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Decision

Matter of: Noble Supply and Logistics

File: B-414511.3

Date: November 6, 2017

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DIGEST

Protest is denied where the record does not demonstrate that, even with the errors in the agency's past performance evaluation, the protester would have had a substantial chance of receiving the award, and thus there is no basis for finding prejudice.

DECISION

Noble Supply and Logistics, of Rockland, Massachusetts, protests the award of a modification of a blanket purchase agreement (BPA) to W.W. Grainger, Inc., of Lake Forest, Illinois, under request for quotations (RFQ) No. QSRA-RFQ-17001, issued by the General Services Administration (GSA) for support of GSA Retail Operations 4th Party Logistics efforts at Andersen Air Force Base in Guam and Joint Base Pearl Harbor Hickman in Hawaii. The protester challenges the reasonableness of the agency's past performance evaluations.

We deny the protest.

BACKGROUND

The RFQ, issued to holders of the GSA Enterprise Supply Chain Solutions/Retail Operations Pacific Northwest-Arctic Region BPA, anticipated that the GSA would modify an existing BPA to expand the scope to include office products to support GSA's Retail Operations 4th Party Logistics efforts at Andersen Air Force Base in Guam and Joint

Base Pearl Harbor Hickman in Hawaii. Agency Report (AR), Tab 2, RFQ, amend. 4 (RFQ) at 4. The BPA modification would be issued to the firm whose quotation represented the best value to the government, considering price and two factors: specific technical expertise and past performance. RFQ at 4, 14-15. Specific technical expertise was more important than past performance, and the two factors together were significantly more important than price. Id. at 15.

With respect to past performance, the agency would consider reports in the Past Performance Information Retrieval System (PPIRS) and information obtained from other sources if these assessment reports “cover[ed] the three (3) calendar years prior to the RFQ closing date.” Id. at 17. In addition, the quotation was to include a listing of certain government supply contracts “with a period of performance occurring during the three (3) calendar years preceding the quotation closing date.” Id. at 17-18.

The RFQ provided that past performance would be evaluated for relevance using one of the following four rankings: highly relevant, relevant, somewhat relevant, and not relevant. Id. at 19. The quality of past performance would be assessed as outstanding, satisfactory, poor, or neutral. Id. at 19-20. Outstanding quality past performance was defined as:

Based on the BPA-Holder’s performance record, the Government has high confidence the BPA-Holder will successfully perform the required effort. The BPA-Holder’s previously awarded contract(s) are relevant to highly relevant. The BPA-Holder’s performance of previously awarded relevant contract(s) met contractual requirements and exceeded many to the Government’s benefit. Performance of completed contracts/orders either was consistently of the highest quality or exhibited a trend of becoming so.

Id. at 19. Satisfactory quality past performance was accomplished with a few or very minor problems, and performance of completed contracts/orders was consistently of adequate or better quality or exhibited a trend of becoming so. Id. After assessing the relevance and quality of a BPA holder’s past performance, the agency would assign one of the following performance confidence assessments: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. Id. at 20-21.

The agency received quotations from the protester, the intervenor, and another offeror (whose proposal is not relevant to the resolution of this protest) by the solicitation closing date of February 15, 2017. AR, Tab 8, Award Determination, at 1. Under the first of the two non-price technical factors, specific technical expertise, the agency evaluated Noble and Grainger’s quotations as outstanding with low risk. Contracting Officer’s Statement at 2.

In its evaluation of past performance, the agency divided the adjectival ratings definitions into the following four discrete criteria: (1) the degree of agency confidence the offeror will successfully perform the required effort; (2) the relevance of the offeror’s

previously awarded contract(s); (3) the degree to which the offeror's performance of previously awarded relevant contract(s) met and/or exceeded contractual requirements; and (4) the quality of the offeror's performance of completed contracts/orders. See AR, Tab 8, Award Determination, at 13-14.

Grainger provided three references with its quotation. In addition, PPIRS had one assessment report for Grainger, which was a completed contract with a period of performance that fell within three years of the solicitation closing date of February 15, 2017. AR, Tab 8, Award Determination, at 13. The Contractor Performance Assessment Report (CPAR) for that requirement, for the time period August 3, 2012, to March 28, 2014, rates the quality of Grainger's performance under six categories. Grainger received four ratings of very good and two of exceptional. AR, Tab 6, Grainger CPARs, at 2. The record contains four other CPARs for Grainger, and for each of those four separate requirements, where performance is ongoing, Grainger's performance was evaluated as satisfactory. Id. at 4-11.

The contracting officer concluded that "[o]n three of the four components that make up the adjectival ratings, Grainger's past performance aligns best with the 'Outstanding' definition." AR, Tab 8, Award Determination, at 14. In other words, the agency reached the following conclusions regarding the awardee's past performance: the agency had high confidence Grainger would successfully perform the contract; Grainger's previously awarded contracts are relevant to highly relevant; and Grainger's performance of those previously awarded relevant contracts met contractual requirements and exceeded many to the government's benefit. Id. at 13. On the remaining factor--performance of completed contracts--the agency concluded that "Grainger's past performance is technically more aligned to 'Satisfactory.'" Id. at 14. The agency recognized that Grainger's performance may not have been consistently of the highest quality, but "that fact is outweighed by the fact that Grainger's past performance has always met or exceeded contractual requirements." Id. The agency evaluated Grainger's past performance as highly relevant, outstanding quality, and substantial confidence. Id.

The agency conducted a similar four part assessment of Noble's past performance. The agency stated that under the first criterion it had confidence--not high confidence--that Noble would satisfactorily perform the requirement. Id. at 25. Under the second criterion, because Noble had previously been awarded highly relevant contracts, GSA evaluated the protester's performance as outstanding. Id. at 26. Under the third criterion, the agency concluded that Noble's performance of previously awarded contracts had not always met contractual requirements. Id. at 25. The contracting officer expressed particular concern with Noble's ongoing performance of a contract on Elgin Air Force Base, Florida. Id. The Air Force assessing official for that contract noted that Noble had difficulty establishing local vendors for materials, and some products were not acquired in a timely manner and at competitive prices. Id. The assessing official described Noble's difficulty maintaining a robust store stock, while noting that Noble was making improvements in performance. Id. The assessing official, however, would not recommend Noble for similar requirements in the future. Id. at 24-25, citing AR, Tab 5, Noble CPARs, at 67-69. Under the fourth criterion, Noble's

one completed contract effort received ratings that ranged from marginal to very good and therefore the agency concluded Noble was satisfactory. Id. at 26. Overall, the agency evaluated Noble's past performance as highly relevant, satisfactory quality, and satisfactory confidence. Id. at 19, 26-27.

Noble's total evaluated market basket price was, by the agency's calculation, 16.42 percent lower than Grainger's price. Id. at 34. The contracting officer determined that Noble's lower price did not outweigh the risks associated with Noble's quotation. The contracting officer concluded that:

Grainger and Noble both offer an outstanding supply chain system capability. Grainger has a superior past performance history. The multiple "Marginal" ratings assigned to Noble for relevant work performed within the time period specified in the RFQ is a cause for concern for this procurement. While Noble's performance improved on two "Marginal" ratings, I am particularly concerned with the ratings and comments in the November 2016 Eglin AFB PPRIS report, in which the assessing official noted that, even with improvements, Noble's performance in the "Schedule" category is "Marginal," and that Noble's problems on this contract are so significant that she would not recommend Noble for future requirements.

Id. at 33-34. The contracting officer noted that "Noble's demonstrated failure in this area" of maintaining store stocking levels "is particularly concerning for GSA." Id. at 34.

The contracting officer concluded that the price savings associated with Noble's quotation did not outweigh the risks associated with Noble's "documented difficulty performing requirements essentially the same as those required under this RFQ." Id. The contracting officer recommended that the BPA modification be issued to Grainger, because "it is worth paying [a] price premium in order to acquire these supplies and services from a BPA Holder with a demonstrated history of meeting requirements of this nature." Id. The BPA modification was issued to Grainger, and Noble protested to this office.¹

DISCUSSION

Noble asserts various challenges to the agency's evaluation of the protester's and awardee's past performance. The agency argues that its evaluation of past performance is reasonable and consistent with the terms of the solicitation. While our decision here may not specifically discuss each and every argument and/or variations of

¹ This is the second protest by Noble of a BPA modification issued to Grainger. GAO dismissed the first protest, which alleged unreasonable past performance evaluations, following the agency's decision to take corrective action. See Noble Supply and Logistics, B-414511, June 2, 2017 (unpublished decision).

the arguments, we have considered all of Noble’s assertions and find no basis to sustain the protest.

