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Decision

Matter of: Souza Construction, Inc.

File: B-420966.4

Date: January 11, 2023

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DIGEST

Protester's challenge of its neutral past performance rating is denied where the protester failed to submit required past performance questionnaires as directed by the solicitation and it has not demonstrated that the evaluation was unreasonable or inconsistent with the solicitation.

DECISION

Souza Construction, Inc. (SCI), a Historically Underutilized Business Zone small business of Farmersville, California, protests the failure of the General Services Administration (GSA) to award it a contract under request for proposals (RFP) No. 47PL0122R0022, for construction and design/build services to support the installation of electric vehicle supply equipment (EVSE) at federal locations throughout the United States. The protester argues that the agency's past performance and price evaluations were unreasonable.

We deny the protest.

BACKGROUND

On March 17, 2022, GSA issued the solicitation as a small business set-aside pursuant to Federal Acquisition Regulation (FAR) part 19, as well as FAR part 15, contracting by negotiation. The solicitation sought proposals for a full spectrum of construction and

design/build services for infrastructure improvements and installation of EVSE at federal locations--both GSA-controlled and non-GSA-controlled spaces--nationwide. Agency Report (AR), Tab 5, RFP amend. 4 at 37.¹ The solicitation also stipulated that any federal agency may use the awarded contracts to procure the EVSE services. *Id.*

The solicitation established four geographical zones (Zones A, B, C, and D), and contemplated the award of multiple fixed-price indefinite-delivery, indefinite-quantity (IDIQ) contracts for each zone.² *Id.* Zone D is at issue in this protest.³ The RFP provided that services under this procurement will be acquired through individual task order competitions. *Id.* The IDIQ contracts will have a 1-year base period of performance and four 1-year option periods. *Id.* at 96.

The solicitation provided that the source selection decision would be based on a best-value tradeoff between price and several non-price factors. *Id.* at 75. The RFP identified the following non-price factors, listed in descending order of importance: prior experience; past performance; management plan; and small business socioeconomic category.⁴ *Id.* at 74. The RFP specified that the non-price factors, when combined, were significantly more important than price. *Id.*

Under the prior experience factor, the solicitation instructed offerors to submit a maximum of four projects completed or substantially completed within six years of the proposal due date that were similar in nature to the work expected to be performed under the contracts here. *Id.* at 59. To facilitate the past performance evaluation, offerors were instructed to submit past performance questionnaires (PPQ) for each project included under the prior experience factor. *Id.* at 59-60. The solicitation required offerors to use the PPQ form included as attachment A. *Id.* at 60. In response to 19 industry questions about whether the agency would accept other PPQ forms or types of information, such as Contractor Performance Assessment Reporting System (CPARS) records, GSA expressly and repeatedly stated, "Offerors must submit 'Attachment A Past Performance Questionnaire'". AR, Tab 2, RFP amend. 1 at 4-5; AR, Tab 3, RFP amend. 2 at 9-10, 12, 15; RFP amend. 4 at 26-27, 31-32, 35-36.

¹ Citations to the record use the Adobe PDF pagination of documents submitted by the parties. Additionally, the RFP was amended four times; all references to the RFP are to the final version in amendment 4, unless otherwise noted.

² The maximum ordering limitation per zone for the contracts awarded is \$500 million. RFP amend. 4 at 38.

³ Zone D consists of the following states: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming, Arizona, California, Hawaii, Nevada, Alaska, Idaho, Oregon, and Washington. *Id.*

⁴ Additionally, the solicitation provided that offerors' project bonding capacity would be evaluated on a go/no-go basis. *Id.* at 74.

For the price evaluation, the solicitation provided that proposals would be evaluated for reasonableness and unbalanced pricing, and that each offeror's total evaluated price would be used in the best-value tradeoff analysis. *Id.* at 74-75. The total evaluated price would be calculated by adding the total price for all options to the total price for the base year. *Id.* at 75-76. Offerors were to complete the supplemental SF1442 pricing sheet, which included unit prices for a variety of goods and services required to perform the contract, for the base year and each option year. *Id.* at 75-76, 79-91. Offerors were to input a maximum unit price for every item listed on the pricing sheet; "[t]hese [u]nit [p]rices will establish the ceiling rate for each line item within each [g]eographic [z]one." *Id.* at 79.

