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Decision

Matter of: Wolf Creek Federal Services, Inc.
File: B-409187; B-409187.2; B-409187.3
Date: February 6, 2014

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Eden Brown Gaines, Esq., Brown Gaines, LLC, for Helix Management Services, LLC, the intervenor.
Alexander T. Bakos, Esq., and J. Brett Swanson, Esq., National Aeronautics and Space Administration, for the agency.
Christina Sklarew, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. An agency reasonably did not consider the past performance of the protester’s affiliates where the protester’s proposal did not establish that the affiliates would have any meaningful involvement in contract performance.
 2. Where a protester’s neutral past performance rating was not considered a significant weakness, and the nature and relevance of the protester’s past performance submissions were clear, an agency was not required to discuss the protester’s past performance.
 3. A protester was not misled by an agency in discussions where the agency led the protester to the areas of concern in its proposal but did not inform the protester that the agency considered these areas to be significant weaknesses.
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DECISION

Wolf Creek Federal Services, Inc., of Anchorage, Alaska, protests the award of a contract to Helix Management Services (HMS), of Lanham, Maryland, under request for proposals (RFP) No. NND11372962R, issued by the National Aeronautics and Space Administration (NASA) for facilities operations and

maintenance support services.¹ Wolf Creek challenges the agency's evaluation of its past performance proposal and conduct of discussions.

We deny the protest.

BACKGROUND

The RFP, issued as a competitive section 8(a) small business set-aside, provided for the award of a contract for operations, maintenance, repair, janitorial, and other miscellaneous services for all facilities at NASA's Dryden Flight Research Center and Dryden Aircraft Operations Facility.² Contracting Officer's (CO) Statement at 1. The contract, which anticipated a phase-in period, a base year, and four option years, included both fixed-price contract line items and indefinite-delivery, indefinite-quantity items, under which task orders would be priced using fixed labor rates. RFP at 7.³ The contract's estimated value is \$35 million. See AR, Tab 17, Source Selection Authority (SSA) Briefing, at 3,016.

Offerors were informed that award would be made on a best-value basis considering the following factors, in descending order of importance: mission suitability, past performance, and price. RFP at 66. The non-price factors, combined, were stated to be significantly more important than price. Id. at 77. Instructions were provided for the preparation of proposals under each of the factors. Offerors were instructed to submit proposals in three separate stand-alone volumes (mission suitability, past performance, and price) that would not require reference to other volume(s) in the evaluation. Id. at 69.

Under the mission suitability factor, the RFP provided that proposals would be rated on a 1,000-point evaluation scale. Offerors were informed that the agency would evaluate the offeror's ability to successfully perform and administer the requirements of the performance work statement (PWS). The mission suitability

¹ Wolf Creek is a section 8(a) certified small business, and a wholly-owned subsidiary of Chugach Alaska Corporation. See Agency Report (AR), Tab 3, Wolf Creek Mission Suitability Proposal, at 2,338. HMS is a joint venture between Helix Enterprises, Inc., a section 8(a) certified small business, and EMCOR Government Services; the HMS joint venture participates in the Small Business Administration's mentor-protégé program, as defined at 13 C.F.R. § 124.520. See Supplemental AR, Tab 37, HMS Mission Suitability Proposal, append. A, at 4,109.

² These services were previously provided under a contract performed by EMCOR Government Services.

³ The RFP was amended several times; this decision cites to the final RFP, dated January 28, 2013. All cites to the agency's report are based on the BATES numbers provided by the agency.

factor included three subfactors: technical (500 points), management (250 points), and safety (250 points). The mission suitability factor and subfactors were also to be given an adjectival rating (excellent, very good, good, fair, or poor) corresponding to the point score.⁴ Id. at 77-78.

The RFP provided that offerors' past performance would receive a confidence assessment rating (very high, high, moderate, low, very low, or neutral confidence) based upon information from the offerors' past performance proposals, past performance questionnaires, the government's past performance databases, and other government-available sources.⁵ Under this factor, offerors were advised that the agency would evaluate the relevance of the offeror's past performance to the PWS requirements and would consider the offeror's overall contract performance, contract type, size, and type of services provided. Id. at 81-82.

