was inconsistent with the RFP's evaluation criteria. Comments at 5. There is no merit to this argument.

We have long recognized that color or adjectival ratings are merely guides for intelligent decision-making in the procurement process. See Citywide Managing Servs. Of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 11. Therefore, evaluators and SSAs should reasonably consider the underlying bases for ratings, including the advantages and disadvantages associated with the specific content of competing proposals, in a manner that is fair and equitable and consistent with the terms of the solicitation. See Systems

⁴ The protester complains that the agency did not contact its identified point of contact concerning this subcontract. Comments at 4. That point of contact, however, completed the questionnaire that described the subcontract as being limited to energy audits. To the extent the protester suggests that the Air Force acted in bad faith by only contacting agency personnel that CE alleges the agency knew would support the conclusion already reached, we note that government officials are presumed to act in good faith, and a protester's contention that contracting officials are motivated by bias or bad faith thus must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8. There is no support in the record for this allegation, apart from CE's unsupported assertion.

Research and Applications Corp.; Booz Allen Hamilton, Inc., B-299818 et al.,
Sept. 6, 2007, 2008 CPD ¶ 28 at 24.

Here, the record shows that the agency reasonably found meaningful differences between the quantity and quality of these firms' past performance, notwithstanding the firms' identical satisfactory confidence ratings. With respect to CE's past performance, the SSA found CE had not identified past performance that was of a scope or magnitude remotely similar to the effort required here. AR, Tab 15, Source Selection Decision, at 19. The SSA found, on the other hand, that Solution One identified past performance of a scope and magnitude nearly identical to the work solicited here. The SSA also found that Solution One had received very favorable past performance ratings for its relevant work. Moreover, the awardee's proposal was the only one that the PCAG found to have an identified strength under the past performance factor, which the SSA found significant.

Recognizing that CE's price was lower than the price of Solution One, the SSA determined that Solution One's stronger record of relevant past performance was worth the price premium. Although CE disagrees with the SSA's judgment in this regard, it has not shown it to be unreasonable.

The protest is denied.

Lynn H. Gibson
General Counsel