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Decision

Matter of: Koniag Management Solutions, Inc.

File: B-423051; B-423051.2

Date: January 10, 2025

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John W. Cox, Esq., Department of State, for the agency.

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DIGEST

1. Protest challenging the agency's evaluation of the protester's past performance is denied, where the agency's evaluation was reasonable and consistent with the terms of the solicitation.
 2. Protest alleging disparate treatment is denied where the record reflects that quotations were not substantively indistinguishable from one another.
 3. Protest challenging the agency's best-value tradeoff decision is denied where the protester has not established that the underlying evaluation was unreasonable.
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DECISION

Koniag Management Solutions, Inc., of Anchorage, Alaska, protests the issuance of a task order to ASRC Federal Highland Technology (ASRC), of Beltsville, Maryland, under request for quotations (RFQ) No. 19AQMM24Q0007, issued by the Department of State (DOS) for software development lifecycle support services. The protester challenges the agency's evaluation of Koniag's past performance, as well as the source selection decision.

We deny the protest.

BACKGROUND

The Department of State issued the solicitation on January 26, 2024, under the General Services Administration's Federal Supply Schedule (FSS) using the procedures set forth in Federal Acquisition Regulation (FAR) subpart 8.4. Agency Report (AR), Tab 13, RFQ at 1, 49.¹ The solicitation sought quotations to provide service transition support services (STS2) for the software development lifecycle, information technology service management, and business process improvement for DOS's Bureau of Consular Affairs, Office of Consular Systems and Technology. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 1; RFQ at 18-20.

The solicitation contemplated the issuance of a hybrid fixed-price and time-and-materials task order with one 12-month base period and four 1-year options. RFQ at 2-11. The RFQ provided that award would be made on a best-value tradeoff basis, considering the following factors in descending order of importance: technical, past performance, and price.² *Id.* at 56. The non-price factors, when combined, were significantly more important than price. *Id.* at 57.

The agency received quotations from eight vendors, including Koniag and ASRC. AR, Tab 38, Award Determination at 2. The agency evaluated Koniag and ASRC as follows:³

	Koniag	ASRC
TECHNICAL	Superior	Superior
Technical Approach	Superior	Superior
Corporate Experience	Superior	Superior
Management and Staffing Plan	Acceptable	Acceptable
Key Personnel Resumes	Superior	Superior
PAST PERFORMANCE	Satisfactory Confidence	Substantial Confidence
PRICE	\$118,381,431	\$149,971,022

¹ References to the RFQ are to the amended version provided at tab 13 of the agency report. Unless otherwise noted, all citations to the record are to the consecutive numbering of the pages in the Adobe PDF documents.

² The RFQ identified four equally important subfactors under the technical factor: technical approach; corporate experience; management and staffing plan; and key personnel resumes. RFQ at 48.

³ The available adjectival ratings for the technical evaluation factors were "superior," "acceptable," "marginal," and "unacceptable." RFQ at 59-60. Past performance would be evaluated with a confidence assessment of "substantial confidence," "satisfactory confidence," "limited confidence," "no confidence," or "unknown confidence (neutral)." *Id.* at 61.

Id. at 4-7, 11. After evaluating quotations, DOS concluded that ASRC provided the best value to the government, finding ASRC's technical approach and past performance record provided a significant advantage to the government that was worth the price premium. *Id.* at 27-28. The agency notified Koniag of the award decision on September 27, 2024. Koniag filed this protest with our Office on October 7.

DISCUSSION

Koniag argues that the agency's evaluation of the protester's past performance was unreasonable and disparate and, as a result, the agency's source selection decision was flawed. Protest at 8-10; Comments & Supp. Protest at 8-10. We have reviewed all of Koniag's protest grounds and find no basis to sustain the protest.

Past Performance

First, the protester contends that the agency should have assigned Koniag a past performance rating of "substantial confidence," rather than "satisfactory confidence." Protest at 8. The agency responds that it properly evaluated Koniag's past performance. COS/MOL at 7.

In reviewing protests of an agency's evaluation and source selection decision of procurements conducted under FSS procedures, we do not conduct a new evaluation or substitute our judgment for that of the agency. *Paragon Tech. Grp., Inc.*, B-407331, Dec. 18, 2012, 2013 CPD ¶ 11 at 5. The evaluation of past performance, including the agency's determination of the relevance and size of a vendor's performance history, is a matter of agency discretion, which we will not find improper unless it is unreasonable or inconsistent with the solicitation's evaluation criteria. *SecTek, Inc.*, B-417852.2, Jan. 13, 2020, 2020 CPD ¶ 123 at 5. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was improper. *LOUI Consulting Grp., Inc.*, B-413703.9, Aug. 28, 2017, 2017 CPD ¶ 277 at 3-4.

