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Decision

Matter of: Duluth Travel, Inc.

File: B-410967.3

Date: June 29, 2015

Ronald F. Thomas II, Esq., Thomas Law Center, for the protester.
Barry Roberts, Esq., Roberts Attorneys, P.A., for Cruise Ventures Inc. d/b/a CI Travel, the intervenor.
Scott Risner, Esq., and M. Katherine Stroker, Esq., United States Agency for International Development, for the agency.
Matthew T. Crosby, Esq., Lois Hanshaw, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of protester's past performance is denied where record reflects evaluation was reasonable and consistent with terms of solicitation.

DECISION

Duluth Travel, Inc., of Duluth, Georgia, protests the issuance of a task order to Cruise Ventures Inc. d/b/a CI Travel, of Virginia Beach, Virginia, by the United States Agency for International Development, under request for quotations (RFQ) No. SOL-OAA-14-000082, for travel agent services. Duluth alleges the agency unreasonably evaluated the firm's past performance and made a flawed source selection decision.

We deny the protest.

BACKGROUND

On March 26, 2014, the agency issued the solicitation, pursuant to Federal Acquisition Regulation subpart 8.4, through the General Services Administration e-Buy system to vendors holding contracts under Federal Supply Schedule 599, Travel Service Solutions. RFQ at 1. The solicitation sought a range of travel agent services to meet the agency's domestic and international travel requirements.

RFQ at 5. Duluth is the incumbent contractor for this requirement. See Contracting Officer's Statement at 2.

The solicitation contemplated the award of a fixed-price task order with a 1-year base period and four 1-year option periods. RFQ at 3. Award was to be made on a best value tradeoff basis, considering the following four factors: technical approach, personnel, past performance, and price. Id. at 39-40. Regarding the relative weight of these factors, the solicitation stated:

Technical approach, personnel and past performance are significantly more important than price. However, the Government will not make an award at a significantly higher overall price to the Government to achieve only a slightly superior technical performance. Overall price may be more significant as quotations are determined to be equal based on other non-price factors.

Id. at 40. Thus, the solicitation established the non-price factors as significantly more important than price, but provided that if quotations were evaluated as equal or nearly equal under the non-price factors, price would become more important.

Under the past performance factor, the solicitation instructed vendors to provide between three and five past performance reports from recent, similar contracts. RFQ at 36. The solicitation advised that in addition to these reports, the agency would consider "[o]ther sources of past performance information, such as CPARS [Contractor Performance Assessment Reporting System] reports." Id. at 37. The solicitation also advised that the agency would evaluate vendors' past performance in the following four areas: quality of product or service; timeliness of performance; customer satisfaction; and key personnel effectiveness. Id. at 40.

The agency received quotations from [DELETED] vendors, including Duluth and CI Travel. Agency Report (AR), Tab 8, Mem. of Negotiation, at 3. A technical evaluation committee (TEC) evaluated the quotations and assigned adjectival ratings under each non-price factor.¹ Id. at 3, 6. The TEC also assigned overall non-price ratings to the quotations. Id. A senior contract specialist then prepared a memorandum summarizing the evaluation findings and recommending CI Travel for award. Contracting Officer's Statement at 2. The contracting officer reviewed the evaluation findings and agreed with the contract specialist's award recommendation. Id. The contracting officer then awarded a task order to CI Travel. Id.

¹ The available ratings were outstanding, very good, good, marginal, and unacceptable. AR, Tab 8, Mem. of Negotiation, at 5.

After being notified of the award, Duluth filed a protest and supplemental protest with our Office. Upon reviewing the protests, the agency decided to take corrective action by reevaluating Duluth's and CI Travel's quotations under the past performance factor and making a new source selection decision.² See Contracting Officer's Statement at 2-3. Based on the agency's corrective action, our Office dismissed Duluth's protest as academic.

The TEC subsequently reconvened and reevaluated Duluth's and CI Travel's quotations under the past performance factor. AR, Tab 8, Mem. of Negotiation, at 7-8. The TEC also assigned new past performance and overall non-price ratings to those two firms' quotations. Id. The contracting officer then documented a price/technical tradeoff among the three "highest technically rated" quotations, which were those of Duluth, CI Travel, and a third vendor.³ Id. at 11-12. The table below shows the ratings assigned to those firms' quotations, as well as their total evaluated prices.

	DULUTH	CI TRAVEL	VENDOR 3
Technical Approach	Very Good	Very Good	Very Good
Personnel	Very Good	Very Good	Good
Past Performance	Good	Outstanding	Very Good
Overall	Very Good	Very Good	Very Good
Total Evaluated Price	\$4,702,440.00	\$3,293,089.27	\$3,860,894.88

Id. at 6-8, 11-12.

In her price/technical tradeoff, the contracting officer noted that among these three quotations, CI Travel's was lowest-priced. AR, Tab 8, Mem. of Negotiation, at 11-12. She also found that while all three quotations received overall ratings of very good, CI Travel's quotation was superior because--as reflected in the table above--it received higher ratings at the individual factor level. AR, Tab 8, Mem. of Negotiation, at 11-12. Since CI Travel's quotation was deemed superior under the

² The contracting officer states the reevaluation was necessary because in the initial evaluation, the TEC did not receive all available past performance information for Duluth's work under the incumbent contract and received incorrect past performance information for CI Travel. Contracting Officer's Statement at 2.

³ Although it is not explicitly documented in the record, the contracting officer apparently did not consider the other [DELETED] quotations in her price/technical tradeoff because [DELETED] of them were deemed nonresponsive and the [DELETED] was evaluated as unacceptable under the technical approach factor. See AR, Tab 8, Mem. of Negotiation, at 6, 11.

non-price factors and was lowest in price, the contracting officer again determined that CI Travel's quotation represented the best value to the government. AR, Tab 8, Mem. of Negotiation, at 11-12.

After the contracting officer made this determination, Duluth was informed the award to CI Travel would stand. Duluth then filed another protest with our Office.

DISCUSSION

Duluth alleges the agency unreasonably evaluated the firm's past performance and made a flawed source selection decision. We have considered all of Duluth's arguments, and we conclude, based on the record, that none have merit. Below we discuss Duluth's principal contentions.

Duluth first argues the evaluators "cherry-picked" adverse information regarding the firm's performance of the incumbent contract, while ignoring positive information. Protest at 9-11; Comments at 1.

The evaluation of an offeror's past performance, including the agency's determination of the relevance and significance of an offeror's performance history, is a matter of agency discretion, which we will not find improper unless it is inconsistent with the solicitation's evaluation criteria. CLS Worldwide Support Servs., LLC, B-405298.2 et al., Sept. 11, 2012, 2012 CPD ¶ 257 at 15; Nat'l Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4. In addition, the relative merits of an offeror's past performance information is generally within the broad discretion of the contracting agency. See Paragon Tech. Group, Inc., B-407331, Dec. 18, 2012, 2013 CPD ¶ 11 at 5. A protester's disagreement with the agency's judgment does not establish that the evaluation was unreasonable. FN Mfg., LLC, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

We find Duluth's claim that the agency "cherry-picked" adverse past performance information during the evaluation to be without merit. In this regard, the record reflects that the TEC identified both strengths and weaknesses regarding Duluth's past performance, and the strengths outnumbered the weaknesses.⁴ AR, Tab 7, Supp. TEC Mem., at 32-42. The record also reflects that the TEC favorably evaluated many aspects of Duluth's past performance and assigned Duluth's quotation ratings of very good in the areas of quality of product or services as well as effectiveness of key personnel. AR, Tab 7, Supp. TEC Mem., at 43. Accordingly, the record does not show the agency "cherry-picked" adverse past performance information for Duluth; rather, it shows the agency considered a variety

⁴ Under the past performance factor, the TEC assigned Duluth's quotation 12 strengths, 6 minor weaknesses, and 1 major weakness. AR, Tab 7, Supp. TEC Mem., at 32-42.

of past performance information, including a substantial amount of positive past performance information.

Duluth also challenges some of the adverse past performance information found in the reports the agency used in its evaluation. More specifically, Duluth argues the past performance reports for its work under the incumbent contract included adverse findings that were undeserved. Protest at 9-10; Comments at 2. In this regard, Duluth claims the agency “played a significant role in” the circumstances leading to the performance issues. Protest at 9-10. Duluth also claims the adverse findings relate to work beyond the scope of the incumbent contract. Id.

An agency’s past performance evaluation may be based on a reasonable perception of inadequate prior performance, regardless of whether the contractor disputes the agency’s interpretation of the underlying facts, the significance of those facts, or the significance of the contractor’s corrective actions. CMJR, LLC d/b/a Mokatron, B-405170, Sept. 7, 2011, 2011 CPD ¶ 175 at 6; Ready Transp., Inc., B-285283.3, B-285283.4, May 8, 2001, 2001 CPD ¶ 90 at 5. Further, a protester’s disagreement with an agency’s judgment in this area is not sufficient to establish the agency acted unreasonably. CMJR, LLC d/b/a Mokatron, supra; Ready Transp., Inc., supra.

The record reflects Duluth’s rating of good under the past performance factor was based in part on six minor weaknesses and one major weakness the TEC assigned after evaluating reports regarding Duluth’s work under the incumbent contract. See AR, Tab 7, Supp. TEC Mem., at 32-43. Five of the six minor weaknesses related to issues the agency experienced with Duluth’s submission of monthly accounting reports. Id. at 34-36. During performance of the contract, Duluth was made aware of these issues. See id. at 34-35; Protest, attach. B, Duluth CPARS Report (Jan. 25, 2013), at 2, 4, attach. E, Duluth CPARS Report (Oct. 25, 2013), at 2-3. The other minor weakness related to agency concerns regarding Duluth’s ability to fill vacant travel counselor positions and provide consistent on-site management on a daily basis. AR, Tab 7, Supp. TEC Mem., at 37-38. The major weakness related to delays agency personnel experienced when seeking travel assistance from Duluth during a particular time period. Id. at 35. As a result of the delays, the agency issued a cure notice. Id. The TEC noted Duluth responded to the cure notice, and the firm’s performance subsequently improved. Id.

In essence, Duluth argues the agency should be required to ignore underlying past performance findings that the firm disputes. Under the circumstances here, we disagree. First, nothing in the solicitation required the agency to ignore adverse past performance; to the contrary, the solicitation contemplated the agency would evaluate a vendor’s past performance in the areas where the TEC identified issues with Duluth’s performance of the incumbent contract. See RFQ at 40. Second, and as discussed above, during performance of the incumbent contract, Duluth was made aware of—and had the opportunity to respond to—the issues underlying the

adverse past performance findings. See AR, Tab 7, Supp. TEC Mem., at 34-35; Protest, attach. B, Duluth CPARS Report (Jan. 25, 2013), at 2, 4, attach. E, Duluth CPARS Report (Oct. 25, 2013), at 2-3. Third, it was logical for the TEC to consider these issues in its evaluation because they arose in performance of the same type of work--and for the same agency--as the work contemplated under the solicitation here. Finally, the record shows the agency documented its consideration of both positive and negative aspects of Duluth's past performance, and took into consideration Duluth's corrective action in response to the issues. AR, Tab 7, Supp. TEC Mem., at 30-44. In sum, Duluth's allegations do not demonstrate the agency's evaluation was unreasonable or otherwise provide a basis to sustain the protest.⁵

Duluth also challenges the award to CI Travel on the basis that the agency allegedly made the award on a lowest-priced, technically acceptable basis instead of a best value tradeoff basis, as required by the solicitation. Protest at 7-8. In this regard, Duluth argues the agency improperly made the award based on "the best price among a group of offerors . . . who made it to the threshold of 'highest technically rated' proposals." Protest at 7-8.

We see no merit in this claim. It is true that CI Travel's quotation was evaluated as being lower-priced than Duluth's. AR, Tab 8, Mem. of Negotiation, at 11. It is also true that CI Travel's and Duluth's quotations received equal overall ratings and equal ratings under the technical approach and personnel factors. Id. at 6-8, 11-12. However, CI Travel's quotation was evaluated as outstanding under the past performance factor, whereas Duluth's proposal was evaluated only as good. Id. at 7. Based on this distinction, the contracting officer found CI Travel's quotation was superior to Duluth's quotation under the non-price factors. See AR, Tab 8,

⁵ Without offering substantive detail, Duluth also alleges the agency evaluated the firm's past performance in bad faith and with bias against the firm. Protest at 8-9; Comments at 1-3. Government officials are presumed to act in good faith, and a protester's contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not consider allegations based on mere inference, supposition, or unsupported speculation. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8; Shinwha Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 5 n.6. There is no evidence in the record, other than Duluth's speculation, to support the allegation of bad faith or bias. Accordingly, we will not further consider it.

Mem. of Negotiation, at 11-12. Thus, contrary to Duluth's claim, the agency did not select a lowest-price, technically acceptable quotation for award, but instead selected a quotation deemed to be superior under the non-price factors, as well as lower in price.

The protest is denied.

Susan A. Poling
General Counsel