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Decision

Matter of: Cantu Services, Inc.

File: B-421440

Date: May 10, 2023

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Captain Dmitrius R. McGruder and Major Weston E. Borkenhagen, Department of the Army, for the agency.
Christopher Alwood, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency unreasonably evaluated the protester’s past performance is denied where the record shows that the agency’s evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Cantu Services, Inc., a small business of Burkburnett, Texas, protests the Department of the Army, Mission and Installation Contracting Command’s decision to exclude Cantu from the competitive range under request for proposals (RFP) No. W9124J-21-R-0027. The Army issued the solicitation for full food services for dining facilities at Fort Huachuca, Arizona. The protester contends that the agency’s past performance evaluation was unreasonable.

We deny the protest.

BACKGROUND

On March 25, 2022, the Army issued the solicitation under the commercial item procedures of Federal Acquisition Regulation (FAR) part 12, using the negotiated procurement policies and procedures established under FAR part 15, seeking proposals to provide full food services for designated dining facilities at Fort Huachuca in Arizona.

AR, Tab 3, RFP¹ at 78. The solicitation contemplated the award of an indefinite-delivery, indefinite-quantity contract with a 5-year ordering period. *Id.* at 79. The RFP established that award would be made on a lowest-price, technically acceptable basis, considering the following evaluation factors: technical capability, past performance, and price. *Id.* at 74.

As relevant here, the agency was to evaluate proposals under the past performance factor by considering each offeror's record of past performance to determine whether the offeror would successfully perform the required effort. *Id.* at 75-76. The RFP explicitly cautioned offerors that the agency could consider past performance information obtained from sources other than the offeror's proposal. *Id.* at 75.

The RFP stated that the agency would consider recent and relevant past performance projects under the following areas of evaluation: quality, schedule, management, small business subcontracting, and regulatory compliance. *Id.* The RFP considered past performance recent if it was performed within 3 years of the issuance of the solicitation. *Id.* The agency was to evaluate a project's relevance by determining how similar it was in "nature of work, size, and complexity to the services/products being procured with this solicitation." *Id.* at 76. The RFP explained that the agency would evaluate the relevance of individual contracts and should specifically consider which aspects of an offeror's contract history would provide "the most confidence that the offeror will satisfy" the current contract requirements. *Id.*

The RFP provided that the agency would assign each offeror's past performance an adjectival rating of acceptable or unacceptable. *Id.* at 75-76. The solicitation defined an unacceptable past performance rating as "[b]ased on the offeror's performance record, the Government does not have a reasonable expectation that the offeror will be able to successfully perform the required effort." *Id.* at 76. As relevant here, the RFP required that, after the initial evaluation of timely proposals, the agency establish a competitive range of proposals evaluated as acceptable before entering into discussions. *Id.* at 73.

On or before the May 13, 2022, closing date for receipt of proposals, the Army received proposals from ten offerors, including Cantu. AR, Tab 12, Competitive Range Determination at 1; RFP at 1; Contracting Officer's Statement (COS) at 1. During its initial evaluation of proposals, the agency evaluated Cantu's past performance as unacceptable. AR, Tab 12, Competitive Range Determination at 32-33.

Specifically, the agency found for a contract Cantu submitted for its performance on a contract for full food services at Fort Lee, Virginia, that Cantu had received "recent Marginal and Unsatisfactory ratings pertaining to Regulatory Compliance and Quality" related to significant performance deficiencies that were not corrected despite Cantu attempting to address them through a corrective action plan. *Id.* The agency also found

¹ The agency amended the solicitation four times. See AR, Tab 7, RFP amend. 0004. Citations to the RFP in this decision are to the conformed copy provided by the agency in its report.

that Cantu's past performance as a prime contractor on that contract was "the most relevant as it relates to the requirement being solicited for Fort Huachuca." *Id* at 33. Based on this negative past performance information, the agency concluded that it did not have a reasonable expectation that Cantu would successfully perform the instant requirement. *Id*.

