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Decision

Matter of: Segue Technologies, Inc.

File: B-415716.18

Date: March 21, 2019

Karlee S. Blank, Esq., and Edwin O. Childs, Jr., Esq., McGuireWoods LLP, for the protester.

Alexis J. Bernstein, Esq., and Lieutenant Colonel Ryan J. Lambrecht, Department of the Air Force, for the agency.

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DIGEST

Protest challenging the agency's evaluation of protester's proposal under the past performance evaluation factor is denied where the record shows that the evaluation was reasonable and consistent with the solicitation.

DECISION

Segue Technologies, Inc., a small business of Arlington, Virginia, protests the exclusion of its proposal from the competition by the Department of the Air Force under request for proposals (RFP) No. FA8771-17-R-1000 for information technology (IT) services.

We deny the protest.

BACKGROUND

The RFP, known as the Small Business Enterprise Application Solutions (SBEAS) solicitation, set aside for small businesses, was issued on September 28, 2017, pursuant to the procedures of Federal Acquisition Regulation (FAR) part 15, and contemplated the award of 40 multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contracts. Agency Report (AR), Tab 4, RFP at 162.¹ The scope of the SBEAS

¹ Citations to the RFP are to the conformed copy provided by the agency. AR, Tab 4, RFP.

RFP, as stated in the statement of objectives (SOO), included a “comprehensive suite of IT services and IT solutions to support IT systems and software development in a variety of environments and infrastructures.” Id. at 130. Additional IT services in the solicitation included, but were not limited to, “documentation, operations, deployment, cybersecurity, configuration management, training, commercial off-the-shelf (COTS) product management and utilization, technology refresh, data and information services, information display services and business analysis for IT programs.” Id. Proposals were to be evaluated based on the technical experience and past performance factors. Id. The past performance factor was comprised of the following three subfactors in descending order of importance: life-cycle software services, cybersecurity, and information technology business analysis.² Id. at 164. Award was to be made on a past performance tradeoff basis among technically acceptable offerors, using the three past performance subfactors. Id. at 162.

Section L of the solicitation instructed offerors that “[t]he proposal shall be clear, specific, and shall include sufficient detail for effective evaluation and for substantiating the validity of stated claims.” Id. at 142. Offerors were instructed to not simply rephrase or restate requirements, but to “provide [a] convincing rationale to address how the [o]fferor’s proposal meets these requirements.” Id. The RFP also instructed offerors to assume that the agency has no knowledge of the offeror’s facilities and experience, and would “base its evaluation of the information presented in the [o]fferor’s proposal.” Id. The solicitation provided that offerors should submit their proposals in four volumes: capability maturity model integration (CMMI) documentation, technical experience, past performance, and contract documentation. Id. at 145.

The RFP’s instructions also directed offerors to complete a cross-reference matrix, which was attached to the solicitation. Id. at 146, 179-183. The offeror’s cross-reference matrix was required to demonstrate “traceability” between the offeror’s contract references. An offeror’s cross-reference matrix was required to show “which contract references [were] used to satisfy each technical element and each past performance sub-factor.” Id. at 146.

As relevant to this protest, the past performance volume was to include the cross-reference matrix, described above, past performance narratives (PPNs) for each of up to six contract references, and contractor performance assessment reports or past performance questionnaires (PPQs). Id. at 155-156. The past performance narratives were to describe how the offeror’s past performance supported the following three past performance subfactors: life-cycle software services, cybersecurity, and information technology business analysis. Id. at 156-158.

² The solicitation stated that pursuant to “10 U.S.C. § 2305(a)(3)(C), as amended by Section 825 of the National Defense Authorization Act (NDAA) for Fiscal Year 2017, the Government will not evaluate cost or price for the IDIQ contract. Cost or price to the Government will be considered in conjunction with the issuance of a task or delivery order under any contract awarded hereunder.” RFP at 162.

The solicitation stated that the agency intended to evaluate proposals and make awards without discussions to the offerors deemed responsible, and whose proposals conformed to the solicitation's requirements and were judged, based on the evaluation factors, to represent the best value to the government.³ Id. at 163.

Section M of the solicitation set up a tiered evaluation process. Id. at 163-164. The first step of the evaluation was a CMMI appraisal, which required offerors to be certified at level 2 in CMMI.⁴ Id. If an offeror passed the CMMI appraisal as level 2 certified, the agency would then evaluate an offeror's technical experience (factor 1) using the self-scoring worksheet and technical narratives provided by the offeror.⁵ Id. at 164.

