



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Washington, DC 20548

Comptroller General
of the United States

Decision

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Matter of: Sayres & Associates Corporation

File: B-418382

Date: March 31, 2020

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DIGEST

1. Protest challenging agency past performance evaluation is denied when an evaluation error did not competitively prejudice the protester, and the evaluation was otherwise reasonable and consistent with the terms of the solicitation.
2. Protest challenging agency best-value tradeoff is denied when the best-value tradeoff was reasonable and consistent with the terms of the solicitation.

DECISION

Sayres & Associates Corporation, a small business of Washington, D.C., protests the issuance of a task order to Reliability and Performance Technologies, LLC (RPT), by the Department of the Navy under request for proposals (RFP) No. N00164-18-R-3006 for program management support services related to the DDG-1000 Destroyer program. The protester alleges that the agency erred in its evaluation of the offerors' past performance, and in its best-value tradeoff.

We deny the protest.

BACKGROUND

On April 18, 2018, the agency issued the RFP as a small business set-aside, seeking proposals from firms holding Department of the Navy, Seaport Enhanced multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contracts. Agency Report (AR) at 2; Protest at 4. The RFP contemplated the award of a single cost-plus-fixed-fee task

order, with a base period of performance of one year and four 1-year options. AR, Tab 1, RFP at 6.¹ Additionally, the RFP indicated that award would be made on the basis of a best-value tradeoff between three evaluation factors: (1) technical and management; (2) past performance; and (3) total evaluated price. Id. at 84. In conducting the tradeoff, the technical factor was more important than the past performance factor, and those two factors when combined were significantly more important than price. Id. However, the RFP also noted that the degree of importance assigned to the price factor would “increase with the degree of equality of the proposals in relation to the other factors [...], or when the [total evaluated price] delta between [o]fferors is so significantly high as to diminish the value of the superiority of the other factors.” Id.

Relevant to this protest, with respect to the past performance evaluation factor, the RFP required offerors to provide past performance references reflecting relevant experience for the prior three fiscal years, as well as a past performance reference for each significant subcontractor.² RFP at 74. The RFP also advised offerors that the government may limit or expand the number of references it contacts, may contact references not provided by the offeror, and may review additional contract performance data obtained from other sources such as government databases or personal knowledge. Id. at 74-75. Finally, past performance would be evaluated on the basis of recency, relevance,³ and quality, and assigned one of five ratings: (1) substantial confidence; (2) satisfactory confidence; (3) limited confidence; (4) no confidence; or (5) unknown confidence. Id. at 86.

The agency received three offers in response to the RFP, including offers from the protester and intervenor. AR at 2. The protester included five past performance references, three for itself and two for its significant subcontractors, all of which were evaluated as very relevant. Sayres Past Performance Proposal at 2; AR, Tab 2, Source Selection Evaluation Board (SSEB) Report, at 47. The agency also identified one additional very relevant past performance effort for Sayres related to program support for the DDG-51 Destroyer program, which it also considered in its evaluation. AR, Tab 2, SSEB Report at 47.

RPT included six past performance references in its proposal, however the agency consolidated two related references into one reference for evaluation purposes.

Compare RPT Past Performance Proposal at 2 with AR, Tab 2, SSEB Report at 15. Relevant to this protest, the agency also mistakenly assessed an additional past

¹ Because Tab 1 contains several separately paginated documents, citations are to the Adobe pdf pagination.

² The solicitation defined subcontractors as significant if they would perform 10 percent or more of the total proposed labor hours. RFP at 74.

³ Each reference would be assigned one of four ratings: (1) very relevant; (2) relevant; (3) somewhat relevant; or (4) not relevant. RFP at 86.

performance reference as part of its evaluation of RPT's proposal. Id. Specifically, the agency evaluated a past performance effort for Alion Science & Technology as part of RPT's past performance evaluation, but RPT did not propose Alion as a subcontractor in its proposal.⁴ Supp. AR at 1; AR, Tab 2, SSEB Report at 15. Instead, the protester proposed Alion as a significant subcontractor, and Sayres's proposal identified a past performance effort for Alion that was correctly evaluated as part of Sayres Proposal. Sayres Past Performance Proposal at 2; AR, Tab 2, SSEB Report at 47.

The Source Selection Authority (SSA) evaluated the protester's and intervenor's proposals as follows:

Evaluation Factors	RPT	Sayres
Technical and Management	Good	Outstanding
Past Performance	Substantial Confidence	Satisfactory Confidence
Total Evaluated Price	\$59,203,221	\$70,229,306

AR, Tab 3, SSA Memorandum, at 3.

The SSA determined that, while Sayres proposal was technically superior, the technical advantages offered by Sayres were not worth an approximately 18 percent price premium, and were offset to some extent by RPT's superior past performance. AR, Tab 3, SSA Memorandum at 8-9. Accordingly, the agency issued the task order to RPT.⁵ AR at 8. This protest followed.

