



Decision

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.

Matter of: Walden Security

File: B-413523.10

Date: August 31, 2017

Jonathan D. Shaffer, Esq., Mary Pat Buckenmeyer, Esq., and Sean K. Griffin, Esq., Smith Pachter McWhorter PLC, for the protester.

Katherine S. Nucci, Esq., and Scott F. Lane, Esq., Thompson Coburn LLP, for Paragon Systems, Inc., the intervenor.

C. Joseph Carroll, Esq., Department of Justice, for the agency.

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

DIGEST

1. Protest of agency's evaluation of information provided by protester to address adverse past performance information to which the offeror was not previously given an opportunity to respond is denied where the agency thoroughly considered the information and reasonably determined that it provided no basis to change the prior past performance rating for the protester.
 2. Protest of agency's evaluation of protester's and awardee's past performance, which found the two firms had essentially equal past performance, is denied where the record establishes that the agency comprehensively considered relevant past performance information for both offerors, recognized positive and negative aspects of both offerors' past performance, and reasonably determined that the proposals were essentially equal.
-

DECISION

Walden Security, of Chattanooga, Tennessee, protests the award of two contracts to Paragon Systems, Inc., of Herndon, Virginia, under request for proposals (RFP) No. DJM-16-A32-R-0001, issued by the Department of Justice (DOJ), U.S. Marshals Service (USMS), for court security officers (CSO) for three federal judicial circuits. The protester challenges the agency's past performance evaluation.

We deny the protest.

BACKGROUND

On April 22, 2016, the USMS issued the RFP seeking court security officer services for the 3rd, 4th, and 12th federal judicial Circuits.¹ RFP at 2. The solicitation anticipated the award of indefinite-delivery, indefinite-quantity, time-and-materials/labor-hour contracts, for a base year, with four 12-month options. Although the solicitation contemplated a separate contract award for each judicial circuit, and required that offerors submit a single technical proposal for all circuits proposed, offerors were not required to submit offers for all three circuits. Id. at L-4.

The RFP provided for award on a best-value basis, considering price and the following two factors: technical and past performance. RFP at M-1, M-2, M-5. For purposes of award, the technical factor and past performance factor were equal in importance, and the technical and past performance factors, when combined, were “significantly” more important than price. Id. at M-1. In addition, the solicitation provided that the agency would assign adjectival ratings to the offerors’ proposals under each evaluation factor and subfactor, and included definitions for each rating. As relevant here, the ratings for the past performance factor were exceptional, very good, satisfactory, marginal, unsatisfactory, or neutral. Id. at M.4, M.5.

The agency received a number of timely proposals for each of the circuits, including a proposal from Paragon for all three circuits, and from Walden for the 3rd and 4th circuits. Agency Report (AR) at 9. After evaluating proposals, the agency concluded that Paragon’s proposal represented the best value to the government for each circuit, and awarded contracts for all three circuits to that firm. Id. Walden and another unsuccessful offeror filed protests with our Office challenging the agency’s evaluation and source selection. In response to the protests, the agency advised our Office of its intention to take corrective action consisting of reevaluating the technical proposals of the two protesters and the awardee, and making new source selection decisions for all three judicial circuits. AR, Tab 11, Notice of Corrective Action (Sept. 23, 2016), at 1. On September 27, 2016, our Office dismissed the protests as academic.

The agency thereafter reevaluated proposals. Walden’s and Paragon’s final ratings under the technical and past performance factors, together with their final evaluated pricing, are shown in the table below.

¹ The long history of this disputed procurement has previously been set forth in detail in our March 22, 2017, and April 24, 2017, decisions, and will not be repeated here, except to the extent necessary to address the instant protest grounds.

	WALDEN	PARAGON
Technical	Very Good	Very Good
Recruitment Program/Vetting Applicants	Very Good	Exceptional
Training & Qualifications Program	Very Good	Very Good
Quality Assurance/Quality Control Plan	Very Good	Very Good
Past Performance	Very Good	Very Good
Price		
3rd Circuit	\$138,834,184	\$139,025,117
4th Circuit	\$207,717,865	\$207,775,949

AR, Tab 15, Source Selection Decision Memo (SSDM), at 4; Tab 14, Source Selection Recommendation Memo (SSRM), at 4.

Although both offerors received overall ratings of very good under both the technical and past performance factors, the source selection authority (SSA) agreed with the technical evaluation board’s (TEB) evaluation, ratings, and recommendation to award all three contracts to Paragon as the best-value offeror. AR, Tab 15, SSDM, at 1-2. Specifically, the SSA agreed with the TEB’s conclusion that Paragon’s proposal was technically superior to Walden’s proposal under the first technical factor (recruitment program and vetting applicants) based on three items proposed by Paragon, which were not matched by Walden’s proposal. *Id.* at 1-3. The SSA also agreed with the TEB that Walden’s and Paragon’s proposals were essentially equal under the second and third technical subfactors, and with regard to past performance. *Id.* at 1-2. Ultimately, the SSA concluded that, although both proposals received the same overall technical rating, Paragon’s proposal was “superior in comparison to Walden’s,” and “warrant[ed] the government paying a slight premium for the additional benefits.” *Id.* at 3.

Thereafter, Walden and another unsuccessful offeror filed protests with our Office, challenging the agency’s evaluation of technical proposals and past performance. Our Office sustained Walden’s protest, in part, because, contrary to the terms of the solicitation, the agency failed to allow Walden an opportunity to address adverse past performance information. *See Walden Sec.; Akal Sec., Inc., B-413523.6 et al., Mar. 22, 2017, 2017 CPD ¶ ___.*

Consistent with the recommendation in our March 22 decision, the USMS provided Walden with the opportunity to respond to the adverse information previously considered in the evaluation of Walden’s past performance. After receiving and reviewing Walden’s response, the contracting officer determined that the response did not provide a basis to change the agency’s previous conclusions that Walden’s past performance warranted a very good rating, that Walden and Paragon were “substantially equal” under the past performance factor, and that Paragon offered the best value considering all of the RFP’s evaluation factors.

After being notified that the original awards to Paragon would stand, and after receiving a debriefing, Walden filed the instant protest.

DISCUSSION

Walden asserts that the agency's evaluation of its proposal under the past performance factor was unreasonable in numerous respects. In particular, the protester contends that the agency failed to adequately consider its response to agency-identified adverse past performance information. Walden also challenges the agency's conclusion that Walden's and Paragon's past performance was substantially equal. In addition, the protester contends that the agency's best-value tradeoff and source selection was unreasonable. We have considered all of Walden's arguments and conclude, based on the record, that none have merit. Walden's chief contentions are discussed below.

Past Performance

Applicant Package Lateness

As relevant here, during the agency's most recent corrective action, the USMS advised Walden of the following "adverse information" considered by the agency during its evaluation of Walden's past performance: (1) Walden "had shown difficulty maintaining contract performance while scaling up services from [fiscal year] FY [20]15 (when Walden had two circuits) to FY [20]16 (when Walden took on three additional circuits)," and (2) the program office reported some ongoing quality assurance issues with Walden. AR, Tab 17, Agency Letter (April 7, 2017), at 1. In connection with the first item, the USMS explained that the primary issue was an "increase in required oversight for Walden's program administration," in particular in the area of "meet[ing] contractual deadlines for submitting complete Applicant Packages." Id. The agency explained that, in determining that there had been an increase in required oversight of the deadlines for submitting complete applicant packages, it relied on "spreadsheets that document[ed] the number of days that Walden was late [or past due] in submitting complete applicant packages in FY15 versus FY16 (through the date of evaluation June 25, 2016)." Id.

In response to the "adverse information" identified by the agency, Walden provided the agency with a letter, along with supporting documentation, in support of its position that the alleged performance issues "simply did not exist." AR, Tab 18, Walden Response Letter (Apr. 17, 2017), at 2-3. With regard to the late submission of applicant packages, Walden's response maintained that the identified issues were based on "inconsistencies" and "disconnects" in the USMS' methodology of reporting and tracking documentation. Specifically, Walden asserted that the agency's spreadsheets contained inaccuracies and discrepancies, which resulted in the agency improperly assessing Walden with some of the late deficiencies. Id. at 3. For example, Walden asserted that it was improperly held liable for late applicant packages from previous contractors, or from "non-Walden circuits." As another example, Walden argued that a number of the packets were listed as late by the USMS based on incorrectly recorded submission dates, and therefore, should not have been identified as late. In support of its position, Walden provided "errata spreadsheets," as one of the attachments to its

response letter, which included modifications to the agency's spreadsheets to highlight "the errors, misinformation, and inaccuracies" of the agency's information. Id. at 4.

The agency evaluated Walden's response and additional supporting information, and documented the review in a detailed, 19-page source selection recommendation letter (SSRL). With regard to the late applicant packages, the contracting officer acknowledged most of the data errors noted by Walden, and accepted (for purposes of her analysis) the submission dates that Walden's response letter asserted should be used. AR, Tab 19, SSRM, at 4-5 ("For purposes of this analysis (and to give Walden the benefit of the doubt), the USMS will utilize the submission date[s] reported by Walden as opposed to its own."). Id. at 5. The contracting officer noted, however, that "Walden was silent on the past due packages" so she used the "past due tally and listed vacancy date as provided by the USMS to Walden" for those packages. Id. at 5.

After considering the data provided by Walden, the contracting officer concluded that "[t]he data evidence acknowledged by Walden fully supports all of the USMS assertions that Walden's applicant package performance trended downward in FY2016." Id. at 5. In this regard, the contracting officer explained that "[i]n FY2015, 3% of packages were submitted late; however, in FY2016 (as of June 25, 2016) 9% of Walden's applicant packages were submitted late or were past due." Id. Specifically, the contracting officer explained that, "in FY2015, of the 183 total vacancies throughout Walden's two circuits, Walden provided six (6) late applicant packages that totaled 26 days late," and therefore the "average late package was four (4) days late." Id.

With regard to FY2016, the contracting officer found that Walden's data showed that, "for the 283 vacancies throughout Walden's five circuits, Walden provided late or failed to provide a total of 25 packages for a total of 723 days late." Id. Accordingly, the contracting officer concluded that "[w]hile Walden may dispute individual data points in the USMS's source material for analysis," it did not provide "any substantial factual refutation of the USMS' original analysis" that the number of late applicant packages increased in FY2016, as compared to FY2015. Id. at 6-7. In this regard, the contracting officer explained that "Walden's response narrative and supporting exhibits have not disproven the analysis of Walden's applicant package performance," and therefore found that Walden "has not disproven the [agency's] conclusions previously drawn from this analysis." Id. at 7.

Overall, the contracting officer explained that "Walden's performance in the area of timely applicant package submission is one piece of a total record of performance," and therefore, "performance issues with applicant packages do not immediately equate to overall poor or marginal performance." Id. at 6. The contracting officer disagreed, however, with Walden's claim that performance problems "simply did not exist," and concluded that Walden's "downward trend" in performance in the applicant package area "[had] some overall negative program impact demonstrating some overall risk." Id. The contracting officer found that "[t]his performance does show that Walden experienced some difficulty in program administration during the FY2016 period after they went from performing on two (2) contracts to performing on five (5) contracts," and

that “Walden’s caliber of performance in FY2016 did require comparatively greater oversight by USMS program offices.” Id.

Walden disagrees with the agency’s assessment regarding the late applicant package issues, contending that the USMS failed to properly consider all of the information and data provided by Walden in its response. In making this argument, however, the protester does not dispute that Walden’s “corrected” data showed an increase in the number of late applicant packages submitted in FY2016, as compared to FY2015. The protester also does not dispute that Walden’s “corrected” data showed that the average lateness of the late applicant packages increased in FY2016, compared to FY2015. Rather, Walden contends that the agency’s review improperly included consideration of two “anomalous, outlier” late applicant packages, which the protester asserts, should not have been considered as late because the applicants were submitted by the previous contractor. The protester also asserts that the agency unreasonably failed to conduct some type of analysis to confirm the soundness of its conclusion that there was an increase in the “average lateness” of the applicant packages in FY2016. For the reasons discussed below, we conclude that neither of these arguments provides a basis to sustain the protest.

An agency’s evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror’s performance history, is a matter of agency discretion which we will not disturb unless the agency’s assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. SIMMEC Training Sols., B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. The evaluation of past performance, by its very nature, is subjective, and we will not substitute our judgment for reasonably based evaluation ratings. American Env’tl. Servs., Inc., B-406952.2, B-406952.3, Oct. 11, 2012, 2013 CPD ¶ 90 at 4.

Based on our review, we find no basis to conclude that the agency’s evaluation was unreasonable. As noted above, the record demonstrates that the contracting officer thoroughly reviewed Walden’s response, including the errata spreadsheets and additional supporting information provided, and documented the agency’s analysis in a detailed 19-page SSRM. In addition, as also mentioned previously, although Walden’s response letter challenged some of the agency’s data regarding the late applicant packages, the contracting officer, in evaluating Walden’s response letter, either acknowledged the data errors noted by Walden, or accepted (for purposes of her analysis) the submission dates asserted in Walden’s response. The record reflects that, in evaluating the information, the contracting officer concluded, based on Walden’s own data, that, in FY2016, both the number of late applicant packages increased, and the number of days late increased. AR, Tab 19, SSRM, at 6-7. Specifically, as previously noted, the contracting officer found that, in FY2015, Walden provided six late packages, out of 183 vacancies, for a total of 26 days late (average lateness of 4 days late), whereas in FY2016, Walden provided 25 late packages, for 283 vacancies, for a total of 723 days late (average lateness of 30 days late). Id. at 5.

The record also fails to support the protester’s contention that the agency improperly included in its late-day tally for FY2016, two anomalous, outlier late applicant packages

submitted by the previous contractor. Walden contends in this regard that more than half of the 723 days late in FY2016 is attributable to these applicant packages, which were 369 days late, and 70 days late, respectively. Protester's Comments at 37.

With regard to the application package that was 369 days late, the record reflects that, although the application was initially late due to the previous contractor, Walden acknowledged in its response letter that Walden thereafter became responsible for the application. Specifically, Walden stated in its errata spreadsheet that the "[v]acancy [for this application was] filled 139 days after [Walden's] assumption of [the] contract." AR, Tab 18.3, Walden Response Letter, Errata Spreadsheet FY2016, at 7, Line 450. Accordingly, Walden acknowledged that this packet was one of Walden's "[l]ate [a]pplication [p]ackets" and that the application packet was 109 days late. AR, Tab 18.3, Walden Response Letter, Errata Spreadsheet FY2016, at 7, Line 450. Consistent with the representations in Walden's errata spreadsheet, the record reflects that the agency counted this packet as 109 days late. AR, Tab 19, SSRM at 6, n.3. We have found no indication in the record that the agency counted this packet as 369 days late, as asserted by the protester. Further, with regard to the application packet that was 70 days late, there is no indication in the record that the agency included consideration of this late application in its calculation of Walden's late application packets. See id. Rather, the contracting officer calculated the 723 total days late for FY2016 by adding the number of days late as indicated in Walden's errata spreadsheet, plus the number of days late of seven additional applicant packages referenced by the agency (totaling 474 days late), which Walden did not dispute in its response. Id.

As for the protester's argument that the agency should have performed further analysis to confirm its conclusion that there was an increase in the "average lateness" of the applicant packages in FY2016, we also find no merit. Specifically, Walden asserts that the agency should have identified the median value, or midpoint of the data sets for FY2015 and FY2016, and that such an analysis of Walden's data would have found "a similar Median Lateness between FY2015 and FY2016." Protester's Comments at 38. Based on the data provided by Walden in its response letter, the median lateness for FY2015 was 5 days late; for FY2016, the median lateness was 10 days late. AR, Tab 18.1, Errata Spreadsheet, 2015; Tab 18.2 Errata Spreadsheet 2016; Protester's Comments at 38, n.7. Also using Walden's data, the average lateness for FY2015 is 4 days late; for FY2016, the average lateness is 16 days late. Id. Either way, Walden's data clearly reflects an increase in the number of days late in FY2016. As such, we fail to see how the agency's failure to conduct an assessment of the median lateness of the applicant packages in any way prejudiced the protester.

In sum, we conclude that the agency's evaluation with regard to the late applicant packages was reasonable.

Quality Assurance

Walden also challenges the agency's evaluation of the protester's past performance of quality assurance. In the foregoing connection, the agency advised Walden that the program office had noted some issues with Walden's quality assurance, including not

receiving required CSO forms with submitted medical packages and receiving additional medical exam items after the medical package had been submitted. AR, Tab 17, Agency Letter (Apr. 17, 2017), at 2.

Walden asserts that the agency's evaluation failed to recognize its successes in overcoming certain challenges with regard to the new circuits, such as completing a backlog of physicals, and finding and submitting missing and late documentation.

Based on our review, we find nothing unreasonable regarding the agency's evaluation. The record shows that the contracting officer conducted a thorough review of Walden's response letter, including its process improvements and the challenges it stated it had to overcome. AR, Tab 19, SSRM, at 18. The record also reflects, however, that on various occasions in April 2016 and May 2016, Walden failed to submit complete medical qualification information, and additional follow-up was required. See id. at 9-10; Tab 21, Agency Docs, at 245-246. For example, the record reflects that the agency notified Walden that a package submitted for review was missing a doctor's signature, and Walden thereafter provided a copy with the doctor's signature. Id. at 245 (Email dated Apr. 4, 2016). As another example, the record shows that the agency notified Walden that a submitted package lacked the required test results, and Walden provided the missing results. Id. at 246 (Email dated Mar. 26, 2016).

Due to these instances and others similar, the record shows that, on May 26, 2016, the agency sent an email requesting that Walden ask its clinics to do a better job with the quality assurance of their exams before sending them for review because the agency had received a number of submissions with required information omitted. Id. at 257. Accordingly, the agency concluded that Walden had experienced some deficiencies in providing complete and accurate medical qualification packages, which the contracting officer viewed as "minor," but still "requiring ongoing corrective action by Walden," and which therefore "required more oversight by the USMS program offices." AR, Tab 19, SSRM at 10. Although Walden points to positive aspects of its performance, and asserts that the agency's evaluation should have focused there, the protester fails to refute the quality assurance issues identified by the agency.

In sum, we conclude that the agency's evaluation in regard to Walden's quality assurance also was reasonable.

Evaluation of Past Performance as "Essentially Equal"

Walden next challenges the agency's conclusion that Walden's and Paragon's past performance was essentially equal, arguing that the agency failed to conduct any meaningful consideration of the discriminators between the offerors' past performance proposals. Specifically, Walden asserts that Paragon should not have been considered equal to Walden because Paragon received lower reference ratings than Walden, and has only limited CSO past performance compared to Walden.

The USMS responds that it was reasonable to rate both offerors as very good under the past performance factor because, in accordance with the rating definitions, the agency

had “an above average expectation” that both offerors would successfully perform, and neither offeror’s performance record was unblemished such that the USMS considered it appropriate to assign the offeror an exceptional rating. AR at 23. The agency further contends that there was no meaningful difference between the offerors’ past performance, and therefore the agency reasonably determined that Paragon’s technical superiority was worth the slight price premium.

As referenced above, an agency’s evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror’s performance history, is a matter of agency discretion which we will not disturb unless the agency’s assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. SIMMEC Training Sols., *supra*. A protester’s disagreement with the agency’s determinations as to the relative merit of competing proposals, and its judgment as to which proposal offers the best value to the agency, does not establish that the evaluation or source selection was unreasonable. Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6.

We find that the protester’s arguments here do not demonstrate that the agency’s assessment of the offerors’ past performance as essentially equal was unreasonable. In evaluating past performance, the contracting officer conducted a comparative assessment of the offerors’ past performance, which was documented in an attachment to the source selection recommendation memorandum (dated Nov. 4, 2016). *See* AR, Tab 13, attach. D, Past Performance Comparison. This version of the agency’s source selection recommendation document also discussed the comparative analysis. AR, Tab 14, SSRM (Nov. 14, 2016), at 11; Tab 15, SSDM (Nov. 28, 2016). Ultimately, the SSA conducted an independent analysis of the offerors’ past performance and agreed with the findings of the contracting officer. AR, Tab 20, SSDM (May 18, 2017), at 1.

While Walden asserts that its past performance is superior to Paragon’s performance because it has more experience performing the specific requirements of the USMS CSO contracts, which the protester asserts, differ in scope and complexity from other security guard contracts, we previously addressed this issue in our prior decision addressing this procurement. There, we found that “there is nothing in the RFP that required experience in all of the PWS requirements to merit a relevant rating.” Walden Sec.; Akal Sec., Inc., *supra* at 14. The record reflects that the agency found that four of Paragon’s past performance contracts were relevant, recent, and met the magnitude of effort and complexity (minimum of \$25 million). AR, Tab 37, Supp. Past Performance Report, at 13. The evaluators noted that three of Paragon’s contracts were for the provision of protective security officers at federal facilities, including at U.S. Courts in Akron, Ohio, and U.S. Attorney’s Offices in Toledo, Youngstown, Columbus, and Cincinnati, and had contract values of \$114 million, \$40 million, and \$28 million, respectively. *Id.* at 14. The evaluators provided a detailed explanation regarding how these three contracts were similar to the instant requirement.² *Id.* at 7-8. Given that the

² For example, the evaluators explained that the contracts were similar to the instant requirement in such areas as: uniformed security personnel (protective security officer, (continued...))

contracts were for the performance of similar services, and exceeded the minimum \$25 million dollar value, the evaluators concluded that the contracts were relevant, and found that they were “within [the required] scope and size.” Id. As such, we found the agency’s evaluation reasonable. Id.

To the extent Walden argues that its past performance is superior because its contracts were more highly rated than Paragon’s, we note that the agency was not required to perform the mechanical comparison of Walden’s and Paragon’s performance scores that the protester suggests. See Palmetto GBA, LLC; CGS Admins., LLC, B-407668 et al., Jan. 18, 2013, 2013 CPD ¶ 53 at 7 (past performance evaluations should not be based on a “simple count” of the strengths and weaknesses assigned to the proposals during the evaluation process).

In sum, the record here shows that the agency performed a comprehensive and comparative analysis of past performance, which is documented in a detailed report. As discussed above, this record shows that the agency reasonably concluded that there were no meaningful differences in the offerors’ past performance, and therefore we find nothing improper in the agency’s selection of Paragon’s technically superior and slightly higher-priced proposal for award.

The protest is denied.

Susan A. Poling
General Counsel

(...continued)

armed workforce), workforce duties include operating screening equipment at duty stations (magnetometers, x-ray), workforce duties include threat detection (perimeter security, patrol and response), workforce management (site staffing, time keeping, training, workforce performance, recruiting, screening, hiring, rapid response for requests to post personnel), contract administration performance monitoring (quality control, inspectors, monitoring, cost controls), contract administration deliverables (status reporting, incident reporting, record auditing), and business capacity (accommodates program changes, corrective actions). Id.