



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

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

Decision

Matter of: PAE Aviation and Technical Services LLC

File: B-413338; B-413338.2

Date: October 4, 2016

David S. Cohen, Esq., John J. O'Brien, Esq., and Daniel J. Strouse, Esq., Cohen Mohr LLP, for the protester.

Kevin P. Connelly, Esq., Kelly E. Buroker, Esq., and Kirsten W. Konar, Esq., Vedder Price PC, for URS Federal Services, Inc., the intervenor.

Wade L. Brown, Esq., and George P. Farley, Esq., Department of the Army, for the agency.

Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly considered all of protester's past performance information, including information regarding adverse past performance under a recent and relevant contract, and reasonably assigned protester a satisfactory confidence past performance rating.

2. Agency properly considered all of the awardee's and a third offeror's past performance information, and reasonably assigned substantial confidence past performance ratings to their proposals.

DECISION

PAE Aviation and Technical Services, LLC, of Arlington, Virginia, protests the Department of the Army's award of a task order to URS Federal Services, Inc. pursuant to request for proposals (RFP) No. W52P1J-15-R-0195, to provide various support services for equipment located in Germany. PAE protests that the agency's source selection process was flawed with regard to the evaluation of past performance and cost/price.

We deny the protest.

BACKGROUND

In December 2015, the agency issued RFP No. W52P1J-15-R-0195 to contractors holding Enhanced Army Global Logistics Enterprise (EAGLE) basic ordering agreements (BOA). The solicitation sought proposals to provide maintenance, supply, and transportation services for equipment that is currently located at facilities in Mannheim and Grafenwoehr, Germany.¹ The solicitation contemplated a single best-value award of a cost-plus-fixed-fee task order for a 1-year base period and four 1-year option periods, and established the following evaluation factors: technical/management,² past performance,³ and cost/price.⁴ AR, Tab 7, RFP amend. 2, at 22. Finally, the solicitation provided that award would be based on the technically-acceptable proposal that offered the lowest total evaluated price and received a substantial confidence past performance rating.⁵ Id. at 23.

On January 21, 2016, proposals were submitted by nine offerors, including PAE and URS. The offerors' initial proposals were evaluated; a competitive range of [redacted] offerors, including PAE and URS, was established; and discussions were

¹ The solicitation refers to the equipment as the "European Activity Set (EAS)," and states that the EAS equipment is "comprised of combined-arms, battalion-sized groups of vehicles and equipment . . . designed to equip Army regionally-aligned forces when they rotate into theater for training, disaster relief, theater security, or contingency operations." Agency Report (AR), Tab 14, Performance Work Statement (PWS) § C-1, at 1.

² The solicitation provided that technical/management would be evaluated on an acceptable/unacceptable basis. AR, Tab 7, RFP amend. 2, at 22.

³ The solicitation provided that the agency would consider the offerors' recent and relevant past performance, and assign one of the following confidence ratings: substantial confidence, satisfactory confidence, limited confidence, no confidence or unknown confidence. Id. at 25-27.

⁴ The solicitation required offerors to propose labor rates for various labor categories, and provided that each offeror's total proposed cost/price would be evaluated for reasonableness and realism. Id. at 23, 27-28. Because the contract will be performed in Germany, the solicitation also required offerors to provide statements that their proposals complied with German labor laws. AR, Tab 12, RFP amend. 7, at 19.

⁵ The solicitation also provided that if no proposal received a substantial confidence past performance rating, the agency would consider all evaluation factors and make a best-value award decision. AR, Tab 7, RFP amend. 2, at 23.

conducted with the competitive-range offerors. On May 19, final revised proposals were submitted. Thereafter, the proposals of PAE, URS, and a third offeror (referred to here as “Offeror A”) were evaluated as follows:⁶

	Technical	Past Performance	Evaluated Cost/Price
URS	Acceptable	Substantial Confidence	\$105,939,715
Offeror A	Acceptable	Substantial Confidence	\$110,556,024
PAE	Acceptable	Satisfactory Confidence	\$115,534,198

AR, Tab 62, Source Selection Evaluation Board (SSEB) Report, at 38.

In assigning a past performance rating of substantial confidence to URS’s proposal, the agency considered 11 of URS’s prior contracts and stated, among other things:

URS Federal’s past performance history demonstrated favorable performance . . . URS had no Unsatisfactory ratings for all references analyzed and the majority of ratings were Very Good and above.

Id. at 11.

