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## Decision

**Matter of:** United Medevac Solutions, Inc.

**File:** B-417032; B-417032.2

**Date:** January 24, 2019

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### DIGEST

Protest challenging the agency's evaluation of the awardee's past performance is denied where the agency's evaluation was reasonable and consistent with the terms of the solicitation.

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### DECISION

United Medevac Solutions, Inc., a woman-owned small business of Georgetown, Texas, protests award of a contract to TGW SuperiorCare MTS, LLC, a small business of San Antonio, Texas, pursuant to request for proposals (RFP) No. FA3016-18-U-0255, issued by the Department of the Air Force for emergency medical ambulance services at Joint Base San Antonio-Randolph, Texas. The protester challenges the agency's evaluation of past performance and best-value decision.

We deny the protest.

### BACKGROUND

The Air Force issued the RFP as a total small business set-aside on August 8, 2018, pursuant to the commercial item and simplified acquisition procedures of Federal Acquisition Regulation (FAR) parts 12 and 13, respectively. Agency Report (AR), Tab 7a, RFP at 1. The RFP sought proposals for ground transport emergency medical services (EMS), including advanced life support (ALS), twenty-four hours a day, seven days a week, for patients requiring emergency transportation from Joint Base San Antonio-Randolph to higher-level care facilities in the surrounding geographic area. AR,

Tab 7b, Performance Work Statement (PWS) at 1. The RFP specified a required response time of 12 minutes or less on at least 90 percent of runs for an estimated 200 runs per year. Id. The RFP contemplated award of a single fixed-price contract for a 1-year base period of performance and four 1-year options, and provided that award would be made on the basis of three factors: technical (which included four subfactors); past performance; and price. RFP at 8. Award was to be made to the offeror representing the best value to the government, with the non-price factors identified as significantly more important than price. Id.

The RFP explained the evaluation process would begin with a pass/fail technical evaluation of proposals under the four subfactors within the technical factor: (1) ability to perform; (2) qualifications and experience; (3) management capability; and (4) mission essential contractor services plan. RFP at 8-9. Then, beginning with the lowest-priced technically acceptable proposal, the agency would consider the offeror's recent and relevant past performance and assign a performance confidence rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence.<sup>1</sup> Id. at 12-13. If the lowest-priced technically acceptable proposal was judged to have a substantial confidence rating, the RFP established that the evaluation would stop at that point with award being made to that offeror without further consideration of any other proposals. Id. at 14. However, if the lowest-priced offeror was judged to have a rating of satisfactory confidence or lower, the agency would evaluate the past performance of the next lowest-priced offeror and the past performance evaluation process would "continue (in order by price) until an offeror is judged to have a Substantial Confidence performance confidence assessment or until all offerors are evaluated." Id. The RFP further advised that if the lowest-priced offeror was rated anything other than substantial confidence, the agency reserved the right to award to other than the lowest-priced offeror and would make an "integrated assessment best value award decision." Id.

For the purpose of evaluating past performance, the RFP directed offerors to send past performance questionnaires (PPQs) "to present and/or past Government and/or industry customers for projects of similar scope performed within three (3) years of the RFP release date." RFP at 7. The RFP explained that if the agency received more than three PPQs only the three most recent would be considered. Id. at 13. According to the RFP, relevant past performance references were those that "demonstrate a record of providing services similar to those required by the PWS,"<sup>2</sup> and "greater consideration

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<sup>1</sup> The RFP defined confidence assessment ratings as a level of "expectation that the offeror will successfully perform the required effort," with substantial confidence meaning "a high expectation," satisfactory confidence meaning a "reasonable expectation," limited confidence meaning "a low expectation," no confidence meaning "no expectation," and neutral confidence meaning there was insufficient information on which to base an expectation. RFP at 12-13.

<sup>2</sup> The RFP's relevancy ratings were defined as the extent to which the past performance effort involved the same scope and magnitude of effort as the solicitation, with very  
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may be given to information on those contracts deemed most relevant to the effort described in this solicitation.” Id.

