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# Decision

**Matter of:** Technica LLC

**File:** B-413546.4; B-413546.5

**Date:** July 10, 2017

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## DIGEST

Protest challenging the agency's evaluation of offerors' past performance is denied where the evaluation was reasonable and consistent with the stated evaluation criteria and the evaluation was not unequal.

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## DECISION

Technica LLC, of Charleston, South Carolina, protests the issuance of a task order to Akima Support Operations, LLC, of Herndon, Virginia, under request for proposals (RFP) No. W52P1J-16-R-0126, issued by the Department of the Army, Army Contracting Command-Rock Island (ACC-RI), for logistics support services at the United States Military Academy at West Point, New York. Technica challenges the reasonableness of the agency's past performance evaluations.

We deny the protest.

## BACKGROUND

The RFP, set aside under the Small Business Administration's 8(a) program, was issued to current Enhanced Army Global Logistics Enterprise (EAGLE) Basic Ordering Agreement (BOA) holders. Agency Report (AR), Tab 7, Conformed RFP at 2. The RFP contemplated the issuance of a combination cost plus fixed fee/fixed-price task order with a 12-month base period and four 1-year options. Id. The task order would be issued on a best-value basis to the responsible offeror whose proposal conformed to the requirements of the RFP, with the lowest evaluated price, and whose proposal was

evaluated as technically acceptable with substantial confidence in past performance. Id.

With respect to past performance, the RFP stated that the agency would consider past performance references provided with the offerors' BOA proposal, task order proposals to date, data calls, and the BOA annual review, as well as references from other sources.<sup>1</sup> AR, Tab 7, Conformed RFP at 55. The RFP advised offerors that the past performance evaluation may consider the recency, relevancy, source, and context of the past performance information that the government evaluates. Id. at 67. The RFP defined recency as any award under which performance has occurred within 5 years of the RFP closing date. Id. The agency reserved the right to consider any past performance that occurs after the RFP closing date and prior to issuance of the task order. Id. The RFP advised offerors that the agency would consider relevant any "[p]resent/past performance effort [that] involved similar scope and magnitude of effort and complexities this RFP requires." Id. Similar in scope was further defined as demonstrating similar experience in at least one of the following three functional areas: maintenance, supply, and transportation. Id. The agency would assign an adjectival rating to an offeror's past performance; as relevant to this protest, substantial confidence was defined as a high expectation that the offeror will successfully perform the required effort, and satisfactory confidence was defined as a reasonable expectation that the offeror will successfully perform the required effort. Id. at 68.

The agency received five timely proposals, including those from Technica and Akima, all of which were evaluated as technically acceptable. AR, Tab 48, Source Selection Evaluation Board (SSEB) Report at 27. The table below summarizes the agency's evaluation of the proposals of the protester and the awardee:

| <b>Offeror</b>  | <b>Technical Rating</b> | <b>Past Performance Rating</b> | <b>Total Evaluated Price</b> |
|-----------------|-------------------------|--------------------------------|------------------------------|
| <b>Akima</b>    | Acceptable              | Satisfactory Confidence        | \$45,309,156                 |
| <b>Technica</b> | Acceptable              | Substantial Confidence         | \$46,903,029                 |

Id. at 27-28. The SSEB evaluated Akima's past performance as satisfactory confidence due to a lack of experience in the supply and transportation functional areas which, according to the SSEB, represent 54 percent of the current requirement. Id. at 18.

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<sup>1</sup> The agency explains that the EAGLE program operates a past performance evaluation system where, throughout the year, all EAGLE BOA holders are given two opportunities to submit an unlimited number of past performance references to the EAGLE program. Contracting Officer's Statement of Facts/Memorandum of Law (COSF/MOL) at 2. As relevant here, BOA holders were given an opportunity in August 2016 to provide new or updated past performance information. Id. These references are placed in a searchable database maintained by the EAGLE program. Id. During a task order competition, evaluation teams query the database for references related to an offeror. Id.

