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Decision

Matter of: Valytics, LLC

File: B-417328.2, B-417328.4

Date: June 25, 2019

Daniel J. Strouse, Esq., John J. O'Brien, Esq., and David Cohen, Esq., Cordatis LLP, for the protester.
Lucas T. Hanback, Esq., and Jeffery M. Chiow, Esq., Rogers Joseph O'Donnell, PC, for FEDITC, LLC, the intervenor.
John G. Terra, Esq., Defense Health Agency, for the agency.
Hannah G. Barnes, and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's past performance evaluation and source selection decision is denied where the record shows the agency reasonably evaluated quotations and made award in accordance with the terms of the solicitation, as well as applicable procurement law and regulation.

DECISION

Valytics, LLC, a small business of Great Falls, Virginia, protests the issuance of a Federal Supply Schedule (FSS) task order to FEDITC, LLC, also a small business, of Rockville, Maryland, under request for quotations (RFQ) No. HT001519Q0001, issued by the Defense Health Agency (DHA) for test and evaluation services. Valytics challenges the agency's past performance evaluation and source selection decision.

We deny the protest.

BACKGROUND

The RFQ, issued on November 7, 2018, as a small business set-aside for vendors holding contracts under the General Services Administration's FSS, Special Item Number 132-56 (Health Information Technology Services), contemplated the issuance of a fixed-price task order for provision of test and evaluation (T&E) services for DHA's Solution Delivery Division's operating environments. RFQ, Performance Work Statement (PWS) at 2. The T&E services, to be performed over a five-month base

period and two 1-year option periods, would include accomplishing software testing and related tasks; electronic health record core, care and benefits integrated systems and clinical support; and government-developed and integrated commercial-off-the-shelf products. Id.

Award was to be made on a best-value tradeoff basis considering three factors: technical approach, past performance, and price. RFQ at 227. Quotations would be rated acceptable or unacceptable under the technical approach factor, which is not at issue here. Id. at 231. The agency would then perform a best-value tradeoff between past performance and price, with past performance being significantly more important than price. Id. at 227. The agency was to consider three aspects of past performance: recency, relevancy, and quality. Id. at 230. To determine relevance, the agency would consider similarity of service/support, complexity, dollar value, use of key personnel, and the role of the offeror's involvement in the effort. Id. at 231. To determine quality, the agency would review all past performance information collected. Id. Vendors were required to submit no more than five past performance references. Id. at 226. The agency would assign one of the following ratings for each vendor's past performance to assess the likelihood it would meet the solicitation's requirements: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. Id. at 232.

The agency received seven quotations in response to the RFQ by February 11, 2019. Agency Report (AR), exh. 14, Source Selection Decision (SSD) at 2. As relevant here,¹ the quotations of both FEDITC and Valytics were rated technically acceptable, with substantial confidence ratings under the past performance factor. Id. at 12. FEDITC's price was \$13,921,441 and Valytics' price was \$15,240,302. Id.

The past performance evaluators² found that FEDITC had outstanding past performance on all three of its referenced contracts, two of which were very relevant and to be weighted heavily.³ AR, exh. 15, Past Performance Recommendation Report at 4-6. The evaluators found that Valytics had performance ranging from excellent to outstanding on two very relevant contracts performed by its subcontractor, and performance ranging from excellent to outstanding on two relevant contracts performed by Valytics. The evaluators also found that all four contract references should be weighted heavily. Id. at 21-25.

¹ An additional vendor filed its own protest, which will be resolved in a separate decision. The evaluation results for other vendors are not relevant here.

² The agency states that the contract specialist and contracting officer, who acted as the source selection authority, evaluated the past performance references for recency, relevance, and quality. Memorandum of Law at 4.

³ FEDITC's third reference was considered only slightly relevant and accorded little weight. Id. at 5. A similar finding was made for a Valytics' reference. Id. at 24-25.

The team noted two comments of concern on a Contractor Performance Assessment Report (CPAR) for Valytics' interoperability testing support contract. Id. at 23. Under the CPAR's quality element, the contracting officer for the referenced contract stated that, "The team is cognizant when delivering a product to the government and continues to look for areas of improvement to ensure the satisfaction of the government; however sometimes they need additional guidance in order to be proactive." AR, exh. 18, Valytics CPAR at 3. Under the schedule element she stated, "Valytics manages resources and time well and meets most deadlines." Id., As noted above, the evaluators had the high expectation that both firms could successfully perform the work and gave both substantial confidence ratings.

In the source selection decision, the source selection authority (SSA) summarized his views as to each vendor's past performance. He stated that he was "very impressed with the quality of the work" for all three of FEDITC's efforts, and that the "outstanding work" the firm did on two contracts gave him high confidence that the firm would do the work well here. AR, exh. 14, SSD at 3. For Valytics, the SSA noted the CPAR comments cited above and stated that "[r]equiring additional guidance and not meeting all deadlines concerns me." Id. at 11. As a result, while he still had a high expectation in Valytics' ability to perform, he did not have "the very highest level of confidence" in its past performance. Id.

The SSA performed a tradeoff between FEDITC's quotation and the others to ascertain the best value and found that both FEDITC and Valytics performed "tremendously well" on efforts "exceptionally similar" to the effort here. Id. at 14. However, he remained concerned about the issues in Valytics' past performance discussed above and found that they gave him "slightly greater confidence" in FEDITC's past performance. Id. at 15. Given FEDITC's lower price and strong past performance, the SSA concluded that FEDITC's quotation represented the better value for the government. Id. On April 5, the agency made award to FEDITC. Id. Valytics' protest followed.

DISCUSSION

Valytics challenges DHA's past performance evaluation and the agency's source selection decision. First, the firm argues that the agency improperly evaluated FEDITC's past performance because its references were minimally relevant to the type of testing and evaluation work the PWS describes. Second, Valytics argues that the agency improperly evaluated its past performance by failing to find certain of its references very relevant and therefore to accord them more weight. Third, Valytics contends that the agency evaluated the firms' past performance unequally by overlooking issues with FEDITC's past performance and overemphasizing issues with the protester's past performance. Finally, Valytics argues that the source selection decision was unreasonable.

The evaluation of past performance, including the agency's determination of the relevance and scope of a vendor's performance history, is a matter of agency discretion, which we will not find improper unless unreasonable or inconsistent with the

solicitation's evaluation criteria. LOUI Consulting Grp., Inc., B-413703.9, Aug. 28, 2017, 2017 CPD ¶ 277 at 3-4. Evaluating the relative merits of vendors' past performance information is generally within the broad discretion of the contracting agency. Id. We review the record to ensure that the evaluation was reasonable and conducted in accordance with the solicitation terms. CSR, Inc., B-413973, B-413973.2, Jan. 13, 2017, 2017 CPD ¶ 64 at 5. For the reasons discussed below, we deny the protest.

Evaluation of FEDITC's Past Performance

Valytics contends that FEDITC's past performance references were not sufficiently relevant to merit a substantial confidence rating. Valytics argues that the PWS primarily contemplates T&E services, and that FEDITC's prior work was only minimally relevant because it involved very little T&E. The firm states that FEDITC's role was more focused on information technology system operation and maintenance, and that to the extent FEDITC was involved in T&E, it was primarily in a supporting role. Protester's Comments & Supp. Protest at 9, 13-17.

The agency found FEDITC's first reference, for a laboratory information management support contract, very relevant based on the dollar amount, type of contract, and its consideration of the narrative in the firm's quotation and the external past performance information it reviewed. The agency cited a passage from FEDITC's quotation describing the work performed on the contract and its T&E efforts to illustrate its relevance. AR, exh. 15, Past Performance Recommendation Report at 4. In addition, the past performance questionnaire (PPQ) provided by the contracting officer's representative for the contract indicated that all four aspects of the scope of the work at issue here were present in the contract. AR, exh. 19, FEDITC Vol. II Past Performance Volume at 19. The PPQ is also replete with references to the T&E work performed by FEDITC. Id. The agency reached similar conclusions, based on similar information, as to FEDITC's third reference, for a theatre enterprise-wide logistics system support contract. AR, exh. 15, Past Performance Recommendation Report at 6; exh. 19, FEDITC Vol. II Past Performance Volume at 30.

