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Decision

Matter of: CASS Professional Services Corp.

File: B-415941; B-415941.2

Date: April 27, 2018

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DIGEST

1. Protest challenging contracting officer's affirmative determination of responsibility is dismissed where the assertion on which the protest is based does not constitute the type of allegation that triggers a review of affirmative responsibility determinations under our Bid Protest Regulations.

2. Protest challenging agency's evaluation of proposals, as well as the agency's best-value decision, is denied where record shows that the evaluation and award decision were reasonable and consistent with the terms of the solicitation.

DECISION

CASS Professional Services Corp. (CASS), a service-disabled veteran-owned small business (SDVOSB) of Temecula, California, protests the award of a contract to Cherokee Holdings, LLC, a SDVOSB of Washington, Utah, under request for proposals (RFP) No. AG-024B-S-17-0014, issued by the Department of Agriculture, Forest Service for HC-130H aircraft aircrew support. The protester alleges that the affirmative responsibility determination performed on Cherokee was flawed. CASS also asserts that the agency failed to properly evaluate proposals and that the best-value award decision was unreasonable.

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

BACKGROUND

The Forest Service issued the solicitation on August 14, 2017, as a total SDVOSB set-aside, seeking proposals for aircrew services to support the HC-130H aircraft.¹ Agency Report (AR), Tab 8, RFP, at 285, 288-289.² The procurement was conducted pursuant to the commercial item acquisition procedures at Federal Acquisition Regulation (FAR) part 12, and the negotiated procedures at FAR part 15. Id. at 376. The solicitation contemplated the award of a fixed-price contract with a 1-year base period and two 1-year options. Id. at 341.

The RFP informed offerors that award would be made based on the following factors: (1) offer acceptability; (2) key personnel; (3) organizational past performance; (4) organizational experience; and (5) evaluated price. Id. at 381-382. Offers were to first be evaluated for acceptability before being evaluated for award. Id. at 382. The remaining non-price factors were listed in descending order of importance, and when combined, were approximately equal to price. Id. at 382.

In order to be evaluated as acceptable, offerors were required to assent to the terms of the solicitation and provide all the information required by the RFP. Id. at 381. As relevant here, all offerors had to be registered in the system for award management (SAM) database prior to award, during performance, and through final payment of any contract resulting from the solicitation. Id. at 380. The RFP also noted that a proposal could be rejected if an offeror failed to provide all key personnel who met the solicitation's minimum requirements. Id. at 381. The key personnel positions identified by the solicitation were as follows: one contractor aircrew project manager (CAPM); two pilot-in-commands (PIC); one second-in-command; two flight engineers; and three load masters. Id. at 352. The RFP provided that one of the individuals offered as a PIC, could also be offered as the CAPM. Id.

With regard to the key personnel factor, offers were to be evaluated to determine whether the key personnel being proposed had currency and relevancy in performing the work contemplated by the solicitation, and to assess the quality of the work that was performed. Id. at 381. The evaluation was to be based on the information offerors submitted with their proposals and from information obtained from other government sources. Id.

With regard to the organizational past performance factor, proposals were to be evaluated for an offeror's ability to provide services similar to those required by the

¹ The Forest Service's HC-130H aircraft are outfitted with specialized firefighting equipment and "are a part of the agency's firefighting mission." Contracting Officer Statement of Facts (COS) at 195.

² The agency report was prepared using a sequential numbering system. Citations to the record, where applicable, use the sequential numbers assigned by the agency.

solicitation. Id. The RFP provided that the evaluation would be based on information obtained from references and other sources, including information obtained from the government-wide Past Performance Information Retrieval System (PPIRS). Id. Greater weight was to be given to experience an offeror had with the government. Id.

For the organizational experience factor, proposals were to be evaluated based on the amount of experience offerors had in providing services that were similar to the services required by the solicitation. Id. Offerors with limited recent experience were to receive a less favorable evaluation while offerors with a greater level of experience, similar to that identified in the solicitation, were to be evaluated more favorably. Id.

Prices were to be evaluated by multiplying the rate for all items in the solicitation's schedule by the estimated number of units for each year, and by adding any other direct costs, as applicable. Id.

The agency received two proposals, one from CASS and one from Cherokee, by the solicitation's September 14, 2017, closing date. COS at 199. Both of the technical proposals were evaluated by a technical evaluation board (TEB), while the contracting officer (CO) conducted an evaluation of initial prices. Id. at 199-200.

After initial evaluations were completed, the agency opened discussions to address the concerns it identified. COS at 202. Both offerors were notified of their weaknesses and deficiencies, and given a chance to submit final proposal revisions. Id. at 201, 207. The final proposal revisions submitted by CASS included an alternate proposal that had not been included with the company's initial proposal. Id. at 208.

The final revised proposals were first evaluated by the TEB. AR, Tab 40, TEB Final Evaluation Report, at 2649-2656. The CO, who was also the source selection authority (SSA) for this procurement, reviewed the ratings assigned by the TEB and made changes to those ratings with which he disagreed. COS at 210; AR, Tab 42, Source Selection Decision (SSD), at 2666-2667. The CO documented and explained the basis for the changes that were made. Id. Specifically, the CO disagreed with the rating of good the TEB assigned to CASS's final proposal under the organizational past performance factor because CASS's "PPIRS evaluations were nearly all [e]xceptional and the work was directly in support of this program which increases the confidence that the same level of support would continue to be provided." Id. at 2667. Based on this assessment, the CO upgraded CASS's final organizational past performance rating from good to exceptional. Id. The CO also disagreed with the neutral rating assigned by the TEB to Cherokee's final proposal under the organizational experience factor. In the CO's view, Cherokee's final proposal provided information that documented "that the [c]ompany does have some relevant experience in providing aircrews to support C-130 [o]perations." Id. at 2666. As such, the CO upgraded Cherokee's rating from neutral to satisfactory under the organizational experience factor.

The ratings assigned to the three final revised proposals were as follows:

	CASS	CASS Alternate	Cherokee
Offer Acceptability	Acceptable	Acceptable	Acceptable
Key Personnel	Good	Good	Good
Organizational Past Performance	Exceptional	Exceptional	Satisfactory
Organizational Experience	Good	Good	Satisfactory
Total Price	\$14,006,578	\$13,075,984	\$10,028,482

Id., at 2660, 2662, 2666-2668.

After final proposals were evaluated, the CO performed a tradeoff analysis between the offers received from CASS and Cherokee. Id. at 2670-2672. As relevant here, in arriving at his source selection decision, the CO noted the differences between the key personnel offered in CASS's and Cherokee's proposal, while also observing that CASS's proposal offered better organizational past performance and experience. Ultimately, the CO determined that award should be made to Cherokee based on its lower price and its satisfactory organizational past performance and experience ratings. Id. at 2670.

On January 9, 2018, the Forest Service notified both CASS and Cherokee of the agency's decision to award the contract to Cherokee. AR, Tab 45, Award Notification, at 2693-2698; Tab 46, Unsuccessful Offeror Notification, at 2699-2700. On January 11, 2018, CASS received a formal debriefing detailing the basis for the agency's award decision. COS at 214-215. This protest was filed with our Office on January 19, 2018.

DISCUSSION

CASS challenges multiple aspects of the agency's evaluation and award decision.³ The protester argues that the Forest Service improperly determined that Cherokee was a responsible offeror. CASS also contends that the agency unreasonably and unequally evaluated both of its proposals. Finally, the protester asserts that the Forest Service's tradeoff decision was flawed and unreasonable because it was based on a flawed evaluation. Although we do not address every argument raised, we have reviewed all of the protester's allegations and find that none provides a basis to sustain the protest.⁴

³ The protester withdrew parts of its initial protest on March 2, 2018. Comments at 2877-2878. Accordingly, this decision does not address those allegations.

⁴ For example, CASS alleges Cherokee's proposal was technically unacceptable due to uncertainty in Cherokee's corporate identity. Comments at 2901-2902. In this regard, the protester points to discrepancies in the addresses used by the company in its various business registration filings with the state of California, SAM, and Dun & Bradstreet (D&B). Id. In response, the CO explains that prior to awarding the contract, he reviewed SAM and confirmed that the data universal numbering system (DUNS) number provided by Cherokee in its offer matched the DUNS number identified in

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Contracting Officer's Responsibility Determination

CASS argues that the CO's affirmative responsibility determination was unreasonable because it failed to take into consideration certain information the protester alleges is relevant. For example, CASS contends that the CO ignored the adequacy of Cherokee's financial resources. In this regard, the protester asserts that the CO should have taken into consideration a D&B report which estimates Cherokee's maximum credit limit to be \$34,000. Thus, the protester asserts that Cherokee lacks the necessary financial resources to perform a contract valued over \$10,000,000. Protest at 22. CASS also contends that "[h]ad the [a]gency conducted a reasonable [price] evaluation, it would've determined that Cherokee's price was too low for it to sustain performance over the entire contract period, and determined that Cherokee was not responsible because it lacked the financial resources to perform" the contract.⁵ Comments at 2885. We conclude that the information cited by the protester does not meet our threshold for review in this area, and these protest allegations are therefore dismissed.

