441 G St. N.W. Washington, DC 20548

Comptroller General of the United States

Decision

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Matter of: OneSource PCS, LLC

File: B-419222

Date: January 6, 2021

William A. Shook, Esq., The Law Offices of William A. Shook PLLC, for the protester. W. Stephen Graves, Graves Law Firm, for AIMS Locum Tenens, LLC, the intervenor. Alexis J. Bernstein, Esq., Michael J. Farr, Esq., Department of the Air Force, for the agency.

Emily R. O'Hara, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of the awardee's past performance experience is sustained where the record shows that the evaluation was inconsistent with the terms of the solicitation, and the agency's finding that the awardee's past performance references were relevant was unreasonable.

DECISION

OneSourcePCS, LLC, a small business of Pensacola, Florida, protests the award of a contract to AIMS Locum Tenens, LLC, of Pikesville, Maryland, under request for proposal (RFP) No. FA301620R0058, issued by the Department of the Air Force for photorefractive keratectomy (PRK) personal and non-personal services at Wilford Hall Ambulatory Surgical Center and the Joint Warfighter Refractive Surgery Center on Joint Base San Antonio-Lackland, Texas. OneSource contends that the Air Force's evaluation of AIMS's past performance was unreasonable.

We sustain the protest.

BACKGROUND

The RFP, issued on July 21, 2020, as a competitive 8(a) set-aside, sought proposals for PRK personal and non-personal services, identifying the following labor categories: optometrists, a clinical manager/research assistant, PRK surgical technicians, PRK

technicians, and an operations manager.¹ Agency Report (AR), Tab 4, RFP at 1, 3-5.² The solicitation anticipated award for a base performance period of one year and four one-year option periods. *Id.* at 5.

The solicitation informed offerors that the Air Force would evaluate proposals based on two factors: past performance and price. AR, Tab 16, RFP Instructions and Evaluation Procedures at 1. The instructions further stated that the agency would conduct the acquisition using a "best value/trade-off approach where past performance is significantly more important than price." *Id.* at 4. Offerors were instructed to identify at least two, but no more than four, references for the past performance evaluation. *Id.* at 2. To assess price, offerors were required to complete the provided pricing worksheet, proposing unit pricing for each listed contract line item number (CLIN),³ as well as submit a professional employee compensation plan (PECP). *Id.* at 4, 8.

The RFP explained the evaluation and award selection process as follows: First, the agency would rank the proposals in order of price, from lowest to highest. *Id.* at 5. Next, the agency would evaluate the lowest-priced offeror's past performance. *Id.* After evaluating that offeror's past performance for "recency, relevancy, and quality," the agency would assign the offer a performance confidence assessment rating. *Id.* at 5-7. Only an offer with a "substantial confidence" rating would be eligible for award. *Id.* at 5. If the lowest-priced proposal was judged to have a "substantial confidence" rating and an acceptable PECP, then that proposal would represent the best value for the agency, the evaluation process would end, and award would be made to that offeror. *Id.* at 5. If, however, the lowest-priced proposal was not judged to have a "substantial confidence"

Page 2 B-419222

¹ Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation 19.800. This program is commonly referred to as the 8(a) program.

² The RFP was amended on July 29. Unless noted otherwise, citations to the solicitation are to the RFP, as amended.

³ Each CLIN identified a labor category and the number of labor hours expected to be performed. For example, CLIN 103 listed "PRK Surgical Technicians" and 5,760 hours, while CLIN 104 listed "PRK Technicians" and 13,440 hours. AR, Tab 9, RFP Pricing Worksheet at 1.

