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Decision

Matter of: NSR Solutions, Inc.

File: B-406894

Date: September 20, 2012

Janice Davis, Esq., Davis & Steele, for the protester.
Christopher S. Cole, Esq., Department of the Air Force, for the agency.
Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the protester is entitled to a higher past performance rating is denied where the agency's evaluation was reasonable and in accordance with solicitation's evaluation criteria.

DECISION

NSR Solutions, Inc., of Rockville, Maryland, protests the award of a contract to JDD, Inc., of Cleveland, Ohio, under request for proposals (RFP) No. FA9301-11-R-0006, issued by the Department of the Air Force for custodial services.

We deny the protest.

BACKGROUND

The solicitation, issued as an historically underutilized business zone (HUBZone) set-aside, provided for the award of a fixed-price, indefinite-delivery/indefinite-quantity contract for five years (with a 6-month option period) for base-wide custodial services at Edwards Air Force Base and the Air Force Research Laboratory. The contractor will provide all management, tools, equipment and labor to perform custodial services at over 250 facilities totaling more than 2 million square feet. RFP amend. 4, Performance Work Statement, appendix B.

The RFP advised that award would be made to the offeror with the lowest-priced, technically acceptable proposal that had received a past performance rating of substantial confidence. Id. at 16. If the lowest-priced, technically acceptable proposal did not receive a "substantial confidence" past performance rating, the

agency would continue to evaluate proposals (from the next lowest-priced proposal) until a technically acceptable proposal received a substantial confidence rating. Id. The source selection authority (SSA) would then consider which proposal reflected the best value, considering past performance and price. Id.

In this regard, the RFP identified the following evaluation factors: price, technical acceptability, and past performance. RFP amend. 2, at 11. Offerors were informed that proposals would be evaluated under the technical acceptability factor on a pass/fail basis, and that the past performance factor was approximately equal in weight to price. Id.

The RFP stated that the agency would first rank all offers by total price, which would be calculated by multiplying unit prices by estimated quantities and adding together all the resulting prices. Id. Next, the Air Force would evaluate offerors' proposals under the technical acceptability factor on a pass/fail basis. Id. The Air Force would then evaluate past performance. With regard to past performance, offerors were required to submit information for no more than four contracts for the prime offeror, and no more than two for each major or critical subcontractor. RFP amend. 5, at 70. Firms were also required to send past performance questionnaires to their references, which were to submit the completed questionnaires to the agency. Id. at 71; Contracting Officer's Statement at 14. The RFP further advised offerors that the agency may obtain past performance information from the Contractor Performance Assessment Reporting System (CPARS), interviews with program managers and contracting officers, and other sources. RFP amend. 2, at 11-12.

The RFP provided that the agency would evaluate this information for recency and relevance.¹ With regard to relevance, offerors were informed that the agency would assess the contracts, considering, in descending order of importance, the contract's scope of work, magnitude/complexity, type, and environment (e.g., Air Force installation, NASA installation, etc.).² Id. at 15. For each of these considerations, the RFP defined what would be considered "very relevant," "relevant," "somewhat relevant," or "not relevant." Id. at 12. For example, with respect to magnitude/complexity, a "very relevant" contract was defined to be one that provided for routine custodial service for over 250 facilities consisting of more than

¹ Recent contracts were those that were completed within the last 3 years from the date the RFP was issued or were "currently being performed within 12 months" of that date. RFP amend. 2, at 12.

² The RFP also provided that the agency would consider the contract value in determining relevance. A "very relevant" contract was defined as having a value greater than \$1.5 million annually, a "relevant" contract would have a value between \$1-1.5 million annually, and a "somewhat relevant" contract would have a value between \$700 - \$999 thousand annually. RFP amend. 2, at 12.

2 million square feet on a weekly basis; a “relevant” contract provided such service for 150 to 250 facilities of 1.5 million to 2 million square feet; and a “somewhat relevant” contract provided service for 100 to 150 facilities consisting of 1 million to 1.5 million square feet. Id.

