



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: RELYANT Global, LLC

File: B-413741

Date: November 21, 2016

Donald M. Patton, for the protester.
Kenneth Biles, for Gear International, LLC, the intervenor.
Robin E. Walters, Esq., Defense Logistics Agency, for the agency.
Kenneth Kilgour, Esq., and Laura Eyester, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency unreasonably evaluated past performance is denied where the record shows that the evaluation was reasonable and consistent with the solicitation criteria.

DECISION

RELYANT Global, LLC, of Maryville, Tennessee, protests the award of a contract to Gear International, LLC, of Pensacola, Florida, under request for proposals (RFP) No. SP4510-16-R-0002, issued by the Defense Logistics Agency (DLA) for equipment repair and maintenance services in Bagram and Kandahar, Afghanistan. The protester asserts that the agency's past performance evaluation and the resulting award decision were unreasonable.

We deny the protest.

BACKGROUND

The RFP, issued on April 29, 2016, sought proposals for the award of single fixed-price, indefinite-delivery/indefinite-quantity contract to the offeror whose proposal represents the best value to the government, considering past performance and price, with past performance significantly more important than price. RFP at 18, 59. The RFP requires the contractor to provide preventive maintenance and repairs for all material handling equipment and unscheduled maintenance and repairs for specified equipment at two locations in Afghanistan--Bagram and Kandahar. Id. at 3. The independent government estimate (IGE) of the value of the contract for

the base and two option periods was \$[DELETED]. Agency Report (AR), Tab 14, Simplified Acquisition Award Documentation, at 1.

With respect to past performance, offerors were to identify up to three government or commercial projects “for the same or similar services for performance in Afghanistan within the last 2 years.” RFP at 16. The RFP advised offerors that their description of the work performed must be sufficient to explain how each reference was the same or similar to the requirements of the solicitation in areas such as performance timeframes, performance in Afghanistan, managing a similar size workforce, and complexities of services. Id. at 17. In addition, the RFP required offerors to provide a past performance survey, set forth in an attachment to the RFP, to the past performance references identified in the proposal, and the past performance reference was required to independently submit the survey to the contracting officer. Id. The RFP stated that the government may consider information obtained from other sources but that it would not contact references for purposes of obtaining the survey. Id.

The RFP stated the agency would evaluate past performance on an adjectival scale and that the assessment of the offeror’s past performance would be used as a means of evaluating the offeror’s probability of success. RFP at 17. The RFP provided that the “offered price will be used in conjunction with the other factors to determine the proposal which represents the best value to the Government. Price will not be numerically scored, but it will be fully evaluated using price evaluation techniques.” Id. at 18. In addition, the RFP stated the government would evaluate price by adding the total price for the base requirement and all options, and may determine an offer is unacceptable if the option prices are materially unbalanced. Id. at 48.

The protester, the awardee, and 14 other firms submitted proposals. AR, Tab 13, Competitive Range Determination, at 1. Three of the 16 proposals, including those of the protester and the awardee, were given ratings of substantial confidence under past performance. Id.

Gear’s past performance proposal identified three contracts, all of which were for work performed in Afghanistan; at least one of these contracts had a value higher than the IGE here. AR, Tab 6, Gear Past Performance Evaluation, at 1; Tab 4, Gear Vol. 2 Past Performance Proposal, at 6-8. Gear’s first contract reference involved a full range of fleet vehicle maintenance, material handling maintenance, special tool/equipment maintenance and calibration, and warehouse operations and inventory management for national air cargo operations throughout Afghanistan. Id.; Tab 4, Gear Vol. 2 Past Performance Proposal, at 6. Gear’s second past performance reference involved providing certified full-time mechanics, parts, tools, and equipment required to perform scheduled and unscheduled maintenance on all makes and models of non-tactical vehicles, and standard materials handling equipment, at 11 locations throughout Afghanistan. Id.; Tab 4, Gear Vol. 2 Past

Performance Proposal, at 7. Gear's third past performance reference involved its performance as a subcontractor where Gear was responsible for all maintenance activities and parts procurement, tracking, installation, and invoicing at eight locations throughout Afghanistan. Id.; Tab 4, Gear Vol. 2 Past Performance Proposal, at 8. Gear's overall survey responses were very good or exceptional. Id. at 2.

