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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Honolulu Shipyard, Inc.

File: B-291760

Date: February 11, 2003

Bruce A. Young for the protester.
Kelly M. Calahan, Esq., Katherine A. Andrias, Esq., and Dawn M. Gingerich, Esq., Department of the Navy, for the agency.
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DIGEST

Protest that contracting agency improperly evaluated protester's proposal with respect to past performance is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's stated evaluation criteria.

DECISION

Honolulu Shipyard, Inc. (HSI) protests the award of a contract to Marisco, Ltd., under request for proposals (RFP) No. N62791-02-R-0093, issued by the Department of the Navy, Naval Sea Systems Command, to obtain miscellaneous topside and interior repairs to the Barge YRBM-52. HSI argues that the Navy's evaluation of its past performance was unreasonable.

We deny the protest.

On July 16, 2002, the Navy's Supervisor of Shipbuilding, Conversion and Repair, (SUPSHIP) in San Diego, California issued this solicitation to obtain miscellaneous topside and interior repairs on the Barge YRBM-52 at the contractor's facility in Hawaii. The solicitation contemplated the award of a fixed-price contract for these services over a performance period of approximately 6 months. RFP at 13(r1). Award was to be made to the firm whose proposal represented the best value to the government, considering two evaluation factors, past performance and price. The past performance factor was approximately equal in importance to the price factor, with the former being more important than the latter. Id. at 32. The past performance factor was comprised of three equally important subfactors: technical (quality of product), schedule, and management. Id. at 31-32.

To evaluate offerors' past performance, the Navy intended to review Contractor Performance Assessment Reporting System (CPARS) ratings[1] and other existing past performance ratings on relevant contracts. Id. at 29. The RFP stated that the Navy might also review other relevant past performance information contained in local or other SUPSHIP files, or from other government sources, and would consider general trends in a contractor's performance. Id. at 29.

Each offeror had the opportunity to provide, in its proposal, any information regarding its past performance of contracts similar to the government's requirement that it would like the government to consider, including additional information the government has readily available, such as data in the CPARS system; information the offeror considers essential to the government's evaluation of its past performance; or explanatory information of substandard or poor performance and the corrective actions taken to prevent a recurrence. Id. at 29r.

The RFP stated that the past performance factor would be evaluated, using the above information, to determine the contractor's performance risk. To determine the relevance of the past performance information, the agency planned to give greater consideration to contracts requiring the same or similar type and complexity of work as that required by the solicitation. The agency would consider an offeror's past performance of the following types of contracts/work to be "most relevant": fixed-price contracts for similar berthing barges undergoing overhauls, with work that included tanks, additional decks, bulkheads, piping, electrical, and air conditioning. Id. at 31. Other types of contracts or work that did not meet the "most relevant" definition might be considered, as well, if aspects of the past performance were deemed to have some bearing on the expected performance of the solicitation's requirements. Finally, the agency would also consider trends showing improving or deteriorating performance. Id.

The Navy received and evaluated offers from Marisco and HSI, conducted discussions, and received final proposal revisions (FPR) from both firms on November 8. On November 12, the past performance evaluation team (PPET) convened to evaluate each offeror's past performance. For Marisco, the PPET considered the available CPARS data as well as additional information the firm had provided in its proposal. Since HSI did not submit any additional past performance information in its proposal, the PPET considered the firm's available CPARS ratings and other past performance information in its files. The PPET did not identify any significant negative information in either offeror's past performance that they had not had the opportunity to address, and had no further communications with either offeror. The PPET evaluated Marisco's proposal as satisfactory under each of the past performance subfactors, and satisfactory overall. The PPET evaluated HSI's

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[1] The three past performance subfactors here correspond to several of the evaluation categories used in the CPARS system. Id. at 5(b1)-10.

proposal as very good under the technical subfactor, satisfactory under the remaining two subfactors, and satisfactory overall. The PPET forwarded its report to the best value advisory committee (BVAC) on November 15.

