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Decision

Matter of: Fors Marsh Group, LLC

File: B-420153

Date: December 1, 2021

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DIGEST

Protest challenging the non-selection of the protester's quotation for the establishment of a blanket purchase agreement is denied where the evaluation was reasonable and in accordance with the solicitation's applicable evaluation criteria.

DECISION

Fors Marsh, Group, LLC, of Arlington, Virginia, protests its non-selection for a multiple-award, blanket purchase agreement (BPA), under Request for Quotations (RFQ) No. 91990021R0020, which was issued by the Department of Education (DOE), Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance, for systematic reviews of research evidence and the development of a series of What Works Clearinghouse™ (WWC) publications.¹ Fors Marsh primarily challenges the evaluation of its quotation, and the agency's subsequent decision to exclude the quotation from the competitive range.

We deny the protest.

¹ The agency established BPAs with: (1) Abt Associates, Inc., of Rockville, Maryland; (2) American Institute for Research, of Arlington, Virginia; (3) Instructional Research Group, of New York, New York; (4) Mathematica Policy Research, of Washington, D.C.; and (5) SRI International, of Menlo Park, California.

BACKGROUND

The RFQ, which was issued on May 21, 2021, sought quotations for the establishment of multiple-award BPAs to support the development of WWC practice guides, intervention reports, and related products that will be ordered under preschool-to-postsecondary evidence synthesis task orders (WWC-PESTO). DOE anticipates issuing at least eight WWC-PESTO orders during the BPAs' 60-month ordering period. Agency Report (AR), Tab C, RFQ, attach. No. 1, Performance Work Statement (PWS), at 1. DOE anticipates issuing hybrid orders, with both fixed-price and cost-reimbursable tasks. *Id.*, attach. No. 4, Questions & Answers, at 7. In addition to establishing the BPAs, DOE also intended to award the first WWC-PESTO order.

DOE was to evaluate offerors under the following evaluation criteria, which are listed in descending order of importance: (a) technical qualifications of proposed staff; (b) soundness of technical approach; (c) management of tasks; (d) substantive small business participation; (e) related corporate experience; (f) past performance; and (g) price. *Id.*, attach. No. 3, Technical Evaluation Criteria, at 1-3. As discussed herein, only the corporate experience factor is relevant to our resolution of the protest.

Under the corporate experience factor, DOE was to evaluate the extent to which:

- There is evidence of prior successful corporate experience and capacity with projects of a similar nature, which includes delivering timely, quality products on or under budget.
- There is evidence of prior successful corporate experience in leading or participating in reviews, studies, or projects of similar scale, scope, and challenges.
- There is documentation of preparation of high-quality, practitioner-friendly resources of materials that communicate research findings to non-researcher audiences.
- There is a track record of maintaining well-qualified staff.
- There is a record of strong past performance in terms of quality, creativity, problem resolution, cost control, timeliness, business relations and customer service.

Id. at 2.

When evaluating quotations, DOE was to assign (i) strengths for quotation attributes that can be beneficial to the program or greatly increase the probability of successful contract performance, and (ii) weaknesses for quotation attributes that are flaws in the quotation that increase the risk of unsuccessful contract performance. *Id.* at 3. Based on its evaluation, the agency was to assign one of four possible adjectival ratings under each non-price criterion: (1) very good; (2) good; (3) marginal; or (4) poor. Relevant here, the RFQ defined very good, good, and marginal as follows:

- *Very good*: The offeror’s proposed solution exceeds the specified performance or capability in a beneficial way to the Department. The solution does not contain inconsistencies or incompatibilities. The response to this criterion has multiple strengths in meeting the requirements. The quote may or may not contain weaknesses that can easily be remedied. This rating is consistent with a very *low risk* of unsuccessful contract performance based on this factor.
- *Good*: The offeror’s proposed solution meets the performance or capability standards. The solution contains minor or insignificant inconsistencies or incompatibilities. The response to this criterion has strengths and may or may not have weaknesses, but the strengths outweigh the weaknesses. This rating is consistent with a *low risk* of unsuccessful contract performance based on this factor.
- *Marginal*: The offeror’s proposed solution fails to meet some of the performance or capability standards. The solution contains inconsistencies or flaws that could jeopardize performance. The response to this criterion may have strengths, but these strengths are offset by multiple weaknesses. This rating is consistent with a *moderate risk* of unsuccessful contract performance based on this factor.

Id. at 2-3 (emphasis in original).