DISCUSSION

The protester contends that the agency erred in its evaluation of the protester's past performance, erred in evaluating RPT's past performance, disparately treated offerors with respect to past performance, and erred in its best-value tradeoff decision. See

⁴ One of the past performance efforts identified in RPT's proposal involved RPT performing as a subcontractor for Alion. Supp. AR at 1-2. The agency indicated that it correctly considered RPT's past performance as a subcontractor to Alion, but mistakenly also considered Alion's performance as the prime contractor for that effort separately in evaluating RPT's past performance. Id.

⁵ The awarded value of the task order at issue here exceeds \$25 million. Accordingly, this procurement falls within our jurisdiction to hear protests related to the issuance of orders under Department of Defense multiple-award IDIQ contracts. 10 U.S.C. § 2304c(e)(1)(B); Parsons Gov't Servs., Inc., B-416771 et al., Dec. 12, 2018, 2018 CPD ¶ 425 at 3 n.3.

Protest generally. We address these arguments in turn.⁶

Protester's Past Performance

The protester primarily objects to the agency's decision to consider a past performance effort in which Sayres provided support for the DDG-51 Destroyer program. Protest at 14-18. Specifically, the protester notes that its proposal did not include a reference for its prior DDG-51 support effort. Id. The protester contends that the agency "cherry-picked" the DDG-51 support contract because there were other equally relevant ship support efforts--with less negative past performance information--that the agency did not consider. Id. at 16-17

Further, the protester argues that the agency erred in its consideration of the DDG-51 effort because the agency considered negative contractor performance assessment reports (CPARs) from 2016-2018, but did not seek out and consider more recent allegedly positive past performance information on that effort. Protester's Comments at 8-9. Finally, the protester notes that its other past performance efforts (to include its performance on the incumbent effort) were uniformly positive and highly relevant. Id. at 6-10. The protester suggests that by not giving it the highest past performance rating the agency, in effect, placed undue importance on the DDG-51 effort. Id.

The agency argues in response that it considered the DDG-51 Destroyer program effort in part because it was the most similar Navy program to the scope of the task order in support of the DDG-1000 Destroyer program, which is the subject of this procurement. AR at 11. Furthermore, the agency points out that the DDG-51 and DDG-1000 program offices are "directly next to one another" and the evaluators had general personal knowledge that Sayres had performance problems on the DDG-51 effort. AR, Tab 5,

⁶ The protester also challenged the agency's cost realism assessment of the awardee's costs on the basis that the awardee's total evaluated price was approximately 18 percent lower than the protester's total evaluated price and the agency made only a small upward adjustment to the awardee's cost. Protest at 11-14. The protester only argued that such a low cost would prove to be unrealistic because the awardee would be unable to retain qualified staff at such low labor rates. Id. However, evidence that the awardee proposed a somewhat lower cost than the protester, alone, is not generally enough to establish a legally sufficient challenge to an agency's cost realism assessment. This is because such an argument, by itself, does not address the possibility that an awardee simply proposed a different technical approach or composed their indirect labor rates differently such that the somewhat lower cost is realistic for the awardee's proposed approach. See, e.g., George G. Sharp, Inc., B-408306, Aug. 5, 2013, 2013 CPD 190 at 1 n.1, 2-3 (dismissing a challenge to a cost realism evaluation for failing to set forth a valid basis of protest because the allegation was based solely on the fact that the agency did not adjust the awardee's cost, and where the awardee proposed a 12 percent lower cost than the protester). Here, the protester simply alleged the awardee's costs were lower. Accordingly, we dismissed this ground of protest.

Declaration of Technical Evaluation Team Chairperson, at 1. As a result, the SSEB sought out the CPARs for that effort as part of the agency's evaluation of this procurement. AR at 12 n.4. Finally, the agency argues that the scope and nature of the performance problems on the DDG-51 effort reasonably led the agency to assign the protester a past performance rating of satisfactory confidence rather than substantial confidence. Id. at 12-14.

The evaluation of the relative merit or relevance of past performance references is generally a matter within the agency's discretion, which our Office will not disturb unless it is shown to be unreasonable or inconsistent with the solicitation's evaluation criteria. American Systems Corp., B-413952.3, B-413952.4, June 23, 2017, 2017 CPD ¶ 204 at 6-7; NCI Information Systems, Inc., B-412680, B-412680.2, May 5, 2016, 2016 CPD ¶ 125 at 4; ORBIS Inc., B-408033.2, June 3, 2013, 2013 CPD ¶ 140 at 4. A protester's disagreement, without more, does not form the basis for us to conclude that an evaluation was unreasonable. See DynCorp International, LLC, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 7-8.

