



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This version has been approved for public release.

Decision

Matter of: Significance Inc.

File: B-421307; B-421307.2

Date: March 3, 2023

Tenley A. Carp, Esq., Justin F. Ferraro, Esq., and Dymond A. Anthony, Esq., Arnall Golden Gregory LLP, for the protester.
John E. Jensen, Esq., Mary E. Buxton, Esq., and Robert Starling, Esq., Pillsbury Winthrop Shaw Pittman LLP, for Redwood Strategy Group, LLC, the intervenor.
Amanda Belanger, Esq., and Emmalyn McCarthy, Esq., United States Marine Corps, for the agency.
Michael Willems, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that agency misevaluated quotations and made an unreasonable source selection decision is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Significance, Inc., a woman-owned small business (WOSB) of Annapolis, Maryland, protests the award of a contract to Redwood Strategy Group, LLC, a WOSB of Chantilly, Virginia, under request for quotations (RFQ) No. M95494-22-Q-0023. The United States Marine Corps issued the RFQ for financial management support services. The protester alleges that the agency erred in evaluating Redwood's past performance, and in the conduct of its best-value tradeoff.

We deny the protest.

BACKGROUND

On July 1, 2022, the agency issued the RFQ as a set-aside for WOSBs using the commercial acquisition procedures of Federal Acquisition Regulation (FAR) part 12, and the simplified acquisition procedures of FAR subpart 13.5. Agency Report (AR), Tab 2, RFQ at 1; Memorandum of Law (MOL) at 2. The RFQ contemplated the award of a single fixed-price contract with a 1-year base period and two 1-year option periods.

RFQ at 7, 41. The RFQ provided that award would be made on the basis of a best-value tradeoff between the following factors: (1) technical capabilities and management approach; (2) past performance; and (3) price. *Id.* at 41. The solicitation explained that the non-price factors were of equal importance to each other, but that the non-price factors when combined, were more important than price. *Id.* at 41-42. Additionally, the RFQ provided that as the technical approach and past performance differences narrowed, price would become more important, and that the agency would not make an award at a significantly higher overall price to achieve only slightly superior technical features. *Id.*

With respect to past performance, the RFQ directed vendors to either identify up to three recent, relevant past performance efforts or to affirmatively state that they lacked recent, relevant past performance. RFQ at 39. Relevant to this protest, the RFQ did not explain how vendors who lacked recent, relevant past performance would be evaluated, but noted that “[c]ontractors and [s]ubcontractors who have successfully performed requirements similar in scope, magnitude, and complexity will be evaluated more favorably.” RFQ at 41. Additionally, the RFQ and associated questions and answers clarified that vendors could submit past performance references for work which they performed as a subcontractor rather than as a prime contractor. RFQ at 39-40; AR, Tab 3, Questions and Answers at 3.

On August 5, 2022, the agency received and evaluated five quotations, including quotations from the protester and awardee. MOL at 7. The protester’s and awardee’s prices were \$8,978,236.80 and \$6,912,294.03 respectively, and the technical quotations of both the protester and awardee were rated as “Outstanding.” AR, Tab 9, Award Decision Document at 1. Of note, the agency did not assign adjectival ratings for past performance, but instead used a narrative approach. See *Id.* at 4. Concerning the protester’s past performance, the agency found all three references that the protester provided to be recent and relevant, and the evaluators concluded that the available contractor performance assessment reports (CPARs) were overwhelmingly positive. *Id.* This led the agency to conclude that it had a “high degree of confidence” in the protester’s ability to perform the requirement. *Id.*

By contrast, the awardee also provided three past performance references, but the agency concluded that only one of those references, a subcontract performed by Redwood, was relevant to the current requirement. *Id.* While the awardee’s available CPARs were also positive, the available CPARs related to references that the agency concluded were not relevant, and there were no available CPARs concerning the sole relevant reference. AR, Tab 9, Award Decision Document at 4. Accordingly, the agency reached out to the agency point of contact for the relevant subcontract reference and requested information about the quality of Redwood’s performance. AR, Tab 8, Past Performance Evaluation Report at 3-4. The point of contact could not provide an overall performance rating, but volunteered that the prime contract’s options had all been exercised and that the agency had extended the period of performance by an additional 12 months. *Id.* The evaluators concluded from this exchange that the awardee’s performance as part of the team supporting the prime contract on the

relevant effort was likely to be, at least, satisfactory. *Id.* This led the agency to conclude that it had a “reasonable degree of confidence” in the awardee’s ability to perform the requirement. AR, Tab 9, Award Decision Document at 4.

The agency conducted a best-value tradeoff, in which the agency acknowledged that the protester’s past performance was superior to the awardee’s. However, the source selection authority concluded that the protester’s past performance advantage did not merit a 26 percent price premium, especially in light of the fact that both vendors had equally good approaches to the technical and management factor. AR, Tab 9, Award Decision Document at 4-5. Accordingly, the agency made award to Redwood, and this protest followed.

DISCUSSION

The protester principally challenges the agency’s evaluation of the awardee’s past performance and the agency’s best-value tradeoff. Protest at 11-20. Specifically, the protester alleges that the awardee lacked a record of recent and relevant past performance, and therefore the agency erred in concluding that it had reasonable confidence in the awardee’s ability to perform.¹ *Id.* at 16-20. Further, the protester contends that the agency’s best-value tradeoff was inconsistent with the terms of the

¹ The agency contends, for the first time in its supplemental memorandum of law, that the protester may have been ineligible for award under the FAR part 13 procedures utilized by the agency, because the protester’s price exceeded the \$7.5 million ceiling for using such procedures. Supp. MOL at 2-5 (*citing* FAR 13.500(a)). However, the protester responds that the current procurement involved, among other things, services performed in support of contingency operations, so a higher \$15 million ceiling applies to this procurement. Supp. Comments at 1-5 (*citing* FAR 13.500(c)). We note that the RFQ appears to support the protester’s characterization, in that significant portions of the statement of work expressly relate to support of contingency operations. See RFQ at 5-7 (discussing contingency operations reporting and analysis service reporting, contingency coding, cost of war reporting, etc.). We also note that the agency has not contested this aspect of the protester’s arguments.

Moreover, there is no evidence in the contemporaneous record that the agency considered the protester to be ineligible for award on this basis; rather it was raised for the first time in the agency’s response to a supplemental protest. We generally give little weight to reevaluations and judgments prepared in the heat of the adversarial process because such reevaluations may not represent the fair and considered judgment of the agency. See *Boeing Sikorsky Aircraft Support*, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. Accordingly, because the RFQ appears to facially contemplate work in support of contingency operations and the agency’s argument relies on post-protest representations that have no basis in the contemporaneous record, we decline to dismiss the protest on this basis.

solicitation and inappropriately minimized the protester's superior past performance. *Id.* at 10-16. We address these arguments in turn.²

As noted above, the procurement was conducted under simplified acquisition procedures. When using simplified acquisition procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. *Emergency Vehicle Installations Corp.*, B-408682, Nov. 27, 2013, 2013 CPD ¶ 273 at 4. In reviewing a protest of a simplified acquisition, we examine the record to determine whether the agency met this standard and exercised its discretion reasonably. *DOER Marine*, B-295087, Dec. 21, 2004, 2004 CPD ¶ 252 at 3. A protester's disagreement with the agency's judgment, without more, does not establish that the evaluation was unreasonable. *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

Past Performance

The protester alleges that the agency erred in evaluating the awardee's past performance in several respects. Specifically, the protester notes that only one of the three references offered by the awardee was both recent and relevant, and that there was no quality information available for that reference. Comments and Supp. Protest at 11-18. Compounding this issue, the protester notes that the sole relevant reference involved the awardee performing as a subcontractor rather than a prime contractor, which the protester contends further limits the relevance of the awardee's only relevant reference. *Id.* As a result, the protester contends that the agency erred in concluding that it had a reasonable degree of confidence in the awardee's past performance. *Id.*

In response, the agency points out that the solicitation expressly permitted vendors to include past performance references on which they were a subcontractor, and so it is unobjectionable that the awardee did so. Supp. MOL at 5-14. Further, the agency

² The protester raises other arguments that are not addressed in this decision. While we do not address all the protester's arguments in this decision, we have considered them and conclude that they provide no basis to sustain the protest. For example, the protester contends that Redwood's technical rating of outstanding was inappropriate because Redwood lacked a record of relevant past performance. Comments and Supp. Protest at 9-11.

In this case, the RFQ provided distinct evaluation criteria for the technical factor and the past performance factor, and the two factors were evaluated separately. See RFQ at 39-41. Moreover, while the solicitation provided for an evaluation of the experience of personnel to be employed on the contract, the RFQ did not provide for or permit an evaluation of corporate experience as part of the technical factor. *Id.* Put another way, Redwood's purported lack of relevant past performance as a company is not meaningfully relevant to the technical evaluation as described in the solicitation. *Id.* Accordingly, this protest ground lacks a sufficient factual and legal basis, and is dismissed. 4 C.F.R. § 21.1(f).

notes that while the awardee included two non-relevant past performance efforts, the quality of the awardee's performance on those efforts was excellent. *Id.*

The agency also explains that when it realized that the awardee's sole relevant effort did not have any CPARs, the agency reached out to the government point of contact for that effort. *Id.* The individual contacted by the agency was unable to provide quality ratings, but also did not provide any adverse past performance information. *Id.* More significantly, the individual explained that the government had exercised all of the prime contract's options, and, indeed, had modified the prime contract to add additional options and extend the contract's period of performance. *Id.* In this regard, the agency argues that FAR section 17.207(c) provides that a contracting officer may exercise options only after determining that, among other things, "the contractor's performance on th[e] contract has been acceptable, e.g., received satisfactory ratings." Supp. MOL at 11 (*citing* FAR 17.207(c)). The agency maintains that the evaluators who reached out to the point of contact understood the information offered to be, in effect, a statement that Redwood's performance as part of the team performing under the relevant reference was satisfactory. *Id.*

Where a protester challenges an agency's evaluation of past performance, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *Recogniti, LLP*, B-410658, Jan. 21, 2015, 2015 CPD ¶ 49 at 4. As a general matter, an agency's evaluation of vendors' past performance, including the agency's determination of the relevance and scope of a vendor's performance history, is a matter of discretion, which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. *Government and Military Certification Sys., Inc.*, B-411261, June 26, 2015, 2015 CPD ¶ 192 at 8-9.

We cannot conclude that the agency's conclusions here were unreasonable on the record before us. Preliminarily, the agency is correct that the FAR generally requires that a contracting officer must determine that a contractor's performance is satisfactory before exercising an option, which supports the agency's inference that the awardee's performance, as part of the overall team supporting the contract, was at least satisfactory. FAR 17.207(c)(7). Further, the agency in this case did not merely exercise options, but actually modified the prime contract to extend its period of performance as well, which is additional evidence that the agency found to support the acceptability of Redwood's performance.

Finally, even assuming that the protester is correct that the agency erred in finding the awardee's past performance to provide a reasonable level of confidence, it is not clear that the protester can demonstrate that it was competitively prejudiced based on these facts. Competitive prejudice is an essential element to every viable protest, and where an agency's allegedly improper actions did not affect the protester's chances of receiving award, there is no basis for sustaining the protest. *See, e.g., American Cybernetic Corp.*, B-310551.2, Feb. 1, 2008, 2008 CPD ¶ 40 at 2-3.

Specifically, even had the agency concluded that the awardee lacked a record of relevant, recent past performance, it would have been inappropriate for the agency to penalize the awardee on that basis. While the solicitation in this case does not expressly explain how vendors who lacked relevant past performance would be evaluated, our decisions have generally concluded that vendors in FAR part 13 procurements who lack a record of recent, relevant past performance may not be treated favorably or unfavorably on that basis. See, e.g., *Jacqueline R. Sims, dba JRS Staffing Services*, B-409613, B-409613.2, June 16, 2014, 2014 CPD ¶ 181 at 4-5 (concluding that an agency is not permitted to evaluate a firm's lack of relevant past performance either favorably or unfavorably in a FAR part 13 procurement, even in the absence of solicitation language to that effect); see also *SSI Tech., Inc.*, B-412765.2, July 13, 2016, 2016 CPD ¶ 184 at 5-6.

Even assuming that Redwood's past performance should have been evaluated as neutral, the protester has not established that the agency likely would have reached a different evaluative conclusion under those circumstances. The source selection decision makes clear that the agency was fully aware of the underlying facts concerning the awardee's limited record of past performance and acknowledged the superiority of the protester's past performance. AR, Tab 9, Award Decision Document at 4-5. However, the agency concluded that this advantage did not merit paying a significant 26 percent price premium. *Id.* In short, given the awardee's limited record of relevant past performance, it is not clear that the agency would have reached a different source selection decision even had the agency ultimately treated the awardee's past performance as a neutral factor. Accordingly, we see no basis on which to sustain the protest.

Best-Value Tradeoff

With regard to the best-value tradeoff, the protester alleges that the agency tradeoff decision was inconsistent with the terms of the solicitation and inappropriately minimized the protester's superior past performance. Protest at 11-16. Specifically, the protester notes that the solicitation provided that the non-technical factors were significantly more important than price, and that as differences in non-price factors narrowed price would become more important. *Id.* However, the protester contends that there were significant differences between the vendors' past performance, which should have outweighed the price difference between the two quotations. *Id.*

In response, the agency notes that the solicitation also provided that the agency would not make an award at a significantly higher overall price to obtain only slightly superior technical features. MOL at 13-27. While the agency acknowledges that the protester's past performance is superior to the awardee's past performance, the agency notes that the two quotations received the same technical rating and the protester's price was significantly higher. *Id.* Accordingly, the agency argues it had the discretion to conclude that the awardee represented the best value to the agency. *Id.*

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. When reviewing an agency's source 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. *The SI Organization, Inc.*, B-410496, B-410496.2, Jan. 7, 2015, 2015 CPD ¶ 29 at 14. Moreover, even when price is the least important factor, an agency may properly select a lower-priced, lower-rated quotation provided that the agency reasonably concludes that the price premium involved in selecting a higher-rated, higher-priced proposal is not justified. See, e.g., *i4 Now Sols., Inc.*, B-412369, Jan. 27, 2016, 2016 CPD ¶ 47 at 15 (concluding, among other things, that an agency was reasonable in declining to pay a 25 percent price premium for a proposal with superior past performance).

In this case, the source selection decision notes that the protester and awardee received similar technical ratings, but clearly describes the differences between the vendors' past performance quotations, discussing each reference for both vendors. AR, Tab 9, Award Decision Document at 4-5. The award decision document also explains that the agency concluded that the protester's past performance was superior, but did not merit paying a significant 26 percent price premium. *Id.* While the solicitation made clear that non-price factors, when combined, were more important than price, such language does not signify that price is irrelevant to the tradeoff, nor that a significant price difference must be ignored because one vendor is superior to another with respect to one of the non-price factors. See *i4 Now Sols., Inc.*, *supra*.

In sum, Significance's protest reflects little more than disagreement with the agency's source selection decision. We see no basis to conclude on the record before us that the tradeoff decision was inappropriate or otherwise inconsistent with the solicitation. See *DEI Consulting, supra*.

The protest is denied.

Edda Emmanuelli Perez
General Counsel