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Decision

Matter of: CPS Professional Services, LLC

File: B-409811; B-409811.2

Date: August 13, 2014

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Douglas Becker, Esq., Department of Homeland Security, for the agency.
Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is sustained in a Federal Supply Schedule procurement that provided for issuance of a task order on a best-value basis, where the agency failed to reasonably assess the comparative merit of the vendors' past performance as required by the solicitation.

DECISION

CPS Professional Services LLC, of Fairfax, Virginia, protests the issuance of an order to Arc Aspicio LLC, of Arlington, Virginia, under request for quotations (RFQ) No. HSCEMD-14-Q-00001, issued by the Department of Homeland Security, Immigration and Customs Enforcement (ICE), for school certification support services. CPS challenges the agency's evaluation of quotations and selection decision.

We sustain the protest.

BACKGROUND

The RFQ, issued as a small business set-aside under the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) Subpart 8.4, sought quotations from vendors holding FSS schedule 874 (mission oriented business integrated services) for various services supporting the agency's Student and

Exchange Visitor Program (SEVP).¹ Under this program, the agency certifies educational institutions across the United States to accept nonimmigrant students and exchange visitors. Agency Report (AR), Tab 3, RFQ amend. 1, Statement of Work (SOW), at 32.

As described by the SOW, the successful vendor will “provide technical, and analytical support to the SEVP adjudication process, planning and operational activities to include program management, [and] assistance to federal adjudicators adjudicating all phases of certification” Id. at 32. The required services were divided into three areas: executive program management support (SOW section 4.1), adjudications support (SOW section 4.2), and file administration (SOW section 4.3). Id. at 33-35.

Vendors were informed that the task order would be issued on a best-value basis, considering three equally-weighted evaluation factors: technical approach and solution; past performance; and price. AR, Tab 3, RFQ, amend. 1, at 4. With respect to the technical approach and solution factor, vendors were required to describe how they will “manage and implement effectively” the various tasks required to accomplish the SOW. Id. Vendors were instructed to provide staffing and draft quality control plans with their quotations. Id. at 4, 39, 43.

With respect to the past performance factor, vendors were informed that the agency would assess the relevance and quality of the firms’ past performance records. In this regard, the RFQ provided that “[h]igh quality performance of past tasks that are relevant to the current requirement, i.e. for the same or similar effort may be rated higher than performance of tasks with poor quality or of less relevance.” Id. at 5. Vendors were instructed to provide at least three current or past tasks performed for “the same or similar efforts.” Id.

¹ This RFQ was issued following the agency’s corrective action in response to an earlier protest by CPS. In response to that protest, the agency canceled an award to Arc Aspicio, revised the scope of work, and issued a new solicitation. AR at 2.

ICE received quotations from CPS and Arc Aspicio, which were evaluated by the agency's technical evaluation team (TET) as follows:²

	CPS	Arc Aspicio
Technical Approach and Solution	Good	Good
Past Performance	Low Risk	Low Risk
Price	\$14,795,992	\$14,554,675

AR, Tab 8, Award Summary Memorandum, at 6.

The evaluators' adjectival ratings were supported by narrative explanations, which identified strengths and weaknesses in the firms' respective quotations. Both vendors' quotations were rated good under the technical approach and solution factor. CPS's quotation was found to have three strengths and two weaknesses under this factor. See AR, Tab 6, Evaluation Report, at 3-4. CPS's strengths were the firm's "comprehensive analysis of the current processes and identifying areas for improvement in support of all tasks in 4.2 Adjudication Support," a staffing plan that retained virtually all incumbent staff and minimized the need for transition, and cross-training of staff. See AR, Tab 6, Evaluation Report, at 3-4. The weaknesses concerned CPS's draft quality control plan (QCP) with respect to providing quality control support of adjudication tasks, and the experience of key personnel proposed for file management. Id.

Arc Aspicio's quotation was found to have five strengths and two weaknesses under the technical approach and solution factor. The awardee's strengths included, among others, the use of a [DELETED], a new approach to performing adjudications support work (SOW section 4.2), and a [DELETED] transition period. Id. at 12-13. The weaknesses concerned the level of detail provided about the creation and operation of a separate file intake team, and the experience of key personnel proposed for file management. Id.

² Quotations were rated under the technical approach and solution factor as excellent, good, marginal, or unacceptable. As relevant here, a good rating reflected a quotation that satisfied all minimum requirements, demonstrated a comprehensive understanding of the goals and objectives of the acquisition, and had one or more strengths that outweighed any weaknesses. Past performance received risk ratings of low, moderate, high, or neutral/unknown risk. As relevant here, low risk was defined as little doubt that the vendor could perform the proposed effort, and moderate risk was defined as some doubt that the vendor could perform. AR, Tab 4, Evaluation Plan, at 4-5.

Both vendors' past performance received low risk ratings. The evaluators found that CPS provided five relevant examples of its past performance; two of CPS's examples were for work as a subcontractor on the incumbent contract, under which CPS provided support for all tasks under SOW sections 4.1 (executive program management support) and 4.2 (adjudications support). The agency received references for four of the past performance examples that reported good to excellent performance. Id. at 5-6.