NASA received proposals from four firms, including Wolf Creek and HMS, which were evaluated by the agency's source evaluation committee (SEC). Because Wolf Creek's proposal referred to itself and to Chugach interchangeably, see Contracting Officer's Statement at 6, NASA sought clarification from Wolf Creek with respect to Chugach's role.⁶ AR, Tab 16, Wolf Creek Clarification Letter, at 3,006. Wolf Creek informed NASA that its references to Chugach in its mission suitability proposal were intended to refer to Wolf Creek, which would be performing the contract work. Id. at 3,007.

⁴ As relevant here, a very good rating was reserved for proposals that received between 710 and 900 points (or 71-90 percent); had no deficiencies; demonstrated overall competence and had one or more significant strengths; and had strengths that outweighed any weaknesses. RFP at 78.

⁵ As relevant here, a moderate level of confidence rating reflected relevant past performance that demonstrated effective performance; was fully responsive to the contract requirements; might include reportable problems, but with little identifiable effect on overall performance; and might have strengths or weaknesses, or both. RFP at 81. A neutral rating, consistent with Federal Acquisition Regulation (FAR) § 15.305(a)(2)(iv), reflected an offeror without a record of relevant past performance, or for whom information on past performance was not available.

⁶ The contracting officer states that the SEC found nothing in Wolf Creek's price proposal indicating that Chugach (or any Chugach subsidiaries) were proposed to provide contract support here. Contracting Officer's Statement at 6.

A competitive range was established that included only Wolf Creek's and HMS's proposals, which were evaluated as follows:

	Wolf Creek	HMS
Mission Suitability	765 Points/Very Good	702 Points/Good
Past Performance	Neutral	Moderate Confidence
Price	\$26.9 million	\$29.3 million

AR, Tab 18, Competitive Range Determination, at 3,232.

Wolf Creek's proposal was evaluated under the mission suitability factor as having 13 strengths (three of which were significant) and 16 weaknesses (four of which were significant). NASA identified all of Wolf Creek's weaknesses in discussions, asking the protester to address 16 questions concerning its mission suitability proposal. As relevant here, Wolf Creek was asked to address its staffing approach of relying on cross-utilization of craft trades⁷ and minimal staffing of heating/ventilation/air-conditioning (HVAC) and janitors. AR, Tab 19, Protester's Discussions Letter, at 3,238-39. NASA also informed Wolf Creek of several instances where the firm's price proposal was missing prices, such as a price for non-core facilities janitorial and grounds maintenance, and overhead or profit rates. Id. at 3,240-41.

With respect to Wolf Creek's past performance, NASA found that Wolf Creek had not identified any past performance for itself, only for its affiliates. Because Wolf Creek's proposal did not establish that Wolf Creek's affiliates would have any meaningful involvement in performance of the contract, NASA did not credit Wolf Creek with the past performance of its affiliates; instead, NASA rated Wolf Creek's past performance as neutral. NASA did not conduct any discussions with Wolf Creek with respect to its past performance.

NASA received final revised proposals from both firms. The agency found that Wolf Creek's revised proposal addressed and satisfied most of the agency's concerns. NASA found, however, that Wolf Creek had not satisfied the agency's concern with respect to cross-utilization of staff. In this regard, NASA noted that Wolf Creek

⁷ Examples of this weakness, listed in the discussion question, include such things as Wolf Creek's proposed use of electricians to perform crane maintenance and certification, and for elevator maintenance and repair; and proposed tasking of fire technicians with the daily operation and repair of chillers and boilers, and with annual flue gas and combustion testing. According to the agency's discussion letter, these tasks require specialized training and skills. See AR, Tab 19, Wolf Creek Discussions, at 3,238.

continued to propose using a mechanical lead to operate and inspect chillers and boilers, and to oversee a maintenance pipefitter, maintenance plumber, and sewage plant operator without identifying the experience or training that would allow the mechanical lead to perform the HVAC duties.⁸ AR, Tab 24, SEC Consensus Evaluation of Wolf Creek Revised Mission Suitability, at 3,698-99; Tab 32, SSA Revised Proposal Briefing, at 3,884. With respect to Wolf Creek’s proposed staffing level, the evaluators also found that the protester’s proposal to use grounds maintenance workers and general maintenance workers to supplement its janitorial staffing, on an as-needed basis, could impact the performance of the maintenance workers’ regularly assigned duties. Id. at 3,883. The evaluators concluded that Wolf Creek’s staffing approach “establishe[d] a lean workforce,” which the SEC found to be insufficient to perform the required HVAC duties.⁹ AR, Tab 32, SSA Revised Proposal Briefing, at 3,884.

The revised proposals were evaluated as follows:

	Wolf Creek	HMS
Mission Suitability	818 Points/Very Good	833 Points/Very Good
Past Performance	Neutral	Moderate
Price	\$26.9 million	\$29.3 million

Id. at 3,916. The SSA was informed of the strengths and weaknesses in the offerors’ respective proposals. The SSA accepted the SEC’s findings and concluded that HMS’s proposal reflected the best value to the agency. In this regard, the SSA found that:

HMS’s proposal demonstrated superior technical and management approaches, a fair safety approach, and allocated sufficient resources for successful contract performance. In addition I found the Past Performance Factor was a key discriminator based on HMS’s Moderate Level of Confidence rating which indicates HMS would be fully responsive to contract requirements and be successful in the performance of the required effort.

⁸ The protester asked a number of questions about the discussion letter, which the agency addressed. None of Wolf Creek’s questions concerned the agency’s view that the protester had minimal staffing, or its proposed plan for the cross-utilization of tradesmen. AR, Tab 20, Protester’s Discussions Letter, at 3,243-45.

⁹ The SEC found that Wolf Creek proposed only 1 HVAC lead, 1.6 HVAC mechanics, and 6.8 janitors to perform the HVAC requirements. AR, Tab 24, SEC Consensus Evaluation of Wolf Creek Revised Mission Suitability, at 3,692.

AR, Tab 33, Source Selection Decision, at 3,994.

Award was made to HMS, and this protest followed a debriefing.

DISCUSSION

Wolf Creek makes numerous arguments challenging the agency's evaluation of its past performance proposal, and the adequacy of the agency's discussions. We have considered all of the protester's arguments, although we only address its most significant ones, and find that none provide a basis to object to NASA's evaluation of Wolf Creek's past performance and its conduct of discussions.

Past Performance Evaluation

Wolf Creek complains that its past performance should not have received a neutral confidence assessment rating, arguing that it should have received credit for the past performance of affiliated companies. In this regard, Wolf Creek's proposal provided past performance information for seven contracts that had been performed by subsidiaries of Chugach, but no past performance information for itself. Wolf Creek argues that it provided records of significant accomplishment by its affiliates and demonstrated the meaningful roles they would play in contract performance. Wolf Creek notes that its past performance proposal informed NASA that Wolf Creek would "directly use the experience of personnel who have played key management roles within the [Chugach] subsidiaries from which our past performance is drawn." See Protester's Comments & 2nd Supp. Protest at 4 n.5, quoting, AR, Tab 4, Wolf Creek Initial Past Performance Proposal, at 2,665. Wolf Creek also complains that it provided resumes for proposed staff that had previously been employees of Chugach affiliates.

NASA responds that Wolf Creek's proposal identified no meaningful role for Chugach or any of its subsidiaries in actually performing the requirements in the PWS. In this regard, Wolf Creek's proposal did not state any substantial role by the affiliates in providing labor, management, or other resources for this contract. Supp. AR at 4. Rather, the agency found that Wolf Creek's proposal described only general consultation and advisory roles for its affiliates, which the agency did not find to be meaningful involvement in the performance of PWS requirements. AR at 8-10. In this respect, NASA notes that no role was assigned to Wolf Creek's parent, Chugach, in the company's mission suitability proposal, and no Chugach resources were allocated to this contract in Wolf Creek's price proposal. Supp. AR at 4.

Responding to Wolf Creek's contention that it should have been credited for the experience of some of its proposed personnel, based on work that these individuals performed for Chugach, NASA states that this information was not provided in Wolf Creek's past performance proposal. Instead, resumes for Wolf Creek's proposed

project manager and business manager (showing experience with Chugach subsidiaries) were improperly provided in Wolf Creek's mission suitability proposal, contrary to the RFP's instructions. Because the past performance evaluation was based exclusively on the contents of the past performance volume, this information was not considered and therefore is not reflected in Wolf Creek's past performance rating. NASA also notes that the project manager's experience was not recent (as defined by the RFP), and that the recent work identified by both resumes was not relevant.¹⁰ AR at 12.

In reviewing a protest challenging an agency's past performance evaluation, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4. An agency properly may consider the experience or past performance of an offeror's affiliated companies where the firm's proposal demonstrates that the resources of the affiliated company will affect the performance of the offeror. See FAR § 15.305(a)(2)(iii); Perini/Jones, Joint Venture, B-285906, Nov. 1, 2000, 2002 CPD ¶ 68 at 4. The relevant consideration is whether the resources of an affiliated company--its workforce, management, facilities or other resources--will be provided or relied upon for contract performance, such that the parent or affiliate will have meaningful involvement in contract performance. IAP World Servs., Inc.; EMCOR Gov't Servs., B-407917.2 et al., July 10, 2013, 2013 CPD ¶ 171 at 9. While it is appropriate to consider an affiliate's performance record where the affiliate will be involved in the contract effort or where it shares management with the offeror, it is inappropriate to consider an affiliate's record where that record does not bear on the likelihood of successful performance by the offeror. Id.

Here, the record supports NASA's determination that Wolf Creek's proposal failed to show that the Chugach family of companies would contribute to Wolf Creek's performance of the PWS requirements.¹¹ AR at 9; Supp. AR at 3; Second Supp.

¹⁰ Wolf Creek contends that NASA should not be allowed in its response to the protest to comment on the quality of the resumes, where the agency's position was that the resumes properly were not considered in the past performance evaluation. Protester's Supp. Comments & 3rd Supp. Protest at 8. NASA's observations, however, appropriately address Wolf Creek's arguments that its resumes demonstrate meaningful involvement by its affiliates.

¹¹ The record shows that NASA was concerned that Wolf Creek had not adequately identified from which Chugach company (its parent or sister affiliates) Wolf Creek claimed it would obtain meaningful support. In response to a clarification request from NASA, Wolf Creek stated that "[w]hen 'Chugach' is used in proposal narrative in Volume I, Mission Suitability to discuss work that will be performed on the Dryden Facilities Operations and Maintenance Services (FOMS) contract, we are referring
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AR at 6. Although Wolf Creek's past performance proposal included a narrative that purported to demonstrate the meaningful involvement of its affiliates, NASA found that this narrative described general administrative support without identifying any firm commitment, nor did it indicate which Chugach affiliate would be providing support. See AR at 2. Although Wolf Creek disagrees with NASA's evaluation in this regard, this does not show that the agency acted unreasonably. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11. It is an offeror's responsibility to submit an adequately written proposal that establishes its capability and the merits of its proposed approach in accordance with the evaluation terms of the solicitation. See Verizon Fed., Inc., B-293527, Mar. 26, 2004, 2004 CPD ¶ 186 at 4.

Wolf Creek also complains that NASA evaluated Wolf Creek's and HMS's past performance unequally because the agency credited HMS with the past performance of its joint venture partner, EMCOR. Protester's Supp. Comments & 3rd Supp. Protest, at 21-23. There is no merit to this argument. HMS is a joint venture between Helix and EMCOR under the SBA's mentor-protégé program.¹² AR, Tab 37, HMS's Mission Suitability volume, append. A, at 4,109. When an agency is evaluating the experience and past performance of a mentor-protégé joint venture, absent an express prohibition in the RFP not present here, there is no basis to preclude an agency from considering the experience and past performance of both partners in such an arrangement. JACO & MCC Joint Venture, LLP, B-293354.2, May 18, 2004, 2004 CPD ¶ 122 at 7; see also Enola-Caddell JV, B-292387.2, B-292387.4, Sept. 12, 2003, 2003 CPD ¶ 168 at 7-8 n.7 (citing SBA's view that it appeared contrary to the intent of SBA's 8(a) mentor-protégé program for a procuring agency to downgrade a proposal based on the lack of experience/past performance of a protégé; in order to be a protégé, an entity must lack experience).

(...continued)

to Wolf Creek Federal Services, Inc., the prime offeror." See AR, Tab 16, Wolf Creek Clarification Letter, May 13, 2013.

