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Comptroller General
of the United States

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Decision

Matter of: Legal Interpreting Services, Inc., d/b/a LIS Solutions

File: B-421368; B-421368.2

Date: April 7, 2023

Ryan C. Bradel, Esq., and Michael E. Hatch, Esq., Ward & Berry PLLC, for the protester.
Colonel Frank Yoon, Isabelle P. Cutting, Esq., and David J. Dusseau, Esq., Department of the Air Force, for the agency.
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency misevaluated quotations for order under multiple-award schedule is denied where the evaluation was reasonable and consistent with the solicitation.
 2. Protest that agency failed to reject successful vendor's quotation as unacceptable for failing to show compliance with limitation on subcontracting clause for each option period is denied where agency properly considered compliance based on the full term of the order.
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DECISION

Legal Interpreting Services, Inc., doing business as LIS Solutions, of Herndon, Virginia, a small business, protests the issuance of a multiple-award schedule (MAS) order to Rally Point Management, LLC, of Fort Walton Beach, Florida, also a small business, under request for quotations (RFQ) No. FA4890-22-Q-0008. The Department of the Air Force, Air Combat Command issued the RFQ for commercial locally-employed person screening teams support services at multiple locations, primarily outside the United States. Legal argues that the agency misevaluated its quotation, the agency should have rejected Rally's quotation for failing to demonstrate compliance with a required limitation on subcontracting clause, and that the Air Force made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

The RFQ, issued June 8, 2022, sought quotations from vendors holding General Services Administration (GSA) MAS special item No. 541611 small business contracts. The successful vendor will provide screener teams to perform screening of all non-government, locally-employed laborers and workers at airbases in the United Arab Emirates, Qatar, Saudi Arabia, Kuwait, and Germany. The selection of a vendor was to be conducted in accordance with Federal Acquisition Regulation (FAR) section 8.404. Agency Report (AR) Tab 3, Conformed RFQ at 1-2. The GSA contracts here included a standard limitation on subcontracting clause, requiring the small business contractor to “not pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not similarly situated entities.” *E.g.*, AR, Tab 19, Rally MAS Contract Excerpt at 5 (FAR clause 52.219-14(e)(1)). Where an order was set aside for small businesses under a MAS contract, as here, the clause further specifies that the limitation had to be satisfied “by the end of the performance period for the order.” *Id.* (FAR clause 52.219-14(f)(2)). The RFQ also incorporated a performance work statement (PWS) describing the tasks the vendor would perform, such as conducting screenings and background checks on locally-employed persons. AR, Tab 4, PWS at 7.

The RFQ identified three evaluation factors: technical capability, past performance, and price. The technical capability factor was to be evaluated on an acceptable/unacceptable basis; only quotations rated acceptable would be considered for award, but no additional credit would be given for exceeding minimum technical requirements. Accordingly, beyond acceptability, the technical capability factor would not be considered otherwise in determining which quotation offered the best value. The Air Force would award the task order to the vendor whose quotation provided the best value based on a past performance-price tradeoff, where past performance would be significantly more important than price. RFQ at 8.

Under the past performance factor, vendors were required to submit up to four performance references and up to one additional performance reference for each teaming partner (including subcontractors) that would “perform[] critical functions or more than 20 [percent] of the total contract value.” *Id.* at 5. Each reference would be assessed for relevance and the agency would assign the following ratings: very relevant (involving “essentially the same scope and magnitude of effort” as the RFQ and performance in at least two of the countries within United States Central Command responsibility); relevant (involving “similar scope and magnitude of effort” as the RFQ and performance in at least one country within United States Central Command responsibility); somewhat relevant (involving “some of the scope and magnitude of effort” as the RFQ and performance outside the continental United States); or not relevant in all other cases. *Id.* at 10-11. The past performance record, including consideration of its relevance, would be rated substantial confidence (a high expectation of successful performance); satisfactory confidence (a reasonable expectation); limited confidence (a low expectation); no confidence (no expectation); or unknown/neutral. *Id.* at 11.

Under the price factor, vendors were required to provide prices for a series of fixed-price and cost-reimbursement contract line item numbers (CLIN), and a pricing narrative. *Id.* at 3-4, 12-13. A total evaluated price would be calculated as the “sum of all . . . CLINs, for [t]ransition, the base period, all option periods[,] and the 6-month extension” under an extension of services option. *Id.* at 12-13.

