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Decision

Matter of: American Auto Logistics LP

File: B-409207

Date: January 30, 2014

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Gary L. Rigney, Esq., and Jon D. Levin, Esq., Maynard Cooper & Gale PC, and J. Samuel Choate Jr., Esq., Atwood Law Firm, for International Auto Logistics LLC, an intervenor.

Christopher S. Cole, Esq., United States Transportation Command, for the agency. Glenn G. Wolcott, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly evaluated awardee's past performance and declined to pay a price premium for protester's superior past performance is denied, where the agency's evaluation and tradeoff decision were reasonable and consistent with the solicitation.

DECISION

American Auto Logistics LP (AAL), of Park Ridge, New Jersey, protests the award of a contract to International Auto Logistics LLC (IAL) of Brunswick, Georgia, under request for proposals (RFP) No. HTC711-13-R-R003, issued by the United States Transportation Command (USTRANSCOM) for the global transportation of privately owned vehicles (POV) for military and civilian employees of the Department of Defense (DOD). AAL, the incumbent contractor for this work, challenges the agency's evaluation of IAL's past performance and the tradeoff decision.

We deny the protest.

BACKGROUND

The RFQ, issued as a solicitation for commercial items, sought a contractor to globally transport POVs of military service members and DOD civilian employees.

Agency Report (AR), Tab 13, RFP at 1; Tab 15, Performance Work Statement (PWS) at 1. This work includes, among other things, operating multiple vehicle processing centers, preparing POVs for shipment, ensuring that necessary agricultural and customs clearances are obtained, arranging for and/or providing ocean and ground transportation, providing intransit visibility of POV shipments, storing POVs, and resolving POV loss and/or damage claims. PWS at 2.

The RFP provided for the award of an indefinite-delivery requirements contract, at fixed-unit prices, for a 22-month base period and three 1-year option periods. RFP at 3-5, 9. The solicitation stated that award would be made to a responsible offeror with a technically acceptable proposal based on a tradeoff between past performance and price. RFP at 39. Technical acceptability was to be based on an assessment of the offeror's transition plan, technical approach,¹ and plan to provide information assurance and cyber security. Id. at 40. Past performance and price were to be equally weighted.² Id. at 39.

For the past performance evaluation, offerors were to provide no more than three references for the offeror, and three references for each major subcontractor, for similar work that was performed in the three years prior to issuance of the solicitation. Id. at 37. The RFP advised that the agency would assess each referenced contract for relevancy by considering the following areas as performed inside "and/or" outside the United States: POV processing, arranging for or providing ocean and inland transportation, customer service, and storage.³ Id. at 41. Based on all of the past performance information considered, the agency was to assign each proposal an overall confidence rating of substantial, satisfactory, limited, no, or unknown confidence. Id. at 41-42.

¹ The acceptability of an offeror's technical approach was based on an evaluation of whether the proposal complied with the PWS requirements for facilities, POV pick-up and turn-in procedures, transportation, POV storage, abandoned POVs, customer service, claims, information technology systems, and subcontracting. RFP at 40.

² The total evaluated price was based on estimated quantities provided in the RFP for various zone pairings. RFP, attach. 3. To be eligible for award, an offeror's price had to be determined fair, reasonable, and realistic. RFP at 43.

³ Possible relevancy ratings were very relevant, relevant, somewhat relevant, and not relevant. RFP at 41. As pertinent here, a relevant rating was assigned where the prior effort involved "similar" scope, magnitude, and complexities to the work required by the RFP; a somewhat relevant rating was assigned where the prior effort involved "some of" the scope, magnitude, and complexities of the required work; and a not relevant rating was assigned where the prior effort involved "little or none" of the scope, magnitude, and complexities of the required work. Id.

Five offerors responded to the RFP, including AAL and IAL. Both firms proposed to use subcontractors to perform the work and submitted past performance references for those subcontractors as required by the RFP. AAL received a substantial confidence rating for past performance and had a total evaluated price of \$957,535,151. IAL received a satisfactory confidence rating for past performance and had a total evaluated price of \$919,233,416.⁴ AR, Tab 66, Source Selection Decision, at 3.

AAL was the only offeror to receive a substantial confidence rating for past performance. In support of this rating, the agency considered 18 past performance references. The agency gave the “[m]ost significant” and “greatest consideration” to AAL’s and its subcontractors’ favorable performance under the incumbent contract, but the agency also considered successful performance under other somewhat relevant contracts. Id. at 4-5. Based on this information, the agency concluded that it had a “high expectation” that AAL would successfully perform the contract. Id. at 5.

