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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: WKG and Associates, LLC

File: B-409835

Date: August 26, 2014

Warren Gladden, WKG and Associates, LLC, for the protester.
JiSan Lopez, Esq., Department of Energy, for the agency.
Charles W. Morrow, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the evaluation of a resume submitted by the protester is denied where the record shows that the agency reasonably found that the lack of sufficient detail in the resume reflected a performance risk.
 2. Protest challenging the agency's evaluation of the protester's past performance is denied where the record shows that the agency reasonably rated the protester's performance record as neutral because of the absence of qualitative information concerning the protester's performance.
 3. Award to a higher-price, higher-technically rated vendor is unobjectionable where, consistent with the terms of the solicitation, the agency reasonably concluded that the awardee's quotation provided the best value to the government.
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DECISION

WKG and Associates, of Waldorf Maryland, protests the award of a purchase order to D Diamond Consulting, of Seattle, Washington, under request for quotations (RFQ) No. DE-SOL-0006914, which was issued by the Department of Energy, National Nuclear Security Administration (NNSA), for fact-finding services. WKG challenges the agency's evaluation of vendors' quotations and the award decision.

We deny the protest.¹

¹ Our Office did not issue a protective order in connection with this protest because WKG did not elect to retain counsel. A full version of the agency report was

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BACKGROUND

The RFQ was issued on April 23, 2014, as a small business set-aside, and anticipated the award of a fixed-price purchase order.² RFQ at 3. The agency issued a combined synopsis/solicitation using the commercial acquisition procedures of Federal Acquisition Regulation (FAR) part 12 and the simplified acquisition procedures of FAR part 13. Id. NNSA sought a vendor to provide independent fact-finding services to investigate a “Hostile Work Environment” allegation filed by an employee at the agency’s Office of Corporate Services. Id. at 4. The vendor was required to perform the following tasks: (1) review and obtain copies of pertinent documents, (2) conduct interviews of individuals at the DOE’s James Forrestal Building to determine facts of the allegation, and (3) prepare a written report. RFQ, Attach. 1, at 1-2.

The RFQ provided for award on a best-value basis considering the following three evaluation factors, which were in listed descending order of importance: (1) resumes, (2) past performance, and (3) price. RFQ at 6. The resumes factor stated that the agency would evaluate “the degree to which the proposed individual(s) demonstrates the expertise, understanding, ability, and performance risk to perform and execute the [performance work statement (PWS)] tasks and deliverables.” Id. The past performance factor stated the agency would evaluate the degree to which a vendor’s performance record demonstrates its ability to successfully perform the PWS tasks, based on information from past performance project sheets submitted by the vendor, as well as information from other sources, including the past performance information retrieval system (PPIRS). Id. The solicitation stated that the agency would evaluate whether the past performance information is relevant, of similar size and scope; vendors that did not have relevant past performance would be rated as neutral. Id. The RFQ stated price would not be rated, but would be evaluated to determine reasonableness based on the price analysis techniques in FAR § 15.404-1. Id.

Eight vendors, including WKG and D Diamond, submitted quotations by the closing date of April 30. A technical evaluation panel (TEP) evaluated the quotations under factor 1, and the contracting officer (CO) and contract specialist (CS) evaluated quotations under factors 2 and 3. Agency Report (AR) at 7. The CO and CS evaluated vendors’ past performance by reviewing the PPIRS database and past

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provided to our Office, while a redacted version of the report was furnished to the protester. We have reviewed the entire unredacted record in camera.

² The RFQ incorporated North American Industry Classification System (NAICS) code 561611 for Investigative Services.

performance questionnaires which were sent to the vendors' references. Id. The CO and CS evaluated vendors' prices, and found all prices to be reasonable based on a comparison to the independent government cost estimate (IGCE)³ and adequate price competition. Id.

The evaluation results relevant here were as follows:⁴

	WKG	D DIAMOND
Resumes	Satisfactory	Excellent
Past Performance	Neutral	Very Good
Price	\$16,000	\$36,000

AR, Tab B, Source Selection Document, at 8-9, 18-19.⁵

Based on a comparative analysis of vendors' quotations, the source selection official (SSO) concluded that D Diamond's quotation provided the best value to the government. Id. at 24. The SSO concluded that D Diamond's quotation demonstrated the following strengths: (1) a resume which reflected excellent expertise, understanding, and ability to perform the PWS tasks, and (2) very good past performance. Id. at 22. The SSO noted that D Diamond's submitted resume demonstrated the highest quality under the resumes factor, the most important technical factor, and that D Diamond's price was reasonable based on adequate price competition. Id. By contrast, the SSO noted that although WKG's price was lower than D Diamond's, WKG had a lower rating under the resumes factor, and that the resume provided reflected a performance risk. Id. at 22-23. The SSO concluded that WKG's lower price did not offset the quotation's performance risk. Id. at 23. The SSO selected D Diamond for award on May 12. This protest followed.

³ The IGCE was priced at \$8,750.

⁴ The possible ratings for the resumes factor were: excellent, good, satisfactory, marginal, or unsatisfactory. RFQ at 7. The possible ratings for the past performance factor were: exceptional, very good, satisfactory, marginal, unsatisfactory, or neutral. Id. at 6-8.

⁵ Page citations herein refer to the pagination for documents provided by the agency in its report.

DISCUSSION

WKG contends that NNSA unreasonably evaluated its quotation under the resumes and past performance factors. Specifically, WKG argues that the agency conducted a perfunctory review of its submitted resume by failing to understand the relevance of the cited experience. The protester also argues that the agency improperly assigned WKG's past performance a neutral rating, even though the agency determined that WKG had relevant past performance. Finally, the protester challenges the propriety of the best-value decision because D Diamond's quotation was more than twice the price of WKG's. For the reasons discussed below, we find no basis to sustain the protest.

As noted above, the procurement was conducted under simplified acquisition procedures. When using simplified acquisition procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. Emergency Vehicle Installation Corp., B-408682, Nov. 27, 2013, 2013 CPD ¶ 273 at 4. In reviewing a protest of a simplified acquisition evaluation, we examine the record to determine whether the agency met this standard and exercised its discretion reasonably. DOER Marine, B-295087, Dec. 21, 2004, 2004 CPD ¶ 252 at 3. A protester's mere disagreement with the agency's judgment does not establish that the evaluation was unreasonable. DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

Resume Evaluation

WKG's quotation stated that the protester is a business comprised of two individuals, including the director, Warren K. Gladden. See AR, Tab C.2, WKG Quotation, at 41. WKG submitted the resume of Mr. Gladden for evaluation under the resumes factor. The information in the resume was organized under five headings: EEO (Equal Employment Opportunity) specialist/investigator; professional experience; federal and private sector employment experience; and education and certifications.

Under the EEO specialist/investigator heading, Mr. Gladden's resume stated that he is an "[e]xperienced employment discrimination law investigator and litigator seeking a position as an EEO investigator." Id. at 38. The resume further stated that Mr. Gladden has over 35 years employment experience in the federal and private sectors; has experience in administrative process under 29 C.F.R. part 1614 (which concerns federal EEO law) and in pursuing civil litigation through federal and district and appellate courts; and has filed petitions to the U.S. Supreme Court for writs of

certiorari in six suits where Gladden was the complainant.⁶ Id. Under the professional experience heading, the resume listed work as a paralegal from June 2007 to the present and describes Mr. Gladden's activities pursuing EEO complaints. Id. at 38-39. Under the federal and private sector employment experience heading, the resume listed the following experience for Mr. Gladden from December 1974 to September 2012: electronics engineer; member of technical staff; engineer section manager; senior member of technical staff/project manager; and estimating supervisor. Id. at 39. Under the education heading, the resume lists the following educational qualifications: graduate certificate in project management; masters of science in electrical engineering; and bachelor of science in physics. Id. Under the certifications heading, the resume states Mr. Gladden is a "Certified EEO Investigator" per 29 C.F.R. § 1614.108, and EEOC (Equal Employment Opportunity Commission) Management Directive-110. Id.