The agency established a competitive range of proposals evaluated as acceptable and accordingly eliminated Cantu from the competition. COS at 5. The agency subsequently informed Cantu that it had been eliminated from the competitive range and provided Cantu a debriefing. *Id.*; see AR, Tab 13, Army Response to Debriefing Questions. This protest followed.

DISCUSSION

Cantu challenges several aspects of the agency's evaluation of Cantu's proposal under the past performance factor, primarily its evaluation of the relevance of Cantu's past performance. We have reviewed the protester's arguments and the evaluation record and find that none of the arguments provide a basis to sustain the protest. As discussed below in a few representative examples, we find the agency's evaluation of past performance did not apply unstated evaluation criteria and was otherwise reasonable and consistent with the terms of the solicitation.

Cantu initially contends that the Army applied unstated evaluation criteria in evaluating the relevance of Cantu's negative past performance under its prime contract for food services at Fort Lee, Virginia. Protest at 9-10; Comments at 7-9. Specifically, Cantu argues that the Army's consideration of whether past performance projects were an "Army enterprise[-]wide food service requirement" represents unstated evaluation criteria because the solicitation did not discuss that type of requirement or signal that it would be considered more relevant than other types of past performance. *Id*. The Army responds that the consideration of whether the Fort Lee contract was an Army enterprise-wide food contract was reasonably encompassed within the past performance evaluation factor. Memorandum of Law (MOL) at 11-12.

It is axiomatic that in a negotiated procurement an agency must evaluate proposals based on the solicitation's enumerated evaluation factors. *SupplyCore, Inc.*, B-411648.2, B-411648.3, Feb. 21, 2017, 2017 CPD ¶ 72 at 9. An agency may properly apply evaluation considerations that are not expressly identified in the RFP if those considerations are reasonably and logically encompassed within the stated evaluation criteria, so long as there is a clear nexus linking them. *Phoenix Air Grp., Inc.*, B-412796.2, B-412796.3, Sept. 26, 2016, 2016 CPD ¶ 308 at 11.

Here, the solicitation stated that, when evaluating the relevance of a past performance project, the agency would "conduct an in-depth evaluation of all recent performance information obtained to determine if it is the same or similar in nature of work[,] size[,] and complexity" to the requirements of the instant solicitation. RFP at 76. The record demonstrates that the agency found Cantu's Fort Lee contract to be Cantu's most

relevant past performance “as it relates to the requirement being solicited for Fort Huachuca,” noting that the Fort Lee contract “represents the Army’s enterprise[-]wide food service requirement.” AR, Tab 12, Competitive Range Determination at 33.

The Army explains that what it refers to as the Army’s enterprise-wide food service requirement is a standardized set of requirements established across the Army for the provision of food and dining services that were used for both the Fort Lee contract and the instant solicitation. MOL at 12; COS at 7-8. The Army notes that the Fort Lee contract’s solicitation and the instant solicitation were “generated by the same requiring activity, for the same service, with the same standards.” MOL at 12. Further, a comparison of the Fort Lee contract and the instant solicitation reveals that the performance requirements and standards contained within the two performance work statements are nearly identical.² *Compare* RFP at 88-98 *with* AR, Tab 18, Contract No. W91QF5-17-D-0003 at 15-23.

On this record, we find no basis to conclude that the agency applied unstated evaluation criteria by considering whether Cantu’s past performance projects were part of the Army enterprise-wide food service requirement. While the RFP did not explicitly inform offerors that the Army would consider whether a past performance project was part of the Army’s enterprise-wide food service requirement, the RFP advised offerors that the agency would evaluate past performance for relevance to determine whether the work was the same or similar in nature of work, size, and complexity as the current requirement. RFP at 76. We conclude that considering whether an offeror’s past performance involved a similar set of standardized Army requirements is reasonably and logically encompassed within the above past performance evaluation criteria envisioning an evaluation of the similarity of the nature of the work, and of the complexity of the work, in relation to the current procurement. Accordingly, the protester’s objections to the Army’s evaluation methodology here do not provide a basis to sustain the protest.

² There are some differences between the two sets of requirements. For example, while both solicitations contained the identical requirement that the contractor “shall clean and sanitize food service equipment and surfaces to support dining facility operations,” the instant RFP added a performance standard specifying that this instruction necessitated cleaning equipment such as “ovens, stoves, walk-in refrigeration units and reach-in warmer units.” *Compare* RFP at 88-98 *with* AR, Tab 18, Contract No. W91QF5-17-D-0003 at 15-16. We note that where our review found differences between the two sets of requirements, like in the example above, these differences generally took the form of more requirements, or more specific requirements, in the instant RFP.

Next, Cantu more broadly challenges the agency's evaluation of the relevance of Cantu's past performance. Protest at 6-13; Comments at 2-7, 9-10. In this regard, Cantu contends that the agency unreasonably relied solely on the Fort Lee contract to find Cantu's past performance unacceptable and unreasonably ignored Cantu's other past performance which was more recent and relevant. See Comments at 9. Specifically, the protester argues that the agency failed to consider the size and complexity of Cantu's non-Fort Lee past performance and unreasonably found that the Fort Lee contract had the most similar nature of work when compared to the current solicitation. Protest at 12; Comments at 9-10.

The agency responds that it evaluated the relevance of Cantu's past performance reasonably and in accordance with the terms of the solicitation. The agency argues that the Fort Lee contract was Cantu's most relevant past performance because it was the only past performance reference where Cantu performed an Army enterprise-wide food service requirement as the prime contractor. MOL at 12. The agency notes that all of Cantu's other recent and relevant past performance was either performed as a subcontractor or involved providing dining services to a different agency that did not use the same performance standards. COS at 8; MOL at 12.

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. *Metropolitan Interpreters & Translators, Inc.*, B-415080.7, B-415080.8, May 14, 2019, 2019 CPD ¶ 181 at 10; see also *SIMMEC Training Sols.*, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. *FN Mfg., LLC*, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

As an initial matter, we see no merit to the protester's argument that the agency should have given greater weight to more recent past performance. As noted above, the RFP provided that past performance would be considered recent if it was performed within 3 years of the date of the issuance of the solicitation. RFP at 75. Our review of the solicitation does not reveal, and the protester does not identify, any language contemplating that the agency would assess recency on a spectrum; that is, more recent past performance would be evaluated more favorably. In this regard, the RFP only provides for a binary recency determination; past performance is either recent or it is not. In light of the RFP's evaluation criteria and the broad discretion afforded to the agency, we find reasonable that the agency did not evaluate the relative recency of Cantu's past performance. See *AAR Airlift Grp., Inc.*, B-414690 *et al.*, Aug. 22, 2017, 2017 CPD ¶ 273 at 11 n.15.

We are also unpersuaded by the protester's objections to the agency's relevancy evaluation. As noted above, the RFP advised offerors that the agency would evaluate past performance for relevancy to determine whether it was the same or similar in nature of work, size, and complexity as the current requirement. RFP at 76.

First, the protester argues that the agency failed to consider the size and complexity of the Fort Lee contract which formed the basis for Cantu's unacceptable rating.³ Comments at 6-7. The protester notes that the Fort Lee contract had a contract value of \$18 million per year to provide services to five dining facilities compared to this procurement which Cantu estimates has a value of \$9 million per year to provide services to two dining facilities.⁴ Protest at 11. The protester maintains that another one of its past performance references--serving two dining facilities and having a contract value of \$9,600,000 per year--should have been considered more relevant than the Fort Lee contract. Comments at 6.

We see no basis to object to the agency's consideration of size and complexity in its relevancy evaluation. While the protester may argue that its smaller past performance references are closer in contract value and number of dining facilities serviced, the RFP did not establish specific standards or thresholds for what the agency considered similar size or complexity with regard to contract values or number of dining facilities serviced. Given that the agency found the Fort Lee contract to be the most relevant for reasons beyond the contract value and number of dining facilities serviced, the protester's

³ Cantu alternatively argues that the agency's evaluation is insufficiently documented and that its explanations for information not in the contemporaneous evaluation record--including why the agency considered the Fort Lee contract similar in size and complexity to the instant requirement--are *post-hoc* justifications that should be afforded little weight. See, e.g., Comments at 10. Post-protest explanations that provide a rationale for contemporaneous conclusions and simply fill in previously unrecorded details will generally be considered in our review of evaluations and award determinations, so long as those explanations are credible and consistent with the contemporaneous record. *AdvanceMed Corp.; TrustSolutions, LLC, B-404910.4 et al.*, Jan. 17, 2012, 2012 CPD ¶ 25 at 21 n.14. Here, given our conclusions above and below regarding the reasonableness of the agency's past performance evaluation based on the information present in the contemporaneous record, we find the agency's explanations to be consistent with the evaluation record and reasonable. Accordingly, we see no basis to question the past performance evaluation for lack of documentation.

⁴ The Army responds that Cantu's arguments that there are two dining facilities incorrectly interpret the number of dining facilities to be serviced under the solicitation. See MOL at 8. In this regard, the Army argues that, in addition to the two dining facilities acknowledged by the protester, the RFP's requirement that the successful contractor regularly deliver food to a specific building without operating an on-site dining location should count as a third dining facility for the purpose of evaluating relevancy. See *id.*; Comments at 2. We need not resolve this apparent disagreement, where, as discussed above, we conclude that there is no basis to sustain the protest based on a solicitation requirement of two dining facilities--the interpretation of the solicitation's requirements most favorable to the protester.

objections here amount to nothing more than disagreement with the agency's judgement and discretion.⁵

The protester also contends that the agency considered another aspect of relevancy, the similar nature of work, unreasonably. Protest at 12; Comments at 6-7. In this regard, Cantu argues that all of its past performance references should have been considered identical in their nature of work because they were all "contracts [] for full food services at a base" and the non-Army contracts "have the same goal: feeding soldiers safely and efficiently." *Id.* Cantu avers that, had the agency properly considered these relevancy data points, it would not have found the Fort Lee contract to be the most relevant past performance reference in relation to the current solicitation.

We see no basis to object to the agency's consideration of the similar nature of work between the Fort Lee contract and the current effort. The contemporaneous record shows that the agency found the Fort Lee contract the most relevant to the RFP's requirements based on it being an Army enterprise-wide food service requirement that Cantu performed as a prime contractor.⁶ AR, Tab 12, Competitive Range Determination at 33. The agency also considered the other past performance references submitted by Cantu in its proposal, but each of those contracts was either not an Army food services contract or not performed by Cantu as a prime contractor. *See id.* at 32-33; *see also* AR, Tab 8, Fort Leavenworth Past Performance Questionnaire (PPQ); AR, Tab 9, Fort Dix PPQ; AR, Tab 10, Fort Sam Houston PPQ.

As discussed above, the agency's consideration of whether Cantu's past performance was an Army enterprise-wide food service requirement was reasonably encompassed by the RFP's past performance relevancy criteria. Further, the protester does not point

⁵ Notably, one of the past performance references submitted by Cantu had a contract value of \$17,400,000 per year to provide services to four dining facilities. Comments at 6. While the protester acknowledges that this past performance reference has a larger contract value than the RFP, the protester does not meaningfully explain why Cantu's positive past performance under this reference should be considered relevant to the agency's evaluation but the negative past performance on the Fort Lee contract--with a contract value of \$18 million per year to service five dining facilities--should be viewed as less relevant. Further, our Office has found that past performance references with greater contract value differences than those present here can be reasonably evaluated as relevant where other aspects of the relevancy evaluation support such a finding. *See, e.g., D&G Support Servs., LLC*, B-419245, B-419245.3, Jan. 6, 2021, 2021 CPD ¶ 8 at 2 (finding an agency reasonably assessed a past performance reference valued at \$50 million as relevant where the procurement was valued at \$150 million).

⁶ As noted above, the Army explains that what it refers to as the Army's enterprise-wide food service requirement is a standardized set of requirements established across the Army for the provision of food and dining services on Army installations. *See* MOL at 12; *see also* COS at 7-8

to, and our review of the relevancy criteria does not reveal, any specific standards for what the agency would consider to be a similar nature of work.

In light of the RFP's evaluation criteria and the broad discretion afforded to the agency, we find no basis to disagree with the agency's relevancy assessment here. In this regard, the protester does not meaningfully allege that any of its past performance references other than the Fort Lee contract were Army enterprise-wide food service requirements that it performed as a prime contractor. While the protester may be correct that its other past performance references (beyond the Fort Lee contract) are similar to the current procurement because they are all food service contracts for defense agencies, no such standard for what the agency would consider a similar nature of work is established by the RFP. As such, we deny this ground of protest.

Finally, the protester contends that the agency unreasonably assigned its proposal a rating of unacceptable for past performance. Comments at 9. In this regard, the protester argues that the Army's "sole reliance" on the "negative ratings for the" Fort Lee contract unreasonably failed to consider Cantu's other, more positive, past performance. *Id.* at 9-10.

The evaluation of proposals should not be based upon a simple count of strengths or weaknesses, but on a qualitative assessment of the underlying basis for the ratings. *Addvetco, Inc.*, B-412702, B-412702.2, May 3, 2016, 2016 CPD ¶ 112 at 4. In assessing past performance, an agency may reasonably assign a no confidence or unacceptable rating despite the fact that portions of the offeror's prior performance may have been rated satisfactory or better. *See Torres-Advanced Enter. Sols., LLC*, B-412755.2, Jun. 7, 2016, 2016 CPD ¶ 167 at 13.

Here, the RFP provided that the agency would evaluate past performance based on its quality, schedule, management, small business subcontracting, and regulatory compliance. RFP at 75. The RFP explained that the agency would be "focusing on performance that is relevant to the services being procured under this solicitation" and determine the "quality and usefulness" of each past performance reference "as it applies to the performance assessment." *Id.* at 75-76. Finally, the RFP stated that an offeror would be assigned a rating of unacceptable if the agency did "not have a reasonable expectation that the offeror will be able to successfully perform" the contract. *Id.* at 76.

As discussed above, the agency found Cantu's Fort Lee contract to be the most relevant to the services being procured under this solicitation. AR, Tab 12, Competitive Range Determination at 33. However, the agency also found Cantu's other past performance submitted with its proposal to be recent, relevant, and evaluated as acceptable. *Id.* at 32. In addition, the agency reviewed the contractor performance assessment rating system (CPARS) reports that it found for Cantu's past performance and considered the PPQs submitted by Cantu for those past performance references where the agency did not find CPARS. *Id.* at 32-33.

The record further demonstrates that the agency considered “[s]pecific deficiencies noted within [the] CPARS” for the Fort Lee contract, including “a lack of staff to properly maintain workstations, [an] inability to manage food items and Days of Supply [], underspending and overspending in dining facilities [], and sanitation issues.” *Id.* at 33. The agency also found that while Cantu had created a corrective action plan that was approved by the contracting officer, there was no evidence that the corrective actions were fully implemented or effective. *Id.* In light of the multi-year documented performance issues with quality of service and regulatory compliance, the agency concluded that it did not have a reasonable expectation that Cantu would successfully perform the required effort. Accordingly, the agency assigned Cantu a rating of unacceptable for past performance.

On this record, we find the agency’s evaluation to be reasonable and consistent with the terms of the solicitation. In this regard, the agency identified negative past performance information in specified areas that the RFP required the agency to consider: quality and regulatory compliance. The agency further explained why these issues were so significant, namely, that they were ongoing and seemingly uncorrected across multiple years of performance. In light of our conclusion above that the agency reasonably evaluated relevancy, and consistent with the solicitation, we see no basis to conclude that the agency was unreasonable to place significant weight on Cantu’s poor performance as a prime contractor on a contract with nearly identical performance standards.

The relative merit of past performance information is generally within the broad discretion of the contracting agency. *See Paragon Tech. Group, Inc.*, B-407331, Dec. 18, 2012, 2013 CPD ¶ 11 at 5. While Cantu clearly objects to the agency’s conclusions, the protester has not demonstrated that the agency was unreasonable or failed to comply with the terms of the solicitation. Accordingly, without more, the protester’s objections amount to nothing more than disagreement with the agency’s judgement and discretion.

The protest is denied.

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General Counsel