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

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## **Decision**

**Matter of:** Cajun Constructors, Inc.

**File:** B-409685

**Date:** July 15, 2014

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Jon W. Burd, Esq., Michael P. Grogan, Esq., and Stacie L. Gonsalves, Esq., Wiley Rein LLP, for the protester.

Marguerite Kingsmill, Esq., and John W. Bihm, Esq., Kingsmill Riess, LLC, for Boh Bros. Construction Co., LLC, the intervenor.

CPT Daniel K. Bilotti, Judith Almerico, Esq., and Thomas J. Warren, Esq., Department of the Army, Corps of Engineers, for the agency.

Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protest challenging agency's evaluation of protester's past performance and small business participation plan, as well as the agency's best value trade-off decision, is denied where evaluation and source selection decision were reasonable and in accordance with the solicitation's evaluation criteria.

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### **DECISION**

Cajun Constructors, Inc., of Baton Rouge, Louisiana, protests the award of a contract to Boh Bros. Construction Co., LLC, of New Orleans, Louisiana, by the Department of the Army, Corps of Engineers, under request for proposals (RFP) No. W912P8-14-R-0001, for the construction of a concrete-covered canal for the Southeast Louisiana Urban Flood Control Project. The protester challenges the agency's evaluation of its proposal and source selection decision.

We deny the protest.

### **BACKGROUND**

The Corps issued the RFP on November 26, 2013, seeking a contractor for the construction of approximately 7,500 linear feet of concrete-covered canal, including associated drainage work and utility relocation. The required work is a part of the Southeast Louisiana Urban Flood Control Project, and referred to as SELA-27.

Award was to be made on the basis of a best-value trade-off process considering four non-price evaluation factors (past performance; technical approach; key personnel and project management plan; and small business participation plan) and price. Among the non-price factors, past performance and technical approach were of comparatively equal importance, and were significantly more important than key personnel and project management plan. The fourth factor, small business participation plan, was significantly less important than the other non-price factors. When combined, the non-price factors were significantly more important than price.

Under the past performance factor, offerors were required to submit up to four projects performed within the past ten years, which the agency would evaluate individually as well as collectively. The projects were to be evaluated for relevancy and quality of performance, and assigned a confidence rating. The RFP advised that the confidence rating “considers the assessed relevancy and quality of past performance presented” and would be rated on a scale of substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence (neutral). RFP, at 8.

Regarding relevancy, an offeror’s past performance projects were to be rated on a scale of very relevant, relevant, somewhat relevant, or not relevant. The RFP defined the rating of “very relevant” as past performance involving “essentially the same scope and magnitude of effort and complexities” as required by the RFP, while the “relevant” rating was defined as involving “similar scope and magnitude of effort and complexities,” and the “somewhat relevant” rating was defined as involving “some of the scope and magnitude of effort and complexities” required by the RFP. RFP, at 7.

Also related to the past performance evaluation, the RFP directed that:

Offerors shall include relevant past performance history that demonstrates experience in providing:

1. Construction of large concrete drainage structures involving deep excavations;
2. installation and relocation of water and sewer mains;
3. construction of large sewer line and/or sewer force main relocation and installation;
4. bypass pumping of large volumes of sewage or similar fluids;
5. installation and tie-in of catch basin and drain lines;
6. construction/installation of streets and driveways;
7. site unwatering and groundwater monitoring;
8. maintenance and diversion of stormwater;
9. installation and handling of foundation jet grout;
10. working with conventionally reinforced concrete;

11. sheet pile installation and temporary retaining structure construction;
12. transit rail or freight railroad and overhead and foundation wire contact system relocations;
13. performing work in highly urban areas adjacent to residential and commercial structures;
14. a history that demonstrates familiarity with the local area and the unique conditions of the soils in the Southeastern Louisiana region, and
15. the ability to develop safe and effective traffic control methodologies.

Id. at 9. The RFP further advised that “[h]igher evaluation ratings will be given for past performance on those projects that are same/similar in scope, complexity and magnitude of this project and clearly demonstrate an Offeror’s capabilities to successfully construct a similar project with similar schedule and budget,” and that “[o]fferors with experience in construction of large concrete drainage canals will be rated higher than those without.” Id. at 12.

