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Decision

Matter of: Bannum, Inc.

File: B-406682

Date: August 2, 2012

Nancy M. Camardo, Esq., and Joseph A. Camardo, Jr., Esq., Camardo Law Firm, P.C., for the protester.

William D. Robinson, Esq., and Seth Bogin, Esq., Department of Justice, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against agency's evaluation of awardee's past performance is denied where the agency's evaluation of awardee's past performance was reasonable and consistent with the solicitation's evaluation criteria.

DECISION

Bannum, Inc., of Odessa, Florida, protests the award of a contract to McLeod Addictive Disease Center, Inc., of Charlotte, North Carolina, under request for proposals (RFP) No. 200-1128-MA, issued by the Federal Bureau of Prisons (BOP), Department of Justice, for Residential Reentry Center (RRC) services. Bannum contends that the BOP unreasonably evaluated McLeod's past performance and/or made an improper trade-off decision.

We deny the protest.

The BOP, through contractual relationships with various entities to operate RRCs, provides community-based residential and nonresidential correctional services to assist federal offenders during the transition from prison to the community. See RFP, Statement of Work (SOW), at 1. The BOP issued the present RFP on April 5, 2011, seeking a contractor to operate the agency's RRC in Charlotte, North Carolina, under a fixed-price contract with a 2 year base period plus 3 option

years.¹ The SOW requires the contractor to furnish all personnel, management, equipment, supplies, and services necessary to perform the contract.

The RFP provided for award to be made on a best value basis considering the evaluation factors of past performance,² technical/management, and price. Past performance was stated to be more important than technical/management and the combined weight of these two factors was significantly more important than price. RFP at 41. The RFP also provided that as the evaluation under the technical/management and past performance factors became more equal, price would become more important in selecting the best value proposal. Id.

The RFP stated that

[t]he past performance area addresses the Government's confidence in the offeror's probability of successfully performing the effort as proposed based on their record of performance in current and past relevant contract efforts. The Past Performance evaluation will be accomplished by reviewing aspects of an offeror's relevant present and recent past performance, focusing on and targeting performance that is relevant to the Past Performance [evaluation sub] factors.

RFP at 42. To evaluate proposals, the RFP required an offeror to submit "[t]he 5 most relevant contracts and/or subcontracts that were, or are currently being, performed in the past 3 years" and explained that "[r]elevant, refers to contracts which are of similar size, scope and complexity being acquired under this solicitation." RFP at 205. The RFP also provided that "[m]ore recent, more relevant performance information will have a greater positive impact on the Past Performance evaluation than less recent, less relevant performance" and that "[t]he Government may consider efforts performed by the offeror for agencies of the federal, state, or local governments and commercial customers as potentially relevant to the Past performance evaluation." RFP at 42.

Three offerors, including Bannum and McLeod, responded to the RFP by the July 5, 2011 closing date. The contracting officer, who also was the source selection official, evaluated proposals utilizing a color adjectival rating scale.³ After conducting three rounds of discussions, the BOP received final proposal revisions

¹ McLeod is the incumbent contractor at this facility.

² Under the past performance factor, there were five equally-weighted evaluation subfactors: accountability, programs, community relations, personnel, and communications/responsiveness. RFP at 39.

³ The possible color adjectival ratings were blue-very good, green-acceptable, yellow-poor, and red-unacceptable.

from both Bannum and McLeod on December 16.⁴ The evaluation results were as follows:

Offeror	Past Performance	Technical//Management	Price
Bannum	Blue-Very Good	Green-Acceptable	\$10,331,775
McLeod	Blue-Very Good	Green Acceptable	\$10,309,866

See Agency Report (AR), Tab 15, Source Selection Document at 11-36.

In selecting McLeod for award, the contracting officer determined that McLeod's proposal represented the best value based on its slightly lower price, very good past performance rating, and several strengths that were associated with its performance of the incumbent contract. Specifically, the contracting office recognized strengths in McLeod's past performance on the incumbent contract related to resident employment accountability, home detention, the low number of unemployed residents, the high number of employment fairs it had conducted and its program review teams. Id. at 37-38. On April 13, 2012, the contracting officer made award to McLeod. This protest followed.

The crux of Bannum's protest is that under the RFP's evaluation scheme it was entitled to the award despite its slightly higher price because Bannum's past performance experience was superior to McLeod's. Bannum argues that McLeod had only one relevant contract--the incumbent contract--whereas Bannum has extensive experience and is presently performing on more than five BOP contracts for RRC services, where it received blue-very good ratings. Thus, Bannum contends that the agency's selection of McLeod's proposal based on its slightly lower price violated the evaluation criteria, which made past performance the most important factor, and/or was the result of in an improper cost/technical tradeoff decision.

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. Family Entertainment Servs., Inc., d/b/a IMC, B-291997.4, June 10, 2004, 2004 CPD ¶ 128 at 5. A protester's mere disagreement with the agency's evaluation provides no basis to question the reasonableness of the evaluators' judgments. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10. As discussed below, we find the BOP's past performance evaluation and source selection decision was reasonable.

⁴ The third offeror withdrew its proposal during the course of discussions.

Both McLeod and Bannum submitted five contract references as required by the RFP. As contemplated by the evaluation criteria, the agency considered the relevance, recency, and quality of Bannum's and McLeod's past performance records.

The five McLeod contracts evaluated by the agency under the past performance factor, which were all located in North Carolina, were: (1) substance abuse treatment, Mecklenburg County; (2) substance abuse treatment, United States Probation Office; (3) substance abuse treatment, Piedmont Behavioral Healthcare; (4) Transitional Drug Abuse Treatment (TDAT), BOP; and (5) Residential Reentry Center services, BOP (the incumbent contract). The agency found the incumbent contract to be highly relevant, since it involved the exact same services being solicited. The TDAT and Piedmont contracts were rated relevant, given that only some of the services under the past performance subfactors had been performed by McLeod under these two contracts.⁵ See AR, Tab 8, McLeod Past Performance Evaluation at 5-6. McLeod's performance under each of the three relevant contracts was considered very good and there were several strengths related to its performance under the incumbent contract noted and discussed--these strengths were those specifically mentioned in the source selection decision. Id. at 9-10.

The five Bannum contracts evaluated by the agency, which were all BOP contracts for RRC services, were: (1) Wheeling, West Virginia; (2) Jackson, Mississippi, (3) Clarksburg, West Virginia; (4) Wilmington, North Carolina; and (5) Savannah, Georgia. The agency determined all of Bannum's contracts were highly relevant. However, the agency noted that four of the five contracts involved moderate use facilities whereas this procurement was for a major use facility. Performance on four of the five RRC contracts was rated very good, and one--Bannum's contract involving a major use facility--was rated acceptable. See AR, Tab 7, Bannum Past Performance Evaluation, at 11-12.

Bannum maintains that it was improper for BOP to consider McLeod's Piedmont and TDAT contracts relevant because they do not encompass all of the services required by the solicited contract. However, the past performance evaluation factor does not contain any language restricting the consideration of relevant contracts to those that contain the exact services required by the solicited contract. Rather, the criteria allowed for the consideration of contracts that were similar to the solicited contract, in size, scope and complexity. Here, the record reflects that the contracting officer considered McLeod's TDAT and Piedmont contracts to be relevant because each involved drug and alcohol treatment and counseling services to residents in Mecklenburg County, North Carolina, which were part of the currently solicited services and involved the same geographical area. Thus, we find the agency could reasonably consider these contracts to be relevant.

⁵ The other two contract references were determined to be not relevant.

Bannum nevertheless argues that its past performance was superior to McLeod's because it offered five highly relevant contract references and McLeod only had one highly relevant reference. The contracting officer, in selecting McLeod's slightly lower priced proposal, specifically considered the differences between the two offeror's past performance records, and determined that the records were "virtually even." See AR, Tab 15, Source Selection Decision, at 36-37. This was so because McLeod was the incumbent on this major use contract with an exceptional record of performance and many notable strengths, and was providing similar services to the same Mecklenburg community under two other relevant contracts, whereas Bannum's very good performance was on four moderate use contracts and one major use contract. Id. The source selection decision also specifically referenced the multiple strengths arising from McLeod's performance under the incumbent contract in determining that its proposal represented the best value. Id.

We find reasonable the agency's documented judgment that McLeod's outstanding performance on the incumbent contract made its past performance at least "virtually even" to Bannum's, such that its slightly lower priced proposal represented the best value.⁶ The fact that Bannum provided more highly relevant references than McLeod does not mandate that its past performance be considered superior, particularly given that McLeod had the most relevant experience in performing the incumbent contract in a very good manner.

The protest is denied.

Lynn H. Gibson
General Counsel

⁶ As stated in the source selection decision, because the ratings were even, price became a more significant factor that determined who would receive award and McLeod's price was lower. AR, Tab 15, Source Selection Decision, at 37; see RFP at 41.