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**Comptroller General
of the United States**

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

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Decision

Matter of: Paragon Systems, Inc.

File: B-299548.2

Date: September 10, 2007

Katherine S. Nucci, Esq., and Timothy Sullivan, Esq., Thompson Coburn LLP, for the protester.

Richard J. Sprunk, Esq., Department of Homeland Security, for the agency.

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DIGEST

1. Agency's evaluation of vendor's past performance was reasonable where agency contacted an individual who was familiar with the vendor's performance, even though the individual was not the point of contact designated by the vendor in its past performance reference.
 2. Protester's contention that agency past performance evaluation was unreasonable because the agency did not distinguish between degrees of relevance in evaluating each vendor's past performance is denied where the evaluation was reasonable, and consistent with the stated evaluation criteria; there is no *per se* requirement that an agency weight differently the ratings given each vendor based on an assessment of the relative relevance of the vendor's prior contracts.
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DECISION

Paragon Systems, Inc. protests the issuance of a task order to NCLN20, Inc. pursuant to request for quotations (RFQ) No. 186419, issued by the Federal Protective Service (FPS), Immigration and Customs Enforcement, Department of Homeland Security (DHS), for armed security guard services at federal facilities located throughout the state of Arizona.¹ Paragon argues that the agency miscalculated vendors' quotations in the area of past performance.

¹ The electronic announcement of the solicitation here was termed an RFQ, Agency Report (AR), July 2, 2007, at 2 n.1, and the responding vendors referred to the solicitation as an RFQ, although the solicitation itself was identified as a request for proposals and stated throughout that "offerors" were to submit "proposals." These

(continued...)

We deny the protest.

BACKGROUND

The RFQ, issued on December 8, 2006, to holders of General Services Administration (GSA) Federal Supply Schedule (FSS) contracts for guard services, contemplated the issuance of a time-and-materials task order for a base year together with four 1-year options.² The solicitation, which included a statement of work (SOW) and instructions to vendors regarding the submission of quotations, established three evaluation criteria: mission capability; past performance; and price.³ The mission capability and past performance evaluation criteria were of equal importance and, when combined, were significantly more important than price. The RFQ stated that the agency would select the vendor whose quotation was determined to represent the “best value” to the government, all factors considered. RFQ at 3-5.

With regard to past performance, the RFQ stated that a vendor’s quotation “should provide a summary of [its] most recent, related, relevant efforts during the last three (3) years that demonstrate [its] potential for success on this effort. Submit a maximum of three references using the forms/format provided herein.”⁴ *Id.* at 2. Regarding the agency’s evaluation of vendors’ past performance the RFQ stated:

The Government will evaluate the past performance data submitted for recency, relevancy, and quality. Relevancy of past performance data will be determined by considering performance on contracts of a similar nature, size, scope, dynamic environment, and complexity,

(...continued)

discrepancies are not relevant to our analysis in this decision. For purposes of consistency, we will refer to the solicitation as an RFQ, the responding firms as vendors, and the responses to the solicitation as quotations.

² The agency subsequently revised the base performance period to reflect only the unfinished portion of fiscal year 2007. *See* AR, Tab 5, Source Selection Decision, at 1 (base period of Apr. 1–Sept. 30, 2007), Tab 13, Revised Source Selection Decision, at 1 (base period of July 1–Sept. 30, 2007).

³ The mission capability evaluation factor was in turn comprised of four equal subfactors, not relevant to the protest here.

⁴ The RFQ included past performance reference worksheets that vendors were to complete and return as part of their quotations. The worksheets required, among other things, the contract number, the name, address, and phone number of the contracting activity, the period of performance, the name and phone number of the contracting officer (or equivalent), and the name and phone number of the program manager (or equivalent). *Id.*, attach. 4, Past Performance Reference Worksheet.

utilizing a comparable number of personnel with like skills. Some past performance data may be considered more relevant to this acquisition than other data. The Government reserves the right to consider any other information obtained through other means including those from Government and commercial sources.⁵

Id. at 4.

