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Decision

Matter of: Amaze Technologies, LLC

File: B-418949; B-418949.2; B-418949.3

Date: October 16, 2020

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Thomas Craig, Emily Spence, Esq., Marlana Ewald, FH+H, PLLC, for the intervenor.
Leigh Ann Bunetta, Esq., Federal Acquisition Service, for the agency.
Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Challenge to the agency's evaluation of experience and past performance of the awardee, a joint venture, is denied where the evaluation was consistent with the terms of the solicitation and applicable small business regulations.

DECISION

Amaze Technologies, LLC, a small business joint venture of Fairfax, Virginia, protests the issuance of a task order to Karthik Consulting, LLC, of Reston, Virginia, under request for task order proposals (RTOP) No. ID08200019, issued by the General Services Administration (GSA) for support services for the Air Force's Space and Missile Systems Center. Amaze asserts that GSA unreasonably evaluated its offer under the experience and past performance factors, and treated it disparately in the evaluation. Amaze also complains that the contracting officer improperly changed the rating assigned by the technical evaluation team (TET) to Amaze's proposal under the experience factor without justification.

We deny the protest.

BACKGROUND

GSA issued the solicitation for task order proposals to provide defensive cyber operations for space agile release teams to the Air Force. Agency Report (AR), Exh. 1, RTOP at 19.¹ Specifically, the Air Force was seeking a broad range of acquisition

¹ Citations to the record are to the numbered pages provided by the agency in its report.

support capabilities to execute effective and responsive integrated program management of space-related research, development, production, and lifecycle acquisition activities for the Air Force’s Space and Missile Systems Center. *Id.* at 20.

The competition was limited to firms holding a One Acquisition Solution for Integrated Services (OASIS) Small Business Pool 1 indefinite-delivery, indefinite-quantity (IDIQ) contract, which are multiple award contracts awarded by GSA to small business concerns. *Id.* at 1. The procurement was conducted in accordance with the terms and conditions of the OASIS contract, and Federal Acquisition Regulation (FAR) 16.505. *Id.* at 16. The solicitation provided that the task order would be issued on a best-value tradeoff basis considering the following factors: relevant experience, past performance, and price. *Id.* For purposes of award, the relevant experience factor was more important than the past performance factor, and the two non-price factors when combined, were significantly more important than price. *Id.*

GSA received ten proposals, including one from Karthik and one from Amaze. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 4. Amaze is a joint venture comprised of AttainX, Inc., a small business protégé and the managing member of the joint venture, and 22nd Century Technologies, Inc., the large business mentor and team member. See AR, Exh. 4, Amaze Technical Proposal at 2; Supp. Comments at 6. Following the evaluation of proposals by the TET, and review of the evaluation by the contracting officer who was also the source selection authority, Amaze and Karthik were rated as follows:²

	AMAZE	KARTHIK
Relevant Experience	Marginal ³	Satisfactory
Past Performance	Satisfactory	Excellent
Price	\$ 13,152,986	\$ 15,707,866

AR, Exh. 10, Award Decision at 3, 9, 25.

² For the relevant experience and past performance factors, the possible ratings were excellent, good, satisfactory, marginal, and unsatisfactory. AR, Exh. 10, Award Decision at 3, 4-5.

³ The TET initially rated Amaze satisfactory for relevant experience. AR, Exh. 9, TET Report at 1. As discussed below, the contracting officer changed the rating to marginal. AR, Exh. 10, Award Decision at 8.

The source selection authority, determined that Karthik's proposal offered the best value to the government, and issued the task order to Karthik. *Id.* at 30. Following a debriefing, Amaze submitted its protest to our Office.⁴

DISCUSSION

Amaze protests that the contracting officer unreasonably lowered the satisfactory rating that the TET assigned to its proposal under the experience factor from satisfactory to marginal. Comments & 2nd Supp. Protest at 12-13. Amaze also asserts that GSA unreasonably evaluated its relevant experience and past performance, and treated it disparately. Protest at 8-14; Comments & 2nd Supp. Protest at 2-11.

As noted, this task order competition was conducted among OASIS contract holders pursuant to the provisions of FAR subpart 16.5. In reviewing protests of awards in task order competitions, we do not reevaluate quotations but examine the record to determine whether the evaluations and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *DynCorp Int'l LLC*, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7. It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors or vendors equally and evaluate their proposals or quotations evenhandedly against the solicitation's requirements and evaluation criteria. *Sumaria Sys., Inc.; COLSA Corp.*, B-412961, B-412961.2, July 21, 2016, 2016 CPD ¶ 188 at 10. A protester's disagreement with the agency's judgment regarding the evaluation of proposals or quotations, without more, is not sufficient to establish that the agency acted unreasonably. *Imagine One Tech. & Mgmt., Ltd.*, B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 4-5.

