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Decision

Matter of: ProLog, Inc.

File: B-405051

Date: August 3, 2011

David S. Cohen, Esq., John J. O'Brien, Esq., and William J. Bainbridge, Esq., Cohen Mohr LLP, for the protester.

William K. Walker, Esq., Walker Reausaw, for the intervenor.

Col. Mark S. Teskey, Christopher S. Cole, Esq., and Amanda M. Willis, Esq., Department of the Air Force, for the agency.

Pedro E. Briones, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's evaluation of protester's past performance is reasonable, where the agency reasonably determined that only 1 of 10 evaluated contracts was very relevant and, although performance on that contract was exceptional, the offeror's lack of very relevant performance warranted only a satisfactory confidence rating.

2. Protester's challenge to the past performance evaluation of the awardee's past performance is dismissed, where protester would not be next in line for award even if its protest were sustained.

DECISION

ProLog, Inc., of Virginia Beach, Virginia, protests the award of a contract to Bering Straits Logistics Services, LLC, (BSLS), of Anchorage, Alaska, under request for proposals (RFP) No. FA3002-10-R-0032, issued by the Department of the Air Force for supply and transportation services. ProLog challenges the past performance evaluation.

We deny in part, and dismiss in part, the protest.

BACKGROUND

The RFP, which was set-aside for section 8(a) small businesses, provided for the award of a firm, fixed-price contract for a 45-day mobilization period, followed by

a 3-month base period and 4 option years.¹ RFP at 136-38; RFP amend. 5. A detailed performance work statement (PWS), included with the RFP, described contract requirements for a broad range of supply and transportation services to support Tyndall Air Force Base (AFB) in Florida. RFP amend. 4, PWS, § 23.1.1. The RFP provided that award would be made based on the following factors: mission capability, price, and past performance. RFP amend. 6, at 149-55. The RFP stated that the agency would rank proposals by total evaluated price and make award to the offeror who submitted the lowest reasonably-priced, technically acceptable proposal with a substantial confidence past performance rating. If no technically acceptable proposals received a substantial confidence rating, then award would be made on a best value basis. Id. at 154-55.

With regard to past performance, the evaluation of which is protested here, offerors were required to submit information on no more than seven contracts performed within 3 years of the RFP's issuance date that the offeror considered relevant to demonstrating its ability to perform the requirements. Id. at 143. Offerors were to provide past performance questionnaires to each point of contact for the listed contracts, and these references were to complete the questionnaire and return it directly to the agency for evaluation. Id. at 145. The RFP stated that the agency would consider the information provided in the proposal and past performance questionnaires, as well as information obtained from other sources.² Id. at 144, 152.

Section M of the RFP provided that the agency would evaluate past performance as an indicator of the offeror's ability to successfully perform the contract. Id. at 151. This evaluation was to include consideration of recency (defined as contracts that were performed within the 3 years preceding the RFP's issuance); relevancy (defined as contracts that were similar or greater in scope, magnitude, and complexity than the effort here)³; and performance information (including an offeror's

¹ The estimated dollar value for this procurement was \$45,350,000. Agency Report (AR), Tab 5, Source Selection Plan, attach. 2, Market Research Report, at 1.

² The RFP also provided that the agency would consider the past performance of predecessor companies, key personnel, or subcontractors that will perform "major or critical aspects of the requirement," as well as past performance of affiliated companies where "the resources . . . of the affiliated [company] will meaningfully affect performance of the instant acquisition." RFP amend. 6, at 152.

