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Decision

Matter of: Erickson Helicopters, Inc.

File: B-409903; B-409903.2

Date: September 5, 2014

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Michael G. McCormack, Esq., Department of the Air Force, 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 challenging the evaluation of offerors' past performance and the awardee's technical acceptability is denied where the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Erickson Helicopters, Inc., of Portland, Oregon, protests the award of a contract to AAR Airlift Group, Inc., of Palm Bay, Florida, under request for proposals (RFP) No. HTC711-13-R-R017, issued by the U.S. Transportation Command (TRANSCOM), Department of Defense, for helicopter transport services. Erickson challenges the agency's evaluation and selection decision.

We deny the protest.

BACKGROUND

The RFP, issued on September 11, 2013 under the commercial acquisition procedures of Federal Acquisition Regulation (FAR) Part 12, provided for the award of a fixed-price, indefinite-delivery, indefinite-quantity contract for two rotary-wing aircraft to provide transport services in Central Africa, including Uganda, Republic of South Sudan, Democratic Republic of the Congo, and Central African Republic. A detailed performance work statement (PWS) was provided that described the anticipated services and various aircraft requirements. See RFP, PWS at 63-79. As

relevant here, offerors were informed that missions could include landing in “any open area with an 80 foot diameter clearing free of trees, brush, and any other obstacles that the pilot deems safe to land in.” Id. at 65. Among the requirements identified was that the contractor have the capability and proficiency to takeoff and land in small landing zones and rapidly changing weather conditions. Id. at 66. The aircraft were required to be capable of carrying at least 3,000 pounds at mean sea level (which would be at least 12 personnel and their baggage--250 pounds per person), or 2000 pounds at 7,000 feet. Id. at 67.

Offerors were informed that award would be made on a best-value basis considering the following evaluation factors: technical, past performance, price, and Fly America Act preference.¹ The technical factor was to be evaluated on a pass/fail basis, and included six subfactors: technical approach; aircraft technical capability; Federal Aviation Administration certification documentation; proof of aircraft ownership; operational date; and information assurance and cyber security. RFP at 44. Proposals that were found to be technically acceptable would then be the subject of a past performance/price tradeoff to determine best value. Id. at 44-46. In this regard, offerors were informed that past performance and price were approximately equal in weight.

With respect to the technical factor, offerors were required to describe how they would meet the various objectives and requirements in the PWS. Offerors were instructed to identify for each proposed aircraft, the make, model, variant, and Aircraft Registration Number. Id. at 41. The RFP also required the submission of Hovering Out of Ground Effect (HOGE) information for each aircraft. Id.; see also RFP, attach. 2a, HOGE Chart.

With respect to past performance, the RFP established that the agency would evaluate the offerors’ demonstrated recent/relevant record of performance to determine the agency’s confidence in their ability to perform the solicitation requirements. RFP at 45. The RFP provided that the agency would rate past performance as substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence (neutral).² Id. at 46. Offerors were instructed to submit past performance information for no more than three recent and relevant

¹ The Fly America Act preference factor is not relevant here and is not further discussed.

² As relevant here, satisfactory confidence reflected a reasonable expectation that the offeror would successfully perform the required effort, and limited confidence rating reflected a low expectation that the offeror would successfully perform the required effort.

past performance efforts.³ Id. at 42. Past performance proposals were limited to 10 pages per contract reference. Id. at 43. The RFP provided that the evaluation would be based on the information provided by the offerors, as well as any other information that the agency may obtain. Id. at 42, 45.

The agency received seven proposals, including Erickson's (the incumbent) and AAR's, by the October 11, 2013 closing date.⁴ Agency Report (AR), Tab 13, Source Selection Evaluation Board (SSEB) Report, at 1. In its initial proposal, Erickson submitted past performance information for three projects: one performed in the Philippines, one in Afghanistan, and one in Guam; Erickson did not provide its incumbent contract as one of its three required past performance projects. AR, Tab 3, Erickson Proposal, at 7-11. Although Erickson did not identify the incumbent contract as one of its projects, it discussed the incumbent contract in a proposal narrative that provided an "overview" and "highlights" of its past performance. See, e.g., id. at 4-7.