On November 19, the BVAC convened to determine its recommendation for award and concurred with the PPET's findings. In a detailed report, the BVAC concluded that, with both offerors rated satisfactory overall in past performance, it was expected that either would perform successfully. The BVAC found that Marisco's price of $7,618,379 was $715,065 lower than that of HSI, which the BVAC deemed to be a significant amount, and recommended that Marisco be awarded the contract as offering the best value to the government.

In a detailed source selection decision, the source selection authority (SSA) noted that Marisco's ratings were based on the PPET's analysis of six of the firm's projects, one of which was considered to be more relevant than the others and given more weight. She stated that the CPARS data associated with that contract rated Marisco's performance as marginal in each of subfactors at issue here, but that on the rest of the contracts forming the basis of Marisco's evaluation, the firm's performance was rated as very good. The SSA explained that Marisco's overall rating of satisfactory here was based on its performance of work of a similar nature but on a smaller scale, and that the contracts considered by the PPET were a fair indicator of Marisco's likely success because the corresponding CPARS assessed the firm's performance parameters on work similar to that required by the current solicitation. She added that Marisco's most recent contracts reflected very good ratings, demonstrating a positive performance trend.

The SSA noted that HSI's ratings were based on the PPET's analysis of the CPARS data for 14 projects, and that greater consideration was given to the firm's work on the YR-46 Barge--a project deemed "most relevant" by the PPET--because it contained work items similar to those required here. The SSA explained that the CPARS data associated with this project rated HSI's performance as very good in the technical area and marginal in the schedule and management areas, but stated that on all of the rest of the contracts considered HSI's performance was rated as satisfactory or better. The SSA stated that these other contracts contained work of sufficient similarity to the current solicitation to be considered relevant for this review.

The SSA agreed with the BVAC that either offeror would perform satisfactorily here and, since Marisco's price of $7,618,379 was $863,122 (10.2 percent) lower than HSI's price of $8,481,501, the SSA determined that Marisco's proposal offered the best value to the government. Award was made on December 2, and HSI filed this protest after its debriefing. In support of its general argument that the Navy conducted an incomplete and inconsistent evaluation of its past performance, HSI makes several

specific allegations concerning the Navy's decision not to consider several of its projects in its evaluation.[2]

The evaluation of past performance is a matter within the discretion of the contracting agency, which our Office will review only to ensure that it was reasonable and consistent with the stated evaluation criteria and with procurement statutes and regulations. Sterling Servs., Inc., B-286326, Dec. 11, 2000, 2000 CPD ¶ 208 at 203. Where a solicitation requires the evaluation of offerors' past performance, an agency has the discretion to determine the scope of the offerors' performance histories to be considered, provided all proposals are evaluated on the same basis and consistent with the solicitation requirements. IGIT, Inc., B-275299.2, June 23, 1997, 97-2 CPD ¶ 7 at 5. Our review of the record shows that the agency's past performance evaluation was reasonable and consistent with the solicitation's requirements.

The record shows that the PPET began its work by reviewing the solicitation to ascertain the work requirements. The PPET then reviewed the information provided in the offerors' proposals, as well as prior contracts that were included in the CPARS reporting system for both offerors. As the chair of the PPET explains, and as the PPET report shows, based upon the RFP's "most relevant" definition, the PPET determined that HSI's work on the YR-46 Barge was "most relevant" because the work identified in the current solicitation closely matched the work index for that project. The PPET also reviewed HSI's work on various other projects. The PPET found HSI's work on 13 of those projects to be relevant and considered the associated CPARS data and performance trends in evaluating the firm's proposal. The PPET found that HSI's work on several other projects did not substantially match the work required under the current solicitation in either size or scope, and did not consider the firm's performance on these projects in evaluating the firm's proposal. The PPET went through the same process in evaluating the past performance of Marisco. The PPET's analysis is supported by a detailed narrative report and contemporaneous evaluation documents. In our view, HSI's allegation that the Navy lacked a rational method for evaluating past performance is not supported by the record.

HSI specifically alleges that the Navy improperly determined that its work on the USS Lake Erie was not relevant and, therefore, that the firm's past performance data associated with that work would not be considered.