³ The RFP stated that the agency would assign proposals relevancy ratings of very relevant, relevant, somewhat relevant, or not relevant. As pertinent here, a very relevant rating reflected an effort involving essentially the same magnitude of effort and complexities as the requirement; a relevant rating reflected an effort involving much of the magnitude of effort and complexity; a somewhat relevant rating reflected an effort that involved some of the magnitude of effort and complexity; and a not

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history of forecasting and controlling costs, and history of performance problems).⁴ Id. at 153. The RFP stated that the agency would integrate its assessment of recency, relevancy, and performance of each offeror's efforts into an overall confidence rating of substantial, satisfactory, limited, no, or unknown confidence.⁵

The agency received six proposals, including those of ProLog and BSLS. Contracting Officer's (CO) Statement at 7. As pertinent here, ProLog identified five contracts that it performed: a support contract for the Maritime Administration (MARAD) from 2006 to 2011 (\$24,579,206); a support contract for the National Oceanic and Atmospheric Administration (NOAA) from 2007 to 2011 (\$2,923,677); and three support contracts at Norfolk Naval Shipyard for various periods between 2006 and 2010 (\$7,739,624; \$1,435,832; and \$2,863,154, respectively). In addition, ProLog identified three contracts performed by its proposed subcontractor, [DELETED]: an installation support contract [DELETED] from 2002 to 2012 [DELETED]; a hazardous material pharmacy and waste management contract [DELETED] from 2008 to 2012 [DELETED]; and a support contract [DELETED] from 2009 to 2012 [DELETED].⁶ Agency Report (AR), Tab 17, ProLog's Past Performance Proposal, at 2-29; Tab 31, Performance Confidence Assessment Group (PCAG) Report, at 69.

The PCAG evaluated offeror's past performance by considering the information in the offerors' proposals, the questionnaires submitted by offerors' references, interviews with references, and information available from Contractor Performance Assessment Reports (CPAR).⁷ AR, Tab 31, PCAG Report, at 5-6. The PCAG

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relevant rating reflected an effort that did not involve any of the magnitude of effort and complexities. RFP amend. 6, at 152.

⁴ The RFP stated that the agency would assign proposals performance ratings of exceptional, very good, satisfactory, marginal, unsatisfactory, or not applicable (NA) where none were available. See RFP amend. 6, at 153.

⁵ As pertinent here, the RFP defined substantial confidence as the government having a high expectation that the offeror would successfully perform the work, and satisfactory confidence as the government having an expectation that the offeror would successfully perform the work. RFP amend. 6, at 154.

⁶ The agency did not consider this last contract in the evaluation because it exceeded the number of contracts that the offeror was permitted to identify in its proposal. AR, Tab 31, PCAG Report, at 58.

⁷ From its search of the CPAR database, the agency found and evaluated three additional contracts performed by ProLog: one clerical support contract for the Navy Field Service Office in Tucson, Arizona, from 2009 through 2010 (\$171,000); and
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looked at the performance period of the contract, the contract type and value, and the tasks performed under the contract to assess recency and relevancy. The PCAG looked to the questionnaires and CPAR ratings to assess performance. ProLog’s past performance ratings were as follows:

ProLog/Chenega	Relevance	Questionnaire Overall Rating	CPAR Rating Range
MARAD (ProLog)	Somewhat Relevant	Exceptional	Outstanding ⁸
NOAA (ProLog)	Somewhat Relevant	Satisfactory	N/A
Norfolk (\$7M) (ProLog)	Somewhat Relevant	Exceptional	N/A
Norfolk (\$3.4M) (ProLog)	Somewhat Relevant	Exceptional	N/A
Norfolk (\$2.8M) (ProLog)	Somewhat Relevant	Exceptional	N/A
[DELETED]	Very Relevant	Exceptional	N/A
[DELETED]	Somewhat Relevant	Exceptional	Satisfactory
Tucson (ProLog)	Not Relevant	N/A	N/A
Norfolk (\$124K) (ProLog)	Not Relevant	N/A	N/A
Norfolk (\$171K) (ProLog)	Not Relevant	N/A	N/A
PERFORMANCE CONFIDENCE:		SATISFACTORY CONFIDENCE	

AR, Tab 31, PCAG Report, at 56, 69.

