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Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: F-2 Solutions, LLC

File: B-418950.2; B-418950.3

Date: April 27, 2021

Jerry Alfonso Miles, Esq., Deale Services, LLC, for the protester.
Kristen M. Nowadly, Esq., and Carol Latterman, Esq., General Services Administration, for the agency.
Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly evaluated protester's proposal is denied where the evaluation was reasonable and consistent with the stated evaluation criteria, and the agency was not required to seek out information not submitted by protester.

DECISION

F-2 Solutions, LLC (F-2), an 8(a) small business of Upper Marlboro, Maryland, protests the elimination of its proposal from consideration for award under request for proposals (RFP) No. 47QREB-20-R-0001--referred to as the Human Capital and Training Solutions (HCaTS) 8(a) solicitation--issued by the General Services Administration (GSA) for training and development services.[1] F-2 contends the agency's evaluation of the firm's proposal was improper.

We deny the protest.

BACKGROUND

The HCaTS procurement was initiated in 2015, as a small business set-aside, and sought proposals for customized training and development services, customized human

[1] Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) 19.800. This program is commonly referred to as the 8(a) program.

capital strategy services, and customized organizational performance improvement services. Agency Report (AR), Attach. 1, RFP at 9.[2] HCaTS is comprised of two separate sets of governmentwide multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contracts, based on different small business size standards, under which task orders can be issued.[3]

The HCaTS 8(a) solicitation here was issued on November 27, 2019, pursuant to the procedures of FAR part 15, and sought to "on-ramp" additional contractors into two 8(a) pools.[4] RFP at 8. The RFP contemplated that the agency would award approximately 20 IDIQ contracts for each 8(a) pool for a 1-year base period with a 5-year option period. *Id.* at 26, 88. Awards were to be made to the offerors that submitted proposals that were the "Highest Technically Rated with Fair and Reasonable Prices." *Id.* at 88. This discussion concerns only the selection for award of contracts under Pool 2.

The RFP explained that the agency would conduct a multi-phased evaluation. First, the agency would identify the top 20 proposals using the offerors' self-scoring worksheets. *Id.* at 89. Next, the agency would perform an initial screening of the top 20 proposals to determine whether the offeror provided all of the attachments and documents listed on the solicitation checklist. *Id.* at 89-90. If an offeror submitted all required attachments and documents, the agency would then review, and if necessary adjust, the offeror's self-scoring. *Id.* at 90-91. Finally, based on the agency's determination of the top 20 proposals, the agency would perform a responsibility determination, and a price reasonableness review, of the apparent successful offerors. *Id.* at 91-92.

The RFP instructed offerors to submit six relevant experience projects (REP) as part of their proposals. *Id.* at 76. For each REP, the solicitation required offerors to submit documentation to substantiate seven requirements: (1) execution; (2) recency; (3) period of performance; (4) obligated dollar amount; (5) scope; (6) North American Industry Classification System code; and (7) past performance rating. *Id.* at 77-79. Relevant to the protest here, with regard to the past performance rating, the RFP provided offerors with "notes for supporting documents" as follows:

> For Federal REPs: Offerors must submit the most recent CPARS/PPIRS [contractor performance assessment reporting system/past performance information retrieval system] report; if the report is not available, submit [RFP] Attachment J.5 (Past Performance Evaluation Form) completed and signed by a duly warranted Contracting Officer. . . . If the Government

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[2] The solicitation was subsequently amended twice. Unless specified otherwise, all citations are to the final, conformed version of the solicitation.

[3] For additional details regarding the HCaTS procurement, see our decisions in *Inalab Consulting, Inc.*, B-418950, Oct. 9, 2020, 2020 CPD ¶ 327, and *RGS Assocs., Inc.*, B-413155.5, Aug. 30, 2016, 2016 CPD ¶ 248.

[4] The first pool would be for 8(a) sole-source task orders, while the second pool would be for 8(a) competitive set-aside task orders. RFP at 8.

> discovers a more current CPARS/PPIRS report, it will be used in lieu of Attachment J.5 (Past Performance Evaluation Form) or any other less current CPARS/PPIRS report that was submitted.

Id. at 79.

The agency received a total of 78 proposals, including a proposal from F-2, by the March 16, 2020, closing date. Contracting Officer's Statement (COS) at 3. F-2's first REP (hereinafter REP 1) referenced a 2019 contract with the Bureau of the Fiscal Service, Department of the Treasury. AR, Attach. 11, F-2 Proposal, REP 1 Contract. F- 2 also self-scored its past performance for REP 1 as warranting 2,500 points, AR, Attach. 12, F-2 Proposal, Self-Scoring Worksheet at 2; however, the offeror provided no supporting documentation, *i.e.*, CPAR or Past Performance Evaluation Form, regarding its past performance rating for REP 1.[5] Importantly, F-2 had received a CPAR for its REP 1 contract on March 11 (referred to by the protester as the "REP #1 Pre-Proposal Submission CPARS"), but did not include this with its proposal.[6] *See* Protest at 18; Exh. 3, REP 1 CPARS at 1-4.

On January 18, 2021, GSA issued a clarification letter to F-2 stating it could not find documentation in the firm's proposal supporting the claimed 2,500 points for REP 1 past performance. AR, Attach. 6, GSA Letter at 1. F-2 responded as follows:

> We reported CPARS data for REP#1 in Volume 1: Eligibility, file name F2Solutions_Att J.3 Self Scoring Worksheet. . . . Documentation to substantiate the Past Performance Average Rating for REP#1 is available via CPARS. We would also note that our attempts to contact the contracting and project points of contact for REP#1 went unanswered, which is why we reported the CPARS data on the Attachment J.3 – Self-Scoring Worksheet Human Capital and Training Solutions 8(a) document. We respectfully request that GSA verify the scores with the contract POCs [points of contact] provided with our submission for REP#1, as you will find that they match our reported scoring.

AR, Attach. 7, F-2 Response Letter.

The GSA evaluators subsequently determined that because F-2's past performance rating for REP 1 was unsupported, the agency deducted the self-awarded 2,500 points from F-2's self-scoring. AR, Attach. 5, Agency Evaluation Checklist for F-2 at 3. This deduction resulted in F-2 being removed from the top 20 proposals. COS at 3.

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[5] The F-2 proposal also did not explain how the firm came up with the self-scoring points it used regarding the past performance for REP 1.

[6] The record reflects that the CPAR here was signed by the Bureau of the Fiscal Service assessing official on March 11, 2020, and by F-2 on March 14, 2020. Protest, Exh. 3, REP 1 CPARS, at 3-4. F-2 also received a second CPAR regarding its REP 1 contract on April 20, 2020. *Id.* at 5-9.

On January 27, the agency notified F-2 that its proposal had been eliminated from further award consideration, and provided the firm with a debriefing. AR, Attach. 2, Notification of Unsuccessful Proposal at 1-2. This protest followed.

DISCUSSION

F-2 contends the agency's evaluation of the protester's proposal was improper. While not disputing that its proposal lacked information supporting the claimed past performance for REP 1, F-2 argues that the CPAR for REP 1 was available to GSA at the time of proposal submission. Protest at 1. The protester also alleges the agency was required to consider the offeror's CPAR as part of its evaluation of F-2. *Id.* at 12-14. F-2 also contends that because it had informed GSA of the existence of the CPAR for REP 1, the agency could not properly ignore the information. *Id.* at 14-15. Had GSA properly taken this information into account, the protester argues, F-2 would have been among the most highly rated offerors selected for award. *Id.* at 15. We have considered all of the protester's arguments and find no basis on which to sustain the protest.

In reviewing protests challenging an agency's evaluation, our Office does not reevaluate proposals; rather, we review the record to determine whether the evaluation was reasonable, consistent with the terms of the solicitation, and compliant with procurement statutes and regulations. *See*, *e.g.*, *Cybermedia Techs., Inc. d/b/a CTEC*, B-413156.25, Apr. 6, 2017, 2017 CPD ¶ 116 at 6; *RGS Assocs., Inc.*, *supra* at 3. An offeror's disagreement with an agency's evaluation, without more, does not establish that the evaluation was unreasonable. *Alutiiq Tech. Servs. LLC*, B-411464, B-411464.2, Aug. 4, 2015, 2015 CPD ¶ 268 at 4. Offerors are also responsible for submitting well-written proposals with adequately detailed information that allows for meaningful review by the procuring agency. *Inalab Consulting, Inc.*, *supra* at 4; *Dougherty & Assocs., Inc.*, B-413155.8, Sept. 1, 2016, 2016 CPD ¶ 232 at 4-5.

We find that the agency's evaluation of F-2's proposal to be reasonable. Here, as discussed above, the solicitation required offerors to submit, in support of a claimed past performance rating, the most recent CPAR or, if not available, the RFP's Past Performance Evaluation Form. RFP at 79. Notwithstanding this provision, F-2 submitted its proposal and provided no information supporting the past performance self-scoring claimed for REP 1. Further, F-2 does not dispute that its proposal failed to include the required information. In support of its evaluation, GSA asserts that it did exactly what the RFP notified offerors the agency would do--validate the information provided (or not provided) by the offeror. Memorandum of Law (MOL) at 3. We agree. Because F-2's proposal was reasonably found not to support the claimed past performance rating for REP 1, its downgraded score was also reasonable. *See Inalab Consulting, Inc.*, *supra.*

We also find no merit in the multitude of arguments raised by F-2 as to why the evaluation was improper.[7] For example, F-2 argues that GSA was required, per the solicitation, to review the most recent past performance available in CPARS. Protest at 11-12. The protester is mistaken. The RFP states that the offeror "must submit the most recent" past performance assessment to support the claimed past performance rating, and "[i]f the Government discovers a more current" assessment, it will be used instead. RFP at 79. There was simply no requirement for the agency to "discover" a more recent past performance assessment for any offeror, and even then, its use would occur only in instances where the offeror had submitted the required past performance information, which F-2 failed to do here.[8]

F-2 also contends that because it had informed GSA of the existence of CPARS for its REP 1 contract, the agency could not properly ignore the information in its evaluation. Protest at 14-15. The protester misunderstands our prior decisions.

We have recognized that in certain limited circumstances, an agency has an obligation (as opposed to the discretion) to consider "outside information" bearing on an offeror's past performance. *See*, *e.g.*, *International Bus. Sys., Inc.*, B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. This obligation, however, is not intended to remedy an offeror's failure, as here, to include information in its proposal. *Level 3 Comc'ns LLC*, B-412854 *et al.*, June 21, 2016, 2016 CPD ¶ 171 at 7 ("No part of this concept, however, is intended to remedy a vendor's failure to include information in its own quotation."); *Affordable Eng'g Servs., Inc.*, B-407180.4 *et al.*, Aug. 21, 2015, 2015 CPD ¶ 334 at 13. Where an offeror is in control of the past performance information contained in its proposal--and not reliant on third parties to submit that information--it exercises its own judgment as to the information that the agency should consider. *Affordable Eng'g Servs., Inc.*, *supra*. Here, F-2 provides no reason why it could not have included the March 11, 2020, CPAR report with its proposal. Accordingly, we conclude the agency

[7] The protester also essentially argues that its failure to comply with the solicitation requirements was excusable because the cognizant contracting officer for the REP 1 contract had been unresponsive. Protest at 13. This allegation is belied by the fact that the contracting officer for the REP 1 contract had issued a CPAR to F-2 on March 11, 2020, which F-2 signed on March 14, and which the offeror apparently used as the basis for its self-scoring. AR, Attach. 7, F-2 Response Letter ("We reported CPARS data for REP#1 in [the] . . . Self Scoring Worksheet"). In any event, F-2 provides no reason why, if it possessed the CPAR, the firm failed to include the CPAR with its March 16 proposal.

[8] F-2 also protested that GSA was required to consider the missing CPAR as part of a responsibility determination of F-2. Protest at 11-12. GSA provided a detailed response to the protester's assertion in its report to our Office, *i.e.*, the agency did not perform a responsibility determination of F-2 because it was not among the prospective awardees (MOL at 5), and F-2 elected not to reply to the agency's response in its comments. We therefore consider this argument to be abandoned. *See Citrus College; KEI Pearson, Inc.*, B–293543 *et al.*, Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4.

had no obligation to seek out and favorably consider information the protester was, in fact, required to have submitted. *Level 3 Commc'ns LLC*, *supra*.

Lastly, F-2 alleges the agency engaged in disparate, unequal, and biased treatment of offerors. Specifically, the protester points to language in the source selection plan indicating that, as part of a responsibility determination, the agency may seek additional information from an offeror.[9] Comments and Supp. Protest at 7-8, *citing* AR, Attach. 3, Source Selection Plan at 12. From this language, F-2 contends that it is unreasonable and unfair for GSA to permit offerors to submit additional information to the agency as part of the responsibility determination phase but not the proposal evaluation phase. *Id.* at 8 ("Restricting F-2 from competing when others as likely as not were allowed to supplement their proposals in any fashion during Phase III evaluations absent discussions is unreasonable."). We find this argument untimely.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. *Logistics Mgmt. Inst.*, B-417601 *et al.*, Aug. 30, 2019, 2019 CPD ¶ 311 at 14. Under these rules, a protest based upon apparent improprieties in a solicitation shall be filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(2).

Here, the RFP stated that, as part of the technical proposal evaluation, "[c]larifications will be conducted . . . solely for the purpose of locating a document in the submitted proposal and the [o]fferor will not be allowed to revise or submit any documents during clarifications." RFP at 91. By contrast, the solicitation stated that, as part of the responsibility determination, "[o]fferors may be asked to supply additional documents as part of the Government's responsibility determination." *Id.* If F-2 was of the opinion that it was improper for GSA to obtain additional information from offerors as part of the agency's responsibility determination, but not also as part of the technical proposal evaluation, it was required to protest this apparent solicitation defect before the deadline for receipt of proposals. 4 C.F.R. § 21.2(a)(1); *see URS Fed. Servs., Inc.*, B-412580,

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[9] Responsibility is a contract formation term that refers to the ability of a prospective contractor to perform the contract for which it has submitted an offer; by law, a contracting officer must determine that an offeror is responsible before awarding it a contract. *See* 41 U.S.C. § 253b(c), (d); FAR 9.103(a), (b). A contracting officer is also required to obtain sufficient information, including from the offeror itself, before making a responsibility determination. FAR 9.105-1. Our Office has explained that an agency's request for information that relates to an offeror's responsibility, rather than proposal evaluation, does not constitute discussions and does not trigger the requirement to hold discussions with other offerors considered eligible for award. *Northrop Grumman Sys. Corp.*, B-412278.7, B-412278.8, Oct. 4, 2017, 2017 CPD ¶ 312 at 19; *General Dynamics-Ordnance & Tactical Sys.*, B-295987, B-295987.2, May 20, 2005, 2005 CPD ¶ 114 at 10. This is because an offeror is not permitted to alter its technical proposal as part of a responsibility determination. *See Northrop Grumman Sys. Corp.*, *supra* at 21.

B-412580.2, Mar. 31, 2016, 2016 CPD ¶ 116 at 5. An offeror simply cannot wait until after contract award to challenge the ground rules by which it elects to compete. *Veterans2Work, Inc.*, B-416935, Jan. 9, 2019, 2019 CPD ¶ 54 at 5; *DynCorp Int'l LLC*, B-415349, Jan. 3, 2018, 2018 CPD ¶ 12 at 9. As F-2 did not raise this challenge until March 18, 2021--more than a year after the March 16, 2020, closing date--it is untimely and will not be considered further.

The protest is denied.

Thomas H. Armstrong
General Counsel