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Decision

Matter of: North Florida Shipyards, Inc.

File: B-413346; B-413346.2

Date: October 7, 2016

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Rhonda L. Russ, Esq., Lana K. Obert, Esq., and Katherine D'Andrea, Esq., Department of the Navy, for the agency.
Gabriel D. Soll, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency unreasonably rated awardee's proposal under past performance evaluation factor is denied where the record supports agency's finding and shows that evaluation standards were applied evenly.
 2. Protest that source selection authority overrode technical evaluation is denied when record indicates no disagreement between evaluation and source selection decision.
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DECISION

North Florida Shipyards, Inc. of Jacksonville, Florida, protests the award of a contract to East Coast Repair and Fabrication, LLC of Norfolk, Virginia, under request for proposals (RFP) No. N40027-16-R-0042, issued by the Department of the Navy for a continuous maintenance availability (CMAV)¹ on board the USS Iwo Jima. The protester challenges the agency's evaluation of East Coast's past performance.

¹ The term "availability," in the context of ship maintenance refers to scheduled periods of ship maintenance which require various levels of coordination through several activities within the Navy. See generally Military Readiness: Progress and Challenges in Implementing the Navy's Optimized Fleet Response Plan, GAO-16-466R (May 2016). The term availability, and the various types of availabilities, is not defined in the RFP.

We deny the protest.

BACKGROUND

The RFP, issued as a small business set-aside, provided for award of a fixed-price contract for maintenance services to be performed between July 5 and July 29, 2016. RFP § F. Award was to be made to the offeror whose proposal represented the best value to the government, considering the evaluation of past performance and price. Id. at § M. The RFP emphasized that past performance would be considered significantly more important than price in the source selection. Id.

The past performance evaluation was to include a relevancy determination and a confidence assessment. Id. The RFP stated that the Navy would evaluate an offeror's past performance by reviewing Contractor Performance Assessment Reporting System (CPARS) reports for up to five relevant and recent contracts; or, if unavailable, past performance questionnaires submitted by an offeror's prior customers. Id. With regard to relevancy, the RFP provided as follows:

“[r]elevant contracts are US Navy surface combatant availabilities similar in scope and complexity to the solicited work performed by the offeror as a prime and completed within the last three years with a reported dollar value at or above \$500,000.”

Id. (emphasis in original). In the area of relevancy, each past performance example would be assessed as very relevant, relevant, or not relevant. Id. The RFP defined very relevant past performance as involving “essentially the same scope and magnitude of effort and complexities this solicitation requires.” Id. A relevant rating was reserved for past performance examples reflecting “similar scope and magnitude of effort and complexities.” Id.

After reviewing the relevance of an offeror's past performance, the RFP anticipated an assessment based on the agency's confidence that the offeror would successfully perform the required effort. Id. Under this confidence assessment, an offeror's past performance would be rated as substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence, based on a review of the technical quality, schedule, and management of the prior contracts. Id. The RFP called for an assignment of unknown confidence to offerors with no recent or relevant performance record. This neutral rating was to be deemed satisfactory. Id.

Proposed prices were to be evaluated for reasonableness and affordability, using the techniques listed in Federal Acquisition Regulation (FAR) § 15.404-1(b)(2) to ensure fair and reasonable pricing. Id.

North Florida and East Coast submitted timely proposals. Agency Report (AR) at 4. Source Selection Evaluation Board (SSEB) members reviewed CPARS reports for contracts performed by each offeror during the 3-year period between May 26, 2013 and May 26, 2016. AR, Tab 6, SSEB Report, at 3. Based on this review, the SSEB assigned consensus relevancy ratings to each reference contract. Id. The SSEB also used the same process to arrive at confidence assessments for the relevant contracts. Id. The SSEB considered the relevancy of nine North Florida contracts and determined that five were relevant. Id. at 4, 6-8. Similarly, the SSEB considered the relevancy of 16 East Coast contracts and determined that one was relevant. Id. at 4-6.

The SSEB evaluated East Coast's one relevant contract as follows:

This contract meets the evaluation factors as set forth in Section M - Evaluation Factors for Award in the RFP. While the CPARS notes the contract type is "other IDIQ," within the narrative it is referred to as a DPMA [docking planned maintenance availability] for USS HURRICANE (PC 3) with a period of performance from 27 March 2013 to 14 March 2014 with a total cost of \$15,837,445. Using Electronic Document Access (EDA), the SSEB validated that the availability was a DPMA. The solicited work on the IWO JIMA involves much more complex electrical and piping systems than that accomplished on the HURRICANE. Based on the vast differences in this major equipment, the SSEB found it **RELEVANT** instead of very relevant. The contractor received a [DELETED] rating for technical and schedule and a [DELETED] rating for management. Throughout the availability it was noted the contractor remained proactive and responsive to the needs of the ship and maintenance team. Additionally, the [DELETED] system [East Coast] has in place was very effective in tracking progress through this availability which facilitated [DELETED] reports allowing for thorough discussion during weekly progress meetings. Based on the information provided herein, the SSEB assigned a **SUBSTANTIAL** confidence rating based on the contractor's very good performance of this contract. The satisfactory performance indicates that the SSEB has a high expectation that [East Coast] will successfully complete this solicitation based on [East Coast's] past performance on this contract.

Id. at 6 (emphasis in original).

The overall evaluation results were as follows:

	Past Performance Confidence	Price
North Florida	Satisfactory	\$1,305,364.00
East Coast	Substantial	\$1,537,029.00

AR, Tab 8, Source Selection Decision (SSD), at 10.

The Source Selection Authority (SSA) reviewed the proposals, the past performance reports, and the SSEB report in making the award decision. Id. The SSA agreed with the relevant rating for the East Coast contract above, and noted that the work included structural, mechanical, and electrical requirements. AR, Tab 8, SSD, at 6. The SSA concluded that East Coast's successful performance on the USS Hurricane DPMA was an indicator of likely success under the instant award. Id. at 11. The SSA determined that, in accordance with the RFP, East Coast's higher confidence rating merited the associated price premium, and awarded the contract to East Coast. Id. This protest followed.²

DISCUSSION

North Florida argues that East Coast's past performance should not have been evaluated as relevant because the past performance involved work on the USS Hurricane, which is not classified as a surface combatant vessel, as required by the RFP. Protest at 5; Protester's Comments at 6-7. Separately, North Florida protests that the award decision was predicated on the SSA's misunderstanding, or a factually-unsupportable override, of the SSEB's evaluation. Supp. Protest at 4. We disagree.

An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of agency discretion which we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. Team Housing Solutions, B-411162, June 3, 2015, 2015 CPD ¶ 230 at 2, citing Green Earthworks Constr., Inc., B-410724, B-410724.2, Feb. 2, 2015, 2015 CPD ¶ 68 at 4. The critical question is whether the evaluation was conducted fairly, reasonably, and in accordance with the solicitation's evaluation scheme, and whether it was based on relevant information sufficient to make a reasonable determination of the offeror's past performance. DRS C3 Sys., Inc., B-310825, B-310825.2, Feb. 26, 2008, 2008 CPD ¶ 103 at 22.

The crux of North Florida's protest is that the Navy unreasonably found East Coast's prior contract work on the USS Hurricane to be relevant. Protest at 5; Protester's Comments at 6-7. The protester insists that the RFP's evaluation scheme required the agency to eliminate as not relevant any effort not performed on

² Our Office was notified on July 14, 2016 of a partial override of the stay in performance required by 31 U.S.C. § 3553. The Navy terminated for the convenience of the government the remaining work items under the awarded contract. The Navy intends to conduct a future competition for the terminated work. AR at 5, n. 5.

a “US Navy surface combatant” vessel.³ Id. North Florida maintains that East Coast’s referenced contract was performed “Patrol Coastal” vessel⁴ and not a “surface combatant” vessel as required by the RFP. Id. The Navy disagrees with North Florida’s interpretation of the solicitation’s terms, explaining that the evaluation of past performance was to focus on the nature of the work completed through the prior contracts, rather than the specific type of vessel on which it was performed. AR at 9-12; Supp. AR at 3-4, Exh. 1. In contrast, North Florida’s reading of the RFP would limit relevant past performance to work done on one classification of vessel, without regard to the nature of the work performed.

The SSEB report demonstrates that, in determining relevance, the evaluators focused on whether the offerors’ prior contracts were performed as maintenance “availabilities,” rather than the type of vessel on which they were performed. For example, the SSEB did not consider two prior contracts performed by East Coast because they were not accomplished as availabilities. AR, Tab 6, SSEB Report, at 6. The SSEB report also noted that East Coast’s performance aboard the USS Hurricane was performed as a Docking Phased Maintenance Availability (DPMA) before evaluating the particulars of the work performed, including comparing the types of systems and the work involved for each. AR, Tab 6, SSEB Report, at 6. The same evaluation was conducted for both offerors on all prior contracts deemed relevant. Where, as here, an agency is alleged to have applied a relaxed standard in evaluating past performance, so long as that standard is reasonable and

³ The Navy classifies its vessels for an official inventory of ships and service craft, regularly updated at the Naval Vessel Register (NVR). See www.nvr.navy.mil (last visited Oct. 6, 2016). The NVR is updated in accordance with instructions from the Secretary of the Navy, specifically, SECNAV Instruction 5030.8C (Instruction). The Instruction distinguishes warships from other types of vessels. Agency Report (AR), Tab 12, SECNAVINST 5030.8C, at Encl. 1. Within the warship classification, vessels are further classified as aircraft carrier, surface combatant, submarine, or amphibious warfare. Id. Each of these four categories may include sub-classifications that further define the type of vessel and include classification symbols used as part of a ship’s unique hull number. Id. As relevant here, the four types of surface combatant vessels are cruisers (CG), destroyers (DDG), frigates (FFG), and Littoral combat ships (LCS). Id. The Instruction was referenced in an attachment to the RFP and provides guidance regarding the classification of Navy vessels. See RFP at 93 (referring to the description of a Standard Item 0009-12, to be performed under the resulting contract); AR, Tab 11, NAVSEA Standard Item 0009-12, at 16.

⁴ Patrol Coastal ships are a classification within the patrol combatant category of combatant craft, and are given the code “PC.” AR, Tab 12, SECNAVINST 5030.8C, at Encl. 3. This is a separate category from the combatant ship category under which the designation of surface combatant is found.

consistently applied among all offerors, we will not find it objectionable.⁵ See CMI Management, Inc., B-402172, B-402172.2, Jan. 26, 2010, 2010 CPD ¶ 65 at 5. On this record, we conclude that the Navy's determination concerning which prior contracts were relevant was reasonable and that its judgment in this regard was consistently applied.⁶

With regard to North Florida's second argument, that the SSA's award decision both controverts the findings of the SSEB and is unsupported by the record, the protester points to statements in both the SSEB Report and the SSD comparing the complexity of the electrical and piping systems on the USS Hurricane and the USS Iwo Jima. Supp. Protest at 4. The protester maintains that the SSA's description of East Coast's work on the USS Hurricane misunderstood the SSEB's findings or misconstrued them in order to find the prior work relevant. Id.; Supp. Comments at 4. The Navy responds that the SSEB's evaluation statement addressed the relevance of East Coast's work on the USS Hurricane--an assessment with which the SSA expressly agreed--whereas the SSA's statement regarding the level of complexity in that performance was made in the context of the confidence rating--a matter on which the SSEB and SSA also agreed. Supp. AR at 3-4. The Navy contends that because the statements addressed different aspects of the past performance review they were not inconsistent. Id.

We agree that the SSEB's and SSA's statements do not conflict. The record here contains the full details of the work performed on the USS Hurricane, which was reviewed by both the SSEB and the SSA. See AR, Tab 7, CPARS Report for USS Hurricane. The SSEB concluded, and the SSA agreed, based on the differences between the work performed on the USS Hurricane and that solicited for the USS Iwo Jima, that East Coast's prior contract should be considered relevant, rather than very relevant. As the RFP defined a rating of very relevant as a contract entailing "essentially the same scope and magnitude of effort," the evaluation was not only consistent with the terms of the solicitation, but reflected the consistent conclusions of the SSEB and the SSA.

⁵ For example, the record shows that North Florida cannot complain as its proposal also was credited for work performed as availabilities on two non-surface-combatant vessels. Id. at 7-8.

⁶ For the record, we note that the USS Iwo Jima itself--the ship for which these services are being procured--is classified as an amphibious assault ship (reflected in its hull code, "LHD"), a sub-category of amphibious warfare ships and not a surface combatant vessel. AR, Tab 12, SECNAVINST 5030.8C, at Encl. 1. When the Navy procures the services sought in this RFP under a future procurement it might wish to consider revisiting the solicitation requirements to ensure that they accurately reflect the minimum needs of the agency.

Thus, we find no merit to North Florida's allegation that the SSA overrode the SSEB inappropriately or that the award was predicated on a misunderstanding.

The protest is denied.

Susan A. Poling
General Counsel