Where a protester challenges an agency’s past performance evaluation, we will examine the record to ensure that the evaluation was reasonable and consistent with the solicitation’s evaluation criteria and procurement statutes and regulations. Divakar Techs., Inc., B-402026, Dec. 2, 2009, 2009 CPD ¶ 247 at 5. The evaluation of past performance, by its very nature, is subjective, and a vendor’s disagreement with an agency’s evaluation judgments does not demonstrate that those judgments are unreasonable. See Glenn Def. Marine-Asia PTE, Ltd., B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3 at 7.

Agency Evaluation of Noble’s Past Performance

Noble argues that it was illogical for the agency not to assign a substantial confidence rating to Noble’s past performance when the protester has a 99.5 percent fill rate and 99 percent on-time deliveries under its GSA contracts. Comments at 13, citing Noble Quotation at 25. The protester asserts that the marginal ratings were isolated incidents, that Noble’s CPARs show repeated success, and that to achieve an outstanding rating Noble did not have to exceed all contractual requirements in every contract, rather, Noble needed to exceed many requirements to the government’s benefit. Id., citing RFQ at 19. The agency asserts that Noble does not dispute the key facts relied on by the agency, including the marginal ratings assigned to Noble’s past performance on highly relevant efforts, and one assessing official’s conclusion that she would not recommend Noble for similar future requirements. Agency Response to Protester’s Comments at 5-7.

Noble’s argument ignores the plain language of the definition of outstanding past performance. Noble received a marginal performance rating on a contract for which performance is complete. The table below summarizes the evaluation ratings from four CPARs for this contract:

Evaluation Area	Ratings by Evaluation Period			
	10/1/13-9/30/14	10/1/14-9/30/15	10/1/15-9/29/16	9/30/16-3/31/17
Quality	Satisfactory	Marginal	Very good	Very good
Schedule	Satisfactory	Satisfactory	Satisfactory	Satisfactory
Management	Satisfactory	Satisfactory	Very good	Very good
Regulatory Compliance	Satisfactory	Satisfactory	Satisfactory	Satisfactory

See AR, Tab 5, Noble CPARs, at 28-42. Noble’s most recent ratings for this contract have been a mix of satisfactory and very good. In its evaluation, the agency noted that Noble’s one marginal rating improved to very good, but also found that the majority of the ratings for this completed contract were satisfactory. AR, Tab 8, Award Determination, at 26. The agency concluded that this meets the definition of satisfactory, not outstanding, quality past performance since there were a few problems but there was a trend of adequate or better performance. Id. Similarly, the CPARs in

the record demonstrate that Noble's performance of ongoing contracts also fails to meet the requirements for outstanding past performance, that is, performance that met contractual requirements and exceeded many of those requirements to the government's benefit. See AR, Tab 5, Noble CPARs passim (noting, in particular, the evaluation of Noble's performance of the contract on Elgin Air Force Base, Florida, as marginal). Accordingly, we find the agency's evaluation reasonable.

Agency Evaluation of Grainger's Past Performance

The protester also argues that the agency unreasonably assigned Grainger an outstanding rating for its past performance because Grainger has an undistinguished performance record. Comments at 2. The agency asserts that Grainger's past performance met or exceeded contract requirements, and, in fact exceeded many requirements on a highly relevant effort, and that it was reasonable for the agency to conclude there was a high expectation that Grainger could successfully perform. Agency Response to Protester's Comments at 11-13. We disagree with the agency's assertion.

Under the third criterion of the agency's definition of outstanding quality past performance, the agency was to evaluate whether "[t]he BPA-Holder's performance of previously awarded relevant contract(s) met contractual requirements and exceeded many [of those requirements] to the Government's benefit." RFQ at 19. The agency's evaluation, however, misstates the third part, asserting that Grainger's performance of ongoing contracts was outstanding because it "either met or exceeded all contractual requirements." Compare AR, Tab 8, Award Determination, at 14 with RFQ at 19. As noted above, the awardee's performance of ongoing contracts was evaluated as satisfactory across the board, and none of the evaluators identified a single instance where Grainger exceeded contract requirements. See AR, Tab 6, Grainger CPARs. The record thus provides no support for the reasonableness of the agency's assignment of an outstanding rating to Grainger's quotation under this part of the evaluation.

