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Decision

Matter of: OSC Solutions, Inc.

File: B-406709; B-406709.2

Date: August 9, 2012

Robert H. Koehler, Esq., and Elizabeth M. Gill, Esq., Patton Boggs LLP, for the protester.

Jessica C. Abrahams, Esq., Henry J. Schweiter, Esq., and Dana B. Pashkoff, Esq., McKenna Long & Aldridge LLP, for National-General Supply, Inc., an intervenor.

Maj. Troy D. Hammon, Department of the Air Force, for the agency.

Paul E. Jordan, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's contention that the agency unreasonably evaluated its past performance as providing satisfactory confidence, instead of substantial confidence, is denied where the record shows that the agency conducted a thorough review of performance assessment reports prepared by both contracting officials with direct knowledge of prior performance and institutional customers with more limited knowledge.

DECISION

OSC Solutions, Inc., of West Palm Beach, Florida, protests the Department of the Air Force's award of a contract to National-General Supply, Inc. (NGSI), of Great Falls, Montana, under request for proposals (RFP) No. FA4897-12-D-0001, for a contractor-operated civil engineering supply store (COCESS) at Mountain Home Air Force Base (AFB), Idaho. OSC challenges its past performance evaluation.

BACKGROUND

The RFP contemplated award of a "not-to-exceed"/fixed-price contract, for a 5-month base period, with four 1-year options, for all necessary labor, supervision, equipment, supplies, and materials to support the Mountain Home COCESS. Proposals were to be evaluated under three factors: technical, past performance, and price. Only proposals evaluated as acceptable under the technical factor were considered for further evaluation.

Of the remaining evaluation factors, past performance was significantly more important than price. Past performance was to be evaluated based on recent (within the past 3 years) and relevant (involving operation of a supply store of similar complexity to the Mountain Home AFB effort) contracts. Each proposal was to receive a past performance confidence rating of substantial, satisfactory, limited, no, or unknown confidence, based on information in past performance questionnaires (PPQ) from references provided by the offerors, and on data independently obtained from other government and commercial sources. RFP at 35. Award was to be made to the offeror whose acceptable proposal represented the "best value" to the government.

Three of the six offers received by the initial August 11, 2011 closing time, including proposals from OSC and NGSI, were evaluated as technically acceptable by the source selection evaluation team (SSET). In addition to the PPQs received for the offerors, the contracting officer obtained available contractor performance assessment reports (CPAR) from the past performance information retrieval system (PPIRS). These included CPARs for OSC's COCESS contracts at Kadena AFB, Okinawa, including one performed 2007 to 2008 (2007 contract) and another performed 2009 to the present (2009 contract).

The SSET's initial simplified source selection report (SSSR), completed in December 2011, evaluated all three offerors as substantial confidence under the past performance factor. However, the contracting officer, as source selection authority (SSA), found that the SSET had not considered the narrative comments from the CPARs, and she therefore reconvened the SSET and instructed it to look beyond the adjectival ratings. By January 13, 2012, the SSET completed its re-evaluation of the offerors' CPARs and PPQs, and rated OSC's past performance as satisfactory confidence and NGSI's and the third offeror's as substantial confidence. The SSA then determined that NGSI's superior past performance warranted payment of its slightly higher price (\$9.47 million versus OSC's \$9.44 million). Upon learning of the resulting award to NGSI, and after a debriefing, OSC filed this protest, challenging its past performance evaluation.

DISCUSSION

OSC asserts that the past performance evaluation was unreasonable because the SSET ignored OSC's correction of the problems identified in the CPARs and the exceptional ratings reflected in its PPQs. According to the protester, its proposal should have received a past performance rating of substantial confidence rather than the assigned satisfactory confidence.

As a general matter, the evaluation of an offeror's past performance, including the relevance and scope of the performance history to be considered, is within the discretion of the contracting agency. We will not question an agency's judgment

unless it is unreasonable, inconsistent with the terms of the solicitation, or undocumented. Family Entm't Servs., Inc., d/b/a/ IMC, B-291997.4, June 10, 2004, 2004 CPD ¶ 128 at 5. A past performance evaluation may be based on a reasonable perception of a contractor's prior performance, regardless of whether that contractor disputes the agency's interpretation of the underlying facts, the significance of those facts, or the significance of the contractor's corrective actions. CMJR, LLC d/b/a Mokatron, B-405170, Sept. 7, 2011, 2011 CPD ¶ 175 at 6. A protester's mere disagreement with the agency's evaluation does not provide a basis for sustaining a protest. Command Enters., Inc., B-293754, June 7, 2004, 2004 CPD ¶ 166 at 4.

