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Decision

Matter of: Navarre Corporation

File: B-419088.2

Date: March 4, 2021

William M. Weisberg, Esq., Law Offices of William Weisberg, PLLC, for the protester.
Sarah Schauerte Reida, Esq., Legal Meets Practical, LLC, for KTS Solutions, Inc., the intervenor.

Laetitia C. Coleman, Esq., Department of Veterans Affairs, for the agency.
Emily R. O'Hara, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of the awardee's offer is denied where the record shows that the evaluation was consistent with the terms of the solicitation and was reasonable.

DECISION

Navarre Corporation, a service-disabled veteran-owned small business (SDVOSB) of Navarre, Florida, protests the award of a contract to KTS Solutions, Inc., of Portsmouth, Virginia, under request for quotations (RFQ) No. 36C24620Q0421, issued by the Department of Veterans Affairs (VA) for wheelchair van transportation services. Navarre contends the agency's evaluation of KTS's past performance and the resulting award decision were improper.

We deny the protest.

BACKGROUND

The procurement was conducted using the simplified acquisition procedures set forth in Federal Acquisition Regulation (FAR) part 13. Agency Report (AR), Tab 3, RFQ at 43. The RFQ, issued on June 4, 2020, as a SDVOSB set-aside, contemplated the award of a fixed-priced contract for a base period and one 1-year option.¹ *Id.* at 1. Award would

¹ Although issued as an RFQ for the acquisition of commercial items under the simplified acquisition procedures of FAR part 13, the solicitation refers to firms as both

be made on a best-value tradeoff basis, using the following evaluation factors: technical, past performance, and price. *Id.* at 46. Technical and past performance, when combined, were significantly more important than price. *Id.*

The contract was awarded to KTS on August 27. AR, Tab 2, Contracting Officer's Statement (COS) at 4. Navarre filed its first protest with our Office on September 4. AR, Tab 1, Memorandum of Law (MOL) at 2. On September 30, the VA notified our Office that it intended to take corrective action, proposing to reevaluate offers and make a new selection decision. As a result, we dismissed the protest as academic on October 2. *Navarre Corp.*, B-419088, Oct. 2, 2020 (unpublished decision).

The VA completed its reevaluation on November 24, with the final evaluation ratings and prices of KTS and Navarre as follows:²

	KTS	Navarre
Technical	Excellent	Good
Past Performance	Substantial Confidence	Satisfactory Confidence
Price	\$2,788,827	\$2,956,450

AR, Tab 6, Award Decision at 23. Award was again made to KTS. *Id.* at 24. After receiving a brief explanation of award on December 4, Navarre filed this protest with our Office on December 10.

DISCUSSION

The protester argues that the VA's evaluation of KTS's past performance was inconsistent with the terms of the solicitation, and thus the resulting evaluation and selection decision were in error.³ Protest at 5. Specifically, Navarre contends that the VA should have eliminated KTS from the competition because KTS failed to provide

"vendors" and "offerors," and the responses submitted as an "offer" and "quote." For the sake of consistency with the record, and because the result of the competition is an award of a contract with a base and option year, we refer to firms that competed here as offerors who submitted offers for the award of a contract.

² The available adjectival ratings for the technical factor were: excellent, good, satisfactory, and unacceptable. The available confidence assessment ratings for the past performance factor were: substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence. RFQ at 47-49.

³ The protester initially raised other allegations in its protest. In its comments to the agency report, however, the protester admitted that one assertion "was an error on Navarre's part," and would not be pursued. Comments at 1. Additionally, Navarre withdrew "its challenge to the evaluated ratings the VA gave to KTS and Navarre." *Id.* at 3. The only remaining allegation that has not been withdrawn or otherwise abandoned is discussed below.

past performance references for contracts that had been completed within the past three years. Comments at 2.

The agency responds that the past performance evaluation of KTS's offer was reasonable and consistent with the terms of the solicitation. MOL at 9. The agency notes that the solicitation required "the successful offeror, to have a minimum of 3 years of experience performing commercial Wheelchair Van Transportation Services that are similar or greater in scope, magnitude and complexity to the effort described in the solicitation," but that the submission of customer satisfaction information for contracts completed in the past three years was not a solicitation requirement. COS at 5; MOL at 7. The VA asserts that the instructions to offerors do not "state this information as a requirement[,] instead the solicitation indicates that references for same or similar type contracts are desired." MOL at 8. The agency contends that the instructions "simply asked offerors to provide available information such as . . . satisfaction ratings for contracts completed in the past three years . . . to capture recent and relevant past performance data that otherwise will not be available to the [contracting officer] in the government data sources." COS at 5.

An agency's evaluation of past performance, including the significance of an offeror's past performance history, is a matter of agency discretion, which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. *Gulf Civilization Gen. Trading & Contracting*, B-417586, Aug. 23, 2019, 2019 CPD ¶ 300 at 6. Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations. *Recogniti, LLP*, B-410658, Jan. 21, 2015, 2015 CPD ¶ 49 at 4. A protester's disagreement with the agency's evaluation judgements concerning the merits of past performance does not establish that the evaluation was unreasonable. *Gulf Civilization, supra*.

The VA and protester disagree about whether the instructions for the submission of customer satisfaction information for contracts completed in the past three years was a requirement that KTS was mandated to follow in order to be eligible for award. When a dispute exists as to a solicitation's actual requirements, we begin by examining the plain language of the solicitation. *Bluehorse Corp.*, B-414809, Aug. 18, 2017, 2017 CPD ¶ 262 at 5. If the solicitation language is unambiguous, our inquiry ceases. *Id.* We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. *Kardex Remstar, LLC*, B-418157, Jan. 16, 2020, 2020 CPD ¶ 56 at 6.

Here, the only reasonable interpretation of the term at issue is the interpretation advocated by the agency--that the submission of customer satisfaction surveys for contracts completed within the past three years was not a requirement. We find that the protester misconstrues the requested information found in the RFQ's instructions. The provision that Navarre contends is a requirement is found in the RFQ's "instructions to

offerors” section. RFQ at 45. There, the RFQ states that “references for same or similar type contracts are *desired*.” *Id.* (emphasis added). Two types of references were requested by the solicitation: (1) quality and satisfaction ratings for contracts completed in the past three years (from which the agency would assess customer satisfaction with overall job performance); and (2) a list of references for contracts completed or ongoing within the past three years (from which the agency would assess the quality of the offeror’s performance).⁴ *Id.* The provision at issue here states that the VA desired:

(a) Quality and Satisfaction Ratings for Contracts Completed in the Past Three Years:

i. Provide any information currently available (letters, metrics, customer surveys, independent surveys, etc.) which demonstrates customer satisfaction with overall job performance and quality of completed product for the same or similar type of contract. In addition, explain corrective actions taken in the past, if any, for substandard performance and any current performance problems.

Id.

Nothing in this provision indicates that an offeror was required to submit customer satisfaction surveys for contracts completed within the past three years or that an offeror would be disqualified from award were the information not provided to the agency. Here, the at-issue term was found in the instructions section of the RFQ and simply requested that offerors provide “any” information that offerors may have “currently available,” or on hand, to aid the VA in assessing past performance. *Id.* This language does not suggest that the agency required offerors to seek out or provide this information if it was not readily available. On the contrary, the RFQ explicitly stated that this information was only *desired* by the agency, rather than required. *Id.*

Reading the solicitation as a whole and in a manner that gives effect to all provisions, we agree with the agency’s interpretation that customer satisfaction information for contracts completed within the past three years was not a material requirement. See *Kardex Remstar, supra*. As such, the agency’s evaluation of KTS’s past performance was not inconsistent with the terms of the solicitation, and the agency was not required to eliminate KTS from award consideration or downgrade KTS’s past performance rating for not providing customer satisfaction information on contracts completed in the past three years.

⁴ To be clear, the protester is only alleging that KTS did not submit satisfaction surveys for contracts completed in the past three years; it is not asserting that KTS does not have the requisite minimum three years of relevant experience. Any argument to that effect would simply be without merit as KTS’s offer plainly demonstrates that at least one of its past performance references was for a contract with the VA to provide wheelchair van transportation services from May 2013 to July 2017. AR, Tab 8, KTS Offer at 37.

Finally, even if we were to agree with the protester's assertion--which we do not--that the solicitation required offerors to submit customer satisfaction information for contracts completed within the past three years, this still would not provide a basis for the agency to eliminate KTS's offer from consideration for award. The solicitation noted that the purpose of the past performance evaluation was to allow the agency to assess an offeror's ability to perform the effort described in the RFQ, based on the offeror's present and past performance. RFQ at 48.

As noted above, the past performance evaluation would result in assignment of one of five performance confidence ratings. *Id.* The RFQ instructed the agency to assign a rating of unknown confidence to "[o]fferors with no relevant past or present performance history or the offeror's performance record is so limited that no confidence assessment rating can be reasonably assigned," meaning that the past performance rating would have been treated neither favorably nor unfavorably. *Id.* As a result, if this had been a requirement, and KTS had no contract references completed within the past three years to submit with its offer, KTS would have, at worst, been assigned an unknown confidence rating. Contrary to the protester's assertions, the lack of past performance references would not have required the agency to eliminate KTS from consideration for award.

Here, we find no basis to conclude that the agency's evaluation was inconsistent with the terms of the solicitation. Given that Navarre has not prevailed on its challenge to the agency's evaluation, and the record shows that the agency's selection decision had a reasonable basis and was properly documented, we see no basis to disturb the selection decision here. See *Raytheon Co.*, B-417524.2, B-417524.3, Dec. 19, 2019, 2020 CPD ¶ 50 at 10.

The protest is denied.

Thomas H. Armstrong
General Counsel