In evaluating PAE’s proposal, the agency considered seven of PAE’s prior contracts, stating:

Overall, PAE received a majority of positive performance ratings on its recent/relevant past performance, exceeding some performance standards in the areas of Quality of Product/Service, Schedule, and Cost Control. However, under contract # [redacted] performing in Mannheim, Germany, it received adverse past performance from the assessing official on a recent PPQ [past performance questionnaire] received. Most references were rated Satisfactory or above, with the preponderance of ratings being Very Good and Exceptional; however, PAE had two (2) instances of an Unsatisfactory rating under [redacted].

Id. at 14.

During discussions, the agency sent an evaluation notice (EN) to PAE, asking that PAE address the above-referenced adverse past performance. PAE responded, by letter dated April 28, acknowledging that a cure notice had been issued under contract No. [redacted] and stating that “[d]uring the early phase” of that contract, “PAE did not fully anticipate the rapid increase in Operational

⁶ The other offerors’ proposals, and the agency’s evaluation thereof, are not relevant to this protest and are not further discussed.

Tempo for the EAS program . . . [and] did not meet several key performance objectives.”⁷ AR, Tab 38, PAE Response to EN, at 4. Nonetheless, PAE’s response also stated that PAE had taken various corrective actions; that several of the unsatisfactory ratings had been upgraded to satisfactory in the final CPAR (contractor performance assessment report); that the cure notice had been “closed”; and that the customer’s recommendation regarding future awards of similar requirements had been changed from “[w]ould not” recommend to “I would recommend.” Id. at 4-5.

In assigning a satisfactory confidence past performance rating to PAE, the agency expressly acknowledged PAE’s corrective action and its other positive past performance assessments, but concluded:

PAE had one Cure Notice on contract [redacted] performing in Grafenwoehr Germany.⁸ PAE failed to resolve 66 non-conformance reports, timely submit six (6) PWS deliverables and comply with Supply operations for the Cure Notice . . . within a one (1) year period. After 30 days of monitoring by the Contracting Officer (KO), PAE corrected these issues with no reoccurrences. PAE also had adverse past performance it addressed in response to a PPQ received under [this same contract]. . . . PAE received two (2) Unsatisfactory ratings for both Quality and Schedule for many inaccuracies found in AWRDS [Army war reserve deployment system], LMP [logistics modernization program], and the system of record, and it was consistently behind production schedules and late with reporting. Although these concerns were addressed or resolved, PAE’s overall performance still presents an element of risk that must be taken into account when considering the likelihood of successful performance without Government intervention. Most other references determined recent and relevant which had the Exceptional or Very Good ratings, discussed above, were either lower dollar value or split between CONUS [continental United States] and OCONUS [outside the continental United States] performance. Additionally, this Unsatisfactory performance is some of the most recent information the Government obtained. . . .

AR, Tab 62, SSEB Report, at 15.

On June 23, the agency selected URS for award on the basis that its technically acceptable proposal offered the lowest evaluated cost/price and received a

⁷ PAE subsequently defined the “early phase” as the period from August 2015 to November 2015. AR, Tab 38, PAE Response to EN, at 4.

⁸ The agency noted that contract [redacted] is a \$33 million contract that is “most similar to the solicited task order.” AR, Tab 62, SSEB Report, at 15.

substantial confidence past performance rating. AR, Tab 64, Source Selection Decision Document, at 4. This protest followed.

DISCUSSION

PAE protests the agency's assignment of a satisfactory confidence past performance rating to PAE's proposal; the agency's assignment of substantial confidence past performance ratings to URS's and Offeror A's proposals; and the agency's cost realism evaluation. As discussed below, none of PAE's allegations provides a basis to sustain its protest.⁹

PAE's Past Performance Evaluation

First PAE protests that the agency's evaluation of PAE's past performance "ignored" PAE's response to the agency's discussion question; PAE describes its response as "provid[ing] context" for its unsatisfactory performance. Protest at 16-18. More specifically, PAE complains that the agency's evaluation failed to reasonably consider the "numerous corrective actions that it had performed," noting that "all of the non-conformance reports had been resolved," and that the final CPAR rating for this performance period stated that the customer "would recommend" PAE for award of future requirements. *Id.* at 15-17. Finally, PAE asserts that the agency assigned "unreasonable weight to just one contract," *id.* at 20, maintaining that the agency was required to assign PAE the highest possible past performance rating of substantial confidence, despite its adverse past performance. We disagree.

An agency's evaluation of past performance is a matter of agency discretion which we will not disturb unless the agency's assessments are unreasonable. Yang Enters., Inc.; Santa Barbara Applied Research, Inc., B-294605.4 *et al.*, Apr. 1, 2005, 2005 CPD ¶ 65 at 5; Acepex Mgmt. Corp., B-283080 *et al.*, Oct. 4, 1999, 99-2 CPD ¶ 77 at 3, 5. In this regard, an agency's past performance evaluation may be based on a reasonable perception of a contractor's prior performance, regardless of whether the contractor disputes the agency's interpretation of the underlying facts, the significance of those facts, or the significance of corrective actions. Ready Transp., Inc., B-285283.3, B-285283.4, May 8, 2001, 2001 CPD ¶ 90 at 5. While consideration of past performance trends and corrective actions is generally appropriate, an agency is not required to ignore instances of negative past performance. The Bionetics Corp., B-405145, B-405145.2, Sept. 2, 2011, 2011 CPD ¶ 173 at 7-8.

⁹ In pursuing this protest, PAE has made arguments that are in addition to, or variations of, those discussed below. We have considered all of PAE's allegations and find no basis to sustain its protest.

Here, the record shows that the agency reasonably considered all of the positive and negative information regarding PAE's past performance, expressly acknowledging that PAE "received a majority of positive performance ratings on its recent/relevant past performance," and that "[m]ost references were rated Satisfactory or above, with the preponderance of ratings being Very Good and Exceptional." AR, Tab 62, SSEB Report, at 14-15. Further, with regard to PAE's adverse past performance under contract No. [redacted], the agency's evaluation specifically acknowledged that "PAE corrected these issues with no reoccurrences." Id. at 15.

Nonetheless, the agency also considered the fact that PAE's adverse performance occurred under a contract that is "most similar to the solicited task order," and that it reflected "some of the most recent [past performance] information" the agency obtained. Id. The agency further noted that most of the prior contracts under which PAE received very good or exceptional ratings were "either lower dollar value or split between CONUS and OCONUS performance." Id. Finally, after consideration of the record as a whole, the agency concluded that although PAE's unsatisfactory performance had been "addressed or resolved," that such prior performance "still presents an element of risk that must be taken into account when considering the likelihood of successful performance without Government intervention." Id. Accordingly, the agency assigned a past performance rating of satisfactory confidence, rather than substantial confidence, to PAE's proposal.¹⁰

As noted above, an agency is not required to ignore instances of negative past performance. The Bionetics Corp., supra. Further, the solicitation here specifically warned offerors that "[a] significant . . . problem . . . can become an important consideration in the [past performance] assessment process," elaborating that "[a]n adverse finding in any element . . . may result in an overall lower confidence assessment rating." AR, Tab 7, RFP amend. 2, at 26. Here, based on our review of the entire record, none of PAE's various complaints and disagreements with the agency's considered, and documented, judgment renders unreasonable the agency's determination that PAE's past performance was properly rated as satisfactory confidence--but did not warrant the highest rating of substantial confidence.¹¹ Accordingly, PAE's protest challenging the agency's past performance evaluation of PAE's proposal is denied.

¹⁰ The solicitation defined a satisfactory confidence rating as reflecting the agency's "reasonable expectation that the Offeror will successfully perform the required effort," and defined a substantial confidence rating as reflecting the agency's "high expectation that the Offeror will successfully perform the required effort." AR, Tab 7, RFP amend. 2, at 27.

¹¹ PAE complains that the agency did not review the final CPAR for contract [redacted], which became available shortly before award was made. However, the record shows that all of the information in the final CPAR was specifically discussed (continued...)

Past Performance Evaluation of URS and Offeror A

Next, PAE asserts that both offerors that received substantial confidence past performance ratings (and offered lower prices) received preferential treatment, and that neither should have received higher past performance ratings than PAE. PAE Comments and Supp. Protest, Aug. 11, 2016, at 2-31. In pursuing these allegations, PAE has made various assertions regarding instances of allegedly adverse past performance for both offerors, along with other alleged flaws in the agency's past performance evaluation. Id. We have reviewed all of PAE's arguments and find no basis to question the reasonableness of the agency's past performance evaluation of the two higher-rated, lower-priced proposals.

For example, PAE notes that URS was purchased by AECOM in 2014, and asserts that "work previously performed by AECOM is now being performed by URS." Protest at 22. Accordingly, PAE maintains that the agency's past performance evaluation of URS's proposal improperly "ignored" past performance problems that had, allegedly, "plagued AECOM." Id.

The agency responds by referencing the provisions of section M.5.2 of the solicitation, under the heading "Past Performance Factor," which stated:

The Government may also consider past performance information regarding predecessor companies. Past performance for parent/sister companies or other corporate entities may be evaluated only if these companies or entities are listed as approved teammates or subcontractors on the Offeror's Teaming Matrix . . . and are expected to perform 20% or more of the total value of [proposed labor].

AR, Tab 7, RFP Amend. 2, at 26; see AR, Tab 18, Teaming Matrix.

The agency states that URS, which remains a separate legal entity, did not propose AECOM as an approved teammate, nor was AECOM proposed to perform 20 percent of the total value of proposed labor. Accordingly, the agency maintains that it was neither required, nor permitted, to consider AECOM's past performance in evaluating URS's proposal under the past performance evaluation factor. We agree.

(...continued)

by PAE in its response to the agency's discussion question. See AR, Tab 38, PAE Response to EN, at 4-6. As discussed above, we believe the record clearly establishes that the agency fully considered PAE's response to the discussion question. On this record, PAE's complaints regarding the agency's consideration of the final CPAR provide no basis to sustain its protest.

It is fundamental that agencies must evaluate proposals consistent with the terms of a solicitation. See, e.g., Excelis Systems Corp., B-407111 et al., Nov. 13, 2012, 2012 CPD ¶ 340 at 5; Public Commc'ns Servs., Inc., B-400058, B-400058.3, July 18, 2008, 2009 CPD ¶ 154 at 17. As noted above, the solicitation specifically provided that a parent corporation's past performance could only be considered if the parent company was proposed as an approved teammate and was expected to perform at least 20 percent of the proposed labor. Here, PAE has not shown that URS's proposal either offered AECOM as a teammate or relied on AECOM to perform 20 percent of the proposed labor. Accordingly, PAE's assertion that the agency's past performance evaluation of URS's proposal was flawed for failure to consider AECOM's past performance is without merit.

Additionally, following receipt and review of the agency report, PAE refers to various aspects of the past performance record regarding both URS and Offeror A, arguing that various portions of that record reflect adverse past performance that should have precluded the assignment of substantial confidence past performance ratings. PAE Comments and Supp. Protest, Aug. 11, 2016, at 2-31. We have reviewed PAE's various allegations and find no merit in them. As noted above, in evaluating URS's past performance, the agency specifically noted that "URS had no Unsatisfactory ratings." AR, Tab 62, SSEB Report, at 11. Nothing in PAE's various assertions renders that determination either inaccurate or unreasonable. While PAE argues that various portions of the past performance records for URS and Offeror A should have been evaluated as unsatisfactory performance (similar to the assessments regarding PAE's performance of contract No. [redacted]), PAE's arguments reflect mere disagreement with the evaluating officials' various judgments. As such, PAE's arguments provide no basis for sustaining its protest. Based on our review of the entire record, we reject PAE's protest challenging the agency's assignment of substantial confidence past performance ratings to URS and Offeror A.

Cost Evaluation

Finally, PAE asserts that the agency's cost evaluation was flawed, maintaining, among other things, that the agency failed to properly evaluate whether the proposed cost/price of the two higher-rated proposals properly reflected compliance with German labor law. Protest at 23-27; PAE Comments and Supp. Protest, Aug. 11, 2016, at 43-51.

As discussed above, the solicitation provided that award would be based on the technically-acceptable proposal that offered the lowest total evaluated price and received a substantial confidence past performance rating. AR, Tab 7, RFP amend. 2, at 23. As also discussed, we have rejected PAE's complaints challenging the agency's assignment of a satisfactory confidence past performance rating to PAE's proposal, as well as PAE's complaints challenging the agency's

assignment of substantial confidence past performance ratings to URS's and Offeror A's proposals. Accordingly, even if we were to conclude that the agency should have upwardly adjusted the proposed cost/price of either URS or Offeror A (which we do not), PAE would not be in line for award. On this record, PAE is not an interested party to further challenge the agency's evaluation, see 4 C.F.R. § 21.0(a)(1); DMS Int'l, B-409933, Sept. 19, 2014, 2014 CPD ¶ 278 at 7, and its assertions regarding the agency's cost evaluation are dismissed.

The protest is denied.

Susan A. Poling
General Counsel