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Decision

Matter of: Veteran National Transportation, LLC

File: B-415696.2; B-415696.3

Date: April 16, 2018

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Noah B. Bleicher, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's assignment of weaknesses to protester's technical proposal is denied where evaluation was reasonable, well-documented, and consistent with the solicitation.
 2. Protest challenging agency's evaluation of protester's past performance is denied where agency's limited confidence in protester was unobjectionable given the totality of the protester's past performance record, which included a contract termination for default on the predecessor effort.
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DECISION

Price Gordon Services, LLC, d/b/a Veteran National Transportation, LLC (VNT), a service-disabled veteran-owned small business (SDVOSB) of Tucson, Arizona, protests the award of a contract to Owl, Inc., an SDVOSB of St. Johns, Florida, under request for proposals (RFP) No. VA258-17-R-0070, which was issued by the Department of Veterans Affairs (VA) for ambulette services for the Southern Arizona Veterans Affairs Health Care System (SAVAHCS). VNT challenges the agency's evaluation of its proposal under the technical capability and past performance factors, among other allegations.

We deny the protest.

BACKGROUND

The RFP, issued on August 3, 2017, as an SDVOSB set-aside, sought proposals for door-to-door ambulatory, wheelchair, and stretcher transportation services to eligible beneficiaries of the SAVAHCS. Agency Report (AR), exh. 5, RFP, at 0101, 0130.¹ The solicitation contemplated the award of a fixed-priced, indefinite-delivery, indefinite-quantity (IDIQ) contract for a base year and four option years. Id. at 0119-20, 0139, 0169. Award was to be made on a best-value tradeoff basis, considering the following evaluation factors: technical capability; past performance; and price.² Id. at 0149.

With respect to technical capability, the solicitation instructed offerors to submit narratives addressing their relevant technical capabilities and methodologies to perform the requirements. Id. at 0147. The RFP identified several specific elements offerors were to address in their proposal, including, for example, a description of the “type(s) of equipment to be employed, number to be used, how to be utilized, owned or leased, serviceability (condition) . . . etc.” Id. In addition, the solicitation required the submission of supporting documentation, such as insurance certificates and a quality control plan. Id. at 0148. Pursuant to the RFP, the VA would evaluate both the offeror’s technical solution and supporting documentation. Id. at 0150.

With respect to past performance, the solicitation instructed offerors to provide past performance information from at least three, and no more than six, contracts performed within the last 5 years of a similar scope to the ambulette services contemplated under the RFP. Id. at 0148. In addition, the RFP included a questionnaire that an offeror’s past performance reference was to submit to the VA. See id. at 0183-85. The solicitation also advised that the agency could consider “other relevant information,” including information from the past performance information retrieval system (PPIRS). Id. at 0148. In evaluating an offeror’s past performance, the VA would assess the offeror’s performance record under several elements, such as management effectiveness, quality of service, and timeliness, to name a few. Id. at 0151.

The VA received proposals from seven firms prior to the submission deadline. AR, exh. 7, Contracting Officer’s Statement (COS), at 0245. A source selection team evaluated proposals, identified technical strengths and weaknesses, and assigned adjectival ratings under the non-price factors. Id. at 0246. Following the evaluation, the contracting officer, serving as the source selection authority (SSA), determined that Owl’s proposal represented the best value to the agency, and the VA awarded the firm the contract in October 2017. Id.

¹ The agency stamped each page of its report, including the RFP, with a Bates number. Citations to documents contained in the AR are to the Bates number.

² The RFP provided that technical capability was more important than past performance and past performance was more important than price. RFP at 0149.

After receiving a debriefing, VNT filed an initial protest with our Office objecting to the evaluation of proposals and award decision. See Protest (B-415696.1), Nov. 13, 2017, at 1-9. In response, the VA advised that it intended to take corrective action by reevaluating proposals and making a new source selection decision. Notice of Corrective Action (B-415696.1) at 1. Accordingly, our Office dismissed VNT's initial protest as academic. Veteran Nat'l Transp., LLC, B-415696, Dec. 4, 2017 (unpublished decision).

A technical evaluation board (TEB) reevaluated technical proposals, and the contracting officer reevaluated offerors' past performance and pricing. COS at 0247. Ultimately, the VA assessed VNT's and Owl's proposals as follows:

	VNT ³	Owl
Technical Capability ⁴	Average	Very Good
Past Performance ⁵	Limited Confidence	Substantial Confidence
Price	\$21,957,292	\$20,654,918

AR, exh. 6, Source Selection Decision (SSD), at 0242.

In assigning VNT's proposal an average rating under the technical capability factor, the TEB identified five strengths and seven weaknesses. AR, exh. 11, TEB Consensus Memo., at 0432-33. The weaknesses encompassed concerns with VNT's vehicles, its proposed schedule, its use of a subcontractor, and the lack of detail regarding establishing operations. Id.

With respect to past performance, the contracting officer considered VNT's past performance references, relevant reports from PPIRS, VNT's performance on the predecessor effort, and VNT's proposed subcontractor's past performance. AR, exh. 6, SSD, at 0230-36. In rating VNT's past performance as limited confidence, the contracting officer highlighted that VNT's prior contract for the same services was terminated for default, among other past performance concerns. Id. at 0233-34. The contracting officer explained that "[b]ecause [VNT] previously defaulted and refused to perform on a contract for the same services for the same geographic location as the current procurement, the contracting officer has no expectation that [VNT] will successfully perform the current procurement on its own." Id. at 0236.

³ In the initial evaluation, the VA rated VNT's proposal as marginal under the technical capability factor and no confidence under the past performance factor. Protest at 2.

⁴ Possible ratings under the technical capability factor included excellent, very good, average, marginal, and unsatisfactory.

⁵ Possible ratings under the past performance factor included substantial confidence, satisfactory confidence, limited confidence, no confidence, and neutral.

Ultimately, Owl earned the highest combined ratings for the technical capability and past performance factors, and submitted the lowest-priced offer. Id. at 0242-43. Because its proposal was the highest-rated and lowest-priced, the SSA again concluded that it represented the best value to the agency. Id. at 0243. The VA awarded Owl the contract on January 6, 2018. This time, VNT did not request a debriefing. Instead, the firm filed the instant protest on January 12, which was based largely on the earlier, superseded debriefing.

DISCUSSION

VNT primarily objects to the agency's evaluation of its proposal under the technical capability and past performance factors. The protester raises other ancillary allegations as well.⁶ We have considered each of VNT's complaints and find them all lacking merit.

First, with respect to the technical capability evaluation, VNT objects to each of the seven weaknesses the TEB assigned to its proposal. VNT maintains that either the agency failed to consider information in its proposal and/or unreasonably assigned the weaknesses. See Comments/Supp. Protest at 6-7. The record, however, confirms otherwise.

An agency's evaluation of technical proposals is primarily the responsibility of the contracting agency, since the agency is responsible for defining its needs and identifying the best method of accommodating them. Wyle Labs., Inc., B-311123, Apr. 29, 2008, 2009 CPD ¶ 96 at 5-6. In reviewing protests of an agency's evaluation, our Office does not reevaluate proposals; rather, we review the record to determine if the evaluation was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. TransAtlantic Lines, LLC, B-411242, B-411242.2, June 23, 2015, 2015 CPD ¶ 204 at 9. In addition, it is an offeror's responsibility to submit an adequately written proposal and it risks an adverse evaluation for failing to do so. See Tetra Tech Tesoro, Inc., B-403797, Dec. 14, 2010, 2011 CPD ¶ 7 at 5.

Here, we find reasonable the VA's evaluation of VNT's proposal under the technical capability factor. In this respect, the TEB's evaluation report identifies numerous concerns spanning across various aspects of VNT's proposed technical solution, as well as the firm's supporting documentation. See AR, exh. 11, TEB Consensus Memo., at 0432-33. For instance, the TEB criticized the lack of detail in VNT's work plan regarding establishing operations and implementing work. Id. at 0432. Other

⁶ For example, the protester makes the untimely and misplaced argument that the agency's November 2017 corrective action was a pretext to avoid submitting an agency report in response to VNT's prior protest. See Protest at 4-5; Comments/Supp. Protest at 4. Given that the corrective action granted the relief requested by VNT, and the reevaluation resulted in improved consensus ratings for its proposal, it is unclear what VNT's actual concern is regarding the corrective action.

weaknesses focused on inconsistencies and confusion surrounding the vehicles VNT identified for performance, as well as the age of some of the vehicles and the questionable use of sedans to transport elderly patients with limited mobility. Id. The evaluators were also unimpressed with VNT's plan to rely on a third party to perform aspects of the contract. Id. at 0433. Based on our review of the record, we find nothing improper with the weaknesses assigned.⁷ We discuss in more detail illustrative examples below.

As an example, one weakness was assigned due to confusion surrounding the total number, type, and availability of VNT's vehicles. AR, exh. 11, TEB Consensus Memo., at 0432. Specifically, the evaluators noted that VNT's proposal first identified "[DELETED] well-maintained vehicles," then discussed "[DELETED] mission-ready non-ambulatory vans and [DELETED] additional ambulatory vehicles," and later described a fleet of "[DELETED] vans configured to support wheelchair and stretcher transports . . . and [DELETED] sedans and vans to support ambulatory services." See AR, exh. 3, VNT Proposal, at 0046, 0050, 0053

In response to the weakness, VNT counters that the solicitation required only 11 vans, which VNT contends it offered, and that the firm provided a "comprehensive list of vehicles on page 26." Comments/Supp. Protest at 6.

The protester's defense is unavailing. As an initial point, VNT's technical proposal only spans 23 pages; the protester's reference to a list on page 26 is unsupported by its own submission. In addition, contrary to VNT's argument, the solicitation did not set a minimum requirement for the number of vehicles to be used during performance. Supp. Memorandum of Law (MOL) at 12. Rather, the performance work statement simply required that the awardee "furnish all . . . vehicles necessary to provide the appropriate

⁷ One weakness was assigned because VNT failed to provide proof of current insurance. AR, exh. 11, TEB Consensus Memo., at 0432. VNT, however, pointed out that, contrary to explicit submission directions in the solicitation, the firm had submitted updated insurance information via an attachment to an email; the RFP required that the information be in proposal volume II. See RFP at 0147. Given that the proposal itself stated that VNT was "in the process of renewing our insurance," and VNT only provided an insurance quote, rather than proof of insurance, in its actual proposal, we find this weakness unobjectionable. See AR, exh. 3, VNT Proposal, at 0064. In this regard, the solicitation plainly warned that "[a]ll information pertaining to Technical Capabilities, Past Performance, and Price/Cost shall be confined to the appropriate proposal volume." RFP at 0146. In any event, to the extent the weakness could be viewed as questionable, we fail to see how removing this one weakness would have changed the award determination in VNT's favor. See Supp. COS at 0514 (explaining that removal of the weakness does not change the contracting officer's award decision). That is, VNT did not suffer competitive prejudice as a result of any error surrounding this weakness. See Eagle Support Servs. Corp., B-412577.2, B-412577.3, July 19, 2017, 2017 CPD ¶ 227 at 5 n.4.

means of transportation required to meet the requirements. . . .” RFP at 0130. Despite VNT’s claim, the RFP contained no reference to 11 vans for performance.

Regardless, as the agency explains, the evaluators did not find the number of vehicles proposed to be inadequate. Supp. MOL at 12. Rather, the weakness was assigned because, as highlighted above, the proposal was “internally inconsistent and caused confusion about exactly how many and what type of vehicles [VNT] was actually going to provide.” Id. On this record, we have no basis to question the weakness. See A-P-T Research, Inc., B-414825, B-414825.2, Sept. 27, 2017, 2017 CPD ¶ 337 at 11 (finding that agency had a reasonable basis to assign a weakness where the protester’s proposal was unclear and inconsistent).

As another example, the TEB assigned VNT’s proposal a weakness because VNT appeared to prefer a “[DELETED]” for patient travel. AR, exh. 11, TEB Consensus Memo., at 0433. In explaining the weakness, the TEB pointed out that an [DELETED] schedule would “not work” because schedules change daily. Id. The TEB identified a risk if VNT needed that much advance notice to perform. Id.

In response to the weakness, VNT merely states that “[t]his contradicts the solicitation.” Comments/Supp. Protest at 7. The protester offers no additional explanation.

With respect to scheduling, the solicitation explained that the VA would provide “a daily transportation schedule the day prior to the transportation needs by 4:30 pm.” RFP at 0134. VNT, however, proposed “[DELETED] for patients . . . to balance resources effectively and meet the VA’s needs.” AR, exh. 3, VNT Proposal, at 0048. In the scheduling methodology section of its proposal, VNT again explained that it would develop [DELETED] schedules and “update schedules for critical patients weekly.” Id. at 0056.

On this record, the weakness is warranted. In this regard, the agency points out that it employs “day-before” scheduling, and that the requirement was clearly stated in the solicitation. Supp. MOL at 17. Given that patient transportation schedules change daily, we find unobjectionable the evaluators’ conclusion that VNT’s proposal for [DELETED] schedules created a performance risk. VNT’s objection reflects its disagreement with the agency’s conclusions but does not demonstrate an unreasonable evaluation. See, e.g., Glenn Def. Marine-Asia PTE, Ltd., B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3 at 5.

Next, we turn to VNT’s challenge to the VA’s past performance evaluation. VNT argues that the agency failed to take into account the past performance record of its proposed subcontractor, and that the past performance evaluation evinces agency bias.

The evaluation of an offeror’s past performance, including the agency’s determination of the relevance of an offeror’s performance history and the weight to be assigned to a subcontractor’s past performance, is a matter of agency discretion, which we will not find improper unless it is inconsistent with the solicitation’s evaluation criteria. CLS

Worldwide Support Servs., LLC, B-405298.2 et al., Sept. 11, 2012, 2012 CPD ¶ 257 at 15. The evaluation of past performance, by its very nature, is subjective and we will not substitute our judgment for reasonably based evaluation ratings; an offeror's disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. FN Mfg., LLC, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

Here, we have no basis to question the agency's evaluation of VNT's past performance. VNT identified in its proposal five past performance references--three that stemmed from its own performance and two from its proposed subcontractor. AR, exh. 3, VNT Proposal, at 0073-77. With respect to its three projects, one--involving safety attendants at schools--was reasonably deemed not relevant; the other two projects--involving ambulette services--were considered relevant. AR, exh. 6, SSD, at 0230-31. Only one past performance questionnaire (PPQ) was returned for VNT's projects, which was for its performance on the predecessor contract to transport patients for the SAVAHCS. AR, exh. 3, VNT Proposal, at 0083-85.

In the PPQ, the contracting officer documented numerous concerns with respect to VNT's performance.⁸ He highlighted problems with the effectiveness of VNT's management, including "several turnovers at the manager position," and the failure to pay subcontractors on time. Id. at 0084. He described VNT's quality as satisfactory, and noted that an 80-year old patient was injured because VNT had not followed procedures. Id. Other concerns focused on timeliness, quality control, and overall customer satisfaction, which was merely satisfactory. Id. at 0084-85. In addition, the contracting officer pointed to a fine imposed by the Department of Labor due to VNT's failure to pay its employees in accord with the Service Contract Act. Id. at 0085. In the end, he explained that VNT "does not understand working with the federal government and the laws and regulations that go along with that," and has "no concept of how to conform to a contract's terms and conditions." Id. The contracting officer wrote that he would not award the company another contract.

The contacting officer also considered additional information obtained from procurement files and his personal knowledge, specifically regarding VNT's performance on the predecessor contract. The contracting officer discussed in detail VNT's "failure to perform the services under the contract," which resulted in the VA terminating VNT's contract for cause in June 2017. AR, exh. 6, SSD, at 0234. The contracting officer documented numerous examples of problems the agency experienced during VNT's performance, including an injured patient, failure to report an accident, and failure to meet transportation timelines. Id. According to the past performance record, VNT was given multiple letters of concern, a cure notice, and a show cause notice. Id. Ultimately, VNT "abruptly ceased performance," which resulted in "numerous patients

⁸ The contracting officer on the predecessor effort is the same contracting officer for the procurement at issue.

. . . stranded at the hospital and up to 100 patients per day . . . in jeopardy of missing their scheduled appointments.” Id. Hence, the contract was terminated for default.⁹

The agency also took into account the past performance record of VNT’s proposed subcontractor. Id. at 0234-35. While the subcontractor’s record showed generally positive past performance, the agency nevertheless assigned little weight to the subcontractor’s past performance. See id. at 0235-36. In this regard, the contracting officer explained that VNT failed to describe in its proposal the percentage of services that the subcontractor would provide. Id. at 0236. In addition, the contracting officer noted that VNT previously failed to timely pay its subcontractors, “raising a question of how long the proposed subcontractor might actually perform work on this contract.” Id. Based on the totality of the past performance record, including the consideration of somewhat positive PPIRS information, the contracting officer concluded that there was a “low expectation that the offeror will successfully perform the required effort.” Id.

Here, in light of the record described above, we have no basis to question the agency’s limited confidence in VNT’s performance. In addition, contrary to VNT’s suggestions otherwise, the agency was under no obligation to afford greater weight to the subcontractor’s performance record. In this respect, the significance of, and the weight to be assigned to, a subcontractor’s past performance is a matter of contracting agency discretion. See Diversified Tech. & Servs. of Va., Inc., B-412090.2, B-412090.3, Dec. 16, 2015, 2015 CPD ¶ 34 at 6-7. Given that VNT failed to disclose what percentage of the effort its proposed subcontractor was to perform, the agency’s consideration of VNT’s subcontractor’s performance record here is unobjectionable.

Moreover, we see nothing improper with the contracting officer’s consideration of VNT’s poor performance on the predecessor effort. In this respect, as discussed above, the RFP expressly provided that the agency could consider “other relevant information.” RFP at 0148. Indeed, the agency may have had an obligation to take this information into account, given that the poor performance was on a contract for the same services for the same geographic location with the same contracting office. See, e.g., International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5; TRW, Inc., B-282162, B-282162.2, June 9, 1999, 99-2 CPD ¶ 12 at 5.

Lastly, and equally unavailing, is VNT’s dubious assertion that the firm’s past performance rating is the result of agency bias, which, according to VNT, is substantiated by the comprehensiveness of the documentation in the record. See Comments/Supp. Protest at 8. As we recently explained to VNT, government officials are presumed to act in good faith, and a protester’s contention that contracting officials are motivated by bias or bad faith must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. See Veteran Nat’l Transp., LLC, B-415011, Oct. 31, 2017, 2018 CPD

⁹ Notably, VNT does not object to any of the agency’s findings or characterizations regarding the termination for default.

¶ 51 at 6; Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8. Here, the record is devoid of any support for VNT's bias claim. Indeed, rather than agency bias, VNT's poor performance on the incumbent effort is what led to its less than favorable past performance assessment.

The protest is denied.

Thomas H. Armstrong
General Counsel