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# Decision

**Matter of:** ACLC, LLC

**File:** B-417141

**Date:** March 5, 2019

Devon E. Hewitt, Esq., and Bret C. Marfut, Esq., Protorae Law PLLC, for the protester. Amy Laderberg O'Sullivan, Esq., and Olivia L. Lynch, Esq., Crowell & Moring LLP, for 1Prospect Technologies LLC, the intervenor.

Colonel C. Taylor Smith and Lieutenant Colonel Ryan Lambrecht, Department of the Air Force, for the agency.

Michael P. Grogan, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Protest challenging an evaluation of past performance, as well as the agency's best-value tradeoff decision, is denied where the record shows that the agency's evaluation and award decision were reasonable and consistent with the terms of the solicitation.

## DECISION

ACLC, LLC, an 8(a) small business of Fayetteville, North Carolina, protests the award of a contract to 1Prospect Technologies, LLC (1Prospect), an 8(a) small business of Milwaukee, Wisconsin, under request for proposals (RFP) No. H92239-18-R-0011, issued by the U.S. Army Special Operations Command (Army), for medical training and support services at the Joint Special Operations Medical Training Center (JSOMTC). ACLC, the incumbent contractor, primarily challenges the agency's evaluation of 1Prospect's proposal under the RFP's past and present performance factor, as well as the Army's best-value tradeoff determination.

We deny the protest.

## BACKGROUND

On August 24, 2018, the Army issued the RFP as an 8(a) set-aside, pursuant to the procedures contained in Federal Acquisition Regulation (FAR) part 15, for medical training and support services at JSOMTC. Agency Report (AR), Tab 10, RFP at 1, 65,

81. Specifically, the agency sought to award a contract to provide qualified instructors to teach basic and advanced operational medicine to special operations medic students, across a variety of medical and trauma-related disciplines. AR, Tab 10, RFP, Performance Work Statement (PWS) at 18-19. The PWS also stated that offerors would provide program management, and instruction management and support. PWS at 41-44. The solicitation anticipated the award of a fixed-price contract, with a cost-reimbursable line item for travel, for a 60-day phase-in, a 10-month base period, and four 1-year option periods. PWS at 20; RFP at 79.

The RFP provided that award would be made on a best-value tradeoff basis, taking into consideration the following factors: (1) technical knowledge of operational medical training; (2) staffing, retention, and management of personnel; (3) past and present performance; and (4) price.<sup>1</sup> RFP at 90-91. The solicitation provided that the two technical factors were equally important, the technical factors were more important than past and present performance and price, and the non-price factors, when combined, were significantly more important than price. RFP at 91.

As relevant to this protest, under the past and present performance factor, offerors were required to submit between three and five recent and relevant contracts that demonstrated the offeror's ability to perform the JSOMTC contract. RFP at 87. Under this factor, proposals would be evaluated for recency and relevancy. Id. The RFP included two separate definitions for relevancy, one for prime contractors and one for subcontractors/teaming partners. RFP at 87-88. Past and present performance references would be assigned one of the following relevancy ratings: very relevant, relevant, somewhat relevant, or not relevant. RFP at 88. Following an evaluation of an offeror's performance history--based on the data gathered from information sheets, questionnaires, interviews, and Contract Performance Assessment Reporting System reports--proposals would then be assigned a performance confidence assessment. RFP at 93. The highest rating for the performance confidence assessment was substantial confidence, reserved for proposals where the agency "has a high expectation that the Offeror will successfully perform the required effort." RFP at 93.

The agency received multiple proposals by the September 27 closing date, including proposals from ACLC and 1Prospect. AR, Tab 1, Contracting Officer's Statement (COS) at 11. The Source Selection Evaluation Board (SSEB) convened on October 1. Id. The SSEB submitted a report on October 23 that evaluated each offeror's proposal as follows:

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<sup>1</sup> The RFP also provided that offerors would be evaluated against two qualifying criterion, neither of which is relevant to this protest. See RFP at 91.

	ACLC	1Prospect
<b>Technical Knowledge of Operational Medical Training</b>	Blue/Outstanding/Low Risk	Blue/Outstanding/Low Risk
<b>Staffing, Retention, and Management of Personnel</b>	Blue/Outstanding/Low Risk	Blue/Outstanding/Low Risk
<b>Past and Present Performance</b>	Substantial Confidence	Substantial Confidence
<b>Price</b>	\$32,446,825	\$32,103,929

AR, Tab 28, Source Selection Decision Document (SSDD), at 3.

The SSEB conducted a tradeoff analysis and recommended 1Prospect for award. AR, Tab 19, SSEB Report, at 127. The Source Selection Authority agreed with the SSEB's recommendation and made award to 1Prospect on October 31. AR, Tab 28, SSDD, at 6. ACLC was informed of the agency's award decision on November 1, and following a debriefing that closed on November 21, ACLC submitted this protest on November 26. COS at 11-12.