Three offerors submitted proposals in response to the RFP, including Cajun and Boh. The proposals were provided to a source selection evaluation board (SSEB), whose members independently reviewed and evaluated the first three non-price evaluation factors. After their individual reviews, the SSEB members completed a technical census report. Combined with the price analysis and the source selection authority’s (SSA) evaluation of the small business participation plans, Cajun and Boh’s proposals were rated as follows:

	Cajun	Boh Bros.
Past Performance Relevancy	Somewhat Relevant	Relevant
Past Performance Confidence	Satisfactory Confidence	Substantial Confidence
Technical Approach	Good	Acceptable
Key Personnel/ Management Plan	Good	Good
Small Business Participation Plan	Marginal	Acceptable
Price	\$84,842,181.51	\$82,621,693.10

AR, Tab 10, SSEB Consensus Report, at 11-12; Tab 12, Source Selection Decision (SSD), at 13.

Based on the SSEB’s report and his independent evaluation of the proposals, the SSA concluded that Boh’s proposal provided the best overall value to the

government. In his selection decision, the SSA explained that Boh was more highly rated under the past performance factor and that, although Cajun was more highly rated under the technical approach factor, Cajun's proposal included several weaknesses and Boh's proposal included several strengths, such that the SSA did not see a benefit in paying the \$2.2 million price premium associated with Cajun's proposal. The SSA also noted that Boh had the advantage under the Small Business Participation Plan factor where searches of the electronic subcontract reporting system (eSRS) showed that Cajun had failed to meet its proposed subcontracting goals on several projects.

The agency made award to Boh on March 14, and all offerors timely requested debriefings, which were provided on March 26. Cajun then filed this protest on April 7.

## DISCUSSION

Cajun asserts that the agency conducted an unreasonable and flawed evaluation of its proposal and made an unsupportable best value decision. More specifically, Cajun alleges that a reasonable evaluation of its proposal would have resulted in higher ratings under the past performance relevancy, past performance confidence, and small business participation factors. Cajun also argues that the SSA essentially inverted the technical approach ratings in his trade-off decision by highlighting the weaknesses in Cajun's approach against the strengths in Boh's approach, despite Cajun's higher adjectival rating under the factor.<sup>1</sup> For the reasons discussed below, we find Cajun's protest to be without merit.

### Past Performance

Cajun first asserts that its "somewhat relevant" past performance relevancy rating was unreasonable and inconsistent with the RFP's stated evaluation factors. In this regard, Cajun argues that its past performance projects merited a rating of at least "relevant," because, according to Cajun, its submitted projects successfully demonstrated experience involving precisely the same 15 construction means and methods identified in the RFP's past performance criteria.

In challenging the agency's evaluation, Cajun specifically takes issue with the agency's repeated assessment of weaknesses for failing to demonstrate experience with linear urban drainage systems involving deep excavations. In this regard, Cajun argues that construction of linear urban drainage systems involving deep

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<sup>1</sup> In its initial protest, Cajun also presented various allegations concerning the agency's evaluation under the technical approach and key personnel and management plan evaluation factors. Subsequent to its review of the agency report, Cajun withdrew these grounds of protest.

excavations was not among the 15 identified areas of experience. To the extent the “very relevant” past performance rating required demonstration of past performance with “essentially the same scope and magnitude of effort and complexities,” the “relevant” rating did not. Cajun contends that there was no requirement that offerors provide past projects that were exactly the same as the RFP’s requirements, and that the agency’s own SSEB consensus report shows that Cajun demonstrated past performance involving similar scope and magnitude of effort and complexities as compared to the RFP’s requirements, warranting at least a “relevant” past performance relevancy rating.

An agency’s evaluation of past performance, including 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 agency’s assessments are unreasonable or inconsistent with the solicitation criteria. SIMMEC Training Solutions, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. A protester’s disagreement with such judgment does not provide a basis to sustain a protest. ManTech SRS Techs., Inc., B-408452, B-408452.2, Sept. 24, 2013, 2013 CPD ¶ 249 at 10.

Here, as an initial matter, we conclude that Cajun misunderstands the 15 areas of experience set forth in the RFP. While the RFP required offerors to demonstrate past project experience in the 15 areas set forth in the RFP, the evaluation was not limited to a consideration of whether an offeror had demonstrated past performance experience in each area. Rather, the RFP clearly established that past performance on “projects that are same/similar in scope, complexity and magnitude” and “experience in construction of large concrete drainage canals” were to be considered in the past performance evaluation.

Turning to the SSEB Consensus Report, the evaluators concluded that, of Cajun’s four past project references, the first was complex, but lacked the “scope of linear canal construction,” while the second and third projects “lacked magnitude and some of the complexity of the [SELA-27] project.” AR, Tab 10, SSEB Consensus Report, at 6. Concerning the fourth project, the evaluators concluded that it was relevant to only 1 of the 15 areas of construction experience set forth in the RFP—jet grouting. The SSEB also noted that none of the rail work included in Cajun’s past performance projects included “overhead and foundation wire contact system relocations,” a requirement of area 12 of the required past performance items.<sup>2</sup>

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<sup>2</sup> The agency notes that demonstrating experience in “overhead and foundation wire contact system relocations” was a requirement of the RFP that Cajun did not meet, and that, if strictly evaluated, Cajun’s proposal could have been found unacceptable for this failure.

Our review of the projects submitted in Cajun's proposal supports the SSEB's conclusions. Specifically, of the four projects submitted, only the first--for the construction of floodwalls in the New Orleans District--appears "similar" to the effort required under the RFP. That project was of a larger magnitude, similar complexity, and, as it included most of the required construction techniques set forth in the RFP, was similar in scope. Cajun's remaining three project references were simply not similar to the SELA-27 project in scope, complexity and magnitude. The second and third projects submitted by Cajun were not of similar magnitude to the SELA-27 project, with completed contract prices of approximately \$24.9 million, and \$8.7 million respectively--the SELA-27 project has a value over \$80 million. Concerning the fourth project, Cajun's proposal shows that it was relevant to only one area of construction experience required under the RFP--jet grouting--and that it was not performed by Cajun. Rather, it was 70 percent performed by Cajun's proposed subcontractor. While the RFP contemplated giving evaluation credit for the past experience of subcontractors, it noted that "[o]fferors with a higher percentage of self-performed construction work may be rated higher than those with a lower percentage." RFP, at 12.

Overall, our review of the record here provides no basis on which to sustain Cajun's protest. The RFP advised offerors that their past performance projects would be evaluated "individually as well as collectively," and that "[h]igher evaluation ratings will be given for past performance on those projects that are same/similar in scope, complexity and magnitude of this project." *Id.* at 8, 12. Where three of the four past performance projects submitted by Cajun were not similar to the scope, complexity and magnitude of the SELA-27 project, we find no fault in the agency's conclusion that Cajun's past performance projects involved "some of the scope and magnitude of effort and complexities" required by the RFP, and warranted an overall relevancy rating of "somewhat relevant."

Cajun next contends that its proposal also warranted a higher rating than "satisfactory confidence" under the past performance confidence criteria, where the agency's own evaluation shows that Cajun's contractor performance assessment ratings were satisfactory to outstanding, and its past performance feedback surveys indicated exceptional and very good ratings. The agency agrees that Cajun's past performance received high quality ratings. However, the agency correctly notes that the RFP's evaluation criteria required the past performance confidence rating to consider both relevancy and quality. Accordingly, where Cajun's past performance was considered only "somewhat relevant," the agency explains that it could not justify assigning Cajun the highest past performance confidence rating of "substantial confidence." We see no error in the agency's analysis.

### Small Business Participation

Cajun alleges that the agency improperly departed from the stated evaluation scheme by rating Cajun as "marginal" under the small business participation plan

factor, based on the agency's conclusion that Cajun had not met historical small business subcontracting goals on previous projects. According to Cajun, the agency erred in converting historical goals into de facto quotas, and failed to follow the evaluation scheme which required consideration of whether an offeror had demonstrated a reasonable effort to comply. Cajun asserts that the agency failed to consider unique circumstances that prevented Cajun from meeting previous goals, and that Cajun's proposal warranted at least an acceptable rating where Cajun had proposed to exceed many of the small business subcontracting goals established by the RFP. We disagree.