Under the terms of the RFP, the failure of Akima's proposal to obtain a rating of substantial confidence under past performance rendered the firm ineligible for award. See RFP at 2. The agency issued the task order to Technica as the firm whose proposal represented the best value to the government. AR, Tab 49, Source Selection Decision Document (SSDD), Jan. 26, 2017 at 7.

The Army provided a post-award debriefing, and during that debriefing Akima asked if the agency had considered Akima's performance at Fort Carson, Colorado, under award number W52P1J14-G-0035, Task Order 1. AR, Tab 50, Procuring Contracting Officer (PCO) Memorandum for Record, Feb. 10, 2017. The agency responded that Akima's performance under that task order had not been considered in the past performance evaluation. Id. Akima had properly submitted the Fort Carson reference for consideration on task order competitions during its BOA annual review in August 2016. See AR, Tab 1, COSF/MOL at 3, citing AR, Tab 53, Email from Akima to Agency, Aug. 24, 2016, containing attachment with updates on Akima past performance. Upon review, the PCO determined that the agency should have considered this information since the information involved a task order that was issued and is being administered by the same contracting command, ACC-RI, and since the Fort Carson task order was issued under the EAGLE program, the same program awarding the West Point task order. AR, Tab 50, Memorandum for Record, Feb. 10, 2017.

In view of its decision that the agency improperly failed to consider Akima's performance under the Fort Carson task order, the Army reevaluated Akima's past performance, including performance of the Fort Carson task order. The Army evaluated this effort as recent; in fact, Akima was fully performing the task order as of June 29, 2016. See Supp. AR, Tab 62, PCO Memorandum for Record, May 2, 2017. The agency evaluated this award as relevant because it is similar in scope, including maintenance, supply, and transportation functions similar to those for the current requirement. AR, Tab 55, Past Performance Evaluation Addendum, Feb. 16, 2017 at 2-3.

The Army received one past performance questionnaire (PPQ) for this reference, with a period of assessment from May 27, 2016, through February 9, 2017, and the following ratings:

| <b>W52P1J14-G-0035/0001</b> | <b>PPQ Rating</b> |
|-----------------------------|-------------------|
| Date of assessment          | 2/14/2017         |
| Quality                     | Very Good         |
| Schedule                    | Very Good         |
| Cost Control                | Satisfactory      |
| Management                  | Very Good         |
| Regulatory Compliance       | Satisfactory      |
| <b>Overall Performance</b>  | <b>Very Good</b>  |

AR, Tab 60, PPQ, Feb. 14, 2017, at 2-3; Tab 55, Past Performance Evaluation Addendum, Feb. 16, 2017, at 3.

The agency reviewed the PPQ and noted that Akima had aided in deploying troops on time, expedited inventories and completed maintenance without the need for re-work, met the transition timeline 28 days sooner than required, executed the schedule flawlessly, taken on additional work, and prepared freight documentation without error, which reduced the government's costs. AR, Tab 55, Past Performance Evaluation Addendum, Feb. 16, 2017, at 3-4. The Army also noted that the agency had performed quality inspections and reported no major issues. Id. at 3. Further, the contract specialist stated he would recommend Akima for a similar future requirement. Id. at 4. In light of the favorable comments in the PPQ, and the relevance and recency of the Fort Carson work, the agency evaluated Akima's past performance under this task order as substantial confidence. Id. at 3. On the strength of the newly-added reference, the agency evaluated Akima's past performance overall as substantial confidence. Id. at 5.

In an addendum to the original SSEB Report, the SSEB chairperson noted that the performance of the Fort Carson task order included a reduced transition-in time and increased workload, and that, despite those challenges, Akima was still able to meet mission requirements through the use of open communication and processes. AR, Tab 56, SSEB Report Addendum at 3. The SSEB noted the ACC-RI contract specialist gave positive comments about Akima's performance of the Fort Carson task order and stated that he would recommend Akima for similar requirements in the future. Id. In the agency's amended evaluation, Akima, now evaluated as substantial confidence, was eligible for award, and Akima's total evaluated price was lower than Technica's. See id. at 3-4.