The evaluators found that Arc Aspicio provided three relevant examples of its past performance, including one for information technology consulting services to SEVP. The agency received references for only two of the past performance examples, both of which reported excellent performance. For one of these two examples, however, the TET noted that it had not received any ratings for the specific projects that the TET deemed most relevant. AR, Tab 6, Evaluation Report, at 5-6, 13-14. The evaluators concluded that both firms' past performance demonstrated that they could perform the required work. Id.

The TET's evaluation results were provided to the contracting officer, who was the source selection authority for this procurement. The contracting officer agreed with the evaluation and the adjectival ratings assigned by the TET. Contracting Officer's Statement at 13, 14. The contracting officer noted that both firms' quotations received identical ratings under the non-price factors, but that Arc Aspicio submitted a lower-priced quotation than CPS (\$14,554,675 as compared to \$14,795,992). AR, Tab 7, Contracting Officer Decision Document, at 9. The contracting officer reviewed the evaluated strengths for each firm's quotation under the technical approach and solution factor, and concluded Arc Aspicio's strengths offered greater benefits than CPS's. In particular, the contracting officer found that, although CPS as the incumbent subcontractor could provide a reduced transition time as compared to Arc Aspicio's quotation, this did not overcome Arc Aspicio's technical advantages, citing the awardee's five evaluated strengths (one of which was a [DELETED] transition period rather than the normal "30-60 days for new awardees"). Id. at 10. The contracting officer also reviewed the firms' evaluated weaknesses under the technical approach and solution factor and found that CPS's assessed weakness with respect to quality control support for adjudication tasks had a greater potential to impact performance than Arc Aspicio's weakness for file management.³ Id. The contracting officer concluded that CPS's quotation offered no technical merit that justified the protester's price premium. Id. at 9.

³ The contracting officer also noted that both CPS's and Arc Aspicio's quotations were assessed as having a weakness pertaining to the experience of the key personnel proposed for file management. AR, Tab 7, Contracting Officer Decision Document, at 10.

The task order was issued to Arc Aspicio, and this protest followed.

DISCUSSION

CPS raises numerous challenges to the agency's evaluation of quotations and selection decision, including the agency's failure to fairly consider the relative merits of the vendors' respective past performance. As explained below, we find that ICE did not reasonably consider the comparative merits of the firms' respective past performance and as a result the agency's best-value selection decision was not reasonably supported. We sustain CPS's protest on this basis. We have also considered CPS's arguments objecting to the evaluation of its and Arc Aspicio's QCPs under the technical approach and solutions factor and find that none provides a separate basis to sustain the protest.

Past Performance

CPS contends that its quotation documented more relevant past performance than Arc Aspicio's quotation, which ICE failed to credit in its evaluation and selection decision. In this regard, CPS notes that the RFQ informed vendors that past performance was of equal weight to the other evaluation factors and that more relevant past performance (and/or past performance with higher quality ratings) would be considered more favorably. AR, Tab 3, RFQ, amend. 1, at 5. CPS also argues that the RFQ required vendors to identify at least three examples of relevant past performance, but that only two of Arc Aspicio's three examples of past performance were relevant. Specifically, CPS objects that one of the awardee's past performance examples involves a significantly smaller effort than the work here (approximately [DELETED] of the value).

The agency responds that the evaluators and contracting officer reasonably considered the vendors' past performance, assigning each a low risk rating based upon the determination that there was little doubt that they could perform the task order. Supp. AR at 11-23. ICE argues that it was reasonable to assign Arc Aspicio's past performance a low risk rating, given the awardee's submission of three relevant examples of past performance with high quality ratings. Id. at 15. In this regard, the agency contends that CPS was not prejudiced, because its past performance received the highest possible past performance rating (that is, low risk). Id. at 23.

Where an agency issues an RFQ to GSA FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation and selection decision are reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. See Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. For procurements conducted pursuant to FAR subpart 8.4 that require a statement of work, such as this one, the

agency's evaluation and trade-off judgments must be documented in sufficient detail to show that they are reasonable. FAR § 8.405-2(f); Neopost USA Inc., B-404195, B-404195.2, Jan. 19, 2011, 2011 CPD ¶ 35 at 7.

Here, the RFQ provided that award would be made on a best-value basis, considering past performance as one of three equally-weighted evaluation factors. The RFQ further stated that the agency would "assess the relevance and quality of the offeror's performance record in assessing past performance." AR, Tab 3, RFQ amend. 1, at 5. Thus, the solicitation provided for the evaluation of past performance on a qualitative basis that considered the relative merits of the firms' past performance in terms of relevance and quality. Where, as here, the solicitation anticipates the use of a best value evaluation plan--as opposed to selection based on low price and technical acceptability--the evaluation of quotations is not limited to determining whether a quotation is merely technically acceptable; rather, quotations should be further differentiated to distinguish their relative quality under each stated evaluation factor by considering the degree to which technically acceptable quotations exceed the stated minimum requirements or will better satisfy the agency's needs. See US Info. Techs. Corp., B-404357, B-404357.2, Feb. 2, 2011, 2011 CPD ¶ 74 at 9; see also Systems Research and Applications Corp.; Booz Allen Hamilton, Inc., B-299818 et al., Sept. 6, 2007, 2008 CPD ¶ 28 at 24.

