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Decision

Matter of: Metson Marine Services, Inc.

File: B-299705.2

Date: July 20, 2007

Margaret A. Dillenburg, Esq., Law Offices of Margaret A. Dillenburg, PC, and Alexander J. Brittin, Esq., Brittin Law Group, PLLC, for the protester. Richard P. Rector, Esq., and Carl L. Vacketta, Esq., DLA Piper US LLP, for Seaward Services, Inc., an intervenor. Joel A. Weger, Esq., and Pamela Castellano, Esq., Department of the Navy, Military Sealift Command, for the agency. Paula A. Williams, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging evaluation of proposals and source selection decision is denied where agency's determinations were reasonable and consistent with the solicitation and protester's arguments amount to mere disagreement with the agency's conclusions.

DECISION

Metson Marine Services, Inc. protests the award of a contract to Seaward Services, Inc. under request for proposals (RFP) No. N00033-06-R-1013 issued by the Department of the Navy, Military Sealift Command (MSC) for port operations and vessel management services at the Naval Diving and Salvage Training Center (NDSTC) in Panama City, Florida.¹ The protester contends that the agency unreasonably evaluated offerors' past performance, failed to conduct meaningful discussions, and that the resulting award decision was improper.

¹ This is the second of two separate follow-on contracts awarded to Seaward under RFP Nos. N00033-06-R-1012 (the Athena solicitation) and N00033-06-R-1013 (the Dive School solicitation). Because the issues raised by Metson challenging each award are separate and distinct, we have addressed the protest of each procurement separately.

We deny the protest.

BACKGROUND

This acquisition is for vessel operation and maintenance services for the NDSTC and the Naval School Explosive Ordinance Disposal (NAVSCOLEOD), and port control services for the Naval Support Activity (NSA), including port operations and scheduling of all vessel operations.² The RFP, issued on August 15, 2006, contemplated the award of a fixed-price contract with reimbursable elements for a base year with four option periods.

The solicitation provided for award on a “best value” basis, considering technical quality, past performance, and price. Technical quality was more important than past performance, and the two factors together were more important than price. The technical quality factor consisted of five equally weighted subfactors: (1) management overview and experience; (2) organization and personnel; (3) operational capabilities; (4) maintenance capabilities; and (5) management processes. RFP at 77-78.

As relevant for this dispute, the instructions in the RFP for the organization and personnel subfactor required offerors to provide specific information such as:

- Offeror shall provide an organizational chart which must include the total number of personnel; separately identify each position; identify contract or subcontracted personnel; part-time personnel; and show related cross-decking of personnel to each position (or collateral duties).
- Offeror must describe how it will provide adequate qualified personnel to meet the mission requirements by describing its labor pool; providing a strike contingency plan; providing a plan for obtaining additional personnel should the need arise during the life of the contract. Offerors should provide convincing proof that it has, or has the ability to obtain, additional

² As amended, the solicitation identified more than 20 different watercraft ranging from 132-foot vessels to 27-foot power boats, as well as small vessels such as the single passenger Wave Runners, that must be operated and maintained by the contractor. Managing the movement and coordination of these vessels is one part of providing these port operation services. In addition, the contractor will be responsible for running all aspects of the marina where these vessels are kept when not in use, as well as coordinating and planning for all operation and maintenance services. Agency Report (AR) amend. 6, at 37-38, Agency Legal Memorandum, at 28 n 5.

personnel with relevant experience in technical areas described in Section C.

Id. at 72-73. As to the personnel requirements, the RFP required offerors to demonstrate that their proposed personnel met minimum qualification requirements for education and experience. For example, the RFP required offerors to propose a project manager (PM) for this work, and indicated that the individual proposed was required to have a “Bachelor of Science Degree in Management, Marine Transportation or Engineering or comparable experience” as well as “the equivalent of ten (10) years experience directly related to the performance requirements” of this contract. RFP amend. 6, at 28.

With regard to the past performance evaluation factor, the solicitation advised that the past performance evaluations would be based on the offerors’ proposals, responses received from past performance reference questionnaires (at least three but no more than five), and data obtained from other sources. RFP at 78. Offerors were asked to provide descriptions of current and relevant contracts in order for the agency to assess past performance. The RFP defined “current” contracts (or subcontracts) as those in-progress or completed within the last 5 years, and “relevant” contracts (or subcontracts) as efforts involving “similar scope, magnitude and complexity” to the efforts described in this solicitation. Id. at 74-75.

Three offerors, including Metson and Seaward, submitted proposals in response to the RFP. Based on the initial evaluation, all proposals were considered technically unacceptable.³ After conducting several rounds of written and telephone discussions during which offerors were advised of the weaknesses, omissions, risks and other aspects of their respective technical and price proposals,⁴ the agency requested final

³ The technical quality evaluation factor and subfactors were rated on an adjectival basis as excellent, acceptable, marginal, and unacceptable; an unacceptable rating on any technical subfactor would result in an overall technical rating of unacceptable. Past performance was assigned ratings of exceptional (indicating no doubt that the offeror will successfully perform the required effort); acceptable (little doubt of successful performance); marginal (some doubt of successful performance); unacceptable (substantial doubt of successful performance); and neutral. AR exh. 36, Source Selection Plan, app. E-1 and E-3.

⁴ For instance, during discussions with Metson, the agency asked Metson, among other things, to:

- Please resubmit organizational chart—annotating total number of personnel to each position. Current chart shows one [Yard Diving Tenders] crew. Also, provide chart of cross decking. Provide any part-time labor or subcontracted labor.

(continued...)

proposal revisions (FPR) which were received by February 23, 2007. Contracting Officer's (CO) Statement, at 6-7. The agency evaluators concluded that all FPRs were technically unacceptable, noting that Metson's [DELETED] and that Metson's proposed organization "has a poor possibility of meeting RFP requirements, with [DELETED] presents a significant risk to the Government." AR exh. 63, Final Technical Evaluation Report, at. 4.

Thereafter, the agency reopened discussions with each offeror. Among other things, the agency's written discussions advised Metson of the following:

- Based on the solicitation requirements, your [DELETED] does not have the experience required per Section C 13.5.1 of the RFP.
- Please clarify your organization chart, as it is unclear.

AR exh. 64, Metson Discussion Items (Mar. 19, 2007).

On March 22, the agency followed up the March 19 email by conducting telephone discussions with Metson, which were memorialized in a subsequent email to Metson. In this email, the agency stated:

- Per our discussions this morning, please provide the additional information requested with regards to [DELETED]. In addition, please clarify your org[anizational] chart with regards to FT/PT personnel and maintenance personnel.

Id., Metson Discussion Items (Mar. 22, 2007).

The agency again requested FPRs which were due by March 22. The final results regarding Seaward's and Metson's proposals were:⁵

(...continued)

AR exh. 49, Metson Summary Items for Discussion, at 2.

⁵ The agency's evaluation of the third offeror's proposal is not relevant to resolution of this protest; accordingly, that proposal and the agency's evaluation thereof are not further discussed.

	Seaward	Metson
1. Overall Technical Quality	Excellent	Acceptable
Management Overview & Experience	Excellent	Excellent
Organization & Personnel	Excellent	Marginal
Operational Capabilities	Acceptable	Marginal
Maintenance Capabilities	Excellent	Acceptable
Management Processes	Excellent	Excellent
2. Past Performance	Exceptional	Acceptable
3. Total Evaluated Price	\$8,174,687.22	\$7,533,034.00

AR exh. 66, Post-Negotiation Business Clearance Memorandum, at 7-8.

Based on the evaluation results, the CO, who served as the source selection authority, determined that Seaward’s proposal represented the best value. In this regard, the CO concluded:

While Seaward is 8.5% higher than Metson, the expectation is that Metson’s manning plan would need to be revised to include additional personnel, thus increasing price, to alleviate the risk noted by the Technical Evaluation Committee. . . . Seaward’s proposal offers strength in the form of a dedicated [Senior Maintenance Engineer], which offers more depth to the maintenance department. Additionally, concerns over Metson’s ability to maintain continuity of personnel under N00033-05-D-1012 resulted in a past performance rating of Acceptable versus Seaward’s rating of Exceptional. As proposed, Seaward Services offers technical advantages that will significantly benefit the Government and contribute to successful contract performance (i.e. mission accomplishment).

