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Decision

Matter of: DynCorp International, LLC

File: B-418742.2

Date: September 25, 2020

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DIGEST

1. Protest challenging the terms of a solicitation is denied, where the solicitation reasonably limits consideration of past performance references and subcontracting reports to those of entities that will meaningfully assist the offeror in performing the work.
 2. Protest that the solicitation’s method for assessing the relevance of past performance references is ambiguous is denied, where the agency provided clarification in a response to a question from industry, and this clarification resolved any ambiguity.
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DECISION

DynCorp International LLC, of McLean, Virginia, protests the terms of request for proposals (RFP) No. W52P1J-19-R-0081, which was issued as a task order solicitation to holders of the basic ordering agreement (BOA) for the Enhanced Army Global Logistics Enterprise (EAGLE) program, by the Department of the Army, Army Contracting Command – Rock Island for logistics support services at Fort Polk, Louisiana. DynCorp has multiple commercial and government entity (CAGE) codes, one of which is identified for the EAGLE BOA. The protester wishes to submit past performance references and subcontracting performance reports associated with CAGE codes that are not those identified for the EAGLE BOA. The protester contends that the solicitation’s provisions regarding how the agency will consider these past performance references and small business participation reports are unclear and unduly restrictive of competition. DynCorp also asserts that the solicitation is unclear as to how the relevance of past performance references, with regard to magnitude, will be assessed.

We deny the protest.

BACKGROUND

On April 7, 2020, the Army issued the solicitation to contractors holding BOAs under the EAGLE program.¹ RFP at 1-2.² The solicitation contemplates the award of a cost-plus-fixed-fee task order in accordance with Federal Acquisition Regulation subpart 9.1, with a period of performance of a 1-year base period and four 1-year option periods. *Id.* at 2.

The RFP establishes the following evaluation factors: technical, small business participation, past performance, and cost/price. *Id.* The solicitation provides for award to the responsible offeror with ratings of acceptable under the technical and small business participation factors, a rating of substantial confidence for the past performance factor,³ and the lowest fair and reasonable price. *Id.* at 100. There will not be tradeoffs between factors. *Id.*

As relevant to this protest, under the past performance factor, the agency “will assess the degree of confidence it has in the expectation that the [o]fferor⁴ will successfully complete the requirements [in accordance with] the contract terms based on the [o]fferor’s demonstrated record of recent and relevant performance.” *Id.* at 111. To make this assessment, the agency “will include in its past performance evaluation the Offeror and any proposed Subcontractor that is expected to perform 20% or more of the total value [. . .] for this effort” or that performs a “critical performance task.” *Id.* at 112.

¹ The solicitation is dated April 6, 2020, but according to the agency was released on April 7. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 2. The EAGLE program is used to provide logistics services at Army installations around the world. *Id.*

² Citations to the RFP are to the conformed copy of the solicitation at tab 61 of the agency report.

³ To the extent that no offeror receives a rating of substantial confidence under the past performance factor, the agency will perform a best-value tradeoff determination among offerors. RFP at 101.

⁴ For the past performance factor, an offeror is defined as the “BOA Holder Prime Contractor submitting a proposal for this task order RFP.” RFP at 68. The RFP otherwise defines an “offeror” as “the prime BOA Holder submitting a proposal under this RFP.” *Id.* at 61. DynCorp does not challenge the agency’s definition of an offeror as the BOA holder. Further, although the definition of an offeror differs slightly between the past performance factor and the remainder of the contract, no party argues that the difference was material. The DynCorp BOA holder has CAGE code 4KEZ7 and is located in McLean, Virginia. Protester Resp. to GAO Request for Information, Sept. 3, 2020, at 3; Agency Report (AR), Tab 60, DynCorp EAGLE BOA at 1.

