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Decision

Matter of: LOUI Consulting Group, Inc.

File: B-413703.9

Date: August 28, 2017

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John G. Terra, Esq., Department of Defense, for the agency.
Stephanie B. Magnell, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of the awardee's past performance is denied, where the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

LOUI Consulting Group, Inc. (LOUI), of Warner Robbins, Georgia, protests the award of a task order to Systems Plus, Inc., of Rockville, Maryland, under request for quotations (RFQ) No. HT0015-16-R-0019, which was issued by the Department of Defense, Defense Health Agency (DHA), for clinical information systems training support services. The protester alleges that the agency's past performance evaluation and best-value tradeoff were flawed.

We deny the protest.

BACKGROUND

On January 24, 2017,¹ DHA issued the amended RFQ as a small business set-aside under General Services Administration (GSA) schedule 70, via the GSA e-Buy system,

¹ There is substantial procedural history to this protest. On September 9, 2016, LOUI and Nolij Consulting LLC (Nolij), of Vienna, Virginia, protested the award of a contract to
(continued...)

in accordance with Federal Acquisition Regulation (FAR) subpart 8.4 procedures, to the six vendors that had participated in earlier rounds of competition, including LOUI and Systems Plus. The RFQ anticipated award of a fixed-price contract with a period of performance consisting of a 20-day transition period, a 6-month base period, and a 1-year option period. RFQ at 41; Amend. 0011. The evaluation consisted of three factors: technical approach, past performance, and price. RFQ at 41. Under the technical approach factor, quotations would be evaluated as either acceptable or unacceptable, with the latter ineligible for award. Id. Award would be made on the basis of a tradeoff between the past performance and price factors of technically-acceptable quotations, where past performance was significantly more important than price. Id.

With regard to the past performance factor, the RFQ provided that contract references would be evaluated for recency, relevance, and performance, resulting in a single adjectival rating. Id. at 43. As relevant here, a rating of substantial confidence under the past performance factor meant that the agency had a “high expectation that the offeror will successfully perform the required effort,” whereas a rating of satisfactory confidence meant that the agency had a “reasonable expectation that the offeror will successfully perform the required effort.” Id. at 45.

The agency received six quotations by the February 18 closing date and evaluated those of LOUI, the incumbent, and Systems Plus as follows:

(...continued)

Systems Plus. Our Office dismissed the protests on September 30 after the agency indicated that it would reevaluate quotations, which rendered the protests academic. LOUI Consulting Grp., Inc.; Nolij Consulting LLC, B-413703 et al., Sept. 30, 2016 (unpublished decision).

On December 19, Nolij, Technology, Automation & Management, Inc., and Systems Plus protested DHA’s subsequent award of a contract to LOUI. Our Office dismissed the protests on January 11, 2017, after DHA indicated that it would review vendors’ past performance evaluations and make a new award decision, which rendered the protests academic. Nolij Consulting, LLC et al., B-413703.4 et al., Jan. 11, 2017 (unpublished decision).

On February 2, 2017, Systems Plus protested DHA’s later decision to amend the solicitation as an overbroad response to the to the earlier protest grounds challenging the agency’s past performance evaluation. Our Office denied the protest, finding that the agency’s decision was reasonably structured to remedy the flaw which the agency believed existed in its procurement process. Systems Plus, Inc., B-413703.8, May 10, 2017, 2017 CPD ¶ 141 at 7.

Factor	Systems Plus	LOUI
Technical Approach	Acceptable	Acceptable
Past Performance	Substantial Confidence	Substantial Confidence
Price	\$30,896,179	\$36,210,097

Agency Report (AR), Tab 15, Source Selection Decision Document (SSDD), at 8.

In performing a tradeoff between the two quotations, the source selection authority (SSA) noted that they were both technically acceptable and that there was little to distinguish their past performance. Id. at 10 (Each vendor “has performed tremendously well on efforts that are exceptionally similar to the effort we require.”). The SSA then noted that Systems Plus’ proposed price was “substantially less expensive” than LOUI’s and therefore “represent[ed] the better value for the government.” Id. On this rationale, DHA made award to Systems Plus, and this protest followed. Id. at 12.

