



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: SST Supply and Service Team GmbH

File: B-409873

Date: September 2, 2014

Paul D. Reinsdorf, Esq., for the protester.
Michael Truppel, Optronic GmbH & Co., KG, for the intervenor.
CPT Vera A. Strebel, Department of the Army, for the agency.
Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated awardee's proposal and past performance is denied where record shows that agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations.

DECISION

SST Supply and Service Team GmbH, of Krailing, Germany, protests the award of a contract to Optronic GmbH & Co., KG, of Konigsbronn, Germany, under request for proposals (RFP) No. W912PB-14-R-3003, issued by the Department of the Army to acquire civilians on the battlefield role-player services for military exercises to be conducted at the Joint Multinational Readiness Center in Hohenfels, Germany. SST maintains that the agency misevaluated the Optronic proposal.

We deny the protest.

BACKGROUND

The RFP contemplates the award of a fixed-price requirements-type contract for a base year and up to two 1-year option periods to provide qualified personnel to perform the required role-player services. Firms were advised that award would be made on a low-priced, technically acceptable (LPTA) basis. The RFP included two non-price evaluation factors, technical and past performance. RFP at 10-11. The technical factor included four subfactors, and advised that proposals had to be assigned an acceptable rating under each subfactor to be considered for award. Id. As relevant here, the fourth subfactor was experience. Id. Under that subfactor, the

RFP provided as follows: “The proposal will be evaluated to determine whether the offeror demonstrated at least two years of experience in managing services of similar scope and magnitude on a controlled access installation.” Id.

Under the past performance factor, offerors were advised that the agency would evaluate previous and current contract efforts that were determined to be recent and relevant under the terms of the solicitation. RFP at 11. Recent contracts were defined as contracts performed within 3 years of the date the RFP was issued. Id. Relevant contracts were defined as role-playing services contracts that involved a volume of work similar to that contemplated under the RFP. Id. The RFP further advised that offerors having no record of past performance, or for whom past performance information was unavailable, would be assigned a rating of unknown; an unknown rating would be considered an acceptable rating for the past performance factor. Id.

The agency received a number of proposals in response to the solicitation. Optronic’s was the lowest-priced. The record shows that the agency found the Optronic proposal acceptable under the experience subfactor, and under the technical factor overall. Agency Report (AR), exh. 8, Technical Evaluation Report, at 2. With respect to the experience subfactor, the basis for the acceptable rating was Optronic’s performance of two prior contracts for essentially the same requirement, namely, to provide role-player services at the same facility where the solicited requirement is to be performed. Those contracts were performed during the period of 2000-2003, and from 2003-2006 respectively. Id.; see also, AR, exh. 9, Source Selection Decision Document (SSDD), at 5.

Under the past performance factor, the agency determined that Optronic merited an unknown rating because the firm did not have any relevant past performance during the preceding three years. AR, exh. 8, Technical Evaluation Report, at 9; exh. 9, SSDD, at 6. Because Optronic was assigned an unknown rating for its past performance, the agency, in accordance with the terms of the RFP, assigned Optronic an acceptable rating for the past performance factor. Id.

On the basis of these ratings, and in accordance with the RFP’s announced LPTA award basis, the agency made award to Optronic. After being advised of the agency’s award decision and requesting and receiving a debriefing, SST filed this protest.

PROTEST

SST argues that it was unreasonable for the agency to have found the Optronic proposal acceptable under the experience subfactor, and the past performance factor. We note at the outset that, in reviewing protests challenging an agency’s evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency’s evaluation to ensure that it is reasonable and

consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. Similarly, with respect to an agency's evaluation of a firm's past performance, our Office will examine an agency's evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit or relative relevance of an offeror's past performance is primarily a matter within the agency's discretion. Swift & Staley, Inc., B-408792, Dec. 6, 2013, 2013 CPD ¶ 284 at 6; LOGMET LLC, B-407061, Oct. 17, 2012, 2012 CPD ¶ 307 at 6. A protester's disagreement with the agency's judgment does not establish that an evaluation was improper. AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 19.

Experience Subfactor Evaluation

SST argues that it was unreasonable for the agency to have considered the two prior contracts performed by Optronic in connection with its evaluation of the firm's proposal under the experience subfactor. According to the protester, even though the RFP did not explicitly include a recency requirement under the experience subfactor, it nonetheless was unreasonable for the agency to have considered these prior contracts because of how old they are. SST also contends that the prior contracts did not include certain security requirements applicable to the solicited requirement, and did not include a requirement for role players with Arabic or Pashtu/Dari speaking capabilities.

As the protester acknowledges, the RFP did not require the agency to consider only recent contracts in connection with evaluating proposals under the experience subfactor. By its terms, the experience subfactor required only that an offeror's proposal demonstrate that it had at least two years of experience managing services of a similar scope and magnitude on a controlled access installation. RFP at 10. Because the RFP did not specify a time period during which this experience was to be obtained, we have no basis to conclude that Optronic's contracts performed from 2000 to 2006 were not sufficiently recent to be considered as part of the agency's experience evaluation.¹

¹ The record shows that, in evaluating proposals under the experience subfactor, the agency adopted the past performance factor's definitions of "similar scope" and "similar magnitude" because those terms were not independently defined under the experience subfactor. Contracting Officer's Statement of Facts at 2. The protester argues that, in a similar vein, the agency also should have adopted the past performance evaluation factor's definition of recency for purposes of evaluating proposals under the experience subfactor. However, the protester's argument ignores the fact that, although both the experience subfactor and the past performance factor use the phrases "similar scope" and "similar magnitude," only the past performance factor included a recency requirement. Since the experience
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We also find no merit to SST's assertion that the Optronic contracts were not sufficiently similar to the requirement being solicited. As noted, the two contracts at issue were for essentially the same services as those being solicited, and also were performed at the same installation. The record shows that the agency considered the similarity between Optronic's prior contracts and the current requirement and concluded that, while there were differences, those differences were minor. In this connection the contracting officer states:

Specifically, the main differences between the prior Contract and the Solicitation are the additional administrative requirements, mostly imposed on the government, a requirement for two additional languages to be used by the role players, and a more detailed performance work statement (PWS) that has been refined to incorporate lessons learned as the JMTC COB [Joint Multinational Readiness Center contractor on the battlefield] program matured over the years. [Record citations omitted]. However, I considered these differences to be minor, because the nature of the work to be performed, i.e., the provision of "Contractors On the Battlefield" role players is for the same continuing follow-on requirement, and the contract values are very similar.

Contracting Officer's Statement at 3. Simply stated, we have no basis to object to the agency's determination that Optronic's prior contracts were similar in scope and magnitude. We therefore deny this aspect of SST's protest.

Past Performance Factor Evaluation

SST argues that the agency's evaluation of Optronic under the past performance factor was unreasonable. In this connection, SST points out that Optronic was debarred during a period from 2005 to 2008. In addition, SST argues that the agency failed to consider that the Army terminated a contract for the convenience of the government that had been awarded to Optronic in 2009. SST alleges that this information should have been taken into account in connection with the agency's evaluation of Optronic's past performance, and that it was improper for the agency to have assigned Optronic a neutral past performance rating. According to the

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subfactor did not include a recency requirement, it would have been improper for the agency to have used that requirement in evaluating proposals under the experience subfactor. See United Medical Sys.--DE, Inc., B-298438, Sept. 27, 2006, 2006 CPD ¶ 148 at 3 (agencies are required to evaluate proposal based solely on the evaluation factors announced in the RFP).

protester these two considerations should have resulted Optronic being assigned an unacceptable past performance rating.

The record shows that both of these events--Optronic's debarment and the termination for convenience--occurred outside of the 3-year timeframe designated by the RFP for consideration of past performance information. Optronic's debarment occurred during a period of time that was six to nine years prior to issuance of the solicitation, and the termination for convenience occurred in 2009, approximately five years prior to the issuance of the RFP. AR, exh. 3, Debarment Decision Letter; exh.4, Termination for Convenience Correspondence. The contracting officer explains that he considered the remoteness in time of these events in concluding that he should not factor them into the agency's overall assessment of Optronic's past performance. Contracting Officer's Statement of Facts, at 5-6.

In addition, the record shows that the contracting officer actually gave substantive consideration to the nature of the events in concluding that they should not bear on the agency's evaluation of Optronic's past performance. With respect to the termination for convenience, the contracting officer explains that the government and Optronic agreed to the termination for convenience and that it did not involve the assignment of fault or a finding of adverse performance on the part of Optronic. Contracting Officer's Statement of Facts, at 5. The protester has presented no evidence that would draw into question these conclusions on the part of the contracting officer.

With respect to Optronic's debarment, the record shows that it was based on the activities of its former president, who was convicted of attempting to ship ultra-strong aluminum alloy tubes to North Korea in contravention of two German foreign Trade statutes. AR, exh. 3, Debarment Decision Letter. The contracting officer explains that the debarment was not a factor in the past performance evaluation because it was for reasons wholly unrelated to the past performance of any contract awarded by the Army to Optronic.² Contracting Officer's Statement of Facts, at 6. The contracting officer further explains that, even though he did not factor Optronic's debarment into consideration during the agency's past performance evaluation, he nonetheless did consider it in connection with his affirmative responsibility determination of Optronic. Id.

On balance, we conclude that the agency's past performance evaluation of Optronic reasonably did not factor into consideration the firm's termination for convenience and debarment. As discussed above, these events were beyond the timeframe

² Despite the firm's debarment in 2005, Optronic nonetheless continued to perform its role player contract awarded by the Army through the following year, and that the agency did not terminate that contract based on the firm's debarment.

designated in the RFP for past performance examples. In addition, and in any event, the record shows that the contracting officer gave substantive consideration to the question of whether these events should be factored into the agency's evaluation of Optronic's past performance, and reasonably determined not to consider them. We therefore deny this aspect of SST's protest.

The protest is denied.

Susan A. Poling
General Counsel