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Decision

Matter of: Posterity Arora JV, LLC

File: B-415760.5

Date: November 2, 2020

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DIGEST

1. Protest alleging that agency's evaluation approach converted a best-value tradeoff procurement into a lowest-price, technically acceptable competition is denied where the record shows that the agency's evaluation was consistent with the solicitation, meaningfully considered the relative merits of the proposals, and resulted in a reasonable best-value tradeoff.
2. Protest alleging that agency's evaluation of proposals applied an unstated evaluation criterion and deviated from the terms of the solicitation is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation

DECISION

Posterity Arora JV, LLC (Posterity), of Rockville, Maryland, protests the award of a contract to WiseStaff, LLC, of Houston, Texas, under request for proposals (RFP) No. W81K04-17-R-0004, issued by the Department of the Army, for licensed vocational nurses (LVNs) and certified nursing assistants (CNAs) for the San Antonio Military Health System. Posterity protests that the agency's evaluation was unreasonable and improperly converted a best-value tradeoff procurement into a lowest-price, technically acceptable (LPTA) competition; applied an unstated evaluation criterion; and deviated from the solicitation terms.

We deny the protest.

BACKGROUND

The San Antonio Military Health System is comprised of the San Antonio Military Medical Center and outlying clinics in the San Antonio area. Agency Report (AR), Tab 11, RFP at 215.¹ The agency issued this RFP as a set-aside for service-disabled veteran-owned small businesses, seeking proposals to provide LVN and CNA nursing services for the San Antonio Military Health System. *Id.*

The RFP provided for award of a single indefinite-delivery, indefinite-quantity (IDIQ) contract on a best-value tradeoff basis considering the following factors: technical quality, performance risk (past and present performance), and price. AR, Tab 11, RFP at 209-213. The technical quality factor had three subfactors: quality control plan, management capabilities, and recruitment and retention. *Id.* at 209-210. The technical quality factor was equal in importance to the performance risk factor, and the technical quality subfactors were all equally important. *Id.* at 208. When combined, the technical quality and performance risk factors were significantly more important than the price factor. *Id.*

As relevant to this protest, under the performance risk factor, offerors were to provide documentation that illustrated their performance on past or current contracts. *Id.* at 197. In particular, the RFP instructed offerors to provide no more than three “performance assessments on their current or past [United States government] or commercial contracts for a single task order, multiple contracts or a combination of task orders to meet the definition of relevancy.” RFP at 197. For each referenced contract, offerors had to provide a statement of relevancy, request the completion of performance risk assessment questionnaires (PRAQs) by a person who had knowledge of the offeror’s performance on the prior contract, and provide a list of the people to whom the PRAQs were provided. *Id.* at 197-198.

The RFP explained that offerors could submit past and present performance information regarding the offeror’s predecessor companies, key personnel with relevant experience, or major subcontractors. *Id.* at 211. Past and present performance information that came from key personnel or major subcontractors would be treated the same as a prime contractor’s performance information. *Id.* In addition, the RFP informed offerors that the agency would “seek recent and relevant performance information from references provided by the offeror and by data independently obtained from other [g]overnment and commercial sources or from any source deemed appropriate.” *Id.* at 211.

¹ The agency report included a consolidated version of the RFP in a single PDF file. The file did not contain page numbers so the citations here are to the page numbers of the PDF.

Each submitted performance assessment would be assigned a relevancy rating of very relevant, relevant, somewhat relevant, or not relevant.² *Id.* at 211-212. The relevancy rating reflected “how relevant a recent or past effort accomplished by the offeror is to the effort to be acquired through the source selection.” *Id.* at 211. The RFP stated that “[c]ommon aspects of relevancy include similarity of service/support, complexity, dollar value, contract type, and degree of subcontract/teaming.” *Id.* After evaluating the performance assessments for relevancy, the agency would assign an overall performance confidence rating to the proposal.³ *Id.* at 212.

