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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

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## Decision

**Matter of:** HydroGeoLogic, Inc.

**File:** B-406635; B-406635.2; B-406635.3; B-406635.4

**Date:** July 25, 2012

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Howard H. Yuan, Esq., Michael Bhargava, Esq., Holly A. Roth, Esq., and Diana Kwok, Esq., Manatt, Phelps & Phillips, LLP, for the protester.  
Kenneth A. Martin, Esq., The Martin Law Firm, PLLC, for Plexus-PARS JV, LLC, an intervenor.

Madeline Shay, Esq., Department of the Army, for the agency.

Mary G. Curcio, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that agency used unstated criteria to evaluate proposals is denied where allegedly unstated criteria were reasonably related to, and logically encompassed by, the stated criteria.
  2. Agency reasonably assigned offerors unknown confidence for past performance where it did not receive the requisite number of past performance questionnaires required by the solicitation.
  3. When evaluating the past performance of a joint venture, an agency may properly consider the past performance of the individual members of the joint venture where the solicitation does not prohibit this approach.
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### DECISION

HydroGeologic, Inc. (HGL), of Reston, Virginia, protests the award of contracts to EA Engineering (EA), of Hunt Valley, Maryland; Cape Environmental Management, Inc., of Norcross, Georgia; PIKA-MP JV, LLC, of Stafford, Texas; Kemron Environmental Services, Inc., of Atlanta, Georgia; and Plexus-PARS JV, LLC, of Alexandria, Virginia, under solicitation No. W912DR-10-R-0098, issued by the Department of the Army, U.S. Army Corps of Engineers, for environmental services. HGL asserts that the agency improperly evaluated its technical proposal and the past performance of the awardees.

We deny the protest.

## BACKGROUND

The RFP contemplated the award of five indefinite-delivery, indefinite-quantity contracts on a “best value” basis considering the following evaluation factors: corporate experience (with subfactors for corporate experience and project listing); hypothetical scenario; management; quality/safety; past performance; personnel; and price. RFP § M.1. The first four listed factors were considered equally important and more important than factors 5 and 6, which were equal to each other. Technical factors were more important than price. Id.

The agency received 18 proposals in response to the solicitation. Following the submission and evaluation of proposals, the five awardees and the protester were rated as follows:<sup>1</sup>

	EA	PIKA	Kemron	Plexus PARS	Cape	HGL
Experience	VG	E	E	VG	VG	VG
Hypothetical Scenario	S	VG	S	VG	VG	S
Management	E	E	E	VG	VG	VG
Quality/Safety	E	VG	VG	VG	E	E
Past Performance	Unknown	Unknown	Unknown	Very Low Risk	Unknown	Very Low Risk
Personnel	E	VG	VG	E	VG	VG
Price	\$5.9 Million	\$6.17 Million	\$6.07 Million	\$5.25 Million	\$5.44 Million	\$5.9 Million

Source Selection Decision Document at 3, 9. The agency performed a best value analysis and selected the five most highly technically rated offers for award. Id. at 9-10. Following a debriefing, HGL filed this protest.

## DISCUSSION

HGL challenges the evaluation of its technical proposal and the awardees’ past performance. In reviewing challenges to the agency’s proposal evaluation, we do not reevaluate proposals, but, rather, review the agency’s evaluation to ensure that it

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<sup>1</sup> The adjectival ratings for the technical factors were excellent (E), very good (VG), satisfactory (S), marginal, and unsatisfactory; and for past performance the ratings were very low risk, low risk, moderate risk, high risk, very high risk, and unknown risk.

was reasonable, consistent with the terms of the solicitation, and consistent with applicable statutes and regulations. Phillips Med. Sys. of N. Am., B-293945.2, June 17, 2004, 2004 CPD ¶ 129 at 2. We have considered all of HGL's allegations and find that none provide a basis for questioning the awards. We discuss several of its assertions below.

#### Corporate Experience/Project Listing

HGL's proposal was rated very good under the corporate experience/project listing evaluation factor. The proposal was assigned a weakness under the corporate experience subfactor because it was not clear from the proposal that the proposed team had experience working together on similar efforts. HGL Evaluation, Factor 1. Under the project listing subfactor, HGL was assigned two weaknesses: (1) it was not evident that the proposed team had experience working together on prior projects; and (2) it was difficult to understand the reason for the significant difference between the awarded cost/price and the final cost/price--i.e., cost growth--for some of the listed contracts of HGL and its team members. Id.

HGL asserts that the weaknesses assigned under the corporate experience and project listing subfactors with respect to the prior experience of the proposed team working together resulted from the application of undisclosed evaluation criteria. According to the protester, the solicitation did not advise offerors that their proposals would be evaluated based on whether or not its team had performed together as a team.

While solicitations must inform offerors of the basis for proposal evaluation, and the evaluation must be based on the factors set forth in the solicitation, Federal Acquisition Regulation § 15.304, agencies are not required to specifically list every area that may be taken into account, provided such areas are reasonably related to or encompassed by the stated criteria. AIA-Todini-Lotos, B-294337, Oct. 15, 2004, 2004 CPD ¶ 211 at 8.

Here, the assigned weaknesses concerned matters which were reasonably related to, and logically encompassed by, the evaluation criteria in the RFP. Regarding the corporate experience subfactor, the solicitation anticipated an evaluation of the offeror's experience performing the required services, RFP § M.1.1(a)(i), and specifically instructed offerors to discuss the "[p]rior experience of the proposed team." RFP § L.3.2.1(a). In our view, evaluating whether the team had experience working as a team is logically encompassed by the solicitation notice that the agency would evaluate the experience of the proposed team. Regarding the project listing subfactor, the solicitation provided that the agency "will evaluate the Offeror's and all team members' relevant experience to determine the potential to satisfactorily perform the intended work." RFP § M.1.1(a)(ii). Again, we find that evaluating whether the team had worked together is reasonably related to, and logically

encompassed by, the solicitation's notice that the agency would evaluate the experience of the proposed team.

HGL also challenges the agency's assessment of a weakness under the project listing subfactor for an inadequate explanation of cost growth. HGL contends that the solicitation did not require offerors to explain the reason for the difference between the awarded and final costs of prior projects, and thus the agency improperly considered this issue when evaluating HGL's proposal. HGL further argues that, in any case, its proposal explained whether the cost growth was the result of modifying the contract, or the exercise of a contract option.

We need not consider this challenge since there is no indication in the record that the lack of a more detailed explanation of cost growth in its project listing adversely affected HGL's competitive standing. Prejudice is an essential element of every viable protest; we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions. Armorworks Enters., LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3. Here, HGL's proposal was rated very good under the corporate experience/project listing evaluation factor. Given the agency's reasonable determination of weaknesses under both subfactors as a result of the proposed team's lack of experience working together, there simply is no basis in the record for concluding that HGL would have been entitled to an excellent rating--the highest available evaluation rating--had it not also received the cost growth explanation weakness under the project listing subfactor.

#### Past Performance

HGL also challenges the past performance ratings of the awardees. In this regard, the solicitation provided that "[t]he offeror **shall** submit five (5) past performance questionnaires (PPQs). . . . It is solely the responsibility of the offeror to ensure that the individuals responsible for filing past performance questionnaires do so prior to the submission deadline." RFP § L.3.2.5. The solicitation further provided that:

the Government will evaluate the past performance areas to assess the relative risk in the contractors ability to successfully perform the services required. In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably.

RFP § M.1.1(e).

For 4 of the 5 awardees (EA, PIKA, Kemron and Cape), the agency received fewer than the 5 past performance questionnaires required by the solicitation. As a result, the agency rated each of these offerors unknown confidence for past performance. HGL asserts that submitting five questionnaires was mandatory, and since these

offerors did not comply with the requirement, they should have been rated unsatisfactory.

We find the evaluation in this regard to be unobjectionable. While the solicitation required offerors to submit five past performance questionnaires, which presumably is the number of questionnaires the agency believed it needed for an adequate basis to evaluate past performance, the solicitation also specifically provided that if the offeror did not have relevant past performance, or if past performance information was not available, the offeror would not be rated favorably or unfavorably. RFP § M.1.1(e). Since there was inadequate evidence of relevant past performance as defined by the solicitation for the four awardees, it was consistent with the solicitation, and reasonable, for the agency to assign these offerors a rating of unknown confidence for past performance. See Thomas Brand Siding Company, Inc., B-286914.3, Mar. 12, 2001, 2001 CPD ¶ 53 at 4.

HGL also questions the past performance rating for the fifth awardee, Plexus-PARS, JV. In evaluating the joint venture's past performance, the agency considered past performance questionnaires submitted on behalf of each of the members of the joint venture, as opposed to questionnaires that were submitted for the joint venture as an entity. HGL asserts that since the solicitation required the offeror to submit the past performance questionnaires, and since the Plexus-PARS JV did not submit any past performance information questionnaires for the joint venture, but only for the members of the joint venture, it should have been rated neutral, rather than very low risk, for past performance.

This argument is without merit. An agency properly may consider the relevant experience and past performance history of the individual joint venture partners of the prime contractor in evaluating the past performance of a joint venture, so long as doing so is not expressly prohibited by the RFP. MVM, Inc., B-290726 et al., Sept. 23, 2002, 2002 CPD ¶ 167 at 4; Network Sec. Techs., Inc., B-290741.2, Nov. 13, 2002, 2002 CPD ¶ 193 at 9. Here, the RFP did not prohibit considering the past performance of individual joint venture partners in evaluating an offeror's past performance. Accordingly, since there were at least five questionnaires submitted on behalf of the individual joint venture partners, the Plexus-PARS JV satisfied the solicitation requirement in this regard. Further, since HGL has not otherwise challenged the evaluation of the quality of the past performance of the Plexus-PARS JV, as evidenced by the questionnaires for the joint venture partners, we have no basis to question the agency's assignment of a very low risk rating to the offeror for its past performance.

The protest is denied.

Lynn H. Gibson  
General Counsel