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Decision

Matter of: Food Services, Inc. of Gainesville
File: B-411032.2; B-411032.3; B-411032.4
Date: August 10, 2015

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DIGEST

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

DECISION

Food Services, Inc. of Gainesville (FSIG), a small business located in Gainesville, Georgia, protests the award of a contract to Cantu Services, Inc., a service-disabled, veteran-owned small business located in Wichita Falls, Texas, under request for proposals (RFP) No. FA4484-15-R-0005, issued by the Air Force for food services at Joint Base McGuire-Dix-Lakehurst (JB MDL), New Jersey.¹ The protester challenges the agency's evaluation of its past performance.

We deny the protest.

¹ According to the Air Force, in addition to the military personnel who live and work on or near the base, JB MDL serves as a training location for thousands of service members preparing for overseas contingency operations. Contracting Officer's (CO) Statement at 1-2.

BACKGROUND

The RFP, issued as a small business set-aside on November 17, 2014, anticipated the award of a fixed-price contract with a 1-year base period and four 1-year options.² CO Statement at 2; RFP at 1-2. Pursuant to the RFP's performance work statement (PWS), the agency sought all supplies and services necessary to provide full food services at JB MDL, including dining facility management; menu planning; ordering, storing, preparing, and serving food; cashier duties; and dining facility cleaning. Agency Report (AR), Exhibit (Exh.) 2, PWS, at 4. According to the PWS, the selected contractor is responsible for operating seven dining facilities, two of which are to be open year-round, with the other facilities to be opened and closed on an as-needed basis. Id. In this regard, the PWS provided that the number of personnel at JB MDL fluctuates throughout the year, sometimes unpredictably, and as such, the contractor may be required to meet surges in requirements by extending the operating hours of dining facilities upon 24 hours' notice, as well as opening additional facilities upon 72 hours' notice. Id. at 3-6. The contractor is also required to facilitate remote feeding for personnel unable to reach the dining facilities by preparing, upon 48 hours' notice, packaged meals for pickup by military units. Id. at 7.

The RFP established that the Air Force would make award on best-value basis using a past performance and price tradeoff procedure, where past performance would be significantly more important than price. RFP at 154. To facilitate the evaluation of past performance, the RFP directed offerors to identify and provide contact information for up to 10 relevant contracts that they had performed in the previous 5 years. Id. at 148. With regard to relevancy, the RFP noted that relevant past performance examples were those that were similar in scope, magnitude, and complexity to the effort described in the solicitation and that the government reserved the right to give greater weight to those contracts deemed most relevant. Id. at 154-55. The RFP further provided that offerors' past performance examples would be rated for relevancy and that the relevancy ratings, along with the offerors' performance on the contracts, would be considered when assigning overall performance confidence assessment ratings.³ Id.

²Although the RFP was issued as a small business set-aside, it also permitted state licensing agencies (SLAs) to submit proposals pursuant to the Randolph Sheppard Act (RSA). RFP at 156. Under the RSA, blind persons recognized and represented by SLAs receive priority in the award of contracts for, among other things, the operation of cafeterias in federal buildings. 20 U.S.C. § 107 (2000); 34 C.F.R. § 395.33(a). The record reflects that FSIG and Cantu submitted proposals as prime contractors and were not eligible for preferential treatment under the RSA. Agency Response to GAO Request for Clarifications, July 30, 2015, at 1.

³ Under the RFP, the possible relevancy ratings for past performance examples were very relevant, relevant, somewhat relevant, and not relevant. RFP at 155.

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The Air Force received ten proposals by the RFP's December 30, 2014 closing date, including those from FSIG and Cantu. CO Statement at 6. The record reflects that in assessing the relevancy of offerors' past performance examples, the agency considered the extent to which the contracts required the offerors to: (1) provide the full range of food services sought under the RFP; (2) serve over one million meals per year; (3) operate at least three dining facilities simultaneously; (4) meet surges in requirements by extending operating hours and opening additional facilities within 24 hours; (5) open and close dining facilities frequently; and (6) provide for remote feeding by preparing packaged meals. AR, Exh. 16, Proposal Analysis Report (PAR), at 6-47. The record also reflects that the Air Force determined that the majority of the past performance references submitted by offerors were not relevant. Id.

With regard to FSIG's proposal, it had an evaluated price of \$38,982,000, and received a past performance rating of "unknown" confidence, which the RFP defined as follows: "No recent/relevant performance record is available or the offeror's performance record is so sparse that no meaningful confidence assessment rating can be reasonably assigned." AR, Exh. 17, Source Selection Decision (SSD), at 2, 6; RFP at 155. In this regard, the agency evaluated three of FSIG's past performance examples as not relevant and one as somewhat relevant.⁴ In assessing the relevancy of FSIG's past performance examples, the agency generally found that the contracts required FSIG to provide significantly fewer meals than called for under the RFP and that they did not require short-notice surge capability or the frequent opening and closing of dining facilities. AR, Exh. 17, SSD, at 6.

By contrast, Cantu's proposal was evaluated at a price of \$42,991,827 and received a past performance rating of substantial confidence. Id. at 2, 7. In assessing the relevance of the three past performance examples submitted by Cantu, the agency found that two were not relevant and one was very relevant. Id. at 7. With regard to the latter, the agency found that the awardee had performed full food services for the government at Fort Sam Houston, serving over 1.1 million meals per year while operating five dining facilities, and responding to surge requirements similar to

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The possible performance confidence ratings were substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence. Id.

⁴ The record reflects that FSIG submitted a fifth past performance example that the Air Force did not evaluate because the agency did not receive any response from the point-of-contract provided by the protester, despite the agency's repeated attempts to contact the reference. AR, Exh. 16, PAR, at 22. The protester has not challenged the agency's decision not to consider this reference in its evaluation.

those required under the solicitation. Id. at 10. Based on this information, the Air Force determined that Cantu's Fort Sam Houston contract was essentially the same or greater in scope, magnitude, and complexity as the anticipated JB MDL contract. AR, Exh. 16, PAR, at 10-11. As to Cantu's performance on the Fort Sam Houston contract, the references contacted by the Air Force rated Cantu highly for its responsiveness and flexibility, and provided that the awardee's overall performance was satisfactory. Id.

In conducting its tradeoff between price and past performance, the Air Force concluded that Cantu's proposal represented the best value to the government when compared to the five proposals that were lower in price, all of which received past performance ratings of unknown confidence.⁵ AR, Exh. 17, SSD, at 11-12. In making the award decision, the Air Force noted that inadequate performance under the anticipated contract would have an immediate, negative impact on mission operations, mobilization and demobilization, contingency training, and the health and welfare of military members from all services. Id. at 11. As such, the agency determined that the agency's greater confidence in Cantu's ability to successfully perform the contract justified paying the price premium for Cantu's services. Id. at 11-12.

The Air Force provided FSIG with a written debriefing on April 29, 2015, and FSIG timely filed the instant protest with this Office on May 11. Supp. Protest at 1.

DISCUSSION

FSIG challenges the Air Force's past performance evaluation on several grounds.⁶ First, the protester contends that in determining the relevancy of offerors' past performance examples, the agency considered factors that were not identified in the RFP. Second, the protester argues that even under the standard for relevancy applied by the agency, its past performance references warranted higher ratings.

⁵ Under the RFP, proposals that were higher in price than a proposal receiving a past performance rating of substantial confidence were not considered in the best-value tradeoff decision. RFP at 155.

⁶ In addition to those discussed below, FSIG raises numerous other contentions, including that the Air Force applied a standard for relevancy that was higher than that contained in the RFP, that offerors receiving a past performance rating of unknown confidence were not considered in the agency's best-value analysis, and that the Air Force should have considered the protester's past performance examples in the aggregate when rating its past performance. Second Supp. Protest at 7, 10, 14-15. Although we do not specifically address each of the protester's arguments in the decision, we have fully considered all of them, and find that they provide no basis to sustain the protest.

Finally, the protester contends that the agency engaged in disparate treatment when it failed to credit FSIG for providing remote feeding under one of its past performance references. For the reasons discussed below, we deny the protest.⁷

FSIG argues that in evaluating the relevancy of offerors' past performance examples, the Air Force improperly considered whether those contracts required the offeror to provide at least one million meals per year. Second Supp. Protest at 3-6. In the protester's view, such a consideration constituted an unstated evaluation criterion. We note that in evaluating proposals, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by, or related to, the stated evaluation criteria. See Independence Constr., Inc., B-292052, May 19, 2003, 2003 CPD ¶ 105 at 4. Here, the RFP advised offerors that relevant past performance examples were those that were similar in scope, magnitude, and complexity to the effort described in the solicitation. RFP at 154. Given that the primary purpose of the procurement at issue is to provide all of the meals for JB MDL's dining facilities, we think it is self-evident that the number of meals provided under offerors' past performance examples is logically related to the relevancy of those contracts to the anticipated requirement. Furthermore, to the extent the protester alleges that offerors were not advised of the number of meals required under the solicitation, an appendix to the RFP provided the number of meals served at each of JB MDL's seven dining facilities in the previous three fiscal years, and these statistics reflect that over one million meals were served in each year.⁸ AR, Exh. 2, PWS, at 30-36.

