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Decision

Matter of: L&J Building Maintenance, LLC

File: B-411827

Date: October 27, 2015

Lawrence Sklute, Esq., and Ethan Brown, Esq., Sklute & Associates, for the protester.

William A. Shook, Esq., for Hamilton Alliance, Inc., the intervenor.

Kenneth G. Wilson, Esq., and Laura Arnolds, Esq., Department of the Navy, for the agency.

Kenneth Kilgour, Esq., Cherie J. Owen, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the evaluation of the awardee's experience and past performance is denied where the evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

L&J Building Maintenance, LLC, of Topeka, Kansas, protests the Department of the Navy's award of a contract to Hamilton Alliance, Inc. (HAI), of West Palm Beach, Florida, under request for proposals (RFP) No. N40085-15-D-7904, for refuse collection and disposal, and recycling services at the Naval Support Activity Crane, Indiana. The protester asserts that the agency unreasonably evaluated the awardee's proposal as meeting the minimum experience and past performance requirements.

We deny the protest.

BACKGROUND

The RFP, issued as a service-disabled, veteran-owned small business (SDVOSB) set-side, sought proposals for the award of a fixed-price contract, with a 1-year base period and four 1-year options, for refuse collection and disposal, and recycling services. The RFP provided that award would be made to the offeror that submitted the lowest-priced, technically acceptable proposal, with the evaluation of technical

acceptability to be assessed under the following four technical factors: experience, management approach, past performance, and safety. RFP at 1, 5, 10-13. An unacceptable rating for any one of the four technical factors would render a proposal technically unacceptable overall. RFP at 5.

Under the experience factor, the RFP required offerors to identify a minimum of two and a maximum of five relevant projects that best demonstrate their experience on “relevant projects that are similar in size, scope, and complexity to the RFP.” RFP at 10. The RFP defined “relevant project” as “refuse collection and disposal and also collecting, processing, and selling recyclable materials described in the solicitation.” Id. The past performance evaluation was to consider how well the offeror performed the relevant projects submitted under the experience factor, as well as the performance of other projects “currently documented in known sources.” RFP at 12. The RFP advised offerors that “[m]ore emphasis will be placed on more relevant projects.” Id.

L&J, HAI, and two other offerors submitted timely proposals. Of relevance here, the protester’s proposal included three past performance references. The first, contract No. [DELETED], required the contractor to provide “[r]efuse collection and disposal” and “operation of [a] recycling center” at [DELETED]. L&J Past Performance References at 5. L&J’s second past performance reference, contract No. [DELETED], was for all labor, transportation, equipment, supplies, and supervision necessary to “collect and transport refuse and recyclables,” and for “the operation of Convenience Center(s),” at [DELETED]. Id. at 6. The description of the second contract specifically referred to the services as “solid waste collection and disposal” and “refuse collection and disposal.” Id. The protester’s third and final past performance reference, contract No. [DELETED], was for “refuse and recycling services,” to include “recycling collection services,” at [DELETED]. Id. at 7.

HAI, the incumbent contractor, submitted a proposal that included five past performance references. The awardee’s first two past performance references, contract Nos. N40083-10-D-2300 and N40083-14-D-2700, indicated that HAI was the current incumbent contractor for the refuse collection and disposal services at Naval Support Activity Crane, and that its proposed subcontractor was the incumbent for the recycling collection services. See HAI Past Performance References at 5. HAI’s third past performance reference, contract No. B40083-07-D-3002, stated that HAI “provide[d] refuse and recycling services that match the scope of work for [Naval Support Activity] Crane.” Id. at 6. HAI provided two other past performance references, HAI contract Nos. FA4407-12-D-0003 and W911S6-14-D-0001; the former required refuse collection and disposal at Scott Air Force Base, Illinois, and the latter required waste and recycling services at Dugway Proving Ground, Utah. Id. at 6-7.

Three proposals, including L&J’s and HAI’s, were evaluated as acceptable for each of the four technical evaluation factors and therefore acceptable overall. Source

Selection Evaluation Board Report at 3. The agency made award to HAI,¹ which proposed the lowest evaluated total price of \$1,971,467. This protest followed.

DISCUSSION

L&J asserts that the agency unreasonably evaluated the awardee's experience and past performance as acceptable, where each of the awardee's past performance references failed to demonstrate experience performing every facet of the current requirement--that is, refuse collection and disposal, and collecting, processing, and selling recyclable materials. Protester's Comments at 5-12. For example, the protester asserts that the awardee's first past performance reference, contract No. N40083-14-D-2700, could not have been considered relevant under the terms of the RFP because the contract was "solely for recycling services rather than refuse collection/disposal and recycling services." Id. at 6 (emphasis in original). The agency maintains that its evaluation was reasonable and consistent with the terms of the solicitation; according to the agency, the protester's insistence that each past performance reference must include experience performing every facet of the current requirement misconstrues the applicable standard of relevance under the solicitation. Agency Comments, Sept. 30, 2015, at 2.

Our Office reviews an agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable statutes and regulations. Herve Cody Contractor, Inc., B-404336, Jan. 26, 2011, 2011 CPD ¶ 27 at 3; FFLPro, LLC, B-411427.2, Sept. 22, 2015, 2015 CPD ¶ 289 at 10. An agency has broad discretion, when evaluating offerors' experience and past performance, to determine whether a particular contract is relevant to an evaluation of experience. FFLPro, LLC, *supra* at 8; Silverback7, Inc., B-408053.2, B-408053.3, Aug. 26, 2013, 2013 CPD ¶ 216 at 9. The evaluation of experience and past performance is, by its very nature, subjective, and an offeror's disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. K-MAR Indus., Inc., B-411262, B-411262.2, June 23, 2015, 2015 CPD ¶ 189 at 4.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that reasonably gives effect to all its provisions. H P Enter. Servs., LLC, B-409169.3, B-409169.4, June 16, 2014, 2014 CPD ¶ 179 at 7. We will not read a

¹ The Navy notified this Office that the Small Business Administration (SBA) had determined HAI to be other than a small business and that, absent an appeal of SBA's determination, the agency would rescind contract award. Letter from Navy to GAO, Sept. 11, 2015. The agency has subsequently advised GAO that HAI appealed the size determination and that the agency did not terminate the contract. Email from Navy to GAO, Oct. 22, 2015.

provision restrictively where the terms of the solicitation do not indicate that such a restrictive interpretation was intended by the agency. Vital Link, Inc., B-405123, Aug. 26, 2011, 2011 CPD ¶ 233 at 4.

In our view, the language of the solicitation, when read as a whole, does not support the protester's challenge to the reasonableness of the agency's evaluation. In this regard, the RFP informed offerors that the agency would consider the degree of relevancy of an offeror's past performance and experience. Specifically, the RFP advised offerors that "[m]ore emphasis would be placed on more relevant projects," RFP at 12, and that the evaluation would consider the offeror's demonstrated experience and "depth of experience" in performing the relevant projects. RFP at 11. This language would be rendered superfluous under the protester's proposed interpretation--that every past performance reference must demonstrate experience performing every aspect of the current requirement--because such an interpretation of the solicitation assumes no relative degree of relevancy. See Vital Link, Inc., supra (noting that if an agency "intended to confine its consideration of an offeror's past performance exclusively to those contracts that included specific attributes" identified in the solicitation, a suggestion in the RFP that there are degrees of relevancy "would be superfluous").

Further, the solicitation advised offerors that they should submit relevant projects that are "similar" in size, scope, and complexity to the RFP. RFP at 10. The plain language of the solicitation, therefore, defined relevant projects as similar to, not identical to, the requirements of the RFP. See Vital Link, Inc., supra, (where evaluation scheme stated that agency would consider work "similar" to the requirements of the RFP, past performance contracts need not precisely mimic the RFP requirements). Therefore, we find that the agency reasonably concluded that HAI's proposal was acceptable under the experience and past performance factors based on HAI having cited similar, albeit not identical, past performance references.

Moreover, the interpretation of the solicitation now advanced by the protester is at odds with the content of its own proposal. In this regard, the protester included in its proposal three past performance references, none of which individually required the performance of both refuse collection and disposal, and also collecting, processing, and selling recycling materials. For example, as noted above, L&J's first reference, contract No. [DELETED], required "[r]efuse collection and disposal" and "operation of recycling center." L&J Past Performance References at 5. Absent from the protester's description of the contract's requirements was any mention of collecting, processing, and selling recyclables. Moreover, L&J's second past performance reference, contract No. [DELETED], required all labor, transportation, equipment, supplies, and supervision necessary to "collect and transport refuse and recyclables" and "the operation of Convenience Center(s)." Id. at 6. Again, this past performance reference did not require the processing and selling of recyclables, which are two tasks required under the current procurement. In fact, none of the protester's three past performance references included any

reference to processing or selling recyclables. See Protester's Past Performance References at 4-7.

Thus, it appears that the protester's litigation position--that in order for a proposal to properly be evaluated as acceptable under past performance, each of the required past performance references must demonstrate experience performing every aspect of the current contract requirement--differs markedly from its interpretation of the solicitation at the time of proposal submission. See PricewaterhouseCoopers LLP; IBM U.S. Fed., B-409885 et al., Sept. 5, 2014, 2014 CPD ¶ 289 at 10-11. The integrity of the protest process, however, does not permit a protester to espouse one interpretation or position during the procurement, and then argue during a protest that the interpretation or position is unreasonable or otherwise improper. Guardian Moving & Storage Co., Inc., B-410171, Nov. 6, 2014, 2014 CPD ¶ 334 at 5; Northrop Grumman Space and Missile Sys. Corp.; Textron Marine & Land Sys. Corp., B-400837 et al., Feb. 17, 2009, 2009 CPD ¶ 52 at 10. On this record, we have no basis to conclude that the agency's evaluation of the awardee's experience and past performance was unreasonable.

The protest is denied.

Susan A. Poling
General Counsel