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

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## Decision

**Matter of:** A&D General Contracting, Inc.

**File:** B-409296

**Date:** February 24, 2014

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Neal W. Clements III, Esq., William L. Bruckner, Esq., and Branden L. Timboe, Esq., The Bruckner Law Firm, for the protester.

David C. Brasfield, Esq., and Stephen L. Sowell, Esq., Department of the Army, for the agency.

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### **DIGEST**

Protest that an agency improperly considered the quantity of relevant past performance offered by the protester where the solicitation did not specifically state that a minimum amount of relevant past performance would be considered is denied where the quantity of relevant experience is logically encompassed by or related to considering the quality of the offeror's past performance.

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### **DECISION**

A&D General Contracting, Inc., of San Diego, California, protests the rejection of its proposal under request for proposals (RFP) No. W91278-13-R-0046, issued by the Department of the Army, Corps of Engineers, for services to support military construction and repair projects in the agency's Mobile District, Alabama. A&D challenges the evaluation of its past performance.

We deny the protest.

### **BACKGROUND**

The RFP, issued as a small business set-aside, provided for the award of an indefinite-delivery, indefinite-quantity contract for construction services for a base year and four option years. Offerors were informed that award would be made on a best-value basis using a two-phase evaluation process. RFP § 00 11 00, ¶¶ 1.3, 1.4. During the first phase, the agency would evaluate offerors under the following factors, in descending order of importance: past performance and technical

approach. Id. ¶¶ 1.3, 4.0. Offerors were informed that the agency would invite only the most highly qualified firms to participate in phase two of the competition. Id. ¶ 1.3.

As relevant here, the RFP stated that the agency's past performance evaluation would assess the relevance and quality of the company's past efforts.<sup>1</sup> Id. ¶ 4.2. In this regard, offerors were instructed to provide no more than five examples of their recent, relevant construction projects that demonstrated the breadth of the company's past performance efforts as a prime contractor. See RFP amend. 1 § 00 11 00 ¶ 4.2.1(a). Offerors were also required to provide a performance evaluation or client questionnaire for each project. RFP § 00 11 00 ¶ 4.2.1(b).

With respect to relevance, offerors were informed that the agency would assess the degree to which work performed by the offeror, as "a prime construction contractor," was similar in scope, magnitude, and complexity to the work described in the SOW. RFP amend. 1 § 00 11 00 ¶ 4.2.1. Offerors were further advised that the evaluation would give greater consideration to the following: efforts that were performed on-site as a prime contractor using its own organization (rather than performed as a subcontractor); construction-type work other than construction management; design-build projects; and successful efforts that demonstrated a breadth of construction projects similar to those in the SOW. See RFP § 00 11 00 ¶ 8.2(a). Offerors were also warned that the agency would only evaluate past performance information from the entity submitting the proposal. See id. ¶ 4.6.

The RFP stated that the agency would assign an overall performance confidence assessment rating based on the agency's evaluation of the relevance and quality of the offeror's past performance.<sup>2</sup> RFP amend. 1 § 00 11 00 ¶ 8.2.1. The RFP advised that more relevant, recent projects would be considered a strong predictor of potential successful contract performance. Id.

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<sup>1</sup> The RFP provided that an offeror's past performance would receive one of the following confidence assessment ratings: substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence (neutral). RFP amend. 1 § 00 11 00 ¶ 8.2.2. As relevant here, the RFP defined substantial confidence as follows: "Based on the Offeror's recent/relevant performance record, the Government has a high expectation that the Offeror will successfully perform the required effort." Id. A satisfactory confidence rating reflected a performance record that provided a reasonable expectation of successful performance. Id.

<sup>2</sup> The RFP stated that the agency would not assign an overall relevancy rating, but that each project cited by an offeror would be assigned an individual relevancy rating based on the consensus of members from an agency source selection evaluation board. RFP amend. 1 § 00 11 00 ¶ 8.2.1; see RFP § 00 11 00 ¶¶ 6.2.2, 8.2.

In the first phase, the Corps received 36 proposals, including A&D's, which were evaluated by the agency's source selection evaluation board (SSEB). With respect to the evaluation of offerors' past performance, the SSEB reserved the highest past performance confidence rating (substantial confidence) for proposals that provided at least four very relevant projects; showed a general trend of performance quality, including client evaluation ratings ranging from satisfactory to outstanding, with mostly above average to outstanding ratings; and included a diverse portfolio of past performance that demonstrated a breadth of projects logically connected to the SOW. See Agency Report (AR), Tab 6, SSEB Report, at 4.

A&D identified 4 projects for its past performance. See AR, Tab 5, A&D Phase I Proposal, at 7-16. A&D also provided performance evaluation questionnaires for its four projects. Id. at 18-32. A&D's proposal indicated that three of the projects were performed by A&D GC, Inc., while the fourth project was performed by Action-A&D Joint Venture.<sup>3</sup> The SSEB found that the three projects performed by A&D were very relevant, and that A&D had received average to outstanding quality ratings from clients for its performance on these projects. AR, Tab 6, SSEB Report, at 29-30, 167. The SSEB did not consider the fourth project, because A&D's proposal indicated that this project was performed by a joint venture, which was not the entity submitting the proposal. Id. at 29-30, 167. The SSEB assigned A&D's past performance a satisfactory confidence rating.

The SSEB recommended that 6 proposals, all of which received substantial confidence past performance and outstanding technical approach ratings, be selected to participate in phase two as the most highly qualified offers. Id. at 5-6, 52-53. A&D, whose proposal received a satisfactory confidence assessment and an outstanding technical approach rating, was not found to be among the most highly qualified offerors.

The contracting officer reviewed the SSEB's evaluation and recommendation, and conducted her own assessment of offerors' phase one proposals. See AR, Tab 7, Contracting Officer's Selection Memorandum, at 1-64. The contracting officer accepted the SSEB recommendation to select the six highest-rated proposals for phase two of the competition, and to exclude A&D's proposal from further competition. Id. at 1, 64. With respect to A&D's proposal, the contracting officer recognized A&D's outstanding technical approach rating that reflected an exceptional approach and three strengths, id. at 12-13, but found that A&D, which had only provided three relevant projects, had not demonstrated the same breadth of past performance efforts as the more highly-rated offerors. See id. at 58-64.

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<sup>3</sup> The performance evaluation questionnaire for the fourth project stated that it was performed by Action-A&D A Joint Venture. AR, Tab 5, A&D Phase I Proposal, at 30.

Following notification that its proposal was not selected to participate in phase two, A&D protested to our Office.

## DISCUSSION

A&D protests that the requirement that an offeror show four relevant projects to receive a substantial confidence assessment was an unstated evaluation criterion.<sup>4</sup> Protest at 2; Comments at 3. The protester complains that the RFP only stated a maximum number of projects that an offeror could provide, and did not identify a minimum number of projects that must be provided. See Comments at 2-4. A&D contends that its proposal should have received a substantial confidence rating based upon its three very relevant rated projects.<sup>5</sup> See id. at 8-9.

The Corps disagrees that considering the number of relevant projects provided by an offeror reflects the use of an unstated evaluation criterion. See Supp. AR at 1. The Corps also contends that the SSEB and contracting officer reasonably concluded from its review of A&D's three relevant projects that the protester had demonstrated only a reasonable expectation that the protester would successfully perform, which warranted a satisfactory confidence rating. See AR at 7.

As a general matter, the evaluation of an offeror's past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. Where a protester challenges an agency's past performance evaluation and source selection, we will review the evaluation and award decision to determine if they were reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. Falcon Envtl. Servs., Inc., B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7. A protester's

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<sup>4</sup> The protester does not substantively challenge the agency's decision that A&D's fourth project was not relevant because that project was not performed by A&D, the entity that submitted the proposal. Rather, A&D suggests that the SSEB had an "erroneous understanding" of the RFP, because the SSEB in its report cited to the wrong solicitation provision. Comments at 7. Regardless of the provision cited to by the SSEB (which the agency states was a clerical error), the record shows--and the protester does not dispute--that A&D's proposal identifies the fourth project as having been performed by a different entity than A&D.

<sup>5</sup> A&D also argues, without explanation or any specificity, that the Corps evaluated its past performance disparately as compared to other offerors. See Comments at 7. The record provides no support for this allegation. As noted above, all of the offers selected to compete in phase two provided a greater number of relevant projects than did A&D.

disagreement with the agency's judgment concerning the merits of the protester's past performance does not establish that the evaluation was unreasonable. Sam Facility Mgmt., Inc., B-292237, July 22, 2003, 2003 CPD ¶ 147 at 3.

Here, the record supports the reasonableness of the agency's assignment of a satisfactory confidence rating to A&D's past performance. As noted above, A&D had only three relevant projects supporting its past performance rating, where other offerors with higher past performance confidence ratings identified a greater number of relevant projects. Although A&D may disagree with the agency's judgment as to the merits of its past performance, this does not show that the Corps acted unreasonably. In this regard, we do not agree with A&D that reserving the substantial confidence past performance rating for offers that identified four or more relevant projects reflected the use of an unstated evaluation criterion. Offerors were specifically informed that the agency's past performance assessment would include consideration of the relevance of the firms' identified projects. Moreover, the RFP explicitly stated that more relevant, recent projects would be considered a strong predictor of potential successful contract performance. RFP amend. 1 § 00 11 00 ¶ 8.2.1. Consideration of how many relevant projects were identified is logically encompassed within this stated review.<sup>6</sup> See Commissioning Solutions Global, LLC, B-403542, Nov. 5, 2010, 2010 CPD ¶ 272 at 4.

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>6</sup> An agency properly may take into account specific matters that are logically encompassed by, or related to, the stated evaluation criteria, even when they are not expressly identified as evaluation criteria. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 6.