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Decision

Matter of: Deloitte & Touche LLP

File: B-406563; B-406563.2

Date: June 27, 2012

David S. Cohen, Esq., John J. O'Brien, Esq., and Gabriel E. Kennon, Esq., Cohen Mohr LLP, for the protester.

Alexander J. Brittin, Esq., Brittin Law Group LLP, and Jonathan D. Shaffer, Esq., and Mary Pat Buckenmeyer, Esq., Smith Pachter McWhorter PLC, for Grant Thornton LLC, the intervenor.

Timothy Lorenzi, Esq., Department of Homeland Security, for the agency.

Noah B. Bleicher, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency evaluation of vendors' past performance is unobjectionable where agency reasonably concluded that awardee's highly relevant past performance was superior to protester's based on awardee's prior performance of more relevant contracts.
 2. Agency evaluation of vendors' key personnel is unobjectionable where agency reasonably determined that awardee's proposed personnel met solicitation requirements.
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DECISION

Deloitte & Touche LLP, of Arlington, Virginia, protests the award of a blanket purchase agreement (BPA) to Grant Thornton LLP (GT), of Alexandria, Virginia, under request for quotations (RFQ) No. HSHQEH-12-Q-00003, issued by the Department of Homeland Security (DHS), Federal Protective Service (FPS), for activity-based costing (ABC) modeling services and other financial services. Deloitte maintains that the agency's evaluation of quotations was flawed with regard to past performance and key personnel.

We deny the protest.

BACKGROUND

The agency issued the RFQ on February 13, 2012, pursuant to General Services Administration Federal Supply Schedule (FSS) procedures, as set forth at Federal Acquisition Regulation subpart 8.4. The RFQ, provided to 10 vendors holding FSS contracts, sought quotations for ABC modeling services, as well as associated financial management, accounting, financial reporting and budgeting support services.¹ Contracting Officer's Statement at 2. The RFQ anticipated the award of a BPA with labor hour, time and material, and fixed-price task orders to be issued during a 1-year base period and four 1-year option periods. RFQ at 11, 14. The RFQ advised vendors that award would be made on a best-value basis considering price and the following non-price factors, listed in descending order of importance: (1) past performance, (2) key personnel, (3) strategic approach and (4) socio-economic considerations. RFQ at 23. For purposes of award, the RFP stated that the non-price evaluation factors, when combined, "are significantly more important than price." Id.

With regard to past performance, the RFQ instructed vendors to "demonstrate relevant past performance," under projects within the past five years that were of a "similar or directly related scope, magnitude and complexity to that which is described in the solicitation. . . ." ² Id. The RFQ also indicated that the agency would consider the quality of the vendor's relevant past performance, specifically instructing vendors to submit up to three of their "most relevant" projects for the

¹ Specifically, FPS provided the RFQ to vendors on the Financial and Business Solutions Schedule 520-12, Complementary Financial Management Services. Contracting Officer's Statement at 2.

² Regarding scope, the RFQ stated the agency would consider "the type of service provided (i.e. is the project/contract for ABC modeling, financial and budgetary support services?)." RFQ at 23. Regarding magnitude, the RFQ stated that the agency would consider "various measures such as, but not limited to, any or all of the following: number of hours per year, number of personnel to support the effort, and total effort value." Id. With regard to complexity, the RFQ advised that the agency would consider:

various measures such as, but not limited to, the experience developing, implementing and sustaining an ABC model, the experience providing support to a DHS component requiring in-depth knowledge of DHS specific financial and budgetary policies and procedures, the extent the experience that was provided was in support of dynamic and/or high visibility projects and programs with frequently changing requirements affecting mission tempo and the level of associated support needed.

Id. at 24.

agency to evaluate.³ RFQ amend. 0001, at 2. For those projects, vendors were to provide references and ensure that past performance questionnaires for each project were submitted.⁴ Id. The agency also reserved the right to review past performance information obtained from sources other than those identified by the vendor. Id.