DISCUSSION

Past Performance Evaluation

LOUI challenges the agency’s past performance evaluation, arguing that, based on the solicitation’s recency and relevance criteria, Systems Plus should not have received a rating of substantial confidence.²

Where, as here, an agency issues an RFQ to Federal Supply Schedule contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency’s evaluation is reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Digital Sols., Inc., B-402067, Jan.12, 2010, 2010 CPD ¶ 26 at 3-4; DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. The evaluation of past performance, including the agency’s

² LOUI also raised other grounds alleging that the Systems Plus’ pricing was unbalanced. Protest at 11-12. We dismissed these grounds on June 20, finding that LOUI had failed to articulate a sufficient legal or factual predicate for its claim, as required by our Bid Protest Regulations. 4 C.F.R. §§ 21.1(c)(4), (f); 21.5(f).

On June 19, 2017, LOUI filed a supplemental protest asserting that Systems Plus was using unqualified personnel to perform the contract. We dismissed the protest under 4 C.F.R. § 21.5(a) as a matter of contract administration and under 4 C.F.R. §§ 21.1(c)(4) and 21.5(f) as legally and factually insufficient. LOUI Consulting Grp., Inc., B-413703.10, July 5, 2017, at 2 (unpublished decision).

Overall, LOUI raised many protest grounds. To the extent that a protest ground was not previously dismissed or addressed herein, it has been considered, but provides no basis to sustain the protest.

determination of the relevance and scope of a vendor's performance history, is a matter of agency discretion, which we will not find improper unless unreasonable or inconsistent with the solicitation's evaluation criteria. United Facility Servs. Corp. d/b/a EASTCO Bldg. Servs., B-408749.2, Jan. 17, 2014, 2014 CPD ¶ 35 at 4.

Evaluating the relative merits of vendors' past performance information is generally within the broad discretion of the contracting agency, and our Office will not substitute our judgment for that of the agency. SENTEL Corp., B-407060, B-407060.2, Oct. 26, 2012, 2012 CPD ¶ 309 at 6. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was improper. Id.

The RFQ provides for an evaluation of vendors' "recent and relevant past performance and the quality of the services provided [in order] to make its assessment as to whether the offeror has the ability to successfully execute the contract." RFQ, Amend. 0008, at 38. Recent contracts were current contracts or those ending no later than 5 years prior to the last proposal due date. Id. at 40. Relevance was assessed in light of similarities between the solicited effort and a vendor's previous work, considering scope, complexity, and value. Id. Vendors were advised that "[m]ore recent and more relevant past performance may be weighted more heavily than less recent, less relevant past performance." RFQ, Amend. 0011 at 33.

DHA assigned ratings of substantial confidence to both LOUI and Systems Plus. AR, Tab 13, Past Performance Consensus Report, at 6, 23; Tab 15, SSDD, at 3, 7. The protester contends that the past performance consensus report does not support a rating of substantial confidence for Systems Plus. Protester's Comments at 12 ("This rating is not reasonable because the DHA failed to apply . . . the diminished weight the Consensus detail gave to the Systems' References."); see also id. at 9-11. The protester further argues that it should have received a higher adjectival rating than Systems Plus, asserting that its contract references were more similar in scope and value to the current effort and that its historical performance was "superior" to that of Systems Plus. Id. at 5-8. In essence, the protester raises two arguments: (1) the past performance evaluation of Systems Plus is not consistent with a rating of substantial confidence, and (2) if its own contract references merited a rating of substantial confidence, the awardee's comparatively lower performance could not have received the same adjectival rating.

DHA contends that its past performance evaluation was reasonable and in accordance with the solicitation. Memorandum of Law (MOL) at 5-6. We agree and find no merit to LOUI's first argument that the agency should not have assigned a rating of substantial confidence to Systems Plus under the past performance factor. The RFQ defined a rating of substantial confidence as when the agency "has high expectation that the offeror will successfully perform the required effort." RFQ, Amend. 0008, at 40. DHA found that, although some of Systems Plus' 11 contract references were less relevant based on either the scope of work or magnitude, other references were "extremely relevant," and Systems Plus demonstrated consistently high performance. AR, Tab 13, Past Performance Consensus Report, at 6, 17. The SSA reviewed the consensus

report and--citing the awardee's "performance record, and favorable customer feedback"--concurred with the recommended rating of substantial confidence. AR, Tab 15, SSDD, at 7. Although LOUI disagrees with the agency's judgment in this regard, it has not shown the adjectival rating to be unreasonable or inconsistent with the terms of the solicitation.

