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## Decision

**Matter of:** Concepts & Strategies, Inc.

**File:** B-405930

**Date:** January 12, 2012

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Bradley D. Wine, Esq., Tina D. Reynolds, Esq., and Adele H. Lack, Esq., Dickstein Shapiro LLP, for the protester.

Daniel J. Donohue, Esq., Claude P. Goddard, Jr., Esq., and Sarah M. Graves, Esq., Husch Blackwell LLP, for CACI, Inc.-Federal, the intervenor.

Andrew Sinn, Esq., and Amy Cook, Esq., General Services Administration, for the agency.

Glenn G. Wolcott, 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. Agency reasonably assigned awardee's proposal a rating of high confidence under the technical capability factor where awardee proposed to meet the solicitation's security clearance requirements by offering to employ incumbent personnel or, alternatively, to staff the contract using non-incumbent personnel that were eligible for security clearances.
  2. Agency reasonably assigned protester's proposal a rating of significant confidence, rather than high confidence, under the technical capability factor where protester's proposal failed to provide sufficient detail regarding its proposed approach to performing contract requirements.
  3. Agency reasonably assigned protester's proposal a rating of significant confidence, rather than high confidence, under the past performance evaluation factor where protester successfully performed the prior contract's requirements but nonetheless, fell short of agency expectations.
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### DECISION

Concepts & Strategies, Inc. (ConStrat), of Washington, D.C., the incumbent contractor for the requirements at issue, protests the General Services Administration's (GSA) evaluation and source selection activities leading to the award of a contract to CACI, Inc.-Federal, of Chantilly, Virginia, under request for

proposals (RFP) No. 4QDS97110075. This solicitation sought proposals to provide information and media support services for the U.S. Central Command (USCENTCOM) Communication Information Directorate (CCCI) at MacDill Air Force Base, Florida.<sup>1</sup> ContStrat asserts that the agency improperly evaluated CACI's and ConStrat's proposals with regard to technical capability and past performance.

We deny the protest.

## BACKGROUND

On May 27, 2011 GSA published the solicitation at issue,<sup>2</sup> seeking proposals to perform support services related to the collection and interpretation of information “to support senior leader decision making, specifically regarding public opinion and the media regarding military, political, social and economic issues.”<sup>3</sup> RFP at 1. The solicitation contemplated award of a fixed-price contract for a 10-month base period and four 1-year option periods, and provided for a best value source selection decision based on the following evaluation factors: technical capability, past performance and price.<sup>4</sup> *Id.* at 2-3.

With regard to technical capability, the solicitation provided that offerors “must demonstrate an understanding of the performance requirements and an ability to execute them IAW [in accord with] the PWS [performance work statement].” *Id.* at 3. Among other things, each offeror was directed to propose a staffing plan; identify a transition plan that “provides for a seamless transition from the incumbent to the successful awardee”; and provide proposed schedules and milestones. *Id.* at 3-4.

With regard to past performance, the solicitation provided that offerors “shall submit documentation of three (3) past or current contracts/task orders with comparable requirements to the solicited contract.” *Id.* at 4. The solicitation stated that the agency “will review how well the offeror has performed on other relevant

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<sup>1</sup> GSA and CCCI executed an agreement under which GSA performed acquisition services on behalf of CCCI. Agency Report (AR), Tab 4, Interagency Agreement.

<sup>2</sup> The solicitation was published on FedBizOpps and directed offerors to submit proposals via GSA's Information Technology Solution Shop (ITSS), GSA's web-based procurement system. AR, Tab 12A, RFP, at 6.

<sup>3</sup> The solicitation elaborated that the contractor's efforts are intended to assist in providing USCENTCOM the ability to “ensure distribution of accurate and timely official information, correct misinformation and support counter-propaganda efforts.” *Id.* at 1.

<sup>4</sup> The solicitation provided that non-price factors were significantly more important than price. RFP at 3.

comparable projects,” and stated that, in addition to the data provided by the offeror, the agency “may use . . . data obtained from other sources that it considers current, accurate and relevant.” Id. at 4-5.

Following publication of the solicitation, the agency published various solicitation amendments, including an amendment that incorporated answers to offerors’ questions regarding certain security clearance requirements, and revised the closing date/time several times.<sup>5</sup> Prior to the final August 29 closing time, proposals were submitted by 12 offerors.<sup>6</sup> Thereafter, the proposals were evaluated with the following results.<sup>7</sup>

	<b>Technical Capability</b>	<b>Past Performance</b>	<b>Price</b>
<b>CACI</b>	High Confidence	High Confidence	\$23,769,137
<b>ConStrat</b>	Significant Confidence	Significant Confidence	\$24,399,615

AR, Tab 21, Best Value Determination, at 7.

Based on this evaluation, the agency concluded that CACI’s proposal was superior to ConStrat’s with regard to the non-price evaluation factors, and that it offered a lower price. Accordingly, CACI was selected for award. This protest followed.

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<sup>5</sup> ConStrat’s protest refers to the closing date/time revisions, suggesting that such revisions were improper. To the extent ConStrat’s reference to this matter is construed as an alleged basis for protest, it is untimely filed, since ConStrat was notified of the various revisions prior to the final closing date/time, yet failed to protest any matter prior to being notified it had not been selected for award. See 4 C.F.R. § 21.2(a)(1) (2011).

<sup>6</sup> The other offerors’ proposals and the agency’s evaluation thereof are not relevant to this protest; accordingly only ConStrat’s and CACI’s proposals are further discussed in this decision.

<sup>7</sup> In evaluating proposals under the non-price factors, the agency assigned adjectival ratings of high confidence, significant confidence, medium confidence, little confidence, and no confidence. AR, Tab 9, Evaluation Team Instructions, at 2-3. Of relevance to this protest, a rating of high confidence was assigned where the proposal “leaves virtually no doubt that the offeror will successfully perform the required effort,” and a rating of significant confidence was assigned where the proposals “leaves little doubt that the offeror will successfully perform the required effort.” Id. at 2 (underlining in original).

## DISCUSSION

ConStrat protests that the agency improperly assigned a high confidence rating to CACI's proposal with regard to technical capability; that the agency improperly assigned only significant confidence ratings to ConStrat's proposal with regard to technical capability and past performance; and that agency personnel were biased against ConStrat. As discussed below, ConStrat's assertions provide no basis for sustaining its protest.

### Evaluation of CACI's Technical Capability

ConStrat first challenges the agency's assignment of a high confidence rating to CACI's proposal under the technical capability evaluation factor, asserting that "CACI Cannot Possibly Meet The Solicitation's Performance Requirements." Protest at 5. In this regard, ConStrat references a provision in the initially-issued solicitation which stated: "The Contractor **shall have** TS/SCI [top secret/sensitive compartmented information] clearance to perform Sections 3.1 and 3.2 [of the PWS] requirements . . . **prior to contract award.**" RFP at 2 (emphasis in original).

Because SCI clearances are issued on a "contract specific" basis, ConStrat asserts that "CACI will not be able to perform [the PWS sections 3.1 and 3.2 requirements], unless current ConStrat employees agree to be hired by CACI." Protest at 6. While acknowledging that CACI's proposal did, in fact, propose to hire incumbent personnel, ConStrat asserts that CACI will not succeed in that endeavor because "in the event this [p]rotest is unsuccessful, [ConStrat intends to] transfer a significant portion of its staff [to other contract efforts]." Protest at 7. In short, ConStrat asserts that the solicitation's requirements regarding TS/SCI clearances precluded successful contract performance by any offeror that did not employ incumbent personnel, and that it was unreasonable for the agency to conclude that any offeror other than ConStrat would likely be successful in recruiting such personnel.

The agency first responds that ConStrat's references to the terms of the initially-issued solicitation fail to acknowledge the agency's subsequent clarification of the clearance requirements through answers to offeror questions, and that these clarifications were incorporated into the solicitation by amendment 2. Contracting Officer's Statement at 3; AR, Tab 14, Questions & Answers. Specifically, in seeking clarification of the solicitation requirements regarding TS/SCI clearances, an offeror noted that only the incumbent contractor's employees could have SCI clearances "prior to award," and specifically asked whether non-incumbent employees need only be "SCI eligible," stating:

Is the intent of this language (and requirement) to ensure that contractor personnel proposed possess a Top Secret Clearance and are "SCI eligible" on day one of contract award.

AR, Tab 14, Questions and Answers, ¶¶ 3, 22.

The agency responded “Yes,” further clarifying that personnel must have the requisite clearance on the first day of their employment on the contract by the awardee. Id. The agency notes that its clarification of the solicitation requirements, as requiring that non-incumbent employees need only be “SCI eligible,” was the only reasonable interpretation since ConStrat’s alternative interpretation would have been overly restrictive of competition. The agency further notes that, in any event, CACI’s proposal, in fact, contemplated employment of incumbent personnel. Accordingly, the agency maintains that its evaluation of CACI’s proposal was reasonable.

Where a dispute exists as to the meaning of solicitation language, we will resolve the matter by reading the provision in the context of the entire solicitation. Lithos Restoration, Ltd., B-247003.2, Apr. 22, 1992, 92-1 CPD ¶ 379. Further, we will not read solicitation provisions in a manner that restricts competition, unless it is clear from the solicitation that such a restrictive interpretation was intended. MAR Inc., B-242465, May 6, 1991, 91-1 CPD ¶ 437. Finally, in reviewing a protest against an agency’s evaluation of proposals, our Office will not substitute our (or the protester’s) judgment for that of the agency but, rather, we will examine the record to determine whether the agency’s judgments were reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. In this regard, the evaluation of an offeror’s proposal is a matter within the agency’s broad discretion, since the agency is responsible for defining its needs and the best method for accommodating them, U.S. Textiles, Inc., B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2, and a protester’s mere disagreement with the agency’s judgment does not establish that the evaluation was unreasonable. C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4.

Here, as discussed above, following its initial issuance of the solicitation, the agency responded to questions regarding the solicitation’s security clearance requirements, expressly providing that offerors’ employees need only be “SCI eligible” on the day of contract award. AR, Tab 14, Questions and Answers, ¶¶ 3, 22. ConStrat’s assertion that the terms of the solicitation should be construed to permit only a proposal of incumbent personnel, with SCI clearances in place at the time of award, is not persuasive since it ignores the agency’s specific clarifying response that employees need only be “SCI eligible.” Further, ConStrat’s interpretation would restrict competition despite the agency’s indication in responding to offeror questions that such restriction was not intended. Accordingly, we reject ConStrat’s assertion that only a proposal of incumbent personnel met the solicitation’s requirements.

Even if we were to accept ConStrat’s proposed interpretation of the solicitation as mandating consideration of only incumbent personnel, CACI’s proposal clearly stated its intent to do just that. Specifically, CACI’s proposal stated: “We are

prepared to hire all incumbent personnel,” adding that “we have a 93 percent incumbent capture rate.”<sup>8</sup> AR, Tab 17, CACI Proposal, at 23-24.

In evaluating CACI’s proposal, the agency considered CACI’s stated intent to hire all incumbent personnel, as well as its alternative staffing approach to draw on its available workforce of over 13,000 cleared personnel. Although ConStrat asserts that CACI will not succeed in recruiting incumbent personnel because ConStrat intends to “reassign” them, ConStrat’s assertions in this regard are not dispositive as to whether such assignments will be accepted and CACI’s offers of employment rejected. Although ConStrat disagrees with the agency’s judgment of the risk associated with this matter, we have no basis to conclude that the agency’s judgment was unreasonable. Further, in assigning a high confidence rating to CACI’s proposal, the agency reasonably considered CACI’s alternative staffing approach using non-incumbent personnel. As discussed above, the agency’s consideration of that approach was not precluded by the terms of the solicitation. On this record, we find no basis to question the agency’s assignment of a high confidence rating for CACI’s technical capability,<sup>9</sup> and ConStrat’s protest challenging that rating is denied.

#### Evaluation of ConStrat’s Technical Capability

Next, ConStrat challenges the agency’s assignment of only a significant confidence rating for ConStrat’s proposal under the technical capability evaluation factor, maintaining that it deserved a rating of high confidence. In this regard, ConStrat states that its proposal referenced its current performance of the contract requirements; notes that the agency assigned an evaluated strength to its proposal because, due to its status as the incumbent, “a transition to a new contractor would not be required”;<sup>10</sup> and concludes that only a high confidence rating was appropriate. Protest at 11.

The agency first responds that ConStrat overestimates the level of its performance under the prior contract and, consistent with that response, notes that the agency

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<sup>8</sup> CACI’s proposal further provided that “In the unlikely event any individuals decide not to accept employment with Team CACI, we are prepared to staff this task order with qualified personnel drawn from our 13,000+-strong workforce of cleared personnel.” AR, Tab 17, CACI Proposal, at 23.

<sup>9</sup> The record shows that, in evaluating CACI’s proposal with regard to technical capability, the agency assigned various strengths and no weaknesses. AR, Tab 22A, CACI Consensus Evaluation, at 1-3. ConStrat’s protest challenges the agency’s technical evaluation of CACI’s proposal only with regard to the security clearance requirements.

<sup>10</sup> AR, Tab 20B, ConStrat Consensus Evaluation, at 1. This was the only evaluated strength assigned to ConStrat’s proposal.

assigned a weakness to ConStrat's technical proposal based on the level of detail it provided. Specifically, the agency's evaluation stated:

The offeror's proposal does not demonstrate how it intends to assess the effectiveness of the government's communication efforts. . . . [N]owhere in the proposal does the offeror demonstrate its ability to provide the required service, either by detailing its planned approach or by citing past experience. The proposal's lack of specificity in this area leaves the government some doubt that the offeror can fulfill PWS requirements 3.2 and 3.6.

AR, Tab 20B, Consensus Evaluation, at 1.

The evaluation of an offeror's technical proposal is a matter within the agency's broad discretion and our Office will not substitute our judgment for that of the agency but, rather, will examine the record to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., supra, at 3. A protester's mere disagreement with the agency's judgment does not establish that the evaluation was unreasonable. C. Lawrence Constr. Co., Inc., supra, at 4.

Here, our review of the record provides no basis to question the agency's evaluation. Specifically, the contemporaneous evaluation record supports the agency's position that while ConStrat's proposal frequently provided general references to its prior contract performance, its proposal lacked details regarding its particular approach to performing [deleted] as required by PWS sections [deleted]. AR, Tab 16A, ConStrat Technical Proposal, at 8-9, 15-16. While ConStrat disagrees with the agency's judgment regarding the level of specificity its proposal contained, such disagreement provides no basis to sustain its protest.

#### Evaluation of ConStrat's Past Performance

Next, ConStrat challenges the agency's assignment of only a significant confidence rating to ConStrat's proposal under the past performance evaluation factor, asserting that any rating other than high confidence was unreasonable. Protest at 10. In challenging the rating, ConStrat asserts that "[i]f ConStrat is now successfully performing the same effort and requirements, then there can be 'virtually no doubt' that ConStrat can perform the follow-on work." Id. In short, ConStrat asserts that, as the successful incumbent contractor, the agency was required to assign ConStrat the highest past performance rating.

The evaluation of an offeror's past performance 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. Further, the evaluation of past performance, by its very nature, is subjective and we will not substitute our judgment for reasonably based evaluation ratings; 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.

Here, the agency's assignment of significant, but not high, confidence to ConStrat's proposal was based in part on input from the contracting officer's technical representative (COTR) for the incumbent contract. While the COTR indicated that ConStrat had successfully performed the incumbent contract, he also stated that ConStrat "labored to develop creative solutions to one key problem in particular-- [deleted]." AR, Tab 32, Declaration of COTR, at 2. The COTR summarized his assessment, stating that while the company "largely met the requirements of the contract, [it] did not deliver services, put in place processes, or draw on industry best practices in such a way as to make this office significantly better," adding "[i]t is in the difference between satisfactory performance and excellence that the company fell short of our expectations." Id. at 1-2.

Accordingly, in evaluating ConStrat's proposal under the past performance factor, the agency concluded that, while there was "little doubt" that ConStrat could perform the required efforts, it declined to conclude there was "virtually no doubt" ConStrat could perform the requirements. While ConStrat disagrees with the agency's judgment in this regard, we find nothing unreasonable in the agency's assessment, and ConStrat's mere disagreement provides no basis for sustaining the protest.

ConStrat also complains that the agency's evaluation failed to consider one of the three past performance questionnaires that were submitted in connection with ConStrat's proposal. In this regard, ConStrat's protest notes that, although there were initial problems in connection with submission of the third questionnaire,<sup>11</sup> the questionnaire was ultimately submitted and received by the agency; yet, the agency evaluators failed to consider it. Protest at 7-10.

There is no legal requirement that an agency consider all references in evaluating an offeror's past performance. ITS Servs., Inc., B-298941, B-298941.2, Jan. 10, 2007, 2007 CPD ¶ 23 at 7 n.11. Rather, an agency is required to make a reasonable effort to obtain past performance information, and the fact that all potential past performance

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<sup>11</sup> It appears the reference initially failed to attach the questionnaire to the email transmission, and that one page had to be corrected. AR, Tab 30A, Email Communications, at 8.

information is not considered does not necessarily provide a basis for sustaining a protest. See Universal Bldg. Maint., Inc., B-282456, July 15, 1999, 99-2 CPD ¶ 32 at 8 n.1.

The agency acknowledges that it mistakenly believed the third questionnaire had not been submitted, but maintains that ConStrat was not prejudiced by this agency error. In short, the agency maintains that, even though the third questionnaire was favorable, the agency's post-protest analysis led it to conclude that the questionnaire was not significant enough to change the agency's past performance assessment. Contracting Officer's Statement at 9-11; AR, Tab 31, Memorandum Regarding Third Questionnaire.

Based on our review of the entire record, including the favorable substance of the third questionnaire and the input provided by the prior COTR, we conclude that the agency's mistake does not provide a basis for sustaining the protest. In reaching this conclusion, we need not assess whether the agency's post-protest assertions regarding the impact of the third questionnaire were reasonable. See Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15 (limited weight given to agency judgments that are made in response to protest contentions). Rather, we rely on the fact that, as discussed throughout this decision, we find no merit in ConStrat's other assertions challenging the agency's evaluation of ConStrat's and CACI's proposals under the technical capability evaluation factor. Accordingly, even if ConStrat's proposal had received the highest possible rating under the past performance factor, CACI's proposal would have remained the technically superior, low-priced proposal.

Our Office will not sustain a protest absent a showing of competitive prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have a substantial chance of receiving award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. On the record here, ConStrat's complaints regarding the agency's failure to consider the third questionnaire prior to making the source selection decision do not provide a basis for sustaining its protest.

#### Alleged Bias

Finally, ConStrat asserts that one of the agency's evaluators was biased against ConStrat, alleging that the agency evaluator "specifically told [a ConStrat subcontractor] that the follow on work would not go to a small business." ConStrat Comments, Nov. 17, 2011, at 8. ConStrat further asserts that its allegation "is supported" by similar allegations made in an anonymous submission to the

contracting officer and to the GSA and Department of Defense Offices of Inspector General. Id.; AR, Tab 30C, Email from James Crown, Sept. 18, 2011.<sup>12</sup>

The record shows that, on October 28, the GSA Inspector General opened an investigation in response to the anonymous submission. Contracting Officer's Statement at 7. It is the well-established policy of this Office that we will not consider bid protest allegations regarding matters that are the subject of open and ongoing Inspector General investigations. See JWK Int'l Corp., B-296969.3, Jan. 5, 2006, 2006 CPD ¶ 17 at n.4; Complere Inc., B-257946, Nov. 23, 1994, 94-2 CPD ¶ 207 at 6 n.4; Oceaneering Int'l, Inc., B-278126, B-278126.2, Dec. 31, 1997, 98-1 CPD ¶ 133 at 2 n.1. Accordingly, since the protester's allegations regarding bias are currently under investigation by the GSA Inspector General, we will not further consider that matter.

The protest is denied.

Lynn H. Gibson  
General Counsel

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<sup>12</sup> The email submission purports to be from a USCENTCOM employee; however, the agency states that it is unaware of any employee by that name. Similarly, ConStrat states that it "has no knowledge of any USCENTCOM employee named James Crown" and "assumes this name is an alias." Protester's Comments, Nov. 17, 2011, at 8.