AR exh. 73, Source Selection Decision, at 4. Following notification of its nonselection and receipt of a debriefing, Metson filed this protest.

DISCUSSION

Metson protests that the agency failed to meaningfully advise Metson regarding the agency’s concern that Metson “intended to call on staff from other contracts in other locations for use on the Dive School Contract.” Protester’s Comments at 11. Had the agency done so, the protester alleges, it could have addressed the agency’s concerns, so that its technical score would have been significantly higher, resulting in a different best value determination by the agency. *Id.* The agency responds that it

clearly advised Metson of the areas where its proposal contained weaknesses, and fully met its obligation to provide meaningful discussions. We agree.

Discussions, when conducted, must be meaningful; that is, discussions may not mislead offerors and must identify deficiencies and significant weaknesses in each offeror's proposal that could reasonably be addressed in a manner to materially enhance the offeror's potential for receiving award. PAI Corp., B-298349, Aug. 18, 2006, 2006 CPD ¶ 124 at 8. Agencies are not required to "spoon-feed" an offeror during discussions; agencies need only lead offerors into the areas of their proposals that require amplification. LaBarge Elecs., B-266210, Feb. 9, 1996, 96-1 CPD ¶ 58 at 6.

Here, as noted above, the agency specifically questioned Metson with regard to its proposed staffing and organizational plan. That is, the contemporaneous evaluation record confirms that during multiple rounds of discussions, the agency directly questioned Metson regarding the specific bases on which Metson's second FPR ultimately was rated marginal under the organization and personnel subfactor. While the record reflects that Metson did in fact address these issues, MSC concluded that Metson's responses did not fully allay its concerns. For instance, although Metson had submitted a revised organizational chart, the evaluators found that the protester failed to "clearly illustrate" or otherwise provide details regarding "how their labor pool would be utilized or where these people are located." AR exh. 67, Final Technical Evaluation Report, at 4. In addition, the evaluators had concerns about Metson's plans to use "several part time personnel assigned to their contract at [DELETED] if "surge operations" are required under the Dive School contract. Id. Because the agency's evaluation was dependent upon information furnished in the proposals, it was Metson's obligation to submit an adequately written proposal for the agency to evaluate. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 19. As evidenced by the record here, despite repeated requests, Metson simply failed to provide the agency with a clearly written organizational plan delineating its proposed staffing. Consequently, Metson's assertion that the agency failed to meaningfully advise Metson of the agency's concerns in this regard is contrary to the evaluation record.

Next, Metson maintains that its rating under the past performance factor should have been higher, since three of the four reference questionnaires received were reviewed and assigned an exceptional rating by the evaluators, and only the fourth reference questionnaire received for Metson's contract at [DELETED] was rated acceptable. In the protester's view, the agency "placed a disproportionate weight" on one contract while minimizing the collective weight of three other relevant contracts, each of which were rated exceptional. Protester's Comments at 3.

Where a solicitation requires the evaluation of offerors' past performance, an agency has the discretion to determine the scope of the offerors' performance histories to be considered, provided all proposals are evaluated on the same basis and in a manner consistent with the solicitation's requirements. The MIL Corp., B-297508, B-297508.2,

Jan. 26, 2006, 2006 CPD ¶ 34 at 10; Hanley Indus., Inc., B-295318, Feb. 2, 2005, 2005 CPD ¶ 20 at 4. Moreover, it is reasonable for an agency to give differing weight to an offeror's prior contracts based upon their similarity or relevance to the required effort. See e.g., Continental RPVs, B-292768.2, B-292768.3, Dec. 11, 2003, 2004 CPD ¶ 56 at 9-12. An agency may thus reasonably give less weight to prior contracts that are found to be less relevant, and greater weight to prior contracts that are found to have greater relevance. Court Copies & Images, Inc., B-277268, B-277268.2, Sept. 24, 1997, 97-2 CPD ¶ 85 at 5.

