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Decision

Matter of: Vital Link, Inc.

File: B-405123

Date: August 26, 2011

Stan Hinton, Esq., Stan Hinton Law Office, for the protester.
Richard J. Leidl, Esq., Richard J. Leidl, PC, for Atec, Inc., an intervenor.
Col. Mark S. Teskey, Amanda M. Willis, Esq., Maj. Christy J. Barry, and Kurt H. Eberle, Esq., Department of the Air Force, for the agency.
Jacqueline Maeder, Esq., and Scott H. Riback, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's evaluation of awardee's past performance as relevant was reasonable and consistent with the terms of the solicitation, which afforded the agency the discretion to consider past performance examples involving similar--but not identical--efforts in determining relevance.

DECISION

Vital Link, Inc., of Sealy, Texas, protests the award of a contract to Atec, Inc., of Stafford, Texas, under request for proposals (RFP) No. FA8100-11-R-0007, issued by the Department of the Air Force for the relocation, and repair/refurbishment of two A/F32T-9 (T-9) noise suppressors and the fabrication and installation of thrust frames and testing systems within each T-9. The protester contends that the evaluation of Atec's past performance was unreasonable.

We deny the protest.

The RFP, issued March 2, 2011 under Federal Acquisition Regulation (FAR) Part 12, Commercial Items, contemplated the award of a 15-month fixed-price contract for: (1) relocation of two T-9 noise suppressors (one from Canon Air Force Base, New Mexico; one from Aviano Air Base, Italy) to Tinker Air Force Base, Oklahoma; (2) repair/refurbishment of the T-9s; and (3) fabrication and installation of a thrust frame system within each T-9. Agency Report (AR), Tab 1, Memorandum of Law, at 2; AR, Tab 2, Contracting Officer (CO) Statement, at 2. The T-9 noise suppressor is a large structure (11,232 square feet and 28 feet 7 inches high) used by the Air

Force for aircraft engine testing. The standard T-9 configuration includes a control room, augmentor tube and exhaust stack. Unlike the standard T-9 configuration, this solicitation also required depot thrust frames, monorail and hoist systems, and ancillary engine testing systems for the relatively new F135 engine. AR, Tab 1, Memorandum of Law, at 3; AR, Tab 2, CO Statement, at 2.

The solicitation included five contract line items (CLINs) for the basic work and three CLINs for options to perform varying additional work on one or both T-9s. RFP at 3-13. The RFP advised that the Air Force would select one option, but offerors were required to price all three options in their proposals. RFP at 38. Award was to be made to the responsible offeror whose proposal was deemed most advantageous to the government, considering past performance and price. Id. at 42. Past performance was deemed to be approximately equal to price in the evaluation and was to be assigned an adjectival rating of either substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence.¹ Id. at 43.

The RFP required offerors to submit past performance information on no more than three contracts within the last 5 years that the offeror considered most relevant in demonstrating its ability to perform the required work. RFP at 39. Offerors were also required to submit information on no more than three recent contracts for any teaming partners or subcontractors. Id. The solicitation specified that “references for the same or similar type contracts are desired.” Id. The RFP contained definitions of the degree of relevance for the past performance references ranging from very relevant to not relevant. RFP at 40. For example, “very relevant” performance was defined as efforts involving essentially the same magnitude of effort and complexity as required under the solicitation, and “relevant” performance was defined as efforts involving much of the magnitude of effort and complexity as required under the solicitation. Id. at 40. Additionally, in the provision of the solicitation outlining the basis for the agency’s source selection decision, the RFP provided:

Relevant performance includes performance of efforts involving disassembly, remanufacture/repair, shipping, and reassembly of T-9 Noise Suppressors or similar jet engine test cells that are similar or greater in scope, magnitude and complexity than the effort described in this solicitation, and fabrication and installation of non-standard thrust frames, monorail, hoists, and support structures for T-9 noise Suppressors that are similar or greater in scope, magnitude and complexity than the effort described in this solicitation.

¹ As relevant here, “substantial confidence” was defined as a high expectation that the offeror will successfully perform the required effort. RFP at 43.

RFP at 43.

The solicitation advised offerors that the agency initially would evaluate by adding the total price for the option CLINs to the total price for the basic requirement CLINs. The agency would then determine which performance option to further evaluate for award. RFP at 42. Proposals were to be ranked according to price, including the selected price option. Id. If the lowest-priced proposal was assigned a “substantial confidence” performance rating (and the offeror was found to be responsible), that offer would constitute the best value and the evaluation process would stop at that point. Id. at 44. If, on the other hand, the lowest-priced offer was not assigned a substantial confidence past performance rating, the next-low-priced offer would be evaluated and the evaluation process would continue, in order of price, until a proposal was determined to have a substantial confidence performance assessment or until all proposals were evaluated. In the event that none of the proposals was rated substantial confidence for past performance, the source selection authority (SSA) would then make an integrated assessment best value award decision. Id.

The agency received three proposals, including Vital Link’s and Atec’s, by the deadline for proposal submission. AR, Tab 2, CO Statement, at 4. The CO completed the initial price evaluations, decided to further evaluate performance option III with the basic requirement for award purposes, and ranked the offers according to price. Id. Atec submitted the low price of \$8,672,220; the third offeror, Offeror A, submitted the second-low price, and Vital Link submitted the highest price of \$11,468,240. Id. Since Atec was the low-priced offeror, its past performance was reviewed by a two-member past performance evaluation team (PPET), which awarded Atec a “substantial confidence” performance rating. AR, Tab 1, Memorandum of Law, at 8-9. The source selection authority (SSA) reviewed the price and past performance evaluations and determined that Atec’s proposal represented the best value. Id. at 9. Award was made without discussions on May 16. After a debriefing, Vital Link protested the award to our Office.

Vital Link challenges the Air Force’s evaluation of Atec’s past performance. Vital Link principally argues that the agency’s determination that Atec’s prior contracts were relevant did not comport with the terms of the solicitation. According to the protester, the RFP--and more particularly the language quoted above--established two definitions of relevant contracts. First, the solicitation required relevant past performance for relocation (disassembly, remanufacturing/repair, shipping and reassembly) of T-9 noise suppressors or similar jet engine test cells. Second, the solicitation required relevant past performance for the fabrication and installation of thrust frames, monorails, and hoists, specifically for T-9 noise suppressors. According to Vital Link, Atec’s past performance proposal did not include any relevant contracts under either of these two definitions of relevant past performance.

We find no merit to this aspect of Vital Link’s protest. Where a solicitation calls for the evaluation of past performance, we will examine the record to ensure that the

evaluation was reasonable and consistent with the terms of the solicitation and procurement statutes and regulations. Divakar Techs., Inc., B-402026, Dec. 2, 2009, 2009 CPD ¶ 247 at 5. Additionally, where, as here, a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that reasonably gives effect to all its provisions. Solec Corp., B-299266, Mar. 5, 2007, 2007 CPD ¶ 42 at 2. We will not read a provision restrictively where it is not clear from the solicitation that such a restrictive interpretation was intended by the agency. XTec, Inc., B-299744.2, B-299744.3, Aug. 6, 2007, 2007 CPD ¶ 148 at 11.

Here, while the RFP did include the language referenced by the protester in support of its position, it also included other provisions that make it clear the agency intended to assess the degree of relevancy of an offeror's past performance. As noted, the RFP included provisions defining the degree of relevance of an offeror's past performance ranging from "very relevant" to "not relevant." If, as asserted by the protester, the agency intended to confine its consideration of an offeror's past performance exclusively to those contracts that included the specific attributes identified in the language relied on by the protester, these definitions of relevancy would be superfluous. Further, the RFP specified that the agency would consider not only contracts that were the same as the requirements of the RFP, but also those that included work that was similar to the requirements of the RFP. Finally, even the language relied on by the protester is not exclusive; rather, it identifies relevant past performance as "including" the performance attributes listed in the provision, but does not exclude consideration of other performance attributes as relevant. In light of these considerations, we conclude that the protester's reading of the RFP is not reasonable.

The record also shows that the agency's evaluators gave careful consideration to the contracts included by Atec in its proposal for both it and its subcontractor, and specifically compared the relevance of the performance attributes in those contracts to the requirements of the RFP.

Atec submitted three references for evaluation: (1) a commercial contract for [redacted] to provide engineering, manufacturing, and installation services for a [redacted] with a value of approximately [redacted]; (2) a contract for a large-scale turboshaft engine test facility integration at the Naval Air Depot at Cherry Point, North Carolina, with a value of approximately \$4.6 million; and (3) a contract with [redacted] for the design, fabrication and commissioning of a [redacted] with a value of approximately [redacted]. AR, Tab 7, Atec Past Performance Proposal Part I, at 1-55. Similarly, Atec also submitted two references for its subcontractor, Swanda Brothers: (1) a contract with the Marine Corps Air Station, Cherry Point, North Carolina for the repair of the T-10 Test Cell, with a value of approximately \$3.9 million; and (2) a contract with the Naval Air Station for T-10 jet engine test cells at Meridian, Mississippi and Kingsville, Texas, with a value of approximately \$3.8 million. AR, Tab 7, Atec Past Performance Proposal Part II, at 1-13.

The PPET awarded Atec a “substantial confidence” past performance rating because its references involved the design, transport and assembly of engine test cells of equal or greater scope, magnitude and complexity as compared to the T-9 relocation effort required under the solicitation and involved the fabrication and installation of custom thrust frames and ancillary test systems for engine test cells. AR, Tab 8, PPET Rating Team Worksheet, at 1-2.

In documenting their relevance determination, the evaluators stated that Atec and Swanda have a long history of test cell and testing-related experience, recent teaming experience, and the ability and experience to simultaneously manage and execute testing at more than one facility. AR, Tab 8, PPET Rating Team Worksheet, at 1-2. The evaluators also noted that Swanda Brothers is a manufacturer of test cell materials and that Atec had delivered numerous test cell thrust frames that were specific to the customer’s test facilities, provided engine adapter frames equal to or greater than the requirement here and generally demonstrated an understanding and experience with designing, manufacturing, and installing the type of thrust frame system required under the solicitation. Id. at 2. The agency also recognized that Atec designed and successfully installed the fuel delivery, starter air, and oil preservation systems for test cells that support the testing of F135 engines. Id.

The evaluators clarified their determination that Atec’s and Swanda’s past performance was similar to, or greater in scope, magnitude and complexity than the effort required under the RFP in an addendum to the PPET Rating Team Worksheet. AR, Tab 21, Addendum to Rating Team Worksheet. Concerning Atec’s abilities to transport and assemble test cells with similar or greater complexity, the evaluators noted that Atec relocated and re-used the aero-acoustics components from a test cell, noting that this work involved a larger, more complex test cell platform than the T-9. Id. at 1. They noted that Atec had designed the test cell prior to executing its construction, a capability they described as “far-and-above the effort associated with the T-9 relocations. . . .” Id. They also noted that they viewed Swanda’s past performance as involving efforts of greater complexity because Swanda had fabricated and installed two Navy T-10 test cells, which exceed their Air Force equivalents in design excellence, build specifications, and aero-acoustical performance. Id.

In sum, the record shows that the agency’s evaluators gave careful consideration to the specific performance attributes reflected in the past performance examples included by Atec in its proposal, and made reasonable judgments concerning the comparative relevance of those performance attributes to the work required under the RFP. Vital Link has not demonstrated that these judgments were unreasonable, but simply disagrees with the agency’s conclusions by relying on an unreasonably narrow definition of relevance. Such disagreement, without more, is inadequate to show that the agency’s evaluation was unreasonable. SDV Telecomms., B-279919,

July 29, 1998, 98-2 CPD ¶ 34 at 2. We therefore deny this aspect of Vital Link's protest.

Finally, Vital Link asserts that the agency did not reasonably evaluate Atec's price. The protester argues that Atec's price is far below both the agency's estimate and Vital Link's price, and that the disparity between Atec's and Vital Link's prices "should have raised red flags for the agency because the agency was well aware that Vital Link has unparalleled knowledge and experience concerning the construction, repair and relocation of T-9 units." Protest at 18.

We find no merit to this aspect of Vital Link's protest. The RFP contemplated the award of a fixed-price contract. Although an agency is required to determine that offered prices are fair and reasonable before awarding a fixed-price contract, FAR § 15.402(a), the purpose of a price reasonableness evaluation in a fixed-price environment is to determine whether prices are too high, as opposed to too low. Sterling Servs., Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3. In contrast, arguments that an agency did not perform an appropriate analysis to determine whether prices are too low concern price realism. SDV Solutions, Inc., B-402309 Feb. 1, 2010, 2010 CPD ¶ 48 at 4. However, a price realism evaluation is not required or appropriate where, as here, the solicitation does not include a requirement for a price realism analysis. Id. Thus, to the extent that the protester asserts that the agency failed to consider whether the awardee's price was too low, this fails to state a basis of protest.²

The protest is denied.

Lynn H. Gibson
General Counsel

² Vital Link asserts that the PPET was improperly influenced by Atec's low price, contending that PPET members awarded Atec the highest past performance rating merely to ensure the Government obtained the benefit of that price. As discussed, however, we find the agency's substantive evaluation conclusions reasonable and supported by the record. We therefore have no basis to conclude that the evaluators were somehow improperly influenced by Atec's low price.