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Decision

Matter of: Arcticom, LLC

File: B-421256; B-421256.2

Date: December 28, 2022

Kenneth A. Martin, Esq., The Martin Law Firm, PLLC, for the protester.
Damien C. Specht, Esq., and James A. Tucker, Esq., Morrison & Foerster LLP, for TBP&JJ Worldwide Services, LLC, the intervenor.
Allison M. Genco, Esq., Jennifer L. Rawls, Esq., and Alex M. Ray, Esq., National Aeronautics and Space Administration, for the agency.
Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency unreasonably evaluated the protester's past performance proposal is denied where the record shows that the agency reasonably disregarded past performance information for affiliated companies in accordance with the terms of the solicitation.
2. Protest that the agency unreasonably made its selection decision is denied where the record shows that the source selection authority reasonably compared the proposals and conducted the tradeoff in accordance with the terms of the solicitation.

DECISION

Arcticom, LLC, of Anchorage, Alaska, protests the award of a contract to TBP&JJ Worldwide Services, LLC, of Leesburg, Virginia, under request for proposals (RFP) No. 80AFRC22R0003, issued by the National Aeronautics and Space Administration (NASA) for base operations and maintenance support services. Arcticom argues that NASA unreasonably evaluated its past performance proposal, and improperly made the selection decision.

We deny the protest.

BACKGROUND

On June 2, 2022, NASA issued the RFP as an 8(a) set-aside¹ for small businesses to procure base operations and maintenance support services at the Armstrong Flight Research Center in Edwards, California. Agency Report (AR) Tab 2a, RFP at 14-16.² Specific services to be provided included facility operations, maintenance, repair, janitorial, grounds-keeping, and other miscellaneous facility upkeep services. *Id.* The RFP contemplated the award of a fixed-price contract to be performed over a 2-month phase-in period, one 12-month base period, and four 1-year option periods. *Id.* at 16-19; 63.

The evaluation would proceed in a multi-stage process. RFP at 57. First, NASA would evaluate proposals for technical acceptability, and eliminate any proposal evaluated as technically unacceptable. *Id.* Next, NASA would evaluate offerors' proposed prices and referenced past performance. *Id.* Finally, NASA would conduct a tradeoff analysis with the past performance factor being considered significantly more important than the price factor. *Id.* at 57, 63.

Eight offerors submitted proposals prior to the July 22 close of the solicitation period. AR, Tab 16, Source Selection Statement (SSS) at 931. The agency's evaluation produced the following relevant results:

	Technical Acceptability	Past Performance Confidence	Total Evaluated Price
Arcticom	Acceptable	Low	\$46,784,247
TBP&JJ	Acceptable	Moderate	\$47,424,612

AR, Tab 15, Source Selection Authority (SSA) Briefing at 926.³ NASA assigned the Arcticom proposal a past performance confidence rating of "low" because the agency determined that two of the three contracts provided in the firm's proposal were not relevant since they referenced the performance of affiliate companies, and because the third contract demonstrated performance that was only of adequate quality. AR, Tab 10, Past Performance Evaluation Report (PPER) at 748. Based on the evaluation results, the SSA identified TBP&JJ's proposal as representing the best value. AR,

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

² Citations to the agency report reference the BATES page numbers provided by the agency when available.

³ The RFP provided that NASA would assign adjectival past performance confidence ratings of very high, high, moderate, low, very low, and neutral. RFP at 61-62.

Tab 16, SSS at 945. When comparing Arcticom and TBP&JJ, the SSA noted that, while Arcticom's evaluated price was slightly lower, TBP&JJ's referenced past performance demonstrated a higher likelihood of success. *Id.* at 946.

After learning that its proposal was unsuccessful, Arcticom requested a debriefing. As part of the oral debriefing, NASA informed Arcticom that two of its contracts were not evaluated because the contracts were performed by affiliate companies, and Arcticom's proposal did not explain how the firm would utilize those companies during performance of the instant requirement. AR, Tab 14, Arcticom Debriefing Script at 853. This protest to our Office followed.

DISCUSSION

Arcticom raises multiple challenges to the agency's conduct of the acquisition. The protester principally argues that NASA unreasonably evaluated the firm's past performance. Additionally, Arcticom argues that NASA unreasonably made the selection decision.

We have reviewed all of the challenges, and conclude that none provides us with a basis to sustain the protest. To the extent we do not discuss any particular allegation, it is denied. We discuss the principal allegations below.

