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Decision

Matter of: JAM Corporation

File: B-408775

Date: December 4, 2013

Theodore P. Watson, Esq., and Nicole Lynn Carter, Esq., Watson & Associates, LLC, for the protester.

Gregory S. Jacobs, Esq., and Erin L. Felix, Esq., Reed Smith LLP, for American Engineering Corporation, the intervenor.

C. Scott Vogeley, Esq., United States Marine Corps, for the agency.

Kenneth Kilgour, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly evaluated proposals is denied where the record shows that the agency's evaluation was reasonable and in accordance with the terms of the solicitation and applicable procurement statutes and regulations.
 2. Agency's determination that protester's cited contract did not meet the solicitation's 3-year "recency" requirement for consideration in the past performance evaluation reasonably relied upon protester's own indication in its proposal of the contract end date to determine that the contract was not recent, notwithstanding the protester's unsupported claim that the agency should have known that the contract extended for an unspecified period after the end date reported in the protester's proposal.
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DECISION

JAM Corporation, of Okinawa, Japan, protests the U.S. Marine Corps's (USMC) award of a contract to American Engineering Corporation (AEC), of Okinawa, Japan, under request for proposals (RFP) No. M67400-13-R-0003, for corrosion control and repair services for government-owned equipment at Camp Kisner, Okinawa, Japan. The protester challenges the evaluation of technical proposals and the best value trade-off decision.

We deny the protest.

BACKGROUND

The solicitation provided for award of a single, fixed-price, indefinite-delivery/indefinite-quantity (IDIQ) contract, with a base year and four 1-year options (as well as an additional option to extend services for 6 months), for corrosion control and repair services for government vehicles, equipment and components of the III Marine Expeditionary Force. Award was to be made to the responsible offeror whose proposal, conforming to the solicitation, was most advantageous to the government considering three evaluation factors: technical approach, including subfactors for service performance approach, program management and staffing approach, and quality control approach; past performance; and price. The non-price factors were approximately equal in importance, and when combined were significantly more important than price. Id.

The agency received proposals from four offerors, including JAM and AEC. Based on the proposal evaluations, the agency established a competitive range consisting of JAM and AEC. In the subsequent discussions, the agency did not address either offerors' past performance because, in the agency's view, there were no adverse past performance reports that would require a response by the offeror. Agency Report (AR), Tab 34, Business Clearance Memorandum (BCM), at 13.

At the conclusion of discussions, the agency requested final proposal revisions (FPR). The FPRs were evaluated as follows:

Offeror	Technical¹	Past Performance	Overall	Price²
JAM	Good	Good	Good	\$19,706,194
AEC	Very Good	Very Good	Very Good	\$20,797,347

BCM at 9-10. While all previously identified weaknesses in JAM's proposal were determined to have been corrected during discussions, the proposal was evaluated as having no strengths. Id. at 10-11. In contrast, the agency evaluated AEC's proposal as having multiple strengths, under each subfactor of the technical factor, as well as no weaknesses. Id. at 11-12.

Noting the importance of corrosion control services, and noting that any service disruption of any length would result in "serious degradation" to the agency's mission, the source selection authority (SSA) determined that the "significant

¹ For both offerors' proposals, the rating for each of the three technical subfactors was the same as the overall technical rating.

² The above evaluated prices reflect offered prices in U.S. dollars when converted from Japanese yen. BCM at 24.

decrease in risk” associated with AEC’s superiority under the technical and past performance factors was worth the “slightly higher total cost” of AEC’s proposal. BCM at 24. Upon learning of the resulting award to AEC, JAM filed this protest with our Office.

DISCUSSION

JAM challenges the evaluation under both the technical and past performance factors. In reviewing protests of an agency’s evaluation, our Office does not reevaluate proposals; rather, we review the evaluation to determine if it was reasonable, consistent with the solicitation’s evaluation scheme, as well as procurement statutes and regulations, and adequately documented. Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6. Having considered all of JAM’s arguments, we find no basis to question the source selection decision. We discuss several of JAM’s arguments below.

Technical Evaluation

JAM asserts that the agency unreasonably evaluated proposals under the technical factor, under which AEC received a very good rating and JAM received a good rating.³ In this regard, JAM challenges the ratings under the program management and staffing approach subfactor of the technical factor, under which AEC received a very good rating while JAM received a good rating. Noting that AEC’s proposal received a strength because it was evaluated as demonstrating an understanding of

³ In challenging the agency’s evaluation of JAM’s technical proposal, the protester largely relies upon disagreements and alleged inconsistencies in the pre-negotiation evaluation and individual evaluator’s worksheets. However, individual evaluator ratings may differ, and in certain instances, differ significantly, from one another, or from the consensus ratings eventually assigned; indeed, the reconciling of such differences among evaluators’ viewpoints is the ultimate purpose of a consensus evaluation. Neeser Constr., Inc./Allied Builders Sys., A Joint Venture, B-285903, Oct. 25, 2000, 2000 CPD ¶ 207 at 4. The overriding concern is not whether the final ratings are consistent with individual ratings, but rather, whether the agency’s final consensus ratings reasonably reflect the relative merits of the proposals, consistent with the terms of the solicitation. Id. The same holds true for differences between preliminary ratings and the final consensus evaluation; allegations that the consensus evaluation report was inconsistent with individual evaluators’ notes or preliminary findings, without more, are without merit. J5 Sys., Inc., B-406800, Aug. 31, 2012, 2012 CPD ¶ 252 at 13. Here, we have reviewed the numerous allegations based on the discrepancies between the individual evaluators’ worksheets, and between the pre-negotiation evaluation and the final evaluation, and they provide no basis upon which to sustain this protest.

the relationship between the government and the contractor, JAM asserts that its proposal likewise indicated an understanding of the relationship between the government and the contractor and thus also warranted a strength.

Agencies have considerable discretion in making subjective judgments about the technical merit of proposals, and technical evaluators are given the discretion to decide whether a proposal “deserves a ‘good’ as opposed to a ‘very good’ rating.” CAS, Inc., B-260934.2, B-260934.3, Sept. 12, 1995, 95-2 CPD ¶ 239 at 4. AEC’s argument does not furnish a basis for questioning the evaluation in this regard. The agency’s consensus evaluation of the AEC’s proposal under the program management and staffing approach subfactor identified three strengths, only one of which related to the relationship between the government and the contractor. BCM at 12. In this regard, the agency determined that AEC’s proposal also deserved strengths because it (1) offered a management structure that ensured appropriate personnel with decision-making authority were present at each phase of the repair and thereby was likely to limit production downtime, and (2) demonstrated an ability to recruit and screen qualified personnel in-house. Id. In addition, the agency noted that AEC’s proposal very clearly articulated the roles and responsibilities for all of the program management personnel. Id. In contrast, the agency’s evaluation of JAM’s proposal under this subfactor noted that the proposal contained highly-qualified personnel, without identifying this as a proposal strength. Id. at 10. Even accepting JAM’s assertion that its proposal, like AEC’s, deserved recognition for demonstrating an understanding of the relationship between the government and the contractor, AEC received three strengths while JAM would receive no more than one, and there simply is no basis for questioning the evaluated superiority of AEC’s proposal under this subfactor. See Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 7 (prejudice essential to viable protest).

JAM asserts that the agency unreasonably failed to consider the participation of its teaming partner, [DELETED], in assessing JAM’s proposal under the quality control approach subfactor. The record does not support this contention. The agency’s final consensus evaluation noted that JAM’s revised proposal was a “significant improvement” over the previous submission, and specifically indicated “that the Offeror has access to personnel with an extensive background in quality control.” BCM at 12. It was this specific aspect of performance--quality control--for which JAM offered [DELETED] as a teaming partner. See AR, Tab 12, JAM Revised Technical Proposal at 16; JAM Comments, Oct. 2, 2013, at 14. The final evaluation rated JAM’s proposal as good under this subfactor, noting that all previously identified weaknesses were corrected and that the revised proposal demonstrated that JAM has a “commitment to quality.” Id.

Past Performance Evaluation

JAM next challenges the past performance evaluation, asserting that the agency unreasonably evaluated the recency of one of its past performance references and the relevancy of another. In addition, JAM asserts that the agency improperly failed to conduct discussions regarding its past performance.

An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. The McConnell Group, Inc., B-405377, Oct. 21, 2011, 2011 CPD ¶ 225 at 3. The evaluation of experience and past performance, by its very nature, is subjective, and an offeror's mere disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. Glenn Def. Marine-Asia PTE, Ltd., B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3 at 7.

The RFP provided that, in assessing past performance, the contracting officer would evaluate present and past performance information through, among other sources, the use of questionnaires completed by an offeror's references and "personal business experience with the offeror." RFP § M-1.1. The government was to consider the recency, relevancy, and trends of the performance, with recency defined as "performance occurring within the last three (3) years for the period beginning with the solicitation release date and back three years," and relevancy defined as similarity of scope of contract and complexity of effort. Id.

For contract No. M67400-09-P-0314, for the overhaul/repair of 15 semi-tractors and trucks at Camp Foster, Okinawa, JAM reported the period of performance as commencing on February 1, 2009 and ending on April 15, 2010, JAM Revised Technical Proposal at 39, which is 3 years and two days prior to the issuance of the RFP on April 17, 2013. The agency evaluated this past performance reference as "not recent" because the period of performance of the requirement was outside the 3-year window established by the RFP. AR, Tab 23, Past Performance Evaluation Team Report at 6.

Both the current Camp Kisner procurement and the above Camp Foster procurement were Okinawa procurements conducted by the Marine Corps Regional Contracting Office Far East, and both involved the same contract specialist. BCM at 1; RFP at 34; JAM Revised Technical Proposal at 39. JAM asserts that agency officials should have viewed JAM's Camp Foster work as falling partly within the RFP's 3-year window--despite the information in JAM's proposal indicating it did not--because the final contract payment date and the end of warranty coverage occurred after April 15, 2010. JAM also argues that the contract specialist must also have known that "several," unspecified "delays on behalf of the Government"

extended the contract end date by an unspecified length of time. Comments on AR at 19.

