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Decision

Matter of: Cyber Protection Technologies, LLC

File: B-416297.2; B-416297.3

Date: July 30, 2018

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DIGEST

1. Protest that the awardee's proposal was unacceptable because the awardee's registration in the System for Award Management was inaccurate is denied where there is no basis to conclude that the protester was prejudiced by the agency's waiver of the registration requirements.
 2. Protest challenging the reasonableness of an agency's past performance evaluation is denied where the record shows that the agency evaluated the protester's proposal reasonably and in accordance with the terms of the solicitation and applicable law and regulation.
 3. Protest that the agency failed to conduct meaningful discussions is denied where discussions identified all deficiencies and significant weaknesses in the protester's proposal and were not misleading.
 4. Protest challenging the agency's source selection decision selecting a higher-rated, higher-priced proposal is denied where the agency's best-value tradeoff was reasonable, adequately documented, and consistent with the terms of the solicitation.
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DECISION

Cyber Protection Technologies, LLC (CPT), a small business, of San Antonio, Texas, protests the award of a contract to Cyber Systems & Services Solutions, LLC (CS3), a small business, of Bellevue, Nebraska, under request for proposals (RFP) No. FA8773-

16-R-8002, which was issued by the Department of the Air Force, for defensive cyber realization, integration, and operational support. CPT alleges that the agency unreasonably found CS3 eligible for award notwithstanding its alleged deficient System for Award Management (SAM) registration, and challenges the agency's evaluation of CPT's past performance and best-value tradeoff determination.

We deny the protest.

BACKGROUND

The RFP, which was issued on May 23, 2016, as a set-aside for service-disabled veteran-owned small businesses (SDVOSB), and subsequently amended three times, sought proposals to provide the Air Force's 688 Cyberspace Wing with support, engineering, management, and technical services. RFP, Performance Work Statement, at 3.¹ The RFP contemplated the award of a single indefinite-delivery, indefinite-quantity contract with fixed-price, cost-reimbursement, and cost-type contract line items, and a maximum value of \$99.9 million. RFP at 2, 27, 47.

Award was to be made on the basis of a best-value tradeoff, considering technical acceptability, past performance, and price. RFP, attach. No. M-1, ¶ A. Past performance and price were approximately equal in weight. Id. Only the evaluation of past performance is relevant to the issues in this protest.

With respect to past performance, the RFP established that the agency would assign offerors an integrated performance confidence assessment rating based on the recency, relevancy, and quality of the offeror's past performance information. Id., ¶ D.4. Relevancy was to be evaluated based on efforts involving mission operations and mission support that involved similar scope and magnitude of effort and complexities as required by the RFP. Id., ¶ D.2. The RFP further provided that the agency would consider the effort, or portion of the effort, being proposed by the offeror, teaming partner, or subcontractor for each contract that was being reviewed and evaluated. Id. With respect to mission operations, the agency would consider each offeror's, and its respective joint venture partners' and subcontractors', past performance in the following areas:

- A. Perform the following Cyber Protection Team mission areas: Mission Protection (Risk Analysis/Management), Discovery & Counter-Infiltration (Threat Response), and Cyber Threat Emulation (Red Team) all supported by intelligence.
- B. Perform the following Cyber Protection Team mission areas: Cyber Readiness (Compliance), Cyber Support (Remediation/Training).

¹ References herein are to the RFP as amended, and to the Bates numbering provided by the Air Force in its agency report.

- C. Perform Computer Network Defense vulnerability assessments and Penetration Testing with a given enclave.
- D. Perform full spectrum Defensive Cyberspace Operations to include mission planning, mission execution, and post mission reporting and lessons learned.
- E. Perform in defining and understanding adversary Tactics, Techniques, and Procedures [TTP]; and evolving friendly TTPs.

RFP, Relevancy Assessment Matrix, at 1.

An offeror's mission operations related past performance was to be considered relevant if it showed cumulative experience in areas A-E of the Relevancy Assessment Matrix in the performance of contracts with at least an annual cumulative amount of \$5 million.

Id. An offeror's mission operations related past performance was to be considered somewhat relevant if it showed cumulative experience in both areas A and B, and one of C, D, or E in contracts with at least an annual cumulative amount of \$4 million. Id.