We have reviewed all of the issues presented by Amaze and find that none provides a basis to sustain the protest. We discuss several examples below.

Experience and Past Performance

With respect to experience, offerors were required to submit at least one, but no more than three, recent and relevant examples of the offeror's experience as a prime contractor or subcontractor performing a contract awarded by the federal government, or performing a task order that was issued against a contract that was awarded by the federal government. AR, Exh. 6, RTOP amend. 3 at 17. An experience example was recent if it was performed within 5 years before the date the RFP was issued, and was performed for at least one year. *Id.* An experience example was relevant if it demonstrated experience in all of the following areas: (1) providing and maintaining a staff of 14 people or more, all of whom have at least a bachelor's degree and 5 or more

⁴ This protest is within our jurisdiction to hear protests related to task and delivery orders placed under civilian agency multiple-award IDIQ contracts valued in excess of \$10 million. 41 U.S.C. § 4106(f)(1)(B).

years of experience, and holding a minimum security clearance level of secret or equivalent; (2) [development, security, operations (DevSecOps)], [Scaled Agile Framework (SAFe)], and Agile software development activities; and (3) a total contract/task value of approximately \$3 million or more per year.⁵ *Id.* The solicitation provided that offerors that submitted more than one example that met the definition of relevant might be rated more favorably. *Id.* at 18. Similarly, offerors that submitted more than one example that met the definition of relevant and demonstrated additional experience might be rated more favorably. *Id.*

With respect to past performance, the agency considered each example submitted in response to the relevant experience factor that met the definition of relevant to assess the offeror's likelihood of successful performance. *Id.* For each relevant example, the agency reviewed a completed contractor performance assessment reporting system (CPARS) report submitted by the contractor, or information provided to the government in a past performance questionnaire. *Id.* The solicitation advised offerors that the agency might also consider past performance information that it received on its own from other sources. *Id.*

Amaze submitted three examples to demonstrate its relevant experience. AR, Exh. 4, Amaze Technical Proposal at 4, 9, 13. The three examples, all of which involved work that had been awarded to 22nd Century (the large business joint venture partner) were contracts in support of: (1) Facilities Services Branch (FSB) Information Technology Services; (2) U.S. Army Recruiting Command Information Technology Support Services; and (3) Defense Logistics Agency Distribution Standard Systems. *Id.*

The TET concluded that the FSB example was relevant as defined by the solicitation. AR, Exh. 7, TET Report at 2. However, while the other two examples met the threshold for value, they did not demonstrate experience in all required areas. *Id.* at 3, 4. The TET therefore concluded that AMAZE submitted one recent and relevant example and assigned AMAZE a rating of satisfactory for experience. *Id.* at 4.

With respect to past performance, the TET reviewed the CPARS for the relevant FSB contract which rated 22nd Century exceptional. *Id.* at 5. The TET also considered that the CPARS for the two non-relevant examples raised concerns with personnel turnover. *Id.* Based on the fact that AMAZE submitted only one recent and relevant example, and there was concern over potential staffing issues, the TET rated 22nd Century satisfactory for past performance. *Id.*

The contracting officer reviewed the TET's evaluation results, and then conducted his own evaluation of Amaze's experience and past performance. AR, Exh. 10, Award Decision at 6, 8. The contracting officer concluded that the FSB example Amaze submitted to demonstrate its experience was relevant, but that neither of the other two examples met the definition of relevant. *Id.* at 8. After checking the CPARS and finding

⁵ The solicitation also referred to a relevant example as a "similar contract/task order." See AR, Exh. 6, RTOP amend. 3 at 17-18.

that Amaze, as a joint venture, had no relevant experience, the contracting officer decided to assess the relevant experience of AttainX and 22nd Century, the members of the joint venture. *Id.* The contracting officer concluded that the FSB example demonstrated that 22nd Century had relevant experience, but that AttainX, the small business and managing member, did not have any relevant experience. *Id.* The contracting officer therefore assigned AttainX an experience rating of unsatisfactory. *Id.* Based on the lack of experience for AttainX, and the submission of one recent and relevant experience example for 22nd Century, the contracting officer assigned the joint venture (Amaze) a rating of marginal for relevant experience. *Id.*

