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Decision

Matter of: VxL Enterprises, LLC

File: B-419467.2

Date: March 8, 2021

Edward J. Tolchin, Esq., Offit Kurman, P.A., for the protester.
Daniel Strouse, Esq., John J. O'Brien, Esq., and David S. Cohen, Esq., Cordatis Law LLP, for Triple Canopy, Inc., the intervenor.
Denise A. McLane, Esq., Department of Homeland Security, for the agency.
Kenneth Kilgour, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of past performance is denied where the evaluation was reasonable and consistent with the solicitation and procurement law and regulation.

DECISION

VxL Enterprises, LLC, of Alexandria, Virginia, protests the award of a contract to Triple Canopy, Inc., of Herndon, Virginia, under request for proposals (RFP) No. 70RFP420RE7000009, issued by the Department of Homeland Security (DHS), Federal Protective Service (FPS) for armed protective security officer services. VxL challenges the reasonableness of the agency's past performance evaluation.

We deny the protest.

BACKGROUND

As the federal agency charged with protecting and delivering integrated law enforcement and security services to facilities owned or leased by the General Services Administration, FPS is responsible for securing over 9,000 buildings and safeguarding their occupants. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 1. This solicitation was for protective security officer (PSO) services throughout Oklahoma.

The solicitation contemplated the issuance of a single indefinite-delivery, indefinite-quantity contract under which the agency would place fixed-priced task orders. Agency

Report (AR), Tab 2, RFP at 13. Award would be made to the offeror whose proposal represented the best value to the agency considering relevant past performance, management approach¹, and price. *Id.* at 475. The relevant past performance factor was more important than the management approach factor; combined, those two factors were more important than price. *Id.*

For the evaluation of past performance, the RFP permitted offerors to submit up to three contract references. RFP, attach. 9 at 1. Where an offeror proposed a teaming arrangement, the RFP permitted the submission of up to three contract references for the teaming partner or subcontractor. *Id.* The agency also reserved the right to obtain information for use in the evaluation of past performance from any and all sources, including sources outside of the government. RFP at 475.

The RFP advised that the assessment of relevant past performance would “be used as a means of evaluating the relative capability of the offeror and other competitors to successfully meet the requirements of the RFP.” *Id.* In determining the rating for the past performance evaluation factor, the agency would “give greater consideration to the contracts which the Government feels are most relevant to the RFP.” *Id.*

The agency would evaluate the quality of recent and relevant past performance. A recent reference was a contract currently being performed or performed within the last 3 years. *Id.* at 478. The agency would determine relevance by analyzing the scope, magnitude, and complexity of the past performance references and comparing them to the current requirement. *Id.* To determine relevance, the agency reserved the right to evaluate submitted projects individually or in the aggregate, consistently across all proposals. *Id.*

Seventeen offerors--including VxL and the awardee--submitted timely proposals. COS/MOL at 1.

As relevant to this protest, the agency considered several factors in evaluating the magnitude and complexity of past performance references.² A past performance reference could show similar magnitude by meeting any one of the following three criteria: annual contract value greater than \$10 million dollars, more than 120 PSOs, or more than 200,000 annual hours. *Id.* at 8. In assessing the complexity of an offeror’s past performance references, the agency considered whether “the contract was for armed guard services; had similar qualifications, certifications, and training; [and had] similar duties and responsibilities as compared to the RFP.” *Id.*

¹ Under the management approach factor, the RFP required offerors to provide a narrative summary of their quality control plans, outline significant transition steps and describe their staffing plans. *Id.* at 1.

² The agency defined “scope” simply as “guard services.” AR, Tab 7, Technical Evaluation Report at 10. All of the past performance references at issue in this protest were for guard services.

