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Decision

Matter of: Technica LLC

File: B-420679

Date: June 21, 2022

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Timothy J. Ryan, Esq., and Kevin F. Phillips, Defense Logistics Agency, for the agency.

Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency failed to consider a negative reference of past performance for the awardee is denied where the record shows that the agency reasonably considered the negative past performance as not providing helpful information.

DECISION

Technica, LLC, of Charleston, South Carolina, protests the award of a contract to Amentum Services, Inc., of Germantown, Maryland, the incumbent contractor, under request for proposals (RFP) No. SP3300-21-R-5005, issued by the Defense Logistics Agency for warehousing and distribution services. Technica alleges that the agency unreasonably evaluated Amentum's past performance.

We deny the protest.

BACKGROUND

On July 29, 2021, DLA issued the RFP to procure warehousing and distribution services for DLA Distribution, Hill Air Force Base, Utah. Agency Report (AR), Tab 2, RFP at 1, 13. The RFP contemplated the award of a hybrid indefinite-delivery, indefinite-quantity contract with fixed-price, cost reimbursable, and cost-plus-fixed-fee line items to be performed over a 5-year ordering period. AR, Tab 3, RFP, amend. 7, attach. 3 at 8.

Award would be made on a best-value tradeoff basis considering cost/price and the following technical factors, listed in descending order of importance: performance confidence assessment; management approach; staffing approach; transition and sustainment of operations approach; and small business participation commitment document. RFP, amend. 7, attach. 3 at 77-78. When combined, the technical factors were significantly more important than the cost/price factor. *Id.* at 78.

Three offerors submitted proposals prior to the December 8, 2021, close of the solicitation period. AR, Tab 5, Source Selection Decision Document (SSDD) at 8. After reviewing proposals, DLA established a competitive range consisting of Amentum and Technica, and then conducted discussions with both offerors. *Id.* at 9. Amentum and Technica submitted final proposal revisions on March 8, 2022. *Id.* DLA’s evaluation produced the following results:

	Amentum	Technica
Performance Confidence Assessment	Substantial Confidence	Substantial Confidence
Management Approach	Good	Acceptable
Staffing Approach	Acceptable	Acceptable
Transition and Sustainment of Operations Approach	Acceptable	Acceptable
Small Business Participation Commitment Document	Outstanding	Outstanding
Cost/Price	\$88,465,620	\$88,390,604

AR, Tab 5, SSDD at 10. When conducting the tradeoff analysis, the source selection authority (SSA) compared the proposals under each of the evaluation factors. *Id.* at 11-22. Ultimately, the SSA concluded that Amentum’s proposal represented a better value because Amentum provided a superior management approach and equivalent value under the other factors. *Id.* at 21-22. The SSA also noted that Amentum’s superior management approach warranted the slightly higher cost. *Id.* at 22. As a result, the SSA selected Amentum’s proposal for award. After learning that its proposal was unsuccessful, Technica filed this protest with our Office.

DISCUSSION

Technica argues that DLA unreasonably assigned an adjectival rating of “substantial confidence” to Amentum’s proposal under the performance confidence assessment factor. Protest at 10. Specifically, Technica asserts that DLA failed to consider reasonably Amentum’s alleged record of poor performance as a major subcontractor on a prior relevant contract (*i.e.*, the “San Diego I” contract). *Id.* at 12; Comments at 3. DLA responds that it reasonably considered the alleged poor performance but that the performance issues could not reasonably be apportioned between the prime contractor and Amentum. Combined Contracting Officer’s Statement and Memorandum of Law

(COS/MOL) at 12-15. Thus, according to DLA, the “San Diego I” contract offered little value for evaluating Amentum’s past performance, and therefore, reasonably did not form an explicit part of the agency’s analysis.¹ *Id.*

By way of background, the RFP instructed each offeror to identify its most recent and relevant contracts demonstrating quality of work on similar projects. RFP, amend. 7, attach. 3 at 62. The RFP advised that past performance would be evaluated as part of the performance confidence assessment. *Id.* at 78. Referenced past performance would first be evaluated for recentness (*i.e.*, whether the referenced contract was completed within the past five years) and relevancy (*i.e.*, whether the referenced contract was similar in complexity, scope, and magnitude to the instant acquisition). *Id.* Next, past performance determined to be recent and relevant would be evaluated for quality of performance. *Id.* Finally, the agency would assign a cumulative performance confidence assessment rating based on the overall quality of each offeror’s demonstrated performance. *Id.*

As part of its proposal, Amentum provided references to four prior contracts, including the incumbent contract. AR, Tab 13, Amentum Past Performance Proposal at 11-31. Relevant to this protest, Amentum did not reference its performance as a major subcontractor on the “San Diego I contract,” which also provided warehouse and distribution operations services to DLA. See COS/MOL at 7-8.

The source selection evaluation board (SSEB) evaluated Amentum’s proposal favorably based on the positive performance on the firm’s four referenced contracts, and on two other contracts the agency located in the contractor performance assessment reporting system (CPARS) database. AR, Tab 11, Initial SSEB Past Performance Report at 4-5, 7, 9, 11-13. The SSEB did not consider Amentum’s performance as a subcontractor on the San Diego I contract. *Id.* Thus, because Amentum had performed similar contracts successfully, the SSEB evaluated the firm’s proposal as demonstrating a high expectation of successful performance for the instant acquisition and recommended an adjectival rating of “substantial confidence.” *Id.* at 13.

After receiving the report from the SSEB, the Contracting Officer (CO) drafted the SSDD. See AR, Tab 9, Decl. of CO at 2. When reviewing Amentum’s past performance information, the contracting officer considered including the firm’s performance as a major subcontractor on the “San Diego I” contract in the SSDD. *Id.*

¹ In its protest, Technica also alleged that DLA unreasonably made the source selection decision. The firm specifically alleged that DLA mechanically applied the assigned adjectival ratings and did not consider the underlying features of the proposals. Protest at 14-15. When filing its comments, Technica withdrew this allegation. Comments at 1.

In addition, Technica raised multiple arguments supporting its primary allegation that the agency unreasonably evaluated Amentum’s past performance. We discuss the principle arguments below, and to the extent we do not discuss any particular argument, we do not find it persuasive.

The contracting officer decided against explicitly identifying the “San Diego I” contract because she viewed the “San Diego I” contract as not particularly helpful. *Id.* She noted that the contract was not helpful for predicting the quality of Amentum’s performance because, even though the firm undoubtedly bore some responsibility for the performance issues, the specific poor performance directly attributable to Amentum could not be reliably identified. *Id.* The contracting officer possessed this level of familiarity with the “San Diego I” contract because she served as a member on the acquisition review board for the successor contract (*i.e.*, the “San Diego II” contract). *Id.* at 1. Following her drafting of the SSDD for the instant requirement, the contracting officer briefed the SSA regarding her past performance, technical, and cost/price recommendations. AR, Tab 9, Decl. of CO at 2. Significant to this protest, the contracting officer did not include any discussion of the “San Diego I” contract in the draft SSDD or the oral briefing. COS/MOL at 8.

When a protester challenges an agency’s evaluation of past performance, we will review the evaluation to determine if it was reasonable and consistent with the solicitation’s evaluation criteria and procurement statutes and regulations. *Jacobs Tech., Inc.*, B-420016, B-420016.2, Oct. 28, 2021, 2021 CPD ¶ 373 at 5. An agency’s evaluation of past performance, which includes its consideration of relevance, scope, and significance, of an offeror’s performance history, is a matter of discretion, which we will not disturb unless the agency’s assessment is unreasonable or inconsistent with the solicitation. *Id.* Further, a protester’s disagreement with an agency’s past performance judgments, without more, is insufficient to establish that the evaluation was improper. *Interactive Government Holdings, Inc.*, B-414071, B-414071.2, Feb. 2, 2017, 2017 CPD ¶ 131 at 7.

On this record, we find no basis to conclude that the agency unreasonably evaluated Amentum’s past performance. Our review confirms that Amentum received mostly positive CPARS ratings on the six identified contracts, and demonstrated positive trends in performance. AR, Tab 11, Initial SSEB Report at 2-13. Additionally, our review confirms that the agency carefully considered areas where Amentum had demonstrated suboptimal performance, and concluded that any performance issues were not likely to be replicated on the instant acquisition. *Id.* at 12. Significantly, our review shows that Amentum referenced its performance as the incumbent contractor, and that the firm received positive CPARS ratings for that effort. *Id.* at 4. Thus, we agree with the agency that it reasonably evaluated Amentum’s past performance favorably given the firm’s positive performance on multiple recent and relevant contracts.

