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Decision

Matter of: Sigma Space Corporation
File: B-410062; B-410062.2; B-410062.3
Date: October 16, 2014

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Jerry A. Miles, Esq., Deale Services, LLC, for Science Systems and Applications, Inc., an intervenor.
Alexander T. Bakos, Esq., Marla Harrington, Esq., and John H. Eckhardt, Esq., National Aeronautics and Space Administration, for the agency.
Lois Hanshaw, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that an offeror had improper contact with the source evaluation board chair during an ongoing procurement is denied where the record shows the offeror's contact consisted only of submitting a past performance questionnaire to the chair in his capacity as the contracting officer's representative on the offeror's prior contract.
 2. Protest challenging an agency's evaluation of the awardee's past performance is denied where the record shows that the evaluation was reasonable and consistent with the evaluation criteria.
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DECISION

Sigma Space Corporation (Sigma), of Lanham, Maryland, protests the award of a contract to Science Systems and Applications, Inc. (SSAI), of Lanham, Maryland, under request for proposals (RFP) No. NNG13454034R, issued by the National Aeronautics and Space Administration/Goddard Space Flight Center (NASA) for hydrospheric and biospheric sciences (HBS) support services. The protester alleges that prohibited contact between the agency and the awardee occurred during the procurement and that the agency misevaluated proposals.

We deny the protest.

BACKGROUND

The RFP was issued on August 15, 2013, as a small business set-aside to acquire scientific support services with a total estimated value of \$250 million. RFP at 1, 18, 42.¹ The HBS laboratory utilizes remotely sensed data to explore and understand the linkages between water, the land, and life on earth. Contracting Officer's (CO's) Statement at 4. This acquisition was for a broad array of support services to the laboratory, such as acquiring, processing, and analyzing scientific data. RFP at 1.

In a cover letter to the RFP, the agency identified the chair and voting members of the source evaluation board (SEB) that would be evaluating proposals, and cautioned that none of the members, other than the contract specialist, should be contacted regarding the HBS acquisition. RFP at 19. The letter also stated that a "blackout" letter had been issued concurrently to agency personnel, prohibiting communication pertaining to this procurement with prospective offerors. Id.

The RFP contemplated the award of a cost-plus-fixed-fee, indefinite-delivery/indefinite-quantity contract, against which task orders would be placed for a period extending 5 years from the date of award. Id. at 18. The RFP advised that proposals would be evaluated under the following three factors, in descending order of importance: (1) mission suitability,² (2) cost, and (3) past performance. Id. at 141. For purposes of award, cost was stated to be significantly less important than mission suitability and past performance, combined. Id. at 141.

For past performance, offerors were directed to provide past performance questionnaires to all past or current contract references (the technical customer or contracting officer) with direct knowledge of the offering firm's performance. RFP at 137-38. The prior customer was to complete the questionnaire and return it directly to the government in a sealed envelope. Id. The RFP stated that, if possible, the questionnaires were to be provided to references from NASA or other government contracts, and commercial contracts. Id. at 138.

The referenced past performance contracts for both prime contractors and significant subcontractors had to meet minimum standards for recency and dollar

¹ NASA used a Bates numbering system in preparing the agency report (AR). Citations to the agency report (AR) in this decision use the Bates numbers assigned by the agency.

² The mission suitability factor was divided into two subfactors: (1) technical approach and (2) management approach. Id. at 123-24.

value, as specified in the RFP, in order to be considered.³ Id. at 146. Regarding recency, the RFP advised that contracts completed more than 5 years prior to the issuance of the RFP would not be considered recent and would not be evaluated. RFP Amend. 2 at 273. If a contract met the recency and dollar value criteria, the government would then determine the contract’s degree of relevance, based on size and content. RFP at 146. The RFP advised that the past performance of significant subcontractors would be attributed to the prime contractor, and that the prime contractor’s past performance would be weighted more heavily than its subcontractors’. Id. at 147. Offerors and subcontractors would be assigned a past performance confidence rating and the offeror would receive an overall confidence rating based on the agency’s subjective evaluation of the information provided in the proposal narratives, customers’ questionnaires, and other references. Id.

Three offerors, including Sigma and SSAI, submitted timely proposals. CO’s Statement at 15. The SEB evaluated proposals and presented its consensus findings to the Source Selection Authority (SSA). AR, Tab 11, SEB Initial Briefing to SSA. The initial ratings for the two proposals were as follows:

	Sigma	SSAI
Mission Suitability	Very Good	Excellent
Most Probable Cost	\$145,931,930	\$147,633,243
Past Performance	High	Very High

Id. at 1723, 1728.

