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**Comptroller General
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**United States Government Accountability Office
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Decision

Matter of: HoveCo

File: B-298697

Date: November 14, 2006

Henry E. Steck, Esq., Harrison Steck, P.C., for the protester.
Maj. Jeffrey Branstetter, Department of the Air Force, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest arguing that proposal should have received performance confidence rating of unknown confidence rather than little confidence is denied where record clearly establishes that protester suffered no prejudice as a result of the little confidence rating.

DECISION

HoveCo protests the award of a contract to Porter Manufacturing Corporation under request for proposals (RFP) No. FA8533-05-R-76816, issued by the Department of the Air Force for the design and production of a trailer-mounted fuel dispensing system. The protester takes issue with the agency's evaluation of its past performance.

We deny the protest.

BACKGROUND

The RFP contemplated the award of a 5-year (basic year, plus four ordering periods) fixed-price, requirements contract. The solicitation advised offerors that award would be made to the offeror whose proposal conformed to all solicitation requirements and was found to represent the best value to the government. Best value was to be determined on the basis of a trade-off between past performance and price, with past performance considered significantly more important than price.

The solicitation provided for the assignment of performance confidence ratings to offerors based on their past performance. Six ratings were possible: high confidence, significant confidence, satisfactory confidence, unknown confidence, little confidence, and no confidence. RFP amend. 3, at 45. Of relevance to this

protest, the RFP defined ratings of satisfactory, unknown, and little confidence as follows:

Satisfactory Confidence: Based on the offeror's performance record, the government has confidence that the offeror will successfully perform the required effort. Normal contractor emphasis should preclude any problems.

Unknown Confidence: No performance record identifiable (see FAR 15.305(a)(2)(iii) and (iv)).

Little Confidence: Based on the offeror's performance record, substantial doubt exists that the offeror will successfully perform the required effort.

Id.

The RFP provided for a "relevancy determination" of each offeror's present and past performance in accordance with the following highly detailed criteria:

Very Relevant: Present and/or past performance efforts that involved essentially the same magnitude of work and complexities that this solicitation requires and included the design and production (including remanufacturing and/or overhaul) of a mobile, trailer-mounted fuel dispensing system capable of delivering no less than 10 GPM [gallons per minute] through a standard service station type fuel dispensing nozzle, and such system has an automated fuel billing and metering capability.

Relevant: Present and/or past performance efforts that involved much of the magnitude of work and complexities that this solicitation requires and included the production (including remanufacturing and/or overhaul) of a mobile fluid dispensing system capable of delivering no less than 10 GPM through a standard service station type nozzle, and such system has a fluid metering capability.

Somewhat Relevant: Present and/or past performance efforts that involved some of the magnitude of work and complexities that this solicitation requires and included the production (including remanufacturing and/or overhaul) of a fluid dispensing system capable of delivering no less than 10 GPM through a standard dispensing nozzle, and such system has a metering capability.

Not Relevant: Present/past performance efforts involved little or none of the magnitude of effort and complexities this solicitation requires.

Id. at 44.

Three proposals were received by the May 15, 2006 closing date.¹ The agency conducted discussions with the offerors and requested final proposal revisions. After reviewing HoveCo's final past performance information, the performance confidence assessment group (PCAG) assigned the protester's proposal a performance confidence rating of little confidence. The PCAG explained that HoveCo had identified only one prior contract as relevant, and that, in keeping with the RFP's relevancy criteria, it had determined that effort to be only somewhat relevant since it did not involve a fuel dispensing system using a standard service station type nozzle. The PCAG further noted that HoveCo had failed to demonstrate either experience as a prime contractor or experience in establishing, operating or managing manufacturing and production work. PCAG Report at 3-5. Based on the shortcomings in HoveCo's experience, the PCAG concluded that there existed substantial doubt that it would be able to perform the solicited effort successfully.²

Final evaluated prices and performance confidence ratings for the three offerors were as follows:

Offeror	Perf. Conf. Rating	Price
HoveCo	Little Confidence	\$5,122,008
Porter	Satisfactory Confidence	\$5,450,002
Offeror A	Unknown Confidence	\$9,531,956

Source Selection Decision Document at 4-6. The Source Selection Authority (SSA) determined that Porter Manufacturing's combination of performance confidence and price represented the best value to the government, and on August 17, the Air Force awarded Porter a contract.

