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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: United Facility Services Corporation d/b/a EASTCO Building Services

File: B-408749.2

Date: January 17, 2014

Steven Brown for the protester.

Ronald K. Henry, Esq., Kaye Scholer LLP, for Potomac Landscaping Services, Inc., the intervenor.

Azine Farzami, Esq., United States Department of Agriculture, for the agency.

Paula A. Williams, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of awardee's past performance is denied where protester fails to show that the evaluation was unreasonable or otherwise inconsistent with the terms of the solicitation.

DECISION

United Facility Services Corporation (UFS) d/b/a EASTCO Building Services of Deer Park, New York, protests the issuance of a delivery order to Potomac Landscaping, Inc. d/b/a/ Potomac Services, of Fort Washington, Maryland, under request for quotations (RFQ) No. 792568 issued by the United States Department of Agriculture (USDA) for facilities maintenance services. UFS contends that the award to Potomac was flawed based on errors in USDA's evaluation of Potomac's past performance.

We deny the protest.¹

¹ UFS did not retain outside counsel to represent it in the instant protest. Our discussion regarding certain aspects of the agency's evaluation of quotations is therefore general in nature.

BACKGROUND

The RFQ, issued as a small business set-aside on the General Services Administration's (GSA) e-Buy website, contemplated the issuance of a fixed-price delivery order with a base year and four option years for various operations and maintenance services at USDA's headquarters in Washington, DC.² Competition was limited to vendors holding schedule 03FAC Federal Supply Schedule (FSS) contracts, which are for facilities maintenance and management services.³ The solicitation's performance work statement described the scope of services being solicited and provided detailed information for the various performance-based tasks as part of the USDA facilities management requirement. RFQ at 11-72.

The delivery order was to be issued to the FSS contract holder, which submitted the quotation that represented the best value to the government, considering the following evaluation factors (with subfactors), listed in descending order of importance: technical approach, management plan, past performance, and cost/price. RFQ amend. 4, at 2-6.

As it relates to the protest, under the past performance factor, the RFQ instructed vendors to provide three references for past performance on similar work for the federal government or private industry. RFQ at 217. Vendors were informed that the agency may contact references or use sources other than those provided by the vendor. RFQ amend. 4, at 5. The RFQ established that the agency would evaluate quotations using the following adjectival scheme: outstanding, very good, satisfactory, unsatisfactory or neutral. As relevant here, outstanding was defined as "**virtually no risk** concerning the offeror's ability to perform" and very good was defined as "**little to no risk** concerning the offeror's ability to perform the requirement." RFQ at 218 (emphasis in original).

In response to the RFQ, USDA received timely quotations from four FSS contractors, including those from Potomac and UFS. Potomac proposed to perform the contract using North America Telecommunications, Inc. (NATI) as its subcontractor. NATI had provided the same services as the incumbent through

² The GSA e-buy website allows agencies to request information, find sources, and prepare online requests for proposals and requests for quotes for services and products offered through GSA's multiple award schedule contracts. Federal Acquisition Regulation (FAR) § 8.402(d) (2010).

³ Although the solicitation is an RFQ, the solicitation and the parties refer to the vendors' quotations as "proposals." This decision will use the terminology typically associated with procurements using an RFQ.

March 2013.⁴ As relevant here, Potomac's quotation included three past performance references--two performance references for itself, and one for NATI. Agency Report (AR) exh. 7, Potomac's Quotation, Evaluation Factor 3, at § 3.2.2. Potomac's price was \$15,183,552 for the combined base and option years, whereas UFS' price was \$16,770,780.

An agency evaluation panel evaluated the four quotations and developed a consensus rating for each quotation. The panel prepared an evaluation report which identified the adjectival rating assigned to each quotation, supported by narrative comments detailing the specific technical strengths and weaknesses of each vendor's quotation. Potomac's quotation received a rating of outstanding under each evaluation factor and had the lowest price. UFS' quotation was assigned ratings of very good for each factor and had the second lowest price. Id. exh. 14, Source Selection Evaluation Panel Report, at 7, 9; Contracting Officer Statement at 7.

The contracting officer, who served as the source selection authority (SSA), reviewed the evaluative assessments, including the assessed strengths and weaknesses of each vendor's quotation. He found that Potomac's quotation represented the best value to the government, given that it received the highest possible technical rating and had the lowest price. Id. exh. 16, SSA Decision at 7-8. On September 29, 2013, the agency issued the order to Potomac under its FSS contract. This protest followed.

