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## Decision

**Matter of:** Rohmann Services, Inc.

**File:** B-405171; B-405171.2

**Date:** September 8, 2011

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David F. Barton, Esq., and Elizabeth H. Connally, Esq., The Gardner Law Firm, for the protester.

Ira E. Hoffman, Esq., Shulman, Rogers, Gandal, Pordy & Ecker, PA, for the intervenor.

Col. Mark S. Teskey, Michael G. McCormack, Esq., and Martin C. O'Brien, Esq., Department of the Air Force, for the agency.

Matthew T. Crosby, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest challenging agency's evaluation of awardee's past performance is denied where protester alleges awardee lacks experience with work not expressly specified in solicitation and where record reflects agency determined awardee had relevant experience in all service areas specified in solicitation; protester's mere disagreement with agency's evaluation is insufficient to show it was unreasonable.

2. Protest alleging agency failed to evaluate validity of awardee's teaming agreement is denied where awardee's proposal represented agreement was valid and where solicitation did not require submission or evaluation of offeror teaming agreements.

3. Protest concerning agency's consideration of awardee's ability to obtain security clearances is denied where solicitation did not contain definitive responsibility criteria regarding security clearances and where there is no evidence of fraud or bad faith in connection with contracting officer's responsibility determination.

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### DECISION

Rohmann Services, Inc., of San Antonio, Texas, protests the award of a contract by the Department of the Air Force to Media Fusion, Inc., of Huntsville, Alabama, under

request for proposals (RFP) No. FA9301-10-R-0010 for multimedia services at Edwards Air Force Base, California. Rohmann challenges various aspects of the agency's evaluation of Media's proposal.

We deny the protest.

## BACKGROUND

On January 7, 2011, the agency issued the solicitation as a total small business set-aside for base-wide multimedia services at Edwards Air Force Base, California. RFP at 1; Performance Work Statement (PWS) § 1.1. The solicitation contemplated the award of a single fixed-price, indefinite-delivery/indefinite-quantity contract, with a 7-month base period, four 1-year option periods, and a fifth, 6-month option period.<sup>1</sup> RFP at 3-15, 25, 36.

The solicitation provided that the successful offeror would be required to perform multimedia services in the following eight "service areas": alert; studio; location; high-speed motion media; aerial; archival; and public address. PWS § 1.3. The high-speed motion media service area was described as follows:

Provide high-speed motion picture services, both analog and digital, in support of missions and special test events . . . . High-speed motion picture and high-speed video cameras will be used to acquire imagery for test events, to record major milestones including aircraft and weapons systems testing.

Id. § 1.7. The aerial service area was described as follows:

Provide aerial multimedia services, including photography, videography, high-speed motion picture media and audio, as requested . . . . Aerial multimedia services will support flight test endeavors that include air to air and/or surface mission elements performed at [Edwards Air Force Base] and other locations worldwide.

Id. § 1.9. In connection with aerial multimedia services, the solicitation required contractor compliance with certain Air Force instructions and provided that aerial photographers "must undergo government-provided training on, and maintain

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<sup>1</sup> Although the solicitation provided for a 7-month base period, four 1-year option periods, and fifth, 6-month option period, RFP at 3-15, the contracting officer states that the "ordering period under the contract [is] to run for 4 years and 7 months." Contracting Officer's Statement at 3. The apparent inconsistency between the solicitation and contracting officer's statement is not material to our analysis in this decision.

proficiency in” twelve specific areas, including aircraft egress, parachute use, water survival, local area survival, and life support equipment use. Id. §§ 1.9.1, 1.9.3. The solicitation announced that award would be made to the offer representing the “best value” to the government based on two evaluation factors: past performance and price. RFP at 25, 28. Past performance was stated to be “significantly more important than price.” Id. For purposes of evaluation under the past performance factor, offerors were to submit information regarding up to three recently performed and relevant contracts. Id. at 22. The solicitation advised that the past performance of major subcontractors would be considered as highly as the past performance of the principal offeror. Id. at 25. Accordingly, offerors were to submit information regarding up to two recent and relevant contracts performed by each major subcontractor. Id. at 22.

The solicitation explained the award selection process as follows. First, the agency would rank offerors’ proposals in order of price, including option year pricing. Id. at 25. Next, the agency would assess the recency, relevance, and quality of offerors’ past performance. Id. at 25-28. Based on this assessment, each offeror would be assigned a “performance confidence assessment rating” of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. Id. at 26. The solicitation explained the final steps of the process as follows:

If the lowest priced evaluated offer is judged to have a “Substantial Confidence” performance rating and is determined to be responsible, that offer represents the best value for the government, and the evaluation process stops at this point. Award shall be made to that offeror without further consideration of any other offers.

If the lowest priced offeror is not judged to have a “Substantial Confidence” performance assessment, the next lowest priced offeror will be evaluated and the process will continue (in order by price) until an offeror is judged to have a “Substantial Confidence” performance assessment or until all offerors are evaluated. The Source Selection Authority shall then make an integrated assessment best value award decision.

Id. at 28.

The agency received four proposals by the solicitation’s closing date, including proposals submitted by Rohmann and Media. Contracting Officer’s Statement at 7. Media’s proposal stated that although Media itself had 15 years of experience in “most” of the service areas, Media’s experience in aerial photography was “perhaps not sufficient” for a performance confidence assessment rating of substantial confidence. Agency Report (AR), Tab 8, Media Proposal, Pt. II, at 17. Therefore, the proposal stated, Media had partnered with Bionetics Photo Services LLC, of Cape Canaveral, Florida, which the proposal characterized as “a proven industry leader in test and aerial photography.” Id. Media’s proposal further stated that Media had

signed a teaming agreement under which Bionetics would perform “at least 30% of the total contract . . . in the areas of Aerial and High Speed Photography.”<sup>2</sup> Id.

Media’s proposal included information regarding contracts previously performed by Media and Bionetics. Id. at 3-16. Regarding prior aerial photography performed by Bionetics, the proposal stated as follow:

[Bionetics] production and engineering personnel have provided aerial photographic and video services for a variety of commercial and government clients throughout the past ten years. From commercial aerial photography of Port Canaveral to aerial digital videography and high speed video supporting [United Launch Alliance’s] Atlas V launch, [Bionetics] is familiar with the rigors and intricacies involved with aerial photography, as well as the inherent safety and training requirements. . . . [Bionetics] personnel complete an extensive suite of training sessions to ensure their understanding and compliance with the safety regulations specific to each individual mission or operations.

Id. at 15.

The agency ranked the proposals in order of price. Media’s proposal was ranked as the third-lowest-priced proposal, and Rohmann’s proposal was ranked as the highest-priced proposal.<sup>3</sup> AR, Tab 14, SSB, at 7. A performance confidence assessment group (PCAG) then evaluated the past performance of the offeror that submitted the lowest-priced proposal. That offeror received a performance confidence assessment rating of limited confidence. Id. at 13-15, 24. Because the offeror that submitted the lowest-priced proposal did not receive a performance confidence rating of substantial confidence, the PCAG evaluated the past performance of the offeror that submitted the second-lowest-priced proposal. Contracting Officer’s Statement at 8. That offeror also received a performance confidence assessment rating of limited confidence, so the PCAG evaluated the past performance of the offeror that submitted the third-lowest-priced proposal, i.e., Media. AR, Tab 14, SSB, at 17-19, 24; Contracting Officer’s Statement at 8.

The PCAG found that under a prior contract, Media had performed multimedia services in the studio, location, high-speed motion media, archival, and public

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<sup>2</sup> An unsigned version of the teaming agreement was integrated into Media’s proposal, along with a copy of a letter signed by Bionetics’s president stating that Bionetics had teamed with Media for purposes of responding to the solicitation. AR, Tab 8, Media Proposal, Pt. II, at 17-24, 27.

