



Decision

Matter of: JXM Inc.

File: B-401641.2

Date: February 23, 2010

Ronald J. Shaw, Esq., The Shaw Law Firm, PC, for the protester.
Wayne A. Keup, Esq., for General Trades & Services, Inc., an intervenor.
Maj. Kathleen J. O'Rourke, Department of the Air Force, for the agency.
Frank Maguire, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest of agency's evaluation of past performance and source selection decision is denied where record shows that evaluation and award decision were reasonable and consistent with terms of solicitation.

DECISION

JXM Inc., of San Antonio, Texas, protests the award of a contract to General Trades & Services, Inc. (GTS), of Waipahu, Hawaii, under request for proposals (RFP) No. F4613-08-R-0002, issued by the Department of the Air Force for base housing management and services at Warren Air Force Base, Wyoming. JXM maintains that the awardee's past performance was not evaluated in accordance with the RFP.

We deny the protest.

There were two evaluation factors under the RFP—price and past performance, which were approximately equal in weight, and award was to be based on a Performance Price Trade-Off (PPT). The past performance evaluation was based on prior contracts, which were assessed for relevance and quality of performance, resulting in a performance confidence assessment. RFP at 28. Under the RFP, a contract was relevant where the “Past/present performance effort involved much of the magnitude of effort and complexities this solicitation requires,” and somewhat relevant where “Past/present performance effort involved some of the magnitude of effort and complexities this solicitation requires.” RFP at 28-30. A substantial confidence rating was to be assigned where, “Based on the offeror's performance

record, the government has a high expectation that the offeror will successfully perform the required effort.” Id.

JXM and GTS submitted proposals. GTS’s proposal was based on a teaming arrangement with Madison Services, Inc. under the Small Business Administration’s (SBA) mentor-protégé program. GTS and JXM received a substantial confidence rating. AR at 2. The agency found as follows with regard to GTS’s past performance:

Individually, GT&S provided somewhat relevant past performance, which was rated Exceptional, and Madison provided relevant past performance, which was also rated Exceptional.

In the Mentor/Protégé teaming arrangement, they provided relevant past performance, which involved much of the magnitude of effort, and complexities this solicitation requires. Under the Mentor/Protégé arrangement, the Quality of Performance for all work was rated Very Good. As a result, the [agency] determined that the offeror’s performance record indicates a High Expectation that the Mentor/Protégé team would successfully perform the required effort and as a result assigned a Performance Confidence rating of Substantial Confidence.

AR, exh. 10, Past Performance Evaluation (PPE), Sept. 14, 2009, at 44. Applying the PPT approach, the agency made award to GTS.

The protester challenges GTS’s substantial confidence rating, chiefly by questioning the assessment of certain of GTS’s prior contracts as relevant or somewhat relevant.¹

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency’s judgment was reasonable, and in accord with the RFP criteria and applicable procurement statutes and regulations. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4.

¹ On February 17, 2010, the cognizant GAO attorney conducted an “outcome prediction” alternative dispute resolution (ADR) conference, as authorized by our Bid Protest Regulations, 4 C.F.R § 21.10(e) (2009). He advised that these procedures contemplate that the parties will take appropriate action consistent with GAO’s predicted outcome--i.e., that the agency will take corrective action if advised that the protest likely will be sustained, or that the protester will withdraw the protest if advised that the protest will be denied. The parties had no objection to proceeding. At the conference, the GAO attorney advised that the protest likely would be denied and discussed the reasons for that denial. The protester subsequently declined to withdraw the protest, necessitating this decision.

JXM's challenge is based on its view that a contract could be found relevant only if it was of a complexity and magnitude the same as or similar to the RFP. Protest at 9, 17-19; Comments at 22-23. As noted, however, the RFP required a prior contract to have only "much of the magnitude of effort and complexities" that the RFP requires to be considered relevant, and only "some" of those efforts and complexities to be found somewhat relevant. JXM asserts that, for a contract to be considered relevant, it had to include performance of each of the specific tasks under the RFP. Protest at 17; Comments at 10, 21. However, the RFP contained no such requirement. JXM asserts that a "high expectation" that an offeror would perform the contract, necessary for a substantial confidence rating, could only be achieved if the offeror had past performance that "was of similar complexity and magnitude to this procurement." Comments at 7, 22. However, the RFP description of a substantial confidence rating (as quoted above) includes no such requirement. Indeed, none of the confidence rating descriptions, RFP at 30, includes any minimum requirements or quantitative or qualitative standards regarding relevance or performance quality of prior contracts. Rather, the descriptions are general in nature. As a result, the agency had a wide degree of discretion in determining relevance.

Against this backdrop, we find no basis to question the relevance assessments of GTS's prior contracts. For illustration purposes, we examine one of JXM's specific challenges to the relevance rating of a GTS contract--GTS's contract for family housing maintenance at Malmstrom Air Force Base, performed under GTS's mentor/protégé agreement, which was rated relevant with very good quality of performance. PPE Report at 43-44. JXM asserts that this contract should not have been found relevant because it was not "similar in magnitude and complexity" to the RFP, in that it included only custodial services, family housing maintenance, painting, and carpeting services, and did not require housing management, furnishings management, and a self help store. Protest at 18; Comments at 10. However, as discussed, to receive a relevant rating, a contract only needed to have "much" of the magnitude of effort and complexities of the RFP. The agency and GTS point out, unrebutted by JXM, that the functions allegedly lacking under the Malmstrom contract accounted for only 16% of the contract's total base year cost. Agency's Additional Comments at 5; Intervenor's Comments at 4. We conclude that there is no basis for questioning the agency's determination that the contract satisfied the "much" standard for a relevant rating. Our finding is the same with regard to GTS's other prior contracts. It follows that there is no basis for questioning the past performance evaluation or award decision.

The protest is denied.

Lynn H. Gibson
Acting General Counsel