The PWS focuses on T&E services but is broader than Valytics suggests. Its objectives include test planning and test execution, but also include more general, overarching goals, like identifying and mitigating testing risks, improving the T&E program, and strengthening the agency's Information Technology Infrastructure Library framework. PWS at 12. The PWS breaks down the requirement into five specific tasks which clearly evidence work beyond simply executing tests, including managerial activities relating to the T&E program and defining and improving the test process. Id. at 41. Even the aspects of the work set forth in the PPQs for the solicitation reflect a broad-based requirement.⁴

⁴ These aspects were: clinical and clinical logistical healthcare application T&E program support services; clinical/technical healthcare program management support services; commercial electronic healthcare record technical support services; and
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We also agree with the agency that Valytics has selectively read FEDITC's past performance. In its quotation, for each reference, FEDITC's quotation detailed how its past experience aligned with the specific tasks in the PWS. The quotation affirms that FEDITC performed testing and evaluation for its laboratory information management support contract. Id. at 2, 7 ("FEDITC's test and evaluation support...and its test framework include: Test planning and preparation, test execution and related activities...unit testing, test techniques, acceptance testing, system testing, test-ware, test resources, and cost factors."). As previously mentioned, the PPQs for both of FEDITC's very relevant contracts indicated that all four aspects of the scope of the work here were present in those efforts. Id. at 19, 30. The PPQ for the laboratory information management support contract in particular corroborates this affirmation and notes that FEDITC "managed all T&E activities across multiple" labs, "successfully completed all T&E activities," and "successfully plan[ned], execute[d], and report[ed] on all T&E tasks and deliverables in a timely manner." Id. at 20-22. In sum, our review of the record gives us no basis to question the agency's conclusions regarding the relevance of FEDITC's contracts.

Evaluation of Valytics' Past Performance

Valytics argues that both it and its proposed subcontractor have more relevant past performance than FEDITC. The firm places particular emphasis on its contract to provide DHA with clinical support development T&E (DT&E) services, stating that it is performing the identical work the current solicitation seeks, that it is the incumbent contractor, and that this contract should have been considered very relevant instead of relevant and therefore accorded more weight.

Again, the agency found that two references performed by Valytics' subcontractor, a contract for DT&E electronic health records support systems, and a contract for engineering management support services contract, were very relevant. AR, exh. 15, Past Performance Recommendation at 23-24. The agency found that Valytics' clinical support DT&E services contract and its interoperability testing support contract were both relevant. Id. at 21-23. The agency expressly concluded that all four of these contracts should be heavily or very heavily weighted in the overall past performance assessment. As a result, it is not apparent how the evaluation results would have differed had the relevant contracts been deemed very relevant instead.

Moreover, with respect to the clinical support DT&E services contract, despite Valytics claim, DHA notes that Valytics is not the incumbent contractor because this solicitation restructured the agency's requirements changing it from a DT&E contract to a T&E

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Department of Defense/Health information technology acquisition lifecycle support services. See, e.g., AR, exh. 19, FEDITC Vol. II Past Performance Volume at 19.

contract.⁵ Memorandum of Law at 3 n.1. To the extent Valtics argues its experience is more relevant because Valtics and its subcontractor worked on DHA contracts, the agency specified that prior DHA contracts may, but would not automatically, be considered more relevant than non-DHA contracts. RFQ, Mod. No. 7 at 24. To the extent that Valtics argues its larger number of relevant past performance references makes its overall past performance more relevant than FEDITC's past performance, the agency specified that there "is no minimum number" of past performance references that an offeror needs to provide. Id. In other words, four very relevant contracts would not necessarily overshadow two very relevant contracts. In sum, Valtics has given us no basis to question the agency's evaluation.