Following an initial evaluation, the agency established a competitive range that included four proposals (including Erickson's and AAR's), and conducted discussions. At the conclusion of discussions, the agency informed Erickson that its proposal was technically acceptable and its past performance was rated limited confidence; the agency requested Erickson's final proposal revision. In its final revised proposal, Erickson provided a new past performance narrative that discussed its purported improvement in its performance of the incumbent contract and other contracts; Erickson did not change the three past performance references identified in its proposal. See AR, Tab 8, Erickson Final Revised Proposal, at 3-5.

Erickson's and AAR's final revised proposals were evaluated as follows:

³ Recent past performance was stated to be ongoing work or work performed within 3 years of proposal submission. RFP at 45. Relevant past performance was defined as "having experience in performing rotary-wing passenger, cargo, and combined service in an austere/remote location." Id. at 46.

⁴ Erickson's incumbent contract was awarded and administered by the Department of the Army, Army Contracting Command.

	Erickson	AAR
Technical	Acceptable	Acceptable
Past Performance	Limited Confidence	Satisfactory Confidence
Evaluated Price	\$41,159,294	\$42,579,005

AR, Tab 13, SSEB Report, at 30.

The agency’s limited confidence rating of Erickson’s past performance was based on the agency’s review of the projects identified by the protester for its past performance, as well as a number of other relevant contracts that the agency identified in the past performance information retrieval system (PIRS).⁵ In its evaluation, the agency gave more weight to performance that was considered very relevant, to include Erickson’s performance of the incumbent contract.⁶ With respect to the incumbent contract, the agency reviewed three contractor performance assessment reports (CPARS) from PPIRS, covering 12 months (from the start of contract through September 23, 2013).⁷ The first two reports, which covered 9 months of performance, reported that Erickson’s past performance was unsatisfactory. AR, Tab 4, Erickson Past Performance Evaluation, at 8-9. During this performance period, Erickson was issued a cure notice on May 2, 2013 under the incumbent contract for being “100% [non-mission capable].” *Id.* at 11. The third CPARS report indicated that, although there was some improvement in Erickson’s performance of the incumbent contract, the protester’s performance was marginal and that Erickson still “failed to meet the Operational Readiness Requirement at any time and w[as] unable to perform all required auxiliary services.” *Id.* at 8, 12. In addition to the marginal and unsatisfactory ratings received under the incumbent contract, the agency’s evaluation also noted 14 additional marginal performance ratings (9 of which were found to be “significant concerns”) received under other contracts that were considered to be very relevant. *Id.* at 7-12.

⁵ There is nothing in the record documenting the agency’s determination as to the merits of Erickson’s Philippines past performance project.

⁶ The RFP provided that the agency would give greater weight to past performance that was determined to be most relevant. RFP at 46.

⁷ The first PIPRS report covered 6 months of contract performance, during which Erickson received ratings of unsatisfactory and marginal. AR, Tab 4, Initial Past Performance Evaluation Report, at 38. The second PIPRS report covered the next three months, during which Erickson received only unsatisfactory ratings. *Id.* at 34. The third PIPRS report covered three months (through September 23), during which Erickson received marginal and satisfactory ratings. *Id.* at 30.

AAR received a satisfactory confidence rating where AAR's past performance information provided the agency with a reasonable expectation that the firm could perform the solicitation requirements. In this regard, the agency found that the CPARS for AAR's very relevant and relevant past performance reflected mainly satisfactory to very good performance. AR, Tab 5, AAR Past Performance Evaluation, at 3-6. With respect to AAR's very relevant past performance, the agency noted AAR had received three marginal ratings, one of which was identified as a significant concern (the failure to provide the required two aircraft fully mission capable by the start date). Id. at 4. The agency also noted that AAR had received four marginal ratings under relevant contracts, but only one was of concern to the government (AAR's failure to maintain the operational readiness rate due to maintenance and spare part issues). Id. at 6. Although the agency had some concerns with AAR's past performance, it found from the CPARS that AAR had evidenced improving performance under its contracts and therefore concluded that a satisfactory confidence was warranted.

The contracting officer, who was the source selection authority for this procurement, reviewed the firms' respective past performance assessments, specifically examining the marginal and unsatisfactory ratings that each firm received in its past performance ratings.⁸ See AR, Tab 14, Source Selection Decision, at 2-6. The contracting officer concluded that AAR's better past performance assessment outweighed Erickson's slight (3 percent) price advantage.

