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Decision

Matter of: SRM Group, Inc.

File: B-410571; B-410571.2

Date: January 5, 2015

John E. McCarthy, Jr., Esq., and Charlotte E. Gillingham, Esq., Crowell & Moring LLP, for the protester.

Jennifer S. Zucker, Esq., and Craig Smith, Esq., Wiley Rein LLP, for Technology, Automation & Management, Inc., the intervenor.

David R. Smith, Esq., and Randy Stone, Esq., Department of Defense, Defense Health Agency, for the agency.

Heather Weiner, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's past performance evaluation is denied where the agency reasonably based its evaluation on the only past performance questionnaire submitted to the agency.
 2. Protest challenging the agency's evaluation of the awardee's staffing approach is denied where the awardee's proposed key personnel met the requirements of the solicitation.
 3. Protest alleging that the awardee had a disqualifying organizational conflict of interest is denied where the protester fails to identify hard facts which reflect an actual or potential conflict.
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DECISION

SRM Group, Inc., of Atlanta, Georgia, protests the award of a task order to Technology, Automation & Management, Inc. (TeAM), of Falls Church, Virginia, under request for proposals (RFP) No. HT0011-14-R-0038, which was issued by the Department of Defense, Defense Health Agency (DHA), for program management and technical support. SRM challenges the agency's evaluation of TeAM's staffing approach and past performance. The protester also asserts that TeAM failed to disclose potential organizational conflicts of interest (OCIs), as required by the solicitation.

We deny the protest.

BACKGROUND

On August 8, 2014, DHA posted the RFP on the General Services Administration's (GSA) e-Buy website. The solicitation was issued as a total small-business set-aside under the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4, to interested vendors holding contracts under schedule No. 874, mission oriented business integrated services (MOBIS).¹ RFP at 31; Contracting Officer (CO) Statement at 1. The solicitation sought personnel, equipment, supplies, facilities, transportation, tools, materials, supervision, and other items and non-personal services necessary to provide advanced technology monitoring and transition support for DHA's Innovation Advance Technology Development Division. RFP, Performance Work Statement (PWS) at 9.

The solicitation anticipated the issuance of a fixed-price task order, for a 9-month base period with four 12-month options. RFP at 10. The RFP provided for award on a lowest-priced, technically acceptable basis, considering the following three factors: (1) price, (2) technical, and (3) past performance. RFP at 39. The technical factor included the evaluation of the following three subfactors: (a) technical approach, (b) experience, and (c) quality control. Id.

The solicitation stated that "proposals will be ranked in price order and a price analysis will be conducted." Id. The RFP explained that "[p]roposals will then be evaluated for technical acceptability based on the technical factors . . . starting with the lowest overall price," and "[i]f the lowest priced offer is not acceptable the government will evaluate the next lowest priced offer." Id. The solicitation also stated that "[a]ll proposals may not be evaluated," and that past performance will be evaluated "[a]fter technical acceptability has been determined." Id. In addition, the RFP advised that past performance "will be evaluated independently from the other non-price evaluation factors utilizing different standards," and that if past performance is deemed not acceptable, "the government will go to the next lowest offer." Id.

¹ Although the solicitation anticipated the issuance of a task order under an FSS contract, the evaluation record and the agency's response to the protest refer to "offerors" and "proposals." For the sake of consistency, and because the distinction between a quotation and a proposal has no bearing on our analysis in this protest, we adopt the usage of the terms offerors and proposals in this decision.

The solicitation included a performance work statement (PWS) describing the services to be provided. As relevant here, section 1.6.11 of the PWS required offerors to propose a key person--the lead subject matter expert (SME). RFP at 12. The solicitation required that an offeror identify its proposed lead SME, and provide a resume and, if the individual was not already employed by the offeror, a signed letter of commitment. Id. at 38. The RFP stated that the lead SME “[m]ust hold a minimum of a Bachelor’s degree in an IT [information technology] discipline,” and “[m]ust have 5 years’ experience in technology analytics.” RFP, amend. 0002, at 6.

In addition, the solicitation included an estimated level of effort, including recommended labor categories, to accomplish the tasks identified in the PWS. RFP at 37. The solicitation explained that the government estimate was provided to allow offerors “to ascertain the approximate or estimated level of effort for this task,” but that, “[o]fferors are not bound to propose these labor categories or quantities.” Id. The solicitation also stated that “[o]fferors are expected to provide [their] best solution citing the labor mix and quantity required to accomplish the tasks.” Id.

With regard to the past performance factor, the solicitation explained that DHA would evaluate an offeror’s past performance “to determine the confidence the Government has in an Offeror’s ability to provide the product and services . . . based on a demonstrated record of recent, relevant performance.” Id. at 42. The RFP also stated that, “the Government may also consider information obtained through other sources such as PPIRS.” Id. In addition, the solicitation stated that an offeror’s past performance would be rated as acceptable/unacceptable, and that references and other sources of past performance information would not be individually rated, but that the government would “consider the collective record of all recent and relevant past performance in assessing a rating.” Id. at 42-43.

DHA received proposals from two offerors, SRM and TeAM. CO Statement at 2. The agency evaluated both offerors’ price proposals, and found that TeAM’s proposed price of \$3,529,500 was lower than SRM’s proposed price of \$4,818,399.68. CO Statement at 6; AR, Tab 6, Award Decision Memo, at 6. The agency then evaluated TeAM’s technical and past performance proposals, finding both acceptable. Id. Because the agency found that TeAM offered the lowest-priced, technically-acceptable proposal, the agency awarded the task order to that firm. CO Statement at 6. This protest followed.

DISCUSSION

SRM challenges the agency’s evaluation of TeAM’s proposal, arguing that DHA failed to evaluate TeAM’s staffing approach, past performance, and organizational conflicts of interest, in accordance with the requirements of the solicitation. For the

reasons discussed below, we conclude that the agency's evaluation of TeAM's proposal was reasonable.²

Where, as here, an agency issues a solicitation to FSS contractors under Federal Acquisition Regulation (FAR) subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. 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. In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. DEI Consulting, supra.

Past Performance

SRM first argues that DHA's evaluation of TeAM's past performance was unreasonable because it was not based on feedback or any other information regarding TeAM's record of performance.³ In this regard, SRM asserts that the agency failed to send past performance questionnaires to TeAM's references prior to award. The protester also challenges the agency's documentation of its past performance evaluation. For the reasons discussed below, we conclude that the

² Although our decision does not specifically address all of SRM's arguments, we have fully considered each of them and find that none provides a basis to sustain the protest. In addition, SRM also argued that the agency engaged in an improper bait and switch, but subsequently withdrew this allegation.

³ SRM also asserts that the agency evaluated past performance simultaneously with the other three non-price factors, in violation of the terms of the solicitation, which provided that past performance "will be evaluated independently from the other non-price evaluation factors utilizing different standards." RFP at 39. We find no merit to this argument. Although the agency's non-price evaluation worksheets include the agency's past performance evaluation in the same document as the agency's evaluation of the other non-price factors, the inclusion of both the past performance factor, and the other technical factors, in a single worksheet does not necessarily reflect that the agency considered past performance in determining the acceptability of TeAM's technical proposal. Rather, the record reflects that the agency found that TeAM's proposal was acceptable under the technical factors, and separately concluded that TeAM's proposal was acceptable under the past performance factor. AR, Tab 8, Evaluator Worksheet, at 3-8, 10; Tab 9, Evaluator Worksheet, at 3-8, 10.

agency's past performance evaluation was reasonable and adequately documented.

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. SIMMEC Training Solutions, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. Where a protester challenges an agency's past performance evaluation and source selection, we will review the evaluation and award decision to determine if they were reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. DynCorp Int'l LLC, B-406523.2, B-406523.3, Dec. 16, 2013, 2014 CPD ¶ 7 at 6; Falcon Envtl. Servs., Inc., B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7.

As discussed above, the RFP required offerors to provide references for recent and relevant contracts performed within the past 3 years that demonstrated the offeror's ability to provide the product and services required by the RFP. RFP at 34. The solicitation explained that the references, and any other sources of past performance information considered, would not be individually rated by the agency, but rather, the agency would consider the collective record of past performance in finding an offeror's past performance either acceptable or unacceptable. Id. 42-43.