By the May 3 closing date for receipt of proposals, GSA received 88 proposals, including SCI's, for zone D. AR, Tab 11, Source Selection Decision (SSD) at 3. The agency evaluated the proposals and assigned 49 of them overall ratings of acceptable or higher. *Id.* at 14. Accordingly, the agency concluded that discussions were unnecessary and awards could be made based on initial offers.⁵ *Id.*

Following the tradeoff analysis, the agency awarded contracts to the 22 firms with the highest technical ratings. Each of the proposals selected for award received an overall rating of very good; ratings of very good or excellent for each of the first three non-price factors; and a rating of acceptable or better for the small business socioeconomic factor.⁶ *Id.* at 18. The total evaluated prices of the 22 awardees ranged from \$280,432 to \$1,387,873. *Id.* at 19. In the tradeoff analysis, the contracting officer determined "any potential price savings for firms outside of the top [22] technically rated offerors would not offset the technical benefits offered by the technically superior firms." *Id.* at 19. The contracting officer also found that each awardee's price was fair and reasonable, and below the independent government estimate (IGE) of \$1,724,768 for zone D. *Id.* at 1, 21-22. The contracting officer further found that having 22 contractors to compete for individual task orders would ensure "robust price competition at the task order level." *Id.* at 52.

The agency assigned SCI's proposal an overall rating of very good, but did not consider it to be one of the top technically rated because GSA rated SCI neutral for the past

⁵ GSA assigned ratings of excellent, very good, acceptable, marginal, unacceptable, or neutral for each non-price factor and then for the proposal overall. AR, Tab 8, Source Selection Plan (SSP) at 22-23.

⁶ Three awardees received ratings of acceptable for the small business socioeconomic category factor and ratings of very good or higher for the other technical factors; the other 19 received ratings of very good or higher under all of the non-price factors. AR, Tab 11, SSD at 18. The agency concluded that a rating of acceptable for the socioeconomic factor does not imply additional performance risk to the government; therefore, a rating of acceptable for this factor does not outweigh the benefits of the other technical factors. *Id.* at 21.

performance factor.⁷ See *id.* at 18. SCI received the rating of neutral⁸ because the agency concluded that it did not have any past performance information that it could consider for SCI. AR, Tab 12, Source Selection Evaluation Board (SSEB) Report Excerpts at 6. Instead of submitting its past performance information using attachment A, the PPQ form specified in the solicitation, for its first and third projects, SCI submitted past performance information that had been entered on a different PPQ form, and for its second and fourth projects, SCI submitted CPARS records. Because the solicitation required offerors to submit their past performance information using attachment A, PPQ, which SCI did not do, the agency did not consider the past performance information submitted by SCI. Consequently, GSA concluded that “[a]s there is no record of relevant past performance or information on relevant past performance is not available,” SCI’s proposal was rated neutral for past performance. *Id.*

The agency notified offerors of the 22 IDIQ awardees on September 27. After requesting and receiving a debriefing, SCI filed this protest.

DISCUSSION

SCI advances two primary protest grounds. First, the protester contends that GSA unreasonably failed to consider the past performance information it submitted with its proposal. Second, SCI argues that GSA failed to conduct a reasonable price evaluation. Protest at 7-8. As explained below, we conclude that neither argument has merit.⁹

⁷ SCI also received a rating of very good for the prior experience factor; a rating of very good for the management plan factor; and a rating of excellent for the small business socioeconomic category factor. AR, Tab 12, SSEB Report Excerpts at 5.

⁸ The source selection plan explained that a “neutral rating will be given to offerors without a record of relevant past performance or for whom information on relevant past performance is not available. This rating is neither favorable nor unfavorable, it simply represents that no record of relevant past performance is available for which the Government can make a determination of performance success and overall risk.” AR, Tab 8, SSP at 23.

⁹ While our decision does not discuss every argument raised, we have considered each allegation and have determined that the record does not provide a basis to sustain the protest. This decision addresses the protester’s central arguments. For example, the protester argues that the agency’s best-value tradeoff decision was improper because it was based on a flawed evaluation. Protest at 8. This allegation is derivative of the protester’s other challenges to the agency’s evaluation. As we discuss below, we find no basis to object to the agency’s evaluation, and therefore, we dismiss this allegation because derivative allegations do not establish independent protest grounds. *DirectViz Sols., LLC*, B-417565.3, B-417565.4, Oct. 25, 2019, 2019 CPD ¶ 372 at 9.

Past Performance Evaluation

Our Office will review an agency's evaluation of past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, as determining the relative merit of an offeror's past performance is primarily a matter within the agency's discretion. *Torres-Advanced Enter. Sols, LLC*, B-412755.2, June 7, 2016, 2016 CPD ¶ 167 at 8. The evaluation of past performance, by its very nature, is subjective, and we will not substitute our judgment for reasonably based evaluation ratings; an offeror's disagreement with an agency's evaluation, by itself, does not demonstrate that those judgments are unreasonable. *Aerospace Training Sys. Partners, LLC*, B-419668 et al., June 22, 2021, 2021 CPD ¶ 243 at 4-5.