With respect to past performance, the contracting officer also considered the past performance of the individual joint venture members, since the joint venture itself did not have any relevant past performance. *Id.* at 9. The contracting officer assigned AttainX a rating of neutral, since it did not have any past performance examples. *Id.* The contracting officer further considered that 22nd Century submitted one relevant past performance example that was rated excellent. *Id.* The contracting officer combined the neutral and excellent ratings, and assigned Amaze an overall past performance rating of satisfactory.⁶ *Id.*

Amaze protests that the agency unreasonably evaluated its proposal under the relevant experience and past performance evaluation factors. First, Amaze complains that the contracting officer improperly changed the satisfactory rating that the TET assigned to its proposal under the relevant experience factor to marginal without providing any justification. Comments & 2nd Supp. Protest at 12-13. According to Amaze, the contracting officer simply reached a different result in the evaluation without explaining why the TET assigned the wrong rating.⁷ *Id.*

⁶ In the tradeoff analysis, the contracting officer discussed further the past performance of Amaze for the two examples found not relevant. AR, Exh. 10, Award Decision at 29. Specifically, the contracting officer stated that in the CPARS, the government identified the contractor's increased turnover rate, and noted that the "quality/skill set of new hires is not at the level it was in the past." *Id.* In another CPARS, the government stated that the "contractors had a high turnover in contract personnel, at times it caused the government to pick up in the lack of support." *Id.* Overall, the contracting officer found that the "issue of turnover noted in the two projects identifies a concerning trend and does not instill confidence in Amaze's experience to provide and maintain the necessary staff for this requirement." *Id.*

⁷ Amaze also asserts that, as demonstrated by the CPARS the protester submitted, AttainX was a key subcontractor to 22nd Century on the FSB contract. Supp. Protest at 2-3; Comments & 2nd Supp. Protest at 10. Amaze complains that the agency failed to consider this information in evaluating Amaze's relevant experience. *Id.* Our review of the record confirms that the CPARS for the FSB example lists AttainX as a key subcontractor performing [DELETED] of the effort. AR, Exh. 4, Amaze Technical Proposal at 18. Nonetheless, there is nothing in the CPARS report, or anywhere else in

Source selection officials are not bound by the evaluation judgments of lower level evaluators; they may come to their own reasonable evaluation conclusions. *TruLogic, Inc.*, B-297252.3, Jan. 30, 2006, 2006 CPD ¶ 29 at 8. When a source selection official disagrees with the ratings of lower-level evaluators, the independent judgement must be reasonable, consistent with the provisions of the solicitation, and adequately documented. *CSR, Inc.*, B-413973, B-413973.2, Jan. 13, 2017, 2017 CPD ¶ 64 at 9. Official. Here, while the contracting officer did not specifically state why he disagreed with the TET, it is clear from his discussion in the source selection decision that he did not believe that the TET properly considered the experience of the joint venture. Specifically, as discussed above, because Amaze, the joint venture, did not have any independent relevant experience, the contracting officer determined it was necessary to evaluate the experience of both joint venture partners to evaluate Amaze. AR, Exh. 10, Award Decision at 8, 9.

As discussed above, in evaluating Amaze's experience, the contracting officer assigned AttainX a rating of unsatisfactory because it did not have any experience, and assigned Amaze a rating of marginal based on AttainX's lack of experience and 22nd Century's provision of one relevant project. Given these factors, we find that the source selection decision reasonably documented why the contracting officer disagreed with the rating assigned by the TET.⁸ See *CW Government Travel, Inc.*, B-416091, B-416091.2, Jun. 13, 2018, 2018 CPD ¶ 225 at 7.

Amaze next protests that GSA improperly evaluated the experience and past performance of the joint venture. Protest at 8-10; Comments & 2nd Supp. Protest at 6-9. According to the protester, the agency was required to consider the experience and past performance of each member of the joint venture as the experience and past performance of the joint venture itself. That is, in Amaze's view, the experience of each member separately is the experience of the joint venture, especially such as here, where a mentor-protégé joint venture is involved. The protester therefore reasons that

Amaze's technical proposal, which describes what tasks AttainX was responsible for performing in this effort. Consequently, even if Amaze intended this to be an experience example for AttainX, the agency would be unable to determine if AttainX's performance met the definition of relevant experience.

⁸Amaze complains that in the award decision the contracting officer wrongly indicated that the TET rated Amaze marginal, rather than satisfactory, for relevant experience. Comments & 2nd Supp. Protest at 12-13. This error did not result in competitive prejudice to Amaze since the contracting officer performed an independent evaluation of Amaze's experience, and based the award decision on that evaluation. Our Office will not sustain a protest, even where there is an error, where the protester does not demonstrate competitive prejudice. See *Interfor US, Inc.*, B-410622, Dec. 30, 2014, 2015 CPD ¶ 19 at 7.

the agency was required to rely solely on the experience and past performance of 22nd Century to evaluate the experience and past performance of Amaze, the joint venture, without considering that the joint venture Amaze, or AttainX, the small business member and managing partner of the joint venture, lacked any relevant experience or past performance. Amaze argues that because it submitted one recent and relevant project, which was all that the solicitation required, its proposal should have received the highest ratings for experience and past performance. We disagree.

The Small Business Act requires agencies under certain circumstances to evaluate the experience and past performance of the individual partners of a joint venture, and to attribute those evaluations to the joint venture itself as follows:

When evaluating an offer of a joint venture of small business concerns for any multiple award contract above the substantial bundling threshold of the Federal agency, if the joint venture does not demonstrate sufficient capabilities or past performance to be considered for award of a contract opportunity, the head of the agency shall consider the capabilities and past performance of each member of the joint venture as the capabilities and past performance of the joint venture.

15 U.S.C. § 644(q)(1)(C). The Small Business Administration (SBA) promulgated regulations implementing this statutory provision, including the following:

When evaluating the past performance and experience of an entity submitting an offer for a contract set aside or reserved for small business[es] as a joint venture established pursuant to this section, a procuring activity must consider work done individually by each partner to 9 which the joint venture as well as any work done by the joint venture itself previously.

13 C.F.R. § 125.8(e); see also 13 C.F.R. § 124.513(f). The SBA's notice explained that the current version of the regulations were proposed "in response to agencies that were considering only the past performance of a joint venture entity, and not considering the past performance of the very entities that created the joint venture entity." 81 Fed. Reg. 48568 (July 25, 2016). According to the notice, SBA concluded that if each partner to a joint venture has individually performed on one or more similar contracts previously, the joint venture should be credited with the experience or past performance of its individual partners.⁹ See *id.*

GAO has previously sought SBA's views about how this provision should be applied. In response, the SBA advised our Office that in evaluating the experience of a joint venture "neither SBA regulations nor the Small Business Act specifically address the

⁹ On October 16, the SBA issued an amendment to this regulation which becomes effective on November 16. Consolidation of Mentor-Protégé Programs and Other Government Contracting Amendments, 86 Fed. Reg. 66146, 66194 (Oct. 16, 2020). Therefore, the new language is not applicable to this analysis.

relative consideration that an agency must give to the past performance of a large business mentor in a mentor-protégé joint venture, as compared to a small business protégé.” See *Ekagra Partners, LLC*, B-408685.18, Feb. 15, 2019, 2019 CPD ¶ 83 at 6 (citing SBA Comments, Feb. 1, 2019, at 1). Thus, while the SBA regulations require agencies to consider the experience and past performance of both the mentor and protégé members of the joint venture, the regulations do not mandate a specific degree of consideration for the mentor or the protégé firm.

We thus conclude that regardless of the ratings that were assigned in evaluating the experience and past performance of Amaze, the agency properly considered the experience and past performance of both AttainX and 22nd Century, as required by SBA’s regulation. Further, the solicitation did not indicate that any specific weight would be assigned to the experience and past performance of the joint venture members. Accordingly, we have no basis to challenge the weight the agency assigned to each of the joint venture members. Here, Amaze submitted one recent and relevant project example for 22nd Century, and no relevant projects for AttainX, the managing member. In addition, Amaze provided three CPARS for 22nd Century, two of which expressed concern regarding staffing turnover. Based on these facts, we find the agency reasonably evaluated Amaze’s experience and past performance.¹⁰ See *22nd Century Techs, Inc.*, B-417478.3, B-417478.4, Feb. 24, 2020, 2020 CPD ¶ 74 at 12-14.

Disparate Treatment

In its protest, Amaze asserted that in evaluating relevant experience, the agency improperly failed to apply the same standard to Amaze and Karthik. Amaze argued that

¹⁰ Amaze points out that in our decision in *Enola-Caddell JV*, B-292387.2, B-292387.4, Sept. 12, 2003, 2003 CPD ¶ 168, the protester argued that the agency improperly downgraded its technical evaluation rating based on the lack of experience and past performance of its protégé, even though its mentor had a rating of excellent. Comments & 2nd Supp. Protest at 7-8. Amaze notes that in that decision, our Office requested SBA’s views and SBA stated that while its regulations provide no guidance on the technical evaluation of joint ventures between mentor-protégé participants by procuring agencies, it appeared contrary to both the intent of the 8(a) business development mentor-protégé program, and FAR 15.305(a)(2)(iv), for a procuring agency to downgrade a proposal based on the lack of experience/past performance of a protégé. *Id.* at 7 (quoting *Enola-Caddell JV*, *supra* at 7-8 n.7).

In SBA’s view, if a mentor had excellent experience/past performance and is legally obligated to perform the entire requirement, the joint venture itself should receive an excellent technical rating in those areas. *Enola-Caddell JV*, *supra* at 7-8 n.7. Since then, SBA has advised our Office that neither SBA’s regulations, nor the Small Business Act, specifically address the relative consideration that an agency must give to the past performance of a large business mentor in a mentor-protégé joint venture, as compared to a small business protégé. See *Ekagra Partners, LLC*, *supra* at 5 (citing SBA Comments, Feb. 1, 2019 at 1).

Karthik was rated satisfactory under the experience factor even though it had only one experience example, which Amaze contends did not meet the definition of relevant. Protest at 12. In contrast, according to Amaze, it submitted one relevant experience example, yet it received a rating of marginal. In its report, the agency acknowledged that Karthik submitted only one experience example, but explained why it was relevant. COS/MOL at 11 (*quoting* AR, Exh. 8, Karthik Technical Evaluation at 11). In its comments, Amaze did not respond to the agency's explanation. Accordingly, we consider this basis of protest abandoned and do not consider it further. See *Jacobs Tech, Inc.*, B-413389, B-418389.2, Oct. 18, 2016, 2016 CPD ¶ 312 at 5.

In its comments, Amaze argues that the agency treated Amaze and Karthik disparately in the past performance evaluation because while they each submitted one recent and relevant example, Karthik was rated excellent, and Amaze only satisfactory. Comments & 2nd Supp. Protest at 10. We disagree that the agency engaged in disparate treatment. The agency's past performance evaluation for Karthik explained that its CPARS for the one relevant project was rated exceptional and very good. AR, Exh. 10, Award Decision at 25. In addition, in the quality section of the report, the CPARS stated that Karthik and its subcontractors exceeded the requirements of the contract to the benefit of the government and there was no "gap or drop in support" with respect to its hiring. *Id.* In the scheduling section of the CPARS, it stated that the team operated in such an efficient manner that there was never a need for government involvement. *Id.* The agency assigned an overall rating of excellent for Karthik's past performance after "considering the entirety of the information evaluated by the Government." *Id.* As discussed above, however, Amaze was properly evaluated as satisfactory for past performance given the issues reported relating to staffing issues.

Failure to Adhere to the Evaluation Criteria in the Solicitation

Finally, Amaze argues that the agency failed to adhere to the evaluation criteria in the solicitation. As discussed above, the solicitation required offerors to provide at least one example of recent and relevant experience. AR, Exh. 6, RTOP amend. 3 at 17. According to Amaze, the agency failed to follow the evaluation criteria because only one experience example was required, but the agency would assign a rating higher than satisfactory only where the offeror provided more than one relevant experience example. Comments & 2nd Supp. Protest at 14. Amaze argues that because it submitted the required one relevant example, it should have received the highest rating of excellent for experience. Amaze further asserts that had it known that the agency would assign a rating of good or excellent only where the offeror provided more than one relevant experience example, it would have submitted more relevant experience examples. *Id.*

We disagree that the agency ignored the solicitation's evaluation criteria, or that submitting one relevant experience example required the agency to award the highest rating. One relevant experience example was the minimum required. That did not mean, however, that an offeror that submitted one relevant experience example would receive the highest rating. To the contrary, the solicitation specifically provided that offerors that submitted more than one experience example that meets the definition of

recent and relevant could be rated more favorably.¹¹ AR, Exh. 6, RTOP, amend. 3 at 18.

The protest is denied.

Thomas H. Armstrong
General Counsel

¹¹ Moreover, we see no basis to conclude that Amaze suffered competitive prejudice. Amaze asserts that if it had known that more than one project was required to get a rating higher than satisfactory it would have identified more relevant experience. However, the solicitation specifically identified what would be considered relevant experience. Amaze submitted three experience examples, the maximum number of examples permitted. In our view, if Amaze possessed more relevant experience, it should have provided it in its proposal.