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Decision

Matter of: Supreme Foodservice GmbH
File: B-405400.3; B-405400.4; B-405400.5
Date: October 11, 2012

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DIGEST

1. Protest challenging agency's assignment of highest possible experience/past performance rating to awardee's proposal under size and complexity evaluation element is sustained where solicitation called for comparison of offerors' most relevant prior contracts to a defined dollar threshold, on an individual basis, and record shows that none of awardee's contracts met the dollar threshold.
2. Protest challenging evaluation of favorable past performance data obtained internally by agency, which conflicted with adverse past performance information provided in awardee's proposal, is sustained where record does not permit meaningful review of whether agency's evaluation was reasonable.
3. Protest that agency's evaluation of protester's and awardee's proposals under past performance subfactors was inconsistent and, therefore, unreasonable is sustained where record does not reflect a reasonable basis for agency's decision to consider some information outside a 12-month window, while refusing to consider other information outside that 12-month window.

DECISION

Supreme Foodservice GmbH, of Ziegelbrücke, Switzerland, protests the award of a contract to ANHAM FZCO, of Dubai, United Arab Emirates, under request for proposals (RFP) No. SPM300-11-R-0063, issued by the Defense Logistics Agency, Troop Support, for the supply and distribution of subsistence products to locations throughout Afghanistan. Supreme asserts that the competition was flawed in numerous respects.

We sustain the protest.

The solicitation, which was issued on April 26, 2011 and amended 12 times, sought a full-line food distributor to act as the prime contractor responsible for the supply and delivery of semi-perishable and perishable items to the military and other federally-funded customers at more than 200 locations throughout Afghanistan. RFP at 1, 125, 127.¹ The solicitation contemplated the award of a single indefinite-delivery/indefinite-quantity fixed-price contract, with economic price adjustment, for a term of 66 months. Id. at 125-26. Award was to be made to the offeror whose proposal was determined to be the most advantageous to the government considering price, and the technical factors, subfactors, and elements shown in the table below.

¹ Citations to the solicitation in this decision refer to a “conformed” copy of the solicitation that incorporates the 12 solicitation amendments. See Agency Report (AR), Vol. I, Tab 1, Conformed Solicitation.

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|--|
| Factor 1 - Experience/Past Performance |
| Subfactor A - Experience |
| Element 1 - Size and Complexity |
| Element 2 - Key Personnel |
| Subfactor B - Past Performance |
| Subfactor C - Socioeconomic Past Performance |
| Subfactor D - AbilityOne Past Performance |
| Factor 2 - Distribution System/Quality Assurance |
| Subfactor A - Warehouse Location/Capacity and Resource Availability |
| Subfactor B - Airlift Capability |
| Subfactor C - Quality Control, Assurance, and Warehouse Procedures |
| Subfactor D - Product Protection/Food Defense |
| Subfactor E - Surge and Sustainment Capability |
| Factor 3 - Private Convoy Security Capability |
| Factor 4 - Operational Support |
| Subfactor A - Afghanistan National Employment - Afghanistan First - Southern Caucasus/Central and Southern Asian States |
| Subfactor B - Civil Reserve Air Fleet/Voluntary Intermodal Sealift Agreement |
| Factor 5 - Socioeconomic Considerations |

RFP at 260-61. The non-price evaluation factors were listed in descending order of importance and were “significantly more important” than price. Id. at 261. With regard to the most important factor 1, experience/past performance, subfactors A and B were of equal importance, and more important than subfactors C and D. Id. at 260. The factor 2 subfactors were of equal importance, id. at 261, and, of the factor 4 subfactors, subfactor A was more important than subfactor B. Id. at 263.

The agency received four proposals by the solicitation’s closing date, including proposals from Supreme and ANHAM. AR, Vol. II, Tab 6, Source Selection Advisory Council (SSAC) Recommendation, at 4. A technical panel evaluated the proposals with respect to the non-price factors and identified proposal strengths, weaknesses, and deficiencies. See AR, Vol. III, Tabs 1, 2, Final Technical Reports. A price analysis team evaluated the offerors’ pricing. See AR at 20. The agency then conducted multiple rounds of discussions and requested and received final proposal revisions (FPR) from all four offerors. Id. at 20-23.

