



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Olympus Building Services, Inc.

File: B-282887

Date: August 31, 1999

Kevin P. Connelly, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for the protester.
Brian L. Howell, Esq., Naval Supply Systems Command, for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

Protest of solicitation provision indicating that past performance evaluation will consider only corporate past performance and not past performance of key personnel is denied; protester has not shown this evaluation scheme to be unreasonable or inconsistent with applicable regulation.

DECISION

Olympus Building Services, Inc. protests the terms of request for proposals (RFP) No. N00600-99-R-1335, issued by the Department of the Navy for janitorial services at various buildings in the Department of Agriculture headquarters complex in Washington, D.C. Olympus argues that the solicitation is defective because the past performance evaluation factor is limited to the past performance of the corporate offeror and excludes consideration of the past performance of proposed key personnel.

We deny the protest.

The RFP contemplates the award of a fixed-priced, indefinite-delivery/indefinite-quantity contract for a base year, with four 1-year options and provides for award on a best-value basis, with technical merit significantly more important than price. RFP §§ F.2, L.2, M.3. The technical evaluation factors and subfactors are listed in descending order of importance as:

1. Management Approach
 - 1.1 Management Structure and Organization
 - 1.2 Key Personnel¹
 - 1.3 Staffing
2. Quality Control
3. Past Performance
4. Technical Understanding, Approach, and Management
 - 4.1 Janitorial Services
 - 4.2 Additional Services

RFP § M.1.

To assist in the past performance evaluation, the RFP, in part, specifically instructs the offeror to furnish:

relevant experience and past performance information (limited to 5 contracts) describing its directly related or similar Federal, State and local Government, and private contracts and subcontracts it has held within the last 5 years and all contracts and subcontracts currently in progress which are of similar scope, magnitude and complexity to that which is detailed in the RFP.

RFP § L.7, Proposal Vol. II, § I (a), at L-7, L-8.

Before proposals were due, Olympus filed an agency-level protest arguing that the solicitation is defective because the past performance evaluation factor could be applied in a manner that restricts competition, thereby violating applicable statute and regulation.² Thereafter, the agency issued amendment No. 0004 to clarify, among other things, how past performance will be evaluated, stating explicitly that past performance of key personnel will not be considered.³

¹Regarding the evaluation of key personnel, the RFP requires the submission of resumes--for all government-designated key personnel positions and any other positions designated by the offeror as key personnel positions--to establish that all key personnel proposed meet or exceed the personnel qualifications set forth in the solicitation. RFP § L.7, Proposal Vol. I, § I, at L-6.

²Olympus asserted that the past performance evaluation factor was susceptible of two interpretations--that the Navy would award evaluation credit either based solely on an offeror's corporate experience or based on both corporate experience and the relevant "team" experience of key employees. Agency Report, Tab G, Agency Protest; Agency Report, Tab H, Supplemental Information, May 24, 1999.

³As modified by amendment No. 0004, Section M.2 of the RFP provides in relevant part:

(continued...)

In its subsequent protest to our Office, Olympus challenges the past performance evaluation factor as improperly restrictive of competition since it allegedly disadvantages newly formed companies such as itself, despite extensive prior “team” experience, by limiting consideration to the corporate experience of the offeror itself. Protester’s Comments at 8. The protester maintains that it is entitled to receive full evaluation credit under the past performance factor because its president and key “team” employees have worked together on similar janitorial services contracts (although for a different firm). In the protester’s view, the Navy has failed to provide any rationale for the solicitation’s restrictive evaluation scheme. Id. at 2-4; Protest at 7-9.

Agency acquisition officials have broad discretion in the selecting evaluation factors that will be used in an acquisition, and we will not object to the use of particular evaluation factors or an evaluation scheme so long as the factors used reasonably relate to the agency’s needs in choosing a contractor that will best serve the government’s interests. Federal Acquisition Regulation (FAR) §15.304; Micromass, Inc., B-278869, Mar. 24, 1998, 98-1 CPD ¶ 93 at 3; Leon D. DeMatteis Constr. Corp., B-276877, July 30, 1997, 97-2 CPD ¶ 36 at 3-4. As discussed below, we find the agency’s evaluation approach under the past performance factor within the discretion afforded contracting officials.

First, we reject as unfounded the protester’s contention that the agency’s exclusion of key personnel experience from the past performance assessment restricts competition. The solicitation here, consistent with FAR §15.305(a)(2)(iv), provides that offerors lacking relevant past performance history will not be evaluated favorably or unfavorably on past performance. While the protester would apparently prefer to receive a rating based on the quality of its key personnel’s past performance rather than to receive a neutral rating due to a lack of corporate past performance, the fact remains that the impact of the contested provision is only the difference between those two ratings. We see no reasonable way that the provision can be said to restrict competition.

Next, the protester argues that failure to consider the past performance of key personnel is inconsistent with FAR §15.305(a)(2)(iii), which provides that contracting agencies “should take into account past performance information

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(b) The Government will evaluate the quality of the offeror’s past performance. . . . The assessment of the offeror’s past performance will be used to evaluate the relative capability of the offeror and other competitors to successfully meet the requirements of the RFP. . . . **Past performance of “key personnel”, if any, will not be considered.**

regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition.” Although the cited provision states that agencies “should” take into account “relevant” key personnel past performance information, we read the provision to permit an agency, as the Navy effectively did here, to decide that this information is not relevant. Here, the Navy reports that evaluating corporate past performance, without consideration of proposed key personnel’s past performance, reflects the agency’s legitimate interest in the performance history of the corporate entity, which the agency believes is indicative of the entity’s future performance. The agency points out that it will be contracting with a company rather than with a team of employees or key personnel, who, as a practical matter, may not stay for the duration of the contract. Agency’s Response to Protester’s Comments at 2-3.

While Olympus disagrees with this explanation, we view it as reasonable and consistent with FAR §15.305(a)(2)(iii). We note in this regard that, although our Office has recognized that an agency properly may consider the experience of supervisory personnel in evaluating the experience of a new business, see Technical Resources, Inc., B-253506, Sept. 16, 1993, 93-2 CPD ¶ 176 at 5, there is no legal requirement that an agency attribute employee experience to the contractor. Hard Bodies, Inc., B-279543, June 23, 1998, 98-1 CPD ¶ 172 at 4. We conclude that the agency acted within its discretion in determining that key personnel’s past performance would not be considered as part of the past performance evaluation.⁴

The protest is denied.⁵

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of the United States

⁴The protester further argues that the evaluation scheme deviates from Department of Defense guidelines concerning the collection and use of past performance information. Protester’s Additional Comments at 2-3. Those internal guidelines were not a part of the solicitation, and the alleged failure to comply with them therefore is a matter of consideration within the agency itself, rather than through the bid protest process. See Litton Sys., Inc., B-239123, Aug. 7, 1990, 90-2 CPD ¶ 114 at 8 n.7.

⁵Olympus also protests that a discrepancy exists between the square footage listed in the RFP and the actual square footage uncovered during a site visit. The Navy subsequently issued amendment No. 5 to correct the square footage listed in the solicitation. We therefore consider this issue to be academic.