



Decision

Matter of: International Preparedness Associates Inc.

File: B-415416.3

Date: December 27, 2017

Scott A. Freeman, for the protester.

Mark R. Gleeman, Esq., Winthrop & Weinstine, PA, for DECO, Inc.; Daniel R. Forman, Esq., Judy Y. Choi, Esq., and Hart W. Wood, Esq., Crowell & Moring LLP, for PAE Government Services, Inc.; and David S. Cohen, Esq., John J. O'Brien, Esq., and Daniel J. Strouse, Esq., Cohen Mohr LLP, for ACADEMI Training Center, LLC dba Constellis, the intervenors.

Morgan L. Cosby, Esq., Dennis J. Gallagher, Esq., and John W. Cox, Esq., Department of State, for the agency.

Charmaine A. Stevenson, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation is denied where agency's evaluation is reasonable and protester proposed a price in excess of the maximum contract value provided in the solicitation.

DECISION

International Preparedness Associates Inc. (IPA), a small business of Virginia Beach, Virginia, protests the decision not to award IPA one of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts under request for proposals (RFP) No. SAQMMA17R0163, issued by the Department of State for antiterrorism training to foreign law enforcement and civilian government officials worldwide. The protester contends that the agency unreasonably evaluated its proposal and should have awarded IPA a contract.

We deny the protest.¹

¹ Because a protective order was not issued in connection with this protest, our discussion is necessarily general.

BACKGROUND

On March 13, 2017, the agency issued the RFP to simultaneously award up to seven IDIQ contracts, and issue seven task orders covering six geographic regions² and its Special Programs Embassy Augmentation Response (SPEAR) program.³ Agency Report (AR), Tab 2, RFP at 6. Each IDIQ contract, comprised of a 1-year base period and four 1-year option periods, contemplates the issuance of both fixed-price and cost reimbursement task orders. Id. at 6. The RFP stated that the maximum quantity for IDIQ contracts and task orders issued during the period of performance shall not exceed \$991,653,210. Id. at 7.

The RFP advised that the agency would use a best-value tradeoff source selection process, with all evaluation factors other than price, when combined, significantly more important than price, and make award to responsible offerors whose proposals conformed to the solicitation requirements and whose proposals were determined to provide the best value to the government. RFP at 106-107. The RFP advised offerors that the technical proposals would be evaluated based on the following seven non-price factors, listed in descending order of importance: (1) corporate experience; (2) management and organization structure; (3) technical proficiency; (4) key personnel; (5) property management system; (6) quality control plan; and (7) past performance. RFP at 107. In addition, the RFP advised that the government intended to make award without discussions on the basis of initial proposals received. Id.

The agency timely received and evaluated 15 proposals. AR, Tab 5, Contracting Officer Award Recommendation Memorandum, at 3. At the conclusion of their evaluation, the technical evaluators identified several weaknesses and deficiencies in IPA's proposal and assigned the following ratings⁴:

² The six geographical regions are: AF-Africa; EAP-East Asia Pacific; EUR-Europe; NEA-Near East Asia; SCA-South Central Asia; and WHA-Western Hemisphere. See RFP at 7.

³ The RFP was amended five times. All citations to the RFP are to the conformed copy provided by the agency.

⁴ The ratings assigned to the technical factors (excluding past performance) were as follows: superior, acceptable, marginal, and unacceptable. AR, Tab 3, IPA Technical Evaluation Consensus Sheet, at 2. A rating of unacceptable meant the proposal did not meet the solicitation requirements, contained one or more deficiencies and was not awardable without being rewritten. Id. The ratings assigned for past performance were as follows: substantial confidence, satisfactory confidence, unknown confidence (neutral), limited confidence, and no confidence. Id. at 2-3. An unknown confidence (neutral) rating meant there was no recent/relevant performance record available or the
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Factor:	Rating:
Corporate Experience	Acceptable
Management and Organization Structure	Marginal
Technical Proficiency	Marginal
Key Personnel	Unacceptable
Property Management System	Acceptable
Quality Control Plan	Unacceptable
Past Performance	Unknown Confidence (Neutral)
Overall:	Marginal

AR, Tab 3, IPA Technical Evaluation Consensus Sheet, at 4-11. In addition, the agency determined that IPA's proposed price of \$1,012,623,832 was the third highest price proposed, exceeded the independent government cost estimate, and did not include pricing for one of IPA's proposed key personnel. AR, Tab 6, Cost/Price Evaluation Report, at 9.

On September 20, the agency advised IPA that it had not been selected for award, and had awarded six IDIQ contracts to higher-rated, lower-priced offerors. AR, Tab 10, IPA Unsuccessful Offeror Letter, at 2. IPA was provided a written debriefing, and this protest followed.

DISCUSSION

The protester argues that the agency unreasonably evaluated its proposal and challenges all of the weaknesses and deficiencies identified by the agency in the evaluation of its proposal. Protest attach. 1. IPA also argues that the agency failed to consider and credit IPA with its past experience performing the same requirements as a subcontractor. Id. Although we do not address in detail all of the protest allegations, we have considered them all and found that none provide a basis to sustain the protest.