The agency received proposals from thirteen offerors; six were included in the competitive range. Contracting Officer’s Statement at 3. The proposals from Posterity and WiseStaff received the following ratings:

Factors/Subfactors	Posterity	WiseStaff
Technical Quality	Good	Acceptable
Quality Control Plan	Good	Acceptable
Management Capability	Acceptable	Acceptable
Recruitment and Retention	Good	Acceptable
Performance Risk	Satisfactory Confidence	Substantial Confidence
Price	\$119,899,096.66	\$118,081,540.30

AR, Tab 56, Source Selection Decision Document (SSDD) at 3-4. The agency assessed to Posterity’s proposal two strengths under the quality control plan subfactor, one strength under the recruitment and retention subfactor, and no weaknesses. *Id.* at 5. WiseStaff’s proposal was the lowest priced of all offers and was assessed one strength under the quality control plan subfactor and no weaknesses. *Id.* The agency found that despite the strengths assessed to Posterity’s proposal under the quality control plan and recruitment and retention subfactors, “there is nothing unique about their proposal as to justify the . . . price premium[.]” *Id.* at 10. Moreover, the agency found that the \$1.8 million price difference between Posterity and WiseStaff was not justified where WiseStaff’s strength was the same as one of the strengths assessed to Posterity under the quality control subfactor, and where WiseStaff received the better

² The RFP defined each rating as follows: a very relevant rating was a past performance effort that “must have involved providing 100 or more LVNs and CNAs on a single contract (or single task order (TO)) or multiple contracts (or multiple TOs)”; a relevant rating was for an effort where “[t]he number of healthcare providers (e.g., registered nurses, physicians, ancillary support, etc.) provided must have been at least 100 on a single contract (or single TO) or multiple contracts (or multiple TOs)”; and a somewhat relevant rating was the same as a relevant rating, except the number of healthcare providers provided by the offeror had to be at least 25 on a single or multiple contracts or TOs. RFP at 212. A not relevant rating was for performance that failed to meet any of the three other relevancy categories. *Id.*

³ The performance confidence ratings were substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence. RFP at 212.

performance risk rating of substantial confidence. *Id.* The agency also found that while other offerors were assessed more strengths than WiseStaff, the additional strengths did not justify paying a price premium. *Id.* at 13. Accordingly, the agency concluded that WiseStaff offered the best value to the government, reasoning that “where a lower-priced offeror demonstrates that the requirement may be met with an acceptable performance confidence[,] then any price premium must be justified,” and noting that none of the other offerors’ proposals justified its associated price premium. *Id.*

After receiving a required debriefing, Posterity protested the agency’s award decision to our Office.

DISCUSSION

Posterity argues that the agency’s evaluation approach was unreasonable because it effectively converted the basis for award from a best-value tradeoff into an LPTA competition. Posterity also asserts that under the performance risk factor, the agency applied an unstated evaluation criterion to Posterity’s proposal, and deviated from the solicitation terms when evaluating WiseStaff’s proposal.⁴ For the reasons discussed below, we deny the protest.

Conversion from Best-Value Tradeoff to LPTA Competition

Posterity complains that the agency failed to assess a strength to Posterity’s proposal under the technical quality factor for the extensive experience of four of its proposed key personnel, and that this reflects an evaluation that applied minimum acceptability thresholds, without identifying strengths or offered benefits. Protest at 7-8; Comments at 2. In this regard, the protester contends that the agency’s evaluation failed to consider the benefits provided by the experience of Posterity’s two quality managers, lead project manager, and program manager. *Id.* Instead, Posterity maintains, the agency “established a lowest common denominator for experience, and refused to consider what benefits may be gained if the Army selected a proposal with more qualified personnel.” Comments at 2. Posterity argues that this evaluation approach effectively converted this best-value procurement into an LPTA competition. *Id.*; Protest at 7-8.

