



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Futurecom, Inc.

File: B-400730.2

Date: February 23, 2009

Bruce Herbin for the protester.

Lt. Col. Won K. Lee, Department of the Air Force, for the agency.

Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Past performance provision in solicitation that limits past performance references to those performed within the past 3 years is consistent with Federal Acquisition Regulation (FAR) § 15.305(a)(2)(i), which requires that the currency of past performance be evaluated, and is not unduly restrictive of competition, particularly given the requirement in FAR § 15.305(a)(2)(iv) that offerors with no current or relevant past performance may not be evaluated favorably or unfavorably on past performance.

DECISION

Futurecom, Inc. of Oviedo, Florida, protests the terms of an amendment to request for proposals (RFP) No. FA8519-08-R-26542, issued by the Department of the Air Force for the general repair of T-10 noise suppressors, otherwise known as hush houses. The protester contends that past performance provisions in the RFP amendment unduly restrict competition and exceed the agency's needs.

We deny the protest.

The Air Force issued the RFP for the general repair of hush houses, setting forth two evaluation factors: price and past performance. Award was made to Vital Link, Inc. on September 30, 2008, and after receiving a debriefing, Futurecom protested the award. Among other things, Futurecom contended that the RFP did not request past performance information, so that the award was improper.

In response, the agency stated that it would take the corrective action of amending the past performance evaluation criteria, giving offerors an opportunity to revise

their past performance information, re-evaluating the past performance information received, and making a new contract award if necessary. On November 21, our Office dismissed the protest as academic in light of the agency's proposed corrective action.

On December 8, the Air Force issued an amendment to the RFP that requested present and past performance information. Specifically, the solicitation requested that offerors provide a separate "Past Performance FACTS Sheet" for each active or completed contract "in the past three (3) years, that the offeror considers relevant in demonstrating its ability to perform the proposed effort." RFP amend. 1 at 3. The amendment also stated that offerors that did not "possess relevant corporate past performance should submit FACTS Sheets for three (3) of their most recent/relevant contracts/efforts demonstrating the present and past performance for each of their key personnel." Id.

Futurecom filed the present protest on December 18, in which it argues that the requirement to submit past performance information limited to the past 3 years is unduly restrictive because it would be very difficult for any offeror other than Vital Link to provide relevant past performance information for the past 3 years in that Vital Link has been the only contractor providing these services to the Air Force in recent years. Protest at 2. Futurecom asks that the agency eliminate the 3-year recency requirement regarding the past performance information to be submitted by the offerors.

We find that the past performance requirements included in the RFP amendment are unobjectionable. Federal Acquisition Regulation (FAR) § 15.305(a)(2)(i), which is applicable to this procurement, provides that "[the] currency and relevance of the information" regarding past performance shall be considered in the past performance evaluation. Consistent with this FAR section, the Air Force explains that the solicitation language requesting past performance information from the contractors is standard language based on the Air Force Past Performance Evaluation Guide (PPEG) IG5315.305(a)(2)(at 7) that provides that 3 years is the standard time period to define "currency" of past performance to be considered in the evaluation of proposals. Moreover, consistent with FAR § 15.305(a)(2)(iii), the RFP amendment provides that offerors, which do not have current and relevant past performance, can reference "contracts/efforts demonstrating the present and past performance for each of their key personnel." RFP amend. 1 at 3. Finally, the proposals of offerors, who have no current (within the past 3 years) or relevant past performance, as defined by the RFP, cannot be rejected as unacceptable because they lack current or relevant past performance, but "may not be evaluated favorably or unfavorably on past performance" and will be provided an "unknown confidence rating." RFP amend. 1 at 4; FAR § 15.305(a)(2)(iv); Kalman & Co., Inc., B-287442.2, Mar. 21, 2002, 2002 CPD ¶ 63 at 8 (agency reasonably evaluated a proposal under a past performance evaluation factor as "neutral" where it found that the offeror lacked current relevant past performance). Because the performance evaluation criteria included in the RFP amendment are consistent with applicable regulations

and do not preclude Futurecom from submitting a proposal, we find no basis to object to this amendment.¹

The protester also argues that the agency improperly widened its corrective action from what it initially stated when it asked in this amendment for staffing information and other various miscellaneous current data. Although the protester does not clearly state which provisions it is complaining about here, we presume this allegation concerns the request in paragraph I of the “FACTS Sheet” that offerors identify the individuals who will participate in the proposed effort on this acquisition who also participated in each of the contracts/efforts that were identified as past performance references. RFP amend. 1, attach. 1, Past Performance FACTS Sheet, at 2. The information requested by the agency here is clearly pertinent to the past performance evaluation.

The protest is denied.

Gary L. Kepplinger
General Counsel

¹ The Air Force reports that it has received four proposals, including Futurecom’s, in response to the RFP, and the information provided “identifies both prime contractors and subcontracts other than Vital Link who have provided performance on the T-10 Hush.” Agency Report, exh. 5, Contracting Officer’s Declaration, at 2.