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Decision

Matter of: VendTech-SGI LLC

File: B-408488; B-408488.3

Date: September 30, 2013

Terrence M. O'Conner, Esq., and Sara Dajani, Esq., Berenzweig Leonard, LLP, for the protester.

Richard J. Conway, Esq., Merle DeLancey, Esq., and Adele H. Lack, Esq., Dickstein Shapiro LLP, for the intervenor.

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

Noah B. Bleicher, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of past performance and source selection decision is denied where record shows that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations.

DECISION

VendTech-SGI LLC (VT-SGI), of Wichita, Kansas, protests the award of a contract to G4S Government Solutions, Inc. (G4S), under request for proposals (RFP) No. HSHQE5-12-R-00011, which was issued by the Department of Homeland Security (DHS), Federal Protective Service (FPS), for armed protective security officer services throughout the state of Michigan. VT-SGI challenges the agency's evaluation of past performance and its award decision.

We deny the protest.

BACKGROUND

On September 28, 2012, FPS issued the solicitation for the protective security officer services as an unrestricted commercial item acquisition. RFP at 1. The RFP contemplated the award of an indefinite-quantity labor hour contract with a 1-year base period of performance and four 1-year option periods. Id. at 2, 26. Offerors were informed that fixed-price labor hour task orders would be issued under the contract. Id. at 26. Pursuant to the solicitation, award would be made to the offeror

whose proposal was deemed to be the best value to the agency, considering price and the following non-price evaluation factors: relevant past performance, management approach, and socio-economic. Id. at 65, 80. For purposes of award, the solicitation advised that the relevant past performance and management approach factors were significantly more important than the socio-economic factor, and the technical evaluation factors, when combined, were significantly more important than price. Id. at 65-66.

With respect to past performance, the solicitation instructed offerors to “demonstrate relevant past performance” under projects within the past 3 years that were of a “similar or directly related scope, magnitude and complexity to that described in the solicitation. . . .”¹ Id. at 69. In this regard, the RFP required offerors to submit up to three of their most relevant projects for the agency to evaluate.² Id. For those projects, firms were to provide references and indicate whether a Contract Performance Assessment Report (CPAR) was available. Id. at 70; see id., attach. 3, Past Project Form, at 1-3. If a CPAR was not finalized and available, offerors were to submit a past performance questionnaire for that project, which the agency included as an attachment to the RFP. Id.; see id., attach. 4, Past Performance Questionnaire, at 1-5. In determining relevance, the solicitation provided that the agency would evaluate submitted projects “individually or in the aggregate . . . and will do so consistently across all evaluated offers.” Id. at 69. The RFP also indicated that the agency would consider the quality of the firm’s relevant past performance, and the agency reserved the right to review past

¹ Regarding scope, the RFP stated that the agency would consider “the type of service provided (e.g. is the project/contract for security PSO services?).” RFP at 71. Regarding magnitude, the RFP stated that the agency would consider “various measures such as, but not limited to, any or all of the following: number of productive hours per year, number of PSO personnel to support the effort, and total annual contract value.” Id. With regard to complexity, the RFP advised that the agency would consider:

various measures such as, but not limited to, any or all of the following: whether or not PSOs are armed; type of PSO qualifications and training requirements; type of suitability and/or security clearance; type of permit, licensure and certification requirements in performance of the effort; typical duties/responsibilities required of security force; type of protection required . . . and the number and geographic dispersion of services sites under a single project.

Id.

² The RFP also permitted offerors to submit past performance information on an additional three projects for any teaming partners or subcontractors. RFP at 69.

performance information obtained from sources other than those identified by the offeror. Id. at 66, 69-70.

The agency received proposals from 15 firms, including offers from VT-SGI and G4S, prior to the solicitation's November 29 closing. Contracting Officer Statement at 2; RFP amend. 4, at 1. VT-SGI proposed to perform the security services for \$94,865,635.53. G4S' proposed a lower price of \$94,335,580.00.

A five-person technical evaluation team (TET) evaluated the three technical evaluation factors using an adjectival rating system of highly acceptable, acceptable, unacceptable or neutral (for past performance only). Agency Report (AR), Tab L, Source Selection Plan, at 14-16. The TET assigned both VT-SGI's and G4S' proposals highly acceptable ratings for each of the three non-price factors. AR, Tab E, TET Report, at 3.

As relevant here, G4S' proposal was rated highly acceptable under the past performance factor. In reaching this conclusion, the TET reviewed three past performance projects for security guard services submitted by G4S and assessed the relevancy of the projects. Id. at 28-32. The TET found that the projects, in the aggregate, were "completely relevant" in terms of scope, magnitude, and complexity. Id. at 33. The TET also reviewed past performance questionnaires submitted for these projects, each of which rated G4S' performance as highly acceptable. Id. at 29-31. The TET recognized the "positive commentary" in the questionnaires and noted that the evaluated projects "generally received favorable ratings in terms of the quality of the past performance." Id. at 33. Additionally, the TET identified 20 relevant CPAR entries in the Past Performance Information Retrieval System (PPIRS), with the "overwhelming majority of the elements evaluated" being rated from satisfactory to exceptional. Id. at 32. Although G4S was rated less than satisfactory in two instances, later CPARs for the same projects showed favorable ratings. Id. Based upon the available past performance information, the TET concluded that G4S' proposal reflected a "good probability of success in contractor performance" with less risk than the level expected of a competent contractor, and a highly acceptable rating was assigned. Id. at 33.

As noted above, the TET also rated VT-SGI's proposal as highly acceptable under the past performance factor. In reaching this rating, the TET reviewed four past performance projects for security guard services submitted by VT-SGI and assessed the relevancy of the projects. Id. at 14-20. Although all projects were determined to be recent and relevant in terms of scope, the TET noted that two of the projects were "limited in relevance" and one was "extremely limited in relevance" in terms of complexity. Id. Similarly, in terms of magnitude, one project was limited in relevance and another extremely limited. Id. at 16, 19. The TET also noted that VT-SGI's performance on one of its relevant projects had been for less than a year. Id. at 17. The TET concluded that, in the aggregate, the past performance submitted was "completely relevant." Id. at 20. The TET also reviewed past

performance questionnaires and two CPAR entries and recognized that “VT-SGI has consistently received favorable ratings in terms of the quality of its past performance. . . .” Id. Concluding that VT-SGI’s proposal represented “slightly less” risk than that expected from a competent contractor, the TET rated VT-SGI’s proposal as highly acceptable under the past performance factor. Id.

Overall, the TET concluded that VT-SGI’s offer represented “a minimal amount of performance risk,” and the TET ranked the proposal number one. Id. at 122. The TET pointed to the two G4S CPAR entries that documented “unfavorable performance” as a distinguishing difference between the two proposals. Id. at 124. The TET also recognized that VT-SGI’s small disadvantaged business target, under the socio-economic factor, was “significantly higher” than G4S’. Id.

Thereafter, the agency conducted a trade-off analysis and determined that G4S’ slightly lower-priced proposal offered the best value to the agency. The source selection official (SSO), who was also the contracting officer, considered the technical evaluation team’s conclusions with regard to the non-price factors and documented her findings in a pre/post negotiation memorandum. AR, Tab D, Pre/Post Negotiation Memorandum, at 1-51. In reviewing the TET findings, the SSO recognized that VT-SGI had a “directly relevant” past performance project for protective security officer services for FPS whereas G4S did not. Id. at 36. The TET also noted VT-SGI’s small disadvantaged business participation target was higher than G4S’ and that VT-SGI participated in the agency’s mentor-protégé program and G4S did not. Id. at 40. Nevertheless, the SSO concluded that the performance risk associated with the two offerors was “relatively equal,” and the benefits of VT-SGI’s proposal did “not warrant paying the price premium.” Id. at 40-41. Thus, the SSO concluded that the offer submitted by G4S was the “most beneficial” to the agency and “provided the best value to meet the Government’s requirements,” and award to G4S was made on June 19. Id. at 47; Contracting Officer Statement at 4. After receiving notice of the award, VT-SGI protested to our Office.

DISCUSSION

As discussed below, VT-SGI challenges various aspects of the agency’s evaluation under the past performance factor. The protester also objects to the agency’s source selection decision.

An agency’s evaluation of past performance 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; L-3 Sys. Co., B-404671.2, B-404671.4, Apr. 8, 2011, 2011 CPD ¶ 93 at 4. The evaluation of experience and past performance, by its very nature, is subjective; we will not substitute our judgment for reasonably based evaluation ratings, 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.

First, VT-SGI asserts that in rating both firms' past performance as highly acceptable, the agency "neutralize[d] and minimize[d] the superior rating" of VT-SGI's proposal. Comments/Supplemental Protest at 2. Specifically, the protester complains that the TET and the SSA "ascribed significance" to the fact that VT-SGI's performance on an "essentially identical" contract was for less than a year. Id.; see AR, Tab D, Pre/Post Negotiation Memorandum, at 36; AR, Tab E, TET Report, at 17. The protester similarly argues that the agency excused G4S' "adverse" past performance as described in two CPAR entries and did not take into account "highly-publicized bad past performance." Protest at 5; Comments/Supp. Protest at 4.

Here, we find that the agency's evaluation of both VT-SGI's and G4S' past performance was reasonable and consistent with the evaluation criteria. As discussed above, the agency assessed the scope, magnitude, and complexity of recent projects in considering relevance. With regard to VT-SGI's past performance on an FPS contract for protective security officer services in a different region, the TET and SSO accurately noted that, while the project met the solicitation's criteria of a recent project, VT-SGI had been performing for less than a year at the time of the evaluation. AR, Tab D, Pre/Post Negotiation Business Memorandum, at 36; AR, Tab D, TET Report, at 17, 120. That the TET and SSO acknowledged the duration of performance on the particular project is unobjectionable in light of the solicitation's express warning that "projects of short duration or recently awarded may be considered as slightly less relevant and/or presenting a higher performance risk given the shorter period of performance." See RFP at 69.

We find equally unpersuasive VT-SGI's complaints about the agency's evaluation of G4S' past performance. Comments/Supp. Protest at 3-4. As discussed above, the record shows that the TET identified two CPAR entries where G4S was rated "less than satisfactory." AR, Tab E, TET Report, at 32. However, the TET noted that one of the unfavorable ratings was for cyber security, which is not part of FPS' requirements here, and that G4S was assigned very good ratings in subsequent CPARs for the same element. Id. The other unfavorable rating was a marginal rating under a business relations element for a different contract. The TET explained that G4S had responded to the CPAR explaining any perceived issues, and, again, all elements were evaluated favorably in subsequent CPARs for the same project. Id. at 33. The TET concluded that these two CPAR ratings did not show "evidence of a negative trend" and that "generally favorable performance was documented" in the 20 other CPAR entries for G4S. Id. Based upon the "complete review" of G4S' past performance information, as discussed above, the agency assigned the offeror a highly acceptable rating. Id. VT-SGI has not shown that the agency's evaluation of G4S' past performance was unreasonable. The protester's

argument that the agency should have assigned G4S a lower rating based on negative performance reports reflects the protester's disagreement with the evaluation and does not provide a basis to sustain the protest.

Next, VT-SGI asserts that the agency failed to take into account three instances of what the protester deems "highly-publicized bad past performance" by G4S. Protest at 5. Specifically, the protester points to what it argues are a "series of failures in comparable contracts" performed by the awardee (under a different corporate name and by the awardee's parent corporation). Id. at 2. Here, the agency has provided a reasonable explanation as to why this information was not part of its past performance evaluation. First, the agency explains that one of the issues cited by the protester occurred 6 years ago, which was outside the solicitation's criteria for relevant past performance. AR at 9; see RFP at 69. With regard to the other instances cited by VT-SGI, the agency has demonstrated that the evaluators were unaware of the alleged performance issues and that the solicitation did not require the agency to consider past performance of affiliated companies. AR at 7, 10. Although the protester argues that the agency should have conducted a different internet search to uncover the alleged issues, the protester has not demonstrated that the solicitation required the agency to do so. See Comments/Supp. Protest at 9. On this record, we find the agency's evaluation of G4S' past performance to be unobjectionable.

Finally, VT-SGI challenges the agency's source selection decision. Specifically, VT-SGI argues that it was unreasonable for the SSO to conclude that G4S was the best value when VT-SGI's technical proposal was ranked ahead of G4S' and VT-SGI's price was "only 0.6% higher." Protest at 5. This, according to the protester, shows that the agency relied on a lowest-priced, technically-acceptable award determination, which was contrary to the solicitation. Id.

Agencies enjoy discretion in making cost/technical tradeoffs where the solicitation provides for the award of a contract on a best value basis; the agency's selection decision is governed only by the test of rationality and consistency with the solicitation's stated evaluation scheme. Marine Hydraulics Int'l, Inc., B-403386.3, May 5, 2011, 2011 CPD ¶ 98 at 4. Additionally, a source selection official, such as the contracting officer here, may rely on reports provided by technical evaluators. See General Dynamics C4 Sys., Inc., B-406965, B-406965.2, Oct. 9, 2012, 2012 CPD ¶ 285; Diemaster Tool, Inc., B-241239, B-241239.2, Jan. 30, 1991, 91-1 CPD ¶ 89 at 6.

In this case, our review of the record shows that the source selection official's decision explains a well-reasoned basis for a tradeoff that justified making an award to the lower-priced, lower-technically-ranked offeror. As documented in the pre/post negotiation memorandum, the SSO conducted a tradeoff analysis focusing on the six offers that were lower-priced than VT-SGI's top-ranked offer. AR, Tab D, Pre/Post Negotiation Memorandum, at 35.

In comparing VT-SGI's offer with G4S', the record shows that the SSO looked beyond the adjectival ratings and reviewed and compared the TET's findings under each of the evaluation factors. With regard to past performance, the SSO recognized that VT-SGI had "directly relevant past experience" but found that G4S' past performance represented a level of performance risk that was "only slightly higher" than VT-SGI's. Id. at 36. The SSO acknowledged G4S' two "unfavorable elements" in the CPAR entries, but found that the offeror overcame any perceived issues. Id. Under the management approach factor, the SSO considered the two offers to be "relatively equal in terms of performance risk." Id. at 40. With regard to the socio-economic factor, the SSO acknowledged--contrary to the protester's assertion otherwise--that VT-SGI proposed higher small disadvantaged business participation than G4S and that VT-SGI participates in the DHS mentor-protégé program. Id.; see Comments/Supp. Protest at 6. However, the SSO noted that the socio-economic factor is the least important non price factor, and significantly less important than the combined past performance and management approach. AR, Tab D, Pre/Post Negotiation Memorandum, at 40; see RFP at 65.

In making the award determination, the SSO reasonably concluded that the performance risk associated with the two offers was "relatively equal." AR, Tab D, Pre/Post Negotiation Memorandum, at 40. According to the SSO, that VT-SGI proposed higher small disadvantaged business participation did "not warrant paying the price premium." Id. at 41. Therefore, the SSO concluded as follows:

[T]he proposal submitted by G4S provides a level of performance risk which is so minimal that it was determined to be a better value than paying the \$530K price premium associated with the offer from VendTech-SGI. Thus, G4S' offer is determined to be more advantageous to the Government when compared to the offer of VendTech-SGI."

Id. Based on our review of the record, we find that the agency's source selection decision is adequately documented, and we see no basis to question the agency's determination that G4S' proposal represented a better value to the government than did VT-SGI's proposal. We disagree with the protester that the award decision reflects a lowest-price technically-acceptable award determination. Additionally, VT-SGI's complaints that the SSO "neutralize[d] the superiority" of its proposal reflect the protester's disagreement with the SSO's decision, but do not provide a basis to sustain the protest. See Comments/Supp. Protest at 7.

In sum, we find reasonable the agency's evaluation under the past performance factor and conclude that award to G4S was unobjectionable.³

The protest is denied.

Susan A. Poling
General Counsel

³ Our Office previously dismissed two of VT-SGI's supplemental protest grounds. We dismissed the protester's complaint related to the agency's use of "efficient competition" on the grounds that the protester had not demonstrated that it was prejudiced by the agency's actions. See Comments/Supp. Protest at 13. Likewise, we dismissed VT-SGI's supplemental protest ground objecting to the agency's decision not to conduct discussions with the offerors because the protest ground was not a valid basis of protest. See id.; see Bid Protest Regulations, 4 C.F.R. § 21.5(f) (2013).