In evaluating IAL’s past performance as satisfactory confidence, the agency considered 26 references, finding none of them to qualify as very relevant because the offeror and its subcontractors had not performed all of the required services under a single contract of the same scope and magnitude. Id. at 3. Nonetheless, the agency determined that many of the prior contracts qualified as relevant or somewhat relevant, as those terms were defined, and that, combined, these prior contracts demonstrated successful performance of IAL and its subcontractors in the required performance areas. Accordingly, the agency concluded that it had a “reasonable expectation” that IAL would successfully perform the contract. Id.

The source selection authority (SSA) performed a tradeoff between AAL’s higher past performance and IAL’s lower evaluated price. The SSA recognized that the “distinguishing difference” between the two firms’ proposals was that the AAL team had previously performed all of the work under a single contract, and that the IAL team had only demonstrated performance of the same or similar tasks under multiple separate contracts of smaller scope and magnitude. However, the SSA determined that AAL’s experience in providing the services under a single contract (as opposed to having experience from multiple contracts of smaller scope) did not result in sufficient benefit to the agency to justify paying a \$38 million price premium. Id. at 5, 8.

The agency selected IAL for award, and this protest followed.

⁴ The evaluation of the other offerors’ proposals is not relevant to this decision and will not be discussed.

DISCUSSION

AAL protests the agency's tradeoff between past performance and price, contending that the agency gave too favorable consideration to IAL's history of performance, and too little consideration to AAL's superior record of performance. The protester also contends that IAL's and its subcontractors' past performance is less relevant than the agency determined, in large part because none of the team had performed all of the required services under a single contract. Finally, the protester attacks some of IAL's references as being irrelevant or inappropriate for consideration.

The evaluation of past performance, including the agency's determination of the relevance and scope of an offeror's performance history to be considered, is within the sound discretion of the contracting agency. Nat'l Beef Packing Co., B-296534, Sept. 1, 2005, 2005 ¶ 168 at 4. We will not find improper an agency's past performance determinations unless unreasonable or inconsistent with the solicitation. Id.; Family Enter. Servs., Inc., d/b/a IMC, B-291997.4, June 10, 2004, 2004 CPD ¶ 128 at 5. The protester has not shown the agency's past performance evaluation to be improper here.

At the heart of the protester's complaints is its belief that the agency is not justified in selecting a lower priced contractor given the protester's superior record of performance. As noted above, the agency disagreed. It specifically recognized that AAL was the only contractor that had performed all of the required services together under a single contract and, as a result, the agency gave AAL the only substantial confidence rating in the evaluation. However, the agency also concluded that AAL's superior experience did not justify paying a price premium of \$38 million dollars. As the agency explains, the services procured here were commercial services that are available in the commercial marketplace. Thus, the IAL team's performance under separate smaller contracts, in the agency's eyes, was relevant to demonstrating satisfactory performance, and AAL's superior performance did not warrant the added cost in the commercial marketplace.⁵ See AR, Tab 66, at 5. Although AAL disagrees with this judgment, it has not shown it to be unreasonable or inconsistent with the solicitation.

⁵ The agency performed extensive market research and all responding vendors (except for AAL) agreed that the services were commercial services; as a result, the agency issued the solicitation as a commercial item acquisition. Although AAL now asserts that the agency is unreasonably minimizing the complexity of the services by relying on the commercial nature of the services, and not recognizing the advantages AAL offers in having previously performed all of the work under one contract, AAL's arguments amount to mere disagreement with the agency's judgment and do not provide a basis to sustain the protest.

As for AAL's specific challenges to the evaluation of IAL's past performance, we have considered all of them and find them to be without merit. We address several of the arguments below.

AAL contends that two of IAL's references that were determined to be relevant are not relevant at all. Both references were for one of IAL's proposed subcontractors, Global Auto Logistics, Inc. (GAL). According to the protester, the agency's findings of relevance were unreasonable because: (1) the references were not for GAL (who the protester claims is newly formed and has no past performance), but for a European "affiliate" of GAL's sister company, which was not proposed as a subcontractor here;⁶ (2) none of the references performed all of the required services; and (3) GAL is proposed to perform only a small portion (\$3-4 million) of the total work under the contract. Comments at 4.