SCI argues that the agency should have considered the past performance information contained in the PPQs SCI submitted for two of its four projects even though the information was not submitted using attachment A, PPQ.¹⁰ SCI maintains this information would have merited a past performance rating of very good. Protest at 7-8. In particular, SCI complains that one of its references--the Department of the Navy--refused to complete RFP attachment A, PPQ, and instead insisted on using its own PPQ form--NAVFAC Form PPQ-0 (9/30/11)--to provide past performance information. *Id.* at 7. Thus, the protester argues, GSA is unreasonably punishing it for the actions of another agency and elevating "form over function" in excluding the alternate PPQ forms. *Id.*; Comments at 2. The protester argues that the information in attachment A, PPQ and the other PPQ is identical, except for one rating category in which GSA uses "G" for a rating of good, and the other agency uses "VG" for a rating of very good. Comments at 2; Comments exhs. at 2; AR, Tab 1, RFP at 28.

Based upon our review of the record, we find the agency acted consistent with the express terms of the solicitation. As noted above, the solicitation required offerors to submit their past performance information on RFP attachment A, PPQ. RFP amend. 4 at 60. For every answer to an industry question about alternate PPQ forms or other sources of past performance information, such as CPARS records, GSA responded: "Offerors must submit 'Attachment A Past Performance Questionnaire.'" See e.g., RFP amend. 1 at 4-5 ("Can PPQs from other solicitations be used if they are recent?" and "For Federal projects that have a CPAR record[,] can we submit the CPAR in lieu of the PPQ[?];"); RFP amend. 2 at 9-10 ("[W]ould GSA allow us to use a recently completed PPQ rather than requesting a new one?" and "Can we use CPARs in lieu of PPQs. It is difficult to get our clients in the government to respond in a timely manner and the CPARs are readily available."), 12 ("Please reconsider and allow [CPARs] to

¹⁰ In its initial protest, SCI also argued that the agency should have considered the CPARS that it submitted for its second and fourth projects. The agency provided a detailed response to these allegations in its agency report. In its comments responding to the agency report, SCI made no further mention of its allegations regarding the CPARS records for projects 2 and 4. Accordingly, we dismiss these allegations as abandoned. *AeroSage, LLC*, B 418292 et al., Feb. 27, 2020, 2020 CPD ¶ 77 at 11 n.8.

supplement for the PPQ requirement.”), 15 (“Per the [questions and answers] submitted with Amendment 0001, CPARS will not be allowed in lieu of PPQs. Will you please reconsider? I have several federal clients who will no longer fill in PPQs”); RFP amend. 4 at 2627, 31 (“As noted in several [requests for information], there may be difficulties in obtaining [PPQs] if points [of] contact have moved, or decline to complete. How will offerors with highly relevant experience be evaluated in the absence of a complete set of [PPQs]? . . . Will past performance assessments be made on the entirety of available information, or will offerors be considered non-compliant for Factor 2?”), 35 (“Will CPARS if supplied in addition to PPQs be counted in the page count?”); see also RFP amend. 4 at 32, 35-36 (GSA replies referring offerors to previously answered questions requiring RFP attachment A, PPQ to be used).

Moreover, when asked specifically about clients that would not complete a new PPQ, GSA consistently responded to all questions: “Offerors must submit ‘Attachment A Past Performance Questionnaire.’” See e.g., RFP amend. 2 at 9 (“Will CPARS be allowed in lieu of PPQs. I have some federal clients that will not fill in PPQs as they use CPARS for their evaluation purposes.”), 15 (“Per the [questions and answers] submitted with Amendment 0001, CPARS will not be allowed in lieu of PPQs. Will you please reconsider? I have several federal clients who will no longer fill in PPQs”); RFP amend. 4 at 27 (“How should we handle past project questionnaires when the clients’ company policy does not permit completing such requests?”), 32 (“Most clients will not complete PPQ’s anymore . . . can the government allow for CPARS in lieu of PPQ[s]?”).

It is undisputed that SCI did not submit any of its past performance information on RFP attachment A, PPQ. Rather, SCI used PPQ forms other than the one included as attachment A for two of its past performance projects, and for its other two projects, SCI submitted CPARS records. Because SCI failed to submit its past performance information in accordance with the solicitation requirements, GSA did not consider the information; accordingly, the agency found there was no record of relevant past performance or no relevant past performance information available, and assigned SCI’s proposal a rating of neutral for past performance.

In light of the plain and unambiguous requirement set forth in the solicitation directing offerors to submit their past performance information using attachment A, PPQ, and GSA’s unequivocal and consistent instruction, “Offerors must submit ‘Attachment A Past Performance Questionnaire,’” in response to numerous requests from offerors asking GSA to accept other PPQ forms or types of information for the submission of past performance information, the protester disregarded the agency’s clear direction at its own peril. Accordingly, we conclude that the agency acted consistent with the terms of the solicitation when it did not to consider SCI’s improperly submitted past performance information and reasonably assigned SCI’s proposal a rating of neutral under the past performance factor based on the lack of past performance information for SCI. See *Wolverine Servs. LLC*, B-409906.3, B-409906.5, Oct. 14, 2014, 2014 CPD ¶ 325 at 5 (denying protest where agency concluded protester’s failure to submit the required PPQ rendered protester ineligible for award); *HydroGeoLogic, Inc.*, B-406635 *et al.*, July 25, 2012, 2012 CPD ¶ 224 at 5 (denying protest where agency reasonably assigned

protester unknown confidence for past performance because the agency did not receive the requisite number of past performance questionnaires required by the solicitation).¹¹

Price Evaluation

The protester also argues that the agency failed to evaluate whether the awardees' prices were fair and reasonable, as demonstrated by the 471 percent variance in the evaluated prices of the 22 awardees. Protest at 8. Specifically, SCI argues that the agency's price evaluation was unreasonable because awardees' evaluated prices ranged from \$280,432 to \$1,322,714, and SCI's proposed a price \$886,405, which was less than nine of the awardees. See *id.* at 3, 8. The agency responds that it used price evaluation techniques as set forth in the solicitation and in accordance with FAR section 15.404-1 and properly found the 22 awardees proposed fair and reasonable prices. Contracting Officer's Statement at 4-5; Memorandum of Law at 9-10.

It is a fundamental principle of federal procurement law that procuring agencies must condition the award of a contract upon a finding that the contract contains "fair and reasonable prices." FAR 15.402(a), 15.404-1(a); *Crawford RealStreet Joint Venture*, B-415193.2, B-415193.3, Apr. 2, 2018, 2018 CPD ¶ 121 at 9. The purpose of a price reasonableness analysis is to prevent the government from paying too high a price for a contract. *Crawford RealStreet Joint Venture*, *supra*.

An agency may use various price analysis techniques and procedures to ensure a fair and reasonable price, including the comparison of proposed prices to each other, to prices found reasonable on previous purchases, or to an independent government estimate. FAR 15.404-1(b)(2); *TransAtlantic Lines, LLC*, B-411846.3, B-411846.4, May 18, 2016, 2016 CPD ¶ 148 at 7. The manner and depth of an agency's price analysis is a matter committed to the discretion of the agency, which we will not disturb provided that it is reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. See *TransAtlantic Lines, LLC*, *supra*; *Federal Acquisition Servs. Alliant JV, LLC*, B-415406.2, B-415406.3, Apr. 11, 2018, 2018 CPD ¶ 139 at 11.

Here, the RFP provided that the agency would evaluate offerors' prices using one or more of the techniques set forth in FAR section 15.404 in order to determine whether

¹¹ To the extent that SCI complains that the agency unreasonably required offerors to exclusively use attachment A, PPQ to submit past performance information, this protest ground is untimely because it is based on an alleged impropriety in the solicitation, which was not protested prior to the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1); see *M & C Venture Group, LLC*, B-417965.3, Sept. 15, 2020, 2020 CPD ¶ 317 at 3. Given the solicitation's unambiguous direction to use attachment A, PPQ, and GSA's consistent and repetitive responses to industry questions, the record is clear that GSA would only accept past performance information submitted on attachment A, PPQ. If SCI thought the solicitation requirements were unreasonable and improper, SCI should have raised this protest ground prior to the closing date for receipt of proposals.

prices were reasonable. RFP amend. 4 at 75. The agency's price evaluation compared offerors' total evaluated prices to one another and to the IGE, two of the techniques set forth in FAR section 15.404; the total evaluated prices of all awardees were less than the IGE. AR, Tab 9, Price Evaluation. The contracting officer furthermore noted that it was anticipated that the IDIQ contract awardees would compete against one another for task orders, and that it was "expected that pricing for the vast majority of, if not all, task orders will be determined fair and reasonable through competition." AR, Tab 11, SSD at 12. Based on our review of the record, we find that the agency reasonably conducted its price evaluation and determined the awardees' prices fair and reasonable.

The protest is denied.

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General Counsel