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Decision

Matter of: Adino Inc.
File: B-412144
Date: December 24, 2015

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DIGEST

Protest of exclusion of proposal from competitive range is denied where the record shows that agency reasonably evaluated protester's proposal and concluded that the proposal was not among the most highly rated.

DECISION

Adino Inc., of Chicago Heights, Illinois, a small business, protests the U.S. Department of Agriculture (USDA), Rural Development Administration's exclusion of its proposal from the competitive range under request for proposals (RFP) No. AG-31ME-S-15-0018, for services in support of the Centralized Servicing Center in St. Louis, Missouri. Adino challenges the conduct of the procurement and the evaluation of its proposal.

We deny the protest.

BACKGROUND

The RFP, issued on July 17, 2015 as a set-aside under the Small Business Administration's 8(a) program, contemplated the award of an indefinite-delivery/indefinite-quantity (ID/IQ) contract, with a 1-year base period and four 1-year options, for loan servicing, loss mitigation processing, property disposition, loss claim processing, administrative and support functions, data entry, and customer service phone support for USDA's Centralized Servicing Center. RFP at 3. The RFP combined two prior USDA contracts: one for administrative

support services (in which Adino is the incumbent), and one for imaging and file maintenance. Contracting Officer's Statement (COS) at 1.

The RFP provided for award on a best-value basis considering the following three evaluation factors: (1) understanding of and technical approach to the requirements, and qualifications; (2) past performance; and (3) price. Agency Report (AR), Tab 17, Revised Evaluation Criteria, at 2. The technical factor contained six subfactors of equal weight: (1) degree the proposed approach meets the requirements within the required schedule; (2) approach for providing quality management for work performed under the contract to ensure deliverables meet or exceed the requirements; (3) approach for resolution of anticipated or potential difficulties and problem areas, and well-reasoned plans for anticipating and managing performance risk; (4) approach for employee retention; (5) attendance/participation in pre-proposal conference; and (6) qualifications. AR, Tab 17, Revised Evaluation Criteria, at 2. The past performance factor contained seven subfactors: six of equal weight (client satisfaction, resource management, reasonable and cooperative behavior, quality, cost control, and schedule), and one of "double weight" (ability to recruit, manage, and administer a professional work force in the St. Louis metropolitan area). Id. at 4. The technical and past performance factors were of equal weight and "weighed more heavily than price." Id. at 1-2.

The RFP stated that USDA would also evaluate offerors on price reasonableness, corporate viability and personnel, and pricing for the sample task order to arrive at a total evaluated price. AR, Tab 17, Revised Evaluation Criteria, at 5-6. The RFP informed offerors that USDA may reject a proposal if it is materially unbalanced (prices significantly less than cost from some work and significantly overstated for other work) or unreasonably low or high. Id. at 1, 5. Further, the solicitation indicated that USDA would evaluate pricing on the basis of the proposed fixed unit prices and whether the offeror has provided "competitive, fair, and reasonable pricing." Id. at 5.

USDA received ten proposals in response to the solicitation, including proposals from Adino, [Deleted] and [Deleted]. COS at 1-2. The technical and past performance evaluation teams evaluated the proposals, assessed strengths and weaknesses under the subfactors, and based on these strengths and weaknesses assigned adjectival ratings. AR, Tab 9, Technical Evaluation Team (TET) Summary.¹

¹ The adjectival ratings were then translated into numerical point scores ranging from 3 points for an excellent technical or exceptional confidence past performance rating to -1 point for an unsatisfactory technical or unacceptable confidence past performance rating. COS at 2; AR, Tab 14, Summary Matrix, at 1-2. For the technical proposals, USDA then totaled the numerical points assigned to each
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The price analysis team evaluated the price proposals by comparing the mortgage clerk positions, and concluded that, because all of the offerors' pricing exceeded the Service Contract Act (SCA) wage rate, and the two lowest-priced offerors were close in pricing, none of the proposals were unrealistically low. Supplemental AR at 5. Contracting Officer's Supplemental Statement (COSS) at 1-2. The price analysis team then assigned point scores by comparing all offers to the lowest-priced (base and options) offer as follows:

Price Ranges	Points
Within \$500,000 of lowest price	8
At least 5% more than lowest price	6
At least 10% more than lowest price	4
At least 20% more than lowest price	2
At least 30% more than lowest price	1
Highest price	0

AR, Tab 15, Price Proposal Summary, at 1.

