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Decision

Matter of: AAR Manufacturing Inc., d/b/a AAR Mobility Systems

File: B-418339

Date: March 17, 2020

Paul R. Hurst, Esq., Michael J. Navarre, Esq., and Caitlin T. Conroy, Esq., Steptoe & Johnson, LLP, for the protester.

Anthony H. Anikeeff, Esq., and Stephen H. Swart, Esq., Williams Mullen, for Taber Extrusions, LLC, the intervenor.

Captain Seiji Ohashi, Alexis J. Bernstein, Esq., Major Darren S. Gilkes, and Charles R. Epperson, Esq., Department of the Air Force, for the agency.

Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency failed to give adequate consideration to a prospective offeror's organizational conflicts of interest is denied where the agency reasonably evaluated whether the prospective offeror had an improper ability to shape the ground rules for the procurement, or unequal access to information, or impaired objectivity to perform the required effort, and where the protester's assertions fail to present hard facts indicating the existence of an impermissible conflict.

2. Protest challenging solicitation's past performance evaluation rating scheme as unduly restrictive of competition is denied where the agency provides a rational explanation for its requirements and demonstrates that they reasonably relate to the agency's actual needs.

DECISION

AAR Manufacturing Inc., d/b/a AAR Mobility Systems (AAR), of Cadillac, Michigan, protests the terms of request for proposals (RFP) No. FA8534-19-R-0001, issued by the Department of the Air Force for the supply of "Next Generation" (Next-Gen) air cargo pallets. AAR argues that a potential competitor, Taber Extrusions, LLC, of Russellville, Arkansas, has organizational conflicts of interest (OCI) that are unmitigatable and that the RFP's past performance evaluation criterion is unduly restrictive of competition.

We deny the protest.

BACKGROUND

The current air cargo pallet, assigned the designation 463L, is used for the transportation of air cargo throughout the Air Force. The 463L pallet was first fielded in 1963, with few subsequent modifications. In its current design, the 463L pallet is made of a balsa wood core with an aluminum skin. Contracting Officer's Statement (COS) at 2; Agency Report (AR), Tab 39, Cargo Pallet Program Acquisition Strategy at 61. AAR has been the sole supplier and maintenance provider for the legacy 463L pallet for decades. AR, Tab 39, Cargo Pallet Program Acquisition Strategy at 4, 24-25, 33, 77.

In 2012, the Air Force began an effort to redesign the 463L air cargo pallet to enhance its longevity and other performance characteristics. In August 2012, the Air Force awarded a contract to the University of Dayton Research Institute (UDRI) to conduct a feasibility study regarding air cargo pallets, including alternative suppliers, materials, and designs, to the legacy 463L pallet. AR, Tab 104, UDRI Next-Gen Program Review Presentation at 5. The UDRI study considered multiple alternative designs, materials, and processes before deciding upon an all-aluminum, extruded aluminum core design, similar to military airfield runway matting. Id. at 6. The feasibility study contract concluded with UDRI's submission of a report (i.e., white paper) to the Air Force.

On August 5, 2014, following the study, the Air Force awarded UDRI a contract for the development, design, and qualification testing of all-aluminum Next-Gen pallets (hereinafter, the development contract). COS at 2; AR, Tab 100, UDRI Development Contract at 1-76. In general terms, UDRI was required to design and manufacture prototype pallets, qualify the prototype pallets, and develop and deliver a corresponding technical data package (TDP), with unlimited data rights, to the Air Force. AR, Tab 100, UDRI Development Contract, Statement of Work (SOW) at 23-28; Tab 106, UDRI Next-Gen Cargo Pallet Final Report 7-8. UDRI, in addition to the work performed itself, employed various subcontractors as part of the development contract. AR, Tab 106, UDRI Next-Gen Cargo Pallet Final Report 9-18. Relevant to the protest here, UDRI utilized Taber as the aluminum extrusion company to fabricate the extrusion dies and extrude the Next-Gen pallet subcomponents.¹ Id. at 9-11; see also Tab 100, UDRI Development Contract, SOW at 24. UDRI completed performance of the development contract by August 2016, and delivered Next-Gen pallet prototypes and related data items (e.g., TDP, final report, qualification test report) to the Air Force.² COS at 2; AR, Tab 104, UDRI Next-Gen Program Review Presentation at 17.

¹ Aluminum extrusion is a process by which a billet (essentially a log) of aluminum is softened by heating and is then pressed through a shaped die with a hydraulic press. This creates a fully formed piece of aluminum in the intended shape as it is squeezed through the die. Memorandum of Law (MOL) at 2 n.1.

² The Air Force subsequently contracted with UDRI for an additional 500 Next-Gen pallets (based on the development contract TDP) to be used for operational test and

The current solicitation, issued on August 19, 2019, contemplates the award of a requirements-type contract (with fixed-price units) for the manufacture and production of an estimated 118,006 Next-Gen pallets for an 18-month base period, eight 12-month options, and one 6-month option, for a total performance period of 10 years.³ AR, Tab 65, RFP § B at 3-61; COS at 3. The solicitation includes a TDP, consisting of nine pages of drawings, detailing the exact specifications for the Next-Gen cargo pallets to be produced.⁴ RFP at 327-335.

The RFP also provides that proposals will be evaluated using four factors: technical; past performance; small business participation; and cost/price. Id., § M at 393. The technical factor consisted of two subfactors: pallet production approach; and aluminum extrusion and friction stir welding capability.⁵ RFP § M at 393. The RFP establishes that the technical and small business participation evaluation factors will be evaluated on an “acceptable/unacceptable” basis, and for those offerors determined to be technically acceptable and having acceptable small business participation, “tradeoffs may be made between past performance and cost/price, with past performance considered approximately equal to cost/price.” Id.

On December 11, prior to the RFP’s December 12 closing date, AAR filed its protest with our Office.

DISCUSSION

AAR raises two primary challenges to the solicitation. The protester first alleges that Taber has unmitigatable OCIs which prohibit it from being eligible for contract award. The protester also contends that the RFP’s past performance evaluation criterion is

evaluation purposes. COS at 3; AR, Tab 76, UDRI Task Order at 1-8. UDRI again utilized Taber as its aluminum extrusion subcontractor for this effort.

³ The RFP has been amended six times since its initial issuance. Unless specified otherwise, all citations are to the final version of the solicitation.

⁴ The record reflects that the production contract TDP is a modified version of the development contract TDP prepared by UDRI. Specifically, the Air Force revised the Next-Gen pallet drawings and switched from a 4-panel design to a 6-panel design, with narrower extrusion widths, as a result of the market research it conducted regarding the capabilities of the aluminum extrusion market to meet the agency’s requirements. AR, Tab 75, OCI Determination at 7, attach. 6, Horan Declaration at 25-26.

⁵ Friction stir welding is a process by which a cylindrical tool is rotated along a joint line. The downward force and rotation of the tool create heat while intermixing the metal along the joint. The friction stir welding process allows the metal along the joint to fuse together without having to raise the temperature of the entire piece to its melting point. MOL at 2 n.2.

unduly restrictive of competition and improperly favors Taber.⁶ Although we do not specifically address all of the protester's issues and arguments about the solicitation, we have fully considered all of them and find they provide no basis on which to sustain the protest.

Organizational Conflicts of Interest Allegations Regarding Taber

AAR protests that prospective offeror Taber has various OCIs that the Air Force failed to reasonably consider or mitigate. Specifically, AAR contends that Taber's significant involvement in the development of the Next-Gen pallet allowed it to both shape the ground rules for this procurement and provided Taber with unequal access to nonpublic information. The protester also alleges that, if awarded, Taber's performance of the Next-Gen pallet contract here would result in it being placed in the dual role of producing a product pursuant to a design to which Taber contributed and assessing the quality of that design. AAR argues that had the agency performed a proposal evaluation, it would have found Taber's OCIs render the prospective offeror ineligible for award.⁷ Protest at 11-21.

The Federal Acquisition Regulation (FAR) requires a contracting officer to "[a]void, neutralize, or mitigate significant potential conflicts of interest before contract award," so as to prevent the existence of conflicting roles that might impair a contractor's objectivity or an unfair competitive advantage. FAR § 9.504(a)(2). The responsibility for determining whether an actual or apparent conflict of interest will arise, and to what extent the firm should be excluded from the competition, rests with the contracting officer. Alliant Techsystems, Inc., B-410036, Oct. 14, 2014, 2014 CPD ¶ 324 at 4; Aetna Gov't Health Plans, Inc.; Found. Health Fed. Servs., Inc., B-254397.15 et al.,

⁶ AAR also alleged that the agency's award process, which did not consider offerors' technical capability in the best-value tradeoff determination, improperly converted the procurement to a lowest-price, technically acceptable (LPTA) basis of award. Protest at 22-25. AAR subsequently elected to withdraw this additional protest ground. AAR Comments at 4 n.1, citing Inerso Corp., B-417791, B-417791.3, Nov. 4, 2019, 2019 CPD ¶ 370 (finding a tradeoff between price and past performance did not violate the statutory requirement that Defense Department agencies avoid using an LPTA award process).

