U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Mission Services, Inc.

File: B-415716.22

Date: April 1, 2019

Daniel J. Strouse, Esq., John J. O'Brien, Esq., and David S. Cohen, Esq., Cordatis LLP, for the protester.
Alexis J. Bernstein, Esq., and Lieutenant Colonel Kevin P. Stiens, Department of the Air Force, for the agency.
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DIGEST

Protest challenging the agency's evaluation of protester's proposal under the past performance evaluation factor is denied where the record shows that the evaluation was reasonable and consistent with the solicitation.

DECISION

Mission Services, Inc., a small business of McLean Virginia, protests the exclusion of its proposal from the competition by the Department of the Air Force under request for proposals (RFP) No. FA8771-17-R-1000 for information technology (IT) services.

We deny the protest.

BACKGROUND

The RFP, known as the Small Business Enterprise Application Solutions (SBEAS) solicitation, set aside for small businesses, was issued on September 28, 2017, pursuant to the procedures of Federal Acquisition Regulation (FAR) part 15, and contemplated the award of 40 multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contracts. Agency Report (AR), Tab 5, RFP at 162.[1] The scope of the SBEAS

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[1] Citations to the RFP are to the conformed copy provided by the agency. AR, Tab 5, RFP.

RFP, as stated in the statement of objectives (SOO), included a “comprehensive suite of IT services and IT solutions to support IT systems and software development in a variety of environments and infrastructures.” Id. at 130. Additional IT services in the solicitation included, but were not limited to, “documentation, operations, deployment, cybersecurity, configuration management, training, commercial off-the-shelf (COTS) product management and utilization, technology refresh, data and information services, information display services and business analysis for IT programs.” Id. Proposals were to be evaluated based on technical experience and past performance factors. Id. at 142. The past performance factor was comprised of the following three subfactors in descending order of importance: life-cycle software services, cybersecurity, and information technology business analysis. [2] Id. at 164. Award was to be made on a past performance tradeoff basis among technically acceptable offerors, using the three past performance subfactors. Id. at 162.

Section L of the solicitation instructed offerors that “[t]he proposal shall be clear, specific, and shall include sufficient detail for effective evaluation and for substantiating the validity of stated claims.” Id. at 142. Offerors were instructed to not simply rephrase or restate requirements, but to “provide [a] convincing rationale to address how the [o]fferor’s proposal meets these requirements.” Id. The RFP also instructed offerors to assume that the agency has no knowledge of the offeror’s facilities and experience, and would “base its evaluation of the information presented in the [o]fferor’s proposal.” Id. The solicitation provided that offerors should submit their proposals in four volumes: capability maturity model integration (CMMI) documentation, technical experience, past performance, and contract documentation. Id. at 145.

The RFP’s instructions also directed offerors to complete a cross-reference matrix, which was attached to the solicitation. Id. at 146 and 179-183. The offeror’s cross-reference matrix was required to demonstrate “traceability” between the offeror’s contract references. An offeror’s cross-reference matrix was required to show “which contract references [were] used to satisfy each technical element and each past performance sub-factor.” Id. at 146.

As relevant to this protest, the past performance volume was to include the cross-reference matrix, described above, past performance narratives (PPNs) for each of up to six contract references, and contractor performance assessment reports (CPARs) or past performance questionnaires (PPQs).[3] Id. at 155-156. The past

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[2] The solicitation stated that pursuant to “10 U.S.C. § 2305(a)(3)(C), as amended by Section 825 of the National Defense Authorization Act (NDAA) for Fiscal Year 2017, the Government will not evaluate cost or price for the IDIQ contract. Cost or price to the Government will be considered in conjunction with the issuance of a task or delivery order under any contract awarded hereunder.” RFP at 162.

[3] Offerors were permitted to include past performance references that were not also used in the technical experience volume, but all references provided as part of the

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performance narratives were to describe how the offeror's past performance supported the three past performance subfactors. Id. at 156-158.

The solicitation stated that the agency intended to evaluate proposals and make awards without discussions to the offerors deemed responsible, and whose proposals conformed to the solicitation's requirements and were judged, based on the evaluation factors, to represent the best value to the government.[4] Id. at 163.

