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**Comptroller General
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Decision

Matter of: The McConnell Group, Inc.

File: B-405377

Date: October 21, 2011

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Scott A. Ford, Esq., for the intervenor.
Major Andrew J. Smith, Department of the Army, for the agency.
Tania Calhoun, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's evaluation of offeror's past performance is reasonable where the evaluation of relevant past performance is consistent with the evaluation criteria and supported by the evaluation record.
2. Protest that the agency conducted unequal discussions is denied where the record shows that the agency's discussion questions reasonably advised offerors of the areas of their proposals considered weaknesses, and that the offerors were treated in an equal manner.

DECISION

The McConnell Group, Inc. (TMG), of Rockville, Maryland, protests the award of a contract to SoBran, Inc., of Burtonsville, Maryland, under request for proposals (RFP) No. W81XWH-11-R-0001, issued by the Department of the Army for animal husbandry and associated animal support services. TMG, the incumbent contractor, argues that the agency improperly evaluated proposals with respect to past performance and conducted unequal discussions.

We deny the protest.

The solicitation, issued December 7, 2010, sought proposals to provide animal husbandry and associated animal support services, including standard laboratory animal veterinary technical procedures, to support the Veterinary Medicine and

Surgery Branch, Research Support Division, for two facilities, the U.S. Army Medical Research Institute of Chemical Defense (USAMRICD) and the U.S. Army Public Health Command (USAPHC). RFP, Performance Work Statement (PWS) ¶ 1. The solicitation also specified optional biological science laboratory technician, laboratory animal medicine veterinarian, veterinarian pathologist, research scientist, and/or administrative support services for these institutes that might be added by contract modification as these services are required. Id. The solicitation contemplated award of a combination fixed-price and cost reimbursement, performance-based, service contract to the successful offeror for a 1-year base period and up to four 1-year option periods. RFP at 88, RFP § B.

Potential offerors were advised that the animal care and research support services were to be performed by both government employees and contractor personnel; the solicitation estimated the respective level of effort as 70% contractor personnel/30% government employees at the USAMRICD facility, and 30% contractor personnel/70% government employees at the USAPHC facility. RFP at 3. The PWS advised offerors they were expected to propose personnel who were cross-trained in a variety of functional disciplines to provide services covering multiple functional areas described in the PWS. PWS ¶ 4.1

Award was to be made to the best overall (i.e., best value) proposal that was determined to be the most beneficial to the government, considering four evaluation factors: technical approach, management approach, past performance, and price. RFP § M.A. The three non-price factors were of equal importance and, when combined, were significantly more important than price; however, the RFP advised that price might become the deciding factor if proposals were evaluated and determined to be technically equivalent. Id.

Under both the technical approach and management approach factors, proposals were to be rated as excellent, good, acceptable, or unacceptable. RFP §§ M.A.2, B. Under the past performance factor, the solicitation stated that the Army would assess the following: the degree of relevancy and success in past performance efforts in the past 3 years of a similar scope, size, complexity, and subject matter in accordance with the solicitation; the performance risk associated with an offeror's likelihood of success in performing the solicitation's requirements and quality as indicated by that offeror's record of current or past performance with the same or similar requirements; and each offeror's general corporate background and recent success in managing similar or related work, as well as each offeror's problems encountered in the performance of similar services and the description of how the problems were resolved. RFP § M.A.2.c. In addition, each offeror was required to have its past performance references return past performance questionnaires to the agency for an assessment of relevancy of performance risk. Id. Proposals were to be rated as low, moderate, high, or unknown risk; as relevant here, low risk would mean that little doubt existed that, based on the offeror's performance record, the offeror could perform the proposed effort. RFP § M.B.

The Army received proposals from 5 firms by the February 9, 2011, closing date, including those of TMG and SoBran. The source selection evaluation board (SSEB), which included the source selection authority (SSA), evaluated initial proposals and conducted written discussions, reevaluated proposals based on discussion responses, and conducted additional written discussions. After it reconvened in June for a final reevaluation, the SSEB prepared the following consensus evaluation:

	Technical Approach	Management Approach	Past Performance	Price
SoBran	Excellent	Excellent	Low Risk	\$9,262,129
TMG	Excellent	Excellent	Low Risk	\$9,674,390
Offeror A	Excellent	Good	Low Risk	\$8,776,061
Offeror B	Excellent	Good	Low Risk	\$10,109,902
Offeror C	Acceptable	Good	Moderate Risk	\$12,349,040

Agency Report (AR), Tab 21, Post-Negotiation Memorandum, June 22, 2011, at 2.

In her source selection decision document (SSDD), the SSA summarized the evaluation results. With respect to the technical approach factor, the SSA noted the experience of both TMG and SoBran in providing animal care services on the installation and with other military agencies. AR, Tab 22, SSDD, at 3. With respect to management approach, the SSA noted that both firms proposed staffing models that demonstrated an understanding of the expected levels of effort by government and contractor personnel at each facility, and that demonstrated the most advantageous strategies to promote successful performance by allocating appropriate labor mixes. Id. at 4. Finally, the SSA summarized the results of the SSEB's past performance evaluation for each firm. Id. at 5.

The SSA stated that all of the offers were determined to be technically acceptable, but that the offer from SoBran represented the best value solution considering all of the evaluation factors. Id. She stated that, although the proposal from Offeror A represented the lowest priced, technically acceptable offer, the proposals from SoBran and TMG were superior when considering the strengths and weaknesses of each proposal. Id. The SSA weighed their respective price premiums, and determined that the price premium for the TMG proposal was not justified because SoBran's proposal was technically equivalent to TMG's proposal. Id.

TMG was notified of the award decision on July 7, and filed its initial protest after its debriefing. The firm argued, among other things, that the Army improperly evaluated proposals with respect to past performance.¹ After the agency filed its

¹ In its initial protest, TMG argued that SoBran performed a "bait and switch" of its proposed personnel and challenged the agency's evaluation of SoBran's price proposal. Because the agency substantively responded to each of these bases of

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report on TMG's initial protest, TMG filed a supplemental protest challenging the agency's conduct of discussions.

Past Performance Evaluation

TMG first argues that the Army unreasonably rated SoBran's proposal as low risk under the past performance factor because, TMG alleges, SoBran's past performance record shows that it does not have experience in efforts "of a similar scope, size, complexity and subject matter" as required by the solicitation.

As noted above, the RFP stated that this requirement was for animal husbandry and associated animal support services, including standard laboratory animal veterinary technical procedures. PWS ¶ 1. The RFP also specified optional laboratory technician and veterinary services that might be added by contract modification.² Id. TMG argues that while SoBran's past performance reflects experience with the solicitation's animal husbandry and animal services requirements, its past performance references do not show that it has experience performing the laboratory technician and veterinarian requirements in the optional portions of the solicitation. TMG argues that, as a result, SoBran has no relevant experience in a major aspect of the contract and that it was unreasonable to assign the firm a low risk rating.

An agency's evaluation of past performance, which includes 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, inconsistent with the solicitation criteria, or undocumented. L-3 Sys. Co., B-404671.2, B-404671.4, Apr. 8, 2011, 2011 CPD ¶ 93 at 4; Family Entertainment Servs., Inc., d/b/a IMC, B-291997.4, June 10, 2004, 2004 CPD ¶ 128 at 5. A protester's mere disagreement with such judgment does not provide a basis to sustain a protest. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

Here, there was no requirement that an offeror's past performance efforts be the same as required under the contract, and no requirement that an offeror have past performance experience with respect to each PWS requirement. Instead, the solicitation advised that past performance efforts would be assessed for their "degree of relevancy and success," for efforts of "similar scope, size, complexity and subject matter." RFP § M.A.2.c.(i). In addition, the agency would make other past

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protest, and the protester did not further address these issues in its comments on the agency report, we consider the protester to have abandoned these issues and will not further consider them. CM Mfg., Inc., B-293370, Mar. 2, 2004, 2004 CPD ¶ 69 at 3.

² The RFP stated that these optional areas were not being performed by the incumbent contractor, TMG. RFP at 2.

performance assessments based on an offeror's record with the "same or similar requirements" and "similar or related work." Id.

In its proposal, SoBran submitted information concerning four contracts for such things as animal care and research support, animal husbandry services, and animal care facilities maintenance and operation at various federal facilities. For each contract, SoBran provided detailed information concerning the scope and types of work provided, including the management and supervision of operational services provided for veterinary care, technical support, intensive care unit support, biosafety level support, cage wash operations, animal husbandry, research support services, and logistical and administrative support. SoBran also provided information concerning the relevance of its past work to the instant requirement, as well as major differences between its past contracts and the instant requirement. As relevant here, SoBran noted that the scope of three of its past contracts was larger than the instant requirement; the record shows that two of its contracts were of significantly higher dollar value and involved significantly more contractor personnel than the instant requirement. Finally, as required by the solicitation, SoBran described problems encountered on its contracts as well as corrective actions and resolutions. AR, Tab 7, SoBran Technical Proposal, at 100-110

The SSEB rated both offerors as low risk under the past performance factor, identifying no weaknesses or deficiencies. Among the strengths identified with the SoBran proposal were its experience with various sizes and complexities of contracts. AR, Tab 10, SSEB Minutes, Mar. 28, 2011, at 4-5. Among the strengths identified with the TMG proposal were that its reviews represented multiple sized contracts. Id. at 16.