The TEP's evaluation of Mr. Gladden's resume found no strengths, and the following weakness:

Mr. Gladden's resume demonstrated minimal expertise, understanding, and ability to perform the PWS task 3.1. For example, Mr. Gladden's resume stated that he has "participated in conciliation sessions with the parties involved to attempt informal resolution of complaints," has "monitored federal employment programs analyzing management practices, organizational structures and employment [m]atters to determine the existence of EEO problem areas/barriers, processed formal EEO complaints, and is an experienced investigator of EEO complaints on a [Department of Defense (DOD)] installation. However, his resume does not state that he was the primary investigator or leader of these activities or provide any further details, such as the location of the DoD installation or the clients for whom he provided these services. Based on the lack of information provided, it is unclear to the Government as to whether Mr. Gladden would be able to perform the task and deliverables for PWS task 3.1. This is a performance risk.

AR, Tab E, TEP Evaluation, at 1. Based on this evaluation, the TEP assigned WKG a satisfactory rating for the resumes factor. Id.

⁶ These cases were identified as follows: Gladden v. Vilsack, No. 12-5690; Gladden v. Solis, No. 12-7015; Gladden v. Bolden, No. 12-5840; Gladden v. McHugh, No. 12-6083; and Gladden v. Bryson, Nos. 12-5689 and 12-6439.

WKG argues that the satisfactory rating was unreasonable, and that an excellent rating more accurately reflects the expertise and skills in the resume.⁷ WKG argues that Mr. Gladden's experience litigating his own complaints against federal agencies on a pro se basis, his 30 years as a professional engineer and scientist, and his work as a paralegal pursuing EEO complaints demonstrates that he is able to perform the PWS tasks. See Protester's Comments (June 30, 2014) at 3. WKG further maintains that the skills necessary to perform the PWS tasks were reflected in Mr. Gladden's qualifications, including: conducting face to face interviews and fact-finding through discovery; researching relevant authorities and writing briefs; writing and submitting reports to diverse audiences as an engineer; experience as an EEO investigator; and an EEOC certification. See id. at 3-16.

Based on the record here, we find no reason to conclude that the agency's evaluation was unreasonable. The agency rated Mr. Gladden's resume as satisfactory because it provided minimal details regarding his understanding of the requirements and ability to perform the required tasks. See AR, Tab E, TEP Evaluation, at 1. In this regard, the TEP found that the resume did not provide details regarding the nature of his experience, e.g., whether he had a lead or primary role in the activities cited. Id. The agency also found that Mr. Gladden's resume did not provide specific details regarding the type of EEO issues with which Mr. Gladden had specific experience, such as age discrimination, racial discrimination, or hostile work environments. See AR at 10-11; Tab C.2, WKG Quotation, at 38-39.

WKG argues that Mr. Gladden's experience filing pro se complaints and pursuing appeals demonstrate his ability to perform the work. The agency states, however, that it viewed the work of pursuing one's own claims on a pro se basis as different than the requirements set forth in the solicitation, and that Mr. Gladden's experience of filing numerous complaints on his own behalf "was not considered by the TEP to demonstrate superior, or even above average, expertise with a very high or high probability of successful . . . performance with a low degree of risk." AR at 11. In this regard, the RFQ required vendors to provide "independent fact-finding services." RFQ at 16. On this record, we think that the agency reasonably

⁷ The RFQ defines an excellent rating as "[t]he resume demonstrated superior expertise, understanding, and ability to perform the PWS tasks and deliverables. The Vendor has strengths that appreciably outweigh any weaknesses; very high probability of successful Purchase Order performance with a low degree of risk." RFQ at 7. The RFQ defines a satisfactory rating as "[t]he resume demonstrated adequate expertise, understanding, and ability to perform the PWS tasks and deliverables. The Vendor has both strengths and weaknesses that are generally offsetting; reasonable probability of successful Purchase Order performance with a moderate degree of risk." Id.

concluded that Mr. Gladden's pro se work did not demonstrate experience that merited a rating higher than satisfactory.

With regard to Mr. Gladden's other work experience, the TEP noted that the resume did not provide any details concerning the work he states was performed for DOD. See AR, Tab C.2, WKG Quotation, at 38-39. For example, as the agency explains, the "professional experience" listed in Mr. Gladden's resume concerned approximately 7 years of experience as a paralegal pursuing EEO claims, but did not clearly address whether this work was done in support of his own pro se complaints, or on behalf of clients.

WKG acknowledges that Mr. Gladden's resume did not identify the DOD agency for whom he now states he performed work. Protester's Comments (June 30, 2014) at 12. The protester nonetheless contends the past performance section of its quotation identified two contract references for WKG involving EEO investigations on behalf of the Defense Intelligence Agency (DIA). See AR, Tab C.2, WKG Quotation, at 42-43. As discussed in detail below, however, the agency was unable to verify any details concerning WKG's performance of these contracts. AR, Tab E, Technical Evaluation, at 1. Additionally, the protester's resume did not clearly state that the work involving EEO complaints at a "DOD installation" was the work identified in the past performance section, nor did the past performance section state that Mr. Gladden (as opposed to a different individual for WKG and Associates) performed the work for DIA. See AR, Tab C.2, supra, at 39, 42-43. In any event, we do not think it was the agency's responsibility to infer that the projects submitted by WKG pertained to the experience of Mr. Gladden reflected in his resume. Instead, it is a vendor's responsibility to submit an adequately written quotation demonstrating its merits and capability. See Westar Aero & Def. Grp., Inc., B-408285, B-408285.2, Aug. 9, 2013, 2013 CPD ¶ 212 at 5.

In sum, we find that the agency reasonably found that the lack of specific details in Mr. Gladden's resume created a risk of unsuccessful performance, and that the agency therefore reasonably assigned a satisfactory rating to WKG's quote for this evaluation factor.⁸ To the extent the protester disagrees and argues that the rating should have been higher, the protester's arguments here provide no basis to sustain the protest.

WKG additionally argues that D Diamond's experience could not be superior to the protester's, based on a review of the awardee's website and the description of the awardee's experience therein. See Comments at 14-16. However, our review of the

⁸ To the extent WKG argues that Mr. Gladden's experience in non-EEO technical matters also reflects his ability to perform the RFQ requirements, the protester's quotation did not explain the basis for this position. We find no merit to the protester's arguments in this regard.

resume provided in D Diamond's quotation does not provide a basis for us to question the evaluation of these two quotations. Unlike WKG's resume, the resume submitted by D Diamond specifically identified experience in the PWS tasks and supports the agency's assignment of an excellent rating to the awardee's resume. See AR, Tab C.1, D Diamond Resume, at 1-3. The protester's disagreement with the agency's judgments is insufficient to establish that the evaluation was unreasonable. See DEI Consulting, supra.

Past Performance Evaluation

Next, WKG argues that NNSA's past performance evaluation was unreasonable because the agency rated its past performance as neutral, despite finding that it had submitted relevant contracts. We disagree.

The evaluation of a vendor's past performance is a matter within the discretion of the contracting agency, and we will not substitute our views for a reasonably based past performance rating. Gonzales-McCauley Investment Grp., Inc., B-402544, May 28, 2010, 2010 CPD ¶ 127 at 3.

For past performance, WKG submitted three past performance project sheets (PPPS): one for the work by Mr. Gladden in pursuit of his own discrimination claims on a pro se basis, and two for WKG's work investigating EEO complaints on behalf of DIA.⁹ See AR, Tab C.2, WKG Quotation, at 42-44. The record shows that the CO searched PPIRS, but found no information on WKG. AR, Tab E, TEP, at 1. The CS sent questionnaires to the references identified in WKG's quotation for the two DIA contracts, but did not receive any responses.¹⁰ Id. The evaluator's determined that WKG's past performance was relevant; however, because of the absence of any relevant information on the quality of how the protester had performed these contracts, the agency assigned a neutral rating. See id.; AR at 13.