Eleven vendors, including Paragon and NCLN20, submitted quotations by the January 24, 2007 closing date. Paragon's quotation included three past performance references. These were: (1) its armed guard security services contract for the Social Security Administration headquarters in Baltimore, Maryland (220 guards at one location); (2) its statewide armed guard security services contract with FPS for Alabama (150 guards at over 50 locations); and (3) its statewide armed guard security services contract with FPS for Kentucky (120 guards at nearly 50 locations). AR, Tab 3, Paragon's Quotation, Vol. II, Past Performance Proposal, at 7-9. By comparison, the SOW here required the contractor to provide approximately 100 security guards at 30 separate locations. AR, July 2, 2007, at 5; Protest, June 4, 2007, at 8.

NCLN20's quotation also included three past performance references regarding its own performance.⁶ These were: (1) its armed guard security services contract with FPS for Northern and Central California (100-105 guards at more than 25 locations); (2) its armed guard security services efforts for the Social Security Administration's Western Regional Processing Center in Richmond, California (30-35 guards at one location); and (3) its armed guard security services efforts for the Bureau of Reclamation at the Folsom Dam, Folsom, California (10-12 guards at one location). AR, Tab 2, NCLN20's Quotation, Vol. II, Past Performance Proposal, at 6-8, 22-25.

⁵ The RFQ also advised vendors of the agency's planned evaluation rating scheme. With regard to the mission capability factor and subfactors, quotations were to be rated as either "Exceeds," "Meets," or "Does Not Meet." Id. at 3. The solicitation stated that vendors' past performance would be evaluated as either "Very Good (Significant Confidence)," "Satisfactory (Confidence)," "Neutral (Unknown Confidence)," or "Unsatisfactory (No Confidence)," and included definitions for each of these adjectival ratings. Id. at 5.

⁶ NCLN20's quotation also contained three past performance references for its primary subcontractor, AlliedBarton Security Services LLC. AR, Tab 2, NCLN20's Quotation, Vol. II, Past Performance Proposal, at 10-12. In its report to our Office, the agency stated that "[i]t was determined that the past performance information for NCLN20 was sufficient to stand on its own merit, thus AlliedBarton's performance information was not considered during the evaluation." Contracting Officer's Statement at 3.

An agency technical evaluation team (TET) evaluated vendors' quotations using the adjectival rating system set forth in the RFQ. The TET's evaluation ratings of Paragon and NCLN20 were as follows:

Factor	Paragon	NCLN20
Mission Capability	Meets	Meets
Past Performance	Satisfactory	Satisfactory
Price	\$28,024,497	\$27,137,559 ⁷

Id., Tab 4, TET Report, at 3, 6. Based on the TET's evaluation, the source selection authority (SSA) concluded that the NCLN20's quotation was the lowest-priced among those deemed technically equal and, on that basis, selected NCLN20. Id., Tab 5, Source Selection Decision, at 4.

On March 13, Paragon filed a protest with our Office asserting that the agency's evaluation of vendors' quotations, including the evaluation of past performance, was unreasonable and had resulted in an improper selection decision. By letter to our Office dated March 15, DHS provided notice that it was taking corrective action in response to Paragon's protest by reevaluating vendors' quotations. Based on the agency's announced corrective action, our Office dismissed Paragon's March 13 protest.

As part of its revised evaluation, the TET contacted all three of Paragon's past performance references.⁸ Paragon's Social Security Administration contract reference considered Paragon's performance to be excellent and stated that he would use the firm again without hesitation. With regard to Paragon's FPS contract for Alabama, the reference stated that while the contractor had performed well overall, a few performance problems had been brought to Paragon's attention and had not been fixed; the reference also opined that he would award another contract to Paragon if a few things changed. For Paragon's FPS contract for Kentucky, the reference stated that Paragon had been generally consistent in manning all required posts, it adapted to changes quickly and smoothly, and its supervision of personnel was satisfactory for the most part. The same reference, however, also noted various

⁷ The TET also found the quotations of three other vendors to be technically equal to those of Paragon and NCLN20; all were higher priced than Paragon's quotation. Id., Tab 5, Source Selection Decision, at 1, 3-4.