The agency counters that its evaluation was neither improper, nor did it convert the basis for award from best-value to LPTA. The agency asserts that it did not assess any strengths because the experience of proposed key personnel was not an evaluation criterion under the technical quality factor or any of the subfactors. Memorandum of Law (MOL) at 20. In addition, the agency argues that Posterity’s proposal did not explain how the experience of these four key personnel would benefit the agency under the technical quality factor. *Id.* Finally, the agency maintains that its decision not to assess a strength did not convert the procurement into an LPTA competition. *Id.* at 20.

⁴ The protester also raised other collateral issues; we have reviewed all of the protester’s arguments and find that none provide a basis for sustaining the protest.

Based on our review of the record, we find the agency's evaluation was reasonable and did not convert the competition into an LPTA source selection process.

In reviewing a protest challenging an agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency's discretion. *The Pragma Corp.*, B-415354.2 *et al.*, May 29, 2018, 2018 CPD ¶ 198 at 6. Rather, we will review the record only to assess whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *FP-FAA Seattle, LLC*, B-411544, B-411544.2, Aug. 26, 2015, 2015 CPD ¶ 274 at 7. An offeror's disagreement with an agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Global Logistics Providers, LLC*, B-416843, Dec. 26, 2018, 2019 CPD ¶ 12 at 5; *Birdwell Bros. Painting & Refinishing*, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

As explained above, the technical quality factor had three subfactors: quality control plan, management capabilities, and recruitment and retention. RFP at 209-210. For each subfactor, the RFP identified multiple specific elements that the agency would consider in its evaluation.⁵ See *id.* None of the elements under any of the subfactors included an evaluation of the experience of proposed key personnel, or even mentioned key personnel. As the agency argues, the elements focused on the offerors' proposed approaches, techniques, capabilities, and processes to meet the requirements of the RFP. Thus, the record supports the agency's contention that the RFP did not include assessment of the experience of key personnel as an evaluation criterion.

In response to the agency's argument, Posterity states that one element under the management capabilities subfactor provided for evaluating whether "[t]he offeror provides adequate management techniques, tools, practices and interface with [g]overnment personnel to ensure satisfactory performance of all required services throughout the life of the contract." Comments at 2 (quoting RFP at 209). Posterity asserts that this element "could easily include consideration of key staff experiences, as these staff will be ultimately responsible for the corporate management and interfacing with the government." *Id.* We disagree.

In our view, this element focuses on management techniques, tools, and practices, and how the offeror proposes to interface with the government. It does not necessarily

⁵ For example, under the quality control plan subfactor, the agency would evaluate whether the quality control plan provides "[a] description of [the] company's procedures that adequately identifies trends, problems, and issues"; under the management capabilities subfactor, the agency would evaluate whether "[t]he offeror describes adequate procedures for and commitment to timely payment of LVNs and CNAs"; and under the recruitment and retention subfactor, the agency would evaluate whether "[t]he offeror provides an adequate technical approach to recruit qualified LVNs and CNAs to include lead-time associated with the use of any advertising media to be used to recruit LVNs and CNAs." RFP at 209-210.

encompass an evaluation of the experience of an offeror's proposed key personnel. Moreover, even if this element could include such a consideration, as Posterity contends, it did not require the agency to evaluate experience, and the protester therefore has not shown that it was unreasonable for the agency not to consider key personnel experience under this element.

Posterity also argues that, contrary to the agency's claims, its proposal clearly communicated how the experience of its key personnel would benefit the agency. In this regard, Posterity states that its proposal explained how Posterity has the "leadership, experience, and authority to staff [DELETED] LVNs and CNAs" and included a chart that highlighted the collective experience of its staff. Comments at 2-3. Posterity asserts that the proposal also explained how the experience of its lead project manager as the recruiting director for the current LVN/CNA contract "would help [] develop a roster of qualified staff to backfill absences." *Id.* at 3. Based on our review of the record, we do not agree that Posterity's proposal explained how the experience of its four key personnel would benefit the agency in performance of this contract.

As noted above, Posterity argued that it should have received strengths for the experience of four specific key personnel. While Posterity identifies parts of its proposal that broadly discuss the experience of its personnel, these parts do not demonstrate how the experience of these four specific key personnel will benefit the agency. Nor do they provide any detail on how Posterity will leverage this experience to perform the required work.

Moreover, Posterity's claim that its proposal explained how the lead project manager's experience would help develop a roster of qualified staff to backfill absences is not supported by the record. Posterity's proposal states that based on the lead project manager's experience, as well as the company's experience on other contracts, the Service Contract Act vacation requirements, and mandated paid sick leave for contractors, "we will need to maintain a minimum . . . pool of [DELETED] LVNs and [DELETED] CNAs in order to meet 100% of scheduled and unscheduled absences." AR, Tab 14, Posterity Prop. Vol. II at II-23. Thus, this language shows that Posterity drew on the lead project manager's prior experience, in part, merely to determine the number of LVNs and CNAs it would need to meet all absences; it does not demonstrate how Posterity would use this experience to actually develop a roster of qualified staff to fill these absences.

In sum, the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation. Thus, the decision not to assess strengths for the experience of Posterity's proposed key personnel does not demonstrate that the agency converted this procurement into an LPTA competition.

Posterity also argues that the agency's source selection decision document further demonstrates that the agency converted this procurement into an LPTA competition. In this regard, Posterity asserts that the agency did not meaningfully evaluate or compare the offerors' proposals, and that "[r]egardless of technical merit or prior experience, the

only meaningful discriminators in the Army's eyes were technical ability to meet the Army's needs and price." Comments at 6. Based on our review of the record, we find that this argument has no merit.

In a best-value tradeoff procurement, such as this one, it is the function of the source selection authority to perform a price/technical tradeoff to determine whether one proposal's technical superiority is worth a higher price. *MVM, Inc.*, B-403912.3, May 26, 2011, 2012 CPD ¶ 129 at 11. Even where price is the least important evaluation factor, an agency may properly select a lower-rated, lower-priced proposal, if the agency reasonably concludes that the price premium involved in selecting a higher-rated proposal is not justified in light of the acceptable level of technical competence available at a lower price. See, e.g., *RQ Construction, LLC*, B-409131, Jan. 13, 2014, 2014 CPD ¶ 30 at 6; *Wyle Laboratories, Inc.*, B-311123, April 29, 2008, 2008 CPD ¶ 96 at 9; *Bella Vista Landscaping, Inc.*, B-291310, Dec. 16, 2002, 2002 CPD ¶ 217 at 4. Further, the extent of such tradeoffs is governed only by the test of rationality and consistency with the evaluation criteria. *Best Temporaries, Inc.*, B-255677.3, May 13, 1994, 94-1 CPD ¶ 308 at 3. A protester's disagreement with the agency's determinations as to the relative merit of competing proposals and its judgment as to which proposal offers the best value to the agency, does not establish that the evaluation or source selection was unreasonable. *Weber Cafeteria Servs., Inc.*, B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 4.

As noted above, WiseStaff proposed the lowest price and received an acceptable rating for the technical quality factor and a substantial confidence rating for the performance risk factor. AR, Tab 56, SSDD at 3. While Posterity received a higher rating of good under the technical quality factor, the agency found that "there is nothing unique about their proposal" to justify a price premium over WiseStaff. *Id.* at 10. The agency noted that WiseStaff proposed a lower price than Posterity and received a higher performance risk rating. *Id.* The agency also concluded that while other offerors, including Posterity, were assessed more strengths than WiseStaff under the technical quality factor, these additional strengths did not justify paying a price premium. *Id.* at 13. Ultimately, the agency found that WiseStaff offered the best value because it submitted a lower-priced proposal that merited an acceptable performance confidence rating, and none of the other offerors' proposals justified their price premiums. *Id.*

On this record, we find that the agency's source selection decision rationally contemplated the differences between the offers and reasonably decided that any benefits identified under the technical quality factor were not worth a price premium, particularly where WiseStaff received the highest rating under the performance risk factor. The agency's source selection decision was reasonable and consistent with a best-value tradeoff analysis, and did not evidence that the agency converted this procurement into an LPTA competition. This protest ground is denied.

Application of an Unstated Evaluation Criterion

Posterity argues that the agency applied an unstated evaluation criterion under the performance risk factor when it found that the past performance of Posterity's key person was not relevant because it was work performed as an employee of the federal government, not as a contractor. Comments at 7. As one of its three performance references, Posterity submitted an assessment of the work performed by one of its key personnel, a retired command sergeant major (CSM), at an Army medical center. AR, Tab 21, Posterity Performance Assessment Submission 3, at 1. The CSM was the senior clinical noncommissioned officer in charge and principal advisor to the hospital commander at the medical center, and "had oversight of [DELETED] employees including [DELETED] LVNs . . . and [DELETED] [registered nurses] for the direct care of 65,000 beneficiaries." *Id.* Posterity contends that the RFP allowed offerors to use the past performance of key personnel, but did not distinguish between work for the federal government versus a civilian contractor, and therefore the CSM's prior performance should have been found to be relevant. Comments at 8.

The agency counters that it reasonably determined that the CSM's prior performance was not relevant "by rationally distinguishing the past performance of a command sergeant major's supervision of soldiers and government employees from the [s]olicitation's requirements and the definition of relevancy provided in the [s]olicitation." MOL at 22. In this regard, the agency asserts that the RFP defined relevancy in terms of the number of contracts or task orders performed in recent years on which the offeror provided healthcare providers. MOL at 23. Thus, the agency contends that "[k]ey personnel who would have relevant experience would be those personnel who have worked on contracts and/or task orders that provided, retained, and managed numbers of various healthcare providers." *Id.* at 23-24. The agency argues that because the CSM had no experience providing, retaining, or managing healthcare providers under contracts or task orders, the agency reasonably concluded that this experience was not relevant. *Id.* at 24.

As noted above, in reviewing a protester's challenge to an agency's evaluation of proposals, we will review the record only to assess whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *FP-FAA Seattle, LLC, supra*. Here, we conclude that the evaluation was consistent with the terms of the RFP, and not premised on unstated evaluation criteria.

Under the performance risk factor, the RFP evaluated past and present performance to assess recent and relevant efforts similar to the type of requirement required by the solicitation. RFP at 210. A relevant contract reference was one where the offeror "performed LVN and CNA services similar or greater in scope to the magnitude and complexity of the requirement." *Id.* at 211. The RFP here sought proposals to recruit, retain, and manage LVNs and CNAs to provide nursing services at the San Antonio Medical Health Center. See *id.* at 195-196.

To demonstrate relevant past or present performance, the RFP stated that offerors could submit the past performance experience of key personnel. RFP at 197.

However, the RFP also instructed that offerors shall submit assessments from “their current or past [United States government] or commercial contracts for a single task order, multiple contracts or a combination of task orders to meet the definition of relevancy.”⁶ *Id.* In addition, as noted above, the agency assigned a relevancy rating to each of the past performance assessments submitted by an offeror. The RFP defined these different relevancy ratings in terms of the number of healthcare providers provided on a prior contract or task order. *Id.* at 211-212. For example, the RFP defined a relevant past performance experience as one where “[t]he number of healthcare providers . . . provided must have been at least 100 on a single contract (or single TO) or multiple contracts (or multiple TOs) within the recency period specified.”⁷ *Id.* at 212. The RFP defined a not relevant experience as one that did not meet the definition of the other three relevancy ratings. *Id.*

While Posterity contends that the RFP did not make a distinction between federal government or civilian contract work, in our view, the RFP consistently and repeatedly informed offerors that their performance assessments must be for work on prior government or commercial contracts, and would be rated as some degree of relevant where they involved the provision of healthcare providers on a prior contract or task order.⁸ This is consistent with the RFP’s explanation that a contract reference would be considered relevant where the offeror performed LVN or CNA services that were similar to those required by this procurement, which sought the provision of LVNs and CNAs. Given this language, and the general requirements of the RFP, we think it was reasonable that the agency found that the CSM’s experience providing oversight of LVNs and registered nurses while working for the federal government was not relevant

⁶ The RFP also informed offerors that the proposal volume addressing the performance risk factor “includes documentation that illustrates the [o]fferor’s performance on current or past [United States government] or commercial contracts.” RFP at 197.

⁷ As noted above, the RFP also defined a very relevant or somewhat relevant past performance experience as one that provided a certain number of healthcare providers on a contract or TO. RFP at 212.

⁸ Posterity argues that the agency’s position “relies on a strict reading of the relevancy descriptions in the [solicitation], which assumes that federal employees are not providing services on a contract basis,” and asserts that as an enlisted soldier, the CSM “would have been party to an enlistment contract with the Army.” Comments at 8. Posterity thus concludes that the CSM “was providing his management services of LVNs and CNAs on a contract with the government, as required by the [s]olicitation.” *Id.* at 8-9. We disagree. In our view, an enlistment contract is not the same as a United States government or commercial contract as referenced in the context of this solicitation. Moreover, Posterity has not shown that its proposal referenced the enlistment contract as forming the basis for the experience of its key person.

to a procurement that sought a contractor that could recruit, retain, and manage LVNs and CNAs for the San Antonio Military Health System. This protest ground is denied.⁹
Deviation from the Terms of the Solicitation

Finally, Posterity argues that the agency's evaluation of WiseStaff's proposal under the performance risk factor deviated from the RFP's terms where the agency independently identified past performance assessments in addition to the three assessments that WiseStaff submitted with its proposal. Comments at 13. As noted above, the RFP instructed offerors to submit no more than three past performance assessments on current or past contracts. RFP at 197. WiseStaff submitted performance assessments for three contracts it, or its subcontractor, had previously performed. AR, Tab 55, Performance Risk Factor Eval. at 3. The agency found that one performance assessment was relevant, one was somewhat relevant, and one was not relevant. *Id.* Based on these three assessments, the agency initially indicated it would assign a risk rating of satisfactory confidence to WiseStaff's proposal under the performance risk factor. *Id.* at 2.

After evaluating the three assessments submitted by WiseStaff, the agency stated that "[a]s indicated in the solicitation . . . the [g]overnment may obtain data independently from other [g]overnment and commercial sources or from any source deemed appropriate when evaluating past performance." *Id.* at 5. Accordingly, the agency explained that it searched the past performance information retrieval system and identified six additional performance assessments for contracts performed by WiseStaff's subcontractor. *Id.* The agency found four of these assessments to be relevant and two not relevant. *Id.* Based on the two relevant assessments submitted by WiseStaff, as well as the additional four relevant assessments identified by the agency, WiseStaff's initial performance risk rating was upgraded to substantial confidence. *Id.* at 9-10.

The agency independently identified WiseStaff's four additional past performance assessments pursuant to language in the RFP which stated that "[t]he [g]overnment will seek recent and relevant performance information from references provided by the offeror and by data independently obtained from other [g]overnment and commercial sources or from any source deemed appropriate." *Id.* at 5; RFP at 211. Posterity asserts that this language did not permit the agency to independently identify additional past performance references beyond the three submitted by the offeror. Comments at 14. Posterity contends that "it merely allowed the Army to obtain additional data--

⁹ Posterity argues that in the alternative, there was a latent ambiguity in the RFP as to "whether the [s]olicitation's relevancy descriptions circumscribed the ability of offerors to receive credit for past performance experience key personnel obtained working for the federal government." Comments at 10. As we explain above, we find the plain language of the RFP informed offerors that relevant past performance was performance on a contract or task order. The fact that the RFP did not also explicitly exclude performance working for the federal government does not indicate any ambiguity in the terms of the RFP.

relating to recency and relevancy--on those references that WiseStaff submitted.” *Id.* Posterity maintains that this is the only reasonable interpretation, asserting that if the agency was allowed to find any past performance references for an offeror, there was no reason to limit offerors to submit only three references themselves. *Id.* at 15.

Based on our review of the record, we find the agency’s independent identification of additional past performance references to be reasonable and consistent with the solicitation. The RFP language at issue here stated that the agency would seek recent and relevant performance information from the references provided by the offeror as well as from data independently obtained from other sources, including “any source deemed appropriate.” Thus the language contemplated finding performance information from sources separate and in addition to the three contract references provided by the offeror, and granted the agency broad discretion to find that information from “any source deemed appropriate.”

The language does not state that the agency would independently obtain data regarding only the three contract references provided by the offeror; rather, it stated that it would use information from those three references, *as well as* additional data independently obtained. Posterity argues that the use of the word “data” in the RFP should be construed to mean only recent and relevant performance information in the context of the three contract references provided by the offeror. While the word data could refer to information bearing on the recency and relevancy of the offeror’s three references, the RFP did not limit that data to only these three references.

Moreover, this language is not inconsistent with instructing offerors to provide no more than three references. The agency limited offerors to submitting three references, while also reserving the right to identify additional references beyond those three. In this way, offerors were instructed to identify the three references they believed demonstrated the best recent and relevant past performance, while the agency maintained its ability to find additional references independently. We find this approach to be unobjectionable.

The protester argues that the agency’s interpretation also is inconsistent with language in the RFP informing offerors that “[s]ince the [g]overnment may obtain past and present performance information from sources other than those provided by the offeror, offerors are encouraged to provide details on any past and present performance problems and the corrective actions taken.” Comments at 14 (quoting RFP at 213). In this regard, the protester asserts that if the agency expected offerors to address problems from every past project, because the agency might include additional projects as a result of its own research, then offerors would have to violate the limit on three past performance references to address all other projects. *Id.* Thus, the protester contends, the agency’s stated intention to find “data” from other sources “had to relate to the three references furnished by [the] offerors.” We disagree.

In our view, this language is not inconsistent with understanding the RFP as allowing the agency to independently identify additional past performance references for its evaluation. Rather, we view this language as encouraging offerors to provide details on

performance problems and any corrective actions taken for the three references submitted by the offeror, and does not necessarily request that offerors provide this information for all prior contracts. Indeed, the RFP also stated that “[t]he offeror will be given an opportunity to address adverse past and present performance information to which the offeror has not yet had an opportunity to respond on a previous occasion.” RFP at 211. Thus, reading all of these provisions in context together, the RFP provided a way for an offeror to address adverse past performance information, whether it arose during performance of the three references submitted by the offeror or during performance of a separate reference independently identified by the agency.

In sum, we find that the agency’s decision to independently obtain past performance information from contract references that were in addition to the three references submitted by the offerors was reasonable and consistent with the solicitation.¹⁰ As a result, we find the agency’s evaluation of WiseStaff under the performance risk factor to be reasonable.

The protest is denied.

Thomas H. Armstrong
General Counsel

¹⁰ In its evaluation of Posterity’s proposal under the performance risk factor, the agency also independently obtained past performance information from references in addition to the three references Posterity submitted. AR, Tab 54, Performance Risk Factor Eval. at 8. Posterity asserts that even though the agency treated both offerors in the same manner, the agency’s evaluation still deviated from the RFP terms in a way that prejudiced Posterity. Comments at 16. Because we find that the agency’s evaluation was reasonable and consistent with the RFP, we need not address this argument.