



Decision

Matter of: Orbit Research, LLC

File: B-417462

Date: July 17, 2019

Venkatesh R. Chari, for the protester.
C. Peter Dungan, Esq., and Jason A. Blindauer, Esq., Miles & Stockbridge P.C., for Zoomax USA Inc.; and Jonathan D. Shaffer, Esq., and Mary Pat Buckenmeyer, Esq., Smith Pachter McWhorter PLC, for HumanWare, the intervenors.
Emily Vartanian, Esq., Library of Congress, for the agency.
Michael P. Grogan, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of quotations is denied where the record reflects that the agency's evaluation was reasonable and in accordance with the solicitation.
 2. Protest alleging that the agency's source selection decision is unreasonable because the agency failed to evaluate all of the protester's past performance information is denied where the protester cannot demonstrate prejudice.
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DECISION

Orbit Research, LLC, a small business of Wilmington, Delaware, protests the award of indefinite-delivery, indefinite-quantity (IDIQ) contracts to Zoomax USA Inc., of Metheun, Massachusetts, and HumanWare, of Quebec, Canada, under request for quotations (RFQ) No. 030ADV19R0114, issued by the Library of Congress (Library), for design review, prototype and software development, production, and service/maintenance of a refreshable braille electronic book reader (e-reader).¹ The protester argues that the

¹ While the solicitation number appears to indicate that the solicitation is a request for proposals, the first page of the solicitation, Standard Form 1449, provides that the solicitation is an RFQ. Agency Report, Tab 2, RFQ, at 1.

agency's evaluation of quotations under the technical and past performance factors was unreasonable.

We deny the protest.

BACKGROUND

The RFQ, issued on January 25, 2019, contemplated the award of either a single or multiple-award IDIQ contract, utilizing the procedures of Federal Acquisition Regulation (FAR) parts 12 and 15, with a five year ordering period, to support the Library's development and manufacture of a braille e-reader.² Agency Report, Tab 3, RFQ amend. 1, at 3-4. Specifically, the RFQ sought vendors for the design, manufacture, and delivery of e-readers, to include a twenty cell refreshable braille display, a braille keyboard, internal memory, and rechargeable battery and charger. *Id.* at 4. The solicitation provided that the agency would issue orders on a fixed-price basis, and would order a minimum of \$50,000 under each awarded IDIQ contract, with the cumulative total not to exceed \$10,000,000. *Id.* at 3.

The RFQ advised that award would be made on a best-value tradeoff basis, utilizing the following factors, in descending order of importance: sample refreshable braille cell technology, technical approach, production/manufacturing capabilities and product support methods, program management, past performance, and price. *Id.* at 36. All non-price factors, when combined, were significantly more important than price. *Id.*

As relevant to this protest, under the past performance factor, the RFQ provided that vendors were to provide "detailed examples of at least three current or completed contracts, performed within five years, that demonstrate experience manufacturing products relevant to this procurement." *Id.* The agency would evaluate past performance information to assess the level of risk associated with a vendor's ability to perform the contract. *Id.* at 38. The solicitation provided that "[t]he offeror will not be evaluated favorably or unfavorably on past performance if no relevant information on past performance is provided by the offeror or otherwise obtained by the Library." *Id.*

The agency received timely quotations from multiple vendors. AR, Tab 24, Source Selection Decision Document (SSDD), at 1. Following an initial round of discussions, on March 6, the agency established a competitive range--which included Orbit, Zoomax, and HumanWare--and requested that final quotations be submitted by March 11. Contracting Officer's Statement (COS) at 4. On March 15, the technical evaluation

² This solicitation was released after the agency took corrective action in response to a prior protest with our Office. See Humanware, B-417115, Dec. 17, 2018 (unpublished decision).

team (TET) completed its evaluation of the non-price factors, evaluating vendors as follows:

	HumanWare	Zoomax	Orbit
Sample Refreshable Braille Cell Technology	Good	Outstanding	Acceptable
Technical Approach	Good	Good	Acceptable
Production/Manufacturing	Good	Good	Acceptable
Program Management	Good	Good	Acceptable
Past Performance	Neutral	Neutral	Neutral

COS at 5; AR, Tab 24, SSDD at 1.