⁴ The performance confidence assessment ratings included: substantial confidence; satisfactory confidence; no confidence; and unknown confidence. AR, Tab 16, RFP Instructions and Evaluation Procedures at 7. The highest confidence rating, substantial confidence, was defined as: "Based on the offeror's performance record, the Government has a high expectation that the offeror will successfully perform the required effort." *Id.* The next highest confidence rating, satisfactory confidence, was defined as: "Based on the offeror's performance record, the Government has an expectation that the offeror will successfully perform the required effort." *Id.*

rating, the agency would move to the next lowest-priced proposal and evaluate that proposal's past performance. This process would continue (in order, by price) until a proposal was judged to have a "substantial confidence" rating, or until all offers were evaluated. *Id.*

The Air Force received twelve proposals in response to the RFP, including proposals from AIMS and OneSource. AR, Tab 1, Contracting Officer's Statement (COS) at 5. The agency ranked the proposals according to price, ranging from lowest to highest. *Id.* The Air Force first evaluated the lowest-priced offeror's past performance. *Id.* at 8. The proposal did not receive a "substantial confidence" rating, and thus, the agency evaluated the second lowest-priced offer. *Id.* This process continued with the third and fourth lowest-priced offers, as none of these proposals received a "substantial confidence" past performance rating. *Id.* The fifth lowest-priced offeror was AIMS. *Id.* The Air Force assigned AIMS a "substantial confidence" rating, determining that "the Government has a high expectation that [AIMS] will successfully perform the required effort." *Id.* at 7. Because of its past performance rating, its acceptable PECP, and its reasonable price, AIMS was determined to be the apparent successful offeror. *Id.* at 13. No other proposals were evaluated.

The agency sent an unsuccessful offeror letter, along with a written debriefing, to OneSource on September 25. AR, Tab 24, Debriefing to OneSource; AR, Tab 25, Unsuccessful Offeror Letter to OneSource. The debriefing informed OneSource that award had been made to AIMS and that because AIMS was the lowest-priced offeror with a past performance confidence rating of "substantial confidence," OneSource's past performance had not been evaluated. AR, Tab 24, Debriefing to OneSource at 8-9; AR, Tab 25, Unsuccessful Offeror Letter to OneSource. OneSource filed this protest with our Office on September 29.

DISCUSSION

OneSource, the incumbent, challenges the agency's evaluation of AIMS's past performance and the resulting award decision. For the reasons discussed below, we sustain the protest.

Past Performance Evaluation

OneSource argues that the agency failed to evaluate AIMS's past performance in accordance with the solicitation. Comments at 1. Specifically, OneSource contends that the agency improperly determined that AIMS's past performance references were relevant to the requirements of the performance work statement (PWS) and, therefore, unreasonably assigned a "substantial confidence" rating to AIMS's proposal. Comments at 12. The protester highlights that AIMS's proposal described work performed on its past contracts in a general manner, listing only "general position descriptions and numbers of individuals in those positions," related to general optometry services. OneSource argues the solicitation "was not for common optometry services but rather was very specific to [PRK] surgery services and research." *Id.* at 12. It

Page 3 B-419222

contends that the contract references identified by AIMS could not reasonably be evaluated as similar in scope to the services required by the PWS, because PRK surgery procedures are more complex than general optometry services. *Id.* at 3. OneSource also argues there was not enough detail in AIMS's proposal to determine that AIMS could provide personnel who were qualified to perform PRK or other refractive surgery services. *Id.* at 3, 7-9, 12.

The agency responds that it conducted its evaluation of AIMS's past performance in accordance with the requirements set forth in the solicitation. AR, Tab 2, Memorandum of Law (MOL) at 12. The agency contends it had "ample information . . . to evaluate the past performance of AIMS." AR, Tab 27, Supplemental Memorandum of Law (Supp. MOL) at 9. As such, the agency argues that its relevancy assessment, combined with its recency and quality assessments, proves that the "Air Force clearly evaluated AIMS' past performance in accordance with the stated evaluation criteria in the RFP . . . and reasonably concluded that it had a high expectation that AIMS would successfully perform the required effort, which warranted a 'Substantial Confidence' past performance rating." MOL at 15. We disagree.

The evaluation of an offeror's past performance is generally within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. *Computer Scis. Corp. et al.*, B-408694.7 *et al.*, Nov. 3, 2014, 2014 CPD ¶ 331 at 12. We will question an agency's evaluation conclusions, however, when they are unreasonable or undocumented. *OSI Collection Servs., Inc.*, B-286597, B-286597.2, Jan. 17, 2001, 2001 CPD ¶ 18 at 6. The critical question is whether the agency conducted the evaluation fairly, reasonably, and in accordance with the solicitation's evaluation scheme. *Al Raha Grp. for Tech. Servs., Inc.; Logistics Mgmt. Int'l, Inc.*, B-411015.2, B-411015.3, Apr. 22, 2015, 2015 CPD ¶ 134 at 5.

The solicitation stated that the purpose of the agency's past performance evaluation was to "allow the [g]overnment to assess the offeror's ability to perform the effort described in this solicitation based on the offeror's demonstrated present and past performance." AR, Tab 16, RFP Instructions and Evaluation Procedures at 7. Offerors were told to submit past performance reference lists as part of their proposals and to send blank past performance questionnaires (PPQs) to former customers. *Id.* at 2. As stated above, past performance was to be evaluated for recency, relevancy, and quality. *Id.* at 5.

To conduct the past performance assessments, the RFP explained that the evaluators would first assess recency. Recent past performance was defined as performance that occurred during the last three years from the date the solicitation was issued. *Id.* at 6. Next, evaluators would assess relevancy. Relevancy was defined as "projects that demonstrate a record of providing services similar in scope and magnitude to those required by the PWS." *Id.* Only after performance efforts qualified as recent and relevant would they then be evaluated for quality of performance. *Id.* at 6. Quality was defined as how well the contractor's performance met and exceeded the contractual requirements, to the government's benefit. *Id.*

Page 4 B-419222

At issue is the agency's finding that AIMS's past performance references were relevant to the requirements of the PWS and warranted a "substantial confidence" rating under the past performance evaluation factor. Here, the very first sentence of the PWS states that the agency "has a requirement for PRK personal and non-personal services as described in this PWS." AR, Tab 13, PWS at 1. Additionally, the RFP provided the following description of the agency's requirements:

Fourteen (14) Full Time Equivalent (FTE) Photorefractive Keratectomy (PRK) personal and non-personal services as described in the Performance Work Statement (PWS) (See attachment 1).... Personal Services include optometrists, clinical management research assistant, vision research laboratory operations, surgical technicians and other vision center technician services. Non-personal services include an Operations Manager.

RFP at 5 (emphasis added).

More specific descriptions of the solicitation's required services were found throughout the PWS, which was divided into parts. For example, the title of the PWS was "Performance Work Statement *Photo Refractive Keratectomy (PRK) Services* JBSA Antonio Texas." PWS at 1 (emphasis added). Within the PWS, in Part 5 (Personal Service Performance Requirements), the document required that an optometrist "must have knowledge of all aspects of refractive surgery" and "have 3 years of experience providing optometry health care for refractive surgery patients as an Optometrist with experience within the last 2 years in optometry healthcare for refractive surgery." *Id.* at 8. There are other examples as well. A laser center clinical manager/research assistant was required to "assist with minor surgical procedures including PRK" and "[c]oordinate all vision PRK research projects." *Id.* at 9-11. Similarly, the PWS required a refractive research surgical technician to "assist[] with minor surgical procedures including PRK" and "[a]ssist, educate and train PRK staff." *Id.* at 12. The PWS also identified a refractive research technician to "assist[] with minor surgical procedures including PRK" and "[a]ssist, educate and train PRK staff." *Id.* at 14. In summary, it is

Page 5 B-419222

⁵ The agency argues that it was not required to consider Part 5 of the PWS in evaluating relevancy because the "Air Force's evaluation of offerors' past performance for . . . relevance . . . as part of the evaluation process for contract award is entirely separate and distinct from the health care worker (HCW) qualifying and credentialing process set forth in . . . the PWS." AR, Tab 30, 2nd Supp. MOL at 6 (citations omitted). This assertion is not supported by the terms of the solicitation. Relevancy was to be assessed by comparing past projects that "demonstrate a record of providing services similar in scope and magnitude to those required by the PWS." AR, Tab 16, RFP Instructions and Evaluation Procedures at 2. The credentials and duties of the personnel to be provided were part of the PWS and described the type of personnel to be provided. See PWS at 8-16. Thus, in assessing relevancy, the agency was

apparent from the RFP that the Air Force sought to procure the services of optometrists and technicians with specific experience in the care of patients undergoing PRK and other refractive surgeries, rather than just general optometry services.

The agency evaluated AIMS's past performance based on PPQs, as well as a list of past performance references.⁶ AR, Tab 19, Evaluation at 11-13. Based on the information in AIMS's past performance table, the Air Force found two contract references to be relevant--LV00923 and CRMC0239.⁷ *Id.* at 11. The entirety of the text under the "description of work performed" column for contract LV00923 in the reference table stated:

AIMS Locum Tenens manages complex physician and Ancillary staffing services at various tough to fill locations in Virginia Beach area. AIMS mainly provided the following specialties - 1 Optometrist, 4 Surgical techs, 4 Optical techs. Below are the hospitals where AIMS Locum Tenens provided staffing services.

- 1. Sentara Princess Ann Hospital
- 2. Sentara Leigh Hospital
- 3. Virginia Beach General Hospital

AR, Tab 20, AIMS Proposal at 7. Similarly, the entirety of the text under the "description of work performed" column for contract CRMC0239 stated:

AIMS Locum Tenens was contracted by Bayview Physician Services to provide physicians and ancillary staffing services of various specialties including but not limited to 1 Ophthalmologist, 3 Optometrist[s], 8 Surgical

instructed to review the requirements of the PWS, including those listed in Part 5, to compare those required services to the services described in the offeror's past performance reference list. *See* AR, Tab 16, RFP Instructions and Evaluation Procedures at 6.

Page 6 B-419222

⁶ The agency provided a table template in the solicitation that offerors used to submit their past performance references. AR, Tab 7, Past Performance List of References Template. AIMS used this table template in its proposal. There were six columns in AIMS's table, titled: Contract Number; Description of Work Performed; Contract Period of Performance; Contracting Agency POC/ Customer Name, Phone # & Email; Contract Values; and Performed by a Proposed Subcontractor, Affiliate, or Joint Venture. AR, Tab 20, AIMS Proposal at 7.

⁷ The completed PPQs submitted for these contracts--which were intended to provide information to assess recency, magnitude, and quality of work--did not provide a sufficient description of the work performed to support a scope determination. For example, the PPQs only described the work performed as "physician staffing" and "healthcare staffing." See AR, Tab 21, AIMS PPQ Contract LV00923; AR, Tab 22, AIMS PPQ Contract CRMC0239.

Techs and ancillary staffing, etc. primarily at Chesapeake Regional Medical Center and Bon Secours DePaul Medical Center and Bayview Clinics.

Id. From that information alone, the agency concluded that the scope of the past performance references provided by AIMS was "similar" to, and "essentially the same" as, that required by the current effort. Based on this limited information, the agency concluded that the LV00923 contract was "relevant" and the CRMC0239 contract was "very relevant." AR, Tab 19, Evaluation at 11-12.

As discussed above, in order to evaluate relevancy of past performance references, the Air Force was required to assess the similarity in magnitude and scope of the past efforts to the requirements of the PWS. AR, Tab 16, RFP Instructions and Evaluation Procedures at 6. Magnitude could be assessed by the contract values or the number of personnel provided in the reference table. AR, Tab 20, AIMS Proposal at 7. The only information from the reference table that the agency could use to assess scope, however, was the information that could be gleaned from the general position titles of personnel that AIMS provided under the "description of work performed" column. *Id.*

Based on the information provided in AIMS's proposal, we cannot find that the agency reasonably concluded that AIMS's experience providing personnel skilled in performing general optometry and surgical skills was similar or essentially the same as providing personnel skilled in assisting in PRK and other refractive surgery procedures. *See AI Raha Grp.*, *supra* at 11-12 (sustaining the protest, in part, because the evaluation of the awardee's past performance was inconsistent with the terms of the solicitation). Personnel required by the solicitation included optometrists, who "must have knowledge of all aspects of refractive surgery," and a laser center clinical manager/research assistant, refractive research surgical technicians, and refractive research technicians, tasked with having knowledge of, and assisting with, minor PRK surgical procedures. PWS at 8, 11-12, 14.

Our conclusion here is buttressed by information provided by the agency's expert, the Chairman of the Ophthalmology Department at the Wilford Hall Ambulatory Surgical Center. He explained that PRK uses a "specialized-for-the-eye laser to sculpt the cornea (front tissue layer of the eye) to correct for refractive errors like near-sightedness, far-sightedness, and astigmatism." AR, Tab 31, 3rd Supp. MOL at 9. The expert explained that while optometrists are not licensed to perform PRK surgery (in

Page 7 B-419222

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⁸ The RFP defined a finding of "relevant" past performance to be one where the prior effort "involved similar scope and magnitude of effort" as the solicitation. A finding of "very relevant" was found when the past performance involved "essentially the same scope and magnitude of effort and complexities" as the solicitation. AR, Tab 16, RFP Instructions and Evaluation Procedures at 6.

"almost all states"), they "often do manage much if not most of the preoperative evaluations and postoperative care." *Id.* The agency's expert further clarified:

A general optometrist would not necessarily have the specialty skill set required to assist in running a refractive surgery center and program. The preoperative evaluations that the clinic performs are refractive-specialty driven (exhaustive pre-op scans on various instruments, such as ArcScan, Pentacam, G4, Vario/Phorcides, Optical Coherence Tomography [OCT], wavefront aberrometry (iDesign), and endothelial cell count) and are not found in your general optometric clinical practice environment.

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Personnel listed in AIMS's past performance reference list included optometrists, surgical technicians, and optical technicians. AR, Tab 20, AIMS Proposal at 7. As explained by the agency's expert, a general optometrist is a doctor for general vision care who diagnoses, manages, and treats eye disorders and diseases. AR, Tab 31, 3rd Supp. MOL at 8. A surgical technician has general knowledge of safe operating room procedures. *Id.* at 9. An optical technician has general knowledge of basic ophthalmic equipment and evaluation experience. *Id.* at 10. None of these labor categories, without elaboration, necessarily reflect the specialty skills sets or experience to assist with PRK procedures. *Id.* at 9-10.

Based on this information, we conclude that the PRK-specific services required by the PWS are not services that are provided by all optometrists and general surgical technicians. Although the labor categories listed in AIMS's past performance reference table showed that AIMS provided personnel in general eye care and surgical fields, the positions listed did not indicate that AIMS's prior efforts involved providing any personnel with PRK experience, or even personnel qualified to assist with refractive surgery procedures, more generally.¹¹

Page 8 B-419222

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⁹ The inference from the expert's explanation is that ophthalmologists, not optometrists, perform refractive surgery such as PRK. AR, Tab 31, 3rd Supp. MOL at 9-10.

¹⁰ In addition to the agency expert's explanation regarding general optometrist skills sets, the expert clarifies, a "general surgical technician would not necessarily have the experience or skillset to perform refractive surgery services or to assist with PRK . . . procedures," nor would "[a] general ophthalmic technician . . . necessarily possess the experience and skills necessary to assist with [PRK] procedures." AR, Tab 31, 3rd Supp. MOL at 9-10.

¹¹ In subsequent development of the record, AIMS asserts that both of its prior references "were for the staffing and management of clinics offering refractive surgeries including PRK and LASIK, among others." AIMS President Affidavit. The intervenor, however, does not provide any reference to where this information can be found in its proposal. Even if these assertions are accurate, we fail to see, and the agency has

The solicitation required the contractor to provide personnel with knowledge or experience in PRK services. Under the evaluation scheme here, the agency was to determine that an offeror's past performance references were relevant before assessing the quality of the prior work performed. There was no basis in the record to conclude that the awardee's prior work involved a "similar," or "essentially the same" scope as here because the prior work did not involve, or provide experience with, PRK-specific procedures. In addition, offerors had ample opportunity to include specific details about prior work in their proposals. Given the fact that PRK-specific services were required by the solicitation, and given that not all general eye care and surgical personnel are able to perform PRK services, we cannot conclude that the agency's relevancy determination, and its resulting assignment of a "substantial confidence" rating to AIMS's past performance, were reasonable. We sustain the protest on this ground. 13

failed to explain, how it found AIMS's past efforts to be "similar" or "essentially the same" in scope as the PWS requirements here, based on the PPQs and past performance reference table submitted by AIMS. Since the PPQs and past performance reference table appear to be the only documents the Air Force considered at the time of evaluation, we see no support in the contemporaneous record for the conclusion that AIMS's prior references involved PRK services. AIMS's arguments during the course of this protest cannot add language to the proposal at this date.

Page 9 B-419222

¹² The past performance reference list template supplied by the agency did not set forth any limitations on how much detail an offeror could place in the table. AR, Tab 30, 2nd Supp. MOL at 3-4. For example, in its proposal, OneSource described its past work as "Photorefractive Keratectomy (PRK) Clinic Services," and included the description "refractive" in the personnel position titles, *e.g.*, "Refractive Research Surgical Technician." AR, Tab 28, OneSource Proposal at 1.

¹³ Also, we find no merit to the agency's argument that its evaluation of AIMS's proposal was reasonable, because (1) the solicitation did not require the agency to evaluate qualifications or specific work performed by personnel on prior contracts, and (2) an offeror did not need to produce the credentials of personnel performing the services of the current effort until after award was made. AR, Tab 31, 3rd Supp. MOL at 1, 3; AR, Tab 30, 2nd Supp. MOL at 6. Despite the agency's contention that offerors were not required to provide "a description of the actual work performed on the past performance references," AR, Tab 31, 3rd Supp. MOL at 5, the solicitation's instructions clearly sought information sufficient to assess the offeror's past experience. Specifically, offerors were required to identify in the past performance section of their proposals, "for each contract listed . . . [a] [d]escription of work performed." AR, Tab 16, RFP Instructions and Evaluation procedures at 2-3. While the agency is correct that the solicitation did not require an evaluation of the specific credentials and duties of personnel provided under the prior contracts, the solicitation did require that the agency have some information by which to determine whether services provided in the prior contracts were similar to services that would be provided here. See AR, Tab 16, RFP Instructions and Evaluation Procedures at 1. In addition, the timing of when the

Competitive Prejudice

Prejudice is an essential element of every viable protest; our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. *Trident Vantage Sys., LLC; SKER-SGT Eng'g & Sci., LLC*, B-415944 *et al.*, May 1, 2018, 2018 CPD ¶ 166 at 22. Where there is no basis for our Office to know what the ultimate source selection might have been, had the evaluation errors discussed not occurred, we resolve any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. *Id.*

Here, we find that the record does not support the Air Force's conclusion that AIMS's past performance references were "similar" or "essentially the same" in scope to the requirements of the PWS. As a result, the record does not support the conclusion that these references warranted a finding of "relevant" and "very relevant" by the agency. Because the issue of relevancy was a threshold matter in the evaluation of past performance in this procurement, the lack of support for these threshold conclusions undercuts the reasonableness of the agency's assignment of a "substantial confidence" rating to AIMS under the past performance evaluation factor. In addition, under the evaluation scheme here, any confidence rating lower than "substantial confidence" would have resulted in skipping over any further consideration of the proposal, and moving to the proposal of the next lowest-priced offeror. By reason of the agency's error, the protester--who was the offeror with the next lowest price--lost the opportunity to be evaluated and considered for award. See AR, Tab 18, Table of Offerors at 1. Accordingly, we conclude that OneSource has established the requisite competitive prejudice to prevail in this protest. See AT&T Gov't Sols., Inc., B-413012, B-413012.2, July 28, 2016, 2016 CPD ¶ 237 at 28.

RECOMMENDATION

We recommend the Air Force reevaluate proposals consistent with the terms set forth in the solicitation, adequately document its evaluation, and make a new source selection decision. Alternatively, if the agency no longer requires personnel with PRK-specific experience, the agency should amend its solicitation to reflect the agency's needs and request revised proposals. We also recommend that OneSource be reimbursed the costs of filing and pursuing its protest, including reasonable attorneys' fees. Bid Protest

Page 10 B-419222

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awardee was required to provide the agency proof of personnel credentials was irrelevant to the analysis of the agency's past performance evaluation. Although an offeror did not need to produce the credentials of personnel until after award was made, ultimately, the services listed in the PWS--*i.e.*, personnel with special PRK skills sets and credentials--would need to be provided. Thus, the agency still had to determine whether services performed on past contracts were similar to services that would ultimately be provided here.

Regulations, 4 C.F.R. § 21.8(d)(1). OneSource should submit its certified claims for costs directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Thomas H. Armstrong General Counsel

Page 11 B-419222