The evaluation of an offeror's proposal is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing an agency's evaluation, our Office will not reevaluate proposals; instead, we will examine the record to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable procurement statutes and regulations. Metro Mach. Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 13; Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2.

The RFP provided that, for the small business participation factor, offerors would be evaluated on "the level of small business commitment that they propose . . . and the Offeror's prior level of commitment to the participation of small businesses in performance of prior contracts." RFP, at 17 (emphasis added). Accordingly, offerors were to provide small business participation plans identifying the extent to which they intended to utilize small business concerns in the performance of the contract, as well as "a description of the Offeror's performance over the past THREE (3) calendar years, in complying with the requirements of FAR 52.219-8, Utilization of Small Business Concerns." Id. at 18. The RFP further provided that offerors shall provide evidence of small business participation by addressing several factors, including:

Past performance of the Offeror in complying with the requirements of FAR clause FAR 52.219-8, Utilization of Small Business Concerns and for large business Offerors, FAR 52.219-9, Small Business Subcontracting Plan, based on the Offeror's presentation of facts, details of efforts and successes in complying with this clause on Federal Government contracts. An Acceptable rating will only be given to Offerors that clearly show by documentation a reasonable effort in complying with this FAR clause.

Id. (Emphasis added.)

The agency states that Cajun's "marginal" rating under the factor was consistent with the RFP's evaluation criteria where the evaluation demonstrated that Cajun

had a history of failing to meet the small business participation goals that it proposed under other projects, including projects submitted for the past performance evaluation. Although Cajun had proposed to exceed several subcontracting goals of the RFP, Cajun did not specify whether subcontracting goals had been met on its prior contracts. On examination of Cajun's records in the eSRS, a database for tracking contractors' subcontracting accomplishments, the agency learned that Cajun had consistently failed to meet its proposed goals.

Based on Cajun's history of submitting aspirational proposals and then failing to deliver results consistent with the levels of small business participation it proposed, the agency concluded that Cajun's performance history in this area indicated a high risk of unsuccessful performance warranting a "marginal" rating. We see nothing unreasonable about the agency's conclusion.

#### Best Value Trade-Off Decision

Finally, Cajun challenges the agency's best value trade-off decision, alleging that the trade-off was unreasonable where it essentially inverted Cajun's higher rating, and Boh's lower rating, under the technical approach factor, by highlighting weaknesses in Cajun's proposal versus strengths in Boh's proposal.

Agencies enjoy discretion in making cost/technical tradeoffs where the solicitation provides for the award of a contract on a best-value basis; the agency's selection decision is governed only by the test of rationality and consistency with the solicitation's stated evaluation scheme. Marine Hydraulics Int'l, Inc., B-403386.3, May 5, 2011, 2011 CPD ¶ 98 at 4. Additionally, a source selection official may rely on evaluation reports provided by technical evaluators. See General Dynamics C4 Sys., Inc., B-406965, B-406965.2, Oct. 9, 2012, 2012 CPD ¶ 285; Diemaster Tool, Inc., B-241239, B-241239.2, Jan. 30, 1991, 91-1 CPD ¶ 89 at 6.

We see no error in the SSA's discussion of the offerors' proposals under the technical approach evaluation factor. The SSA reviewed and concurred with the SSEB Consensus Report, and individually reviewed the proposals, before recognizing in the SSD that "Cajun's Technical Approach was rated higher than that of Boh's." AR, Tab 12, SSD at 14.

To the extent the SSA's selection decision highlights several weaknesses in Cajun's technical approach, and several strengths of Boh's technical approach, we find no error with the SSA's decision. In context, it is apparent that the SSA's analysis in this regard reflected a consideration of the underlying aspects of the proposals and a determination that the gap between the two proposals' technical approaches was narrower than the adjectival ratings of "good" and "acceptable" otherwise conveyed. Ultimately, the SSA found this information to be meaningful, in concluding that, despite Cajun's higher rating under the technical approach factor, there was no benefit in paying the \$2.2 million price premium associated with Cajun's proposal,



particularly given Boh's superior past performance and more advantageous small business participation plan. We have no basis to question the SSA's exercise of his business judgment in this regard.

The protest is denied.

Susan A. Poling  
General Counsel