The maximum points a proposal could receive were 20 for technical, 20 for past performance, and 8 for price. AR, Tab 8, Competitive Range Determination, at 3. Using these point conversion matrixes, USDA evaluated Adino's proposal and the proposals of the two offerors, [Deleted] and [Deleted], which were included in the competitive range as follows:

(...continued)

subfactor and divided the score by six, since each of the six subfactors were of equal weight. AR, Tab 14, Summary Matrix, at 1. USDA then multiplied the total by 1.111 to reflect that the weight of the technical evaluation is equal to the weight of the past performance evaluation, for which there were seven subfactors. Id. For the past performance proposals, USDA totaled the numerical points assigned to each of the six subfactors (which were of equal weight) and doubled the score of the seventh subfactor (which was given "double weight"), and then divided the score by seven. Id. at 2. USDA then multiplied the total by 0.8333 to reflect that the weight of the technical evaluation is equal to the weight of the past performance. Id.

	Adino		[Deleted]		[Deleted]	
Technical	Rating	Point	Rating	Point	Rating	Point
Requirements /Schedule	Excellent	3	Excellent	3	Excellent	3
Quality Management	Good	1	Good	1	Excellent	3
Resolution of Difficulties	Marginal	0	Good	1	Good	1
Employee Retention	Excellent	3	Excellent	3	Excellent	3
Pre-Proposal Conference	Excellent	3	Marginal	0	Excellent	3
Qualifications	Excellent	3	Excellent	3	Excellent	3
Total		13		11		16
Weighted Score	Very Good	14.4	Very Good	12.2	Excellent	17.8
Past Performance						
Client Satisfaction	Satisfactory	1	Excellent	3	Excellent	3
Resource Management	Satisfactory	1	Excellent	3	Excellent	3
Reasonable/ Cooperative	Satisfactory	1	Excellent	3	Excellent	3
Quality	Very Good	2	Excellent	3	Excellent	3
Cost Control	Satisfactory	1	Excellent	3	Excellent	3
Schedule	Satisfactory	1	Excellent	3	Excellent	3
St. Louis Workforce	Excellent	6	Very Good	4	Excellent	6
Total		13		22		24
Weighted Score	Very Good	10.8	Excellent	18.3	Excellent	20
Total= technical + past performance		25		31		38
Price	\$16,988,001	2	[Deleted]	8	[Deleted]	8
TOTAL SCORE		27		39		46

AR, Tab 8, Competitive Range Determination, at 2; Tab 14, Summary Matrix, at 1-2; Tab 15, Price Proposal Summary, at 1.

The contracting officer determined that only [Deleted] and [Deleted] had a combined technical and past performance score above 30 (out of a possible 40 points). AR, Tab 8, Competitive Range Determination, at 3. The contracting officer concluded that

The line of demarcation between what is considered to be the 'most highly rated' proposals and the proposals excluded from the competitive range were those that scored 30 or above in the combined technical and past performance areas before consideration was given for possible trade off for awarding to the offeror whose Technical and Past Performance combined scores were the highest but whose price was not the lowest. After combining the Price evaluation these same two still remained the total evaluation score leaders with both scoring above 390 [sic] out of 48 possible points, and the next closest evaluation score was a full eights (8) [sic] points less.

Id. Thus, the contracting officer included only [Deleted] and [Deleted] in the competitive range. The agency notified Adino on September 13 that it was excluded from the competitive range because of its pricing, past performance, and because it had failed to provide an approach to resolve potential difficulties and a quality management plan. AR, Tab 4, Notice of Exclusion, at 1. This protest ensued.

DISCUSSION

Adino challenges the evaluation of its proposal and its exclusion from the competitive range. With respect to a competitive range determination, our Office will review an agency's evaluation and exclusion of proposals from the competitive range for reasonableness and consistency with the solicitation criteria and applicable statutes and regulations. iGov et al., B-408128.24 et al., Oct. 31, 2014, 2014 CPD ¶ 329 at 9; Cylab Inc., B-402716, July 13, 2010, 2010 CPD ¶ 163 at 4. Here, we have considered all of the arguments raised by the protester, and we find they provide no basis on which to sustain the protest. We discuss several of the arguments below.

Technical

Adino asserts that it should have received an excellent rating overall under the technical factor, instead of very good, because the evaluators did not properly evaluate its proposal under two technical subfactors: approach for resolving potential difficulties (Adino received a marginal rating), and approach for providing quality management (Adino received a good rating). Protest at 4-8; Comments at 2-6. The agency responds that Adino's proposed approach for resolving difficulties and its quality management plan were sparse and lacking in details. AR at 4-7.

An offeror bears the burden of submitting an adequately written proposal that contains all of the information required under a solicitation. Battelle Memorial Inst., B-299533, May 14, 2007, 2007 CPD ¶ 94 at 3. Where a proposal omits, inadequately addresses, or fails to clearly convey required information, the offeror runs the risk of an adverse agency evaluation. Great Lakes Towing Co. dba Great Lakes Shipyard, B-408210, June 26, 2013, 2013 CPD ¶ 151 at 7-8.

The RFP here provided that the agency would evaluate offerors on their “[p]roposed approach for resolution of anticipated or potential difficulties and problem areas and [well-reasoned] plans for anticipating and managing performance risk”. AR, Tab 17, Revised Evaluation Criteria, at 2. The agency assessed Adino’s proposal a weakness under this subfactor on the basis that “[n]o plan [was] provided,” and assigned a marginal rating. AR, Tab 9, TET Summary, at 4. Adino contends that it did provide an approach for resolving difficulties in its proposal when it discussed its status as the incumbent, explained its employee retention policy, stated it would provide hands-on project management, and stated that the Project Manager would resolve potential difficulties. Protest at 3-6; Comments at 3-6.

The evaluation in this regard was unobjectionable. Specifically, the record supports the agency’s finding that Adino’s proposal did not discuss potential problem areas or difficulties, other than employee retention, in any detail. In this regard, while Adino’s proposal generally stated that it [Deleted], it did not otherwise identify anticipated or potential difficulties and problem areas, nor did it provide specific information as to any particular approach to resolve anticipated challenges and risk. AR, Tab 5, Proposal, at 4. Further, the record indicates that the agency did review and credit Adino’s proposal for employee retention and performance of the incumbent contract, but did so under the relevant evaluation areas. See AR, Tab 9, TET Summary, at 5 (excellent rating for employee retention), 14 (excellent rating for ability to recruit, manage and administer a professional workforce in the St. Louis, Missouri area); see SPAAN Tech, Inc., B-400406, B-400406.2, Oct. 28, 2008, 2009 CPD ¶ 46 at 7 (successful performance as the incumbent contractor does not substitute for an adequately written proposal addressing all of the solicitation’s requirements).

With respect to quality management, the RFP stated the agency would evaluate offerors on their “[p]roposed approach for providing quality management for work performed under this contract [to] ensure deliverables meet or exceed the requirements.” AR, Tab 17, Revised Evaluation Criteria, at 2. Adino’s proposal was assessed a weakness under this subfactor on the basis that “[n]o actual plan presented only commented [Deleted].” AR, Tab 9, TET Summary, at 3; see AR, Tab 4, Notice of Exclusion (“[n]o actual quality management plan provided.”). Adino asserts that the agency’s evaluation was unreasonable because the solicitation did not contain a specific requirement that offerors submit a quality plan. Protest at 6-8; Comments at 6.

This argument is without merit. In this regard, we find reasonable the agency's position that the solicitation provision for evaluating the offeror's "[p]roposed approach for providing quality management," AR, Tab 17, Revised Evaluation Criteria, at 2, reasonably encompassed consideration of whether the offeror had submitted an actual quality management plan. AR at 7; see Straughan Env'tl., Inc., B-411650 et al., Sept. 18, 2015, 2015 CPD ¶ 287 at 8 (agencies may evaluate proposals based on considerations not expressly stated in the solicitation where those considerations are reasonably and logically encompassed within the stated evaluation factor, and where there is a clear nexus between the stated and unstated criteria). Further, as noted by the agency, while Adino's proposal stated that the project management team [Deleted], the proposal failed to provide any further details in the proposal about what this plan would entail. AR, Tab 5, Proposal, at 28; Tab 9, Technical Evaluation Team Summary, at 3. In these circumstances, we see no basis for questioning either the agency's assignment of a weakness to Adino's proposal for not including a quality management plan, nor the assignment of an overall good rating (rather than a higher rating) to the proposal under this subfactor.

Past Performance

Adino also challenges its past performance ratings. For example, the protester argues that it should have been provided the opportunity to respond to a past performance questionnaire received with respect to its performance of the incumbent administrative support services contract. Protest at 8, 12; Comments at 7-8. According to the protester:

Critical to the GAO's decision here is that this same Agency has failed to provide any CPARS [Contractor Performance Assessment Reporting System] or other performance evaluations during Adino's time as the incumbent. . . . Here, Adino has been the incumbent on the contract for over two (2) years without any CPARS. The questionnaire is the first time that Adino has been provided any evaluation on its incumbent performance, and as such, the Agency inappropriately relied on this reference to exclude Adino from the competition.

Comments at 7.

Here, the record reflects that Adino's rating of very good under the past performance factor was based on three CPARS reports and one past performance questionnaire. AR, Tab 9, Technical Evaluation Team Summary, at 8-13; AR, Tab 11, Summary of Adino Past Performance, at 1. With respect to the CPARS reports, Adino received mostly satisfactory ratings, two very goods, one marginal, one unsatisfactory and one exceptional rating. AR, Tab 11, Summary of Adino Past

Performance at 1. The past performance questionnaire, which related to its work under the incumbent USDA administrative support services contract, contained four ratings of satisfactory and two ratings of highly satisfactory. Id., Tab 13, Past Performance Questionnaire, at 1-3.

Federal Acquisition Regulation (FAR) § 15.306(b)(1)(i) provides that communications “[s]hall be held with offerors whose past performance information is the determining factor preventing them from being placed within the competitive range.” These communications “shall address adverse past performance information to which an offeror has not had a prior opportunity to respond.” FAR § 15.306(b)(4). Although Adino attempts to characterize the incumbent contract past performance questionnaire responses as adverse, we find no merit to this argument, given that all of the ratings were either satisfactory or highly satisfactory, and there were no negative statements in the past performance questionnaire for Adino to refute. See SEI Group, Inc., B-400829, Feb. 13, 2009, 2009 CPD ¶ 51 at 8-9 (finding “simply no merit” to argument that satisfactory ratings on past performance questionnaire constituted adverse past performance information that was required to be raised with the protester).²

Adino next argues that the relevance of its past performance as an incumbent should have been given additional consideration and resulted in a higher past performance rating. Protest at 8 (“Adino’s past performance should have been given extra consideration for relevancy”). In this regard, 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 agency’s discretion. iGov et al., supra at 13; American Env’tl. Servs., Inc., B-406952.2, B-406952.3, Oct. 11, 2012, 2013 CPD ¶ 90 at 5. Further, while an agency may provide for evaluation of relevance, the agency is not required to evaluate the past performance of the incumbent contractor as superior to its competitors simply because the incumbent has the most relevant past performance. ABSG Consulting, Inc., B-407956, B-407956.2, April 18, 2013, 2013 CPD ¶ 111 at 6.

Here, the RFP provided that contracts that are more technically relevant to the project requirements and similar in size, scope and complexity will receive greater consideration than those that are less relevant. AR, Tab 17, Revised Evaluation

² A CPARS report for a different contract contained a rating of unsatisfactory in the area of management and a rating of marginal in the area of schedule evaluation. AR at 9. However, as the agency notes, Adino had already responded to the ratings in this CPARS report, and this response became part of the CPARS record that the agency considered in its past performance evaluation. See AR, Tab 12, CPARS, at 2 (“We do not concur . . . with the Government’s Unsatisfactory rating”).

Criteria, at 3. As noted above, the agency did evaluate Adino's prior performance as the incumbent, and in fact rated Adino as exceptional under the past performance subfactor for ability to recruit, manage and administer a work force in the St. Louis, Missouri area, as shown by its performance as the incumbent administrative support services contractor. AR, Tab 9, Technical Evaluation Team Summary, at 14. Since Adino's past performance as the incumbent was favorably considered by the agency, and the agency was not required to give Adino a higher rating based only on its status as the incumbent, this argument provides no basis for questioning the agency's evaluation of Adino's past performance.³

Competitive Range Determination

Finally, the protester argues that the agency failed to consider price in its competitive range determination, and instead improperly based its determination on an arbitrary cut-off score. Protest at 12-14; Comments at 9. The agency maintains that it considered technical, past performance, and price when making its competitive range determination, and that it reasonably concluded that Adino's proposal was not among the most highly-rated proposals. AR at 10.

An agency is authorized to exclude proposals from the competitive range that are not among the "most highly rated," FAR § 15.306(c)(1), and there is no presumption in favor of retaining a proposal in the competitive range. Straughan Envtl., Inc., supra at 13. Further, adjectival ratings and point scores are mere tools in the evaluation and selection process and should not be mechanically derived or applied. Wackenhut Servs., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 7.

Here, the record shows that the agency evaluated the proposals against the RFP's evaluation criteria, assessed strengths and weaknesses in each proposal, assigned adjectival ratings under the technical and past performance factors based on these strengths and weaknesses, and then converted these ratings to numerical scores. Adino has not shown these ratings to be unreasonable. The two proposals included in the competitive range ([Deleted] and [Deleted]) each received a higher overall combined score for the technical and past performance factors than did Adino, and

³ The protester also challenges its overall rating of very good for the past performance factor, arguing that it should have received a rating of excellent. Comments at 8. As set forth above, the agency's evaluation of Adino's past performance considered CPARS and questionnaire responses that contained mostly satisfactory ratings, two very goods, one marginal, one unsatisfactory and one exceptional rating. While Adino argues for an overall rating of exceptional, the agency reasonably concluded that the CPARS and past performance questionnaire did not support that rating since Adino received only one exceptional rating in one area (for quality).

also offered lower prices than Adino. Since the two proposals included in the competitive range were both higher-rated and lower-priced than Adino's proposal, we see nothing unreasonable in the agency's determination that Adino's proposal was not among the most highly-rated and the consequent exclusion of the proposal from the competitive range.

The protest is denied.

Susan A. Poling
General Counsel