In the event that technical experience was evaluated as acceptable, then the agency would evaluate the offeror's past performance for recency, relevancy and quality.⁶ Id. at 172. The agency would first review the accompanying PPNs for recency. Next, the agency would use the PPNs to evaluate relevancy. Id. As relevant to this protest, the RFP stated that:

[T]he Government will evaluate all recent PPNs to determine the relevancy of the Offeror's past performance contract reference as it relates to each sub-factor's criteria set forth below. The Government's relevancy assessment of the PPNs will utilize the applicable SOO sections identified below and the Definition of Terms (Section J, Attachment 7). The Government may also consider the National Institute of Standards and Technology (NIST) Special Publications 800-37, 800-53, 800-53A Rev 4,

³ The agency's estimated value for the SBEAS contract is a maximum of \$13.4 billion over the possible ten year ordering period of the contract. Combined Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 4.

⁴ CMMI is a process level improvement training and appraisal program that is administered by the CMMI Institute.

⁵ The solicitation provided that the technical experience factor would receive an adjectival rating of acceptable or unacceptable. RFP at 164-165.

⁶ The RFP provided the following regarding the past performance sub-factor criteria:

Offerors shall utilize the applicable SOO sections, Definitions of Terms (Section J, Attachment 7) and the Risk Management Framework (RMF) and DoD [Department of Defense] Information Assurance Certification and Accreditation Process (DIACAP) standards to help form a better understanding of the Government's use of specific technical terms and requirements.

RFP at 156.

Committee on National Security Systems Instructions (CNSSI) 1253 and DoD 8510.01.

RFP at 172. Each past performance subfactor would receive a relevancy rating of very relevant, relevant, somewhat relevant or not relevant depending on whether the offeror demonstrated past performance regarding certain SOO sections identified for each past performance subfactor. RFP at 176.

The agency would then assess “all past performance information collected” and assign a performance quality rating of acceptable or unacceptable for each subfactor. Id. at 176-177. The solicitation provided that in making its quality assessment the agency would review the PPQs and/or contractor performance assessment reports (CPARs) it had received, “as well as other relevant CPAR[s] available to the Government.” Id. at 173.

These ratings would then be rolled up into a performance confidence assessment rating for each past performance subfactor of substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. Id. at 177. The RFP provided that each offeror must receive a confidence rating of “satisfactory or higher” for each past performance subfactor in order to be eligible for award.⁷ Id. at 164.

Segue timely submitted its proposal in response to the solicitation. On November 29, 2018, the agency notified Segue that its proposal received an acceptable rating under the technical experience factor. AR, Tab 14, Segue Notification Memorandum at 1. Regarding past performance, the agency’s notification to Segue indicated that the firm received performance confidence assessment ratings of limited confidence for the life-cycle software services subfactor, and neutral confidence for the cybersecurity and information technology business analysis subfactors. Id. at 2. The agency noted that the solicitation provided that the “Government will not award to any offeror that receives a Past Performance Confidence Rating below Satisfactory for any of the Past Performance sub-factors.” Id. citing RFP at 226. Because Segue received performance confidence assessment ratings below satisfactory, as defined by the RFP, for each of the past performance subfactors, the agency determined that Segue was ineligible for award. Id. Following a written debriefing on December 4, Segue filed this protest on December 14, with our Office.

⁷ As a general matter, a neutral rating is not considered to be lower than a satisfactory rating. However, according to the terms of the solicitation here, a past performance confidence rating of neutral is considered lower than satisfactory. RFP at 164. We note that no offeror challenged the terms of the solicitation prior to the closing date of the solicitation.

DISCUSSION

Segue protests the agency's exclusion of its proposal from the competition, alleging that the agency failed to properly evaluate its proposal under each of the past performance subfactors. Specifically, the protester contends that the agency "ignored substantial details corroborating Segue's exemplary record of past performance," when it was scoring its six PPNs. Protest at 45. Segue contests the agency's evaluation of six of the fourteen sub-elements of the life-cycle subfactor, four of the six requirements of the cybersecurity subfactor and both of the requirements of the information technology business analysis subfactor.⁸ Id. at 13-50.

While Segue protests the agency's evaluation of its proposal under each of the past performance subfactors, the RFP provided that a rating below satisfactory in any one of the past performance subfactors would render Segue's proposal ineligible for award. Therefore, for the reasons discussed below, we need only address the agency's evaluation of Segue's proposal with regard to the information technology business analysis subfactor.

Information Technology Business Analysis Subfactor

The information technology business analysis subfactor instructed offerors to describe its past performance in two areas: IT business analysis and functional business area expertise (FBAE), and service desk, field and technical support (SOO section 3.2.3). RFP at 175. As part of addressing the area of service desk, field and technical support, offerors were required to demonstrate past performance in each of the following five elements: access management, event management, incident management, problem management, and request fulfillment. Id.

In order to receive a rating of very relevant under the information technology business analysis subfactor, offerors were required to demonstrate past performance in at least two functional business areas of expertise and in all five of the service desk field and technical support areas listed in SOO section 3.2.3. Id. at 175. To receive a rating of relevant, offerors were required to demonstrate past performance with one functional business area of expertise and all five of the service desk field and technical support areas listed in SOO section 3.2.3; to receive a somewhat relevant rating, offerors were required to demonstrate past performance in one functional business area of expertise or all five of the service desk field and technical support areas listed in SOO section 3.2.3; a not relevant rating was for offerors who failed to demonstrate past performance in at least one functional business area of expertise or all five of the service desk field and technical support areas listed in SOO section 3.2.3. Id.

⁸ While we do not address all of Segue's arguments, we have considered them all and find none provides a basis to sustain the protest.

As stated above, an offeror's past performance was evaluated for recency, relevance and quality. Id. at 177. The RFP provided that in order to receive a rating of satisfactory confidence under this subfactor, an offeror's past performance must be evaluated as recent and relevant with acceptable quality.⁹ Id. at 178.

The agency evaluated Segue's past performance narratives and determined that its proposal failed to demonstrate past performance providing FBAE for at least one functional business area, and failed to demonstrate the offeror's past performance in event management service desk services, as defined in the RFP's definition of terms. The agency assigned Segue's proposal a relevancy rating of not relevant, along with a confidence assessment rating of neutral confidence. AR, Tab 13, Agency Evaluation of Segue's Proposal at 47.

Segue first challenges the agency's determination that its proposal did not demonstrate event management with regard to the service desk field and technical support areas listed in SOO section 3.2.3. Segue argues that the agency "unreasonably ignored" its demonstrated experience providing proactive and reactive event management services. Protest at 46. The protester contends that "the plain language" throughout its PPNs used to describe Segue's past performance providing vulnerability testing for life-cycle management was sufficient to conclude that Segue had relevant past performance providing proactive and reactive event management. Comments at 24. For example, Segue argues that its help desk statistics in its PPNs, demonstrated its experience with event management because those statistics, "demonstrated its work with 'identifying and prioritizing all events that occur throughout the IT infrastructure and establish the appropriate response to those events . . . to provide information and corrective actions for these events.'" Protest at 45-46.

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. Kiewit Infrastructure West Co., B-415421, B-415421.2, Dec. 28, 2017, 2018 CPD ¶ 55 at 8. A protester's disagreement with a procuring agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. WingGate Travel, Inc., B-412921, July 1, 2016, 2016 CPD ¶ 179 at 4-5. Moreover, it is an offeror's responsibility to submit an adequately written proposal; this includes adequate information relating to the offeror's past performance. Wolf Creek Federal Servs., Inc., B-409187 et al., Feb. 6, 2014, 2014 CPD ¶ 61 at 8. An offeror failing to submit an adequately written proposal runs the risk that its proposal will be evaluated unfavorably. Id.

The RFP defined event management as follows:

⁹ Past performance quality was rated as acceptable or unacceptable. Id. at 177. A rating of acceptable meant that the agency evaluated and rated the offeror's PPQs and/or CPARs as exceptional, very good, or satisfactory. Id.

The process of identifying and prioritizing all events that occur throughout the IT infrastructure and establish the appropriate response to those events. Event Management monitors, filters, and notifies of actions and occurrences that have an effect on the services provided. This process is proactive and reactive. Proactively, Operations is notified of events that may cause service degradation and outages enabling operations to take steps necessary to avert any service level agreement (SLA) breach. Reactively, Event Management interfaces with Operations, Incident, Problem and Change Management to provide information and corrective actions for those events.

RFP at 215. The agency's evaluation of Segue's past performance proposal found that Segue failed to demonstrate past performance providing event management, as that term is defined in the solicitation. AR, Tab 13, Agency Evaluation of Segue's Proposal at 44-45. In this regard, the agency determined that Segue failed to demonstrate past performance in proactive and reactive event management services. Id. at 42-46.

Regarding PPN 1, the agency concluded that while Segue's proposal rephrased part of the solicitation's definition of event management, it failed to demonstrate the offeror's past performance of either the proactive or reactive portion of event management. Id. at 44. Regarding PPN 3, the agency provided that the statement the "Segue Help Desk has an established set of [DELETED] and other helpful hints and instructions to provide the user swift resolution to many issues," may be an example of the event management interfacing with problem management, but found that as there was no further detail to support this assumption; the proposal was not clear and did not include sufficient detail for an effective evaluation of the offeror's past performance with IT service desk event management. Id. at 45 citing AR, Tab 5, Segue's Past Performance Vol. III at 18.

Based on our review of the record, we find that the agency reasonably determined that Segue failed to demonstrate past performance in the event management area of service desk, field and technical support, which encompassed proactive and reactive event management. Regarding Segue's argument that the inclusion of its help desk statistics in its PPNs demonstrated event management, the agency concluded that this information failed to show that Segue had demonstrated past performance in event management because these help desk statistics did not describe a process of identifying, prioritizing and processing events, as is required by the solicitation. COS/MOL at 63. We find reasonable the agency's determination that Segue failed to include sufficient information in its PPNs for the agency to conclude that it had demonstrated past performance in both proactive and reactive event management.¹⁰

¹⁰ Segue for the first time in its comments on the agency report argues that other sections of PPNs 1 and 3 contained language demonstrating its performance in proactive event management. Comments at 24-25 citing AR, Tab 5, Segue's Past Performance Vol. III at 9. Where a protester initially files a timely protest, and later supplements it with new grounds, the later-raised allegations must independently satisfy our timeliness requirements, since our Regulations do not contemplate the piecemeal
(continued...)

Segue next argues that the agency was required to consult Segue's CPARs to augment the relevancy evaluation of its past performance narratives. The protester contends that the RFP did not permit the agency to disregard CPARs evaluations when evaluating an offeror's past performance because the solicitation allowed the agency to consider all sources of past performance information. Comments at 5. Segue further contends that the agency, in Questions and Answers (Q&A), "explicitly informed offerors that it *would* use PPQs/CPAR[s] to validate an offeror's claims of relevant past performance." Comments at 5 (italics in original). Specifically, the protester points to Q&A No. 113, which included the following exchange:

We assume that the project summary in the PPQ¹¹ must include all factors and sub-factors that the offeror is claiming in its Past Performance Narrative. Is this assumption correct? If this is not the case, offerors could claim credit for experience for past performance sub-factors in the Past Performance Narrative and the Government would have no validation from the PPQ that this would had actually been performed.

AR, Tab 3, RFP Q&A at 7. In response, the agency answered, "[y]es, this is correct." Id.

(...continued)

presentation or development of protest issues. This includes the identification of "examples" of flaws in the agency's evaluation. QualMed, Inc., B-257184.2, Jan. 27, 1995, 95-1 CPD ¶ 94 at 12-13. To the extent that Segue raised what amount to a secondary-new-aspect of its challenge to the agency's evaluation of its proposal regarding event management, we find that these arguments are a piecemeal presentation of Segue's arguments, and are thus, untimely. Constructure-Trison JV, LLC, B-416741.2, Nov. 21, 2018, 2018 CPD ¶ 397 at 4 n.2; Vigor Shipyards, Inc., B-409635, June 5, 2014, 2014 CPD ¶ 170 at 5. Segue was notified in its debriefing about the information from its PPNs the agency considered in its evaluation. AR, Tab 15, Segue Debriefing Charts at 53-56. To the extent that Segue believed that other specific portions of its PPNs demonstrated past performance in event management, the protester should have included this information in its protest. Interactive Tech. Solutions, LLC, B-413665.2, B-413665.3, Mar. 1, 2017, 2017 CPD ¶ 82 at 7-8 (dismissing as untimely allegation that proposal warranted additional strengths where agency disclosed lack of assigned strengths in debriefing). In any event, we note that while the protester's comments cite to the additional language in PPNs 1 and 3, as demonstrating that it provided event management, it does not explain how this particular language demonstrates its past performance in event management. Comments at 24-25.

¹¹ According to the terms of the RFP, offerors were required to submit either a PPQ or a CPAR evaluation for each past performance reference used in its proposal.

The agency responds that it was not required to use CPARs as part of the relevancy evaluation because the RFP specifically stated that the agency would evaluate “all recent PPNs” to determine relevancy. RFP at 172. The solicitation provided that a subfactor’s relevancy rating would be determined by the number of sub-elements that reflect the required evaluation criteria in the PPNs provided in the proposal. Id. at 175. The agency notes that the RFP specifically stated that CPARs would be evaluated to “determine the overall quality of the Offeror’s Past Performance as it relates to each sub-factor.” Id. at 173.

Under our Bid Protest Regulations, protests based upon a conflict or ambiguity in the solicitation which is apparent prior to the time set for receipt of initial proposals must be filed prior to that time. 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). Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Armorworks Enters, LLC, B-400394, B-400394.2, Sept. 23, 2008, 2008 CPD ¶ 176 at 7; Peacock, Myers & Adams, B-279327, Mar. 24, 1998, 98-1 CPD ¶ 94 at 3-4. Such a rule promotes fundamental fairness in the competitive process by preventing an offeror from taking advantage of the government as well as other offerors, by waiting silently only to spring forward with an alleged defect in an effort to restart the procurement process, potentially armed with increased knowledge of its competitors’ position or information. Blue & Gold Fleet, L.P. v. United States, 492 F.3d 1308, 1313-1314 (Fed. Cir. 2007). It also promotes efficiency by ensuring that concerns regarding a solicitation are raised before contractor and government resources are expended in pursuing and awarding the contract, thus avoiding costly and unproductive litigation after the fact. Id.

Here, as explained above, the solicitation stated that the CPARs would be evaluated to “determine the overall quality of the [o]fferor’s [p]ast [p]erformance as it relates to each sub-factor.” RFP at 173. If the protester believed that the agency in Q&A No. 113 stated an intent also to use CPARs to validate an offeror’s claims of relevant past performance, then in accordance with our Bid Protest Regulations, Segue was required to protest this apparent conflict in the terms of the solicitation before the receipt of proposals. CORMAC Corp., B-416160 et al., June 26, 2018, 2018 CPD ¶ 231 n.10 (where an agency’s Q&A response creates a direct conflict with the terms of the solicitation, an offeror may not simply make unilateral assumptions regarding the meaning of patently ambiguous terms in the solicitation and then expect relief).

We dismiss as untimely the portion of this protest regarding the impact of the Q&A on the evaluation criteria. In addition, our Office finds that the agency reasonably evaluated Segue’s proposal in accordance with the solicitation criteria which clearly stated that the agency would evaluate PPNs for relevancy, and evaluate CPARs and PPQs to assess the quality rating. While the solicitation may have allowed the agency to consider information not found in an offeror’s proposal, it did not require the agency to do so.

As stated above, an offeror is responsible for demonstrating affirmatively the merits of its proposal and risks rejection of its proposal if it fails to do so. Intelligent Decisions, Inc., et al., B-409686 et al., July 15, 2014, 2014 CPD ¶ 213 at 8. The solicitation specifically required that offerors demonstrate both proactive and reactive event management with “sufficient detail for effective evaluation and for substantiating the validity of stated claims.” RFP at 142. The agency’s evaluation of Segue’s proposal found that these sections lacked the detail that the solicitation required. While Segue contests the agency’s evaluation in this regard, we find its arguments amount to disagreement with the agency’s evaluation which, without more, is insufficient to establish that the evaluation was unreasonable. We therefore find reasonable the agency’s assessment that Segue’s cited PPNs failed to demonstrate event management.

The RFP provided that to receive a rating of relevant the offeror must have demonstrated past performance in one functional business area of expertise and all five areas of service desk, field and technical support described in SOO section 3.2.3. RFP at 176. Because we determined that the agency reasonably determined that Segue failed to demonstrate past performance in all five areas of service desk, field and technical support described in SOO section 3.2.3, we need not address the agency’s evaluation of Segue’s demonstrated performance of one functional business area of expertise. By failing to demonstrate past performance in all five areas of service desk, field and technical support, Segue cannot achieve a relevant rating for this past performance sub-factor, which is necessary for a satisfactory performance confidence assessment rating.

Given our conclusion that the agency reasonably evaluated Segue’s proposal under the information technology business analysis subfactor as providing neutral confidence, which according to the terms of the solicitation was considered lower than satisfactory, and given that a performance confidence rating lower than satisfactory in any subfactor rendered the proposal ineligible for award, we find that the agency reasonably concluded that Segue’s proposal was ineligible for award. As a result, Segue is not an interested party to pursue its remaining challenges regarding the evaluation of its proposal. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1).

The protest is denied.

Thomas H. Armstrong
General Counsel