The contracting officer, also the source selection authority, concluded that Zoomax and HumanWare represented the best value to the agency. AR, Tab 24, SSDD at 5. In so finding, the contracting officer found that Zoomax's quotation, having received the highest technical rating, contained numerous strengths and "proposed outstanding braille cell technology as well as strong designs for its sample device." Id. Moreover, the contracting officer found that while HumanWare's quotation received the second highest technical rating, it quoted an "established and well-tested design in its braille cell, a proven team with good experience of work in the field, and a complete understanding of the requirements and facilities that can handle the output required under this contract." Id. The source selection authority concluded that although Orbit offered a lower price, approximately 5-10 percent lower than the awardees' prices, Zoomax and HumanWare's technical solutions were "much stronger than Orbit's and the additional technical merit outweighs the difference in price." Id.

On March 27, the Library made award to Zoomax and HumanWare; the agency notified the unsuccessful vendors of its award decision on March 28. COS at 4. On April 2, the protester requested a debriefing with the agency. COS at 6. On April 4, the agency declined Orbit's request for a debriefing on the grounds that the request was made too late to generate a required debriefing. Id. This protest followed.

DISCUSSION

The protester argues that the agency's evaluation of quotations was flawed in a number of respects.³ Orbit contends that the agency unreasonably found that Zoomax's and

³ No protective order was issued in this matter because Orbit elected to proceed with its protest without counsel. A full version of the agency report was furnished to our Office, and a redacted version of the report was furnished to the protester. We have reviewed the entire record, in camera, including all of the agency's evaluation materials and the quotations submitted by the firms. Our discussion here is necessarily general, to avoid reference to proprietary or source selection sensitive information. Spacesaver Storage Sys., Inc., B-298881, Dec. 11, 2006, 2006 CPD ¶ 196 at 2 n.2.

HumanWare's quotations offered better technical solutions, and also argues that the agency's evaluation of its past performance, and Zoomax's, was unreasonable. Protest at 1-2; Protester's Comments at 2-6. While we do not address each protest ground and argument raised by the protester, we have reviewed them all and find that none provide a basis to sustain the protest.⁴ For the following reasons, we find no basis to sustain the protest.

Technical Evaluation

The protester first contends that, in contrast to the awardees, Orbit offered "a newer and much superior technology," thereby offering better value to the agency and end-user. Protest at 1-2. In this regard, the protester argues that since the awardees' technical solutions relied on piezo cells, and since Orbit's technical solution "overcomes fundamental issues" with such cells, Orbit's quotation should have been rated superior to both Zoomax's and HumanWare's. Id.

⁴ For example, Orbit argues that the awardees are not American companies. However, the RFQ did not require vendors to be American companies, nor did the solicitation incorporate domestic source restrictions, either in text or by reference. Accordingly, because the record reflects that the solicitation contains no such requirement, Orbit's allegation, in this regard, fails to state a valid basis of protest and is dismissed. 4 C.F.R. § 21.5(f). To the extent the protester is arguing that domestic source restrictions should have been included in the RFQ, or that the agency improperly determined that this procurement was exempt from such restrictions, such protest grounds are untimely solicitation challenges. 4 C.F.R. § 21.2(a)(1).

Orbit also challenged whether the awardees quoted a commercially available product. Protest at 2. The agency provided a response to this protest argument, but Orbit did not respond to the agency's arguments in its comments on the agency report. Thus, we dismiss these allegations as abandoned. Medical Staffing Sols. USA, B-415571, B-415571.2, Dec. 13, 2017, 2017 CPD ¶ 384 at 3 ("Where, as here, an agency provides a detailed response to a protester's assertion and the protester fails to rebut the agency's argument in its comments, the protester fails to provide us with a basis to conclude that the agency's position with respect to the issue in question is unreasonable, and as a result, the protester abandons that assertion."). To the extent the protester is alleging that the solicitation required vendors to quote commercially available products or commercial-off-the-shelf products, such allegations concern alleged ambiguities apparent on the face of the RFQ. Our timeliness rules specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1); see AmaTerra Env'tl. Inc., B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3. As such, because Orbit was required to protest these ambiguities prior to the deadline for the submission of quotations, they are untimely raised and will not be considered further. 4 C.F.R. § 21.2(a)(1).

The agency argues that its evaluation of quotations under the technical factors was reasonable. The Library provides that the TET paid close attention to each vendor's technological solutions and carefully examined each quotation. Memorandum of Law (MOL) at 4; see COS at 4. For example, concerning sample refreshable braille cell technology, the source selection authority found that Orbit's "technology possesses a solid feel and provided a solid user experience, but the cell technology has a slower than optimal refresh, noisy operation, and could be difficult to repair due to the difficulty to remove the cells." COS at 5. On the other hand, the source selection authority found Zoomax's technical solution to be "an improvement upon an already proven design" that is "easy to disassemble and reassemble for ease of cleaning and repair of cells. . . ." Id. Concerning HumanWare, the source selection authority noted that it quoted "an established and well-tested design," but acknowledged a difficulty in repairing cells. Id.

In reviewing protests of an agency's evaluation, our Office does not reevaluate quotations; rather, we review the evaluation to determine if it was reasonable, consistent with the solicitation's evaluation scheme and procurement statutes and regulations, and adequately documented. Savvee Consulting, Inc., B-408416.3, Mar. 5, 2014, 2014 CPD ¶ 164 at 7. A protester's disagreement with the agency's judgments does not establish that the agency acted unreasonably. Encompass Group LLC, B-310940.3, Mar. 17, 2009, 2009 CPD ¶ 60 at 3.

Based on our review of the record, we find that the agency reasonably concluded that the awardees, Zoomax and HumanWare, quoted a superior technical solution. The record reflects that the adjectival ratings provided by the TET and adopted by the source selection authority reflect a reasonable evaluation of the vendors' quotations. In this manner, the agency reasonably assessed the strengths and weaknesses of each vendor's quotation under the stated evaluation factors in the RFQ, and reasonably concluded that the technical solutions provided by Zoomax and HumanWare were superior to the solution provided by Orbit. As a result, this protest ground is denied.⁵

Past Performance

The protester also challenges the agency's evaluation of Zoomax under the past performance factor, arguing that it was unreasonable for the Library to assign Zoomax a past performance rating of neutral. Protest at 1; Protester's Comments at 4. In this regard, the protester contends "Zoomax has had no past experience in the development or manufacture of braille or tactile products" and Orbit's products "are in a completely different league in terms of complexity, reliability requirements, mechanical tolerance requirements, and the manufacturing techniques required. . . ." Protest at 1.

⁵ It is unclear whether Orbit challenges the agency's evaluation of vendors under all the non-price factors, or simply the sample refreshable braille cell technology factor. See Protest at 1-2. In any event, we have examined the agency's evaluation under all factors and find it reasonable.

Zoomax's initial quotation provided information about its subcontractors' experience in developing braille technology. COS at 2. However, the agency did not consider this information sufficiently relevant because the Library did not receive independent information from Zoomax's references substantiating the subcontractors' performance. Id. As such, and consistent with the evaluation criteria established in the RFQ, the agency assigned Zoomax's initial quotation a neutral rating under the past performance factor. Id. Zoomax submitted additional past performance information with its final quotation. Id. at 2-3. Zoomax submitted additional points of contact for the two past performance examples it previously identified, and information about six contracts awarded to Zoomax for digital magnifiers. Id. However, because the agency did not receive responses from these additional points of contact, and because it deemed Zoomax's contracts for digital magnifiers as not relevant to its requirements, the agency's assignment of a neutral past performance rating remained unchanged. Id.

Where a protester challenges an agency's evaluation of experience or past performance, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that it is adequately documented. See Falcon Envtl. Servs., Inc., B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7. The evaluation of a vendor's experience and past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based evaluation ratings. See SIMMEC Training Sols., B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4.

We find the agency's evaluation of Zoomax's past performance and the assignment of a neutral rating reasonable and consistent with the terms of the solicitation. As provided in the RFQ, an "offeror will not be evaluated favorably or unfavorably on past performance if no relevant information on past performance is provided by the offeror or otherwise obtained" by the agency. RFQ amend. 1 at 38; see also 41 U.S.C. § 1126(b); FAR § 15.305(a)(2)(iv). Here, the agency reasonably determined that the past performance information Zoomax submitted was not, per the solicitation, relevant to the manufacture of the required refreshable braille e-reader because the agency either did not receive information substantiating the relevancy of Zoomax's prior performance, or deemed Zoomax's contracts for digital magnifiers not relevant to the agency's requirements. COS at 2. On this basis, and following our review of the record, we conclude the agency's assignment of a neutral rating under the past performance factor is unobjectionable.

Orbit next challenges the agency's evaluation of its own past performance. Protester's Comments at 2, 5. The Library assigned Orbit's past performance a rating of neutral. COS at 3. While Orbit received positive feedback from two of its references, the agency determined that those contracts involved devices other than refreshable braille displays, and therefore, were not relevant to the Library's requirements. Id. As a result, consistent with the terms of the solicitation, the agency assigned Orbit a rating of neutral for the past performance factor. Id.

However, in the agency's report, the Library acknowledges that it did not consider as part of its evaluation a third reference provided by Orbit in its proposal. COS at 3; Supp. COS at 1. The agency also acknowledges that this third reference was favorable with respect to Orbit's past performance, and that the prior work was relevant to the Library's requirements under this RFQ. Id. As a result, Orbit argues that it would have been awarded a contract had the agency considered this reference. Protester's Comments at 5.

The agency responds that there is no competitive prejudice associated with any error related to failing to consider this third past performance reference. COS at 3. In this regard, the agency points to the order of importance of the RFQ's evaluation factors, noting that past performance was the fifth most important non-price factor, out of five factors. Id. As such, the agency argues that even if Orbit's past performance rating was changed--following the agency's evaluation of the third reference--from neutral to low risk, such a "change would not have affected the source selection decision or caused the agency to make an award to Orbit. . . ." Id.

Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. Cargo Transport Sys. Co., B-411646.6, B-411646.7, Oct. 17, 2016, 2016 CPD ¶ 294 at 9 n.14. Based on our review of the record, Orbit has not demonstrated competitive prejudice because it has not shown that it had a reasonable possibility of receiving award, had its past performance rating been changed to low risk.

As stated above, past performance was the fifth most important non-price factor, out of five factors. RFQ amend. 1 at 37. Even if the record supported a finding that considering Orbit's third past performance reference would have resulted in a low risk rating (rather than a neutral or moderate risk rating)--and it does not--such a "change would not have affected the source selection decision or caused the agency to make an award to Orbit." COS at 3. In this regard, Orbit's proposal was rated lower than the two awardees' proposals under each and every one of the four more important non-price factors. AR, Tab 24, SSDD at 1. Given that the SSA recommended against making an award to Orbit because Zoomax and HumanWare's technical proposals were "much stronger than Orbit's [proposal]," Orbit's protest fails to establish that a change in its past performance rating--the least important non-price factor--would have resulted in

Orbit also receiving award.⁶ Here, because Orbit cannot establish that it was prejudiced by the agency's failure to address its third past performance example, we deny the protest.⁷

We deny the protest.

Thomas H. Armstrong
General Counsel

⁶ We note that had its past performance rating been changed to low risk, Orbit would have received the same ratings--under the non-price evaluation factors--as another unsuccessful vendor with a lower evaluated price. AR, Tab 24, SSDD at 1. Given that the source selection authority concluded that both Orbit and this lower-priced vendor should not be given award because "Zoomax and HumanWare's technical proposals are much stronger," the record demonstrates that Orbit did not have a reasonable possibility of receiving award, even if its past performance rating been changed to low risk.

⁷ The protester disagrees with the agency's position on prejudice and argues that "had the rating for Zoomax on Past Performance been High Risk, this would most certainly have altered the source selection decision" Protester's Comments at 5. Though we have already found unobjectionable the agency's conclusion that Zoomax's past performance warranted a rating of neutral, the protester fails to explain how Zoomax's past performance rating bears on the agency's evaluation of Orbit's own quotation and its decision not to award to Orbit, under an IDIQ with potentially multiple awardees.