



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Gulf Civilization General Trading & Contracting Company

File: B-417586

Date: August 23, 2019

Gabriel Grillo, for the protester.

Robin E. Walters, Esq., Defense Logistics Agency, for the agency.

Michael P. Grogan, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of awardee's quotation is denied where the agency's evaluation was reasonable and consistent with the terms of the solicitation.
2. Protest challenging agency's source selection decision is denied where agency reasonably determined that protester's higher-priced quotation was not worth the associated price premium and the agency's decision was appropriately documented.

DECISION

Gulf Civilization General Trading & Contracting Company (Gulf) of Al Salhiya, Kuwait, protests the award of a contract to Bulldozer Gulf General Trading & Contracting Company (Bulldozer), under request for quotations (RFQ) No. SP4510-19-Q-0004, issued by the Defense Logistics Agency (DLA) for excess property management at Camp Arifjan, Kuwait. The protester contends that the agency's evaluation of Bulldozer's past performance and price was flawed, and that DLA's best value decision was unreasonable and not properly documented.

We deny the protest.

BACKGROUND

The solicitation, issued on March 1, 2019, pursuant to the commercial items and simplified acquisition procedures contained in Federal Acquisition Regulation (FAR) parts 12 and 13, contemplated the award of a fixed-price contract with a six-month base period and two six-month option periods, for excess property management services at Camp Arifjan, Kuwait. Agency Report (AR), Tab 1, RFQ at 1, 3; Contracting Officer's

Statement and Memorandum of Law (COS/MOL) at 2. Specifically, the awardee would provide the requisite personnel for the receipt, storage, issuance, and demilitarization of Department of Defense excess material at Camp Arifjan. Id. at 3.

The solicitation advised that award would be made to the responsible vendor whose quotation demonstrated the best value to the agency, considering past performance and price. Id. at 15. Past performance was significantly more important than price. Id. As relevant to this protest, the RFQ advised that the agency would evaluate past performance based on the quotation submission requirements described in the RFQ, where the quality of a vendor's past performance would be used to determine the agency's confidence that the vendor would perform successfully on the contract. Id. at 14-15. The solicitation further provided that past performance would be rated on an adjectival scale and a vendor's failure "to provide evidence of relevant performance on contracts of a similar nature in terms of performance timeframes and complexities of services provided" would result in a finding that the vendor has no relevant past performance.¹ Id. Regarding price, the RFQ provided that a vendor's price would not be numerically scored to determine best value, but that price would be "fully evaluated using price analysis techniques." Id. at 15.

The agency received multiple quotations by the March 29 deadline, to include quotations from Gulf, the incumbent contractor, and Bulldozer. COS/MOL at 4. Consistent with the terms of the RFQ, the contracting officer, who was also the source selection authority, reviewed the five lowest-priced quotations, which included Bulldozer's and Gulf's quotations.² COS/MOL at 4; AR, Tab 6, Simplified Acquisition Award Documentation (SAAD), at 2-3; see RFQ at 15. The following is a summary of the final ratings of the quotations of Bulldozer and Gulf:

	Bulldozer	Gulf
Past Performance Rating	Satisfactory Confidence	Substantial Confidence
Price	\$672,477.30	\$863,238.00

AR, Tab 6, SAAD, at 2.

The evaluation record reflects that the agency assigned Bulldozer a satisfactory confidence rating based on two relevant past performance references. COS/MOL at 5-6; see AR, Tab 13, Bulldozer's Past Performance Evaluation at 1-2. In this regard, the agency determined that while Bulldozer's "combination of relevant past performance

¹ The RFQ did not provide information concerning what adjectival ratings DLA would use or how they would be applied.

² The RFQ advised that DLA may not evaluate a vendor's submitted past performance. RFQ at 15. Instead, the solicitation provided that the agency would evaluate the price of all quotations received, and would then evaluate past performance for those quotations whose price was determined by the agency to be most competitive. Id.

demonstrates Bulldozer has successfully performed on contracts similar to the solicited requirement,” Bulldozer’s past performance did not demonstrate “knowledge of [Reutilization, Transfer and Donation] codes, and has not elaborated on specific warehousing experience managing a large range of accountable property.” COS/MOL at 5-6; see AR, Tab 13, Bulldozer’s Past Performance Evaluation at 1-2. As a result, the agency determined that Bulldozer’s past performance warranted a satisfactory confidence rating. COS/MOL at 6.

The contacting officer determined that Bulldozer, the lowest-priced vendor, represented the best value to the agency. The agency found that while Gulf had the highest past performance rating among all vendors, its quotation was priced 24.84 percent higher than Bulldozer’s quotation. AR, Tab 6, SAAD at 3. Though he noted that past performance was significantly more important than price, the contracting officer concluded that one adjectival rating level difference between Gulf and Bulldozer in past performance was “not significant enough to justify paying a 24.84% price premium.” Id. Instead, the agency found that Bulldozer had “the optimum combination of past performance and price, and is the best value to the Government.” Id.

On April 17, the agency made award to Bulldozer. AR, Tab 2, Contract Award, at 1. That same day, the agency’s e-procurement system automatically posted the award announcement on the Federal Business Opportunities (FBO) website.³ The FBO award announcement did not include the solicitation number and was not otherwise linked to the original FBO solicitation posting. See Protest, attach. 3, FBO award notice. Additionally, the title of the award notice was changed from the solicitation’s title of “Excess Property Management for DLA Disposition Services Kuwait” to “S2--FY19 KWT EPM_Contract Labor CENT_013.” AR, Tab 4, FBO Solicitation Notice, at 1; Protest, attach. 3, FBO award notice. The name of the contracting activity, the name and contact information for the contracting officer, and the North American Industry Classification System (NAICS) code remained the same between the two FBO posts.

On May 9, the protester contacted the agency to inquire about whether an award decision had been made. COS/MOL at 7. The agency informed Gulf that it had awarded the contract and the agency provided a written response to the protester’s questions on that date. Id.; Protest, attach. 1, Email from Agency to Protester, May 9, 2019, 1:34 p.m.; Protest, attach. 2, Email from Agency to Protester, May 9, 2019, 5:30 p.m. Gulf filed this protest with our Office on May 17.

DISCUSSION

The protester contends that the agency’s evaluation of Bulldozer’s past performance was unreasonable because the awardee’s past performance references were not

³ The official public medium for providing notice of contracting actions by federal agencies is the FBO website, which has been designated as the government-wide point of entry for procurements valued over \$25,000. FAR § 2.101.

relevant to DLA's solicited requirements. Protest at 3-7; Comments at 4-6. The protester also argues that the awardee's price is unrealistically low and that the agency failed to conduct a price analysis of the awardee's quotation. Protest at 4-5; Comments at 11-13. Gulf additionally argues that the agency's best value determination was flawed because the weight given to past performance was inconsistent with the stated evaluation criteria, and because the agency's rationale for selecting Bulldozer was not properly documented. Protest at 4; Comments at 6-11. For the following reasons, we find no basis to sustain the protest.⁴

Timeliness

DLA requests that our Office dismiss Gulf's protest because it was not timely filed. COS/MOL at 8-11. The agency argues that the award announcement posted to the FBO website on April 17 provided Gulf with constructive notice of the award to Bulldozer. Id. While the agency concedes that its FBO posting did not reference the original solicitation, it contends that "[a]ny flaws in the FBO award posting were not so significant as to prevent a reasonable person in the protester's shoes from knowing the posted notice pertained to the matter in which it was interested." Id. at 10. In this regard, the agency posits that because the contracting officer's name and contact information, and the NAICS and classification codes were identical to the FBO posting for the solicitation, Gulf should be deemed as having constructive notice of the award.⁵ Moreover, concerning the change in the title of the procurement in the award notice described above, DLA argues that the agency "frequently communicated" with Gulf concerning prior excess property management contracts by referring to the agency's requirement as "Kuwait EPM." Id. at 11; see AR, Tab 5, Correspondence with Gulf. Accordingly, given that the award notice was posted on the FBO website on April 17, the agency argues that Gulf's May 17 protest is untimely, as it was filed more than 10 days after its bases of protest were known or should have been known. See 4 C.F.R. § 21.2(a)(2).

⁴ While we do not address every protest ground Gulf has raised, we have reviewed them all and find that none provides a basis to sustain the protest. For example, the protester argues that Bulldozer failed to secure host nation approvals, as required by the RFQ. Protest at 5-6; Comments at 13-14. However, the solicitation provides that the awardee must secure host nation approval for performance, and provide it to DLA, "after contract award." RFQ at 13-14. Accordingly, whether Bulldozer secures host nation approval after award is a matter of contract administration, which we will not review. 4 C.F.R. § 21.5(a); see ARI Phoenix, Inc., B-416878, Oct. 24, 2018, 2018 CPD ¶ 363 at 3.

⁵ The agency also provides that the location of the requirement was the same in both the solicitation and award notice. COS/MOL at 10. However, our review of the FBO award notice shows no location is listed.

The agency is correct that protesters are charged with constructive notice of the contents of procurement actions published on the FBO website. DBI Waste Sys., Inc., B-400687, B-400687.2, Jan. 12, 2009, 2009 CPD ¶ 15 at 2. However, based on the facts here, we cannot conclude that Gulf's protest is untimely. The agency's award notice, posted to FBO, did not include or otherwise link to the underlying solicitation. Moreover, the title of the award notice was sufficiently different from the title of the solicitation that vendors would not reasonably be able to determine that the two were linked.⁶ Because DLA's FBO award notice lacked certain critical information necessary to inform a reasonably diligent vendor of the agency's contract action, we are unwilling, in this case, to apply the usual presumption that vendors are on constructive notice of FBO postings. See Jess Bruner Fire Suppression, B-296533, Aug. 19, 2005, 2005 CPD ¶ 163, at 3-4 (in response to the agency's suggestion that the protester could find an FBO posting by searching the NAICS code, we noted that it "would be quite burdensome for a contractor to have to regularly search [by NAICS code] such a large database in order for the contractor to be assured that it remained aware of potential contracting opportunities."); see also TMI Management Sys., Inc., B-401530, Sept. 28, 2009, 2009 CPD ¶ 191 at 4-5 (sustaining a protest where the agency's misclassification of a procurement on the FBO website improperly deprived the protester of an opportunity to respond to the agency's solicitation). Since Gulf filed its protest within 10 days of receiving actual notice of the agency's award decision, we find the protest to be timely.

Bulldozer's Past Performance

The protester challenges the agency's evaluation of Bulldozer's past performance, arguing that Bulldozer's two past performance references are not sufficiently similar in terms of scope or complexity to the instant procurement to warrant a satisfactory confidence rating. Comments at 4-6. In this regard, concerning Bulldozer's first reference for its work as a subcontractor at a refinery, Gulf contends that Bulldozer merely "bought (picked up and paid for) scrap" but did not manage scrap operations. Id. at 4. Concerning Bulldozer's second reference for its work on a scrap sales contract for DLA, the protester argues that the "amount [of scrap], performance duration, and complexity of services are hardly relevant to the solicited requirement."⁷ Id. at 5. In

⁶ The record reflects that on four occasions over the past five years, the agency has corresponded with Gulf--regarding prior procurements for similar services--using the phrase "Kuwait EMP." AR, Tab 5, Correspondence with Gulf. In our view, this does not establish a course of conduct that would have put Gulf (or other firms) on notice that the FBO posting titled "S2--FY19 KWT EPM_Contract Labor CENT_013" was the award notice for the solicitation titled "Excess Property Management for DLA Disposition Services Kuwait." See Protest, attach. 3, FBO award notice; AR, Tab 4, FBO Solicitation Notice, at 1.

⁷ Gulf also provides that its records show that Bulldozer did not conduct scrap management, did not provide labor support, and that its work did not involve

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Gulf's view, neither of these references was sufficiently relevant to the solicited requirement, and therefore, the agency lacked a reasonable basis to assign Bulldozer's quotation a satisfactory confidence rating under the past performance factor. Id. at 6.

The agency argues that its evaluation of Bulldozer's past performance was reasonable and consistent with the terms of the solicitation. COS/MOL at 11-12. In this regard, the agency asserts that Bulldozer's first reference was deemed relevant because it involved "similar work including the management of scrap operations and providing unskilled and semi-skilled labor for the project." Id. at 12. For its second reference, the agency viewed this contract as "similar because it involved scrap management, the provision of labor support (although slightly smaller in scope than the instant requirement), demilitarization and removal of scrap property and required Bulldozer to obtain base access and comply with DLA policies and requirement." Id. Finding Bulldozer's references sufficiently similar and relevant, the agency had satisfactory confidence that Bulldozer would be able to perform the work. Id.

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of a vendor's performance history, is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. RELYANT Global, LLC, B-413741, Nov. 21, 2016, 2016 CPD ¶ 338 at 4. Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations. Id. A protester's disagreement with the agency's evaluation judgments concerning the merits of past performance does not establish that the evaluation was unreasonable. Id. at 5.

Under the terms of the RFQ, vendors were to "provide any current relevant information regarding the level of performance, in terms of delivery and quality achieved under either Government or commercial contracts for the same or similar services for performance in Kuwait within the last 5 years." RFQ at 14. The solicitation further provided that "[t]he description of work performed shall be in sufficient detail to explain how each reference relates to same or similar requirements of the instant solicitation in areas such as performance timeframes, performance in Kuwait, managing a similar size [third-country national] workforce, and complexities of services (to determine the relevancy of the work)." Id. Moreover, the agency would evaluate past performance based on the quotation submission requirements described in the RFQ. Id. at 15.

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demilitarization, as the agency has provided. Comments at 5. However, Gulf does not include any documents in the record to support its contentions, in this regard.

Based on our review of the record, we find no basis to object to the agency's evaluation.⁸ Bulldozer submitted two past performance references: one as a subcontractor on a scrap material and collection contract, and the other for managing scrap removal. The record reflects that the agency reasonably determined that the awardee's performance on these two contracts was relevant to the instant solicitation across a number of areas. Specifically, the record confirms that the agency found Bulldozer's references to be similar to this procurement based on their similar performance locations, dollar values, number of personnel, and labor categories. See AR, Tab 13, Bulldozer's Past Performance Evaluation at 1-2. To the extent the protester is arguing that these references are not relevant because they are not a one-to-one match with every aspect of the performance work statement, the RFQ did not require such a match. Instead, the RFQ simply required that a reference include the "same or similar requirements" of the RFQ in areas such as "performance timeframes, performance in Kuwait, managing a similar size [third-country national] workforce, and complexities of services. . . ." RFQ at 14. Given the record before us, we have no basis to find the agency's evaluation unreasonable.

Price Analysis

The protester further argues that Bulldozer's price is unrealistically low and that Bulldozer may not fully understand the contract requirements, or be able to satisfactorily perform them. Protest at 5. The protester contends that had the agency conducted a price analysis, DLA would have identified that Bulldozer's price was too low. Id. The agency argues that it properly found Bulldozer's price fair and reasonable, and that the RFQ did not allow for a price realism analysis. COS/MOL at 14-15.

Where a solicitation contemplates the award of a fixed-price contract, an agency may provide in the solicitation for the use of a price realism analysis for the purpose of measuring a vendor's understanding of the requirements or to assess price risk in its quotation. IBM Corp., B-299504, B-299504.2, June 4, 2007, 2008 CPD ¶ 64 at 10-11. In the absence of an express price realism provision, we will conclude that a solicitation contemplates a price realism evaluation only where the solicitation expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and the solicitation states that a quotation can be rejected for offering low prices. DynCorp Int'l LLC, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9. Absent a solicitation provision providing for a price realism evaluation, agencies are neither required nor permitted to conduct one in awarding a fixed-price

⁸ No protective order was issued in this matter because Gulf elected to proceed with its protest without counsel. A full version of the agency report was furnished to our Office, and a redacted version of the report was furnished to the protester. We have reviewed the entire record, including all of the agency's evaluation materials and the quotations submitted by the firms. Our discussion here is necessarily general, to avoid reference to proprietary or source selection sensitive information. Spacesaver Storage Sys., Inc., B-298881, Dec. 11, 2006, 2006 CPD ¶ 196 at 2 n.2.

contract. Id. Here, the RFQ does not include a requirement for a price realism analysis.⁹ Accordingly, we dismiss Gulf's argument that the agency failed to consider whether the awardee's price was too low because it fails to state a valid basis of protest.¹⁰ 4 C.F.R. § 21.1(c)(4), (f).

Best Value Determination

Finally, the protester challenges the agency's best value determination, arguing that the agency's decision was inconsistent with the RFQ's evaluation criteria. Protest at 4; Comments at 6-10. In this regard, because the solicitation established past performance as significantly more important than price, Gulf maintains that it should have received the award given that it was the highest-rated vendor under the past performance factor and the awardee's price advantage was, according to Gulf, "relatively small." Id. The protester further argues that the agency's decision was not adequately documented and did not explain why Gulf's quotation was not worth the added price premium. Comments at 10.

The agency argues that its best value determination was reasonable, in accordance with the solicitation, and properly documented. COS/MOL at 12-14. In this regard, DLA argues that the contracting officer "acknowledged that Gulf's proposal was more highly rated representing a higher degree of confidence (Substantial Confidence) than that of Bulldozer, who had a past performance rating of Satisfactory confidence, but that [the contracting officer] did not feel that paying the price premium of over \$190,000 or over 24% was warranted." Id. at 13. Moreover, the agency contends that the best value decision was properly documented in a manner consistent with FAR subpart 13.5, Simplified Procedures for Certain Commercial Items. Id. at 13-14.

Agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results; price/technical tradeoffs may be made, and the extent to which one is sacrificed for the other is governed by the

⁹ To extent the protester is arguing that the RFQ should have required a price realism analysis, such an argument is untimely. Gulf's allegation, in this regard, concerns an alleged impropriety apparent on the face of the solicitation that was required to be raised prior to the due date for the submission of quotations. See 4 C.F.R. § 21.2(a).

¹⁰ While the protester challenges multiple aspects of the agency's evaluation of price, our review of the record supports the agency's conclusion that it evaluated price in accordance with the terms of the RFQ. For example, Gulf contends that the agency unreasonably failed to consider the costs associated with awarding a contract to a non-incumbent. Protest at 4-5; Comments at 11-13. This argument is without merit. DLA's procurement is a fixed-price contract, not a cost contract, and the terms of the solicitation did not permit the agency to consider or adjust a vendor's evaluated price based on expected or potential costs to the government. This allegation is dismissed. 4 C.F.R. § 21.1(c)(4), (f).

test of rationality and consistency with the established factors. LCLC Inc/CfMRF, B-414357, May 22, 2017, 2017 CPD ¶ 153 at 6. An agency may properly select a lower-priced, lower-rated proposal if it reasonably decides that the price premium involved in selecting a higher-rated, higher-priced proposal is not justified. Id.

Here, the record shows that the contracting officer--who also evaluated vendors' past performance--considered the respective merits of the individual quotations in accordance with the RFQ criteria, and reasonably concluded that Bulldozer's quotation represented the best value to the agency. The contracting officer acknowledged that Gulf's quotation was rated highest among all vendors under the past performance factor. AR, Tab 6, SAAD at 3. Importantly, while noting that the awardee had "experience with providing labor support in the commercial sector, and in providing demilitarization and scrap removal" the contracting officer recognized the limitations of Bulldozer's past performance information. Specifically, the contracting officer found that Bulldozer "did not have experience with as extensive a variety of property" nor did it "demonstrate experience providing personnel who had experience managing property under DLA's reutilization, donation, and transfer policies." COS/MOL at 12. While the contracting officer acknowledged that "[p]ast performance [is] significantly more important than price" under the terms of RFQ, the agency concluded that the difference in past performance ratings between Gulf and Bulldozer was "not significant enough to justify paying a 24.84% price premium." COS/MOL at 13; AR, Tab 6, SAAD at 3. We have no basis to question the reasonableness of the agency's tradeoff decision.

We also find no merit to the protester's arguments that the agency failed to document its best value analysis and selection decision. Although the procedures for simplified acquisitions do not require detailed justifications supporting a best value determination, the FAR requires that the contracting officer evaluate proposals "on the basis established in the solicitation" and support "the award decision if other than price-related factors were considered in selecting the supplier." FAR §§ 13.106-2(a)(2), 13.106-3(b)(3)(ii). Moreover, an agency is required to include in the contract file "[a]n explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision." FAR § 13.501(b)(3). We note that in procurements conducted under simplified acquisition procedures for commercial items, limited documentation of a source selection is permissible, as long as the agency provides a sufficient record to show that the source selection was reasonable. See SKE Italy Srl, B-414884.3, Jan. 24, 2018, 2018 CPD ¶ 37 at 5; United Medevac Solutions, Inc., B-417032, B-417032.2: Jan 24, 2019, 2019 CPD ¶ 70 at 9 ("The simplified acquisition procedures of FAR part 13 require agencies to document award decisions contemporaneously, but do not require the same level of detailed justification supporting a best-value determination as in a FAR part 15 procurement.").

Here, as set forth above, the contracting officer recognized the evaluated benefits of Gulf's quotation under the stated evaluation criteria, but decided that the merit of Gulf's quotation did not justify paying a nearly 25 percent price premium. Our review of the record shows that the agency sufficiently documented its rationale; the protester's objections to the source selection decision reflect its disagreement with the agency's

selection decision, but do not demonstrate an unreasonable or otherwise improper award determination.¹¹

The protest is denied.

Thomas H. Armstrong
General Counsel

¹¹ To the extent the protester contends that this procurement was conducted pursuant to FAR part 15, rather than, as the RFQ stated, FAR parts 12 and 13, we disagree. For example, the protester alleges that, in practice, DLA established a competitive range in accordance with FAR § 15.306. Comments at 7. The record belies this assertion. To the extent the protester disagrees with the agency's review of only the five lowest-priced quotations, or with its use of evaluation factors, such arguments concern alleged improprieties with the express terms of the RFQ and are untimely raised here. See 4 C.F.R. § 21.2(a)(1).