Arcticom Past Performance

Arcticom asserts that NASA unreasonably failed to consider its affiliated companies' referenced past performance. Comments & Supp. Protest at 13. The protester argues that the agency should have considered this past performance information because its proposal made clear that these affiliated companies would provide technical and administrative support. *Id.* at 13-14. Arcticom also asserts that NASA failed to document its reasons for not considering the affiliated companies' referenced past performance. Supp. Comments at 14-16. As a final challenge, Arcticom argues that the agency unequally evaluated both its and TBP&JJ's past performance. Protest at 11.

NASA responds that it reasonably evaluated Arcticom's past performance. According to NASA, it reasonably disregarded the affiliated companies' referenced past performance because the RFP did not require the agency to consider such information. Memorandum of Law (MOL) at 4. Additionally, NASA argues that it reasonably documented its decision to disregard the affiliated companies' referenced past performance.⁴ Supp. MOL at 13-15.

⁴ Alternatively, NASA argues that its decision to disregard these referenced contracts was reasonable because Arcticom's proposal did not explain precisely how the affiliate companies would be involved in performance of the contract. MOL at 4; *see also* Contracting Officer's Statement (COS) at 13. We need not determine whether this part of the evaluation was reasonable because, as discussed *infra*, NASA was not obligated to consider the unsolicited past performance information for the affiliated companies.

When providing instruction to offerors about past performance, the RFP provided:

Past performance refers to the Offeror's, major subcontractors[,] and/or team members demonstrated record quality of work and contract compliance in supplying services[,] relevant quantitative and qualitative aspects of each Offeror's record of performing services[,] or delivering products similar in size, content, and complexity [to this acquisition]. A major subcontractor is defined in this area as performing more than 30 [percent] of the labor effort of this requirement.

AR, Tab 4b, RFP, amend. 2 at 415-16. Offerors were instructed to submit up to three current or past contracts performing the same or similar tasks. *Id.* at 416. Importantly, only one of the three contracts could reference performance for a major subcontractor or team member. *Id.*

NASA was to evaluate referenced past performance for relevancy, and then for quality of performance. RFP, amend. 2 at 423. NASA would assign each referenced contract a "quality assessment rating," consisting of exceptional, very good, satisfactory, marginal, unsatisfactory, or neutral. *Id.* at 424. After determining whether referenced performance was relevant and examining the quality of performance, NASA would then evaluate each offeror's overall past performance, and assign a composite confidence rating. *Id.* at 425. The RFP also advised that past performance information for predecessor companies, subcontractors, and others would not be evaluated as highly as past performance information for the offeror. *Id.* at 423.

Arcticom identified three contracts as part of its proposal. See AR, Tab 6c, Arcticom Past Performance Proposal at 664. Two contracts referenced the performance of affiliated companies, and the other referenced performance of its teaming partner.⁵ *Id.* at 667-672. When evaluating Arcticom's referenced contracts, NASA determined that the referenced contracts for the affiliated companies were not relevant because the RFP did not contemplate the evaluation of affiliated companies' past performance. COS at 13; see *also* AR, Tab 9, Arcticom Past Performance Assessment Spreadsheet. Additionally, NASA reviewed Arcticom's proposal, and determined that the records were not relevant because the proposal did not explain precisely how these firms would be involved in contract performance. COS at 13. Indeed, NASA specifically noted:

Past performance records for two contracts were not assessed because the contract was performed by the managing partner of a sister company to the Prime Offeror and the proposal did not demonstrate how the firm would utilize the company such that they would have meaningful involvement in the contract performance.

⁵ One of the identified contracts references the performance of a joint venture. AR, Tab 6c, Arcticom Past Performance Proposal at 667. Arcticom's affiliated company serves as the managing partner for that joint venture. *Id.*; see *also* COS at 12.

AR, Tab 10, PPER at 749.

As to the remaining contract, NASA evaluated the teaming partner's performance as very relevant, and the firm's performance as demonstrating satisfactory quality. AR, Tab 10, PPER at 748. Based on this evaluation, NASA assigned an overall past performance confidence assessment rating of "low." *Id.* at 749.

Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria. *LATA-Atkins Tech. Servs., LLC*, B-418602, B-418602.2, June 10, 2020, 2020 CPD ¶ 192 at 9. An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the assessment is unreasonable or inconsistent with the solicitation criteria. *Id.*

Additionally, the evaluation must be documented in sufficient detail to show that it was reasonable. Federal Acquisition Regulation (FAR) 15.305(a); *see also Ideal Electronic Sec. Co., Inc.*, B-283398, Nov. 10, 1999, 99-2 CPD ¶ 87 at 4. In reviewing the record, while we generally accord greater weight to contemporaneous evidence, we consider post-protest explanations which are credible and consistent with the rationality of the selection decision. *Ideal Electronic Sec. Co., Inc., supra.*

On this record, we find no basis to object to the past performance evaluation. First, we do not find unreasonable NASA's decision to disregard the affiliated companies' referenced past performance. Our decisions explain that an agency may consider the experience or past performance of an offeror's parent or affiliated company where, among other things, the proposal demonstrates that the resources of the parent or affiliated company will affect contract performance. *Eagle Eye Electric, LLC*, B-415562, B-415562.3, Jan. 18, 2018, 2018 CPD ¶ 33 at 3. There is, however, no requirement that an agency do so. *Id.*; *accord Highlight Techs., LLC*, B-417620, Sept. 6, 2019, 2019 CPD ¶ 315 at 3, n.3. In other words, an agency is under no general obligation to consider the unsolicited experience or past performance for a parent or affiliated company. *Eagle Eye Electric, LLC, supra.*

Here, the RFP does not contain any provision soliciting past performance information for affiliated companies, or requiring the agency to consider an affiliated company's referenced past performance. *See* MOL at 4; RFP, amend. 2 at 415-416. Indeed, whereas the RFP explained that NASA would consider one example of past performance from team members or major subcontractors, the RFP was silent as to whether NASA would consider examples of past performance from affiliated companies. RFP, amend. 2 at 415. Thus, we do not object to NASA's evaluation here because the

RFP did not require the agency to consider the affiliated companies' referenced performance, and, as noted, NASA was not under any general obligation to do so.⁶

To the extent that Arcticom argues that the agency must demonstrate that it reasonably disregarded the affiliated companies' past performance information for some reason other than the RFP simply did not require such an evaluation, we disagree. See Comments and Supp. Protest at 13-15. As noted, an agency does not have any obligation to consider unsolicited past performance information for affiliated companies, and therefore the agency may, as here, reject that information.⁷ See *Eagle Eye Electric, LLC, supra* at 4, n.3.

Likewise, we do not find persuasive Arcticom's related assertion that the agency failed to document its rationale for not considering the past performance information for the affiliated companies. See Supp. Comments at 14-15. Here, the contemporaneous

⁶ Insofar as Arcticom argues that the agency's decision not to consider affiliated companies' past performance unduly restricts competition or was unclear as to whether such past performance would be considered, see Comments and Supp. Protest at 16, we note those arguments constitute challenges to the terms of the solicitation, and should have been filed prior to the close of the solicitation period. 4 C.F.R. § 21.2(a)(1).

⁷ We also note that Arcticom's allegation that NASA unreasonably disregarded the past performance information for the affiliated companies is untimely because the protester developed this argument in piecemeal fashion. Our Regulations do not contemplate the piecemeal presentation of evidence, information, or analysis supporting allegations previously made. *Raytheon Blackbird Techs., Inc.*, B-417522, B-417522.2, July 11, 2019, 2019 CPD ¶ 254 at 3. Indeed, our regulations obligate a protester to set forth all known legal and factual grounds supporting its allegations because the piecemeal presentation of evidence unnecessarily delays the procurement process and our ability to resolve protests within the requisite 100-day period. *Id.*

Arcticom learned, as part of its debriefing, that NASA disregarded the affiliated companies' referenced past performance because those contracts were not performed by Arcticom. See AR, Tab 14, Debriefing Script at 853 ("Past performance records for two contracts were not assessed because the contract was performed by the managing partner of a sister company[.]"). Nevertheless, Arcticom did not challenge that aspect of the evaluation in its initial protest filing; instead, Arcticom waited to raise that argument as part of its comments on the agency's report. See Protest at 10 ("Arcticom's past performance references exceed the scope of NASA's requirements in terms of size, content, and complexity. Yet, NASA offered nothing to explain how it rationally rated Arcticom's past performance as 'low level of confidence.'"); Comments and Supp. Protest at 12-13 (arguing that the past performance evaluation was flawed because the agency did not consider the referenced past performance for affiliate companies). Accordingly, we dismiss the allegation as untimely.

record shows that the agency disregarded that information because it did not demonstrate Arcticom's performance, or the performance of a teaming member or subcontractor. AR, Tab 16, SSS at 941. Further, the contracting officer explains that the referenced past performance was not considered because the RFP solicited only past performance information for offerors, teaming members, or subcontractors. COS at 13. Thus, the record contained sufficient documentation showing that NASA elected not to consider the referenced past performance because the RFP did not solicit that type of past performance information, or contemplate that affiliated companies' past performance information would be considered as part of the evaluation process.⁸

Next, based on the past performance information considered, we think the agency reasonably evaluated Arcticom as demonstrating a "low" performance assessment confidence rating. Importantly, the RFP provided that a "low" rating would be assigned when an offeror's record of past performance demonstrated adequate performance. RFP, amend. 2 at 425. Consistent with that rating, the subcontractor's referenced contract demonstrated mostly "satisfactory" performance. AR, Tab 7a, Arcticom Contractor Performance Assessment Reporting System (CPARS) Spreadsheet; AR, Tab 7b, CPARS Report at 712. Additionally, the record shows that the subcontractor's performance was also sometimes characterized as poor because, during one evaluation cycle, the firm failed to perform some contract requirements, and did not have a sufficient number of qualified employees to perform particular functions. AR, Tab 7b, CPARS Report at 722. Thus, we do not object to the agency's evaluation because the referenced past performance demonstrated mostly adequate performance. Accordingly, we deny the protest allegation.

Arcticom also alleges that the agency unequally evaluated both its and TBP&JJ's past performance. Protest at 10-11. According to Arcticom, NASA applied a more rigorous standard when evaluating its past performance when compared to the awardee's past performance because TBP&JJ has less relevant past performance. Protest at 11. We dismiss this allegation as legally and factually insufficient.

Our Bid Protest Regulations require that protests "[s]et forth a detailed statement of the legal and factual grounds of protest," and require a protester to "clearly state legally sufficient grounds of protest." 4 C.F.R. § 21.1(c)(4), (f). These requirements contemplate that a protester will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. *Kodiak Base Operations Servs., LLC, B-414966 et al.*, Oct. 20, 2017, 2017 CPD ¶ 323 at 3.

⁸ To the extent Arcticom argues that the agency's alternative rationale was not sufficiently documented, we similarly do not find that argument persuasive. See Supp. Comments at 16. Here, the record shows that the agency concluded that Arcticom's proposal failed to demonstrate how the affiliated companies would have meaningful involvement in contract performance. AR, Tab 16, SSS at 941; AR, Tab 11, Briefing of SSA at 814. Thus, even if this aspect of the agency's evaluation was critical, we do not agree with the protester that the agency failed to document such determination.

Here, the protester's allegation does not state a valid basis of protest because it lacks any factual support. Indeed, while the protester asserts that it has larger and more relevant past performance, the firm does not explain in any factual detail how its contracts were larger or more relevant. See Protest at 11. Further, Arcticom does not reference or contrast a single contract performed by TBP&JJ to support its allegation. See *id.* Thus, we dismiss the allegation because Arcticom has not provided us with any tangible evidence to substantiate a finding that it was subjected to a more rigorous evaluation standard.

Source Selection Decision

As a final matter, Arcticom complains that NASA unreasonably made its selection decision because the agency did not meaningfully compare proposals when conducting the tradeoff analysis. See Supp. Comments at 17. In response, NASA explains that the SSA reviewed the evaluation results, and reasonably compared the proposal's features in accordance with the RFP's terms. Supp. MOL at 17-18.

Source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and price evaluation results, and their judgments are governed only by the tests of rationality and consistency with the stated evaluation criteria. *Integrity Mgmt. Consulting, Inc.*, B-418776.5, June 22, 2021, 2021 CPD ¶ 245. In reviewing an agency's selection decision, we examine the supporting record to determine if it was reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *Id.*

On this record, we do not find any basis to object to the agency's selection decision. As noted, the RFP advised that the past performance factor was considered to be significantly more important than the price factor. RFP, amend. 2 at 426. The record shows that the SSA reviewed TBP&JJ's referenced past performance, noted that the firm's quality of performance was very good for each of the referenced contracts, and concluded that the firm would probably perform the instant requirement successfully. AR, Tab 16, SSS at 944. In contrast, the record shows that the SSA reviewed Arcticom's past performance, noted that the firm's quality of performance was adequate, and concluded that the firm probably would experience some difficulty performing the requirement. *Id.* at 941.

When conducting the tradeoff analysis, the record shows that the SSA specifically compared TBP&JJ's and Arcticom's proposals. AR, Tab 16, SSS at 946. In this regard, the record shows that the SSA considered TBP&JJ's record of past performance as demonstrating a greater chance of successfully performing the requirement than Arcticom. *Id.* at 946. Additionally, the record shows that the SSA considered TBP&JJ's higher likelihood of success to be worth the slightly higher price. *Id.* Thus, we deny the

protest allegation because the record confirms that the SSA reasonably compared the proposals and identified TBP&JJ's proposal as representing the better value in accordance with the RFP's terms.

The protest is denied.

Edda Emmanuelli Perez
General Counsel