The past performance evaluation was unobjectionable. In this regard, the record shows that both the SSET and the SSA considered OSC's positive and negative performance record as reflected in its PPQs and CPARs. For example, the simplified source selection report (SSSR) discussed OSC's overall exceptional ratings in the PPQs for its 2007 and 2009 Kadena AFB COCESS contracts and included the respondents' positive comments. With regard to the 2007 contract, the comments included that OSC "was a very customer-focused company that provided exemplary service," and that the contractor was "very responsive to meeting both routine and emergency material requirements." Kadena 2007 Contract PPQ; SSSR at 7. Similarly, with regard to the 2009 contract, the respondent stated that "OSC consistently goes beyond the call of duty," providing "hardware stores that are very modern, look like commercial stores, and offer over 1,000 products in stock." Kadena 2009 Contract PPQ; SSSR at 6.

However, in its review of the CPARs for these same contracts, the SSET found that OSC's performance was only rated from satisfactory to very good, with some identified problems. For example, while the contracting officer in the CPAR for the 2007 Kadena contract assigned generally very good overall ratings, she noted that there had been a delay in implementing a new retail management system needed to replace the current obsolete system, and thus only assigned OSC a satisfactory rating for schedule. She also noted that there had been numerous customer complaints about an OSC employee, leading to replacement of the employee. The CPAR indicated that OSC did not dissent from these findings. Kadena 2007 Contract CPAR; SSSR at 8.

Further, the two CPARs reviewed for the more recent 2009 Kadena contract indicated lower performance ratings and included more reports of performance problems. With regard to the first 6 months of the 2009 contract, the reporting contracting officer rated OSC in the CPAR as only satisfactory for quality of product/service, schedule (originally rated marginal by the contracting officer but increased by the reviewing official after OSC feedback), cost control, and for hardware stores, and as only "satisfactory (+)" for business relations. Kadena 2009 Contract CPAR I; SSSR at 7. In addition, she noted confusion over ordering parts to complete work orders; numerous complaints about items not being stocked,

ordered or replenished; and that OSC's stateside counterparts were not as helpful as the local operations manager. Id. With regard to a subsequent 10-month performance period for the 2009 contract, the assessing official rated OSC in the CPAR as only satisfactory for quality of product/service, schedule, cost control, hardware stores, and hardware wholesale. He also noted that there were minor discrepancies in the balance of stock items; the government had to follow-up on items at times; and expressed his preference that OSC find replacement parts for discontinued items without being asked by the government. Kadena 2009 Contract CPAR II; SSSR at 6-7. The SSET also considered significant that OSC's performance problems on the 2009 contract were such as to warrant dispatch of an OSC management team to Kadena to meet with contracting personnel for resolution, and to require additional government man-hours to resolve contract deficiencies. SSSR at 8.

In reviewing OSC's past performance record, the SSA personally reviewed all past performance information for the offerors. While she recognized that the PPQs were more positive than the CPARs, she noted that the PPQs represented the opinions of two institutional customers of the COCESS contracts, which were necessarily limited to their interactions related to their particular missions, while the CPARs represented inputs from contracting personnel charged with responsibility for management of the contracts. Contracting Officer's Statement at 12; Contracting Officer's Supplemental Statement at 3.

In sum, the record indicates that the source selection team here placed more weight on the official performance ratings by officials with overall responsibility for managing OSC's Kadena contracts than on the PPQs completed by some of the customers served under those contracts. We find this approach unobjectionable. Further, since the CPARs reviewed with respect to the two Kadena contracts, in particular the two CPARS for the more recent 2009 contract, indicated primarily only satisfactory performance, and noted the existence of a number of performance problems, the evaluators and SSA could reasonably conclude that OSC's record of past performance warranted a rating of only satisfactory confidence (rather than substantial confidence).

OSC complains that the agency failed to consider the most recent (and more positive) CPAR regarding its prior performance on the 2009 Kadena contract. In the protester's view, since this information was available in January, and the award was not made until April 30, the contracting officer should have sought and considered it. However, there is no general requirement that an agency continue to seek updated performance information once its past performance evaluation is complete. See, e.g., CMJR, LLC d/b/a Mokatron, supra (where evaluation completed in January and award not made until May, agency not required to consider a CPAR from March); MINACT, Inc. B-400951, Mar. 27, 2009, 2009 CPD ¶ 76 at 7 n.4 (where agency used the most recent information available at time of evaluation, there is no requirement that agency seek more recent information at time of source selection).

Here, the record shows that the evaluation was completed in December 2011 and finalized on January 13, 2012. While the later CPAR covered the period up to January 12, 2012, and was dated January 24, it was not available on PPIRS until February 9, after the evaluation was completed. Although the agency continued reviews and edits to various contract documents from February 8 to April 30, it did not reopen the evaluation to request updated past performance information during that time. Contracting Officer's Statement at 8, 15. Under these circumstances, the agency's reliance on the existing record, without seeking additional information, was unobjectionable.

While OSC asserts that its lower priced proposal should have been selected for award, the SSA found that award to NGSI would require less government oversight, and would result in having the function performed by a contractor with a proven track record of on-time deliveries, appropriately stocked parts, and replacements for discontinued parts. Source Selection Decision at 2. Based on NGSI's superior past performance, and only slightly higher price, the agency reasonably concluded that NGSI's proposal represented the best value. This conclusion was reasonable.

The protest is denied.

Lynn H. Gibson
General Counsel