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Decision

Matter of: STAcqMe LLC

File: B-417128

Date: February 25, 2019

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J. Bradley Reaves, Esq., and Beth C. McMahon, Esq., ReavesColey, PLLC, for Crew Training International, Inc., the intervenor.

Colonel C. Taylor Smith, Alexis J. Bernstein, Esq., Captain Jacquelyn C. Fiorello, and Kevin P. Stiens, Esq., Department of the Air Force, for the agency.

Evan C. Williams, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of awardee's proposal under the past performance evaluation factor is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's stated evaluation criteria when information requirements provided in the solicitation's proposal preparation instructions are not evaluation criteria and do not establish minimum evaluation standards.

DECISION

STAcqMe, LLC, a small business of Goodyear, Arizona, protests the award of a contract to Crew Training International, Inc. (CTI) under request for proposals (RFP) No. FA4890-8-R-0001, issued by the Department of the Air Force for contract aircrew training and courseware development (CAT/CWD) services.¹ STAcqMe challenges the agency's evaluation of CTI's proposal under the past performance factor.

We deny the protest.

¹ STAcqMe is a joint venture between AcqMe LLC and Sonoran Technology and Professional Services, LLC. Agency Report (AR), Tab 10, STAcqMe Technical Proposal, Executive Summary, at 12.

BACKGROUND

On February 8, 2018, the agency issued the RFP as a small business set-aside, pursuant to the procedures of Federal Acquisition Regulation parts 12 and 15, for CAT/CWD services to support the MQ-9 Reaper for the Department of the Air Force.² AR, Tab 4, RFP at 1, 151, 179; COS at 2-3. The RFP contemplated the award of a fixed-price contract, with a base year (including phase-in) and four 1-year option periods.³ RFP at 4-115, 151; AR, Tab 5, Performance Work Statement (PWS) at 3.

Under the PWS, the contractor is to provide all personnel, equipment, tools, materials, supervision, and all other items and services to perform and support MQ-9 CAT/CWD, to include instrument refresher course personnel in support of operations at multiple locations. PWS at 3; COS at 2. With respect to CAT, the PWS described various types of academic, training device, and live flying instruction that the contractor would be required to conduct. PWS at 3. For the CWD requirement, the PWS required contractor personnel to produce, update, and revise MQ-9 aircrew and operational support courseware to support academic and training device instruction, and flight phases of the training system covered under the contract. Id. at 6.

The RFP provided that award would be made using the tradeoff process to the offeror whose proposal offered the best value to the government, considering the following four evaluation factors, listed in descending order of importance: (1) technical capability; (2) risk; (3) past performance; and (4) price. RFP at 179-180. The technical capability factor was comprised of the following three subfactors: (A) manpower workload analysis, training workload management plan, and recruitment, training and retention plan; (B) organizational structure and roles, responsibilities and communications, transition plan, courseware personnel and instructor training and certification plan; and (C) learning management system and contractor furnished equipment.⁴ Id. at 180. The RFP further stated that “[t]he greater the equality of technical proposals the more important price becomes in selecting the best value for the Government.” Id.

As relevant to this protest, under the past performance factor, the RFP established that the agency would assign one of the following overall performance confidence ratings, based upon an evaluation of the offeror’s past performance data: substantial, satisfactory, neutral, limited, or no confidence. Id. at 184-186. Past performance was to be evaluated by examining a minimum of three and a maximum of six past performance

² The MQ-9 Reaper is an unmanned aerial vehicle that is remotely monitored or controlled by aircrew on the ground. Contracting Officer’s Statement (COS) at 2.

³ Citations to the RFP are to the conformed copy provided by the agency at Tab 4 of the agency’s report.

⁴ Subfactor (A) is significantly more important than subfactors (B) and (C). Id. at 180. Subfactors (B) and (C) are equally important. Id.

references determined by the agency to be the most recent and relevant to the instant requirement. Id. at 184.

The agency received multiple proposals prior to the March 13, 2018 closing date. AR, Tab 35, Source Selection Decision Document (SSDD), at 9. The source selection evaluation board (SSEB) evaluated the proposals and established a competitive range, which included STAcqMe and CTI. COS at 8. The agency entered into discussions with all of the competitive range offerors and requested final proposal revisions (FPRs). Id. The SSEB evaluated the FPRs submitted by STAcqMe and CTI as follows:

	STAcqMe	CTI
Technical Capability (Risk)		
Subfactor A	Good (Low Risk)	Good (Low Risk)
Subfactor B	Acceptable (Low Risk)	Acceptable (Low Risk)
Subfactor C	Acceptable (Low Risk)	Acceptable (Low Risk)
Past Performance Confidence	Substantial	Substantial
Total Overall Evaluated Price	\$265,085,880	\$241,310,854

AR, Tab 35, SSDD, at 10. The source selection authority (SSA) conducted a comparative analysis of the proposals, and concurred with the SSEB evaluation findings and recommendation for award. Id. at 10-21. Based upon an integrated assessment of all proposals, the SSA made award to CTI, finding that its proposal represented the best overall value to the government. Id. at 21.

