



## Decision

**Matter of:** Avalon Contracting, Inc.

**File:** B-423021

**Date:** January 8, 2025

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Robert A. Lockwood for the protester.

Jerome S. Gabig, Esq., Government Procurement Lawyer, LLC, for Tiya Support Services, LLC, the intervenor.

John R. Lockard, Esq., David Zhai, Esq., and Jason H. Shippy, Esq., Department of the Army, for the agency.

Kasia Dourney, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging agency's evaluation of past performance is denied where the agency evaluated the proposals in accordance with the terms of the solicitation.

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### DECISION

Avalon Contracting, Inc., a service-disabled veteran-owned small business of Tacoma, Washington, protests the award of a contract to Tiya Support Services, LLC, a small business of Baton Rouge, Louisiana, under request for proposals (RFP) No. W9123624R4005, issued by the Department of the Army, U.S. Army Corps of Engineers for preventive and demand maintenance repair services. Avalon asserts that the agency improperly evaluated offerors' past performance.

We deny the protest.

### BACKGROUND

The agency issued the solicitation on March 13, 2024, as a small business set-aside, seeking to award a fixed-price, indefinite-delivery, indefinite-quantity contract for a 6-month base period and four 1-year option periods. Agency Report (AR), Tab 3, RFP at 2, 4. The solicitation sought proposals for preventive and demand maintenance repair services for the Department of Defense Education Activity facilities at Fort

Campbell in Kentucky. *Id.* at 13.<sup>1</sup> The RFP contemplated making the award on a best-value tradeoff basis, using the procedures of Federal Acquisition Regulation (FAR) part 15, and considering the following evaluation factors: technical approach, past performance, and price. *Id.* at 167.

As relevant here, for past performance, the RFP instructed offerors to provide up to five “example projects or contracts,” performed within the last ten years, demonstrating “experience similar in size and scope and complexity to the work anticipated under this solicitation.” *Id.* at 159.

Offerors were also advised that “[t]he experience of your proposed subcontractors on example projects will not be considered in the evaluation of Past Performance.” *Id.* at 160. The solicitation further provided that:

If the Offeror is comprised of more than one member via a teaming agreement, joint venture (JV) agreement, or other appropriate instrument, relevant project experience should be submitted for projects completed by the Offeror as the proposed collective. If the proposed collective does not have shared experience, projects may be submitted for the constituent members other than subcontractors.

*Id.*

Finally, the solicitation provided, in bold, that offerors were required to:

address any previously unaddressed adverse past performance issues, with respect to all projects or contracts performed within the last ten (10) years, for which the Offeror, a member, or proposed subcontractor was issued a Cure Notice, Show Cause, Termination for Default or ‘adverse past performance.’

*Id.* at 161. Adverse past performance was defined as “past performance information that supports a less than [s]atisfactory rating on any evaluation pertaining to a submitted project or other project for which a record of a past performance . . . may be retrieved.”

*Id.*

The agency received six timely proposals in response to the RFP, including proposals from Avalon and Tiya Support Services. Contracting Officer’s Statement (COS) ¶ 14. Avalon submitted five past performance references, including three projects it performed as a prime, and two projects that were performed by BryMak & Associates, a firm described as a “teaming partner” and “subcontractor” in a teaming agreement submitted with Avalon’s proposal. Resp. to Req. for Add’l Briefing, exh. 1, Teaming Agreement at 1; see also COS ¶ 15; AR, Tab 9, Avalon’s Proposal at 8-16. During the

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<sup>1</sup> Citations to the RFP are to the copy provided at tab 3 of the agency report. All page citations to the record are to the Adobe PDF page numbers.

evaluation of the protester’s past performance, the agency found the projects performed by Avalon were recent and relevant.<sup>2</sup> AR, Tab 11, Redacted Technical Evaluation Board (TEB) Report at 40. The agency did not, however, evaluate the two contracts performed by BryMak because the agency concluded that BryMak would be performing as a subcontractor to Avalon. *Id.* at 36-38.

In addition to the past performance references provided by Avalon, the evaluators reviewed performance ratings retrieved from the Contractor Performance Assessment Reporting System (CPARS). *Id.* at 37. Ultimately, the TEB assigned the protester’s proposal a rating of satisfactory confidence under the past performance factor. *Id.* at 41.

Tiya, on the other hand, submitted a single past performance reference, a base operations support contract at Fort Moore, Georgia (formerly, Fort Benning), which it performed as a prime contractor. AR, Tab 10, Tiya’s Proposal at 9-11. The TEB found the project recent and relevant, noting that it met the RFP’s criteria “for more favorable consideration.” AR, Tab 11, Redacted TEB Report at 76. Additionally, the TEB reviewed five CPARS ratings provided in Tiya’s proposal and assigned Tiya’s proposal an overall rating of satisfactory confidence under the past performance factor. *Id.* at 76-77.

