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Decision

Matter of: Pacific-Gulf Marine, Inc.

File: B-415375; B-415375.2

Date: January 2, 2018

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Ronald S. Perlman, Esq., and Rodney Perry, Esq., Holland & Knight, LLP, for Ocean Ships, Inc., the intervenor.
Chad Diederich, Esq., Allison McDade, Esq., and Tricia A. Nicewicz, Esq., Department of the Navy, for the agency.
Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of awardee's past performance is denied where the evaluation was reasonable and consistent with the stated evaluation criteria.
2. Agency's selection of a higher-rated, higher-priced proposal for award is unobjectionable where the agency's tradeoff decision was reasonable, and where the agency adequately documented its tradeoff rationale.

DECISION

Pacific-Gulf Marine, Inc. (PGM), of Gretna, Louisiana, protests the award of a contract to Ocean Ships, Inc. (OSI), of Houston, Texas, under request for proposals No. N32205-16-R-3000, issued by the Department of the Navy, Military Sealift Command, for the operation, maintenance, and repair of certain ships. The protester challenges the Navy's evaluation of the offerors' past performance and argues that the best-value tradeoff and source selection decision was unreasonable.

We deny the protest.

BACKGROUND

On June 10, 2016, the Navy issued the RFP, which anticipated the award of two fixed-price contracts, with reimbursable elements, for a base year and four 12-month options. RFP at 147. The solicitation sought qualified vessel officers and crew for the

operation, maintenance, and repair of up to 11 ships. The solicitation divided the ships into two contract lots on the basis of ship class, and provided that each lot would be evaluated and awarded separately. Id. at 147, 167. This protest pertains to Lot 2.

The RFP provided for award on a best-value basis considering the following evaluation factors: technical approach, past technical performance and price. Technical approach and past technical performance were of equal importance and, when combined, were significantly more important than price. Id. at 170.

With regard to past technical performance, the solicitation provided that the agency would evaluate past performance to assess “the offeror’s probability of meeting the solicitation’s requirements.” Id. at 171. In addition, the RFP explained that the agency would assess an overall confidence rating based on the combined evaluation of the following types of recent and relevant performance information: (a) past performance narratives, (b) past performance questionnaire responses, (c) Past Performance Information Retrieval System (PPIRS) records, and (d) contract discrepancy reports (CDRs). Id. The solicitation also provided that the agency would consider any other sources of information relevant to the evaluation. Id.

The Navy received proposals from both PGM and OSI. After evaluating proposals, the agency conducted two rounds of discussions with both offerors, and then requested, received, and evaluated revised proposals. The final evaluation ratings and prices of PGM’s and OSI’s proposals under the tradeoff factors were as follows:¹

	PGM	OSI
Technical Approach	Good	Good
Past Technical Performance	Satisfactory	Substantial
Total Evaluated Price	\$72,013,592	\$76,045,545

Agency Report (AR), Tab D, Source Selection Decision Document (SSDD), at 2.

Both OSI and PGM received a technical rating of good, and the agency found that the proposals of both offerors “contain strengths that provide benefit to the Government.” AR, Tab E, SSAC Report at 3. The evaluators concluded, however, that PGM’s proposal was “slightly stronger” than OSI’s proposal under the technical approach factor. Id. at 9. With regard to the past technical performance factor, PGM received a

¹ Prior to assigning the final ratings, the agency confirmed that the final proposals submitted by PGM and OSI met several minimum requirements. Proposals were evaluated under the technical approach factor as outstanding, good, acceptable, marginal, and unacceptable. AR, Tab F, Source Selection Plan, attach. 3, at 19. Under the past technical performance factor, proposals were evaluated based on confidence as: substantial, satisfactory, limited, no, or unknown. AR, Tab G, PTPR, at 5-6.

rating of satisfactory confidence, and OSI received a rating of substantial confidence. Id. at 7-8. The source selection authority noted that OSI's proposed price was 5.6 percent more than the price proposed by PGM. AR, Tab SSDD, at 4. Ultimately, the source selection authority (SSA) concluded that, although PGM's proposal was "slightly stronger" under the technical approach factor, OSI's higher-priced proposal offered the best value to the government, in light of OSI's "clearly superior rating" under the past technical performance factor, which was based on "an extensively documented record of exceptional performance." AR, Tab D, SSDD, at 4; Tab E, SSAC Report at 10. The agency awarded a contract to OSI on September 19, and notified PGM of the award the same day. After timely requesting a debriefing, PGM protested to our Office on September 27.