Following evaluation of FPRs, the offerors' proposals were assigned final ratings, which, together with the total evaluated prices, are shown in the table below.²

| | ANHAM | Supreme | Offeror 3 | Offeror 4 |
|------------------------|------------------------|------------------------|------------------|------------------|
| Factor 1 | Acceptable | Acceptable | [DELETED] | [DELETED] |
| Subfactor A | Outstanding | Outstanding | [DELETED] | [DELETED] |
| Element 1 | Outstanding | Outstanding | [DELETED] | [DELETED] |
| Element 2 | Outstanding | Outstanding | [DELETED] | [DELETED] |
| Subfactor B | Acceptable | Acceptable | [DELETED] | [DELETED] |
| Subfactor C | Marginal | Acceptable | [DELETED] | [DELETED] |
| Subfactor D | Marginal | Marginal | [DELETED] | [DELETED] |
| Factor 2 | Good | Outstanding | [DELETED] | [DELETED] |
| Subfactor A | Acceptable | Good | [DELETED] | [DELETED] |
| Subfactor B | Outstanding | Outstanding | [DELETED] | [DELETED] |
| Subfactor C | Good | Outstanding | [DELETED] | [DELETED] |
| Subfactor D | Outstanding | Outstanding | [DELETED] | [DELETED] |
| Subfactor E | Outstanding | Outstanding | [DELETED] | [DELETED] |
| Factor 3 | Outstanding | Outstanding | [DELETED] | [DELETED] |
| Factor 4 | Outstanding | Good | [DELETED] | [DELETED] |
| Subfactor A | Outstanding | Good | [DELETED] | [DELETED] |
| Subfactor B | Outstanding | Outstanding | [DELETED] | [DELETED] |
| Factor 5 | Outstanding | Outstanding | [DELETED] | [DELETED] |
| Risk | Low | Low | [DELETED] | [DELETED] |
| OVERALL RATING | GOOD | GOOD | [DELETED] | [DELETED] |
| Evaluated Price | \$3,274,432,221 | \$4,723,740,821 | [DELETED] | [DELETED] |

AR, Vol. II, Tab 7, Source Selection Decision Document (SSDD), at 8.

² The solicitation included definitions for each of the proposal ratings. RFP at 264. Additionally, the agency's source selection plan (SSP) included a separate set of definitions for the individual factor, subfactor, and element ratings. AR, Vol. II, Tab 1, SSP, at 13-57.

The SSAC reviewed the evaluation documentation, comparatively analyzed the proposals, and determined that ANHAM's proposal represented the best value to the government. AR, Vol. II, Tab 6, SSAC Recommendation, at 1. The SSA also reviewed the evaluation documentation and comparatively analyzed the proposals. AR, Vol. II, Tab 7, SSDD, at 1, 8-77. The SSA concurred with the SSAC that ANHAM's proposal represented the best value to the government. Id. at 64, 77. Before making an award to ANHAM, the agency requested that the Defense Contract Management Agency (DCMA) conduct a pre-award survey to evaluate ANHAM's financial capability and to verify certain ANHAM technical capabilities. Id. at 64.

DCMA reviewed ANHAM's finances and issued a report finding ANHAM to be financially capable of performing the contemplated contract. AR, Vol. XIV, Tab 22, Revised DCMA Pre-Award Survey (June 8, 2012), Financial Capability, attach. 1, at 2. DCMA also visited [DELETED] ANHAM sites in Afghanistan and issued a report regarding ANHAM's technical capabilities. See AR, Vol. XIV, Tab 23, DCMA Pre-Award Survey (May 23, 2012). The contracting officer subsequently identified certain discrepancies between ANHAM's proposal and DCMA's findings with regard to ANHAM's technical capabilities.³ AR, Vol. II, Tab 7, SSDD, at 65.

The SSA analyzed the discrepancies by considering whether they were significant and by considering ANHAM's manner of mitigating them. See id. at 65-67. The SSA concluded that as a result of the discrepancies, ANHAM's rating under factor 2, distribution system/quality assurance, subfactor A, warehouse location/capacity and resource availability, should be downgraded from acceptable to marginal. Id. at 66. The SSA also concluded that notwithstanding this change, ANHAM's overall factor 2 rating of good should not be changed, ANHAM's overall proposal rating of good should not be changed, and ANHAM's overall risk rating of low risk should not be changed. Id. at 68.