With respect to mission support, the agency would consider each offeror's, and its respective joint venture partners' and subcontractors', past performance in the following areas:

- A. Perform system administration duties and network infrastructure support to include installing, documenting and testing hardware and software systems while ensuring their security and compliance levels and [Department of Defense information assurance] controls.
- B. Perform controlling and tracking documentation and hardware/software and supporting equipment.
- C. Perform developing training scenarios/curriculum, and qualifying personnel to conduct cyber operations.

Id.

An offeror's mission support related past performance was to be considered relevant if it showed cumulative experience in areas A, and one of B or C of the Relevancy Assessment Matrix in the performance of contracts with at least an annual cumulative amount of \$5 million. Id. An offeror's missions operations related past performance was to be considered somewhat relevant if it showed cumulative experience in area A in the performance of contracts with at least an annual cumulative amount of \$4 million.

Id.

The Air Force received seven proposals in response to the RFP. Following multiple rounds of discussions and proposal revisions, the Air Force evaluated the final proposals of the protester and intervenor as follows:

	Technical	Past Performance	Total Evaluated Price
CPT	Acceptable	Satisfactory	\$85,243,985
CS3	Acceptable	Substantial	\$94,142,204

Agency Report (AR), Tab 13, Source Selection Decision (SSD), at 2.

The Source Selection Authority (SSA) concluded that the CS3’s proposal represented the best value to the government. In this regard, the SSA found CS3’s superior past performance raised less performance risk for the government, which warranted paying CS3’s higher price. AR, Tab 13, SSD, at 15.² Following a debriefing, this protest to our Office followed.

DISCUSSION

CPT raises four primary protest grounds. First, the protester alleges that the agency failed to find CS3 technically unacceptable or otherwise ineligible for award because its SAM registration was inaccurate. Second, CPT challenges the agency’s evaluation of the protester’s past performance. Third, the protester alleges that the Air Force failed to engage in meaningful discussions regarding CPT’s past performance. Fourth, CPT alleges that the SSA’s best-value tradeoff decision was unreasonable and inconsistent with the terms of the solicitation. For the reasons that follow we find no basis on which to sustain the protest.³

SAM Registration

CPT alleges that CS3 failed to disclose its status as a joint venture or its corporate parents in SAM as required by applicable Federal Acquisition Regulation (FAR) clauses

² The Air Force initially selected another offeror as the apparent awardee. As a result of size protests filed with the Small Business Administration (SBA) and a subsequent appeal to the SBA Office of Hearings and Appeals, it was determined that the offeror was not in compliance with applicable SBA rules, and therefore did not qualify as an eligible SDVOSB concern. See ASIRTek Fed. Servs., LLC, SBA No. VET-269, Mar. 27, 2018, 2018 SBA LEXIS 21. As a result, the SSA prepared a new award decision.

³ CPT raises other collateral issues. While our decision does not specifically address every argument, we have considered all of the protester’s arguments and find that they do not provide a basis on which to sustain the protest. For example, our Office previously dismissed the protester’s allegations regarding the agency’s evaluation of CS3’s past performance and disparate evaluation of proposals because the allegations were speculative and failed to state legally and factually sufficient bases of protest.

and the terms of the solicitation, and accordingly did not have a valid SAM registration.⁴ For this reason, CPT argues that CS3's proposal should have been found technically unacceptable or otherwise ineligible for award. Additionally, the protester argues that the failure to maintain a valid SAM registration disclosing CS3's ownership structure precluded the protester from being able to investigate and contest the intervenor's size status and, thus, its eligibility for award. For the reasons that follow, even assuming that CS3's SAM registration is inaccurate or otherwise not in accordance with the requirements of the FAR, CPT has failed to demonstrate that it was competitively prejudiced by the agency's waiver of the requirement for a valid SAM registration.

Competitive prejudice is an essential element of any viable protest, and where none is shown or otherwise evident, we will not sustain a protest, even where a protester may have shown that an agency's actions arguably were improper. Interfor US, Inc., B-410622, Dec. 30, 2014, 2015 CPD ¶ 19 at 7. With respect to allegations that an offeror's SAM registration is inaccurate or incomplete, our Office has generally recognized that minor informalities related to SAM (or its predecessor systems) registration generally do not undermine the validity of the award and are waivable by the agency without prejudice to other offerors. See, e.g., High Plains Computing, Inc. d/b/a HPC Solutions, B-409736.2, Dec. 22, 2014, 2014 CPD ¶ 379; C.L.R. Dev. Grp., B-409398, Apr. 11, 2014, 2014 CPD ¶ 141 at 7. We have found no prejudicial error in these cases largely because an awardee's registration status does not implicate the terms of its proposal, and there is nothing to suggest that another offeror would have altered its proposal to its competitive advantage in response to a relaxed SAM registration requirement. C.L.R. Dev. Grp., supra; Graves Constr., Inc., B-294032, June 29, 2004, 2004 CPD ¶ 135 at 3.

Even accepting CPT's allegations that CS3's SAM registration was not in compliance with applicable FAR provisions or otherwise was inaccurate, the protester has not established that it was prejudiced by the agency's waiver of the SAM registration requirement. It has not, for example, demonstrated that CS3's SAM registration provided the intervenor with any competitive advantage, or explained how CPT would have amended its proposal had it known that the agency would not strictly enforce the SAM registration requirements. Furthermore, the protester's argument that it was

⁴ For example, pursuant to FAR clause 52.204-17, Ownership or Control of Offeror, which is one of the required representations and certifications in SAM, an offeror must identify whether it has an immediate owner, which is defined as "an entity, other than the offeror, that has direct control of the offeror." FAR clause 52.204-17 at (a). The clause specifically requires that "[i]f the Offeror has more than one immediate owner (such as a joint venture)," then the offeror must disclose the identities and Defense Logistics Agency (or North Atlantic Treaty Organization, if applicable) Commercial and Government Entity codes for the offeror's immediate owners. Id. at (b). CS3 represented in its SAM representations and certifications that it "does not have an immediate owner." CS3's SAM Representations & Certifications, available at <https://sam.gov/portal/SAM/> (last visited July 26, 2018).

prejudiced in its ability to investigate and challenge CS3's size status is undermined by the protester's representation that "CPT filed a size protest which was submitted to the [Small Business Administration]-the appropriate fact finder." See Opp. to Intervenor's Request for Partial Dismissal (May 25, 2018) at 3. On this record, we find no basis on which to sustain the protest.

CPT's Past Performance

CPT challenges the agency's evaluation of the relevancy of its past performance, arguing that the agency applied unstated evaluation criteria or otherwise evaluated in a manner inconsistent with the RFP's terms. Specifically, the protester argues that the agency unreasonably focused on the subareas of past performance set forth in the RFP's Relevancy Assessment Matrix, and on the past performance of CPT alone, as opposed to reasonably considering the cumulative past performance of the protester's team. For the reasons that follow, we find no basis on which to sustain the protest.

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. Fox RPM Corp., B-409676.2, B-409676.3, Oct. 20, 2014, 2014 CPD ¶ 310 at 3. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. Beretta USA Corp., B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 10.

CPT and its team received an overall cumulative past performance confidence rating of satisfactory. AR, Tab 12, Proposal Analysis Report, at 226. Although the evaluators found that the demonstrated past performance of the CPT team was comprehensive in all experience areas, it specifically noted that CPT's own limited past performance relative to the evaluated experience areas presented risk to the government because much of the relevant past performance belonged to CPT's subcontractors. Specifically, the evaluators concluded that:

While the offeror's teaming concept demonstrated relevancy in Mission Operations and Mission Support, the prime contractor proposed to perform 60% of the effort but only demonstrated relevant experience in 4 of the 11 Past Performance Criteria. The Prime's limited breadth of experience impacted the government's confidence rating because they are relying on their subcontractor's past experience for 11 of the 11 areas of required past performance while only proposed to perform 40% of the effort. If, after award, one or more subcontractors leave the contract this could place the Prime, with little demonstrated experience, left to execute the contract.

Id.