⁸ The TET utilized a written questionnaire consisting of eight specific inquiries as part of its evaluation of vendors' past performance. The past performance references either completed the questionnaire themselves, or a TET member filled out the questionnaire based on a telephonic interview of the reference.

shortcomings in Paragon's performance.⁹ AR, Tab 10, Revised TET Report, at 3; Tab 9, Paragon's Past Performance References, at 1-2, 8-9, 13-15. The TET considered all of Paragon's past performance references to be recent and relevant, and, based on the information received, concluded that Paragon's overall past performance was satisfactory. *Id.*, Tab 10, Revised TET Report, at 3.

The TET also contacted NCLN20's past performance references as part of its reevaluation of vendors' quotations. For NCLN20's FPS contract, the TET obtained the reference from the contract's program manager (PM), who stated that the contractor's performance was problematic, its cost control questionable, and that there had been some difficulty in the ongoing transition from NCLN20 to the new contractor.¹⁰ *Id.* at 2. The TET considered this reference to be both recent and relevant. With regard to NCLN20's Social Security Administration effort, the reference stated that there had been no performance problems and found the contractor was very responsive to changes in the agency's requirements. The reference here also stated that NCLN20 supervised its employees very well and was very organized, and that she would award another contract to the firm. The TET found NCLN20's second reference to be recent, but because it was for a single building location, considered it not as relevant as the vendor's first reference. Multiple attempts by the TET to contact NCLN20's third reference (the Bureau of Reclamation) were unsuccessful. The TET concluded that while NCLN20 had recent and relevant experience, based on the information received, the vendor's past performance merited an overall rating of unsatisfactory. *Id.*, Tab 10, Revised TET Report, at 2; Tab 8, NCLN20's Past Performance References, at 14, 24.

The TET's final revised ratings for Paragon and NCLN20 were as follows:

⁹ The reference found that problem-solving was one of the contractor's weak areas; that there seemed to be unwillingness on Paragon's part to deal with issues because of the employees' union; potential personnel problems had lingered, causing new ones to arise; the contractor seemed to change managers about every 6 months which led to different and sometimes conflicting directions; and Paragon had not had an administrative specialist or dedicated person to help manage the day-to-day paperwork but had relied on a lead supervisor and contract manager. AR, Tab 9, Paragon's Past Performance References, at 13-15.

¹⁰ In her actual written comments, the PM stated that NCLN20 had falsified a past performance document by altering information contained therein (e.g., the contract's total amount/value), questioned the vendor's management and financial depth (NCLN20 had informed its employees of the intended use of pension funds in order to meet payroll), and found that the vendor had failed to maintain proper guard records. *Id.*, Tab 8, NCLN20's Past Performance References, at 14.

Factor	Paragon	NCLN20
Mission Capability	Meets	Meets
Past Performance	Satisfactory	Unsatisfactory
Price	\$26,156,096	\$25,625,518

Id., Tab 11, Revised TET Report Summary Chart; Tab 13, Revised Source Selection Decision, at 1.

The SSA recognized, after receipt of the TET’s revised evaluation report, that the change in NCLN20’s past performance rating from satisfactory to unsatisfactory was the result of the reference provided by the PM for the vendor’s FPS contract, an individual with whom the SSA was familiar.¹¹ Additionally, based on DHS’s recent award of separate follow-on security guard service contracts for the Northern and Central California areas, and the internal review that followed the negative references for NCLN20 provided by the PM on those occasions, the SSA was also aware that the contract file here contained no documentation to substantiate the PM’s claims of poor performance.¹² Further, the written comments furnished by the PM did not address many of the areas of inquiry contained in the past performance questionnaire, and much of the information that the PM did provide was deemed by the SSA to be irrelevant to the issue of NCLN20’s past performance. AR, Tab 13, Revised Source Selection Decision, at 5.

Based on the foregoing information, and the fact that NCLN20’s second reference had indicated there had been no problems with the vendor’s performance, the SSA decided to seek additional information regarding NCLN20’s past performance. Specifically, the SSA contacted the contract specialist responsible for administering NCLN20’s FPS contract, who had been involved with the contract since its inception (5 ½ years earlier). The contract specialist provided a reference stating that

¹¹ The SSA was aware of allegations that the PM was believed to be romantically involved with an employee of the contractor for which she had program oversight, an allegation that caused the SSA to question the PM’s judgment. The SSA also knew that the PM’s performance as a program manager had been less than successful, and that she had been placed on an employee performance improvement plan by her supervisor. Contracting Officer’s Statement at 4; AR, Tab 24, Internal Agency Emails, Feb. 26-27, 2007.