The SSA performed a price/technical tradeoff between the four proposals whereby he noted proposal strengths and weakness, compared proposal ratings, and evaluated prices. Id. at 69-77. In the tradeoff, the SSA first eliminated the proposals of Offerors 3 and 4 from consideration for award because their technical ratings were lower than those of ANHAM's proposal, yet their evaluated prices were higher. AR, Vol. II, Tab 7, SSDD, at 73. The SSA next compared Supreme's higher-technically-rated, higher-priced proposal with ANHAM's lower-technically-rated, lower-priced proposal. Id. at 73-76. Following this comparison, the SSA

³ For instance, DCMA projected that [DELETED] in Afghanistan would be completed in July 2012, rather than [DELETED] as represented in ANHAM's proposal. AR, Vol. II, Tab 7, SSDD, at 65-66. Additionally, DCMA found that ANHAM was [DELETED]. Id. Finally, DCMA found that ANHAM [DELETED] as discussed in the firm's proposal. Id.

noted three “valued added benefits” for Supreme and two “value added benefits” for ANHAM. AR, Vol. II, Tab 7, SSDD at 76. The SSA then made the following determination:

Supreme’s advantages in several of the factors represent benefits to the Government, but these are relatively minor The advantages result in slightly, not substantially, less performance risk compared to Anham. Comparing the two offers, Anham has fully demonstrated that it can successfully perform the contract requirements and Anham’s slightly higher performance risk is fully acceptable to the Government, while Supreme’s slight advantages do not justify Supreme’s 44.3% higher price, which represents an additional \$1.45B [billion] dollars as evaluated. . . . Therefore, I have determined that Anham’s overall proposal represents the best value to the Government.

Id. at 76-77.

Based on the SSA’s determination, and an affirmative determination of ANHAM’s responsibility by the contracting officer, the agency made award to ANHAM. Id. at 78; AR at 40. Following a debriefing, Supreme filed this protest.

DISCUSSION

Supreme challenges various aspects of the agency’s evaluation, including: the agency’s aggregation of contracts in connection with the evaluation of ANHAM’s experience; the agency’s consideration of favorable “in-house” past performance information for ANHAM rather than certain adverse past performance information that was included in ANHAM’s proposal; and the agency’s determination to consider past performance information outside of a 12-month window on an inconsistent basis. We conclude, for the reasons discussed below, that these claims have merit and that the agency’s actions competitively prejudiced Supreme. Accordingly, we sustain the protest.

Experience/Past Performance Claims

Supreme contends that the agency improperly aggregated the value of prior contracts listed in ANHAM’s proposal when it evaluated ANHAM’s experience/past performance under the size and complexity element. 2d Supp. Protest at 65-78, 85-86, 95-97; Supp. Comments at 65-79. Supreme further contends that none of the contracts listed in ANHAM’s proposal individually met an 85 percent threshold for contracts of “similar size” that was specified in the solicitation’s size and complexity element evaluation criteria. 2d Supp. Protest at 67-69; Supp. Comments at 76-78. Based on these contentions, Supreme argues that the agency’s determination to assign ANHAM’s proposal the highest-possible evaluation rating

under the size and complexity element was unreasonable. 2d Supp. Protest at 68-69; Supp. Comments at 66, 70-75. We agree.

Our Office examines an agency's evaluation of experience and past performance to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable statutes and regulations. Herve Cody Contractor, Inc., B-404336, Jan. 26, 2011, 2011 CPD ¶ 27 at 3; JVSCC, B-311303.2, May 13, 2009, 2009 CPD ¶ 138 at 5.

As described above, factor 1 (experience/past performance) was the most important technical evaluation factor and consisted of four subfactors, one of which was subfactor A, experience. RFP 262. Subfactor A, which was one of two equally-most-important subfactors, included two elements, the most important of which was element 1, size and complexity. Id. The solicitation stated that with respect to this element:

The Government will evaluate the offeror's experience in fulfilling similar requirements of similar size (85%-100%), and complexity for customers in a prime vendor/regular dealer capacity on an individual contract basis only for its most relevant (in terms of size and complexity) provided contracts.

Id. at 264 (emphasis added). Related to this solicitation provision, the agency, in its evaluation of proposals under the size and complexity element, documented that "[t]he evaluation defined relevant in terms of size and complexity to be 85%-100% of the estimated value or \$1.55 [billion] annually (85% of \$1.82 [billion])." AR, Vol. III, Tab 2, ANHAM Final Technical Report, at 7; AR, Vol. III, Tab 1, Supreme Final Technical Report, at 7 (emphasis added).

The documentation of the agency's evaluation of ANHAM's proposal under the size and complexity element included a table showing the contracts that ANHAM listed in its proposal for evaluation under factor 1. AR, Vol. III, Tab 2, ANHAM Final Technical Report, at 8-9. The table also showed the number of delivery points for each contract and the following annual contract values: [DELETED]. Id. at 8. From these values, the agency calculated an aggregated contract value for ANHAM of [DELETED] billion.⁴ Id. at 7. The agency found that this aggregate value "exceeds the solicitation requirement of \$1.82 [billion] annually." AR, Vol. III, Tab 2, ANHAM Final Technical Report, at 7. The agency then assigned ANHAM's proposal the highest available rating (outstanding) under the size and complexity element, finding

⁴ We calculate the sum of the contract values in the table to be [DELETED] billion. The basis for the agency's calculation of [DELETED] billion is unclear. The difference in the value calculated by the agency and our calculation is not material to the analysis in this decision.

that “[ANHAM,] when combined with a teaming approach[,] presents evidence of providing full line food service as a prime vendor for customers whose size and complexity exceeds the contract dollar value and number of delivery stops required by this solicitation.” AR, Vol. III, Tab 2, ANHAM Final Technical Report, at 7. Thus, the record reflects that the agency based ANHAM’s outstanding rating under the size and complexity element on the aggregated value of the contracts under evaluation.

In response to Supreme’s claim that the aggregation of contract values was improper, the agency asserts that based on an integrated assessment of ANHAM’s proposal, the evaluation was reasonable. See Supp. AR at 23-27. The agency also asserts that the solicitation’s evaluation criteria for the size and complexity element should be read to mean that the agency “would consider only the most relevant contracts on an individual basis” and did “not prohibit aggregating contracts during the evaluation.” Id. at 25-26.

Here, the agency acknowledges that the solicitation contemplated the evaluation of the most relevant contracts on an individual basis. The contemporaneous record, however, does not reflect any consideration by the agency that none of the contracts listed in ANHAM’s proposal met the 85 percent threshold on an individual basis.⁵ Rather, the record shows that the predicate for ANHAM’s proposal rating under this evaluation element was an aggregation of the contracts listed in ANHAM’s proposal. In the absence of documentation to show that the agency recognized that none of the contracts individually met the threshold, we find the agency’s determination to assign ANHAM’s proposal the highest available rating under this evaluation element to be unreasonable. Accordingly, we sustain this basis of protest.⁶

⁵ As shown above, the agency estimated the annual value of the solicited contract to be \$1.82 billion. AR, Vol. III, Tab 2, ANHAM Final Technical Report, at 7. As also shown above, the highest annual value of the contracts listed in ANHAM’s proposal was [DELETED]. Id. at 8-9. This is [DELETED] percent of the estimated annual value of the solicited contract. The second-highest annual value of the contracts listed in ANHAM’s proposal was [DELETED]. Id. This is [DELETED] percent of the estimated annual value of the solicited contract. Thus, the individual annual value of either of the two highest-value contracts listed in ANHAM’s proposal is considerably less than the 85 percent threshold identified in the solicitation.

⁶ We agree with the agency that the solicitation did not preclude consideration of an offeror’s contracts in the aggregate as one component of an integrated evaluation of proposals. Here, however, the agency deviated from the solicitation’s evaluation scheme by failing to evaluate ANHAM’s most relevant contracts on an individual basis (or failing to document such an evaluation). Thus, the agency did not factor into its evaluation the fact that none of ANHAM’s contracts individually met the 85 percent threshold. The agency compounded this deviation by predicating

(continued...)

As a separate claim, Supreme protests that the agency misevaluated ANHAM’s proposal under subfactor B of the experience/past performance factor by failing to consider that ANHAM’s proposal showed that ANHAM consistently failed to meet a 97 percent “fill rate” under one of its past contracts. 2d Supp. Protest at 4, 92, 98-99; Comments at 36, 52-53; Supp. Comments at 84-85.

In this regard, the solicitation provided that the agency would evaluate “whether the firm has a successful history of . . . providing consistently high fill rates, which meet the contractual requirement of 97%.” RFP at 265. In evaluating ANHAM’s proposal against this stated criterion, the agency concluded that ANHAM’s proposal merited a rating of acceptable. AR, Vol. III, Tab 2, ANHAM Final Technical Report, at 18. As support for this assessment, the agency’s contemporaneous evaluation documentation included a table with the following fill rate information regarding ANHAM’s performance under a relevant contract.⁷

| ANHAM | Requirement 97% |
|------------------------------|-----------------|
| Oct 2010 (Contract start-up) | [DELETED] |
| Nov 2010 | [DELETED] |
| Dec 2010[] | [DELETED] |
| Jan 2011 | [DELETED] |
| Feb 2011 | [DELETED] |
| Mar 2011 | [DELETED] |

Id. However, as Supreme points out, the fill rate information contained in ANHAM’s proposal was materially different, and indicated that ANHAM failed to meet the 97 percent requirement for [DELETED] of the 7 months during the relevant time period. Specifically, the information in ANHAM’s proposal is shown in the table below:

(...continued)

ANHAM’s proposal rating under this evaluation element on an aggregation of the contracts listed in ANHAM’s proposal.

⁷ There were separate tables that compiled fill rate information for ANHAM team members. AR, Vol. III, Tab 2, ANHAM Final Technical Report, at 18-19.

| | W / Sub | W/O Sub |
|--------|-----------|-----------|
| | * * * | |
| Sep-10 | [DELETED] | [DELETED] |
| Oct-10 | [DELETED] | [DELETED] |
| Nov-10 | [DELETED] | [DELETED] |
| Dec-10 | [DELETED] | [DELETED] |
| Jan-11 | [DELETED] | [DELETED] |
| Feb-11 | [DELETED] | [DELETED] |
| Mar-11 | [DELETED] | [DELETED] |

AR, Vol. VIII, Tab 8, Anham Revised Proposal (Dec. 21, 2011), at 4.

In response to Supreme’s allegation regarding this discrepancy, the agency states that it “relied upon not only information provided by Anham but also in-house . . . government data, which showed that Anham exceeded its contractual fill rate on the . . . contract [DELETED] out of six months from October 2010 to March 2011.”⁸ Supp. AR at 34. In support of this assertion, however, the agency references only the page of ANHAM’s final technical evaluation report containing the more favorable data depicted in the first table above. *Id.* (citing AR Vol. III, Tab 2, ANHAM Final Technical Report, at 18). That page does not reflect the source of the higher fill rate data, nor does it discuss the discrepancy between that fill rate data and the fill rate data contained in ANHAM’s proposal.

Although an agency is not required to retain every document generated during its evaluation of proposals, the agency’s evaluation must be sufficiently documented to allow our Office to review the merits of a protest. Apptis, Inc., B-299457 et al., May 23, 2007, 2008 CPD ¶ 49 at 10. Where an agency fails to document or retain evaluation materials, it bears the risk that there may not be adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for its source selection decision. Navistar Def., LLC; BAE Sys., Tactical Vehicle Sys. LP, B-401865 et al., Dec. 14, 2009, 2009 CPD ¶ 258 at 13.

The record here does not reflect the basis for the agency’s reliance on a set of fill rates that are higher than the set of fill rates ANHAM provided in its proposal--which generally do not meet the solicitation-specified threshold of 97 percent. Further, the record includes “in-house” information that is consistent with the lower fill rate information contained in ANHAM’s proposal. Specifically, a Contractor

⁸ The solicitation stated that the agency may use government records in connection with the evaluation of offerors’ past performance. RFP at 264.

Performance Assessment Reporting System (CPARS) report that is referenced in ANHAM's final technical evaluation report states that, for the contract in question, ANHAM's "monthly Fill Rates started in the low 90%⁹." AR Vol. III, Tab 16, ANHAM CPARS Report, at 2-3.