The PCAG found that ProLog identified only one very relevant contract--performed not by ProLog, but by its proposed subcontractor--that was similar in size, scope, and complexity to the PWS. *Id.* at 58. Specifically, the PCAG found that [DELETED] contract included some of the supply functions and essentially all of the transportation functions that were very relevant to the solicited requirement, was of far greater magnitude than the solicited requirement, and [DELETED] performance under the contract was exceptional. *Id.* at 58, 66-67. The remaining contracts were deemed only somewhat relevant or not relevant as they were not of the same or similar size, scope, or complexity as compared to the requirements here. Although the PCAG reported that it received no detrimental feedback about the quality of ProLog’s or [DELETED] performance on the remaining contracts, and acknowledged that ProLog received high performance ratings from its references, the lack of very relevant contracts resulted in an overall performance confidence rating of only

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two support contracts at Norfolk, Virginia, for periods between 2007 to 2011 (\$124,000 and \$890,000, respectively). AR, Tab 31, PCAG Report, at 65-66.

⁸ MARAD used a different performance rating scale in its CPAR with “outstanding” reflecting the highest possible rating. Supp. AR, ProLog CPARs & Questionnaires, at 9; see AR, Tab 31, PCAG Report, at 60.

satisfactory. Id. at 58. That is, the PCAG concluded that ProLog would successfully perform the required effort. Id.

The PCAG provided its findings to the source selection evaluation team (SSET), who considered the past performance findings along with mission capability and price. The SSET agreed with the PCAG's past performance assessment of satisfactory confidence for ProLog's proposal, and found the proposal to be acceptable under the mission capability factor, which was the only technical factor. AR, Tab 32, Performance Analysis Report (PAR), at 128-31. The SSET also determined that the remaining five proposals evaluated were technically acceptable, and that three of those proposals (including BSLs's) warranted substantial confidence past performance ratings. Id. at 130-31.

In accordance with the RFP, the SSET ranked technically acceptable offers according to price, and eliminated the lowest-priced offer with a substantial confidence rating from further consideration because it was determined that the firm was not an 8(a) small business. The SSET determined that the next lowest-priced offer with a substantial confidence rating was submitted by BSLs, and recommended that firm for award to the source selection authority (SSA).⁹ The SSA agreed with the SSET's recommendation and selected BSLs for award. AR, Tab 34, Source Selection Decision, at 5-6.

After receiving notice of the award and a debriefing, ProLog filed this protest. Performance of the contract has been suspended pending our decision.

DISCUSSION

ProLog protests the agency's evaluation of past performance in its proposal. It contends that its proposal should have been rated higher than BSLs's under the past performance factor, and because it was not, the evaluation was unreasonable and unequal. ProLog also contends that the agency failed to conduct meaningful discussions with regard to past performance concerns.

In reviewing protests against allegedly improper evaluations, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the evaluation factors set forth in the RFP. See, e.g., TPL, Inc., B-297136.10, B-297136.11, June 29, 2006, 2006 CPD ¶ 104 at 10. An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, as well as consideration

⁹ One other offeror's proposal (not ProLog) received a substantial confidence rating, but it was higher in price than BSLs's proposal. AR, Tab 32, PAR, at 130-31.

of actions taken to resolve prior problems, 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. See, e.g., Yang Enter., Inc.; Santa Barbara Applied Research, Inc., B-294605.4 et al., Apr. 1, 2005, 2005 CPD ¶ 65 at 5; Acepex Mgmt. Corp., B-283080 et al., Oct. 4, 1999, 99-2 CPD ¶ 77 at 3, 5. In short, we will not substitute our judgment for that of the agency, and a protester's mere disagreement with such judgment does not provide a basis to sustain a protest. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