The record here supports the reasonableness of the agency's consideration of the past performance of the European "affiliate" of GAL's sister company. It is well settled that an agency may rely on the performance of a parent or sister company where, as here, resources and key personnel are anticipated to be relied on during performance. Serco, Inc., B-406683, B-406683.2, Aug. 3, 2012, 2012 CPD ¶ 216 at 6; Ecompex, Inc., B-292865.4 et al., June 18, 2004, 2004 CPD ¶ 149 at 5. Both IAL's proposal and its responses to discussion questions confirmed and explained the involvement and support of GAL's sister company in performing the work contemplated here, and mentioned both the sister company's European branch offices and commitment of European key personnel. E.g., AR, Tab 22, IAL Proposal, at 73, 85-87, 117-21; Tab 37, IAL Evaluation Notices, at 52, 55. For example, IAL emphasized that GAL and its sister company shared common ownership and that the sister company's president and owner, European managing partner,⁷ and key personnel would be supporting GAL in its performance of this contract. AR, Tab 22, IAL Proposal, at 117; Tab 36, at 52. Indeed, IAL provided the agency with a commitment letter from the sister company, stating:

GAL will have at its complete disposal TGAL's vast resources in the areas of: freight forwarding, 2nd POV movement, NVOCC (Non-

⁶ IAL's proposal explained that the sister company, Trans Global Auto Logistics, Inc. (TGAL), is an international company, established in 2002, with main offices in Texas and branch offices in Florida, Germany, France, and the United Kingdom. AR, Tab 22, IAL Proposal, at 73. TGAL is an independent, non-vessel operator common carrier and freight forwarder serving the shipping community within the United States and Europe. Id.

⁷ IAL's proposal identified the sister company's European managing partner as key personnel. This individual is both the general manager of the sister company and the vice president of European operations. AR, Tab 22, IAL Proposal, at 87, 117.

Vessel Owning Common Carrier), warehousing, trucking, global operations, network, systems, operational transportation logistics policies and procedures, human resources, and financial backing to meet any challenge and insure GAL compliance with the requirements as defined [in the RFP].

AR, Tab 37, at 55. Based on this record, we find the agency's consideration of the sister company's past performance, including the performance of the European "affiliate" to be reasonable.⁸

We further find reasonable the agency's consideration of the sister company's past performance even though the references did not perform all of the work required here under one contract, and even though GAL is expected to perform only a relatively small portion of the work on the contract. The RFP did not require that each reference have experience performing all of the required work, or all of the work under one contract. Based on our review of the record, the agency's relevancy assessments were within the reasonable discretion afforded the agency.⁹

AAL also attempts to diminish the relevancy of several of the somewhat relevant contracts the agency considered in evaluating IAL's performance. The protester again bases its complaint on the fact that none of the referenced contracts involved performing all of the requirements of the RFP under a single contract. For the reasons discussed above, these arguments are unavailing and do not provide a basis to sustain the protest.¹⁰ We have reviewed each of the challenged references and find that the record supports the agency's relevancy determination as well as the agency's conclusion that, collectively, all of the references provided the agency with satisfactory confidence that IAL would successfully perform the contract.¹¹

⁸ Although the protester maintains that the European "affiliate" is a separate and distinct entity from the sister company, the protester's own evidence shows that the "affiliate" was formed to support and serve the customer base of the sister company. AAL Comments, Dec. 6, 2013, exh. A.

⁹ Even if the GAL sister company references should have been deemed only somewhat relevant instead of relevant, we fail to see how AAL was prejudiced, since the totality of IAL's past performance still supports a satisfactory rating.

¹⁰ In many instances, AAL bases its arguments on a misreading of the RFP. For example, the protester repeatedly asserts that contractors had to have experience arranging and providing inland and ocean transportation. E.g., AAL Comments, Dec. 6, 2013. However, the RFP stated only that relevancy would be based on, among other things, a contractor's experience arranging or providing for the transportation. RFP at 41.

¹¹ The protester contends that IAL was, and may still be, associated with unsavory individuals and organizations that have ties to North Korea, China, and the

(continued...)

In sum, we find unobjectionable the agency's conclusion that, although the protester had a superior record of performance, that superiority was not worth a price premium of \$38 million.

The protest is denied.

Susan A. Poling
General Counsel

(...continued)

Unification Church; the protester claims that these relationships pose cybersecurity risks that should have caused the agency to "seriously question whether IAL can be trusted to properly secure the information provided to it." Comments, Dec. 6, 2013, at 35-37. The agency responds that it is not aware of any connection between IAL and North Korea, China, or the Unification Life Church. Contracting Officer's Statement of Fact/Agency Memorandum of Law, Nov. 26, 2013, at 31. Further, the agency notes that protester acknowledges that IAL submitted an acceptable information assurance and cybersecurity plan, see Comments, Dec. 6, 2013, at 2, 35-37, and that the protester has not otherwise shown that the agency violated procurement laws or regulations in finding IAL's proposal to be technically acceptable and in finding the firm to be responsible. Supp. Contracting Officer's Statement of Fact/Agency Memorandum of Law, Dec. 17, 2013, at 19-20. On this record, the protester's allegations regarding IAL's possible relationships do not provide a basis for our Office to sustain its protest.