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Decision

Matter of: Systems Engineering Partners, LLC

File: B-412329; B-412329.2

Date: January 20, 2016

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Paula J. Haurilesko, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency improperly considered the past performance of the awardee's affiliate is denied, where the awardee's proposal demonstrated that the affiliate's resources would be utilized for contract performance.
 2. Protest that the agency unreasonably assigned the protester a strength instead of a significant strength is denied, where the protester did not identify features of its proposal that would merit a significant strength in accordance with the terms of the solicitation.
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DECISION

Systems Engineering Partners, LLC (SEP), of Tysons Corner, Virginia, protests the National Aeronautics and Space Administration's (NASA) award of a contract to Arctic Slope Technical Services, Inc. (Arctic Slope), of McLean, Virginia, under request for proposals (RFP) No. NNG15498942R, for software engineering services. SEP challenges the evaluation of proposals.

We deny the protest.

BACKGROUND

The RFP, issued on January 26, 2015 and set aside for small business concerns under the Small Business Administration's section 8(a) program, provided for award of a cost-plus-fixed-fee hybrid contract, consisting of a core requirement and an indefinite-delivery/indefinite-quantity (ID/IQ) requirement, for software and information system engineering services for the Software Engineering Division at NASA's Goddard Space Flight Center. RFP at 84;¹ Contracting Officer Statement (COS) at 1. The core requirement consists of computer security and system administration support, and flight software sustaining engineering functions; these functions support the ID/IQ requirement, which includes division-specific administration support, software process improvement support, software systems engineering, flight software systems support, ground software systems support, flight system verification and validation, engineering services, and science data system engineering support. See RFP, Statement of Work (SOW), at 126-145. The RFP provided for a 5-year period of performance for the core requirement and a 5-year ordering period for the ID/IQ requirement, including option periods.

The RFP provided that award would be made on a best-value basis, considering (in descending order of importance) the following evaluation factors: mission suitability, cost, and past performance. When combined, mission suitability and past performance were significantly more important than cost. RFP at 115. The mission suitability factor was comprised of three numerically scored subfactors: (A) technical approach to sample problem (400 possible points), (B) core requirements (150 points), and (C) management plan (450 points). The RFP further advised that an adjectival rating would be assigned to each subfactor based on the point scores.² RFP at 118.

With respect to the technical approach to sample problem subfactor, the RFP provided a fictitious scenario involving the development of a constellation of

¹ The agency report in this matter was submitted with Bates numbering. Our citations to page numbers in this decision refer to the applicable Bates numbers in the agency report (AR).

² The RFP stated that the mission suitability subfactors would be evaluated using the adjectival ratings in NASA Federal Acquisition Regulation Supplement (NFS) § 1815.305(a)(3)(A): excellent, very good, good, fair, and poor. RFP at 119. As relevant here, a "good" rating was defined as: "A proposal having no deficiency and which shows a reasonably sound response. There may be strengths or weaknesses, or both. As a whole, weaknesses not off-set by strengths do not significantly detract from the offeror's response." A "fair" rating was defined as: "A proposal having no deficiency and which has one or more weaknesses. Weaknesses outbalance any strengths." NFS § 1815.305(a)(3)(A).

four CubeSat satellites for monitoring farmland.³ The RFP indicated that the scenario would require the development of flight software, mission operations center software, and a limited science data handling system, as well as system level software integration and testing for the mission operations center. RFP, Encl. 2, Sample Problem, at 199. As relevant here, the RFP instructed offerors to provide an overall approach to the sample problem, and to demonstrate the techniques and procedures necessary to satisfy the requirements in a timely and cost effective manner. RFP at 94. The RFP further advised offerors that their approach to the sample problem would be evaluated to ensure completeness, realism, relevance, adequacy, and effectiveness, and that any new or innovative methods, techniques or technologies that are proposed would be evaluated with respect to their benefit to the government including quantifiable efficiencies. Id. at 109.

With respect to the past performance factor, offerors were required to submit past performance references for all recent contracts involving similar efforts that were performed or ongoing by the prime or significant subcontractors within 5 years of the date the RFP was issued. Id. at 110. As relevant here, the RFP advised offerors that the government may attribute the experience or past performance of a parent or affiliated company to the proposed prime contractor where the proposal demonstrates that the resources of the parent or affiliate will affect the performance of the proposed prime contractor. Id. at 121.

NASA received proposals from four offerors, including SEP and Arctic Slope. Under the mission suitability factor, the agency's source evaluation board (SEB) assigned adjectival ratings and point scores for each subfactor based on identified strengths, significant strengths, and weaknesses in the offerors' proposals. Under the past performance factor, the SEB assigned a confidence level based on the relevance of each past performance reference and quality of performance. The SEB rated SEP's and Arctic Slope's proposals as follows:

	Arctic Slope	SEP
Mission Suitability		
Technical Approach (400 points)	Good (204)	Fair (180)
Core requirements (150 points)	Good (87)	Good (92)
Management plan (450 points)	Excellent (423)	Good (302)
Past Performance Confidence	Very High	High
Proposed Cost Plus Fixed Fee	\$198,473,369	\$201,212,611
Probable Cost Plus Fixed Fee	\$202,751,987	\$202,092,142

³ A CubeSat is a small, cube-shaped satellite used for research. See http://www.nasa.gov/mission_pages/cubesats/overview (last visited Jan. 8, 2016).

AR, Tab 15, SEB Final Briefing to Source Selection Authority (SSA), at 1258, 1265.

With respect to the mission suitability factor, the SEB assigned Arctic Slope a “good” rating, 204 total points, and two weaknesses under the technical approach to the sample problem subfactor. AR, Tab 15, SEB Final Briefing to SSA, at 1267. The SEB assigned one weakness for proposing an approach inconsistent with the size of the mission and identified specific examples. The SEB concluded that the proposal failed to demonstrate an understanding of the requirements and did not adequately tailor standard [Deleted] processes and requirements. Id. at 1268-69. The SEB assigned Arctic Slope’s proposal another weakness for proposing a new software engineering process methodology called [Deleted]. The SEB found that the choice to use [Deleted] introduced unnecessary process variation that could negatively impact cost and schedule. Id. at 1270.

The SEB assigned SEP a “fair” rating and 180 points under the technical approach to sample problem subfactor based on the identification of one strength and four weaknesses. AR, Tab 15, SEB Final Briefing to SSA, at 1280. SEP received a strength for its technical approach to [Deleted] systems using [Deleted]. The SEB assigned SEP’s proposal weaknesses under this subfactor for: insufficient detail on quantifiable efficiencies or effectiveness to demonstrate the value of proposed innovations; insufficient rationale for assumptions that will add schedule and cost risk, increasing the likelihood of unsuccessful contract performance; inefficient use of [Deleted], where SEP proposed using [Deleted]; and multiple discrepancies in SEP’s response to the sample problem. See id. at 1281-87.

Under the management plan subfactor, the SEB assigned Arctic Slope an “excellent” rating and 423 points based on two significant strengths, two strengths, and one weakness. Id. at 1267. As relevant here, the SEB assigned Arctic Slope a significant strength for its plan to incentivize its workforce by proposing exceptional employee performance-based incentives that indicated the offeror’s intent to contribute to the technical development of its workforce, which in the SEB’s view significantly enhanced the potential for successful contract performance. Id. at 1272. The SEB assigned SEP a “good” rating and 302 points based on four strengths and one weakness. Id. at 1280.

With respect to past performance, the SEB assessed Arctic Slope’s past performance as warranting a “very high” confidence level. In this regard, the SEB relied primarily on the performance of Arctic Slope’s sister company [Deleted] on NASA’s [Deleted] and [Deleted] follow-on contracts, as well as [Deleted] performance on the National Oceanic and Atmospheric Administration’s [Deleted] and [Deleted] follow-on contracts. AR, Tab 15, SEB Final Briefing to SSA, at 1303. The SEB concluded that [Deleted] performance on these contracts could be considered because [Deleted] was an affiliate of Arctic Slope and the two share personnel and management. Id. at 1304 footnote. The SEB found [Deleted]

performance on the [Deleted] and [Deleted] follow-on contracts to be very highly relevant, and performance on the contract and follow-on contract to be highly relevant, and found the level of performance on these contracts to merit a “very high” confidence level. Id. at 1304. In contrast, SEP only received a “high” confidence level with respect to past performance.

Based on her identification of discriminators between Arctic Slope’s and SEP’s proposals under the management plan subfactor and the past performance factor, the SSA concluded that the benefits offered by Arctic Slope’s proposal outweighed SEP’s “very slight” probable cost advantage. On this basis, the SSA selected Arctic Slope for award. AR, Tab 16, Source Selection Decision, at 1333-35. After a debriefing, SEP filed this protest with our Office.

DISCUSSION

SEP raises numerous challenges to the evaluation of proposals. In reviewing protests of an agency’s evaluation and source selection decision, our Office will not reevaluate proposals; rather, we review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation’s evaluation criteria, and applicable procurement laws and regulations. M&S Farms, Inc., B-290599, Sept. 5, 2002, 2002 CPD ¶ 174 at 6. Here, we have considered all of SEP’s arguments and find that none furnish a basis for questioning the selection of Arctic Slope’s proposal as offering the best value. We discuss several of SEP’s arguments below.

Past Performance

SEP argues that NASA improperly assigned Arctic Slope a “very high” past performance confidence level based primarily on the performance of an affiliated company, [Deleted]. Protest at 14-15. ([Deleted] and Arctic Slope are subsidiaries of ASRC Federal/AFHC. AR at 31.) According to the protester, as [Deleted] was not listed in Arctic Slope’s proposal as a significant subcontractor, its role cannot be considered meaningful involvement in the contract. SEP Comments at 25-26. The agency responds that consideration of [Deleted] past performance was appropriate since Arctic Slope’s proposal indicated that [Deleted] resources would be used in performing the contract. AR at 27-34.

An agency properly may attribute the experience or past performance of a parent or affiliated company to an offeror where the firm’s proposal demonstrates that the resources of the parent or affiliate will affect the performance of the offeror. Perini/Jones, Joint Venture, B-285906, Nov. 1, 2000, 2002 CPD ¶ 68 at 4. The relevant consideration is whether the resources of the parent or affiliated company--its workforce, management, facilities or other resources--will be provided or relied upon for contract performance such that the parent or affiliate will have meaningful involvement in contract performance. Ecompex, Inc., B-292865.4 et al., June 18,

2004, 2004 CPD ¶ 149 at 5. While it is appropriate to consider an affiliate's performance record where the affiliate will be involved in the contract effort or where it shares management with the offeror, it is inappropriate to consider an affiliate's record where that record does not bear on the likelihood of successful performance by the offeror. National City Bank of Indiana, B-287608.3, Aug. 7, 2002, 2002 CPD ¶ 190 at 10.

Here, the record shows that NASA reasonably attributed to Arctic Slope the past performance of its sister company, [Deleted]. As noted above, the RFP permitted offerors to reference the past performance of an affiliated company where the proposal demonstrates that "the resources of the . . . affiliate . . . will affect the performance of the proposed prime contractor." RFP at 121. Arctic Slope's proposal listed [Deleted] as a team member, and included numerous references to the role [Deleted] and its employees will play in contract performance. For example, Arctic Slope's proposal stated that it will use [Deleted] personnel, expertise, lessons learned, and best practices to perform the contract. AR, Tab 6, Arctic Slope's Past Performance Vol., at 643, 647. In this regard, Arctic Slope's proposal indicated that the position of [Deleted] would be filled by [Deleted] staff, and that Arctic Slope and [Deleted] use the same [Deleted]. AR, Tab 5, Arctic Slope's Mission Suitability Volume, at 404. The proposal also showed that certain [Deleted] staff would be transferring to Arctic Slope, including such proposed personnel as the [Deleted], [Deleted], and two other [Deleted]. Id. at 458. In addition, Arctic Slope's proposal stated that [Deleted] staff would be available for surges and short-term staffing needs. Id. at 406. In light of the variety of [Deleted] resources that Arctic Slope proposed to utilize in contract performance, we have no basis to question the agency's position that [Deleted] proposed role constituted meaningful involvement in the contract, such that the attribution of [Deleted] past performance to Arctic Slope was consistent with the terms of the solicitation.

Assignment of Strengths

SEP challenges NASA's assignment of strengths rather than significant strengths to its proposal. For example, under the management plan subfactor of the mission suitability factor, SEP argues that it should have received a significant strength for its extensive and detailed safety and health plan because safety is of critical importance to NASA. Protest at 13. According to the protester, its plan exceeded NASA's requirements and "will almost certainly" lead to a substantial reduction in the number of injuries that could result in work stoppages.⁴ SEP Comments at 25.

⁴ As relevant here, the RFP defined a strength as a

proposal area that enhances the potential for successful performance or contributes toward exceeding the contract requirements in a manner that provides additional value to the government (this could be

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The essence of an agency's evaluation is reflected in the evaluation record itself, not in the adjectival ratings or adjectival characterizations of proposal features as strengths or weaknesses. IAP World Servs., Inc., B-406339.2, Oct. 9, 2012, 2012 CPD ¶ 287 at 4. In this regard, it is well-established that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision making in the procurement process. Loyal Source Gov't Servs., LLC, B-407791.5, Apr. 9, 2014, 2014 CPD ¶ 127 at 7.

Here, the record shows that NASA recognized the benefits associated with SEP's safety and health plan, finding that it addressed NASA's requirements, showed an understanding and familiarity with the appropriate procedures and directives, and "can reduce the chances for incidents leading to work stoppages." AR, Tab 13, Final Presentation to SSA, at 1219. NASA specifically identified five positive aspects of the plan, such as familiarity with [Deleted]. Id. Since, however, the contemplated contract was for software engineering services, the SEB did not find that this plan would significantly increase the likelihood of successful contract performance such as to merit a significant strength rather than a strength. AR at 23. Given the nature of the solicited services, we find no basis for questioning the agency's position that SEP's safety and health plan was unlikely to significantly increase the likelihood of successful contract performance.

Technical Approach to Sample Problem

SEP challenges the "good" rating assigned to Arctic Slope's proposal under the technical approach to sample problem subfactor of the mission suitability factor. In this regard, SEP argues that the "good" rating was improper because the agency did not assign the proposal any strengths under the subfactor, and one of the two weaknesses assigned should have been a significant weakness since NASA's evaluation found that Arctic Slope's approach to the sample problem indicated a lack of understanding of mission requirements and endangered successful performance. Protest at 10; Supp. Protest at 12-13.

This argument is without merit. As an initial matter, we note that the solicitation definition of a "good" rating did not preclude the agency from finding that Arctic

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associated with a process, technical approach, materials, facilities, etc.).

RFP at 112. A significant strength was defined as a "proposal area that greatly enhances the potential for successful performance or contributes significantly toward exceeding the contract requirements in a manner that provides additional value to the government." Id.

Slope's proposal merited a "good" rating under the solicitation. In this regard, a "good" rating was defined as: "A proposal having no deficiency and which shows a reasonably sound response. There may be strengths or weaknesses, or both. As a whole, weaknesses not off-set by strengths do not significantly detract from the offeror's response." NASA Far Supplement (NFS) § 1815.305(a)(3)(A) (emphasis added).⁵ Thus, NASA was not precluded from finding that, even with two weaknesses and no strengths, Arctic Slope's proposal could still merit a "good" rating.

Nor do we find any basis to question the agency's assignment of a weakness rather than a significant weakness under the technical approach to sample problem subfactor. The SEB assigned Arctic Slope's proposal a weakness for proposing an approach to the sample problem that was inconsistent with its size. In this regard, the SEB concluded that:

The Offeror's proposal fails to demonstrate an understanding of the requirements and does not adequately tailor standard [Deleted] processes and requirements, increasing the potential for unsuccessful contract performance.

AR, Tab 15, SEB Final Briefing to SSA, at 1268-69. The SEB chairman explains that by using the phrase, "fails to demonstrate an understanding of the requirements," the SEB did not mean that Arctic Slope's proposal showed a fundamental lack of knowledge or ability to perform the requirement, but rather indicated a lack of understanding of the specific requirement to tailor the solution to the limited mission size. SEB Chair Decl. at 3. According to the agency, in assessing Arctic Slope's proposal as a whole, the SEB concluded that its weaknesses (including this one) could be mitigated without substantial risk of adverse performance. Id.

Further, the specific examples the SEB cited in support of the weakness--proposing reviews to tailor processes without describing how the tailoring requirement would be accomplished; scheduling [Deleted] meetings that add a layer of process; adding a layer of review by [Deleted]; inefficient use of [Deleted]; and proposing to [Deleted] too frequently--were consistent with the SEB chairman's explanation that Arctic Slope simply showed a lack of understanding of the specific requirement to tailor the solution to the limited mission size. See AR, Tab 15, SEB Final Briefing to SSA, at 1268-69. Based on the record here, we find nothing unreasonable in the agency's explanation about why Arctic Slope's approach to the sample problem, while warranting a weakness on account of proposing a more expansive solution

⁵ NFS § 1815.305(a)(3)(A) was incorporated into the solicitation by reference. See RFP at 119.

than required, nevertheless did not indicate a fundamental lack of knowledge or ability to perform such as to warrant a significant weakness.

Moreover, we fail to see how SEP was prejudiced by the adjectival ratings for this subfactor. The SSA did not find this subfactor to be a discriminator between SEP and Arctic Slope, but rather focused on offerors' management plans and past performance confidence levels as discriminators in determining the best value to the government. See AR, Tab 16, Source Selection Decision, at 1334-35.

In sum, we conclude that SEP has not shown the award to Arctic Slope to be unreasonable.

The protest is denied.

Susan A. Poling
General Counsel