As relevant here, the past performance confidence ratings reflected the board’s subjective evaluation of the offeror’s past performance information.⁴ Among the five contracts referenced in SSAI’s proposal, four were given a “very high” overall performance rating, and one (for a subcontractor) was rated as moderate. AR, Tab 11, SEB Report, at 1803. NASA received three completed questionnaires demonstrating SSAI’s past performance, and one questionnaire for each of SSAI’s two significant subcontractors. Id. at 1805. One of SSAI’s references was for a

³ Significant subcontractors were defined as any proposed subcontractor that was estimated to meet/exceed an average annual cost/fee of \$3 million. RFP at 146.

⁴ Past performance confidence ratings would indicate the level of confidence that the offeror would successfully complete the required effort. RFP at 147-48. As relevant here, a very high level of confidence rating also indicated past performance of exceptional merit and very relevant to the acquisition, while a moderate level of confidence indicated past performance relevant to the acquisition and demonstrating effective performance. Id.

prior contract with NASA. AR, Tab 7, SSAI's past performance questionnaires, at 1138-45. The record shows that the associated questionnaire was completed by the NASA contracting officer's representative (COR) for that work; this COR is currently serving as the SEB chair for this procurement. Supp. AR at 2. The SEB assigned SSAI's proposal a "very high" overall level of confidence. AR, Tab 11, SEB Report, at 1805.

Following the SEB's initial briefing to the SSA, the SSA met with the board to discuss questions the SSA had with respect to the briefing. Among other things, the SSA asked the SEB to explain SSAI's "very high" confidence rating, given the "moderate" confidence rating for one of its subcontractor's contracts. AR, Tab 12, Q&A with SEB and SSA, at 1829. The SEB explained that it concluded the subcontractor's moderate performance confidence rating would have little bearing on the performance of the current procurement, stating that the subcontractor's earlier rating reflected its performance as a prime contractor, whereas it would be acting in this instance as a subcontractor to SSAI, and that SSAI was viewed as managing its subcontractors well. Id. at 1829. No changes were subsequently made to the past performance ratings.⁵ AR, Tab 13, SEB Supplemental Briefing to SSA, at 1832, 1835, 1837.

The SSA prepared a source selection statement, documenting the evaluation results in detail and identifying discriminators between the offerors' proposals. AR, Tab 14, Source Selection Statement, at 1841-57. The SSA noted that SSAI's price, though slightly higher, was reasonable and competitive. After considering the evaluation results and the relative importance of the evaluation factors, and identifying specific discriminators between the two offers, the SSA concluded that SSAI's proposal was superior overall, offered the best value to the government, and that the technical and past performance advantages of the proposal more than offset the "minimal price premium." Id. at 1855-57.

DISCUSSION

While Sigma initially challenged many aspects of the agency's evaluation, its protest now relies on two essential arguments: first, that SSAI must be eliminated from the competition because it had direct contact with the chairman of the SEB during the procurement, allegedly violating the RFP's prohibition on such communication; and

⁵ During the Q&A, the SSA also questioned Sigma's rating under the management approach evaluation subfactor. AR, Tab 12, Q&A with SEB and SSA, at 1827. Afterwards, the SEB revised its findings to award Sigma an additional strength under the management approach subfactor. AR, Tab 13, SEB supplemental briefing to SSA, at 1833. This additional strength slightly increased Sigma's numerical score under the mission suitability factor, but did not change the adjectival rating that Sigma's proposal had previously received. Id. at 1836, 1840.

second, that the agency improperly evaluated SSAI's past performance resulting in a confidence rating that was unreasonably high.⁶ We have reviewed all of Sigma's arguments and conclude that none of them have merit. We discuss the two issues below.

Sigma alleges that SSAI's proposal should be eliminated from the competition because, according to Sigma, SSAI violated the RFP's terms by contacting the SEB chairman to request his completion of a past performance questionnaire. Supp. Protest at 2. Sigma also contends that the SEB chair violated the blackout directive when he completed and submitted the questionnaire. Id. at 3.

In determining whether an impropriety exists or improper contact occurred between the agency and an offeror, we look to the facts and circumstances surrounding the allegation. See e.g., McKissack-URS Partners, JV, B-406489.7, Jan. 9, 2013, 2013 CPD ¶ 25 at 3; Airforce Turbine Service, Ltd., B-404478 Feb. 16, 2011, 2011 CPD ¶ 45 at 3 n.3. Government officials are presumed to act in good faith and a protester's claim that contracting officials were motivated by bias or bad faith must be supported by convincing proof; our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Celeris Systems, Inc., B-404651, Mar. 24, 2011, 2011 CPD ¶ 72 at 6.