The Air Force received quotations from four vendors, including Legal and Rally.¹ AR, Tab 12, Letter from Air Force to Legal, Dec. 29, 2022, at 1. All vendors’ technical quotations were evaluated as acceptable. AR, Tab 9, Combined Quote Evaluation Report, Comparative Analysis Recommendation, and Award Decision at 25, 42.

Under the past performance factor, two of Legal’s past performance references were assessed as relevant, while two were assessed as somewhat relevant. *Id.* at 68. For each reference, the evaluation noted that none of the past performance demonstrated performance of actual screening capabilities that were an essential part of the requirement, making them at most relevant. Additionally, Legal’s second reference showed performance in only one location, making it less similar to the requirement, and its fourth reference had material differences from the scope of the linguist support required by the RFQ, which resulted in those references being deemed somewhat relevant. *Id.* at 65, 67. The overall evaluation noted that the past performance had been rated highly for each reference, but that none showed the performance of screening capability, which the evaluation emphasized as a critical element of the requirement. *Id.* at 68. As a result, the agency assigned Legal’s proposal an overall past performance rating of satisfactory confidence. *Id.*

For Rally, the agency excluded one reference as not relevant, it assessed two as very relevant, and a fourth was excluded from the evaluation. *Id.* at 57-58. Both of the very relevant references were for performance by Rally’s major subcontractors, one of which is the incumbent contractor for the requirement. *Id.* at 54-55. Overall, the past performance was highly rated, and the evaluation noted that the past performance record showed two highly rated and very relevant references, which confirmed that Rally could successfully perform the requirement, resulting in a rating of substantial confidence. *Id.* at 54, 58.

Both firms’ pricing was assessed as reasonable and realistic. Legal’s total evaluated price was \$36.5 million, and Rally’s was \$44.7 million. *Id.* at 102. The contracting officer reviewed the evaluation results and determined that Rally’s quotation represented the best value based on its superior past performance, and issued the task order to it. The Air Force then sent Legal a letter that provided notice of the award and

¹ Neither quotation from the two other vendors is relevant to our decision.

a debriefing², after which the agency answered additional questions. Legal then filed this protest.

DISCUSSION

Legal challenges the evaluation of past performance for both itself and Rally,³ argues that the Air Force was required to reject Rally's quotation because it showed that the firm would not comply with the limitation on subcontracting clause in the RFQ, and asserts that the source selection rationale was unreasonable and inconsistent with the RFQ. For the reasons discussed below, we conclude that the protester's arguments are not supported by the record and we therefore deny its protest.

Past Performance Evaluation

The protester raises multiple challenges to the past performance evaluation of both its own and Rally's quotations. First, Legal argues that the Air Force unreasonably evaluated its references as relevant and somewhat relevant, rather than very relevant, and on the basis of that lower degree of relevance, improperly assigned its proposal an overall past performance rating of satisfactory confidence, rather than substantial confidence. Protest at 8-10; Comments at 5-6. The protester also argues that the agency unreasonably evaluated Rally's past performance as demonstrating substantial confidence when the agency had assessed Rally's own past performance record as not relevant and the firm's only relevant performance record was from its proposed subcontractors. Supp. Comments & Supp. Protest at 5-6.

In assessing a protester's challenge to the evaluation of past performance, we recognize that the evaluation of past performance, including the agency's evaluation of the relevance of an offeror's performance record, is a matter of agency judgment. Our Office will not sustain a protest unless the record demonstrates that the evaluation was unreasonable, inconsistent with the solicitation criteria, or undocumented. *Harris IT Servs. Corp.*, B-406067, Jan. 27, 2012, 2012 CPD ¶ 57 at 10.

With respect to its own past performance, the protester argues that the assessment of three of its references as less than very relevant was unreasonable because the criteria for relevance were applied too strictly. Legal maintains that its past performance was essentially the same scope as the RFQ, and contends that the Air Force improperly focused on the alleged lack of screening capabilities in the firm's performance record.

² The Air Force uses the term debriefing, but the competition was conducted under FAR subpart 8.4 procedures, for which a brief explanation, rather than a debriefing, was required. FAR 8.405-2(d).

