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Decision

Matter of: Building Solutions, Inc.

File: B-406894.2

Date: September 24, 2012

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Christopher S. Cole, Esq., and Mark S. Teskey, Esq., Department of the Air Force, for the agency.
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DIGEST

Protest that agency failed to evaluate the relevancy of protester's past performance in accordance with the terms of the solicitation is denied where, reading the solicitation as a whole, the protester's reading of the solicitation is not reasonable.

DECISION

Building Solutions, Inc. (BSI), of Reno, Nevada, protests the award of a contract to JDD, Inc., of Cleveland, Ohio, under request for proposals (RFP) No. FA9301-11-R-0006, issued by the Department of the Air Force for custodial services.

We deny the protest.

BACKGROUND

The solicitation, issued as an historically underutilized business zone (HUBZone) set-aside, provided for the award of a fixed-price, indefinite-delivery, indefinite-quantity contract for five years (with a 6-month option period) for base-wide custodial services at Edwards Air Force Base and the Air Force Research Laboratory. The contractor will provide all management, tools, equipment and labor to perform custodial services at over 250 facilities totaling more than 2 million square feet. RFP amend. 4, Performance Work Statement, appendix B.

The RFP advised that award would be made to the offeror with the lowest-priced, technically acceptable proposal that had received a past performance rating of

substantial confidence. RFP amend. 2, at 16. If the lowest-priced, technically acceptable proposal did not receive a “substantial confidence” past performance rating, the agency would continue to evaluate proposals (from the next lowest-priced proposal) until a technically acceptable proposal received a “substantial confidence” past performance rating. Id. The source selection authority (SSA) would then consider which proposal reflected the best value, considering past performance and price. Id.

In this regard, the RFP provided the following evaluation factors: price, technical acceptability, and past performance. Id. at 11. Offerors were informed that proposals would be evaluated under the technical acceptability factor on a pass/fail basis, and that the past performance factor was approximately equal in weight to price. Id.

The RFP stated that the agency would first rank all offers by total price, which would be calculated by multiplying unit prices by estimated quantities and adding together all the resulting prices. Id. Next, the Air Force would evaluate offerors’ proposals under the technical acceptability factor on a pass/fail basis. Id. The Air Force would then evaluate past performance. With regard to past performance, offerors were required to submit past performance information for no more than four contracts for the prime offeror, and no more than two for each major or critical subcontractor.¹ RFP amend. 5, at 70. The agency would evaluate this information (and information received from other sources) to determine recent and relevant past performance. In determining relevancy, offerors were informed that the agency would assess the contracts, considering, in descending order of importance, scope of work, magnitude/complexity, type, and environment.² RFP amend. 2, at 15. For each of these considerations, the agency defined what would be considered “very relevant,” “relevant,” “somewhat relevant,” or “not relevant.” Id. at 12.

Under the scope of work consideration, a “very relevant” contract provided

routine and periodic custodial services to include: floor care, trash collection and disposal, restroom/locker room cleaning at Child Care, School Age Program, Youth and Fitness centers, general

¹ The RFP stated that past performance information for major subcontractors would be considered “as highly as” past performance information for the prime offeror. RFP amend. 2, at 14.

² The RFP also provided that the agency would consider the contract value in determining relevance. A “very relevant” contract was defined as having a value greater than \$1.5 million annually, a “relevant” contract would have a value between \$1-1.5 million annually, and a “somewhat relevant” contract would have a value between \$700 - \$999 thousand annually. RFP amend. 2, at 12.

administrative and commercial/industrial facilities meeting or exceeding requirements of the [Performance Work Statement].

Id. A “relevant” contract provided custodial services “at either a Child Care, a School Age Program, Youth and Fitness centers,” and a “somewhat relevant” contract provided the same services but not at any such center. Id.

Under the magnitude/complexity consideration, a “very relevant” contract was defined to be one that provided for routine custodial service for over 250 facilities consisting of more than 2 million square feet on a weekly basis; a “relevant” contract provided such service for between 150 and 250 facilities of 1.5 million to 2 million square feet; and a “somewhat relevant” contract provided service for 100 to 150 facilities consisting of 1 million to 1.5 million square feet. Id. The RFP also stated that “[i]n determining relevancy for individual contracts, consideration will be given to the effort, or portion of the effort, being proposed by the offeror, teaming partner, or subcontractor whose contract is being reviewed and evaluated.” Id. at 15.

Offerors were informed that the agency’s past performance evaluation would assess the offeror’s performance risk and assign a rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence based up on the government’s confidence in the offeror’s probability of successfully performing the contract.³ Id. at 14-15. In this regard, the RFP provided that the agency may assign greater weight to information from contracts deemed most relevant. Id. at 16.

The agency received 11 proposals in response to the RFP, including BSI’s and JDD’s. BSI proposed a teaming arrangement with the incumbent contractor, Accent Service Company, Inc., and BSI proposed to perform [DELETED] percent of the work itself. With regard to past performance, BSI’s proposal identified five contracts: three that BSI performed and two that Accent performed.

³ Substantial confidence indicated a high expectation that the offeror would successfully perform the required effort; satisfactory confidence indicated an expectation that the offeror would successfully perform; and limited confidence indicated a low expectation of successful performance. RFP amend. 2, at 15.

The agency evaluated the three lowest-priced proposals as follows:

	Technically Acceptable	Past Performance	Price
NSR Solutions Inc.	Yes	Limited Confidence	\$9,873,822
BSI	Yes	Satisfactory Confidence	\$10,115,232
JDD	Yes	Substantial Confidence	\$10,140,765

Agency Report, Tab 22, Source Selection Decision Brief, at 20, 22, 29, 33, 40, 42, 48.

BSI's satisfactory past performance rating reflected the judgment of the agency's performance confidence assessment group (PCAG) that, although BSI and its teaming partner identified contracts with satisfactory to excellent past performance ratings, BSI's own contracts were of limited relevance or not relevant. Specifically, the PCAG found that, of the three contracts BSI had submitted for its own past performance, one contract was not relevant, and the other two were only "somewhat relevant" in scope and "not relevant" in magnitude/complexity or contract value.⁴ AR, Tab 20, Past Performance Rating Team Worksheet, at 4. The PCAG also found that, of the two contracts identified for Accent, one (the incumbent contract) was very relevant, and the other contract was very relevant in scope, somewhat relevant in magnitude/complexity, and either relevant or very relevant under all remaining considerations. Id. at 2-3. Thus, although Accent had relevant, good past performance, the agency was concerned that BSI, who proposed to perform [DELETED] percent of the work, had only minor custodial contracts that were "somewhat relevant" in scope and "not relevant" under other considerations. Id. at 4.

JDD's substantial confidence past performance rating reflected the PCAG's determination that JDD submitted contracts for itself and its team that were very relevant in scope, and that the questionnaires it received for JDD's performance (two for JDD and two for its subcontractor) reflected overall good and excellent performance. AR, Tab 17, Past Performance Evaluation, at 3.

Because the lowest-priced, technically acceptable proposal (NSR's) did not receive a substantial confidence rating, the SSA performed a cost/technical tradeoff

⁴ The contract that was found to be not relevant was for construction services, where the only janitorial-type service procured was clean-up at the end of the building renovation. The other two contracts were for janitorial services, but were for buildings that were only 25,000 square feet and had annual contract value of only \$25,000. The agency did not assess the quality of BSI's performance for the construction contract that was found to be not relevant.

analysis to determine which proposal reflected the best value to the agency. The SSA found that NSR's lowest-priced, lower-rated proposal did not reflect the best value. AR, Tab 23, Source Selection Decision, at 4. The SSA also found that BSI's proposal did not reflect the best value, noting that BSI's proposed price was only slightly less than JDD's (.25 percent less). The SSA concluded that this slight price advantage was outweighed by JDD's higher past performance rating. The SSA noted in this regard that he was "aware of the very relevant past performance findings of [BSI's] major subcontractor, but it is the prime BSI that has the lead on the contract." AR, Tab 23, Source Selection Decision, at 4.

Award was made to JDD, and this protest followed.

DISCUSSION

BSI contends that the agency did not evaluate its past performance in accordance with the terms of the solicitation.⁵ Specifically, BSI argues that, with respect to the contract that the agency found was not relevant, the agency ignored the provision in the RFP providing that "[i]n determining relevancy for individual contracts, consideration will be given to the effort, or portion of the effort, being proposed by the offeror, teaming partner, or subcontractor whose contract is being reviewed and evaluated." See RFP amend. 2, at 15. BSI states that it proposed to perform contract management functions (among other responsibilities), while Accent was proposed to perform quality control and training (and other responsibilities). BSI contends that, in determining the relevance of its construction services contract, the Air Force should have considered BSI's performance of contract management functions.

Where a dispute exists as to the meaning of a particular solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, an interpretation must be consistent with such a reading. ArmorWorks Enter. LLC, B-405450, Oct. 28, 2011, 2011 CPD ¶ 242 at 3.

Here, we find BSI's reading of this solicitation provision to be unreasonable, either read alone or in considering the solicitation as a whole. This provision does not state, as BSI maintains, that the agency was required to find a contract for unrelated services (here construction services) to be relevant as compared to the scope of the work being solicited here (custodial services). Moreover, such a reading ignores

⁵ BSI also protested the agency's evaluation of the awardee's past performance. Protest at 9-10. The agency specifically responded to this issue in its report. BSI abandoned this ground of protest when it did not address in its comments the agency's response to the protester's arguments. See Cedar Elec., Inc., B-402284.2, Mar. 19, 2010, 2010 CPD ¶ 79 at 3 n.4.

the remainder of the RFP that plainly provides that the agency would consider as the most important relevance consideration the type of services provided. See RFP amend 2, at 12. Given this, we find nothing unreasonable with the agency's determination that BSI's construction contract was not relevant to the custodial services being procured here.

BSI also complains that, although the RFP stated that the past performance of a major subcontractor would be considered "as highly as" the prime offeror's, the Air Force did not give BSI sufficient credit for its teaming partner's past performance. This argument is belied by the record, which shows that the PCAG and the SSA both credited the protester for Accent's relevant, good past performance. See AR, Tab 20, Past Performance Rating Team Worksheet, at 4; Tab 23, Source Selection Decision, at 3. The agency also found, however, that BSI's minimally relevant past performance was a concern where BSI itself had proposed to perform [DELETED] percent of the work. Thus, the agency concluded that, on balance, the protester's past performance merited a satisfactory rating. Although BSI disagrees with the agency's judgment in this regard, it has not shown that the agency acted unreasonably.⁶

The protest is denied.

Lynn H. Gibson
General Counsel

⁶ BSI also challenged the SSA's selection of JDD's higher-priced proposal, based upon its argument that the agency did not sufficiently credit the protester for the past performance of its teaming partner. Given our determination that the PCAG and SSA reasonably considered Accent's past performance, this provides no basis to question the SSA's judgment.