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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: MFM Lamey Group, LLC

File: B-402377

Date: March 25, 2010

Robert M. Anderson, Esq., Akerman Senterfitt, LLP, for the protester.
Genevieve G. Stubbs, Esq., Overseas Private Investment Corporation, for the agency.
Pedro E. Briones, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Procurements of supplies and services by the Overseas Private Investment Corporation (OPIC), a wholly-owned government corporation which is identified as a federal agency under the Competition in Contracting Act of 1984 (CICA), are subject to GAO's bid protest jurisdiction.
 2. OPIC's procurement of planning and logistical support services is subject to the procurement procedures of the Federal Property and Administrative Services Act of 1949, as amended by CICA, and the Federal Acquisition Regulation.
 3. Protest that the agency unreasonably attributed to the awardee past performance that should actually have been attributed to the protester (where the protester and awardee are successor firms to another entity) is denied where the record shows that the agency's evaluation of the awardee's past performance was based upon that firm's performance since the split of the two firms.
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DECISION

MFM Lamey Group, LLC, of Miami, Florida, protests the award of a contract to MFMci, LLC, of Miami, Florida, under request for proposals (RFP) No. OPIC-10-R-0006, issued by the Overseas Private Investment Corporation (OPIC) for planning and logistical services for an international investment conference. MFM Lamey challenges OPIC's past performance evaluation, arguing that the agency improperly

attributed to the awardee past performance that was actually attributable to the protester.¹

We deny the protest.

BACKGROUND

OPIC was established in 1969 to promote and assist United States business investment in developing nations. See 22 U.S.C. § 2191 (2006); see also The Overseas Private Investment Corporation: Background and Legislative Issues, Congressional Research Service Report for Congress, No. 98-567, Dec. 1, 2009, at 1.

The RFP, issued on Federal Acquisition Regulation (FAR) standard form 1447 on the Federal Business Opportunities (FedBizOpps) website, provided for the award of a time-and-materials contract for planning, promotion (including identifying and recruiting qualified American companies) and logistics support for an international business and investment conference to be held in India in the spring of 2010. The RFP provided a statement of work (SOW) that detailed the services to be provided under the contract and informed offerors that contract deliverables would include a detailed marketing plan, production/project calendar, conference preparations and logistics, conference materials, a conference website, weekly status reports, and a final report within 45 days following the conference. SOW at 1-2.

The RFP set out the language of Alternate 1 of FAR clause 52.212-4, “Contract Terms and Conditions--Commercial Items (Oct. 2008),” but did not include the remainder of that standard FAR clause. The RFP included no other instructions or information for offerors, and in particular, did not state any evaluation criteria or identify a basis for award.² The solicitation notice posted on the FedBizOpps website, however, requested that offerors “submit up to five of the attached [past performance] questionnaires completed by former customers with your proposal.” See Solicitation Notice at 2.

OPIC received four proposals by the stated closing date for receipt of proposals. Agency Report (AR) at 2. The proposals were evaluated by a three-person panel under two factors: technical capability and past performance.³ AR, Tabs F-1, F-2,

¹ The protester states that it and the awardee are separate, successor companies to MFM Group, Inc., which was split in 2008 by mutual agreement of its owners.

² No aspect of the RFP was protested to our Office or the agency.

³ Technical capability was assessed as either outstanding, better, acceptable, marginal, or unacceptable; past performance was assessed as either outstanding, better, acceptable, marginal, or neutral.

G-1, G-2 (Evaluations). The evaluation panel concluded that MFMci's proposal, which was rated as "outstanding" overall, was superior to MFM Lamey's proposal, which was rated as "better" overall, and recommended award to MFMci. With respect to the offerors' past performance evaluations, the evaluation panel noted that MFMci's past performance since its split from the MFM Group was "very impressive," and that OPIC had direct experience with MFM Lamey and had found its "customer service to be lacking," since the split. AR, Tab H, Email from the Evaluation Panel Chairperson to the Contracting Officer, Dec. 15, 2009. The contracting officer accepted the evaluation panel's recommendation.

Following notice of the award, MFM Lamey protested the awardee's past performance evaluation to OPIC, arguing that MFMci may have received credit for MFM Lamey's past performance and that the use of MFM Lamey's past performance history constituted an appropriation of the protester's intellectual property. OPIC denied the agency-level protest, and this protest to our Office followed.

DISCUSSION

Jurisdiction

As a preliminary matter, the agency argues that "GAO does not have authority to review this protest, and should dismiss it, because the contract at issue is funded with non-appropriated funds." OPIC Request for Dismissal at 2-3. We find, as explained below, that we have bid protest jurisdiction to review OPIC's award of a contract to MFMci.

Our authority to decide bid protests is set forth in the Competition in Contracting Act of 1984 (CICA), which defines a protest, as relevant here, to be a written objection by an interested party to an award of a contract by a federal agency for the procurement of property or services. See 31 U.S.C. §§ 3551(1), 3553 (2006). Since the passage of CICA, our bid protest jurisdiction has not been based on the expenditure of appropriated funds. See USA Fabrics, Inc., B-295737, B-295737.2, Apr. 19, 2005, 2005 CPD ¶ 82 at 2. Rather, our threshold jurisdiction concern is whether the procurement at issue is being conducted by a federal agency. Americable Int'l, Inc., B-251614, B-251615, Apr. 20, 1993, 93-1 CPD ¶ 336 at 2. In this regard, CICA adopted the definition of federal agency set forth in section 3 of the Federal Property and Administrative Services Act of 1949 (FPASA), 40 U.S.C. § 102 (2006). See 31 U.S.C. § 3551(3). FPASA defines a federal agency as including any "executive agency," which it defines as including any executive department or independent establishment in the executive branch of the government, and any wholly-owned government corporation.⁴ 40 U.S.C. §§ 102(4), (5).

⁴ We recognize that our Bid Protest Regulations, 4 C.F.R. § 21.5(g) (2009), state that protests of procurements by nonappropriated fund activities are beyond our bid

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OPIC is specifically identified as a wholly-owned government corporation, 31 U.S.C. § 9101(3)(H), and is thus, as defined by CICA, a federal agency for the purposes of our bid protest jurisdiction.⁵ See Professional Pension Termination Assocs., B-230007.2, May 25, 1988, 88-1 CPD ¶ 498 at 5 (GAO has bid protest jurisdiction over procurements of the Pension Benefit Guarantee Corporation, a wholly-owned government corporation).

Application of CICA and the FAR

OPIC also argues that, even if this procurement is within GAO's bid protest jurisdiction, our review of the protest is limited to reviewing the reasonableness of the agency's procurement actions because "the basic procurement statutes are not applicable" to OPIC.⁶ AR at 4. The agency believes it is otherwise exempt from CICA under various provisions of titles 22, 40, and 41 of the U.S. Code. See id. at 4-5.

Specifically, the agency argues that CICA, 41 U.S.C. §§ 251-260, is not applicable to purchases by executive agencies, when "made inapplicable pursuant to section 113(e) of title 40 or any other law." See 41 U.S.C. § 252(a)(2). OPIC contends that section 113(e)(2) provides that nothing in FPASA "impairs or affects the authority of an executive agency, with respect to any program conducted for the purposes of . . . foreign aid." AR at 5.

The agency also contends that under the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2151 et seq., and Executive Order 11223, OPIC is exempted from provisions of FPASA. See 22 U.S.C. § 2393(a). Specifically, OPIC states that Executive Order 11223 exempts OPIC from the provisions of 41 U.S.C. §§ 5 and 8. See Executive Order 11223, Relating to the Performance of Functions Authorized by the Foreign Assistance Act of 1961, As Amended, §§ 1(4), (5), (May 12, 1965), reprinted at 30 Fed. Reg. 6,635. The agency also notes that other provisions of the Foreign Assistance Act provide the agency with authority to expend funds

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protest jurisdiction. By its terms, however, this provision excludes from our jurisdiction protests concerning procurements by agencies "other than Federal agencies" as defined in FPASA. USA Fabrics, Inc., supra, at 2. Thus, the term "nonappropriated fund activities," as used here, only refers to entities that are not federal agencies as defined in CICA and the FPASA.

⁵ OPIC has not previously challenged our bid protest jurisdiction. See, e.g., Digital Sys. Group, Inc., B-256422, B-256521, June 3, 1994, 94-1 CPD ¶ 344, recon. denied, B-256422.2, B-256521.2, Oct. 28, 1994, 94-2 CPD ¶ 169.

⁶ In cases where the basic procurement statutes are not applicable to a protested procurement, we review the agency's actions to determine whether they were reasonable. The Real Estate Ctr., B-274081.4, Feb. 24, 1997, 97-1 CPD ¶ 85 at 2.

“notwithstanding any other provision of law” and “without regard to such laws and regulations governing the obligation and expenditure of funds” with respect to the procurement here. AR at 5, citing 22 U.S.C. §§ 2197(d)(3), 2396(b).

Finally, OPIC argues that CICA only applies to wholly-owned government corporations that are “fully subject to” the provisions of the Government Corporation Control Act (GCCA), as amended, 31 U.S.C. §§ 9101-9110, and that GCCA is only “partially applicable” to OPIC. Id., citing 41 U.S.C. § 403(1)(D) (defining “executive agency”). In this respect, the agency explains that under 22 U.S.C. § 2199(c) (Audits of the Corporation), OPIC is “subject to the applicable provisions of [GCCA], except as otherwise provided in [22 U.S.C. §§ 2191-2200b, OPIC’s organic statute].” Id. (emphasis in original).

We find, as explained below, that the procurement at issue here is subject to the requirements of CICA, and that the agency has not identified any statute that expressly exempts it from CICA. We also find that the acquisition here is funded with appropriated funds and is subject to the FAR, which applies to the acquisition by contract with appropriated funds of supplies or services by and for the use of the federal government.

FPASA, as amended by CICA, is the basic procurement statute applicable to procurements by most executive branch civilian agencies. See, e.g., Michael J. O’Kane; Lorna H. Owens, B-257384, B-257384.2, Sept. 28, 1994, 94-2 CPD ¶ 120 at 3. Executive agencies must make purchases and contracts for property and services in accordance with the provisions of the CICA and the FAR, except when the act is made inapplicable pursuant to another law. 41 U.S.C. § 252(a). That is, 41 U.S.C. §§ 251-260 apply in the absence of a statutory provision that, in express terms, exempts the procurement from the procurement statute.⁷ See Andrus v. Glover Constr. Co., 446 U.S. 608, 618 n.19 (1980).

For example, the Tennessee Valley Authority, while a federal agency subject to GAO’s bid protest jurisdiction under CICA, is exempt from the requirements of full and open competition under CICA and the FAR because the agency’s procurement procedures are expressly authorized by a separate statute. NAC Int’l, Inc., B-310065, Nov. 21, 2007, 2008 CPD ¶ 3 at 5-6. Similarly, the United States Postal Service (USPS) is expressly exempted from federal procurement laws (including CICA and

⁷ There is a legal presumption that CICA applies to executive agencies, “except in the case of procurement procedures otherwise expressly authorized by statute.” Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 10, cf., Department of Health & Human Servs.—Request for Advance Dec., B-232364, Oct. 5, 1988, 88-2 CPD ¶ 325 at 2-3 (Buy Indian Act establishes procurement procedures which exempt purchases under the act from CICA).

our Bid Protest Jurisdiction), except as specifically enumerated in 39 U.S.C. § 410(b). Falcon Sys., Inc., B-222549, May 14, 1986, 86-1 CPD ¶ 462 at 1. See also Performance Excavators, Inc., B-291771, Mar. 17, 2003, 2003 CPD ¶ 63 at 2-3 (statute establishing Presidio Trust, a wholly-owned government corporation, expressly limits extent to which Trust is subject to federal procurement laws and regulations).

The Foreign Assistance Act, which the agency argues exempts OPIC from the “basic procurement statutes,” does not by its terms expressly exempt the agency from CICA or authorize procurement procedures for OPIC. In making this determination, we reviewed the language of the Foreign Assistance Act to ascertain whether that Act expressly exempted OPIC from FPASA, as amended by CICA, and also reviewed the statute to determine whether the Act provided for procurement procedures different from those applicable to federal agencies generally. See, e.g., American Battle Monuments Comm’n--Contracting with Donated Funds for World War II Armed Forces Mem’l, B-275669.2, July 30, 1997, 97-2 CPD ¶ 41 at 4-5 (no specific provision of law excludes Commission from, or authorizes adoption of procurement rules unconstrained by, FPASA or the FAR). Our review leads us to conclude that the Foreign Assistance Act neither expressly exempts OPIC from FPASA, as amended by CICA, nor otherwise authorizes procurement procedures apart from CICA.

We also disagree with OPIC that Executive Order 11223 exempts the agency from FPASA, as amended by CICA. That order, which was issued under the authority of section 633(a) of the Foreign Assistance Act, as amended (22 U.S.C. § 2393(a)), provides for the performance of functions authorized by the Act without regard to sections 5 and 8 of title 41. However, section 260 of title 41 specifically provides that sections 5, 8, and 13 of title 41 do not apply to the procurement of supplies or services by civilian executive agencies under CICA.⁸ See 41 U.S.C. § 260. Accordingly, we do not find that Executive Order 11223, although authorized by the Foreign Assistance Act, exempts the agency from FPASA, as amended by CICA.

We also find that the limitation provision of 40 U.S.C. § 113(e)(2) does not exempt the agency from CICA or authorize procurement procedures for OPIC. That provision provides, in pertinent part, that nothing in FPASA should impair or affect the authority of an executive agency with respect to any program conducted for the purposes of foreign aid. OPIC has not shown, however, that complying with CICA or the FAR when it procures supplies or services impairs its authority to conduct foreign aid programs. On the contrary, the agency availed itself of several provisions of the FAR in conducting its procurement; that is, the procurement was advertised

⁸ Sections 5 and 8 of Title 41 were the basic procurement authority for civilian agencies prior to the enactment of CICA. We have found that 41 U.S.C. § 5 remains applicable to procurements by judicial branch agencies that are not subject to CICA’s procurement procedures. See Electrographic Corp.--Recon., B-225517.3, Sept. 11, 1987, 87-2 CPD ¶ 233 at 2.

on the FedBizOpps website; the solicitation was issued on FAR standard form 1447 and included Alternate 1 of FAR clause 52.212-4, “Contract Terms and Conditions--Commercial Items”; and the agency accepted MFM Lamey’s agency-level protest under FAR § 33.103. Moreover, our Office has decided numerous bid protests involving agencies that are subject to the Foreign Assistance Act, including OPIC, without impairing their authority to conduct foreign aid.⁹

We also find that OPIC’s authority to obligate fees under section 237(d)(3) of the Foreign Assistance Act “notwithstanding any other provision of law” does not exempt the agency from CICA. That provision provides:

Fees paid for the project-specific transaction costs and other direct costs associated with services provided to specific investors or potential investors pursuant to section 2194 of this title (other than those covered in paragraph (2)), including financing, insurance, reinsurance, missions, seminars, conferences, and other preinvestment services, shall be available for obligation for the purposes for which they were collected, notwithstanding any other provision of law.

See 22 U.S.C. § 2197(d)(3) (emphasis added).

The Supreme Court has noted that “in construing statutes, the use of such a ‘notwithstanding’ clause clearly signals the drafter’s intention that the provisions of the ‘notwithstanding’ section override conflicting provisions of any other section.” See Cisneros v. Alpine Ridge Group, 508 U.S. 10, 18 (1993) (emphasis added). That is, a “phrase ‘notwithstanding any other provision of law’ connotes a legislative intent to displace any other provision of law that is contrary to the Ac[t].” Shoshone Indian Tribe of the Wind River Reservation v. United States, 364 F.3d 1339, 1346 (Fed. Cir. 2004) (emphasis added). Thus, a “notwithstanding” clause may not be read to supersede all other laws that are not directly related to the object to which a statute seeks to address, but must be read together with an agency’s specific statutory tasks and interpreted to mean that the clause only supersedes or trumps

⁹ See, e.g., SKJ & Assoc., Inc., B-294219, Aug. 13, 2004, 2004 CPD ¶ 154 (cancellation of RFQ issued by Trade and Development Agency (TDA) under FAR subpart 12.6 for grant administration services for development promotion in developing and middle-income countries); Ritchie Sawyer Corp., B-281241.2, Jan. 25, 1999, 99-1 CPD ¶ 21 (TDA contract award for program audit of central African grant); Mary Jo McDonough, B-270530, B-270530.2, Mar. 13, 1996, 96-1 CPD ¶ 154 (award of personal services contract under 22 U.S.C. § 2396 by Agency for International Development (AID)); Cosmos Eng’rs, Inc., B-220000.3, Feb. 24, 1986, 86-1 CPD ¶ 186 (contract award by AID Regional Economic Development Services financed by loan to government of Liberia).

other statutes that are inconsistent. See Jacobs COGEMA, LLC, supra, at 7; State Dept. Assistance for Lebanon, B-303268, Jan. 3, 2005, at 3. Such an interpretation honors the long-standing principle of statutory construction that, if possible, statutes should be construed harmoniously, so as to give effect to both. See, e.g., Posadas v. Nat'l City Bank, 296 U.S. 497, 503 (1936); Negonsott v. Samuels, 933 F.2d 818, 819 (10th Cir. 1991).

Here, 22 U.S.C. § 2197(d)(3) does not relate to CICA or FPASA. Rather, the provision relates specifically to fees that OPIC collects for costs incurred for investment and pre-investment services—such as the conference services solicited here—and provides that those fees shall be available for obligation for the purposes for which they were collected, notwithstanding any other provision of law. Namely, fees collected under section 237(d)(3) for the costs of these investment services must be used for those costs, notwithstanding section 236, 22 U.S.C. § 2196(a), which otherwise grants OPIC broad authority to use revenues and income earned by the corporation, from whatever source derived, to carry out the agency's purposes. Compare 22 U.S.C. § 2197(d)(3) with 22 U.S.C. § 2196(a). Furthermore, to the extent that a “notwithstanding” clause may override inconsistent, conflicting provisions of law, the agency has not shown that CICA or the FAR is inconsistent with OPIC's authorities; as we discuss above, the agency actually applied FAR provisions in conducting this procurement. See also Agency for Int'l Dev.—Auth. to Pay Claims under Sec. 636(b) of the Foreign Assistance Act of 1961, B-246211, B-246211.2, Dec. 7, 1992 at 5 (“without regard to” clause in 22 U.S.C. § 2396(b) does not authorize AID to exceed limitations of Claims Act); Computer Support Sys., Inc., B-239034, Aug. 2, 1990, 90-2 CPD ¶ 94 at 3-4 (“notwithstanding” clause does not exempt Federal Reserve from broad definition of federal agencies subject to CICA).

For these same reasons, OPIC is not exempt from CICA under the “without regard to” clause of section 636(b) of the Foreign Assistance Act. See 22 U.S.C. § 2396(b). Section 636(b) provides, in relevant part, that “[f]unds made available for the purposes of [the Foreign Assistance Act] may be used for . . . expenditures outside the United States for the procurement of supplies and services . . . without regard to such laws and regulations governing the obligation and expenditure of fund[s].” 22 U.S.C. § 2396(b) (emphasis added). By its plain terms, the clause refers narrowly to federal fiscal laws, such as the Anti-Deficiency Act, 31 U.S.C. §§ 1341-42, 1517, that govern the obligation and expenditure of agency funds; the clause does not refer to, or expressly exempt OPIC from, CICA. See, e.g., U.S. Postal Serv. Office of Inspector Gen.—Implementation of Postal Accountability & Enhancement Act, Sec. 603, Pt. 1, B-317022, Sept. 25, 2008, at 4, 6 (39 U.S.C. § 410(a), which provides that no federal law dealing with budgets or funds shall apply to USPS, exempts the agency from the Anti-Deficiency Act and Miscellaneous Receipts Act); cf. TLM Marine, Inc., B-226968, July 29, 1987, 87-2 CPD ¶ 111 at 3 (“notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States” clause in Merchant Marine Act, 46 U.S.C. § 1275(c) (1982), exempts Maritime Administration from CICA). Moreover, OPIC does not argue, and the record does

not otherwise show, that the procurement here was for “expenditures outside the United States.”

In so far as the agency argues that section 239(c)(1) of the Foreign Assistance Act, 22 U.S.C. § 2199(c)(1), exempts the agency from GCCA and thereby exempts it from CICA under the definition of “executive agency” at 41 U.S.C. § 403(1)(D), the definitions at section 403 apply only to the Office of Federal Procurement Policy Act (OFPPA), as amended (41 U.S.C. §§ 403-440), not to CICA. 41 U.S.C. § 403; see Rapides Reg'l Med. Ctr. v. Sec'y, Dept. of Veterans' Affairs, 974 F.2d 565, 573 (5th Cir. 1992) (section 403 definitions apply exclusively to OFPPA, not to CICA).

With respect to the application of the FAR, we disagree that the acquisition here is funded with non-appropriated funds. The FAR applies to acquisitions, which are defined to be the acquiring by contract with appropriated funds of supplies or services. FAR §§ 1.104, 2.101(b)(2). Funds available to an agency are considered appropriated funds, regardless of their private source, where they are made available for collection and expenditure pursuant to specific statutory authority. International Line Builders, B-227811, Oct. 8, 1987, 87-2 CPD ¶ 345 at 2. In this regard, our Office has long held that where Congress has authorized the collection or receipt of funds by an agency, for example, by establishing a working capital or revolving fund, and has specified or limited the purposes of those funds, the authorization meets the constitutional requirement for an appropriation made by law and is a “continuing appropriation” regardless of the fund’s private sources. USA Fabrics, supra, at 2 n.1.

To the extent that the agency relies on Core Concepts of Fla., Inc. v. United States, 327 F.3d 1331 (Fed. Cir. 2003), for the proposition that OPIC’s funds are non-appropriated, the Federal Circuit court in that case limited the applicability of its “non-appropriated funds doctrine” to the determination of whether the Court of Federal Claims had jurisdiction of a contract appeal under the Tucker Act. Core Concepts at 1338; see USA Fabrics, supra, at 1 n.1. The court specifically acknowledged that the doctrine was not applicable to federal appropriations law or to GAO’s position on the appropriated status of revolving funds. Core Concepts at 1338.

Here, the funds available to OPIC are appropriated funds because the funds were made available for collection and expenditure pursuant to specific statutory authority. See 22 U.S.C. § 2197(d); see also Pub. L. No. 111-117, div. F, title VI, 123 Stat. 3034, 3342 (Dec. 16, 2009) (fiscal year 2010 appropriations for OPIC noncredit revolving fund account and limitations on its availability for certain purposes); 41 U.S.C. § 5a (as used in FPASA, “appropriation” must be construed as including funds available by legislation to wholly-owned government corporations); cf. 22 C.F.R. § 712.100(a) (OPIC regulation implementing restriction on use of appropriated funds for lobbying with regard to OPIC contracts, grants, loans, or cooperative agreements).

Past Performance Evaluation

The protester argues that the “award to MFMci is entirely irrational because it is not supported by relevant past performance and it relies upon . . . material misrepresentations made by MFMci with respect to the nature of its past performance experience.” Protest at 1. Specifically, the protester complains that MFMci was credited for past performance that was attributable to the protester and contends that “[s]ince [the awardee’s and protester’s] split from MFM Group, Inc., [the awardee] has not provided international conference planning services for any U.S. Government agency or entity . . . upon which OPIC could reasonably rely in making its award decision.”¹⁰ *Id.* at 4. The protester contends that the awardee’s past performance since the split is not relevant to this procurement. The protester also complains that the awardee “appropriated intellectual property” belonging to the protester, including its “contractual experience, approach and staff work.”¹¹ *Id.* In this regard, the protester claims that the meeting planning operations division of the predecessor firm was sold to the protester, “including all U.S. Government meeting planning conducted by” the predecessor firm. *Id.*

The agency responds that it’s past performance evaluation judgments were based upon conferences and other events that took place after the firms split from the MFM Group. AR at 10.

The evaluation of an offeror’s past performance is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method for accommodating them, and we will not substitute our judgment for reasonably based past performance ratings. See Team BOS/Naples-Gemmo S.p.A./DelJen, B-298865.3, Dec. 28, 2007, 2008 CPD ¶ 11 at 8; Clean Harbors Envtl. Servs., Inc., B-296176.2, Dec. 9, 2005, 2005 CPD ¶ 222 at 3. Moreover, a protester’s mere disagreement with the agency’s judgment does not establish that an evaluation was unreasonable. UNICCO Gov’t Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

¹⁰ The protester complains that over half of the past performance identified in the awardee’s proposal is attributable to past performance by the predecessor company, MFM Group, to which (the protester argues) only the protester is entitled to reference. Comments at 4-5.

¹¹ The protester contends that two “contract personnel” identified in the awardee’s proposal are actually employees of the protester. Comments at 4. These two individuals were not identified as employees of the awardee, *see* AR, Tab D, at 27 (MFMci proposal, contract personnel), and the protester does not contend that the awardee was not authorized to use these individuals’ names in its proposal.

Here, we find that the agency's past performance evaluation judgments are reasonable. The record shows that the past performance questionnaires submitted by the awardee's clients describe nine international conferences that the awardee performed in 2009 (after the split from the MFM Group), and that those clients consistently rated the awardee's past performance with the highest possible rating. See AR, Tab F-2, Awardee's Past Performance Questionnaires. Several of the awardee's clients made comments attesting to the awardee's superior past performance, such as "[t]he best there is" and "highly recommended!"¹² Although the protester generally questions the relevance of these questionnaires, the questionnaires described MFMci's past performance as including logistics planning, meeting support, audio-visual and internet support for a conference, venue sourcing, and ground logistics and production. The protester does not explain why this work is not relevant here; the protester's disagreement with the agency's judgment does not establish that it is unreasonable.¹³

Finally, with regard to the protester's complaint that the awardee's alleged use of past performance history attributable to the protester, or its offer of individuals employed by the protester, constitutes a misappropriation of the protester's intellectual property, such a complaint, as framed by the protester, concerns a private dispute between the parties, which is not for consideration by our Office.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

¹² In contrast to the awardee's superior past performance rating, OPIC found that the protester's recent performance as the agency's contractor demonstrated weaknesses in communicating with the client, flexibility, and meeting time frames. The protester has not challenged the agency's evaluation of its own past performance.

¹³ Although the awardee's proposal identifies past performance that occurred before the firms' split from MFM Group, we need not address MFMci's arguments concerning this past performance, because OPIC's evaluation of the awardee's past performance was based upon that firm's performance of work since the two firms' split.