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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Choctaw Staffing Solutions

File: B-413434

Date: October 24, 2016

Nathaniel Cox, Choctaw Staffing Solutions, for the protester.
Antonio R. Franco, Esq., and Patrick T. Rothwell, Esq., Piliero Mazza PLLC, for
ADC Management Services, Inc., the intervenor.
Christopher S. Cole, Esq., Department of the Air Force, for the agency.
Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of the protester's past performance is denied where the record shows that the evaluation was reasonable and in accordance with the solicitation's evaluation criteria.

DECISION

Choctaw Staffing Solutions (CSS), of Durant, Oklahoma, protests the award of a contract to ADC Management Services, Inc. (ADC), of Lakewood, Colorado, by the Department of the Air Force under request for proposals (RFP) No. FA8052-15-R-0020 in support of the agency's domestic abuse victim advocate program. CSS challenges the evaluation of its own past performance.

We deny the protest.

BACKGROUND

The RFP, issued on December 17, 2015, sought proposals from participants in the Small Business Administration's 8(a) Business Development Program to provide support to the agency's Domestic Abuse Victim Advocate program at various Military Treatment Facilities based in the continental United States. Performance Work Statement (PWS) at 3. The contract was to be awarded to the responsible offeror whose offer was most advantageous to the government, considering price, technical capability and past performance. RFP, Amendment 0002, at 11.

Technical capability was to be evaluated on an acceptable/unacceptable basis and past performance was to be evaluated and assigned one of the following performance confidence ratings: substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. Id. at 13-15. Past performance was to be “the significantly more important factor,” and the non-price factors, when combined, were significantly more important than price. Id. at 11.

Under the past performance factor, the agency was to evaluate the offeror’s recent and relevant work record to assess its confidence in the offeror’s probability of successfully performing as proposed. Id. at 14. Recent past performance was defined as one years’ performance occurring within three years from the date of issuance of the solicitation. Id. at 16. The RFP defined relevant as behavioral health experience across multiple geographic locations, with each relevancy rating corresponding to a specified metric of full-time equivalent employees (FTE) and sites. For example, somewhat relevant was defined as “[p]resent/past performance effort involved some of the scope and magnitude of effort and complexities this solicitation requires. This would consist of references with at least 10 sites and at least 10 FTEs.” Id. at 14. Relevant past performance was defined as “Present/past performance effort involved similar scope and magnitude of effort and complexities this solicitation requires; this would consist of references with: a. At least 20 sites and at least 20 FTEs and b. Geographic dispersion of sites.” Id.

The RFP included the following admonition:

In its evaluation, the Government may also take into account past performance information regarding predecessor companies and key personnel who have relevant experience. Contracts performed by the company submitting the proposal are viewed more favorably than those performed by predecessor companies and/or key personnel. More relevant past performance may be weighed more heavily than less relevant past performance. More recent past performance may be weighed more heavily than less recent past performance.

Id. at 16.

Proposals were received from eight offerors, including CSS and ADC. Agency Report (AR), exh. 8, Source Selection Decision Document (SSDD), at 5. The relevant evaluation results are as follows:

	CSS	ADC
Technical Capability	Acceptable	Acceptable
Past Performance Confidence Rating	Substantial	Satisfactory
Price	\$18,146,600	\$16,571,684

Id.

CSS' past performance confidence rating was based on an assessment of three references, two CSS performed as a subcontractor and the third performed by an affiliated company. Id. at 6. With respect to the two contracts CSS performed as a subcontractor, the record shows that CSS' portion of the effort consisted of providing twelve FTE personnel across at least twelve geographically dispersed sites. AR, exh. 4, Proposal Analysis Report (PAR), at 18. CSS' third past performance reference, performed by a predecessor company, was found to have some of the scope, magnitude of effort, and complexities of the current contract. Id. CSS' past performance references received a rating of somewhat relevant. Id.

The source selection authority (SSA) conducted a tradeoff analysis between three proposals, including ADC and CSS. The SSA found that while CSS proposed the lowest price, "the tradeoff to ensure the safety of [Air Force] members and beneficiaries" justified paying a price premium for ADC's superior past performance. AR, exh. 8, SSDD, at 7. On this basis, award was made to ADC and after receiving a debriefing, this protest followed.

DISCUSSION

CSS argues that the Air Force failed to properly evaluate the firm's submitted past performance. In this regard, the protester asserts that the agency failed to properly attribute the performance of predecessor companies to CSS, as permitted by the solicitation and the Federal Acquisition Regulation (FAR). Protest at 3-4. CSS also argues that the agency unreasonably failed to consider the performance of certain key personnel on prior contracts in its past performance evaluation. Id. at 4. We have considered both allegations, and find that neither provide a basis to sustain the protest.¹

Our Office examines an agency's evaluation of past performance to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations; however, the necessary determinations regarding the relative merits of offerors' proposals are primarily matters within the contracting agency's discretion. Advanced Env'tl. Solutions, Inc., B-401654, Oct. 27, 2009, 2010 CPD ¶ 7 at 5. Our Office will not question an agency's determinations absent

¹ CSS also argues that the RFP improperly prevented the firm from including its most relevant past performance because there was less than one year of performance. Protest at 3. However, this ground of protest pertains to an alleged defect on the face of the solicitation. Under our Bid Protest Regulations, such a challenge must be filed prior to the time set for the receipt of initial proposals, and is thus untimely and dismissed. 4 C.F.R. § 21.2(a)(1).

evidence that those determinations are unreasonable or contrary to the stated evaluation criteria. Id.

As we have held, an agency may properly evaluate the corporate experience of a new business by considering the experience of a predecessor firm, see J.D. Miles & Sons, Inc., B-251533, Apr. 7, 1993, 93-1 CPD ¶ 300 at 3, or a subcontractor, Cleveland Telecomms. Corp., B-257294, Sept. 19, 1994, 94-2 CPD ¶ 105 at 5, including experience gained by employees while working for the predecessor firm. Oklahoma County Newspapers, Inc., B-270849, B-270849.2, May 6, 1996, 96-1 CPD ¶ 213 at 4. The key consideration is whether the experience evaluated reasonably can be considered predictive of the offeror's performance under the contemplated contract. Id.

A review of CSS' proposal shows that the firm submitted three past performance references. The proposal states that each reference should be attributed to CSS for purposes of the past performance evaluation because, "[t]hese contracts were executed by two prime contractors that are CSS's predecessor companies: Choctaw Contracting Services [(CCS)] and Choctaw Professional Resources Enterprise [(CPRE)]. However, they may be considered as past performance for CSS, in accordance with [FAR] 15.305(a)(2)(iii)."² AR, exh. 12, CSS Proposal, at 21. CSS' proposal also states, "[n]either CSS nor our predecessors, [CCS] or [CPRE], has been acquired by or merged with other companies – nor have they been reorganized, restructured, or otherwise altered." AR, exh. 12, CSS Proposal, at 48. Finally, the proposal states, "[b]oth companies are separate and distinct entities, and remain so at present. CSS is also a distinct entity, separate from CPRE and CCS." Id.

For two of the references, the agency evaluated the portion of the contract that the proposal states was performed by CSS as a subcontractor, and did not impute the entire past performance of the contracts to CSS. AR, exh. 4, Proposal Analysis Report (PAR), at 3.3.2.3; exh. 12, CSS Proposal, at 29, 36. Based on this evaluation, the agency found CSS' performance on both contracts to involve some of the effort and complexities required by the solicitation. AR, exh. 4, PAR, at 3.3.2.3. With respect to the third reference, the agency found that the work, performed entirely by what CSS asserts was a predecessor company, also involved some of the scope and magnitude required by the solicitation. Id. Finally, the evaluators found that CSS' proposal did not show how the firm would utilize certain

² Section 15.305(a)(2)(iii) of the FAR states, "[t]he evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition."

key personnel such that they “will have meaningful involvement in contract performance.” Id.

As discussed above, the RFP informed offerors that, in evaluating past performance, the government “may also take into account past performance information regarding predecessor companies and key personnel who have relevant experience.”³ RFP at 16. The solicitation did not define the term “predecessor companies.” The FAR also does not define the term “predecessor companies” in the context of FAR § 15.305(a)(2)(iii). Outside of the context of FAR part 15, FAR § 9.104-6 discusses affiliates, such as immediate owners and subsidiaries, and predecessors in the context of responsibility determinations. Section 9.104-6(a)(2) of the FAR also references FAR Clause 52.204-20, Predecessor of Offeror (July 2016), which was not included in the solicitation. The clause defines a “predecessor” as “an entity that is replaced by a successor and includes any predecessors of the predecessor.” FAR Clause 52.204-20(a).

Informed by these references, a predecessor company is plainly one that precedes and is replaced by a successor company. Here, the companies that CSS asserts are predecessor companies do not meet the definition. As discussed above, the purported predecessor companies, CCS and CPRE, have not been “acquired by or merged with other companies – nor have they been reorganized, restructured, or otherwise altered.” AR, exh. 12, CSS Proposal, at 48. They remain separate and distinct entities from CSS. Id. As they are not predecessor companies to CSS, their performance cannot be reasonably imputed to CSS as predecessor companies under the terms of the solicitation and FAR § 15.305(a)(2)(iii), as the protester argues.

Given this context, we are provided no basis to question the agency’s evaluation of CSS’ performance as a subcontractor on the two prior contracts. Moreover, while the agency appeared to impute the third reference’s performance to CSS despite the past performance being performed by a company that was not a predecessor to CSS, such evaluation inured to the benefit of CSS.

Finally, turning to CSS’ argument that the agency’s past performance evaluation failed to properly evaluate the performance of certain key personnel who performed on the prior contracts, and were to perform on this contract, our review of the record shows that the allegation is without merit. According to the contracting officer, the

³ Elsewhere, the solicitation states, “[i]n accordance with FAR 15.305(a)(2)(iii), the government’s evaluation will take into account past performance information regarding predecessor companies, key personnel including current employees and new hires proposed for this contract who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition.” RFP at 19.

agency took into account the performance of these key personnel on the prior contracts, including information and ratings contained in the Contractor Performance Assessment Reporting System (CPARS) reports submitted with CSS' proposal. Contracting Officer's Statement at 6, 8. However, according to the contracting officer, CSS' proposal did not show how the management team would have meaningful involvement in contract performance. Id.

A review of CSS' technical volume shows that the roles and responsibilities for the key personnel were discussed in the proposal, but not in any great detail. AR, exh. 12, CSS Proposal, at 8-9. The past performance volume of the proposal identifies the same key personnel by name and title, but provides no description of the work each performed on the prior contracts. Id. at 31, 38, 44. Our review of CSS' proposal does not cause us to question the agency's determination that CSS' proposal did not show how the management team would have meaningful involvement in contract performance. We are also given no basis to question the agency's decision not to credit CSS with the performance of the key personnel under the past performance factor as our review of the proposal shows that there is insufficient information in the past performance volume of CSS' proposal to determine what role, if any, each key person had in the performance of the prior contracts.

The protest is denied.

Susan A. Poling
General Counsel