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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:** Commissioning Solutions Global, LLC

**File:** B-401553

**Date:** October 6, 2009

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Robert S. Reich, Esq., and W. Jacob Gardner, Esq., Reich Album & Plunkett, LLC, for the protester.

Bruce C. Smith, Esq., W. Cody Goff, Esq., and William S. Sheppard, Esq., Morris Manning & Martin, LLP, for Riverhawk Marine, LLC, an intervenor.

Talbot J. Nicholas II, Esq., United States Coast Guard, for the agency.

Nora K. Adkins, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

In a best value procurement involving the evaluation of past performance and price, agency's selection of a higher-priced quotation from a vendor that received an "excellent" rating for past performance as compared to the protester, who received a "neutral" rating, was reasonable and consistent with the solicitation, where the agency made reasonable assessments of the relevancy of vendors' past performance and reasonably determined that the quotation from the vendor with the more relevant performance record was worth the higher price.

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### DECISION

Commissioning Solutions Global, LLC (CommSol) of Mandeville, Louisiana, protests the award of a contract to Riverhawk Marine, LLC (Riverhawk) of Tampa, Florida, issued by the U.S. Coast Guard (USCG) under request for quotations (RFQ) No. HSCG80-09-Q-3FAJ23 for dry dock repairs to the USCG Cutter Sapelo.

The RFQ, issued on April 3, 2009 as a total small business set-aside, provided for the award of a fixed-priced contract in accordance with Federal Acquisition Regulation (FAR) Subpart 13.5 "Test Program for Commercial Items." The RFQ stated that award would be made based on the evaluation of past performance and price, with

past performance considered to be “significantly more important than price.”<sup>1</sup> RFQ at 18, 25, 27.

With regard to past performance, the RFQ required vendors to identify in their quotations “at least two (2) relevant (construction, overhaul, repair and alteration of ships) and current federal, state or local government or private contracts performed during the last three (3) years.” The RFQ explained that past performance would be evaluated for the quality of the product or service, timeliness of performance, business relations (*i.e.*, customer service), and subcontract performance. In addition to reviewing the information provided by the vendors, the RFQ stated that the government would review “U.S. Coast Guard Contractor Performance Reports and other existing past performance ratings on relevant contracts,” as well as general trends in the contractor’s performance. *Id.* at 26.

Twelve vendors, including Riverhawk and CommSol, submitted quotations in response to the solicitation. CommSol’s quotation of \$442,143.00 was the lowest-priced quotation received, and Riverhawk’s quotation of \$603,793.00 was the second lowest in price.<sup>2</sup> Agency Report (AR), Tab 7D, Evaluation & Award Documentation, at 6.

CommSol’s quotation identified three USCG contracts performed during 2006 for the agency’s review. The largest of CommSol’s contracts was for “oil flush of the main reduction gear and lines” on a USCG boat and was valued at \$115,612.31; the second largest contract was for “hot flush of the main engine and coolers” on a USCG boat and was valued at \$94,543.50; and the smallest contract was for “dry dock work” on a 41-foot USCG patrol boat and was valued at \$35,546.00. AR, Tab 5A, CommSol’s Quotation, attach. 3, at 1-2.

The agency evaluated the largest two of CommSol’s contracts and determined that both were not relevant because “they were not of the same complexity, scope, and dollar value [as] this acquisition.”<sup>3</sup> AR, Tab 7D, Evaluation & Award Documentation, at 4. The agency also contacted CommSol’s references for these contracts, but neither reference provided past performance information. In this regard, the first

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<sup>1</sup> The RFQ stated that price would be evaluated for “fairness and reasonableness” and would include a calculation of the “foreseeable costs” of transporting the USCG Cutter Sapelo to the vendor’s commercial shipyard. RFQ at 27.

<sup>2</sup> The independent government estimate was \$534,700.00. AR, Tab 7D, Evaluation & Award Documentation, at 6.

<sup>3</sup> The agency did not evaluate CommSol’s third contract, which was the lowest in value of the three contracts that CommSol identified in its quotation. The protester does not protest the agency’s failure to evaluate this contract under the past performance criteria.

reference stated, “I don’t recall the performance by this vendor and this [purchase order] file is no longer located in this area.” AR, Tab 7A, CommSol’s Past Performance Evaluation, at 8. The second reference, after being contacted by the agency twice, stated that she would send information via email, but she “never did.” Id. at 7. Because the USCG could not obtain any past performance information from CommSol’s references and the contracts were deemed not relevant, the agency assigned CommSol’s quotation a “neutral” rating under the past performance factor. AR, Tab 7D, Evaluation & Award Documentation, at 4; Contracting Officer’s Statement at 1-2.

Riverhawk’s quotation identified two USCG contracts for the agency’s review. The first contract, performed in 2008, involved dry dock repairs of the 110-foot USCG Cutter Key Biscayne and was valued at \$338,515.00. The second contract, which was being performed during the evaluation here, involved dry dock repairs of the 110-foot USCG Cutter Pea Island and was valued at \$1,260,541.56. AR, Tab 6A, Riverhawk’s Quotation, at 1; Tab 7A, Riverhawk’s Past Performance Evaluation, at 2; USCG’s E-Mail to GAO, Sept. 23, 2009, attach. 1.

The USCG determined that Riverhawk’s past performance was relevant based primarily on the Key Biscayne contract, which was the only contract that Riverhawk had fully performed at the time of the evaluation. In this regard, the USCG determined that the contract was similar in “complexity, scope, and dollar value” to the acquisition here. AR, Tab 7D, Evaluation & Award Documentation, at 7. The agency contacted Riverhawk’s references for the Key Biscayne contract and received a USCG contractor performance report, which indicated that Riverhawk’s performance ranged from “excellent” to “outstanding” in all performance areas evaluated. Based on these findings, the agency assigned Riverhawk’s quotation an “excellent” rating under the past performance factor.<sup>4</sup>

After considering vendors’ past performance ratings and price, the USCG determined that Riverhawk’s quotation provided the “best value” to the government. The agency noted that although CommSol’s quotation was lower in price, the firm’s lack of relevant past performance “that meets the complexity, scope, and dollar value of this acquisition . . . could produce an administrative burden to industry and the government.” In contrast, the agency noted, Riverhawk’s relevant and “excellent” past performance demonstrated that the firm “will likely produce an excellent end product, on time delivery, and very satisfied customers.” Thus, the agency

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<sup>4</sup> With regard to the Pea Island contract, a contractor performance report was not available because Riverhawk was still performing the contract at the time of the evaluation. USCG’s E-Mail to GAO, Sept. 28, 2009, at 1. However, the agency reviewed a pre-award survey for this contract, which “draws heavily” from Riverhawk’s work on the Key Biscayne contract, and found that this survey supported its assessment of an “excellent” rating for Riverhawk’s past performance. Id.; USCG Legal Memorandum at 2.

concluded, it was in the “best interest of the government to pay a higher premium [for Riverhawk’s quotation] based upon past performance being significantly more important than price.” AR, Tab 7D, Evaluation & Award Documentation, at 7.

The USCG awarded the contract to Riverhawk on June 23. CommSol protested on July 2 after receiving notice of the awardee and contract price.<sup>5</sup> In its protest, CommSol complains that the agency improperly evaluated the vendors’ past performance and unreasonably awarded the contract to Riverhawk—a higher-priced vendor—who had less or equal experience than CommSol on USCG projects. Specifically, CommSol contends that the agency deviated from the stated evaluation criteria by crediting Riverhawk’s quotation with an “excellent” rating based on only one contract that was fully performed and one contract that had not yet been completed at the time of the evaluation, when the solicitation required that vendors identify at least two fully-performed contracts. CommSol also asserts that the agency improperly assigned its quotation a “neutral” rating.

Where a solicitation contemplates the evaluation of vendors’ past performance, as is the case here, the contracting 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 it is unreasonable or inconsistent with the terms of the solicitation or applicable procurement statutes and regulations. National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4; Sam Facility Mgmt., Inc., B-292237, July 22, 2003, 2003 CPD ¶ 147 at 3. A protester’s mere disagreement with the agency’s judgment does not establish that an evaluation was unreasonable. Sam Facility Mgmt., Inc., *supra*, at 3. Based on our review of the record, as discussed below, we find the USCG’s evaluation of past performance to be reasonable.

With regard to the evaluation of Riverhawk’s quotation, the protester is correct that vendors were required to identify at least two relevant contracts that had been “performed during the last three (3) years.” RFQ at 26. However, the RFQ states only that the contracts must be performed during the past 3 years, not that performance must be completed prior to the evaluation. Where, as here, the RFQ only requires performance and not completed performance, we will not find unreasonable an agency’s decision to consider performance of ongoing contracts. See Sam Facility Mgmt., Inc., *supra*, at 7 (challenge to the agency’s past performance evaluation that considered ongoing contracts was denied because the solicitation did not state that contracts must have been completed within the last 5 years, only that they must have been “performed” within the last five years). As such, we find the

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<sup>5</sup> The agency argues that the protest is untimely because CommSol was provided an earlier notice of award more than 10 days before it filed its protest. However, we find that the earlier notice did not contain sufficient information to provide CommSol with a basis of protest and that the protest filed here, which is based on information provided in the later-provided notice, is timely.

USCG's evaluation of Riverhawk's past performance, which included consideration of Riverhawk's uncompleted Pea Island contract but relied primarily on the Key Biscayne contract, to be reasonable and in accordance with the terms of the solicitation.<sup>6</sup>

We also find reasonable the agency's assessment of CommSol's past performance--both the agency's determination that CommSol's contracts were not relevant and the agency's assessment of a "neutral" rating to CommSol's quotation. In this regard, the record confirms that none of CommSol's contracts were relevant because they were not of similar complexity, scope, or dollar value to this acquisition. All three contracts were significantly less in value than the independent government estimate for this acquisition, and the two largest contracts did not include the same work as was required here. For example, CommSol's two largest contracts were for flushing engines, which the agency explains are only a small part of the 67 dry dock requirements that would be performed here. CommSol's third contract was for dry dock work, but the contract was only for \$35,546.00, which was only a fraction of the government estimate of \$534,700.00. Furthermore, the USCG received no input from contractor references, despite the agency's reasonable attempts to obtain such information from references for the two largest contracts. Given the absence of relevant past performance and reference responses, we find that the agency could reasonably assess CommSol's quotation a "neutral" past performance rating. CMC & Maint., Inc., B-292081, May 19, 2003, 2003 CPD ¶ 107 at 3.

Finally, the protester asserts that the agency erred in awarding the contract to a higher-priced vendor who, according to the protester, had "less or equal" past performance. Protest at 2. However, as discussed above, the record supports the agency's determination that Riverhawk had a more relevant and excellent record of performance, and the agency reasonably considered this record to be worth the price premium associated with the Riverhawk's quotation. Since the RFQ stated that past performance was "significantly more important than" price, we find the agency's best value analysis and award selection to be unobjectionable.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel

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<sup>6</sup> We further find reasonable the USCG's judgment that the Key Biscayne contract was relevant to this acquisition and that the favorable ratings from the contractor performance report supported an "excellent" past performance rating. As noted above, the agency had the discretion to determine the scope and relevance of the performance history to be considered and, in our view, the USCG reasonably exercised that discretion here.