<sup>3</sup> The difference between the evaluated price of Rohmann’s and Media’s proposals was \$1,783,621. See AR, Tab 14, Source Selection Briefing (SSB), at 7.

address areas, but that Media “did not display performance in the area of alert photography and their aerial photography was limited to air to ground.” AR, Tab 12, PCAG Report, at 3. The PCAG, however, also found that under a prior contract Bionetics had performed multimedia services in all of the areas described in the solicitation, including aerial multimedia services. Id. at 5. Based in part on these findings, the PCAG assigned Media a performance confidence assessment rating of substantial confidence. Id. at 2. Later, through a clarification from a point of contact for the relevant Bionetics contract, the PCAG learned that the aerial photography performed by Bionetics under that contract involved flying in “turbo-charged propelled aircraft in support of air to air photography services,” but that Bionetics personnel had not been required to fly in jet aircraft.<sup>4</sup> Id. at 6. The PCAG considered this information and determined not to change Media’s substantial confidence rating because “air to air support was considered [the] same or similar” as the service provided for in the solicitation. Id.

The PCAG’s findings were presented to the source selection authority (SSA), who was also the contracting officer. AR, Tab 14, SSB. The SSA then performed and documented a best value analysis. AR, Tab 15, Source Selection Decision Document (SSDD) ¶ 12. In the analysis, the SSA noted that the two lowest-priced proposals were 13.12 and 3.73 percent lower in price, respectively, than Media’s proposal. Id. The SSA also noted that the two lowest-priced proposals did not demonstrate experience with air-to-air photography, high-speed motion media, or management of a contract of similar magnitude, whereas Media’s proposal demonstrated recent and relevant experience in all of the evaluation areas. Id. Finally, the SSA noted that Media’s performance confidence rating of substantial confidence was two levels above the two lower-priced offerors’ ratings of limited confidence. Id. For these reasons, the SSA determined that Media’s higher-rated, higher-priced proposal represented the best value to the government. Id.; Contracting Officer’s Statement at 12. Award was made to Media on April 18. Contracting Officer’s Statement at 12. This protest followed.

## DISCUSSION

Rohmann asserts that the substantial confidence rating assigned to Media was unreasonable because, according to Rohmann, neither Media nor Bionetics has “high speed air to air photography experience,” which Rohmann alleges was required by the solicitation. Comments at 8-10; see also Protest at 9-10. In this regard, Rohmann points out that Media’s proposal acknowledged that Media itself may not have had sufficient air-to-air photography experience and that the PCAG knew that the

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<sup>4</sup> The PCAG chairman initially communicated this information to the PCAG in an e-mail stating that Bionetics “was found to do aerial photog[raphy] by cessena [sic] only.” AR, Tab 12, PCAG Report, at 7. The e-mail further stated: “We figured this might change your ratings . . . .” Id.

Bionetics contract that they evaluated did not require Bionetics personnel to fly in jet aircraft. Comments at 9, 11.

The evaluation of an offeror's past performance, including the agency's determination of the relevance and scope of an offeror's performance history, is a matter of agency discretion, which we will not find improper unless unreasonable or inconsistent with the solicitation's evaluation criteria. National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4; Command Enters., Inc., B-293754, June 7, 2004, 2004 CPD ¶ 166 at 4. The evaluation of experience and past performance, by its very nature, is subjective; we will not substitute our judgment for reasonably based evaluation ratings, and an offeror's mere disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. FN Mfg., LLC, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7; MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10.

As an initial matter, we observe that Rohmann's argument is premised on the view that the solicitation contained a specific requirement for, as Rohmann puts it, "high speed air to air photography." See Comments at 9. The solicitation provisions regarding aerial multimedia services, however, do not expressly include such a requirement,<sup>5</sup> see PWS §§ 1.9 - 1.9.3, and Rohmann has not identified other solicitation provisions that reflect such a requirement.<sup>6</sup> Further, when read together, the solicitation's aerial and high-speed motion media service area provisions suggest that the reference within the aerial service area provision to "high-speed motion picture media and audio" pertains to the use of high-speed motion picture and audio equipment. See note 5, *supra*. Finally, although the solicitation provisions regarding the aerial service area reference numerous Air Force instructions and training areas, none of the instructions or training areas are specific to high-speed or jet aircraft. See PWS §§ 1.9.1, 1.9.3. For these reasons, we decline to adopt Rohmann's view that the solicitation included a definite high-speed air-to-air photography requirement that the agency ignored when evaluating the air-to-air photography experience of Media and Bionetics.

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<sup>5</sup> As described above, the solicitation stated that "photography, videography, [and] high-speed motion picture media and audio" were included in the aerial multimedia services area, and that aerial multimedia services would support "air to air and/or surface" flight test endeavors. PWS § 1.9. As also described above, the solicitation included a separate provision regarding high-speed motion media services that described those services as involving the use of "[h]igh-speed motion picture and high-speed video cameras . . . to acquire imagery for test events, to record major milestones including aircraft and weapons systems testing." *Id.* § 1.7.

<sup>6</sup> For example, Rohmann has not identified any distinction within the solicitation between high-speed air-to-air photography and other-than high-speed air-to-air photography.

Moreover, the record reflects both that the PCAG confirmed that Bionetics had experience under a predecessor contract with flight in “turbo-charged propelled aircraft in support of air to air photography,” and that the PCAG specifically concluded that such experience was the “same or similar” as the solicitation requirement in question. AR, Tab 12, PCAG Report, at 6. Rohmann’s position that this conclusion tainted the agency’s past performance evaluation amounts to mere disagreement with the agency and does not provide a basis to sustain the protest.

Rohmann also argues that the substantial confidence rating assigned to Media’s proposal was unreasonable because, as alleged by Rohmann, the record does not show that either Media or Bionetics personnel have undergone training related to air-to-air photography. Comments at 10; see also Protest at 13-14. As recounted above, the solicitation included a provision requiring that aerial photographers “undergo government-provided training on, and maintain proficiency in” twelve areas, most of which pertained to airborne emergencies. PWS § 1.9.3. This provision does not require an offeror to have completed the training in advance of contract award, and Rohmann has not identified any solicitation provision with such a requirement. Further, Media’s proposal indicated that Bionetics personnel were familiar with aerial photography safety and training requirements, and that they complete training regarding “compliance with the safety regulations specific to each individual mission or operation.” AR, Tab 8, Media Proposal, Pt. II, at 15. In light of the foregoing, this basis of protest is denied.

In its protest and comments on the agency report, Rohmann challenges various other aspects of the agency’s evaluation of Media’s proposal. We have reviewed each argument and have determined that none has merit. For example, because the version of the Media/Bionetics teaming agreement that was integrated into Media’s proposal was unsigned, Rohmann argues that the agency improperly failed to evaluate or confirm the validity of that agreement, a step that Rohmann alleges was required by the solicitation. Comments at 12-13; Supp. Comments at 5.

An agency must evaluate proposals and assess their relative qualities based solely on the factors and subfactors stated in the solicitation. Federal Acquisition Regulation § 15.305(a). As an initial matter, we observe that Media’s proposal expressly represented that Media had signed the teaming agreement. AR, Tab 8, Media Proposal, Pt. II, at 17. In any event, we find no merit in Rohmann’s argument because Rohmann has failed to show that the solicitation required the agency to evaluate or validate offerors’ teaming agreements, or, for that matter, that the solicitation required offerors to submit their teaming agreements.<sup>7</sup>

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<sup>7</sup> In connection with the evaluation of past performance, the solicitation stipulated that if an offeror provided past performance information regarding a contract that the offeror had performed as a member of a joint venture or a team, the relevant joint venture or teaming agreement was to be submitted with the offeror’s proposal.

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Rohmann also argues that the agency improperly did not evaluate whether Media or Bionetics possesses certain security clearances, which Rohmann alleges will be required at the start of contract performance. Comments at 13-14; Supp. Comments at 7. The ability to obtain a security clearance generally is a matter of responsibility, absent an express requirement in the solicitation to demonstrate the ability prior to award. Waterfront Techs., Inc.-Protest and Costs, B-401948.16, B-401948.18, June 24, 2011, 2011 CPD ¶ 123 at 6; Ktech Corp.; Physical Research, Inc., B-241808, B-241808.2, Mar. 1, 1991, 91-1 CPD ¶ 237 at 3. Here, the contracting officer determined Media to be a responsible offeror, that is, a firm capable of satisfactory performance, including obtaining any required security clearances. Supp. Contracting Officer's Statement at 11. Our Office does not review an agency's affirmative determination of responsibility unless a protester shows either that the determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met. 4 C.F.R. § 21.5(c) (2011). There is no evidence here of fraud or bad faith on the part of the contracting officer, and Rohmann has not shown that the solicitation included definitive responsibility criteria regarding security clearances. Accordingly, this basis of protest is denied. See Calian Tech. (US) Ltd., B-284814, May 22, 2000, 2000 CPD ¶ 85 at 10.

Rohmann further argues that the agency erred in calculating Media's total offered price. Comments at 13; Supp. Comments at 6. Assuming for the sake of argument that the agency erred as Rohmann alleges, Rohmann has failed to establish that such error caused the firm any prejudice. Prejudice is an essential element of every viable protest; we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions. Armorworks Enters., LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3. Here, Rohmann asserts that the agency's purported error resulted in an understatement by "over \$415,000" of Media's evaluated price. Supp. Comments at 6. Yet the difference between the evaluated price of Rohmann's and Media's proposals was \$1,783,621, a sum vastly greater than \$415,000. AR, Tab 15, SSDD ¶¶ 9, 10. Thus, Rohmann has not shown that the agency's alleged error would have resulted in Rohmann's proposal being evaluated as lower-priced than Media's proposal; *i.e.*, Rohmann has not shown that but for the agency's alleged error, the agency would have considered Rohmann's proposal for award under this solicitation's award selection methodology. We therefore deny this basis of protest.<sup>8</sup>

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RFP at 23. This provision, however, did not require an offeror to submit, or the agency to evaluate or validate, a teaming agreement, such as the one between Media and Bionetics, entered into for purposes of responding to the solicitation.

<sup>8</sup> As a related ground of protest, Rohmann claims that the agency did not adequately document its evaluation of Rohmann's proposal. Protest at 7. The award selection process described in the solicitation here did not require the agency to evaluate higher-priced proposals after the agency had identified a lower-priced proposal that

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Finally, Rohmann contends that the agency improperly failed to evaluate the realism of Media's offered pricing. Protest at 15. The solicitation here did not require the agency to evaluate prices for realism, and an offeror, in its business judgment, properly may decide to submit a price that is extremely low. JSW Maint., Inc., B-400581.5, Sept. 8, 2009, 2009 CPD ¶ 182 at 7 n.3. Accordingly, we dismiss this claim because it does not constitute a valid basis of protest.<sup>9</sup> 4 C.F.R. § 21.5(f).

Lynn H. Gibson  
General Counsel

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merited a performance confidence assessment rating of substantial confidence. RFP at 28. Because, as described above, we find reasonable the agency's determination to assign a substantial confidence rating to Media's proposal, there is no need to consider this protest claim.

<sup>9</sup> Apart from challenging the agency's evaluation of Media's proposal, Rohmann's protest also claims that the agency improperly failed to establish mission capability factors or subfactors and improperly failed to disclose the weight of the evaluation factors and subfactors. Protest at 7. Our Bid Protest Regulations require that a protest based on alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1). We dismiss these claims as untimely because they concern alleged solicitation improprieties that were apparent prior to the deadline for receipt of proposals. See 4 C.F.R. § 21.5(e); American Cybernetic Corp., B-310551.2, Feb. 1, 2008, 2008 CPD ¶ 40 at 2-3 n.1. Similarly, Rohmann in its comments on the agency's supplemental report argues for the first time that the process used by the agency to evaluate proposals deviated from the process contemplated in the solicitation. We have reviewed Rohmann's arguments and conclude not only that they are untimely, see 4 C.F.R. § 21.2(a)(2), but that they are wholly without merit.