



## Decision

**Matter of:** Franzosini Sud S.R.L.

**File:** B-415009

**Date:** October 27, 2017

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Dr. Luca Bosco, Franzosini Sud S.R.L., for the protester.  
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GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging the agency's evaluation of protester's proposal is denied where the record shows that the agency evaluated the proposal consistent with the solicitation and applicable statutes and regulations; remaining allegations concerning the evaluation of protester's proposal need not be addressed because the record shows that the protester was not prejudiced by an errors in this regard.

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### DECISION

Franzosini Sud S.R.L., of Naples, Italy, protests its exclusion from the competitive range under request for proposals (RFP) No. S-IT700-17-R-0001, issued by the Department of State for shipping and packing services for United States diplomatic and consular posts in Italy. The protester challenges the agency's evaluation of its proposal.

We deny the protest.

### BACKGROUND

The RFP, issued on December 16, 2016, contemplated the award of multiple fixed-price indefinite-quantity, indefinite-delivery contracts for a 1-year base-period and 4 one-year option periods for shipping and intra-city moving services for the United States Tri-Mission in Rome, Italy, and the United States Consulates General in Milan, Florence, and Naples, Italy. RFP at 1-2. Awards were to be made to the lowest-priced, technically acceptable (LPTA) offerors. RFP § M.1.

The RFP advised offerors that the agency would evaluate technical acceptability by reviewing the offeror's past performance and experience, as defined by Section L of the

RFP, as well as by reviewing any additional technical information provided by the offeror with its proposal. Id. Section L delineated the required contents of offeror's proposals, including the information the agency would evaluate to determine the offeror's ability to perform the services contemplated by the performance work statement (PWS). RFP § L.1.2.2.

Relevant here, offerors were required to demonstrate that they could provide the necessary personnel, defined as the size and composition of the firm's key personnel and work force presently on payroll, to perform the services described in the PWS. RFP § L.1.2.2(4). Additionally, offerors were required to demonstrate that they had sufficient equipment, defined as the composition of their vehicle fleet and moving equipment, as well as to provide information regarding the size and location of their warehouses and offices. Id. As for past performance, the RFP advised that the agency intended to use past performance primarily to assess an offeror's capability to meet the solicitation's performance requirements. RFP § L.1.2.2(3). The offerors were to include in their proposals a list of their clients from the past three years which demonstrate relevant past performance. Id.

The agency received twelve proposals in response to the RFP. Agency Report (AR), Tab 10, Pre-Negotiation Memorandum, at 2. In evaluating Franzosini's proposal, the agency noted that the firm, presently operating out of Naples, stated that if it were awarded the contract, it would establish a partnership with another firm, Luciano Franzosini (Luciano), to perform the contract requirements located in Rome.<sup>1</sup> AR, Tab 7, Franzosini Proposal, at 4. Luciano independently submitted a proposal which was determined to be technically unacceptable based on inadequate staffing, equipment, and warehouse facilities, as well as a record of poor past performance on a preexisting contract with the agency. AR, Tab 9, Technical Evaluation at 4-6. As the agency also found that Franzosini had inadequate staffing, equipment, and warehouse facilities, in part due to its reliance on Luciano to fulfill the Rome portions of the contract, Franzosini's proposal was also found to be technically unacceptable. Id. at 1-3.

The agency notified Franzosini of its exclusion from the competitive range and offered a debriefing. AR, Tab 11, Letter from Agency to Protester, Apr. 21, 2017. In response, Franzosini requested a post-award debriefing. AR, Tab 12, Email from Protester to Agency, Apr. 21, 2017. The agency conducted discussions and received revised proposals from those firms remaining in the competitive range, ultimately selecting four firms for award at amounts ranging from \$2,792,055.44 to \$4,233,417.60. AR, Tab 13, Price-Negotiation Memorandum, at 2.

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<sup>1</sup> The agency represents that roughly 90 percent of the services rendered under the contract will take place in Rome. AR, Memorandum of Law, (MOL), at 13. In its protest, Franzosini also stipulates that the majority of services performed under the contract will take place in Rome. Protest at 3.

After the awards were made, the agency provided Franzosini with the requested debriefing. AR, Contracting Officer's Statement of Facts (COSF), at 11. Franzosini then requested more information, which the agency provided in the form of a second debriefing. AR, Tab 16, Second Debriefing, at 1. This protest followed.