The source selection authority, who was also the PCO, adopted the amended findings of the SSEB, and made a new award to Akima as the firm whose proposal now offered the best value to the government. AR, Tab 59, SSDD, Feb. 21, 2017 at 8. This protest followed.

## DISCUSSION

Technica asserts that it was unreasonable for the agency to evaluate the awardee's past performance as substantial confidence based on Akima's performance of the Fort Carson task order.<sup>2</sup> First Supp. Protest at 2. The agency asserts that its evaluation of past performance was reasonable and consistent with the RFP's stated evaluation criteria. Supp. AR at 5-8.

Where, as here, a solicitation contemplates the evaluation of past performance, the agency has the discretion to determine the relevance and scope of the performance history to be considered, and our Office will not question the agency's judgment unless

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<sup>2</sup> Technica withdrew the original protest following an agency request for dismissal. Protester Email, April 11, 2017. This decision addresses Technica's supplemental protests.

it is unreasonable or inconsistent with the terms of the solicitation or applicable procurement statutes and regulations. America's Pride, B-401114, May 27, 2009, 2009 CPD ¶ 116 at 3. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. Beretta USA Corp., B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 10. Absent a relevant solicitation provision, there is no minimum duration requirement that an offeror's past performance reference must meet before performance of that requirement may be considered in the agency's past performance evaluation. Diversified Tech. & Servs. of Va., Inc., B-412090.2, B-412090.3, Dec. 16, 2015, 2016 CPD ¶ 34 at 8. The challenge to the agency's evaluation instead concerns the weight assigned. Id.

The protester argues that even where the solicitation does not state an agency will consider the length of time an offeror has performed, the agency may properly accord less weight to past performance of a relatively short duration. First Supp. Protest at 3, citing Nova Techs., B-403461.3, B-403461.4, Feb. 28, 2011, 2011 CPD ¶ 51; Chenega Tech. Prods., LLC, B-295451.5, June 22, 2005, 2005 CPD ¶ 123. Therefore, Technica asserts, it was unreasonable for the agency to raise Akima's past performance rating from satisfactory confidence to significant confidence given Akima's relatively brief period of performance under the Fort Carson task order. Id. at 2. Moreover, the protester argues that the evaluation and subsequent award decision are unreasonable because the agency mischaracterized the actual start date of Akima's performance of the Fort Carson task order. Comments on AR and Second Supp. Protest at 9, citing AR, Tab 1, COSF/MOL at 7.

The agency asserts that the solicitation did not preclude it from considering the Fort Carson reference.<sup>3</sup> COSF/MOL at 6. The Army also states that Akima had completed several months of well-regarded performance under sometimes challenging conditions by the time the Army evaluated its past performance on the task order. Id. at 7. As a result, since the Fort Carson past performance was recent and relevant, the agency properly considered the reference and concluded that Akima merited a substantial confidence past performance rating. Id.

We see no merit to the protester's allegation that the agency improperly evaluated past performance. The RFP advised offerors that the past performance evaluation could consider the recency, relevancy, source, and context of the past performance information that the government evaluates. RFP at 67. Further, the RFP stated that the agency reserved the right to consider any past performance that occurs after the RFP closing date and prior to issuance of the task order. Id. As such, the RFP contained no minimum duration requirement for an offeror's past performance.

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<sup>3</sup> The agency notes that "Technica does not dispute that the Ft. Carson [past performance] reference is both recent and relevant." AR, COSF/MOL at 6.

Further, the protester has offered only bare assertions--without supporting rationale--in support of its argument that Akima's Fort Carson task order performance was too brief for the agency to reasonably consider and afford weight to it in the evaluation of past performance for this procurement. First Supp. Protest at 3-4 (asserting that elevating Akima's past performance rating based on an award that had been performed for a short duration is unreasonable); Comments on AR and Second Supp. Protest at 9 (asserting that the agency's favorable reevaluation of Akima's past performance was unreasonable, where it was based on an award that had been performed for at most five months). As discussed above, the agency contract specialist who completed the PPQ for Akima's task order performance at Fort Carson evaluated Akima's performance as very good overall. AR, Tab 60, PPQ at 2-3.

Specifically, the agency reviewed the PPQ and noted that Akima had aided in deploying troops on time, expedited inventories and completed maintenance without the need for re-work, met the transition timeline 28 days sooner than required and executed the schedule flawlessly, taken on additional work, and prepared freight documentation without error, which reduced the government's costs. AR, Tab 55, Past Performance Evaluation Addendum, Feb. 16, 2017, at 3-4. The Army also noted that the PPQ stated the agency had performed quality inspections and reported no major issues. Id. at 3. In considering all of Akima's past performance, the agency assigned Akima a rating of substantial confidence, which means there was a high expectation that the offeror will successfully perform the required effort.

The record here provides no basis on which to conclude that the agency assigned unreasonable weight to this reference, where the agency contract specialist completed a highly favorable review of Akima's performance to date. The protester's disagreement with the contemporaneous evaluation of Akima's past performance, without more, provides no basis on which to find the agency's evaluation unreasonable.

Technica also asserts that the agency unreasonably overstates the length of Akima's performance of the Fort Carson task order. Comments on the AR and Second Supp. Protest at 9, citing AR, Tab 1, COSF/MOL at 7. Specifically, Technica argues that although Akima was awarded the task order on May 27, 2016, Akima did not start performance until September 2016, which would equate to only five months of performance. Id. We find the record does not support the protester's assertion.

The agency contract specialist who completed Akima's PPQ for the Fort Carson task order was knowledgeable about the length of time, post-transition, that Akima was performing the requirement and the PPQ specifically references the number of days required to complete the transition. AR, Tab 60, PPQ, Feb. 14, 2017 at 2. In fact, the PPQ noted that Akima transitioned in 32 days after notice of award, although the solicitation provided for a 60 day transition period, and that Akima executed the expedited schedule flawlessly. Id. Further, Akima was fully operational as of June 29, 2016. Supp. AR, Tab 62, PCO Memorandum for Record, May 2, 2017.

In addition, nothing in the contemporaneous record supports the protester's assertion that the agency evaluation was predicated on a misunderstanding of the length of Akima's performance of the Fort Carson requirement. The amended past performance evaluation mentions no specific duration of Akima's performance under the Fort Carson task order. See AR, Tab 55, Akima Past Performance Report Addendum at 4. The SSEB makes no reference to the length of performance either. See AR, Tab 56, SSEB Report Addendum at 3. Rather, both focused on the quality of performance to date by Akima. The source selection authority relied upon the SSEB Report in making the determination that Akima's proposal represented the best value to the government. AR, Tab 59, SSDD, Feb. 21, 2017 at 4.

Technica also asserts that the agency disparately evaluated the offerors' past performance. Comments on AR and Second Supp. Protest at 10-11. Technica argues that the agency correctly did not consider one of its teaming partner's past performance references because the teaming partner had not taken full operational control of the requirement and was only in the transition stage. Id. at 10, citing AR, Tab 44, Technica Past Performance Report at 10. In contrast, Technica claims that the agency improperly considered the transition period as part of the period of performance when considering the duration of Akima's performance of the Fort Carson task order. Id., citing AR, Tab 1, COSF/MOL at 6-7. Technica argues that since its teaming partner's past performance was not considered, the agency should not have considered Akima's performance under the Fort Carson task order.

As discussed above, we conclude that the agency reasonably considered Akima's past performance at Fort Carson. Moreover, the protester does not contest the agency's assertion that its teaming partner was not performing the contract prior to the time that the agency conducted its past performance evaluation for this requirement. See Comments on AR and Second Supp. Protest. In contrast, by the protester's own calculation, the agency evaluated at least 5 months of Akima's performance of the Fort Carson task order. First Supp. Protest at 3. Thus, contrary to the protester's argument, the agency did not disparately evaluate offerors' past performance here.

Further, Technica received the highest possible evaluation rating, substantial confidence, making it eligible for award. We therefore see no prejudice to Technica from the agency's failure to consider the past performance of its teaming partner. HP Enter. Servs., LLC, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 6 (noting that competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found).

The protest is denied.

Susan A. Poling  
General Counsel