As a general matter, our Office does not review affirmative determinations of responsibility by a contracting officer. 4 C.F.R. § 21.5(c); FCi Fed., Inc., B-408558.4 et al., Oct. 20, 2014, 2014 CPD ¶ 308 at 7. One of the circumstances in which we will make an exception to the general rule is where a protest identifies evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information. Verestar Gov't Servs. Group, B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68 at 4.

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Cherokee's SAM registration. COS at 220. Based on this review, the CO did not have questions about Cherokee's corporate identity. Id. DUNS numbers are established by Dun & Bradstreet Information Services for purposes of establishing the precise identification of an offeror or contractor. See Raymond Express Int'l, LLC, B-409872.3 et al., Sept. 11, 2015, 2015 CPD ¶ 265 at 6. Here, we find reasonable the CO's reliance on Cherokee's DUNS number to determine the company's corporate identity. Id.

⁵ To the extent this protest allegation is a direct challenge to the agency's evaluation of Cherokee's price, it is dismissed as untimely. CASS was made aware of Cherokee's total price when it received its unsuccessful offeror notification from the agency on January 9, 2018. AR, Tab 46, Unsuccessful Offeror Notification, at 2700. This allegation was first raised in the protester's comments, which were filed on March 2, 2018. Comments at 2882-2885. Therefore, any allegation about the agency's evaluation of Cherokee's price should have been raised in the initial protest. See 4 C.F.R. § 21.2(a)(2); Dominion Aviation, Inc.--Recon., B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3 (protest allegations must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest).

This exception was intended to encompass protests raising supported allegations that the contracting officer ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. Greenleaf Constr. Co., Inc., B-293105.18, B-293105.19, Jan. 17, 2006, 2006 CPD ¶ 19 at 14.

The allegations that our Office has reviewed in the context of an affirmative determination of responsibility generally pertain to very serious matters such as potential criminal activity. For example, in FN Mfg., Inc., B-297172, B-297172.2, Dec. 1, 2005, 2005 CPD ¶ 212 at 7-8, our Office reviewed an allegation that the agency failed to consider an ongoing investigation into whether the awardee defrauded the government on a prior contract for the same requirement. In Southwestern Bell Tel. Co., B-292476, Oct. 1, 2003, 2003 CPD ¶ 177, we reviewed an allegation that the agency failed to consider that the awardee's CEO had been indicted for conspiracy and fraud by the U.S. Attorney for the Southern District of New York. In Verestar Gov't Servs. Group, *supra*, we reviewed an allegation that the agency had failed to consider that the awardee was embroiled in a public accounting scandal and had vastly misstated its earnings.

Allegations pertaining to an estimate of a proposed awardee's credit limitation and a protester's disagreement with the reasonableness of an agency's price evaluation do not rise to the level needed to trigger a review by our Office of a contracting officer's responsibility determination.⁶ See MicroTechnologies, LLC, B-415214, B-415214.2, Nov. 22, 2017, 2018 CPD ¶ 48 at 8 (dismissing allegation that agency was obligated to consider a Dun & Bradstreet report, among other things, in making an affirmative responsibility determination because it "does not meet our threshold for review in this area").

Proposal Evaluation

CASS also raises multiple challenges to the agency's evaluation of proposals. We first note that the evaluation of an offeror's proposals is a matter within the agency's discretion. Al-Razaq Computing Servs., B-410491, B-410491.2, Jan. 7, 2015, 2015 CPD ¶ 28 at 9. In reviewing protests of an agency's evaluation of an offeror's technical proposal, our Office does not reevaluate proposals; rather, we review the evaluation to determine if it was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. Team People LLC, B-414434, B-414434.2, June 14, 2017, 2017 CPD ¶ 190 at 5. A protester's disagreement with the agency's evaluation, without more, is not sufficient to

⁶ The protester also alleged that there were other facts the CO failed to consider in his responsibility determination, which should have raised serious concerns. For example, CASS argued that the CO's affirmative responsibility determination was flawed because he failed to consider that Cherokee was proposing a new CAPM. Comments at 2904. None of the protester's allegations, even in their totality, are sufficient to rise to the level needed to trigger a review by our Office.

render the evaluation unreasonable. Glacier Tech. Solutions, LLC, B-412990.3, Mar. 15, 2017, 2017 CPD ¶ 91 at 7.