For the purposes of establishing the BPAs and issuing the first order, DOE first was to establish a competitive range including all quotations with a rating of very good or good for “each technical evaluation factor.” *Id.* at 1. The agency subsequently clarified that “[t]he three relevant evaluation criteria for being on the BPA are, in decreasing order of importance, Criterion A: Technical Qualifications of Proposed Staff, Criterion E: Related Corporate Experience, and Criterion F: Past Performance.” *Id.*, attach. No. 4, Questions and Answers, at 1. The remaining factors were relevant to the tradeoff for the first order. *Id.* Each offeror qualifying for inclusion in the competitive range would be recommended for the establishment of a BPA. *Id.*, attach. No. 3, Technical Evaluation Criteria, at 1. The agency would then make a best-value tradeoff for the issuance of the first order, with technical merit being significantly more important than price. *Id.*

DOE ultimately received nine quotations in response to the RFQ. Relevant here, Fors Marsh’s quotation was evaluated as follows:

A. Technical Qualifications of Proposed Staff	Good
B. Soundness of Technical Approach	Marginal
C. Management of Tasks	Marginal
D. Substantive Small Business Participation	Marginal
E. Related Corporate Experience	Marginal
F. Past Performance	Good
BPA Rating (Criteria A, E, and F only)	Marginal
Task Order Rating	Marginal

AR, Tab G, Price Negotiation Memo., at 3-4.

As to Fors Marsh’s corporate experience, the technical evaluation panel (TEP) evaluated both strengths and weaknesses, and ultimately assigned the quotation a rating of marginal for this factor. First, the TEP positively assessed the number of certified group design and other reviewers proposed for inclusion on the protester’s team. AR, Tab H, Eval. Rep., at 26. The TEP also assigned strengths for two of Fors Marsh’s proposed subcontractors. The TEP assigned a strength for one subcontractor’s prime contract experience (i) developing products and publications related to interventions for low-performing schools, formative assessment, teacher preparation and evaluation, and online and hybrid learning programs, and (ii) relying on social media, a blog, and an e-newsletter to disseminate education research. *Id.* As to the second subcontractor, the TEP assessed a strength based on, among other experience, its subcontract experience supporting evidence reviews and co-leading relevant supportive learning environments and developmental disabilities topic areas. *Id.*

Countervailing these strengths, however, the TEP assigned the protester’s quotation three weaknesses for this factor. First, the TEP found that the protester’s own experience with relevant DOE contracts was primarily as a subcontractor performing limited work that only began in April 2021 (or approximately 4 months before the instant evaluation). The TEP noted that while a few people at Fors Marsh and one of the above discussed subcontractors have contributed to WWC work on practice guide panels, such limited work of such a limited duration was insufficient to demonstrate the protester’s organizational capabilities. *Id.* at 27. In sum, the TEP concluded that “[w]hile some proposed leads have experience working with the WWC—including personnel experienced with practice guides, reviews of single-case design studies, and behavior interventions—the [quotation] does not indicate strong corporate capability to lead this work.” *Id.* at 21.

Second, the TEP, while noting Fors Marsh’s experience complying with security procedures under contracts with the Department of Defense and Internal Revenue Service, expressed concern with the protester’s lack of direct prime contracting experience with DOE. This presented a risk that the protester might not be able to

successfully obtain DOE-issued security clearances in a timely way.² *Id.* at 27. Third, the TEP assessed a weakness based on Fors Marsh's employee retention rates of [DELETED] percent for 2018 and [DELETED] percent for 2019. The agency found that a potential annual [DELETED] turnover of project staff created risk to successful performance. *Id.*

The source selection official agreed with the TEP's evaluation of Fors Marsh's corporate experience. AR, Tab G, Price Negotiation Memo., at 6-7. Therefore, because the protester did not receive at least a rating of good for the corporate experience factor (criterion E), its quotation was excluded from the competitive range. Based on the underlying evaluations of the other offerors, the source selection official elected to establish BPAs with the five firms submitting quotations that received at least ratings of good under evaluation criteria A, E, and F. *Id.* at 16. The source selection official then conducted a tradeoff among the five competitive range offerors, and ultimately selected Abt's quotation for award of the first WWC-PESTO order, which is valued at \$3,749,760. *Id.* at 16-17. Following a debriefing, this protest followed.