CPT argues that the agency's evaluation departed from the RFP's stated past performance evaluation criteria by unreasonably adding additional subcategories of past performance beyond the eight enumerated areas in the RFP's Relevancy Assessment Matrix. CPT also argues that the agency failed to reasonably consider the relevance of the CPT team's cumulative past performance. But for the alleged errors, the protester contends that its past performance should have been rated as superior. It is axiomatic that in a negotiated procurement an agency must evaluate proposals based on the solicitation's enumerated evaluation factors. FAR § 15.305(a); DA Defense Logistics HQ, B-411153.3, Dec. 2, 2015, 2015 CPD ¶ 358 at 4. Agencies, however, properly may evaluate proposals based on considerations not expressly stated in the solicitation where those considerations are reasonably and logically encompassed within the stated evaluation factor, and where there is a clear nexus between the stated and unstated criteria. Straughan Envtl., Inc., B-411650 et al., Sept. 18, 2015, 2015 CPD ¶ 287 at 8. We find that neither of the protester's contentions demonstrates that the Air Force unreasonably relied on unstated evaluation criteria, or otherwise demonstrates that the agency's evaluation was inconsistent with the RFP's evaluation scheme.

First, we find that the agency's consideration of eleven past performance areas was consistent with the RFP's enumerated past performance evaluation criteria. The RFP indicated that the agency's relevancy determination of an offeror's past performance would "be made based upon the definitions in the Relevancy matrix." RFP, ¶ D.2. As set forth above, the Relevancy Assessment Matrix identified five areas (A-E) for mission operations, and three areas (A-C) for mission support. For areas A and B for missions operations, however, the Relevancy Assessment Matrix further identified subareas that would be evaluated by the agency. For example, area A required offerors to show experience "[p]erform[ing] the following Cyber Protection Team mission areas: [1] Mission Protection (Risk Analysis/Management), [2] Discovery & Counter-Infiltration (Threat Response), and [3] Cyber Threat Emulation (Red Team) all supported by intelligence." RFP, Relevancy Assessment Matrix, at 1. Thus, to the extent that the evaluators considered in their relevancy assessment of area A whether the offeror demonstrated specific experience with each of the enumerated subareas, we find that this consideration was consistent with the RFP's express evaluation criteria.

Furthermore, we find nothing objectionable in the agency's consideration of the distribution of the team's relevant past performance compared to the anticipated division of work among the team members. The RFP specifically provided that the agency would consider the effort, or portion of the effort, being proposed by the offeror, teaming partner, or subcontractor whose contract was being reviewed and evaluated. RFP, ¶ D.2. Thus, the agency's consideration of the amount of relevant past performance possessed by CPT as the prime contractor relative to its anticipated level of effort on the resulting contract was consistent with the RFP's express evaluation criteria. Additionally, we have previously found that, even where an RFP does not expressly state a specific preference for past performance as a prime contractor, an agency properly may take such information into account in its past performance evaluation as it is reasonably predictive of the quality of contract performance. DA Defense Logistics HQ, supra. Thus, even in the absence of the RFP's express criteria, we find no basis to

object to the agency's more thorough consideration of CPT's individual past performance as the prime contractor.

Discussions

CPT also argues that the Air Force did not conduct meaningful discussions when it failed to raise during discussions the agency's concern regarding the protester's alleged limited past performance. CPT argues that the past performance related discussions conducted by the agency were insufficient to put the protester on notice of the agency's true concerns with CPT's alleged limited past performance. For the reasons that follow, we find no basis on which to sustain the protest.

Discussions, when conducted, must be meaningful; that is, they may not mislead offerors and must identify proposal deficiencies and significant weaknesses that could reasonably be addressed in a manner to materially enhance the offeror's potential for receiving award. Serco Inc., B-405280, Oct. 12, 2011, 2011 CPD ¶ 237 at 11. Although discussions must address deficiencies and significant weaknesses identified in proposals, the precise content of discussions is largely a matter of the contracting officer's judgment. FAR § 15.306(d)(3); American States Utilities Servs., Inc., B-291307.3, June 30, 2004, 2004 CPD ¶ 150 at 5. To satisfy the requirement for meaningful discussions, an agency need only lead an offeror into the areas of its proposal requiring amplification or revision; all-encompassing discussions are not required, nor is the agency obligated to "spoon-feed" an offeror as to each and every item that could be revised to improve its proposal. ITT Fed. Sys. Int'l Corp., B-285176.4, B-285176.5, Jan. 9, 2001, 2001 CPD ¶ 45 at 7.

Section 15.306(d)(3) of the FAR requires discussions to address only "deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond." The Air Force did not identify this issue as a deficiency, significant weakness, or adverse past performance information with respect to CPT's past performance.⁵ Indeed, the agency evaluated the CPT team's cumulative past performance as being "comprehensive" and noted that the quality ranged from very good to excellent for all references. AR, Tab 12, Proposal Analysis Report, at 225-26. Specific to CPT's own past performance, the agency concluded that the past performance, while limited in terms of the number of areas it was responsive to, was very good to exceptional in quality. AR, Tab 12, Proposal Analysis Report, at 216-18, 220-22. We have previously found that an agency is not required to conduct discussions with an offeror concerning its neutral past performance rating, where the offeror's past performance is not viewed as a deficiency or significant weakness, and

⁵ The evaluators did identify concerns regarding the CPT team's failure to adequately demonstrate relevant experience in three past performance areas. The agency engaged in two rounds of discussions with CPT regarding its concerns, and, based on CPT's responses, the agency's concerns were satisfactorily resolved. See, e.g., AR, Tab 12, Proposal Analysis Report, at 209.

the nature and relevance of the offeror's past performance information is clear to the agency. See Wolf Creek Fed. Servs., Inc., B-409187 et al., Feb. 6, 2014, 2014 CPD ¶ 61 at 9. Similarly, we conclude here that the agency was not required to raise the matter of CPT's relatively limited past performance where it favorably evaluated CPT's past performance and the cumulative past performance of CPT's team.

Best-Value Tradeoff

CPT also challenges the reasonableness of the SSA's best-value tradeoff. Specifically, the protester contends that the tradeoff decision was unreasonable and inconsistent with the RFP's evaluation criteria because the SSA could not reasonably conclude that CS3's superior past performance warranted the payment of an almost 10 percent price premium in light of the RFP's approximately equal weighting of price and past performance. We find that the SSA's best-value tradeoff was reasonable, adequately documented, and consistent with the solicitation's evaluation criteria, and therefore find no basis on which to sustain the protest.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results; cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the evaluation criteria. Crowder Constr. Co., B-411928, Oct. 8, 2015, 2015 CPD ¶ 313 at 10. In this regard, award may be made to a firm that submitted a higher-rated, higher-priced proposal where the decision is consistent with the evaluation criteria and the agency reasonably determines that the technical superiority of the higher-priced offeror outweighs the price difference. Charles Kendall & Partners, Ltd., B-310093, Nov. 26, 2007, 2007 CPD ¶ 210 at 4. Where a cost/technical tradeoff is made, the source selection decision must be documented, and the documentation must include the rationale for any tradeoffs made, including the benefits associated with additional costs. FAR § 15.308. A protester's disagreement with the agency's determinations as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency, without more, does not establish that the source selection decision was unreasonable. Pacific-Gulf Marine, Inc., B-415375, B-415375.2, Jan. 2, 2018, 2018 CPD ¶ 124 at 7.

The SSA here recognized the RFP's stated evaluation methodology of price and past performance being approximately equal in weight, and concluded that the CS3's superior past performance warranted the associated price premium due to lesser performance risk for the government. AR, Tab 13, SSD, at 15. The SSA explained that the effort covered by the resulting contract "is critical to our nation's ability to conduct [Air Force] Cyber Operations and Support," and that "[p]erformance confidence is critical for this mission and a trade-off with price to obtain a superior performer may be warranted." Id. at 9-10. The SSA further noted that "[p]erformance risk is lessened by awarding to a team that demonstrates past performance experience across the entire team." Id. at 10.

The SSA then documented a direct comparison of CPT's and CS3's past performance and the basis for his conclusion that CS3's superior performance was worth the price premium. The SSA recognized that CPT proposed to perform 60 percent of the contract effort, but only had relevant experience in 4 of the 11 past performance areas. Id. at 12. Although the protester's team demonstrated relevant experience in the remaining areas, the SSA was concerned that "[i]f, after award, one or more subcontractors leave the contract this could place [CPT], with lesser demonstrated experience, left to execute the contract, which increases the risk to the Government." Id. Additionally, the SSA found that CPT's subcontractors did not show the same level of experience as CS3's respective subcontractors. Id. at 13. The SSA concluded that "the depth of capabilities" of CS3's team, and the associated anticipated lower performance risk, warranted the associated price premium. Id. While CPT disagrees with the SSA's decision to pay a premium for CS3's superior past performance, the protester has failed to show that the SSA's best value determination was unreasonable or otherwise not in accordance with the terms of the RFP.

The protest is denied.

Thomas H. Armstrong
General Counsel