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## Decision

**Matter of:** Fidelity Decypher Services, LLC

**File:** B-418542.2; B-418542.3

**Date:** August 26, 2021

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Colonel Patricia S. Wiegman-Lenz, Erika L. Whelan Retta, Esq., Josephine R. Farinelli, Esq., and Kent H. Grubb, Esq., Department of the Air Force, for the agency.

Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that agency misevaluated the protester's proposal under the past performance and technical factors is denied where the contemporaneous record shows that the evaluation was reasonable and consistent with the solicitation.

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### DECISION

Fidelity Decypher Services, LLC, of San Antonio, Texas, a small business, protests the award of contracts to WJM Professional Services, LLC, of Rockville, Maryland, and to IVA'AL Solutions, LLC, of Phoenix, Maryland, also small businesses, under request for proposals (RFP) No. FA8052-20-R-0002. The Department of the Air Force issued the RFP for commercial family advocacy personal healthcare services to support the family advocacy program for Air Force personnel, families, and intimate partners located in the continental United States (CONUS) and the United States Forces in Europe (USAFE).<sup>1</sup> Fidelity primarily argues that the Air Force misevaluated its proposal under the past performance and technical factors.

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<sup>1</sup> Fidelity's protest does not challenge the award of a third contract for the Pacific Air Forces (PACAF) region under the same RFP so our decision addresses that region only as background.

We deny the protest.

## BACKGROUND

The RFP, issued on January 28, 2020, as a set-aside for participants in the Small Business Administration's section 8(a) program<sup>2</sup>, sought proposals to provide services for a base year and four 1-year options, with a potential of an additional 6-month option. Agency Report (AR) Tab 14, RFP FAR provision 52.212-1 Instructions to Offerors Commercial Items Addendum at 2. Although the RFP permitted offerors to submit a proposal for any or all of the regions, an offeror could be awarded a contract for no more than a single region.

The RFP also informed offerors of certain requirements that would affect the contractor's performance, such as the applicability of requirements for employing staff in certain countries due to a status of forces agreement (SOFA)<sup>3</sup> with the host country and approvals by the Department of Defense Contractor Personnel Office (DOCPER), among other things. AR, Tab 3, RFP at 359-363.

Each contract would be awarded to the offeror whose proposal provided the best value. The RFP identified three evaluation factors: technical/technical risk, past performance, and price. AR, Tab 15, RFP FAR provision 52.212-2 Evaluation Criteria Commercial Items Addendum at 3. The technical/technical risk and past performance factors were equally important and, when combined, were significantly more important than price. The technical/technical risk factor consisted of three subfactors: staffing plan, management plan, and transition plan, with the first two subfactors being equally important. The transition plan subfactor was to be evaluated as either acceptable or unacceptable, and would have no role in a tradeoff. AR, Tab 131, Source Selection Decision Document (SSDD) at 3.

The RFP instructed offerors to submit examples of past performance for evaluation:

### 3. Past Performance

Each Offeror shall submit a Past Performance Volume. Offerors are requested to submit up to four (4) total Past Performance Information (PPI) [examples] IAW [in accordance with] the format contained in the

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<sup>2</sup> Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) 19.800. This program is commonly referred to as the 8(a) Business Development program (or simply "8(a) program").

<sup>3</sup> The Air Force explains that a SOFA between the United States and the host country is significant to the contractor's staffing and management because it governs matters such as criminal jurisdiction, taxation, and employment questions. MOL at 12.

“FACTS Sheet” (See RFP Attachment 1) and the following paragraphs. Past Performance submissions shall have at least One (1) year of performance completed and have occurred within three years of the date of issuance of this solicitation. Submissions shall be relevant to the size, scope, magnitude and complexity to the proposed solicitation. Offerors proposing on overseas regions should provide at least one overseas PPI submission.

AR, Tab 14, RFQ attach. 19, Instructions to Offerors Commercial Items Addendum at 9.

The Air Force received proposals from multiple offerors, including Fidelity, WJM, and IVA’AL. After evaluating the proposals, the Air Force held two rounds of discussions with all offerors, and then obtained and evaluated final proposal revisions (FPR). AR, Tab 2, Memorandum of Law (MOL) at 6. The source selection authority (SSA) then prepared a separate source selection decision for each region.

**USAFE Region Source Selection Tradeoff**

For the USAFE region the final evaluation ratings and prices were as follows:

| <b>Factor</b>   | <b>Fidelity</b>                   | <b>WJM</b>                       |
|---|-----------------------------------|----------------------------------|
| <b>Technical/Technical Risk</b><br>-- Staffing plan<br>-- Management Plan<br>-- Transition Plan | Outstanding<br>Good<br>Acceptable | Good<br>Acceptable<br>Acceptable |
| <b>Past Performance</b>   | Satisfactory confidence           | Substantial confidence           |
| <b>Total Evaluated Price</b>  | \$32.67 million                   | \$30.67 million                  |

AR, Tab 135, Evaluation Results for USAFE Award at 3, 23.

In reviewing the final evaluation, the SSA noted that under the staffing plan subfactor, Fidelity’s proposal had been assessed three strengths: for [DELETED]. AR, Tab 131, SSDD at 22. Under the management plan subfactor, the SSA noted that Fidelity had one strength for [DELETED], and that Fidelity’s proposal provided the most value to the agency under the technical/technical risk factor. *Id.*

Under the past performance factor, the SSA noted that Fidelity’s four performance references showed the firm’s ability to meet higher staffing requirement levels than the USAFE requirement, and to staff medical professionals across geographically dispersed locations. *Id.* at 23. The SSA also noted that Fidelity’s performance showed that for some references, the firm had not provided proper credentialing packages or had failed to fill a vacancy within a specified time, but also found that Fidelity’s performance had subsequently improved. *Id.* Overall, the SSA summarized the past performance record as justifying a reasonable expectation that Fidelity would be successful, and thus a satisfactory confidence rating overall, but did not justify finding a high expectation of success such that the agency should assess Fidelity a substantial confidence rating. *Id.*

In making a tradeoff between Fidelity's superior technical/technical risk, its lower-rated past performance, and its higher price, the SSA determined that Fidelity's proposal did not have non-price advantages overall that would justify paying its higher price. *Id.* at 23-24. The SSA selected WJM's proposal for award as the best value.

### CONUS Region Source Selection Tradeoff

The final evaluation results for the CONUS region were as follows:

| Factor                          | Fidelity                | IVA'AL                 |
|---------------------------------|-------------------------|------------------------|
| <b>Technical/Technical Risk</b> |                         |                        |
| -- Staffing Plan                | Acceptable              | Outstanding            |
| -- Management Plan              | Good                    | Acceptable             |
| -- Transition Plan              | Acceptable              | Acceptable             |
| <b>Past Performance</b>         | Satisfactory confidence | Substantial confidence |
| <b>Total Evaluated Price</b>    | \$116.3 million         | \$122.1 million        |

AR, Tab 132, Evaluation Results for CONUS Award at 3, 22.

As with the other contracts, the SSA again summarized the evaluation of Fidelity's proposal, starting with the technical/technical risk factor. Unlike for the USAFE region, the CONUS region evaluation concluded that the firm's proposal provided no strengths under the staffing plan subfactor. *Id.* at 27. The evaluation of Fidelity's proposal under the management plan subfactor was assessed one strength ([DELETED]), and the SSA noted that Fidelity's proposal clearly exceeded its competitors' proposals for the subfactor. *Id.* at 27-28.

Under the past performance factor, however, the SSA found that two of Fidelity's four references were only somewhat relevant: one involved a largely administrative function and provided only three of the labor categories, while the other provided four of the RFP's labor categories but lacked comparable geographic dispersion to the RFP requirements and involved only services outside the continental United States. *Id.* at 28. With regard to overall performance, the four references received three ratings of satisfactory where there was little that stood out in the record, and one rating of very good. *Id.* The SSA deemed Fidelity's record of performance as showing a reasonable expectation of success, which justified making a meaningful distinction from the high expectation of success provided by the record of its competitors. *Id.*

In making a tradeoff for the CONUS region, the SSA determined that Fidelity's proposal was approximately equal to its competitors under the technical/technical risk factor, but its past performance was inferior in comparison. *Id.* The SSA emphasized the importance of program stability arising from far superior past performance, and found that to be an important distinction from Fidelity due to its lower-rated past performance. *Id.* at 28-29. The SSA determined that IVA'AL's higher price compared to Fidelity's was justified by the expected benefit of its superior past performance, and selected IVA'AL for award of the CONUS region contract. *Id.* at 29.

Following notice of the selections and a debriefing, Fidelity filed this protest.

## DISCUSSION

Fidelity contends that the Air Force applied unstated evaluation criteria and unreasonably evaluated its past performance regarding both regions. The firm further argues that, in considering its proposal for the CONUS region, the agency improperly disregarded a strength that had been assessed under the staffing plan subfactor for the PACAF and USAFE regions. Protest at 1-2. Fidelity also contends that the Air Force misevaluated its past performance for the USAFE region by using different relevancy criteria than for the CONUS region. Supp. Protest at 3-4. We address first the protester's challenges to the evaluation of its past performance, and then the challenge to the evaluation of the staffing plan subfactor under the technical/technical risk factor, and conclude that the record supports the reasonableness of the evaluation and the resulting source selection decisions.

