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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Miracle Systems, LLC

File: B-407324.7, B-407324.8, B-407324.10

Date: March 5, 2013

David S. Cohen, Esq., John J. O'Brien, Esq., and Gabriel E. Kennon, Esq., Cohen Mohr LLP, for the protester.
Cyrus E. Phillips, IV, Esq., Albo & Oblon, LLP, for Sevatec, Inc., an intervenor.
Adam Sleeter, Esq., Department of Transportation, for the agency.
Mary G. Curcio, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly evaluated protester's proposal is denied where evaluation was reasonable and consistent with the solicitation.

DECISION

Miracle Systems, LLC, of Arlington, Virginia, protests the Department of Transportation, Federal Highway Administration's (FHWA) award of a contract to Sevatec, Inc., of Falls Church, Virginia, under request for proposals (RFP) No. DTFH61-12-R-00012, for FHWA's Information Technology Support Services (FITSS) II contract. Miracle asserts that the agency unreasonably evaluated its proposal.

We deny the protest.

BACKGROUND

The solicitation, issued as a competitive 8(a) set-aside, provided for award of a contract to furnish information technology (IT) support services for the design, installation, management, maintenance and improvement of FHWA's nationwide information technology infrastructure. This work was divided among 7 task areas: program management, integrated communications, capital planning, infrastructure support, application software management, customer service, and IT security.

The solicitation provided for award to be made to the offeror whose proposal represented the best value considering the following evaluation factors (worth a total of 100 points): technical approach; management approach; quality control/quality assurance; past performance; and cost/price. Each proposal was also to be assigned a risk rating of low, moderate, or high. Overall, when combined, the four non-price evaluation factors were significantly more important than cost/price. RFP §§ M.2, M.3, M.4; Technical Evaluation Report (TER) at 3.

Twelve offerors responded to the RFP. Following the evaluation of proposals, the agency initially made award to Sevatec. After a debriefing, Miracle filed a protest with our Office against the award. In response, the agency agreed to reevaluate proposals, and our Office dismissed Miracle's protest as academic. B-407324 et al., Nov. 14, 2012.

Subsequent to the reevaluation, Sevatec's proposal received the highest technical score (82 points, 19 strengths and 1 weakness). Sevatec was rated medium for past performance with low performance risk. Miracle's proposal received a technical score of 78 points (10 strengths, 1 weakness and 3 "deficiencies"), and was also rated medium for past performance with low performance risk. Supplemental Source Selection Decision at 1. Sevatec's evaluated price was $117,240,476, while Miracle's was $108,286,926.34. The agency determined that Sevatec's proposal represented the best value. Upon learning of the resulting award to Sevatec, and following a debriefing, Miracle filed this protest with our Office.

DISCUSSION

Miracle challenges the evaluation of its proposal, arguing that the agency unreasonably and unequally evaluated its technical, past performance, and cost in numerous instances. In reviewing challenges to the agency's proposal evaluation we do not reevaluate proposals, but, rather, review the agency's evaluation to ensure that it was reasonable, consistent with the terms of the solicitation, and consistent with applicable statutes and regulations. Philips Med. Sys. of N. Am. Co, B-293945.2, June 17, 2004, 2004 CPD ¶ 129 at 2. We have considered all of Miracle's allegations and find that none provide a basis for questioning the award. We discuss several examples below.

Past Performance

With respect to past performance, offerors were required to identify contracts for similar requirements, and to have a minimum of five current (within the last three years) references submit past performance questionnaires (PPQ) to the agency. RFP §§ L.2.3.1, L.2.3.2. The solicitation advised offerors that the agency would evaluate past performance to assess the offeror's ability to perform the effort described in the solicitation based on the PPQs received and information obtained from other sources. RFP § M.2.5. Past performance of subcontractors that would perform a substantial portion of the requirement was also to be considered. Agency Response to Question No. 99.

Miracle and Sevatec were both rated "medium"[1] for past performance. Miracle asserts that it instead should have received a higher rating--that is, a "high" rating, the highest available--than Sevatec primarily because its subcontractor **[REDACTED]** is the incumbent FITSS contractor for the solicited services, and **[REDACTED]** was highly rated on the incumbent contract.

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 such judgment does not provide a basis to sustain a protest. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5. Further, the significance of, and the weight to be assigned to, a prime contractor's versus a subcontractor's past performance is principally a matter of agency discretion. Loral Sys. Co., B-270755, Apr. 17, 1996, 96-1 CPD ¶ 241 at 5.

Here, Miracle has not shown that it was unreasonable for the agency to evaluate its past performance as warranting a medium rating rather than a high rating. On the contrary, the record clearly supports the agency determination to rate both offerors medium for past performance, based on a distinction between the past performance of the 8(a) prime contractors, and their proposed subcontractors. For example, the agency evaluation recognized that Miracle's subcontractor, **[REDACTED]**, was the incumbent contractor with performance ratings of 5, the highest available rating. The evaluator's also considered **[REDACTED]** performance of a much smaller **[REDACTED]** IT contract covering 5 of 7 solicitation task areas under which **[REDACTED]** likewise received PPQ performance ratings of 5. Past Performance Evaluation (PPE) at 4-6.

Likewise, the evaluation noted that a PPQ was received for Sevatec subcontractor, **[REDACTED]** IT contract in which the work was indicated to be similar to the solicited work in all 7 task areas and for which **[REDACTED]** also received performance ratings of 5. In addition, a PPQ was received for a second Sevatec subcontractor, **[REDACTED]**, on a **[REDACTED]** IT contract in which the work was similar to the solicited work in 6 of 7 task areas and for which **[REDACTED]** received

[1] Past performance was rated high, medium, low, unsatisfactory or neutral. A medium past performance rating was defined as: "Proposal addresses the criterion in an adequate manner. Success in performance is likely." RFP § M.2.5.

performance ratings of 5 for quality (characterized in the narrative as “excellent”), timeliness of performance and customer satisfaction, and a rating of 4 for cost. PPE at 7-8.

However, recognizing that the solicitation required the 8(a) prime contractor to perform “at least 51% of the work,” RFP § L.2.2.3.3 at 156, the agency decided to give greater weight to the past performance of the offeror. AR at 27. In this regard, the values of Miracle’s contracts for which PPQs were received were all very much below the value of the current solicitation. Specifically, the estimated value of the contract to be awarded here is $141 million, AR at 19, while the highest-value contract submitted on behalf of Miracle to demonstrate its past performance was a **[REDACTED]** contract with an estimated value of **[REDACTED]**, but under which only **[REDACTED]** had been invoiced. The values of the remaining two Miracle contracts were even smaller: a **[REDACTED]** contract under which only **[REDACTED]** had been invoiced. Miracle received **[REDACTED]** PPQ performance ratings of 5, while its **[REDACTED]** ratings included 4s. PPE at 3-4.

Likewise, the values of the contracts for Sevatec for which PPQs were received were all well below the value of the current solicitation, although Sevatec’s contracts were significantly larger than Miracle’s. Specifically, Sevatec’s PPQ’s included a **[REDACTED]** contract. All were reported to be for IT work similar to the solicitation requirements and for all performance ratings of 5 were received.
PPE at 6-7.

In sum, while the record reflected significant, relevant, and highly-rated past performance by Miracle’s and Sevatec’s proposed subcontractors, the two offerors themselves proffered past performance that was considerably less in value. As a result, the agency focused on the offerors’ own lack of fully comparable experience and assigned both Miracle and Sevatec a rating of medium because the prime contractor itself is responsible for performing at least 51 percent of the contract, and will have ultimate responsibility for overall performance of the contract. PPE at 6, 8; AR at 19-20; 26-28. We see no basis to question this rationale for assigning both offerors a medium, rather than a high rating.

Staffing Plan

Under the management approach factor, offerors were required to provide a staffing plan, regarding which the solicitation provided as follows:

> The proposed staffing plan will be evaluated for the extent to which the Offeror proposed both key and non-key personnel that efficiently align to the LOE [level of effort].

> The offeror's staffing plan's roles and functions must be sufficiently and suitably defined and allocated and managed to satisfy the full range of effort contained in the PWS [Performance Work Statement].

RFP § M.2.2.2. Miracle's proposal was assigned a weakness for its proposed staffing plan because it did not adequately define the roles, functions and experience levels of the proposed personnel. As a result, the evaluators could not determine if Miracle's staffing plan would satisfy the staffing requirements under the contemplated contract. TER at 45.

According to Miracle, the agency acted unreasonably in assigning this weakness because the solicitation did not require offerors to identify roles, responsibilities and experience levels on a labor category by labor category basis. Rather, asserts Miracle, offerors were only required to include a plan to recruit and retain staff on the project, a requirement with which it complied. Miracle asserts that in any case it identified in its proposal named individuals for numerous positions that it proposed to fulfill, and described the experience of its essential personnel in detail.

The evaluation in this regard was reasonable. First, Miracle is incorrect in asserting that offerors were only required to include a plan to recruit and retain personnel. Rather, offerors were specifically informed that proposed staffing plans would be evaluated for the extent to which the offeror "proposed both key and non-key personnel that efficiently align to the level of effort (LOE)." RFP §§ L.2.2.3.2, M.2.2.2. Further, we disagree with Miracle that it was not required to identify the roles, responsibilities and experience levels by labor category. Rather, this was reasonably encompassed by the solicitation's requirements for a plan that efficiently aligned the proposed staff to the level of effort, and for offerors to suitably, and sufficiently, define, allocate and manage the staffing plan's roles and functions to satisfy the effort contained in the PWS. RFP § M.2.2.2. In this regard, the agency reasonably concluded that it would be unable to evaluate whether an offeror proposed a staff that could meet the requirements of the solicitation if it could not consider what roles and responsibilities the staff members would perform, and what experience they had that would allow them to satisfactorily perform the required functions.

Miracle asserts that it included relevant experience and background information. Miracle's proposal, however, included a list of **[REDACTED]** named individuals for different labor categories, with background information for only **[REDACTED]** of these personnel. Staffing Management Plan at 2-4, 6-11. Furthermore, for all but **[REDACTED]** of the staff, there was no discussion in Miracle's proposal of the functions the individuals will perform. Project Management Plan at 5. Neither was there information about the qualifications needed to qualify for these positions. SMP at 2-4. Thus, for example, Miracle proposed a task lead, but did not explain what functions the task lead will perform or identify the qualifications for the task lead. Miracle also listed job titles such as journeyman or junior without defining what these categories mean with respect to the skills necessary to perform the requirements of the contract. We find that the agency reasonably concluded that without this information it could not determine whether Miracle's staffing plan was adequate to perform the contract.

Unequal Treatment

The solicitation provided that the government would evaluate the extent to which the offeror demonstrated a sound approach to effectively applying the Information Technology Infrastructure Library (ITIL), a best practices guide for providing quality IT services, including the degree to which the offeror effectively utilized ITIL to enhance the delivery of IT services and to measure improvements. RFP § M.2.1.3. The solicitation also provided for the government to evaluate the degree to which the offeror's proposed quality management and program management plans were compliant with the Project Management Institute's (PMI) Project Management Book of Knowledge (PMBOK), RFP §§ M.2.2.3, M.2.3.1, a recognized industry project management standard. Supplemental Agency Report (SAR), Jan. 30, 2013, at 6.

Miracle asserts that it was treated unequally in the evaluation because another offeror was assigned a strength for its offer to employ an integrated lifecycle management framework that utilizes ITIL to move from development to operations and PMBOK best practices for management and quality assurance. According to Miracle, it also proposed to use ITIL to perform service transition from service design to service operations and PMI/PMBOK for management and quality control, and therefore its proposal also should have been assigned a strength.

In response, the agency explains that services that are managed by ITIL sometimes give rise to individual projects that are managed under PMBOK, and PMBOK projects typically develop a need for ongoing services to which ITIL best practices apply. SAR at 6-7. The agency further explains that another offeror was given a strength because it proposed to manage all task orders consistently using best practices from the different methodologies--PMBOK and ITIL--in a harmonized way. That is, the other offeror proposed to use both methodologies together for each task order. Id. at 7. In contrast, according to the agency, Miracle proposed to utilize either ITIL or PMBOK as required, that is, Miracle proposed to pick different methodologies to manage different task orders. Id. In sum, the other offeror, but not Miracle, offered to apply the two best practices together, across all task areas, thus effectively utilizing them to enhance the delivery of IT services. As Miracle does not dispute the agency's analysis of the differences in the proposed use of ITIL and PMBOK, we have no basis to conclude that Miracle was treated unequally when it was denied a strength in this regard.

The protest is denied.

Susan A. Poling
General Counsel