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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: CCITE/SC

File: B-400782

Date: November 21, 2008

Cammy C. Ticknor for the protester.

Maj. LaChandra C. Richardson, Department of the Air Force, for the agency.

Frank Maguire, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly assessed relevance of protester's past performance submissions by applying criteria on an individual, contract-by-contract, basis--rather than applying criteria cumulatively, as protester argues agency should have done--where agency applied relevance criteria based on only reasonable interpretation of solicitation.

DECISION

CCITE/SC, of San Ramon, California, protests the award of a contract to another offeror under Department of the Air Force request for proposals (RFP) No. FA4427-08-R-0014, for medical support personnel at Travis Air Force Base, California. The protester principally contends that the agency misevaluated the relevance of its past performance submissions.

We deny the protest.

The RFP sought personnel for 10 different positions/employee classes, RFP at 3-30, and provided that award would be made on a "best value" basis considering three factors--technical, past performance, and price. *Id.* at 49. The past performance evaluation, the only part of the evaluation relevant here, was to be based on "past and present efforts provided by the offeror" and past performance information otherwise obtained by the government. *Id.* at 50. The past performance evaluation was to result in an overall performance confidence assessment of substantial confidence (exceptional or good performance survey results), satisfactory confidence (satisfactory results), limited confidence (marginal results), no confidence (unsatisfactory results), or unknown confidence (neutral results). An

unknown confidence rating meant that the proposal would be treated neither favorably nor unfavorably with regard to past performance. Id.

The RFP required, inter alia, that offerors submit past performance information. Specifically, it required offerors to “Provide a list of no more than five (5) of the most relevant contracts performed for Federal agencies and commercial customers within the last two (2) years,” and defined relevance as follows:

VERY RELEVANT	Contractor has provided all of the services in this PWS [performance work statement] and has provided all of the positions/employee classes.
RELEVANT	Contractor has provided some of the same services in this PWS and has provided at least 7 of the positions/employee classes.
SOMEWHAT RELEVANT	Contractor has provided similar services as the ones in the PWS. Must apply to at least 5 of the same or related positions/employee classes.
NOT RELEVANT	Contractor has not provided any similar services as the ones in the RFP, or the services were similar but apply to less than 5 of the positions in the RFP.

Id. at 48, § C.3(b). The RFP further provided that offerors “submitting less than three (3) recent and relevant surveys will receive a neutral rating.” Id.

The protester submitted information with regard to four contracts. Agency Request for Summary Dismissal at 4. The agency rated two of the contracts not relevant—because they only covered two similar positions/employee classes, while seven were required for a contract to be considered relevant—and two somewhat relevant—because they covered five of the positions/employee classes. Id. Since only two contracts were found to have any relevance, in accordance with section C.3(b), the agency assigned the proposal a performance confidence assessment of unknown confidence (neutral survey results).

CCITE/SC contends that its prior contracts improperly were rated somewhat relevant or not relevant, because the agency’s method for determining the number of positions/employees covered by the contracts was incorrect. Protest at 1-2. More specifically, the protester asserts that the RFP “did not require offerors to provide numbers of employees per contract referenced to be considered recent and relevant,” id. at 2, but, rather, allowed for considering the positions/employees covered by the submitted contracts cumulatively. CCITE/SC states that the four prior contracts it submitted, considered cumulatively, provided “some of the same services” as set forth in the PWS and provided at least seven of the positions/employee classes required by the RFQ. Protest at 2-4. CCITE/SC concludes that this should have been sufficient for the four contracts to be rated at least relevant, which would have improved its performance confidence assessment.

Where a dispute exists as to the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. See Honeywell Regelsysteme GmbH, B-237248, Feb. 2, 1990, 90-1 CPD ¶ 149 at 5. To be reasonable, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Id.

We find the protester's interpretation of the RFP untenable. While the RFP did not expressly state that contracts would be evaluated separately, we think that was the import of the relevant provisions. As noted, the RFP advised offerors to provide "five (5) of the most relevant contracts performed," and then listed the descriptions of the four relevance categories. This reference to "relevant contracts," followed by a listing of the relevance categories, made it sufficiently clear, we think, that relevance was to be determined for each contract. This view is reinforced by the further statement that "submitting less than three (3) recent and relevant surveys will receive a neutral rating"; again, this was sufficient, we think, to indicate that the agency would be assessing relevance on a contract-by-contract basis, since such an individual assessment would be necessary to determine whether "less than three (3) recent and relevant" contracts had been submitted. At a minimum, even if it could be said that the RFP was unclear on this point, there certainly was no reasonable basis for the protester to simply assume that relevance would be assessed cumulatively for purposes of determining how many positions/employees were covered by the contracts, given the absence of any indication that the agency intended to follow such an approach. It is worth noting that the term cumulative is not used in this provision. This being the case, to the extent the protester believed prior contracts should be evaluated cumulatively for relevance, it was required to challenge the RFP on this basis prior to the closing time for receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2 (a)(2) (2008). We conclude that the agency reasonably evaluated the relevance of CCITE/SC's prior contracts, consistent with the terms of the RFP, and properly assigned CCITE/SC a neutral performance confidence assessment.

CCITE/SC contends that the agency improperly failed to take into account information from "other sources such as other Federal Government offices and commercial sources" to assess its past performance, as also required under section C.3(b) of the RFP, and differs with the agency with regard to whether it contacted appropriate points of contact related to CCITE/SC's past performance submissions. Protest at 3-5. Prejudice is an essential element of every viable protest, and where none is shown or otherwise apparent, we will not sustain a protest, even if the agency's actions may arguably have been improper. TELESIS Corp., B-299804, Aug. 27, 2007, 2007 CPD ¶ 150 at 7 (no prejudice from allegedly improper evaluation where record established no reason to believe that revised score would affect competitive range determination). Since we conclude that CCITE/SC's proposal properly received a neutral performance confidence assessment for failure to provide three or more relevant contracts--based on an inadequate number of covered positions/employees--and there is no evidence that the agency's alleged omissions

had any effect on the number of CCITE/SC's relevant contracts, there was no prejudice to CCITE/SC resulting from the alleged omissions.

The protest is denied.

Gary L. Kepplinger
General Counsel