Unequal Treatment

Valtics argues that the agency evaluated the vendors' past performance unequally by overemphasizing unfavorable comments about its past performance but ignoring what it alleges is similar information about FEDITC's past performance. In this regard, Valtics contends that because a CPAR for FEDITC's theatre enterprise-wide logistics support contract included four "satisfactory" ratings, and the definition of a "satisfactory" rating includes the existence of "some minor problems" in the contractor's performance, the agency should have acknowledged FEDITC's "less than perfect" performance. Protester's Comments and Supp. Protest at 4. The firm also contends that a comment in a CPAR for FEDITC's third, somewhat relevant contract stating, "[v]ery little oversight is required on 90% of the problem solving and troubleshooting efforts" means that FEDITC required additional guidance on some of the effort which the agency ignored. Id. at 5.

An agency has not treated offerors' past performance unequally when the record shows a difference in the quantity and degree of adverse past performance information pertaining to each firm's performance. See Vectrus Systems Corporation, B-412581.3 et al., B-412581.4, Dec. 21, 2016, 2017 CPD ¶ 10 at 10. Our review of the record shows that Valtics' efforts to equate the firms' past performance are unavailing.

With respect to FEDITC's enterprise-wide logistics system contract, the quality element of the CPAR at issue notes "minor issues," but immediately states that "corrective actions taken by the contractor were highly effective and resulted in well written, concise documentation being delivered on time." AR, exh. 20, FEDITC CPARs at 2. This statement indicates that the FEDITC "minor issues" were unique and quickly resolved in a way that Valtics' scheduling issues referenced in its CPAR do not appear to have been. All other categories rated satisfactory, including the schedule element, have comments that are entirely positive. See id. at 2-3. The CPAR for FEDITC's third contract, which includes the comment that "[V]ery little oversight is required on 90% of the problem solving and troubleshooting efforts," is surrounded by effusive comments

⁵ In the PPQ for this contract, the responding agency official indicated that only three of the four aspects of the instant requirement were present in the referenced contract.

and is itself phrased as a positive comment. Id. at 7-8. In contrast, the comment that Valytics “performed most tasks...within the agreed schedule” and “meets most deadlines” suggests that Valytics’ issues with deadlines were not rare. The fact that Valytics’ CPAR reports the team “continues to look for areas of improvement” does not negate the fact that it still needed “additional guidance.” AR, exh. 18, Valytics CPAR at 3. As the agency argues, Valytics cannot “make a silk purse out of a sow’s ear” by portraying negative critique as a positive statement. Agency’s Response to Protester’s Comments & Supp. Protest at 4.

Turning to its past performance on its interoperability testing support contract, Valytics argues that the agency should have given more weight to the positive ratings on the more recent PPQ than on the CPAR containing the unfavorable comments discussed above. However, while the PPQ indicates that no deadlines were missed, it otherwise contains little narrative information and does not negate the fact that the issues identified in the CPAR existed.⁶ Although consideration of past performance trends and corrective actions is generally appropriate, an agency is not required to ignore instances of negative past performance. PAE Aviation and Tech. Servs., LLC, B-413338, B-413338.2, Oct. 4, 2016, 2016 ¶ 283 at 5.

Source Selection Decision

Valytics argues that the SSA’s source selection decision was unreasonable because he gave undue weight to the comments in Valytics’ CPAR. As discussed above, our review of the record gives us no basis to question the past performance evaluation, including the agency’s consideration of these comments. Source selection officials have broad discretion to determine the manner and extent to which they will make use of evaluation results, and must use their own judgment to determine what the underlying differences between quotations might mean to successful performance of the contract. See ERC, Inc., B-407297, B-407297.2, Nov. 19, 2012, 2012 CPD ¶ 321 at 10. The SSA considered all of the past performance information for both vendors and found that the comments were a discriminator between the two firms’ past performance. Based on our review of the entire record, none of Valytics’ disagreements with the SSA’s consideration of the comments renders his decision unreasonable.

The protest is denied.

Thomas H. Armstrong
General Counsel

⁶ The CPAR shows that Valytics’ contemporaneous response to these comments, dated shortly before quotations were submitted here, did not rebut the comments or explain any improvements made.