The protester's past performance references included the incumbent contract, valued at \$8.681 million, and two other contracts with a contract value lower than the IGE for this requirement. AR, Tab 12, RELYANT Past Performance Evaluation, at 1; Tab 10, RELYANT Vol. 2 Past Performance Proposal, at 5-9.

The agency's award determination noted that although RELYANT was the incumbent contractor, Gear had extensive experience at multiple locations throughout Afghanistan, on contracts of greater dollar value and complexity than the solicited requirement. AR, Tab 14, Simplified Acquisition Award Documentation, at 3. The agency noted that, while the solicitation requires operation at two locations, Gear's past performance references demonstrated experience operating eight maintenance facilities for one contract and supplying mobile maintenance teams, and experience repairing and maintaining equipment similar to that covered under the current requirement. Id. at 3-4. The agency's award documentation noted that under Gear's past contracts, the awardee has managed parts and supplies for scheduled and unscheduled maintenance and repair with a higher estimated dollar value than this requirement. Id. at 4. The contracting officer further noted that the awardee had received a past performance rating of substantial confidence for demonstrating a high level of performance on highly similar contracts. Id.

The agency calculated that the protester's price was approximately 20 percent higher than the awardee's price of \$3,952,328.25, and concluded that there were no unbalanced pricing concerns. The agency also concluded that Gear's price was fair and reasonable, based on adequate price competition, and that Gear's proposal offered the best value to the government. AR, Tab 14, Simplified Acquisition Award Documentation, at 2, 4. The agency made award to Gear, and this protest followed.

DISCUSSION

The protester challenges the agency's award decision and past performance evaluation, asserting that, because RELYANT is the incumbent contractor, it was unreasonable for any other offeror to receive as high a past performance rating as it received. Protest at 4. The protester also challenges the agency's failure to verify the past performance questionnaires submitted to the agency by the offerors' past performance references. Id. The agency asserts that its evaluation of past performance was reasonable and consistent with the terms of the solicitation. AR

at 10-11. We have reviewed all of the protester's allegations and find that none provide a basis to sustain the protest.¹

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. Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that it is adequately documented. Falcon Envtl. Servs., Inc., B-402670, B-402670.2, July 6,

¹ Among other things, the protester asserts that the agency improperly failed to consider the risk of awarding to Gear, because, in the protester's view, the awardee's price is unrealistically low. The protester contends that one potential reason for the low price is that the awardee will be violating local labor laws, but the protester offers no evidence to support this contention. Protest at 5. The agency argues that the solicitation did not anticipate a price realism analysis and that the awardee's price was determined to be reasonable based on adequate competition. AR at 13-14. The agency also stated that the protester's allegations concerning potential violations of local labor laws are speculative and a matter of contract administration. Id. at 14. The protester failed to respond to or rebut the agency's arguments in its comments; we therefor consider these arguments to be abandoned. SRM Grp., Inc., B-410571, B-410571.2, Jan. 5, 2015, 2015 CPD ¶ 25 at 8 n.5.

We note that, in any event, where the award of a fixed-price contract is contemplated, a proposal's price realism is not ordinarily considered since a fixed-price contract places the risk and responsibility for contract costs and resulting profit or loss on the contractor. Res. Ltd., B-406492, B-406492.2, June 6, 2012, 2012 CPD ¶ 195 at 4. Because the resulting award will be a fixed-price contract, and because the RFP did not provide for a price realism analysis, the agency was precluded from conducting one. GlobalOpal, LLC, B-408414.7, B-408414.8, Mar. 19, 2014, 2014 CPD ¶ 140 at 4. Further, price reasonableness concerns whether a price is unreasonably high, as opposed to unreasonably low. Cherry Road Techs.; Elec. Data Sys. Corp., B-296915 et al., Oct. 24, 2005, 2005 CPD ¶ 197 at 18. Here, the protester has argued that the awardee's price is too low. Nonetheless, the record supports the agency's contention that it conducted a price reasonableness analysis based on adequate price competition. See AR, Tab 13, Competitive Range Determination (showing the awardee's proposed price relative to the other offerors).

2010, 2010 CPD ¶ 160 at 7. A protester's disagreement with the agency's evaluation judgments concerning the merits of past performance does not establish that the evaluation was unreasonable. Sam Facility Mgmt., Inc., B-292237, July 22, 2003, 2003 CPD ¶ 147 at 3.

RELYANT primarily argues that its performance as the incumbent contractor should have resulted in special consideration or additional evaluation credit and that no other offeror could reasonably receive as high a rating. We find this argument without merit. L-3 Nat'l Sec. Solutions, Inc., B-411045, B-411045.2, Apr. 30, 2015, 2016 CPD ¶ 233 at 13. As noted above, the solicitation required that an offeror's past performance references describe how the work performed was the same or similar to the current requirement. RFP at 17. The RFP did not specify that an offeror had to have identical experience in order to receive a "substantial confidence" rating, nor did the RFP provide that the past performance of the incumbent contractor would be given special recognition or consideration. Accordingly, the agency properly declined to afford RELYANT an evaluation preference or additional credit for its performance as the incumbent contractor on the preceding contract. L-3 Nat'l Sec. Solutions, Inc., *supra*.

RELYANT also argues that the agency was required to verify the accuracy of the past performance questionnaires provided by Gear's references. However, as the agency notes, the RFP did not require the agency to do so. Rather, the RFP required offerors to provide a past performance survey to the past performance references identified in the proposal, and the past performance references were required to independently submit the survey to the contracting officer. RFP at 17. The RFP also stated that the government may consider information obtained from other sources but that it would not contact references for purposes of obtaining the survey. *Id.* In accordance with the solicitation, the agency reviewed the three responses received from Gear's references and used that information in its past performance evaluation.

Moreover, we find reasonable the agency's conclusion that the three past performance references of the awardee demonstrate that the awardee has significant relevant experience in Afghanistan performing work similar to the current requirement. Specifically, the agency's award determination noted that Gear had extensive experience at multiple locations throughout Afghanistan, on contracts of greater dollar value and complexity than the solicited requirement, and evaluated the awardee's past performance as offering substantial confidence of successful performance. AR, Tab 14, Simplified Acquisition Award Documentation, at 3. The agency's past performance evaluation applied the announced solicitation criteria to the description of Gear's past performance provided to the agency by the awardee's references. Here, the record provides no basis on which to question the reasonableness of the agency's past performance evaluation.

The protester also raises other issues that are not for our consideration.² For example, RELYANT asserts that the awardee's attempts to hire the protester's incumbent workforce violate non-compete agreements signed by RELYANT personnel, and contends that the awardee's potential to fail security vetting will create risk for the government. Comments at 4-5. The existence and enforceability of non-compete agreements is a private dispute and is not for our consideration. Hendry Corp., B-400224.2, Aug. 25, 2008, 2008 CPD ¶ 164 at 3. In addition, the RFP expressly stated the assessment of the offeror's past performance would be used as a means of evaluating the offeror's probability of success. RFP at 17. The agency explains that it therefore assessed performance risk when it conducted its past performance evaluation, which we found reasonable.

The protest is denied.

Susan A. Poling
General Counsel

² The protester asserts that the agency failed to notify RELYANT of the contract award as required by Federal Acquisition Regulation (FAR) § 15.503(b)(1). Protest at 3, Comments at 1-2. The agency states that the acquisition was conducted under FAR part 13 and award notice was posted on FedBizOps. Email from Agency to GAO, Oct. 31, 2016. In addition, the harm alleged by the protester--that it had less time for demobilization as a result of the delayed notification--does not implicate the protester's chances for award and is therefore not the kind of prejudice on which we would sustain a protest. Worldwide Primates, Inc., B-294481, Oct. 12, 2004, 2004 CPD ¶ 206 at 5 n.4.