Triple Canopy provided six past performance references, three for Triple Canopy itself and three for its proposed subcontractor. The agency evaluated the three references for Triple Canopy as meeting all of the criteria for relevance under both magnitude and complexity. *Id.* at 11. The quality of performance contained in the contractor performance assessment reports (CPARs) for these contracts ranged from satisfactory to exceptional. *Id.*

The agency evaluated two of the three references for Triple Canopy’s proposed subcontractor as fully relevant and the third as relevant. *Id.* at 15. Again, the CPARs for these references ranged from satisfactory to exceptional. *Id.* Based on the relevance and quality of Triple Canopy’s contract references, the agency found that “Triple Canopy has a history of very good performance on highly relevant contracts.” *Id.* at 15. Moreover, the agency noted that one past performance reference provided evidence that Triple Canopy and its proposed subcontractor had worked together in a manner similar to their proposed relationship for the performance of this requirement. That experience in working together, the agency concluded, would reduce performance risk. *Id.* The agency assigned Triple Canopy’s proposal a rating of highly acceptable under the past performance factor. *Id.*

VxL also provided six past performance references, three for the VxL itself and three for its proposed subcontractor. The agency found that one of VxL’s references was relevant and that two were partially relevant. *Id.* at 25. The agency evaluated two of VxL’s proposed subcontractor’s projects as relevant; the agency determined that the remaining project was not recent. *Id.* at 25. VxL’s CPARs performance ratings, as well as its subcontractor’s, ranged from satisfactory to exceptional. *Id.* The agency’s evaluation noted that none of the past performance references demonstrated a past working relationship between VxL and its proposed subcontractor. *Id.* The agency concluded that VxL had a history of very good performance on relevant contracts and rated VxL’s proposal as acceptable under the past performance factor. *Id.*

The table below summarizes the agency’s evaluation of VxL’s and Triple Canopy’s proposals.

Factor	VxL	Triple Canopy
Relevant Past Performance	Acceptable	Highly Acceptable
Management Approach	Highly Acceptable	Highly Acceptable
Price	\$64,097,620	\$64,315,185

AR, Tab 12, Pre-Negotiation Memorandum at 6.

The source selection authority, who was also the contracting officer, found that Triple Canopy’s proposal was superior to VxL’s under both the relevant past performance and the management approach factors. AR, Tab 13, Source Selection Decision Document (SSDD) at 7. The source selection authority noted that Triple Canopy’s proposal “provided relevant high-quality past performance and an effective and comprehensive

Management Approach which includes numerous strengths that are benefits to the Government, as well as a realistic and reasonable price.” *Id.* With respect to past performance, the source selection authority noted that Triple Canopy “has several more CPARS reports which shows an extensive history of successful past performance which is significantly more relevant to this instant FPS PSO requirement as compared to VxL’s experience.” *Id.* at 4. The source selection authority further noted that Triple Canopy had the “most directly relevant project[,]” and that Triple Canopy and its proposed subcontractor had worked together in the past. *Id.* at 7. In the source selection authority’s view, there was “very little performance risk to the Government in relation to Triple Canopy successfully performing the present requirement.” *Id.* Overall, the source selection authority concluded that “the level of performance risk associated with Triple Canopy’s past performance is significantly less than the performance risk associated with VxL.” *Id.* at 4.

When considering price in the best-value tradeoff analysis, the source selection authority concluded that Triple Canopy’s proposal provided a better value to the government than VxL’s proposal. *Id.* That is, the source selection authority concluded that Triple Canopy’s proposal “provides a level of technical superiority which outweighs any benefits associated with the selection of the lower priced proposal of VxL[.]” *Id.* Specifically, the source selection authority determined that “[t]he decreased performance risk presented in Triple Canopy’s past performance record and added benefits of its Management Approach” warranted “the \$217,565.00/(0.34%) price premium” over VxL’s proposal. *Id.* at 7-8.

The agency awarded the contract to Triple Canopy, and this protest followed.

DISCUSSION

VxL alleges various flaws in the agency’s evaluation of past performance.³ As discussed below, we find no prejudicial errors in the agency’s evaluation. Rather, the record demonstrates the reasonableness of the agency’s finding that Triple Canopy’s past performance was more relevant than VxL’s.