⁷ Our Office questioned the parties regarding the ripeness of this protest ground because, as a general rule, a protester is not required to protest that another firm has an impermissible OCI until after that firm has been selected for award. Deque Sys., Inc., B-415965.4, June 13, 2018, 2018 CPD ¶ 226 at 5; REEP, Inc., B-290688, Sept. 20, 2002, 2002 CPD ¶ 158 at 1-2. The Air Force acknowledged that AAR's challenge here is not premature, but was properly filed prior to the RFP closing date, insofar as the solicitation was issued on an unrestricted basis, the protester is aware of the facts giving rise to the potential OCI, and the protester has been advised by the Air Force that the agency considers Taber eligible for award. Supp. MOL at 2, citing Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 ¶ 49 at 6.

July 27, 1995, 95-2 CPD ¶ 129 at 12. Further, “[t]he exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it.” FAR § 9.505.

We review the reasonableness of a contracting officer’s OCI investigation and, where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency’s, absent clear evidence that the agency’s conclusion is unreasonable. Systems Made Simple, Inc., B-412948.2, July 20, 2016, 2016 CPD ¶ 207 at 7; McConnell Jones Lanier & Murphy, LLP, B-409681.3, B-409681.4, Oct. 21, 2015, 2015 CPD ¶ 341 at 13. In this regard, the identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. Systems Made Simple, Inc., *supra*; see Axiom Res. Mgmt., Inc. v. United States, 564 F.3d 1374, 1382 (Fed. Cir. 2009). A protester must identify hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. TeleCommunication Sys. Inc., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4; see Turner Constr. Co., Inc. v. United States, 645 F.3d 1377, 1387 (Fed. Cir. 2011).

Relevant to all the issues raised by AAR, the contracting officer conducted a detailed review of whether significant OCIs existed regarding Taber’s involvement in the current Next-Gen pallet solicitation. This review resulted in a 59-page determination documenting his analysis. AR, Tab 75, OCI Determination. As part of his review, the contracting officer considered:

- the scope of the Next-Gen development contract;
- the role of Taber and other subcontractors, as well as UDRI, in the Next-Gen development contract;
- the contract file for the Next-Gen pallet production contract;
- declarations from Taber regarding interactions with Air Force personnel;
- the revisions (and source of the revisions) made to the production contract TDP as compared to the development contract TDP; and
- the contracting officer’s own interactions with UDRI and Taber since his involvement with the Next-Gen pallet program began in 2016.

Id. at 1-11.

Additionally, the contracting officer interviewed (and obtained a statement from) UDRI’s project leader regarding the Next-Gen development contract. Id. at 3, 13-15. The contracting officer also obtained statements from 11 of the agency’s technical, program, and contracting personnel involved in the Next-Gen pallet program regarding Taber’s alleged OCI. Id. at 16-48. The contracting officer thereafter concluded that: “In accordance with the above findings and in accordance with the provisions of FAR Subpart 1.7, I hereby determine that . . . there is no significant OCI affecting the [current RFP].” Id. at 11.

As detailed below, the record reflects the contracting officer reasonably investigated and considered each of the potential OCI issues raised, and AAR has failed to satisfy the standard required to demonstrate the existence of the alleged OCIs. Thus, we have no basis to question the contracting officer's conclusion that Taber's participation in the procurement here does not raise significant potential OCI concerns.

Alleged Biased Ground Rules OCI

AAR first alleges that Taber has a biased ground rules OCI. In support thereof, the protester contends that UDRI's development contract for the Next-Gen pallet led directly to the design and specifications in the procurement here, and that Taber had significant involvement in the development of the Next-Gen pallet technical specifications. Protest at 12. AAR also contends that even if Taber did not assist in the drafting of the TDP under the Next-Gen development contract, it was nevertheless in a position to affect the ground rules for the current production contract competition in its own favor. Id. at 14.

A biased ground rules OCI arises where a firm, as part of its performance of a government contract, has in some sense set the ground rules for the competition of another government contract by, for example, writing the statement of work or providing materials upon which a statement of work is based. FAR §§ 9.505-1, 9.505-2. The primary concern with a biased ground rules OCI is that the firm could skew the competition, whether intentionally or not, in favor of itself. Systems Made Simple, Inc., supra; CIGNA Gov't Servs., LLC, B-401068.4, B-401068.5, Sept. 9, 2010, 2010 CPD ¶ 230 at 10.

The FAR, however, also recognizes the unique role played by a development contractor in the procurement process: while a development contractor "has a competitive advantage, it is an unavoidable one that is not considered unfair; hence no prohibition should be imposed." FAR § 9.505-2(a)(3). Thus, with regard to the development of a solicitation's work statement, the FAR states as follows:

If a contractor prepares, or assists in preparing, a work statement to be used in competitively acquiring a system or services--or provides material leading directly, predictably, and without delay to such a work statement--that contractor may not supply the system major components of the system, or the services unless--(i) It is the sole source; (ii) It has participated in the development and design work; or (iii) More than one contractor has been involved in preparing the work statement.

FAR § 9.505-2(b)(1).

The contracting officer, as part of his OCI investigation here, determined that Taber's role in the Next-Gen pallet development contract was more significant than mere aluminum extrusion production, and that Taber contributed materially to the TDP prepared by UDRI. AR, Tab 75, OCI Determination at 5. However, the contracting officer also determined that Taber had participated in the development and design work

for the Next-Gen pallet, and that more than one contractor had been involved in the preparation of the Next-Gen pallet TDP. Based on these two exceptions, the contracting officer determined that Taber did not have an impermissible biased grounds rules OCI. Id. at 5-7.

Our review finds that the contracting officer reasonably concluded that Taber did not have an improper biased ground rules OCI. As a general matter, the mere existence of a prior or current contractual relationship between a contracting agency and a contractor does not create an unfair competitive advantage unless the alleged advantage was created by an improper preference or unfair action by the procuring agency. Alliant Techsystems, Inc., *supra*, at 5; Science Applications Int'l Corp., B-405718, B-405718.2, Dec. 21, 2011, 2012 CPD ¶ 42 at 8 n.12. Likewise, even if the current RFP's specifications were based on the Next-Gen pallet as developed and designed by UDRI with Taber's participation, this fact alone does not confer an unfair competitive advantage on Taber to be addressed under the OCI rules, as evidenced by the "development and design work" exception. Alliant Techsystems, Inc., *supra*; Lakota Tech. Sols., Inc., B-298297, Aug. 4, 2006, 2006 CPD ¶ 118 at 5 n.3 (a competitive advantage that derives from an offeror's previous performance under a development contract is not an unfair competitive advantage that agency is required to neutralize); see also FAR § 9.508(c) ("Company A develops new electronic equipment and, as a result of this development, prepares specifications. Company A may supply the equipment.").

AAR does not dispute the existence of the FAR's "development and design work" exception to the general prohibition on contractors who prepare or assist in preparing work statements. Instead, the protester contends that Taber--and UDRI--did not perform "development and design work" under the UDRI development contract, but rather, merely drafted the TDP for the current solicitation. AAR Comments at 6-9. We find AAR's assertion here to be both inaccurate and inconsistent with its initial protest arguments.

First, although FAR subpart 9.5 does not define "development and design work," the word "development" is defined in FAR part 35 (Research and Development Contracting) as "the systematic use of scientific and technical knowledge in the design, development, testing, or evaluation of a potential new product or service (or of an improvement in an existing product or service) to meet specific performance requirements or objectives. It includes the functions of design engineering, prototyping, and engineering testing" FAR § 35.001. We have also previously found "development and design work" to be, as here, that which "pushes the edges of technology in developing or designing new hardware or processes." GIC Agric. Grp., B-249065, Oct. 21, 1992, 92-2 CPD ¶ 263 at 10 n.6.

Second, the record reflects that the Next-Gen pallet did not exist before UDRI and Taber developed and designed it under UDRI's development contract. Third, while AAR focuses myopically on UDRI's preparation and delivery of Next-Gen pallet drawings (i.e., the TDP) under the development contract, the fact remains that UDRI was also

required to develop, design, and deliver a new product here, as evidenced by the Next-Gen pallet prototypes. Fourth, AAR, in its initial protest, repeatedly acknowledges that UDRI's 2014 contract was a developmental effort. See Protest at 3 (“[t]he development contract . . . required UDRI to design, manufacture, and qualify” the Next-Gen pallet). The integrity of the protest process simply does not permit a party to espouse different positions at different times to our Office. See Quotient, Inc., B-416473.6, B-416473.7, July 30, 2019, 2019 CPD ¶ 281 at 7; WingGate Travel, Inc., B-412921, July 1, 2016, 2016 CPD ¶ 179 at 8. In sum, because the contracting officer's determination is consistent with our prior decisions on this FAR exception, we have no basis to find unreasonable the contracting officer's determination that this exception applies.⁸

Alleged Unequal Access to Information OCI

AAR next alleges that Taber has an unequal access to information OCI. In support thereof, the protester asserts that “[t]here is no doubt that Taber's involvement in the development contract resulted in it obtaining unequal access to non-public information.” Protest at 19. AAR argues that as a member of the development contract team, Taber had communications with government officials involved in the Next-Gen procurement, and further surmises that “Taber may have [gained] detailed knowledge of the time and cost of production based on its work on the development contract.” Id. at 20. The protester also contends the contracting officer's review was unreasonable for concluding that Taber did not have access to nonpublic information that would provide it with a competitive advantage. AAR Comments at 15.

An unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract and where that information may provide the firm a competitive advantage in a later competition. FAR § 9.505-4; Tatitlek Techs., Inc., B-416711 et al., Nov. 28, 2018, 2018 CPD ¶ 410 at 4; Cyberdata Techs., Inc., B-411070 et al., May 1, 2015, 2015 CPD ¶ 150 at 6. The concern regarding this category of OCI is that a firm may gain a competitive advantage based on its possession of proprietary information furnished by the government or source selection information that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract. See FAR § 9.505(b); Alliant Techsystems, Inc., supra; Phoenix Mgmt., Inc., B-406142.3, May 17, 2012, 2013 CPD ¶ 154 at 3 n.6.

⁸ We also find reasonable the contracting officer's determination that more than one contractor was involved in preparing the Next-Gen pallet TDP (i.e., UDRI, Taber, as well as two friction stir welder subcontractors), such that a second exception also existed to the FAR § 9.505-2(b)(1) prohibition. AR, Tab 75, OCI Determination at 6-7. While AAR contends that Taber was the only aluminum extrusion contractor involved in preparing the Next-Gen pallet TDP, the fact remains that the “work statement” was the complete Next-Gen pallet TDP, and more than one contractor was involved in its preparation. Systems Made Simple, Inc., supra; American Artisan Prods., Inc., B-292559, B-292559.2, Oct. 7, 2003, 2003 CPD ¶ 176 at 8; S.T. Research Corp., B-233115.2, Mar. 30, 1989, 89-1 CPD ¶ 332 at 5.

The contracting officer, in response to AAR's protest, conducted a detailed inquiry regarding Taber's alleged access to nonpublic information as part of the Next-Gen pallet development contract. AR, Tab 75, OCI Determination at 8-10. Among other things, the contracting officer--who had been involved with the procurement since October 2016--considered his own personal knowledge of agency communications with Taber (which were very limited). He also recalled that: (1) he sought out information from other Air Force personnel involved in the development contract (and obtained affidavits) regarding any nonpublic information that was provided to Taber; and (2) he interviewed UDRI's group leader for the development contract about whether nonpublic information was released from the Air Force. Id. Based on his investigation, the contracting officer concluded that Taber did not receive an unfair competitive advantage from receiving any nonpublic information from the Air Force. Id. at 10.

Here, we find reasonable the agency's conclusion that Taber does not have an OCI due to unequal access to nonpublic information. The record reflects that in performing his OCI review, the contracting officer reasonably reviewed all pertinent information. The contracting officer also reasonably gained input from other Air Force personnel (program, technical, and contracting) involved in the Next-Gen pallet development contract regarding Taber's access to or receipt of nonpublic information. Based on the gathered information, the contracting officer reasonably found that Taber did not receive an unfair competitive advantage due to receiving nonpublic information from the Air Force.

Moreover, in addition to the reasonableness of the contracting officer's OCI investigation regarding Taber, AAR has not demonstrated that Taber received any nonpublic information, either directly or indirectly, from the Air Force. Again, the FAR requires that contracting officials avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage. FAR §§ 9.504(a), 9.505. However, much of the alleged information in question here is neither proprietary information of a competitor, nor agency source selection information, but essentially knowledge which Taber acquired arising out of its performance of the Next-Gen pallet development contract. For example, AAR states that Taber obtained detailed knowledge about the time and cost of Next-Gen pallet production, as Taber (as well as UDRI) was required to report this information to the Air Force. Needless to say, Taber was the source of its own information here. Similarly, it was Taber's performance of the Net-Gen pallet development contract--not Air Force information--that provided Taber with knowledge regarding manufacturing process problems and how to satisfy testing requirements.

It is well settled, however, that while an offeror may possess unique information, advantages, and capabilities due to its prior experience under a government contract, including performance as the incumbent contractor, the government is not required to equalize competition to compensate for such an advantage, unless there is evidence of preferential treatment or other improper action. See FAR § 9.505-2(a)(3); Alliant Techsystems, Inc., supra, at 9; Onsite Health Inc., B-408032, B-408032.2, May 30,

2013, 2013 CPD ¶ 138 at 9. The existence of an advantage, in and of itself, does not constitute preferential treatment by the agency, nor is such a normally occurring advantage necessarily unfair. Id. Again, the FAR specifically states that, while a “development contractor,” such as Taber, “has a competitive advantage, it is an unavoidable one that is not considered unfair; hence no prohibition should be imposed.” FAR § 9.505-2(a)(3).

As final point, AAR essentially argues that the contracting officer’s OCI inquiry “didn’t go far enough,” because it didn’t find that any nonpublic information was obtained by Taber. AAR Comments at 15-16. We find this amounts to mere disagreement with the contracting officer’s OCI inquiry, which does not establish that it was unreasonable. Liquidity Servs., Inc., B-409718 et al., July 23, 2014, 2014 CPD ¶ 221 at 9.

Alleged Impaired Objectivity OCI

Lastly, AAR alleges that Taber will also have an impaired objectivity OCI as part of the performance of the Next-Gen pallet production contract. The protester asserts that although the Air Force is not awarding a contract to obtain design advice from the successful offeror, nor does the agency anticipate that the pallet’s design will change during contract performance, “Taber will [nonetheless] be in the position of evaluating the pallet design and production work it performed in the development contract.” Protest at 18. Consequently, AAR argues, “Taber would be reluctant to question the merit of the [existing] design and/or production process that it helped develop as part of the UDRI/Taber team” Id.

An impaired objectivity OCI exists where a firm’s work under one government contract could entail its evaluating itself, either through an assessment of performance under another contract or an evaluation of proposals. FAR § 9.505-3; L-3 Servs., Inc., B-400134.11, B-400134.12, Sept. 3, 2009, 2009 CPD ¶ 171 at 5. In these cases, the primary concern is that the firm’s ability to render impartial advice to the government will be undermined by the firm’s competing interests such as a relationship to the product or service being evaluated. FAR § 9.505-3; ORBIS Sibro, Inc., B-417406.2, B-417406.3, Nov. 19, 2019, 2019 CPD ¶ 404 at 12; PURVIS Sys., Inc., B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 at 7.

The contracting officer, in response to AAR’s assertions, considered whether the facts demonstrated the existence of a significant impaired objectivity OCI regarding Taber. The contracting officer first determined that Taber’s role in the design of the Next-Gen pallet, while material, was still extremely limited. AR, Tab 75, OCI Determination, at 8. The contracting officer considered the fact that UDRI was the primary author of the Next-Gen TDP, and he took into consideration the explanation provided by the UDRI project leader regarding the relative roles of UDRI and Taber. Id. In identifying the work performed by Taber, the UDRI project leader explained that:

I cannot identify any materials that were prepared by Taber which were subsequently incorporated into the data that UDRI delivered to the [Air

Force] that the [Air Force] would have used in their solicitation or the technical data package they created from UDRI's data. My best estimate of the percentage of the Air Force Next-[Gen] Cargo Pallet technical data package and specification that UDRI delivered to the [Air Force] that Taber contributed to was 1%.

Id., attach. 1, UDRI Project Leader Declaration at 13-14.

Based on the information before him, the contracting officer concluded that AAR's "speculation of an OCI on this ground is not supported by the facts in this case." AR, Tab 75, OCI Determination at 8.

We find the contracting officer reasonably considered the potential for competing roles should Taber win and reasonably found no significant OCI concern here. As a preliminary matter, as AAR itself recognizes, the contract here does not require the awardee to provide advisory services nor does the Air Force anticipate changes to the Next-Gen pallet's design during contract performance. Further, with regard to AAR's assertion that Taber played a "significant" role in the development and design process (which would therefore make Taber reluctant to submit proposals suggesting changes in design or to report a faulty or suboptimal design), we find no merit to these arguments.

Here, the contracting officer reasonably considered the extent of Taber's role in the Next-Gen pallet design process to be a material, but extremely limited, one. Moreover, as the current solicitation employs a modified version of the TDP prepared by UDRI, Taber's role in the design process and potential for an impaired objectivity OCI becomes even more attenuated. Based on the relative roles of UDRI and Taber in the design process, the contracting officer concluded:

I am confident that if Taber found a flaw in the TDP they would remind the Air Force that UDRI was the primary author of the specifications, and submit a request for an equitable adjustment. Likewise, if Taber found a way to improve the Next-Gen Cargo Pallet TDP they would submit an [engineering change proposal]. Based on my experience in contracting, government contractors are always eager to submit a change order and be paid for additional work.

AR, Tab 75, OCI Determination at 8. We find no basis to challenge the reasonableness of this conclusion.

In sum, the protester fails to show that the contacting officer was unaware of, or failed to consider, all relevant information when reviewing Taber's potential OCIs. The protester essentially expresses disagreement with the contracting officer's judgments regarding the reasonableness of the OCI inquiry; such mere disagreement does not rise to the hard facts necessary to support a valid challenge. Systems Made Simple, Inc., supra, at 13.

Unduly Restrictive Past Performance Evaluation Criterion

AAR also challenges the RFP's past performance evaluation factor. The protester contends that the "relevancy criteria for the [p]ast [p]erformance [e]valuation [rating scheme] are unduly restrictive of competition," and improperly favor Next-Gen pallet development subcontractor Taber. Protest at 21.

The RFP instructs offerors to submit up to four past performance references--for the prime contractor, joint venture members, and critical subcontractors--of ongoing work or efforts completed within 6 years of the RFP's issuance date, demonstrating the offeror's ability to perform the required effort. RFP § L at 380-381. The RFP also provides that the agency will evaluate offerors' past performance, based on the recency, relevance, and quality of prior work performed, so as to assess an offeror's ability to successfully accomplish the proposed effort.⁹ Id. at 395, 399. With regard to the evaluation of relevance as it relates to past performance, the RFP sets forth the specific areas to be considered: friction stir welding; production of aluminum extrusions; and program management/integration. Id. at 397-398.

The solicitation also provides the rating scheme for the agency's evaluation of past performance, including the available performance confidence assessment ratings: substantial confidence, satisfactory confidence neutral confidence, limited confidence, or no confidence. Id. at 399. Additionally, for purposes of relevancy, the RFP provides that contracts will be deemed "very relevant" in the friction stir welding area if they involved "essentially the same scope and magnitude of effort and complexities this solicitation requires." Id. at 397. Further, the "very relevant" efforts "must have included all of the following: Friction stir weldments of 96 [inches] or longer, multi-void, thin wall (0.125 [inches] or less) 6000 series aluminum extrusions in quantities of 500 per month or greater." Id. Similarly, the RFP provides that contracts will be deemed "very relevant" in the aluminum extrusion production area if they involved "essentially the same scope and magnitude of effort and complexities this solicitation requires," and the efforts "must have included the following: Production of minimum 96 [inch] length by 15 [inch] profile width, multi-void, thin wall (0.125 [inches] or less) aluminum extrusions in quantities of 500 per month or greater." Id. at 398.

AAR argues that the past performance relevancy ratings are unduly restrictive of competition. In particular, the protester contends that the "very relevant" definition (for friction stir welding and aluminum extrusions) is too narrow "because the definition is restricted to precise dimensions based on the pallet called for by this RFP." AAR Comments at 18. Additionally, according to the AAR, only Next-Gen pallet development subcontractor Taber can have its past performance deemed "very relevant" in the friction stir welding and aluminum extrusion areas because only that firm has the

⁹ The RFP also sets forth the expected magnitude and complexity of the work to be performed here, for purposes as assessing the relevance of offerors' past performance. RFP § M at 397.

necessary requisite experience. Id. at 19-20. As detailed below, we have no basis to object to the terms of the solicitation for the reasons advanced by AAR.

In general, agency acquisition officials have broad discretion in the selection of evaluation criteria that will be used in an acquisition, and we will not object to the presence or absence of a particular criterion as long as the method chosen reasonably relates to the agency's needs in choosing a contract and is not otherwise contrary to law or regulation. Crosstown Courier Serv., Inc., B-416261, July 19, 2018, 2018 CPD ¶ 300 at 3; Logistics Mgmt. Int'l, Inc., B-412837, June 6, 2016, 2016 CPD ¶ 159 at 3. The fact that an evaluation criterion may be burdensome, or otherwise makes a firm's offer less competitive, is not objectionable, provided the agency's criteria have a reasonable basis and are not otherwise contrary to law or regulation. Logistics Mgmt. Int'l, Inc., supra. Further, a protester's disagreement with an agency's judgment concerning the agency's needs and how to accommodate them does not show that the agency's judgment regarding the selection of evaluation criteria is unreasonable. Crosstown Courier Serv., Inc., supra; Dynamic Access Sys., B-295356, Feb. 8, 2005, 2005 CPD ¶ 34 at 4.

Where a protester challenges a solicitation requirement as unduly restrictive of competition, the acquiring activity has the responsibility of establishing that the requirement is reasonably necessary to meet the agency's requirements. Flight Support, Inc., B-417637.2, Oct. 3, 2019, 2019 CPD ¶ 375 at 3; OMNIPLEX World Servs. Corp., B-415988.2, Dec. 12, 2018, 2018 CPD ¶ 424 at 3. We examine the agency's justification for a challenged provision to ensure that it is rational, and can withstand logical scrutiny. Flight Support, Inc., supra; HK Consulting, Inc., B-408443, Sept. 18, 2013, 2013 CPD ¶ 224 at 2. Additionally, our Office has determined that when determining whether a solicitation's past performance evaluation criteria are unduly restrictive, the fact that an aspect of the RFP's evaluation criteria may prevent a number of firms from obtaining a positive, or the best possible, rating is not dispositive. See Logistics Mgmt. Int'l, Inc., supra; Flight Support, Inc., supra.

Here, the agency's fundamental position is that the RFP's past performance evaluation factor reflects its needs to have a contractor capable of performing the solicitation's requirements, and that its past performance relevancy criteria were narrowly tailored to determine which offerors have experience performing work that is substantially similar to the RFP's specifications. MOL at 14 ("Experience in manufacturing similar products is a reasonable indicator of successful performance on this contract"); COS at 12-14. Additionally, with regard to the "very relevant" definitions which AAR challenges, the Air Force states that the specific dimensional requirements are directly tied to the work required by the solicitation here. For example, the specifications here call for friction stir weldments with a length of 114 inches, and a "very relevant" effort was defined as including friction stir weldments of 96 inches or longer.¹⁰ MOL at 13. Similarly, the

¹⁰ The contracting officer also explains that the chosen length (for aluminum extrusions and friction stir weldments) "was made with the thought that 96 inches, or 8 feet nominal length is a more common length of product more likely to be representative of industry past performances." COS at 13; see also MOL at 13.

specifications here call for aluminum extrusion widths from 14.70 inches to 15.75 inches, and a “very relevant” effort was defined as including aluminum extrusions of at least 15 inches wide. COS at 13. As a third example, the specifications here typically call for the wall thickness of the pallet extrusions from 0.06 inches to 0.09 inches, and a “very relevant” effort was defined as including aluminum extrusion wall thicknesses of 0.125 inches or less. Id.

We reject AAR’s characterization of the solicitation as unduly restrictive of competition. As a preliminary matter, the solicitation does not restrict AAR’s ability to submit a responsive proposal; there is no requirement, for example, that an offeror’s past performance be rated as “very relevant” in order to be eligible for award. Additionally, AAR has not explained, and it is not apparent to us, how the RFP’s definition of “very relevant” exceeds the agency’s requirements. As set forth above, the record reflects that the specific dimensional requirements within the “very relevant” definitions are reasonably related to the RFP requirements here, and are therefore ones reasonably necessary to meet the agency’s needs. In fact, the protester itself acknowledges that the dimensional requirements within the “very relevant” definitions are “based on the pallet called for by this RFP.” AAR Comments at 18. AAR essentially argues that the size of previously-performed friction stir welds and aluminum extrusions, even if essentially the same as those required here, “has no bearing on a potential offeror’s ability to successfully perform this build-to-print project.” Id. A protester’s disagreement with an agency’s judgment concerning the agency’s needs and how to accommodate them, however, does not show that the agency’s judgment regarding the selection of evaluation criteria is unreasonable. Crosstown Courier Serv., Inc., supra. In sum, we find the past performance evaluation criterion here to be unobjectionable because they have a reasonable basis and are not contrary to law or regulation.¹¹

AAR also maintains that because the RFP’s definition of what constitutes a “very relevant” contract cannot be met by any firm other than Taber, the past performance evaluation criterion improperly favors Taber. We disagree. The fact that the evaluation criteria provide an advantage--possibly even a dispositive advantage--to contractors that have the precise experience called for under the definition of a “very relevant” contract does not provide a basis for our Office to object to the requirement. Flight Support, Inc., supra. That such prior contractors may have an advantage because they

¹¹ We also note the only aspect of the RFP’s past performance evaluation criterion that AAR challenges is the evaluation rating scheme. Evaluation ratings, however, be they adjectival, numerical, or color, are merely guides to intelligent decision-making, and the agency must look behind those ratings to make a comparative assessment of the merits of the offerors’ proposals. Protection Strategies, Inc., B-414573.3, Nov. 9, 2017, 2017 CPD ¶ 348 at 6; NCI Info. Sys., Inc., B-412680, B-412680.2, May 5, 2016, 2016 CPD ¶ 125 at 9. Thus, even if the “very relevant” definition was “watered down,” as AAR suggests, the agency might still reasonably find two proposals with the same adjectival rating to be of different quality. See Avalon Contracting, Inc., B-417845, B-417845.2, Nov. 19, 2019, 2019 CPD ¶ 390 at 7; HydroGeoLogic, Inc., B-311263, B-311263.2, May 27, 2008, 2008 CPD ¶ 218 at 10.

possess the most relevant past performance is unobjectionable, inasmuch as we have recognized that incumbent contractors with good performance records can offer real advantages to the government in terms of lessened performance risk. Id.; Emax Fin. & Real Estate Advisory Servs., LLC, B-408260, July 25, 2013, 2013 CPD ¶ 180 at 6. Quite simply, the requisite experience made part of the “very relevant” evaluation rating definitions does not improperly favor Taber, but rather, properly favors any offeror with relevant past performance as compared to the “scope and magnitude of effort and complexities this solicitation requires.” RFP § M at 397.

The protest is denied.

Thomas H. Armstrong
General Counsel