³ Legal initially challenged the evaluation of Rally's past performance, based only on general "knowledge of the industry and its competitors," Protest at 10, which we dismissed as lacking a factual basis. Electronic Protest Docketing System Nos. 10, 14.

Protest at 9. Even if its past performance record did not include screening experience⁴, Legal contends that such a difference was not a valid basis for downgrading its relevance. According to Legal, the RFQ did not require past performance to be “identical to every single element” of the RFQ requirement to be considered very relevant. *Id.* Moreover, the protester argues that past performance performing screening, which the Air Force considered to be important in the evaluation, was not a valid basis for evaluation because it was not disclosed in the RFQ. *Id.*; Comments & Supp. Protest at 5. In short, Legal maintains that even if it has not performed screening duties, its past performance should nevertheless have been rated very relevant, and substantial confidence overall.

The Air Force responds that its evaluation of Legal’s past performance was reasonable and consistent with the RFQ criteria. Memorandum of Law (MOL) at 11. Specifically, the agency argues that Legal’s past performance was less relevant because none of its examples involved screening people. *Id.* at 9-11. The agency contends that it properly considered relevant aspects of each reference, including whether the performance involved functions that were essentially the same or were merely similar to the RFQ, and whether each reference showed performance in multiple relevant countries. *Id.* at 8. Altogether, the agency argues that the record supports its evaluation judgments regarding Legal’s past performance.

Our review of the record supports the Air Force’s evaluation of Legal’s past performance. The RFQ specified that past performance would meet the highest relevance rating of very relevant were it was essentially the same scope as the RFQ. The RFQ informed vendors that the agency sought past performance that was “relevant in demonstrating the ability to perform the full range of the PWS requirements.” RFQ at 6. The PWS descriptions of the scope, objective, and requirements of the task order each center on the contractor’s performance of screening. PWS at 2-3. For instance, the PWS describes the scope of the contract “to establish and maintain operation of Locally Employed Person (LEP) screening teams” which would “provide a single point of screening for all non-government, locally employed laborers and workers,” and further described the contract tasks as providing “Screenings . . . designed to enhance force protection by providing an added layer of vetting to the workforce,” and that “[s]creenings are . . . intended to limit access of persons whose background or activities pose a risk to installation security.” *Id.* Accordingly, the RFQ sufficiently informed vendors that the performance of screening services could be considered in both assessing the relevance of past performance and, consequently, the overall evaluation of past performance. Based on the record here, Legal has not shown that the evaluation of its past performance as satisfactory confidence was unreasonable.

⁴ To the extent that Legal appears to argue that its performance record included screening experience, the Air Force points out that the record only shows that Legal’s personnel were present to provide interpretation services when screening was being performed by others. Our review of the record confirms that the agency’s view was reasonable, that the record does not show that Legal’s past performance involved providing screening services.

Legal raises parallel arguments in challenging the evaluation of the awardee's past performance. It contends that the Air Force unreasonably emphasized past performance of screening services in finding two of Rally's subcontractors' past performance references very relevant. Comments & Supp. Protest at 5-6. The protester contends further that the agency's evaluation of Rally's past performance was irrational and applied unstated evaluation criteria. *Id.* Having concluded above that the evaluation of Legal's past performance was reasonable and consistent with the RFQ in considering the performance of screening services, the evaluation of Rally's past performance, which reflected performance of those services, was reasonable and consistent with the RFQ.

Legal nevertheless disputes the evaluation of one of Rally's past performance references, arguing that it did not, in fact, involve performance of screening services as described in the RFQ PWS. *Id.* The Air Force argues that the evaluation was proper because the subcontractor's contract was for linguist support services for the Department of State, and that the services are also referred to as vetting and linguistics support services, and specifically included screening. Supp. Memorandum of Law and Contracting Officer's Statement (Supp. MOL/COS) at 6. The agency points to the description of the past performance as including the performance of in-depth counterintelligence and counterterrorism vetting interviews of locally employed job applicants and staff seeking security certification renewals. *Id.* at 7 (quoting AR, Tab 23, Rally Past Performance Proposal at 18).