The record shows that CPS submitted five relevant examples of its past performance (two of which were for the exact work here) and that ICE received good to excellent references for four of these examples. In contrast, Arc Aspicio submitted three examples of its past performance (one of which was of significantly less magnitude than the work being procured here), and two of which the agency found that Arc Aspicio had excellent ratings (although, as noted above, for one of these two examples the TET had not received a rating for the work it found most directly relevant).⁴ The record thus indicates that the firms' past performance may present qualitative differences in terms of either relevance or quality. For example, CPS's subcontract work on the incumbent contract indicates that CPS may have more specific, relevant past performance than does Arc Aspicio, particularly given that one of Arc Aspicio's past performance examples is significantly smaller than the work presented here.⁵

⁴ ICE states that following the protest the agency received an excellent quality rating for the third past performance project. Supp. AR at 15.

⁵ As the agency notes, the RFQ did not state that a vendor's past performance example must be of a similar size to the task order work here to be considered relevant. However, given that the RFQ stated the agency's best-value evaluation of past performance would consider the relative relevance of the competitors' past performance, a reasonable evaluation would have assessed whether this much

(continued...)

Despite the indication in the record that there may be differences in the quality of CPS's and Arc Aspicio's past performance, at least in terms of relevance, there is no evidence in the contemporaneous evaluation record showing that either the TET or the contracting officer considered the relative merits of the two firms' past performance. Rather, the record shows that the TET simply catalogued the firms' respective past performance and quality ratings before concluding that both proposals should be rated low risk under the past performance evaluation factor. AR, Tab 6, Evaluation Report, at 5-6, 13-14. At no point in this record is there any consideration by the TET or the contracting officer of whether the past performance of these vendors is equally relevant or why the two firms' past performance was equivalent. Id.; AR, Tab 7, Contracting Officer Decision Document, at 6-7. In this regard, there is no discussion of the respective merits of the firms' past performance in the contracting officer's trade-off analysis, which only focuses upon the respective merits of the vendors' quotations under the technical approach and solution factor and price.

The agency's failure to consider the relative qualitative merits of the firms' past performance may have been driven by the adjectival rating scheme that was employed by the TET and contracting officer.⁶ As noted above, the highest rating that a vendor could receive for past performance was low risk, indicating that there was no doubt that the vendor could perform the task order work. This scheme provided no adjectival ratings to account for better or more relevant past performance. Regardless, we have long stated that evaluation ratings, whether adjectival or numerical, should be merely guides to intelligent decision-making, and that therefore evaluators and selection officials should reasonably consider the underlying bases for ratings, including the advantages and disadvantages associated with the specific content of competing quotations, in a manner that is fair and equitable and consistent with the terms of the solicitation. See Systems Research and Applications Corp.; Booz Allen Hamilton, Inc., supra. This was, however, not done here.

In short, because the record does not show that the TET or the contracting officer reasonably considered the relative merits of the vendors' past performance consistent with the RFQ's evaluation scheme, we sustain the protest.

Technical Approach and Solution

(...continued)

smaller example of past performance indicated any meaningful difference in the comparative quality of the vendors' past performance.

⁶ The adjectival rating scheme used in the evaluation was not announced in the RFQ.

CPS also raises numerous challenges to the agency's evaluation of the firms' quality control plans under the technical approach and solution evaluation factor. We find that none provides a basis to object to the agency's evaluation under this factor.

For example, CPS complains with respect to its QCP that the RFQ required the submission of only draft plans, which CPS apparently believes allowed the firm to submit a plan that did not address all SOW elements. The RFQ specifically informed vendors, however, that their quotations, including the draft QCPs, would be evaluated with respect to how the vendor would manage and implement the SOW tasks. See AR, Tab 3, RFQ amend. 1, at 4; SOW at 43.

CPS also objects to the assignment of a weakness for failing to fully address quality control with respect to adjudication support under SOW section 4.2. CPS argues, among other things, that the agency treated the vendors disparately, where Arc Aspicio allegedly also provided a draft QCP that did not address quality control of adjudication support, and yet the agency did not assign a weakness to the awardee's quotation for this failure. The record shows that the TET found that the protester's draft QCP addressed only weekly reporting of overall quality with respect to adjudication support, but did not address how the firm would provide quality control with respect to underlying services of this SOW section. In contrast, the TET found that Arc Aspicio's draft QPC described an integrated quality control process that addressed "the application of the quality control procedures at each step in the adjudication process by name." See Supp. AR at 7; AR, Tab 6, Evaluation Report, at 11. Although CPS disagrees with the TET's judgment in this regard, it has not shown that the evaluation was unreasonable.

RECOMMENDATION

We recommend that the agency reevaluate the firms' past performance and make a new selection decision. If CPS's quotation is selected for issuance of the task order, the agency should terminate Arc Aspicio's task order. We also recommend that the agency reimburse CPS for their reasonable costs of filing and pursuing the protest. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2014). The protester's certified claim for costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

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