Key Personnel

The protester argues that the agency failed to properly and fully evaluate its proposal, and unreasonably assigned a deficiency for its failure to provide resumes for its proposed key personnel. Protest attach. 1 at 13-14. Specifically, IPA argues that its proposed key personnel are more than qualified to meet the requirements of the solicitation, and that "[i]t should not be the responsibility of the contractor to fully define the significance of each career milestone as it applies to each task associated with the solicitation." Id. at 14. The agency responds that the RFP contained a clear

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offeror's performance record is so sparse that no meaningful confidence assessment rating can be reasonably assigned. Id.

requirement to provide a detailed resume for the proposed key personnel, and IPA indisputably failed to do so. Contracting Officer's Statement (COS) at 25-26; Memorandum of Law (MOL) at 12-13.

The evaluation of proposals is primarily a matter within the agency's discretion, since the agency is responsible for defining its needs and identifying the best method for accommodating them. VSE Corp., B-414057.2, Jan. 30, 2017, 2017 CPD ¶ 44 at 8. In reviewing protests challenging an agency's evaluation of proposals, our Office will not reevaluate proposals, but rather will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement statutes and regulations. Id. A protester's disagreement with the agency's judgments is not sufficient to render the evaluation unreasonable. NCS/EML JV, LLC, B-412277 et al., Jan. 14, 2016, 2016 CPD ¶ 21 at 8. An offeror is responsible for demonstrating affirmatively the merits of its proposal and risks rejection of its proposal if it fails to do so. Energy Eng'g & Consulting Servs., LLC, B-407605, Jan. 15, 2013, 2013 CPD ¶ 33 at 5.

The RFP identified two key personnel positions, program manager and operations manager, and set forth for each a description of duties, responsibilities, and mandatory qualifications. RFP at 46. Specifically, the RFP required the program manager to have a "minimum of ten years supervisory experience responsible for achieving results from up to 100 subordinate staff and intermittent contractors." Id. The operations manager was required to have a "minimum of five years supervisory experience responsible for operational management of up to 50 subordinate staff and intermittent contractors." Id. The RFP instructed offerors to provide resumes for the individuals proposed, and mandated that the resumes include, among other things, the following information:

* * * * *

- Statement of work history (including dates, employer, and title), description of experience, and indicate whether experience is full time or part time;
- Length of time employed by the offeror. If a resume is provided for an individual who does not currently work for the firm, then include a Contingency Offer Letter signed by the individual proposed[;] and
- Resume(s) shall identify a start and end date (month and year) that the individual worked on each experience block or job reference cited in the resume.

Id. at 101.

Here, the agency concluded that IPA's proposal was deficient and unacceptable for this factor because it did not provide a detailed resume for the key personnel to show the relevant experience as it relates to the tasks and responsibilities to be performed under the solicitation. AR, Tab 3, IPA Technical Evaluation Consensus Sheet, at 9. In its proposal, IPA identified two individuals proposed to be its program manager and operations manager and provided a narrative that included some of the information

required by the RFP, but failed to provide a resume for either individual. AR, Tab 8, IPA Technical Proposal, at 47-48. As the agency explains, IPA's proposal failed to provide information relating to the dates, lengths, and duties or previous employment or how they related to the solicitation requirements. COS at 26. For example, IPA's proposal identified four prior positions in the proposed program manager's work history dating back to March 2005, however, IPA did not include a description of all of the work experience and nowhere indicates whether it was full time or part time experience, or that it was supervisory experience. AR, Tab 8, IPA Technical Proposal, at 47. IPA's proposal further stated that its proposed operations manager was a retired Navy SEAL warrant officer, however, the proposal does not state when the individual retired from the Navy, and the only other work experience provided is a position at IPA beginning in February 2013 and does not indicate whether any of the individual's work experience was supervisory. Id. at 48.

On this record, we have no basis to question the reasonableness of the agency's conclusions. Here, IPA's proposal failed to include resumes for its key personnel, as instructed by the solicitation, and did not otherwise demonstrate that the proposed individuals satisfied the mandatory qualification requirements.

Past Performance

The protester also argues that it was improper for the agency to assign a rating of unknown confidence (neutral) to its proposal under the past performance factor. Specifically, IPA argues that such a rating is unreasonable because the agency is aware that IPA previously performed the same requirements as a subcontractor to Raytheon under the incumbent contract for these same requirements. Protest attach. 1 at 17. The agency responds that IPA was properly rated as neutral because the evaluators reasonably concluded that none of IPA's past performance was relevant in terms of size, scope, and complexity to the solicitation requirements. COS at 28-32; MOL at 17-20.

The evaluation of an offeror's past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. Where a solicitation calls for the evaluation of past performance, 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 relative merits of an offeror's past performance information is generally within the broad discretion of the contracting agency. See Paragon Tech. Group, Inc., B-407331, Dec. 18, 2012, 2013 CPD ¶ 11 at 5. A protester's disagreement with the agency's judgment does not establish that an evaluation was unreasonable. FN Mfg., LLC, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

The RFP required offerors to provide a minimum of three past performance references for contracts or subcontracts performed within the past five years for the same or similar

work. RFP at 102. The RFP further stated that an offeror without past performance or relevant experience should provide a list of references for key personnel and management that had worked on similar contracts. Id. Four past performance questionnaires were submitted to support IPA's proposal. AR, Tab 9, IPA Past Performance Questionnaires.

As noted, the RFP contemplated award of up to seven IDIQ contracts with a contract ceiling for all contracts and associated task orders of \$991,653,210. RFP at 6-7. The contracting officer explains that this procurement significantly expands the requirements included in the agency's incumbent contracts, which provided training that was primarily classroom based and required only two or three trainers for no more than two weeks. COS at 29. The contracting officer further states that this procurement requires delivery of significantly more training courses, consultations, and mentorships; a larger percentage of training that will require a larger number of trainers and courses with heavier equipment, weapons, and explosives for practical exercises; and will be for longer periods of time and increasingly delivered in challenging and austere environments. Id.; see RFP at 15.

When assigning a rating of unknown confidence, the evaluator's concluded that although IPA's proposal stated it had previous experience with similar work, IPA's past performance record "is so sparse that no meaningful confidence assessment rating can be reasonably assigned," and that the "questionnaires that were provided were not for the performance of similar work." AR, Tab 3, IPA Technical Evaluation Consensus Sheet, at 10-11. The contracting officer acknowledges that the technical evaluators were inadvertently not provided with the questionnaire for IPA's performance as a subcontractor to Raytheon under Raytheon's incumbent contract, however, the evaluators were nonetheless aware of this experience because of its discussion throughout the IPA proposal. COS at 31; see AR, Tab 4, Consensus Report, at 18 (discussing IPA's prior experience as a subcontractor for the incumbent and that IPA had deployed numerous instructors for several courses during the performance period).

The record shows that of the four questionnaires submitted for IPA, the largest reference contract was the subcontract IPA performed for Raytheon, an incumbent contractor, with an estimated value of less than \$14 million.⁵ See AR, Tab 9, IPA Past

⁵ The agency states that this experience, while attributed to IPA under the corporate experience factor, is considered not relevant under the past performance factor because IPA's performance included only a subset of the entirety of the incumbent contract requirements. MOL at 18. The agency further explains that Raytheon requested that the agency not exercise its third option year, ending IPA's performance at the beginning of the prior procurement. Id. at 19; AR, Tab 9, IPA Past Performance Questionnaires, at 23. The agency argues that because its requirements expanded substantially thereafter and are further increased in the RFP, IPA's performance of the Raytheon subcontract would account for only 1.3 percent of the contract value in

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Performance Questionnaires, at 23-28. The record further shows that the highest contract value between the remaining three past performance questionnaires was \$1.7 million, and none of the work performed compared in scope or complexity to the RFP requirements. See AR, Tab 9, IPA Past Performance Questionnaires, at 2-21. For example, with respect to the past performance with a contract value of \$1.7 million, the contract utilized only four independent contractors and five employees, while the solicitation here contemplated using more than 1,000 contractors for training worldwide. COS at 30. Thus, the protester did not submit a minimum of three relevant past performance references as required by the solicitation. We have concluded in other decisions that where the solicitation requires offerors to submit a specific number of relevant past performance references and an offeror fails to do so, the agency may reasonably assign a neutral/unknown confidence rating. See, e.g., HydroGeoLogic, Inc., B-406635 et al., July 25, 2012, 2012 CPD ¶ 224 at 5; Thomas Brand Siding Co., Inc., B-286914.3, Mar. 12, 2001, 2001 CPD ¶ 53 at 4. We also note that Federal Acquisition Regulation (FAR) § 15.305(a)(2)(iv), which applies to negotiated procurements, and 41 U.S.C. § 1126(b), prohibit an agency from assigning a negative or positive rating for an offeror without relevant past performance. On this record, we find the agency's past performance evaluation judgments are reasonable.

Moreover, even assuming that IPA's past performance rating should have been evaluated as higher than neutral, as reflected in the agency's award decision, the agency selected six offers for award whose overall ratings were higher than IPA's marginal overall rating, and whose prices were lower than IPA's proposed price. As noted, IPA's proposed price of \$1,012,623,832 was the third highest proposed price, and failed to include pricing for one of its proposed key personnel. The agency argues that IPA's proposed price exceeded the RFP's stated maximum quantity for IDIQ contracts and associated task orders of \$991,653,210, and failed to include pricing for a proposed key personnel, an omission that would indicate that IPA's proposed price should have been even higher, and thus it could not make an award to IPA without engaging in discussions. COS at 14; MOL at 20; see also RFP at 107 ("The Government intends to make award without discussions on the basis of initial proposals received."). Because IPA has not challenged the evaluation of any of the awardees' proposals, the agency's evaluation of price proposals, or the agency's decision not to

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comparison to the current requirements, making this prior experience not relevant under the past performance factor. MOL at 19.

engage in discussions, we have no basis to conclude that the agency's decision not to award a contract to IPA was unreasonable.

The protest is denied.

Thomas H. Armstrong
General Counsel