## DISCUSSION

ACLC primarily challenges the agency's evaluation of 1Prospect's proposal under the past and present performance factor.<sup>2</sup> Specifically, the protester argues that the agency unreasonably found that 1Prospect's proposal deserved a substantial confidence rating under the past and present performance evaluation factor, the same rating ACLC received. The protester further argues that the agency's evaluation resulted in an unreasonable best-value tradeoff determination.

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<sup>2</sup> Although we do not address every argument the protester has raised, we have reviewed all of the protester's allegations and find that none provides a basis to sustain the protest. For example, ACLC contends that 1Prospect's proposal failed to properly demonstrate its relevant corporate experience under the technical knowledge of operational medical training factor, and that the agency improperly found that 1Prospect's proposal had relevant experience in providing medical instruction at JSOMTC. Protester's Comments at 10-11. However, our review of the record shows that the agency reasonably determined that 1Prospect's proposal demonstrated its corporate experience. Specifically, 1Prospect's proposal explained that the firm had provided active instruction across a number of combat medical and trauma courses and that its subcontractor also had relevant medical instruction background, including the medical instruction it provided on the prior JSOMTC contract. See AR, Tab 17, 1Prospect's Technical Proposal, at 9-10. While ACLC disagrees with the Army's evaluation, a protester's disagreement with the agency's judgments, without more, is not sufficient to render the evaluation unreasonable. NCS/EML JV, LLC, B-412277 et al., Jan. 14, 2016, 2016 CPD ¶ 21 at 8.

## 1Prospect's Past and Present Performance

ACLC alleges that the agency erred when it determined that 1Prospect's past and present performance warranted a substantial confidence rating. Protest at 4. In this regard, the protester contends that the agency misapplied the RFP's definition of relevancy, in that two of 1Prospect's offered references were unreasonably assigned a very relevant rating. ACLC argues that these two 1Prospect performance references are too dissimilar to the work to be performed under the JSOMTC contract--in that they do not include sufficient medical instruction or medical training--to be deemed very relevant. Protester's Comments at 4-8; Protester's Supp. Comments at 2-6. For example, ACLC argues that 1Prospect's references did not demonstrate instruction in "enhanced" medical training areas, such as dental or veterinary medicine, which would be required under the JSOMTC contract. Protester's Comments at 6-7; Protester's Supp. Comments at 3. In addition, ACLC argues that 1Prospect's [DELETED] hours of training in various aspects of medical care under the Army Medical Department and Center Schools (AMEDDC&S) contracts were not representative of the level of effort required under the JSOMTC contract, which required over 100,000 hours. Protester's Comments at 6; Protester's Supp. Comments at 2.

The agency argues that its determination that it had substantial confidence in 1Prospect's ability to perform the JSOMTC contract is fully supported by the record, and its decision to assign a very relevant rating for two of 1Prospect's past and present performance references was reasonable. COS at 19-26; Supp. Joint Contacting Officer's Statement and Memorandum of Law (COS/MOL) at 5-10. In this regard, the agency argues that the two contracts for which 1Prospect received a very relevant rating--for work performed on two successive contracts at AMEDDC&S--included medical instruction and training, and was very relevant to the JSOMTC contract, in terms of magnitude, number of employees, and overall business and control policies. COS at 22; Supp. COS/MOL at 5. Moreover, the agency contends that the RFP provided for over 40 different aspects of medical training, and that the protester's emphasis on a few specific types of medical instruction provided for in the PWS, such as dental and veterinary instruction, misconstrues the true nature of the work to be performed. Supp. COS/MOL at 3-5. Instead, the Army asserts that 1Prospect's references illustrate experience in several types of paramedic, trauma, and combat medicine courses that are similar to the work to be performed under the JSOMTC contract. Id. at 6-10.

Where, as here, a solicitation requires the evaluation of past performance, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria. TriWest Healthcare Alliance Corp., B-401652.12, B-401652.13, July 2, 2012, 2012 CPD ¶ 191 at 24. 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 agency discretion that we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. Fox RPM Corp., B-409676.2, B-409676.3, Oct. 20, 2014, 2014 CPD ¶ 310 at 3. The evaluation of past performance, by its very nature, is

subjective and we will not substitute our judgment for reasonably based evaluation ratings; an offeror's disagreement with an agency's evaluation judgments, without more, does not demonstrate that those judgments are unreasonable. FN Mfg., LLC, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

As stated above, the agency's evaluation of past and present performance was to focus on the recency and relevancy of an offeror's demonstrated record of performance. The RFP defined recency as contract actions within the past three years. RFP at 87. For prime contractors, relevancy was defined as contracts that are most similar to the JSOMTC contract, considering factors including "the diversity of required expertise, scope of [statement of work] SOW, magnitude, project complexity, security classification requirements, business management and control processes, contract type(s), number of employees required, special operations support, other [Department of Defense] support, and some major functional areas as depicted in the JSOMTC's PWS." RFP at 87-88. The RFP provided four adjectival ratings for relevancy: very relevant, relevant, somewhat relevant, and not relevant. RFP at 88. Very relevant was defined as effort that had "essentially the same scope and magnitude of effort and complexities" as the JSOMTC PWS. Id.

The SSEB, in finding both of 1Prospect's AMEDDC&S references to be recent and very relevant, noted that these references were "very similar" to the JSOMTC contract, in terms of "program management, instruction support, and curriculum review." AR, Tab 19, SSEB Report, at 67-69. The SSEB also noted that both references were similar in regards to the magnitude, complexity, amount of full time equivalents (FTEs), and overall business and control policies. Id. For example, the SSEB noted that one of the AMEDDC&S references was valued at \$22 million, which was found to be quite similar to the JSOMTC contract's estimated value of \$24 million. Id. The SSEB also found similarities in the number of FTEs: the JSOMTC contract required 52 FTEs, while 1Prospect's AMEDDC&S references required [DELETED] and [DELETED] FTEs, respectively. Id. On this basis, the agency concluded that 1Prospect's past performance references for work at AMEDDC&S were both very relevant, and, after also evaluating the awardee's performance assessments, gave 1Prospect's past and present performance a substantial confidence rating.

Our review of the record indicates that the agency had sufficient information concerning 1Prospect's experience in medical training to reasonably conclude that the awardee's past and present performance references warranted a very relevant rating. The SSEB specifically noted 1Prospect's instructional activities as provided in its proposal, which included "active instruction in the Brigade Combat Team Trauma Training (BCT3), Critical Care Flight Paramedic (CCFP), Expeditionary Combat Medic (ECM), Tactical Combat Medical Care (TCMC), Joint Forces Combat Trauma Management Course (JFCTMC), and Noncommissioned Officers Academy (NCoA) programs." AR Tab 19, SSEB Report, at 67-68. 1Prospect's instructional activities, in this regard, reflect the type of medical instruction and training identified in the RFP that would be required for the performance of the JSOMTC contract. See PWS at 18-20.

The SSEB also highlighted that these instructional activities included “more than [DELETED] hours” of medical training. AR Tab 19, SSEB Report, at 68. While the protester contends that the awardee on the JSOMTC contract “will be responsible for over 100,000 hours of instruction in just one year” and that 1Prospect’s [DELETED] hours of training on an AMEDDC&S contract “represents a tiny fraction of training hours required under the JSOMTC contract,” we do not view this as a valid comparison. Protester’s Supp. Comments at 3. While the RFP provides that an offeror can expect to expend about 100,000 hours to execute the tasks under the PWS, those 100,000 hours encompass more than just instruction time, and instead, include technical writing and training development time, as well. RFP, Tech. Exh. 4, at 52.

Furthermore, while the protester is correct that 1Prospect’s medical instruction references do not cover every single category of medical training to be performed on the JSOMTC contract, as described in the PWS, the RFP did not require past performance references to do so. Instead, the RFP provided that the agency would evaluate the degree of similarity between past and present performance and the overall JSOMTC effort across a variety of factors, not exclusively concerning medical instruction. RFP at 87-88 (“Some of the factors in determining relevancy include: the diversity of required expertise, scope of SOW, magnitude, project complexity, security classification requirements . . .”). In this regard, the assignment of a very relevant rating to these references did not require a one-to-one match with every aspect of the PWS, but instead, required a past performance reference to essentially be the same in terms of scope, complexity, and magnitude of effort. Given the record as demonstrated above, here, we find no basis to disagree with the agency’s conclusion that 1Prospect’s work on the AMEDDC&S contracts was very relevant as compared to the JSOMTC contract, and that 1Prospect’s past and present performance merited a substantial confidence rating.

#### Tactical Element’s Past and Present Performance

ACLC also argues that the agency erred in finding that the past and present performance of Tactical Element, Inc., a subcontractor for 1Prospect, warranted a relevant rating. Protester’s Comments at 8-9; Protester’s Supp. Comments at 7-9. The protester contends that Tactical Element’s past and present performance did not include sufficient medical instruction, and was much smaller in scope and magnitude than the JSOMTC contract, and thus, the agency could not reasonably conclude that such past performance was relevant.

The agency argues that under the evaluation criteria established in the RFP, the agency properly determined Tactical Element’s past and present performance to be relevant for the services it was to perform as a subcontractor. COS at 26-30; Supp. COS/MOL at 10-14. In this regard, the agency explains that five of Tactical Element’s references provide for direct medical training across a number of trauma, emergency, and combat medical fields. Supp. COS/MOL at 10-12. The agency also argues that while the references are smaller in scope and magnitude than the JSOMTC contract, Tactical

Element's rating of relevant for these low magnitude contracts is consistent with the terms of the RFP. Id. at 13-14.

The RFP provided the following standard for the relevancy of past and present performance for subcontractors<sup>3</sup>: "For proposed subcontractors/teaming partners, relevancy is defined by that which reflects experience in the area of expertise the subcontractor is projected to actually perform under the JSOMTC program, (i.e., specific areas in the SOW)." RFP at 88. The agency would assign an adjectival rating for relevancy for each past and present performance reference and, as pertinent here, relevant past performance "involved similar scope and magnitude of effort and complexities this solicitation requires." Id. The agency found all five of Tactical Element's references to be relevant. AR, Tab 19, SSEB Report, at 70-75.

Here, the protester's objections provide no basis for our Office to find that the agency's evaluation of Tactical Element's past and present performance was unreasonable. The record reflects that Tactical Element's references did include training experience in a variety of medical and trauma disciplines, to include emergency medical services and backcountry/wilderness medical training, physician level medical direction and oversight, first aid and safety training, and the operation of combat support hospitals. AR, Tab 18, 1Prospect Technical Proposal, at 15, 27. Again, while Tactical Element's past performance does not correspond to all of the "enhanced" medical tasks identified in the PWS, such as dental or veterinary medicine, we find reasonable the agency's determination that Tactical Element's prior medical instruction was at least "similar" to the JSOMTC contract. And, while Tactical Element's references were smaller--both in terms of dollar value and number of FTEs--than the JSOMTC contract, a rating of relevant under the terms of the RFP required the agency only to find that Tactical Element's experience to be "similar" in scope. See RFP at 88. Accordingly, even with the lower magnitude of effort required by these contracts, the agency's determination that those references, as a whole, were "similar" in scope, magnitude of effort, and complexity to the JSOMTC contract was not an unreasonable one.<sup>4</sup>

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<sup>3</sup> To the extent the protester argues that the agency should have applied the relevancy criteria for prime contractors when it evaluated Tactical Element's past and present performance, we disagree. As noted by the protester, Tactical Element is a teaming partner of 1Prospect and will be performing less than half of the work under the RFP. Protest at 5; Protester's Comments at 8. As the RFP makes clear, the agency would apply one relevancy standard for a prime offeror's past and present performance references and another for a subcontractor/teaming partner's references. RFP at 87-88. To the extent ACLC now challenges the propriety of the terms of the RFP, such a protest ground is untimely. 4 C.F.R. § 21.2(a)(1).

<sup>4</sup> ACLC's protest alleged that the agency's evaluation of Tactical Element's past and present performance was flawed because the Army improperly ignored information concerning Tactical Element's performance as a subcontractor to ACLC on the incumbent contract. Protest at 7. In the Agency Report, the Army provided a detailed  
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## Best-Value Tradeoff Decision

Finally, ACLC challenges the agency's conclusion that 1Prospect's proposal provided the best value to the Army by alleging that multiple errors in the evaluation of proposals tainted the award decision. Protest at 9. ACLC also argues that the agency's tradeoff analysis did not give due consideration to ACLC's advantages, in light of the marginal price difference between ACLC and 1Prospect's proposals. Id.

With respect to ACLC's alleged evaluation errors, as discussed above, we find no flaw in the evaluation, and thus no related error in the best-value tradeoff. Additionally, the record demonstrates that the contracting officer, who was also the source selection authority, provided a well-reasoned basis for a tradeoff, finding that while both ACLC and 1Prospect "submitted outstanding technical proposals and received substantial confidence past performance ratings . . . any strengths offered by ACLC are essentially offset by 1Prospect's broader experience with other extremely relevant Army medical training programs." AR, Tab 28, SSDD at 5. As such, the agency found that the "increased cost of \$190,646.59 proposed by ACLC [was] not justified." Id. For these reasons, we find no merit in ACLC's challenges to the source selection decision.

The protest is denied.

Thomas H. Armstrong  
General Counsel

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response concerning the agency's investigation into Tactical Element's alleged performance issues. COS at 30-36; MOL at 29-37. ACLC's comments on the Agency Report provide no substantive response in connection with its challenge. See Protester's Comments at 10. In our view, ACLC has abandoned this allegation. Where an agency provides a detailed response to a protester's allegations and the protester fails to rebut or otherwise substantively address the agency's arguments in its comments, the protester provides us with no basis to conclude that the agency's position with respect to the issue in question is unreasonable or improper and we therefore find this protest ground abandoned. See 4 C.F.R. § 21.3(i)(3); KSJ & Assocs., Inc., B-409728, July 28, 2014, 2014 CPD ¶ 222 at 5.