We see nothing unreasonable about the evaluation here. First and foremost, JAM's own proposal indicated that contract performance ended more than 3 years prior to the issuance of the solicitation. We see no reason why agency officials could not reasonably accept JAM's representations in this regard for purposes of determining a contract's recency. In short, it falls to offerors to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. T-C Transcription, Inc., B-401470.2, Feb. 16, 2010, 2010 CPD ¶ 50 at 4. When an offeror fails to comply with this basic requirement, we will not shift responsibility to the government to cure errors and omissions in the offeror's own proposal.

JAM further challenges the agency's determination that another of its past performance references, contract No. SPM8EJ-09-D-0003 for logistics support distribution, was not relevant. The protester asserts that, because the current RFP specifies that the contractor "shall provide all labor, training, management, supervision, tools, equipment . . . materials and supplies" necessary for contract performance, RFP at 12, JAM's logistics support distribution experience should have been viewed as relevant here.

The agency contends that the current requirement for vehicle corrosion control and repair has little in common with JAM's prior contract to procure, warehouse and distribute supplies. We agree. As noted by the agency in its reply, the RFP informed offerors that the government would provide all necessary coatings and hazardous materials, unless otherwise indicated. RFP at C-3.4. The protester points to nothing, specifically, that the contractor was required to provide in the way of tools, equipment, materials, and supplies. See Comments on AR at 17-19.

JAM also asserts that it was entitled to meaningful discussions on any concerns the agency had about the relevance and recency of its past performance. Comments on AR at 20-21. However, when conducting discussions, an agency is not required to raise with each offeror every discriminator for award. See, e.g., PWC Logistics Servs., Inc., B-299820, B-299820.3, Aug. 14, 2007, 2007 CPD ¶ 162 at 6. Rather, discussions need only be meaningful, that is, discussions must identify deficiencies, significant weaknesses, and adverse past performance to which the offeror has not yet had an opportunity to respond. Federal Acquisition Regulation (FAR) § 15.306(d)(3); Bank of Am., B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10-11. None of the agency's evaluation conclusions about the relevance or recency of JAM's past performance references rise to the level of a deficiency or significant weakness, nor are they adverse past performance information that must be raised during discussions. ProLog, Inc., B-405051, Aug. 3, 2011, 2012 CPD

¶ 84 at 7. JAM's arguments in this respect do not provide a basis to sustain this protest.⁴

Finally, JAM asserts that the agency treated offerors disparately when it sent out past performance questionnaires for JAM only for those contracts that were deemed relevant and recent, while sending out a questionnaire for an AEC reference that was not relevant. Comments on AR at 21. The agency acknowledges that the past performance evaluation team did, in fact, mistakenly send out a questionnaire for an AEC contract reference that was not relevant. Nonetheless, the agency contends that JAM was not prejudiced because the agency's past performance evaluation did not consider the results of the questionnaire. Agency Response to Protester's Comments on the AR at 11-12.

The record supports the agency's contention that this contract was not considered in the evaluation of the awardee's past performance. See AR, Tab 23, Past Performance Evaluation Team Report at 9-10. As a result, we see no prejudice to JAM from this minor error. Prejudice is an essential element of every viable protest, and the GAO will not sustain a protest where it is clear from the record that a protester suffered no prejudice as a result of an evaluation error. A-Tek, Inc., B-404581.3, Aug. 22, 2011, 2011 CPD ¶ 188 at 10.

Best Value Trade-Off

JAM asserts that the contracting officer, who was also the SSA for this procurement, did not conduct a comparative evaluation of proposals as required by FAR § 15.308, which states that the source selection authority's decision shall be based on a comparative assessment of proposals against all source selection criteria in the solicitation. Source selection decisions must be documented and include the rationale and any business judgments and tradeoffs made or relied upon by the source selection authority. FAR § 15.308. However, there is no need for extensive documentation of every consideration factored into a tradeoff decision. See id.; see also Terex Gov't Programs, B-404946.3 , Sept. 7, 2011, 2011 CPD ¶ 176 at 3. Rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. Terex Gov't Programs, supra.

⁴ Likewise, JAM asserts that the agency failed to conduct adequate discussions, because an individual evaluator noted a weakness in the protester's proposal that was not disclosed to JAM during discussions. That weakness, however, was not reflected in the final consensus evaluation and therefore need not be addressed further by our Office. Triumvirate Envtl., Inc., B-406809, Sept. 5, 2012, 2012 CPD ¶ 244 at 10.

Here, the source selection authority's analysis was included in the business clearance memorandum, which contains a lengthy summary of the consensus evaluation, including significant attributes of the competing proposals under each evaluation factor and subfactor. See BCM at 1-22. The source selection authority noted what in her view is the critical nature of the services to be provided in preventing the degradation of the agency's mission. Id. at 24. She determined that paying a slightly higher total cost for significantly less risk, represented by AEC's higher technical and past performance evaluation ratings, was reasonable and in accordance with the stated evaluation criteria, where non-price factors, when combined, were significantly more important than price. Id. On this record, we have no basis to object to the SSA's conclusion that the higher-priced offer provided the best value to the agency.

The protest is denied.

Susan A. Poling
General Counsel