The RFP closed on August 23, and the agency received two timely proposals--one from United Medevac and the other from TGW. Contracting Officer’s Statement (COS) at 6. Both proposals were evaluated as technically acceptable under each of the technical evaluation subfactors. Id. TGW submitted the lowest total evaluated price of \$4,250,182, while United Medevac’s price was \$5,565,030 . AR, Tab 19, Price Reasonableness Determination, at 1.

The agency received three PPQs for the awardee. Each PPQ was for a private sector EMS and ALS ambulance service contract. AR, Tab 16, Awardee’s PPQ for Inspiration Hills Rehabilitation Center, at 1; Tab 16a, Awardee’s PPQ for Life Care Hospital of San Antonio, at 1; Tab 16b Awardee’s PPQ for The Center for Healthcare Services, at 1. The PPQ’s for the three contracts indicated that they were for 102, 114, and 264 runs a year. Id. The awardee received overall quality ratings of high<sup>3</sup> on all three of its PPQs, and each PPQ noted an on-time performance rate above 90 percent with notations regarding the awardee taking proactive steps to remedy any untimely performance. Id. at 1, 3. The agency’s technical evaluation panel (TEP) evaluated the awardee’s PPQs as recent, and two members of the TEP found them to be very relevant while a third member found them to be relevant. AR, Tab 28, Evaluation Scoresheets for Awardee, at 6, 12 and 18. One TEP member assigned the awardee a rating of substantial confidence and two assigned the awardee a rating of satisfactory confidence. Id. The TEP assigned TGW an overall past performance rating of satisfactory confidence. COS at 8.

Because TGW was the lowest-priced offeror, and it received a rating lower than substantial confidence, the TEP evaluated the past performance of the next lowest-priced offeror--the protester, in accordance with the award process outlined in the RFP. COS at 8. The agency received four PPQs for the protester, and considered the three most recent of the PPQs. Id. at 6-7. The three PPQs were for EMS and ALS ambulance services contracts performed on three different military installations. AR, Tab 17, Protester’s PPQ for William Beaumont Army Medical Center, at 1; Tab 17a, Protester’s PPQ for Joint Base San Antonio Military Medical Center, at 1; Tab 17b,

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relevant meaning “essentially the same scope and magnitude,” relevant meaning “similar scope and magnitude,” somewhat relevant meaning “some of the scope and magnitude,” and not relevant meaning “none of the scope and magnitude.” RFP at 13.

<sup>3</sup> The PPQ form had six possible ratings with high being the best possible rating. See AR, Tab 16, Awardee’s PPQ for Inspiration Hills Rehabilitation Center, at 2. A rating of high meant the offeror’s “[p]erformance met all of the contract requirements and exceeded many requirements. Problems if any were negligible and were resolved in a timely and highly effective manner.” Id.

Protester's PPQ for White Sands Missile Range, at 1. Only one of the PPQs identified the number of runs per year--430--whereas the PPQs for the two other contracts presented the number of runs in terms of monthly units. Id. The protester received an overall quality rating of satisfactory<sup>4</sup> on two of its PPQs, and significant<sup>5</sup> on the third, with one PPQ noting an on-time response rate above 90 percent and two of the PPQs leaving blank the form's question about the "number of unacceptable performance occurrences." Id. at 1, 3. The TEP evaluated the protester's PPQs as recent and two TEP members found them to be very relevant, while the third found them to be relevant. AR, Tab 29, Evaluation Scoresheets for Protester, at 6, 12 and 18. All three TEP members assigned the protester a rating of satisfactory confidence. Id. The TEP assigned United Medevac an overall past performance rating of satisfactory confidence. COS at 8.