In her source selection decision document, the SSA summarized the SSEB's evaluation results. In summarizing the results of the technical approach evaluation, she noted that SoBran's proposal described several years of experience providing animal care services involving a broad variety of species, a history of work on the installation and with other military agencies, and experience with chemical agent work. AR, Tab 22, SSDD at 3. For TMG's proposal, she noted its demonstrated broad experience providing animal care services involving a variety of species, history of working on the installation and other military agencies, and experience providing technical research support as required by the optional services included in the PWS. Id. In summarizing the results of the past performance evaluation, the SSA noted the positive aspects identified by the SSEB for both firms. Id. at 5. Nonetheless, as noted above, in making her trade-off decision, the SSA determined that the offers were technically equivalent.

Giving due deference to the agency's broad discretion to determine whether particular contracts are relevant to the evaluation of an offeror's past performance, we have no basis to question the agency's consideration of SoBran's past performance efforts of varying sizes and scopes as relevant to the work defined in the PWS. See Family Entertainment Servs., Inc., d/b/a IMC, supra. While TMG may

be correct in asserting that SoBran has no past performance involving the laboratory technician and veterinarian requirements in the optional portion of the solicitation, that does not render unreasonable the agency's low risk past performance rating of the proposal. TMG provides no evidence that SoBran's past performance efforts are so dissimilar from the optional services that the Army should have discounted their relevance, nor has TMG provided support for its assertion that the optional services were a major part of the contract, such that SoBran's alleged lack of past performance in this area should have changed the evaluation results.

The SSA acknowledged TMG's experience with the optional work as a benefit, implicitly recognizing that SoBran did not have this experience. Nonetheless, the SSA ultimately determined that the firms' differing strengths under the past performance factor and other factors rendered them technically equivalent. Given all of the aspects of past performance considered by the Army here, we have no basis to question the agency's ratings of low risk for both firms.

Improper Receipt of Information

TMG next argues that SoBran improperly received and used information about the Army's future staffing to reduce the number of proposed employees within its proposal. In support of this allegation, TMG provides an affidavit from one of its employees who states that, on August 11, 2011, a SoBran employee told her that, during proposal preparation, SoBran had information that the Army would be hiring additional veterinary technicians to perform work under the contract, thereby reducing the need for contractor personnel. This allegation, first raised in TMG's August 29 comments on the agency report, is untimely.

Under our Bid Protest Regulations, a protest based on other than solicitation improprieties must be filed not later than 10 calendar after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (2011). When a protester initially files a timely protest, and later supplements it with independent protest grounds, the later-raised allegations must independently satisfy the timeliness requirements, since our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. Maybank Industries, LLC, B-403327, B-403327.2, Oct. 21, 2010, 2010 CPD ¶ 249 at 4.

The record shows that, by August 11, TMG knew that the approximately \$400,000 price difference between its proposal and SoBran's was the deciding factor in the award decision. By this time, TMG had also concluded, as it stated in its July 19 initial protest, that it was unclear how SoBran could propose a price \$400,000 less than TMG's and still offer the same number of quality personnel at marketable labor rates. Initial Protest at 5. When TMG allegedly heard, on August 11, that SoBran had learned, during the preparation of its proposal, that the need for contractor personnel would be reduced, information not provided to the protester, it had all the information it needed to raise this allegation. While the record of discussions TMG received in the agency report may have provided additional support for this

allegation, this information was not necessary to raise this allegation.³ As a result, TMG's allegation, first raised more than 10 days after the protester knew or should have known the basis of protest, is untimely and will not be considered.

Unequal Discussions

Finally, TMG argues that the Army improperly engaged in unequal discussions with SoBran. The firm asserts that the Army impermissibly advised SoBran during discussions that the firm did not need all the individuals proposed in its original staffing plan but did not afford TMG a similar opportunity despite the "near-identical" nature of the two firms' proposed staffing.

In negotiated procurements, if an agency conducts discussions, the discussions must be meaningful. The Communities Group, B-283147, Oct. 12, 1999, 99-2 CPD ¶ 101 at 4. That is, agencies must lead offerors into the areas of their proposals that contain significant weaknesses or deficiencies, and may not mislead offerors. Metro Mach. Corp., B-281872, et al., Apr. 22, 1999, 99-1 CPD ¶ 101 at 6-7. While offerors must be given an equal opportunity to revise their proposals, and the Federal Acquisition Regulation (FAR) prohibits favoring one offeror over another, discussions need not be identical; rather, discussions must be tailored to each offeror's proposal. FAR §§ 15.306(d)(1), (e)(1); WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 5-6. The record does not support TMG's allegation.