We have reviewed the evaluation of ProLog's past performance and find, based on the record, that the agency's evaluation was reasonable, consistent with the RFP's stated evaluation criteria, and fair. In this regard, of the 10 contracts evaluated, only 1 was very relevant, 6 were somewhat relevant, and 3 were not relevant. The very relevant contract was performed by ProLog's proposed subcontractor [DELETED]; but, as the agency noted, ProLog itself had not performed contracts that were of similar scope or magnitude. For example, the MARAD contract was close in magnitude (\$24.5 million) and included some of the required services, but it did not include all transportation functions¹⁰; the other contracts performed by ProLog were of much smaller dollar values and therefore were not of similar magnitude. The agency recognized that ProLog's and [DELETED] performance ratings ranged from satisfactory to exceptional and outstanding, but given ProLog's lack of very relevant experience, the agency only had confidence (not high confidence) that the offeror would successfully perform. Accordingly, the proposal was rated satisfactory and not substantial confidence. AR, Tab 31, PCAG Report, at 57-58, 100-01; Tab 32, PAR, at 129; Tab 34, Source Selection Decision, at 4. Although ProLog disagrees with the agency's evaluation judgments, it has not shown them to be unreasonable.¹¹

¹⁰ Although ProLog contends that transportation services are included, it did not identify them in its proposal, and the questionnaire states that passenger transportation services were not performed. See AR, Tab 17, ProLog's Past Performance Proposal, at 3-6; Supp. AR, ProLog CPARs & Questionnaires, at 6.

¹¹ For example, ProLog asserts that the agency improperly downgraded its proposal because the firm's past performance references were mostly for time-and-materials contracts, and not fixed-price contracts. ProLog asserts that consideration of whether contracts were fixed-price or time-and-materials constituted unstated evaluated criteria. Protest at 21-23; ProLog's Comments (June 10, 2011) at 2-3. The record does not support that this was an important discriminator in the evaluation and, in any event, it was encompassed within the stated evaluation criteria. Specifically, the RFP provides that the agency will consider each offeror's history of forecasting and controlling costs. RFP amend. 6, at 153; see, e.g., Master Lock Co., LLC, B-309982.3, Dec. 10, 2008, 2009 CPD ¶ 6 at 5-6 (denying protest

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ProLog next complains that it was entitled to meaningful discussions on “any concerns” the agency had about the relevance of its past performance. Protest at 23; ProLog’s Comments (June 10, 2011) at 4. However, when an agency conducts discussions, as it did here, the agency is not required to raise with each offeror every discriminator for award. See, e.g., PWC Logistics Servs., Inc., B-299820, Aug. 14, 2007, 2007 CPD ¶ 162 at 6. Rather, discussions need only be meaningful, that is, discussions must identify deficiencies, significant weaknesses, and adverse past performance to which the offeror has not yet had an opportunity to respond. Federal Acquisition Regulation (FAR) § 15.306(d)(3); Bank of Am., B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10-11. None of the agency’s evaluation conclusions about the relevance of ProLog or its subcontractor’s contracts rise to the level of a deficiency or significant weakness, and do not constitute adverse past performance information that must be raised during discussions. ProLog’s arguments in this respect do not provide a basis to sustain this protest.

ProLog raises a myriad of other issues challenging the evaluation of BSLS’s past performance. We do not address these issues because ProLog is not an interested party to protest the past performance evaluation of BSLS. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (2006), only an “interested party” may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1) (2011). A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57.

As noted above, the RFP provided that award would be made to the offeror who submitted the lowest-priced, technically acceptable offer that was rated substantial confidence for past performance. Even if ProLog were successful in its protest challenging the substantial confidence rating given to BSLS’s proposal, ProLog would not be in line for award because its proposal was reasonably rated satisfactory confidence and because one other offeror, besides BSLS,

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alleging unstated evaluation criteria where issue was reasonably and logically encompassed within solicitation stated past performance criteria).

submitted a technically acceptable proposal that was rated substantial confidence, and that firm would be next in line for award.¹² Therefore, we dismiss this aspect of ProLog's protest.

The protest is denied in part and dismissed in part.

Lynn H. Gibson
General Counsel

¹² ProLog does not challenge the evaluation of the intervening offeror's proposal.