Offer Acceptability

The protester contends that the agency unreasonably evaluated Cherokee's proposal as acceptable because Cherokee allegedly failed to comply with the solicitation requirement that companies be registered in SAM prior to award. In this regard, CASS asserts that Cherokee's use of an outdated address in its SAM profile, and its failure to keep its SAM registration up-to-date, disqualifies Cherokee's offer from being considered acceptable. Comments at 2898-2901.

In response, the agency notes that nothing prevents a company from entering, and having, more than one address in its SAM profile. COS at 3211. Furthermore, at least one of the addresses used by Cherokee in its SAM profile matched the address in Cherokee's offer. Id. The CO explains that as required by the solicitation, Cherokee was, in fact, registered in SAM prior to award. COS at 220.

While we agree with the protester that companies have a responsibility to ensure that their SAM profiles contain accurate information, we decline to sustain CASS's protest based on the facts presented here. As noted by the CO, one of the addresses in Cherokee's SAM profile matched the address contained in Cherokee's offer. Moreover, as required by the solicitation, Cherokee was registered and active in SAM prior to contract award.

Key Personnel

The protester also contends that the agency unreasonably and unequally evaluated CASS's and Cherokee's proposals under the solicitation's key personnel factor. The protester first argues that the individual proposed by Cherokee for the CAPM position is unqualified for the role. The protester also contends that CASS should have received a higher rating than Cherokee under the key personnel factor because the CAPM proposed by CASS was highly qualified and had more relevant experience than Cherokee's CAPM.⁷

⁷ CASS's initial protest raised other allegations with regard to the agency's evaluation of the key personnel factor. For example, the protester argued that the rating assigned to Cherokee under the key personnel factor was unreasonable because although "Cherokee offered the government some of the same personnel that [CASS] offered, Cherokee failed to obtain any adequate assurances or negotiate a definitive salary" with those individuals. Protest at 12. Our review of the record confirms that this allegation is factually inaccurate. Cherokee's initial proposal contained letters of intent signed by seven CASS aircrew members who performed under the HC-130H aircraft aircrew support contract previously awarded to CASS. AR, Tab 12, Cherokee Initial Proposal, at 2302-2308. All seven individuals represented that they would accept employment

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In response to these allegations, the agency explains that the solicitation's evaluation criteria required an evaluation of the entire group of personnel offered, rather than one individual. The Forest Service also explains that because both offerors proposed an almost identical roster of key personnel, it was reasonable for the agency to assign the same key personnel rating to both proposals.

We agree with the agency. Our review of the record confirms that the solicitation did not require key personnel to be evaluated separately. In addition, the CAPM and one loadmaster position were the only two positions where CASS's and Cherokee's offer identified different personnel. AR, Tab 11, CASS Initial Proposal, at 2064; AR, Tab 12, Cherokee Initial Proposal, at 2287. The CO's evaluation of both proposals reflects that he evaluated whether the staff being offered met the RFP's minimum requirements for their positions, and then identified various qualifications held by each of the individuals and the high quality ratings for the work they had performed. AR, Tab 42, SSD, at 2662-2665. Based on his review, the CO assigned a good rating to both proposals under the key personnel factor.⁸ Id. at 2665.

We find nothing unreasonable with the CO's evaluation. While CASS may disagree with the key personnel ratings that were assigned to the proposals, its disagreement, without more, is not sufficient to render the agency's evaluation unreasonable. Glacier Tech. Solutions, LLC, supra.

Organizational Experience

The protester also contends that the agency improperly assigned a satisfactory rating to Cherokee under the organizational experience factor. CASS argues that this rating is unreasonable because Cherokee lacks any experience and past performance similar to the work required by the solicitation. CASS also contends that the Forest Service improperly used information that was not included in Cherokee's proposal to justify the satisfactory rating that was assigned.

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with Cherokee, in the event Cherokee was awarded the new contract. Id. Although we do not address each of CASS's initial protest allegations challenging the agency's key personnel evaluation, we have reviewed them all and find that none provides our Office with a basis to sustain the protest.

⁸ During its evaluation of initial proposals, the agency determined that the CAPM initially offered by Cherokee failed to meet the solicitation's minimum requirements for that position. AR, Tab 15, Initial TEB Evaluation Report, at 2420. Cherokee responded by revising its proposal to replace the unqualified individual with another person who was already identified in the offer as one of the two PICs. AR, Tab 36, Cherokee's Final Crew Matrix, at 1. This had the effect of reducing Cherokee's total key personnel roster to eight individuals, with one individual in a dual role as both the CAPM and one of the two PICs. Id.

In response, the agency identified those areas of Cherokee's initial proposal which demonstrated that it had prior experience providing aircrew support for the C-130 aircraft. Contracting Officer Supplemental Statement of Facts (Supp. COS) at 3203. Specifically, Cherokee's initial proposal stated that it had provided "qualified aircrew to the current contract holder and was listed as a partner during the previous contract bid process." AR, Tab 12, Cherokee Initial Proposal, at 2274. Furthermore, during discussions, Cherokee provided additional information related to other experience it had with managing aircrew to ferry C-130's from the U.S. to Japan and from Mexico to the U.S. AR, Tab 33, Cherokee Revised Proposal, at 2503. It was this experience that the CO used to justify the satisfactory rating he assigned to Cherokee under the organizational experience factor. AR, Tab 42, SSD, at 2667.

The contemporaneous record confirms that the satisfactory rating assigned to Cherokee was based on information contained in Cherokee's proposal. The contracting officer reviewed this information and determined that it demonstrated prior experience similar to the scope of work required by the solicitation. AR, Tab 42, SSD, at 2667. Here, the prior experience described in Cherokee's initial and revised proposal pertained to providing aircrew support for C-130 aircraft. In light of the solicitation's evaluation criteria for organizational past performance, which required offerors to demonstrate prior experience similar to the scope of work identified in the solicitation, we find reasonable the CO's decision to assign a satisfactory rating to Cherokee under the organizational experience factor.⁹ Team People LLC, supra.

Best-Value Decision

Finally, the protester contends that the agency's best-value decision was flawed because it was based on an unreasonable and flawed evaluation. Based on our review of the record, and as discussed above, we find no merit to this argument.¹⁰ Glacier

⁹ CASS also argued that it was unreasonable for the agency to assign a satisfactory rating to Cherokee under the organizational experience factor because of the poor quality of the service Cherokee previously provided. We note that under the solicitation's evaluation scheme, proposals were to be evaluated based on the amount of experience an offeror had in providing services that were similar to the scope of work identified in the solicitation, and not on the quality of the services that were previously provided. RFP at 381. As such, this allegation does not provide a basis upon which to sustain CASS's protest. See Midwest Tube Fabricators, Inc., supra.

¹⁰ In addition to the various allegations raised, the protester also asserted that there was a "continued pattern of the [a]gency purposely directing award to Cherokee."

Comments at 2889. To the extent CASS is asserting that the agency had a bias in favor of Cherokee, as a general matter, government officials are presumed to act in good faith, and a protester's contention that procurement officials were motivated by bias or bad faith must be supported by convincing evidence. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8. Where a protester alleges bias, it

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Tech. Solutions, LLC, supra at 9 (denying challenge to agency's best-value tradeoff decision where protester's argument was premised entirely on allegations that had been discussed earlier and denied). The record also demonstrates that the contracting officer provided a well-reasoned basis for a tradeoff, which identified discriminators between the proposals and justified the agency's decision to award the contract to Cherokee. For example, the CO noted that both CASS and Cherokee offered similar aircrews and concluded that the differences between the crews proposed were "very minor." AR, Tab 42, SSD, at 2670. Id. The CO credited CASS's offer for its more highly rated organizational past performance and experience ratings. Id. Ultimately, in spite of CASS's higher technical ratings, the CO decided to award the contract to Cherokee based on the difference between the prices offered. Id. In light of the solicitation's evaluation scheme, which made non-price factors, when combined, approximately equal to price, we find the CO's award decision to be reasonable.

The protest is dismissed in part and denied in part.

Thomas H. Armstrong
General Counsel

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must not only provide credible evidence clearly demonstrating bias against the protester or in favor of the awardee, but must also show that this bias translated into action that unfairly affected the protester's competitive position. Global Integrated Sec. (USA) Inc., B-408916.3 et al., Dec. 18, 2014, 2014 CPD ¶ 375 at 14. See also Marinette Marine Corp., B-400697 et al., Jan. 12, 2009, 2009 CPD ¶ 16 at 28-29. Here, CASS has not provided the necessary credible evidence to establish a basis upon which to sustain such a protest allegation.