The RFP required the successful contractor to furnish all personnel necessary to accomplish the required work at both the USAMRICD and USAPHC facilities. As discussed above, these services were to be performed by both government employees and contractor personnel, and the solicitation informed offerors of the respective levels of effort for both facilities – 70% contractor personnel/30% government employees (70/30) at the USAMRICD facility, and 30% contractor personnel/70% government employees (30/70) at the USAPHC facility.

In its initial proposal, SoBran proposed to perform the services with [DELETED] personnel, [DELETED] of whom would be assigned to the USAPHC facility. AR, Tab 7, SoBran Technical Proposal, at 68-74. In evaluating the proposal, the SSEB identified as a weakness that the proposal did not appear to reflect USAPHC staffing

³ In any event, the record of discussions does not show that the agency provided this information to the awardee. See AR, Tab 12, Discussions Letter to SoBran, April 5, 2011; Tab 17, Discussions to SoBran Letter, May 12, 2011. Moreover, the intervenor has provided affidavits from the SoBran employee who allegedly made these statements, as well as from a witness, which contradict TMG's affidavit. SoBran Comments on the Agency Report, Sept. 22, 2011, Exhibits A, B. The contracting officer (CO) also categorically denies releasing any information regarding staffing to SoBran. CO's Supplemental Statement, Sept. 12, 2011, ¶ 11.

needs at the specified 30/70 workload distribution. AR, Tab 10, SSEB Minutes, Mar. 28, 2011, at 4. In this regard, the contracting officer states that there were [DELETED] USAPHC government employees, so having [DELETED] contractor personnel would be a [DELETED] level of effort, not a 30/70 level of effort. CO's Supp. Statement, Sept. 12, 2011, ¶ 8.a. The SSEB advised SoBran of this weakness during discussions. AR, Tab 12, SoBran Discussions Letter, April 5, 2011. In response to the discussions questions, SoBran stated that it had reevaluated its proposed staffing plan and organization chart and decided to remove [DELETED] from its proposed personnel for USAPHC. AR, Tab 18, SoBran Response to Discussions Letter, Apr. 15, 2011, at 1. The firm said it believed having [DELETED], whose functions it specified, would better suit the workload distribution. *Id.* The SSEB determined that SoBran's revisions made its excellent proposal better, and asked for a revised price proposal. AR, Tab 15, SSEB Minutes, May 6, 2011, at 2; AR Tab 17 at 1. Based on its proposed staffing reduction, SoBran submitted a price that was lower than its initial price.

Turning to TMG, in its initial proposal, the firm proposed to perform the services with [DELETED] personnel, [DELETED] of whom would be assigned to the USAPHC facility. AR Tab 4, TMG Technical Proposal, at 69-78. As the contracting officer explains, TMG's proposal met the solicitation's 30/70 level of effort, and the SSEB did not consider the firm's proposed staffing level to be a weakness. CO's Supp. Statement, Sept. 12, 2011, ¶ 8.c.; AR Tab 22, SSDD, at 4. The contracting officer states that since the staffing level at the USAPHC facility was appropriate and consistent with the needs of the facility, there was no need to raise the issue during discussions. CO's Supp. Statement, Sept. 12, 2011, ¶ 8.c.

TMG complains that the Army did not alert it that it could have reduced its staffing for the USARICD facility below the [DELETED] personnel it proposed, since the Army found that SoBran's proposed staffing level of [DELETED] for the USARICD facility was acceptable. TMG alleges that while the Army helped SoBran adjust its staffing for the USAPHC facility, it did not help TMG adjust its staffing for the USARICD facility.

The record shows, however, that the Army discussed SoBran's staffing for the USAPHC facility with the firm because it considered the ratio of government to contractor personnel a weakness, but did not conduct discussions with either firm concerning their staffing levels for the USARICD facility because both ratios were found to be acceptable, with no weaknesses. AR Tab 22, SSDD, at 4. As the contracting officer explains, contractors had the opportunity to propose their most advantageous staffing models and labor mixes to accomplish the requirements. CO's Supp. Statement, Sept. 12, 2011, ¶ 8.e. She states that there are four government employees assigned to the facility, so the agency thought a staffing plan proposing as few as ten or as many as fourteen contractor personnel would not constitute a significant deviation from the expected contractor workforce given the level of effort. *Id.* The contracting officer states that each offeror proposed a unique staffing model for the facility, and both offerors' staffing plans represented reasonable

contractor levels of effort and were not considered weaknesses. Id. On this record, we find no support for TMG's allegation that the Army thought it proposed too many staff, or that it was required to advise the firm that it could propose fewer staff for the USARICD facility since it identified no weakness or deficiency with its staffing approach. As a result, TMG provides no basis to question the reasonableness of the Army's conduct of discussions.

The protest is denied.

Lynn H. Gibson
General Counsel