Section M of the solicitation set up a tiered evaluation process. Id. at 163-164. The first step of the evaluation was a CMMI appraisal, which required offerors to be certified at level 2 in CMMI.[5] Id. If an offeror passed the CMMI appraisal as level 2 certified, the agency would then evaluate an offeror's technical experience (factor 1) using the self-scoring worksheet and technical narratives provided by the offeror.[6] Id. at 164.

In the event that technical experience was evaluated as acceptable, then the agency would evaluate the offeror's past performance for recency, relevancy and quality. Id. at 172. The agency would first review the accompanying PPNs for recency.[7] Next, the agency would use the PPNS to evaluate relevancy. Id. Each past performance subfactor would receive a relevancy rating of very relevant, relevant, somewhat relevant or not relevant depending on whether the offeror demonstrated past performance regarding certain SOO sections identified for each past performance subfactor. RFP at 176.

The agency would then assess "all past performance information collected" and assign a performance quality rating of acceptable or unacceptable for each subfactor. Id. at 173. The solicitation provided that in making this quality assessment the agency would review the PPQs and/or CPARs it received, "as well as other relevant CPARs available to the Government." Id. at 173.

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technical experience volume were required to also be used as past performance references.

[4] The agency's estimated value for the SBEAS contract is a maximum of $13.4 billion over the possible ten year ordering period of the contract. Contracting Officer's Statement (COS) at 3.

[5] CMMI is a process level improvement training and appraisal program that is administered by the CMMI Institute.

[6] The solicitation provided that the technical experience factor would receive an adjectival rating of acceptable or unacceptable. RFP at 164.

[7] The RFP defines recent contracts to be any contract that was ongoing or completed within three years of the date of the issuance of the present solicitation. RFP at 172.

These ratings would then be rolled up into a performance confidence assessment rating for each subfactor of substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. Id. at 177. The RFP provided that each offeror must receive a confidence rating of "[s]atisfactory or higher" for each past performance subfactor in order to be eligible for award.[8] Id. at 164. The solicitation stated that to receive a satisfactory confidence rating at the sub-factor level, an offeror's past performance must be recent, relevant and of acceptable quality. RFP at 178.

Mission Services timely submitted its proposal in response to the solicitation. On December 18, 2018, the agency notified Mission Services that its proposal received an acceptable rating under the technical experience factor. AR, Tab 10, Mission Services Notification Memorandum at 1. Regarding past performance, the agency notified Mission Services that the firm received performance confidence assessment ratings of satisfactory confidence for the life-cycle software services subfactor and the cybersecurity factor, and neutral for the information technology business analysis subfactor. Id. at 2. The agency noted that the solicitation provided that the "Government will not award to any offeror that receives a Past Performance Confidence Rating below Satisfactory for any of the Past Performance sub-factors." Id. citing RFP at 225. Because Mission Services received a performance confidence assessment rating below satisfactory, as defined in the RFP, for the information technology business analysis past performance subfactor, the agency determined that Mission Services was ineligible for award. Id. Following a written debriefing on December 21, Mission Services filed this protest with our Office on December 31.

DISCUSSION

Mission Services protests the agency's exclusion of its proposal from the competition, alleging that the agency's evaluation of its proposal under the information technology business analysis past performance subfactor was unreasonable.[9] The protester contends that its demonstrated past performance was provided in its proposal, yet, in many instances, the agency incorrectly determined that it used "key words," without

[8] As a general matter, a neutral rating is not considered to be lower than a satisfactory rating. However, according to the solicitation here, a past performance confidence rating of neutral is considered lower than satisfactory. RFP at 164.

[9] The protester raised additional grounds, which it withdrew during the pendency of the protest. For example, the protester withdrew its argument that it should have been included in the competitive range due to the fact that the agency made clear in its request for summary dismissal there was no competitive range for this procurement. Request for Partial Summary Dismissal, Attachment 1 at 3-4; Comments on Partial Summary Dismissal at 1. The protester also withdrew its allegation that SOO Section 3.2.3 did not require all five areas of service desk, field, and technical support (access management, event management, incident management, problem management, and request fulfillment). Comments at 3.

demonstrating its experience. Protest at 23. The protester further challenges the propriety of the solicitation language providing that a past performance confidence rating of neutral is considered to be below satisfactory and therefore renders a proposal ineligible for award.[10]

Information Technology Business Analysis Subfactor

The information technology business analysis past performance subfactor required an offeror to describe its past performance in two areas: IT business analysis and functional business area expertise (FBAE), and service desk, field and technical support (SOO 3.2.3). RFP at 175. As part of addressing the area of service desk, field and technical support, offerors were required to demonstrate past performance in each of the following five elements: access management, event management, incident management, problem management, and request fulfillment. Id.

In order to receive a rating of very relevant under the information technology business analysis subfactor offerors were required to demonstrate past performance in at least two functional business areas of expertise and in all five of the service desk field and technical support areas listed in SOO section 3.2.3. RFP at 176. To receive a rating of relevant, offerors were required to demonstrate past performance with one functional business area of expertise and in all five of the service desk field and technical support areas listed in SOO section 3.2.3; to receive a somewhat relevant rating, offerors were required to demonstrate past performance in one functional business area of expertise or all five of the service desk field and technical support areas listed in SOO section 3.2.3; a not relevant rating was assigned to offerors who failed to demonstrate past performance in at least one functional business area of expertise or all five of the service desk field and technical support areas listed in SOO section 3.2.3. Id.

As stated above, an offeror's past performance was evaluated for recency, relevance and quality. Id. at 177. The quality of an offeror's past performance was rated as either acceptable or unacceptable.[11] Id. The RFP provided that in order to receive a rating of satisfactory confidence at the subfactor level, an offeror's past performance must be rated recent and relevant with acceptable quality. Id. at 178.

The agency evaluated Mission Services' proposal and determined that its proposal failed to demonstrate the offeror's performance providing FBAE for at least one functional business area and failed to demonstrate the offeror's past performance in incident management and problem management service desk services, as defined in

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[10] While we do not address each of the protester's arguments, we have reviewed them all and find that none provide a basis to sustain the protest.

[11] A past performance quality rating of acceptable meant that the agency evaluated and rated the offeror's PPQs and/or CPARs as exceptional, very good, or satisfactory. Id. at 177.

the RFP's definition of terms. AR, Tab 9, Agency Evaluation of Mission Service's Proposal at 42-45. The agency assigned Mission Services' proposal a relevancy rating of not relevant and a neutral confidence rating under this subfactor. Id. at 46-47.

Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Kiewit Infrastructure West Co., B-415421, B-415421.2, Dec. 28, 2017, 2018 CPD ¶ 55 at 7. A protester's disagreement with a procuring agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. WingGate Travel, Inc., B-412921, July 1, 2016, 2016 CPD ¶ 179 at 4-5. Moreover, it is an offeror's responsibility to submit an adequately written proposal; this includes adequate information relating to the offeror's past performance. Intelligent Decisions, Inc., et al., B-409686 et al., July 15, 2014, 2014 CPD ¶ 213 at 8. An offeror failing to submit an adequately written proposal runs the risk that its proposal will be evaluated unfavorably. Id.

Mission Services first challenges the agency's determination that its proposal did not demonstrate problem management with regard to the service desk field and technical support areas listed in SOO section 3.2.3. The protester argues that "the agency's demand that an offeror touch on every aspect of problem management is unreasonable given the language of the [s]olicitation." Comments at 8.

The RFP defined problem management as follows:

> The process of preventing problems and incidents from happening, eliminat[ing] recurring incidents and minimizing the impact of incidents that cannot be prevented. Problem Management includes the activities required to diagnose the root cause of incidents, determining the resolution to those problems and providing workarounds to Incident Management.

RFP at 215.

Mission Services challenges the agency's evaluation of several of its PPNs with regard to problem management. For example, Mission Services cites to the following language in PPN 1:

> [DELETED]

AR, Tab 7, Mission Services' Proposal, Vol. III, Past Performance at 11.

The protester contends that the agency, in evaluating this PPN, "completely disregarded" that it stated that it had experience with root cause analysis, and that therefore, the agency's evaluation had "no relation to reality." Protest at 22. The protester argues that a more fulsome explanation of all of the root cause analysis that it performed and its associated recommendations would have far exceed the 25 page limitation for this volume. Comments at 7.

The agency argues that while this PPN includes key words from the definition of problem management, it does not demonstrate the offeror's past performance with a process of preventing problems and incidents from happening, eliminating recurring incidents and minimizing the impact of incidents that cannot be prevented. AR, Tab 9, Agency Evaluation of Mission Service's Proposal at 45. The agency further argues that, in this PPN, the protester provided a generic description of an approach without any correlation to the work of that particular project that would demonstrate the use of that approach as past performance. Memorandum of Law (MOL) at 21.

Regarding PPNs 2 and 3, the protester contends that these PPNs each provided a specific example of its problem management. For example, the protester argues that PPN 2 demonstrated that Mission Services performed root cause analysis of recurring issues, and argues that the agency unreasonably found that this PPN was not relevant. Protest at 22; Comments at 7. With regard to PPN 3, Mission Services states that it demonstrated that it provided a specific example of problem management by stating that it provided trend analysis to improve services and resolve problems. Comments at 8. The protester states that the agency's requirement that an offeror "touch on every aspect of problem management" is unreasonable "given the language of the [s]olicitation." Id.

The agency responds that while these PPNs describe examples of the offeror performing a root cause analysis, they failed to demonstrate problem management, because, as the agency explains, IT service desk problem management includes root cause analysis along with "other methods to prevent problems and incidents from happening or recurring." AR, Tab 9, Agency Evaluation of Mission Service's Proposal at 45. The agency states that the past performance submitted by Mission Services demonstrates the offeror maintaining software without any indication of the management of the problem before it was fixed. Id.; COS at 23. The agency also states that Mission Services did not demonstrate in its proposal any past performance of minimizing the impact or "'providing workarounds to [i]ncident [m]anagement' until the software fix was complete." COS at 21 citing RFP at 215.

Based on our review of the record, we find reasonable the agency's finding that Mission Services failed to demonstrate problem management in its cited PPNs. With regard to PPN 1, we agree that this description was a generic description of an approach to problem management with no correlation to the actual work performed on that project. In fact, the text in Mission Services' PPN 1 is identical to the text in its PPN 4 with regard to problem management.[12] AR, Tab 7, Mission Services' Proposal, Vol. III, Past Performance at 11 and 25. Regarding Mission Services PPNs 2 and 3, the agency

[12] To the extent that Mission Services' critique of the agency's evaluation of PPN 1 can be interpreted as an objection to the solicitation's page limitations for proposals, this alleged apparent solicitation impropriety should have been protested before the closing time for receipt of proposals under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(1).

reasonably determined that the protester in these PPNs used key words from the RFP's definition of problem management, but failed to provide the information required in sufficient detail so that the agency could determine that it had provided all aspects of IT service desk problem management, as defined in the solicitation. As the agency notes, problem management includes more than just the activities required to diagnose the root cause of incidents, and "includes the activities required to diagnose the root cause of incidents, determining the resolution to those problems and providing workarounds to Incident Management." COS at 22 citing RFP at 215.

As stated above, an offeror is responsible for affirmatively demonstrating the merits of its proposal and risks rejection of its proposal if it fails to do so. Intelligent Decisions, Inc., et al., supra. The solicitation specifically required that offerors demonstrate problem management with "sufficient detail" that would allow the agency to substantiate the validity of the stated claims. RFP at 142. The agency reviewed Mission Services' proposal and found that it lacked detail that the solicitation required. While Mission Services contests the agency's evaluation in this regard, we find its arguments amount to disagreement with the agency evaluation which, by itself, is not sufficient to establish that the evaluation was unreasonable. We therefore find reasonable the agency's assessment that Mission Services' cited PPNs failed to demonstrate problem management.

Mission Services also challenges the reasonableness of the agency's evaluation of its proposal under this subfactor regarding incident management and functional business area expertise. The RFP provided that to be considered relevant under this subfactor, an offeror was required to demonstrate past performance in one functional business area of expertise and all five areas of service desk, field and technical support described in SOO section 3.2.3. Because we find reasonable the agency's determination that Mission Services failed to provide demonstrated past performance in problem management, we need not address its challenges to the agency's evaluation of its proposal with regard to incident management or functional business area of expertise. Even if the protester were to prevail in these two areas, according to the terms of the solicitation it could not receive a rating of relevant under this subfactor, which is required to receive a satisfactory confidence rating. Given that a performance confidence assessment rating lower than satisfactory in any subfactor rendered the proposal ineligible for award, we find that the agency reasonably concluded that Mission Services' proposal was ineligible for award.

Untimely Challenge to Solicitation Provision

Mission Services also challenges the solicitation language providing that offerors receiving a neutral past performance rating are ineligible for award. The protester argues that this provision violates FAR section 15.305(a)(2)(iv) which states that an entity without relevant past performance must not be evaluated favorably or unfavorably. Protest at 31. The protester recognizing that this is an untimely challenge to the terms of the solicitation requested that our Office consider this issue under the significant issue exception to our timeliness rules. Id. at 32. Under 4 C.F.R. §21.2(c), our Office may consider an untimely protest that raises issues significant to the procurement system.

The agency, in responding to the protester's request, contends that our Office signaled its agreement with this provision, in a previous decision concerning this solicitation provision that treated neutral past performance adversely (Request For Partial Summary Dismissal at 6-7). We disagree. In Avosys Technology, Inc., B-415716.6, our Office simply noted that while generally "a neutral rating is not considered to be lower than a satisfactory rating. However, according to the solicitation here, a past performance confidence rating of neutral is considered lower than satisfactory." Avosys Technology, Inc., B-415716.6, July 30, 2018, 2018 CPD ¶ 301 at 4 n.8. Our Office did not signal its agreement with the agency's definition of neutral in this solicitation, rather it noted the terms of the solicitation.[13]

Under our Bid Protest Regulations, protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial quotations must be filed prior to that time. 4 C.F.R. §21.2(a)(1). Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Armorworks Enters. LLC, B-400394, B-400394.2, Sept. 23, 2008, 2008 CPD ¶ 176 at 7; Peacock, Myers & Adams, B-279327, Mar. 24, 1998, 98-1 CPD ¶ 94 at 3-4. Such a rule promotes fundamental fairness in the competitive process by preventing an offeror from taking advantage of the government as well as other offerors, by waiting silently only to spring forward with an alleged defect in an effort to restart the procurement process, potentially armed with increased knowledge of its competitors' position or information. Blue & Gold Fleet, L.P. v. United States, 492 F.3d 1308, 1313-14 (Fed. Cir. 2007). It also promotes efficiency by ensuring that concerns regarding a solicitation are raised before contractor and government resources are expended in pursuing and awarding the contract, thus avoiding costly and unproductive litigation after the fact. Id.

Here, as explained above, the terms of the solicitation stated that a past performance confidence rating of neutral is considered lower than satisfactory and that a confidence rating lower than satisfactory would render an offeror ineligible for award. RFP at 164. If the protester believed that this solicitation provision regarding neutral past performance violated the FAR because it treated neutral past performance adversely, then, in accordance with our Bid Protest Regulations, Mission Services was required to protest this solicitation term before the receipt of proposals.

[13] We note that the agency's treatment of neutral in the RFP differs from the definition of neutral contained in the FAR, which states that a neutral rating would not be considered either favorable or unfavorable. See FAR § 15.305(2)(iv). We did not, and we do not, resolve this apparent conflict since no offeror protested the terms of the solicitation prior to the closing date of the solicitation.

Regarding the protester's request that we consider this protest allegation under our significant issue exception, we acknowledge that what constitutes a significant issue is to be decided on a case-by-case basis. Cyberdata Tech., Inc., B-406692, Aug. 8, 2012, 2012 CPD ¶ 230 at 3. In order to prevent our timeliness rules from becoming meaningless, we strictly construe and seldom use the significant issue exception, limiting it to those protests that raise issues of widespread interest to the procurement community which have not been considered on the merits in a previous decision. See Cleveland Telecomm. Corp.--Recon., B-247964.4, Nov. 12, 1992, 92-2 CPD ¶ 340 at 3; cf. Satilla Rural Electric Membership Corp., B-238187, May 7, 1990, 90-1 CPD ¶ 456 at 3. While we recognize that the agency's definition of neutral in this RFP, is of paramount important to the protester here, we fail to see an issue of such widespread interest to the procurement community, or an issue that would recur, as to warrant its resolution in the context of an otherwise untimely protest allegation. Accordingly, our Office declines to invoke the significant issue exception, and therefore this issue is dismissed as untimely.

The protest is denied.

Thomas H. Armstrong
General Counsel