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Decision

Matter of: Advanced Alliant Solutions Team, LLC

File: B-417334

Date: April 10, 2019

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Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency unreasonably evaluated protester's past performance is denied where the record shows that the evaluation was reasonable and consistent with the firm's record of past performance and the terms of the solicitation.

DECISION

Advanced Alliant Solutions Team, LLC (AAST),¹ of Fairfax, Virginia, protests the issuance of a task order to Data Computer Corporation of America (DCCA), of Ellicott City, Maryland, under request for proposals (RFP) No. HT940219R0002, issued by the Defense Health Agency for information technology (IT) and engineering services. AAST alleges that the agency unreasonably evaluated its proposal and improperly made the source selection decision.

We deny the protest.

¹ AAST is a joint venture between Technical and Management Resources, Inc. (TMRI) and 22nd Century Technologies, Inc. (TSCTI). Protest at 3.

BACKGROUND

The RFP was issued on October 30, 2018, to holders of the General Services Administration's Alliant Small Business governmentwide acquisition contract. Agency Report (AR), Tab 2, Conformed RFP at 2, 28. The RFP contemplated the issuance of a fixed-price task order to be performed over a 30-day transition period, an 11-month base period, three 1-year option periods, and a final 7-month option period. Id. at 28, 30. The selected contractor would be expected to provide IT and engineering support services to the agency's E-Commerce system (ECS), including maintenance of the existing ECS and upgrading the ECS software and applications. Id. at 33.

The RFP provided for award on a best-value tradeoff basis considering technical, past performance, and price factors. AR, Tab 2, Conformed RFP at 30-31. The technical factor would be evaluated for acceptability. Id. The agency would then make its tradeoff decision considering the past performance and price factors. Id. The RFP specified that past performance was significantly more important than price. Id. at 31.

Seven offerors, including AAST and DCCA, submitted proposals prior to the December 3, 2018, closing date. AR, Tab 4, Combined Price Analysis Report and Price Competition Memorandum (PAR/PCM) at 3. The agency's evaluation produced the following relevant results:

	AAST	DCCA
Technical	Acceptable	Acceptable
Past Performance	Limited Confidence	Substantial Confidence
Price	\$39,359,098	\$44,526,789

Id. at 16, 34, 48. After comparing the proposals, the source selection authority (SSA) determined that DCCA's proposal represented the best value. Id. at 48. Although AAST's proposal was lower-priced, the SSA concluded that DCCA's price premium was justified because the solicitation considered the past performance factor to be significantly more important than price, and because DCCA's past performance record indicated a much higher chance of successful contract performance than AAST's past performance. Id. at 49-50. After the agency made award to DCCA on January 25, 2019, the protester filed the instant protest with our Office.²

² This protest is within our jurisdiction to hear protests of task orders placed under civilian agency multiple-award indefinite-delivery, indefinite-quantity contracts valued in excess of \$10 million. 41 U.S.C. § 4106(f)(1)(B); see also Alliant Solutions, LLC, B-415994, B-415994.2, May 14, 2018, 2018 CPD ¶ 173 at 4 n.8.

DISCUSSION

AAST alleges that the agency unreasonably evaluated its past performance and improperly made its source selection decision. We have considered all of the allegations raised and find no basis to sustain the protest. We discuss AAST's primary allegations below.

Past Performance

AAST argues that the agency unreasonably evaluated its past performance because it "cherry-picked" negative past performance evaluation comments and failed to consider the overwhelmingly positive ratings. Comments at 2-8. Thus, the protester asserts that had the agency considered the entirety of its past performance information, it would have received a higher rating. Id. In response, the agency argues that it reasonably considered all of AAST's past performance information in formulating the assigned rating. Memorandum of Law (MOL) at 5-7.

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. Spinnaker JV, LLC, B-416688, Nov. 21, 2018, 2018 CPD ¶ 398 at 8. An agency's evaluation of past performance 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. Id.

The solicitation instructed offerors to identify three performance examples, and advised that each referenced performance example would be evaluated for recentness and relevance. AR, Tab 2, Conformed RFP at 31-32. The solicitation further advised that the agency may consider recent contracts contained in the Past Performance Information Retrieval System (PPIRS), past performance references from other recent contracts, and recent and relevant past performance for any joint venture partner. Id. at 32.