The record shows that the agency received four completed past performance questionnaires for Metson, and that it considered the relevance and quality of each of these references when performing its past performance evaluation. Of these four references, one was for Metson's performance of a [DELETED] contract; the second reflected Metson's performance as a [DELETED]; the third reference was for Metson's performance of its [DELETED] contract; and the fourth reference was for the [DELETED] contract. AR exh. 54, Initial Past Performance Evaluation Memorandum, at 4-5; AR exh. 70, Final Past Performance Evaluation Memorandum, at 1-3.

Although the agency considered all four references, it gave greater weight to its evaluation of Metson's [DELETED] contract—for port operations, operation of multiple watercrafts, related maintenance and waterfront administration—which the agency considered to be extremely similar to the type and scope of work required for the Dive School effort. Specifically, the evaluation record shows that the on-going [DELETED] contract was the most recent MSC contract awarded to Metson and that the agency had actual knowledge of the issues relating to the difficulties experienced by Metson with regard to its personnel levels and continuity of key personnel. AR exh. 70, Final Past Performance Evaluation, at 2-3. As a result, the agency assigned an overall rating of acceptable to Metson's proposal under the past performance factor.

In our view, it was not unreasonable for MSC to conclude that Metson's current performance on the [DELETED] contract was more relevant to the Dive School requirements than Metson's three other contracts, or that the [DELETED] contract was a more appropriate indicator of Metson's likely future success on the Dive School contract. Moreover, under these circumstances, we will not find that the agency acted unreasonably in according more weight to the [DELETED] contract, than to the other three contracts, in determining Metson's overall past performance rating. See ProServe Corp.—Protest and Request for Declaration of Entitlement to Protest Costs, B-247948.2, B-247948.3, Oct. 5, 1992, 92-2 CPD ¶ 225 at 5. We also note in conclusion that the protester does not dispute the accuracy of the agency's assessment of its performance under any of the four past performance references, other than its disagreement as to the overall resulting past performance rating the agency generated with the four references. See SWR, Inc.—Protests & Costs, B-294266.2 et al., Apr. 22, 2005, 2005 CPD ¶ 94 at 6.

Metson next contends that the agency unreasonably evaluated Seaward's past performance record because the agency impermissibly failed to consider the facts surrounding the Athena vessel fire which occurred during the period of Seaward's performance of the prior contract. Protester's Comments at 5-9. Here, the CO explains, and the record confirms, that the investigation of the vessel fire was not completed at the time proposals were evaluated. We think that this explanation provides a reasonable basis for the agency's decision not to consider this incident in evaluating Seaward's past performance history and we conclude that the agency reasonably exercised its discretion in deciding not to do so. In sum, based on our review of the record as a whole, we conclude that the agency reasonably evaluated the proposals of Metson and Seaward.

Finally, Metson asserts that the agency's best value decision was flawed due to the alleged evaluation improprieties discussed above. In a best value procurement such as this, a procuring agency may select for award a higher-priced but technically higher-rated proposal, where the agency determines that the price premium is justified considering the technical superiority of the selected proposal. 4-D Neuroimaging, B-286155.2, B-286155.3, Oct. 10, 2001, 2001 CPD ¶ 183 at 10. Here, the agency performed a price/technical tradeoff, as required, and reasonably concluded that Seaward's proposal offered the best value to the government. Further, it is clear that the CO applied the solicitation's stated evaluation scheme, which made technical superiority more important than price, and weighed Metson's evaluated price along with Metson's non-price ratings against the higher evaluated price of Seaward along with its relative technical strengths. Based on that analysis, quoted in part above, we have no basis to question the agency's selection of Seaward's higher-rated, higher-priced proposal.

The protest is denied.⁶

Gary L. Kepplinger
General Counsel

⁶ In pursuing this protest, Metson has raised various other issues including, for example, the allegation that the agency impermissibly allowed Seaward to utilize a single PM for both the Athena and Dive School contracts. We have considered all of Metson's allegations and find that the record shows that they are either factually incorrect, without merit, or did not result in any prejudice to Metson.