⁷ In its initial protest and first supplemental protest, FSIG also raised additional allegations, including that the Air Force did not adequately consider the protester's past performance information in the Contractor Performance Assessment Reporting System and that the agency should have considered Cantu's litigation history related to its government contracts when evaluating the awardee's past performance. Supp. Protest at 4-7. The agency responded to these arguments in its report and the protester did not take issue with, or otherwise seek to rebut, the agency's response in its comments. Under such circumstances, we view these arguments as abandoned. Earth Res. Tech., Inc., B-403043.2, B-403043.3, Oct. 18, 2010, 2010 CPD ¶ 248 at 6.

⁸ FSIG also argues that the agency's consideration of whether an offeror served more than a million meals under its past performance examples unduly restricted competition because there are only a few locations where the government requires food service contracts of this magnitude. Second Supp. Protest at 6-7. The fact that a requirement may be burdensome or even impossible for a particular firm to meet, however, does not make it objectionable, if the requirement properly reflects the agency's needs. JBG/Naylor Station I, LLC, B-402807.2, Aug. 16, 2010, 2010 CPD ¶ 194 at 4. As discussed above, the RFP anticipated that the contractor would be required to serve over one million meals per year. AR, Exh. 2, PWS, at 30-36. In any event, the record reflects that two offerors in addition to Cantu also submitted
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As a related matter, the protester contends that the agency in effect treated the one million meal standard as a “go/no-go” evaluation factor, in that if an offeror did not serve at least one million meals per year under a contract, the contract was automatically deemed not relevant. Second Supp. Protest at 3, 15. The protester argues that applying such a standard was inconsistent with the RFP, which provided that a past performance effort be similar, not identical, to the solicitation’s requirements in order to be rated as relevant. Id. The record, however, demonstrates that the agency did not mechanically apply the million meal standard as FSIG claims. While the agency clearly considered the number of meals served to be an important factor in assessing the relevancy of offerors’ past performance examples, the record reflects that it was one of several criteria that the agency considered. AR, Exh. 16, PAR, at 6-47. For example, although FSIG served only approximately 388,000 meals per year under its Hill Air Force Base (AFB) contract, the agency rated the contract as somewhat relevant because the protester provided full food services at three dining facilities and also provided meals for remote feeding, but did not demonstrate the ability to meet surge requirements or open and close facilities on a frequent basis. Id. at 19-20. Thus, there is no basis for the protester’s contention that the agency treated the provision of a million meals per year as a litmus test for relevancy when evaluating offerors’ past performance examples.

FSIG argues that in assessing the relevancy of its past performance examples, the Air Force improperly considered whether offerors demonstrated the ability to open additional dining facilities within 24 hours. Second Supp. Protest at 4-5. In this regard, the protester correctly notes that while the RFP requires the awardee to open additional dining facilities within 72 hours, the agency’s evaluation focused on whether offerors’ past performance examples demonstrated their ability to open facilities within 24 hours. Id. As discussed below, however, FSIG’s past performance examples did not require the protester to open any additional facilities, under any timeframe. AR, Exh. 16, PAR, at 19-23. Nor does the protester contend that it would have submitted different past performance references had it known that the agency would use the more stringent 24-hour notice period in its evaluation. Thus, FSIG has not demonstrated how it was prejudiced by the Air Force’s consideration of a notice period that was shorter than that identified in the RFP, and accordingly, the protester’s contention provides no basis to sustain the protest. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3 (“Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency’s actions, that is, unless the protester demonstrates that, but for the agency’s actions, it would have had a substantial chance of receiving the award.”).

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past performance examples that the agency evaluated as highly relevant. AR, Exh. 167, SDD, at 7-8.

Next, FSIG contends that the Air Force should have assigned all four of its past performance references higher relevancy ratings. Second Supp. Protest at 7-10. As an initial matter, we note that the evaluation of past performance is a matter within the discretion of the contracting agency. HLC Indus., Inc., B-274374, Dec. 6, 1996, 96-2 CPD ¶ 214 at 3. In reviewing an agency's evaluation of past performance, we will not reevaluate proposals, but instead will examine an agency's evaluation to ensure that it was reasonable and consistent with the solicitation. CDA Inv. Techs., Inc., B-272093, B-272093.2, Sept. 12, 1996, 97-1 CPD ¶ 102 at 7. As discussed below, the protester's arguments amount to mere disagreement with the agency's judgment, and thus fail to establish that the agency's evaluation was unreasonable.

