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**Comptroller General
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Decision

Matter of: Alaska Mechanical, Inc.

File: B-404191

Date: December 15, 2010

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for Weldin Construction, Inc., an intervenor.
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Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Past performance rating of satisfactory confidence was reasonable where supported by protester's performance record; while protester's performance under two contracts was rated as substantial confidence, references for two other contracts identified issues with protester's management and scheduling.
 2. Agency reasonably based past performance evaluation only on projects for which third party references submitted completed questionnaires directly to agency, disregarding an additional third party questionnaire obtained in connection with prior procurement, submitted directly by protester.
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DECISION

Alaska Mechanical, Inc. (AMI), of Anchorage, Alaska, protests the award of a contract to Weldin Construction, Inc., Palmer, Alaska, under request for proposals (RFP) No. FA5004-10-R-C005, issued by the Department of the Air Force for construction work at Eielson Air Force Base (AFB), Alaska. AMI challenges the evaluation of its proposal under the past performance factor.

BACKGROUND

The RFP contemplated the award--on a "best value" basis--of a fixed-price contract for phase 3 of a waste water treatment plant repair and rehabilitation project at Eielson AFB. Performance was to be accomplished within 180 days after the notice to proceed. Proposals were to be evaluated under two factors--past performance

and cost/price. Offers were first ranked according to price and then evaluated for past performance.

Using questionnaires submitted by references directly to the agency, the contracting officer was to seek relevant performance information based on the past and present efforts provided by offerors, and data independently obtained from other government and commercial sources. Relevant performance included projects that had a logical connection to the RFP work and had a scope, magnitude, and complexity similar to or greater than the RFP work. Proposals were to be assigned overall performance confidence assessments of substantial, satisfactory, limited, no, or unknown confidence. If the lowest-priced offeror was not evaluated at the substantial confidence level, the next lowest-priced offeror was to be evaluated, with the process continuing until an offeror was evaluated at the substantial confidence level or all offers were evaluated. The source selection authority (SSA) would then make an integrated assessment of best value.

Four offerors—including AMI and Weldin—submitted proposals and were ranked by price. AMI, with the lowest price (\$2.04 million), was evaluated at the satisfactory confidence level and Weldin, with the second lowest price (\$2.52 million), was evaluated at the substantial confidence level. Based on AMI's non-superior performance and Weldin's superior performance, the contracting officer, as SSA, concluded that Weldin's proposal was the best value, and made award to that firm. After a debriefing, AMI filed this protest.

DISCUSSION

AMI challenges the evaluation of its past performance on several grounds. As a general matter, the evaluation of an offeror's past performance, including relevance and scope of the performance history to be considered, is within the discretion of the contracting agency. We will not question an agency's judgment unless it is unreasonable or inconsistent with the terms of the solicitation, or is undocumented. Family Entm't Servs., Inc., d/b/a/ IMC, B-291997.4, June 10, 2004, 2004 CPD ¶ 128 at 5. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. Sam Facility Mgmt., Inc., B-292237, July 22, 2003, 2003 CPD ¶ 147 at 3.

Past Performance Rating

AMI asserts that its past performance evaluation of satisfactory confidence was unreasonable, noting that its four past performance records reflected 18 ratings of "substantial confidence," five ratings of "satisfactory confidence," and only one rating of "limited confidence." AMI Comments at 15. AMI asserts that it was irrational for the evaluators and SSA to focus on the less favorable ratings.

In their review, the evaluators considered four past performance questionnaires submitted on behalf of AMI—all concerning water treatment projects. Each questionnaire asked references for ratings in the areas of management, quality control, knowledge/professionalism, problem resolution, schedule adherence, and working relationship.¹ AMI received ratings of substantial confidence in all areas under two projects—scum concentrator replacement, valued at \$1.75 million, and septage improvements, which was the smallest of the four both in value, at less than \$800,000, and performance period (4 months). The evaluators found that the smallest project was of limited relevance due to its size. On a third project—sludge system modifications, valued at \$1.14 million—the references rated AMI’s performance as satisfactory confidence in the areas of management and scheduling. On the fourth project—buried concrete water distribution valve vault, the largest project in value, \$3.023 million, and performance period, 32 months—the references rated AMI’s performance as satisfactory confidence in management, problem resolution, and scheduling, and limited confidence in the area of quality control.

In rating AMI’s past performance satisfactory overall, the evaluators noted that these latter two projects included lower ratings stemming from subcontractor issues. For example, in the sludge project, the individual lower ratings were based on several subcontractor and supply vendor delays that the reference believed could have been managed more aggressively. Source Selection Decision (SSD) at 4. Similarly, the reference’s lower ratings for the vault project—considered the “most substantially similar project of all four”—were attributed to AMI’s “serious” problems with its electrical subcontractor, which took over 1 year to resolve. *Id.* The reference added that, as to contract performance, the agency had notified AMI that its actions jeopardized performance and that contract payments were withheld to drive resolution of the subcontractor issue. *Id.*

While AMI had ratings of substantial confidence for two of its projects, only one of those projects was of comparable size and complexity to the RFP work. Both of the remaining projects were of comparable size to the RFP, and the agency was not precluded from according the negative past performance patterns identified in those projects greater weight than accorded the more favorable ratings under the higher-rated projects. See *National Beef Packing Co.*, B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 5-6 (agency identification of negative performance patterns or trends, despite otherwise positive references, is reasonable and is not a disproportionate weighting of negative ratings). Since these two projects involved problems with management and scheduling on comparable projects, the agency

¹ The questionnaires also asked for ratings in the areas of design capabilities and environmental awareness. However, in all four of AMI’s projects, the references rated AMI as “unknown confidence” because none of the projects involved either requirement.

could reasonably conclude that AMI's past performance warranted no more than an overall satisfactory confidence rating.²

Outdated Record

AMI argues that the evaluation was flawed because the agency considered an additional past performance record--found in the past performance information retrieval system (PPIRS)--that was older than the time frame set forth in the RFP and was otherwise irrelevant. Protest at 4. In this regard, offerors were to provide a list of no more than 10 of their most relevant contracts within the past 3 years, with relevance defined (as noted above) as performance with a logical connection to the work described in the RFP and including consideration of similarity, magnitude, and complexity. RFP § L(4)(b)(ii). In AMI's view, the additional project was not relevant--and thus should not have been considered in the evaluation--because it was completed more than 3 years earlier, involved work that was not logically connected to water treatment work, and was significantly larger than the RFP work.

This argument is without merit. While the RFP restricted offerors to submission of projects completed within the past 3 years, there was no such restriction on the agency in conducting the evaluation. Rather, the RFP provided only that the evaluation would consider--in addition to relevant past/present efforts provided by the offeror--data independently obtained from other government and commercial sources, with no reference to a time frame. RFP § M, at 40. Further, although the project did not involve water treatment, it did involve installation of piping, pumps, valves, and operating tanks, work that could be considered similar to the RFP work, which included cleaning, rehabilitation, and replacement of waste-water pumps, piping, and wet and dry wells. Since an agency has discretion to determine the scope and relevance of past performance information (Family Entm't Servs., Inc., d/b/a/ IMC, supra), and there is no evidence of unequal treatment of the offerors, the agency reasonably could consider the challenged past performance record.³

² AMI asserts that the SSA focused on the negative aspects of its past performance because the evaluations did not accurately report the positive aspects. AMI Comments at 15. This assertion is without merit. The evaluators' rating sheets made reference to positive aspects of AMI's past performance record and the contracting officer--who was also the SSA--had access to the details of AMI's past performance references.

³ Although the agency maintains that it, in fact, did not consider the PPIRS project in the evaluation, it appears from the record that the information was considered in the source selection decision. That said, we need not resolve this question given our finding above.

Questionnaire Submitted By AMI

AMI asserts that the evaluation was flawed because the agency unreasonably failed to consider a positive record of its past performance involving work at the Rock Creek Mine. In this regard, AMI's proposal included a completed past performance questionnaire--reflecting all "very good" or "exceptional ratings"--and identified it as coming from the former mill manager and as having been submitted to another federal agency in support of a previous, unrelated past performance evaluation. AMI asserts that the agency was required to consider this performance record under the terms of the RFP.

The agency's treatment of this past performance record was unobjectionable. For contracts completed within the past 3 years, the RFP allowed offerors to submit any currently available past performance information, including customer surveys as well as a listing of up to 10 relevant past/present performance contracts. RFP § L(4)(b)(i)-(ii). For each of the listed projects, offerors were required to provide identifying information, including up-to-date contact information for contracting officers and to forward agency-provided questionnaires to a "verified point of contact" at each past performance reference, with instructions to complete the questionnaire and return it to the agency. *Id.* § L(4)(b)(ii)-(iv). AMI completed and forwarded questionnaires for the four projects discussed above, but for the Rock Creek Mine, it simply submitted a previously completed (and different) questionnaire from the former mill manager. It also submitted background information on the project as part of its own "currently available" information. AMI explained in its proposal that it did not resolicit the Rock Creek information because the questionnaire had been used in prior RFPs. Past Performance Proposal at 7.

Notwithstanding that the RFP solicited a variety of past performance information from offerors with no parameters, it set explicit parameters for consideration of past performance questionnaires. In particular, the RFP required questionnaires to come from verified points of contact rather than from the offeror itself. As explained by the contracting officer, since the Rock Creek questionnaire was submitted directly by AMI, rather than by the third party reference, the agency was unable to validate the integrity of the information in the questionnaire. Contracting Officer's Statement at 6. In determining the quality and relevance of an offeror's past performance information, an agency reasonably may consider the credibility of the information's source. See *Hughes Missile Sys. Co.*, B-259255.4, May 12, 1995, 95-1 CPD ¶ 283 at 14-15 (agency performance risk assessment that included consideration of the credibility of the information source was proper). Indeed, under the Federal Acquisition Regulation (FAR), agencies are required to consider the source of past performance information. FAR § 15.305. Since the Rock Creek questionnaire was not in the same format as the questionnaires used in the RFP, and was submitted by AMI itself--with an obvious stake in the evaluation--instead of directly from the third party reference, as provided for under the RFP, the agency reasonably could conclude that it lacked sufficient credibility. It follows that the agency reasonably

disregarded the questionnaire and based AMI's past performance evaluation on the other four questionnaires. See J. Womack Enters., Inc., B-299344, Apr. 4, 2007, 2007 CPD ¶ 69 at 8 (agency reasonably questioned validity of responses submitted by offeror's critical subcontractor, given stake in outcome of competition).

Tradeoff

AMI asserts that the SSA failed to give price meaningful consideration, and thus did not adequately justify his decision to make award to Weldin at a higher price.

Where, as here, the RFP allows for a price-technical tradeoff, the agency has discretion to select a higher-priced, technically higher-rated submission, if doing so is in the government's best interest and is consistent with the solicitation's stated evaluation and source selection scheme. University of Kansas Med. Ctr., B-278400, Jan. 26, 1998, 98-1 CPD ¶ 120 at 6.

The tradeoff decision here was unobjectionable. The RFP provided that offerors' past performance history would be evaluated as significantly more important than price. RFP at 40. The SSD described the basis for both offerors' past performance ratings, and specifically noted that Weldin had extensive experience in the field and was given a substantial confidence rating, while AMI's rating was only satisfactory. SSD at 4-5. Specifically noting that AMI's proposed price was lower than Weldin's, the SSA found that the past performance information for AMI did not demonstrate superior performance, that there was only moderate confidence that AMI would successfully perform the RFP effort, and that AMI's proposal thus did not represent the best value. Id. at 6. While AMI asserts that the SSA's decision provides no "substantive justification" for his tradeoff (AMI Comments at 18), the determination that Weldin's superior past performance rating is worth the difference in price is sufficiently established in the decision. See General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44 at 11; Virginia Tech. Assocs., B-241167, Jan. 29, 1991, 91-1 CPD ¶ 80 at 8.

The protest is denied.

Lynn H. Gibson
Acting General Counsel