We find that the agency reasonably evaluated WKG's performance. The RFQ stated that the purpose of the past performance evaluation was to determine the degree to which the past performance record demonstrated the vendor's ability to successfully perform the PWS tasks. See RFQ at 6. Here, the agency did not have any information to make this determination because none of WKG's references

⁹ As noted above, the PPPS do not specifically state whether Mr. Gladden was involved with the work performed by WKG for DIA. See AR, Tab C.2, WKG Quotation, at 42-44. In this regard, WKG was identified as a two-person firm in materials provided by the protester. Id. at 41.

¹⁰ For Mr. Gladden's pro se EEO complaints, the WKG quotation did not provide a point of contact or any other information for reference purposes. AR, Tab C.2, WKG Quotation, at 44.

responded to the agency's questionnaires, and because the PPPS for Mr. Gladden's pro se work did not provide any contact references--and in fact stated that the contact information was "N/A," or not applicable. As our Office has held, agencies are not required to receive a response from all past performance references identified by an offeror or vendor in order to conduct a review of that offeror or vendor's performance record. See Dragon Servs., Inc., B-255354, Feb. 25, 1994, 94-1 CPD ¶ 151 at 8.

WKG also argues that a neutral rating is inconsistent with the definition for that rating set out in the RFQ (that is, a vendor with no relevant experience). As discussed above, the agency concluded that WKG identified relevant contracts, but was unable to obtain any indication of how WKG performed on these contracts. We think that a neutral rating here is consistent with the requirement to not assign positive or negative ratings to an offeror or vendor "without a record of relevant past performance or for whom information on past performance is not available." See FAR § 15.305(a)(2)(iv). On this record, we find that NNSA reasonably evaluated WKG's past performance.

Best Value Decision

Finally, the protester challenges the award decision because D Diamond's price was more than twice WKG's price. We find no merit to this argument.

Where, as here, a solicitation allows for a price-technical tradeoff, an agency has the discretion to select a higher-priced, higher-rated submission, if doing so is in the government's best interest, and is consistent with the solicitation's stated evaluation and source selection scheme. See University of Kansas Med. Ctr., B-278400, Jan. 26, 1998, 98-1 CPD ¶ 120 at 6.

Here, NNSA's decision to make the award to D Diamond was consistent with the evaluation scheme. The solicitation stated that vendors' resumes and past performance was more important than price. The SSO found that D Diamond's quotation provided the best value because the awardee's quotation received an excellent rating under the resumes evaluation factor, for the reasons discussed above, and because D Diamond's price was reasonable based on adequate price competition. AR, Tab B, Source Selection Document, at 22. The SSO also found that WKG's lower price did not merit award in light of the performance risks identified in Mr. Gladden's resume. Id. at 23. While the protester contends that the

agency's selection decision was not reasonable, we find no basis to conclude that the decision was inconsistent with the solicitation or otherwise unreasonable.¹¹

The protest is denied.

Susan A Poling
General Counsel

¹¹ WKG also argues that D Diamond's price was unreasonably high, based on what the protester contends are comparable rates under the General Services Administration's schedule contract No. 738X for EEO counselors and specialists. As discussed above, however, the agency found that the awardee's price was reasonable based on adequate price competition. AR, Tab B, Source Selection Document, at 21-22. In this regard, the agency found that all vendors quoted prices above the IGE, and that two vendors quoted prices below, and three vendor's quoted prices above, the awardee's price. *Id.* at 21. This evaluation approach satisfies the applicable regulation and evaluation scheme. See FAR § 15.404-1(b)(2)(i) (adequate price competition establishes a fair and reasonable price).