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Decision

Matter of: Eagle Eye Electric, LLC

File: B-415562; B-415562.3

Date: January 18, 2018

William K. Walker, Esq., Walker Reausaw, for the protester.
Amy Laderberg O'Sullivan, Esq., and Olivia L. Lynch, Esq., Crowell & Moring LLP, for the intervenor.
Sandra Jackson, Esq., Ryan M. Warrenfeltz, Sr., Esq., Ellen Rothschild, Esq., Social Security Administration, for the agency.
Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's evaluation of the protester's experience and past performance is denied where the record shows the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Eagle Eye Electric, LLC, of Anchorage, Alaska, protests the award of a contract to Advancia Ahtna JV, of Oklahoma City, Oklahoma, under request for proposals (RFP) No. SSA-RFP-R07-17-1001, issued by the Social Security Administration for support services for the agency's folder storage operation at the National Records Center (NRC). Eagle Eye challenges the agency's evaluation of its experience and past performance.

We deny the protest.

BACKGROUND

The RFP, issued as a competitive set-aside under the Small Business Administration's 8(a) program, provided for the award of a fixed-price contract on a best-value tradeoff basis considering experience, past performance, and price. Agency Report (AR),

Exh. 1, RFP, at 1, 102.¹ In reaching the award decision, experience was more important than past performance and these two factors combined were approximately equal to price. Id. at 102.

With respect to experience, offerors were required to include a description of no more than three contracts that demonstrated the offerors' relevant experience. Id. at 98. The offeror was to provide a complete and full description of the services provided for each contract, describing the extent to which the work under the NRC solicitation is similar. Id. Offerors were also to indicate whether the work was performed as a prime contractor or subcontractor, and if the work was performed as a subcontractor, offerors were to include a description of the tasks performed and percentage of contract performance. Id. at 99. Experience was rated extremely similar, very similar, somewhat similar, slightly similar, or not similar. AR, Exh. 6, Technical Evaluation, at 1; Combined Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 12-13.

With respect to past performance, offerors were required to have references complete and submit questionnaires for each reference cited in the experience section of the proposal. RFP at 100. The solicitation further provided that past performance information could also be obtained from other sources known to the government. Id. at 103. Past performance was rated excellent, very good, satisfactory, marginal, unsatisfactory, or neutral. AR, Exh. 6, Technical Evaluation, at 1; COS/MOL at 12-13.

The agency received proposals from nine firms, including Eagle Eye and Advancia. AR, Exh. 6, Technical Evaluation, at 2. In its proposal, Eagle Eye included contract performance assistance commitment statements from its parent company, Bering Straits, an Alaska Native Corporation, and several companies affiliated with Bering Straits and Eagle Eye. AR, Exh. 4, Eagle Eye Proposal, at 17-18. According to these statements, Eagle Eye was permitted "to utilize the past performance and experience information" of Bering Straits and the other affiliated companies because Bering Straits and the subsidiaries were "committed to provide contract performance advice, assistance and resources" in contract performance. Id.

For experience, Eagle Eye, submitted information for three contracts. AR, Exh. 4, Eagle Eye Proposal, at 16. Eagle Eye was not involved in the performance of any of these contracts, which were performed by Bering Straits and other subsidiaries of Bering Straits. AR, Exh. 6, Technical Evaluation, at 6; COS/MOL at 11-12. The agency assigned Eagle Eye a rating of not similar for experience. Id.

With respect to past performance, the agency received two completed questionnaires, both for work performed by subsidiaries of Bering Straits. Id.; AR, Exh. 5, Eagle Eye Past Performance, at 1, 6. The agency also obtained two contractor performance assessment reports from the past performance information retrieval system database

¹ The agency report was submitted as individually bates-stamped exhibits. Citations to the record are to the bates-stamped page of each exhibit.

for contracts on which Eagle Eye was the prime contractor. Id. at 11-14. The agency concluded that neither of these contracts was relevant to the current agency requirements. COS/MOL at 14.² The agency rated Eagle Eye neutral for past performance. AR, Exh. 6, Technical Evaluation, at 6.

Eagle Eye proposed to perform for \$42,231,594. AR, Exh. 7, Trade-Off Analysis, at 2. Advancia, which was rated very similar for experience and very good for past performance, proposed to perform for \$48,661,763. Id. The agency selected Advancia for award and this protest followed.

DISCUSSION

Eagle Eye protests that the agency improperly failed to consider the experience and past performance that it submitted with its proposal. Eagle Eye protests that the contracts it proffered to demonstrate its experience and past performance were performed by Bering Straits, Eagle Eye's parent corporation, or by affiliated companies (other subsidiaries of Bering Straits). Eagle Eye notes that in its proposal, it submitted signed contract performance assistance commitment statements for its parent company and each affiliate which acknowledged allowing Eagle Eye to submit their experience and past performance information, and committed to being involved in contract performance. According to Eagle Eye, the agency therefore was required to evaluate its experience and past performance using the experience and past performance information of its affiliates.

The agency argues that the solicitation did not contain any indication that the agency would evaluate the experience and past performance of parent or subsidiary companies. COS/MOL at 18. The agency contends that the solicitation specifically states that offerors must provide no more than three contracts that demonstrate "the offeror's relevant experience" and past performance, and notes that Eagle Eye did not submit anything showing it had experience or past performance applicable to the solicitation's requirements. Id. Consequently, the agency argues that it was reasonable to assign Eagle Eye a rating of not similar for experience and neutral for past performance.

An agency may consider the experience or past performance of an offeror's parent or affiliated company where, among other things, the proposal demonstrates that the resources of the parent or affiliate will affect contract performance, and there is no solicitation provision precluding such consideration. Doyon-American Mechanical, JV; NAJV, LLC, B-310003, B-310003.2, Nov. 15, 2007, 2008 CPD ¶ 50 at 4. There is, however, no requirement that they do so. CDS Network Sys., Inc., B-281200, Dec. 21,

² One report was for a contract with a total value of \$5.6 million, which is significantly lower than the total value of the NRC requirement, and contained no description of the work performed. COS/MOL at 14. The other report was for a contract with a total value of \$1.4 million and the work performed was not relevant. Id.

1998, 98-2 CPD ¶ 154 at 3; see also Olympus Building Servs., Inc., B-282887, Aug. 31, 1999, 99-2 CPD ¶ 49 at 4 (procuring agency not required to consider experience and past performance of other than performing entity); see TyeCom, Inc., B-287321.3, B-287321.4, Apr. 29, 2002, 2002 CPD ¶ 101 at 7 (in appropriate circumstances a procuring agency may, but is not required to, consider the past performance of other than the performing entity).

Here, the solicitation required offerors to provide three contracts that demonstrated the offerors' relevant experience, and to describe the services provided for each contract and the extent to which the work under the NRC solicitation is similar. RFP at 98. Offerors were also to indicate whether the work was performed as a prime contractor or subcontractor, and if the work was performed as a subcontractor, offerors were to include a description of the tasks performed and percentage of contract performance. Id. at 99. With respect to past performance, offerors were required to have references complete and submit questionnaires for each reference cited in the experience section of the proposal. Id. at 100. The solicitation did not require the agency to consider the experience and past performance of Eagle Eye's affiliate concerns and therefore, the agency was under no obligation to do so.³ Accordingly, we have no basis to conclude that the agency's evaluation of Eagle Eye's experience and past performance was unreasonable.

The protest is denied.

Thomas H. Armstrong
General Counsel

³ In any case, before an agency may properly attribute the experience or past performance of a parent or affiliated company to an offeror, the firm's proposal must demonstrate that the resources of the parent or affiliated company--its workforce, management, facilities or other resources--will be provided or relied upon for contract performance such that the parent or affiliate will have meaningful involvement in contract performance. Ecompex, Inc., B-292865.4 et al., June 18, 2004, 2004 CPD ¶ 149 at 5. Eagle Eye contends that it submitted statements showing the specific contract responsibilities the agency could expect its affiliates to perform and therefore the agency was required to attribute the experience and past performance of the affiliates to Eagle Eye. 1st Supp. Protest at 3-5. However, as discussed above, we conclude that the solicitation did not require the agency to consider the experience and past performance of Eagle Eye's affiliates.