After the TEP completed its evaluation, the contracting officer (CO), who was also the source selection authority (SSA), conducted his own evaluation of TGW's past performance information, because TGW had submitted the lowest evaluated price. COS at 8. In this regard, the CO considered all three of the awardee's PPQs to be recent and to reflect high quality performance with respect to customer ratings. AR, Tab 19, Price Reasonableness Determination, at 3-4. The CO also noted that performance had been on-time between 92 and 98 percent of the time and TGW successfully took steps to address any untimely performance. Id. The CO considered one of the awardee's PPQs to be very relevant because it involved essentially the same scope and magnitude as the solicited requirement, specifically noting that it involved EMS and ALS ambulance services with more than 200 runs. Id. at 3. The CO considered the awardee's two other PPQs to be relevant because the efforts involved similar scope and magnitude--EMS and ALS ambulance services for approximately half the estimated number of runs as the solicited requirement. Id. at 3-4. The CO gave greater consideration to the most relevant of the awardee's three PPQs. Supp. COS at 8. Based on his evaluation, the CO assigned the awardee a past performance rating of substantial confidence. AR, Tab 19, Price Reasonableness Determination, at 4. Because the lowest-priced technically acceptable offeror received a past performance rating of substantial confidence, per the terms of the RFP, it was automatically considered the best value to the government. Id. at 4.

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<sup>4</sup> A rating of satisfactory meant the offeror's "[p]erformance met the contract requirements. There were some minor problems and corrective actions taken by the contractor were satisfactory." AR, Tab 17, Protester's PPQ for William Beaumont Army Medical Center, at 2.

<sup>5</sup> A rating of significant meant the offeror's "[p]erformance met the contractual requirements and exceeded some requirements. There were a few minor problems, which the contractor resolved in a timely and effective manner." AR, Tab 17, Protester's PPQ for William Beaumont Army Medical Center, at 2.

On September 25, the agency made award to TGW. Memorandum of Law (MOL) at 10; AR, Tab 21, Notice of Award Posting on Federal Business Opportunities, at 1. The protester was notified of the award on October 3. Id. On October 9, the agency provided the protester a brief explanation of award, in accordance with FAR § 13.106-3(d). AR, Tab 23, Letter from Contracting Officer to Protester, Oct. 9, 2018, at 1. United Medevac filed its initial protest with our Office on October 19.<sup>6</sup> The initial protest challenged the agency's past performance evaluation ratings, arguing that its ratings were too low and the awardee's were too high. Protest at 7-10. The protester also challenged the best-value decision as unreasonable where it was based on the flawed past performance evaluation. Id. at 13. In its comments on the agency's report, the protester filed a supplemental protest ground challenging the CO's decision to adjust upward the awardee's past performance rating above the rating assigned by the TEP. Protester's Comments and Supp. Protest at 7-8.

## DISCUSSION

### Awardee's Past Performance Evaluation

The protester challenges the agency's evaluation of the relevancy of the awardee's past performance in four respects. Specifically, the protester argues that the agency erred in evaluating the awardee's past performance references as relevant because they involved: (1) private sector contracts as opposed to contracts for services on military installations; (2) lower dollar value contracts as compared to the awarded contract; (3) contracts for fewer ambulance runs than anticipated by the solicitation; and (4) contracts with slower response times than those required by the solicitation. In this regard, the protester challenges both the CO's decision, and the CO's documentation of his decision, to assign the awardee a substantial confidence past performance rating.

The evaluation of an offeror's past performance, including the agency's determination of the relevance and scope of an offeror's performance history, is a matter of agency discretion, which we will not find improper unless it is inconsistent with the solicitation's evaluation criteria. See K-MAR Indus., Inc., B-411262, B-411262.2, June 23, 2015, 2015 CPD ¶ 189 at 4. The evaluation of experience and past performance is, by its very nature, subjective, and an offeror's disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. Id.

