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Decision

Matter of: SVD Stars II, LLC

File: B-416446; B-416446.3

Date: September 12, 2018

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DIGEST

1. Protest challenging agency's technical evaluation is denied where the record demonstrates that the evaluation was reasonable and in accordance with the terms of the solicitation.
 2. Protest challenging agency's past performance evaluation is denied where, notwithstanding errors in the evaluation, the record provides no basis on which to find a reasonable possibility that the protester was prejudiced.
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DECISION

SVD Stars II, LLC, of Columbia, Maryland, protests the issuance of a task order to 22nd Century Technologies, Inc., of Somerset, New Jersey, under request for proposals (RFP) No. 1276035, issued by the Department of the Army, for information management/information technology support services for the Fort Belvoir Community Hospital. The protester contends that the evaluation of proposals was unreasonable.

We deny the protest.

BACKGROUND

This competition was conducted among firms holding General Services Administration (GSA) 8(a) STARS II (Streamlined Technology Acquisition Resources for Services II)

contracts, which are multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contracts established to purchase various information technology services and service-based solutions. The RFP contemplated issuance of a single fixed-price task order, with a 1-year base period and four 1-year options. The solicitation provided for the issuance of the order to the offeror whose proposal represented the best value to the government, considering price and the following three factors: management approach; technical capability (which included two elements--technical approach and technical experience); and past performance.¹ RFP at 1, 6. The management approach factor was the most important factor. The technical capability factor was slightly less important than the management approach factor. Past performance was slightly less important than the technical capability factor. Id. at 6. Price was the least important factor, significantly less than all non-price factors combined. Id. at 7. The best-value tradeoff process was to include a comparison of proposals based on the ratings and the impact of the strengths, weaknesses, and risks on the specific objectives of the acquisition. Id. at 6.

Under the technical experience element of the technical capability factor, the RFP provided as follows:

The Offeror's proposal shall demonstrate past experience as a "Prime Contractor" for up to three (3) projects within the last 3 years that are similar in scope, size, and complexity to the tasks described in the [performance work statement (PWS)] for this contract. The term "Offeror" means the prime contractor, which includes joint ventures. If the prime contractor is a joint venture, joint venture members which will have meaningful involvement in the contract's performance may submit experience for which the member previously performed as the prime contractor. Included in the contract experience demonstration, the Offeror, at a minimum, shall include specifically the listed technical experience with the following specific tasks in section 5 of the PWS. Experience shall be in the Military Health System for the task listed below.

- PWS Section 5.2.6 Network Engineering and Administration Support.

Id. at 8-9.

¹ The agency initially referred to the solicitation as an RFP and as a request for quotations (RFQ). See Agency Report (AR), Tab 1, e-Buy Posting (containing the heading "Prepare RFQ" and the attached document "RFP Letter"). Amendment 1 referred to the solicitation as an RFP. AR, Tab 2, RFP amend. 1, conformed RFP, (RFP) at 1. The parties variously use both designations. The distinction between an RFP and an RFQ has no bearing on our analysis of the issues presented, and we use throughout the terms RFP and proposal.

The solicitation provided for the evaluation of past performance to be based on the same contracts identified to demonstrate technical experience. The RFP required that the past performance have occurred within 3 years of the closing date of this solicitation involving “contracts of similar size, scope, and complexity to the effort described in the PWS to be considered relevant.” Id. at 10. The agency was to assign each contract reference a relevancy rating of very relevant, relevant, somewhat relevant, or not relevant.² Id. Considering the offerors’ performance on relevant contracts, the agency was then to assign each proposal a performance confidence rating of substantial, satisfactory, neutral, or limited confidence.³ Id.

Eleven offerors, including the protester--who is the incumbent contractor--and the awardee, submitted timely proposals. AR, Tab 17, Source Selection Decision Document (SSDD) at 3. The agency established a competitive range of seven offerors, which again included both the protester and the awardee. Id. at 11. Final proposals were evaluated as follows:

² The solicitation defined the relevancy ratings as follows: very relevant--present/past performance effort involved essentially the same scope and magnitude of effort and complexities this solicitation requires; relevant--present/past performance effort involved similar scope and magnitude of effort and complexities this solicitation requires; somewhat relevant--present/past performance effort involved some of the scope and magnitude of effort and complexities this solicitation requires; or not relevant--present/past performance effort involved little or none of the scope and magnitude of effort and complexities this solicitation requires.

³ The performance confidence ratings were defined as follows: substantial confidence--based on the offeror’s recent/relevant performance record, the government has a high expectation that the offeror will successfully perform the required effort; satisfactory confidence--based on the offeror’s recent/relevant performance record, the government has a reasonable expectation that the offeror will successfully perform the required effort; neutral confidence--no recent/relevant performance record is available or the offeror’s performance record is so sparse that no meaningful confidence assessment rating can be reasonably assigned; limited confidence--based on the offeror’s recent/relevant performance record, the government has a low expectation that the offeror will successfully perform the required effort.

Offeror	Management Approach	Technical Capability	Past Performance	Total Evaluated Price
Offeror A	Acceptable	Good	Substantial Confidence	\$37,805,831
Offeror B	Good	Good	Satisfactory Confidence ⁴	\$39,696,979
Offeror C	Acceptable	Acceptable	Satisfactory Confidence	\$40,619,838
Offeror D	Acceptable	Acceptable	Satisfactory Confidence	\$43,570,819
SVD Stars	Acceptable	Acceptable	Satisfactory Confidence	\$44,419,573
Offeror E	Marginal	Good	Limited Confidence	\$32,093,712
22nd Century	Good	Outstanding	Substantial Confidence	\$34,484,226

Id. at 12.

The source selection authority (SSA) chose 22nd Century's proposal as offering the best value to the government. Id. at 32. The SSA explained that her decision was based on the management approach and technical capability demonstrated by the awardee's proposal, its record of very relevant past performance, and its fair and reasonable price. Id. The SSA noted that 22nd Century received an outstanding technical rating and a performance confidence rating that "instills substantial confidence in its ability to fulfill the requirement and enhances the opportunity for [the hospital] to execute its mission." Id.

The task order was issued to 22nd Century, and this protest followed.⁵

DISCUSSION

The protester challenges the reasonableness of the agency's evaluation of proposals under the technical capability factor, asserting that the agency's evaluation was not in accordance with the solicitation's stated requirements. SVD Stars also asserts that the agency failed to evaluate the relevance of past performance in accordance with the RFP's criteria. As explained below, we find no merit to the challenge to the agency's evaluation of proposals under the technical capability factor, and, while we find flaws in the agency's evaluation of proposals under the past performance factor, there is no

⁴ Although the selection document in the record indicates a substantial confidence rating for Offeror B, the detailed discussion therein reflects a satisfactory confidence rating. See id. at 19, 26, & 27.

⁵ As set forth above, the awarded value of the task order at issue exceeds \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award indefinite-delivery, indefinite-quantity contracts awarded under the authority of Title 41 of the U.S. Code. 41 U.S.C. § 4106(f)(1)(B).

reasonable possibility that the protester was prejudiced by any of these evaluation errors.⁶

Technical Experience Evaluation

The protester asserts that the agency's evaluation of the awardee's proposal under the technical experience element deviated from the announced terms of the solicitation when the agency credited the awardee--a firm that is not a joint venture--with experience it obtained as a joint venture partner.⁷ Comments at 3-5; Supp. Comments at 1-8.

The evaluation of technical proposals is a matter within the agency's discretion. Acquisition Servs. Corp., B-409570.2, June 18, 2014, 2014 CPD ¶ 197 at 7. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. Technology & Telecomms. Consultants, Inc., B-415029, Oct. 16, 2017, 2017 CPD ¶ 320 at 3. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. Technica LLC, B-413546.4, B-413546.5, July 10, 2017, 2017 CPD ¶ 217 at 5.

As noted above, the RFP provided that, if the prime contractor was a joint venture, "joint venture members which will have meaningful involvement in the contract's performance may submit experience for which the member previously performed as the prime contractor." RFP at 8. The awardee, 22nd Century Technologies, Inc., is not a joint venture. See AR, Tab 4, 22nd Century Technical Proposal at ii. The awardee performed as the joint venture managing partner in each of the three contracts that it submitted to establish its technical experience. AR, Tab 4, 22nd Century Technical Proposal at 12-18.

⁶ While our decision does not specifically address every protest allegation, we have considered all of the protester's additional assertions and find that none of them provide a basis for sustaining the protest.

⁷ The protester also challenged the evaluation of its own proposal under the technical experience element, arguing that the proposal deserved a higher rating. The agency conceded in its August 14 reply to the protester's comments that the record did not support the rating of the protester's proposal as merely acceptable under the technical experience element. As a result, the agency stated that, "for the purposes of this protest," the agency would "consider the protester's rating for Factor 2 [technical capability] to be revised from Acceptable to Good." Agency Reply to Protester's Comments at 6.

The agency argues that it reasonably considered experience the awardee gained as the managing partner of joint venture prime contractors because our Office has recognized that “a party to a joint venture may have experience it gained thereunder considered during the agency’s assessment of that offeror’s past performance.” Supp. Legal Memorandum at 19, citing Paragon Sys., Inc., B-414515.1, B-414515.2, June 29, 2017, 2017 CPD ¶ 240.⁸ The protester asserts that, while the agency’s argument is “correct in general,” the RFP here provided an exception to that rule. Supp. Comments at 2. In this regard, the protester maintains that in providing for a single exception to the requirement that the experience be that of the offeror as a prime contractor (i.e., where the offeror is a joint venture), the RFP effectively prohibited any other exceptions (such as allowing an offeror that is not a joint venture to rely on experience it gained as part of a joint venture).

We do not agree with the protester’s assertion that the RFP language allowing joint ventures to rely on the prior experience of the individual joint venture members may reasonably be interpreted as prohibiting prime contractors that are not joint ventures from relying on prior experience gained as a member of a joint venture. The solicitation here did not expressly prohibit the agency from considering the experience that non-joint venture offerors gained as members of a joint venture. As a consequence, we find no merit to the allegation that the agency deviated from the terms of the RFP in considering 22nd Century’s past experience as a joint venture managing partner.

The protester also asserts that the agency’s evaluation of the awardee’s proposal under the technical experience factor is unreasonable because the RFP required that proposals demonstrate experience on projects similar in scope, size, and complexity to the tasks described in the PWS here, and because the awardee’s contracts are not similar in size to the effort here. Comments at 7-10; Supp. Comments at 9-11.

In addition to requiring that proposals demonstrate experience on projects similar in scope, size, and complexity to the tasks described in the PWS here, the RFP more specifically required that the experience, “at a minimum,” include technical experience with PWS Section 5.2.6, Network Engineering and Administration Support, and that this experience have been in the Military Health System. RFP at 8-9. The record reflects that in evaluating the awardee’s proposal, the agency focused primarily on whether the awardee’s projects demonstrated experience with PWS Section 5.2.6 and experience in the Military Health System. Specifically, the evaluators assigned the awardee’s proposal one significant strength for demonstrating “core experience in the Military Health System (MHS) Arena, mainly in support of the Medical Treatment Facility (MTF),” and another significant strength for demonstrating “System and Application level experience in the Military Health System (MHS).” AR, Tab 14, 22nd Century

⁸ Specifically, we found in Paragon that where an offeror relies on past performance of the firm as a participant in a joint venture, the agency may consider the performance on the basis that the offeror had a sufficient role in the joint venture to make the performance relevant. Id. at 10.

Consensus Evaluation at 4. Given the RFP's particular focus on experience with network engineering and administration support and experience in the Military Health System, we are not persuaded that the evaluation was unreasonable.

Past Performance

The protester also challenges the agency's evaluation of the awardee's past performance as substantial confidence. Comments at 7-10; Supp. Comments at 9-11. As a general matter, the evaluation of an offeror's past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. Al Raha Group for Tech. Servs., Inc.; Logistics Mgmt. Int'l, Inc., B-411015.2, B 411015.3, Apr. 22, 2015, 2015 CPD ¶ 134 at 5. However, we will question an agency's evaluation conclusions where they are unreasonable or undocumented. Id. The critical question is whether the evaluation was conducted fairly, reasonably, and in accordance with the solicitation's evaluation scheme. Id.

The consensus evaluation of the awardee's past performance assessed each identified prior performance example as "very relevant," and assigned an overall relevancy rating of "very relevant." AR, Tab 14, 22nd Century Consensus Evaluation at 6-7. Of the three contracts considered, the evaluators made the following three observations: the "work performed is very similar to the magnitude, scope and complexity of the current requirement"; the "work performed" was "similar to the magnitude, scope and complexity to the current requirement"; and the "project" was "similar to the magnitude, scope and complexity to the current requirement." Id. The SSA adopted that finding, stating that "[a]ll of the projects submitted by [22nd Century] were considered very relevant." AR, Tab 17, SSDD at 21.

The RFP provided that a very relevant past performance effort involved "essentially the same" scope and magnitude of effort and complexities this solicitation requires, and that a relevant effort involved "similar" scope and magnitude of effort. RFP at 10. The agency's own description of two of the awardee's contracts as "similar" to the current requirement appears to be inconsistent with the RFP's definition of very relevant past performance. Specifically, under the terms of the RFP, an evaluation of the contracts as "similar" equates to a rating of relevant (and not very relevant). Furthermore, if the agency considered the contracts very relevant on the basis of factors other than dollar value, the agency has provided no support for that rationale. Because the record provides no basis on which to conclude that the agency reasonably found that the awardee's contracts were very relevant, it is unclear that the agency reasonably rated the awardee's proposal as substantial confidence under the past performance factor.⁹

⁹ The protester also challenges the evaluation of its own proposal under the past performance factor, arguing that the agency found two of the protester's contracts to be somewhat relevant based solely on the fact that performance was not at a military health facility. Comments at 25-26. The agency asserts that it reasonably found these
(continued...)

Notwithstanding these flaws in the evaluation of the awardee's past performance, the record here does not support a conclusion that the protester was prejudiced. Competitive prejudice is an essential element of a viable protest; where a protester fails to demonstrate that, but for the agency's actions, it would have a substantial chance of receiving award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. Smartronix, Inc.; ManTech Advanced Sys. Int'l, Inc., B-411970.9 et al., Dec. 9, 2016, 2016 CPD ¶ 362 at 10.

Here, even assuming that 22nd Century's prior performance contracts should have received a rating of relevant, rather than very relevant, and assuming that a rating of relevant should have translated to a satisfactory confidence rating, rather than a substantial confidence rating--a conclusion we do not reach here--22nd Century's proposal still remains higher-rated than the protester's under both the management approach and technical capability factors, and significantly lower in evaluated price than the protester's. In these circumstances, we fail to see a reasonable possibility that the protester's proposal would have been selected for award.

The protest is denied.

Thomas H. Armstrong
General Counsel

(...continued)

two performance examples to be somewhat relevant, because performance was for the National Highway Traffic Safety Administration, and for the Center for Food Safety and Applied Nutrition. Supp. COS at 17. Under the terms of this RFP, which placed particular importance on experience in Military Health Systems, we think that the agency's assessment was reasonable.