While Technica complains that the agency should have considered more heavily the “San Diego I” contract, we disagree. Our review confirms that the contracting officer was aware that Amentum served as a major subcontractor and that the firm had some role in the performance issues. AR, Tab 9, Decl. of CO at 1. Nevertheless, our review also confirms that the contracting officer was aware that the responsibility for the poor performance was extremely difficult to apportion between the prime contractor and Amentum. AR, Tab 10, Decl. of Agency Official at 2; *see also* AR, Tab 7, San Diego II SSDD at 18 (acknowledging that Amentum had some role in the performance issues,

but that responsibility for the poor performance could not be apportioned). As a result, we do not find the contracting officer's decision unreasonable because, consistent with the agency's position, the inability to apportion responsibility means that the performance issues may not be indicative of Amentum's performance. See Agency's Resp. to Comments at 12; COS/MOL at 13. Insofar as the protester contends that the agency still could have gleaned some information from the contract, we note that such a contention constitutes disagreement with the agency's judgment concerning the probative value of the contract and does not provide a basis to find the evaluation unreasonable. See *Interactive Government Holdings, Inc., supra*. Accordingly, we deny the protest allegation.

To the extent Techica asserts that the contracting officer could not "independently" or "unilaterally" make the determination about which contracts should be considered because the SSA must evaluate relevancy of past performance under Federal Acquisition Regulation (FAR) subsection 15.305(a)(2)(ii),² we do not find that position persuasive. See Protester's Resp., June 7, 2022, at 5-6. First, the contracting officer elected not to consider the "San Diego I" contract as significant because it offered little probative value, not due to a perceived lack of relevance. See COS/MOL at 8.

Further, we are not convinced that the SSA must scrutinize every possible record of past performance for relevancy and probative value. See Protester's Resp. June 7, 2022, at 5. Instead, we agree with the agency that the SSA may rely on lower-level evaluators to reasonably cull the past performance records; for example, by removing references that do not meet a solicitation's stated recency requirements, or as here, by not putting forward a reference where the record of the past performance does not provide a reliable basis for evaluation. See Agency Resp. to Comments at 2-4, 13 (explaining that FAR subsection 15.305(a)(2)(ii) contemplates a collaborative role between SSAs and lower-level evaluators by providing that the "Government" shall consider past performance information). While the reasonableness of the decision to cull such references may be challenged, such a decision is not *per se* improper simply because the decision was not made by the SSA, as the protester's argument would suggest. Rather, we view the specific language of FAR subsection 15.305(a)(2)(ii)

² Subsection 15.305(a)(2)(ii) of the FAR provides as follows:

The solicitation shall describe the approach for evaluating past performance, including evaluating offerors with no relevant performance history, and shall provide offerors an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the Government requirement. The solicitation shall also authorize offerors to provide information on problems encountered on the identified contracts and the offeror's corrective actions. The Government shall consider this information, as well as information obtained from any other sources, when evaluating the offeror's past performance. The source selection authority shall determine the relevance of similar past performance information.

regarding the SSA's duty "to determine the relevance of similar past performance information" as pertaining to the pool of references that have reasonably been identified for consideration.

Moreover, we note that there is no legal requirement that all past performance be checked or included in a valid review of past performance. *See Dismas Charities*, B-298390, Aug. 21, 2006, 2006 CPD ¶ 131 at 5. As a result, we agree with the agency that the fact that the "San Diego I" contract was not ultimately presented to the SSA did not make the evaluation inherently unreasonable. *Cf. Paragon Sys., Inc.*, B-299548.2, Sept. 10, 2007, 2007 CPD ¶ 178 at 8-9 (past performance evaluation was not unreasonable where the SSA did not consider all of the information, including adverse comments, that the agency possessed for a particular referenced contract).

The protest is denied.

Edda Emmanuelli Perez
General Counsel