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Decision

Matter of: Zolon PCS, LLC

File: B-418626.8

Date: April 5, 2021

J. Patrick McMahon, Esq., and William T. Welch, Esq., McMahon, Welch and Learned LLC, for the protester.

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DIGEST

Protest challenging the agency’s evaluation and best-value tradeoff decision is denied where the evaluation of the protester’s quotation was reasonable, including under the past performance evaluation factor, and dismissed to the extent the protester contends that the agency failed to assess risk in the awardees’ lower-priced quotations.

DECISION

Zolon PCS, LLC,¹ of Ashburn, Virginia, protests the establishment of blanket purchase agreements (BPAs) with five vendors² under request for quotations (RFQ)

¹ Zolon is identified as a joint venture between Zolon Tech, Inc., and Pioneer Corporate Services, Inc. Agency Report (AR), Tab 7, Technical Evaluation Panel (TEP) Report, July 7, 2020, at 8.

² The five successful vendors were identified as: swiftINTEL JV, of Ellicott City, Maryland; IT Concepts, Inc., of Vienna, Virginia; Integrated Computer Solutions, Inc., of Montgomery, Alabama; Team Free Alliance LLC, a contractor teaming arrangement with Mission Services Inc., of McLean, Virginia; and Spatial Front Incorporated of McLean, Virginia. AR, Tab 10, Notice of Award, Jan. 19, 2021, at 2; AR, Tab 6, Summary of Award with Corrective Action, Jan. 12, 2021, at 1.

No. 28321320Q00000011, issued by the Social Security Administration (SSA) for information technology support services. The protester challenges various aspects of the agency's evaluation and award decision.

We deny the protest.

BACKGROUND

On January 16, 2020, the agency issued the RFQ as a small business set-aside under Federal Acquisition Regulation (FAR) subpart 8.4 to vendors holding General Services Administration (GSA) Federal Supply Schedule (FSS) Information Technology contracts. AR, exh. 1, RFQ.³ The RFQ contemplated the establishment of multiple-award BPAs to acquire systems information technology support for the agency's mainframe, distributed, and telecommunications environments. *Id.* at 66. Among other things, the contractor would be required to provide expertise, technical knowledge, information technology support personnel, and other related resources necessary to support all information technology engineering and infrastructure support services. *Id.*

The RFQ contemplated the establishment of multiple-award BPAs under which fixed-price, time-and-materials, or labor-hour call orders would be issued. RFQ at 7. The term of the anticipated BPA would include a 1-year base period, nine 1-year option periods, and an optional 6-month extension, for a total possible performance period of 126 months. *Id.* at 6.

The RFQ established a two-phase process; only phase 2 is relevant to this protest.⁴ In phase 2, the agency would consider two non-price factors, listed in descending order of importance: detailed experience and past performance. RFQ at 61-62. The RFQ provided for award on a best-value tradeoff basis, in which the two non-price factors considered in phase 2, combined, were significantly more important than price, and in which the agency could consider award to other than the lowest-priced vendor or other than the highest technically rated vendor. *Id.* at 59-60.

³ The agency amended the RFQ twice. All citations are to the Adobe PDF page numbers of the consolidated solicitation provided by the agency. We also note that, although firms that compete for the establishment of a BPA are generally referred to as "vendors" who submit "quotations," the record and the parties' briefings use the terms "offerors" and "proposals" interchangeably with the proper terms. For the sake of consistency, we refer to the firms that competed as vendors who submitted quotations for the establishment of a BPA.

⁴ In phase 1, the agency would consider two non-price evaluation factors on a pass/fail basis: acceptance of accessibility terms and conditions, and relevant experience. RFQ at 60-61.

With regard to past performance, the RFQ included, as an attachment, a past performance questionnaire that vendors were instructed to complete and send to references for three prior projects; those references were then to complete and submit the past performance questionnaires to the agency. RFQ at 57. The RFQ advised that the agency's evaluation "will consist of a subjective assessment of the offeror's demonstrated success in the performance of previous and/or ongoing relevant projects," and that the evaluation "will be based on information received from the [p]ast [p]erformance [q]uestionnaires and other sources of information available to SSA (such as PPIRS [past performance information retrieval system]) that indicates the offeror has performed other contracts of a similar scope, size, and complexity to these requirements." *Id.* at 61. The RFQ also explained that the agency "will evaluate how well the offeror has performed" and "how satisfied the client is/was with the offeror[]"s performance[,] and use this information to determine SSA's confidence in the offeror[]"s ability to perform under this BPA."⁵ *Id.* at 62.

Under the price evaluation factor, the RFQ provided the following: "The offeror's hourly rates will be evaluated to ensure the quoted pricing is included under the applicable GSA contract and is equal to, or less than, the current GSA hourly rates. The government will arrive at the offeror's total proposed price by adding the total price for the base and all option years." RFQ at 62.

On or before the February 14, 2020, closing date, the agency received quotations from 37 vendors, including Zolon, swiftINTEL, IT Concepts, Integrated Computer Solutions, Free Alliance, and Spatial Front.⁶ The agency made its award decision on September 16, 2020, and Zolon filed its first protest with our Office, challenging various aspects of the agency's evaluation and award decision. The agency proposed to take corrective action, to include reevaluating the protester's experience and making a new award decision. We dismissed that protest as academic. *Zolon PCS, LLC*, B-418626.6, Oct. 15, 2020 (unpublished decision).

⁵ Quotations were assigned past performance ratings of exceptional, very good, satisfactory, marginal, unsatisfactory, or neutral. AR, Tab 7, TEP Report at 6; see *also* RFQ at 109.

⁶ The quotations submitted by the other vendors are not relevant to this protest and are not further discussed.

The TEP reevaluated quotations, and the overall results were presented as follows:

	Experience	Past Performance	Price
swiftINTEL	Good	Very Good	\$182,010,308
IT Concepts	Excellent	Exceptional	\$198,209,770
Integrated Computer Solutions	Good	Exceptional	\$202,184,443
Free Alliance	Good	Very Good	\$209,766,365
Spatial Front	Excellent	Exceptional	\$211,593,345
ZolonPCS	Excellent	Very Good	\$254,182,678

AR, Tab 6, Summary of Award with Corrective Action, at 7.

Based on the reevaluation results, the contracting officer, who also served as the source selection official, selected five vendors for award as presenting the best value to the government. With regard to Zolon’s quotation, the contracting officer specifically noted Zolon’s “favorable technical ratings” and “significantly higher” price, and concluded that “it would not be in the best interest of the government to pay a premium price when previously awarded lower priced offerors displayed superior experience.” AR, Tab 6, Summary of Award with Corrective Action, at 8.

The contracting officer also considered, among other things, the “scope and complexity of the contract requirements,” “mix of resources a contractor must have to perform the expected task order requirements,” and “ability to maintain competition among awardees throughout the BPA’s period of performance.” AR, Tab 6, Summary of Award with Corrective Action, at 9-10. The contracting officer noted that establishing BPAs with five vendors “is sufficient to maintain the level of support needed for all call orders.” *Id.* at 10. With regard to the possibility of establishing any additional BPAs, the contracting officer noted that doing so “would not necessarily increase the quality of competition at the call order level, as these remaining offerors did not have the most highly rated technical quot[at]ions,” and that doing so “would increase the administrative and operational costs to SSA in a way that would outweigh any benefits to be gained from the increased call order competition.” *Id.*

The agency notified Zolon of its award decision on January 19, 2021. This protest followed.

DISCUSSION

The protester challenges various aspects of the agency’s evaluation--including, primarily, the evaluation of its past performance--and best-value tradeoff decision. We have reviewed all of Zolon’s arguments and discuss below several representative

examples of the protester's assertions, the agency's responses, and our conclusions. Based on our review, we find no basis to sustain Zolon's protest.⁷

Evaluation Challenges

Zolon, which received a rating of "very good" for past performance, primarily argues that it should have received the highest rating for past performance and that the agency "did not accurately or fairly evaluate" its past performance. Protest at 9. Specifically, Zolon claims that the responses from the references submitted in its quotation "would have shown the clients to have been exceptionally satisfied with [Zolon's] performance," and that "[a]nything less than the highest rating for confidence and client satisfaction would not have been supported by the submitted references." *Id.* at 5.

As noted above, the RFQ included, as an attachment, a past performance questionnaire that vendors were instructed to complete and send to references for three prior projects; those references were then to complete and submit the past performance questionnaires to the agency. RFQ at 57. The RFQ advised that the agency's evaluation "will consist of a subjective assessment of the offeror's demonstrated success in the performance of previous and/or ongoing relevant projects." *Id.* at 61. The RFQ also explained that the agency "will evaluate how well the offeror has performed" and "how satisfied the client is/was with the offeror[']s performance[,] and use this information to determine SSA's confidence in the offeror[']s ability to perform under this BPA." *Id.* at 62.

The record shows that Zolon identified references for three contracts, and the contracting officer received completed past performance questionnaires from those references--two were rated as "very good" and one was rated as "satisfactory."⁸ AR,

⁷ In response to the protest, the contracting officer asserts that, had she "decided to make a sixth award, she would have made it to an intervening offeror, Offeror A, between the five awardees and Zolon." Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 11. The agency then argues that Zolon is not an interested party to challenge the award decision as it "still would not be next in line for award of a BPA because of its price, which was significantly higher than other same-rated or well-rated offerors." *Id.* at 30; see 4 C.F.R. § 21.0(a)(1); *RELM Wireless Corp.*, B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2 (a protester is not an interested party where it would not be in line for contract award were its protest to be sustained). Yet, the agency notes that there is no contemporaneous documentation to support the contracting officer's assertion. Agency Response to Protester's Request for Additional Documents, Mar. 3, 2021, at 2. We note also that the RFQ did not prescribe a limitation on the number of BPAs to be established here, such that an award to a sixth vendor would have precluded an additional award to Zolon. See *generally* RFQ. Under these circumstances, we do not think dismissal of the protest on this basis is appropriate.

⁸ The agency notes, and the record shows, that the TEP, in its report, incorrectly documented the overall performance rating for one of the past performance

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Tab 7, TEP Report at 17; *see also, generally*, AR, Tab 8, Zolon Past Performance Questionnaires. The TEP assigned Zolon an overall past performance rating of “very good,” noting the comments provided by the references and “the majority of very good ratings.” AR, Tab 7, TEP Report at 17. The TEP concluded: “Based on the elements of the [past performance questionnaires] and its ratings, the TEP determined that the offeror’s performance met and sometimes exceeded contract requirements or customer expectations, and the TEP concluded with a significant level of confidence that little doubt exists that the offeror will successfully perform the required effort.” *Id.*

Where an agency conducts a competition for the establishment of BPAs, we will review the agency’s actions to ensure that the evaluation was reasonable and consistent with the solicitation and applicable procurement statutes and regulations. *OfficeMax, Inc.*, B-299340.2, July 19, 2007, 2007 CPD ¶ 158 at 5. An agency’s evaluation of past performance, which includes its consideration of the relevance, scope, and significance of a vendor’s performance history, is a matter of agency discretion which we will not disturb unless the agency’s assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. *AT&T Gov’t Sols., Inc.*, B-406926 *et al.*, Oct. 2, 2012, 2013 CPD ¶ 88 at 15-16; *see also, e.g., SIMMEC Training Sols.*, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. Since the agency is responsible for defining its needs and the best method for accommodating them, we will not substitute our judgment for reasonably based past performance ratings. *SIMMEC Training Sols., supra.*

On this record, we find no basis to object to the agency’s evaluation. Contrary to Zolon’s belief that “[a]nything less than the highest rating . . . would not have been supported by the submitted references,” Protest at 5, the agency’s evaluation appears reasonable. As the agency explains, “[c]ontrary to Zolon’s argument, the information in the [past performance questionnaires] submitted by its references did not support the highest available rating of ‘exceptional’ as such a rating requires that ‘performance exceeds contract requirements or customer expectations for the element being assessed a significant amount of the time.’” COS/MOL at 17.

Moreover, Zolon’s insistence that the agency was required to consider “other sources available to the SSA,” Comments at 7, is unpersuasive and fails to explain how such information would have improved the quality of its rating. The RFQ provided that, in addition to reviewing the questionnaires submitted by references, the past performance evaluation “will be based on . . . other sources of information available to SSA (such as PPIRS) that indicates the offeror has performed other contracts of a similar scope, size,

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questionnaires as “exceptional” instead of “very good.” COS/MOL at 8 n.7, *citing* AR, Tab 7, TEP Report at 17. The contracting officer explains that she “confirmed with the TEP that even if the rating from the [past performance questionnaire] had been documented correctly as very good, it would not have changed the TEP’s overall past performance rating of Zolon as very good.” COS/MOL at 8 n.7.

and complexity to these requirements.” RFQ at 61. While the protester argues that the RFQ required the agency to consult other sources of information,⁹ it does not assert that it performed additional contracts that would meet the standard for consideration here, *i.e.*, contracts that were of similar scope, size, and complexity. In addition, the protester does not meaningfully assert that any such sources contained information that would have improved Zolon’s rating. The agency explains that, “[a]lthough the solicitation allowed for the use of other sources of information available, such as PPIRS, the TEP used only the information from the [past performance questionnaires] when evaluating the past performance of each offeror.” COS/MOL at 7 n.5. Without any explanation about how the review of other sources of material would have resulted in the agency assigning a higher evaluation rating to Zolon’s past performance, we are provided no basis to sustain the protest. In sum, this protest ground is denied.

As an additional evaluation challenge, to the extent Zolon contends that the agency failed to assess the awardees’ lower-priced quotations for risk “[i]n connection with its evaluation of price,” Protest at 6, the agency argues--and we agree--that the solicitation did not require such an assessment here.¹⁰ See COS/MOL at 21; *see also, e.g., ERIMAX, Inc.*, B-410682, Jan. 22, 2015, 2015 CPD ¶ 92 at 7 (as a general rule, when establishing a fixed-price BPA, an agency is only required to determine whether prices are reasonable--that is, whether the quoted prices are too high, rather than too low). We also find unpersuasive Zolon’s contentions that the RFQ “certainly suggested [the agency’s] intention to assess performance risk,” Protest at 6, or that such an assessment was an “inherent” requirement. Comments at 11. Under these circumstances, because Zolon’s argument is based on requiring an assessment that the RFQ here did not require, Zolon’s argument does not state legally sufficient grounds of protest and is dismissed. See 4 C.F.R. § 21.1(f).

Best-Value Tradeoff Decision

Finally, Zolon challenges the agency’s best-value tradeoff decision by arguing that the agency “failed to assess properly the significant increase in technical merit that resulted

⁹ Zolon also argues that this aspect of SSA’s evaluation violated regulatory requirements, insisting that “[t]he use of past performance questionnaires alone . . . is not a substitute for compliance with FAR 42.1503.” Comments at 10. The protester’s reliance on FAR part 42, Contract Administration and Audit Services, is misplaced. Subpart 42.15 of the FAR, Contractor Performance Information, provides policies and establishes responsibilities for recording and maintaining contractors’ performance information, and does not establish requirements for evaluating quotations under a past performance factor. FAR 42.1500.

¹⁰ The RFQ stated, with regard to price, that an “offeror’s hourly rates will be evaluated to ensure the quoted pricing is included under the applicable GSA contract and is equal to, or less than, the current GSA hourly rates.” RFQ at 62.

from the most recent re-evaluation,” and that “the final award selection did not appear to recognize or reward [Zolon]’s advantages.” Protest at 9.

We find no merit to Zolon’s complaints here. The record shows that the agency considered Zolon’s technical merit and higher price, and documented the following:

Zolon[]’s quote was determined to have experience that was extremely similar to the requirements of the solicitation. Although Zolon’s excellent rating for detailed experience shows that the TEP believes that the contractor can perform the services, it would not be in the best interest of the government to pay a premium price when previously awarded lower priced offerors displayed superior experience. Zolon’s quote is approximately 20% higher than the highest priced awardee, Spatial Front, a difference of \$42,589,333.00[,] and approximately 29% higher than the lowest priced awardee, IT Concepts, a difference of \$55,972,908. While Zolon received favorable technical ratings, the proposed price of \$254,182,678.00 is significantly higher than all five awardees and is therefore determined not to represent the best value to the government.

Although the revised analysis of Zolon’s detailed experience resulted in an increase to their rating for this factor, their past performance rating remained “very good” and their proposed price is approximately 20% higher than the highest-priced awardee (Spatial Front), who received an excellent rating not only for detailed experience, but also for past performance. Therefore, an award to Zolon would not be illustrative of best value.

AR, Tab 6, Summary of Award with Corrective Action, at 8.

In our view, this aspect of the agency’s best-value tradeoff decision was unobjectionable. The record is consistent with the requirement that where, as here, a procurement conducted pursuant to FAR subpart 8.4 provides for award on a “best value” basis, it is the function of the source selection official to perform a price/technical tradeoff, that is, to determine whether one quotation’s technical superiority is worth its higher price. *InnovaTech, Inc.*, B-402415, Apr. 8, 2010, 2010 CPD ¶ 94 at 3, 6 n.8; *The MIL Corp.*, B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 13. Accordingly, this protest ground is denied.

The protest is denied.

Thomas H. Armstrong
General Counsel