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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: SSI Technology, Inc.

File: B-412765.2

Date: July 13, 2016

Robert A. Bloom for the protester.

Adam J. Heer, Esq., and John R. Hart, Esq., Defense Logistics Agency, for the agency.

Pedro E. Briones, Esq., and Noah B. Bleicher, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the evaluation of awardee's past performance and agency's best-value determination is denied where the record shows that the evaluation and source selection decision were reasonable and consistent with the solicitation.

DECISION

SSI Technology, Inc. (SSI), a small business located in Madison Heights, Michigan, protests the issuance of a purchase order to Five Star Associates, Inc., of Bangor, Pennsylvania, under request for quotations (RFQ) No. SPE7L7-16-Q-0075, issued by the Department of Defense, Defense Logistics Agency-Land and Maritime (DLA-L&M), for battery chargers. SSI challenges the evaluation of Five Star's past performance and DLA's best-value source selection decision.

We deny the protest.

BACKGROUND

The RFQ, which was set aside for small businesses, was issued pursuant to Federal Acquisition Regulation (FAR) part 13 to vendors holding DLA eProcurement Automated Simplified Acquisition contracts, and sought delivery of 195 battery chargers (national stock number 6130-01-267-3309) within 244 days. RFQ at 1-2, 10-11; Master Solicitation, Revision 31, Dec. 15, 2015 (Master Solicitation), at 1. The RFQ incorporated the eProcurement master solicitation by reference, which, as relevant here, provides for the "manual evaluation" of quotations and issuance of the purchase order on a best-value basis, considering price, delivery, and past

performance.¹ RFQ at 2; Master Solicitation at 5. Vendors were to submit quotations electronically using DLA's Internet Bid Board System. Master Solicitation at 2.

With respect to the past performance evaluation factor, relevant here, the master solicitation incorporates, by reference, Department of Defense FAR Supplement (DFARS) clause 252.213-7000, Notice to Prospective Suppliers on Use of Past Performance Information Retrieval System—Statistical Reporting in Past Performance Evaluations, as well as Defense Logistics Acquisition Directive (DLAD) clause 52.215-9003, Use of Past Performance Information Retrieval System—Statistical Reporting (PPIRS-SR) Information in Past Performance Evaluation. Id. at 6, 9-10. The two solicitation provisions are discussed in relevant part below.

The agency received 10 quotations ranging in price from \$745 to \$2,583 per battery charger. Agency Report (AR) at 2; Tab 7, Abstract of Quotations, at 1-5.² Nine of the 10 vendors, including SSI and Five Star, proposed delivery within the required 244-day timeframe. AR, Tab 15, Simplified Acquisition Award Documentation (SAAD), at 1-3.

A DLA contracting officer evaluated quotations based on vendor prices, delivery terms, and past performance, and performed a best-value tradeoff. Id. The contracting officer found that while Five Star did not quote the lowest price per unit, the vendor's better past performance indicators (namely, its DLA-L&M composite delivery score, delinquency rate, and on-time delivery rate), provided DLA with greater confidence that Five Star would be able to successfully deliver the battery chargers by the vendor's proposed delivery date. See id. at 3.

The contracting officer concluded that Five Star's quotation provided the best value to the government and DLA issued the purchase order to the vendor for \$146,250. Id.; AR, Tab 2, Purchase Order No. SPE7L7-16-M-1823. This protest followed.³

¹ The master solicitation does not specify the relative importance of the three evaluation factors. See Master Solicitation at 5.

² SSI was not represented by counsel who could obtain access to non-public information (such as the abstract of quotations or source selection decision document) pursuant to the terms of a protective order. Accordingly, our discussion of some aspects of the procurement record is necessarily general in nature in order to avoid reference to non-public information. Our conclusions, however, are based on our review of the entire record, including the non-public information.

³ The agency issued the purchase order on February 18, 2016, and SSI filed a protest (B-412765) of the award with our Office on February 20. However, SSI subsequently withdrew that protest after DLA advised SSI that the agency would suspend delivery, reevaluate quotations, and make a new award decision. See AR, (continued...)

DISCUSSION

Past Performance

SSI protests DLA's evaluation of Five Star's past performance, arguing that it was irrational, unsupported by the record, and inconsistent with the terms of the solicitation. See Protest at 2. SSI points out that Five Star does not have any PPIRS-SR delivery scores,⁴ thus, according to the protester, the award was based on DLA's improper favorable assessment of Five Star's past performance, because the solicitation provided that vendors without a PPIRS-SR delivery score could not be rated favorably or unfavorably.⁵ See Comments at 1. SSI contends that Five Star otherwise has no history of relevant past performance, including projects of similar scope, magnitude, and complexity to the requirement. Id. We have considered each of the protester's arguments and find that none provides a basis to sustain the protest.

When using simplified acquisition procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. Emergency Vehicle Installations Corp., B-408682, Nov. 27, 2013, 2013 CPD ¶ 273 at 4. In reviewing a protest of an allegedly improper simplified acquisition evaluation, we examine the record to determine whether the agency met this standard and exercised its discretion reasonably. DOER Marine, B-295087, Dec. 21, 2004, 2004 CPD ¶ 252 at 3. The evaluation of a vendor's past performance is a matter within the discretion of the contracting agency, and we will not substitute our views for a reasonably based past performance rating. Gonzales-McCauley Investment Grp.,

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Tab 11, Notice of Corrective Action, at 1. SSI filed the instant protest on April 18 following DLA's April 13 notice to SSI that, after reevaluating quotations, the agency once again selected Five Star for award. See AR, Tab 13, Notice of Reevaluation & Award, at 1.

⁴ A vendor's PPIRS-SR delivery score is based on a weighted combination of the percentage of contract line items (CLINs) with on-time deliveries and the average date late for all deliveries. AR, Tab 17, PPIRS-SR Evaluation Criteria, at 1. The score is calculated as follows: delivery score = (on-time weight X on-time score) + (average days late weight X average days late score). Id. DLA concedes that Five Star did not have a PPIRS-SR delivery score. AR at 3.

⁵ DLAD clause 52.215-9003 (which, as stated above, is incorporated into the eProcurement master solicitation) provides that in the case of a contractor without a record of relevant past performance, or for whom past performance information is not available in PPIRS-SR, the contractor will be evaluated neither favorably nor unfavorably on past performance. DLAD cl. 52.215-9003(d)(3).

Inc., B-402544, May 28, 2010, 2010 CPD ¶ 127 at 3. Moreover, an agency has broad discretion when evaluating the relevance of a vendor's past performance. See Ernst & Young LLP, B-411728, B-411728.2, Oct. 14, 2015, 2015 CPD ¶ 318 at 7.

As stated above, the eProcurement master solicitation incorporates DLAD clause 52.215-9003 and DFARS clause 252.213-7000. Master Solicitation at 6, 9-10. Significantly, the DLAD clause states, explicitly, that a contracting officer "may collect and analyze other relevant information in addition to any past performance information derived from PPIRS-SR."⁶ DLAD cl. 52.215-9003(e). The DLAD clause also states that DLA's evaluation of past performance may include, but is not limited to, a contractor's record of conforming to specifications and standards of good workmanship, adherence to contract schedules, and commitment to customer satisfaction. DLAD cl. 52.215-9003(a)(3). Similarly, the DFARS clause provides that PPIRS-SR data will be used in conjunction with the solicitation's other past performance provisions and a supplier's references (if requested). DFARS cl. 252.213-7000(c).

Based on our review of the record, we find that DLA's evaluation of Five Star's past performance was reasonable and in accordance with the solicitation's evaluation provisions. The contemporaneous record shows that, consistent with the DLAD and DFARS clauses discussed above, the agency considered Five Star's DLA-L&M composite delivery score for the past 3 years, the vendor's on-time delivery rate, and its delinquency rates, including the number of times that Five Star delivered before or after 30 days of contract delivery date and the average number of days that its deliveries were late.⁷ See AR, Tab 19, Five Star Past Performance Evaluation, at 1. DLA also reviewed Five Star's PPIRS data under several other FSCs, including the number of deliveries and number of items delivered. Id. at 3. Moreover, the agency compared Five Star's number of open CLINs (for both DLA generally and DLA-L&M in particular) to the number of delinquent CLINs. Id. at 1. These evaluation methods are all consistent with the master solicitation's past performance provisions.⁸ Based on our review of the record, the agency

⁶ Indeed, section (d)(2) of DLAD clause 52.215-9003 cites the PPIRS Reference Manual for specifics on how PPIRS-SR calculations are affected when there is no delivery or quality information provided by the source databases.

⁷ DLA-L&M calculates a composite delivery score when: a contractor is unscored in PPIRS on a particular federal supply class (FSC), the contracting officer lacks confidence in a FSC score, or the contractor is a reseller with a wide range of PPIRS delivery scores across multiple FSCs. AR, Tab 18, DLA Notices, DLA-L&M Composite Vendor Delivery Score, at 1.

⁸ We note that although SSI was not provided a copy of Five Star's past performance evaluation (see n.2, supra), SSI was provided with a redacted version (continued...)

reasonably determined that Five Star provided greater confidence that it would be able to successfully deliver within its proposed timeframe.

In our view, SSI's protest of DLA's past performance evaluation is based on the protester's misreading of the solicitation's DLAD and DFARS clauses. These clauses, as DLA argues, did not limit the agency's past performance evaluations to PPIRS-SR data, contrary to SSI's suggestion. See AR at 4. Moreover, contrary to SSI's assertions, the clauses do not define past performance relevance, or otherwise suggest that DLA may only consider projects that are similar in scope, magnitude, or complexity to the requirement. See DLAD cl. 52.215-9003; DFARS cl. 252.213-7000; see also DFARS § 213.106-2(b)(i).⁹

Moreover, SSI's argument that DLA should not have favorably assessed Five Star's past performance because the vendor did not have a PPIRS-SR delivery score also lacks merit. In this regard, as noted above, the record reflects that Five Star had a favorable record of past performance that the agency properly considered. The lack of a PPIRS-SR delivery score did not mean that the agency had no basis to evaluate the awardee's past performance or compel a different finding.