When evaluating AAST's past performance, the agency reviewed the protester's referenced performance examples and also identified an additional 13 recent contracts in PPIRS. AR, Tab 4, PAR/PCM at 10-13. For the contracts identified in PPIRS, the agency noted that, while the majority of ratings ranged from satisfactory to very good, the firm received adverse narrative comments on four of the contracts. Id. at 13-16. The agency considered these four contracts to be significant because each contract required AAST to provide nearly identical IT services to those included in the instant acquisition. Id. at 15. Thus, even though the agency acknowledged that AAST received positive past performance ratings and comments on its referenced performance examples and on some of the other contracts identified in PPIRS, the agency had a low expectation of successful performance in light of the adverse narrative comments on AAST's highly relevant contracts. Id. at 16.

After reviewing the record, we find the agency's evaluation to be unobjectionable. The record confirms that while AAST received mostly positive ratings, it also received adverse narrative comments (including some that were extremely negative) on some of the contracts identified through PPIRS. See AR, Tab 9, AAST Contractor Performance Assessment Report (CPAR) at 4-7; AR, Tab 10, AAST CPAR at 3-6; AR, Tab 11, AAST CPAR at 2; AR, Tab 13, AAST CPAR at 2; AR, Tab 15, AAST CPAR at 3. For example, with respect to quality of performance, one reviewer characterized TSCTI's performance as [DELETED] during the transition period, and explained that "technical, personnel, and management issues persisted during the first 9 months of performance, with significant outages[.]" AR, Tab 9, AAST CPAR at 3.

Similarly, with respect to TSCTI's cost control, the reviewer stated that the "Government was not getting the quality of people TSCTI claimed to be able to provide in its quotation" and that TSCTI's performance was therefore "unacceptable as this contract was a Best Value selection, not a [lowest-priced, technically acceptable] and [sic] the Government expects to receive what TSCTI offered in its quotation." Id. at 4-5. Additionally, an agency official for one of the other performance examples reported that TSCTI pushed completion of a major project task [DELETED]. AR, Tab 11, AAST CPAR at 2. Furthermore, these ratings were, as the agency points out, from highly relevant contracts. MOL at 7. Thus, we find that the agency reasonably assigned a "limited confidence" rating to AAST's proposal.

In addition, we do not find that the agency cherry-picked negative narrative comments to support its evaluation. Indeed, our review of the CPARs shows that the agency did not select minor negative comments to support its evaluation. Instead, the record shows that the negative comments constituted a large portion of the CPAR comments, or were readily apparent criticisms. See, e.g., AR, Tab 9, AAST CPAR at 4-8; AR, Tab 15 AAST CPAR at 3. Furthermore, to the extent the protester asserts that the agency unreasonably considered negative comments more significant than positive ratings, we do not find the agency's evaluation to be unreasonable. This argument constitutes a disagreement with the agency's judgment as to the relative worth of the negative narrative comments versus the positive ratings. See EMTA Insaat Taahhut Ve Ticaret, A.S., B-416391, B-416391.4, Aug. 13, 2018, 2018 CPD ¶ 280 at 7 ("Although EMTA disagrees that the negative comments outweighed its overall satisfactory-to-positive past performance ratings, such disagreement, without more, does not provide [a] basis to object to the agency's evaluation in this area."). Accordingly, we deny this protest allegation.

As a related matter, the protester asserts that the agency unequally evaluated its and the awardee's past performance proposals. The protester argues that the agency credited DCCA's proposal for its positive ratings and narrative comments but did not do the same for AAST's proposal when evaluating past performance. Protester's Comments at 9-11.

It is a fundamental principle of government procurement that agencies must treat offerors equally, which means, among other things, that they must evaluate proposals in

an even-handed manner. Novetta, Inc., B-414672.4, B-414672.7, Oct. 9, 2018, 2018 CPD ¶ 349 at 15. Where a protester alleges unequal treatment in an evaluation, it must show that the differences in ratings do not stem from differences in the proposals. See Credence Mgmt. Solutions, LLC; Advanced Concepts and Techs. Int'l, LLC; B-415960 et al., May 4, 2018, 2018 CPD ¶ 294 at 10-11. Here, we do not find that the protester has met this burden. The protester's argument fails because AAST has not demonstrated that DCCA likewise received negative past performance information. Without that showing, the agency reasonably would have been able to consider DCCA's positive past performance record as better in spite of any similarities between the offerors' positive ratings or feedback. Accordingly, we deny this protest allegation because the protester has not demonstrated that the agency unequally evaluated the proposals.³

The protester also argues that the agency unreasonably applied an unstated evaluation criterion when evaluating its past performance. Specifically, the firm asserts that the agency unreasonably compared its past performance to that of the previous contractor, even though the solicitation did not provide that proposals would be compared with the previous contractor's performance. Protester's Comments at 5. In response, the agency asserts that its evaluation was consistent with the solicitation criteria. MOL at 9-11.

In our view, the record does not support the protester's argument. An agency properly may take into account specific matters that are logically encompassed by, or related to, the stated evaluation criteria, even when they are not expressly identified as evaluation criteria. Insect Shield Mfg., LLC, B-408067.3, Aug. 8, 2013, 2013 CPD ¶ 235 at 3. Here, the RFP specifically provided that the agency would evaluate past performance to determine each offeror's likelihood of successful contract performance. RFP at 31. The record shows that the agency considered AAST's negative narrative comments as

³ In its protest, the protester asserted that the agency unequally evaluated proposals under the past performance factor because it did not review DCCA's past performance information as thoroughly as it did when reviewing the AAST past performance information. Protest at 10. We dismiss this protest ground because it fails to state a valid legal basis. Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(c)(4), (f). A protest allegation which relies on speculation is legally insufficient because our Office will not find improper agency action based on conjecture or inference. Electra-Motion, Inc., B-229671, Dec. 10, 1987, 87-2 CPD ¶ 581 at 1; see also Mark Dunning Indus., Inc., B-413321.2, B-413321.3, Mar. 2, 2017, 2017 CPD ¶ 84 at 1 (a protest allegation which is speculative fails to state a valid legal basis). Here, the protest allegation relies solely on the protester's speculation that the agency did not thoroughly review DCCA's past performance or that DCCA must have had significantly fewer past performance examples. See Protest at 10. Neither rationale is based on any degree of fact or evidence. Accordingly, we dismiss the protest allegation because it is speculative.

indicative of a low expectation of successful contract performance because the performance examples were highly relevant to the instant acquisition and the negative narrative comments were representative of similar problems that the previous contractor experienced. AR, Tab 4, PAR/PCM at 15. Consistent with the agency's position, we consider that practice unobjectionable because it is consistent with the solicitation; it shows the agency using its experience with the requirement to gauge AAST's potential performance and does not show the agency applying some sort of pass or fail comparison scheme. MOL at 10-11. Accordingly, we deny this protest allegation.

Source Selection Decision

Finally, AAST argues that the agency made an unreasonable best-value tradeoff. The protester argues that the tradeoff analysis was flawed because it was based on misvaluation of the protester's past performance.⁴ Protester's Comments at 8-9. This allegation is derivative of the challenges to the agency's evaluation. Thus, we dismiss this allegation because derivative allegations do not establish independent bases of protest. GCC Techs., LLC, B-416459.2, Nov. 19, 2018, 2018 CPD ¶ 394 at 8.

The protest is denied.

Thomas H. Armstrong
General Counsel

⁴ In its protest, AAST argued that the source selection decision was flawed because the agency did not adequately explain why a few negative past performance narrative comments justified DCCA's \$5 million price premium. Protest at 12-13. In our view, AAST has abandoned that allegation. Where, as here, an agency provides a detailed response to a protester's assertion and the protester fails to respond to the agency's arguments in its comments, the protester abandons its argument because it fails to provide us with a basis to conclude that the agency's position with respect to the issue in question is unreasonable. Elevator Service, Inc., B-416258.2, B-416258.3, Sept. 13, 2018, 2018 CPD ¶ 319 at 3 n.3. The agency responded to the allegation in its legal memorandum. MOL at 15-16 (source selection decision justified price premium on account of the relative weights of the factors and DCCA's higher expectation of successful contract performance). In its comments, AAST did not provide any rebuttal to the agency's position. Protester's Comments at 8-9. Accordingly, AAST abandoned this allegation because it did not provide us with a basis to conclude that the agency's position was unreasonable.