We also find no merit to LOUI's second argument, *i.e.*, that its allegedly stronger past performance record should have resulted in a comparatively lower adjectival rating for Systems Plus. As an initial matter, there is nothing *per se* improper with LOUI and Systems Plus receiving the same adjectival rating under the past performance factor, even if, as LOUI contends, it provided a greater number of relevant contract references as compared to Systems Plus. See Wackenhut Services, Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 7 (same adjectival ratings unobjectionable, despite differing numbers of underlying strengths and weaknesses); All Star Maintenance, Inc., B-271119, June 17, 1996, 96-1 CPD ¶ 278 at 4 (agency's evaluation of two offers as essentially equal was not unreasonable, even where protester's proposal received more strengths than awardee's proposal). In this regard, relevance is one of several elements--along with recency and performance quality--that the agency considered in evaluating vendors' past performance. RFQ, Amend 0008, at 40; AR, Tab 13, Past Performance Consensus Report (generally); Tab 15, SSDD, at 3, 7.

As discussed above, the protester has not shown that the agency failed to follow the solicitation when assigning past performance adjectival ratings. Absent some reason for concluding that the technical findings underlying the ratings and scores were flawed, there is no basis for our Office to conclude that the SSA's evaluation was unreasonable simply because the protester and the awardee received the same adjectival rating. Here, the SSA determined that LOUI's and Systems Plus' quotations were essentially equal under the past performance factor based not simply on a comparison of the adjectival ratings, but on review of and concurrence with the underlying evaluation, which has been amply documented. AR, Tab 15, SSDD, at 3, 7, 9. Based on this information, we think DHA could reasonably determine that LOUI's and Systems Plus' proposals were relatively equal under the past performance factor. This protest ground is denied.

Tradeoff Decision

LOUI also challenges the agency's tradeoff decision between past performance and price on the basis that it rests on an unsound past performance evaluation. Protest at 10-11. The protester also asserts that the agency failed to look beyond the past performance adjectival ratings and recognize LOUI's allegedly stronger overall past performance. *Id.* We find no merit to these arguments.

For technically acceptable quotations, the RFQ requires the agency to perform a tradeoff between the past performance and price factors, where past performance is significantly more important than price. RFQ, Amend. 0008, at 37. Our decisions provide that the evaluation of quotations and assignment of adjectival ratings should

generally not be based upon a simple count of strengths and weaknesses, but on a qualitative assessment of the quotations consistent with the evaluation scheme. Amyx, Inc., B-410623, B-410623.2, Jan. 16, 2015, 2015 CPD ¶ 45 at 11. 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. Id.

Here, the record shows that the agency substantively evaluated the recency, relevance, and performance of each vendors' contract references. See generally AR, Tab 13, Past Performance Consensus Report. Based on that detailed review, the evaluation team recommended adjectival ratings of substantial confidence for both LOUI and Systems Plus. Id. at 6, 23. The SSA reviewed the report and concurred with the findings and the assigned adjectival rating. AR, Tab 15, SSDD, at 3, 7, 9. As discussed above, we find that the agency had a reasonable basis for its past performance adjectival ratings. After evaluating quotations individually, the SSA performed a tradeoff between LOUI and Systems Plus, looking beyond the adjectival ratings and considering the substance of the past performance evaluation, as follows:

Even looking beyond the [past performance adjectival] ratings I see little, if any, difference between the past performance of Systems and [LOUI]. Systems, just like [LOUI], has performed tremendously well on efforts that are exceptionally similar to the effort we require. Both are very successfully performing the services our contract requires at numerous locations on a [g]lobal scale. Customers for both of the offerors are very satisfied with the work the offerors are providing. In terms of past performance, I can see no discernable difference between the two.

Id. at 10. After finding the vendors essentially equal on the past performance factor, the SSA considered Systems Plus' lower price, and made award to Systems Plus.

The record shows that DHA understood the comparative merits of the competing proposals. While the protester takes issue with the adjectival rating assigned to Systems Plus' past performance, LOUI has not shown that the agency's evaluation was improper, that the agency did not appropriately look behind the adjectival ratings to the substance of the evaluation, or that the agency somehow failed to appreciate the relative merits of the two proposals in comparing them to each other. See L-3 Commc'ns, L-3 Link Simulations & Training, B-410644.2, Jan. 20, 2016, 2016 CPD ¶ 44 at 7 (denying protest where agency properly considered relative merits of two proposals).

The protest is denied.

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General Counsel