DISCUSSION

PGM challenges the Navy's evaluation of OSI's past performance and the award decision.² For the reasons discussed below, we conclude that the agency's evaluation was reasonable and consistent with the RFP.

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of agency discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. SIMMEC Training Solutions, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. Where a protester challenges an agency's past performance evaluation and source selection, we will review the evaluation and award decision to determine if they were 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-406523.2, B-406523.3, Dec. 16, 2013, 2014 CPD ¶ 7 at 6.

Past Performance Evaluation

PGM challenges the substantial confidence rating assessed to OSI's proposal for past technical performance, arguing that the agency improperly based this rating on a mischaracterization of the information contained in the past performance questionnaires submitted for OSI. PGM also argues that the agency's evaluation of OSI's past performance was unreasonable because it relied on information contained in three CPARS reports, which the protester asserts, was not relevant or recent. As discussed below, we find no merit to the protester's arguments.

As relevant here, for the past technical performance factor, the solicitation required that offerors include past performance narratives in their proposals to describe their

² The protester raises other collateral arguments that are not discussed in this decision. We have reviewed all of the protester's allegations and conclude that they are without merit.

performance on recent and relevant government or commercial contracts. RFP at 164. As part of the narratives, offerors were asked to provide the specific government or commercial contract numbers under which the experience was gained, along with a point of contact and email/phone number for the contact. Id. 164-65. In addition, the solicitation required that offerors provide a past technical performance questionnaire (attachment R to the solicitation) to a reference at the organization that awarded the contract listed in the narrative. As relevant here, the questionnaire sought performance information regarding three areas of performance: ship crewing, transition plan, and crew familiarization/rotation plans. RFP, attach. R, at 1. The solicitation explained that, to be considered, the questionnaire must “be completed by the reference, not the offeror,” and submitted to the government. RFP at 165.

OSI’s proposal included three past performance narratives for OSI. AR, Tab K, OSI Past Technical Performance Proposal, at 1-11. In evaluating OSI’s narratives, the agency determined that the performance information identified by OSI was recent and “very relevant.” AR, Tab H, OSI Relevancy Eval., at 1; AR, Tab G, Past Technical Performance Report (PTPR), at 7. The agency also received three past technical performance questionnaire responses concerning these contracts submitted on behalf of OSI. Id.

In evaluating OSI’s past technical performance, the agency considered the responses received on the questionnaires, which the agency stated “consistently rated OSI Exceptional in all performance areas.” Id. The agency also noted that it reviewed CPARS reports for “three MSC ship operating contracts” for “performance from October 2008 to September 2015,” and found that the [r]atings for all contracts across these periods were in the Very Good to Exceptional range.” Id. In addition, the agency stated that “[t]he majority of ratings for the most recent contract period were Exceptional for all contracts.” Id. Finally, the agency noted that it “is not aware of the issuance of any CDRs, or other sources of information that indicate negative performance for this Contractor in the past 12 months.” Id. at 8. Accordingly, the agency concluded:

OSI’s overall rating of Substantial Confidence is based upon the Very Relevant rating of OSI’s past technical performance narrative submission (Attachment 1), the Exceptional past technical performance rating that was derived from Questionnaires (Attachment 2), information found in PPIRS, and the absence of CDRs, or any other sources of negative performance information.

Id.

The protester argues that the agency’s evaluation of OSI’s past performance was unreasonable because it “materially misstated” the ratings provided by OSI’s references in the past technical performance questionnaires that were submitted on behalf of OSI. The protester contends that the record, in fact, shows that the ratings for OSI and PGM were “nearly identical,” and therefore, it was improper for OSI to receive a higher past technical performance rating than PGM.

In support of this argument, the protester points to one of the questionnaires submitted on behalf of OSI, which the protester asserts, reflects that the reference did not rate OSI as “exceptional” in all three performance areas.³ Protester’s Comments at 12. The protester contends that, instead, the questionnaire shows that OSI received an “exceptional” rating in only one performance area, and was rated as only “satisfactory” in the other two areas. Id. Accordingly, the protester argues that it was unreasonable for the agency to conclude that OSI’s questionnaires were “consistently rated . . . Exceptional in all performance areas.” AR, Tab G, PTPR, at 7.

In response, the agency reference who completed the questionnaire submitted a statement with the agency’s report on this protest. This individual states that he works at MSC as a program analyst, and was the Contracting Officer Representative (COR) for the OSI contract assessed in the questionnaire. Supp. AR, attach. 1, Decl. of Program Analyst (Nov. 6, 2017), at 1. This individual also states that, for the instant procurement, he served as one of the past technical performance evaluation team members. Id. He explains that, in filling out the questionnaire, it was his understanding that “only the first question (related to crew training) could be answered with a range of ratings (Exceptional to Unsatisfactory),” and that “all of the subsequent questions could only be answered on a yes (“Satisfactory”) or no (“Unsatisfactory”) basis.” Id. at 2 (“For example, ‘The Master, Officers, and entire crew were US citizens and were literate in English’ and ‘GMDSS operators and maintainers were properly certified and endorsed.’”). As such, he explains that he “marked those items with a ‘Satisfactory’ to indicate the requirement was met.” Id. He further states, however, that he “attempted to convey [that] OSI’s overall performance under [the contract] was ‘Exceptional,’” and that he “deemed OSI ‘Exceptional’ in all areas, which [he] conveyed via three prior CPARS reports and the written comments on the questionnaire.” Id. at 2. In this regard, he explains that, in his capacity as (COR), he completed three prior CPARS reports rating OSI’s performance under the contract, and that “all three CPARS reports

³ The protester also challenges the agency’s consideration of a second questionnaire. As relevant here, this questionnaire was submitted after the initial due date for receipt of proposals, but approximately seven months before the second round of final proposal revisions were due. AR, Tab C-2; Supp. AR at 2. The protester contends that it was improper for the agency to consider the questionnaire because the questionnaire itself provided that it must be submitted prior to the original closing date, and because the RFP provided that it must be submitted “before the due date for proposals.” RFP at 165. We disagree. The RFP provided that the government “reserves the right to consider information received after the due date for receipt of proposals” and “reserves the right to contact references for verification or additional information and the right to consider other relevant past technical performance information.” Id. at 172. Accordingly, the solicitation expressly reserved the government’s right to consider information received, such as the questionnaire, after the initial due date for receipt of proposals. To the extent the protester disagrees, this argument is untimely because it was not raised prior to the time for submission of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1).

were uniformly 'Exceptional' in all areas." Id. He notes that "[t]hese CPARS reports were compiled in PPIRS," and that they were also reviewed by the past technical evaluation team as part of its evaluation of OSI's past technical performance. Id. at 1. In addition, he states that his intention to rate OSI as "exceptional" in all three performance areas is "further conveyed . . . in [a] table [he] drafted that summarized [the] questionnaire response evaluations," which provided that "OSI was rated 'Exceptional' in all areas." Id. at 2.

Although the protester claims that we should give no weight to the evaluator's statement, our Office generally considers post-protest explanations, such as this, where the explanations merely provide a detailed rationale for contemporaneous conclusions and fill in previously unrecorded details, so long as the explanations are credible and consistent with the contemporaneous record. See Lynxnet, LLC, B-409791, B-409791.2, Aug. 4, 2014, 2014 CPD ¶ 233 at 6. To the extent the protester asserts that the evaluator's statements are inconsistent with the record, based on our review of the record, and as discussed below, we disagree, and conclude that the statements are consistent with, and provide a more detailed explanation of, the past technical performance evaluation in the contemporaneous record.