DISCUSSION

UFS argues that USDA unreasonably evaluated Potomac's past performance. More specifically, based on various publicly available sources such as, the GSA Schedule Sales Query Report, the protester asserts that the awardee "is strictly a Landscaping Company, with no or little past performance and experience" for the solicited services. Protest at 3. Accordingly, the protester maintains that Potomac's quotation should have received a rating of unsatisfactory, rather than outstanding, under the past performance evaluation factor. Id. at 5; Protester's Comments at 3-4.⁵

⁴ The agency reports that it entered into a bridge contract with KIC-Facilities Management LLC, an 8(a) contractor for these services pending resolution of this protest. USDA Memorandum of Law at 4-5.

⁵ Although the protester argues that the awardee should have received an unacceptable past performance rating given its lack of relevant past performance, by the terms of the solicitation, a vendor without relevant past performance would have received a "neutral" rating. RFQ at 218.

Where, as here, an agency issues an RFQ to FSS contractors under Federal Acquisition Regulation (FAR) subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Digital Solutions, Inc., B-402067, Jan.12, 2010, 2010 CPD ¶ 26 at 3-4; DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. The evaluation of past performance, including the agency's determination of the relevance and scope of a vendor's performance history to be considered, is a matter of agency discretion, which we will not find improper unless unreasonable or inconsistent with the solicitation's evaluation criteria.

Here, we have reviewed the entire evaluation record, including the individual evaluator worksheets, the report prepared by the evaluation panel, the protester's and the awardee's quotations, and the source selection decision documents. Based on this record, we have no basis to conclude that the agency unreasonably evaluated Potomac's quotation under the past performance factor.

As noted above, the RFQ required vendors to submit three past performance references for similar work, and advised that vendors would be evaluated on the "quality" of such demonstrated past performance "in delivering operations and maintenance services and in meeting technical, cost, and schedule requirements for work performed." RFQ amend. 4, at 5. In its quotation Potomac included three references, as noted above, two for itself, which were for multi-million dollar facilities services contracts, and one for its subcontractor, NATI, which was for the incumbent facility services contract. The record reflects that USDA received completed past performance questionnaires for each of these references, each of which rated Potomac's and NATI's performance as exceptional under every category listed on the past performance questionnaire. AR exh. 11, Completed Questionnaires for Potomac/NATI; AR exh. 9, Past Performance Evaluation of Vendors; AR exh. 14, Source Selection Evaluation Panel Report, at 14-15. In light of this record, we have no basis to question Potomac's "outstanding" past performance rating.

Moreover, to the extent UFS argues that it was improper for USDA to credit Potomac with the past performance history of its subcontractor, NATI, the protester is mistaken. Our Office has held that, in the absence of any prohibition in the solicitation, an agency may properly evaluate and give weight to the past

performance of a proposed subcontractor. SIMMEC Training Solutions, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 5-6. In this regard, FAR § 15.305(a)(2)(iii) expressly provides that agencies “should take into account past performance [of] . . . subcontractors that will perform major or critical aspects of the requirement.”⁶

The protest is denied.

Susan A. Poling
General Counsel

⁶ The protester also argues that the awardee’s use of NATI as a subcontractor was unfair because NATI held unique insights regarding the agency’s requirements as a consequence of its incumbent performance. It is well settled, however, that an offeror may possess unique information, advantages, and capabilities due to its prior experience under a government contract, including performance as the incumbent contractor. Our Office has held that the government is not required to equalize competition to compensate for such an advantage, unless there is evidence of preferential treatment or other improper action. See FAR § 9.505-2(a)(3); CACI, Inc.-Fed., B-403064.2, Jan. 28, 2011, 2011 CPD ¶ 31 at 10; MASAI Techs. Corp., B-298880.3, B-298880.4, Sept. 10, 2007, 2007 CPD ¶ 179 at 8. The existence of an advantage, in and of itself, does not constitute preferential treatment by the agency, nor is such a normally occurring advantage necessarily unfair. Council for Adult & Experiential Learning, B-299798.2, Aug. 28, 2007, 2007 CPD ¶ 151 at 6; Government Bus. Servs. Group, B-287052 et al., Mar. 27, 2001, 2001 CPD ¶ 58 at 10. Additionally, the record is devoid of any support for the protester’s speculation that Potomac intends to “subcontract the entire 100% of the operations to NATI.” Protester’s Comments at 4.