TeAM's past performance proposal included three references for TeAM, and one reference for TeAM's subcontractor. AR, Tab 20, TeAM Past Performance Proposal, at 1-8. In evaluating TeAM's past performance, the individual evaluator worksheets show that one of the evaluators rated TeAM's past performance "acceptable," and indicated a reference from an individual at the Military Health System (MHS) Cyberinfrastructure Services (MCiS), dated September 10, 2014. AR, Tab 8, Evaluator Worksheet, at 10. The completed MHS questionnaire rated TeAM's overall performance on the referenced contract as "very good," and stated that the reference agency "[w]ould . . . purchase services from this contractor again." Supplemental (Supp.) AR (Nov. 26, 2014), attach. 2, MHS Past Performance Questionnaire, at 2-3. The other evaluator rated TeAM's past performance "unknown" in the evaluation worksheet, but the consensus score sheet reflects an overall past performance rating for TeAM of "acceptable." AR, Tab 9, Evaluator Worksheet, at 1; Tab 7, Consensus Score Sheet, at 1. In the award decision memorandum, the contracting officer stated that TeAM was rated "acceptable" under the past performance factor, noting: "TeAM Inc.[']s past performance references submitted shows they have perform[ed] work similar in scope and magnitude to the requirement[;] the Government has a reasonable expectation that TeAM Inc. can perform the required effort." AR, Tab 6, Award Decision Memorandum, at 8.

SRM argues that DHA failed to adequately document the basis for its conclusion that TeAM's past performance was acceptable, and asserts that the completed MHS past performance questionnaire, which the agency did not include as part of its initial agency report, "appears inconsistent with the evaluation record."⁴ Protester's Comments (Dec. 4, 2014), at 6-7.

For procurements conducted under FAR subpart 8.4 that require a statement of work, such as this one, FAR § 8.405-2(e) designates limited documentation requirements, requiring only that the agency's evaluation judgments be documented in sufficient detail to show they are reasonable. Arrington Dixon & Assocs., Inc., B-409981, B-409981.2, Oct. 3, 2014, 2014 CPD ¶ 284 at 5; FAR § 8.405-2. Here, while the contemporaneous record may be limited, based on our review of the record and the agency's explanation, the documentation is sufficient to permit us to assess the reasonableness of the agency's assessments.

Although the protester claims that we should give no weight to the evaluators' and contracting officer's statements, our Office generally considers post-protest explanations, such as these, where the explanations merely provide a detailed rationale for contemporaneous conclusions and fill in previously unrecorded details, so long as the explanations are credible and consistent with the contemporaneous record. See Lynxnet, LLC, B-409791, B-409791.2, Aug. 4, 2014, 2014 CPD ¶ 233 at 6. To the extent the protester asserts that the agency's statements are inconsistent with the record, based on our review of the record, and as discussed below, we disagree, and conclude that the statements are consistent with, and provide a more detailed explanation of, the past performance evaluation in the contemporaneous record.

⁴ SRM raised a supplemental protest arguing that "[t]he [a]gency failed to obtain any information or feedback regarding TeAM's record of performance . . . from any source, much less evaluate such information." Protester's Comments (Nov. 17, 2014), at 9. DHA provided additional information regarding the agency's past performance evaluation, including a completed past performance questionnaire for TeAM. Supp. AR (Nov. 26, 2014), attach. 2, Past Performance Questionnaire. The contracting officer explains that "[t]his questionnaire was in the possession of one of the evaluators, [who] provided a copy . . . to the Agency in response to SRM's supplemental protest." CO Statement (Nov. 19, 2014), at 2. The contracting officer further explains that only one of the two evaluators reviewed the completed questionnaire in evaluating TeAM's past performance, and that this questionnaire was the only completed questionnaire that was returned for TeAM. Id. In addition, the contracting officer states: "While the Award Decision Memorandum is brief on the discussion of past performance, the evaluators did send past performance questionnaires to the points of contact identified in the Past Performance Volume of the TeAM proposal." Id.

For example, although the protester asserts that the individual evaluator worksheets fail to reflect that the MHS questionnaire was considered by the agency, or even that any questionnaires were sent or received by the agency prior to award, one of the individual evaluator's worksheets, dated September 12, 2014, reflects receipt of a questionnaire, on September 10, 2014, from the same individual who is listed as the point of contact on the questionnaire itself. See AR, Tab 8, Evaluator Worksheet, SRM, at 10. In addition, as the contracting officer states in response to the protest: "While the Award Decision Memorandum is brief on the discussion of past performance, the evaluators did send past performance questionnaires to the points of contact identified in the Past Performance Volume of the TeAM proposal." CO Statement (Nov. 19, 2014), at 2. The protester has provided no basis to doubt the statements of the contracting officer.

With regard to the questionnaire itself, DHA rated TeAM's overall performance as "very good," and stated that the reference agency "[w]ould . . . purchase services from this contractor again." Supp. AR (Nov. 26, 2014), attach. 2, Past Performance Questionnaire, at 2-3. One of the two technical evaluators rated TeAM's past performance "acceptable," and stated in response to the protest that he found TeAM's past performance reference to be "relevant" and recent, as required by the solicitation. AR, Declaration of Technical Evaluator (Nov. 7, 2014), at 2. Although the other technical evaluator assessed TeAM's past performance as "unknown," the contracting officer explains that this evaluator did not receive the past performance questionnaire that was returned for TeAM. CO Statement (Nov. 18, 2014), at 2. We find that the contracting officer's explanation reasonably supports the contemporaneous record, and that the protester has failed to provide any basis to doubt the contracting officer's statements in this regard.

Further, the award decision memorandum states that TeAM was rated "acceptable" under the past performance factor, noting: "TeAM Inc.'[s] past performance references submitted shows they have perform[ed] work similar in scope and magnitude to the requirement[;] the Government has a reasonable expectation that TeAM Inc. can perform the required effort." AR, Tab 6, Award Decision Memorandum, at 8. We find the agency's past performance evaluation complied with the solicitation's requirement that the agency evaluate the acceptability of an offeror's past performance "based on a demonstrated record of recent, relevant performance." RFP at 42.

Finally, we note that the protester does not allege that TeAM has any negative past performance, or assert that TeAM's proposal should have been rated unacceptable based on the contract references provided by TeAM in its proposal. Rather, the protester merely speculates that, if the agency had received completed questionnaires from all of TeAM's past performance references, "it is entirely possible that TeAM would have received a negative past performance report." Protester's Comments (Dec. 4, 2014), at 7. As our Office has explained, however, it is not objectionable for an agency to evaluate an offeror's past performance based

on fewer than the maximum number of possible number of references that the agency could have received. Harris IT Servs. Corp., B-406067, Jan. 17, 2012, 2012 CPD ¶ 57 at 11. Here, the agency evaluated TeAM's past performance based on the past performance questionnaire it received. We find no basis to sustain the protest.

Technical Acceptability

SRM next argues that DHA should have found TeAM's technical proposal unacceptable for proposing inadequate staffing. Specifically, the protester contends that the individual proposed by TeAM as its lead SME failed to satisfy the corresponding labor category requirements in TeAM's ID/IQ contract for the proposed position.⁵ For the reasons discussed below, we find no merit to the protester's argument.

As discussed above, the solicitation included an estimated level of effort to accomplish the tasks identified in the PWS, and listed the following recommended labor categories: SME I, SME II, SME II SATX on-site, SME III on-site, project manager and tech writer. RFP at 37-38. The RFP advised that if an offeror "intend[s] to use any labor categories that [it] feel[s] are consistent in duties with the level of effort labor categories but are titled differently . . . [it] must cross map those labor categories to the Government's PWS to ensure [its] proposal receives a proper evaluation." Id. at 33. In addition, the RFP required that offerors propose a key person for the position of lead SME, and stated that this individual "[m]ust hold a minimum of a Bachelor's degree in an IT [information technology] discipline," and "[m]ust have 5 years' experience in technology analytics." RFP, amend. 00002, at 6. The solicitation did not specify a labor category for the position of lead SME. RFP at 37-38.

TeAM's proposed lead SME met the solicitation's requirements that the individual hold a minimum of a Bachelor's degree in an IT discipline and have 5 years of experience in technology analytics. See, e.g., AR, Tab 19, TeAM Technical

⁵ SRM also asserted that TeAM's proposal failed to distinguish between labor categories mapped to the SME I and SME II positions contemplated by the solicitation. See Protester's Comments and Supplemental Protest (Nov. 17, 2014), at 19-22. The protester, however, failed to rebut or otherwise substantively address the agency's arguments in its comments. Accordingly, we conclude that the protester abandoned this protest ground. Atmospheric Research Sys., Inc., B-240187, Oct. 26, 1990, 90-2 CPD ¶ 338 at 3; see Israel Aircraft Indus., Ltd.--TAMAM Div., B-297691, Mar. 13, 2006, 2006 CPD ¶ 62 at 6-7 (where protester either does not respond to the agency's position or provides a response that merely references or restates the original allegation without substantively rebutting the agency's position, we deem the originally-raised allegation abandoned).

Proposal, at 24. In TeAM's price proposal, TeAM mapped the labor categories in TeAM's GSA MOBIS contract to the labor categories listed in the PWS's level of effort labor categories. AR, Tab 18, TeAM Price Proposal, at 6.

SRM does not argue that TeAM's proposed lead SME fails to meet the RFP's stated minimum requirements for the lead SME. Rather, SRM contends that TeAM was required to propose an individual who also met the qualifications of TeAM's GSA MOBIS labor category of SME III, in addition to meeting the qualifications stated in the RFP, and asserts that TeAM's proposed individual failed to meet these additional qualifications. Protester's Comments (Nov. 17, 2014), at 18. As the agency argues, and the record reflects, however, the solicitation did not require offerors to propose the labor category SME III (or its mapped MOBIS equivalent) for the solicitation's lead SME position, and the protester fails to point to any provision in the RFP that included such a requirement. Instead, as discussed above, the solicitation only required that the lead SME have at least 5 years of experience in technology analytics and a bachelor's degree in an IT discipline. RFP at 12. TeAM's proposed lead SME met these requirements.⁶ AR, Tab 19, TeAM Technical Proposal, at 24; Tab 18, TeAM Price Proposal, at 6. Based on this record, we find no basis to sustain the protest.

Organizational Conflicts of Interest

SRM also argues that TeAM's proposal failed to identify potential OCI concerns, as required by the solicitation. In support of its allegation, SRM points to several contracts identified by TeAM in its past performance proposal, arguing that "[e]ach of those contracts could give rise to an organizational conflict of interest." Protester's Comments (Dec. 4, 2014), at 10. The protester, however, does not allege any actual conflict of interest. Rather, because TeAM has performed DHA contracts, or DHA-related contracts, SRM essentially speculates that an OCI may exist. As our Office has explained, however, a protester must identify hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. Science Applications Int'l Corp., B-406899, Sept. 26, 2012, 2012 CPD ¶ 282 at 8-9. Because the protest

⁶ Although SRM also asserts that TeAM's proposal failed to cross map TeAM's MOBIS contract labor categories and rates to the PWS labor categories, the protester's argument is not supported by the record. As discussed above, in TeAM's price proposal, TeAM mapped the labor categories in its MOBIS contract to those listed in the PWS. AR, Tab 19, TeAM Technical Proposal, at 24; Tab 18, TeAM Price Proposal, at 6. To the extent SRM contends that the agency failed to determine whether TeAM's proposed key person was qualified to perform at the SME III labor category and corresponding rate, as also discussed above, TeAM did not propose this labor category for its key person. We find nothing unreasonable about the agency's evaluation.

does not set forth hard facts that satisfy this standard for review of OCI protest arguments, we conclude that the protester has failed to state a valid basis for this protest allegation. See Bid Protest Regulations, 4 C.F.R. § 21.5(f) (2014); Science Applications Int'l Corp., supra (hard facts necessary to show actual or potential conflict).

The protest is denied.

Susan A. Poling
General Counsel