Upon completing the evaluation, the final evaluation ratings were as follows:<sup>3</sup>

	Avalon	Tiya
Technical Approach	Good	Good
Past Performance	Satisfactory Confidence	Satisfactory Confidence
Price	\$8,770,073	\$7,651.002

AR, Tab 12, Source Selection Decision Document (SSDD) at 16.

The source selection authority (SSA) concurred with the TEB’s adjectival ratings, confidence assessment ratings, and adopted the results of the price evaluation. *Id.* The SSA found that although Avalon’s proposal “had comparatively stronger” past

<sup>2</sup> The protester elected to file and pursue its protest *pro se*, *i.e.*, without representation by legal counsel, and therefore no protective order was issued in this matter. In certain areas, our discussion is general in nature to avoid reference to non-public information.

<sup>3</sup> For the technical factor, the agency assigned proposals one of the following ratings: (1) outstanding, (2) good, (3) acceptable, (4) marginal or (5) unacceptable. RFP at 170. For the past performance factor, the agency assigned proposals one of the following ratings: (1) substantial confidence, (2) satisfactory confidence, (3) neutral confidence, (4) limited confidence or (5) no confidence. *Id.* at 172.

performance than Tiya based on its “demonstrated successful performance on more projects rated relevant or higher,” that advantage did “not merit the . . . \$1,119,071.78 higher price,” or 15 percent price premium. COS ¶ 24; AR, Tab 12, SSDD at 42. The SSA therefore concluded that Tiya represented the best value to the government and selected Tiya’s proposal for award. AR, Tab 12, SSDD at 56.

The agency notified Avalon of the award on September 24, and provided a debriefing on September 30. COS ¶ 26. This protest followed.

## DISCUSSION

Avalon argues that the agency unreasonably assigned Tiya’s proposal a rating of satisfactory confidence under the past performance factor, positing that the awardee unduly relied on the past performance of its subcontractor.<sup>4</sup> Protest at 2-3. To the extent the awardee identified its own past work, Avalon contends that Tiya’s only known past contract had numerous publicly known performance issues, and that Tiya must not have disclosed these adverse past performance issues as required by the solicitation.<sup>5</sup> *Id.* at 3. Avalon also asserts that the agency treated offerors disparately by not considering the past performance references performed by Avalon’s own subcontractor BryMak, while crediting Tiya for its subcontractor’s work.<sup>6</sup> *Id.* at 4. The protester further

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<sup>4</sup> The record does not support Avalon’s speculation that the agency considered any subcontractor information in its evaluation of Tiya’s past performance. To the contrary, the record reflects that the agency’s past performance evaluation was based entirely on past performance information about Tiya’s performance as a prime contractor. See COS at 7-8; AR, Tab 11, TEB Report at 74-77.

<sup>5</sup> Specifically, the protester alleges that there were multiple performance problems and other issues related to Tiya’s Fort Moore operation support contract submitted with the awardee’s proposal. Protest at 3. Avalon mentions a “denial of requests for equitable adjustments,” a Defense Contract Audit Agency audit report finding that Tiya’s accounting system was noncompliant, and “three material non-compliances related to the accumulation and allocation of [general & administrative] expenses.” *Id.* The protester also points to “a subsequent [f]raud investigation by the United States Army Criminal Investigation Division.” *Id.*

<sup>6</sup> As another variation of the protest ground challenging the evaluation of Tiya’s past performance, Avalon alleges that the awardee is affiliated with its “parent group and sister companies,” “their sister company is performing the predominance of the work,” and as such, the firm had “a substantial unfair competitive advantage” in this procurement. Protest at 4-5.

Avalon’s arguments about improper affiliation between Tiya, its sister companies, and its parent group, however, ultimately concern Tiya’s size status as a small business concern--a matter that our Office lacks jurisdiction to consider. See *Quality Servs. Int’l*,  
(continued...)

argues that BryMak was its “teaming partner” and therefore, in accordance with the solicitation instructions, BryMak’s two past performance references should have been considered by the agency. *Id.*

The agency responds that it evaluated the past performance information submitted by both Avalon and Tiya in a manner that was both reasonable and consistent with the solicitation’s evaluation criteria. Memorandum of Law (MOL) at 7-9. The agency rejects the contention that Tiya was required to disclose or address alleged adverse past performance. *Id.* at 5. In this regard, the agency notes that the denial of a request for equitable adjustment and the other performance problems alleged by the protester did not result in CPARS ratings of less than satisfactory for the past performance reference at issue and therefore, under the solicitation’s evaluation criteria, they did not need to be addressed by Tiya. *Id.* at 4-6. Furthermore, the agency maintains that it evaluated past performance of both offerors in an equal manner. *Id.* at 7-9.