In this regard, “any proposed subcontractor who will be performing any of those critical tasks will be considered in this past performance evaluation regardless of what percentage of the Offerors total estimated dollar value that subcontractor is performing.” *Id.* at 87. Also, the agency will confirm the subcontractor’s minimum participation or assignment to a critical performance task by reviewing the offeror’s teaming matrix. *Id.*

With respect to each past performance reference submitted, the offeror will enter “one name (as identified in SAM [system for award management]) for the contractor who performed the requirements of the contract number” and “one corresponding CAGE Code (as identified in SAM) for the contractor who performed the requirements of the contract number listed” *Id.* at 88. The solicitation also provides that “[p]ast performance for parent/sister companies or other corporate entities may be evaluated only if these companies or entities are listed as subcontractors on the Offerors Teaming Matrix [. . .] and are expected to perform 20% or more of the total value of column F in the Offerors Teaming Matrix.” *Id.* at 112. In addition, the agency will evaluate the past performance of any entity expected to perform a critical performance task. *Id.*

The past performance references will be evaluated for relevance along several metrics, of which two are relevant to this protest. First, the magnitude of effort and complexities of the references will be compared to the present requirement. *Id.* at 112-133. In addition, the average annual dollar value (AADV) of each reference will be compared to the Fort Polk historical AADV for each of three functional areas: maintenance, supply, and transportation.⁵ *Id.* at 113. Prior to the deadline for proposal submission, the Army answered an industry question about whether the agency intended to compare the past performance references against the current requirement or against the historical AADVs by functional area. AR, Tab 35, Questions & Answers at 3, line 31. The Army responded that “[t]he evaluators will compare the AADV of the reference to the AADV of the historicals along with the task performed to determine Magnitude and Complexity.” *Id.*

For the subcontracting participation factor, the solicitation imposes a similar relationship requirement, in that it provides for consideration of subcontracting information from offerors and their subcontractors.⁶ In this regard, offerors must submit “three Individual Subcontracting Reports (ISRs) for recent contracts that included a subcontracting plan.” RFP at 97. The agency will use ISRs to evaluate the offeror’s “achievement on each goal stated within the subcontracting plan as reported on each ISR.” *Id.* at 115. The agency may reject as unacceptable, and deem ineligible for award, a proposal that does

⁵ The AADV is defined as the total contract value divided by the number of months of performance, presuming the exercise of all options, multiplied by 12. RFP at 89. If the period of performance is less than 12 months, the AADV will be equal to the total contract value. *Id.*

⁶ The RFP states that the provisions in section L.5.5.2 apply to the small business participation factor evaluation. RFP at 114. The provisions in L.5.5.2 explain that the agency will consider the participation of the offeror and its subcontractors. *Id.* at 97.

not show that the offeror met or exceeded its small business goals for each recent reference, or provide a reasonable rationale for not meeting the goals.⁷ *Id.* at 116.

Proposals were due on June 25. AR, Tab 41, RFP amend. 0006 at 2. The protester filed this timely protest with our Office on June 19.

DISCUSSION

The majority of DynCorp's challenges to the solicitation terms are based on the tension between the solicitation's use of the terms offeror and subcontractor on the one hand, and DynCorp's status as an entity with multiple CAGE codes on the other, even though the EAGLE BOA identifies only one CAGE code in its award to DynCorp.⁸ In this context, DynCorp contends that the solicitation is unduly restrictive of competition and fails to provide adequate detail for the protester to intelligently respond to the solicitation's requirements for the past performance and subcontracting factors. Protest at 13-14, 18. The protester also claims that solicitation is unclear with regard to the method for assessing the relevance of the magnitude of past performance references. For the reasons below, we deny the protest.⁹

⁷ The small business participation requirement applies to large businesses only. RFP at 114. Small business offerors will be assigned an acceptable rating for small business participation. *Id.* DynCorp states that it is a large business. Protest at 19.

⁸ In our prior decisions, we have specifically noted that CAGE codes are assigned to discrete business entities for a variety of purposes (for example, facility clearances, pre-award surveys, and tracking the ownership of technical data) to dispositively establish the identity of a legal entity. *URS Group, Inc.*, B-402820, July 30, 2010, 2010 CPD ¶ 175 at 4; *Gear Wizzard, Inc.*, B-298993, Jan. 11, 2007, 2007 CPD ¶ 11 at 2; *National Found. Co.*, B-253369, Sept. 1, 1993, 93-2 CPD ¶ 143; see also *DynCorp Int'l, LLC*, B-418594, B-418594.2, June 23, 2020, 2020 CPD ¶ 221 at 2 n.4.

⁹ We have considered all of the protester's arguments and, although not all are discussed here, none provides a basis to sustain the protest. For example, DynCorp argues that the Army has previously accepted certain CAGE codes as representing the same company, DynCorp International LLC, and on this basis asserts that the agency must do so again here. Protester's Response, Sept. 9, exh. A, Corrected Decl. of Senior Vice President, Contracts & Procurement, DynCorp Int'l LLC at 2. As a preliminary matter, even presuming that the claim is accurate, this argument does not support the protester's position that the agency is prohibited from structuring its solicitation as it has done here. In this regard, an agency's practices or actions under one procurement do not bind its practices or actions on others. *Community Ed. Ctrs., Inc.*, B-418207, B-418207.2, Jan. 24, 2020, 2020 CPD ¶ 58 at 5 n.5. Instead, every procurement stands on its own. *Id.*

Whether Offerors Can Include Other CAGE Codes for the Same Entity

DynCorp asserts that the RFP lacks a method for offerors who were awarded the BOA under a single CAGE code to submit past performance references and ISRs for different CAGE codes that are still associated with the same legal entity as the BOA holder. Protest at 13-15; see *also* Comments at 4. DynCorp explains that in its particular situation, “[t]he CAGE codes and DUNS [data universal numbering system] numbers [it intends to submit as references] represent different facilities and certain contract vehicles within the same facility, which [DynCorp] utilizes in the performance of its contracts.” DynCorp Resp. to GAO Inquiry, Sept. 3, 2020. In this context, the protester argues that the solicitation is unduly restrictive and lacks sufficient detail for offerors with multiple CAGE codes to compete on an intelligent basis. Protest at 13-15. The protester asserts that, “as the RFP is currently drafted, [DynCorp] will be unfairly penalized for providing past performance references for itself that include different CAGE codes or DUNS numbers than apply to the BOA holder.” *Id.* at 14.

As a general rule, an agency must provide offerors with a sufficiently detailed solicitation that enables them to compete intelligently and on a relatively equal basis. *DocMagic, Inc.*, B-415702, B-415702.2, Feb. 16, 2018, 2018 CPD ¶ 96 at 3; *Verizon Bus. Network Servs., Inc.*, B-418331.3 *et al.*, July 10, 2020, 2020 CPD ¶ 235 at 11. An allegation that a solicitation is ambiguous or restrictive does not make it so. *DocMagic, supra*, at 4.

Here, the RFP provides that “[p]ast performance for parent/sister companies or other corporate entities may be evaluated only if these companies or entities are listed as subcontractors on the Offerors Teaming Matrix [. . .] and are expected to perform 20% or more of the total value of column F in the Offerors Teaming Matrix.” RFP at 112. In addition, “any subcontractor performing a critical performance task will receive a past performance evaluation.” *Id.* Offerors are to enter in the teaming matrix the entities that will be performing the work on the contract. *Id.* at 83. Specifically, “the Offeror shall provide the full company name, CAGE code, role of participant, functional area(s) to be performed . . . percent of participation . . . and indicate which participants will perform” the critical performance task. *Id.* Offerors are to complete this information for themselves “and proposed [s]ubcontractors.” *Id.*

As noted above, the RFP defines a subcontractor as “those who are expected to perform 20% or more of the Offeror’s total estimated dollar value as found in . . . the Offeror’s Teaming Matrix.” *Id.* at 87. Thus, we find that a reasonable reading of these provisions is that offerors can choose the entities that will work on the contract by identifying these entities by their CAGE codes on the teaming matrix, and that the past performance references and ISRs of those entities will be considered as long as the identified entity is performing at least 20 percent of the contract work.

In response to the protest, the Army confirms that “if DynCorp wants to use the past performance of other corporate entities, those other entities must be listed as a subcontractor performing 20% or more of the effort on DynCorp’s Teaming Matrix. So long as DynCorp follows this guidance, it would be able to use the past performance of

other corporate entities, as identified through different CAGE codes, in its proposal submission.” COS/MOL at 14-15. In addition, the Army confirmed that this reasoning applied to the ISRs as well. *Id.* at 36 (“DynCorp could . . . identify[] the other corporate entities as subcontractors on its [teaming matrix] as performing 20% or more of its total contract value. This would indicate to the Army that these other corporate entities will be meaningfully involved in contract performance, and thus, like with past performance, the other corporate entities ISR’s could be considered as part of the Small Business Participation evaluation.”) (internal citations omitted).