The outstanding rating under the third criterion of the evaluation of past performance influenced the agency's overall evaluation. Having recognized that under the fourth criterion of the definition of outstanding quality past performance Grainger's performance of completed contracts may not have been consistently of the highest quality, the contracting officer concluded, however, "that [Grainger's performance of completed contracts] is outweighed by the fact that Grainger's past performance has always met or exceeded contractual requirements." AR, Tab 8, Award Determination, at 14. The contracting officer concluded that Grainger's past performance had been more outstanding than satisfactory because under three of the four criteria the agency evaluated the awardee's past performance as outstanding. See id. If the agency had used the RFQ's definition of outstanding and had evaluated Grainger's past performance as satisfactory under the third criterion, the statement that Grainger's past performance was more outstanding than satisfactory would not have been accurate. Grainger's overall outstanding quality rating under past performance was dependent on the application of a definition of outstanding different from that provided in the RFQ. In

sum, the record does not support the reasonableness of the agency's evaluation of Grainger's past performance as outstanding.²

To prevail, a protester must demonstrate that it has been prejudiced by the agency's error. 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, even if deficiencies in the procurement are found. HP Enter. Servs., LLC, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 6. As explained below, we see insufficient evidence in the record that Noble was prejudiced by the agency's evaluation of Grainger's past performance as outstanding with substantial confidence.

It is well-established that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision making in the procurement process. See Environmental Restoration, LLC, B-406917, Sept. 28, 2012, 2012 CPD ¶ 266 at 5. The relevant considerations are the agency's qualitative assessments of proposals. See Archer Western Contractors, Ltd., B-403227, B-403227.2, Oct. 1, 2010, 2010 CPD ¶ 262 at 5.

The distinction drawn by the agency in its award determination was not simply between outstanding and satisfactory ratings. Rather, what seemed crucial to the agency in its best-value determination were the marginal ratings Noble received for relevant work, that in turn led the contracting officer for that requirement to advise in her evaluation that she would not recommend Noble for future requirements. AR, Tab 8, Award Determination, at 33-34. The best-value determination turned on "Noble's demonstrated failure in this area" of maintaining store stocking levels, which was "particularly concerning for GSA," and not Grainger's past performance adjectival rating of outstanding. Id. at 34.

In the agency's view, Noble's price advantage did not outweigh the risks associated with Noble's "documented difficulty performing requirements essentially the same as those required under this RFQ," and, thus, in the contracting officer's view, "it is worth paying [a] price premium in order to acquire these supplies and services from a BPA Holder with a demonstrated history of meeting requirements of this nature." Id. Although we conclude that the agency unreasonably assigned an adjectival rating of outstanding to Grainger's past performance, the record does support the foundation of the tradeoff

² Because we conclude that the agency's evaluation of Grainger's past performance as outstanding has no reasonable basis in the record, we need not consider at length other challenges to the agency's evaluation of Grainger's past performance. Noble is incorrect, however, that the agency unreasonably included in its evaluation of Grainger's past performance a contract that concluded less than 3 years prior to the solicitation closing date, as specified in the RFQ. RFQ at 17-18; Comments at 5. Noble's assertion that the agency's reevaluation following corrective action should have considered a different time frame is an untimely challenge to the terms of the solicitation and will not be considered further. See 4 C.F.R. § 21.2(a)(1).

decision--namely, that, unlike Noble, Grainger's past performance had never been evaluated as marginal. For that reason, we see no reasonable possibility that even with the error in assigning Grainger's past performance adjectival ratings, Noble would have had a substantial chance of receiving the modification to the BPA.³

The protest is denied.

Susan A. Poling
General Counsel

³ The protester asserts that the agency tradeoff decision was unreasonable where it failed to look behind the identical adjectival ratings for Grainger and Noble's proposals under the specific technical expertise factor. Comments at 15-16. The only basis for prejudice Noble offers is that it operates significantly more storefronts than Grainger. Id. at 16. Noble cites no support in the RFQ as to why the agency was required to consider the total number of operational storefronts as a discriminator. Noble also argues that the price evaluation, which considered a market basket of goods, understated Noble's actual price advantage. Id. at 16-17. This claim is without merit, where the agency followed the announced price evaluation scheme.