DISCUSSION

HoveCo argues that, because Federal Acquisition Regulation (FAR)

¹ The agency reports that the RFP was originally set aside for small businesses, but that when only one proposal was received by the originally established closing date of September 9, 2005, the agency issued an amendment that removed the set-aside and set a new closing date.

² The quality of the protester's performance did not contribute to the rating of little confidence; according to the PCAG, the references who submitted responses rated HoveCo's performance as satisfactory to very good, with "many laudatory comments." Id. at 5.

§ 15.305(a)(2)(iv) provides that an offeror without a record of relevant past performance may not be rated favorably or unfavorably with regard to past performance, it should not have received the unfavorable rating of little confidence based on its lack of relevant experience.

The protester is in essence arguing that due to its lack of relevant experience, it should have received the neutral rating of unknown confidence.³ It is clear from the record that the SSA would not have selected HoveCo for award even if the protester had received a performance confidence rating of unknown confidence, however; thus, it is apparent that the protester suffered no prejudice as a result of receiving the little confidence rating. See GC Servs. Ltd. P'ship, B-298102, B-298102.3, June 14, 2006, 2006 CPD ¶ 96 at 7-8 (prejudice is an essential element of every viable protest). In this connection, it is clear from the source selection decision document that the SSA considered Porter Manufacturing's proposal to be worth its higher price because Porter had demonstrated through its present and past performance that it had the capabilities and experience necessary to handle the requirement. Id. at 7. In other words, the SSA focused on the advantages associated with Porter's greater experience and not simply the difference between the two offerors' performance confidence ratings in selecting Porter's proposal as representing a better value to the government. Those relative advantages would remain the same regardless of whether HoveCo's proposal was assigned a rating of little confidence or a rating of unknown confidence. Under these circumstances, we see no reasonable possibility that the SSA would have selected HoveCo even if it had received a rating of unknown confidence.

³ To the extent that the protester argues, citing Braswell Servs. Group, Inc., B-278921.2, June 17, 1998, 98-2 CPD ¶ 10 and Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208, that it should have received a rating of satisfactory confidence (rather than unknown confidence) to reflect its status as an offeror without relevant past performance, we disagree. Both of the cases cited by the protester are distinguishable from the case at hand. In Braswell, we found that the agency had not improperly equated a rating of neutral with a rating of satisfactory where the agency's definition of satisfactory reflected an average evaluation with no strengths or weaknesses and was thus closest to a neutral assessment. Similarly, in Joint Mgmt. & Tech. Servs., we found that where past performance was to be rated on a 10-point scale that did not include a neutral rating, it was proper for the agency to assign the midpoint score of 5, which equated to a rating of satisfactory, to an offeror without a record of past performance. In the case at hand, in contrast to the above cases, the solicitation included a rating that clearly equated to a neutral assessment, *i.e.*, unknown confidence; moreover, a rating of satisfactory confidence, as defined by the solicitation, was clearly a favorable, as opposed to merely a neutral, rating.

HoveCo also argues that the SSA erred in finding that it had not provided targets for small disadvantaged business (SDB) participation. (The RFP provided for evaluation of the extent of participation by SDB firms as part of the past performance evaluation. RFP amend. 3, at 45.) According to HoveCo, it did provide a target for SDB participation, which was zero percent.

The parties disagree as to whether HoveCo, as a small business, was required to furnish targets for SDB participation, and whether zero percent was an acceptable target. We need not address these arguments, however, because it is clear from the record that HoveCo would have received the same performance confidence rating (of little confidence) based on the shortcomings in its experience, regardless of whether its SDB participation targets were considered acceptable. In this connection, the PCAG makes no reference to the protester's failure to furnish SDB targets in the section of its report where it explains the basis for its rating of the protester's performance as little confidence. PCAG Report at 5. In other words, even assuming that the protester is correct that the agency erred in finding that it was required to, but had not furnished targets for SDB participation, the protester suffered no prejudice as a result.

The protest is denied.

Gary L. Kepplinger
General Counsel