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Decision

Matter of: Professional Performance Development Group, Inc.

File: B-408925

Date: December 31, 2013

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Julia P. Hatch, Esq., Department of the Navy, for the agency.
Katherine I. Riback, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of the exclusion of the protester's proposal from the competitive range is denied where the evaluation of the protester's past performance and technical approach was reasonable and consistent with the solicitation.
 2. The agency was not required to provide an opportunity to the protester to address adverse past performance prior to its exclusion from the competitive range where its past performance was not the "determining factor" for the exclusion.
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DECISION

Professional Performance Development Group, Inc. (PPDG) of San Antonio, Texas, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. N62645-13-R-0005, issued by the Department of the Navy, Naval Supply Systems Command, for nursing and advanced practice nursing services at various Navy medical treatment facilities. PPDG argues that the agency improperly evaluated its proposal.

We deny the protest.

BACKGROUND

The RFP, which was issued on October 24, 2012, contemplated the award of a minimum of four indefinite-delivery, indefinite-quantity contracts to allow for maximum competition for future task order awards. RFP at 141. The agency will issue individual task orders that will specify the number of health care workers

required, the location at which they are to perform, and the minimum qualifications that must be held by each worker. All task orders will be awarded on a firm fixed-price basis. Id. at 4. Firms were advised that the agency would award contracts to the offerors submitting the proposals that provided the best value to the government. Id. at 141. The RFP identified two non-price factors: (1) past performance and (2) technical. The solicitation stated that past performance was significantly more important than the technical evaluation factor, and that the past performance and technical factors, when combined, were significantly more important than price. Id.

The agency received fifty proposals by the closing date of November 27. One proposal was rejected as untimely, nine of the timely-received proposals were eliminated from consideration because they failed to follow RFP instructions, and one vendor withdrew its proposal. Agency Report (AR), Tab 10, Pre-Negotiation Business Clearance Memorandum, at 2. The remaining 39 proposals were evaluated in accordance with the solicitation. Id. The agency ranked the offerors based on their past performance and technical evaluation factor scores. Id. at 11. The Navy concluded that discussions were required in order to make award, and established a competitive range of the most highly-rated offerors, based on their past performance and technical evaluator factor ratings. Id. at 38. PPDG's proposal was ranked 23rd, based on a past performance rating of limited confidence, and a technical factor rating of marginal.¹ Id. at 27. The agency limited the competitive range to the 14 most highly-rated offerors, and excluded the remaining offerors, including PPDG. Id. at 39. This protest to our Office followed.

DISCUSSION

PPDG argues that the Navy improperly excluded its proposal from the competitive range. The protester challenges the evaluation of its proposal under the past performance and technical evaluation factors, and also contends that the agency improperly failed to engage in communications with PPDG regarding its past

¹ For the technical factor, the agency assigned a combined technical/risk rating of outstanding, good, acceptable, marginal or unacceptable. RFP at 143. Of relevance to this protest, marginal is defined as “[p]roposal does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements. The proposal has one or more weaknesses which are not offset by strengths. Risk of unsuccessful performance is high.” Id. For the past performance factor, offerors’ could receive adjectival ratings of substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence. Id. at 142. Of relevance to this protest, limited confidence was described as, “[b]ased on the offeror’s recent/relevant performance record, the Government has a low expectation that the offeror will successfully perform the required effort.” Id.

performance prior to establishing the competitive range. Based on our review, we find that the evaluation and the resulting decision to exclude PPDG's proposal from the competitive range were reasonable. Although our decision does not specifically address all of the protester's arguments, we have fully considered each of them and find that none provides a basis to sustain the protest.

The evaluation of proposals and resulting determination as to whether a particular offer is in the competitive range are matters within the discretion of the contracting agency. NAE-TECH Remediation Servs., B-402158, Jan. 25, 2010, 2010 CPD ¶ 89 at 3. Federal Acquisition Regulation (FAR) § 15.306(c) permits an agency to establish a competitive range consisting of only the most highly-rated proposals. Our Office will review an agency's evaluation of proposals and determination to exclude a proposal from the competitive range for reasonableness and consistency with the criteria and language of the solicitation. Novavax, Inc., B-286167, B-286167.2, Dec. 4, 2000, 2000 CPD ¶ 202 at 13; SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 4.

Technical Factor Evaluation

PPDG challenges its marginal rating under the technical evaluation factor. As discussed above, the Navy assigned several weaknesses to the protester's technical proposal.

With regard to staffing, the Navy assigned PPDG's proposal a weakness because it did not address the responsibilities, qualifications and experience of the deputy product line manager. PPDG argues that this weakness was improperly assigned because, the protester contends, the RFP required offerors to address only the qualifications and experience of "key personnel," and did not require offerors to address the qualifications of non-key personnel, such as the deputy product line manager. Protester's Comments (Nov. 4, 2013) at 9. The agency contends, however, that the solicitation requirements for personnel were broader, and that the evaluation reasonably found that the protester failed to comply with those requirements. We agree with the Navy.

The solicitation required offerors to identify the "corporate personnel" who will be responsible for "key functional areas," as follows:

L.2.3.1. The offeror shall discuss the corporate personnel who will be responsible for contract start-up and the ongoing administration of all key functional areas, such as but not limited to recruitment, scheduling, human resources, program management, security, and credentialing. The offeror shall list the name, title, and employer (*i.e.* offeror or teaming partner) of all key corporate personnel. The plan shall describe the range of responsibilities for each individual and

should discuss how the qualifications and experience of each individual will contribute to successful contract operations.

RFP at 113-114. As discussed in the quote above, the RFP did not define specific positions as “key personnel,” and instead, required offerors to identify and discuss the qualifications of “all key corporate personnel,” that is, “corporate personnel who will be responsible for contract start-up and the ongoing administration of all key functional areas.” Id.

PPDG’s proposal did not specifically identify individuals as “key personnel,” and instead identified individuals as “corporate employees.” AR, Tab 7, PPDG Proposal, at 1-2. As relevant here, the protester’s proposal stated the following with regard to the positions of product line manager and deputy program line manager:

All corporate employees have a direct phone line and voicemail, ensuring messages are received in a timely manner. The Product Line Manager (PLM), [employee 1], will be the primary contact, [employee 2], Deputy PLM, will be the alternate contact for the Government. [Employee 1] and [employee 2] will respond promptly to the Contracting Officer, Contracting Officer’s Representative or assigned Government Supervisor.

Id. at 1.

The Navy’s evaluation found that the protester’s proposal “identified corporate personnel by name and title,” but also found that “PPDG failed to define the responsibilities of the deputy product line manager.” AR, Tab 10, Pre-Negotiation Business Clearance Memorandum, at 27-28; see also Tab 8, Past Performance and Technical Evaluation Report, at 125.

The agency contends that because the deputy product line manager is cited as the alternate point of contact to the product line manager, and because both the product line manager and deputy are responsible for responding to the contracting officer, the deputy is responsible for the “ongoing administration” of the contract. AR at 26; AR, see Tab 8, Past Performance and Technical Evaluation Report at 125. For this reason, the agency argues that the responsibilities, qualifications and experience for the deputy product line manager position should have been addressed in PPDG’s proposal. AR at 26; AR, Tab 8, Past Performance and Technical Evaluation Report at 125. We agree with the agency in this regard, and conclude that the agency reasonably assessed PPDG’s proposal a weakness for failing to provide the

responsibilities, qualifications and experience of the individual proposed for this position.²

The Navy also assigned PPDG's proposal a weakness regarding its proposal to provide recruitment resources. The RFP required offerors to "discuss their knowledge of the marketplaces represented in the solicitation and detail the sources and methodologies through which they will recruit and retain required health care workers." RFP at 114. The agency found that although the protester's proposal discussed recruitment resources, this plan addressed "general recruitment sources and [a] standard retention plan," but did not provide sources specific to the RFP's locations or labor bands. AR, Tab 8, Past Performance and Technical Evaluation Report, at 125.

PPDG contends that this was a minor weakness, and notes that the weakness was also assessed for offerors that were included in the competitive range. Protester's Comments (Nov. 4, 2013) at 12. While we agree with PPDG that some of the other offerors included in the competitive range had the same weakness regarding recruitment resources, the record shows that these offerors had fewer technical weaknesses and/or were more highly rated for past performance. AR, Tab 10, Pre-Negotiation Business Clearance Memorandum, at 12-21. In all, we find that the weaknesses that the agency identified in PPDG's proposal were reasonable, and have no basis to question the agency's rating of marginal under PPDG's technical factor.

Past Performance Evaluation

Next, PPDG challenges the Navy's assignment of a limited confidence rating for its past performance. Although the protester does not specifically challenge the accuracy of the data cited by the Navy in its evaluation, the protester argues that the agency improperly focused on minor concerns with its performance. PPDG also argues that its performance compared favorably with most of the offerors who were included in the competitive range.

² PPDG notes that, for a prior procurement that involved similar solicitation language, the protester submitted a similar proposal wherein it listed the qualifications and experience of the protester's product line manager, but not its deputy product line manager, and the Navy did not assess a weakness concerning this position. Protester's Comments (Nov. 4, 2013) at 10. As our Office has recognized, however, each procurement stands on its own. See SDS Int'l, B-285822, B-285822.2, Sept. 29, 2000, 2000 CPD ¶ 167 at 7 n.2. Where, as here, an agency's evaluation is reasonable and consistent with the terms of the solicitation, we will not find that evaluation unreasonable because an agency may have reached a different conclusion in a prior procurement.

The RFP stated that the agency's evaluation of offerors' past performance would consider "contract start-up, fill rates, submission and maintenance of credentials, and performance discrepancy resolution." RFP at 142. The solicitation also stated that greater consideration would be given to services that were "closely related" to those required under this solicitation. Id. The RFP permitted offerors to provide up to six past performance information sheets concerning prior contracts. Id. at 113. In addition to evaluating these references, the RFP stated that the agency could review other relevant past performance information, such as data from the Past Performance Information Retrieval System (PPIRS) and interviews with agency representatives.³ Id. at 142.

The Navy based its evaluation of PPDG's past performance on six past performance information sheets submitted in the protester's proposal, information from PPIRS, and internal agency references concerning performance of Navy contracts. AR at 14. The agency identified numerous areas where the protester's performance raised concerns regarding staffing fill rates and vacancies. For example, one of the information sheets provided by PPDG concerned its performance of nursing services at the Naval Medical Center Portsmouth, a location within the scope of the current RFP. The record shows that, for this contract, a physician assistant position was terminated because it was not filled, and the protester had a fill rate for medical assistants of 70 percent. AR, Tab 8, Past Performance and Technical Evaluation Report, at 70. For another reference, also at Portsmouth, the record show that the protester had three vacancies of three to six months during the course of the contract, and "[t]he contractor was slow to fill these vacancies because they submitted incomplete [healthcare worker] packages." Id. at 71.

With regard to PPIRS, the Navy found 24 reports of PPDG providing relevant services regarding 11 contracts. Id. Although many of the reports and comments were positive, the agency noted some problems with regard to PPDG's performance. For example, some PPIRS reports noted absences from shifts on several contracts, of which approximately six were in the nursing or advanced practice nursing labor bands. Id. The PPIRS reports also noted that eleven positions were terminated for not being filled (one of which was a nursing position), a low quality of service, and other health care worker issues. Id.

The Navy's evaluation of PPDG's past performance also included internal information concerning PPDG's past performance under contracts awarded by the Naval Medical Logistics Command. Regarding PPDG's contract to provide health care personnel under a Gulf Coast contract, the agency noted that some services were terminated following long-term vacancies, and that as recently as 2012,

³ PPIRS is a web-enabled, government-wide application that collects quantifiable delivery and quality past performance information. See FAR § 42.1503.

vacancies continued and contract discrepancy reports were issued. As of fiscal year 2013, five vacant positions were reported, and difficulties were experienced filling other positions. AR at 14. Under another contract where PPDG had to provide healthcare personnel at the Naval Medical Center, Portsmouth, PPDG experienced long-term vacancies for physician assistant and nurse practitioner positions in fiscal year 2012. It was noted that contractor discrepancy reports were issued to PPDG under this contract, and liquidated damages were assessed. AR, Tab 8, Past Performance and Technical Evaluation Report, at 71. There were also a number of vacancies under a contract to provide healthcare personnel to certain Navy medical treatment facilities. For example, there were two positions vacant at the time of evaluation at the Naval Health Clinic Great Lakes. Id. Also, at the Naval Health Clinic Quantico, there were vacancies for two certified medical assistants, a health educator, and three registered nurse case managers. Id.

Although PPDG does not specifically dispute the accuracy of the information cited by the agency's evaluation of the protester's past performance, PPDG argues that its performance record was no worse than that of other offerors included in the competitive range, each of whose past performance was rated as satisfactory confidence or better. See Protester's Comments (Nov. 4, 2013) at 5. While the protester notes that the agency found some similar concerns with regard to certain references for some of the other competitive range offerors, the protester did not demonstrate that the agency identified the same scope and magnitude of concerns regarding past performance for these competitive range offerors.

Moreover, the Navy notes that this solicitation required only two labor bands, nursing and advanced practice nursing, and that other vendors' past performance issues were concentrated in bands not required under the RFP; in contrast, PPDG had several past performance issues with regard to employees in the most relevant labor bands. Supp. AR at 2. Based on the record here, including the information that the agency considered regarding PPDG's past performance from various sources, we find no basis to question PPDG's rating of limited confidence under the past performance factor.⁴

Pre-Competitive Range Communications

⁴ PPDG also argues that it received a contract award in a different procurement based on an evaluation of the same past performance information. Protester's Comments (Nov. 4, 2013) at 2. We do not consider this argument persuasive, because, as discussed above, each procurement stands on its own. See SDS Int'l, supra. Additionally, the agency notes that the evaluation procedures and technical requirements in the current RFP are different from those in prior procurements, such as those where PPDG received an award. Supp. AR (Nov. 8, 2013) at 2.

Finally, PPDG argues that the agency was required by FAR § 15.306(b) to conduct exchanges regarding the protester's adverse past performance record. This argument is without merit. By its terms FAR § 15.306(b)(1)(i), requires the agency to conduct "communications" with offerors "whose past performance information is the determining factor preventing them from being placed within the competitive range." Here, as detailed above, PPDG's elimination from the competitive range was due to low ratings under both the past performance and the technical factors. Under these circumstances, the agency was not required to provide communications to permit PPDG to address its adverse past performance. See The Cmty. P'ship LLC, B-286844, Feb. 13, 2001, 2001 CPD ¶ 38 at 13.

The protest is denied.

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General Counsel