¹² Specifically, “there was no indication in any of the contract files of negative performance issues noted by the contracting officer. Option years [had also been] exercised, an indication that NCLN20’s performance was satisfactory or better.” Contracting Officer’s Statement at 4. The few quarterly performance reviews that had been done also indicated the contractor’s performance had been satisfactory or better. Id., AR, Tab 14, NCLN20 Quarterly Evaluation Reports for Contract No. GS-09P-01-NZD-0005.

NCLN20's performance level was very satisfactory, that the contractor was very responsive to both contracting agency and customer concerns, and that its response to changes in government requirements was very good. *Id.*, Tab 12, Supplementary NCLN20 Past Performance Reference. Based on this additional reference, information obtained orally from other agency personnel administering NCLN20's active FPS contracts, and her personal knowledge of the vendor's current performance, the SSA concluded that NCLN20's past performance rating should be raised to satisfactory. *Id.*, Tab 13, Revised Source Selection Decision, at 5; Contracting Officer's Statement at 4-5.

The SSA subsequently concluded that the NCLN20's quotation was again the lowest-priced among those determined technically equal and, on that basis, selected NCLN20 for award. *Id.*, Tab 13, Revised Source Selection Decision, at 6. This protest followed.

DISCUSSION

Paragon's protest raises numerous issues regarding the agency's evaluation of both its and NCLN20's past performance. Although we do not here specifically address all of the protester's arguments, we have fully considered all of them and find that they afford no basis to sustain the protest of the selection decision here.

Paragon first protests that DHS improperly contacted the wrong reference for the vendor's two FPS contracts. Both of Paragon's FPS contracts were handled by the same contracting officer. Prior to the agency's reevaluation of quotations, Paragon updated the point of contact information for its FPS contracts, as there had been a change in contracting officers. Paragon contends that notwithstanding this change, DHS still contacted the former contracting officer for purposes of obtaining past performance references for Paragon.¹³ Paragon contends that the current contracting officer (or the contracting officer's technical representative (COTR)) was in the best position to provide current and relevant information about Paragon's performance, not the former contracting officer, an individual who had been involved with Paragon's CDA claims. Had DHS contacted the correct reference for these FPS contracts, the protester argues, Paragon would have received a past performance rating of very good. Protest, June 4, 2007, at 5-7.

When, as here, an agency conducts a formal competition under the FSS program for the issuance of a task order, we will review the agency's actions to ensure that the evaluation was reasonable and consistent with the solicitation and applicable procurement statutes and regulations. Worldwide Language Res., Inc., B-297210

¹³ Paragon also contends that the former FPS contracting officer had been involved with Contract Disputes Act (CDA) appeals that Paragon successfully pursued under both contracts. Protest, June 4, 2007, at 5-7.

et al., Nov. 28, 2005, 2005 CPD ¶ 211 at 3; COMARK Fed. Sys., B-278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34 at 4-5. Where a solicitation contemplates the evaluation of vendors' past performance, the agency has the discretion to determine the scope of the performance history to be considered, provided all quotations are evaluated on the same basis and the evaluation is consistent with the terms of the solicitation. See Weidlinger Assocs., Inc., B-299433, B-299433.2, May 7, 2007, 2007 CPD ¶ 91 at 8. In this regard, an agency is generally not precluded from considering any relevant past performance information, regardless of its source. See, e.g., NVT Techs., Inc., B-297524, B-297524.2, Feb. 2, 2006, 2006 CPD ¶ 36 at 5. Regarding the relative merits of vendors' past performance information, this matter is generally within the broad discretion of the contracting agency, and our Office will not substitute our judgment for that of the agency. See, e.g., Clean Harbors Envtl. Servs., Inc., B-296176.2, Dec. 9, 2005, 2005 CPD ¶ 222 at 3. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was improper. Id.

As a preliminary matter, the record here shows that DHS obtained the past performance reference for Paragon's FPS contract for Alabama not from the former contracting officer, but from the COTR--see AR, Tab 9, Paragon's Past Performance References, at 8-9--an individual who Paragon itself describes as being "in the best position to provide current and relevant information about Paragon's performance." Protest, June 4, 2007, at 7. With regard to Paragon's FPS contract for Kentucky, while the record indicates that the agency did obtain the past performance reference from the former contracting officer, id. at 13-16, we find Paragon's challenge on this ground to be without merit. As discussed above, an agency is generally not precluded from considering any relevant information, and is not limited to considering only the information provided within the "four corners" of vendor's quotation when evaluating past performance.¹⁴ See FAR § 15.305(a)(2)(ii); Weidlinger Assocs., Inc., supra; Forest Regeneration Servs. LLC, B-290998, Oct. 30, 2002, 2002 CPD ¶ 187 at 6. Likewise, there exists no requirement mandating that an agency contact the specific individual designated by the vendor as the reference when seeking past performance information. Rather, the relevant inquiry as to who may furnish a past performance reference is whether the individual has a sufficient basis of knowledge to render an informed opinion regarding the vendor's prior work efforts.

Paragon does not argue that the former contracting officer for its FPS contracts did not have a sufficient basis of knowledge to render an informed opinion regarding Paragon's performance. In fact, the protester admits that the former contracting officer was involved with Paragon's FPS contracts for the past 3 years, while the current contracting officer had only been in that position for less than 1 month at the

¹⁴ Further, the solicitation here also expressly permitted the agency to consider past performance information obtained from sources other than the vendors' quotations. RFQ at 4.

time the agency sought the past performance references here. Protest, June 4, 2007, at 7. Based on our review of the record we find nothing unreasonable in the agency's evaluation of Paragon's quotation with regard to past performance. As noted above, DHS obtained and considered the input furnished by individuals familiar with Paragon's performance for each of the contract references that Paragon included in its quotation. The agency reasonably determined that Paragon's references were all recent and relevant, and based on the information received, warranted an overall past performance rating of satisfactory. To the extent that Paragon argues that the reference comments were inaccurate and unfounded, see Comments, July 12, 2007, at 13, we conclude that this represents mere disagreement with the agency's judgment.¹⁵

Paragon also protests the agency's evaluation of NCLN20's past performance, specifically the SSA's determination to raise NCLN20's past performance rating from unsatisfactory to satisfactory. We find the protester's assertions here to be without merit.

As set forth above, the SSA was aware of various allegations regarding the PM that caused the SSA to question her judgment. As a result, the SSA decided to seek additional references regarding NCLN20's performance on its FPS contract. The record does not reflect, as the protester contends, that the SSA completely discounted the PM's reference and replaced it with that provided by the FPS contract specialist. Rather, the record indicates that the SSA properly considered all the sources of information she had regarding NCLN20's past performance.

Paragon also argues that the agency's evaluation of NCLN20's past performance was unreasonable because the SSA did not consider all the information which the agency possessed regarding the awardee's performance. Specifically, the protester contends that the reference furnished by the PM regarding NCLN20's FPS contract contained the comments of two agency inspectors that also were critical of the awardee's past performance. These additional comments, the protester asserts, were known to the TET but were not made part of the evaluation record and were not considered by the SSA. Paragon argues that the information here was "too close at hand" to be ignored, and had the SSA considered these additional adverse comments regarding the awardee's past performance, NCLN20 would not have received a past performance rating of satisfactory. Comments, July 19, 2007, at 1-2, Comments, July 20, 2007, at 1-2.

¹⁵ Paragon also provides no evidence to support its assertion that the former FPS contracting officer was not objective, and inferences of bad faith or bias do not rise to the level of proof required to demonstrate that an agency employee was biased against it. TPL, Inc., B-297136.10, B-297136.11, June 29, 2006, 2006 CPD ¶ 104 at 21.

As set forth above, the PM provided the TET with the original reference regarding NCLN20's FPS contract. Together with her own comments, the PM also attached comments from two agency inspectors. AR, Tab 8, NCLN20's Past Performance References, at 16. The inspectors' comments were not prepared as a reference regarding NCLN20's performance on its FPS contract. Rather, the comments were prepared as part of the evaluation of quotations from various vendors, including NCLN20, for the follow-on FPS contract for the Northern California area.¹⁶ *Id.*, Tab 25, Evaluation Comments of C.F.; Tab 26, Evaluation Comments of O.L. According to the agency, the inspectors' comments were subsequently lost and were not part of the evaluation file provided to the SSA. Given that the relevance and the context of the comments is at best unclear, and in fact the comments apparently were not considered material by the TET itself even to bolster its unsatisfactory rating of the awardee, in our view the fact that this information was not presented to the SSA does not affect the reasonableness of her evaluation of NCLN20's past performance.

Paragon also argues that the agency failed to adequately consider the comparative relevance of the vendors' past performance, citing our decision in Clean Harbors Env'tl. Servs., Inc., *supra*. The protester alleges that its past performance references were substantially more relevant than those of NCLN20 and therefore it was improper for the agency to give the vendors equal ratings. We disagree.

Our decision in Clean Harbors is inapposite to the circumstances here. In Clean Harbors, the agency entirely failed to consider the relevance of offerors' past performance references as part of its determination of relative equality. By contrast, the record here clearly shows that the agency properly took into account the relevance of each contract reference as part of its evaluation of quotations. For example, the TET expressly concluded that NCLN20's FPS contract was relevant here, and recognized that NCLN20's Social Security Administration reference, being smaller in both size and scope, was not as relevant as the firm's FPS contract to the

¹⁶ Regarding NCLN20's proposal, one inspector stated, "Past Performance - Fails to meet. Performance References: description of current contract services provided [does] not accurately reflect duties performed. I have professional knowledge of site & contract references," while the other inspector stated, "Past Performance - Fails to meet (previous history of slow to respond to employees unacceptable behavior, lack of sufficient reserve pool, lack of professionalism of training officer, FPS routinely not being made aware of abandoned post)." *Id.*, Tab 25, Evaluation Comments of C.F., at 1; Tab 26, Evaluation Comments of O.L., at 1. We note that, with regard to the first inspector, the conclusion here is unsupported: while characterizing NCLN20's past performance as unsatisfactory, the supporting comments lack any meaningful explanation.

SOW requirements here.¹⁷ AR, Tab 10, Revised TET Report, at 2. Here, the agency looked at the relevance of each vendor's past performance and reasonably concluded each vendor's past performance merited a satisfactory rating. To the extent that Paragon argues that it had more (either quantitatively or qualitatively) relevant references than NCLN20, this constitutes mere disagreement with the agency's reasonable judgment that NCLN20 had relevant past performance. See Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5. There is simply no requirement that vendors have an equivalent number of relevant references in order to receive equal ratings.¹⁸

The protest is denied.

Gary L. Kepplinger
General Counsel

¹⁷ Moreover, the agency was not precluded from relying upon, or giving weight to, NCLN20's Social Security Administration reference merely because it was determined to be less relevant. There is no requirement that an agency apply a "mathematical calculation" to the combined relevance and quality of a vendor's reference as part of its past performance evaluation. Weidlinger Assocs., Inc., *supra*; University Research Co., LLC, B-294358.6, B-294358.7, Apr. 20, 2005, 2005 CPD ¶ 83 at 16 (holding that there is no *per se* requirement that an agency weight differently the ratings given offerors based on an assessment of the relative relevance of the offerors' prior contracts).

¹⁸ Paragon argues that the information provided by the PM questioning NCLN20's integrity and business ethics should have been taken into account by the agency as part of its responsibility determination of the awardee. Comments, July 12, 2007, at 8-11. Assuming if we were to agree with Paragon that there are legitimate issues concerning NCLN20's integrity and ethics, we have previously determined that there is no requirement that an ordering agency perform a responsibility determination when, as here, placing a task or delivery order under an FSS contract; the initial responsibility determination made by GSA in connection with the award of the underlying FSS contract satisfies the requirement for a responsibility determination regarding that offeror, and there is no requirement that an ordering agency perform additional responsibility determinations when placing orders under that contract. Advanced Tech. Sys., Inc., B-296493.6. Oct. 6, 2006, 2006 CPD ¶ 151 at 5-6.