



Decision

Matter of: GSI Construction Corporation

File: B-418084

Date: January 6, 2020

Joshua Owens, for the protester.
Colonel Patricia S. Wiegman-Lenz, Major Alexander L. Lowry, and Christopher B. Bennett, Esq., Department of the Air Force, for the agency.
Michael P. Grogan, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's evaluation of offeror's past performance is reasonable because the evaluation of past performance is consistent with the evaluation criteria and supported by the evaluation record.

DECISION

GSI Construction Corporation (GSI), a service-disabled veteran-owned small business (SDVOSB) of Pace, Florida, protests the award of a contract to Chiefs Construction Company, LLC (Chiefs), an SDVOSB of D'Iberville, Mississippi, under request for proposals (RFP) No. FA3010-19-R-A007, issued by the Department of the Air Force, for renovation and repair work at Arnold Hall, Keesler Air Force Base (AFB), Mississippi. The protester contends that the agency's evaluation of its past performance was unreasonable.

We deny the protest.

BACKGROUND

The RFP, issued on April 8, 2019, as a set-aside for SDVOSBs, pursuant to the procedures in Federal Acquisition Regulation part 15, contemplated the award of a fixed-price contract, with a 1-year period of performance, for repair and renovation services at Arnold Hall, Keesler AFB. Agency Report (AR), Tab 4, RFP at 1. Specifically, the agency required contractor support for the demolition and installation of partition walls, doors, frames, flooring, electrical, lights, and bathrooms, as well as

patching and painting existing walls. Id. at 43-50; Contracting Officer's Statement (COS) at 2.

The solicitation advised that award would be made on a best-value tradeoff basis, utilizing two evaluation factors, past performance and price, with past performance considered significantly more important than price. RFP at 37. The solicitation explained that the Air Force would initially evaluate proposals for technical acceptability, namely, whether proposals met the minimum requirements outlined in the solicitation. Id. Proposals rated as technically acceptable would then be ranked according to price; an offeror's proposed price would be evaluated for reasonableness. Id. The Air Force would then evaluate an offeror's past performance. Id.

Under the past performance factor, the solicitation advised that the agency would "seek recent and relevant performance information on offerors based on (1) the past and present efforts provided by the offeror and (2) data independently obtained from other government and commercial sources." Id. at 37. Offerors were required to provide a list of no more than three of their most relevant contracts performed within the last three years.¹ Id. at 33. Considering an offeror's past performance information, the agency would assess an offeror's ability to perform the effort described in the RFP, and then assign one of five overall performance confidence assessment ratings: substantial confidence, satisfactory confidence, limited confidence, no confidence, or neutral.² Id. at 37.

The solicitation stated that if the lowest-priced offeror was assessed a performance confidence assessment rating of substantial confidence, award would be made to that offeror. Id. at 38. If the lowest-priced offeror was not assigned a substantial confidence rating, the agency would evaluate the next lowest-priced offeror. Id. The agency's evaluation would continue until a proposal was assessed a substantial confidence rating, at which point, the agency would make an "integrated assessment best value award decision." Id.

¹ The RFP defined recent performance as those contracts "on which some portion of performance occurred during the last three (3) years from date of receipt of proposal." RFP at 37. Relevant performance was defined as "past/present effort involving similar scope and magnitude of effort and complexities this solicitation requires" and would be classified as one of four adjectival ratings: very relevant, relevant, somewhat relevant, and not relevant. Id.

² As relevant to this protest, a substantial confidence rating would be assigned when, "[b]ased on the offeror's recent/relevant performance record, the Government has a high expectation that the offeror will successfully perform the required effort" and a satisfactory confidence rating where "[b]ased on the offeror's recent/relevant performance record, the Government has a reasonable expectation that the offeror will successfully perform the required effort." RFP at 33.

The Air Force received multiple proposals by the June 6 deadline, including proposals from GSI and Chiefs. AR, Tab 21, Source Selection Decision Document (SSDD), at 1; COS at 5. All submitted proposals were deemed technically acceptable and to offer fair and reasonable prices. COS at 5. Following the agency's evaluation of past performance for the two lowest-priced offerors, the Air Force moved to the third lowest-priced offeror, GSI.³ Id. at 6-7.

The agency evaluated each of the three past performance references GSI included in its proposal. AR, Tab 21, SSDD, at 7. The agency also evaluated an additional past performance questionnaire, prepared by the contracting officer, concerning GSI's then on-going performance under a separate Air Force contract for warehouse repair work at Keesler AFB. Id.; COS at 7. Based on the Air Force's evaluation of GSI's past performance information, the agency assigned GSI a performance confidence assessment rating of satisfactory confidence. AR, Tab 21, SSDD, at 9. The agency noted that while most of GSI's past performance was both recent and relevant, the Air Force had concerns with GSI's ability to complete work on time. Id.

The Air Force then evaluated the past performance of the next lowest-priced offeror, Chiefs, and assigned the firm a substantial confidence rating. Id. at 9-10. The source selection authority, consistent with the solicitation, then conducted a tradeoff between Chiefs and GSI to determine which proposal submission represented the best value to the Air Force. Id. at 11-12. Acknowledging that past performance was significantly more important than price, the source selection authority decided that paying the price premium associated with Chiefs' proposal was warranted, given Chiefs' lower performance risk.⁴ Id. As such, the agency concluded that Chiefs' proposal represented the best value to the agency. Id.

On September 26, the Air Force notified offerors of its award decision. AR, Tab 22, Unsuccessful Offeror Notification, at 1. GSI requested a debriefing, which the Air Force provided on September 30. AR, Tab 26, GSI Debriefing, at 1. This protest followed on October 3.⁵

³ The lowest-priced offeror did not receive a substantial confidence past performance rating. COS at 6. While the Air Force assigned the second lowest-priced proposal a substantial confidence past performance rating, following a challenge to this offeror's SDVOSB status, the Small Business Administration issued a final decision concluding that the offeror was no longer an SDVOSB, rendering this offeror ineligible for award. Id.

⁴ Chiefs proposed price was \$906,906, as compared to GSI's price of \$898,000. AR, Tab 12, Proposal Abstract, at 1.

⁵ No protective order was issued in this matter because GSI elected to proceed with its protest without counsel. The agency provided an unredacted version of the agency report to our Office and a redacted version of the report to the protester. We have reviewed the entire record, including all of the agency's evaluation materials and the

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DISCUSSION

GSI argues that the agency's evaluation of its past performance was unreasonable and that its proposal warranted a rating of substantial confidence. Protest at 1-3; Comments at 1-2. Specifically, the protester disputes the ratings it received in the past performance questionnaire prepared by the contracting officer, concerning its performance on a warehouse repair contract at Keesler AFB. Protest at 2-3; Comments at 1-2. GSI argues that one of the marginal ratings in that questionnaire, based on GSI's inability to complete the project on schedule, was unreasonable because the negative rating stemmed from both excusable delays and delays caused by the agency's expansion of the contract's scope of work. Comments at 1-2. GSI contends that it successfully completed the project by the scheduled date in the contract, as modified.⁶ *Id.* at 2. While we do not address every issue raised by GSI in this decision, we have reviewed them all and find that none provides a basis to sustain the protest.⁷

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proposals submitted by Chiefs and GSI. 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.

⁶ GSI's protest also appears to challenge the agency's evaluation of Chiefs' past performance. Protest at 3-4. The Air Force provided a detailed response addressing its evaluation. COS at 15-17; Memorandum of Law at 13-16. GSI's comments on the agency report provide no substantive response in connection with its challenge; in our view, GSI abandoned this allegation. Where an agency provides a detailed response to a protester's allegations and the protester fails to rebut or otherwise substantively address the agency's arguments in its comments, the protester provides us with no basis to conclude that the agency's position with respect to the issue in question is unreasonable or improper, and we therefore find this protest ground abandoned and do not consider it further. See 4 C.F.R. § 21.3(i)(3); KSJ & Assocs., Inc., B-409728, July 28, 2014, 2014 CPD ¶ 222 at 5.

⁷ For example, in an addendum to its comments on the agency report--filed fourteen days after the agency filed its report--the protester provides further information concerning its contract performance on the warehouse repair project, and contends that the agency acted in bad faith, as evidenced by prior projects GSI performed at Keesler AFB that "illustrate a pattern of Contracting Officer mistakes, if not maleficence." Addendum to Comments, Nov. 18, 2019, at 3. This argument constitutes a piecemeal presentation of issues; the timeliness requirements of our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues. See Battelle Memorial Institute, B-278673, Feb. 27, 1998, 98-1 CPD ¶ 107 at 24 n.32; 4 C.F.R. § 21.2(a)(1). In any event, the protester has failed to demonstrate that the Air Force was motivated by bad faith. See Lawson Env'tl. Servs. LLC, B-416892, B-416892.2, Jan. 8, 2019, 2019 CPD ¶ 17 at 5 n.5 ("Our decisions have consistently explained that government officials are presumed to act in good faith, and a contention that procurement officials are motivated by bias or bad faith must be supported by

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The solicitation expressly stated that the Air Force would seek performance information about offerors in both the past and present efforts provided by offerors and from data independently obtained from other government and commercial sources. RFP at 37. The record reflects that the Air Force considered the three past performance references submitted by GSI, as well as a fourth, then on-going project, of which the contracting officer had personal knowledge. COS at 7; AR, Tab 21, SSDD at 8-9. Information for two of GSI's four projects raised concerns about GSI's ability to timely complete future projects. First, a contractor performance assessment report (CPAR) included in GSI's proposal, concerning renovations of McClelland Hall at Keesler AFB, rated GSI as satisfactory in all areas and stated that "[t]he contractor maintained a complicated schedule but had a few issues with their subcontractors that led them to finishing the contract late." See AR, Tab 14, McClelland Hall CPAR, at 2.

Second, regarding the warehouse repair project at Keesler AFB, the past performance questionnaire rated GSI as marginal in meeting established project schedules. See AR, Tab 13, Warehouse Past Performance Questionnaire (PPQ), at 2-3. In the questionnaire, the contracting officer indicated that GSI was late in finishing the project, that the Air Force was not responsible for the delay, and that "GSI has shown no sense of urgency to get this project completed." Id. at 3. The record reflects that GSI was afforded an opportunity to respond to the past performance questionnaire and GSI asserted that the delay was caused by a contract modification issued by the Air Force that added additional work. Id. at 4-5. The agency reviewed this information, but concluded that GSI's response did not support a change to the marginal rating because the contract modification did not extend the period of performance for the existing requirements. Id.; COS at 9. As noted above, the Air Force's evaluation of GSI's past performance resulted in a satisfactory confidence rating. AR, Tab 21, SSDD at 7-9.

Where, as here, a solicitation requires the evaluation of past performance, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria. TriWest Healthcare Alliance Corp., B-401652.12, B-401652.13, July 2, 2012, 2012 CPD ¶ 191 at 24. An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of agency discretion that we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. Fox RPM Corp., B-409676.2, B-409676.3, Oct. 20, 2014, 2014 CPD ¶ 310 at 3. The evaluation of past performance, by its very nature, is subjective and we will not substitute our judgment for reasonably based evaluation ratings; an offeror's disagreement with an agency's evaluation judgments, without more, does not demonstrate that those judgments are unreasonable. FN Mfg., LLC, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7. We have explained that it is proper for agency contracting officials to consider and rely on their personal

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convincing proof; our Office will not consider allegations based on mere inference, supposition, or unsupported speculation.").

knowledge of an offeror's past performance where a solicitation contains past performance as an evaluation factor. See Independence Constr., Inc., B-292052, May 19, 2003, 2003 CPD ¶ 105 at 2 n.2; HLC Indus., Inc., B-274374, Dec. 6, 1996, 96-2 CPD ¶ 214 at 6.

Here, the record demonstrates that the Air Force's evaluation of GSI's past performance was reasonable and consistent with the terms of the solicitation; we find no basis to question the agency's assessment that GSI's proposal warranted a satisfactory confidence, rather than substantial confidence, rating. While the record reflects that GSI submitted past performance references rated as recent and very relevant, one submitted reference, concerning renovations of McClelland Hall, noted that the protester did not complete the work as scheduled. See AR, Tab 14, McClelland Hall CPAR, at 2. Additionally, a fourth project considered by the Air Force, for warehouse repair work at Keesler AFB, also referenced GSI's failure to meet its performance schedule. See AR, Tab 13. Warehouse PPQ, at 2-3. The agency's evaluation of GSI's past performance acknowledges that "[w]hile a majority of GSI's past performance was recent and relevant/very relevant, their marginal ratings received on a contract for work at Keesler AFB raise concerns with their ability to complete the work on-time[.]" AR, Tab 21, SSDD at 9. Given the documented concerns with the timeliness of GSI's performance on its relevant contracts, we cannot conclude that the agency's assignment of a performance confidence assessment rating of satisfactory confidence was unreasonable.

The protester's arguments challenging the agency's assessment are unpersuasive. First, the protester does not substantively address its delayed completion for the McClelland Hall project, noting only that GSI did "not necessarily agree with the Contracting Officer's comments." Comments at 1. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. Beretta USA Corp., B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 10. Additionally, the protester's contentions that its late performance on the warehouse repair project resulted from excusable delay and/or an increase in the scope of work, via a contract modification, are also unavailing. Whether prior performance deficiencies were excusable is a matter of contract administration not for resolution under our Bid Protest Regulations, but instead, are within the discretion of the contracting agency and for review by a cognizant board of contract appeals or court. See 4 C.F.R. § 21.5(a); BMY, Div. of Harsco Corp., B-233081, B-233081.2, Jan. 24, 1989, 89-1 CPD ¶ 67 at 5. On this record, GSI has failed to show that the agency's evaluation of its past performance was improper.

The protest is denied.

Thomas H. Armstrong
General Counsel