¹² HMS submitted its approved joint venture agreement with its proposal, outlining the roles and responsibilities of both joint venture partners. See AR, Tab 37, HMS Mission Suitability Proposal, append. A, at 4,115-62.

Meaningful Discussions

Wolf Creek also complains that it did not receive meaningful discussions with respect to its past performance and mission suitability proposals.

Discussions, when conducted, must be meaningful; that is, they may not mislead offerors and must identify proposal deficiencies and significant weaknesses that could reasonably be addressed in a manner to materially enhance the offeror's potential for receiving award. Serco Inc., B-405280, Oct. 12, 2011, 2011 CPD ¶ 237 at 11. Although discussions must address deficiencies and significant weaknesses identified in proposals, the precise content of discussions is largely a matter of the contracting officer's judgment. FAR §15.306(d)(3); American States Utilities Servs., Inc., B-291307.3, June 30, 2004, 2004 CPD ¶ 150 at 5.

Here, with respect to Wolf Creek's complaint that it received no discussions concerning its past performance, NASA did not find that Wolf Creek's lack of relevant past performance was a deficiency or significant weakness.¹³ An agency is not required to conduct discussions with an offeror concerning its neutral past performance rating, where the offeror's past performance is not viewed as a deficiency or significant weakness, and the nature and relevance of the offeror's past performance information is clear to the agency. See Herley Indus., Inc., B-400736.2, Jan. 15, 2009, 2009 CPD ¶ 48 at 5 n.5; Standard Commc'ns, Inc., B-296972, Nov. 1, 2005, 2005 CPD ¶ 200 at 8.

The protester also contends that NASA's discussions with Wolf Creek concerning its mission suitability proposal were misleading. Specifically, Wolf Creek complains that, although NASA identified certain areas in which the evaluators found Wolf Creek's staffing to be "minimal" and requested further information about Wolf Creek's staffing approach in these areas, NASA did not inform Wolf Creek that the agency viewed this concern to be a significant weakness. Essentially, Wolf Creek contends that it failed to adequately address the agency's concerns with Wolf Creek's proposed cross-utilization and staffing because the agency did not adequately convey that it viewed this concern to be significant or serious.

¹³ Wolf Creek contends that its lack of relevant past performance was viewed by the SSA to be a significant weakness, because it was one of the discriminators that the SSA noted in his selection decision. Protest at 2, 7. The record shows, however, that Wolf Creek's neutral past performance rating was not viewed to be a deficiency or a significant weakness. Rather, the SSA recognized, as he was permitted to do, that HMS's past performance rating of moderate confidence provided benefits beyond Wolf Creek's neutral rating. See West Coast Unlimited, B-281070.2, Aug. 18, 1999, 99-2 CPD ¶ 40 at 6.

We find no merit to Wolf Creek's contention that NASA misled the firm in discussions. To satisfy the requirement for meaningful discussions, an agency need only lead an offeror into the areas of its proposal requiring amplification or revision; all-encompassing discussions are not required, nor is the agency obligated to "spoon-feed" an offeror as to each and every item that could be revised to improve its proposal.¹⁴ ITT Fed. Sys. Int'l Corp., B-285176.4, B-285176.5, Jan. 9, 2001, 2001 CPD ¶ 45 at 7. The agency was not required to identify every instance of cross-utilization, nor was it required to specifically label its concern as a "significant weakness," as Wolf Creek claims.¹⁵ See Grunley Constr. Co., Inc., B-407900, Apr. 3, 2013, 2013 CPD ¶ 182 at 8. While the protester painstakingly compares the specific wording used in the evaluation record with the language in the discussions questions to suggest that the agency was required to disclose to Wolf Creek exactly how it evaluated the offeror's proposal in this area, this simply does not reflect the standard for discussions established in the FAR and in the decisions of our Office--that is, the agency's obligation to lead the offeror into the area of concern.

The protest is denied.

Susan A. Poling
General Counsel

¹⁴ The protester disputes any assertion by the agency that it needed to be "spoon fed." Protester's Comments & 2nd Supplemental Protest, at 16.

¹⁵ The fact that Wolf Creek misjudged the significance of the identified weaknesses does not support its assertion that the discussions were misleading. See Serco Inc., B-407797.3, B-4097797.4, Nov. 8, 2013, 2013 CPD ¶ 264 at 5.