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Decision

Matter of: WingGate Travel, Inc.

File: B-412921

Date: July 1, 2016

Josephine L. Ursini, Esq., for the protester.
Bryant S. Banes, Esq., Sean D. Forbes, Esq., and Stormy N. Mayfield, Esq., Neel, Hooper & Banes, P.C., for Cruise Ventures, Inc. d/b/a CI Travel, an intervenor.
Brian C. Caney, Esq., Department of Health and Human Services, for the agency.
Louis A. Chiarella, Esq., and Noah B. Bleicher, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's past performance evaluation is denied where the agency reasonably considered both the relevance and quality of the protester's references; the agency reasonably took into account the size of the offeror's prior work, in accordance with the solicitation's stated evaluation criteria, when assessing performance confidence.

DECISION

WingGate Travel, Inc., of Overland Park, Kansas, protests the award of a contract to Cruise Ventures, Inc. d/b/a CI Travel, of Norfolk, Virginia, under request for proposals (RFP) No. 15-233-SOL-00024, issued by the Department of Health and Human Services (HHS) for commercial travel office services in support of Department of Defense military entrance processing stations (MEPS).¹ WingGate argues that the agency's evaluation of its past performance was improper.

We deny the protest.

¹ Although the requirement here was one involving a Defense Travel Management Office (DTMO) function, and the evaluation of proposals was largely performed by DTMO personnel, the procurement was conducted by HHS contracting personnel on a fee-for-service basis.

BACKGROUND

The RFP,² issued on June 15, 2015, as a small-business set-aside, contemplated the award of a single indefinite-delivery, indefinite-quantity (IDIQ) contract with fixed-priced task orders for a base year with four 1-year options.^{3, 4} RFP at 37-40.⁵ In general terms, the RFP's performance work statement (PWS) required the contractor to provide all necessary personnel, materials, and facilities to perform the required travel management support services (*i.e.*, authorizations, reservations, ticketing, fulfillment, reporting, and management) in support of 66 separate MEPS locations throughout the United States. RFP at 41-42.

The solicitation established that contract award would be made on a best-value basis, based on three evaluation factors in descending order of importance: technical; price; and past performance. RFP Amend. 002, at 312. The technical factor consisted of five subfactors, also in descending order of importance: understanding of the MEPS travel process; technical approach; corporate experience; implementation/transition; and management plan. *Id.* The nonprice factors, when combined, were significantly more important than price. *Id.*

Ten offerors, including CI Travel and WingGate, submitted proposals by the August 28 closing date. An agency technical evaluation panel (TEP) evaluated offerors' proposals under the nonprice factors using various adjectival rating schemes: outstanding, good, acceptable, marginal, or unacceptable for the technical factor and subfactors; and substantial confidence, satisfactory confidence,

² The RFP was subsequently amended five times. Unless stated otherwise, all references are to the final version of the solicitation.

³ The history of this procurement is a long and tortuous one. HHS first issued a solicitation in June 2013 for the required services which was subject to preaward protest and cancellation. WingGate Travel, Inc. et al., B-408537 *et al.*, Aug. 2, 2013 (unpublished decision). The agency thereafter issued two new solicitations which were also subject to protest and solicitation amendment. WingGate Travel, Inc., B-408750, Sept. 18, 2013 (unpublished decision); WingGate Travel, Inc., B-408751, Sept. 18, 2013 (unpublished decision). Subsequent contract awards to CI Travel in July 2014 resulted in additional protests and agency corrective action (*i.e.*, contract termination and the resolicitation here). Veteran Travel, et al., B-408750.2 *et al.*, Sept. 10, 2014 (unpublished decision); Transcor Inc., et al., B-408751.2 *et al.*, Sept. 10, 2014 (unpublished decision).

⁴ The RFP also stated that the awarded ID/IQ contract had a guaranteed minimum of \$2,500, and a maximum order amount of \$14 million. RFP at 37.

⁵ The agency assigned the record sequential Bates numbers which we use in our decision.

limited confidence, no confidence, or unknown confidence for the past performance factor.⁶ The final evaluation ratings and prices of the CI Travel and WingGate proposals were as follows:

	CI Travel	WingGate
Technical ⁷	Good	Good
Price	\$5,938,033	\$6,831,834
Past Performance	Satisfactory Confidence	Satisfactory Confidence

Agency Report (AR), Tab 7, TEP Report for WingGate, Feb. 26, 2016, at 798-810; Tab 9, Source Selection Decision, Mar. 10, 2016, at 820.

Additionally, the agency evaluators made narrative findings (e.g., strengths, weaknesses) in support of the ratings assigned under both the technical and past performance evaluation factors. See AR, Tab 7, TEP Report for WingGate, Feb. 26, 2016, at 798-810; Tab 8, Past Performance Evaluation Report, Feb. 26, 2016, at 811-818.

The contracting officer, as source selection authority (SSA), subsequently reviewed the technical and past performance evaluation reports. The SSA found that although CI Travel and WingGate had different numbers and types of technical strengths which significantly benefitted the government, the offerors' proposals were essentially technically equal. AR, Tab 9, Source Selection Decision, Mar. 10, 2016, at 839-842. With regard to past performance, the SSA found that CI Travel and WingGate both had prior work that was comparable in terms of relevance and quality, but that WingGate had more "noteworthy experience" as a prime contractor with regard to MEPS transactions. Id. at 842-843. The SSA concluded, however, that WingGate's past performance advantage did not warrant the associated 15 percent price premium, and that CI Travel's proposal represented the best value to the government all factors considered. Id. at 844.

⁶ As detailed below, as part of determining overall performance confidence ratings, the agency also assessed the relevance (i.e., very relevant, relevant, somewhat relevant, or not relevant) of the offerors' prior work efforts. See RFP at 285-286.

⁷ Although not relevant to the protest here, the TEP also assigned adjectival ratings to each technical subfactor.

On March 9, the agency awarded the contract to CI Travel. On March 30, after receiving notice of contract award and a written debriefing, WingGate filed its protest with our Office.

DISCUSSION

WingGate challenges the agency's evaluation of its past performance. Specifically, the protester alleges that it was improper for the agency to take into account the size of the offeror's prior work when assessing past performance relevance and confidence. WingGate also maintains that it was unreasonable for the agency to assess as only somewhat relevant its incumbent contract references, which allegedly covered essentially the same scope, magnitude of effort, and complexities required by the solicitation.⁸ As detailed below, we find no merit to the protester's arguments, no demonstrated prejudice to WingGate from the agency's past performance evaluation, and no basis on which to sustain the protest.

An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the agency's assessment is unreasonable or inconsistent with the solicitation criteria. Metropolitan Life Ins. Co., B-412717, B-412717.2, May 13, 2016, 2016 CPD ¶ 132 at 14; Cajun Constructors, Inc., B-409685, July 15, 2014, 2014 CPD ¶ 212 at 8. Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations and to ensure that the agency's rationale is adequately documented. DynCorp Int'l, LLC, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 14; Falcon Envtl. Servs., Inc., B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7. A protester's disagreement with

⁸ WingGate also contends the calculation of offerors' total evaluated prices was improper because it included optional services and items that the agency would allegedly never order. Protest, Mar. 30, 2016, at 6-7. As the RFP indicated that offerors' total evaluated prices would be based on all performance periods and items, RFP at 280-81, 286, we find this protest issue to be untimely. See 4 C.F.R. § 21.2(a)(1); Raytheon Co., B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 18 n.17. WingGate also protests the rationality of the agency's price/technical best-value tradeoff decision. Protest, Mar. 30, 2016, at 7-8. We consider this argument abandoned, since the agency provided a detailed response to the protester's assertion in its report to our Office (AR, May 4, 2016, at 8-13), and WingGate elected not to reply to the agency's response in its comments (WingGate Comments, May 16, 2016, *passim*). See Citrus College; KEI Pearson, Inc., B-293543 *et al.*, Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4. In any event, as set forth above, the record reflects the agency fully documented the rationale for its best-value tradeoff determination.

the agency's judgment, without more, is insufficient to establish that an evaluation was improper. Beretta USA Corp., B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 10.

