



**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

## Decision

**Matter of:** TA Services of South Carolina, LLC

**File:** B-412036.4

**Date:** January 31, 2017

---

Richard B. O’Keeffe Jr., Esq., Samantha S. Lee, Esq., and William A. Roberts, III, Esq., Wiley Rein LLP, for the protester.

Robert S. Gardner, Esq., Laura A. Gardner, Esq., Celeste R. Gamache, Esq., and Angeline R. Burke, Esq., Robert S. Gardner Law Office, for Valdez International Corp., the intervenor.

Maj. David S. Gilkes, Libbi Finelsen, Esq., and Alexis J. Bernstein, Esq., Department of the Air Force, for the agency.

Frank Maguire, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Agency’s best-value award decision was proper where the solicitation provided for a competitive source selection decision and permitted the agency to elect to trade present/past performance for price.

---

### DECISION

TA Services of South Carolina, LLC (TAS),<sup>1</sup> of Charleston, South Carolina, protests the award of a contract to Valdez International Corporation (Valdez), of Colorado Springs, Colorado, under request for proposals (RFP) No. FA8773-15-R-8007, issued by the Department of the Air Force for Integrated Air Force Network Operations Services (IAFNOS). The protester asserts that the Air Force unreasonably evaluated its past performance and made an unreasonable best-value tradeoff decision.

---

<sup>1</sup> TAS is an 8(a) Joint Venture formed pursuant to a Small Business Administration (SBA) approved Mentor-Protégé Agreement between Technica LLC, a woman-owned small business (WOSB), and AECOM, a large business. Protest at 2.

We deny the protest.

## BACKGROUND

The RFP, which was issued on March 13, 2015, as a women-owned small business (WOSB) set-aside, seeks services supporting Air Force Information Network (AFIN) operations. These services include defensive cyberspace operations; network management; information assurance; and fault resolution activities to maintain the operational capabilities of the network, establish the domain for Air Force cyberspace operations, and ensure Air Force cyberspace superiority. (COS) at 2. The RFP contemplates the award of a fixed-price contract (with a few cost-reimbursable line items for travel and other direct costs) for a 12-month base period, four one-year option periods, and one six-month extension. Id. at 4.

The RFP provided for award on a best-value basis, considering technical, past performance, and price factors. RFP at 97. Under the technical factor, proposals were to be rated as acceptable or unacceptable under each of five subfactors, with only technically acceptable proposals considered for award.<sup>2</sup> RFP at 97-98. Past performance and price were then to be evaluated on an “approximately equal” basis, with “present/past performance [traded] for price if warranted.” RFP at 97. In this regard, the RFP further provided that:

IAW [in accordance with] FAR [Federal Acquisition Regulation] 15.101-1(c), the government reserves the right to award a contract to other than the lowest priced offer if the lowest priced offeror is judged to have a performance confidence assessment of “Satisfactory Confidence” or lower. In that event, the Source Selection Authority shall make an integrated assessment best value award decision.

Id.

In connection with the evaluation of past performance, the RFP instructed offerors to submit past performance information on no more than eight recent relevant contracts performed by the offeror, its subcontractors, teaming partners, and/or joint venture partners. RFP at 89. The information submitted was to include “a cross-reference matrix identifying the PWS [Performance Work Statement] reference and the team member(s) proposed to perform that function.” Id. Offerors were cautioned that the agency would use both the information provided by the offeror and information obtained from other sources in its evaluation of past performance.

---

<sup>2</sup> The five technical subfactors, which are not at issue in this protest, were staffing/management, transition plan, AFIN Mission Assurance Center (AMAC) support, network operations and core services, and operations support.

Id. at 89-90, 99. Of relevance to this protest, the RFP instructed that “[p]ast performance of either party in a joint venture counts for the past performance of the entity.” RFP at 90.

The RFP provided that the past performance information would be assessed for recency and relevancy. To be considered recent, the effort had to “be ongoing or have been performed during the past three years from the date of issuance of the solicitation”; ongoing efforts were considered recent “so long as the effort has been performed for at least six months.” RFP at 99. Relevancy was to be evaluated by mission area.<sup>3</sup> In this connection, the RFP included a matrix setting forth the criteria for a prior/ongoing contract to be considered relevant or somewhat relevant in each of the five areas. Offerors were advised that “[i]n determining relevancy for each mission area identified, consideration [was to] be given to the effort, or portion of the effort, being proposed by the offeror, teaming partner, or subcontractor whose contract is being reviewed and evaluated.” Id.

The RFP provided that each recent relevant contract was to be assigned a performance quality rating, and, based on the relevancy and performance quality ratings, each offeror was to receive an integrated performance confidence rating of substantial, satisfactory, limited, or no confidence. RFP at 100. Relevant here, a substantial confidence rating was assigned when the government has a “high expectation that the offeror will successfully perform the required effort.” RFP at 100. A satisfactory confidence rating was assigned when the government has a “reasonable expectation that the offeror will successfully perform the required effort.” Id.

Eleven offerors submitted proposals in response to the RFP. After evaluating the proposals, the agency established a competitive range, which included the protester and the awardee, and conducted discussions. As provided in the solicitation, the evaluation included a detailed assessment of each offeror’s past performance by mission area. The evaluation also included a breakdown of the percentage of effort in each mission area to be performed by each prime contractor, subcontractor, and joint venture partner. After receipt of final proposal revisions, the proposals included in the competitive range were rated as follows:

Offeror	Technical Subfactors					Past Performance	Total Evaluated Price
	1	2	3	4	5		

<sup>3</sup> Mission Areas included: Integrated Operations and Security Center (I-NOSC), Enterprise Services Unit (ESU), AFIN Mission Assurance Center (AMAC), Area Processing Center (APC), and Operations and Mission Support (O&M).

TAS	A	A	A	A	A	Satisfactory	\$175,250,047
Offeror A	A	A	A	A	A	Substantial	\$202,020,240
Valdez	A	A	A	A	A	Substantial	\$203,254,989
Offeror B	A	A	A	A	A	Satisfactory	\$210,023,524
Offeror C	A	A	A	A	A	Satisfactory	\$213,989,540
Offeror D	A	A	A	A	A	Substantial	\$220,342,866
Offeror E	A	A	A	A	A	Satisfactory	\$259,032,686

A= "Acceptable"

Source Selection Decision Document (SSDD) at 3.

After performing a tradeoff analysis, the source selection authority (SSA) selected the proposal of Valdez as representing the best value to the government. The SSA noted that performance of the IAFNOS contract was "critical to AF Cyberspace Operations" and that:

Performance confidence is very important for this mission and a trade-off with price to obtain a superior performer may be warranted. Performance risk is lessened by awarding to a team that demonstrates breadth and depth of past performance experience across the entire team--breadth in terms of Relevant experience in managing an enterprise of the magnitude of IAFNOS across the range of mission areas required, and depth in terms of Relevant experience demonstrated directly in each mission area by the teaming partner proposed to accomplish the work.

Id. at 13-14. In comparing Valdez's proposal to the protester's, the SSA noted that "Valdez and two of its subcontractors demonstrated past performance for an average of more than 94% of the staffing in every mission area," and that "Valdez, who is proposed to directly accomplish 55% of the IAFNOS effort, demonstrated experience as a prime contractor with management responsibility for an entire effort in all five mission areas with magnitude similar to IAFNOS." Id. at 15. In contrast, the SSA further noted, "only one JV member of TAS demonstrated relevant past performance and that [sic] lacked prime contractor management responsibilities for three of five mission areas." Id. The SSA explained his conclusion that Valdez's proposal represented a better value than the protester's proposal as follows:

I assess Valdez's proposal to have an advantage over TAS' in the area of past performance with a Substantial Confidence assessment based on the Prime's contracts, and those of its subcontractors. On the other hand, TAS has an advantage in terms of price with Valdez's TEP being almost 16% higher than TAS. On balance, the Substantial confidence assessment of Valdez, outweighs the price advantage by TAS. Valdez's demonstrated past performance clearly brings Relevant experience in managing an enterprise of the magnitude of IAFNOS

across the range of mission areas required with experience demonstrated directly in each mission area by the teaming partner proposed to accomplish the work. That confidence is critical when one considers the importance of these services in protecting Air Force networks, on which the Air Force is dependent in carrying out its mission.

Id. at 15.

On October 13, 2016, the Air Force notified all offerors in the competitive range that Valdez had been awarded the contract. COS at 11. This protest followed.

## DISCUSSION

TAS challenges the agency's evaluation of its past performance, arguing that the AF departed from the terms of the RFP in evaluating joint venture offerors, and in evaluating the relevance and quality of offerors' past performance. The protester also argues that the agency miscalculated the relevance of JV partner, AECOM's, past performance pertaining to the AMAC mission area under one contract. As explained below, we find that these arguments do not provide a basis for sustaining the protest.

As a general matter, the evaluation of an offeror's past performance, including the agency's determination of the relevance and scope of an offeror's performance history to be considered, is a matter within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. The Emergence Group, B-404844.5, B-404844.6, Sept. 26, 2011, 2012 CPD ¶ 132 at 5.

In assigning TAS a performance confidence rating of satisfactory confidence, the agency--consistent with the methodology described above--considered the percentage of effort to be performed by each JV partner and the relevance/quality of performance under prior contracts by mission area. TAS's proposed staffing by mission area showed that in the mission area of I-NOSC, JV partner Technica was proposed to perform 66 percent of the effort, and JV partner AECOM, 34 percent. In the other four mission areas, the proposed breakdown in staffing percentages between Technica and AECOM was 55/45, 70/30, 55/45, and 0/100, respectively. Memorandum of Law (MOL) at 8; SSDD at 8. With regard to prior contracts, TAS furnished past performance information pertaining to three contracts performed by AECOM, but no past performance information pertaining to contracts performed by Technica. As part of its evaluation, the agency identified a fourth AECOM contract. These contracts are referenced below as contract 1, contract 2, contract 3, and contract 4.

Under contract 1, which AECOM performed as a subcontractor, the agency found relevant performance in all mission areas except AMAC, with quality of performance

rated as exceptional. Under contract 2, AECOM's performance was rated as not relevant in all mission areas. Under contract 3, which AECOM performed as a prime, its performance was rated as not relevant in I-NOSC, ESU, and APC; as relevant in O&M; and as somewhat relevant in AMAC. Quality of performance was exceptional. Under the government-identified contract, contract 4, which AECOM performed as a subcontractor, there was somewhat relevant performance in I-NOSC and relevant performance in the other four areas, with exceptional quality. Protest at 14; Comparative Analysis Report (CAR) at 22.

The CAR summarized the evaluators' findings pertaining to TAS's past performance as follows:

- Relevant or Somewhat Relevant experience is not demonstrated by the majority partner accomplishing a large portion of effort (100% of effort, but not of staffing) across all mission areas
- As a Joint Venture, TAS provided meaningful past performance to enable a confidence level to be determined for the Joint Venture; however, while Technica proposed the majority of staffing in all areas except APC, they demonstrated no past performance
- Quality was consistently Exceptional
- All relevant past experience except that in O&M was as a subcontractor
- Relevant experience was documented for every mission area by the minority JV partner
- Per staffing numbers, no Relevant or Somewhat Relevant past performance experience was documented for 66% of the team proposed to accomplish the I-NOSC mission
- Per staffing numbers, no Relevant or Somewhat Relevant past performance experience was documented for 55% of the team proposed to accomplish the ESU mission
- Per staffing numbers, no Relevant or Somewhat Relevant past performance experience was documented for 70% of the team proposed to accomplish the O&M mission
- Per staffing numbers, no Relevant or Somewhat Relevant past performance experience was documented for 55% of the team proposed to accomplish the APC<sup>4</sup> mission.

MOL at 9-10, citing CAR at 23.

As noted above, the protester contends that the agency's evaluation of its past performance was inconsistent with the solicitation's terms pertaining to the

---

<sup>4</sup> The agency explains that the reference to APC was an administrative error. MOL at 10 n.1. It appears that the reference should have been to AMAC.

evaluation of JV offerors. TAS maintains in this regard that while the RFP provided that “past performance of either party in a joint venture counts for the past performance of the entity,” RFP at 90, the agency “abandoned the solicitation’s promise that one JV member’s past performance would stand for the JV when it engage[d] in an erroneous staffing percentage exercise based on its understanding of how TAS would deploy personnel from its two members to achieve the work.” Comments at 4. According to the protester, the agency failed to adhere to the terms of the solicitation by distinguishing between the past performance of the two JV partners in its assessment.

We disagree. In our view, the RFP’s reference to the past performance of a JV partner counting for the past performance of the JV does not mean the agency could not consider which JV partner was responsible for particular performance. We note in this connection that the solicitation provided for consideration of the “effort, or portion of the effort, being proposed by the offeror, teaming partner, or subcontractor whose contract is being reviewed and evaluated.” RFP at 99.

TAS also argues that the agency departed from the solicitation’s evaluation scheme “by assigning undue weight to relevance to the point at which it virtually eclipsed performance quality.” Comments at 6. The protester contends that this unreasonably resulted in a performance confidence rating of satisfactory confidence for TAS, “a prime contractor that demonstrated relevance in each mission area at a uniformly Exceptional level,” while Valdez, “a prime contractor that demonstrated relevance in each mission area at a lower, Very Good level, but [which] could boast subcontractors with additional contracts showing relevance in each mission area at a level from Satisfactory to Exceptional,” received a performance confidence rating of substantial confidence. Id. at 8.

Consistent with the protester’s argument, the record reflects that the agency gave little, if any, weight to distinctions between exceptional and very good quality of performance, and instead focused almost entirely on differences in relevance in comparing offerors’ past performance. In this connection, the agency noted as follows:

The difference in the quality of each offeror’s past performance was so minimal that it was not a discriminator. All four offerors [considered in the tradeoff] demonstrated mostly Very Good or Exceptional quality . . . . The primary difference between the offerors’ proposals related to the degree to which each teaming partner brought relevant past performance experience that aligned with the mission areas their staff was proposed to work.

CAR at 27.

Nonetheless, we see no basis upon which to question the reasonableness of the performance confidence ratings assigned the protester and the awardee. In the case of the protester, despite the fact that one JV partner had relevant past performance of exceptional quality in all mission areas, it remains the case that the other JV partner, which was proposed to perform the majority of staffing in four of the five mission areas, had no relevant past performance. Given the latter circumstance, we fail to see that satisfactory confidence was an unreasonable performance confidence rating for the JV. Similarly, when the quality of performance by Valdez and its proposed subcontractors is considered, along with the relevance of particular efforts and their alignment with the mission areas to be supported under the contract here, a performance confidence rating of substantial confidence was clearly reasonable.

TAS further argues that the agency unreasonably failed to find that AECOM had relevant performance in the AMAC mission area under contract 1.

We do not address this argument in detail because it is clear from the record that even assuming that the protester is correct that the agency erred in finding that AECOM had not demonstrated relevant performance in the AMAC mission area under contract 1, TAS suffered no prejudice as a result. In this regard, AECOM was found to have relevant performance in the AMAC mission area in another of its contracts, and somewhat relevant performance in the AMAC area in a third contract. As a result, AECOM was acknowledged to have past performance in the AMAC mission area. Prejudice is an essential element of very viable protest, and we will not sustain a protest where it is clear from the record that a protester suffered no prejudice as a result of an evaluation error. JAM Corp., B-408775, Dec. 4, 2013, 2013 CPD ¶ 282 at 7.

Finally, the protester asserts that the source selection decision was unreasonable since it was based on a flawed past performance evaluation. Protest at 17. Because we conclude that, in fact, the agency's past performance evaluation was not flawed, this protest ground is denied.

The protest is denied.

Susan A. Poling  
General Counsel