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Decision

Matter of: Software Engineering Services Corporation

File: B-406963.3

Date: October 11, 2012

John M. Heida, Esq., for the protester.
David S. Cohen, Esq., John J. O'Brien, Esq., Gabriel E. Kennon, Esq., and Amy J. Spencer, Esq., Cohen Mohr LLP, for Array Information Technology; and, Pavan I. Khoobchandani, Esq., Akerman Senterfitt LLP, for IndraSoft, Inc., the intervenors.
Col. Mark S. Teskey and Jared D. Minsk, Esq., Department of the Air Force, for the agency.
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's assignment of a "limited confidence" rating to the protester's proposal under the solicitation's past performance factor is unobjectionable where the evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Software Engineering Services Corporation (SESC) protests the evaluation of its proposal and the failure of its proposal to be selected for the award of a contract under request for proposals (RFP) No. FA8771-09-R-0021, issued by the Department of the Air Force.

We deny the protest.

The RFP provided for multiple awards of fixed-price, indefinite-delivery/ indefinite-quantity (ID/IQ) contracts, for a base period of 3 years, with four 1-year option periods, to small business offerors. Offerors were advised that the agency intended to award six to nine ID/IQ contracts, with the agency reserving the "right to make more, less or no award at all as determined to be in the best interest of the government." RFP at 196. The solicitation provided that awards would be made to the offerors whose proposals represented the "best value" to the agency, using a "Performance Price Tradeoff (PPT) . . . methodology." *Id.* at 195.

The RFP explained that under the PPT method, proposals would first be evaluated for technical acceptability “on a pass/fail basis.” Id. The RFP informed offerors that proposals would then be evaluated under the past performance factor to “assess the Government’s confidence in the offeror’s probability of successfully performing as proposed” based upon the offeror’s past work record, and that proposals would be evaluated under the past performance factor as either “substantial confidence,” “satisfactory confidence,” “limited confidence,” “no confidence,” or “unknown confidence.” RFP at 198-99. The solicitation stated that in accordance with the PPT method, the agency would determine which technically acceptable proposals represented the best value by performing “[t]rade offs” between past performance and price, with past performance being considered significantly more important than price. RFP at 195.

The RFP included detailed proposal preparation instructions, and requested that each proposal include a past performance volume. RFP at 186. The past performance volume was to include, among other things, “information on not more than (10) contracts,” with “not more than five (5)” pertaining to significant subcontractors or teaming members. Id. The solicitation requested that the information be provided on “Past Performance Information Sheets” (PPIS), and that the PPIS for each contract could not exceed four pages. Id. The solicitation further included past performance questionnaires (PPQ) that were to be sent by the offerors to the “person responsible for the contract being referenced,” such as the cognizant contracting officer or contracting officer technical representative. Id. at 187. The RFP specified that the completed PPQs were to be sent directly to the Air Force for evaluation. Id.

The RFP explained that in evaluating the past performance information provided, the agency would “conduct an in-depth review and evaluation of all recent performance data provided and obtained from other sources . . . to determine how relevant the work performed under those efforts is to the proposed effort.” RFP at 198. The solicitation stated that the past performance ratings assigned would be based on the “quality of the work performed” and “the relevancy . . . to the acquisition.” Id. The RFP added, with regard to the agency’s determinations of relevancy, that the agency would focus on the following four areas: (1) systems sustainment, (2) web service development, (3) management, and (4) cost. Id. at 200-01. The solicitation set forth in detail the elements under each of these four areas that would be considered during the past performance evaluation. Id.

The Air Force received 28 proposals in response to the solicitation, and included all of them in the competitive range. AR, Tab 29, Source Selection Decision, at 2. Two offerors withdrew from the competition, and after discussions, 26 offerors submitted final revised proposals. Id. The agency rated 14 of these proposals, including the proposal submitted by SESC, as technically acceptable.” Id. at 4-7. The agency ultimately awarded contracts to 12 offerors. Id. at 7.

SESC's proposal, which was not selected for award, received a rating of "limited confidence" under the past performance factor, at an evaluated cost/price of \$73,437,119.¹ Id. at 4. In this regard, the record reflects that while the quality of the work performed by SESC had been rated by its references as "exceptional" to "very good," the agency found that SESC had "failed to demonstrate that it performed recent and relevant work of the same magnitude and complexity" as set forth in the RFP here. Contracting Officer's Statement at 17. Specifically, the Air Force determined that SESC lacked highly relevant or relevant past performance in the systems sustainment and web service evaluation areas, and accordingly, assigned a rating of "limited confidence" to SESC under the past performance factor.

After requesting and receiving a debriefing, SESC filed this protest. The protester argues that the Air Force's evaluation of its proposal as limited confidence under the past performance factor was unreasonable.

Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the contracting agency's discretion. TRW, Inc., B-282162, B-282162.2, June 9, 1999, 99-2 CPD ¶ 12 at 3. The evaluation of past performance is, by its very nature, subjective, and an offeror's disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. FN Mfg., LLC, B-402059.4; B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

Our review of the record provides no basis to question the reasonableness of the limited confidence past performance rating assigned to the protester's proposal. In this regard, we find that the record evidences that the agency provided the protester with detailed discussions regarding its past performance, and conducted a thorough and thoughtful evaluation of the protester's proposal under the past performance

¹ Nine of the twelve proposals selected for award were lower-priced than SESC's, and received the better ratings of either "satisfactory confidence" or "substantial confidence" under the past performance factor. One of the proposals selected for award received a rating of "satisfactory confidence" under the past performance factor, with the higher evaluated cost/price (than SESC's) of \$75,409,109, and two of the proposals selected for award received ratings under the past performance factor of "substantial confidence," with the higher evaluated costs/prices (than SESC's) of \$78,106,409 and \$78,390,449. AR, Tab 29, Source Selection Decision, at 4, 7.

factor.² For example, the agency evaluated the protester's performance of a Department of the Army contract, where the SESC provided "NetCentric Support Services, Systems Administration/Data Management, and Information Assurance to the Fort Hood Enterprise Center," as excellent with regard to quality of services, but only somewhat relevant to the RFP here with regard to the systems sustainment and web service development areas of past performance. AR, Tab 24, SESC FPR/PPIS, at 15; Tab 26, Past Performance Consensus Evaluation, at 1-3. The agency's evaluation specifically notes that the protester's proposal failed to address a number of elements under the system sustainment and web service development areas that were set forth in the RFP, such as the "system sustainment activities" of "[r]equirements management," and the web service development "methodology and associated processes, tools, and techniques" used to accomplish "[d]evelopment/use of Web Service Definition Language Documents." AR, Tab 26, Past Performance Consensus Evaluation, at 1-2; RFP at 200.

SESC generally asserts that its proposal's narrative describing its performance of the Fort Hood contract established that effort as relevant to the RFP here, rather than somewhat relevant, as found by the agency. However, the protester, despite having access under our protective order to, among other things, the initial evaluation of its proposal under the past performance factor, the evaluation of its responses to the first and second rounds of discussions, and the agency's final past performance consensus evaluation, does not point to any specific mention in its proposal of any of the elements that the agency concluded had not been addressed. As such, we find that the protester's argument here constitutes nothing more than its disagreement with the agency's conclusions, which does not show they were unreasonable.

The protester also complains that the relevancy ratings set forth in the consensus evaluation report for the past performance factor differ from certain of the individual evaluator ratings. The protester argues that "the consensus evaluation would have produced more relevant and highly relevant ratings if they were the sum of the three individual evaluations." Protester's Comments at 7. This argument is without merit.

It is not unusual for individual evaluator ratings to differ, and in certain instances, to differ significantly, from one another, or from the consensus ratings eventually assigned; indeed, the reconciling of such differences among evaluators' viewpoints is the ultimate purpose of a consensus evaluation. Neeser Constr., Inc./Allied Builders Sys., A Joint Venture, B-285903, Oct. 25, 2000, 2000 CPD ¶ 207 at 4. The overriding concern is not whether the final ratings are consistent with individual ratings, but rather, whether the agency's final consensus ratings reasonably reflect

² The record reflects that SESC made a number of revisions to its past performance proposal in response to discussions, including the replacement of three of its referenced contracts with other contracts. Contracting Officer's Statement at 21.

the relative merits of the proposals, consistent with the terms of the solicitation. Id. As such, and contrary to the protester's view, the fact that the agency's consensus ratings regarding the relevancy of SESC's past performance to the effort solicited here differ somewhat from certain of the individual evaluator ratings does not show that the agency's consensus evaluation was unreasonable.³

The protester next points out that the past performance questionnaires set forth in the RFP, and completed by the offerors' references, included the categories of systems sustainment and web service development, and the possible rating of not applicable if the references were either unaware of the contractors' performance in an area, or if a contract did not provide for such performance. The protester argues, using the Fort Hood contract discussed above as an example, that because its reference for the Fort Hood contract evaluated SESC's performance under the sub-categories to the systems sustainment category as excellent, and not as not applicable, SESC must have relevant past performance in this area, and the Air Force's evaluation of its past performance as "somewhat relevant" was thus unreasonable. We disagree.

As noted by the agency, the offerors' references, including SESC's, were asked only to provide their views as to the quality of the contractors' performance under the subject contracts, and not the relevancy of the work performed under the contracts to the acquisition here. Agency's Supp. Report at 2. Indeed, the references completing the questionnaires were not provided with the RFP here, and thus had no way of knowing whether the work performed was relevant to the requirements of this solicitation. Accordingly, we find that the protester's contention on this issue provides no basis on which to find the agency's evaluation objectionable.

The protest is denied.

Lynn H. Gibson
General Counsel

³ In any event, we note that with the vast majority of examples pointed to by the protester concern the past performance relevancy evaluation areas of management and cost. Protester's Comments at 6-9. As set forth above, the agency's concerns with regard to the relevancy of SESC's past performance to the acquisition here were in the areas of systems sustainment and web service development.