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Decision

Matter of: Noble Supply & Logistics, Inc.

File: B-417494.3

Date: August 7, 2020

Gary J. Campbell, Esq., G. Matthew Koehl, Esq., and Lidiya Kurin, Esq., Womble Bond Dickinson (US) LLP, for the protester.

Alexis J. Bernstein, Esq., Lawrence M. Anderson, Esq., and Frank Minogue, Esq., Department of the Air Force, for the agency.

Lois Hanshaw, Esq., and Evan C. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of offerors' past performance is denied where the record shows that the evaluation was reasonably based and not disparate.

DECISION

Noble Supply and Logistics, Inc. (Noble), a small business of Rockland, Massachusetts, protests the award of a contract to CC Distributors, Inc. (CCD), the incumbent, of Corpus Christi, Texas, under request for proposals (RFP) No. FA441919RA003, issued by the Department of the Air Force. The Air Force awarded the contract to support a contractor operated civil engineer supply store (COCESS) located on Altus Air Force Base, Oklahoma. Noble argues that the agency's past performance evaluation was unreasonable.

We deny the protest.

BACKGROUND

On March 26, 2019, the agency issued the RFP in accordance with Federal Acquisition Regulation (FAR) part 12, acquisition of commercial items, and FAR part 15, contracting by negotiation. Agency Report (AR), Tab 6, RFP at 1, 109. Under this effort, the contractor would provide a simplified method for customers to purchase quality materials, tools, and equipment to be used for work tasks, construction, recurring

preventive maintenance, and repairs through the base “U-Fix-It Program.”¹ *Id.* at 3. The RFP contemplated the award of a fixed-price contract with a 4-month base period and four 1-year option periods on a best-value tradeoff basis. *Id.* at 15-16, 60, 109.

Proposals were to be evaluated based on three factors: technical, past performance, and price. *Id.* at 109. The technical and past performance factors when combined would be significantly more important than price. *Id.* at 110. As relevant here, past performance would be evaluated on the basis of recency, relevancy, and quality, and assigned a performance confidence rating. *Id.* at 112.

The past performance factor required offerors to identify no more than five recent and relevant contracts and to send past performance questionnaires (PPQs) to contacts with firsthand experience with the offeror’s performance for each of the past performance references identified. *Id.* at 93, 106-107. Recent contracts were those performed within the three years prior to the issuance date of the solicitation. *Id.* at 112. Relevant past performance would involve performance of COCESS contracts similar in scope, magnitude (*i.e.*, dollar value), and complexity to the requirements defined in the solicitation. *Id.* Each past performance reference would be assigned one of four ratings: (1) very relevant; (2) relevant; (3) somewhat relevant; or (4) not relevant.² *Id.* at 112-113.

The quality of an offerors’ past performance would be used to assess the likelihood that an offeror would successfully perform the solicitation’s requirements here. *Id.* at 113. The agency would consider an offeror’s past performance references, PPQs received, and other data independently obtained by the government--which could include, but was not limited to, information in the past performance information retrieval system (PPIRS), the Federal Awardee Performance and Integrity Information system, or other databases. *Id.* at 112. Based on this information, the agency would assign one of five performance

¹ The U-Fix-It Program is intended to help facility managers perform minor maintenance and repair tasks that do not require special tools or technical expertise, such as changing lightbulbs and touching-up paint. RFP at 57-58. A non-inclusive list of typical areas of commercial materials to be provided through the program include: electrical, plumbing, heating, ventilation, air conditioning (HVAC), refrigeration, sheet metal, welding, pipe fitting, carpentry, pavement, controls and alarms, painting, hardware, liquid fuels, maintenance, power production, generators, water and waste treatment, pest control, and general construction. *Id.* at 57.

² A very relevant rating would be assigned to a past performance effort involving essentially the same scope, magnitude of effort, and complexity as the work sought under the solicitation. *Id.* at 112. A relevant rating would be assigned to an effort involving a similar scope, magnitude of effort, and complexity as the solicitation, while a somewhat relevant rating would be assigned to an effort with some of the scope, magnitude of effort, and complexity. *Id.* at 112-13.

confidence ratings: (1) substantial confidence; (2) satisfactory confidence; (3) limited confidence; (4) no confidence; or (5) unknown confidence.³ *Id.* at 113.

By the December 2 closing date, the agency received four proposals, including those of Noble and CCD. Contracting Officer's Statement (COS) at 6. Noble identified five contract references in its past performance proposal. AR, Tab 17, Source Selection Evaluation Board (SSEB) Report at 16. Three of the five references were for COCESS indefinite-delivery, indefinite-quantity (IDIQ) contracts that were rated by the agency as recent and very relevant. *Id.* at 16-17.

The fourth contract reference, which was not identified as a COCESS contract, was for the procurement of the full range of paint supplies and distribution at the Army Depot Storefront in Anniston, Alabama (Anniston contract). This contract performance was rated as recent and somewhat relevant. *Id.* at 16-17. A past performance questionnaire was submitted for this reference with an overall rating of exceptional; this was the only PPQ received by the agency for Noble. *Id.* at 17. The fifth contract reference, also not identified as a COCESS contract, was for work performed at the Navy's Industrial Supply Store at Hickham Air Force Base, Hawaii (Hawaii contract); this contract was rated as recent and relevant. *Id.* With respect to the Hawaii contract, Noble stocked the industrial supply storefront with a mix of products such as maintenance, repair, and operations (MRO), building, and industrial supplies; consolidated multiple orders in containers on the West Coast; scheduled different shipping lines; and distributed the products to customers throughout the Hawaiian Islands. *Id.* at 17. The agency considered the contract to be a COCESS-like requirement and rated it as relevant due to the similarities to the RFP. *Id.* at 18.

Additionally, the agency checked the PPIRS and Contractor Performance Assessment Reporting System (CPARS) databases and found 12 reports related to Noble: on six reports, Noble was rated overall very good, and on the six others, Noble was rated overall satisfactory. *Id.* at 17. Based on this information, the agency assigned Noble a satisfactory confidence rating, stating that it had a reasonable expectation that Noble would successfully perform the required effort. *Id.* at 18.

CCD also identified five contract references for COCESS IDIQ contracts; each was rated as recent and very relevant. *Id.* at 12-14. The agency received four PPQs for CCD's contract references, each with an exceptional rating. *Id.* Additionally, the agency found 16 PPIRS/CPARS reports related to CCD: on six of the reports, CCD was rated overall exceptional; on four, CCD was rated overall very good; and on six, CCD was rated overall satisfactory. *Id.* at 14. Based on this information, the agency

³ As relevant here, a substantial confidence rating would be assigned to a proposal with a recent and relevant performance record that gave the government a high expectation that the offeror would successfully perform the required effort, while a satisfactory confidence rating would be assigned to a proposal that gave the government a reasonable expectation that the offeror would successfully perform the required effort. *Id.*

assigned CCD's proposal a substantial confidence rating, stating that the government had a high expectation that CCD would successfully perform the required effort based on the magnitude of the Air Force COCESS contracts and the applicable CPARS ratings for those contracts. *Id.*

The agency's final ratings for these proposals were as follows:

	Price	Technical	Past Performance
CCD	\$1,138,794	Acceptable	Substantial Confidence
Noble	\$1,114,363	Acceptable	Satisfactory Confidence

AR, Tab 16, Source Selection Decision Document (SSDD) at 21; Tab 4, SSDD Addendum at 1.

The source selection authority (SSA), who was also the contracting officer, reviewed "all available documents pertaining to the acquisition," including evaluation briefing slides, the proposals, technical subfactor evaluation worksheets, consensus documentation, evaluation notices, evaluation reports, technical ratings, cost/price information, and other documentation. AR, Tab 16, SSDD at 1. Based on an extensive review of the documentation and consultation with the SSEB, the SSA determined that CCD's proposal offered the best overall value. *Id.*

On April 21, 2020, the agency notified Noble that award had been made to CCD. After timely requesting and receiving a debriefing, this protest followed.

DISCUSSION

The protester challenges the agency's evaluation of past performance, advancing two primary arguments. First, Noble contends that its performance confidence rating should have been higher. Second, Noble argues that the agency disparately evaluated its past performance and CCD's. For the reasons discussed below, we find no basis to sustain the protest.⁴

The evaluation of an offeror's past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. *Hanford Integrated Infrastructure Servs. Contractor, LLC*, B-418411 *et al.*, Apr. 22, 2020, 2020 CPD ¶ 159 at 17. In addition, the assessment of the relative merit of an offeror's past performance information is generally within the broad discretion of the contracting agency. *DynCorp Int'l LLC*, B-414647.2, B-414647.3, Nov. 1, 2017, 2017 CPD ¶ 342 at 9. The evaluation of past performance, by its very nature, is subjective; an offeror's disagreement with the agency's evaluation

⁴ Noble also raises other collateral arguments. Although not addressed in this decision, we have considered the protester's various arguments and conclude that none provide a basis to sustain the protest.

judgments, without more, does not demonstrate that those judgments are unreasonable. *Id.*; *ProSecure LLC*, B-418397; B-418397.2, Apr. 15, 2020, 2020 CPD ¶ 156 at 6.

