



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Dextera Corporation

File: B-415562.2; B-415562.4

Date: February 5, 2018

Isaias Alba, IV, Esq., Michelle E. Litteken, Esq., Meghan F. Leemon, Esq., and Matthew E. Feinberg, Esq., Piliro Mazza PLLC, for the protester.
Amy Laderberg O'Sullivan, Esq., and Olivia L. Lynch, Esq., Crowell & Moring LLP, for Advancia-Ahtna, Joint Venture, LLC, the intervenor.
Ellen Rothschild, Esq., Sandra Jackson, Esq., and Ryan Warrenfeltz, Esq., Social Security Administration, for the agency.
Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency unreasonably evaluated the awardee's experience and past performance and made an unreasonable best-value tradeoff is denied where evaluation was reasonable and consistent with the solicitation.
 2. Protest that the agency unreasonably found that awardee was a responsible firm is denied where allegation is based on eligibility of the awardee which is part of the Small Business Administration's 8(a) program and the Small Business Administration found that the awardee was eligible to receive an award.
-

DECISION

Dextera Corporation, of Centreville, Virginia, protests the award of a contract to Advancia-Ahtna, Joint Venture, LLC, of Oklahoma City, Oklahoma, under request for proposals (RFP) No. SSA-RFP-R07-17-1001, issued by the Social Security Administration for support services for the agency's folder storage operation at the National Records Center (NRC). Dextera challenges the agency's evaluation of Advancia-Ahtna's experience and past performance and its determination that Advancia-Ahtna is a responsible firm.

We deny the protest.

BACKGROUND

The RFP, issued as a competitive set-aside under the Small Business Administration's (SBA) 8(a) program, provided for the award of a fixed-price contract on a best-value tradeoff basis considering experience, past performance, and price. Agency Report (AR), Exh. 1, RFP, at 1, 102.¹ In reaching the award decision, experience was more important than past performance and these two factors combined were approximately equal to price. Id. at 102.

With respect to experience, offerors were required to include a description of no more than three contracts that demonstrated the offerors' relevant experience. Id. at 98. The offeror was to provide a complete and full description of the services provided for each contract, describing the extent to which the work under the NRC solicitation is similar. Id. The agency stated it would use this information to determine whether an offeror has proven experience to reduce contract performance risk and ensure performance success over the life of the contract. Id. at 102. Experience was rated extremely similar, very similar, somewhat similar, slightly similar, or not similar. AR, Exh. 6, Technical Evaluation, at 1; Combined Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 11-12.

With respect to past performance, offerors were required to have references complete and submit questionnaires for each reference cited in the experience section of the proposal. RFP at 100. The solicitation further provided that past performance information could also be obtained from other sources known to the government. Id. at 103. Past performance was rated excellent, very good, satisfactory, marginal, unsatisfactory, or neutral. AR, Exh. 6, Technical Evaluation, at 1; COS/MOL at 11-12.

The solicitation also provided that the experience and past performance of each party to a joint venture would be considered only to the extent that it related to the work that each party would be responsible for under the NRC contract. RFP at 103. Further, the experience and past performance of the joint venture entity would be considered more relevant than experience and past performance of the individual parties to the joint venture. Id.

The agency received proposals from nine firms, including Dextera and Advancia-Ahtna. AR, Exh. 6, Technical Evaluation, at 2. Advancia-Ahtna is a joint venture between Ahtna Engineering Services, LLC (Ahtna) and Advancia Technologies, LLC, which have an SBA-approved 8(a) mentor protégé agreement.² AR, Exh. 12, Technical Proposal,

¹ The agency submitted the solicitation as a bates-stamped exhibit. Citations to the solicitation are to the bates-stamped page.

² The SBA's 8(a) mentor-protégé program is designed to encourage approved mentors to provide various forms of business development assistance (i.e., technical and management assistance, financial aid in the form of equity investments and/or loans, and subcontract support) to eligible protégé participants in order to enhance the

(continued...)

at ii. Ahtna, the mentor firm, is the current incumbent, and is proposed to perform **[DELETED]** percent of the contract. Id. at iv. Advancia, the protégé firm, is proposed to perform **[DELETED]** percent of the contract. Id. In its proposal, for experience, Advancia-Ahtna submitted a detailed description of Ahtna's experience as the 15-year incumbent on the contract, but did not submit any examples of experience for Advancia or for the joint venture entity. Id. at 1, 13-15; AR, Exh. 6, Technical Evaluation, at 3. Based on Ahtna's extremely similar experience and Advancia's lack of relevant experience, the agency rated the joint venture very similar for experience. AR, Exh. 6, Technical Evaluation, at 3.

With respect to past performance, Advancia-Ahtna provided the contractor performance assessment reporting system (CPARS) review for Ahtna's performance on the incumbent contract. AR, Exh. 12, Technical Proposal, at 13-15. The agency also reviewed four additional assessments for Ahtna from the past performance information retrieval system (PPIRS). AR, Exh. 6, Technical Evaluation, at 3. Based on overall ratings of very good for the incumbent contract and two other contracts, and satisfactory for two contracts, the agency assigned Advancia-Ahtna a rating of very good for past performance. Id. at 3, 12.

Dextera submitted three contracts to demonstrate its experience. AR, Tab 4, Dextera Proposal, at 3, 8, 11. The agency found that these contracts did not demonstrate the same size or complexity as the work under the NRC solicitation and rated Dextera somewhat similar for experience. AR, Exh. 6, Technical Evaluation, at 5. With respect to past performance, the agency reviewed the three contracts Dextera listed in its proposal to demonstrate its experience and two additional contract reports obtained from PPIRS. Id. Based on the references, the agency assigned three of these contracts an overall exceptional rating, one an overall very good rating, and one an overall satisfactory rating. Id. at 5, 11. The agency assigned Dextera a very good rating for past performance.

Advancia-Ahtna offered to perform for \$48,661,763 and Dextera offered to perform for \$46,391,983. AR, Exh. 8, Best-Value Tradeoff, at 3, 5. The agency performed a best-value tradeoff and selected Advancia-Ahtna for award. Id. at 18. This protest followed.

DISCUSSION

Dextera protests that Advancia-Ahtna should not have been rated very similar for experience and very good for past performance because neither Advancia, nor the Advancia-Ahtna joint venture entity, demonstrated relevant experience or past performance. The protester further asserts that the agency treated Advancia-Ahtna and Dextera disparately with respect to the past performance rating, the agency improperly

(...continued)

capabilities of the protégés and improve their ability to successfully compete for federal contracts. 13 C.F.R. § 124.520(a).

determined that Advancia-Ahtna is a responsible firm, and the best-value tradeoff is unreasonable. Our Office does not specifically address every nuance of Dextera's arguments, but we have fully considered each of them and conclude that they do not provide a basis to sustain the protest.

Past Performance and Experience

Dextera argues that the agency should not have assigned Advancia-Ahtna ratings of very similar for experience and very good for past performance because all of the contracts used to demonstrate experience and past performance were performed by Ahtna, and there was no experience or past performance information for Advancia or for the joint venture entity Advancia-Ahtna. Dextera notes that the solicitation stated that the experience and past performance of the individual entities would be considered only to the extent it related to work they would perform on this NRC contract, and that the experience and past performance of the joint venture was more important than that of the individual entities. In Dextera's view, since the protégé Advancia had no experience and would perform **[DELETED]** percent of the contract, the agency ignored this language in assigning the joint venture a very similar rating for experience and very good for past performance. Dextera further argues in this regard that it was improper for the agency to rely on the experience and past performance of one member of the joint venture in evaluating the experience and past performance of the entire joint venture. We disagree.

An agency's evaluation of past performance, and experience is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. Family Entm't. Servs., Inc., d/b/a IMC, B-291997.4, June 10, 2004, 2004 CPD ¶ 128 at 5. A protester's disagreement with such judgment, without more, does not provide a basis to sustain a protest. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

The solicitation provided that the experience and past performance of each party to a joint venture would be considered only to the extent that it related to the work that each party will be responsible for under the NRC contract, and that the experience and past performance of the joint venture entity would be considered more relevant than experience and past performance of the individual parties to the joint venture. RFP at 103. Here, the agency was evaluating the experience and past performance of the joint venture offeror using the experience and past performance of the entities that made up the joint venture as well as any experience and past performance the joint venture itself possessed.