Based on our review of the record, and as explained below, we conclude that none of the protester’s arguments provide a basis on which to sustain the protest.

As a preliminary issue, in its comments on the agency report, the protester largely failed to address the agency’s substantive responses to the protest allegations described above. Instead, in its brief comments on the agency report, Avalon mainly argues that the agency improperly excluded the two past performance references performed by BryMak, its “teaming partner[].” Protester’s Comments at 1.

Because Avalon did not substantively reply to the agency’s response, we view the majority of its protest arguments as abandoned.<sup>7</sup> 4 C.F.R. § 21.3(i)(3) (“GAO will

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*LLC, B-410156 et al.*, Nov. 3, 2014, 2014 CPD ¶ 330 at 3 n.1 (post-award small business size protests, including alleged improper affiliation, are reserved for determination by the Small Business Administration (SBA) under its protest process). To the extent that the protester seeks to “question[] affiliation and size standards,” Protest at 4, it must do so by filing a size protest with the SBA.

<sup>7</sup> Even if we were to consider these arguments, they do not provide a basis to question the reasonableness of the agency’s past performance evaluation. Specifically, the record reflects that the agency properly considered both offerors’ past performance references, and, consistent with the solicitation’s instructions, the agency did not consider any subcontractor past performance information for either offeror. AR, Tab 11, TEB Report at 36-39, 74-77. An agency’s evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror’s performance history, is a matter of discretion, which we will not disturb unless the agency’s assessments are unreasonable or inconsistent with the solicitation criteria. *See Sterling Medical Associates, Inc.*, B-418674, B-418674.2, July 23, 2020, 2020 CPD ¶ 255 at 8.

(continued...)

dismiss any protest allegation or argument where the agency's report responds to the allegation or argument, but the protester's comments fail to address that response."); see also *IPKeys Techs., LLC*, B-416873.2, B-416873.3, Apr. 5, 2019, 2019 CPD ¶ 138 (finding that protester abandoned allegations of 16 missed technical strengths where initial protest alleged agency failed to assign 19 separate strengths, but protester's comments rebutted only three of the agency's arguments).

Turning to the remaining issue, as noted above, Avalon argues that the agency should have considered the two past performance references performed by BryMak because the firm is "part of a contractor teaming arrangement with Avalon and thereby part of the collective as a constituent member vs. a subcontractor." Protester's Comments at 1. The agency counters that Avalon's proposal identified BryMak as a subcontractor and the solicitation provided clear instructions that "past performance submitted for subcontractors would not be considered even if the subcontractor was part of [a] 'proposed collective' via a teaming arrangement." MOL at 8 (*quoting* RFP at 160).

As noted above, the solicitation clearly advised that the agency would not consider subcontractors' experience in the evaluation of past performance. RFP at 160. The RFP also stated that if "the [o]fferor is comprised of more than one member via a teaming agreement[,] . . . relevant project experience should be submitted for projects completed by the [o]fferor as the proposed collective." *Id.* However, if "the proposed collective does not have shared experience, projects may be submitted for the constituent members other than subcontractors." *Id.*

Here, Avalon has clearly acknowledged that BryMak was its subcontractor. Protest at 4 (stating that "Avalon had and included a Teaming Agreement with our subcontractor 'Brymak'"). In addition, the teaming agreement included in Avalon's proposal describes in detail each party's role in their combined efforts to obtain the contract at issue, stating that it would "result in the selection of [Avalon] as prime contractor" and its "[t]eaming [p]artner," BryMak, "as subcontractor." Resp. to Req. for Add'l Briefing, exh. 1, Teaming Agreement at 1.

As such, the record before us unequivocally contradicts Avalon's contention that BryMak was something other than its subcontractor. Accordingly, we conclude that the contemporaneous record, as well as the agency's response to the protest, demonstrate that the agency acted in accordance with the terms of the solicitation when it excluded,

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With respect to Avalon's contention that the awardee failed to disclose its "adverse past performance," the agency successfully rebutted the protester's argument. See MOL at 4-6. We agree with the Corps that under the RFP's definition of adverse past performance, the awardee was not required to disclose any of the occurrences cited by Avalon because "[n]one of this information was used by an assessing official . . . to assign a rating of less than [s]atisfactory" to Tiya's past performance rating at issue. *Id.* at 5 (*citing* RFP at 161). Accordingly, the protester's argument is without merit.

from consideration, the two past performance references performed by BryMak. We, therefore, find this allegation to be without merit.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel