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# Decision

**Matter of:** J. Squared Inc., d/b/a University Loft Company

**File:** B-417010; B-417010.2

**Date:** January 22, 2019

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Kristi Morgan Aronica, Esq., and Mark A. Weitz, Esq., Weitz Morgan PLLC, for KLN Steel Products Company, LLC, the intervenor.

Christopher S. Cole, Esq., and Alexis J. Bernstein, Esq., Department of the Air Force, for the agency.

Louis A. Chiarella, and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest challenging the agency’s evaluation of the awardee’s past performance is denied where the evaluation was reasonable, consistent with the stated evaluation criteria, and adequately documented.

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## DECISION

J. Squared, Inc., d/b/a University Loft Company (University Loft), a small business of Greenfield, Indiana, protests the issuance of a delivery order to KLN Steel Products Company, Inc., of Dallas, Texas, under request for quotations (RFQ) No. FA4418-18-Q-0049, issued by the Department of the Air Force for dormitory furniture items for Joint Base Charleston, Charleston, South Carolina. University Loft alleges the agency’s evaluation of KLN’s past performance was unreasonable.

We deny the protest.

## BACKGROUND

The RFQ was issued on August 2, 2018, as a small business set-aside, under the procedures of Federal Acquisition Regulation (FAR) part 13 (Simplified Acquisition Procedures) and FAR part 12 (Acquisition of Commercial Items). Agency Report (AR), Tab 3, RFQ at 8; Contracting Officer’s Statement at 2-3. The solicitation contemplated the issuance of a fixed-price purchase order for the delivery and installation of dormitory

furniture (e.g., bunk-able beds, TV stands with drawers) for unaccompanied personnel housing at Joint Base Charleston. RFQ at 1-2. Award was to be made on a best-value tradeoff basis considering three evaluation factors--price, past performance, and technical--and the nonprice factors, when combined, were significantly more important than price. Id. at 9-10.

KLN and University Loft were among the vendors that submitted quotations by the September 4 closing date. The Air Force evaluated vendors' quotations using various adjectival rating schemes that were set forth in the solicitation as follows: acceptable or unacceptable for the technical factor; and substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence/neutral for the past performance factor.<sup>1</sup> Id. at 4, 10. On September 28, the contracting officer, as the source selection authority, found KLN's quotation, which had been rated as technically acceptable with substantial performance confidence, represented the overall best value to the government. AR, Tab 18, Source Selection Decision, at 4. After the agency provided University Loft with notice of award to KLN on September 30, this protest followed.

## DISCUSSION

University Loft challenges the agency's evaluation of KLN's past performance. The protester alleges, among other things, that the information the Air Force considered as part of its evaluation did not merit assigning KLN a "substantial confidence" rating. Supp. Protest at 10-13. The gravamen of University Loft's challenge, however, is that the agency was unaware of, and failed to consider, certain relevant information (i.e., KLN's bankruptcy reorganization and the past performance of a KLN-related company with other contracting agencies) when evaluating the awardee's past performance. Id. at 5-9; Protest at 2-3. We have considered all of the protester's assertions and find no basis on which to sustain the protest.<sup>2</sup>

As noted above, the RFQ was issued under the simplified acquisition procedures of FAR part 13. When using these procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. Recogniti, LLP, B-410658, Jan. 21, 2015, 2015 CPD ¶ 49 at 5. In reviewing protests of an allegedly improper simplified acquisition evaluation, we examine the record to determine whether the

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<sup>1</sup> Technical acceptability was based on whether a vendor's proposed items met the item description specifications set forth in the solicitation. RFQ at 10.

<sup>2</sup> University Loft also alleges that it believes KLN will not comply with applicable small business requirements during performance of the awarded delivery order. Protest at 3 n.2. This is a matter of contract administration, which we will not review. 4 C.F.R. § 21.5(a); Solar Plexus, LLC, B-402061, Dec. 14, 2009, 2009 CPD ¶ 256 at 2-3.

agency met this standard and exercised its discretion reasonably. JRS Staffing Servs., B-409360 et al., Mar. 27, 2014, 2014 CPD ¶ 105 at 5.

An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of a vendor's performance history, is a matter of discretion which we will not disturb unless the assessment is unreasonable or inconsistent with the solicitation criteria. RELYANT Global, LLC, B-413741, Nov. 21, 2016, 2016 CPD ¶ 338 at 4; see WingGate Travel, Inc., B-412921, July 1, 2016, 2016 CPD ¶ 179 at 4. The evaluation of past performance, by its very nature, is subjective and a vendor's disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. Chloeta Fire, LLC, B-416448, July 17, 2018, 2018 CPD ¶ 248 at 5; see WingGate Travel, Inc., supra.

The RFQ instructed vendors to provide two past performance references, RFQ at 10, and established that the agency's evaluation would be based on the submitted references and "data independently obtained from other Government and commercial sources." Id. at 3. The solicitation also stated the agency would assess both the relevance and quality of a vendor's recent performance history as part of its evaluation.<sup>3</sup> Id. at 3-4. Lastly, the RFQ included definitions for the various performance confidence ratings, and "substantial confidence" was defined as "[b]ased on the offeror's recent/ relevant performance record, the Government has a high expectation that the offeror will successfully perform the required effort." Id. at 4.

KLN's quotation included two past performance references regarding its installation of dormitory furniture at Ft. Irwin, California, and an earlier project at Joint Base Charleston. The Air Force received past performance questionnaires (PPQ) from both references. KLN was rated "good" in four areas and "exceptional" in three areas (including "exceptional" overall) on its Ft. Irwin reference, and rated as "good" in all areas on its Joint Base Charleston reference. AR, Tab 25, KLN PPQ (Ft. Irwin); Tab 26, KLN PPQ (Joint Base Charleston). The contracting officer also conducted a search of KLN's Contractor Performance Assessment Reports (CPAR), and found two dormitory furniture projects where the awardee was rated "[s]atisfactory" in all assessed areas. AR, Tab 24, KLN CPARs, at 1-5.

The contracting officer, when evaluating KLN's past performance, found the awardee's references and CPAR reports to be both recent and very relevant to the scope of the work here. AR, Tab 18, Source Selection Decision, at 3. The contracting officer also noted that "[n]either [referenced] project had any reported problems and both would award to KLN again." Id. The contracting officer thereafter concluded that KLN had demonstrated a history of good performance at other installations as well as the "capability to manage numerous similar projects of this scope and magnitude," such that a "substantial confidence" rating was warranted. Id.

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<sup>3</sup> The solicitation also defined recency as prior work performed within the last 3 years. RFQ at 3.

We find the agency's evaluation of KLN's past performance to be unobjectionable. As a preliminary matter, the record reflects that, in accordance with the stated evaluation criteria, the Air Force assessed the relevance of KLN's past performance references--both of which involved dormitory furniture installation--and reasonably found them to be highly relevant to the work here. The Air Force also reasonably considered the "good" and "very good" performance of KLN's references as well as the awardee's performance on available CPAR reports. Based on this comprehensive assessment, the agency reasonably concluded that there was a high expectation KLN would successfully perform the required effort (i.e., warranted a "substantial confidence" rating). Likewise, we find no merit in, and the RFQ provides no support for, University Loft's assertion that the awardee was required to receive exceptional quality assessments from every past performance reference in order to receive a "substantial confidence" rating.

We next address University Loft's challenge regarding the scope of the information which the agency considered when evaluating the awardee's past performance. Here, the protester alleges that because KLN's recent bankruptcy reorganization left the awardee without any "hard assets," and because KLN must therefore (allegedly) rely on an affiliated company with a record of poor past performance to perform its contracts, the awardee should have received a "no confidence" rating for past performance. Supp. Protest at 4-8. University Loft also maintains that the agency was required to seek out and consider this publicly-available information as part of its past performance evaluation. Id. at 7. We disagree.

As set forth above, the RFQ provided that in addition to reviewing vendors' past performance references, the agency would consider "data independently obtained from other Government and commercial sources." RFQ at 3. This is consistent with the discretion that rests with agencies in determining the scope of performance history to be considered when evaluating vendors' past performance, provided all quotations are evaluated on the same basis and the evaluation is consistent with the terms of the solicitation. Paragon Tech. Grp., Inc., B-407331, Dec. 18, 2012, 2013 CPD ¶ 11 at 5-6; see also Hygeia Solutions Partners, LLC; STG, Inc., B-411459 et al., July 30, 2015, 2015 CPD ¶ 244 at 13 (determining an agency's decision to limit its evaluation to documented sources of past performance information to be unobjectionable).

While agencies may generally limit the scope of past performance information considered, we have also recognized that in certain limited circumstances, an agency has an obligation (as opposed to the discretion) to consider "outside information" bearing on the vendor's quotation when it is "too close at hand" to require vendors to shoulder the inequities that spring from an agency's failure to obtain and consider the information. See e.g., International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. See also Earth Res. Tech. Inc., B-416415, B-416415.2, Aug. 31, 2018, 2018 CPD ¶ 312 at 6 (recognizing "too close at hand" principle but declining to apply it to non-past performance information). Our Office has limited application of this narrow principle, however, to consideration of prior contracts for the same services with the same contracting activity, or information personally known to the evaluators. See

Orbital Scis. Corp., B-414603, B-414603.2, July 26, 2017, 2017 CPD ¶ 249 at 10 (finding agency was not required to consider an Inspector General report in its past performance evaluation); Level 3 Comms. LLC, B-412854 et al., June 21, 2016, 2016 CPD ¶ 171 at 7 (“No part of this [too close at hand] concept, however, is intended to remedy a vendor’s failure to include information in its own quotation.”).

On this record we fail to see how the agency misevaluated KLN’s past performance. As a preliminary matter, we find nothing improper with the Air Force’s decision to limit its review here to the past performance information that was submitted in vendors’ quotations as well as to other official government sources (i.e., CPAR reports). Further, the outside information to which University Loft refers (e.g., KLN’s bankruptcy filing and reorganization plan) was not with the procuring agency of subject solicitation, nor is it evident that it was information personally known to the evaluators. There was simply no requirement, as the protester suggests, for the agency to perform a search of and review public records as part of its past performance evaluation. See BillSmart Solutions, LLC, B- 413272.4, B- 413272.5, Oct. 23, 2017 2017 CPD ¶ 325 at 7-8. Likewise, KLN’s alleged reliance on an affiliated company with a poor record of past performance with other contracting agencies, could not have been known to the Air Force without review of the same bankruptcy reorganization plan that the agency was not required to consider--University Loft does not assert that this information was part of KLN’s quotation, or personally known to the evaluators. In sum, the PPQs received from official government sources, coupled with the other past performance information reviewed by the agency related to KLN’s other prior contracts, reasonably led the contracting officer to assign a “substantial confidence” rating, a determination we find unobjectionable.

The protest is denied.

Thomas H. Armstrong  
General Counsel