Award was made to AAR, and this protest followed Erickson's debriefing.

DISCUSSION

Erickson raises numerous challenges to the agency's evaluation of the offerors' past performance, to include that it should have received a better confidence rating. Erickson also complains that the agency treated it and AAR disparately in the evaluation of past performance. Moreover, Erickson challenges the agency's evaluation of AAR's proposal as technically acceptable. We have considered all of Erickson's arguments, although we address only its primary ones, and find that none provides a basis for questioning the agency's evaluation or award decision.

⁸ The contracting officer incorrectly indicated in his selection decision that Erickson's last two CPARS for the incumbent contract reported unsatisfactory performance; Erickson's last two CPARS (in the record) for the incumbent contract actually reported unsatisfactory and marginal performance.

Past Performance

Erickson contends that the agency's past performance evaluation was flawed because the agency failed to consider information showing that the protester's performance was improving. Specifically, Erickson complains that the agency did not review the latest information in PPIRS for its incumbent contract or consider the narrative explanation in Erickson's final revised proposal indicating that its performance had improved. Protester's Comments at 4-5. Erickson asserts that its revised past performance narrative explained how its performance was improving "across multiple contracts," and notes that the narrative specifically requested that the agency review the latest CPARS report for its performance on the incumbent contract. Protester's Supp. Comments at 5.

The evaluation of an offeror's past performance is a matter of agency discretion, which we will not find improper unless unreasonable or inconsistent with the solicitation's evaluation criteria, National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4; Command Enters., Inc., B-293754, June 7, 2004, 2004 CPD ¶ 166 at 4, nor will we substitute our judgment for reasonably based evaluation ratings. MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. An offeror's mere disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. FN Mfg., LLC, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

Here, with regard to the agency's failure to consider the latest CPARS for the incumbent contract, the agency explains that this report was not available to the government when the agency completed its past performance evaluation.⁹ Agency Supp. Legal Memorandum at 5. Given that there is no general requirement that an agency continue to seek updated performance information once its past performance evaluation is complete, we find nothing improper with the agency's failure to obtain and consider the latest CPARS. See, e.g., CMJR, LLC d/b/a Mokatron, *supra* (where evaluation completed in January and award not made until May, agency not required to consider a CPAR from March); MINACT, Inc. B-400951, Mar. 27, 2009, 2009 CPD ¶ 76 at 7 n.4 (where agency used the most recent information available at time of evaluation, there is no requirement that agency seek more recent information at time of source selection).

With regard to the agency's failure to consider the narrative information contained in Erickson's final revised proposal (including information about Erickson's

⁹ In this regard, the agency explains that the contractor did not comment on the CPARS report until March 4 and that the CPARS Report still had to be processed in the Past Performance Information Retrieval System before it would have been available to source selection officials. Agency Supp. Legal Memorandum at 5 n.2.

performance on the incumbent contract), we find no persuasive explanation as to why the agency should not have given this information any consideration in its evaluation where it was in fact considering Erickson's performance on the contracts as part of its past performance evaluation.¹⁰ Nevertheless, the record does not show any reasonable possibility that Erickson was prejudiced thereby. As noted above, the CPARS information documented numerous marginal ratings for Erickson's very relevant past performance on various contracts that the agency found to be a significant concern. Moreover with respect to Erickson's performance of the incumbent contract, as the agency notes, the available CPARS information documented Erickson's unsatisfactory and marginal performance. Although Erickson believes that consideration of narrative information in its revised proposal would have tempered the agency's negative views of its incumbent performance, the record establishes that the agency's past performance evaluation focused on third-party assessments of the offerors' performance, as opposed to self-interested performance assessments presented by offerors in their proposals.¹¹ As noted by our Office, common sense dictates that an offeror's self-assessment regarding the quality of its past performance is, by its nature, of less value as compared to the disinterested assessment provided by third parties. See Shaw-Parsons Infrastructure Recovery Consultants, LLC; Vanguard Recovery Assistance, Joint Venture, B-401679.4 et al., Mar. 10, 2010, 2010 CPD ¶ 77 at 9. Accordingly, we cannot say that the agency's limited confidence rating was unreasonable.¹²

¹⁰ The agency asserts that it did not consider any narrative information (for any offeror) regarding contracts that were not one of three references identified in an offeror's proposal. See Contracting Officer's Statement at 3.

¹¹ In fact, the agency viewed the solicitation as not allowing offerors "to mitigate poor past performance with unsubstantiated, self-serving statements regarding their ability to improve performance in the future." Contracting Officer's Statement at 3. In any event, the narrative information in Erickson's proposal largely addresses how the ownership of the firm had changed and that its performance had been improving. The contracting officer here, who is also the contracting officer for Erickson's Afghanistan contract, contends that he was "well aware of how little their functional corporate structure has changed..." Contracting Officer's Statement, at 16 n.4.

¹² Erickson also complains that it was not provided with an opportunity to address adverse information concerning the firm's performance of the incumbent contract. Discussions, when conducted, must be meaningful; that is, offerors must be given an opportunity to address proposal deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond. See FAR § 15.306(d)(3). Here, the record shows that Erickson was provided the opportunity to address its performance of the incumbent contract, given that this adverse past performance information was contained in CPARS to which the protester was provided an opportunity to comment. See CGI Fed., Inc., B-403570 et al., Nov. 5, 2010, 2011 CPD ¶ 32 at 15 n.8.

Erickson also complains that the agency considered mitigating information (such as improvements in performance) with respect to the awardee's past performance, while failing to consider similar information for the protester.

Here, the record shows that the agency recognized Erickson's good performance for some of its past performance, including performance that had improved with respect to one of the three past performance projects identified by Erickson. Nevertheless, the agency also found that Erickson had performed poorly under the incumbent contract and had marginal performance under other contracts. Although Erickson complains that AAR also had marginal ratings in CPARS for some of its past performance, those particular CPARS explained why AAR's performance had been rated as marginal, how AAR had corrected its performance, and detailed AAR's improved performance over the remaining performance period. See, e.g., AR, Tab 5, AAR Past Performance Evaluation, at 4-5. In contrast, Erickson's available CPARS indicated instances where Erickson's performance was considered to be a significant concern, which Erickson had not always improved. AR, Tab 4, Erickson Past Performance, at 7-10. In short, the record does not show that the agency evaluated AAR's and Erickson's past performance disparately.

Technical Acceptability

Erickson also contends that AAR's proposal was not technically acceptable. Specifically, Erickson argues that AAR's proposed helicopters cannot satisfy the requirement that the helicopters be capable of landing in small landing zones (80-foot diameter circle), and capable of lifting the minimum load requirements.

In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP evaluation criteria. Panacea Consulting, Inc., B-299307.4, B-299308.4, July 27, 2007, 2007 CPD ¶ 141 at 3.

Here, with respect to the small landing zone requirement, the record shows that the agency found that AAR's helicopters, which have an overall length of 72 feet, 10 inches, could satisfy this requirement. AR, Tab 6, Technical Review. Although Erickson contends that this length is too large to land within a 80-foot diameter circle, the protester provides no support for this assertion. Accordingly, Erickson's unsupported disagreement with the agency's judgment provides no basis for us to conclude that the agency acted unreasonably.

With respect to the solicitation's load requirements, the protester has not supported its allegation that AAR's aircraft may not be able to lift the required minimum loads. Erickson variously argues that AAR's helicopters may weigh more than the awardee represented in its HOGE information, that AAR failed to account for the additional

weight of a third crew member, and that AAR also failed to account for the weight of repainting the aircraft. The agency responded to each of these arguments, explaining the basis for its conclusion that AAR's aircraft could lift the minimum required loads. For example, the agency explained that there were many different variants of the helicopters offered by AAR, and that the particular model and variant offered by AAR weighed much less than the standard version which apparently is in Erickson's fleet. Agency Supp. Legal Memorandum at 10-11. In this regard, Erickson has not provided any supported explanation, such as calculations, to show that AAR's helicopters cannot satisfy the solicitation's requirements. Again, Erickson's unsupported speculation and disagreement with the agency's judgment does not show that the agency acted unreasonably.

The protest is denied.

Susan A. Poling
General Counsel