For example, although the protester asserts that the "supposed anecdotal corrections" in the explanation fail to "rescue" the evaluation because the evaluators relied instead on the "documents themselves," we note that the individual who completed the questionnaire at issue was also one of the evaluators for this procurement. In this capacity, he contemporaneously drafted a table summarizing the questionnaire response evaluations, which provided, for the questionnaire he completed, that OSI was rated "Exceptional" in all three performance areas included on the questionnaire. In addition, he completed three prior CPARS reports, which all also rated OSI's performance under the contract as "uniformly 'Exceptional' in all areas." These contemporaneous actions are consistent with his explanation that he "deemed" OSI as "exceptional" in all three of the questionnaire's performance areas, and only marked the form "satisfactory" because he believed that it indicated that the requirements had been met. We find that the evaluator's explanation reasonably supports the contemporaneous record, and that the protester has failed to provide any basis to doubt the evaluator in this regard.

The protester also asserts that the agency's past performance evaluation of OSI was unreasonable because it improperly considered information "as far back as 2008" and "relied on CPARS characterizations that did not correspond to the Questionnaires." Protester's Comments at 13. We find no merit to these arguments.

With regard to the first argument--that the agency improperly considered information from 2008--the record reflects that the contract at issue had a performance period of "October 2008 to September 2015." AR, Tab G, PTPR, at 7. As relevant here, the solicitation defined "recent" to mean "a contract in progress or completed within the last five (5) years." RFP at 163. Accordingly, because the completion date for this contract

occurred within the last 5 years, the agency properly considered it “recent” in accordance with the RFP.

As for the second argument--that it was improper for the agency to consider information contained in CPARS reports for some of OSI’s relevant contracts because the categories listed in the reports differed from those identified in the solicitation or questionnaire--the agency responds that its evaluation properly considered all “relevant” information. The solicitation defined “relevant” to mean a contract that is of “similar scope, complexity, dollar value and/or contract type.” RFP at 163. The agency maintains that, although the solicitation advised offerors that it would consider information pertaining to certain performance areas, the RFP’s definition of “relevancy” clearly indicated that the agency’s examination would not be limited to those areas. In addition, in evaluating OSI’s past performance, the evaluators stated: “Although the categories rated in PPIRS differ from those in the Questionnaires that target performance areas specific to the RFP, these ratings are considered valid indicators of a contractor’s overall performance.” AR, Tab G, PTPR, at 7 n.5. Other than the difference in categories, the protester provides no argument why the agency should not consider the performance information in the CPARS. On this record, we find nothing unreasonable regarding the agency’s consideration of this information for the contracts it reasonably found to be recent and relevant.

Tradeoff Analysis and Source Selection Decision

Finally, PGM challenges the source selection authority’s best-value tradeoff, which resulted in OSI’s higher-rated, higher-priced proposal being selected for award. The protester argues that the agency unreasonably failed to consider PGM’s lower proposed price and technical advantages, and failed to adequately document the record. We find no basis to sustain the protest.

Where, as here, the RFP provides for a best-value tradeoff, the source selection official retains discretion to select a higher-priced but technically higher-rated submission, if doing so is in the government’s best interest and is consistent with the solicitation’s stated evaluation and source selection scheme. All Points Logistics, Inc., B-407273.53, June 10, 2014, 2014 CPD ¶ 174 at 13-14. The source selection official has broad discretion in determining the manner and extent to which he/she will make use of technical, past performance, and cost/price evaluation results, and this judgment is governed only by the tests of rationality and consistency with the stated evaluation criteria. Id. A protester’s disagreement with the agency’s determinations as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency, without more, does not establish that the source selection decision was unreasonable. General Dynamics-Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8.