Here, the RFQ required vendors to submit at least three past performance references demonstrating effective and timely performance on contracts of similar size, scope, complexity, and dollar value to the current requirement. RFQ at 52. In this connection, the solicitation advised:

The Offeror will be evaluated on the Government's confidence that prospective vendors will successfully perform the solicitation requirements based on the prospective vendors' (including subcontractors' and/or team members') relevant past performance and demonstrated experience. Under Past Performance, the Government will evaluate recent and relevant performance records to predict how well prospective vendors will perform similar work.

Id. at 53. With regards to relevancy of past work, the agency would assess the submitted references as either "very relevant," "relevant," "somewhat relevant," or "not

relevant.” *Id.* at 60. The relevancy assessments were used to inform the overall past performance confidence ratings.⁴ *Id.*

Koniag submitted past performance information for five contracts. AR, Tab 18, Koniag Past Performance Questionnaire (PPQ) at 2-7. The technical evaluation panel (TEP) reviewed Koniag’s references and found several strengths and weaknesses related to Koniag’s past performance. For example, the evaluators found that Koniag’s second past performance reference--a contract for the United States Agency for International Development (USAID)--contained generally positive performance assessments. AR, Tab 34, Koniag Technical Consensus Report at 10. The panel also found that the scope of the USAID contract aligned well with the IV&V [Independent Validation and Verification] test services tasks and configuration process management tasks of the current requirement.⁵ *Id.* On the other hand, the TEP noted that the USAID contract was only valued at \$9.6 million with a total of 55 full-time equivalent positions (FTEs), whereas the independent government cost estimate (IGCE) for the current requirement was \$175 million and 157 FTEs. *Id.*; see AR, Tab 18, Koniag PPQ at 6; AR, Tab 38, Award Determination at 6, 8.

As another example, for the protester’s third past performance reference--a contract performed for DOS consolidated facilities management (CFM)--the TEP found the contract value of \$161 million to be closer to the current requirement’s IGCE. However, the agency found the CFM contract’s relevance to STS2 tasks was not high, as only 4 out of the 12 STS2 task areas were covered under the CFM contract. AR, Tab 34, Koniag Technical Consensus Report at 10; see AR, Tab 18, Koniag PPQ at 7. Similarly, for the protester’s fourth past performance reference--a Department of Homeland Security (DHS) contract--the TEP found that the scope of the DHS contract

⁴ The solicitation defined a rating of “substantial confidence” as: “Based on the Offeror’s recent/relevant performance record, the Government has a high expectation that the Offeror will successfully perform the required effort. It is unlikely that Government intervention will be needed in order to obtain the required product/service.” RFQ at 61. While a rating of “satisfactory confidence” was defined as: “Based on the Offeror’s recent/relevant performance record, the Government has a reasonable expectation that the Offeror will successfully perform the required effort. Little Government intervention is expected to be needed in order to obtain the required product/service.” *Id.*

⁵ The agency evaluated scope by comparing tasks performed under the prior contracts to the tasks to be completed for the current requirement. The tasks in the STS2 performance work statement (PWS) are: (1) program management and reporting; (2) transition activities; (3) facility management; (4) IV&V test services; (5) commercial off-the-shelf and government off-the-shelf review; (6) non-production environment and integration testing support; (7) enterprise continuous integration and continuous delivery/deployment integration; (8) IV&V test automation; (9) information technology service management support services; (10) portal services; (11) tools and repository services; and (12) configuration control process management services. RFQ at 51; see AR, Tab 38, Award Determination at 10.

aligned well with the STS2 tasks and was, therefore, highly relevant with respect to scope. However, the agency also noted that the value (\$118 million) of the DHS contract, as well as the low FTE count (26), was not as relevant with regards to the expected size and dollar value of the current requirement. AR, Tab 34, Koniag Technical Consensus Report at 10; see AR, Tab 18, Koniag PPQ at 8-9.

