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**Comptroller General  
of the United States**

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

## Decision

**Matter of:** SIMMEC Training Solutions

**File:** B-406819

**Date:** August 20, 2012

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Merri Tyrrel, SIMMEC Training Solutions, for the protester.  
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GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging an agency's past performance evaluation is denied, where the agency reasonably assessed offerors' past performance in accordance with the solicitation's evaluation criterion.

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### DECISION

SIMMEC Training Solutions, of Oceanside, California, protests the award of a contract to Tier-One Quality Solutions (TQS), of Virginia Beach, Virginia, under solicitation No. N00189-12-R-0019, issued by the Department of the Navy, Navy Expeditionary Combat Command, for combat first aid instruction.

We deny the protest.

### BACKGROUND

The solicitation, issued as a small business set-aside, provided for the award of a fixed-price contract for a base year and four option years for instructors for 24 three-day combat first aid courses. A performance work statement (PWS) was provided to describe the required services. Among other things, offerors were informed that the training would be provided to 360 total personnel (180 personnel in Virginia Beach, Virginia, and 180 personnel in San Diego, California), and that the courses were to be divided into classes containing between 15 and 40 students each.<sup>1</sup>

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<sup>1</sup> The Navy posted a combined synopsis/solicitation on the FedBizOpps website that identified evaluation criteria and the basis for award. Although the combined

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Agency Report (AR), Tab 3, Solicitation, PWS at 4. The courses use pigs for live tissue training to simulate battlefield trauma care. Id. at 6. Offerors were informed that the contractor was required to have a valid Association for Assessment and Accreditation of Laboratory Animal Care (AAALAC) certification and U.S. Department of Agriculture (USDA) license. AR, Tab 1, Combined Synopsis/Solicitation, at 2.

Award was to be made on a best value basis, considering technical acceptability, past performance, and price. Id. at 2-4. Offerors were informed that proposals would be evaluated under the technical acceptability factor on a pass/fail basis with respect to whether the offeror had demonstrated that it could fully perform the PWS services by the required performance start date. Id. at 2.

Proposals were to be qualitatively evaluated under the past performance factor as substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. The solicitation provided that offerors without a record of relevant past performance would receive a neutral rating.<sup>2</sup> Id. at 3. The solicitation instructed offerors to provide past performance information for no more than three relevant contracts performed within the past five years. Id. at 2. Offerors were informed that relevance would be determined by the contract's similarity to the RFP's requirements, based upon scope and magnitude. Scope was stated to be experience in the PWS areas, and magnitude was stated to be the similarity of the value of the contract work with the PWS requirements. Id. The solicitation also informed offerors that the agency may verify past performance information by contacting references or reviewing other information in the Contractor Performance Assessment Reporting System (CPARS). Id.

With respect to price, offerors were informed that price would be evaluated by adding the offeror's base year and option years' prices. Id. at 4. Price was stated to be less important than past performance, and offerors were informed that the agency would perform a past performance/price tradeoff analysis to determine best value. Id. at 2, 4.

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synopsis/solicitation stated that a written solicitation would not be issued, the Navy in fact issued a written solicitation that provided the PWS.

<sup>2</sup> As relevant here, the solicitation defined satisfactory confidence as follows: "Based on the offeror's recent/relevant performance record, the Government has a reasonable expectation that the offeror will successfully perform the required effort." AR, Tab 1, Combined Synopsis/Solicitation, at 3.

The agency received seven proposals, including TQS's and SIMMEC's. The firms' proposals were evaluated as follows:<sup>3</sup>

	<b>Technical Acceptability</b>	<b>Past Performance</b>	<b>Price</b>
TQS	Acceptable	Satisfactory Confidence	\$1,733,623
SIMMEC	Acceptable	Neutral	\$1,898,400

AR, Tab 7, Contract Review Board Presentation, at 9, 11, 30.

SIMMEC's neutral rating under the past performance factor reflected the agency's judgment that SIMMEC had not shown any relevant past performance. In its proposal, SIMMEC provided past performance references for eight contracts that ranged in value from \$36,000 to \$858,000. AR, Tab 6, SIMMIC Technical Proposal, at 21-25. Because the solicitation limited offerors to 3 past performance references, the agency only considered SIMMIC's first three references. These references were the following: a \$132,160 contract for providing 18 one-day classes; a \$144,975 contract to provide a 4-day course, and a 5-day course; and a \$62,280 contract to provide two 5-day courses. AR, Tab 7, Contract Review Board Presentation, at 15, 16. In assessing the magnitude of offerors' past performance references, the agency compared actual value of the offerors' past performance to the IGE. *Id.* at 3, 15-17. The agency considered an offeror's past performance to be of similar magnitude where it was at least \$279,000.<sup>4</sup> Contracting Officer's Statement at 3. Because the value of SIMMEC's three references was much less than that figure, SIMMEC's past performance was found to be not similar in magnitude, and thus not relevant. Contracting Officer Statement at 8; AR, Tab 7, Contract Review Board Presentation, at 15-17.

The awardee's satisfactory confidence rating under the past performance factor reflected the agency's judgment that TQS had provided references that gave the agency a reasonable expectation that TQS could successfully perform the contract. TQS provided three past performance references in its proposal. Two of the references (valued at \$23,820 and \$230,960) were found not to be relevant. The agency found TQS's remaining reference for a \$1,999,585 contract to be relevant both as to scope and magnitude. AR, Tab 7, Contract Review Board Presentation, at 12-13.

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<sup>3</sup> The Independent Government Estimate (IGE) for the procurement was \$2,959,496. AR, Tab 7, Contract Review Board Presentation, at 3.

<sup>4</sup> SIMMEC does not challenge the Navy's use of \$279,000 to determine whether an offeror's past performance was of similar magnitude to the contract requirements.

The agency performed a past performance/price tradeoff analysis. With respect to SIMMIC's and TQS's proposals, the agency concluded that TQS's lower price and satisfactory confidence past performance rating reflected better value than SIMMIC's higher price and neutral rating. In this regard, the agency noted that "it was not in the best interest of the government to pay a higher cost for the purpose of obtaining an unknown expectation of performance when [TQS] obtained a reasonable expectation of performance." Id. at 31.

Award was made to TQS, and this protest followed.

## DISCUSSION

SIMMEC challenges the agency's evaluation of its and TQS's past performance. With respect to the evaluation of its own past performance, SIMMEC contends that the agency should have found the firm's three past performance references to be of similar magnitude to the solicitation requirements.<sup>5</sup> Specifically, SIMMEC argues that the agency unreasonably considered the magnitude of its past performance by considering only the actual value and length of its prior work. Comments at 3.

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 agency discretion which we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. See, e.g., Yang Enter., Inc.; Santa Barbara Applied Research, Inc., B-294605.4 et al., Apr. 1, 2005, 2005 CPD ¶ 65 at 5; Acepex Mgmt. Corp., B-283080 et al., Oct. 4, 1999, 99-2 CPD ¶ 77 at 3, 5. Since the agency is responsible for defining its needs and the best method for accommodating them, we will not substitute our judgment for reasonably based past performance ratings. See MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10.

The record shows that the agency reasonably determined that SIMMEC did not have relevant past performance. As noted above, the solicitation provided that relevance would be determined in part by comparing the magnitude of the identified past performance with the contract requirements. In this regard, the solicitation stated that magnitude of past performance referred to "the dollar amount of work

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<sup>5</sup> SIMMEC acknowledges that it submitted more than the permitted number of past performance references and states that it accepts the agency's decision to consider only the first three references. Comments at 3 n.3. In any event, we have found, in such cases, that where a solicitation provides for consideration of a limited number of past performance references, the agency is not required to consider submissions beyond that number. Enterprise Solutions Realized, Inc., B-405203, Sep. 22, 2011, 2011 CPD ¶ 196 at 7 (agency was not required to consider a fourth experience reference where the solicitation limited the number of references to three).

actually performed under the contract.” AR, Tab 1, Combined Synopsis/Solicitation, at 2 (emphasis added). As noted above, the Navy considered an offeror’s past performance to be of similar magnitude where it was at least \$279,000, which SIMMEC does not challenge. The value of the work that SIMMEC actually performed under its past performance references is much less than \$279,000.

SIMMEC does not contend that the actual value of its past performance is similar in magnitude to the contract requirements. Rather, SIMMEC argues that, to determine the value of its past performance, the agency should have multiplied the value of its past performance by an amount that would make the duration of its performed work equal to the solicitation requirements. Comments at 3. SIMMEC does not identify any solicitation or other requirement for the agency to do so, and we can see no reason why an agency should inflate an offeror’s past performance in this way.

SIMMEC also complains that the Navy did not review the CPARS to identify other relevant past performance for SIMMEC.<sup>6</sup> Comments at 4. The record shows, however, that the contracting officer reviewed the Past Performance Information Retrieval System, which includes CPARS, but was unable to locate any additional relevant past performance information for SIMMEC. Contracting Officer’s Statement at 4; AR, Tab 7, Contract Review Board Presentation, at 17. SIMMEC claims, however, that it performed a contract valued at over \$34 million, which the agency should have found on CPARS. Comments at 3. The contract identified by SIMMEC is the same as one of the later past performance references that the agency did not consider, although SIMMEC stated in its proposal that the value of this contract was only \$858,000, and was on-going. Given SIMMEC’s concession that the agency did not have to consider more than the first three references in its proposal, which did not include this work, this objection provides no basis to question the agency’s past performance evaluation.

SIMMEC also challenges the agency’s past performance evaluation of TQS, complaining that the awardee’s only relevant past performance was attributable to a subcontractor, and not to TQS. Protest at 4. The record shows that TQS proposed the incumbent contractor as a subcontractor to perform a significant portion of the work, and submitted past performance information for this subcontractor. The agency credited TQS for the subcontractor’s past performance, of which the agency also had first-hand knowledge. We have no basis to object to this. We have found an agency’s consideration of a proposed subcontractor’s past performance permissible where, as here, the solicitation neither prohibits nor mentions the evaluation of such information. Singleton Enterprises, B-298576, Oct. 30, 2006,

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<sup>6</sup> The solicitation did not require the Navy to search CPARS for relevant past performance for SIMMEC. It only provides that the agency “may” verify an offeror’s past performance through sources such as CPARS. AR, Tab 1, Combined Synopsis/ Solicitation at 2.

2006 CPD ¶ 157 at 4; see also AC Technologies, Inc., B-293013, B-293013.2, Jan. 14, 2004, 2004 CPD ¶ 26 at 3 (in the absence of any prohibition in the solicitation, agency properly evaluated and gave weight to past performance of proposed subcontractor). In this regard, Federal Acquisition Regulation § 15.305(a)(2)(iii) provides that an agency's past performance evaluation "should take into account past performance [of] . . . subcontractors that will perform major or critical aspects of the requirement."

SIMMEC also complains that TQS did not provide required certifications in its proposal. A provision, such as that in the solicitation here, that requires a contractor to obtain necessary certifications and licenses establishes performance requirements that must be satisfied by the successful offeror during contract performance.<sup>7</sup> Therefore, offerors are not required to satisfy the requirements as a precondition to award, and the requirements do not affect the award decision, except as a matter of a contractor's general responsibility. See Chem-Spray-South, Inc., B-400928.2, June 25, 2009, 2009 CPD ¶ 144 at 5; United Segurança, Ltda., B-294388, Oct. 21, 2004, 2004 CPD ¶ 207 at 4. We generally do not review affirmative determinations of responsibility, except in circumstances not alleged or demonstrated here. 4 C.F.R. § 21.5(c) (2012). Moreover, because TQS is a small business, any issue concerning the awardee's responsibility is a matter for the Small Business Administration under its certificate of competency program. Ultimately, whether TQS complies with the certification and license requirements is a matter of contract administration, which we do not review. 4 C.F.R. § 21.5(a) (2012).

We deny the protest.

Lynn H. Gibson  
General Counsel

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<sup>7</sup> As noted above, the solicitation provided that "[t]he contractor shall also have a valid AAALAC certification and USDA license." AR, Tab 1, Combined Synopsis/Solicitation, at 2. Here, TQS represented in its proposal that its subcontractor had the required certifications and licenses and that TQS was obtaining them. See AR, Tab 5, TQS Proposal, at 4.