Here, NASA states that the blackout notice was intended to avoid favoritism, bias, or inconsistent instructions to potential offerors, and emphasizes that neither the awardee's nor the SEB chairman's actions violated the terms of the notice or the RFP's instructions to offerors. Supp. CO's Statement at 3. The agency argues that because the SEB chairman did not discuss anything concerning the questionnaire with SSAI, release any documents to SSAI, or provide advice or feedback to SSAI, his completion of the questionnaire did not constitute non-permissible communication. Id. Our review of the record indicates that SSAI simply mailed a blank questionnaire to the SEB chairman, in his capacity as the COR for SSAI's

⁶ Sigma initially argued that NASA unreasonably evaluated both the protester's and SSAI's proposals under the mission suitability factor. Protest at 3-26. The agency provided a detailed response to each rating challenged by the protester. See Legal Memo at 4-31. In its comments, the protester acknowledged the agency's response, but decided that it "need not address NASA's arguments and presentations point-by-point" because the SEB chairman's allegedly inappropriate contact with the awardee rendered NASA's documents supporting those ratings meaningless. Comments at 3. We conclude that Sigma has abandoned its original protest concerning the evaluation of the mission suitability factor, since it does not rebut or substantively address the agency's arguments. IntelliDyne, LLC, B-409107 et al., Jan. 16, 2014, 2014 CPD ¶ 34 at 3 n.3.

prior contract, without discussing this solicitation or its requirements; and that the SEB chairman completed and submitted the questionnaire to the contract specialist for this procurement in a sealed envelope, as required by the RFP. Accordingly, we agree with the agency that these actions did not violate the blackout on communication with SEB members, or any other provision of the RFP.⁷

With respect to the agency's evaluation of past performance, the protester alleges that the awardee's rating was not reasonable because the agency failed to consider information regarding allegedly problematic performance by SSAI on a contract for search and rescue satellite-aided tracking. Protest at 27. The protester also argues that SSAI should have received a lower confidence rating because one of its significant subcontractors received a moderate confidence rating on a contract referenced for past performance, which the agency allegedly did not consider. Comments at 5.

Our Office will examine an agency's evaluation of a firm's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit or relative relevance of an offeror's past performance is primarily a matter within the agency's discretion. SST Supply and Service Team GmbH, B-409873, Sept. 2, 2014, 2014, CPD ¶ 251 at 2. In determining whether a particular evaluation conclusion is reasonable, we examine the record to determine whether the judgment was reasonable, adequately documented, and in accord with the solicitation's stated evaluation criteria. Triple Canopy, Inc., B-400437, Nov. 13, 2008, 2009 CPD ¶ 3 at 4-5.

Sigma contends that NASA's evaluation ignored SSAI's past performance on a particular contract that, according to Sigma, was performed "through early 2013." Protest at 27. In response, NASA identifies the particular contract (one that SSAI had performed, but did not reference in its proposal), and asserts that the period of performance ended in 2007. Legal Memo at 33. The agency points out that this contract was therefore outside the five year period of recency contemplated by the solicitation, and that, moreover, the scope of work was not relevant to the current solicitation. Id. at 33-34. In its comments, Sigma does not refute the agency's account, other than to argue that NASA should have been aware of the contract. Comments at 5. In short, the protester has not shown that this aspect of the agency's past performance assessment was inconsistent with the terms of the RFP in any way.

⁷ To the extent the protester has argued that the SEB chairman had a conflict of interest in evaluating proposals, that argument is premised on the assertion that the SEB chairman engaged in improper contact with the awardee. See Supp. Protest at 3. Because we find no improper contact, we need not discuss the protester's conflict of interest arguments.

Additionally, regarding the moderate rating of SSAI's subcontractor, the record shows that both the SEB and the SSA considered the subcontractor's rating in determining SSAI's performance confidence rating, and reasonably concluded that it should not lower SSAI's rating. In this regard, we find the agency's placement of less weight on the performance of SSAI's subcontractor, where SSAI's own performance was more highly rated, was reasonable, in compliance with the requirements of the solicitation, and adequately documented in the record. Sigma's disagreement with the agency's judgment provides no basis to sustain the protest.

The protest is denied.⁸

Susan A. Poling
General Counsel

⁸ In its final supplemental argument, Sigma claims that SSAI's proposal expired on May 14, 2014, and therefore was not a valid offer when the SSA selected SSAI for award on June 13. The agency produced documentation of SSAI's extension of its offer, showing that SSAI agreed to an extension of its proposal prior to its expiration, factually refuting Sigma's allegation. See Supp. AR, Tab 24, Proposal Extension, at 2011. In its supplemental comments, Sigma responded by claiming that the extension was signed by an unauthorized SSAI individual. Supp. Comments at 10. We find no merit to this argument as Sigma did not include any evidence to support its allegation and failed show that the agency violated the RFP.