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Decision

Matter of: MindPetal Software Solutions, Inc.

File: B-420070; B-420070.2

Date: November 18, 2021

Devon E. Hewitt, Esq., Protorae Law PLLC, for the protester.
William B. Blake, Esq., Department of the Interior, for the agency.
Christine Milne, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency unreasonably and unequally evaluated proposals is denied where the record shows that the agency evaluated the proposals in accordance with the terms of the solicitation, and did not treat offerors unfairly.

DECISION

MindPetal Software Solutions, Inc., a small business of Rockville, Maryland, protests the award of a contract to SourceLab, Inc. doing business as GuideOne Mobile, a small business of Brooklyn, New York, under request for proposals (RFP) No. 140P2121R0011, issued by the Department of the Interior, National Park Service (NPS), for digital support services for the NPS mobile application. The protester argues that the agency improperly and unequally evaluated proposals and made a flawed best-value decision.

We deny the protest.

BACKGROUND

The RFP was issued on May 3, 2021, as a combined synopsis/solicitation of commercial items in accordance with Federal Acquisition Regulation subpart 12.6 and part 13. Agency Report (AR), Tab 3, RFP at 3. The NPS manages approximately 31 park-specific applications, and recently launched its first consolidated NPS application (called the “NPS App”) to easily connect visitors with all parks and provide service-wide information. AR, Tab 4, RFP, attach. 1, Performance Work Statement (PWS) at 2, 5. Through this solicitation, the NPS sought support for development, user experience/interface, and maintenance services for the NPS App. *Id.* at 5.

The RFP contemplated the award of a combined fixed-priced/labor hour contract to be performed over a 1-year base period and a 6-month option period. RFP at 2. Award would be made to the firm whose proposal was the most advantageous to the agency, considering non-price evaluation factors and price. *Id.* at 4-5. The non-price factors, in descending order of importance, were: technical capability, overall experience, key personnel, management capability/company resume, and past performance. *Id.* The technical capability factor included two subfactors: operations and maintenance, and design/development/documentation. *Id.* at 4. The non-price factors, when combined, were more important than price. *Id.* at 10-12.

The agency received proposals from 17 firms by the May 21 closing date. Contracting Officer's Statement (COS) at 2. GuideOne's proposal did not include separate sections titled "overall experience" or "management capability/company resume," but did include a section titled "work samples." AR, Tab 10, GuideOne Technical Proposal at 14-16. During the course of the evaluation, the NPS asked GuideOne whether the "work samples" section was meant to represent its company resume and GuideOne replied in the affirmative. AR, Tab 18, GuideOne Clarification Request and Response. The technical evaluation panel (TEP) found that only the proposals of GuideOne and MindPetal were technically acceptable. Both firms were asked to reduce their prices and both submitted final proposal revisions (FPRs). The final evaluation results were:

	MindPetal	GuideOne
Technical Capability		
Operations & Maintenance	Acceptable	Good
Design/Development/Documentation	Acceptable	Good
Overall Experience	Good	Good
Key Personnel	Good	Outstanding
Management Capability	Good	Good
Past Performance	Acceptable	Outstanding
Overall Rating	Acceptable	Good
Price	\$1,594,997	\$1,585,000

AR, Tab 21, TEP Consensus Report at 3, 7-8.

The narrative in the TEP's consensus document focused almost exclusively on the past performance of the two firms, both of whose work was known to the agency. The contracting officer explained that MindPetal developed the technical architecture for the NPS App and, as a subcontractor, provided actual development of the NPS App and other support. COS at 10. GuideOne has developed individual national park applications (apps) and dozens of ParkMobile apps¹ for individual national parks within the larger ParkMobile app architecture that GuideOne also developed. *Id.*

¹ The ParkMobile app allows users to find parking spaces, reserve them in advance, and pay parking meters online without needing to return to physical parking meters. <https://parkmobile.io> (last visited Monday, November 8, 2021).

With respect to MindPetal's past performance, the TEP noted that the NPS experience with the firm was that its process with the current NPS App codebase often resulted in higher costs than expected. AR, Tab 21, TEP Consensus Report at 3. Acknowledging that part of this contract was priced on a labor-hour basis, the TEP stated there was a risk that the processes would result in a very limited amount of work being accomplished given the rate at which labor hours are utilized. *Id.* at 4. The TEP noted other concerns including sloppy invoicing and a failure to provide staff with required skill sets. *Id.* With respect to GuideOne's past performance, the TEP noted that the firm had extremely relevant skills and experience as demonstrated by its work on numerous individual park apps. *Id.* at 3. The TEP also noted that GuideOne consistently received excellent past performance reviews for providing quality products within budget and meeting deadlines, and that its code architecture within the ParkMobile app framework was the model the agency wants to use for features in the NPS app. *Id.* at 9-10.

In the source selection decision, the contracting officer found that both offerors provided technically acceptable proposals, had experience working with the NPS native mobile apps, and offered fair and reasonable prices. AR, Tab 22, Source Selection Decision Document at 6. The contracting officer concluded that GuideOne's proposal provided less risk with respect to potential cost overruns, and this, combined with its lower price, was the deciding factor in determining the best value. *Id.* After MindPetal was advised of the award decision, the firm requested and received a debriefing. In its written debriefing, the agency provided to MindPetal the verbatim comments from the TEP consensus report regarding the evaluator's concerns about the firm's past performance.

DISCUSSION

In its initial protest, MindPetal argues that the NPS improperly evaluated proposals under the overall experience and past performance factors because, the firm alleges, its experience and past performance were superior. MindPetal did not rebut or even address the negative past performance information disclosed during its debriefing.² In a supplemental protest, MindPetal argues that GuideOne should have been ineligible for award for failing to title sections of its proposal to correspond to two of the evaluation factors, that the NPS did not treat offerors similarly under the non-price evaluation factors, and that past performance was unduly emphasized in the selection decision.³

² As a result, to the extent that MindPetal challenges this past performance information in later pleadings, such challenges are untimely. 4 C.F.R. § 21.2(a)(2).

³ MindPetal also alleges, without reference to any factual support, that GuideOne must have had improper access to MindPetal's pricing because GuideOne lowered its FPR price to a level slightly below that of MindPetal. This unsupported conjecture amounts to a speculative argument and will not be considered. *JMark Services, Inc.*, B-417331.2, July 22, 2019, 2019 CPD ¶ 277 at 7. Further, any protest allegations not specifically addressed in this decision are denied.

Where a protester challenges the evaluation of its proposal in a procurement using simplified acquisition procedures, we will review the record to ensure the agency conducted the procurement consistent with a concern for fair and equitable competition, evaluated proposals in accordance with the terms of the solicitation, and exercised its discretion reasonably. *First American Business Solutions*, B-420002, Sept. 29, 2021, 2021 CPD ¶ 322 at 3. As discussed below, MindPetal has not provided a basis to sustain the protest.

Technical Capability

MindPetal argues that the agency unequally evaluated proposals under the technical capability factor. MindPetal generally contends that the evaluation comments for both firms were similar and should have yielded the same ratings.

A contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. *Unitec Distribution, supra* at 4. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between offerors' proposals. *Id.* MindPetal's arguments generally overlook the fact that GuideOne's proposal was assessed more strengths and fewer weaknesses than its own, fail to acknowledge its own weaknesses, and fail to persuasively challenge the NPS conclusion that aspects of GuideOne's technical capability were of more value to the agency. We discuss an illustrative example concerning the second subfactor under the technical capability factor.

Under the design/development/documentation subfactor, offerors were required to demonstrate a management and development strategy with time frames for managing tasks, and 5 years' experience performing various tasks. RFP at 4-5. One weakness identified by the agency was that MindPetal's proposal did not clearly demonstrate 5 years of experience performing certain required tasks. The agency reached this conclusion because the firm's app work with NPS was for less than 5 years, and the information in the proposal about projects with other agencies was not specific. AR, Tab 13, TEP Member Evaluation at 2.

MindPetal argues that the agency disparately evaluated proposals because the NPS did not affirmatively conclude that GuideOne had the required 5 years' experience. This argument is factually incorrect.

The record here shows that one TEP member found that GuideOne's "years of experience with NPS apps have afforded GuideOne with more than 5 years[] experience for each of [the tasks required]." AR, Tab 17, TEP Member Evaluation at 2. The TEP Consensus Report further states that "GuideOne has demonstrated experience in the full range of skills that are required by this RFP. They have more than a decade of demonstrated experience producing native mobile apps with the full range of features that we now seek for this NPS App." AR, Tab 21, TEP Consensus Report at 8. Thus, the record reflects that the agency was clearly willing to credit both firms

with the experience gained with their NPS app work. Since the agency recorded that GuideOne met the requirement, and MindPetal does not dispute the agency's finding with respect to its proposal, we see no basis to conclude that these proposals were treated unequally.

Overall Experience

MindPetal argues that the agency unequally evaluated proposals under the overall experience factor because both firms received the same rating but GuideOne did not include the required information in its proposal.⁴

In this regard, under the overall experience factor, the RFP included two requirements. The first required "5 years' experience with HTML5, JavaScript, jQuery, and Ajax," and the second required "5 years knowledge of MySQL, PostgreSQL, Microsoft SQL Server, or a similar database management system." RFP at 5. Both proposals were rated as good under this factor.

The record shows the TEP chair assigned GuideOne's proposal a deficiency because the firm did not provide a description of its overall experience with the technologies identified above and the chair was unable to determine "from other content that [GuideOne had] this experience." AR, Tab 15, TEP Chair Evaluation at 4. However, the record also shows that two other TEP members found that GuideOne demonstrated experience with all of the required technologies, and that its experience "providing the first generation, park-specific apps for the NPS includes ample experience in all of these technologies." AR, Tab 16 and 17, TEP Member Evaluations at 3 and 4, respectively. Because the TEP consensus report did not reconcile these comments and because the record did not otherwise explain the discrepancy, our Office asked for a statement from the TEP chair explaining the different evaluator conclusions. Notice of Questions Regarding the Record at 1.

The TEP chair explained that all of these technologies work together as one codebase that interfaces with a database management system that has been used by the existing NPS ParkMobile applications since they were launched in 2010. TEP Chair Statement at 1-2. The chair further states that GuideOne developed the platform for all of these original park applications and has maintained them since their launch in 2010. As a result, the TEP chair explains, GuideOne has more than 10 years of experience in the required technologies, this experience is "common knowledge" among NPS program staff, and the technologies are inherent in the ParkMobile applications. TEP Chair Statement at 2. When asked to provide citations to GuideOne's proposal to show that it

⁴ MindPetal also argues that the agency should have eliminated GuideOne's proposal from consideration because its proposal did not include a section titled "overall experience." Comments & Supp. Protest at 2. However, the RFP did not provide for rejection of proposals for failing to include separate narrative sections mirroring the evaluation factors. RFP at 4.

fully met the requirement, the TEP chair cited to portions of the proposal where GuideOne references its work with the ParkMobile apps. *Id.*

Our decisions have explained that an agency may consider experience information known to the agency and not found in the firm's proposal. See, e.g., *Network Security Systems Plus, Inc.*, B-416755, Dec. 6, 2018, 2018 CPD ¶ 4 at 7; *SNAP, Inc.*, B-409609, B-409609.3, June 20, 2014, 2014 CPD ¶ 187 at 8; *Nuclear Prod. Partners, LLC; Integrated Nuclear Prod. Sols. LLC*, B-407948 *et al.*, Apr. 29, 2013, 2013 CPD ¶ 112 at 20 (no logical basis to preclude an agency from considering information about which it is aware in evaluating an offeror's corporate experience).⁵ Here, the TEP members reasonably used their personal knowledge to determine that GuideOne's experience with the ParkMobile app met and exceeded the requisite experience set forth under the overall experience factor and warranted a rating of good. MindPetal has not shown that the evaluation is improper.

Key Personnel

MindPetal argues that the agency unequally evaluated proposals under the key personnel factor because MindPetal's proposed key personnel had superior qualifications but GuideOne received a higher rating.

The RFP identified the position of project manager as the sole key personnel position, AR, Tab 7, RFP amend. 1 at 10, but did not include any evaluation criteria for assessing individuals proposed for the position. RFP at 5. Both MindPetal and GuideOne provided resumes for individuals to be part of their team in addition to the proposed project manager and the agency considered the qualifications of all proposed key personnel in its evaluation. AR, Tab 12 and 14, TEP Member Evaluations at 4 and 5, respectively; AR, Tab 15-17, TEP Member Evaluations at 4-5. The TEP noted that MindPetal proposed a key person who had an understanding of the agency's requirements; proposed a project manager and an alternate; and had knowledge of the information required (albeit not necessarily with large-scale mobile app projects). AR, Tab 12 and 14, TEP Member Evaluations at 4 and 5, respectively. In contrast, the TEP found that GuideOne's key person had an impressive list of app experience, and that its team included the developers of the NPS ParkMobile individual apps and the current NPS app as well as the designers of the ParkMobile app and current NPS app. AR, Tab 15-17, TEP Member Evaluations at 4-5.

MindPetal's argument that its proposal warranted a higher rating because its key personnel had superior educational and other credentials amounts to disagreement with the agency's evaluation. Such disagreement, standing alone, does not provide a basis to sustain the protest. *Integrity Management Consulting, Inc.*, B-418776.5, June 22, 2021, 2021 CPD ¶ 245 at 8. The RFP did not state that such credentials were preferred or required, and MindPetal has not shown that the agency's preference for the

⁵ We recognize that the specific terms of a solicitation could properly limit such consideration. MindPetal has identified no such limiting terms and we have found none.

more specific and relevant experience of GuideOne key personnel was unreasonable, unequal, or inconsistent with the solicitation's terms.

Management Capability/Company Resume

MindPetal argues that GuideOne's proposal should have been rejected because it exceeded the page limits the solicitation established for offerors to respond to the management capability/company resume factor. The firm also argues that its proposal should have been rated higher and GuideOne's lower under this factor because the protester's proposal was superior.

The RFP set a 2-page limit for providing information in response to this factor and did not include any evaluation criteria. RFP at 5. In a question and answer exchange incorporated into the solicitation by amendment, the agency stated that it was looking for "any additional information beyond the company technology stack capability such as certifications or any other information that supports the company's ability to provide the services outlined in the PWS." RFP, amend. 1 at 10.

As stated above, based on the awardee's affirmative response to the agency's inquiry about this factor, the agency considered GuideOne's "work samples" to be its company resume. The 3-page "work samples" portion of GuideOne's proposal discussed three projects, one for each page.⁶ AR, Tab 10, GuideOne Technical Proposal at 14-16. The contracting officer concedes that this section of GuideOne's proposal exceeded the solicitation's page limits by one page, but states that, at most, the agency should have disregarded the third page and even if it had, the results would have been the same.⁷ Supp. COS at 3. The contracting officer explains that, in fact, the first page, which identifies the ParkMobile app program, was all that was needed to show that GuideOne's approach met the agency's needs in this area, and that the substantive information on the third page for a third non-NPS work sample was repetitive and not necessary. *Id.*

Our review of the record confirms that the agency's focus in evaluating the GuideOne proposal was on the first project, the ParkMobile app. One TEP member commented that the work samples were "solid and indicate the ability to do work on the scope and scale required" for the NPS servicewide app. AR, Tab 16, TEP Member Evaluation

⁶ The three projects provided by GuideOne were: the NPS ParkMobile platform; the Holocaust Memorial of Miami Beach app; and app work for the Boris Yeltsin Presidential Museum. AR, Tab 10, GuideOne Technical Proposal at 14-16.

⁷ Additionally, our Office has explained that an agency may waive or relax a material solicitation requirement when the award will meet the agency's actual needs without prejudice to the other offerors. *Inalab Consulting, Inc.*, B-418950, Oct. 9, 2020, 2020 CPD ¶ 327 at 6. While MindPetal argues that if it had a third page it "might have" included information that could have increased its rating, Comments & Supp. Protest at 4 n.2, such a speculative position, standing alone, does not establish competitive prejudice.

at 5. The evaluator further explained that the NPS ParkMobile project was “of particular interest” because it was essentially the first generation of the NPS App which led to the design for the current servicewide app. *Id.* Given the clarity of the record on this topic, and the general nature of the evaluation criteria, MindPetal has not provided any basis to find the evaluation results would have been different had the agency only considered the first two pages of GuideOne’s work samples. As for MindPetal’s assertion that it should have been rated higher based on such things as its staffing plan and other features, there were no requirements or preferences for such features and the firm has not shown that the agency was required to find them of any particular value.

Past Performance

MindPetal also argues that the NPS unreasonably evaluated proposals under the past performance factor because it failed to consider that the prior projects submitted by GuideOne were significantly smaller in size than the requirement at issue, and smaller than MindPetal’s prior projects.⁸

Offerors were required to submit past performance questionnaires for up to three efforts similar to the effort here in scope, magnitude, and complexity. RFP at 5. The TEP noted that GuideOne’s past performance was extremely relevant because it displayed exactly the range of skills the agency sought here, and because GuideOne had developed and maintained more than 25 ParkMobile apps. AR, Tab 21, TEP Consensus Report at 8. The agency also noted that GuideOne had consistently received excellent ratings on projects it had performed, specifically meeting deadlines with quality results and within budget. *Id.* at 9. As MindPetal argues, the size of GuideOne’s past projects were significantly smaller than the value of the procurement here, and smaller than the projects submitted by MindPetal, yet there is no indication in the record that the agency considered these differences.

In response, the contracting officer acknowledges these size differences but asserts that GuideOne’s experience gained in performing these projects was highly relevant to the current project, rendering the size of GuideOne’s prior projects of less importance. COS at 10. More important, the contracting officer explains, GuideOne had excellent past performance comments, whereas MindPetal had received negative past performance feedback multiple times as mentioned above, which is what primarily created the difference in the ratings. *Id.*

⁸ MindPetal also argues that the NPS was biased against it because of a personal conflict with its president, citing negative past performance comments. However, government officials are presumed to act in good faith, and a protester’s contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not consider allegations based on mere inference, supposition, or unsupported speculation. *IDIS Corp.*, B-414429, B-414429.2, June 12, 2017, 2017 CPD ¶ 186 at 7 n.10. No such evidence has been provided here.

The record confirms that the focus of the evaluation of GuideOne's past performance was on its relevance and quality, and it is unclear whether the agency contemporaneously considered the size of its past projects. However, MindPetal has not shown that a consideration of the difference in the size of the two offerors' past projects would have impacted the final evaluation results, given the relevance and quality of GuideOne's past performance. As a result, even if the agency committed an error in not contemporaneously considering the difference in the size of the two offerors' past projects, MindPetal has not demonstrated that it was prejudiced by this hypothetical error. See *DRS Network & Imaging Systems, LLC*, B-413409, B-413409.2, 2016 CPD ¶ 315 at 10.

Source Selection Decision

Finally, MindPetal argues that the agency gave too much weight to the least important non-price factor, past performance, by relying on it as the primary basis for award. The firm ignores the qualitative differences between the two firms' past performance that caused the agency to use it as a discriminator. Moreover, the fact that an agency's source selection decision turns on an evaluation consideration that is designated as less important is unobjectionable; there is no requirement that the key award discriminator be the most heavily weighted factor. *KIRA, Inc.*, B-287573.4, B-287573.5, Aug. 29, 2001, 2001 CPD ¶ 153.

The protest is denied.

Edda Emmanuelli Perez
General Counsel