Our review of the record supports the Air Force assessment of the challenged subcontractor's past performance as demonstrating performance of screening that was similar to the PWS requirements. Legal has not shown that the assessment of this performance as very relevant was unreasonable on this record.

In a final past performance challenge, Legal argues that the evaluation of Rally's performance was unreasonable in disregarding the fact that both of its very relevant past performance examples were from two subcontractors, not Rally itself. Legal argues that only past performance by the prime contractor itself (which Legal contrasts with its own proposal, which relied on the past performance of a single subcontractor) should have been eligible for a past performance rating of substantial confidence. Comments & Supp. Protest at 3.

Again, the Air Force contends that the evaluation of Rally's past performance was reasonable and consistent with the RFQ. The agency notes that the RFQ did not provide that the evaluation of past performance by a subcontractor that met the solicitation requirements (by either performing critical functions or over 20 percent of the value of the order) would be considered differently than past performance of the prime. Accordingly, the agency maintains it reasonably assessed both prime and subcontractor past performance in evaluating past performance. Supp. MOL/COS at 9-10.

We see no basis in this record that would support Legal's contention that the Air Force was unreasonable or violated the RFQ when considering the very relevant past

performance of Rally's subcontractors. Consistent with the terms of the RFQ, the agency weighted past performance according to its relevance. As a result, Rally's very relevant past performance had a significant role in the overall evaluation of its past performance.

Limitation on Subcontracting Clause

Next, Legal argues that the Air Force was required to reject Rally's quotation because it showed that the firm would not comply with the limitation on subcontracting clause in the RFQ. Legal notes that during discussions the Air Force questioned both vendors' compliance with the limitation. Rally responded that it had revised its quotation so that specific positions to be performed by subcontractor personnel would transition to performance by Rally's personnel in later performance periods, in order to bring the quotation into compliance with the limitation. Legal contends that Rally's revised approach should have been rejected for failing to comply with the limitation during the initial periods of performance. Supp. Comments & Supp. Protest at 6.

Our Office will consider a protester's contention that a quotation, on its face, should have led the agency to conclude that the vendor had not agreed to comply with the subcontracting limitation. Such a contention challenges the acceptability of the quotation. *KAES Enters., LLC*, B-408366, Aug. 7, 2013, 2013 CPD ¶ 192 at 2. As relevant here, the general obligation is that at least 50 percent of the cost of contract performance incurred for personnel be expended for employees of the concern. Nevertheless, an agency's judgment as to whether a small business vendor will be able to comply with this subcontracting limitation presents a question of responsibility not subject to our review. *Id.* Furthermore, a contractor's compliance with the limitation clause (among many other contract requirements) during the course of performance may be affected by future events, including the parties' own actions. Those circumstances must be addressed as matters of contract administration, which are not within our Office's protest jurisdiction. 4 C.F.R. § 21.5(a). Once again, our protest jurisdiction in this area considers whether the quotation on its face showed a failure to agree to the limitation on subcontracting.

The Air Force explains that in the circumstances of this procurement (that is, in the case of an order under a schedule contract above the simplified acquisition threshold that is set aside for small businesses), the clause specifies that compliance with the limitation is to be assessed at the end of the full performance period for the order. Supp. MOL/COS at 13 (citing FAR clause 52.219-14(f)(2)). The Air Force argues that Legal does not actually dispute that Rally's quotation provided for compliance by the end of the order at issue; rather, Legal's argument emphasizes that option years under the order are not guaranteed--the Air Force could decide not to exercise options--and if so, the order could expire when Rally had not yet expended at least 50 percent of the incurred personnel cost for its own employees. Comments & Supp. Protest at 6.

As noted above, our Office only considers whether a quotation on its face shows that a vendor will not fulfill the requirements of the limitation; the application of the clause during performance is a matter of contract administration and thus, outside our

jurisdiction. The clause itself provides for assessment of compliance based on the complete order, not each option year. Accordingly, allegations about Rally's noncompliance at earlier times during performance do not shown a failure to comply with the limitation on subcontracting clause on the face of Rally's quotation. At best, Legal presents only potential circumstances that might occur during performance which are thus matters of contract administration. 4 C.F.R. 21.5(a). Accordingly, we deny this ground of protest.

The protest is denied.

Edda Emmanuelli Perez
General Counsel