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# Decision

**Matter of:** K&K JL Services, Inc.

**File:** B-423367

**Date:** May 7, 2025

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## DIGEST

Protest challenging solicitation provisions as unduly restrictive of competition is denied where the provisions are reasonably related to the agency’s requirements.

## DECISION

K&K JL Services, Inc., a small business of Concord, California, challenges the terms and conditions of request for proposals (RFP) No. FA480025R0009, issued by the Department of the Air Force for grounds maintenance at Joint Base Langley-Eustis (JBLE), Virginia. The protester contends that the solicitation is unduly restrictive of competition.

We deny the protest.

## BACKGROUND

On February 11, 2025, the Air Force issued the RFP as a total small business set-aside pursuant to Federal Acquisition Regulation (FAR) parts 12 and 15. Agency Report (AR), Tab 9, RFP at 1.<sup>1</sup> The solicitation contemplates the award of a single fixed-price contract for grounds maintenance at JBLE with a base period of 8 months and two 1-year option periods. *Id.* at 3-13, 73; Contracting Officer’s Statement (COS) at 5. JBLE consists of more than 2,000 acres of improved, semi-improved, and airfield

<sup>1</sup> Citations to the record refer to the documents’ internal Adobe PDF pagination.

grounds and over 1 million linear feet of edging and similar areas that require service. AR, Tab 24, Performance Work Statement (PWS) at 3. K&K is the incumbent provider of the services, currently performing under a contract awarded in May 2024. Protest at 5.

The RFP provides for award to be made on a lowest-price, technically acceptable (LPTA) basis, considering the following evaluation factors: (1) price; (2) technical; and (3) past performance. RFP at 73. The technical and past performance factors will be rated on an acceptable or unacceptable basis. *Id.* at 74-75. With respect to past performance, the solicitation states that offerors “shall provide at least two (2) references . . . for recent past performance of similar size and scope requirements as detailed” in the PWS. *Id.* at 75. Here, the RFP defined relevant size of a past project as a contract “with a value of at least \$1M per year.”<sup>2</sup> *Id.*

Past performance will be evaluated as “acceptable” if, based “on the offeror’s performance record,” the agency has “a reasonable expectation that the offeror will successfully perform the required effort,” and “unacceptable” if the agency does not. *Id.* at 74. The solicitation provides that “an offeror without a record of relevant past performance, or for whom information on past performance is not available or so sparse that no meaningful past performance rating can be reasonably assigned” shall be determined to have a rating of unknown, which will be considered acceptable. *Id.* at 75.

Proposals were due by March 7, and the agency received four proposals, including one from K&K. RFP at 1; COS at 7. K&K filed this protest of the solicitation prior to the closing date for receipt of proposals.

## DISCUSSION

The protester challenges the solicitation’s past performance evaluation factor as unduly restrictive of competition. The protester does not object to the solicitation’s definitions of relevant past performance with respect to recency (within the past five years) or scope (similar depth and breadth of grounds maintenance). See RFP at 75. Instead, the protester focuses its challenge on two issues: (1) requiring two past performance references; and (2) defining relevant size as a project with a value of at least \$1 million per year. Protest at 7. According to K&K, these requirements are unduly restrictive of competition because they effectively exclude a number of small businesses that are capable of the work.<sup>3</sup> *Id.* at 7-8 (“Quite simply, the past performance criteria outlined

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<sup>2</sup> The RFP also defined recent performance as “occurring within the last 5 years” and relevant scope as a project that “involves the depth and breadth of work described in this PWS (i.e. mowing, trimming, edging, mulch, flower bed maintenance, and tractor operations to present a neat, clean, and professional appearance).” RFP at 75.

<sup>3</sup> While we do not discuss every permutation of every argument raised by the protester, we have considered them all thoroughly and conclude that none provides a basis to sustain the protest.

above--the minimum number of projects and dollar value--serve no legitimate agency needs and unduly restrict competition.”).

The determination of the government’s needs and the best method of accommodating them is primarily the responsibility of the procuring agency. *Columbia Imaging, Inc.*, B-286772.2, B-287363, Apr. 13, 2001, 2001 CPD ¶ 78 at 2. Our Office will not sustain a protest challenging an agency’s determination of its needs unless the protester presents clear and convincing evidence that the specifications are in fact impossible to meet or unduly restrict competition. *Instrument Control Servs., Inc.; Science & Mgmt. Res., Inc.*, B-289660, B-289660.2, Apr. 15, 2002, 2002 CPD ¶ 66 at 6. To the extent a protester challenges a specification as unduly restrictive, that is, challenges both the restrictive nature of the requirement as well as the agency’s need for the restriction, the procuring agency has the responsibility of establishing that the specification is reasonably necessary to meet its needs. *Smith & Nephew, Inc.*, B-410453, Jan. 2, 2015, 2015 CPD ¶ 90 at 5. The adequacy of the agency’s justification is ascertained through examining whether the agency’s explanation is reasonable, in other words, whether it can withstand logical scrutiny. *Id.*

As an initial matter, the protester attempts to elide a fundamental element with respect to our review of solicitation requirements that are alleged to be unduly restrictive of competition. It is true that our Office has sustained challenges to solicitation requirements that restrict competition and are not reasonably related to the agency’s needs. See, e.g., *Pitney Bowes, Inc.*, B-413876.2, Feb. 13, 2017, 2017 CPD ¶ 56. In those instances, however, the challenged solicitation requirements generally restricted competition by preventing the protester from competing. *Pitney Bowes, Inc.*, *supra*.