Noble's Past Performance

The protester raises various arguments asserting that if the agency had properly evaluated its proposal, it would have received a substantial confidence rating. Protest at 15-21. We have reviewed these challenges and find no basis to sustain the protest. We discuss two examples below.

For example, Noble contends that it should have been assessed a higher confidence rating because its Hawaii contract reference warranted a rating of very relevant.⁵ *Id.* at 15. Specifically, Noble contends that the Hawaii contract “operates exactly the same” as the requirement here. *Id.* at 16.

In response, the agency explains that the SSEB concluded that only some of the scope, magnitude of effort, and complexity of Noble's Hawaii contract matched the effort here. MOL at 13 (citing AR, Tab 17, SSEB Report at 17). In this regard, the agency argues that distributing construction materials throughout the Hawaiian Islands is not exactly the same as delivering materials to civil engineering projects on a base and that keeping supplies stocked at a remote and isolated installation in the far southwest corner of Oklahoma presents different logistical challenges than the Hawaii contract. MOL at 13. Thus, according to the agency, the evaluation reasonably shows that the Hawaii contract did not warrant a very relevant rating.

The RFP stated that relevant past performance required performance of COCESS contracts similar in scope, magnitude (dollar value), and complexity to the RFP requirements. RFP at 112. The RFP also stated that references that were essentially the same as these three areas would be rated very relevant, while references that were similar to these areas would be rated relevant. *Id.* at 112-114.

We find no merit to the protester's assertions that the agency should have assigned a higher relevancy rating to the Hawaii contract. While the protester suggests that the Hawaii contract “operates exactly the same” as the work contemplated by the RFP, the record does not support these assertions. See Protest at 17; MOL at 13 (citing COS at 13). Instead, the contemporaneous record shows that the agency reasonably

⁵ Initially, Noble also challenged the relevancy rating assessed for the Anniston contract. *Id.* at 17. In the agency's report, the agency substantively responded to this argument. Memorandum of Law (MOL) at 14. In its comments on the agency report, however, the protester failed to rebut or otherwise substantively address the agency's response regarding the Anniston contract. Accordingly, we find that these arguments are abandoned, and do not address them further. *Torres-Advanced Enter. Sols.*, B-412755.2, June 7, 2016, 2016 CPD ¶ 167 at 19 n.20.

concluded that the Hawaii contract's "overall scope [was] similar to a COCESS requirement due to the supplies and stock required" and involved some of the magnitude and complexity of the solicited requirement. AR, Tab 17, SSEB at 17; Tab 16, SSDD at 16.

Although the record demonstrates that the agency found the Hawaii contract to be similar to the RFP requirements, the agency nevertheless concluded that the work was not essentially the same as a COCESS contract, and therefore assigned a rating of relevant, rather than very relevant.⁶ *Id.*; *Id.* To the extent the protester contends that the agency erred by not concluding that stocking the Hawaii industrial supply store front with MRO, building, and industrial supplies provided essentially the same types of materials required under the RFP, *i.e.*, HVAC, electrical, plumbing supplies, and lawn and garden, we disagree. Rather, we find such an argument to constitute disagreement with the agency's evaluation that, without more, fails to show that the agency's evaluation was unreasonable. *DynCorp Int'l LLC, supra* at 9. In our view, the agency's contemporaneous evaluation reasonably assessed a relevant rating to the Hawaii contract reference and provides no basis to sustain the protest.⁷

We next address the protester's contention that it would have received a substantial confidence rating if the agency had evaluated the underlying performance assessments in the CPARS reports, rather than merely relying on the adjectival ratings. Protest at 18-22. In this regard, the protester contends that the underlying narrative supported a higher expectation of performance than the assigned rating represented. *Id.*

In response, the agency maintains that in reaching its confidence rating, it reasonably relied on the judgments provided by individuals who had firsthand knowledge of Noble's performance without further interpreting the information these individuals provided. MOL at 16; COS at 16.

⁶ In the debriefing provided to Noble and the agency's memorandum of law filed with our Office, the agency also represents that the Hawaii contract was rated as relevant (rather than very relevant) because the agency viewed the magnitude of the Hawaii contract reference as six times greater than the magnitude of the effort here. MOL at 3; AR, Tab 22, Debriefing at 25. The agency's assertions in this regard are not borne out by the contemporaneous record. Nonetheless, our conclusions here are based on the agency's contemporaneous representations that the Hawaii contract was relevant (but not very relevant) because the scope was similar, and involved some of the magnitude and complexity as the solicited requirement. AR, Tab 17, SSEB at 17; Tab 16, SSDD at 16.

⁷ Based on our conclusion that the agency did not downgrade Noble's Hawaii contract based on magnitude, we find no merit to the protester's contention that the agency engaged in unequal treatment by not downgrading references from CCD that also exceeded the estimated value. See Comments at 14.

Based on our review of the record, we find that the protester's arguments do not establish that the agency's evaluation was unreasonable. As required by the RFP, the agency considered the recency, relevance, and quality of Noble's past performance references, PPQs, and information obtained from PPIRS/CPARS. At the conclusion of this review, the agency assigned the protester a satisfactory confidence rating. RFP at 112; AR, Tab 17, SSEB at 16-18. Contrary to the protester's assertions, the record shows that the agency based its performance confidence rating on the entirety of Noble's past performance information--*i.e.*, the three very relevant references for COCESS requirements; one relevant reference for a COCESS-like requirement; one somewhat relevant reference for which Noble received a PPQ rating of exceptional; and the judgments, including narratives and ratings, provided in Noble's CPARS reports. AR, Tab 17, SSEB at 16-18; Supp. COS at 5.⁸ In this regard, the agency considered Noble's CPARS ratings and narratives as one element of the agency's past performance evaluation and concluded that the totality of Noble's record warranted a satisfactory confidence rating. On these facts, we find no basis to conclude that the agency failed to consider the entirety of Noble's CPARS reports and find the agency's assignment of a satisfactory confidence rating unobjectionable.⁹

⁸ The SSA represents that she reviewed "all available documents" associated with the acquisition. AR, Tab 16, SSDD at 1. In this regard, we accept the contracting officer's supplemental statement that her review included both CPARS quality ratings and narratives. In our view, the statement provides a detailed rationale that is credible and consistent with contemporaneous conclusions rather than a *post-hoc* rationalization. Supp. COS at 5; See, e.g., *GloTech, Inc.*, B-416967, Jan. 15, 2019, 2019 CPD ¶ 59 at 5 n.10 (concluding that a declaration that identified additional details on an agency's previous findings and conclusions was a post-protest explanation that provided a detailed rationale for contemporaneous conclusions).

⁹ We also find no merit to the protester's allegations that the agency improperly "averaged" CPARS ratings. Protest at 21-22. The record shows that the agency viewed the assessment areas in the CPARS reports as equal and compiled the ratings for each assessment area to reach an "overall" average rating per report based on the consistency of assessment area ratings. See, e.g., AR, Tab 14, Noble Proposal at 107; Supp. COS at 8. For example, a report with ratings of very good for quality and schedule, and ratings of satisfactory for cost and management, was assigned an overall rating of very good by the agency. AR, Tab 14, Noble Proposal at 107.

To the extent the protester asserts that the agency's averaging misrepresented CCD's past performance record by omitting a marginal rating for quality in one of CCD's CPARS reports, Comments at 2, the record shows that the agency was aware of the marginal rating and chose to add the only two ratings completed for this CPARS report--marginal for quality and satisfactory for management--into an overall satisfactory rating. AR, Tab 13 CCD Proposal at 120; Supp. COS at 6. Given that an agency is afforded broad discretion in evaluating the merits of an offeror's past performance, the protester's assertions do not show, and we find no basis to conclude, that this averaging or compiling of ratings was inaccurate, unreasonable, or violated procurement law or

Unequal Evaluation

Finally, we find no merit to the protester's argument that the agency's evaluation was unequal because "nothing in [CCD's] past performance" information indicates a greater chance of successful performance than Noble's information. Protest at 22. Although an agency's evaluation of past performance is a matter of agency discretion, agencies may not engage in disparate treatment of offerors in the evaluation of past performance. *Chenega Fed. Sys., LLC*, B-417037.2, Sept. 6, 2019, 2019 CPD ¶ 314 at 9.

Here, differences in the evaluation results reasonably reflected the differences in Noble's and CCD's past performance information. CCD identified five very relevant contract references, four of which had PPQ ratings of exceptional, and PPIRS/CPARS reports that were rated as overall exceptional, very good, and satisfactory. In contrast, Noble identified three very relevant, one relevant, and one somewhat relevant reference, with one PPQ rating of exceptional, and PPIRS/CPARS reports that were rated as overall very good and satisfactory. The record shows the agency simply concluded that CCD's past performance information provided more of a basis for a substantial confidence rating than Noble's. In this regard, Noble's assertions--*i.e.*, that "nothing in [CCD's] past performance" information supports the agency's confidence rating--are unpersuasive and unsupported by the record. Accordingly, we find no disparate treatment in the agency's evaluation.

As illustrated by the examples above, we have no basis to find that the past performance evaluation was unreasonable or the result of unequal treatment.

The protest is denied.

Thomas H. Armstrong
General Counsel

regulation. See *Palmetto GBA, LLC; CGS Adm'r, LLC*, B-407668 *et al.*, Jan. 18, 2013, 2013 CPD ¶ 53 at 8.