Our Office will examine an agency’s evaluation of an offeror’s past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, because determining the relative merit of an offeror’s past performance is primarily a matter within the agency’s discretion. *American Envtl. Servs., Inc.*, B-406952.2, B-406952.3, Oct. 11, 2012, 2013 CPD ¶ 90 at 5. The evaluation of past performance, by its very nature, is subjective, and we will

³ Our decision addresses the heart of this protest--that the agency improperly assigned Triple Canopy’s proposal a higher rating than VxL’s under the past performance factor. In doing so, we do not address every allegation. We have, however, considered all of the protester’s contentions, and none, alone or in the aggregate, provides a basis to conclude that the agency’s evaluation contains a prejudicial error or errors that warrant sustaining this protest.

not substitute our judgment for reasonably based evaluation ratings; an offeror's disagreement with an agency's evaluation judgments, by itself, does not demonstrate that those judgments are unreasonable. *Id.*

VxL argues that, “[w]hile [the agency] found that VxL had three projects which ‘fully met scope, magnitude, and complexity based on the prime/sub efforts proposed,’ [the agency] downgraded VxL because two more ‘met scope but did not meet the magnitude and complexity set for relevancy.’”⁴ Comments on Supp. AR at 2, *quoting* AR, Tab 7, Technical Evaluation Report at 25.

The agency found one reference for VxL and two references for VxL's proposed subcontractor fully met the scope, magnitude, and complexity requirements. AR, Tab 7, Technical Evaluation Report at 25. The agency evaluated the other two references for VxL as partially relevant. *Id.* The agency concluded that those six contracts “in the aggregate are considered relevant and demonstrates [VxL] can meet the requirements of the subject RFP.” *Id.* There is no evidence that the agency “downgraded” VxL's proposal by considering its three relevant references and two partially relevant references as relevant in the aggregate.

VxL argues that the agency unreasonably found two of its references only partially relevant because they did not meet the magnitude and complexity thresholds for relevancy. Comments on Supp. AR at 2, *citing* AR, Tab 7, Technical Evaluation Report at 25. As noted above, past performance references were required to meet one of the three criteria under magnitude and all four criteria under complexity. AR, Tab 7, Technical Evaluation Report at 8. VxL argues that “[a]ll of VxL's contracts met magnitude under this disjunctive definition.” Comments on Supp. AR at 2. The protester does not assert, however, that either of the two references rated partially relevant met all of the criteria for complexity. *See id.* Those two references, which were for unarmed guard services, did not meet the complexity relevancy requirements, which specified armed guard services. The agency argues that it thus reasonably evaluated those two references as partially relevant. Final Agency Comment at 3-4. We agree with the agency that the record supports the agency's evaluation of two VxL references as partially relevant. We thus have no reason to sustain the allegation that the agency unreasonably found two references only partially relevant.⁵

⁴ Triple Canopy notes that “[t]he significant distinctions with respect to relevance relate primarily to the prime contractors' respective past performance experience.” Response to GAO Request for Comments at 1 n.1. We agree with the intervenor, and, for that reason, our discussion focuses on the agency's evaluation of the prime contractors' past performance.

⁵ The agency's evaluation mistakenly noted that one VxL reference did not meet one of the complexity criteria. AR, Tab 7, Technical Evaluation Report at 21. In this regard, the agency's evaluation stated that the reference's 52 posts did not meet the complexity requirement, even though the evaluation indicated that the basis for comparison was 45 posts. *See id.* The protester has not asserted how it was competitively prejudiced by

VxL argues that the agency's past performance evaluation improperly distinguished between the proposals of Triple Canopy and VxL. Comments on Supp. Protest at 3. The protester contends that the agency relied solely on the prior working relationship of Triple Canopy and its proposed subcontractor--an unstated evaluation criterion--to find Triple Canopy's past performance more relevant than VxL's. *Id. citing* AR, Tab 7, Technical Evaluation report at 15, 25. The agency asserts that it properly considered whether a prime contractor and a proposed subcontractor demonstrated an ability to successfully work together, because such a prior working relationship reduces the risk that the two contractors will have conflicts or issues in jointly performing the requirement. COS/MOL at 24.

An agency's consideration of how a proposed team would function together is reasonable and logical, even where a solicitation does not expressly state a preference for contractor/subcontractor teams that have previously performed similar requirements. *Systems Research & Applications Corp.*, B-257939.5, Feb. 28, 1995, 95-1 CPD ¶ 214 at 5. We thus see nothing unreasonable in the agency's finding that the prior working relationship of Triple Canopy and its proposed subcontractor would reduce performance risk in this procurement.⁶

this error. See Comments on Supp. COS/MOL at 2. Competitive prejudice is an essential element of every viable protest, and we will not sustain a protest where it is clear from the record that a protester suffered no prejudice as a result of an agency evaluation error. *Maywood Closure Co., LLC*, B-408343 *et al.*, Aug. 23, 2013, 2013 CPD ¶ 199 at 6. Notwithstanding minor past performance evaluation errors, the record provides no basis to question the source selection authority's conclusion that Triple Canopy's past performance was more relevant--and thus of greater value to the agency--than VxL's past performance.

⁶ The protester argues that it has a mentor/protégé relationship with its proposed subcontractor, and that relationship would more effectively reduce performance risk than the "mere prior standard prime/sub relationship of no known specifics" that Triple Canopy has with its proposed subcontractor. Comments at 6. As an initial matter, Triple Canopy's technical proposal indicates that it is also a participant in the mentor/protégé program with its proposed subcontractor. See AR, Tab 9, Triple Canopy Technical Proposal at 2-15. Moreover, the performance of Triple Canopy and its proposed subcontractor is, in fact, documented in the record. See *id.*; see also AR, Tab 10, Triple Canopy CPARS at Project 2. The intervenor asserts that the record contains no such analogous record of VxL and its proposed subcontractor having "actually performed work together." Intervenor's Comments at 5. More important, VxL has not demonstrated why it was unreasonable for the agency to provide evaluation credit for a prior working relationship between the prime contractor and its proposed subcontractor. We agree. We also conclude that this assertion simply expresses the protester's disagreement with the agency's evaluation which is not sufficient, standing alone, to show that it was unreasonable. *American Env'tl. Servs., Inc.*, *supra*.

Moreover, the protester incorrectly contends that the sole discriminator between the two proposals was this prior teaming relationship. As the protester notes, the technical evaluation report found that “VxL has a history of very good performance on relevant contracts[,]” while “Triple Canopy has a history of very good performance on highly relevant contracts.” Comments on Supp. COS/MOL at 3, *citing* Tab 7, Technical Evaluation Report at 15, 25.

Although the protester disputes that Triple Canopy’s contracts were more highly relevant than its own, asserting that “Triple Canopy has *more* individually relevant contracts in number according to the [SSDD] scorecard, but nothing in the evaluation documents indicates that they are more ‘highly’ relevant[,]” Final Comments at 2, *citing* SSDD at 3 (emphasis in original), VxL’s assertion that the evaluation documents provide no evidence of the greater relevance of Triple Canopy’s past performance is contradicted by the record. The current requirement is for armed guard services. While all three of VxL’s proposed subcontractor’s past performance references were for armed guard services, two of the references for VxL itself were for unarmed guard services. AR, Tab 7, Technical Evaluation Report at 21, 22. All three of Triple Canopy’s past performance references were for armed guard services, as were all three of the references for the awardee’s proposed subcontractor. *Id.* at 11, 13. Accordingly, under this important complexity criterion--whether the requirement was for armed guards--Triple Canopy’s past performance references demonstrate more relevance to the current requirement than VxL’s references.

As further support for its finding that Triple Canopy’s past performance references were more relevant than VxL’s, the agency notes that Triple Canopy had the most directly relevant past performance reference because the awardee is the incumbent contractor for PSO services for Oklahoma. Final Agency Comments at 4, *citing* AR, Tab 7, Technical Evaluation Report at 13-15. The agency argues that,

because [Triple Canopy’s] three Reference Contracts were each fully relevant, because [Triple Canopy] had performed successfully on its contracts including the most directly relevant contract on the current contract for PSO services in Oklahoma, and because [Triple Canopy] had comparatively and successfully performed many more relevant projects as reflected in CPARS when compared to VxL⁷, the adjectival rating assigned to the Agency’s evaluation of [Triple Canopy]’s past performance was Highly Acceptable.

Final Agency Comments at 7. The record provides ample support for the reasonableness of the agency’s evaluation of Triple Canopy’s past performance as

⁷ The agency evaluation contained far more CPARs reports for Triple Canopy than for VxL. *Compare* AR, Tab 7, Technical Evaluation Report at 11 (noting that the agency’s evaluation record contained 39 CPARs reports for Triple Canopy) *with id.* at 22 (noting that the agency’s evaluation record contained 3 CPARs reports for VxL).

more relevant than VxL's, and we thus find the allegation that the agency unreasonably evaluated past performance to be without merit.

The protest is denied.

Thomas H. Armstrong
General Counsel