



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** R4 Integration, Inc.

**File:** B-409717; B-409717.2

**Date:** June 6, 2014

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John S. Parsley, R4 Integration, Inc., for the protester.  
Douglas C. Proxmire, Esq., and Elizabeth M. Gill, Esq., Patton Boggs LLP, for TKC Aerospace, Inc., the intervenor.  
Dennis J. Gallagher, Esq., Department of State, 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.

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### DIGEST

1. Protest challenging the evaluation of the awardee's past performance is denied where the record shows that the agency reasonably considered the awardee's performance record in accordance with the solicitation criteria.
  2. Protest challenging the contracting officer's affirmative determination of responsibility for the awardee is dismissed where the protester's allegation concerning the awardee's potential financial risks does not constitute the type of information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible, as required for review by our Office.
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### DECISION

R4 Integration, Inc., of Fort Walton Beach, Florida, protests the award of a contract to TKC Aerospace, Inc. (TKCA), of Anchorage, Alaska, under request for proposals (RFP) No. SAQMMA14R0197, issued by the Department of State (DOS), for two modified Raytheon Beechcraft 1900D fixed-wing aircraft.<sup>1</sup> R4 contests the agency's past performance evaluation of TKCA and determination that TKCA possessed adequate financial resources.

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<sup>1</sup> In response to the agency's request, we issued this decision under the express option provisions of our Bid Protest Regulations. See 4 C.F.R. § 21.10 (2014).

We deny and dismiss in part the protest.<sup>2</sup>

## BACKGROUND

The RFP was posted on February 27, 2014, as a combined synopsis/solicitation, and stated that the procurement was a total small business set-aside, in accordance with the commercial item acquisition procedures of Federal Acquisition Regulation (FAR) part 12. It provided for the acquisition of two modified Raytheon Beechcraft 1900D fixed-wing aircraft under a fixed-price contract. Award was to be made to the offeror that submitted the lowest-priced, technically-acceptable proposal,<sup>3</sup> and also demonstrated satisfactory past performance. RFP at 33.

As relevant here, the RFP stated that offerors' past performance would be rated as satisfactory or unsatisfactory, based on the following:

Demonstrate satisfactory past performance. The government may seek relevant performance information on all responsive and otherwise Technically Acceptable Offerors through sources such as DCMA [Defense Contract Management Agency] offices, CPARS [contractor performance assessment reporting system] or PP[IR]S [past performance information retrieval system] or other government data bases and other sources that are available. The government shall not be limited in its search for performance data. When performance is evaluated, the outcome is either satisfactory or unsatisfactory. Unsatisfactory performance will disqualify an offeror from award.

RFP at 37.

The solicitation required offerors to submit at least two past performance questionnaires filled out by the offeror's references. Id. at 32.

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<sup>2</sup> R4 was not represented by counsel in this protest. Accordingly, our Office did not issue a protective order, and R4 was only provided a redacted version of the agency report. In resolving the protest, we reviewed unredacted copies of all evaluation and source selection documents in camera, and have based our decision on the full record. As much of the information reviewed by our Office is source selection sensitive and proprietary in nature, our discussion of the evaluation is necessarily limited.

<sup>3</sup> The technical evaluation factors were: (1) number of aircraft hours; (2) number of engine hours; (3) aircraft component life; (4) delivery schedule; (5) avionics; (6) past experience; and (7) letters of intent. See RFP at 33-36.

Two offerors, TKCA and R4, responded to the RFP by the closing date on March 17. A technical evaluation team evaluated the proposals under the seven evaluation factors. Agency Report (AR), Tab 10, Source Selection Recommendation, at 7-10. The contracting officer evaluated the offerors' past performance. Contracting Officer's Statement at 7. Based on these evaluations, both TKCA's and R4's proposals were rated acceptable under all seven evaluation factors, were rated satisfactory for past performance, and were determined to reflect reasonable prices. Because TKCA's price of \$14,359,996.80 was lower than R4's price, DOS awarded the contract to TKCA on April 3. AR, Tab 10, Source Selection Recommendation, at 7-10. This protest followed.

## DISCUSSION

R4 contends that DOS's evaluation of TKCA's past performance and responsibility were unreasonable because of poor performance on prior contracts and because TKCA lacked adequate financial resources. As discussed below, we find no basis to sustain the protest.<sup>4</sup>

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<sup>4</sup> R4 raised several other protest arguments which we previously dismissed, including: that TKCA engaged in unethical business practices in its dealings with R4; that DOS discriminated against R4 during the evaluation process by refusing to allow the protester to modify its proposal; and that DOS failed to provide a complete debriefing. See Protest at 13-17. We dismissed these protest grounds on April 24, 2014, advising the parties that each of these grounds either failed to set forth a valid basis of protest, or were untimely. Accordingly, our decision only addresses the issues that remained for our review. R4 also filed a supplemental protest arguing that TKCA improperly submitted an electronic proposal in violation of the terms of the solicitation. However, R4 withdrew this basis of protest. See R4 Supp. Comments at 2. Additionally, R4 raised other collateral arguments; we have reviewed all of the protester's arguments and find that none provides a basis to sustain the protest. For example, the protester argues that the agency failed to respond to the protester's inquiry regarding pre-award aircraft inspections. Protester's Comments at 7-8. In its protest, R4 asked whether the agency had evaluated this issue. Protest at 16. We did not request that the agency provide documents in response to the protester's request because the protester did not assert a valid basis of protest that would require the production of such documents. See Bid Protest Regulations, 4 C.F.R. § 21.5(f) (2014). In this regard, the protester did not allege any facts that suggested that the agency had failed to conduct a pre-award survey of the awardee's aircraft, but merely asked that the agency verify whether it done so.

## Past Performance

R4 argues that DOS unreasonably rated TKCA's past performance satisfactory by not meaningfully considering TKCA's entire past performance record. Specifically, R4 identifies several contracts, including several with DOS, that the protester found through publicly-available sources. Protest at 9; Protester's Response to Request for Dismissal (Apr. 23, 2014) at 1. The protester contends that these references show that TKCA, and its subcontractors, have been "seriously deficient in contract performance."<sup>5</sup> Protest at 7.

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. SIMMEC Training Solutions, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. A protester's disagreement with such judgment does not provide a basis to sustain a protest. ManTech SRS Techs., Inc., B-408452, B408452.2, Sept. 24, 2013, 2013 CPD ¶ 249 at 10.

As discussed above, the RFP provided for consideration of at least two completed past performance questionnaires to be the basis for the DOS's evaluation of an offeror's past performance. RFP at 32. The RFP also advised that the government could seek relevant past performance information through other sources such as the Defense Contract Management Agency, Contractor Performance Assessment Reports (CPARs), Past Performance Information Retrieval System (PPIRS), or other available government data sources. Id. at 32, 37.

The record shows that the contracting officer considered two past performance questionnaires submitted by TKCA, both of which involved TKCA contracts with DOS. For one of the references, TKCA delivered four modified Beechcraft 1900D aircraft to the agency (May 2009-September 2009); on the other TKCA delivered a modified medium lift (Bombardier Dash 8) aircraft to the agency (May 2010-July 2010). AR, Tab 12, Past Performance Questionnaires, at 1. The completed questionnaires reflect that the knowledgeable agency official rated TKCA either satisfactory or very good for each of the rating elements under the major rating categories: (1) quality; (2) timeliness of performance; (3) management; and (4) compliance with environmental, safety of flight, FAA (Federal Aviation

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<sup>5</sup> For instance, R4 alleges that it believes that TKCA has missed delivery schedules and experienced cost overruns, which has required the government to provide contract modifications to extend period of performances for the delivery of aircraft, aircraft technical data, and the necessary funding to cover unplanned repairs and changes. Protest at 7.

Administration), and security requirements. See id. at 2-4. For each of the references, the individual responding to the questionnaire advised that he would award another contract to TKCA. Id. at 4. The record shows that the contracting officer also considered two CPARs on contracts completed in 2013, one from DOS, and the other from the General Services Administration. AR, Tab 11, CPAR Reports, at 1, 4. TKCA was rated either very good, exceptional or satisfactory on all of the areas where it was rated by these agencies. Id. at 2, 5.

Moreover, as DOS notes, none of the information provided by R4 to support its challenge to the evaluation of TKCA's performance record is based on completed questionnaires or other evaluations retained in government databases, such as CPARS or PPIRS. See Protest at 9. In this regard, DOS contends that none of the contract information cited by the protester reflects whether there were changes in the government's requirements or excusable delays or schedule waivers. In addition, none of the information includes any past performance assessments by DOS or any other government officials. See AR at 11. Further, at least one of the contracts listed by R4, which it argues is evidence that TKCA was a poor performer, is one of the contracts that the agency considered supported the satisfactory rating. Specifically, the DOS reference who rated TKCA's performance found that the company had satisfactorily/very good performance under the various rating elements. AR, Tab 12, Past Performance Questionnaire No. 1, at 1. On this record, we find that R4's allegations regarding TKCA contracts do not demonstrate that DOS unreasonably evaluated TKCA's past performance.

R4 also argues that DOS acted unreasonably in limiting its review of TKCA's past performance record to the information submitted in the awardee's proposal, and the CPARS. The protester contends that the solicitation, which stated that "[t]he government shall not be limited in its search of performance data," RFP at 37, obligated the agency to conduct a more extensive search of TKCA's past performance. We disagree. This provision did not require the government to undertake an open-ended search of an offeror's past performance record, and instead recognized that the agency had the discretion to seek past performance information outside the offeror's proposal if it decided that such information was necessary. In any event, our Office has held that agencies are not required to contact all of an offeror's performance references, or seek out all possible additional sources of past performance information, aside from circumstances not present here. See OMV Med., Inc.; Saratoga Med. Center, Inc., B-281387 et al., Feb. 3, 1999, 99-1 CPD ¶ 52 at 4; Cessna Aircraft Co., B-261953.5, Feb. 5, 1996, 96-1 CPD ¶ 132 at 20.

In sum, we conclude that the agency's evaluation was reasonable. The record shows that the agency's past performance evaluation complied with the criteria established in the RFP for conducting the past performance evaluation. As noted, TKCA provided two past performance questionnaires as required by the solicitation and the agency considered the information in the questionnaires, as well as two

CPARS related to TKCA's past performance. To the extent the protester believes that the information reviewed by the agency should have resulted in the assessment of an unsatisfactory rating for TKCA's past performance, the protester's disagreement with the agency's judgment does not provide a basis to sustain the protest.

#### TKCA Financial Risk

Next, R4 argues that TKCA lacked adequate resources to perform the contract, or the ability to obtain them, as a result of litigation being faced by the company and because of the company's allegedly poor record of paying subcontractors. R4 contends that DOS should have found TKCA to be nonresponsible based on these financial circumstances.

Contracts may only be awarded to responsible prospective contractors. FAR § 9.103(a). In making a responsibility determination, the contracting officer must find, among other things, that the contractor has "adequate financial resources to perform the contract, or the ability to obtain them." FAR § 9.104-1(a). Because the determination that a bidder or offeror is capable of performing is committed to the discretion of the contracting officer, we will consider a protest of an affirmative determination of responsibility only where it is alleged that definitive responsibility criteria in the solicitation were not met, or where the protest identifies evidence raising serious concerns that in reaching the responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. 4 C.F.R. § 21.5(c); T.F. Boyle Transp., Inc., B-310708, B-310708.2, Jan 29, 2008, 2008 CPD ¶ 52 at 5. We will review a challenge to an agency's affirmative responsibility determination where the protester presents evidence that the contracting officer may have ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. Verestar Gov't Servs. Group, B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68 at 4-5.

Here, the contracting officer reports that the decision to affirmatively find TKCA to be a responsible offeror was based on its record of performance of similar requirements, and the absence of any information to cause the agency to doubt TKCA's capability to perform the contract requirements. See Contracting Officer's Statement at 8. The protester's allegations that TKCA lacked adequate financial resources due to unresolved litigation, as opposed to proven insolvency, is not the type of allegation that would meet the threshold showing for review of a challenge to an affirmative

responsibility determination.<sup>6</sup> See Hendry Corp., B-400224.2, Aug. 25, 2008, 2008 CPD ¶ 164 at 2-3.

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>6</sup> R4 also argued that TKCA's past performance should have led the contracting officer to conclude that the awardee was not a responsible contractor. Because we conclude, as discussed above, that the agency reasonably evaluated the awardee's past performance as satisfactory, we find no basis to conclude that the contracting officer failed to consider available relevant information that should have affected the responsibility determination.