Both the solicitation language and the agency’s stated interpretation of the language establish that the protester is at liberty to submit the past performance references and ISRs for its non-BOA holder entities. On this basis, we conclude that the solicitation is not unclear or ambiguous in this respect, and this protest ground is denied. *Al Baz 2000 Trading & Contracting Co., W.L.C.*, B-416622.2, Dec. 12, 2018, 2018 CPD ¶ 422 at 3.

Participation Minimum for Past Performance and Subcontracting Consideration

Next, we address the main thrust of DynCorp’s protest, *i.e.*, its challenge to the 20 percent minimum performance requirement for consideration under the past performance and subcontracting factors as unduly restrictive of competition. The protester asserts that “it is . . . commonplace for a contractor to have differing CAGE codes within the same legal entity, distinguished only by the physical location, or facility, executing on behalf of the same company.” Protest at 13. While we conclude above that the solicitation permits DynCorp to include these entities, the protester also specifically objects to the requirement that these entities must perform at least 20 percent of the total value of the work in order for their references to be considered. *Id.* at 16. Thus, the question here is whether the solicitation’s 20 percent minimum participation requirement is reasonable.

Agencies must specify their needs in a manner designed to permit full and open competition, and may include restrictive requirements only to the extent they are necessary to satisfy the agencies’ legitimate needs or as otherwise authorized by law. 41 U.S.C. § 3306(a). Where a protester challenges a specification or requirement as unduly restrictive of competition, the procuring agency has the responsibility of establishing that the specification or requirement is reasonably necessary to meet the agency’s needs. *Remote Diagnostic Techs., LLC*, B-413375.4, B-413375.5, Feb. 28, 2017, 2017 CPD ¶ 80 at 3-4. We examine the adequacy of the agency’s justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. *Coulson Aviation (USA), Inc.*, B-414566, July 12, 2017, 2017 CPD ¶ 242 at 3.

The fact that an evaluation criterion may be burdensome, or otherwise makes a firm’s offer less competitive, is not objectionable, provided the agency’s criteria have a reasonable basis and are not otherwise contrary to law or regulation. *AAR Mfg. Inc., d/b/a AAR Mobility Sys.*, B-418339, Mar. 17, 2020, 2020 CPD ¶ 106 at 11. Further, a protester’s disagreement with an agency’s judgment concerning the agency’s needs

and how to accommodate them does not show that the agency's judgment regarding the selection of evaluation criteria is unreasonable. *Id.*; *Dynamic Access Sys.*, B-295356, Feb. 8, 2005, 2005 CPD ¶ 34 at 4.

The Army explains that it anticipates a significant volume of potential past performance references and argues that it was reasonable to limit the submitted information to those entities that would perform a meaningful percentage of the effort. AR, Tab 53, Contracting Officer Memorandum for Record at 1. The Army contends that, based on "lessons learned from previous EAGLE procurements," it "was necessary to limit affiliate past performance evaluations to only those companies whose participation would be substantial and meaningful." COS/MOL at 5. The intent of the provision was thus to "assess relevant, and only relevant, offerors' parent and/or sister organizations' past performance information." AR, Tab 52, Decl. of Chief of EAGLE Business Office at 2. In an earlier EAGLE procurement with identical past performance evaluation language regarding the requirement that subcontractors perform at least 20 percent of the work,¹⁰ the Army explained the basis for this minimum participation as follows:

Determining when a proposal demonstrated that the resources of the affiliate company would be used in contract performance posed significant challenges for Government evaluators [who] often had to make assumptions about whether the affiliate company would provide support to an offeror based on vague references contained in proposals. [. . .] The language . . . is in response to these concerns and clearly notifies offerors of when a parent/sister and affiliate company can expect to have its past performance evaluated. [. . .] Given the large volume of offerors and the potential for large amounts of subcontractor/ teammate and affiliate/sister company information that could become available, the Government determined that it was prudent to only consider the past performance information for the prime offeror and any teammate/ subcontractor that will be performing 20% or more of the labor effort. It was determined that this level of past performance review (20%) would allow the Government to easily identify when the resources of a sister/affiliate company are being used by the offeror to perform the effort, thus providing a clear standard to all offerors and also allows the Government to efficiently use the resources and time of evaluators.

AR, Tab 53, Contracting Officer Memorandum for Record at 1-2. Overall, in order "to efficiently evaluate" an offeror's past performance references, the agency limited the references to those entities that "reasonabl[y] demonstrate[ed] . . . 'meaningful involvement' in contract performance. . . ." AR, Tab 52, Decl. of Chief of EAGLE Business Office at 2.

¹⁰ The Army asserts that the relevant past performance language was finalized in December 2015. AR, Tab 52, Decl. of Chief of EAGLE Business Office at 2, *see also* AR, Tab 53, Contracting Officer Memorandum for Record at 1.

Here, the record supports the agency's position that it is reasonable for it to economize its resources by limiting the consideration of past performance to those entities that will be performing the work. As we have concluded in similar circumstances, the agency's desire to reduce the risk of unsuccessful performance can be rationally achieved by restricting consideration of experience and past performance to the firms contractually obligated to meet the agency's requirements. See, e.g., *Diversity Marketing & Commc'ns, LLC*, B-412196.2, 2016 CPD ¶ 84, Mar. 9, 2016; *Valor Constr. Mgmt., LLC*, B-405365, Oct. 24, 2011, 2011 CPD ¶ 226 at 3 (agency's decision not to consider team member's experience and past performance was not unduly restrictive of competition); *Emax Fin. & Real Estate Advisory Servs., LLC*, B-408260, July 25, 2013, 2013 CPD ¶ 180 at 6 (agency's concern with limiting risk of unsuccessful performance by favoring experience of firms that will be in privity with the government reasonably relates to agency's needs in choosing a contractor that will best serve its interests with respect to a complex project). Given this, we find nothing improper about the RFP provision that restricts the agency's evaluation of past performance and subcontracting to those entities performing at least 20 percent of the work.

Additionally, DynCorp has not explained, and it is not apparent to us, how the RFP's minimum participation provision exceeds the agency's requirements, or how it hinders DynCorp's ability to submit a competitive proposal. Rather, DynCorp argues only that it is not able to submit the past performance references of offices with different CAGE codes without documenting that the office will be performing at least 20 percent of the work. The protester alleges, without providing specific details, that this will result in DynCorp not being relatively competitive in responding to the solicitation. However, the fact that a requirement may be burdensome, or even impossible for a particular firm, does not make it objectionable if it meets the agency's needs. *Diversity Marketing & Commc'ns, LLC, supra*; *Advanced Commc'n Cabling, Inc.*, B-410898.2, Mar. 25, 2015, 2015 CPD ¶ 113 at 6-7. Accordingly, this protest ground is denied.

Annual Average Dollar Value

DynCorp also argues that the RFP's provisions regarding the evaluation of annual average dollar value of past performance reference render offerors unable to respond intelligently. Protest at 17. As discussed above, the agency will evaluate the magnitude of effort and complexities of the past performance references by comparing them to the present requirement. RFP at 112-133. In addition, the agency will compare the AADV of each reference to the Fort Polk historical AADV for each of three functional areas: maintenance, supply, and transportation. *Id.* In response to the protester's earlier questions, the agency confirmed that "[t]he evaluators will compare the AADV of the reference to the AADV of the historicals along with the task performed to determine Magnitude and Complexity." AR, Tab 35, Questions & Answers at 3, line 31. The protester asserts that, nevertheless, it remains "ambiguous whether the Army will evaluate offerors' proposals against the present requirements or against the historical requirements, or against some combination of the two." *Id.*

As stated above, a contracting agency must provide offerors with sufficient detail in a solicitation to enable them to compete intelligently and on a relatively equal basis. *Centre Market Bldg., LLC*, B-417413.2, B-417413.3, Aug. 7, 2019, 2019 CPD ¶ 288 at 5; *CWTSatoTravel*, B-404479.2, Apr. 22, 2011, 2011 CPD ¶ 87 at 10. The determination of a contracting agency's needs, including the selection of evaluation criteria, is primarily within the agency's discretion and we will not object to the use of particular evaluation criteria so long as they reasonably relate to the agency's needs in choosing a contractor that will best serve the government's interests. *SML Innovations*, B-402667.2, Oct. 28, 2010, 2010 CPD ¶ 254 at 2.

Also, specifications must not be ambiguous--that is, subject to more than one reasonable interpretation. *Centre Market Bldg., LLC*, *supra*, at 4. However, there is no legal requirement that a competition be based on specifications drafted in such detail as to eliminate completely any risk or remove every uncertainty from the mind of every prospective offeror. *Id.*; *Owl, Inc.*; *MLB Trans., Inc.*, B-414962, B-414962.2, Oct. 17, 2017, 2017 CPD ¶ 322 at 4. In this regard, a protester's disagreement with the agency's judgment concerning the agency's needs and how to accommodate them does not show that the agency's judgment is unreasonable. *Caduceus Healthcare, Inc.*, B-414965; B-414965.2, Nov. 1, 2017, 2017 CPD ¶ 329 at 7.

The Army asserts that the answers to industry questions remove any ambiguity that the agency will both compare the magnitude and complexity of an offeror's past performance reference to the current requirement *and* compare the reference's AADV to the Ft. Polk historical AADV for each functional area. COS/MOL at 27-28.

We find that, despite the agency's use of the more colloquial double preposition "along with" instead of the single preposition "both" in the answer to DynCorp's questions, the agency's answer and the solicitation are sufficiently clear that the agency does, in fact, intend to perform both comparisons. This protest ground is denied. *AI Baz 2000 Trading & Contracting Co., W.L.C.*, *supra*, at 3.

The protester also argues that the solicitation improperly fails to provide offerors with the historical AADVs for each Fort Polk functional area and that without this information, it cannot determine which reference contracts to submit.¹¹ Protest at 17. The Army responds that this information is not required and that the protester has information adequate to submit its proposal. COS/MOL at 29-30.

¹¹ DynCorp also protests that the RFP does not identify a location in the proposal for offerors to provide the AADV for each functional area for each reference contract. Protest at 17. However, the solicitation explains that column N of attachment 11 "will be populated based on the information provided in Columns L (Total Contract Value) and M (Number of Months)." RFP at 71. Accordingly, because the record shows that the solicitation does in fact include a method for calculating the information from offerors' inputs, this protest ground is dismissed for failing to state legally sufficient grounds of protest. 4 C.F.R. § 21.5(f).

As our office has consistently stated, agencies enjoy broad discretion in the selection of evaluation factors, and we will not object to the use of particular evaluation criteria or an evaluation scheme so long as the factors used reasonably relate to the agency's needs. *SEK Sols., LLC*, B-406939.2, Feb. 27, 2014, 2014 CPD ¶ 87 at 5. However, an agency is not required to eliminate all risk or remove every uncertainty, provided the solicitation contains sufficient information for offerors to compete intelligently and on equal terms. *AirTrak Travel et al.*, B-292101 *et al.*, June 30, 2003, 2003 CPD ¶ 117 at 13. In this regard, even if the offeror does not know the historical AADVs of each functional area, the agency has identified the functional areas (maintenance, supply, and transportation), thus guiding offerors toward selection of past performance references that show experience in these areas. RFP at 113.

As a result, the agency's approach is unobjectionable. See *AshBritt Inc.*, B-297889, B-297889.2, Mar. 20, 2006, 2006 CPD ¶ 48 at 14 (even where agency did not provide specific estimates for each of three contracts, solicitation contained enough detail to enable offerors to compete intelligently and on a relatively equal basis). Furthermore, none of DynCorp's arguments identifies any legal basis for its contention that the agency must provide the information the protester seeks. On this record, and in the context of the performance specifications in this solicitation, we find no basis to sustain the protest. *Centre Market Bldg.*, *supra*, at 3.

The protest is denied.

Thomas H. Armstrong
General Counsel