Here, the protester has, in fact, submitted a proposal--in response to the current RFP--that identifies two past performance references for grounds maintenance work with dollar values of more than \$1 million per year. AR, Tab 38, K&K Proposal Vol. 3 at 3-5. Although the protester asserts that “it is not sure whether the references it submitted will be considered relevant,” K&K’s concerns in that regard are not based on the number of past performance references required or the size of either reference. See Comments at 3. Accordingly, because the protester has demonstrated the ability to submit--and has, in fact, submitted--a proposal that met the number and size requirements for past performance under the RFP as written, the protester has not demonstrated competitive prejudice. *McGoldrick Constr. Servs. Corp.*, B-419327, Jan. 15, 2021, 2021 CPD ¶ 53 at 12 (finding that “because the protester clearly believed it was able to make a responsive offer to the RFP as written and has not argued to the contrary, the protester has not demonstrated competitive prejudice with respect to the bonding requirement”).

Competitive prejudice is an essential element of every viable protest, and, where a prospective offeror has not shown competitive prejudice stemming from a solicitation provision, the offeror is not an interested party to challenge that provision. See *DNC Parks & Resorts at Yosemite, Inc.*, B-410998, April 14, 2015, 2015 CPD ¶ 127 at 12-13 (concluding that an offeror that did not demonstrate that it was competitively prejudiced

by a solicitation provision was not an interested party to challenge that provision); see *also Government & Mil. Certification Sys., Inc.*, B-409420, Apr. 2, 2014, 2014 CPD ¶ 116 at 4 (concluding that a prospective offeror generally is not an interested party to challenge a specification as unduly restrictive in cases where it can meet requirement, because its economic interests are not prejudiced). Here, the protester has submitted a proposal and has not otherwise alleged or demonstrated that it is unable to compete based on the solicitation criteria it challenges in this protest.

In any event, even disregarding the fact that the protester has not demonstrated competitive prejudice with respect to the past performance criteria, this protest ground is also substantively without merit. Preliminarily, we note that nowhere in the solicitation does it provide that offerors without two relevant past performance references will be deemed ineligible for award. RFP at 75. To the contrary, the RFP explicitly advises:

In the case of an offeror without a record of relevant past performance, or for whom information on past performance is not available or so sparse that no meaningful past performance rating can be reasonable assigned, the offeror may not be evaluated favorably or unfavorably on past performance (see FAR 15.305(a)(2)(iv)). Therefore, the offeror shall be determined to have “Unknown” past performance. In the context of acceptability/unacceptability, “Unknown” shall be considered “Acceptable.”

*Id.* Therefore, under this solicitation--which provides for selection on an LPTA basis--an offeror without a record of relevant past performance remains eligible for award.<sup>4</sup> See *id.* at 75.

Furthermore, the record reflects that the contract here is expected to have a value in excess of \$1 million per year. The Air Force prepared an independent government cost

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<sup>4</sup> K&K objects to the solicitation in this regard. Comments at 5-8. Although K&K frames its objection as an issue of an ambiguity in the solicitation, it is apparent that K&K's real objection is to the agency's reservation of the right to consider “information available in the Contractor Assessment Reporting System (CPARS) and any other sources identified by the offeror or the Government” in the evaluation of past performance. See *id.*; RFP at 75. That is, K&K asserts that, if an offeror submits past performance references, the agency should be limited to evaluating only those submitted references, and the agency should not be permitted to consider CPARS or other information about any contract that the offeror does not identify as a reference in its proposal. Comments at 8. There is, however, nothing inherently improper or unreasonable with the agency retaining the discretion to look to sources of past performance outside of those specifically submitted by the offeror, provided all offers are evaluated on the same basis and the evaluation is consistent with the terms of the solicitation. *Cf. J. Squared Inc., d/b/a Univ. Loft Co.*, B-417010, B-417010.2, B-417010, Jan. 22, 2019, 2019 CPD ¶ 65 at 4 (discussing agency discretion to consider information beyond that submitted in a proposal in evaluating past performance). As such, we find no basis to sustain K&K's objection here.

estimate of approximately \$[DELETED] for the overall potential 2-year and 8-month period of performance being competed under this solicitation. COS at 4. This is consistent with the protester's incumbent contract for this work, which has a base-year price of approximately \$2.4 million. *Id.* at 2. According to the Air Force, the grounds maintenance work "is critical because controlling vegetation near air strips reduces the likelihood that wildlife (e.g., birds) will strike Air Force planes in transit." COS at 5. As a result of "documented" performance issues with the last two contractors performing grounds maintenance at JBLE, the agency considers "[r]eliable contractor performance [to be] necessary to meet this essential mission." Memorandum of Law at 2, 4.

In short, the Air Force's requirement that offerors submit at least two past performance references with a yearly value over \$1 million are reasonably related to the agency's requirements here. *Cf. WILLCOR Inc.*, B-422358, May 22, 2024, 2024 CPD ¶ 122 at 5-6 (finding agency's minimum requirements for corporate experience were reasonably explained by reference to the expected contract value and performance requirements). On this record, we find no basis to sustain the protest that the evaluation requirements are unduly restrictive of competition.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel