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Decision

Matter of: Universal Protection Service, LP dba Allied Universal Security Services

File: B-417376.2; B-417376.3

Date: June 20, 2019

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DIGEST

1. Protest that the agency improperly evaluated past performance by crediting the awardee with the past performance of its corporate affiliate, which served as the incumbent contractor, is denied where the awardee's responses to discussions showed that the affiliate's resources would be meaningfully involved in performance by the awardee, the discussions held with both offerors were fair, and the evaluation was reasonable.
2. Protest challenging a source selection decision as unreasonable is denied where the source selection authority documented consideration of the evaluation record and the determination that the awardee's advantages over the protester's proposal were sufficient to justify incurring the awardee's higher price.

DECISION

Universal Protection Service, LP, of Santa Ana, California, doing business as Allied Universal Security Services (Allied), protests the award of a contract to Triple Canopy Inc., of Reston, Virginia, under request for proposals (RFP) No. 70RFP418RE500005, issued by the Department of Homeland Security (DHS), Federal Protective Service (FPS), for commercial protective security officer (PSO) services throughout the State of Michigan. Allied argues that FPS misevaluated Triple Canopy's past performance, conducted flawed discussions, and made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

The RFP, issued on April 17, 2018, sought proposals to provide services under a fixed-price and cost-reimbursement contract for a base year and four option years, with up to a 6-month extension-of-services option. The contract was to be awarded to the offeror whose proposal provided the best value as evaluated under three factors: relevant past performance, management approach, and price. RFP at 42. The RFP directed offerors to provide specific responses to four elements related to management approach: quality assurance, transition, staffing (including a staffing plan and a relief plan), and, where applicable, mentor and protégé roles for participants in the DHS mentor-protégé program. Id. at 47-51. The relevant past performance factor was more important than the management approach factor and, when combined, those factors were more important than price. Id. at 42.

The relevant past performance factor evaluation was to assess contracts performed within the preceding three years based on the scope, magnitude, and complexity of the contracts individually or in the aggregate, whichever the agency decided. Id. at 45-46. Each offeror could submit up to three past performance references, but for offerors that proposed a teaming arrangement, the RFP permitted the submission of three additional references for partners and subcontractors. Id. In evaluating past performance, the RFP stated that FPS would “consider the quality of the [c]ontractor’s relevant past performance.” Id. at 46.

FPS received proposals from seven offerors, including Allied and Triple Canopy. Agency Report (AR), Tab 13, Pre-Negotiation Business Memorandum, at 3. After an initial evaluation, FPS established a competitive range of three offerors, including both Allied and Triple Canopy, and held discussions with each.

The initial discussion questions provided to Triple Canopy asked the firm to address concerns identified about its **[DELETED]**, which Triple Canopy addressed through revisions to its proposal. AR, Tab 14, Discussions with Triple Canopy, at 15 (Cover Letter to Proposal Revision, Oct. 11, 2018). A few months later, the agency initiated a second round of discussions, in which the contracting officer stated it was unclear whether Triple Canopy was proposing to use the same personnel as were performing the work for the incumbent contractor, Centerra Group. Id. at 1 (Email from Contracting Officer to Triple Canopy, Jan. 29, 2019). The contracting officer’s email noted that Triple Canopy had not provided Centerra’s past performance as the incumbent contractor, even though the proposal stated that the firms were corporate affiliates. Id. The contracting officer requested that Triple Canopy “describe how Centerra will have meaningful involvement” in performing the contract. Id.

In response, Triple Canopy stated that Constellis, had acquired Centerra in 2017 (which resulted in Triple Canopy and Centerra becoming corporate affiliates). Id. The response also stated that Constellis had used shared corporate resources to support Centerra’s performance, and would provide the same shared resources to support Triple Canopy’s performance. Id. at 4 (Email enclosure from Triple Canopy to Contracting Officer, Jan. 29, 2019). Triple Canopy then stated that “we do not

anticipate that Centerra will have meaningful involvement post-transition,” but that Triple Canopy would nevertheless “operate under the same management as Centerra” and added that “current FPS Michigan key personnel and support staff will seamlessly transition from Centerra to Triple [Canopy].” *Id.*

The contracting officer sent a follow-up email to Triple Canopy, stating that it was unclear whether “Triple Canopy fully understand[ed] what FPS mean[t] by ‘meaningful involvement’ of Centerra, and providing an excerpt describing GAO decisions on that issue. *Id.* at 6 (Email from Contracting Officer to Triple Canopy, Jan. 30, 2019). The contracting officer’s email also expressed concern that there “appear[ed] to be a disconnect” in Triple Canopy’s failure to list Centerra’s past performance in the proposal, and asked for more details about the transition of personnel from the incumbent contract to Triple Canopy. *Id.* at 7. Triple Canopy responded by explaining that it **[DELETED]** had decided not to cite the incumbent contract in its proposal **[DELETED]**. *Id.* at 5 (Email from Triple Canopy to Contracting Officer, Jan. 30, 2019). Nevertheless, Triple Canopy stated that based on the information provided in the contracting officer’s email, it agreed that there would be meaningful involvement by Centerra, and went on to list the positions from the incumbent workforce that would be reassigned from Centerra to Triple Canopy, among which were the contract manager and all supervisors. *Id.* at 9-10 (Email enclosure from Triple Canopy to Contracting Officer, Jan. 30, 2019).

In the first round of discussions with Allied, the contracting officer identified a concern about whether the proposed technical approach included **[DELETED]**. Allied responded with a revised proposal **[DELETED]**. AR, Tab 15, Discussions with Allied, at 1 (Discussions Letter from Contracting Officer to Allied, Oct. 5, 2018); *id.* at 3 (Email from Allied to Contracting Officer, Oct. 11, 2018). The agency asked follow-up questions about Allied’s staffing of **[DELETED]**. *Id.* at 39 (Email from Contracting Officer to Allied, Oct. 16, 2018). Allied responded with further revisions to its proposal addressing those issues. *Id.* at 38 (Email from Allied to Contracting Officer, Oct. 19, 2018). In response to the second round of discussions (which like Triple Canopy’s, were held in January 2019), Allied submitted a technical proposal supplement to specifically explain the basis on which it had provided past performance for a corporate affiliate, identified as FJC Security Services (FJC). *Id.* at 50 (Allied Proposal Supplement). The response explained Allied’s acquisition of FJC and stated that, since the acquisition, FJC had been integrated “within the [Allied] Government Services Division.” *Id.* Further, the response stated that Allied had focused on retaining FJC staff, and specifically keeping personnel who had been performing FPS PSO work in the same roles, and that FJC leadership personnel would function as the leadership and support team to oversee Allied’s performance of the RFP. *Id.* at 51.

Following two rounds of discussions, FPS announced that discussions were closed and invited the offerors to submit final proposal revisions (FPR). FPS prepared a technical evaluation report that summarized the evaluation of each firm’s FPR. For Triple Canopy, the evaluators determined that its responses to discussions showed that its affiliate, Centerra, would have meaningful involvement in Triple Canopy’s performance

through personnel who were performing the incumbent contract, and merited a highly acceptable rating. AR, Tab 16, Addendum to Technical Evaluation Report Based on Discussions & FPRs, at 3. For Allied, the evaluators determined that its responses to discussions confirmed that consideration of the past performance of its affiliate, FJC, was also appropriate based on the inclusion of FJC personnel to oversee Allied's performance of the RFP, and merited a rating of highly acceptable. Id. at 4-5. The evaluators compared the proposals of each offeror in the competitive range and established a technical ranking of Triple Canopy as first, Offeror A as second, and Allied as third. Id. at 5.

The source selection authority (SSA) reviewed the evaluation record and prepared a decision memorandum to document the business judgments and tradeoffs made in selecting the contractor. AR, Tab 18, Source Selection Decision Memorandum, at 1. The SSA identified the adjectival ratings, technical rankings, and prices as follows:

Offeror	Past Performance	Management Approach	Technical Ranking	Total Price
Triple Canopy	Highly Acceptable	Highly Acceptable	1	\$105.7 million
Offeror A	Highly Acceptable	Highly Acceptable	2	[not provided]
Allied	Highly Acceptable	Highly Acceptable	3	\$105.0 million

The SSA noted that Offeror A's price was higher than Triple Canopy's, but that Offeror A was ranked lower by the technical evaluators and the combination would not justify incurring Offeror A's higher price. Id. at 2. The SSA then proceeded to compare the merits of the Triple Canopy and Allied proposals in detail. Id. at 2-9.

The SSA determined that both offerors had relevant past performance, and that the consideration of Centerra's incumbent contract for Triple Canopy, and of FJC's contracts for Allied, was appropriate in each case based on the meaningful involvement of the affiliated company's personnel. Id. at 3-4. The SSA also judged both offerors' past performance as providing very little performance risk, but ultimately concluded that Triple Canopy's past performance had a "slight edge" through the more directly relevant performance of the incumbent contractor, making its past performance superior to Allied's. Id. at 4. The SSA then compared the evaluations of both firms' management approaches and concluded that Triple Canopy had an edge in terms of supervision, quality control, and transition, while the proposals were essentially of equal merit in terms of staffing and relief. Id. at 6-9. Finally, the SSA considered the price evaluation and noted that the price difference was 0.63 percent in favor of Allied, but that in a

tradeoff, the SSA's judgment supported selecting Triple Canopy's proposal at its higher price, due to its advantages in past performance and management approach. Id. at 9-10. After receiving notification of the award decision and a debriefing, Allied filed this protest.

DISCUSSION

Allied contends that FPS held unequal discussions by conducting multiple rounds of discussions to obtain information to support considering the past performance of the incumbent contractor while not providing equivalent discussions to Allied. It also contends that FPS erred in attributing the incumbent's past performance to Triple Canopy because the company did not include the incumbent's past performance information in its proposal, and because the proposal did not show that the incumbent would have a meaningful role in performance of the contract. Allied contends that the result was an unreasonable evaluation of Triple Canopy's past performance, which resulted in an unreasonable best-value tradeoff decision. We deny all grounds of protest because, as discussed below, our review of the record shows that FPS conducted discussions equally with both firms, had a reasonable basis for considering the past performance of the incumbent contractor in evaluating Triple Canopy's past performance, and made a reasonable source selection decision.

Discussions with Triple Canopy

Allied argues that FPS held unequal discussions when it conducted multiple rounds of discussions that, on one hand, permitted Triple Canopy to provide omitted information about the proposed roles of its affiliate's personnel in Triple Canopy's performance and, on the other hand, provided Allied no similar opportunity to improve its proposal. Protester's Comments & Supp. Protest at 8-9. Allied argues that the discussions provided to Triple Canopy guided it from its initial position (that its affiliate would have no meaningful involvement in performance) to the opposite position, but that FPS did not provide equivalent discussions to Allied. Id. at 8. Although Allied complains that FPS did conduct discussions with it about whether its own affiliate would have meaningful involvement in contract performance, the firm acknowledges that the meaningful involvement of its own affiliate was "never in question." Id.

FPS counters that its discussions with both firms were equal and meaningful, and were properly tailored to address the evaluation of each firm's proposal. Additionally, FPS argues that the content of the discussions held with both firms was proper and aimed at providing a basis for it to make appropriate evaluation judgments about the past performance of each firm's affiliate. In particular, FPS argues that Allied's response to discussions resolved any uncertainty about whether FJC Security Service, a subsidiary of Allied, would be meaningfully involved in Allied's performance. Supp. AR at 10. Allied's response explained that the subsidiary's leadership and support team had transitioned to analogous roles in an Allied division, including the personnel involved in

performance of FPS PSO work. AR, Tab 15, Discussions with Allied, at 50 (Technical Proposal Supp. at 2). As a result, FPS argues, its conduct of discussions with both offerors was appropriate. Supp. AR at 10-11.

Although discussions must provide offerors an equal opportunity to revise their proposals, the content and extent of discussions are matters within the discretion of the contracting officer and discussions with each offeror need not be identical; rather, a procuring agency should tailor its discussions to each offeror since the need for clarification or revision will vary with the proposals. AmerInd, Inc., B-253751, Oct. 19, 1993, 93-2 CPD ¶ 240 at 5-6. Conducting additional discussions relating to previously discussed issues with only one or a limited number of offerors is permissible where the agency has remaining concerns relating to those issues, but this does not mean that an agency may engage in what amounts to disparate treatment of the competing offerors. Where an agency conducts multiple rounds of discussions relating to the same issues with one offeror, it must afford other similarly situated offerors the same benefit of additional discussions. Front Line Apparel Group, B-295989, June 1, 2005, 2005 CPD ¶ 116 at 3-4. Ultimately, an agency must not engage in conduct that favors one offeror over another, Federal Acquisition Regulation (FAR) § 15.306(e)(1), and it must, at a minimum, discuss deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond. FAR §15.306(d)(3); HP Enter. Servs., LLC; Aon Nat'l Flood Servs., B-413967 *et al.*, Jan. 17, 2017, 2017 CPD ¶ 26 at 9.

As described above, our review of the contemporaneous record shows that FPS's discussions treated Allied and Triple Canopy equally, and that the discussions Allied received were meaningful and were tailored to its proposal and the results of the initial evaluation. Specifically, the discussions at issue for both firms sought information about whether their respective affiliates would have meaningful involvement in contract performance, such that evaluating the corresponding affiliate's past performance could be validated or rejected. Despite Allied's arguments, FPS was not required to ensure that discussions would have the same significance to the evaluation for all offerors, rather the agency properly tailored discussions to the unique aspects of each offeror's evaluation that required additional explanation or revision. Accordingly, we deny this ground of protest.

Past Performance Evaluation

Allied next challenges the evaluation of Triple Canopy's past performance, arguing that FPS improperly credited the awardee with the performance of Centerra, the incumbent contractor, which is an affiliate of Triple Canopy. Allied argues that the consideration of Centerra's past performance as the incumbent contractor was improper because the firm will not have meaningful involvement in Triple Canopy's performance of the contract at issue, which is confirmed by the fact that the incumbent contract was not listed in Triple Canopy's past performance references. In response, FPS argues that

the evaluation of Triple Canopy's past performance was reasonable, and that the agency properly considered the past performance of the incumbent contractor because its resources, particularly several key personnel, would continue to have roles in Triple Canopy's performance.

The evaluation of past performance, including an agency's determination of the relevance and scope of a firm's performance history to be considered, is a matter of agency discretion, which we will not find improper unless unreasonable, inconsistent with the solicitation criteria, or undocumented. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. Harris IT Servs. Corp., B-406067, Jan. 27, 2012, 2012 CPD ¶ 57 at 10. The past performance of an affiliated company may be attributed to an offeror where its proposal demonstrates that the resources of the affiliate will affect the performance of the offeror. Perini/Jones, Joint Venture, B-285906, Nov. 1, 2000, 2002 CPD ¶ 68 at 4. The relevant consideration is whether the resources of the affiliated company, particularly its workforce, management, facilities or other resources, will be provided or relied upon for contract performance, such that the affiliate will have meaningful involvement in contract performance. Core Tech Int'l Corp.--Costs, B-400047.2, Mar. 11, 2009, 2009 CPD ¶ 59 at 5.

The record supports FPS's decision to consider Centerra's past performance in the evaluation of Triple Canopy's proposal, and the conclusion that as a result, Triple Canopy's past performance provided a slight edge over Allied's. Although Allied argues that Triple Canopy's omission of the incumbent contract from its past performance submission should preclude FPS from considering it, we disagree. The omission of the incumbent contract did not prevent the agency from considering it regardless of whether the performance record was positive or negative, so long as the agency had a reasonable basis to attribute that performance to Triple Canopy.¹ The record shows that Triple Canopy's FPR, including its responses to discussions, provided a reasonable basis for FPS to conclude that resources of Centerra, including incumbent personnel in significant roles, would be involved in performance by Triple Canopy, and therefore Centerra's incumbent past performance could be considered.² The record provides no

¹ We also disagree with Allied's assertion that, because the terms of the RFP limited offerors from providing more than three past performance references for themselves, and three for team members, FPS was thereby precluded from considering other relevant past performance of which the agency was aware. The RFP expressly provided that FPS could obtain past performance information from other sources, RFP at 42, and more generally, an agency is not precluded from considering any relevant past performance information, regardless of its source. Fattani Offset Printers, B-415308, Nov. 20, 2017, 2017 CPD ¶ 350 at 8.

² In its comments on the agency report, Allied argues that the SSA's decision memorandum is undermined because it does not discuss specific aspects of Triple Canopy's past performance and because some of the firm's past performance was not adequately documented. Protester's Comments & Supp. Protest at 2-3. The agency's (continued...)

basis to question the evaluation of Triple Canopy's past performance as highly acceptable, or of the SSA's judgment that Triple Canopy's past performance was superior to Allied's as a result.

Best-Value Tradeoff Judgment

Finally, Allied argues that FPS lacked a rational basis for selecting Triple Canopy's higher-priced proposal over Allied's. Protest at 5-6. Allied argues that since the agency's evaluation of Allied's proposal identified no weaknesses or deficiencies, it is "simply unfathomable" that the SSA could justify paying the higher price offered by Triple Canopy. *Id.* at 6. Ultimately, Allied argues that it was fundamentally improper for the SSA to consider Centerra's past performance on the incumbent contract as an advantage for Triple Canopy over Allied. Protester's Comments & Supp. Protest at 7-8.

FPS counters that the record shows it reasonably determined that consideration of Centerra's past performance was proper, and provided a reasonable basis for the SSA to determine that Triple Canopy's past performance thereby provided an advantage over Allied's. Ultimately, the agency argues that the SSA reasonably found that Triple Canopy's advantages in both past performance and management approach justified incurring its higher price. Supp. AR at 12.

In a best-value tradeoff procurement, it is the function of the selection official to perform a price/technical tradeoff; that is, to determine whether one proposal's technical superiority is worth the higher price. In assessing a challenge to that source selection judgment, the extent to which one is traded off for the other is governed only by the test of rationality and consistency with the stated evaluation criteria. Savvee Consulting, Inc., B-408416.3, Mar. 5, 2014, 2014 CPD ¶ 92 at 7.

The record here provides ample support for the reasonableness of the source selection rationale. The source selection decision memorandum shows that the SSA compared the proposals from Triple Canopy and Allied under the evaluation factors and reasonably determined as an exercise of business judgment that the advantages identified for Triple Canopy, while individually slight, were sufficient to provide a benefit to FPS that would justify paying the additional price of selecting Triple Canopy's proposal for award. In short, our review shows that the evaluation was reasonable and

(...continued)

supplemental report explains that Triple Canopy's ongoing performance was judged to be of sufficient length and was adequately documented by the time of the final evaluation. Supp. AR at 3-4; Supp. SSA Statement at 2-3. In its supplemental comments, Allied does not meaningfully challenge the agency's response, and provided no basis to sustain those grounds of protest. See Bid Protest Regulations, 4 C.F.R. § 21.3(i)(3).

consistent with the evaluation criteria, which then provided a sound basis for the SSA's reasonable source selection decision.

The protest is denied.

Thomas H. Armstrong
General Counsel