We conclude that the SSA adequately documented his comparison of proposals, including the relative merits of the proposals under the non-price and price evaluation factors. With regard to the technical approach factor, the SSA explained that he

reviewed the technical evaluation report, and concurred with the tradeoff assessment recommendations of the source selection advisory council (SSAC). AR, Tab D, SSDD, at 3. As relevant here, the SSAC concluded that, while both PGM and OSI received the same technical rating of “good” and both proposals “contain strengths that provide benefit to the Government,” PGM’s proposal “provides benefits that are more specific to the ROS [reduced operating status] requirement and will help mitigate recent MSC maintenance and funding challenges which have stretched port engineer resources.” AR, Tab E, SSAC Report at 9. Accordingly, the SSAC found that PGM’s proposal was “slightly stronger” than OSI’s proposal under the technical approach factor. Id.

For the past technical performance factor, the SSA stated that he reviewed the past technical performance evaluation team report, and concurred with the evaluation team’s evaluation and ratings of the offerors. AR, Tab D, SSDD, at 3. The SSAC explained that PGM received a rating of satisfactory confidence, which was based on “very relevant” experience submitted by PGM in its past technical performance narrative, satisfactory rating derived from the questionnaires submitted, and the absence of any known CDRs or other performance deficiencies. AR, Tab E, SSAC Report, at 8. OSI received a rating of substantial confidence, which was based on “very relevant” experience submitted by OSI in its narrative, exceptional ratings derived from the questionnaires, information found in CPARS reports from three recent/ongoing contracts, and the absence of any CDRs or other performance deficiencies. Id. at 7.

The SSAC concluded that “[a]fter weighing the proposals against the evaluation criteria, we determined OSI’s proposal provides the best value to the government.” Id. at 10. The SSAC noted that “[t]he RFP stated that the [g]overnment ‘may award on the basis of a proposal with superior ratings even though it may result in a higher price to the [g]overnment.’” Id. It also stated that, in accordance with the solicitation, technical approach and past technical performance were considered of equal importance and when combined, were significantly more important than price. Id. As such, the SSAC explained that:

PGM and OSI both received a rating of “Good” for Technical Approach but PGM’s proposal provided a slightly better approach. Nonetheless, the technical proposal is weighted equally with Past Technical Performance. OSI’s Past Technical Performance earned a clearly superior rating (OSI was given a rating of “substantial confidence” for this factor and PGM received a rating of “satisfactory confidence”). OSI’s higher rating is based on an extensively documented record of exceptional performance. The Past Performance Narratives submitted by both PGM and OSI were rated “Very Relevant.” However, PGM had an inadequate number of questionnaires, PPIRS, and other relevant information to support a rating higher than “satisfactory confidence.” We find OSI’s proposal merits the additional 5.7% increase in price because Past Technical Performance combined with technical performance is significantly more important than price. The government will obtain a contractor with an exceptional proven

track record that substantially lowers the risk or poor performance on this contract.

AR, Tab E, SSAC Report, at 10.

The SSA adds that the SSAC tradeoff recommendation details [the] differences among the reports, and concludes that the advantages identified in OSI's technical approach and past technical performance proposal are sufficient to justify OSI's price premium. AR, Tab D, SSDD, at 3. The SSA explains that OSI proposed a total price of \$76,045,545.39, the second highest evaluated price, which over the life of the contract is 5.6 percent more than the total evaluated price proposed by PGM. Id. The SSA concluded: "I concur with the SSAC's assessment that there are merits in OSI's proposal [that] warrant award to OSI at a price premium of \$4.03M." Id. at 4. Accordingly, the SSA found that "[t]aking into consideration each offeror's technical approach, past technical performance, and price proposals, OSI's proposal represents the best value to the [g]overnment," and the value of OSI's advantages "is worth the 5.60% premium price over the lowest priced offeror." Id.

Based on this record, we find no merit to the protester's arguments that the SSA failed to document the tradeoff analysis and selection decision, or that the SSA failed to weigh the benefits of the individual strengths assessed to each offeror. To the contrary, as discussed above, the record reflects that the SSA adequately documented the rationale for the tradeoff and his decision that OSI submitted the best value proposal.

The protest is denied.

Thomas H. Armstrong
General Counsel