FSIG disputes the agency's conclusion that its proposal demonstrated "limited or no past performance of short notice surge capability and no frequent closing/opening of dining facilities." Second Supp. Protest at 9-11; AR, Exh. 17, SSD, at 6. In this regard, the protester argues that the references contacted by the Air Force for its past performance examples all informed the agency that the protester had handled surges in requirements. Id. The record, however, supports the agency's conclusion that FSIG did not provide the same types of surge responses under its past performance examples as required under the RFP. For example, with respect to its Hill AFB contract, FSIG contends that it provided for surge operations when it responded to aircraft accidents by increasing staff numbers and providing meals in temporary tents. The agency, however, determined that these services did not involve opening or extending the operating hours of existing dining facilities as envisioned under the RFP. Id. at 19-20. Likewise, for FSIG's Schriever AFB and Fort Irwin contracts, although the Air Force recognized that the protester demonstrated an ability to handle, on short notice, significant increases in the number of meals served, the record reflects that these surges were handled using a single facility and thus did not require the protester to open or extend operating hours of additional facilities. Id. at 20-21. Based on the above, we have no basis to conclude that the agency's evaluation was unreasonable or inconsistent with the solicitation.

FSIG also challenges the Air Force's determination that the protester's Fort Riley past performance example was not relevant, arguing that the contract should have been rated as highly relevant as it required serving over one million meals annually, the operation of up to seven dining facilities, and frequent surge operations involving the opening and closing of facilities. Second Supp. Protest at 9, 11. In support of these claims, however, the protester relies not on its current contract at Fort Riley, which it submitted as a past performance example, but rather to its predecessor contract for this location, which it did not identify in its proposal. Second Supp. Protest, Declaration of FSIG President, at 1-2. With regard to FSIG's existing Fort Riley contract, the reference contacted by the agency was unsure of the number of meals served under the contract, but informed the Air Force that the

protester was currently providing only mess attendant and contingency cook services at two dining facilities, a fact which the protester acknowledges. Exh. 16, PAR, at 21-22; Second Supp. Protest, Declaration of FSIG President, at 2. Given the limited scope of services being provided under FSIG's current Fort Riley contract vis-à-vis the requirements of the RFP, we have no basis to conclude that the agency's relevancy assessment was unreasonable. Further, although FSIG has submitted information regarding the scope of its current and former Fort Riley contracts during the course of this protest, the record reflects that the agency did not have this information at the time of its evaluation. Id.; AR, Exh. 16, PAR, at 21-22. We find nothing objectionable in the agency's failure to consider information that was not available to it at the time it performed the past performance evaluation.⁹ CMJR, LLC d/b/a Mokatron, B-405170, Sept. 7, 2011, 2011 CPD ¶ 175 at 8; Honolulu Shipyard, Inc., B-291760, Feb. 11, 2003, 2003 CPD ¶ 47 at 6.

Next, FSIG contends that the Air Force engaged in disparate treatment when assessing whether offerors provided remote feeding under their past performance examples. Second Supp. Protest at 12. The protester notes that although the Air Force credited the awardee for providing remote feeding where Cantu prepared meals for pickup but did not deliver them, the agency did not give FSIG credit for providing the same service under its Fort Schriever contract. Id. Although the record suggests that the Air Force failed to credit FSIG under its Fort Schriever contract for providing remote feeding, we do not believe that the protester was prejudiced by any such error, given that the contract failed to meet several of the agency's other relevancy criteria. As discussed above, the Air Force found that the protester's Fort Schriever contract did not require FSIG to meet surges in requirements on short notice or to frequently open and close dining facilities. AR, Exh. 16, PAR, at 20. Additionally, the agency also noted that the protester operated only one dining facility under this contract, serving approximately 315,000 meals per year. Id. By comparison, under FSIG's Fort Irwin contract, the protester provided over 400,000 meals out of a single dining facility, served an additional 250,000 meals out of a military-run facility, and provided remote feeding. Id. at 20-21. Thus, even assuming the Air Force had credited FSIG for remote feeding under its Fort Schriever contract, it would have met, at best, the same relevancy criteria as FSIG's Fort Irwin contract, which the agency evaluated as not relevant. As such, the

⁹ Also without merit is FSIG's contention that the agency should have sought clarifications from the protester concerning the scope of its current and prior contracts at Fort Riley. As we have previously recognized, clarifications are not required where the solicitation, as here, provides for award to be made without discussions. IJC Corp., B-408950, Dec. 31, 2013, 2013 CPD ¶ 301 at 3.

protester cannot establish that it was prejudiced by the agency's failure to credit it for remote feeding under its Fort Schriever contract. See McDonald-Bradley, supra.¹⁰

The protest is denied.

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General Counsel

¹⁰ There is likewise no merit to FSIG's argument that the agency failed to credit the protester for providing remote feeding under its Fort Riley contract. For this past performance example, the record reflects that the agency was aware that FSIG provided remote feeding, but as discussed above, determined that the contract was not relevant because the protester was only providing mess attendant and contingency cook services at two dining facilities. AR, Exh. 16, PAR, at 21-22.