Offerors were informed that the agency’s past performance evaluation would assess the offeror’s performance risk and assign a rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence based upon the government’s confidence in the offeror’s probability of successfully performing the contract.³ Id. at 14-15. In this regard, the RFP provided that the agency may assign greater weight to information from contracts deemed most relevant. Id. at 16.

The agency received 11 proposals, including NSR’s and JDD’s. NSR proposed a teaming arrangement with Integrity National Corporation, Inc. (INC), and identified three contracts for its past performance: two that INC performed and one that NSR and INC performed together as a joint venture at Lackland Air Force Base (AFB).

The three lowest-priced proposals were evaluated as follows:

	Technically Acceptable	Past Performance	Price
NSR	Yes	Limited Confidence	\$9,873,822
Building Solutions, Inc.	Yes	Satisfactory Confidence	\$10,115,232
JDD	Yes	Substantial Confidence	\$10,140,765

Agency Report (AR), Tab 22, Source Selection Decision Briefing, at 20, 22, 29, 33, 41, 43, 48.

NSR’s limited confidence past performance rating reflected the judgment of the agency’s performance confidence assessment group (PCAG) that, although NSR identified very relevant contracts for itself and INC, the agency had concerns with the contractor’s quality of work. See AR, Tab 20, NSR Consensus Past Performance Evaluation, at 3. The PCAG based its evaluation upon two questionnaires that the agency received for NSR’s three identified contracts (one questionnaire was for the contract that NSR and INC performed as a joint venture at

³ Substantial confidence indicated that the agency had a high expectation that the offeror would successfully perform the required effort; satisfactory confidence indicated that the agency had an expectation that the offeror will successfully perform; and limited confidence indicated that the agency had a low expectation of successful performance. RFP amend. 2, at 15.

Lackland AFB and the other was for the contract performed by INC).⁴ The evaluation also relied upon three contracts for which the Air Force found information in the CPARS for INC. Id. at 2-3. The PCAG's concern with the quality of the protester's past performance was based upon negative past performance information the agency received with respect to the NSR/INC joint venture's performance of the contract at Lackland AFB and upon marginal ratings in the CPARS for two other contracts.

With regard to the joint venture's Lackland AFB contract, the PCAG received an initial questionnaire response that rated the joint venture as marginal for its effectiveness of quality control procedures. Specifically, Lackland AFB indicated that, for this 6-month contract, the joint venture had unacceptable quality control procedures for April and May of 2011, and marginal quality control procedures for June. AR, Tab 15, NSR Past Performance Evaluation, at 23. The Air Force asked NSR to address this negative past performance information. NSR disagreed that it had marginal performance, stating that the joint venture's overall performance rating for April and May was satisfactory and that there must have been a discrepancy in the information provided to the PCAG. AR, Tab 20, NSR Consensus Past Performance Evaluation, at 14.

In response, the Air Force obtained a revised questionnaire from Lackland AFB, which changed the joint venture's marginal rating for quality control procedures to satisfactory and stated that the joint venture's overall performance was satisfactory. The narrative, however, continued to indicate that the joint venture's quality control procedures were "unacceptable" for the months of April and May, but, that the protester was "overall satisfactory for both months." Id. at 18-20. The PCAG then contacted Lackland AFB personnel regarding this contract, and was informed that the joint venture had performed satisfactorily overall but had "quality and performance issues at the CDCs (child development centers)" and that the "main performance issues were in the child development centers and fitness centers." See AR, Tab 15, NSR Past Performance, at 10, 13. The PCAG was also informed that the joint venture required "quite a bit of government oversight." Id. at 10. The evaluators concluded that Lackland AFB's revised questionnaire and further explanation did not alleviate their concerns about the joint venture's past performance. AR, Tab 20, NSR Consensus Past Performance Evaluation, at 3.