On November 7, 2018, the agency notified STAcqMe that it was an unsuccessful offeror. The agency subsequently provided STAcqMe with a debriefing on November 14. This protest was filed with our Office on November 19.

DISCUSSION

STAcqMe challenges the agency's evaluation of CTI's proposal under the past performance factor. In this regard, STAcqMe argues that the agency violated the terms of the solicitation when it considered one of CTI's past performance references--a reference which STAcqMe asserts did not meet the minimum recency requirements of the solicitation. Specifically, STAcqMe alleges that CTI's performance on the past performance reference in question is not recent because less than 12 months of its performance occurred within the RFP's five-year recency period. Thus, STAcqMe contends that the agency's assignment of a substantial confidence past performance rating is unreasonable.⁵

⁵ In its protest, STAcqMe also alleged that the agency failed to treat offerors equally when performing the price evaluation. STAcqMe withdrew this protest ground. Protester's Comments at 14.

Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the agency's discretion. Richen Mgmt., LLC, B-409697, July 11, 2014, 2014 CPD ¶ 211 at 4. The evaluation of past performance, by its very nature, is subjective, and we will not substitute our judgment for reasonably based evaluation ratings; an offeror's disagreement with an agency's evaluation, by itself, does not demonstrate that those judgments are unreasonable. A-P-T Research, Inc., B-414825, B-414825.2, Sept. 27, 2017, 2017 CPD ¶ 337 at 4. In conducting a past performance evaluation, an agency has discretion to determine the scope of the offerors' performance histories to be considered, provided all proposals are evaluated on the same basis and consistent with the solicitation requirements. Guam Shipyard, B-311321, B-311321.2, June 9, 2008, 2008 CPD ¶ 124 at 3.

Here, under the past performance factor, the solicitation's evaluation criteria provided the following definition of recency:

Recency for this solicitation is defined as performance occurring within the last five (5) years from the date of issuance of the solicitation.

RFP at 184. The RFP's evaluation criteria further advised offerors that "[r]eferences for contracts with less than one (1) year performance will not be considered." Id. Thus, according to the agency, to be considered recent for purposes of its evaluation, a past performance reference must include: (1) some performance occurring during the five years preceding the issuance of the solicitation (i.e., between Feb. 8, 2013 and Feb. 8, 2018); and (2) at least 12 months of total performance. COS at 9-10.

CTI's proposal identified six past performance references to be considered under the past performance factor. AR, Tab 28, CTI Past Performance Proposal, at 6. At issue in this protest, CTI identified its past performance on contract No. FA4890-08-C-0006 in support of the MQ-1/9 CAT/CWD program (the "MQ-1/9 contract"). Id. at 6-7, 9-13. The MQ-1/9 contract is a predecessor contract to the effort contemplated by the RFP. COS at 2. CTI's performance on the MQ-1/9 contract began on October 1, 2008 and ended September 30, 2013. AR, Tab 28, CTI Past Performance Proposal, MQ-1/9 Contractor Performance Assessment Report, at 12.

During its evaluation, the SSEB found CTI's performance on the MQ-1/9 contract to meet the recency requirement and to be very relevant. AR, Tab 34, Final Past Performance Evaluation, at 30; COS at 12. Based upon a review of all of the performance references and records provided by CTI, the SSEB stated that it had a high expectation that the offeror will successfully perform the required effort and assigned CTI's proposal a performance confidence assessment of substantial confidence. AR, Tab 34, Final Past Performance Evaluation, at 30. The SSA concurred with the substantial confidence rating, noting the fact that CTI possesses past performance on a predecessor contract. AR, Tab 35, SSDD, at 16, 21. Based upon our review of the record, we find nothing unreasonable about the agency's evaluation.

At the core of STAcqMe's protest is its contention that the agency's interpretation of the solicitation's evaluation criteria is contrary to the plain language of the solicitation's definition of recency. In support of its argument, the protester cites the instructions to offerors section of the RFP which states: "Recency is defined as active contract performance (minimum of 12 months) during the five (5) years preceding the date of issuance of this solicitation. References for contracts with less than 12 months performance will not be considered." RFP at 160. According to the protester, this language requires a past performance reference to include at least 12 months of performance occurring during the five-years preceding the RFP issuance to be considered recent.

In response, the agency first contends that the past performance reference in question was recent under the definition provided by the evaluation criteria of the RFP, which the agency argues only required some performance to have occurred within the five-year recency period. In the alternative, the agency argues any conflict between the recency definition in the instructions section of the RFP and the recency definition in the evaluation section, constituted a patent ambiguity that was required to be challenged prior to the deadline for receipt of proposals.⁶

Our Office has previously found that information provided in a solicitation's instructions to offerors section is not the same as evaluation criteria detailed in a solicitation's evaluation section. See All Phase Env'tl, Inc., B-292919.2 et al., Feb. 4, 2004, 2004 CPD ¶ 62 at 4. In this regard, rather than establishing minimum evaluation standards, an RFP's instructions to offerors section generally provides guidance to assist offerors in preparing and organizing their proposals. Id. Accordingly, we find that the language within the solicitation's instructions section did not create a minimum recency requirement to be used by the agency in its past performance evaluation.

We also find reasonable the agency's evaluation of CTI's past performance reference, given the definition of recency as stated in the RFP's evaluation section. RFP at 184 ("Recency for this solicitation is defined as performance occurring within the last five (5) years from the date of issuance of the solicitation."). That is, we find nothing in the evaluation criteria's definition to require a minimum of 12 months active performance to have occurred during the five years preceding the issuance of the solicitation. Thus, based upon the plain language of RFP's evaluation criteria, the agency properly considered CTI's reference to its past performance on the MQ-1/9 contract because: (1) CTI's performance from Feb. 8, 2013 until September 30, 2013 occurred within the

⁶ The agency also argues that it was permitted to consider the past performance reference provided by CTI because the RFP stated that the agency "may confirm past and present performance data identified by offerors in the proposals, and may obtain additional performance data from other sources." RFP at 185. Because we deny the protest on the basis that the agency's interpretation of the RFP's definition of recency was reasonable, we need not reach this issue to resolve the protest.

five-year recency period; and (2) CTI's performance on this contract totaled more than 12 months.

In addition, we agree with agency that, to the extent that the differing definitions of recency create a conflict or ambiguity in the solicitation, any such ambiguity was patent and must have been protested prior to the closing time for receipt of proposals. 4 C.F.R. § 21.2 (a)(1); see e.g., AOC Connect, LLC, B-416658, B-416658.2, Nov. 8, 2018, 2018 CPD ¶ 384 at 6 (patent ambiguity exists where solicitation provisions appear inconsistent on their face); Glock, Inc., B-414401, June 5, 2017, 2017 CPD ¶ 180 at 14 (lack of clarity in solicitation created a patent ambiguity).

Here, we reject STAcqMe's argument that these two recency definitions can be read in harmony with each other. The solicitation purported to define "recency" in two different ways. Compare RFP at 160 ("Recency is defined as . . .") with RFP at 184 ("Recency for this solicitation is defined as . . ."). Assuming, for purposes of this discussion, that the recency definition in the instructions section could reasonably be read to require a minimum of 12 months performance to occur within the five-year recency period, this requirement is inconsistent with the definition of recency contained in the evaluation section. In this respect, the definition of recency in the evaluation section is less restrictive in that its plain language merely requires some performance to have occurred within the five-year recency period. Simply put, the RFP contained two definitions of recency, each establishing a different minimum standard which is not compatible with the other. Because the two definitions are inconsistent on their face, any post-award challenge to the proper recency standard is untimely.

Finally, STAcqMe argues that, at most, the two sections of the RFP defining recency may have created a latent ambiguity, which was not required to be protested prior to the closing time for receipt of proposals. Protester's Comments at 6 citing Colt Defense, LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. However, even assuming the RFP was latently ambiguous, we would find no basis to sustain the protest. Where a solicitation contains a latent ambiguity, prejudice is measured with respect to the agency's intended meaning of the ambiguous provision. Thus, we examine whether the offeror would have altered its proposal to its competitive advantage if it had an opportunity to respond to the intended meaning. CW Constr. Servs. & Materials, Inc., B-279724, July 15, 1998, 98-2 CPD ¶ 20 at 8-9. Under this standard, we find nothing in the record to support a finding that the protester was prejudiced. That is, had STAcqMe known that the terms of the solicitation did not require an offeror's past performance reference to have a minimum of 12 months during the five years preceding the issuance of the solicitation, there is no indication that it would have altered its proposal in any way. See Marine Terminals Corporation-East, Inc., B-410698.9, Aug. 4, 2016, 2016 CPD ¶ 212 at 10 (denying allegation of latent ambiguity where protester did not show it was prejudiced).

Related to STAcqMe's principal protest ground regarding the agency's alleged violation of the RFP, STAcqMe also argues that the agency erred by assigning CTI the same substantial confidence rating that STAcqMe received. However, this argument is

predicated on STAcqMe's allegation that the agency's interpretation of the RFP was unreasonable, and that the agency was therefore precluded from considering CTI's past performance on the MQ-1/9 contract. As discussed above, there is no merit in these contentions. Therefore, because the protester has not demonstrated that the agency's evaluation of CTI's past performance was unreasonable, we find no basis to sustain this protest ground.⁷

The protest is denied.

Thomas H. Armstrong
General Counsel

⁷ STAcqMe has presented arguments that are in addition to, or variations of, those discussed above. We have considered all of STAcqMe's assertions and find no basis to sustain the protest.