The contracting officer, serving as the source selection authority (SSA), agreed with the TEP's findings. See AR, Tab 38, Award Determination at 10-11. The SSA found that, collectively, Koniag had relevant experience performing contracts with much of the magnitude of effort and complexities as required by the solicitation. *Id.* at 10. The SSA, however, found that Koniag lacked experience performing contracts of the same dollar value and FTE size that covered all task areas of the current requirement. *Id.* at 25; COS/MOL at 5, 8. Because Koniag's references contained limited breadth of coverage for the STS2 requirement, the SSA found that there was a reasonable expectation that Koniag would successfully perform the requirement, rather than a high expectation Koniag would have successful performance. AR, Tab 38, Award Determination at 26. The agency explained that "[t]aken as a whole, it was not clear to the TEP that [Koniag's] past performance was so relevant and high quality in every aspect of the STS2 work as to avoid any need for Government intervention in performance." COS/MOL at 8. The record demonstrates that DOS evaluated Koniag's references collectively, and in doing so, assessed the quality of Koniag's performance along with the differences and similarities of past performance to the current effort. Based on the record, we find the agency's evaluation to be reasonable. Notwithstanding the protester's disagreement with the agency's evaluation, we find no basis to sustain the protest.⁶ *LOUI Consulting Grp., Inc., supra.*

⁶ The protester also contends that because Koniag received the highest possible rating under the corporate experience technical subfactor, the agency was required to assign Koniag the highest possible rating under the past performance factor. Protest at 8-9. The protester's argument, however, fails to recognize that the corporate experience and past performance factors reflected separate and distinct concepts. *Commercial Window Shield*, B-400154, July 2, 2008, 2008 CPD ¶ 134 at 3. Specifically, as is the case here, the former focuses on the degree to which an offeror has actually performed similar work, whereas the latter focuses on the quality of the work. *Amyx, Inc.*, B-410623, B-410623.2, Jan. 16, 2015, 2015 ¶ 45 at 14. For example, here, the corporate experience subfactor required the agency to review the similarity in "magnitude of effort, including the depth and breadth of the Offeror's experience in all PWS areas," while under the past performance factor, the agency was tasked with evaluating the vendor's record of providing high quality services of similar size, scope, complexity, technical difficulty, and dollar value "to predict *how well* prospective vendors will perform similar work." RFQ at 52-53 (emphasis added).

The agency explains that corporate experience references, submitted with the technical volume, were brief summations of prior projects. COS/MOL at 7. In contrast, the past performance references, submitted in a separate volume of the quotation, contained detailed descriptions of past performance, along with past performance questionnaires.

(continued...)

Disparate Treatment

Next, Koniag argues that the agency “treated Koniag and ASRC disparately in evaluating” ASRC and Koniag’s quotations. Comments & Supp. Protest at 8. The protester contends that the agency used a “harsher lens” in evaluating Koniag’s past performance than it did when evaluating ASRC’s past performance. *Id.* at 10. The agency responds that it reasonably evaluated past performance based on the differences in quotations. Supp. COS/MOL at 3-4.

It is a fundamental principle of government procurement that contracting agencies must even-handedly evaluate proposals or quotations against common requirements and evaluation criteria. *ITegrity Inc.*, B-422694, B-422694.2, Sept. 26, 2024, 2024 CPD ¶ 234 at 8; *Battelle Memorial Inst.*, B-418047.5, B-418047.6, Nov. 18, 2020, 2020 CPD ¶ 369 at 6. Agencies properly may assign dissimilar proposals different evaluation ratings, however. *Battelle Memorial*, *supra*; *Office Design Group v. United States*, 951 F.3d at 1372 (Fed. Cir. 2020), *citing* FAR 1.102-2(c)(3) (“All contractors and prospective contractors shall be treated fairly and impartially but need not be treated the same.”). Thus, when a protester alleges disparate treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors’ quotations. *ITegrity Inc.*, *supra*. That is to say, in order to prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably evaluated the protester’s proposal in a different manner than another proposal that was substantively indistinguishable or nearly identical. *Battelle Memorial Inst.*, *supra* at 6, *citing Office Design Group*, *supra* at 1372.

Here, the record demonstrates that the overall performance confidence ratings resulted from the agency’s assessment of the quality and relevance of references submitted. AR, Tab 38, Award Determination at 25-27; AR, Tab 33, ASRC Technical Consensus Report at 8-9; AR, Tab 34, Koniag Technical Consensus Report at 10-11. The relevance of past performance references was based primarily on the size, scope, and complexity of the references. AR, Tab 38, Award Determination at 25-27; see RFQ at 60. The awardee’s quotation included two contract references that covered 12 out of 12 STS2 task areas, with FTE numbers that were similar to, or higher than, the

Id. Further, in reviewing quality, along with the relevancy of past performance references, the agency found that although the quality of the protester’s past performance ranged from excellent to satisfactory, those ratings were assigned to projects of lower magnitude that did not completely cover the scope of the PWS tasks here. *Id.* at 8. Thus, considering relevancy and quality of past performance, the agency did not find that it had the highest confidence in Koniag’s ability to perform the current contract, which required fulfilling 12 different tasks with an estimated 157 FTEs. See *id.* In sum, the record demonstrates that the solicitation required a different evaluation for corporate experience and past performance. As such, we find reasonable the agency’s different assessments with respect to Koniag’s corporate experience and past performance. *Amyx, Inc.*, *supra*.

estimated FTEs for the current requirement. Moreover, those two contract references were valued at \$144 million and \$222 million, which were comparable to the IGCE of \$175 million for the current requirement. AR, Tab 22, ASRC PPQ at 5-8; AR, Tab 38, Award Determination at 14. Further, ASRC's other two contract references involved 9 of 12 PWS tasks required by the solicitation. AR, Tab 22, ASRC PPQ at 9-12. Whereas, Koniag's quotation had no references that encapsulated all 12 of the PWS tasks. Supp. COS/MOL at 3. Additionally, the task areas mentioned in Koniag's references varied from one involving 10 of 12 tasks to contract references that only mentioned 5 of 12 PWS tasks or 4 of 12 task areas, with varying degrees of specificity. See AR, Tab 18, Koniag PPQ at 5-7; AR, Tab 38, Award Determination at 11. As noted above, in reviewing the protester's references, the agency found that Koniag's past performance warranted a "satisfactory" rating, and not higher, because it was not clear to the agency that Koniag's past performance was so relevant and high quality in every aspect of the STS2 work as to avoid any need for agency intervention in performance. COS/MOL at 8.

On this record, we find no basis to object to the agency's evaluation. With regard to the vendors' past performance submissions, the record reflects that the quotations were neither identical nor substantively indistinguishable. See e.g., *Systems Implementers, Inc.; Transcend Technological Sys., LLC*, B-418963.5 *et al.*, June 1, 2022, 2022 CPD ¶ 138 at 19 (denying allegation where offerors proposed to use similar agile processes, but proposals were sufficiently different that agency reasonably assessed them as meriting different strengths). Indeed, the record demonstrates that in reviewing the quality and relevance of references, DOS considered the differences in the vendors' quotations, and the agency reasonably determined it had "substantial confidence" that ASRC would successfully perform the current requirement, while it had "satisfactory confidence" that Koniag would successfully perform the contract. In sum, the agency's evaluation of past performance was consistent with the solicitation and based on differences in the vendors' quotations. As such, this allegation is denied.

Best-Value Decision

Lastly, the protester challenges the agency's source selection decision. Koniag contends that because the best-value determination was based on an unreasonable evaluation of quotations, the best-value decision is also flawed.⁷ Comments & Supp. Protest at 10.

As discussed above, we find no reason to object to the agency's evaluation of quotations. Thus, there is no basis to question the SSA's reliance upon those evaluations in making the source selection decision. *ITegrity Inc.*, *supra* at 8 n.2 ("Where other challenges to an evaluation of quotations have been denied or otherwise dismissed, a derivative challenge to the best-value determination does not afford a basis to sustain the protest."). Accordingly, we find no merit to Koniag's objection to the agency's selection decision based upon the underlying evaluation of quotations.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

⁷ The protester initially argued that the agency's source selection decision was flawed and inadequately documented because the agency allegedly failed to justify why ASRC's quotation warranted a price premium. Protest at 10. The agency responded to this allegation in its memorandum of law, contending that the agency's tradeoff decision was documented and reasonable. COS/MOL at 10. In its comments, the protester failed to respond to the agency's argument justifying its comparison of quotations and representation that ASRC was deemed the best value to the government. The protester, instead, shifted this argument, contending that because DOS's underlying past performance evaluation was flawed, the source selection decision was also flawed. Comments & Supp. Protest at 10. Where, as here, an agency provides a detailed response to a protester's assertion and the protester fails to rebut the agency's argument in its comments, the protester fails to provide us with a basis to conclude that the agency's position with respect to the issue in question is unreasonable. 4 C.F.R. § 21.3(i)(3); *Medical Staffing Sols. USA*, B-415571, B-415571.2, Dec. 13, 2017, 2017 CPD ¶ 384 at 3. We consider this allegation to be abandoned and do not discuss it further. *DigiFlight, Inc.*, B-419590, B-419590.2, May 24, 2021, 2021 CPD ¶ 206 at 4.