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<sup>6</sup> The initial protest contained six protest grounds, three of which were dismissed as untimely because they were based on information contained in the October 3 notice of award, and were not filed within 10 days of the protester's receipt of that notice. 4 C.F.R. § 21.2(a)(2). Moreover, because the instant procurement was conducted using FAR part 13 procedures, the debriefing exception to our timeliness rules does not apply in this case. Electronic Protest Docketing System, Docket Entry 10, Partial Dismissal Decision, Nov. 7, 2018, at 2.

First, the protester argues the agency unreasonably assigned the awardee a substantial confidence rating where its PPQs were for private sector contracts and it allegedly has neither performed federal contracts similar to the solicitation's requirement, nor provided ambulance services at military installations. Protest at 8; Protester's Supp. Comments at 5. In response, the agency points out that the RFP did not require offerors to have performed contracts at military bases. COS at 11; MOL at 14-15. Rather, the RFP instructed offerors to send blank PPQs to "present and/or past Government and/or industry customers for projects of similar scope." RFP at 7. The agency explains the RFP sought to acquire commercial EMS and ALS ambulance services, and there were no requirements particular to the services being provided at a military installation (or pursuant to a federal contract) that would cause them to differ from those provided in the private sector. See Supp. MOL at 6. We find the protester's argument unavailing where, as here, the RFP allowed for submission of private sector PPQs and required no deviations from commercial ambulance services. See e.g., ViroMed Laboratories, Inc., B-289959.7, Dec. 19, 2003, 2004 CPD ¶ 86 at 11-13.

Second, the protester argues the agency erred by not considering the value of the awardee's past contracts. Protester's Comments and Supp. Protest at 5-7. The awardee's three PPQs had annual values of \$124,567, \$136,858 and \$518,537, a range of approximately 17 to 67 percent of the awarded contract value here. See AR, Tabs 16, 16a and 16b, Awardee's PPQs. The protester contends these values are too low to be relevant. Protester's Comments and Supp. Protest at 5-7. In response, the agency explains contract values for ambulance services often do not reflect accurately the magnitude of effort under the contracts because much of the value of these contracts may be recovered through billing to third parties, such as health insurance providers. Supp. COS at 3-4. Third-party billing is a common practice in the ambulance service industry, according to the agency, and results in ambulance providers receiving payment from entities other than the party with whom they have a contract.<sup>7</sup> Id. Accordingly, the agency argues it reasonably considered the type of services and number of ambulance runs, rather than contract value, when assessing magnitude of effort under its relevance evaluation. We have no basis to question the agency's evaluation in this regard.

The solicitation here neither indicated nor required the use of contract value as a metric of relevancy, but instead defined degrees of relevancy in terms of the scope and magnitude of effort in comparison to the services set forth under the RFP. See RFP

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<sup>7</sup> To illustrate this fact, the agency provided an example of a previous contract for provision of ambulance services at a military installation for approximately 200 ambulance runs--the same number of runs as anticipated under this solicitation. Supp. COS at 3-4. The total cost of the contract to the government was only \$54,000 where the provider was able to bill third parties for its services. Id. The awarded contract here, which does not provide for third-party billing, has an annual value of \$771,490. Notwithstanding the dramatically different contract values, both are for the same services and essentially the same number of ambulance runs. Id.

at 13. Moreover, contrary to the protester's assertion, there is no requirement for agencies to consider contract value in assessing relevancy of past performance; agencies reasonably may use benchmarks other than contract value. See e.g., XPO Logistics Worldwide Gov't Servs., Inc., B-412628.6, B-412628.7, Mar. 14, 2017, 2017 CPD ¶ 88 at 12 (noting that acceptable relevancy benchmarks reasonably might have included total or annual average dollar value of an effort or the number of total or monthly shipment transactions under the effort).<sup>8</sup> Given the nature of the differing billing practices within the industry, the agency had a reasonable basis to discount contract value as a metric for comparing the relevance of the contracts at issue and to instead compare the types of services performed and the number of ambulance runs involved with the types of services and number of runs required in the RFP. See e.g., JSW Maint., Inc., B-400581.5, Sept. 8, 2009, 2009 CPD ¶ 182 at 4-5.

Third, the protester challenges the agency's finding that the awardee's past contracts involving 102 and 114 ambulance runs per year were relevant where the solicitation estimates a level of effort involving approximately 200 ambulance runs per year. Protester's Comments and Supp. Protest at 4-5. The agency notes the CO differentiated between these two contracts and the awardee's larger PPQ contract in his evaluation. In this regard, the CO considered the two smaller performance examples (involving 102 and 114 ambulance runs) to be relevant, involving "similar scope and magnitude," while he considered the awardee's contract with 264 ambulance runs to be very relevant, involving "essentially the same scope and magnitude." AR, Tab 19, Price Reasonableness Determination, at 3-4. We find the CO's determination unobjectionable given the awardee's past performance was for the same type of EMS and ALS ambulance services required by the RFP, and the number of runs performed was 50 percent or more of the number of runs anticipated by the RFP. See e.g., FN Mfg. LLC, B-407936 et al., Apr. 19, 2013, 2013 CPD ¶ 105 at 2 (denying a protest where the agency rated as relevant, rather than very relevant, past performance references involving half the delivery rate required by the solicitation).

Fourth, the protester challenges the agency's failure to consider response times in evaluating the relevance of the awardee's past performance. Protester's Comments and Supp. Protest at 4. The solicitation requires the awarded contractor to respond to service calls in 12 minutes or less at least 90 percent of the time. PWS at 1. According to the protester, the awardee's PPQ response times of 15, 20, and 30 minutes or less should have resulted in a lower relevancy rating for the awardee. Protester's Supp.

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<sup>8</sup> We note that had the agency considered contract value in assessing relevancy of past performance, the awardee's PPQ contract values ranging from 17 to 67 percent of the annual average awarded contract value are not so low as to be inherently irrelevant, as argued by the protester. See e.g., Northrop Grumman Sys. Corp., B-412278.7, B-412278.8, Oct. 4, 2017, 2017 CPD ¶ 312 at 17 (finding reference contracts ranging from 11.5 to 24.5 percent of the estimated award value were not so disparate in magnitude as to be irrelevant).

Comments at 4-5. The agency explains it considered response time as part of the technical evaluation, but not as part of the past performance evaluation.<sup>9</sup> Supp. COS at 4.

Procuring agencies are free to determine the manner in which proposals will be evaluated so long as the method selected provides a rational basis for source selection and the actual evaluation is conducted in accordance with the established criteria. See Canaveral Port Servs., Inc.; General Offshore Corp., B-211627.3, B-211627.4, Sept. 26, 1984, 84-2 CPD ¶ 358 at 12. Our Office will not question an agency's evaluation methodology so long as it is reasonable and follows the specified evaluation criteria. See Roy F. Weston, Inc., B-274945 et al., Jan. 15, 1997, 97-1 CPD ¶ 92 at 9. Here, the RFP required response time to be considered as part of the technical evaluation, which the agency did, and was silent as to whether it would be considered as part of the past performance evaluation. See RFP at 9-13. The agency's decision to consider response time only as part of the technical evaluation was not contrary to the RFP, nor can we say it was unreasonable given the broad discretion afforded to agencies in performing their evaluations.<sup>10</sup>

Finally, the protester challenges both the reasonableness and adequacy of the CO's independent evaluation of the awardee's past performance and assignment of a higher rating than the TEP. Protester's Comments and Supp. Protest at 7-8. The agency explains that due to the lack of consensus among the TEP evaluators on a single past performance rating for the awardee, the CO decided that his greater experience in performing evaluations warranted his review to establish a final rating. Supp. COS at 7. An evaluation is not unreasonable because an SSA disagrees with the evaluation ratings and results of lower level evaluators. See Honeywell Tech. Solutions, Inc., B-406036, Jan. 3, 2012, 2012 CPD ¶ 43 at 5. An SSA is permitted to make an independent evaluation of proposals and may disagree with the findings of lower level evaluators, provided that the SSA's judgments are reasonable, consistent with the specified evaluation scheme, and adequately documented. See Glenn Def. Marine-Asia PTE, Ltd., B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3 at 8.

All three of the awardee's PPQ references gave it the highest possible quality rating, with one reference commenting the awardee "is the best in the business," "highly

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<sup>9</sup> The RFP provided under technical subfactor 1 "ability to perform" that offerors would be "evaluated to the extent to which they provide information that demonstrates offeror's ability to successfully meet the twelve (12) minute response timeline . . . 90% of the time." RFP at 9-10.

<sup>10</sup> We note that had the agency considered response time in evaluating past performance the difference between the solicitation's required response time of 12 minutes and the awardee's PPQ response times of 15, 20 and 30 minutes is not so disparate as to be inherently irrelevant, as argued by the protester. See e.g., Northrop Grumman, supra, at 17.

capable,” and highly recommended. AR, Tab 16, Awardee’s PPQ for Inspiration Hills Rehabilitation Center, at 3. Additionally, while the CO concluded some of the awardee’s PPQs were only relevant in scope and magnitude, as opposed to very relevant, the RFP advised offerors the agency may give greater consideration to the most relevant past performance submitted by an offeror. Given the terms of the RFP, the high quality of the awardee’s past performance of the same type of EMS and ALS ambulance services, and the discretion afforded an agency in evaluating past performance, we find unobjectionable the CO’s determination that the awardee’s proposal merited a substantial confidence past performance rating. See e.g., Colt Def. LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 9-10. The protester’s myriad allegations reflect only its disagreement with the agency’s evaluation, which provides no basis to question the reasonableness of the agency’s judgments. See K-MAR Indus., supra, at 4-5.

The protester’s allegations of insufficient documentation also are unavailing. The simplified acquisition procedures of FAR part 13 require agencies to document award decisions contemporaneously, but do not require the same level of detailed justification supporting a best-value determination as in a FAR part 15 procurement. See Universal Bldg. Maint., Inc., B-282456, July 15, 1999, 99-2 CPD ¶ 32 at 4. Here, the contemporaneous record contains a written summary of the CO’s independent past performance evaluation sufficient to show he reasonably considered the RFP’s specified criteria of recency, relevancy, and quality in reaching his rating decision. See, AR, Tab 19, Price Reasonableness Determination, at 3-4. Accordingly, we have no basis to sustain the protest with regard to this issue.

#### Protester’s Past Performance Evaluation and Best-Value Decision

United Medevac also challenges the TEP’s evaluation of the protester’s own past performance, arguing that its own very relevant past performance should have resulted in a rating of substantial, rather than satisfactory, confidence. The protester further argues that the TEP’s past performance evaluation was unequal because the evaluation worksheets indicate one of the technical evaluators took response time into consideration when evaluating the protester’s, but not the awardee’s, past performance.

We need not consider the protester’s remaining challenges because it was the CO’s past performance evaluation, not the TEP’s, that informed the best-value decision. Based on his independent evaluation, the CO assigned the awardee a substantial confidence past performance rating. COS at 8-9; AR, Tab 19, Price Reasonableness Determination, at 3-4. In accordance with the solicitation, once the lowest-priced technically acceptable proposal was judged to have a substantial confidence rating, the evaluation stopped, and award was made to that offeror without further consideration of other proposals. See RFP at 14. Because we have denied the protester’s challenge to the CO’s evaluation of the awardee, even were we to agree that the TEP’s evaluation of the protester’s past performance was unreasonable, the source selection decision would not be disturbed. Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for

the agency's improper actions, it would have had a substantial chance of receiving the award. See Northrop Grumman, supra, at 18-19.

The protest is denied.

Thomas H. Armstrong  
General Counsel