### Evaluation of Fidelity's Past Performance

Fidelity argues that the Air Force unreasonably assessed some of Fidelity's past performance as less relevant for the USAFE region than for the CONUS region by applying unstated evaluation criteria that downgraded performance outside the CONUS region because it did not include overseas locations. Protest at 19, 24; Comments at 2-4; Supp. Protest at 3-4. The firm also contends that the Air Force unreasonably failed to consider information in its proposal demonstrating the quality of its performance on two indefinite-delivery, indefinite-quantity (IDIQ) contracts, and instead focused the evaluation on contractor performance assessment reporting system (CPARS) reports for four task orders that the agency selected arbitrarily. Protest at 25-31.

The Air Force maintains that the evaluation reasonably considered the relevancy of each offeror's past performance to the specific requirements for each region. The agency notes that while the RFP broadly covered all three regions, it gave more specific instructions regarding past performance for the PACAF and USAFE regions and that "[o]fferors proposing on overseas regions should provide at least one overseas PPI [past performance information] submission." AR, Tab 14, RFQ attach. 19, Instructions to Offerors Commercial Items Addendum at 9.

Additionally, the Air Force contends that since the requirement for the USAFE region included performance in multiple countries overseas, it was reasonable to consider performance in overseas locations as more relevant than performance within non-contiguous states and United States territories even though those areas are outside the continental United States. Supp. MOL at 5-7. In that regard, the evaluation concluded that Fidelity's performance outside CONUS was in Hawaii, Alaska, and Guam, and thus was not as relevant to performance in the USAFE region where, in particular, onboarding of staff would require handling the associated complications for recruiting and employing professional staff while complying with the SOFA for the specific foreign location, and with the DOCPER procedures. *Id.*

The RFP provided the following regarding the assessment of the relevancy of offerors' past performance:

Relevancy assessment. The Government will conduct an in-depth evaluation of all recent performance information obtained to determine how closely the products provided/services performed under those projects relate to this acquisition. For each recent past performance citation reviewed, the relevance of the work performed will be assessed. Consideration will be given to criteria such as similarity, on-boarding complexity, diversity of tasks, and type of effort, scope, value, and geographic dispersion (multiple locations in separate states). Past Performance References for CONUS and OCONUS [outside of CONUS] must have an annual value of at least \$1M[jillion]. A relevancy determination of the Offeror's past performance will be made based upon the aforementioned considerations, including Joint Venture partner(s) and Subcontractors. The Past Performance Questionnaires (PPQs) and additional information obtained from other sources will be used to establish the degree of relevancy of past performance. Government is not bound by the Offeror's opinion of relevance.

AR, Tab 15, RFP FAR provision 52.212-2 Evaluation Criteria Commercial Items Addendum at 7.

A procuring agency must identify significant evaluation factors and subfactors in a solicitation, but the agency need not identify every aspect of each factor that might be taken into account. Thus, the agency may take into account considerations, even if not expressly stated, that are reasonably related to or encompassed by the evaluation criteria in the solicitation. *Millennium Space Sys., Inc.*, B-406771, Aug. 17, 2012, 2012 CPD ¶ 237 at 7. The evaluation of an offeror's past performance is generally within the discretion of the contracting agency; our Office will not substitute our judgment for reasonably based past performance ratings. *Computer Scis. Corp. et al.*, B-408694.7 *et al.*, Nov. 3, 2014, 2014 CPD ¶ 331 at 12. The critical question is whether the agency conducted the evaluation fairly, reasonably, and in accordance with the solicitation's evaluation scheme, and whether it was based on relevant information sufficient to make a reasonable assessment of the offeror's past performance. *Emergence Grp.*, B-404844.5, B-404844.6, Sept. 26, 2011, 2012 CPD ¶ 132 at 5.

Our review of the record shows that the evaluation of Fidelity's past performance was reasonable and consistent with the evaluation criteria. In its proposal, Fidelity identified four past performance references. The first was a contract to provide physician, nursing and ancillary services to military treatment facilities within the 50 United States, District of Columbia, Guam, and Puerto Rico. AR, Tab 65, Fidelity Proposal Past Performance Volume at 4-5. The second reference was a blanket purchase agreement to provide general clerks, medical record clerks, and medical record technicians at Navy military treatment facilities throughout the United States, including Hawaii. *Id.* at 7-8. The third reference was a task order contract being performed by one of Fidelity's subcontractors, to provide ancillary services providers, nursing services providers, physicians, and

dental services providers at military treatment facilities in the United States. *Id.* at 10-11. And the fourth reference was a contract being performed by a different subcontractor to provide general dentists, pediatric dentists, orthodontists, and dental hygienists in multiple locations, which Fidelity identified as Germany, Italy, and South Korea. *Id.* at 13-14.

The record shows that when evaluating past performance, the Air Force systematically reviewed each reference contract for scope, magnitude, value, diversity of tasks, and geographic dispersion. That record provides a reasonable basis for assessing the relevance of Fidelity's past performance differently for the USAFE region than for the CONUS region. For example, the first reference contract (to provide physician, nursing and ancillary services in the 50 United States, District of Columbia, Guam, and Puerto Rico) was assessed as very relevant for the CONUS region because it had essentially the same scope and magnitude as the RFP, but was assessed simply as relevant for the USAFE region because the scope and magnitude were merely similar to the RFP requirements. AR, Tab 130, Source Selection Evaluation Board Report at 129, 199.

The assessment of the geographic dispersion of the same contract also differed between the CONUS and USAFE evaluations. The evaluators noted that it showed Fidelity's capability in handling complications in bringing specialized healthcare staff on board principally in CONUS. *Id.* at 203-204. For the USAFE contract evaluation, the evaluators found that the contract did not show geographic dispersion that was essentially the same capability as the USAFE requirement because the OCONUS performance had been in Alaska, Hawaii, and Guam, rather than in USAFE countries. *Id.* at 133. The evaluation explained that employing specialized medical staff in Alaska, Hawaii, and Guam under the reference contract did show Fidelity's OCONUS performance under United States laws, but did not show performance by Fidelity that was sufficiently similar to the USAFE requirement to employ staff under the requirements of a SOFA or the DOCPER. *Id.* As another example, the Air Force made a similar determination for the fourth reference (the subcontractor's contract to provide general dentists, pediatric dentists, orthodontists, and dental hygienists overseas), which was assessed as somewhat relevant for the CONUS region because it showed performance in staffing specialty medical care for far fewer positions in European countries, compared to the CONUS RFP requirement, but the reference was assessed as very relevant for the USAFE region because it involved a similar staffing level and geographic dispersion around Europe. Compare *id.* at 203-204 with *id.* at 134-135.

Although Fidelity contends that there is no basis for reaching different relevance assessments for the same reference in each region, the record provides a reasonable basis for the Air Force's judgment here. Despite the same PWS applying across all three contracts, the Air Force reasonably considered past performance differently because hiring and managing staff for the CONUS contract would be different than doing so for the USAFE contract. Furthermore, as noted above, the RFP advised offerors seeking the PACAF or USAFE regions to provide at least one reference showing performance overseas. AR, Tab 14, RFQ attach. 19, Instructions to Offerors Commercial Items Addendum at 9. Given the inherent differences between the CONUS

and USAFE regions in the way the contractor would have to handle staffing the contract, the agency's evaluation judgment in assessing relevance was a reasonable application of the RFP's stated criteria.

Next, Fidelity challenges the evaluation of the quality of its past performance, arguing that the Air Force disregarded information in its proposal related to its IDIQ performance and instead focused on an arbitrary selection of CPARS reports related to task order performance. Fidelity contends that its proposal included specific information demonstrating that its performance under two IDIQ contracts exceeded objective contract metrics for filling positions and avoiding turnover. The firm contends that since its performance record far exceeded the contractual staffing metrics, the quality of its performance should have been rated exceptional, or at least very good, which would have resulted in a substantial confidence past performance rating. Instead, the protester contends that the Air Force improperly elected to rely on a selection of CPARS reports with past performance information for four individual task orders (out of 86 orders under one reference, and 190 orders for the second) rather than the entire contracts, and reached an unreasonable assessment that Fidelity's past performance was of merely satisfactory quality for those references. Protest at 26.

The Air Force responds that the evaluation of the quality of Fidelity's past performance was reasonable and consistent with the RFP's criteria. The agency explains that it lacked a way to assess the quality of offerors' relevant past performance at the IDIQ contract level in a uniform manner. MOL at 5. Since a straightforward method for the Air Force to compare offerors' past performance quality was not available at the overall IDIQ contract level, the agency decided to assess the quality of four task orders using CPARS reports for orders that met the RFP criteria for being considered recent. *Id.* The agency contends that it thereby reasonably assessed the quality of Fidelity's recent performance on the two IDIQ contracts, and that it was not required to take into account Fidelity's presentation of its staffing metrics that the Air Force lacked a method to verify.<sup>4</sup> MOL at 16. Further, the agency argues that it did not selectively choose the most unfavorable CPARS reports for Fidelity in assessing quality, but instead selected the four most recent task order CPARS reports that were available at the time of the evaluation.<sup>5</sup> Overall the agency contends that the record does not support the protester's claim that the agency improperly failed to consider information in Fidelity's proposal or additional CPARS reports.

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<sup>4</sup> Indeed, the agency notes that one of the past performance questionnaires echoed essentially the same concern, stating that the reviewer could not provide an overall assessment of the quality of Fidelity's performance because the acceptable quality level standards were established at the task order level. MOL at 16-17.

<sup>5</sup> While Fidelity also questioned the omission of specific CPARS records, the Air Force provided a reasonable explanation that specific CPARS either lacked a full year of performance and were thus excluded under recency criteria, or were not on file when the agency retrieved CPARS reports for that portion of the evaluation. MOL at 17.



As noted previously, our review of a challenge to a past performance evaluation recognizes the discretion afforded to the contracting agency. In this regard we consider whether the agency conducted the evaluation fairly, reasonably, and in accordance with the solicitation's evaluation scheme, and whether the agency made a reasonable assessment of the offeror's past performance. *Emergence Grp.*, supra at 5. Our review of the record shows that the evaluation of Fidelity's past performance quality was reasonable.

As an example, in assessing one of Fidelity's IDIQ contracts, the record shows that the evaluators recognized the performance metrics from Fidelity's proposal, but also CPARS ratings for recent performance. The agency identified two CPARS reports that met the recency standard. For one of those task orders, the firm's performance was reported as very good for quality but satisfactory for both schedule and management performance. AR, Tab 130, Source Selection Evaluation Board Report at 130-131. For the second, although Fidelity's quality, schedule, and management were reported as unsatisfactory, the Air Force took into account the explanation provided by Fidelity about the course of events behind that rating, and the earlier ratings of very good, and determined that the firm's performance should be considered satisfactory. *Id.* at 131.

The record thus shows that the Air Force took into account both the information provided by Fidelity in its proposal and the reports of the firm's performance on recent task orders under the contracts.<sup>6</sup> The agency's actions were consistent with the RFP, which did not limit the agency to considering only the offeror's own assessment of its performance, and they were a reasonable means to assess the quality of past performance uniformly. Accordingly, we have no basis to question the agency's assessment of Fidelity's past performance.

#### Staffing Plan Subfactor Evaluation of Fidelity

Fidelity argues that the technical evaluation under the staffing subfactor was unreasonable. Specifically, the protester contends that while the agency recognized as a strength under the staffing plan subfactor Fidelity's approach to [DELETED] in the evaluation for the USAFE region (and for the PACAF region), the agency did not assess that aspect as a strength for the CONUS region. The protester argues that its proposal used essentially the same language to explain this aspect of its approach for each region, but the agency evaluated the firm less favorably for the CONUS region.

The Air Force responds that its evaluation was reasonable and properly recognized an important difference in the requirement for administering bonuses under the contract for the CONUS region. MOL at 25. The RFP provided for the authority to provide bonuses in the CONUS region to be overseen and authorized by the contracting officer and the contracting officer's representative. *Id.* In particular, it specified that the government

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<sup>6</sup> Essentially the same approach was used in assessing quality for the firm's other references, which considered information in Fidelity's proposal as well as ratings from four task order CPARS reports. *Id.* at 132-134.

would determine: when the contractor had justified paying its employees a sign-on or retention bonus; which positions were eligible for a bonus (identified on a list of specific “hard-to-fill positions”); the criteria for an individual to receive a bonus; the amount of the bonus; and, the necessity to obtain approval by both the contracting officer and contracting officer’s representative before implementing a bonus. AR, Tab 3, RFP at 359-363.

As a result, the agency argues that the evaluation reasonably recognized Fidelity’s approach to [DELETED] provided a strength in the USAFE and PACAF regions, but did not provide a similar strength in the CONUS region. It would have been unreasonable, the agency argues, to assess a strength for Fidelity’s approach to [DELETED] in the CONUS region given the RFP clauses that provided for that authority to be exercised by the agency rather than the contractor. Contracting Officer’s Statement at 19.

In considering a protester’s challenge to 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. The Air Force has shown that the technical evaluation under the staffing plan subfactor reasonably distinguished between the requirements for the USAFE region, where Fidelity’s approach to [DELETED] constituted a strength, and the CONUS region, where the solicitation’s requirement for bonuses to be overseen and approved by the agency did not justify assessing a strength. In short, Fidelity has not shown a flaw in the technical evaluation of its proposal.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel