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# Decision

**Matter of:** US21, Inc.

**File:** B-415045.9

**Date:** September 10, 2018

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## DIGEST

Protest challenging the agency's evaluation of the awardee's past performance is sustained where the record shows that the evaluation was inconsistent with the terms of the solicitation and not adequately documented.

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## DECISION

US21, Inc., of Fairfax, Virginia, protests the award of a contract to Blue Force, Inc., of Hampton, Virginia, under solicitation No. SAQMMA-17-R-0213, issued by the Department of State for support services for the agency's mission in supporting the Palestinian Authority Security Forces (PASF) program. The protester contends that the agency unreasonably evaluated Blue Force's past performance.

We sustain the protest.

## BACKGROUND

The Department of State, Bureau for International Narcotics and Law Enforcement Affairs (INL), is working in partnership with the United States Security Coordinator towards strengthening the skills, competencies, and abilities of the Palestinian Authority to provide law enforcement, security, and public safety in the West Bank. Agency Report (AR), Tab 2A, Statement of Work (SOW), at 2. The contractor selected under this solicitation will support the Department of State in this mission. Among other things, the contractor will be required to conduct investigations into matters concerning security, safety, property accountability, misconduct, employee injuries and automobile

accidents; ensure coordination and cooperation with other programs operating in the West Bank; provide suitable lodging to contractor personnel; provide morale, welfare, and recreation services for training mentors and subject matter experts; provide a warehouse to receive and store supplies and equipment; recruit qualified training mentors and subject matter experts; provide interpreters and translators; provide mentoring and advice to Palestinian counterparts to enhance the capabilities of the PASF to provide public security and law enforcement in the West Bank; provide specialized training to members of the PASF; and procure and deliver equipment. Id. at 2-4, 16-17.

The solicitation, a small business set-aside issued on March 1, 2017, provided for the award of a contract on a best-value tradeoff basis considering price, and the following non-price factors: technical approach; personnel management; and past performance and capacity. AR, Tab 1, Request for Proposals (RFP), at 69.<sup>1</sup> As relevant here, with respect to past performance and capacity, the solicitation required offerors to identify at least four contracts performed within the past 5 years that demonstrated relevant past performance. Id. at 60, 70. Past performance information could also be submitted for subcontractors. AR Supp., Tab 6, amend. 3, at 1.

For each past performance example, offerors were required to include the instrument number, the name of the organization, a reference's contact number, the funding amount, the performance period, the place of performance, and a brief description of the work performed. RFP at 60. The solicitation advised offerors that past performance would be evaluated for contracts that were consistent with the size, scope, and complexity of the solicitation's objectives. Id. at 70. The solicitation further advised that contracts that were technically relevant to PASF training and logistics, and similar in size, scope, and complexity to the instant solicitation, would receive greater consideration than less relevant contracts. Id. Past performance was to be assigned a rating of substantial confidence, satisfactory confidence, unknown confidence, limited confidence, or no confidence.<sup>2</sup> Id. at 72.

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<sup>1</sup> Technical approach was rated superior, acceptable, marginal or unacceptable. RFP at 71. Personnel management was rated very relevant, relevant, somewhat relevant, or not relevant. Id.

<sup>2</sup> The confidence ratings were defined as follows:

Substantial Confidence – Based on the offeror's recent/relevant performance record, the Government has a high expectation that the offeror will successfully perform the required effort. It is unlikely that Government intervention will be needed in order to obtain the required product/service.

Satisfactory Confidence – Based on the offeror's recent/relevant performance record, the Government has a reasonable expectation that the offeror will successfully perform the required effort. Little

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Following the submission of proposals, an initial evaluation, discussions, and the submission and evaluation of final proposal revisions, Blue Force and US21 were rated as follows:

	<b>Blue Force</b>	<b>US21</b>
<b>Technical Approach</b>	Superior	Acceptable
<b>Personnel Management</b>	Very Relevant	Very Relevant
<b>Past Performance and Capacity</b>	Substantial Confidence	Substantial Confidence
<b>Price</b>	\$45,888,807	\$40,190,933

AR Supp., Tab 4, Source Selection Authority Award Decision, at 5.<sup>3</sup> The agency made a best-value tradeoff decision and selected Blue Force for award. *Id.* at 8. This protest followed.

## DISCUSSION

US21 contends that the Department of State unreasonably rated Blue Force’s past performance as substantial confidence because the agency failed to evaluate past performance in accordance with the RFP’s relevancy criteria. Specifically, the protester argues that the agency failed to meaningfully consider the limited magnitude and

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Government intervention is expected to be needed in order to obtain the required product/service.

Unknown Confidence (Neutral) – No recent/relevant performance record is available or the offeror’s performance record is so sparse that no meaningful confidence assessment rating can be reasonably assigned.

Limited Confidence – Based on the offeror’s recent/relevant performance record, the Government has a low expectation that the offeror will successfully perform the required effort. Some Government intervention is expected to be needed in order to obtain the required product/service.

No Confidence – Based on the offeror’s recent/relevant performance record, substantial doubt exists that the offeror will be to successfully perform the required effort.

RFP at 72.

<sup>3</sup> This solicitation was subject to prior protests on which the agency took corrective action or which were otherwise dismissed. This decision concerns an award made to Blue Force on April 23, 2018.

technical relevance of Blue Force’s past performance examples when it assigned the awardee the highest possible past performance confidence assessment. As discussed below, we find that the agency’s evaluation of Blue Force’s past performance was inconsistent with the terms of the RFP and not adequately documented. Therefore, we sustain the protest.

Our Office will question an agency’s past performance evaluation where the record indicates that the agency either failed to evaluate, or otherwise unreasonably considered, the relevance of the submitted past performance in accordance with the solicitation’s stated evaluation criteria. An agency’s evaluation of an offeror’s past performance is unreasonable where the solicitation requires the agency to consider the value of the offerors’ past performance examples as compared to the value of the solicited requirement, and the agency fails to reasonably explain why comparatively small-value examples provide a basis to justify a high past performance rating, or in this case the highest possible rating. E.g., Health Net Fed. Servs., LLC, B-401652.3, B-401652.5, Nov. 4, 2009, 2009 CPD ¶ 220 at 16 (sustaining a protest where an agency assigned the highest possible past performance rating based on three contracts that were less than 3 percent, and one contract equaling 11 percent, of the magnitude of the requirements contemplated by the solicitation); Continental RPVs, B-292768.2, B-292768.3, Dec. 11, 2003, 2004 CPD ¶ 56 at 8 (finding prior contracts no larger than 4 percent of the solicitation’s requirements were not similar in size). Additionally, where an agency fails to document its evaluation, it bears the risk that there may not be an adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for its source selection decision. Navistar Def., LLC; BAE Sys., Tactical Vehicle Sys. LP, B-401865 et al., Dec. 14, 2009, 2009 CPD ¶ 258 at 13.

Blue Force identified six past performance examples, as follows:

<b>Past Performance Example</b>	<b>Dollar Value</b>	<b>Purpose</b>
Blanket Purchase Agreement SINLEC14A0011 (“BPA 0011”)	\$30,761,147	Subject Matter Experts
Call Order SINLEC15L0049 (“Call Order 0049”)	\$2,010,860	Security Assistance Coordinator (Jordan)
Call Order SINLEC16L0057 (“Call Order 0057”)	\$525,805	Program Safety Advisor (Jordan and West Bank)
Call Order SINLEC15L0015 (“Call Order 0015”)	\$3,714,960	3 Senior Police Advisors (Beirut)
FA-4890-12-D-0003 (“Contract 0003”)	\$62,127,327.16	English Language Training (Saudi Arabia)
SAQMMA16F4052 Subcontractor Reference (“Task Order 4052”)	\$91,829,930.00	Support Diplomatic Mission (Jerusalem, West Bank and Gaza Strip)

AR Supp., Tab 2, Blue Force Proposal, at 95-99.

The record shows that the agency considered four of the examples provided by Blue Force when it evaluated Blue Force's past performance: BPA 0011; Call Order 0049; Call Order 0057; and Call Order 0015. AR Supp., Tab 3, Technical Evaluation Consensus, at 10; AR Supp., Tab 2, Blue Force Proposal, at 95-99. BPA 0011 is an agreement to provide subject matter experts in the fields of law, order, and justice, under which call orders may be placed when the Department of State requires services. AR Supp. Tab 2, Blue Force Proposal, at 96. In assigning the Blue Force proposal a rating of substantial confidence for past performance, the agency assigned Blue Force the following strengths:

**Strength:** Blue Force currently holds two Call Orders with INL in Jordan as part of the INL Subject Matter Expert BPA (SINLEC14A0011).

**Strength:** Blue Force holds the Call Order for the INL Jordan Security Assistance Coordinator and his three-person staff (SINLEC15L0049).

**Strength:** Blue Force holds a Call Order for the INL Program Safety Officer (SINLEC16L0057).

**Strength:** Blue Force holds a Call Order for three senior police advisors in Beirut for INL (SINLEC15L0015).

**Strength:** Blue Force received "outstanding" ratings on submitted [Contractor Performance Assessment Reporting System] evaluations.

AR Supp., Tab 3, Technical Evaluation Consensus, at 10.

The RFP here required the agency to evaluate the relevancy of an offeror's past performance based on the size, scope, and complexity of the cited examples relative to the RFP. RFP at 70. As noted above, the contemplated value of the solicitation is more than \$40 million. The three call orders performed under BPA 0011, and considered by the agency, however, are valued at \$525,805 (Call Order 0057), \$2,010,860 (Call Order 0049), and \$3,714,960 (Call Order 0015); amounts which are not close to the value of the solicitation. In addition, while the solicitation contemplates performance by over 50 dedicated employees, the call orders are for performance by **[DELETED]** employees (Call Order 0057), **[DELETED]** employees (Call Order 0049), and **[DELETED]** employees (Call Order 0015). AR Supp., Tab 2, Blue Force Proposal, at 95-99. In our view, given the difference between the dollar values of these call orders and the work at issue here--and the difference in the number of employees involved--the agency could not reasonably conclude that the performance examples identified by Blue Force and reviewed by the evaluators are similar in size to the solicitation here. As a result, we cannot find reasonable the agency's decision to assign Blue Force a rating of substantial confidence under the past performance evaluation factor.

Further, the agency gave Blue Force a strength for BPA 0011 (valued at over \$30 million) because Blue Force performed two call orders in Jordan under the BPA. AR

Supp., Tab 3, Technical Evaluation Consensus, at 10. The record shows, however, that the two call orders in Jordan--Call Order 0049 and Call Order 0057--are the same two call orders for which the agency previously assigned strengths. As a result, we find that it was unreasonable for the agency to assign Blue Force's past performance proposal a strength for performing the BPA because it included the two Jordan based call orders when the agency had already assigned Blue Force a strength for performance of the identical call orders.

In its response to the protester's contentions regarding the validity of the agency's conclusions about the past performance review, the agency correctly asserts that the RFP's past performance evaluation criteria also provided for consideration of other factors, such as the technical relevancy of the examples. See RFP at 70. Nonetheless, even if we agree that the examples provided by Blue Force are technically relevant to the objectives in the solicitation (something the protester disagrees with and we do not specifically decide), we do not find reasonable the agency's conclusion that the smaller dollar value and staffing levels of the past performance examples identified by the awardee support the highest possible confidence assessment rating. See Health Net Fed. Servs., LLC, supra, at 17.

During the course of this protest, the agency now argues that it also considered the two other past performance examples that Blue Force included in its proposal--Contract 0003 and Task Order 4052--even though no review of these performance examples is reflected in the contemporaneous record.<sup>4</sup> Contracting Officer's Statement at 5, 6. Specifically, Blue Force identified contract 0003 with the Air Force to provide English language training to the Royal Saudi Arabian Air Force (valued at \$62.1 million), and Task Order 4052 (held by Blue Force's subcontractor) with the Department of State, Bureau of Diplomatic Security, to support the diplomatic mission in Jerusalem, the West Bank, and the Gaza Strip (valued at \$91.8 million). The agency also asserts that in addition to considering the two call orders performed in Jordan under BPA 0011, it considered separately that BPA 0011 was valued at \$30.7 million, and that Blue Force had performed numerous additional call orders under the BPA. Id. at 6. Again, however, no review of the BPA apart from the two call orders performed in Jordan under the BPA is reflected in the contemporaneous evaluation record.

Here, the agency's contention that it relied on the additional past performance examples provided by Blue Force in its proposal is not reasonably supported by the contemporaneous evaluation record. Specifically, there is nothing in the record that indicates that the agency considered the recency or relevance of these additional examples when it evaluated Blue Force's past performance. That is, the contemporaneous evaluation documents do not mention the past performance contract that Blue Force has with the Air Force, the past performance example for the

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<sup>4</sup> As discussed above, Blue Force provided six past performance examples, but the agency's evaluation record shows that in evaluating Blue Force's past performance, the agency considered only four of the examples.

subcontractor, or past performance on the BPA separate from the two call orders performed in Jordan under the BPA.<sup>5</sup> Accordingly, the record does not support the substantial confidence rating which was assigned during the evaluation. See Al Raha Group for Tech. Servs., B-411015.2, B-411015.3, Apr. 22, 2015, 2015 CPD ¶ 134 at 11-12.

## RECOMMENDATION

In summary, we find that the agency's evaluation of Blue Force's past performance was inconsistent with the relevancy requirements of the RFP and not adequately documented. We recommend that the agency, consistent with our decision, reevaluate, and document its review of, Blue Force's past performance information. Upon completion of the reevaluation, we recommend that the agency make a new source selection determination. We also recommend that the agency reimburse the protester its costs associated with filing and pursuing this protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protester's respective certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Thomas H. Armstrong  
General Counsel

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<sup>5</sup> We also note that the agency did not receive a past performance questionnaire for the subcontractor's past performance example.