With regard to the key personnel factor, the RFQ identified certain key personnel positions,⁵ along with minimum education and experience requirements for each position, and required vendors to submit résumés for each of the proposed key personnel. RFQ at 24.

The RFQ instructed vendors to submit both price quotations and technical quotations by March 1.⁶ RFQ at 2. GT and Deloitte both submitted quotations by the RFQ closing date. Deloitte's price quotation was \$34,907,180.00. GT's price quotation was 2.6% more at \$35,832,182.40.⁷ Agency Report (AR), Tab D, Pre/Post Negotiation Memorandum, at 55.

A technical evaluation team (TET) evaluated the four technical evaluation factors using an adjectival rating system of highly acceptable, acceptable, unacceptable and neutral (for past performance only). AR, Tab E, TET Report, at 7-8. The final ratings were as follows:

³ The RFQ also permitted vendors to submit past performance information on no more than five projects for any teaming partners or subcontractors. RFQ amend. 0001, at 2. This additional information was to be provided "at the prime vendor's discretion." Id. at 7.

⁴ The questionnaires were provided as an attachment to the solicitation, identified various performance categories and provided for ratings of highly acceptable, acceptable, unacceptable and not applicable. RFQ, attach. 5, Past Performance Questionnaire, at 53-56.

⁵ The RFQ identified the following key personnel: project manager, ABC modeling subject matter expert, senior level budget analyst, senior level financial analyst and senior level accountant.

⁶ Technical quotes were limited to 40 pages; price quotes were limited to 8 pages total. RFQ amend. 0001, at 2-3.

⁷ The agency analyzed both vendors' prices and found them to be fair and reasonable. Agency Report (AR), Tab D, Pre/Post Negotiation Memorandum, at 64.

Contractor	Past Performance	Key Personnel	Strategic Approach	Socio-Economic
Grant Thornton	Highly Acceptable	Highly Acceptable	Acceptable	Highly Acceptable
Deloitte & Touche	Acceptable	Highly Acceptable	Acceptable	Highly Acceptable

AR, Tab E, TET Report, at 1.

With regard to past performance, Deloitte’s quotation was rated acceptable. In reaching this conclusion, the TET reviewed the projects Deloitte submitted, including four projects performed by Deloitte’s proposed subcontractors, and found that they ranged from “relevant to somewhat relevant” in terms of scope, magnitude and complexity. AR, Tab E, TET Report, at 24-30. Deloitte’s quality of performance, as indicated on the past performance questionnaires, was highly acceptable, and the quality of Deloitte’s subcontractors’ performance ranged from highly acceptable to acceptable. Id. The TET report noted, however, that Deloitte’s performance of the type of work contemplated by the RFQ--that is, ABC modeling on a 100% fee funded program--represented “only a very small fraction of the total value” of one of the projects Deloitte submitted for review. Id. at 41. Nevertheless, the TET concluded that Deloitte had the “capability and capacity to perform the required support services at a satisfactory level” and that “the performance risk is no greater than the level expected from a competent vendor.” Id. at 30, 41. Consequently, an acceptable rating was assigned.

The TET rated GT highly acceptable under the past performance factor. The TET found that GT’s projects also ranged from “relevant to somewhat relevant,” but that, “overall GT possesses experience that is highly relevant to the subject requirement in terms of scope, magnitude and complexity.”⁸ Id. at 12-13. Specifically, the TET highlighted the work GT performed on two projects that were “directly relevant” to the work contemplated by the RFQ and noted that GT had the “most relevant past performance experience.” Id. at 13, 41. The TET also reviewed past performance questionnaires and contract performance assessment reports (CPARs) identified in the past performance information retrieval system (PPIRS) related to GT projects. Id. at 41. Finally, the TET recognized positive third party evaluations of GT’s financial cost modeling system, and that GT had been nominated for or received various awards related to the projects the firm submitted. Id. at 42. In assigning the highly acceptable rating under the past performance factor, the TET report concluded that GT’s “intrinsic working knowledge” of 100% fee funded programs allowed for a “minimum learning curve, increased levels of efficiency, a higher

⁸ GT only submitted its own past performance information.

quality of work product, lower recognized risk and a higher potential for overall project success to be acknowledged. . . .” Id. at 46.

With regard to the key personnel factor, the TET assigned both vendors a highly acceptable rating. The TET recognized that both vendors provided personnel with experience and/or education “at levels that exceeded the requirements for an acceptable rating and those excesses were considered by the TET to provide direct benefit to the Government.” Id. at 42. However, the TET determined that GT’s quotation was “slightly better” than Deloitte’s under the key personnel factor because of a combination of “education, certifications and direct experience with the core requirement” of the RFQ. Id. at 42. Moreover, the TET recognized that GT’s proposed key personnel had “more years of pertinent experience across each position.” Id. at 43.

Overall, the TET concluded that GT’s quotation was “superior to Deloitte’s from a technical perspective.” Id. at 47. In this respect, the TET determined that GT had the “most relevant” past performance and proffered “slightly better” key personnel. The TET also noted that GT’s quotation was stronger under the other two evaluation factors.⁹ Id. at 46.

Thereafter, the agency conducted a trade-off analysis and determined that GT’s slightly higher-priced quotations offered the best value to the agency. Contracting Officer’s Statement at 4. In this regard, the agency concluded that the “substantially lower performance risk associated with the GT quotation far outweighs the 2.6% [price] premium,” and GT was awarded the BPA on March 20. AR, Tab D, Pre/Post Negotiation Memorandum, at 65; Contracting Officer’s Statement at 4. After receiving notice of the award, Deloitte protested to our Office.

DISCUSSION

As discussed below, Deloitte challenges various aspects of the agency’s evaluation under the past performance and key personnel factors. We have reviewed all of the protester’s allegations and find no basis to sustain the protest.

Past Performance

First, Deloitte argues that the agency “grossly misapplied the [past performance] factor weights.” Comments (May 7, 2012) at 17. In this regard, Deloitte asserts that

⁹ Under the strategic approach factor, the TET assigned both vendors an acceptable rating, but the TET found GT’s quotation to be “slightly better.” AR, Tab E, TET Report, at 43. For the socio-economic considerations factor, the TET assigned both vendors a highly acceptable rating, but the TET concluded that GT’s quotation was the “stronger of the two.” Id. at 46.

“[p]ast performance was divided into two factors, quality and relevance,” and that “[r]elevance, in turn, was divided into three subfactors, scope, magnitude and complexity.” Id. Deloitte’s characterization of the terms of the solicitation is erroneous.

Agencies are required to evaluate offers in accordance with the solicitation’s stated requirements. The Boeing Co., B-311344 et al., June 18, 2008, 2008 CPD ¶ 114 at 38. Where a dispute exists as to a solicitation’s actual requirements, we will first examine the plain language of the solicitation. See e.g., Carthage Area Hosp., Inc., B-402345, Mar. 16, 2010, 2010 CPD ¶ 90 at 5 n.7; W. Gohman Constr. Co., B-401877, Dec. 2, 2009, 2010 CPD ¶ 11 at 3-4.

The protester’s argument that the RFQ established additional “factors” and “subfactors” under the stated past performance evaluation is contrary to the record. The RFQ established only four non-price evaluation factors (past performance, key personnel, strategic approach, and socio-economic considerations); it did not establish any other factors or subfactors. See RFQ at 23. With regard to past performance, vendors were advised that, to receive any past performance rating other than neutral they must “demonstrate relevant past performance.” Id. Further, the RFQ provided that in making relevance determinations the agency would “consider” the scope, magnitude and complexity of the vendor’s prior projects. Id. The RFQ did not, however, identify those items as subfactors, nor did the agency treat them as such in its evaluation. Consequently, the protester’s contentions that relevance and quality of performance were “factors” under the RFP’s stated past performance factor, and that scope, magnitude and complexity were “subfactors” under the relevance “factor,” are contrary to the plain language of the solicitation. As such, these contentions--and the arguments that flow from them--provide no basis to sustain the protest.¹⁰ See STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 9; Kuhana-Spectrum, B-401270, July 20, 2009, 2010 CPD ¶ 61 at 2 n.2 (“[I]t is clear from the solicitation that relevance, quality, and quantity were not identified as subfactors, but were elements of past performance that the agency would take into account in evaluating overall past performance.”); Roy F. Weston, Inc., B-274945 et al., Jan. 15, 1997, 97-1 CPD ¶ 92 at 9 (noting that nothing in solicitation supports protester’s claim that four “areas of consideration” are subfactors).

Likewise, the record shows that the agency’s decision to assign a highly acceptable rating to GT and an acceptable rating to Deloitte under the past performance factor

¹⁰ Deloitte makes a similar--and equally flawed--assertion that the agency was required to treat “ABC modeling” and “financial and budgetary services” as “equally weighted elements” of the scope “subfactor.” See Comments (May 7, 2012) at 17. As discussed above, Deloitte’s attempt to create “factors,” “subfactors” and “elements” where the solicitation did not provides no basis for protest.

was neither unreasonable nor inconsistent with the terms of the solicitation. As explained above, the RFQ required vendors to demonstrate relevant past performance by identifying three projects for evaluation. RFQ amend. 0001, at 2. The TET determined that two of GT's projects "successfully provided direct ABC Modeling support to programs/organizations that have a 100% fee funded structure" similar to the requirements contemplated by this solicitation. AR, Tab E, TET Report, at 41.

In contrast, the agency noted that only one of Deloitte's past performance projects--including the four submitted for its subcontractors--was directly relevant because it included support to an ABC model on a 100% fee funded structure. Id. at 40, 41. Moreover, the TET noted that even the directly relevant work reflected only a "very small fraction" of that project's total value. Id. at 41. Similarly, while a second Deloitte project highlighted the firm's work on ABC modeling, it was not performed on a 100% fee funded program similar to the tasks contemplated in the RFQ. Id. at 30, 41.

As discussed above, the agency reviewed the projects submitted by Deloitte and GT and determined that GT's quotation had the "most relevant past performance experience." Id. at 41. The agency explains, and we agree, that GT's "highly relevant" and "direct experience" was a discriminator the agency reasonably recognized to distinguish the two quotations. Id. at 13, 41; see Supplemental AR, Tab B, Legal Memorandum, at 42. As we have stated, an agency may reasonably give differing weight to an offeror's prior contracts based upon their similarity or relevance to the required effort. See e.g., Kuhana-Spectrum, supra, at 7; TPL, Inc., B-297136.10, B-297136.11, June 29, 2006, 2006 CPD ¶ 104 at 12. Deloitte's assertions regarding the relative impact of the agency's various considerations in evaluating past performance provides no basis for sustaining the protest.

Deloitte next asserts that the agency treated vendors unequally in performing the past performance evaluation. In this regard, Deloitte complains that the evaluation was unequal because of how the agency assessed the vendors' past performance questionnaires, PPIRS reports, and company awards. Comments (May 7, 2012) at 8-14. We have reviewed each of Deloitte's allegations and find nothing objectionable about the agency's evaluation.

Among other things, Deloitte argues that the responses to the past performance questionnaires "clearly show the superiority of Deloitte's past performance" because Deloitte received a highly acceptable rating in all 18 metrics on each of its three past performance questionnaires.¹¹ Comments (May 7, 2012) at 25; see AR,

¹¹ Deloitte also submitted four past performance questionnaires for its subcontractors, which indicated a mix of highly acceptable and acceptable rankings. AR, Tab S, Past Performance Questionnaires, at 16-30.

Tab S, Past Performance Questionnaires, at 1-15. GT, on the other hand, received 13 acceptable ratings across its questionnaires, yet it was rated highly acceptable for the factor. Id. at 31, 42.

As explained above, the past performance evaluation was not based solely on a vendor's past performance questionnaire rating. Instead, the agency also took into account the relevance of a submitted project. While the TET noted that the quality of Deloitte's performance was highly acceptable to acceptable (including its subcontractors' projects) without performance problems, it also noted that GT's quotation "reflected more relevant past performance experience." AR, Tab E, TET Report, at 30, 46. Thus, notwithstanding Deloitte's disagreement, we find no reason to object to the agency's evaluation under the past performance factor.¹²

Finally, in its supplemental comments in response to the agency's supplemental report, Deloitte for the first time asserts that the agency erred in aggregating certain past performance information. For example, Deloitte argues that the TET "conjunctively" aggregated GT's past performance to reach a favorable result and "disjunctively" aggregated Deloitte's past performance, including its subcontractor past performance information, to reach an unfavorable result. Supp. Comments (May 29, 2012) at 10, 12.

Under our Bid Protest Regulations, protests must be filed no later than 10 days after the basis for the protest was, or should have been, known, 4 C.F.R. § 21.2(a)(2), and where, as here, a protester files supplemental protest grounds, each new ground must independently satisfy our timeliness requirements. QualMed, Inc., B-257184.2, Jan. 27, 1995, 95-1 CPD ¶ 94 at 12-13. If Deloitte believed the agency "irrationally" and "unequally" aggregated certain past performance information, it was required to so allege within 10 days after it became aware of the issue from the agency's April 27 report. We see no reason why Deloitte would not have been able to raise this specific argument in its May 7 filing with our Office. Since the protester did not raise this argument until submission of its supplemental comments on May 29, this basis of protest is untimely and will not be addressed.

¹² To the extent the protester argues that the evaluation was unequal because the TET report acknowledged GT's award and nomination and not Deloitte's, we find that this allegation does not provide a basis to sustain the protest. See Comments (May 7, 2012) at 10. In this respect, the agency explains that the TET recognized Deloitte's awards, but could not determine whether they were tied to the type of contract or work being solicited. Supp. AR, Tab C, Declaration of Contract Specialist, at ¶ 9. The agency explains that the TET concluded that Deloitte's awards were "neither a strength nor a weakness." Id. On the other hand, GT's award and nomination were tied to a submitted project, which allowed the TET to recognize the "high quality of performance on that project." Id. at ¶ 8.

In sum, we find that the agency evaluated quotations under the past performance factor consistent with the terms of the RFQ.

Key Personnel

Deloitte also objects to the agency's evaluation under the RFQ's key personnel factor. Deloitte contends that GT's quotation failed to demonstrate that certain proposed key personnel--the project manager, ABC modeling expert and senior level accountant--met the RFQ's mandatory experience requirements. Comments (May 7, 2012) at 25, 27, 29. We have reviewed each of Deloitte's allegations and find no basis to object to the agency's evaluation under the key personnel factor.

First, Deloitte argues that GT's quotation fails to show that the proposed project manager had the required 5 years of experience in a supervisory position. Comments (May 7, 2012) at 25. In this regard, the RFQ required that the proposed project manager possess "15 years of financial management and Activity Based Costing experience. Five (5) years of experience in a supervisory or team lead position." RFQ, attach. 3, Labor Category Description, at 45. Here, GT's quotation included a résumé for its proposed project manager that the agency concluded evinced the required 5 years of supervisory experience. Specifically, GT's proposed project manager's résumé indicated that the individual was a "manager" for more than 2 years, a "senior manager" for just over 3 years and a "director" for at least one year.¹³ AR, Tab N, GT Technical Quotation, at 26. As the agency explains, the TET determined that these positions qualified as supervisory positions, and the more than 6 years of experience in these positions met the RFQ's requirement. Supp. AR, Tab B, Legal Memorandum, at 52. Although Deloitte disagrees with the agency's "reliance on job titles," its disagreement does not show that the agency's determination is unreasonable. See Supp. Comments (May 29, 2012) at 31. On this record, we find nothing objectionable about the agency's conclusion that GT's proposed project manager met the RFQ's experience requirement.

Similarly, Deloitte complains that GT's proposed ABC modeling subject matter expert did not have "10 years of experience in the delivery [of] ABC models," as stipulated in the RFQ. RFQ, attach. 3, Labor Category Description, at 46; Comments (May 7, 2012) at 27. Here, too, the agency concluded that the proposed individual met the RFQ's requirements. In making its assessment, the agency relied on the contents of the individual's résumé and a TET member's "personal professional knowledge" of the proposed subject matter expert to conclude that all

¹³ The résumé also stated that the individual "possesses over 16 years of experience in financial management and accounting for government agencies and private industry." AR, Tab N, GT Technical Quotation, at 24.

experience requirements were met.¹⁴ Supp. AR, Tab B, Legal Memorandum, at 53, citing Supp. AR, Tab D, Declaration of TET Member, at ¶ 7. The TET member submitted a declaration indicating that she knew the proposed subject matter expert since 2002 and worked with him in 2004 where she “learned his status as a Subject Matter Expert in the field of ABC Modeling and delivery.” Supp. AR, Tab D, Declaration of TET Member, at ¶ 7.

An agency may properly use information known by its own evaluators, as with any other references, to aid in the evaluation of proposals, including evaluating offeror experience. Arctic Slope World Servs., Inc., B-284481, B-284481.2, Apr. 27, 2000, 2000 CPD ¶ 75 at 7 (not unreasonable for agency to use past experience with proposed deputy project manager to infer whether individual would be a team player).

Here, as noted above, one of the TET members had knowledge of the proposed individual’s extensive experience and the TET report expressly noted that the proposed individual “reflects educational accomplishments and experiences that are far in excess of what was required . . . and provide[s] direct additional benefit to the Government.” AR, Tab E, TET Report, at 19. Notwithstanding the protester’s assertions to the contrary, the record shows that the agency reasonably concluded that the awardee’s proposed key personnel met the RFQ’s requirement for experience.¹⁵

Finally, the protester disputes the agency’s conclusion that the résumés submitted by GT were “in aggregate considered to be better” than those submitted by Deloitte. See AR, Tab E, TET Report, at 43. Deloitte argues that this conclusion was unreasonable because it believes that it submitted more experienced candidates for

¹⁴ The related résumé in GT’s quotation stated that the individual possessed 40 years of professional experience, was the founding partner of an organization that includes activity-based costing as an area of discipline, spent 13 years as an instructor of activity-based costing and has published more than 10 books about various accounting topics, including activity-based costing. AR, Tab N, GT Technical Quotation, at 24.

¹⁵ Deloitte also asserted that the agency should have concluded that GT’s proposed senior level accountant did not have 15 years of experience with federal financial systems, as required by the RFQ--notwithstanding the awardee’s submission of a résumé affirmatively representing that he did. Comments (May 7, 2012) at 29; see RFQ, attach. 3, Labor Category Description, at 50. Although the protester acknowledges that the résumé for this individual “made the requisite claim of experience [and] [l]egally DHS was entitled to rely on that claim,” Supp. Comments (May 29, 2012) at 33, Deloitte speculates that this is a misrepresentation. Deloitte’s speculation provides no basis to sustain the protest.

three of the five key personnel positions. Comments (May 7, 2012) at 32. Deloitte's assertion in this regard represents mere disagreement with the agency's evaluation and does not form a basis to sustain the protest. On the record here we find no basis to question the agency's evaluation with regard to the key personnel factor.

In sum, the protester has not shown the agency's evaluation under either the past performance or key personnel factors to be improper or otherwise unreasonable.¹⁶

The protest is denied.

Lynn H. Gibson
General Counsel

¹⁶ Deloitte's initial letter of protest challenged different aspects of the agency's past performance evaluation and objected to one of GT's proposed key personnel, but in its comments responding to the agency's detailed response to the allegations, Deloitte did not substantively rebut the agency's position. At the end of its pleading, Deloitte merely stated that it "does not withdraw" its original protest bases. See Comments (May 7, 2012) at 34 n.19. Merely referencing or restating a protest basis without substantively responding to an agency's detailed rebuttal amounts to abandonment of the protest basis. Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4.