With regard to INC's contracts that the Air Force reviewed in the CPARS, the agency found that, for Contract No. N40085-06-D-4250 (which concerned INC's performance for the Department of the Navy), INC had received marginal ratings for schedule and key personnel management areas. AR, Tab 20, NSR Consensus Past Performance Evaluation, at 3. The CPARS also included a statement from the

⁴ The agency did not receive a past performance questionnaire for one of the two contracts INC performed. Contracting Officer's Statement at 14.

contracting officer that the agency would “probably not” award to the company again. In addition, the contracting officer for this contract advised the PCAG that INC’s “quality of work had decreased in the last year of the contract and [the CO] believed upper management was unresponsive to concerns. . . .which contributed to the poor quality provided by the contractor.” AR, Tab 20, NSR Consensus Past Performance Evaluation, at 25. The agency also reviewed INC’s Contract No. GS07P05UBC0002 (which concerned INC’s performance of custodial services for the General Services Administration (GSA)). The CPARS again contained a marginal rating--this time for INC’s commitment to customer satisfaction. Id. at 3. The PCAG also contacted the contracting officer for this contract and was informed that INC’s performance was satisfactory. Id. at 30. The PCAG concluded based upon this information, and the information that it received from Lackland AFB, that it had a low expectation that the protester would successfully perform the contract.

In contrast, JDD’s substantial confidence past performance rating reflected the PCAG’s determination that JDD had submitted contracts for itself and its team that were very relevant in scope, and that the questionnaires it received for JDD’s performance (two for JDD and two for its subcontractor) reflected overall good and excellent performance. See AR, Tab 17, JDD Past Performance Evaluation, at 3.

Because the lowest-priced, technically acceptable proposal (NSR’s) did not receive a substantial confidence rating, the SSA performed a cost/technical tradeoff analysis to determine which proposal reflected the best value to the agency. The SSA received a briefing that detailed the PCAG’s past performance evaluation. AR, Tab 22, Source Selection Decision Briefing. The SSA concluded that JDD’s higher past performance rating reflected a better value to the agency than NSR’s limited confidence rating. AR, Tab 23, Source Selection Decision, at 4. In this regard, the SSA specifically recognized that, although NSR had received an overall satisfactory rating for the joint venture’s performance at Lackland AFB, the joint venture had required “quite a bit of Government oversight.” Id. The SSA concluded that JDD’s higher, substantial confidence past performance rating outweighed NSR’s \$267,000 price advantage. Id.

Award was made to JDD, and this protest followed.

DISCUSSION

NSR objects to the agency’s evaluation of its past performance, arguing that it should have received higher than a “limited confidence” rating.⁵ In this regard, NSR

⁵ NSR raises numerous objections to the agency’s past performance evaluation. We have considered all of the protester’s arguments--although we specifically address only the principal ones--and find that they provide no basis to sustain the protest.

contends that the Air Force's reliance on negative information concerning the joint venture's contract at Lackland AFB was unreasonable, where the joint venture was found to have satisfactory performance overall. NSR also complains that the Air Force failed to consider positive past performance information contained in the CPARS for NSR and/or INC, and improperly considered negative performance information related to contracts not relevant to the work here.

The evaluation of an offeror's past performance is a matter of agency discretion, which we will not find improper unless unreasonable or inconsistent with the solicitation's evaluation criteria, National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4; Command Enters., Inc., B-293754, June 7, 2004, 2004 CPD ¶ 166 at 4, nor will we substitute our judgment for reasonably based evaluation ratings. MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. An offeror's mere disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. FN Mfg., LLC, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

Here, the record shows that the Air Force's evaluation of NSR's past performance was reasonable. With respect to the NSR/INC joint venture's performance at Lackland AFB, the Air Force received information from questionnaire responses and Lackland AFB personnel that indicated that the joint venture had marginal or unacceptable quality control for half of the contract term. See AR, Tab 15, NSR Past Performance Evaluation, at 23. Although the second questionnaire rated the joint venture's quality control performance as satisfactory overall, that questionnaire continued to indicate the joint venture's performance problems in specific areas. Moreover, the personnel at Lackland AFB informed the agency, after receipt of the second questionnaire response, that the joint venture had performance problems on this contract and required significant government supervision. Although NSR disagrees that it had performance problems, it does not show that any of this information is in error.⁶