Since the joint venture itself had no experience or past performance, the agency relied on the experience and past performance of the entities to the joint venture. While the solicitation stated that the experience and past performance of the joint venture would be considered more important than the experience and past performance of the individual entities, the solicitation did not prohibit the agency from using the experience

and past performance of the individual entities in its evaluation of the past performance of the joint venture. In this regard, as noted above, Advancia-Ahtna is an SBA 8(a) mentor-protégé joint venture where Advancia, an 8(a) firm, is the protégé of Ahtna, the mentor. When an agency is evaluating the experience and past performance of a mentor-protégé joint venture, we have found no basis to preclude an agency from considering the experience and past performance of both partners in such an arrangement. See 13 C.F.R. § 124.513(f) (“When evaluating the past performance and experience of an entity submitting an offer for an 8(a) contract as a joint venture approved by SBA pursuant to this section, a procuring activity must consider work done individually by each partner to the joint venture as well as any work done by the joint venture itself previously.”); JACO & MCC Joint Venture, LLP, B-293354.2, May 18, 2004, 2004 CPD ¶ 122 at 7; see also Enola-Caddell JV, B-292387.2, B-292387.4, Sept. 12, 2003, 2003 CPD ¶ 168 at 7-8 n.7 (citing SBA’s view that it appeared contrary to the intent of SBA’s 8(a) mentor-protégé program for a procuring agency to downgrade a proposal based on the lack of experience/past performance of a protégé; in order to be a protégé, an entity must lack experience).

Moreover, it was not unreasonable for the agency to assign Advancia-Ahtna ratings of very similar for experience and very good for past performance based solely on Ahtna’s experience and past performance record. In this regard, contrary to the protester’s argument, the agency did not ignore Advancia’s lack of experience and past performance; the agency lowered the rating for experience from extremely similar to very similar and for past performance from excellent to very good. Given that Ahtna, the mentor, is the incumbent with extremely similar experience and very good ratings for the incumbent contract, and will perform **[DELETED]** percent of the work under the NRC contract, the ratings were reasonable. See ASRC Research & Tech. Solutions, B-406164, B-406164.3, Feb. 14, 2012, 2012 CPD ¶ 72 at 12 (considering mentor experience for contract management experience where protégé had no management experience and was proposed to be the managing partner); AJT & Associates, Inc., B-284305, B-284305.2, Mar. 27, 2000, 2000 CPD ¶ 60 at 6 (agency properly used experience of subcontractor to rate experience of 8(a) contractor which did not have relevant experience).

Dextera also asserts that the agency treated Dextera and Advancia-Ahtna disparately in the past performance evaluation. Dextera specifically complains that it was rated the same for past performance--very good--as Advancia, even though its ratings on the contracts used to evaluate past performance were higher. We find no basis to conclude that in evaluating past performance, the agency treated Dextera and Advancia-Ahtna disparately.

In this regard, the agency assigned Dextera three overall exceptional ratings, one very good rating, and one satisfactory rating on the contracts used to evaluate its past performance. AR, Exh. 6, Technical Evaluation, at 11. The agency assigned Advancia-Ahtna, in contrast, three overall very good ratings and two satisfactory ratings on the contracts used to evaluate its past performance. Id. at 12. While Dextera’s reference ratings appear to be higher than Advancia-Ahtna’s, Dextera did not have past

performance on a contract as relevant as Advancia-Ahtna's. The agency reasonably considered that Advancia-Ahtna's past performance was based on more relevant experience in assigning both offerors the same rating for past performance.

Dextera also complains that in assigning it a past performance rating of very good the agency mentioned only one of the many positive comments that were included in its ratings. We do not find that this evidences that the agency treated the offerors disparately in evaluating past performance. The agency was not required to list every positive comment a reference made when it assigned a past performance rating. Here, the agency mentioned what it found to be a particularly complimentary statement about Dextera's past performance in its evaluation. In comparison, the agency did not list any of the multiple positive comments that were included by Advancia-Ahtna's references in its evaluation when it assigned Advancia-Ahtna a past performance rating.³ For all of these reasons, these protest allegations are denied.

Responsibility

Dextera asserts that the agency unreasonably concluded that Advancia-Ahtna is a responsible firm pursuant to Federal Acquisition Regulation (FAR) § 9.103(b), which provides that a contract may not be awarded unless the contracting officer makes an affirmative determination of responsibility. Dextera explains that in order to be found responsible, an offeror must be otherwise eligible to receive an award and that to be eligible for award under the 8(a) program, Advancia-Ahtna was required to have its joint venture agreement approved by the SBA. Dextera notes that in order to be an approved 8(a) joint venture, the 8(a) participant must be designated as the managing venture and an employee of the 8(a) participant must be the project manager. Dextera also argues that where the SBA approves a mentor-protégé joint venture agreement, the individual approved as the project manager cannot be employed by the mentor and later become an employee of the protégé. Dextera asserts that in its SBA 8(a) approved joint venture agreement, it lists an Advancia employee as the project manager, but in its proposal, it lists a current employee of Ahtna, who will become an employee of Advancia upon contract award, as the program manager. Dextera asserts therefore, that the conflict between the joint venture agreement and the proposal should have put the contracting officer on notice that Advancia was not eligible for award as an 8(a) joint venture, and thus was not a responsible contractor.

Here, the agency requested SBA determine the 8(a) eligibility of Advancia-Ahtna JV, LLC for award. AR, Tab 13.3, Agency Request for Eligibility Determination, Sept. 21, 2017. The SBA approved Advancia-Ahtna as a joint venture under the 8(a) program, stating that "Advancia-Ahtna JV, LLC is in full compliance with the 8(a) program

³ In its supplemental comments, Dextera for the first time asserts that the agency did not consider whether all the past performance references provided by Advancia-Ahtna were relevant to the NRC solicitation. This basis of protest, raised more than ten days after Dextera received the agency report, is untimely. 4 C.F.R. § 21.2(a)(2).

requirements” AR, Tab 13, SBA 8(a) Eligibility Letter, Sept. 22, 2017. In our view, in making the responsibility determination, the contracting officer was not required to further consider whether Advancia-Ahtna was eligible for award since SBA’s regulations specifically provide that only SBA makes such eligibility determinations and SBA had, in fact, made the determination that Advancia-Ahtna was eligible. See 13 C.F.R. § 124.507(b) (procuring agencies must request SBA to determine firm’s eligibility for award of 8(a) contract); 13 C.F.R. § 124.513(e) (SBA approves a joint venture agreement prior to award of an 8(a) contract); 13 C.F.R. § 124.517(a) (the eligibility of a participant for an 8(a) requirement may not be challenged by another participant or any other party to the SBA or any administrative forum as part of a bid or other contract protest). Accordingly, we deny this protest allegation.

Source Selection Decision

Dextera also challenges the award decision. According to Dextera, the agency based its decision on a flawed evaluation. Dextera specifically complains that in reaching the decision, the agency attributed a weakness to Dextera’s proposal when the evaluators did not mention any weakness. Dextera also complains that the agency failed to consider the risk that Advancia’s lack of experience will entail given that Advancia is proposed to perform **[DELETED]** percent of the work.

Source selection decisions must be documented, and include the rationale and any business judgments and tradeoffs made or relied upon by the source selection authority. FAR § 15.308. A protester’s disagreement with the agency’s determinations as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency, does not establish that the source selection decision was unreasonable. General Dynamics-Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8.

Here, in making its best-value determination, the agency acknowledged that the joint venture and Advancia did not have any experience that clearly aligned with the solicitation, but also recognized that Ahtna was the incumbent for 15 years. AR, Exh 8, Best-Value Tradeoff, at 13. The agency considered this against Dextera’s experience, which was performed on contracts that were lower in value and staffing, and performed at smaller facilities. Id. In the context of the best-value tradeoff decision, the agency found that Dextera’s less relevant experience was a weakness. Id. The agency concluded that because of Advancia-Ahtna’s more relevant experience, there was less of a risk that Advancia-Ahtna would encounter performance issues. Id. While Dextera disagrees with this conclusion, that is not a basis to find that the determination was unreasonable. See General Dynamics-Ordnance & Tactical Sys., supra.

The protest is denied.

Thomas H. Armstrong
General Counsel