## DISCUSSION

Franzosini argues that the agency unreasonably concluded that its proposal was technically unacceptable. We note at the outset that, in reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. ManTech Advanced Sys. Int'l, Inc., B-413717, Dec. 16, 2016, 2016 CPD ¶ 370 at 3.

### Technical Acceptability

Franzosini alleges that the agency applied unstated evaluation criteria in evaluating its proposal as technically unacceptable.<sup>2</sup> Protest at 4. We have considered Franzosini's allegations and find that they do not provide a basis to sustain the protest. As discussed further below, we need not address all of Franzosini's challenges to the evaluation of its proposal because even if these remaining allegations have merit, Franzosini cannot demonstrate that it would have been prejudiced by the agency's actions.

### Personnel

The RFP required proposals to demonstrate that the firm could provide the necessary personnel, defined as the size and composition of the firm's key personnel and workforce presently on payroll, to perform the services outlined in the PWS. RFP, § L.1.2.2(4). The agency concluded that Franzosini's proposal lacked evidence that it had adequate personnel presently on payroll because it currently was only operating in Naples and had proposed to partner with Luciano to satisfy performance requirements in Rome only if it was awarded the contract. AR, Tab 9, Technical Evaluation, at 1.

Franzosini argues that the agency applied unstated evaluation criteria in evaluating its proposal because the solicitation did not set forth a specific number of staff required to perform the services contemplated by the contract. Protest at 5. Additionally, by indicating that it would partner Luciano to perform the Rome portions of the contract, Franzosini argues that it proffered sufficient evidence that it had adequate personnel to perform the requirements of the contract. Id.

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<sup>2</sup> Franzosini specifically argues that the agency applied "induced and vague evaluation criteria." Protest at 4-5. We construe this language as arguing that the agency applied unstated evaluation criteria.

We find that the agency reasonably concluded that Franzosini's proposal failed to provide evidence that it had adequate personnel and workforce to perform the requirements of the contract. The RFP expressly required offerors to provide evidence that they had the requisite workforce presently on payroll. RFP § L.1.2.2(4) (emphasis added). Franzosini proposed to satisfy the Rome portion of the contract by conditionally entering into a partnership agreement with Luciano. AR, Tab 7, Franzosini's Proposal at 4. By indicating that it would partner with Luciano to satisfy the Rome portions of the contract only if it received award, Franzosini effectively conceded that it did not have adequate personnel presently on payroll to perform those services, i.e., the majority of services to be rendered under the contract. As a result, the agency did not apply unstated evaluation criteria, but rather evaluated Franzosini's proposal in accordance with the RFP's expressly stated evaluation criteria.

### Past Performance

As discussed above, the RFP advised that past performance information would be utilized primarily to assess an offeror's capability to meet the solicitation's performance requirements. RFP § L.1.2.2(3). In evaluating Franzosini's past performance, the agency noted that Franzosini provided client references in its proposal that demonstrated recent and relevant past performance that took place in Naples. AR, Tab 9, Technical Evaluation, at 3. However, Franzosini proposed to rely on Luciano to render contract performance in Rome and the agency had found Luciano's proposal technically unacceptable in part due to poor past performance. AR, Tab 7, Franzosini's Proposal at 4; AR Tab 9, Technical Evaluation, at 6.

In particular, in the course of performing a preexisting shipping contract with the agency, Luciano had failed to notify the agency that the location of its warehouse had changed. AR Tab 9, Technical Evaluation, at 6; AR, COSF at 9. The agency explains that this notification, required under the terms of the contract, would have triggered an updated technical evaluation conducted by the Contracting Officer's Representative (COR), in order to verify whether the new warehouse location satisfied the contract's minimum size standards. AR, COSF at 9. However, the agency only surmised that Luciano had changed warehouses after the COR reconciled invoices provided by Luciano that contained different addresses. Id. When the agency finally surveyed Luciano's new warehouse, they noticed that its facility was significantly smaller; so much so that the agency represents that if it had been timely notified of the change pursuant to the terms of the contract, it would have disqualified Luciano from further performance. AR Tab 9, Technical Evaluation, at 6. The agency concludes that Luciano's failure to update the agency of its warehouse move contributed to a lack of trust and confidence in Luciano's ability to successfully perform.

Franzosini argues that the agency misevaluated Luciano's past performance, and, by extension, Franzosini's past performance. As support, Franzosini provided a letter from Luciano which challenges the agency's conclusions with regards to its past performance. In the letter, Luciano argues that it has been able to successfully render

performance on its existing contract in its present warehouse. Comments on Agency Report, Luciano Rebuttal Letter, at 2. Additionally, Luciano provides several performance quality reports to support its assertion that it had been performing well on this contract. Id. at 5.

Our Office will examine an agency's past performance evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the contracting agency's discretion. Arctic Slope World Servs., Inc., B-284481, B-284481.2, Apr. 27, 2000, 2000 CPD ¶ 75 at 10; Pacific Ship Repair and Fabrication, Inc., B-279793, July 23, 1998, 98-2 CPD ¶ 29 at 3-4. In conducting a past performance evaluation, an agency has discretion to determine the scope of the offeror's performance histories to be considered, provided all proposals are evaluated on the same basis and consistent with the solicitation requirements. Arctic Slope World Servs., Inc., supra. An agency may base its evaluation of past performance upon its reasonable perception of inadequate past performance, regardless of whether the contractor disputes the agency's interpretation of the facts. Ready Transp., Inc., B-285283.3, B-285283.4, May 8, 2001, 2001 CPD ¶ 90 at 5.

We find that the agency reasonably lacked confidence in Franzosini's proposed partner Luciano's ability to perform the services contemplated by the RFP. In the letter it included with Franzosini's comments on the agency report, Luciano does not actually challenge the agency's assertion that it failed to provide the requisite notice that it was changing warehouses. Comments on Agency Report, Luciano Rebuttal Letter, Attach. 3, at 4. In fact, it implicitly concedes this point, noting that its change in address was published in its emails and its invoices. Id. While these do evidence Luciano's publication of its new address, they plainly fail to satisfy a requirement that the COR be directly notified of a change in warehouse location. As a result, despite Luciano's belief that it continued to have the ability to satisfactorily perform the requirements of the contract, this difference in interpretation of facts provides us with no basis to question the agency's lack of confidence in Luciano. Ready Transp., Inc., supra. It therefore follows that the agency reasonably lacked confidence in Franzosini's ability to perform the services contemplated here.

Based on our findings above, we find nothing unreasonable about the agency's conclusion that Franzosini's proposal was technically unacceptable. As already discussed, the agency reasonably concluded that Franzosini's proposal lacked sufficient evidence that it could provide the requisite personnel. Additionally, as the agency lacked confidence in Luciano's ability to successfully perform the requirements of the contract, it therefore lacked confidence in Franzosini's ability to successfully perform the vast majority of services under this contract. On this record, we have no basis to question the agency's conclusion that Franzosini's proposal was technically unacceptable. See FreeAlliance.com, LLC, B-414531, June 19, 2017, 2017 CPD ¶ 191 at 5-6 (finding there was no basis to question the agency's conclusion that the

protester's proposal was technically unacceptable where the proposal failed to satisfy all of the requirements of the solicitation.).

## Prejudice

Franzosini also argues that the agency imposed unstated evaluation criteria in the evaluation of its proposal by concluding that its proposal failed to provide evidence that it had adequate equipment and sufficient warehouse space. Protest at 4-5. This protest ground does not provide a basis to sustain the protest because the protester has not demonstrated prejudice.

Prejudice is an essential element of every viable protest, and we will not sustain a protest where it is clear from the record that the protester suffered no prejudice as a result of an agency evaluation error. Investment Mgmt. Enter., B-410762, B-410762.2, Feb. 9, 2015, 2015 CPD ¶ 77 at 4. Where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice. Id. Here, even if the agency applied unstated evaluation criteria in evaluating the adequacy of Franzosini's proposed equipment and warehouse size, the fact remains that the agency reasonably found Franzosini's proposal to be technically unacceptable due to inadequate personnel presently on payroll and due to the record of poor past performance of its proposed partner. As Franzosini was thus ineligible for award, it follows that Franzosini was not prejudiced by these alleged evaluation errors.

The protest is denied.

Susan A. Poling  
General Counsel