NSR also complains that the agency considered negative past performance information the agency found in the CPARS for two contracts that INC performed, where the agency itself found that these contracts were "not relevant" under at least one of the considerations established by the RFP for determining relevancy. Specifically, NSR notes that Contract No. -4250 (INC's contract with the Navy) was found to be not relevant under the magnitude/complexity and contract value

⁶ NSR also argues that the CPARS shows satisfactory performance for this contract, which the agency did not consider. Given the past performance concerns that the agency received from the questionnaire responses, and directly from Lackland AFB personnel, we do not see how the CPARS information would alleviate the agency's concerns with NSR's past performance.

considerations,⁷ and that Contract No. -0002 (INC's contract with GSA) was found to be not relevant under the magnitude/complexity consideration.⁸ AR, Tab 20, Past Performance Recency and Relevancy Worksheet, at 9, 10.

We do not agree that the Air Force could not consider these contracts in its past performance evaluation. In this regard, the RFP did not state that the agency would only consider contracts to be relevant if they were deemed to be at least "somewhat relevant" under every relevancy consideration. Rather, the RFP provided for an integrated assessment of a contract's relevancy, and stated an order of importance for these considerations. Here, the PCAG found the contracts relevant considering all of the stated considerations, and in particular considering the most important "scope of work" consideration. Although NSR disagrees with this judgment, it does not show it to be unreasonable.⁹

NSR also complains that the Air Force in its review of the CPARS failed to credit NSR for other, positive, CPARS evaluations. In this regard, NSR identifies in its protest CPARS evaluations for three other contracts that NSR believes the agency should have considered. The contracting officer explains that he searched for the CPARS for relevant contracts for NSR, INC, and NSR/INC joint venture by cage codes and contractor names, and states that he did not find any other relevant CPARS evaluations. See Contracting Officer's Statement at 18. The record provides no basis to question the contracting officer's statement in this regard. In any event, we find no merit to this complaint, given the past performance concerns that were otherwise identified for NSR.

Finally, NSR challenges the Air Force's evaluation of JDD's past performance, arguing that the Air Force did not consider negative comments contained in one of JDD's CPARS evaluations, and did not give sufficient weight to an unsatisfactory rating received on a questionnaire response for JDD's subcontractor. The Air Force responds that it did consider this information in its evaluation. The agency first

⁷ This contract was for custodial services at three buildings comprising 157,253 square feet, and had a value of \$523,841 annually. AR, Tab 20, Past Performance Recency and Relevancy Worksheet, at 10.

⁸ This contract was for custodial services at three buildings with 7,311,400 square feet. AR, Tab 20, Past Performance Recency and Relevancy Worksheet, at 10.

⁹ NSR also disagrees with the agency's judgment that INC had performance problems under Contract No. -0002, where the contracting officer for that contract stated that INC's performance was "satisfactory." This does not show that the agency unreasonably assessed the import of INC's negative performance ratings for specific areas under this contract (such as, INC marginal rating for commitment to customer satisfaction).

explains that, with regard to the CPARS negative comments for one of JDD's contracts, the agency also received a questionnaire response from the contracting officer who completed the CPARS evaluation, and he indicated that there were not any performance problems. The agency placed more weight on the recent questionnaire response. 2nd Legal Memorandum at 5. With regard to the subcontractor's unsatisfactory rating, the record shows that, after receiving the questionnaire response, the Air Force contacted the individual who completed the questionnaire and learned that the rating related to performance problems at the start of the contract that were not solely the subcontractor's fault. The PCAG did not view this negative past performance information as significant, given this explanation. Contracting Officer's Statement at 14. We find nothing unreasonable about the agency's conclusions in this regard.

The protest is denied.

Lynn H. Gibson
General Counsel