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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Charles F. Day & Associates, LLC

File: B-411164

Date: June 2, 2015

John A. Tacker, Esq., and Kale D. Knisley, Esq., Charles F. Day & Associates, LLC, for the protester.

Isaias Alba IV, Esq., Patrick T. Rothwell, Esq., and Jacqueline K. Unger, Esq., Piliro Mazza PLLC, for Loyal Source Government Services, LLC, the intervenor.

Wade L. Brown, Esq., Department of the Army, for the agency.

Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably assigned a weakness to protester's proposal for failing to meaningfully address the solicitation's recruiting and hiring requirements, concluding that, instead, protester relied on its current employment of the incumbent workforce.
2. Where protester received the highest possible past performance rating, none of its complaints regarding the agency's past performance evaluation provide a basis for sustaining its protest.

DECISION

Charles F. Day & Associates, LLC (CFDA), of Stafford, Virginia, protests the Department of the Army's award of a contract to Loyal Source Government Services (LSGS), of Orlando, Florida, pursuant to request for proposals (RFP) No. W15QKN-14-R-0137, to provide field support training services for specified military equipment at various locations around the world. CFDA asserts that the agency's evaluation under the solicitation's non-price evaluation factors was flawed.

We deny the protest.

BACKGROUND

On October 8, 2014, the agency issued RFP No. W15QKN-14-R-0137, seeking proposals from service-disabled veteran-owned small businesses (SDVOSB)¹ to provide various support services for the M777A2 howitzer, the M119A2 howitzer, and the M11A1 improved position azimuth determining system (IPADS).² Agency Report (AR), Tab 3, RFP at 2, 26. The solicitation identified various labor categories/positions for which offerors were required to propose fully-loaded fixed rates, and provided that award would be made on a best-value basis considering the following evaluation factors: management/technical approach, past performance, and price.³ RFP at 5-25, 67, 69. The solicitation contemplated award of a contract with a 1-year base period and four 1-year option periods. Id.

On October 29, the agency issued RFP amendment No. 2. Among other things, this amendment added a provision notifying offerors that the agency would “evaluate the Offeror’s proposed recruiting and hiring processes,” and specifically warned that “[a] technical approach relying only or primarily on retaining incumbent personnel is not an adequate technical approach nor an adequate description of the Offeror[’]s capabilities.” AR, Tab 3, RFP amend. 2, at 10.

On November 5, proposals were submitted by four offerors, including CFDA and LSGS. In evaluating CFDA’s proposal under the management/technical factor, the agency identified certain strengths, but also assigned a weakness based on the agency’s assessment that CFDA’s proposal failed to meaningfully address CFDA’s recruiting and hiring process and, instead, reflected CFDA’s primary reliance on its current employment of the incumbent workforce. AR, Tab 6, Management/Technical Evaluation (CFDA), at 1. In criticizing this aspect of CFDA’s proposal, the agency stated:

The proposal provides information about retaining current staff, as well as the annual turnover rate for employees. However the proposal does not provide processes to recruit or hire new employees.

Id. at 1-3.

¹ The procurement was conducted as a total SDVOSB set-aside.

² CFDA is the incumbent contractor for these requirements.

³ The solicitation provided that the management/technical factor was more important than past performance, which was more important than price, and that the non-price factors combined were significantly more important than price. RFP at 69.

In evaluating LSGS’s proposal under the management/technical factor, the agency identified various strengths, including a strength for its recruiting and hiring process, and no weaknesses. Specifically, in assigning the recruiting/hiring strength, the agency stated: “Information regarding the proposed recruiting and hiring process includes specific recruiting methods, and a verification process was provided.” AR, Tab 9, Management/Technical Evaluation (LSGS), at 1-3.

Following the agency’s evaluation, CFDA’s and LSGS’s proposals were rated as follows:

	Management/ Technical	Past Performance	Price
LSGS	Outstanding	Substantial Confidence/Relevant	\$24,379,961
CFDA	Good	Substantial Confidence/Relevant	\$25,202,317

AR, Tab 14, Source Selection Decision, at 4.

On February 5, 2015, the agency awarded the contract to LSGS based on its higher management/technical rating and its lower price.⁴ CFDA filed this protest on February 23, five days after receiving a required debriefing.⁵

DISCUSSION

CFDA protests the agency’s evaluation with regard to the management/technical and past performance factors. In short, CFDA asserts that its status as the incumbent contractor required the agency to rate CFDA’s proposal higher than

⁴ The solicitation advised offerors that the agency intended to make award without discussions. RFP at 64. Consistent with that provision, discussions were not conducted with any offeror.

⁵ On February 10, CFDA filed a size protest with the U.S. Small Business Administration (SBA). On March 11, the Head of the Army’s Contracting Activity authorized an override of the automatic stay triggered by CFDA’s protest to our Office. That override was subsequently the subject of litigation at the U.S. Court of Federal Claims. See Charles F. Day & Assocs., LLC v. U.S., No. 15-289C (Fed. Cl. Apr. 24, 2015). On March 12, the SBA Area Office upheld CFDA’s size protest; thereafter, LSGS appealed that decision to the SBA Office of Hearings and Appeals (OHA). LSGS Comments on AR, Apr. 6, 2015, at 9. On May 28, the SBA OHA overturned the SBA Area Office’s decision. Email from Department of the Army to GAO, May 29, 2015.

LSGS's proposal under both evaluation factors. CFDA's assertions are without merit.⁶

Management/Technical Evaluation

CFDA first protests that it was unreasonable for the agency to assess a weakness in CFDA's proposal for failing to adequately address the solicitation requirements regarding CFDA's recruiting and hiring processes. In this regard, CFDA complains that the solicitation did not provide "specific guidance" to offerors regarding this requirement and asserts that "absent specific guidance on the specifics of the recruitment and hire process, our only requirement [was] to discuss one." Comments on Agency Report, Apr. 3, 2015, at 24. In this context, CFDA maintains that its proposal met the solicitation's recruiting and hiring requirements by providing "documentary evidence that [we] are already meeting those requirements." Protest at 10.

In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the proposals; rather, we will examine the record to determine whether the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. See, e.g., Maybank Indus., LLC, B-403327, B-403327.2, Oct. 21, 2010, 2010 CPD ¶ 249 at 5; OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. It is the offeror's responsibility to submit an adequately written proposal; that is, an offeror, including an incumbent contractor, must furnish, within its proposal, all information that was requested by the solicitation. See, e.g., HealthStar VA, PLLC, B-299737, June 22, 2007, 2007 CPD ¶ 114 at 2.

Based on our review of the record here, we reject CFDA's assertion that the agency's evaluation under the technical/management factor was flawed. As noted above, RFP amendment No. 2 specifically advised offerors that the agency "will also evaluate the Offeror's proposed recruiting and hiring processes," and further warned that "[a] technical approach relying only or primarily on retaining incumbent personnel is not an adequate technical approach nor an adequate description of the Offeror[']s capabilities." AR, Tab 3, RFP amend. 2, at 10.

Here, CFDA has not meaningfully disputed the agency's conclusion that CFDA's proposal failed to prospectively address its hiring and recruiting activities. Rather, CFDA primarily asserts that, because it is the incumbent and its proposal demonstrated that "[we] possess the people," any further discussion of the recruiting

⁶ In its various protest submissions, CFDA has raised arguments that are in addition to, or variations of, those specifically discussed below—including small business issues outside of our bid protest jurisdiction. See 4 C.F.R. § 21.5(b). We have considered all of CFDA's various allegations and find no basis to sustain its protest.

and hiring processes that CFDA would employ during the 5-year performance period was unnecessary. Protest at 10. We disagree. Where, as here, the solicitation expressly warned that reliance on retention of incumbent personnel was inadequate, CFDA's discussion of its currently-employed personnel failed to meet the solicitation's requirement to prospectively address its hiring and recruiting activities. On this record, we find nothing unreasonable in the agency's assignment of a weakness to CFDA's proposal for failing to address the recruiting and hiring activities that it would employ throughout the life of the contract; accordingly, CFDA's protest challenging the agency's evaluation under the management/technical evaluation factor is denied.⁷

Past Performance

CFDA next challenges the agency's evaluation under the past performance factor. Among other things, CFDA asserts that, due to its performance as the incumbent contractor, it "should have received the highest rating possible." Protest at 4. CFDA also maintains that the agency improperly rated CFDA's past performance history as "relevant," rather than "very relevant,"⁸ and complains that the agency used "wholly subjective evaluation standards." Protest at 3-7.

The evaluation of an offeror's past performance, including the agency's determination of the relevance and scope of an offeror's performance history, is a matter of agency discretion, which we will not disturb unless it is unreasonable or inconsistent with the solicitation's evaluation criteria. Burke Consortium, Inc., B-407273.3, B-407273.5, Feb. 7, 2013, 2013 CPD ¶ 74 at 10. Since the evaluation of past performance is subjective by its very nature, and a procuring agency is responsible for defining its needs and the best method for accommodating them, we will not substitute our judgment for an agency's reasonably based past performance ratings. MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10;

⁷ CFDA also challenges the agency's evaluation of LSGS's proposal under the management/technical factor, maintaining that LSGS's proposal "cannot possibly" have been reasonably rated higher than CFDA's because, according to CFDA, "LSGS has never worked on these systems, according to publicly available data." Protest at 8. Because CFDA did not retain counsel that could be admitted to a protective order, LSGS's proposal and the agency's evaluation thereof were not provided to CFDA's representatives. Nonetheless, we have reviewed the entire record and find no basis to question the agency's evaluation of LSGS's proposal.

⁸ The solicitation defined "relevant" past performance as involving a "similar scope and magnitude of effort and complexities," and defined "very relevant" past performance as involving "essentially the same scope and magnitude of effort and complexities" as the solicitation requires. RFP amend. 2, at 11.

Glenn Def. Marine-Asia PTE, Ltd, B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3 at 7.

In responding to CFDA's protest, the agency first notes that, with regard to evaluation of past performance, section M of the solicitation advised offerors that "[a] single confidence rating will be established," further stating that "[r]elevancy is not separately rated." RFP amend. 2, at 11. Consistent with these provisions, the solicitation provided for assignment of the following confidence ratings: substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence. Id.

The record shows that, in evaluating past performance, the agency considered several prior contracts CFDA had performed, including the incumbent contract, and concluded that the totality of CFDA's performance history met the definition of relevant past performance. Specifically, while the incumbent contract was considered very relevant, the other CFDA contracts did not require "essentially the same" scope and magnitude of effort and complexity as the solicited requirements;⁹ accordingly, the agency considered CFDA's total performance history to be relevant, but not very relevant. Nonetheless, as noted above, the agency assigned CFDA's proposal the highest possible past performance rating--that is, substantial confidence. Source Selection Decision at 4.

On this record, we conclude that CFDA's assertion that it "should have received the highest rating possible" fails to state a basis for protest. That is, since CFDA's proposal was, in fact, assigned the highest possible past performance rating, even if we were to conclude that the agency's past performance evaluation was flawed--which we do not--CFDA was not prejudiced.¹⁰ See Northport Handling, Inc., B-274615, Dec. 18, 1996, 97-1 CPD ¶ 3 at 3-4. Similarly, since CFDA's proposal was assigned the highest possible past performance rating, CFDA's various

⁹ CFDA acknowledges that some of the contracts it submitted for consideration under the past performance factor "may not have been performance of the exact same scope and magnitude" as required by this solicitation. Protest at 4.

¹⁰ CFDA also asserts that LSGS's proposal should have received a lower past performance rating than CFDA's proposal, complaining, for example, that a portion of a contract LSGS had previously performed had been terminated for default. Protest at 7. The record shows that, in selecting LSGS's proposal for award, the agency contacted the contracting officer for the prior terminated contract, was advised that the partial termination had occurred due to LSGS's failure to fill one of nine required positions, and was also advised that the termination had not impacted the agency's mission. Contracting Officer's Statement of Facts/Legal Memorandum at 7. Our review of the record provides no basis to question the reasonableness of the agency's judgment in evaluating LSGS's proposal.

complaints regarding the degree of relevance the agency assigned to its overall performance history provides no basis for sustaining its protest.¹¹ Finally, as noted above, the very nature of an agency's past performance evaluation is subjective. See Glenn Def. Marine-Asia PTE, Ltd, supra. Accordingly, CFDA's complaint that the agency used "wholly subjective evaluation standards" in performing its past performance evaluation fails to state a basis for protest.

The protest is denied.¹²

Susan A. Poling
General Counsel

¹¹ Among other things, CFDA asserts that, in evaluating past performance, the agency was precluded from considering any prior contract with an applicable North American Industry Classification System (NAICS) code that differed from the NAICS code applicable to this procurement; however, the solicitation did not provide for use of NAICS codes in this manner. To the contrary, the agency properly considered the nature of the efforts required by the prior contracts in determining their relevance. Contracting Officer's Statement/Legal Memorandum at 5.

¹² On May 18, CFDA submitted a "Motion to Supplement Protest" in which CFDA asserts that the agency engaged in misrepresentation during litigation at the Court of Federal Claims regarding the suspension override. We have reviewed CFDA's May 18 submission and find that it does not state a valid basis of protest and provides no basis for our Office to sustain CFDA's protest.