In sum, the record does not reflect whether the agency in its evaluation of ANHAM's proposal under the past performance subfactor considered the lower fill rate information contained in ANHAM's proposal. Additionally, assuming for the sake of argument that the agency did consider the lower fill rate information, the record fails to provide the agency's basis for rejecting that information and evaluating ANHAM's proposal on the basis of higher, more favorable fill rate data. Accordingly, our Office has no basis to conclude that the agency's evaluation of ANHAM's proposal in this regard was reasonable. We therefore sustain this basis of protest.¹⁰

Supreme additionally challenges the agency's evaluation of its and ANHAM's proposals with regard to the time period for which past performance information would be considered. Specifically, Supreme contends that the solicitation limited the information eligible for evaluation under subfactors B (past performance) and D (AbilityOne past performance) to information regarding performance that occurred during the 12 months preceding issuance of the solicitation. Comments at 32-35, 40-41. Supreme refers to this time period as the "12-month window." Id. at 32. Supreme asserts that the agency inconsistently considered adverse Supreme past performance information from outside the 12-month window in its evaluation under subfactor B (past performance), but refused to consider favorable Supreme past performance information under subfactor D (AbilityOne past performance) because it was outside that 12-month window. Comments at 33-34,

⁹ The report also states that "the overall Fill Rate for the reporting period of 09/2010 to 10/2011 is 97.27%." AR Vol. III, Tab 16, ANHAM CPARS Report, at 2-3. Evaluating the consistency with which an offeror meets fill rates, such as the solicitation stated would be done here, RFP at 265, is different than evaluating whether an offeror meets a fill rate on an overall (i.e., average) basis.

¹⁰ We recognize that the agency assigned a weakness to ANHAM's proposal under the subfactor at issue based on the finding that "[a]lthough offeror provided fill rate information, their fill rates only frequently met their contractual requirement." AR, Vol. III, Tab 2, ANHAM Final Technical Report, at 18. The agency has not represented, and we see nothing in the record to suggest, that this weakness pertained to the adverse fill rate information included in ANHAM's proposal. Additionally, the record indicates that this weakness may relate to the infrequency with which one of ANHAM's proposed team members met a contractual fill rate. See id. (table in ANHAM final technical report showing that under prior contract, ANHAM team member met requirement for 98 percent fill rate [DELETED] months in 12 month period).

40-41. Similarly, Supreme asserts that the agency was inconsistent in considering favorable ANHAM past performance information from outside of the 12-month window, while refusing to consider favorable Supreme past performance information from outside of the 12-month window. Comments at 35, 41.

As an initial matter, we disagree with Supreme that the solicitation precluded the agency's consideration of past performance information outside of the 12-month window. The solicitation instructed offerors to submit past performance information "for the most recent 12 month period preceding the solicitation issue date." RFP at 244. Nonetheless, the solicitation's past performance evaluation criteria provided that, in addition to evaluating the information in an offeror's proposal, the agency would evaluate "relevant Government (in-house) records, and the information provided by the points of contact or references designated by the offeror." Id. at 264. Thus, in contrast to the instructions to offerors, the solicitation's past performance evaluation criteria did not reference any particular period for consideration. See id. at 264-66.

Notwithstanding our conclusion that the solicitation did not limit the agency's evaluation of past performance to the 12-month window, as Supreme asserts, we agree that the agency conducted its past performance evaluation in an inconsistent and, therefore, unreasonable manner. Specifically, the record reflects that the agency assigned a weakness to Supreme's proposal under the past performance subfactor because one of Supreme's past performance references rated Supreme's past performance as unsatisfactory. AR, Vol. III, Tab 1, Supreme Final Technical Report, at 18, 22. Taking this weakness into account, the agency determined that Supreme's proposal merited a rating of only acceptable under the past performance subfactor. Id. at 22. The unsatisfactory past performance rating underlying the weakness, however, pertained to past performance that occurred between May 2011 and August 2011. AR, Vol. III, Tab 13, Supreme Past Performance Questionnaires, at 11-17. In other words, the weakness was based on performance that occurred outside of (and more recently than) the 12-month window.

The record also reflects that the agency assigned a weakness to Supreme's proposal under the AbilityOne past performance subfactor because under the current prime vendor contract Supreme did not meet a 1 percent AbilityOne participation goal during the 12 months preceding issuance of the solicitation-- despite the agency's recognition that Supreme's more recent past performance had met the goal. AR, Vol. III, Tab 1, Supreme Final Technical Report, at 29. In its evaluation of Supreme's proposal under this subfactor, the agency noted the following:

Supreme indicates they have surpassed the target of 1% and now have a [DELETED] participation rate from December 2010 through November 2011. Although Supreme has shown recent improvements with the AbilityOne Program, the evaluation period identified in the

solicitation was for the most recent 12 month period of the contract proceeding [sic] the solicitation issue date (May 2010-April 2011).

AR, Vol. III, Tab 1, Supreme Final Technical Report, at 29 (emphasis added). Accordingly, based solely on Supreme's (less recent) failure to meet the AbilityOne goal during the 12-month window, the agency determined that Supreme's proposal merited a rating of marginal under the AbilityOne past performance subfactor. Id. at 30.

The agency in its response to Supreme's protest adopts the same inconsistent application of the 12-month window that is reflected in the evaluation record. With respect to instances where the agency limited its evaluation to information within the 12-month window, the agency states that "the solicitation indicates that the offeror should submit and [that the agency] would evaluate information for the twelve months preceding the solicitation issue date." AR at 56. However, with respect to the agency's evaluation of information outside the 12-month window, the agency states that "[l]ogically, [the] most recent performance would be more important than . . . performance in past years."¹¹ Id. at 57; see also Supp. AR at 35.

We find the agency's inconsistent application of the 12-month window to be unreasonable. We see nothing in the solicitation--and the agency has offered nothing of substance--to support the approach of strictly adhering to the 12-month window in some instances (and where more recent data is available), but evaluating outside of the 12-month window in other instances. As stated above, we do not view the solicitation to have limited the agency to consideration of information within the 12-month window. However, because the agency here adopted the view that the solicitation imposed such a limit in at least one area of the evaluation in a manner that materially and adversely affected Supreme's evaluation ratings, fairness dictates that the agency should have adhered to that interpretation across the board, rather than considering information outside the 12-month window on a selective basis. In short, because of the agency's inconsistent and unreasonable application of the 12-month window, which resulted in unequal treatment of the offerors, this basis of protest is sustained.

Prejudice

As discussed above, the record shows that the agency's evaluation of Supreme's and ANHAM's proposals was unreasonable in several respects. Our Office will not sustain a protest, however, unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the

¹¹ The record reflects that the agency considered favorable past performance information for ANHAM that was outside the 12-month window. See AR at 58-59 n.16.

protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3.

It is unclear what precise effect the flaws discussed above had on the assessment of the technical quality of the proposals or the evaluation as a whole. Our review shows that both Supreme's proposal and ANHAM's proposal were reasonably evaluated in some respects, but that the evaluation was unreasonable in other respects. We cannot say whether the SSA would have determined that the technical merits of Supreme's proposal did not justify the payment of a price premium if the evaluation results were adjusted to account for the flaws discussed above. In such circumstances, we resolve any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. See Kellogg, Brown & Root Servs., Inc.-Recon., B-309752.8, Dec. 20, 2007, 2008 CPD ¶ 84 at 5. Accordingly, we conclude that Supreme has established the requisite competitive prejudice to prevail in a bid protest.

The protest is sustained.¹²

RECOMMENDATION

We recommend that the agency reevaluate Supreme's and ANHAM's proposals in a manner that is reasonable and consistent with the solicitation's evaluation criteria and this decision. For example, the agency should reevaluate the proposals under the size and complexity element by considering the most relevant contracts on an individual basis; reevaluate ANHAM's proposal under the past performance subfactor by considering the fill rate information in ANHAM's proposal or by documenting the basis for considering other fill rate information; and reevaluate the offerors' past performance information in a manner that does not involve inconsistently excluding past performance information from the same time period without a reasonable basis. After completing and documenting the reevaluation, the agency should perform and document a new price/technical tradeoff analysis. If ANHAM's proposal is not found to offer the best value to the government, the agency should terminate ANHAM's contract for the convenience of the government

¹² Supreme's protest includes numerous allegations other than those discussed above. For example, Supreme asserts that the agency improperly failed to amend the solicitation to reflect its actual requirements; that the agency conducted unequal discussions by accepting post-FPR proposal submissions from ANHAM but not Supreme; and that the agency's affirmative determination of ANHAM's responsibility was flawed due to an incomplete analysis of ANHAM's financial capability. We have reviewed and considered each of Supreme's allegations, along with the entire evaluation record, and conclude that none furnishes any additional basis to sustain the protest.

and make award to the offeror whose proposal is found to provide the best value to the government. We also recommend that Supreme be reimbursed its costs of filing and pursuing the protest. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2012). Supreme's certified claims for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. Id. § 21.8(f)(1).

Lynn H. Gibson
General Counsel