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**Comptroller General  
of the United States**

**United States General Accounting Office  
Washington, DC 20548**

# Decision

**Matter of:** Five-R Company

**File:** B-288190

**Date:** September 10, 2001

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Ray Fertig for the protester.

Capt. Jeremy S. Weber, Department of the Air Force, for the agency.

Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Consistent with the stated evaluation scheme in the solicitation, agency reasonably found that protester's past performance was satisfactory, rather than exceptional, where the protester's recent experience was not on projects of the same magnitude as the solicited project and the particular complexities of the protester's projects were not an aspect of the solicited project.

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## DECISION

Five-R Company protests the Department of the Air Force's award of a contract to John Bowman, Inc. under request for proposals (RFP) No. F48608-01-R0008.

Five-R contends that the agency unreasonably evaluated its proposal under the past performance evaluation factor.

We deny the protest.

The RFP, issued February 26, 2001, contemplated the award of a fixed-price contract for asbestos abatement and demolition of the existing golf course clubhouse, and the construction of a new golf course clubhouse, at F.E. Warren Air Force Base (AFB), Wyoming.

The RFP provided for award to the responsible firm whose offer was found most advantageous to the government, considering past performance and price equally. In evaluating past performance, offerors were assigned a performance risk assessment rating of exceptional/high confidence, very good/significant confidence, satisfactory/confidence, neutral/unknown confidence, marginal/little confidence, or unsatisfactory/no confidence, based on the recency, relevance and quality of the

offerors' past performance. Relevance of past performance was to be determined based on work, size, and complexity as compared to the RFP work. The RFP proposal instructions provided:

Past performance shall provide adequate information describing the offeror's previous experience in **construction of golf course clubhouse or work of a similar complexity and magnitude, both commercial and government** within the **past three years**. The offeror shall also list **all contracts** (maximum of **last ten consecutive** contracts) performed the **past three years**.

RFP at 40 (emphasis in original). The RFP advised that, although the agency reserved the right to conduct discussions if necessary, it planned to make award on the basis of initial proposals.

The agency received six proposals by the April 9 due date. Five-R's total offer was second lowest priced at \$1,719,300 and Bowman's was third lowest at \$1,831,300. A performance risk assessment group (PRAG) conducted a past performance evaluation for each offeror.

The agency initially received two questionnaires regarding Five-R's past performance on other contracts. One of those, an Air Force contract for the renovation of three missile alert facilities, with a total dollar value of \$1,951,059, was judged to be relevant to the solicited requirement. The other project of remodeling at a restaurant, with a dollar value of \$175,000, was judged to be somewhat relevant. The agency then called Five-R, stated that only two questionnaires had been received, and asked if it had performed other work during the last 3 years. As a result of this request, Five-R provided two additional projects that it had performed at a hotel and at a personal residence. The jobs, one valued at \$282,000 and another valued at \$29,167, were judged to be somewhat relevant to the present project. Five-R also referenced work that had been performed more than 3 years earlier, which was not considered by the PRAG.<sup>1</sup>

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<sup>1</sup> While Five-R references other past performance in its protest correspondence, this was not contained in its proposal. Five-R challenges the RFP provision limiting the agency' review of the contractor's past performance to the preceding 3 years. Five-R contends that this RFP provision excludes much of the work that it had performed at F.E. Warren AFB since 1961, such as construction of a swimming pool and covered storage. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2001), a bid protest which is based upon alleged improprieties apparent from a solicitation must be filed prior to the closing time for the receipt of initial proposals. Five-R's challenges against the terms of the solicitation, filed after award, are therefore untimely and will not be considered further.

Five-R received an overall satisfactory/confidence rating. While Five-R received favorable comments from its references, and its projects were found to be relevant or somewhat relevant to the solicited golf course clubhouse project, the PRAG noted that these projects were for small-scale construction projects. In this regard, the PRAG noted that the Air Force contract was for the renovation of three separate facilities to be completed in sequence for approximately \$650,000 apiece, which was 36 percent of the cost of the RFP project. The PRAG concluded that Five-R had not recently completed any project close in scope to the golf course clubhouse project, so that there was some doubt whether Five-R would successfully perform the required effort.

Bowman received an exceptional/high confidence rating, because its evaluated projects received high ratings and very favorable comments, and all were found to be of the same scope, complexity and cost magnitude as the subject project.

The source selection official determined that Bowman's exceptional/high confidence rating was worth the associated price premium for "an offeror who based on their past performance leaves no doubt as [to] their ability to successfully perform the contemplated effort." Agency Report, Tab 15, Contracting Officer's Decision, at 2. The contract was awarded to Bowman on June 7, 2001. On June 15, Five-R filed an agency-level protest against the award to Bowman, which was denied on June 20. This protest followed.

Five-R does not challenge the exceptional/high confidence past performance rating assigned to Bowman, but contends that the agency improperly evaluated the protester's past performance information. Specifically, Five-R contests the agency's assessment that it lacks recent experience with contracts of this cost magnitude. In this regard, Five-R contends that the agency incorrectly broke down its one missile facilities contract into three small projects, thereby reducing the contract price for which Five-R could claim experience.

In reviewing a protest against an agency's evaluation of past performance, we examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. The protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4. As discussed below, we find that the evaluation of the protester's past performance was reasonable and consistent with the evaluation criteria.

Although Five-R claims that the agency improperly broke its missile facilities contract into three smaller pieces, thereby reducing the total contract price for which Five-R could claim experience, the record shows the PRAG also considered the total contract value in the past performance evaluation and judged the renovation of the missile facilities contract to be relevant to the subject requirement.

Agency Report, Tab 12, Five-R's Past Performance Evaluation at 1. In any case, we find the agency's conclusion that this one contract was comprised of three separate parts was reasonably based and not inconsistent with the RFP's evaluation scheme.

The protester also argues that this missile facilities contract presented special logistical problems that the agency failed to take into account in evaluating past performance, such as that these projects had to be well organized and well equipped because of the fact that the missile sites were in remote locations far removed from the necessary materials and supplies. While it is true that the agency did not specifically take into account this particular complexity, it is not an aspect of the project at issue in this procurement. As stated in the RFP, the agency, in evaluating past performance, would look at the offeror's experience in construction of a golf course clubhouse "or work of a similar complexity." RFP at 40. An agency is not required to give evaluation credit for proposed features it determines will not contribute in a meaningful manner to better satisfying the agency's needs. Airwork Ltd.-Vinnell Corp. (A Joint Venture), B-285247, B-285247.2, Aug. 8, 2000, 2000 CPD ¶ 150 at 9.

Finally, Five-R attributes its past performance evaluation to bias on the part of agency officials. Here, Five-R has furnished no credible evidence to support this allegation, but only infers bias based on the evaluation. We will not attribute bias in the evaluation of proposals on the basis of inference and supposition. TLC Sys., B-243220, July 9, 1991, 91-2 CPD ¶ 37 at 4. Indeed, the agency affirmatively sought additional references from Five-R--hardly indicia of bias. Given these circumstances, we find no basis to question the motives of any of the contracting officials.

The protest is denied.

Anthony H. Gamboa  
General Counsel