DISCUSSION

Fors Marsh challenges the agency's evaluation of its quotation under five of the six non-price evaluation factors. As addressed above, however, the agency's competitive range determination--which served as the basis for eligibility for the issuance of a BPA--was limited to assessing whether the offeror received at least a rating of good under factors (a) technical qualifications of proposed staff, (e) related corporate experience, and (f) past performance. See AR, Tab C, RFQ, attach. No. 4, Questions and Answers, at 1 (stating that the relevant criteria for a BPA award were criteria a, e, and f). Thus, in order to be eligible for the issuance of a BPA, Fors Marsh would need to prevail on its challenge to the rating of marginal assigned to its quotation under the corporate experience factor.

As to the corporate experience factor, the protester primarily challenges the three weaknesses the agency assigned to Fors Marsh's quotation, arguing that the agency relied on unstated evaluation criteria or otherwise failed to reasonably consider information contained in the quotation. But for these alleged errors, Fors Marsh contends that its quotation would have been rated as at least good under the corporate experience factor, and, therefore, would have been included in the BPA competitive

² The RFQ incorporated a deviation to DOE Federal Acquisition Regulation clause 3452.239-72, Department Security Requirements, which imposes DOE-specific personnel security screening and other security-related provisions. AR, Tab C, RFQ, at 14-16. The PWS further expounded on the applicable contractor employee security screening requirements. *Id.*, attach. No. 1, PWS, at 27-32.

range.³ For the reasons that follow, we find no basis on which to sustain the protester's challenge to the agency's evaluation of Fors Marsh's corporate experience. Additionally, because the agency reasonably excluded the protester from the competitive range and the protester was therefore ineligible for the first WWC-PESTO order, we need not resolve the protester's challenges with respect to the agency's evaluation under the other evaluation factors.

An agency's evaluation of corporate experience and past performance is, by its nature, subjective, and that evaluation, including the agency's assessments with regard to relevance, scope, and significance, are matters of discretion which we will not disturb absent a clear demonstration that the assessments are unreasonable or inconsistent with the solicitation criteria. *22nd Century Techs., Inc.*, B-418029 *et al.*, Dec. 26, 2019, 2020 CPD ¶ 14 at 11. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. *FN Mfg., LLC*, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

Before addressing Fors Marsh's specific challenges to the three assessed weaknesses, we observe that Fors Marsh does not principally rebut the agency's concern that the protester does not have directly relevant prime contracting corporate experience leading and managing relevant work with the agency or involving the specific education-focused work contemplated by the solicitation. See, e.g., AR, Tab C, RFQ, attach. No. 1, PWS, at 1 (explaining that the anticipated task orders will "support the development of evidence-based practice recommendations to educators in preschool, elementary, secondary, and postsecondary education"); *id.*, RFQ, attach. No. 3, Evaluation Criteria, at 2 (requiring the agency to evaluate, among other experience, whether the offeror provided evidence of prior successful corporate experience and capacity with "projects of a similar nature," and "leading or participating in reviews of studies, or projects of similar scale, scope, and challenges"). In this regard, excluding the protester's current WWC subcontract work discussed below and the experience of two of its proposed subcontractors,⁴ the protester does not demonstrate how the additional references provided in its quotation involved a similar, education-focused scope of work as anticipated by the RFQ.

³ Fors Marsh raises other collateral arguments. While our decision does not address every argument, we have considered all of the protester's arguments and find that none provides a basis on which to sustain the protest.

⁴ As addressed above, the agency favorably assessed the experience of the protester's proposed subcontractors. See AR, Tab H, TEP Eval. Rep., at 26. Such strengths, however, were offset by the protester's lack of relevant experience both leading and managing similar contracts. In this regard, when evaluating corporate experience, the significance of, and the weight to be assigned to, a subcontractor's corporate experience is a matter of contracting agency discretion, and the agency may reasonably conclude that a subcontractor's corporate experience is less valuable. *Addx Corp.*, B-414749 *et al.*, Aug. 28, 2017, 2017 CPD ¶ 275 at 7; *MIRACORP, Inc.*, B-410413.2, Feb. 23, 2015, 2015 CPD ¶ 98 at 5; *Emax Fin. & Real Estate Advisory Servs., LLC*, B-408260, July 25, 2013, 2013 CPD ¶ 180 at 6.

Turning to the protester's challenges to the three assessed weaknesses, Fors Marsh first objects to the agency's assessment of a weakness for the protester's limited corporate experience with the agency as reflected by the protester's current subcontract supporting WWC reviews and products. The protester raises two primary objections, first arguing that the agency relied on an unstated evaluation preference for prime contracting experience and second that the agency unreasonably discounted the reference due to the protester having performed approximately only 4 months of work prior to the evaluation. We find no merit to these objections.

As to its first objection, it is axiomatic that in a negotiated procurement an agency must evaluate quotations or proposals based on the solicitation's enumerated evaluation factors. Federal Acquisition Regulation 15.305(a); *RTI Int'l*, B-411268, June 26, 2015, 2015 CPD ¶ 206 at 12. Agencies, however, properly may evaluate quotations or proposals based on considerations not expressly stated in the solicitation where those considerations are reasonably and logically encompassed within the stated evaluation factor, and where there is a clear nexus between the stated and unstated criteria. *Straughan Env'tl, Inc.*, B-411650 *et al.*, Sept. 18, 2015, 2015 CPD ¶ 287 at 8. Relevant here, we have previously found that, even where a solicitation does not expressly state a specific preference for corporate experience or past performance as a prime contractor, an agency properly may take such information into account in its evaluation. *DA Def. Logistics HQ*, B-411153.3, Dec. 2, 2015, 2015 CPD ¶ 358 at 4; *MIRACORP, Inc.*, B-410413.2, Feb. 23, 2015, 2015 CPD ¶ 98 at 5.

Thus, even if not explicitly stated, we find no basis to object to DOE's consideration of the protester's lack of direct prime experience on relevant contracts. Ultimately, the significance of, and the weight to be assigned to, the prime's experience--or lack thereof--is a matter of contracting agency discretion.⁵ *MIRACORP, Inc.*, *supra*. On this record, we find no basis to object to the agency's evaluated concern with Fors Marsh's lack of relevant prime contracting experience with DOE or related educational work.

Additionally, the protester alleges that the agency unreasonably discounted Fors Marsh's relevant subcontract experience based on the four-month duration of the

⁵ Fors Marsh also alleges that the agency unreasonably discounted its proposed personnel's relevant experience and instead focused on the protester's alleged lack of organizational experience. This argument, however, ignores that the technical qualifications of proposed staff were evaluated under criterion A, and the agency awarded multiple strengths for the experience of Fors Marsh's proposed personnel. See AR, Tab H, TEP Eval. Rep., at 21-22. To the extent that the protester contends that the agency should have effectively "double counted" such strengths under the corporate experience factor to excuse the protester's lack of prime contracting experience leading relevant projects, such disagreement with the agency's evaluation fails to provide a basis on which to sustain the protest.

protester's performance.⁶ We find no basis to sustain the protest on this basis. As we have explained, an agency reasonably may consider the limited duration of performance when evaluating experience or past performance. See, e.g., *Tyonek Global Servs., LLC; Depot Aviation Solutions, LLC*, B-417188.2 *et al.*, Oct. 4, 2019, 2019 CPD ¶ 354 at 14-15 (denying protest that the agency improperly failed to assign more significant relevance to the protester's 3-months of incumbent performance); *MIRACORP, Inc.*, *supra*, at 5-6 (denying protest challenging an assessed weakness under a corporate experience factor where the protester's reference had a limited duration and dollar amount compared to the agency's requirement). Thus, to the extent that the protester contends that DOE unreasonably considered that Fors Marsh's directly relevant experience was limited to 4 months of subcontract performance presented a moderate risk to successful contract performance, we find no basis on which to sustain the protest.⁷

Next, Fors Marsh challenges the agency's assessment of a weakness based on the protester's lack of prime contracting experience with DOE's personnel security screening process. The protester raises two primary objections, first that the weakness reflects an unstated evaluation criterion because the solicitation did not require prior prime contracting experience with DOE's personnel security clearance, and second that DOE unreasonably "double counted" security screening concerns under both the qualifications of proposed staff and corporate experience factors. We find no basis to object to the agency's evaluation.

As to the allegation that DOE relied on an unstated evaluation criterion, we disagree. The RFQ incorporated specific DOE security-related provisions that were further delineated in the PWS. The specified requirements to timely navigate applicants through the DOE security process are directly related to whether the offeror has "prior successful corporate experience and capacity with projects of a similar nature," and "a record of strong past performance" in terms of "problem resolution" and "timeliness." AR, Tab C, RFQ, attach. No. 3, Evaluation Criteria, at 2. Thus, it was not unreasonable for the agency to conclude that the failure to timely complete security screening reviews could delay or otherwise deleteriously impact the contractor's ability to perform.

⁶ Although the agency focused solely on the duration of the subcontract, we also note that the protester identified the total subcontract value is \$115,403, which is relatively small as compared to the \$3.7 million awarded value of the first WWC-PESTO order and Fors Marsh's own proposed price for that order. See AR, Tab D, Fors Marsh Quotation, at 48.

⁷ Fors Marsh also argues that, even assuming its corporate experience was not relevant, the agency erred in assigning a weakness, as opposed to making a neutral finding with respect to the lack of relevant experience. As we recently explained in *AnderCorp, LLC*, however, an agency must generally evaluate a quotation or proposal as neutral if an offeror fails to provide adequate evidence of relevant past performance, but this limitation does not apply to an agency's evaluation under a corporate experience factor. *AnderCorp, LLC*, B-419984, Oct. 14, 2021, 2021 CPD ¶ 343 at 4-6.

Similarly, as the prime contractor, Fors Marsh would not only be responsible for managing its own employees through the screening process, but would also be responsible for managing its proposed subcontractors and their proposed personnel through the process. Thus, we find nothing objectionable with the agency's consideration of the risk associated with the protester's lack of direct experience managing personnel security screening under DOE's unique procedures. See *Blue Origin Federation, LLC; Dynetics, Inc.-A Leidos Co.*, B-419783 *et al.*, July 30, 2021, 2021 CPD ¶ 265 at 46 n.23 (explaining that an agency may always consider performance risk intrinsic to the stated evaluation factors).

Next, we reject the protester's complaint that it was unreasonable for DOE to assess weaknesses relating to Fors Marsh's employee screening under both the technical qualifications of proposed staff and corporate experience factors. We have explained that an agency is not precluded from considering an element of a quotation or proposal under more than one evaluation criterion where the element is relevant and reasonably related to each criterion under which it was considered. *Mission1st Grp., Inc.*, B-419369.2, Jan. 25, 2021, 2021 CPD ¶ 65 at 12; *Infrared Techs. Corp.*, B-282912, Sept. 2, 1999, 99-2 CPD ¶ 41 at 5-6 n.2. Here, we find nothing objectionable with DOE's consideration of security screening under both the qualifications of proposed staff and corporate experience factors. The record reflects that the agency assessed a weakness under the staff qualifications factor because the agency could not determine whether the protester's proposed certified reviewers currently have the required security clearances. AR, Tab H, TEP Eval. Rep., at 23. The agency then separately evaluated a concern under the corporate experience factor with the protester's lack of prime corporate experience successfully managing applicants through the DOE security screening process. *Id.* at 27. As these weaknesses address different concerns, one with the individual proposed staff and one with the apparent lack of corporate experience--we find no basis to conclude that the agency impermissibly assessed an identical weakness twice.

Finally, Fors March challenges the agency's assessment of a weakness based on the protester's relatively high employee turnover rates for 2018 and 2019. The protester complains that the agency unreasonably cherry-picked two years of data, and failed to reasonably consider its better retention rates for 2017 and 2020. We find no basis to object to the agency's identified concern.

An agency's evaluation may be based on a reasonable perception of a contractor's prior performance, regardless of whether the contractor disputes the agency's interpretation of the underlying facts, the significance of those facts, or the significance of corrective actions. *PAE Aviation & Tech. Servs., LLC*, B-413338, B-413338.2, Oct. 4, 2016, 2016 CPD ¶ 283 at 5. And, although consideration of trends and corrective action is generally appropriate, an agency is not required to ignore instances of negative prior experience. *Id.*; *Vectrus Sys. Corp.*, B-412581.3 *et al.*, Dec. 21, 2016, 2017 CPD ¶ 10 at 9. Here, we find no basis to object to DOE's concern that Fors Marsh's recent employee turnover rate was greater than [DELETED] percent for a two-year period. Although the protester is correct that its turnover rates for 2017 and 2020 were better,

these data-points do not mean that the agency was required to ignore the markedly higher turnover experienced in 2018 and 2019.

In sum, based on the reasonableness of the agency's assessed weaknesses, we find no basis to object to the agency's determination that Fors Marsh's quotation presented a moderate risk of unsuccessful contract performance. The protester's subjective disagreements with respect to the evaluated concerns with its quotation fail to present a credible basis to object to the agency's evaluation. *Blue Origin Federation, LLC; Dynetics, Inc.-A Leidos Co., supra*, at 49.

The protest is denied.

Edda Emmanuelli Perez
General Counsel