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**Comptroller General
of the United States**

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

Decision

Matter of: Commissioning Solutions Global, LLC

File: B-403542

Date: November 5, 2010

Wade M. Bass, Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, for the protester.

Anthony J. Cuva, Esq., Bajo Cuva Cohen & Turkel, PA, for the intervenor.

Talbot J. Nicholas II, Esq., Department of Homeland Security, United States Coast Guard, for the agency.

Paula J. Haurilesko, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the contracting agency improperly considered the quantity of relevant past performance where the solicitation did not specifically state that the amount of relevant past performance would be considered is denied where the quantity of relevant experience is logically encompassed by or related to considering the quality of the vendor's past performance.

2. A contracting agency may properly consider in its past performance evaluation the protester's termination for default, even where that termination is appealed and where, after award, the termination is converted to one of convenience by agreement of the parties.

DECISION

Commissioning Solutions Global, LLC (CommSol), of Mandeville, Louisiana, protests the award of a contract to Hendry Corporation, of Tampa, Florida, issued by the Department of Homeland Security, United States Coast Guard, under request for quotations (RFQ) No. HSCG80-10-Q-PA1DE8 for dry dock repairs of the Coast Guard Cutter Tornado.

We deny the protest.

BACKGROUND

The RFQ, issued as a total small business set-aside, provided for the award of a fixed-price contract in accordance with Federal Acquisition Regulation (FAR) Subpart 13.5 “Test Program for Commercial Items.” RFQ at 1, 23. The RFQ stated that award would be made on a best value basis, considering past performance and price, and that the past performance factor was significantly more important than price. Id. at 24, 25. Vendors were also informed that the Coast Guard would include foreseeable costs related to the locations of the vendors’ shipyards in its evaluation of price. Id. at 26.

With respect to the past performance factor, vendors were required to identify “at least two relevant (construction, overhaul, repair, and alteration of ships) federal, state or local government or private contracts” performed during the last 3 years. Id. The RFQ explained that the past performance evaluation would take into account the guidelines outlined at FAR § 15.305(a)(2) Past Performance Evaluation,¹ and further provided that past performance would be evaluated for quality of product or service, timeliness of performance, business relations (*i.e.*, customer service and customer satisfaction), and subcontracts. Id. at 25. In addition to reviewing the information provided by the vendors, the RFQ stated that the government intended to review Coast Guard contractor performance reports and other existing past performance ratings on relevant contracts. Id.

The Coast Guard received quotations from seven vendors, including CommSol and Hendry. Agency Report (AR), Tab 7C, Evaluation Memorandum, at 1. CommSol’s quotation listed 31 projects the firm performed as either a prime contractor or subcontractor since 2006 for a mix of government and private customers. See AR, Tab 5I, CommSol Resume of Work Performed. As relevant here, the list included two contracts for dry dock work: one in 2006 valued at \$35,546 and another in 2010 valued at \$500,000. Id. The list also included two contracts with the Coast Guard in 2006 for flushing a main diesel engine and the flushing of a reduction gear, valued at \$94,544 and \$115,612, respectively. Id. Finally, the list included a 2010 contract valued at \$89,986 for the hot flushing of a main diesel engine, for which CommSol identified as its contact person the contract specialist for this solicitation. Id.

The contract specialist evaluated CommSol’s performance based on the two Coast Guard contracts in 2006 for flushing a main diesel engine and flushing a reduction gear and the 2010 dry dock repairs contract. With regard to these contracts, the Coast Guard relied on prior attempts to contact the identified references during another acquisition in 2009; neither reference provided any past performance

¹ As relevant here, FAR § 15.305(a)(2) provides that the currency and relevance of the information, source of the information, context of the data, and general trends in a contractor’s performance would be considered.

information to the Coast Guard. The first reference informed the agency that “I don’t recall the performance by this vendor and this [purchase order] file is no longer located in this area.” Id., Tab 7A, CommSol Past Performance Evaluation Summary, at 1. The second reference stated that she would send information via email, but the record indicated she failed to do so. Id. With regard to the 2010 dry dock repairs contract, the Coast Guard noted that this contract was terminated for default on July 12. Id. at 1, 2.

The Coast Guard determined that CommSol’s experience with the Coast Guard was on smaller projects that were not relevant because they were not the same complexity, scope, and dollar value as the acquisition, and therefore assigned a past performance rating of “neutral.”² Id., Tab 7C, Evaluation Memorandum, at 2. In contrast, the Coast Guard determined that Hendry’s experience was both extensive and relevant, and assigned a past performance rating of “excellent.”³

CommSol’s quotation, including foreseeable costs, was \$951,219.60, and Hendry’s quotation was \$968,033.08.⁴ Id. at 4. After considering the vendors’ past performance ratings and price, the Coast Guard determined that Hendry’s quotation provided the best value to the government and, on August 8, made award to Hendry. Id.; AR, Tab 9, Award Notice. Following a debriefing, CommSol filed this protest with our Office.

DISCUSSION

CommSol challenges the Coast Guard’s evaluation of its past performance, arguing variously that the Coast Guard applied unstated evaluation criteria, improperly determined that CommSol’s past performance references were not relevant to the current acquisition, relied on inaccurate past performance information, and did not make reasonable efforts to contact CommSol’s references.

Where, as here, a solicitation contemplates the evaluation of vendors’ past performance, the contracting agency has the discretion to determine the relevance

² The Coast Guard apparently did not consider the termination for default of CommSol’s 2010 dry dock contract, in assigning the firm a neutral rating for its past performance. There is no explanation in the record as to why the agency did not consider this terminated contract relevant.

³ Hendry’s past performance evaluation was based on four Coast Guard contracts for dry dock repairs: a 2009 contract valued at \$365,521; two 2007 contracts valued at \$578,317 and \$185,572; and a 2010 contract for emergency dry dock services valued at \$56,202. AR, Tab 7C, Evaluation Memorandum, at 2.

⁴ Another vendor submitted the lowest-priced quotation, but withdrew the quotation. AR, Tab 7C, Evaluation Memorandum, at 2.

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.

CommSol contends that the Coast Guard improperly considered the quantity of Hendry's relevant experience in making its award decision, noting that the Coast Guard credited Hendy's "more robust" experience and "long history" of doing dry dock repairs. CommSol argues that the RFQ did not provide for considering the quantity of a firm's relevant experience.

We disagree with CommSol's apparent belief that the Coast Guard was limited to determining whether a firm had identified two relevant contracts. As noted above, the RFQ provided for a qualitative assessment of vendors' past performance, and instructed vendors to identify "at least" two relevant contracts in the past 3 years. RFQ at 24. To the extent that CommSol is complaining that the RFQ did not specifically state that the agency might credit a vendor for having a number of relevant contracts, we think such a consideration would be logically encompassed by or related to considering the quality of the vendor's past performance. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 6.

CommSol also disagrees with the Coast Guard that the firm's contracts were not relevant, arguing that its prior contracts are relevant because they include tasks such as flushing various systems, and the cleaning and preservation of tanks, which are task performed as part of dry dock repairs. Protester's Comments at 3.

The record shows that CommSol's identified past performance (with the exception of the 2010 dry dock contract that was terminated for default) was not of similar size, scope and complexity to the work solicited here. Although some of the identified work appears to be for tasks that would be part of the overall dry dock work, none of these smaller contracts is for the range of tasks comprising the dry dock work under this RFQ. *See* RFQ at 4. Rather, as CommSol acknowledges, the protester's past performance consists of tasks that are subsets of the overall dry dock process; as such, they are inherently less complex than the entirety of the work required here. Therefore, we find that the Coast Guard reasonably concluded that CommSol's contracts were not relevant.

CommSol also complains that the Coast Guard did not favorably consider the firm's 2010 dry dock repair contract with the agency. In this regard, the protester argues that the Coast Guard should not have considered the July 2010 default termination of this contract, because CommSol appealed the termination to the Civilian Board of Contract Appeals (CBCA) and the Coast Guard ultimately agreed to convert the termination for default to a termination for convenience.

As indicated above, the record here shows that the Coast Guard did not consider CommSol's default-terminated 2010 dry dock repair contract. That said, the agency properly could have considered this contract. CommSol's 2010 contract was terminated several weeks before the Coast Guard made its selection decision, and the Coast Guard's agreement to convert the default termination to one for convenience occurred after the agency's evaluation of quotations and selection decision. See Protester's Comments, exh. B. An agency may properly consider the termination of a firm's contract in its past performance evaluation, even where the termination has been appealed; the fact that a termination may ultimately be overturned on appeal does not demonstrate that the agency's earlier consideration of that default termination in a past performance evaluation was unreasonable. See MAC's Gen. Contractor, B-276755, July 24, 1997, 97-2 CPD ¶ 29 at 3.

With respect to CommSol's complaint that the Coast Guard did not make reasonable efforts to contact CommSol's references,⁵ we see little possibility that the protester was prejudiced by the agency's actions. As discussed above, the Coast Guard reasonably found CommSol's listed contracts--with the exception of the 2010 contract that was terminated--were not relevant.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁵ Although we recognize that there is no requirement that an agency contact all references furnished by an offeror, see Family Entm't Servs., Inc., B-298047.3, Sept. 20, 2006, 2007 CPD ¶ 59 at 6, agencies are required to treat all offerors fairly, and to make reasonable efforts to contact references. Id. at 7 n.2.