The RFP instructed offerors to submit up to three performance references and include information demonstrating, among other things the relevancy (i.e., similarity of service, complexity, dollar value, contract type, and degree of subcontract/teaming) of each reference to the subject PWS requirements. RFP at 279. The solicitation also established that the agency's past performance evaluation would be based on assessing the relevancy, recency, and quality of an offeror's prior work. Id. at 285. Relevant to the protest here, the RFP set forth performance relevancy ratings as follows:

Very Relevant – Present/past performance effort involved essentially the same scope and magnitude of effort and complexities this solicitation requires. . . .

Relevant – Present/past performance effort involved similar scope and magnitude of effort and complexities this solicitation requires. . . .

Somewhat Relevant – Present/past performance effort involved some of the scope and magnitude of effort and complexities this solicitation requires. . . .

Not Relevant – Present/past performance effort involved little or none of the scope and magnitude of effort and complexities this solicitation requires. . . .

Id. at 285-286.

WingGate submitted two past performance references.⁹ These involved two of the six MEPS travel areas that the agency was consolidating as part of the procurement here. WingGate's first reference involved 10 MEPS locations and had an annual contract value of approximately \$475,000, while the second reference involved 13 MEPS locations and had an annual contract value of approximately \$500,000. AR, Tab 5, WingGate Proposal, Aug. 28, 2015, Past Performance Proposal, at 674-681. WingGate also stated that its two MEPS travel area references, "when taken together within calendar year 2014 had a combined volume of 73,319 official

⁹ WingGate also mentioned its commercial travel office services contract for 23 Air Force installations, but did not provide the required information nor a past performance questionnaire for this contract. AR, Tab 5, WingGate Proposal, Aug. 28, 2015, Past Performance Proposal, at 674-675; see Tab 8, Past Performance Evaluation Report, Feb. 26, 2016, at 813.

travelers, representing approximately 38% of this contract[']s workload, with the identical scope and complexity of this contract.” Id. at 675.

The TEP, when assessing the relevance of WingGate’s past performance, found the offeror’s references to be similar in scope and complexity, but much smaller in magnitude of effort--as measured by contract value and transactions--than the PWS requirements. AR, Tab 8, Past Performance Evaluation Report, Feb. 26, 2016, at 813. Specifically, the evaluators noted that WingGate’s references had contract values of \$475,000 and \$500,000 annually, as compared to the current requirement which was estimated at \$2.8 million annually. Id. The TEP also found that while the estimated volume for the current requirement was 192,747 transactions annually, WingGate’s MEPS references, even when combined, totaled 73,319 transactions in 2014. Id. The evaluators concluded that because none of WingGate’s references approached the magnitude of the current requirement, the offeror’s past performance was somewhat relevant.¹⁰ Id. at 814. The TEP thereafter considered the quality of WingGate’s prior work, which was uniformly exceptional, and concluded that WingGate’s overall performance confidence level was satisfactory. Id. at 814-815.

WingGate argues that it was improper (i.e., inconsistent with the solicitation) for the agency to consider the size--in dollars or number of transactions--of the offeror’s prior contracts when assessing performance relevance. The protester maintains that the RFP phrase “magnitude of effort” does not refer to the size of an offeror’s prior contracts, but rather, to the type of work involved. As the difference between its current efforts and the PWS requirements here is approximately eight additional travel agents (working from an existing central reservation center), WingGate argues, its references were essentially the same in scope, magnitude of effort, and complexity, and as such should have been rated as very relevant.

HHS and the intervenor argue that the agency’s past performance evaluation of WingGate was reasonable and consistent with the stated evaluation criteria. The agency maintains that the RFP phrase “magnitude of effort” refers to the size of an offeror’s prior contracts, and that size is rationally part of past performance relevance. As each of the protester’s references was significantly smaller in size than the subject requirement, the agency argues, it was proper to rate WingGate’s past performance as somewhat relevant and satisfactory confidence.

Here, the protester essentially challenges the agency’s interpretation of the RFP’s “magnitude of effort” phrase, and asserts that its interpretation should be the controlling one. When a dispute arises as to the actual meaning of solicitation

¹⁰ Similarly, the TEP also found CI Travel’s past performance references to be somewhat relevant because the number of transactions in the identified projects was substantially less than the size of the subject requirement. Id. at 817.

language, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. DKW Commc'ns, Inc., B-412652.3, B-412652.6, May 2, 2016, 2016 CPD ¶ __ at 7; KAES Enters., LLC, B-411225 et al., June 18, 2015, 2015 CPD ¶ 186 at 5. A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations. Id. If the solicitation language is unambiguous, our inquiry ceases. See Kingdomware Techs., Inc. v. United States, No. 14-916, 2016 U.S. LEXIS 3921, at *14 (U.S., June 16, 2016).

We have reviewed the RFP and agree with the agency that “magnitude of effort” reasonably refers to the size of an offeror’s past performance references, and that the protester’s allegation is premised on an unreasonable interpretation of the solicitation. First, the common dictionary definition of the term “magnitude” means the size, extent, or importance of something. Merriam-Webster Dictionary, available at <http://www.merriam-webster.com/> (last visited June 24, 2016). Additionally, as set forth above, the solicitation instructions expressly stated that the relevancy of an offeror’s past performance references included, among other things, their dollar value (i.e., size). We therefore find that offerors were sufficiently on notice that the agency would consider size as part of past performance relevance.¹¹ By contrast, WingGate’s assertion that “magnitude of effort” somehow means the type of work involved would render the phrase in question synonymous and superfluous with the terms “scope” and “complexity.” See L&J Bldg. Maint., LLC, B-411827, Oct. 27, 2015, 2015 CPD ¶ 344 at 4 (finding unreasonable the protester’s proposed interpretation of solicitation language regarding the relevance of offerors’ past performance and experience insofar as it would render other solicitation language superfluous).

Moreover, the interpretation of the solicitation now advanced by the protester is at odds with the content of its own proposal. In this regard, the protester included in its past performance proposal the size of its references in both contract dollar value and number of transactions. Thus, it appears that the protester’s litigation position--

¹¹ Moreover, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated evaluation criteria. Food Servs., Inc. of Gainesville, B-411032.2 et al., Aug. 10, 2015, 2015 CPD ¶ 249 at 5; Si-Nor, Inc., B-292748.2 et al., Jan. 7, 2004, 2004 CPD ¶ 10 at 12. We think it is self-evident that the size of an offeror’s prior efforts--including the number of travel service transactions performed--logically relates to the relevance of those contracts to the anticipated requirement. See, e.g., KPMG LLP, et al., B-412732 et al., May 23, 2016, 2016 CPD ¶ __ at 14; UNICCO Gov’t Servs., Inc., B-409111 et al., Jan. 23, 2014, 2014 CPD ¶ 55 at 14. Thus, the agency could reasonably take into account the size of offerors’ prior efforts, even if unstated, as part of evaluating the relevancy of offerors’ past performance.