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[2] HSI's protest included numerous specific allegations concerning the propriety of the Navy's evaluation of its past performance, all of which were addressed in full by the agency report. HSI's comments do not revisit the majority of these allegations, which we deem to have been abandoned. Goode Constr., Inc., B-288655 et al., Oct. 19, 2001, 2001 CPD ¶ 186 at 4.

The PPET chair explains that the PPET examined the relevance of HSI's work on four orders involving repairs and refurbishment to the USS Lake Erie and ascertained that the work was not sufficiently analogous to be considered relevant for purposes of the evaluation. She states that HSI's work on Order 00-14H involved galley steam kettle conversion, and its work on Order 01-02H pertained only to weight and moment compensation, neither of which were included in or related to any portion of the work anticipated under the current solicitation. The PPET chair further states that, as part of Orders 0003 and 0001, HSI performed no tank, electrical or air conditioning work, all of which were integral to the contemplated work on the YRBM-52. Since the PPET did not consider this work to be relevant, it did not consider the past performance information associated with this project. PPET Chair's Declaration ¶ 7.

HSI argues that, under Order 0001, a work item for cooling skid preservation required piping and electrical work, and a work item for fan room and vent ducting required vent ducting or air conditioning work. HSI also argues that several requests for change orders included air conditioning work. However, a review of the CPARS data for this order does not include any such details. The description of the work required under the order is simply noted as miscellaneous structural repairs, inspection of the main mast, preservation of the cooling skid, preservation of the shaft alley, fan room and vent ducting repairs and preservation, and preservation of the helicopter hanger. While HSI argues that the PPET should have known these details because the contracting agency is the same one that administered this contract, there is no evidence that the PPET had first-hand knowledge of these details, and the solicitation's terms did not obligate the PPET to make inquiries beyond the CPARS data.

In any event, the fact that the CPARS data shows that the dollar value of these work items was very low indicates that any included tasks similar to this solicitation's work requirements were relatively small in size and scope. As a result, we have no basis to object to the Navy's determination that this project did not contain work of "sufficient relevancy" to provide an indication of potential performance on the current solicitation.[3] PPET Report at 3. HSI has not shown that the agency's consideration of its performance under this project, which has, at best, limited similarity to the current solicitation's work requirements, would have warranted a different overall evaluation result. See Day & Zimmermann Pantex Corp., B-286016 et al., Nov. 9, 2000, 2001 CPD ¶ 96 at 16.

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[3] Since we find that the Navy reasonably concluded that HSI's work on this project was not relevant, we need not consider HSI's complaint that the evaluators did not have identical views concerning the merits of its past performance on the project.

HSI next argues that the Navy improperly failed to consider the CPARS data associated with its work on the USS O'Kane. HSI states that this contract was completed in May 2002, and complains that, if the responsible officials had accomplished a timely CPAR evaluation, the PPET would have been able to consider it in evaluating its proposal. The record shows that HSI was not given the CPARS data for comment until December 5, 2002. As the Navy explains, the PPET did not review the CPARS data for the USS O'Kane contract because it was not completed until after award of the contract being protested here. If HSI knew it had completed the contract in May but had not received the CPARS data by the time it submitted its FPR in November, it should have taken the opportunity to include information about its performance on the contract in its FPR if it believed the information should have been considered. By failing to do so, HSI assumed the risk that the Navy's evaluation of its past performance would not encompass this project.

Similarly, HSI argues that the Navy should have considered its work on the YR-44 Barge because the work was almost identical to the work required under this solicitation. In its protest, HSI acknowledged that no CPARS data was generated on this project due to the timeframe in which it was performed. As the Navy agrees, since this project was completed in 1995, before the CPARS reporting system was in place, there was no CPARS data to consider. Again, since HSI knew there was no CPARS data on this project, it was incumbent upon the firm to provide information about its performance of the project in its proposal if it believed such information should have been considered.

The protest is denied.

Anthony H. Gamboa
General Counsel