In any event, even were we to assume, arguendo, that DLA could only favorably assess vendors that possess a PPIRS-SR delivery score, the lack of a PPIRS-SR delivery score could not be held against such vendors. See 41 U.S.C. § 1126(b); see, e.g., Y&K Maint., Inc., B-405310.2, Oct. 17, 2011, 2011 CPD ¶ 239 at 7 (finding that an offeror can neither be punished nor rewarded for the lack of relevant

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of DLA's source selection decision document that discusses the agency's process for evaluating vendors' past performance, including the indicators that the agency used to evaluate Five Star's past performance. See AR, Tab 15, SAAD, at 3 (redacted version). Moreover, SSI was provided a copy of its own past performance evaluation, which mirrors the same process that the agency used to evaluate Five Star's past performance and includes a detailed graph of the agency's process and calculations for evaluating on-time delivery rates for DLA-L&M CLINs. See AR, Tab 16, SSI Past Performance Evaluation, at 1-2.

⁹ DFARS clause 252.213-7000 provides that PPIRS-SR will be used in evaluating suppliers' past performance in accordance with DFARS section 213.106-2(b)(1). DFARS cl. 252.213-7000(a). Section 213.106-2(b)(1) of DFARS specifies procedures for evaluating past performance for the competitive solicitation of supplies using FAR part 13 simplified acquisition procedures, and largely restates the requirements of DFARS clause 252.213-7000. See DFARS § 213.106-2, Evaluation of quotations or offers. Section 213.106-2(b)(1) also references the PPIRS-SR User's Manual, which is available at www.ppirs.gov. DFARS § 213.106-2(b)(i)(A).

past performance); cf. National Aerospace Grp., Inc., B-281958, B-281959, May 10, 1999, 99-1 CPD ¶ 82 at 4 (sustaining protest of DLA's issuance of purchase order using simplified acquisition procedures, where RFQ stated that supplier with no performance history would be assigned a neutral rating and where contracting officer placed order at a significant price premium for the sole reason that vendor quoting lower price had no prior performance history). Thus, even if Five Star's past performance could neither be assessed favorably nor unfavorably (due to the lack of a PPIRS-SR delivery score), the protester has not demonstrated that such an assessment would have altered DLA's award determination, particularly where it was unobjectionable for the agency to take into account the other past performance information that was favorable to the awardee.

In short, SSI has not shown that DLA's evaluation of Five Star's past performance was inconsistent with the RFQ or the eProcurement master solicitation, or otherwise violated applicable procurement laws and regulations. See United Terex, Inc.-- Protest & Request for Costs, B-405070.3, B-405070.4, Sept. 27, 2011, 2011 CPD ¶ 197 at 4-5 (denying protest where, given the general wording of RFQ's past performance evaluation criterion, there was no basis for the stringent evaluation of past performance relevance advanced by the protester, and its disagreement with agency's conclusions that awardee's past performance was similar provided no basis to sustain protest).

Best-Value Determination

Finally, SSI protests DLA's source selection decision, asserting that the contracting officer's best-value tradeoff was unreasonable insofar as it was based on the allegedly flawed past performance evaluation described above. See Protest at 2-3. In this respect, SSI argues that the agency unreasonably selected Five Star's higher-price quotation based on an improper comparison of its non-relevant past performance to SSI's relevant past performance. Comments at 1-2.

Agencies enjoy discretion in making cost/technical tradeoffs where the solicitation provides for the award on a best-value basis. See Marine Hydraulics Int'l, Inc., B-403386.3, May 5, 2011, 2011 CPD ¶ 98 at 4. The agency's selection decision is governed only by the test of rationality and consistency with the solicitation's stated evaluation scheme. Id.

As discussed above, we find no merit to SSI's challenges to DLA's evaluation of Five Star's past performance. Thus, there is no basis to question the agency's reliance upon those evaluation judgments in making its source selection, and SSI's disagreement does not establish that the agency acted unreasonably or provide a basis to sustain SSI's protest. Moreover, an agency may select the higher-rated, higher-priced quotation as reflecting the best value to the agency where, as here, that decision is consistent with the evaluation criteria and the agency reasonably determines that the technical superiority of the higher-priced quotation outweighs

the price difference. See, e.g., Marathon Watch Co. Ltd., B-281876, B-281872.2, Apr. 22, 1999, 99-1 CPD ¶ 89 at 4-8 (protest of DLA's best-value tradeoff determination based on awardee's allegedly insufficient past delivery data denied where agency evaluated vendors' delivery performance ratings consistent with RFQ criteria and contracting officer reasonably concluded that higher-priced vendor's better performance record indicated a lower performance risk).

The protest is denied.

Susan A. Poling
General Counsel