



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This version has been approved for public release.

Decision

Matter of: TechTrend, Inc.

File: B-412009; B-412009.2

Date: December 4, 2015

David B. Robbins, Esq., and Laura J. Mitchell Baker, Esq., Shulman, Rogers, Gandal, Pordy & Ecker, PA, for the protester.
Azine Farzami, Esq., Department of Agriculture, Forest Service, for the agency.
Susan K. McAuliffe, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's contention that its proposal was improperly excluded from the competitive range is denied where the protester has not shown that its "satisfactory" past performance rating was unreasonable or inconsistent with the stated evaluation criteria.

DECISION

TechTrend, Inc., of Arlington, Virginia, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. AG-3187-S-14-0005, issued by the Department of Agriculture, Forest Service, for human resource (HR) technology implementation and advisory support services. TechTrend contends that the agency improperly evaluated its past performance resulting in its improper exclusion from the competitive range.

We deny the protest.

BACKGROUND

The RFP, issued on October 21, 2014, as a small business set-aside under the Small Business Administration's 8(a) Business Development Program, contemplated the award of up to three indefinite-delivery/indefinite-quantity (IDIQ) contracts for a base year and four option years, with a total ceiling dollar value of \$49 million. RFP amend. No. 4 at 1, 4-6. The solicitation's requirements, as set forth in the performance work statement (PWS), consolidated requirements previously performed under two prior contracts and included new requirements for

human resource information technology and contract advisory and assistance services. Memorandum of Law at 2.

The solicitation established that awards would be made using a best-value tradeoff process based on a consideration of the following factors: (1) technical capability (including subfactors for organization/management approach, response to an initial task order provided in the solicitation, and resumes for key personnel); (2) past performance (including subfactors for technical capabilities/experience and past performance summaries and questionnaires); and (3) price. RFP amend. No. 4 at 34.

Regarding the past performance capabilities/experience subfactor, the RFP provided that the agency would assess an offeror's experience, and that of its subcontractors, for: (a) breadth and depth of technical capabilities and experience in fulfilling the PWS requirements; (b) capabilities and experience with human resource technology implementation support services identified in the RFP; and (c) capabilities and experience with human resource technology implementation support services provided to U.S. Government agencies. Id. Under the past performance summaries and questionnaires subfactor, the RFP provided for an evaluation of the quality of an offeror's performance on relevant contracts--those of similar size, scope, and complexity. Id. at 34, 35. Further, with regard to the agency's evaluation under the past performance factor, the RFP generally advised that "establishing the capability and quality of the prime contractor is more important than establishing the same on the proposed subcontractors." Id. at Question and Answer (Q&A) No. 2.

For the purpose of the best-value tradeoff selection process, the RFP established that the two non-price factors (technical capability and past performance) were of approximately equal importance and, when combined, were approximately equal in weight to price. Id. at 36. In the event the agency chose to conduct discussions, the contracting officer was to establish a competitive range of the most highly-rated proposals and could limit the number of proposals included in the competitive range to conduct a more efficient competition. Id. at 37.

The agency received and evaluated nineteen proposals. Contracting Officer Statement at 1. Based on the initial evaluation, the contracting officer decided to establish a competitive range limited to the most highly-rated proposals. TechTrend's proposal, which the agency rated as "very good" under the technical capability factor, and "satisfactory" under the past performance factor, was not considered one of the most highly-rated proposals and, on August 11, 2015, the agency notified TechTrend that its proposal had been excluded from the competitive range. Contracting Officer's E-mail to Protester, Aug. 11, 2015. The exclusion notice advised TechTrend that its proposal "did not establish an adequate breadth and depth of relevant experience in providing [human resource information technology] services to US Government organizations" and "did not provide any

past performance questionnaires where it performed as a prime contractor or otherwise establish through its capabilities and experience that it would be a strong prime contractor as compared to the higher-rated offerors for this effort.” Id.

TechTrend received a written debriefing on August 19. On August 24, TechTrend submitted a written reply to the agency’s debriefing, challenging the evaluation findings noted in the agency’s debriefing. On August 28, TechTrend filed a protest with our Office contending that the agency unreasonably failed to rate the firm’s proposal higher than “satisfactory” under the past performance evaluation factor. TechTrend contends that but for the agency’s allegedly unreasonable evaluation of its past performance, which evaluation the firm contends is inconsistent with the terms of the RFP, its proposal would have been one of the most highly-rated proposals and included in the competitive range. Protest at 3.

DISCUSSION

In challenging the “satisfactory” rating its proposal received under the past performance factor, and its exclusion from the competitive range, the protester essentially argues that its past performance rating was unreasonable given that it proposed the incumbent team for one of the predecessor contracts. According to TechTrend, its team demonstrated highly relevant past performance for which the team received exceptional quality ratings. TechTrend also argues that the agency improperly downgraded TechTrend for having failed to submit past performance information concerning its performance as a prime contractor. The protester asserts that the solicitation did not require offerors to include prime contract past performance references from the prime offeror; rather, the solicitation simply provided that past performance information could be for the prime contractor, teaming partner, or subcontractor. Id. at 2.

The determination of whether a proposal is in the competitive range is principally a matter within the reasonable exercise of discretion of the procuring agency. Foster-Miller, Inc., B-296194.4, B-296194.5, Aug. 31, 2005, 2005 CPD ¶ 171 at 6. Accordingly, in reviewing an agency’s evaluation of proposals and subsequent competitive range determination, we will not evaluate the proposals anew in order to make our own determination as to their acceptability or relative merits; rather, we will examine the record to determine whether the documented evaluation was fair, reasonable, and consistent with the evaluation criteria. Ervin & Assocs., Inc., B-280993, Dec. 17, 1998, 98-2 CPD ¶ 151 at 3. Since 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 are matters of agency discretion, we will not find such determinations improper unless they are inconsistent with the solicitation’s terms. Unispec Enters., Inc., B-407937, B-407937.2, Apr. 16, 2013, 2013 CPD ¶ 104 at 9. A protester’s disagreement with the agency’s judgment simply does not establish

that an evaluation was improper. AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 19.

We have reviewed the protester's challenges to the agency's past performance evaluation and conclude that they do not provide a basis to sustain the protest. The record reflects that in evaluating TechTrend's proposal as satisfactory under past performance, the agency assigned the proposal various strengths. For instance, the agency assigned TechTrend's proposal strengths based on the experience of its proposed subcontractors, and for some of its own experience. Specifically, the agency highlighted the fact that one of TechTrend's subcontractors had been the incumbent prime contractor performing one of the two contracts consolidated under the current solicitation. The TechTrend proposal was also given a strength for the protester's performance as a subcontractor to that firm in one of the task areas of the firm's prime contract. Additionally, the agency credited the fact that another of TechTrend's subcontractors provided support services migrating core HR systems for another federal agency. TechTrend also received a noted strength for the quality of its own work as a subcontractor providing information technology support for another Forest Service office; the agency, however, concluded that the subcontract--awarded at a lower dollar value than anticipated under the current RFP--was of low relevance and did not show technical capability in core HR management services related to work under the RFP. Technical Evaluation Board (TEB) Summary Evaluation Scoresheet at 3.

The agency also identified a number of concerns with respect to TechTrend's past performance mainly related to the fact that TechTrend, as the prime contractor, lacked sufficient relevant experience of its own. More specifically, these concerns included that: the firm failed to demonstrate capability in several federal HR management services associated with the PWS work; other than its work as a subcontractor for a portion of an incumbent contract for some of the PWS requirements, TechTrend's experience was not considered highly relevant; and the past performance information provided was not for TechTrend's prime contract work. Id. at 3-4. The contracting officer also had first-hand knowledge of negative past performance information concerning TechTrend's performance as a prime contractor on a much smaller contract involving HR functions, which the agency considered to be related (i.e., low to moderate relevancy) to work required under the PWS. Regarding the last issue, the contracting officer found that TechTrend had submitted deliverables of lower quality than expected by the agency in performance of this contract.¹ Competitive Range Determination at 33; Pre-Award Debriefing at 4.

¹ On October 8, TechTrend filed a supplemental protest alleging for the first time that the contracting officer improperly considered TechTrend's negative past performance arguing that the issues were under a contract that was much smaller in terms of scope and total value as compared to the contract contemplated by the

(continued...)

While the protester contends that it deserved a higher past performance rating for proposing an incumbent contractor of some of the work as its subcontractor under the RFP, based on the above record, it is without doubt that the agency in fact considered and credited TechTrend's proposal for the past performance of its team in performance of one of the incumbent contracts related to the solicitation requirements. As noted above, the agency specifically assigned TechTrend's proposal a strength in this regard for its subcontractor, and it noted TechTrend's own performance under the incumbent contract.

The agency's fundamental concern regarding TechTrend's past performance stemmed from the fact that TechTrend, as the prime contractor, failed to sufficiently demonstrate its own relevant performance history, not, as the protester asserts, the mere lack of references for TechTrend performing as a prime contractor. Consideration of the extent of the prime offeror's own past performance was expressly contemplated by the solicitation where it advised offerors that establishing the capability and quality of the prime contractor's past performance record was more important than establishing the record of proposed subcontractors. RFP amend. No. 4, Q&A No. 2. Such consideration is consistent with the general notion that an agency need not directly "credit" or otherwise substitute a subcontractor's experience or past performance for a prime contractor that lacks sufficient past performance of its own. See IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90. Rather, an agency, as the Forest Service did here in determining the protester's proposal to be satisfactory for past performance, may balance the prime contractor's lack of stronger past performance information against that of its proposed subcontractors. Id. An agency may reasonably determine that a prime contractor that lacks past performance of its own warrants a lower rating given that it would be the entity responsible for performing the contract, even where its subcontractor has considerable positive past performance. J.A. Farrington Janitorial Servs., B-296875, Oct. 18, 2005, 2005 CPD ¶ 187 at 5.

(...continued)

solicitation and therefore not relevant. The basis of this contention, however, was known or should have been known to the protester from the August 19 debriefing, as shown by the fact that this concern was included in the firm's August 24 response to its debriefing. Pre-Award Debriefing at 4; Protester's Response to Government Debriefing at 5-6. Because the issue was not included in the firm's August 28 protest, but instead was filed weeks later, it is untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (to be timely, protests other than of solicitation improprieties must be filed within 10 days of when the protester knew or should have known of its basis for protest). In any event, an agency generally is not required to ignore adverse past performance information about a firm's performance of a much smaller contract. See Si-Nor, Inc., B-292748.2 et al., Jan. 7, 2004, 2004 CPD ¶ 10 at 11, n.3.

Regarding the scope of TechTrend's own past performance, the agency points out, and the record reflects, that TechTrend's work under one of the relevant incumbent contracts was limited to a single task area. Additionally, the agency found that TechTrend's work as a subcontractor providing information technology services in support of another office with the agency was of limited relevance. Although the protester has expressed its disagreement with the agency's assessment, the firm has not persuasively demonstrated that its work in performance of that subcontract, awarded at a lower dollar amount, matched the extensive requirements of the current RFP to have warranted a higher relevance assessment. We recognize that the subcontract may have involved some similar types of information technology work. However, as the agency noted and the record reflects, the protester failed to adequately demonstrate through its work on that subcontract, and its other reported work, its experience and capability providing HR management services to include labor management and employee relations, employee development, staffing, labor classification, and equal opportunity, core HR management services identified in the PWS and reasonably related to the HR information technology requirements of the PWS. PWS at 1; TEB Summary Evaluation Scoresheet at 3. In short, our review of the record provides no basis to question the propriety of the agency's evaluation of the protester's proposal under the past performance factor or its exclusion from the competitive range.

The protest is denied.

Susan A. Poling
General Counsel