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Decision

Matter of: Logistics Management International, Inc.

File: B-412837

Date: June 6, 2016

Ron R. Hutchinson, Esq., Doyle & Bachman LLP, for the protester.
Lawrence M. Anderson, Esq., Department of the Air Force, for the agency.
Michael Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging terms of solicitation establishing that agency would not consider past performance of an offeror's key personnel as part of its past performance evaluation is denied where the selected past performance evaluation criteria are reasonable.

DECISION

Logistics Management International, Inc. (LMI), of Eastman, Georgia, protests the terms of request for proposals (RFP) No. FA8505-16-R-0007, issued by the Department of the Air Force for F-15 repair support services for the Royal Saudi Air Force. LMI challenges the Air Force's decision not to consider past performance of key personnel in its evaluation of an offeror's past performance.

We deny the protest.

BACKGROUND

The Air Force issued the RFP on January 6, 2016, for return and repair services in support of the Royal Saudi Air Force for F-15 component parts and aviation items, and for repair, refurbishment, and replacement of aerospace ground equipment (AGE) to include special purpose vehicles, hush house/open air test cell equipment, and fire and safety vehicle equipment. RFP Synopsis at 1. The contemplated contract involved two components: the return or repair of over 4,000 different F-15 aviation items with an annual average of approximately 3,000 parts repaired, and approximately 800 AGE-related repairs annually. Contracting Officer's Statement at 1-2.

The solicitation advised that proposals would be evaluated on the basis of four factors: (1) technical proposals, (2) past performance, (3) cost/price, and (4) small business concern utilization. RFP at 127-137. The solicitation provided that each proposal would be evaluated for technical acceptability and small business concern utilization, and that among those offerors determined to be technically acceptable with acceptable small business concern utilization, tradeoffs would be made between past performance and cost/price, with past performance being significantly more important than cost/price. RFP at 127.

With respect to evaluating past performance, the solicitation indicated that the Air Force would consider the past performance of any critical subcontractors, but would not consider key personnel of either the prime contractor or any critical subcontractors. RFP at 97-98. The solicitation defined a critical subcontractor as an entity (subcontractor and/or teaming member), other than the offeror itself, that would perform more than 30 percent of the overall effort, based on the sum of the price proposed for each contract line item; would be responsible for AGE; and/or would possess the Saudi business license the prime contractor would rely on to perform the efforts outlined in the performance work statement. RFP at 97. The solicitation also provided that offerors without a record of past performance would not be evaluated favorably or unfavorably and would receive an “unknown confidence” rating, but that a strong record of relevant past performance may be considered more advantageous to the government than an “unknown confidence” rating. RFP at 133.

LMI submitted a solicitation question requesting that the Air Force consider amending the solicitation to allow for consideration of key personnel past performance. Protest at 6-7. In answers issued March 3, the Air Force responded indicating that it would not consider key personnel past performance in its evaluation. Agency Report, Tab 8, Industry Day Questions and Responses, at 5. This protest followed.

DISCUSSION

In its protest, LMI challenges the agency’s decision not to evaluate the past performance of key personnel, arguing that this decision is unduly restrictive of competition. Protest at 8-9. In this regard, LMI alleges that not considering key personnel past performance will undermine its ability to compete for the contract because, while its president has extensive past performance information relevant to the contract, LMI is a newly-formed company that lacks equivalent corporate past performance. LMI also argues that the solicitation is inconsistent with FAR § 15.305(a)(2)(iii), which provides that agencies should consider both key personnel and critical subcontractor past performance when relevant to the acquisition, and that the FAR makes no distinction between the two. Protest at 9. According to LMI, the Air Force’s decision not to consider past performance of key personnel is

inconsistent with the Air Force's intended approach of considering the past performance of critical subcontractors. Protest at 7-8. Specifically, LMI contends that considering critical subcontractor past performance, but not considering the past performance of individual key personnel, is unreasonable because a critical subcontractor could be a sole proprietorship. The protester argues that considering the past performance of a sole proprietorship necessarily involves the evaluation of the past performance of an individual, and cannot be reasonably distinguished from the evaluation of key personnel.

In general, the selection of evaluation criteria is primarily within the agency's discretion, and we will not object to the use of particular criteria so long as they reasonably relate to the agency's needs in choosing a contractor that will best serve the government's interests. SML Innovations, B-402667.2, Oct. 28, 2010, 2010 CPD ¶ 254 at 2. The fact that an evaluation criterion may be burdensome, or otherwise makes a firm's offer less competitive, is not objectionable, provided the agency's criteria have a reasonable basis and are not otherwise contrary to law or regulation. See generally, JBG/Naylor Station I, LLC, B-402807.2, Aug. 16, 2010, 2010 CPD ¶ 194 at 4. Further, a protester's disagreement with an agency's judgment concerning the agency's needs and how to accommodate them does not show that the agency's judgment regarding the selection of evaluation criteria is unreasonable. Dynamic Access Sys., B-295356, Feb. 8, 2005, 2005 CPD ¶ 34 at 4.

As a preliminary matter, we reject LMI's characterization of the solicitation as unduly restrictive of competition. Our Office has held that when evaluating whether a solicitation's past performance evaluation criteria are unduly restrictive, the fact that an aspect of the RFP's evaluation criteria may prevent a number of firms from obtaining positive experience and past performance ratings is not dispositive. See Valor Construction Mgmt., LLC, B-405365, Oct 24, 2011, 2011 CPD ¶ 226 at 2. Here, the solicitation does not restrict LMI's ability to submit a responsive proposal; in the absence of relevant past performance information, the solicitation simply provides for a rating of "unknown confidence", which is neither favorable nor unfavorable. While the solicitation also provides that a strong record of relevant past performance may be considered more advantageous to the government than an "unknown confidence" rating, otherwise reasonable evaluation criteria that prevent a particular firm from getting the best possible rating are not unduly restrictive of competition. As explained below, we find the past performance evaluation criteria here to be unobjectionable because they have a reasonable basis and are not contrary to law or regulation.

Turning to protester's contention that the exclusion of key personnel past performance information from the overall past performance evaluation is inconsistent with the FAR, the argument is without merit. FAR § 15.305(a)(2)(iii) provides that an agency "should" take into account key personnel and major or critical subcontractor past performance information when it is relevant to the acquisition. Our decisions have consistently held that agencies may, but are not

required to, consider the past performance of proposed key personnel, which is to say that agencies may conclude that key personnel past performance is not relevant to the acquisition. See Olympus Building Servs., Inc., B-282887, Aug. 31, 1999, 99-2 CPD ¶ 49 at 3-4 and Valor Construction Mgmt., LLC, *supra*, at 3-4. Additionally, our decisions do not support the conclusion, as LMI suggests, that consideration of key personnel and subcontractor past performance are necessarily linked. In other words, where an agency decides to consider subcontractor past performance information, it need not also consider the past performance information of key personnel. See e.g., JWK International Corp., B-297758.3, Aug. 31, 2006, 2006 CPD ¶ 142 at 7 and Hard Bodies, Inc., B-279543, June 23, 1998 98-1 CPD ¶ 172 at 4 (both concluding that the agency was not required to consider key personnel past performance, although in both cases the solicitation called for an evaluation of the past performance of critical subcontractors).

Here, the agency has concluded that, given the scope and complexity of the project, evaluating the past performance of individual personnel is not a relevant basis for assessing a firm's past performance. Agency Report, Tab 5, Memorandum to File—Evaluation of Key Personnel, at 1. This conclusion was based on the work to be performed under the contemplated contract, which involves the return or repair of an annual average of approximately 3,000 F-15 parts, repair of an annual average of approximately 800 AGE-related items, and a total estimated valuation of nearly \$1 billion. The agency noted that the contract effort could not be effectively executed by a small cadre of experienced key personnel. Agency Memorandum of Law at 5-6. As a result, the agency decided that assessing key personnel past performance would not provide a sufficient basis to assess the relevance of the company's past performance or to conclude that the offeror is likely to successfully perform the contract. Agency Report, Tab 5, Memorandum to File—Evaluation of Key Personnel, at 1. In light of the magnitude of the contemplated contract, we conclude that the agency has stated a reasonable basis for its decision not to consider the past performance of individual key personnel in its assessment of past performance. Accordingly, there is no basis to find the agency's actions are inconsistent with the requirements of the FAR.

The protester's contention that the agency's decision not to consider key personnel past performance is unreasonable and inconsistent with the agency's decision to consider critical subcontractor past performance, because a critical subcontractor could be a sole proprietorship, is also without merit. In this case, the agency's treatment of critical subcontractors is reasonably related to the agency's assessment of performance risk, which stems from the role a critical subcontractor will play in performance of the contemplated contract. Specifically, the consideration of subcontractor past performance information is limited to subcontractors performing 30% or more of the overall effort, performing the AGE effort, or possessing a Saudi business license that the contractor is relying on to perform the work. See RFP at 97.

We see no basis to conclude that it would be unreasonable for the agency to assess past performance of entities that will be directly performing significant portions of the work, or entities that possess the necessary business license that is a precondition to performance of the work as a whole. We also see no basis to accept the protester's contention that the agency is required to consider the past performance of key personnel simply because a Saudi business license holder could be a sole proprietorship, and thus, any assessment of the subcontractor would, by definition, also be an assessment of an individual's past performance. The past performance of a firm holding such a license (regardless of the firm's size) is necessarily relevant to the agency's risk evaluation in a way that evaluation of individual key personnel is not; the loss of a Saudi business license would pose a direct risk to the successful performance of the contract. Accordingly, we have no basis to question the agency's criteria for evaluating past performance.

The protest is denied.

Susan A. Poling
General Counsel