that “magnitude of effort” meant type of work involved rather than size--differs markedly from its interpretation of the solicitation at the time of proposal submission. See L&J Bldg. Maint., LLC, *supra*, at 5; PricewaterhouseCoopers LLP; IBM U.S. Fed., B-409885 *et al.*, Sept. 5, 2014, 2014 CPD ¶ 289 at 10-11. The integrity of the protest process, however, does not permit a protester to espouse one interpretation or position during the procurement, and then argue during a protest that the interpretation or position is unreasonable or otherwise improper. Guardian Moving & Storage Co., Inc., B-410171, Nov. 6, 2014, 2014 CPD ¶ 334 at 5; Northrop Grumman Space and Missile Sys. Corp.; Textron Marine & Land Sys. Corp., B-400837 *et al.*, Feb. 17, 2009, 2009 CPD ¶ 52 at 10. In sum, we conclude that WingGate’s interpretation of the RFP fails to give effect to the unequivocal RFP language providing that the past performance evaluation would include consideration of the size of an offeror’s references.¹²

WingGate also alleges that it was unreasonable for the agency to create a rating scheme where an incumbent contractor could not receive the highest relevance rating. WingGate cites to our recent decision in Paragon Tech. Group, Inc., B-412636, B-412636.2, Apr. 22, 2016, 2016 CPD ¶ 113, to support its assertion that the relevance of its prior contracts should have been rated higher.

In Paragon, we found the past performance evaluation to be unreasonable because the agency adopted an approach to assessing the relevance of a vendor’s references that was disconnected from its actual PWS requirements, such that even the incumbent contract for the solicited services was not eligible for the highest relevance assessment.¹³ *Id.* Here, by contrast, the agency is consolidating six MEPS travel areas into one procurement, and WingGate was the incumbent contractor for two travel areas. WingGate is, at best, one of several “incumbent” contractors, each of which had partially performed the work required by the RFP here.¹⁴ The protester itself acknowledges that its two prior MEPS contracts, when combined, represented only “approximately 38%” of the new contract’s workload.

¹² In any event, even assuming that WingGate’s interpretation was also reasonable, the resulting ambiguity was readily apparent from the face of the solicitation. Thus, to be timely, any protest on this ground had to be filed prior to the closing time for submission of proposals. See 4 C.F.R. § 21.2(a)(1); Apptis, Inc., B-299457 *et al.*, May 23, 2007, 2008 CPD ¶ 49 at 16. Since it was not, and since the agency’s interpretation of the required relevance criteria was reasonable, we have no basis to question the agency’s conclusion that WingGate’s references involved some of the scope, size, and complexity of the work here, and were somewhat relevant.

¹³ The agency assessed past performance relevance using a value 200 percent larger than the value of the solicited effort. *Id.* at 13.

¹⁴ Alternatively, there is no “incumbent contractor” for the new, consolidated requirement.

AR, Tab 5, WingGate Proposal, Aug. 28, 2015, Past Performance Proposal, at 675. We therefore find our decision in Paragon to be inapposite to the present matter because WingGate was not the incumbent contractor who had previously performed all the work encompassed by the present solicitation.

Lastly, WingGate has failed to establish that it was at all prejudiced by the agency's evaluation of its past performance. Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. Swets Info. Servs., B-410078, Oct. 20, 2014, 2014 CPD ¶ 311 at 14; see Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996). The record reflects that CI Travel's past performance was also considered to be somewhat relevant because the awardee--like WingGate--had previously performed work that was found to be similar in scope and complexity, but not size, to the effort here. Thus, any change to WingGate's rating based on a different interpretation of "magnitude of effort" would also apply to CI Travel. Moreover, in contrast to WingGate's misplaced fixation on its assigned past performance relevance and confidence ratings, the SSA's best-value determination properly looked behind the ratings and determined that the offerors' past performance was comparable in relevance and quality, and that WingGate had more direct MEPS experience. The SSA reasonably concluded, however, that WingGate's past performance advantage did not overcome CI Travel's price advantage. In sum, we find the agency's evaluation of WingGate's past performance evaluation to be proper, and the resulting contract award decision reasonable.

The protest is denied.

Susan A. Poling
General Counsel