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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

## **Decision**

**Matter of:** Richen Management, LLC

**File:** B-409697

**Date:** July 11, 2014

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Richard McCue for the protester.

Joel David Malkin, Esq., General Services Administration, for the agency.

Louis A. Chiarella, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

1. Protest challenging the agency's evaluation of the protester's past performance is denied where the evaluation was reasonable and consistent with the solicitation's stated evaluation criteria.
2. Protest challenging the propriety of the agency's best value determination is denied where the agency's price/past performance tradeoff determination was documented, reasonable, and consistent with the solicitation's stated evaluation criteria.

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### **DECISION**

Richen Management, LLC, of Dover-Foxcroft, Maine, protests the award of a contract to Sparkle Janitorial Service, of Detroit, Michigan, under request for proposals (RFP) No. GS-05P-14-SVD-0019, issued by the General Services Administration (GSA) for janitorial and related services at the Ambassador Bridge and Nexus Trailer, Detroit, Michigan. Richen challenges the agency's evaluation of its past performance and source selection decision.

We deny the protest.

## BACKGROUND

The RFP, issued as a Historically Underutilized Business Zone (HUBZone) small business set-aside,<sup>1</sup> contemplated the award of a fixed-price contract for a base year with four 1-year options.<sup>2</sup> In general terms, the contractor was to provide all personnel, supplies, and equipment necessary to perform the required janitorial services as set forth in the performance-based statement of work (SOW). SOW at 8. The RFP established that contract award would be made on a best-value basis, based on two evaluation factors: past performance and price. RFP § M.1. Past performance was significantly more important than price. Id.

Three offerors, including Richen and Sparkle, submitted proposals by the RFP's closing date. The agency evaluated offerors' past performance using a combined, adjectival/point scoring system that was set forth in the solicitation.<sup>3</sup> The agency originally made award to the third offeror. Agency Report (AR), Tab 9, Source Selection Decision, June 28, 2013, at 7.

Richen challenged the HUBZone status of the third offeror, and the Small Business Administration (SBA) sustained Richen's protest. AR, Tab 13, Richen HUBZone Status Protest, July 7, 2013, at 1-6; Tab 14, SBA Decision, Aug. 9, 2013, at 1-8; Tab 16, SBA Appeal Decision, Sept. 18, 2013, at 1-6. The agency terminated the contract awarded to the third offeror, and informed Richen and Sparkle that the agency would resolicit the Ambassador Bridge janitorial service requirements. AR, Tab 17, Contract Termination Notice, Oct. 17, 2013, at 1-5; Tab 18, Email from GSA to Richen, Oct. 24, 2013, at 1-3.

Richen then protested to our Office challenging the agency's decision to cancel the solicitation rather than conduct discussions with Richen and Sparkle. AR, Tab 19, Protest, Oct. 24, 2013, at 29-42. In response, the agency decided not to cancel the solicitation, but to conduct discussions with Richen and Sparkle.<sup>4</sup> As a result, we

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<sup>1</sup> The purpose of the HUBZone program is to provide federal contracting assistance for qualified small business concerns located in designated historically underutilized business zones in an effort to increase employment opportunities. See 15 U.S.C. § 657a (2006); Federal Acquisition Regulation (FAR) § 19.1301.

<sup>2</sup> The solicitation was amended several times, and was originally referred to as No. GS-05P-12-SV-D-0017.

<sup>3</sup> Past performance was to be rated as excellent (5); very good (4); satisfactory (3); marginal (2); unsatisfactory (1); or neutral. RFP § M.2.

<sup>4</sup> The agency also stated that it would amend the RFP (e.g., update the current prevailing Department of Labor wage determination). AR, Tab 20, GSA Letter to GAO, Nov. 18, 2013, at 2-3.

dismissed the protest of the cancellation decision as academic. Richen Mgmt. LLC, B-409171, Nov. 19, 2013.

The contracting officer conducted discussions with Richen and Sparkle, and obtained final proposal revisions (FPR), which were evaluated as follows:

	Richen	Sparkle
Past Performance	Neutral	Very Good/4.86
Price	\$451,425	\$535,371

AR, Tab 27, Source Selection Decision, Mar. 31, 2014, at 5, 10.

The contracting officer, the source selection authority for this procurement, determined that Sparkle's qualitative advantage (*i.e.*, superior past performance) outweighed Richen's \$83,946 (19%) price advantage, and that Sparkle's proposal represented the best value to the government. *Id.* at 10-12.

Award was made to Sparkle, and this protest followed a debriefing.

## DISCUSSION

Richen challenges GSA's evaluation of its past performance and contends that the agency unreasonably found that Sparkle's superior past performance outweighed Richen's lower price.<sup>5</sup> Protest, Apr. 18, 2014, at 1-8. We have considered all the issues and arguments raised by the protest and, although we do not address them all, find no basis on which to sustain the protest.

### Past Performance Evaluation

Richen objects to the neutral rating assigned to its past performance arguing that its past performance references all met the RFP's requirements. In this regard, Richen contends that the agency failed to make reasonable efforts to contact its past performance references.

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<sup>5</sup> Richen also challenges GSA's decision to conduct discussions with the offerors rather than make award on the basis of initial proposals (although this was the relief requested by Richen in its protest). Protest, May 19, 2014, at 1-2. This challenge to the announced ground rules for conducting the corrective action is untimely. See Domain Name Alliance Registry, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 7; 4 C.F.R. § 21.2(a)(1) (2014).

Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations since determining the relative merit or relative relevance of an offeror's past performance is primarily a matter within the agency's discretion. Swift & Staley, Inc., B-408792, Dec. 6, 2013, 2013 CPD ¶ 284 at 6; LOGMET LLC, B-407061, Oct. 17, 2012, 2012 CPD ¶ 307 at 6. A protester's disagreement with the agency's judgment does not establish that an evaluation was improper. AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 19.

Here, the RFP instructed offerors to submit a minimum of three, but "in no case" more than six, references for their relevant past performance. RFP § L.7. The solicitation defined "relevant" past performance as being prior janitorial services contracts in a commercial or government facility of at least 2 consecutive years in length, and performed within 5 years from the solicitation's closing date.<sup>6</sup> Id. The RFP also warned that the "failure of the offeror to provide a minimum of three relevant references . . . and/or the inability of the Government to complete a minimum of three reference checks, after making a reasonable effort to do so, will result in the offeror being rated as 'neutral' on the past performance factor." RFP § M.2.

Richen provided 11 past performance references in its FPR. AR, Tab 25, Richen FPR, Dec. 2, 2013, at 57-58. The agency determined that five of Richen's past performance references were not relevant as defined by the RFP. AR, Tab 34, Richen Past Performance Evaluation, Mar. 27, 2014, at 2-3. The agency then attempted to contact three of the references which it considered to be relevant--the Northern Maine Community College, Maine Department of Transportation (MDOT) Safety Offices, and the Town of Dover-Foxcroft, Maine. The agency's calls to these references were not returned.<sup>7</sup> Id. at 4-6. Subsequently, the agency successfully contacted Richen's remaining three references and learned that one of these (the Maine Attorney General's Office) also was not relevant as defined by the RFP.<sup>8</sup>

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<sup>6</sup> The solicitation also informed offerors that "[t]he Government is not required to conduct or complete reference checks on more than 3 contracts, although it may choose to do so. Additionally, if more than 3 references are provided, the Government reserves the right to choose which references to include in its evaluation." RFP § L.7.

<sup>7</sup> The record indicates that, for each of these references, the agency left multiple messages. Id. at 4-6.

<sup>8</sup> The contracting officer also found no information regarding Richen in the past performance information retrieval system (PPIRS), and had no personal knowledge of the firm's past performance. AR, Tab 27, Source Selection Decision, Mar. 31, 2014, at 8.

AR, Tab 34, Richen Past Performance Evaluation, Mar. 27, 2014, at 8. Because the agency had been unable to contact at least three relevant past performance references, the agency rated Richen's past performance as neutral. AR, Tab 27, Source Selection Decision, Mar. 31, 2014, at 8.

We find the agency's evaluation of Richen's past performance was reasonable. As a preliminary matter, notwithstanding Richen's failure to comply with the solicitation instructions regarding the number of past performance references that an offeror could submit, GSA inexplicably evaluated all of Richen's 11 references. The record shows that the agency made numerous attempts to contact the Richen references that were determined to be relevant. Ultimately, the agency was able to contact references for three past performance projects, but only two were found to meet the RFP's relevancy requirements (which the protester does not dispute). Because the offeror lacked three references for relevant past performance as required by the solicitation, the agency (in accordance with the solicitation) reasonably evaluated Richen's past performance as neutral.<sup>9</sup> Although Richen contends that the contracting officer should have advised the firm that the agency was having a problem contacting the firm's references, Protest, May 19, 2014, at 2, Richen has not shown that, in this context, the agency's efforts, or evaluation, were unreasonable. An agency need only make a reasonable effort to contact a reference, and where, as here, that effort proves unsuccessful, it is not objectionable for the agency to proceed with the evaluation without the benefit of that reference's report. Harris IT Servs. Corp., B-406067, Jan. 27, 2012, 2012 CPD ¶ 57 at 11 n.6; Dictyon LLC, B-405504, Nov. 16, 2011, 2011 CPD ¶ 253 at 4.

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<sup>9</sup> Richen also contends that the agency may have been biased against Richen because of its three prior protests. In this regard, Richen states that it does not believe the agency ever tried to contact its Town of Dover-Foxcroft past performance reference, and "forgot" that it did in fact contact the MDOT Safety Office reference. Protest, May 19, 2014, at 2. Government officials are presumed to act in good faith, and a protester's contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not consider allegations based on mere inference, supposition, or unsupported speculation. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8; Shinwha Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 5 n.6. Here, the contemporaneous evaluation record shows that the agency in fact tried to contact these references several times. See AR, Tab 34, Richen Past Performance Evaluation, Mar. 27, 2014, at 5-6. Although Richen disputes this, it has provided no evidence (such as statements from the references) to support its claims.

## Best Value Decision

Richen also objects to the agency's best value decision, arguing that GSA failed to give price any serious consideration in its award determination.

In a best value procurement, it is the function of the selection official to perform a price/technical tradeoff, that is, to determine whether one proposal's technical superiority (however represented) is worth the higher price, and the extent to which one is sacrificed for the other is governed only by the test of rationality and consistency with the stated evaluation criteria. Savvee Consulting, Inc., B-408416.3, Mar. 5, 2014, 2014 CPD ¶ 92 at 7; The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 13. A protester's mere disagreement with the agency's determinations as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency does not establish that the source selection decision was unreasonable. General Dynamics-Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8.

Here, the agency's source selection decision was well-documented, reasonable and consistent with the solicitation's evaluation criteria. The record shows that the contracting officer reviewed the relative importance of the solicitation's evaluation criteria, and the size of the price difference between the Sparkle and Richen proposals. AR, Tab 27, Source Selection Decision, Mar. 31, 2014, at 10-11. The contracting officer looked behind the assigned adjectival ratings and considered what the difference between the offerors' past performance ratings actually represented. Id. at 11. The contracting officer then detailed why she believed Sparkle's superior past performance (and lower performance risk) outweighed the additional costs, and adequately documented the rationale for this cost/technical tradeoff as follows:

The perceived benefit of the higher priced proposal is of value to [the] government because the government is confident that this contractor is able to successfully perform the work successfully. While Sparkle's proposed price is 19% higher than Richen, past performance is significantly more important than price, thus the tradeoff of a higher price for less risk represents the best value to the government. Sparkle has shown a very good history of performance, as well as the capability to manage a project of this magnitude. Past performance indicates that the firm has demonstrated the successful ability to conform to contract requirements and to standards of good workmanship . . . . Sparkle represents the best value to the government because the government is willing to pay for a contractor that has a proven history of very good experience and quality of work. Based on this

record, I have little doubt that the offeror will successfully perform the required effort.

Id. Although Richen argues that any performance risks associated with a janitorial service contract are minimal, and that the agency failed to give adequate consideration to the protester's lower price, this reflects no more than disagreement with the agency's judgment, which does not establish that the source selection decision was unreasonable.<sup>10</sup>

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>10</sup> Richen also argues that the size of the federal government debt should have been considered by the agency when making its best value determination. Protest, Apr. 8, 2014, at 7-8; Protest, May 19, 2014, at 2. To the extent Richen believes that price should have been afforded greater weight in the solicitation's evaluation scheme, this ground of protest was required to be filed before the receipt of proposals. See 4 C.F.R. § 21.2(a)(1).