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Decision

Matter of: Management & Training Corporation

File: B-420568; B-420568.2

Date: May 10, 2022

Alex P. Hontos, Esq., Dorsey & Whitney LLP, for the protester.

John E. McCarthy, Jr., Esq., William B. O'Reilly, Esq., Issac D. Schabes, Esq., and Jacob A. Harrison, Esq., Crowell & Moring LLP, for Odle Management Group, LLC, an intervenor.

Jose Otero, Esq., Jonathan Pomerance, Esq., and Robert Proudfoot, Esq., Department of Labor, for the agency.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of proposals and source selection decision is denied where record shows agency's actions were reasonable and consistent with the terms of the solicitation and applicable statutes and regulations.

DECISION

Management and Training Corporation (MTC) of Centerville, Utah, protests the award of a contract to Odle Management Group, LLC, of Scottsdale, Arizona, under request for proposals (RFP) No. 1605JE-21-R-00007, issued by the Department of Labor for operation of the Turner Job Corps Center in Albany, Georgia. MTC alleges that the agency misevaluated proposals and made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

The RFP contemplates the award, on a best-value tradeoff basis, of a fixed-price contract for a base period of 2 years, three 1-year option periods, and a final 1-month

phase-out period to perform the solicited services.¹ Firms were advised that the agency would consider price and several non-price factors in making its award determination. The RFP included the following evaluation factors in descending importance: technical approach, past performance, staff resources, and price, and specified that the non-price considerations in combination were significantly more important than price.² RFP at 85-88. In addition, the RFP provided that the agency would evaluate prices to determine whether they were fair and reasonable. RFP at 87.

In response to the RFP, the agency received a number of proposals, including those submitted by MTC and Odle. The agency evaluated proposals and, on the basis of that evaluation, assigned the following ratings to the proposals submitted by the protester and Odle:³

	MTC	Odle
Technical Approach	Acceptable	Acceptable
Past Performance	Satisfactory/Moderate	Satisfactory/Moderate
Staff Resources	Acceptable	Acceptable
Phase-In/Phase-Out	Pass	Pass
Price	\$121,899,636	\$100,996,715

AR, Exh. 8, SSDD, at 7. Based on these evaluation results, the agency made award to Odle, finding that its proposal represented the best value to the government. *Id.* at 58-66. After being advised of the agency's source selection decision and requesting and receiving a debriefing, MTC filed the instant protest.

DISCUSSION

¹ The RFP includes primarily fixed-price contract line items, but also includes fixed-price-with-price-adjustment contract line items, and cost-reimbursement contract line items. As to the cost-reimbursement contract line items, the RFP provided not-to-exceed "plug" amounts, and further advised that the cost-reimbursement contract line items would be excluded from the agency's price evaluation. RFP at 5-9, 87.

² The RFP also provided that the offerors' phase-in/phase-out plans would be evaluated on a pass/fail basis. RFP at 88. In addition, the RFP included a number of subfactors to be considered under the technical approach and staff resources factors. RFP at 85-88. MTC's protest is confined to a challenge to the agency's past performance evaluation; the agency's evaluation under the technical approach, staff resources and phase-in/phase-out factors is not at issue in the protest.

³ The record shows that, in evaluating proposals under the technical approach and staff resources factors (and subfactors), the agency assigned adjectival ratings of either outstanding, very good, acceptable, marginal or unacceptable. Agency Report (AR) Exh. 8, Source Selection Decision Document (SSDD), at 8. In evaluating the offerors' past performance, the agency assigned adjectival/risk ratings of exceptional/very low, very good/low, satisfactory/moderate, marginal/high, unsatisfactory/very high or neutral/unknown. *Id.* at 35.

MTC's protest is confined to a challenge of the agency's past performance evaluation, as well as a challenge to the agency's best-value source selection decision. MTC raised a number of additional allegations in the course of the protest, but we found that none of those assertions presented a cognizable basis for protest. Consequently, we advised the parties during the pendency of the protest that these issues would not be considered on the merits. We discuss these issues briefly below before turning to MTC's challenge to the agency's past performance evaluation and source selection decision.

Preliminary Matters

In its initial protest, MTC alleged that the agency improperly failed to perform either a cost realism or price realism evaluation of proposals. MTC also argued that, in evaluating the Odle proposal, the agency erred in failing to take into consideration a corporate transaction that had occurred between Odle and another concern. Odle filed a request for partial dismissal of these issues, arguing that they failed to state a basis for protest, and we agreed.

Specifically, we concluded that the RFP did not contemplate the evaluation of prices for realism, and instead provided that the agency would only evaluate prices for reasonableness. RFP at 87. We also concluded that the RFP specifically excluded the cost-reimbursement contract line items from evaluation during the agency's price evaluation. *Id.* We therefore advised the parties that these issues failed to state a cognizable basis for protest, and that the agency would not be required to provide a substantive response (or documents relevant) to these allegations. Electronic Protest Docketing System (Dkt.) No. 20, First Notice of Resolution of Request for Partial Dismissal.

We advised the parties that MTC's contention relating to the agency's alleged failure to consider Odle's corporate transaction also failed to state a cognizable basis for protest. The record showed that the transaction in question had been completed more than a year before the deadline for submitting proposals. We therefore concluded that the resources offered to perform the requirement were necessarily not affected by the transaction, and were available to the offering entity at the time of proposal submission. Dkt. No. 20, First Notice of Resolution of Request for Partial Dismissal.

Thereafter, the agency filed its report responding to the remaining protest allegations. After reviewing the agency report, MTC advanced several supplemental bases for protest, including an allegation that Odle had engaged in a prohibited "bait and switch" by identifying an individual whom MTC alleged would not perform under the resulting contract.

Odle filed a request for partial dismissal of this allegation, arguing that it failed to state a cognizable basis for protest because the RFP did not require offerors to identify any particular personnel to perform the contract. We agreed with Odle and advised the

parties that, because the RFP did not require firms to identify any particular personnel, or to provide resumes or evidence of their commitment to perform on the contract, this allegation also failed to state a cognizable basis for protest. Dkt. No. 42, Second Notice of Resolution of Request for Partial Dismissal *citing Computers Universal, Inc.*, B-292794, Nov. 18, 2003, 2003 CPD ¶ 201 at 3 (in the absence of a solicitation requirement to identify particular key personnel and demonstrate their availability for contract performance, there can be no “bait and switch”).

We discuss MTC’s remaining allegations below.

Past Performance Evaluation

MTC challenges the agency’s evaluation of Odle’s past performance. According to MTC, none of the past performance examples identified by Odle in its proposal are relevant examples under the terms of the RFP, because none of them are of comparable size, scope and complexity. MTC therefore maintains that the agency should have assigned Odle a rating of neutral (rather than satisfactory) for past performance.

We find no merit to this aspect of MTC’s protest. In reviewing an agency’s evaluation of proposals, including its evaluation of the offerors’ past performance, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to ensure that the agency’s evaluation is reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. *Alexandra Construction, Inc.*, B-417212, Apr. 2, 2019, 2019 CPD ¶ 132 at 3.

MTC does not object to the underlying substantive findings of the agency based on the past performance examples reviewed. As noted, MTC objects only on the basis that, according to the protester, the past performance examples considered by the agency for Odle were not comparable in size, scope or complexity to the solicited requirement. However, a review of the record shows that the agency treated both offerors identically and considered all of their past performance examples, regardless of the size, scope or complexity of the examples.⁴ AR, Exh. 8, SSDD, at 41-48.

In this connection, the record shows that, in reviewing Odle’s past performance, the agency considered a total of 10 performance examples. One of these examples was for performance at the Pittsburgh Job Corps Center, and the contract at issue was to provide services to a total of 669 students.⁵ AR, Exh. 8, SSDD, at 46-47. The

⁴ The agency excluded examples that were not performed during the relevant time period (within the past 3 years) or had not been performed for an interval of sufficient duration (as least 12 months of performance) as specified in the RFP. RFP at 86.

⁵ The parties--and the RFP--describe the size of the past performance examples, as well as the size of the solicited requirement, in terms of the “on board strength” (OBS) measurement of contract size. The RFP defines OBS as the total number of students

remaining 9 past performance examples considered by the agency in its evaluation of Odle were smaller efforts, ranging from a low OBS of 186 students at the New Orleans Job Corps Center, to a high OBS of 379 students at the David L Carrasco Job Corps Center in El Paso, Texas. *Id.*

In comparison, in reviewing MTC's past performance, the agency considered a total of 17 examples, only three of which were of a comparable size to the solicited requirement (one of the three was the incumbent contract for the solicited requirement). AR, Exh. 8, at 42-44. The remaining 14 examples considered for MTC were smaller efforts, ranging in OBS size from a low of just 153 students at the Wilmington Job Corps Center in Philadelphia, Pennsylvania--the smallest of all past performance examples for any offeror considered by the agency--to a high OBS of 614 students (at the Los Angeles Job Corps Center). *Id.*

In effect, the protester's argument amounts to an assertion that the agency waived the relevancy requirements of the RFP in its evaluation of Odle's past performance. However, as demonstrated by the discussion above, to the extent the agency waived the past performance relevancy requirements of the RFP, it did so equally for both offerors.

Prejudice is an essential element of every viable protest, and where none is shown or otherwise evident, our Office will not sustain a protest, even if the protester arguably is correct. *Bodell Construction Company*, B-419213, B-419213.2, Dec. 28, 2020, 2021 CPD ¶ 44 at 5. Here, because the record shows that the agency treated all offerors equally in assessing the relevancy of their past performance examples, we have no basis to conclude that MTC was prejudiced by the agency's actions, even if the agency arguably failed to evaluate the relevancy of the offerors' past performance examples in strict conformity with the terms of the RFP. Under the circumstances, we have no basis to object to the agency's past performance evaluation of Odle for this reason. We therefore deny this aspect of MTC's protest.

MTC also argues that the agency erred in failing to consider the past performance of one of Odle's subcontractors, a firm called Paxen, which Odle proposed as a subcontractor to perform outreach and admission services. According to MTC, the agency should have evaluated Paxen's past performance because the firm will perform what MTC characterizes as a "major or critical" aspect of the requirement. MTC notes that the RFP provided for consideration of subcontractor past performance where the subcontractor will perform a major or critical aspect of the requirement. RFP at 86.

The agency explains that it did not consider Paxen's past performance because the firm will only perform a minor element of the requirement. We have reviewed the record and conclude that it supports the agency's position that outreach and admissions services

served by the program at a given location. In the case of the solicited requirement the OBS is 732 students. RFP at 4.

are only a minor element of the requirement and that, correspondingly, there was nothing improper about the decision not to consider Paxen's past performance.

As noted, MTC did not advance any challenge to the agency's evaluation of Odle's technical or staffing proposal, so the record does not include its technical or staffing proposal, because those documents were not relevant. Nonetheless, the record includes MTC's technical and staffing proposal, and a review of those documents demonstrates, consistent with the agency's position, that outreach and admissions services are only a minor element of the overall requirement.

Specifically, the record shows that MTC proposed a total of [deleted] full-time equivalent (FTE) personnel to perform the requirement. AR, Exh.9, MTC Staffing Proposal, at 8.⁶ Of that number, MTC proposed just [deleted] FTEs to perform outreach, admissions and career transition services.⁷ *Id.* at 22. By way of comparison, MTC proposed [deleted] administrative personnel (such as property supply officers and clerks, information technology systems personnel and mailroom personnel); [deleted] FTEs for security; [deleted] FTEs for support service personnel (such as kitchen staff); [deleted] FTEs for medical staff, and [deleted] FTEs for facility maintenance. *Id.* at 19-21.

We conclude from our review of the record that the admissions and outreach function, while no doubt important, is simply not a critical or major component of the solicited requirement. Consequently, we have no basis to object to the agency's decision not to review the past performance of Paxen, Odle's subcontractor for outreach and admissions services. We therefore deny this aspect of MTC's protest.

⁶ Our citations to the MTC staffing proposal are to the Adobe pdf pages rather than to the page numbers used in the proposal.

⁷ Of the [deleted] FTEs proposed by MTC for outreach, admissions and career transition services, MTC's proposal identified [deleted] outreach, admissions, and career transition services director; [deleted] career transition services manager; [deleted] career transition services specialists; and [deleted] job developer. AR, Exh. 9, MTC Staffing Proposal, at 15. MTC did not propose any outreach and admission supervisory personnel, and just [deleted] admissions counselors. *Id.* The remaining [deleted] FTEs are a quality assurance specialist and an administrative assistant. *Id.* This staffing is to perform both outreach and admissions services (provided as students enter the program), as well as--separately--career transition services (performed after students graduate from the program). RFP at 10, 14, 20.

Best-Value Source Selection Decision

Finally, MTC challenges the propriety of the agency's source selection decision, maintaining that the agency failed to conduct an in-depth comparison of proposals in reaching its selection decision. We point out that, in making source selection decisions in a best-value setting, agencies are afforded broad discretion, and their tradeoffs are governed only by the test of rationality and consistency with the solicitation's evaluation scheme. *SOC LLC*, B-418027, B-418027.2, Dec. 30, 2019, 2020 CPD ¶ 16 at 6.

We have no basis to object to the agency's source selection here. MTC's challenge to the agency's award decision amounts--principally--to an attempt to parse the language of the source selection decision, but MTC ultimately fails to show that the agency's actions were in any way objectionable.

The record shows that the agency found the proposals of MTC and Odle to be broadly comparable, assigning 6 strengths to the MTC proposal, while at the same time assigning 10 strengths and one weakness to the Odle proposal under the technical approach factor. AR, Exh. 8, SSDD, at 58. Both firms also were rated satisfactory/moderate risk under the past performance factor, and acceptable under the staffing approach factor, with neither firm's proposal being assigned any strengths or weaknesses under that factor. *Id.* The source selection authority also detailed the strengths identified for each offeror in the SSDD. *Id.* at 61-63.

In the final analysis, the record shows that the agency selected Odle based on the conclusion that, since the proposals of all offerors were broadly comparable under the non-price evaluation considerations, Odle's proposal represented the best overall value to the government because it offered a substantial cost savings to the agency. AR, Exh. 8, SSDD, at 65-66. As it pertains to MTC, the record shows that award to Odle represented a savings of approximately \$21 million.

MTC has not shown that any aspect of the agency's underlying evaluation of proposals was unreasonable; in fact, MTC has not challenged the overwhelming majority of the agency's evaluation findings. Given the agency's conclusion that the MTC and Odle proposals were broadly comparable under the non-price evaluation criteria, and in light of Odle's significant price advantage, we have no basis to object to the agency's source selection decision for any of the reasons advanced by MTC.

The protest is denied.

Edda Emmanuelli Perez
General Counsel