Here, the agency's evaluation appears reasonable. The RFP provided that the agency could seek additional sources of past performance information from databases or from first-hand knowledge, which is precisely what the agency did in this case. See RFP at 74-75. While the protester has identified other efforts that the agency might have considered, agencies are not required to seek out all possible additional sources of past performance information. R4 Integration, Inc., B-409717, B-409717.2, June 6, 2014, 2014 CPD ¶ 171 at 5. The agency has provided a reasonable explanation concerning how the additional information it considered came to its attention, and we see no basis in the record to conclude that the agency deliberately selected only negative additional information for consideration. Accordingly this argument is without merit.

We likewise do not agree with the protester's contention that the agency was compelled to seek out and consider more recent past performance information concerning the DDG 51 effort. In this case, the agency concluded its evaluation in October of 2019, and considered final CPARs from 2016-17 and 2017-2018. AR, Tab 2, SSEB Report at 1; Protester's Comments at 8-9. While the protester suggests that the agency should have considered information from 2019 and 2020, the protester does not allege that newer CPARs were available when the evaluation was conducted. Protester's Comments at 8-9; Supp. Comments at 2. Instead the protester suggests that the agency should have contacted and interviewed staff from the DDG-51 contracting office. Id.

In this case, additional CPARs were not available to the evaluators when they conducted the evaluation, and evaluators are not required to consider information they do not possess. CMJR, LLC d/b/a Mokatron, B-405170, Sept. 7, 2011, 2011 CPD ¶ 175 at 8; Honolulu Shipyard, Inc., B-291760, Feb. 11, 2003, 2003 CPD ¶ 47 at 6. In this case, the agency reasonably decided to rely on final CPARs, which represent the agency's considered opinion of a contractor's performance and provide the contractor with an opportunity to respond. See, e.g., Mark Dunning Industries, Inc., B-413321.4,

July 26, 2017, 2017 CPD ¶ 248 at 4-5 (CPARs represent an agency's considered opinion of a contractor's performance, and interim evaluations are typically subsumed in final CPARs).

While we have concluded that an agency may choose to consider interim past performance information not embodied in CPARs, we have not concluded that an agency must seek out and consider such information. See, e.g., Al Raha Group for Technical Services, Inc.; Logistics Management International, Inc., B-411015.2, B-411015.3, Apr. 22, 2015, 2015 CPD ¶ 134 at 19-21 (agency's failure to seek out and consider past performance information not yet embodied in completed CPARs at time of evaluation, and not otherwise known to evaluators was unobjectionable). On this record, we cannot conclude the agency erred by relying on CPARs rather than interviewing officials in the DDG-51 contracting office.

The protester's argument concerning the degree of emphasis the agency placed on the DDG-51 effort is similarly meritless. While the protester is correct that its other past performance efforts were generally positive and very relevant, the protester nonetheless had significant negative past performance information on an effort the Navy considers very relevant--the DDG-51 program effort.⁷ See AR, Tab 2, SSEB Report at 47, 50. 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; 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. U.S. Textiles, Inc., B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2. We see no basis to conclude that the agency was unreasonable in assigning the protester the second highest past performance rating rather than the highest possible rating on these facts. The protester, in effect, simply disagrees with the agency's evaluative judgment, and a protester's disagreement with an agency's judgment is insufficient to establish that the agency acted unreasonably. Fiserv NCSI, Inc., B-293005, Jan. 15, 2004, 2004 CPD ¶ 59 at 9.

Awardee's Past Performance

The protester also challenges the agency's evaluation of the awardee's past performance. Protester's Comments at 5-6. Specifically, the protester argues that the agency erred in crediting RPT with a past performance effort for Alion, because RPT did not propose Alion as a subcontractor. Id. In this respect, the agency concedes that it erred in crediting RPT's proposal with Alion's past performance effort. Supp. AR at 1.

However, the agency argues that the protester was not prejudiced by this error because RPT would have received the same past performance rating even without considering the erroneous past performance effort. Id. at 2-3. In this vein, the agency contends that, of the six past performance efforts evaluated for RPT, three were very relevant and

⁷ Specifically, the CPARs for this effort included unsatisfactory or marginal ratings in quality, schedule, and management. AR, Tab 2, SSEB Report at 50.

three were relevant. Id. The SSA Memorandum notes that RPT's past performance rating was primarily predicated on RPT's uniformly high quality of past performance, with specific focus on the three very relevant efforts. AR, Tab 3, SSA Memorandum at 5. The agency notes that the Alion effort was one of the three efforts evaluated as relevant, and so was not significant in the agency's decision to assign RPT the highest past performance rating. Supp. AR at 2-3.

It is clear that the agency erred in crediting RPT's proposal with Alion's past performance. However, competitive prejudice is an essential element to every viable protest, and where an agency's improper actions did not affect the protester's chances of receiving award, there is no basis for sustaining the protest. See, e.g., American Cybernetic Corp., B-310551.2, Feb. 1, 2008, 2008 CPD ¶ 40 at 2-3.

Here, the contemporaneous record supports the agency's characterization of its evaluation. While the relevant section of the SSA memorandum discussed each of RPT's very relevant efforts and noted that RPT's past performance quality was uniformly positive, it did not otherwise discuss the relevant past performance references. SSA Memorandum at 5. The Alion effort, which was one of three relevant references, was not specifically mentioned in the SSA memorandum narrative. Id. Given the SSA's focus on the very relevant past performance efforts, it is reasonable to conclude that the removal of a single relevant effort would not have affected RPT's rating of substantial confidence.

On the record before us, we do not believe that this error had a meaningful effect on the outcome of the agency's evaluation, and therefore the protester was not prejudiced by the error. Accordingly, there is no basis to sustain the protest on this ground.

Disparate Treatment

The protester also contends that the agency's evaluations of the two proposals demonstrate disparate treatment. Protester's Comments at 10. Specifically, the protester contends that the agency erred by assigning RPT a higher past performance rating than the protester because RPT's past performance was, in general, less relevant than the protester's past performance and RPT had fewer efforts on which it was the prime contractor. Id.

As noted above, in reviewing an agency's evaluation, we will not reevaluate proposals, but will examine the record to ensure that it was reasonable and in accordance with the stated evaluation criteria and applicable procurement statutes and regulations. PMC Solutions, Inc., B-310732, Jan. 22, 2008, 2008 CPD ¶ 20 at 2. It is a fundamental principle of federal procurement law that a contracting agency must treat all vendors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. Rockwell Elec. Commerce Corp., B-286201 et al., Dec. 14, 2000, 2001 CPD ¶ 65 at 5. However, where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in the evaluation did not stem from differences between the offerors' proposals. IndraSoft, Inc.,

B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10; Paragon Sys., Inc.; SecTek, Inc., B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9. Here, the protester has not made the requisite showing that the agency treated the offerors' proposals unequally. See Alphaport, Inc., B-414086, B-414086.2, Feb. 10, 2017, 2017 CPD ¶ 69 at 7.

While it is true that Sayres past performance references included more very relevant past performance efforts than RPT's references, as discussed above, one of Sayres's very relevant efforts had significant negative past performance information. See AR, Tab 2, SSEB Report at 15, 47, 50. By contrast, while RPT had fewer very relevant past performance references than Sayres and fewer as a prime contractor, RPT's past performance references were uniformly positive. Id.; AR, Tab 3, SSA Memorandum at 5. This was a clear distinguishing factor in the SSA's decision memorandum between the two offerors, and the agency was not unreasonable in treating it as a differentiator when evaluating the two proposals. Id. Accordingly, the protester's allegations of improper disparate treatment are without merit.

Best-Value Tradeoff

Lastly, the protester challenges the agency's best-value tradeoff, primarily on the basis that its proposal received a higher technical rating than RPT's proposal, and the RFP provided that the technical factor was the most important evaluation factor.⁸ Protester's Comments at 11. Specifically, the protester argues that its proposal received an outstanding technical rating, while RPT's proposal was rated only good. Id. The protester contends that because the RFP made it clear that the technical factor was more important than past performance and significantly more important than total evaluated price, the agency erred in selecting RPT's proposal as the best value. Id.

Source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results, and their judgments are governed only by the tests of rationality and consistency with the stated evaluation criteria. Client Network Servs., Inc., B-297994, Apr. 28, 2006, 2006 CPD ¶ 79 at 9. In reviewing an agency's source selection decision, we examine the supporting record to determine if it was reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. The SI Organization, Inc., B-410496, B-410496.2, Jan. 7, 2015, 2015 CPD ¶ 29 at 14.

In this case, the protester's argument concerning the relative weight of the technical factor fails because the RFP also provided that the total evaluated price would become more important in determining best value as the total evaluated price difference between proposals increased. RFP at 84. In this case, Sayres's proposal was

⁸ The protester advanced certain other arguments concerning the best-value tradeoff that were derivative of its past performance arguments discussed above. See Protest at 18. Because we see no basis to sustain the protester's past performance arguments, we need not address these other arguments here.

approximately 11 million dollars (or 18.6 percent) more expensive than RPT's proposal. AR, Tab 3, SSA Memorandum at 9. The SSA memorandum analyzed the scope of the price difference between the proposals and concluded that the difference was very significant. Id. The SSA concluded that Sayres's acknowledged technical advantages did not merit such a significant price premium, especially in light of RPT's superior past performance rating. Id. We see no basis to question the agency's exercise of its discretion on this point.

The protest is denied.

Thomas H. Armstrong
General Counsel