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Decision

Matter of: Halbert Construction Company, Inc.

File: B-413213

Date: September 8, 2016

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DIGEST

1. Protest challenging the agency's past performance evaluation is sustained where the record reflects that the agency engaged in disparate treatment of offerors' past performance.
 2. Protest challenging the agency's past performance evaluation is denied where the agency made a reasonable attempt to contact the protester's references.
 3. Protest challenging the agency's source selection decision is sustained where the record reflects that the agency erroneously relied upon a non-existent distinction between proposals.
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DECISION

Halbert Construction Company, Inc. (Halbert), of El Cajon, California, protests the exclusion of its proposal from the second phase of the competition under request for proposals (RFP) No. N62473-14-R-0069, issued by the Department of the Navy, Naval Facilities Engineering Command (NAVFAC) Southwest, for design-build services to be performed at various government installations located in California, Arizona, Nevada, Utah, Colorado, and New Mexico. The protester contends that the agency conducted a flawed past performance evaluation and tradeoff analysis.

We sustain the protest.

BACKGROUND

On August 17, 2015, the Navy issued the RFP as a set-aside for Historically Underutilized Business Zone (HUBZone) small businesses and service-disabled veteran-owned small businesses (SDVOSBs). RFP, amend. 0001, at 1. Offerors were informed that award would be made on a best-value basis using the two phase design-build procedures of Federal Acquisition Regulation (FAR) subpart 36.3. RFP at 30.¹ The RFP stated that the phase one evaluation would result in the selection of the five most highly qualified offerors.² Id. Those offerors would then be invited to submit phase two proposals. Id.

At the conclusion of phase two, the agency anticipated the award of at least three fixed-price indefinite-delivery, indefinite-quantity (IDIQ) contracts with a period of performance of a year and four option years. RFP at 20, 30, 122-23. Subsequent task orders would be issued on a fixed-price basis. RFP at 9. When combined, the estimated maximum dollar value of all contracts was \$240 million; the estimated range for the task orders was \$3,000 to \$9 million. RFP at 7, 123. The RFP advised offerors that the Navy intended to evaluate proposals and make awards without discussions. RFP at 30.

In phase one, the RFP provided that proposals would be evaluated on the basis of three evaluation factors: (1) technical approach, (2) experience, and (3) past performance. RFP at 32. Under the technical approach factor, the agency rated proposals as either acceptable or unacceptable. RFP at 33. The experience and past performance factors were weighted equally. Id.

To demonstrate the requisite experience, the RFP required offerors to submit a maximum of five construction projects, as well as a maximum of five design projects.³ RFP at 33, 34. An offeror was permitted to submit the same projects to demonstrate experience in both construction and design. RFP at 34. In evaluating

¹ Many documents in the agency report, including the RFP, are not paginated. In such cases, citations refer to the electronic page numbers.

² The RFP permitted the selection of more than five offerors if the contracting officer determined that a greater number of offerors would benefit the agency. RFP at 30.

³ With respect to construction experience, offerors were required to submit: (1) at least one project demonstrating experience in new construction; (2) at least one project demonstrating experience in renovation and repair work; (3) at least one project demonstrating experience in design-build construction; and (4) at least two projects performed by the offeror as a prime contractor. RFP at 33. The requirements relating to an offeror's design experience were similar. See RFP at 34.

experience, the RFP stated that the agency may consider the following types of projects more favorably: (1) projects where the offeror and the proposed design firm have worked together; (2) projects that demonstrate design-build experience; and (3) projects that demonstrate experience with applicable sustainable design features. RFP at 35. The RFP also stated that the agency may assign a higher rating to proposals demonstrating that the offeror has self-performed major construction trade work on two or more relevant construction projects. Id. The source selection plan provided that, under the experience factor, the agency would assign proposals a rating of outstanding, good, acceptable, marginal, or unacceptable. Agency Report (AR), Tab 5, Source Selection Plan, at 22-23.

Regarding the evaluation of past performance, the RFP provided that the agency would evaluate the offerors' past performance on the projects submitted to demonstrate experience. RFP at 36. For construction projects, offerors were instructed to submit completed Construction Contractor Appraisal Support System (CCASS) or Contractor Performance Assessment Rating System (CPARS) evaluations. Id. For design projects, offerors were instructed to submit completed Architect-Engineer Contractor Appraisal Support System (ACASS) or CPARS evaluations. Id. If a completed CCASS, ACASS, or CPARS evaluation was not available for the project, offerors were instructed to submit a completed past performance questionnaire (PPQ) instead. Id. Of relevance to Halbert's protest, the RFP further stated:

If the Offeror is unable to obtain a completed PPQ from a client for a project(s) before proposal closing date, the Offeror should complete and submit[,] with the proposal[,] the first page of the PPQ, which will provide contract and client information for the respective projects(s). The Government may make reasonable attempts to contact the client noted for that project(s) to obtain the PPQ information. However, Offerors should follow-up with clients/references to help ensure timely submittal of questionnaires. . . . The Government's inability to contact any of the Offeror's references or the references['] unwillingness to provide the information requested may affect the Government's evaluation of this factor.

RFP at 36. The solicitation also informed offerors that the agency reserved the right to obtain information for use in the evaluation of past performance from other sources, including the Past Performance Information Retrieval System (PPIRS) database. Id.

The source selection plan provided that the agency's evaluation of past performance would include two aspects. AR, Tab 5, Source Selection Plan, at 26. First, the agency would evaluate the relevancy of each project and assign a rating of either relevant or non-relevant to the project. Id. To be considered relevant, the RFP required projects to meet several criteria. A project needed to: (1) be similar

in size, scope, and complexity to projects that might be ordered under the resulting contract; (2) involve new construction, renovation, and/or repair of commercial and institutional buildings, by design-build or design-bid-build, with a construction cost of \$3 million or greater; and (3) be 100 percent complete. RFP at 33. The second aspect of the agency's past performance evaluation was to determine how well the offeror performed on each project and to assign an offeror's past performance a rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence (neutral). AR, Tab 5, Source Selection Plan, at 26-27.

The Navy received phase one proposals from 24 offerors, including Halbert. AR, Tab 7, Technical Evaluation Team (TET) Report, at 1. The Navy selected seven firms as the most highly qualified to proceed to phase two. Halbert was not among the selected firms. AR, Tab 10, Source Selection Decision, at 1; Tab 9, Source Selection Advisory Council (SSAC) Report, at 7-8. The proposals of the seven selected firms all received the same ratings: acceptable for the technical approach factor, outstanding for the experience factor, and substantial confidence for the past performance factor.⁴ AR, Tab 9, SSAC Report, at 2. Halbert's proposal, which was ranked eighth, received the same ratings as the selected proposals under the first two factors, but received a lower rating of satisfactory confidence under the past performance factor. Id. at 2, 5, 8. Halbert's proposal was the only proposal to receive ratings of acceptable for the technical approach factor and outstanding for the experience factor not selected to proceed to phase two. Id. at 2-3.

Halbert submitted five projects to establish its construction experience and resubmitted four of these projects, plus an additional fifth project, to establish its design experience. AR, Tab 6, Halbert's Proposal, at 24-61. All of the projects Halbert submitted were performed for the same customer--the Navy's procuring activity here, NAVFAC Southwest. To meet the RFP's past performance requirements, Halbert included CPARS and CCASS evaluations for the construction projects and PPQs for the design projects. See id.; Tab 7, TET Report, at 48-49. The PPQs pertaining to Halbert's design experience were not completed. However, as permitted by the RFP, Halbert submitted the first page of each PPQ with contact information for references within NAVFAC Southwest. AR, Tab 6, Halbert's Proposal, at 50, 53, 56, 59, 62.

⁴ Despite the identical adjectival ratings, however, the Navy did not conclude that the seven proposals were essentially equal. Rather, the Navy performed a comparative assessment of the seven proposals and ranked them accordingly. AR, Tab 9, SSAC Report, at 3-5.

The Navy attempted to contact Halbert's references by email. Combined Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 9; AR, Tab 12, Agency Emails to References. In this respect, because Halbert identified the same individual as the reference for three of the five design projects, NAVFAC Southwest sent emails to a total of three references (hereinafter References A, B, and C). AR, Tab 6, Halbert's Proposal, at 53, 56, 59; Tab 12, Agency Emails to References, at 1. The record reflects that emails sent to References A and B were returned as "undeliverable" and that the agency received no response to an email sent to Reference C. Id.; Tab 7, TET Report at 48, 49. The record does not reflect, nor does the agency represent, that it took any further action to contact the three references. Having failed to obtain any information that would allow it to assess the quality of Halbert's design team's past performance, the Navy assigned Halbert's proposal a neutral past performance rating for its proposed design experience.⁵ AR, Tab 7, TET Report, at 49. The Navy further stated that, as a result of the neutral rating, Halbert's design experience would "not be rated favorably nor unfavorably[.]" Id.

With respect to Halbert past performance on its proposed construction projects, the Navy reviewed the CPARS and CCASS evaluations submitted by Halbert and noted that Halbert received two outstanding ratings, two above average ratings, and one satisfactory rating for the submitted projects.⁶ Id. The Navy concluded that, with respect to these projects, Halbert's "team has a history of highly successful performance." Id. Accordingly, the Navy assigned Halbert's proposal a strength under the past performance factor for the two outstanding and two above average ratings. Id.

Finally, in further evaluating Halbert's past performance on construction projects, the Navy also considered information it independently obtained from the PPIRS database. Id. at 49. Of the 24 evaluations in the database for Halbert, the Navy concluded that three interim evaluations evidenced adverse past performance information. Id.; Tab 9, SSAC Report, at 1. Several months later, however, when reconfirming the information in the database, the Navy found that two of the three customers had issued final evaluations altering their prior conclusions in a manner favorable to Halbert.⁷ AR, Tab 9, SSAC Report, at 1. The Navy assigned a

⁵ The Navy did not identify any relevant past performance information in the PPIRS database for Halbert's proposed design firm. AR, Tab 7, TET Report, at 49.

⁶ The terminology used here reflects the ratings used in the CPARS and CCASS evaluations, not the ratings used by the Navy to assess overall confidence in this procurement. Compare e.g., AR, Tab 6, Halbert's Proposal, at 27, with Tab 5, Source Selection Plan, at 26-27.

⁷ The record does not contain copies of these two final evaluations and it is unclear from the record whether the final evaluations, despite some changes in favor of

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weakness to Halbert's past performance for the third evaluation--an interim CPARS evaluation relating to a project being performed by Halbert for the U.S. Army Corps of Engineers. AR, Tab 7, TET Report, at 49; Tab 13, CPARS, at 3. Halbert refers to this project as the "6th Floor Project." Protest at 6. In this evaluation, the evaluator stated that he would not recommend Halbert for similar requirements in the future. AR, Tab 13, CPARS, at 3.

After reviewing the totality of Halbert's past performance information, the Navy concluded that "the Government has a reasonable expectation that the Offeror will successfully perform the required effort." AR, Tab 7, TET Report, at 49. Therefore, the Navy assigned Halbert's proposal a satisfactory confidence rating for past performance. Id.; Tab 9, SSAC Report, at 2.

As explained above, the Navy performed a comparative assessment of all proposals, ranking them accordingly. See AR, Tab 9, SSAC Report. In comparing Halbert's proposal to that of the offeror ranked above it (hereinafter Offeror 7), the Navy noted that the proposals of both offerors were rated acceptable under the technical approach factor. Id. at 5. Under the experience factor, the Navy concluded that Halbert's proposal demonstrated more experience with design-build projects, more experience incorporating sustainable design features, and significantly more experience working together with its design team. Id. The Navy concluded that the two offerors possessed equal experience in self-performing major construction work. Under the past performance factor, the Navy concluded that Offeror 7 possessed "better" past performance for construction projects and noted that Halbert had been assessed one weakness associated with the interim CPARS evaluation for the 6th Floor Project. Id. As a result of this comparative assessment, the Navy concluded that Halbert's strengths under the experience factor did not outweigh Offeror 7's better past performance rating. Id. Therefore, the Navy found that Offeror 7 should be "rated higher." Id.

In deciding whether to include Halbert among the most highly qualified offerors, the Navy concluded that, although Halbert's proposal offered strengths which outweighed its weaknesses, the strengths "were not enough to offset the meaningfully stronger past performance (and consequently higher ratings) that the seven most highly qualified, higher ranked Offerors provided." Id. at 5-6. See also COS/MOL at 10 (explaining that Halbert was not included in the group of most highly qualified offerors due to its lower past performance rating).

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Halbert, still evidenced any adverse past performance information. See AR, Tab 7, TET Report, at 49; Tab 9, SSAC Report, at 1. In any event, the Navy did not assign Halbert any weaknesses for these two evaluations. AR, Tab 7, TET Report, at 49; Tab 9, SSAC Report, at 1, 5.

On May 10, 2016, the Navy notified Halbert that its proposal had not been selected to proceed to phase two. AR, Tab 11, Navy Email, May 10, 2016, 3:27 p.m. Halbert subsequently requested a debriefing, which was provided on May 19. Id., Halbert Email, May 11, 2016, 4:25 p.m.; Tab 14, Debriefing. Halbert filed a protest with our Office on May 31.

DISCUSSION

Halbert challenges the Navy's evaluation of its past performance and the Navy's tradeoff analysis. With respect to the Navy's past performance evaluation, Halbert argues that the Navy improperly (1) assigned a weakness to Halbert's proposal based upon its performance of the 6th Floor Project and (2) assigned a neutral past performance rating to Halbert's design projects. With respect to the Navy's tradeoff analysis, Halbert argues that the Navy's comparison of the relative merit of Halbert's proposal and Offeror 7's proposal under the experience and past performance factors was flawed because it was based upon conclusions not supported by the record. For the reasons discussed below, we sustain the protest.⁸

In reviewing protests of an agency's evaluation, our Office will not reevaluate proposals; rather, we review the record to determine whether the evaluation is reasonable and consistent with the solicitation's evaluation criteria, and applicable procurement laws and regulations. West Coast General Corp., B-411916.2, Dec. 14, 2015, 2015 CPD ¶ 392 at 9. Although we will not substitute our judgment for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, undocumented, or unreasonable. Id. at 9-10; Logistics Mgmt. Int'l, Inc., et al., B-411015.4 et al., Nov. 20, 2015, 2015 CPD ¶ 356 at 8.

Evaluation of Halbert's Performance on the 6th Floor Project

Halbert contends that the Navy improperly considered the 6th Floor Project to downgrade Halbert's past performance rating. Protest at 8; Comments at 5-6. Specifically, Halbert claims that the 6th Floor Project does not meet the solicitation's criteria for relevance; and, thus, the project could not properly be used "as an indicator of Halbert's [] performance" on the subject contract. Protest at 8.

An agency's determination of the relevance and scope of an offeror's performance history to be considered is a matter within the discretion of the contracting agency, which we will not disturb unless the agency's assessments are unreasonable or

⁸ In its various protest submissions, Halbert raised arguments in addition to, or that are variations of, those discussed herein. Although we do not address every issue raised, we have considered all of Halbert's arguments and find that, except as discussed herein, they provide no basis to sustain the protest.

inconsistent with the solicitation criteria. Rotech Healthcare, Inc., *supra*, at 5; Logistics Mgmt. Int'l, Inc., *supra*, at 8; Al Raha Grp. for Tech. Servs., Inc.; Logistics Mgmt. Int'l, Inc., B-411015.2, B-411015.3, Apr. 22, 2015, 2015 CPD ¶ 134 at 5; Delfasco, LLC, B-409514.3, Mar. 2, 2015, 2016 CPD ¶ 192 at 4. The critical question is whether the evaluation was conducted fairly, reasonably, and in accordance with the solicitation's evaluation scheme. Al Raha Grp. for Tech. Servs., Inc. *supra* at 5; Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 22; DRS C3 Sys., LLC, B-310825, B-310825.2, Feb. 26, 2008, 2008 CPD ¶ 103 at 22.

As explained above, to be considered relevant, the RFP required projects to meet several criteria. First, a project needed to be similar in size, scope, and complexity to projects that might be ordered under the resulting contract. RFP at 33. Second, a project needed to involve new construction, renovation, and/or repair of commercial and institutional buildings, by design-build or design-bid-build, with a construction cost of \$3 million or greater. *Id.* Finally, and most relevant to our decision here, a project needed to be "100% complete[.]"⁹ *Id.* The RFP defined "100% complete" as "[t]he facility is completely constructed and ready for the intended use." RFP at 31.

Halbert contends that the 6th Floor Project did not meet this definition because the project: (1) was performed for a different agency; (2) involved a specialized type of construction work that is distinctly different from the commercial and institutional work contemplated by the solicitation here; (3) did not include design-build or design-bid-build work; and (4) is not complete. Protest at 8; Comments at 5-6. With one exception, we reject Halbert's contentions.

First, we reject Halbert's contention that the 6th Floor Project is not relevant because it was performed for a different agency. The identity of the customer was not a criterion listed in the RFP to be considered by the Navy in assessing the relevancy of prior work. *See* RFP at 33. Second, we reject Halbert's contention that the 6th Floor Project involved a unique type of work not contemplated here. As the agency correctly points out, *see* COS/MOL at 15, the 6th Floor Project includes the same North American Industry Classification System (NAICS) Code of 236220, Commercial and Institutional Building Construction. RFP at 4; AR, Tab 13, CPARS, at 1. Additionally, although the 6th Floor Project may have required work within a medical intensive care unit, the RFP here contemplates construction within hospitals and laboratories. RFP at 122; AR, Tab 13, CPARS, at 1. Furthermore, the description of work involved in the 6th Floor Project, *e.g.*, asbestos

⁹ In this respect, the language of the RFP differs from the language contained in other solicitations that permits the consideration of both active/ongoing and complete efforts. *See e.g.*, Logistics Mgmt. Int'l, Inc., *supra*, at 3; Rotech Healthcare, Inc., B-413024 *et al.*, Aug. 17, 2016, 2016 CPD ¶ 225 at 3.

abatement, demolition, electrical, HVAC, fire protection, plumbing, structural steel, etc., does not appear to be specialized, but similar to the work contemplated by the subject RFP. AR, Tab 13, CPARS, at 1.

Third, with respect to Halbert's contention that the project did not include design-build or design-bid-build work, the Navy contends that the 6th Floor Project was either design-build or design-bid-build "since, in construction, those are the only two types of projects."¹⁰ COS/MOL at 16. The protester does not address this contention in its comments. See generally Comments at 5-6. Thus, we consider Halbert to have abandoned this allegation, and we will not further consider it. 22nd Century Techs., Inc., B-412547 et al., Mar. 18, 2016, 2016 CPD ¶ 93 at 10.

The only remaining question is whether the 6th Floor Project was complete at the time of the evaluation. The CPARS evaluation indicates that the project was only 45 percent complete during the period assessed (November 2012 through April 2014), AR, Tab 13, CPARS, at 1, and there is no evidence in the record that the Navy obtained any additional information indicating that the project had been completed prior to the Navy's evaluation here.¹¹ Moreover, in its protest, Halbert asserted that the project was not complete, Protest at 8, and the agency never disputed that assertion in its responses, see generally, COS/MOL at 15-16; Supp. MOL at 3. Thus, the record establishes that the project was not 100 percent complete as defined by the solicitation here.

The Navy, however, contends that this relevancy criterion did not apply to information obtained by the agency, but rather, applied only to information submitted by the offeror. Supp. MOL at 3 (explaining that "the Solicitation required offerors to submit projects that were 100% complete[,] but that "this requirement for 'completeness' did not apply to information found from other sources such as the PPIRS[.]"). The Navy further contends that it "was entitled to obtain information for use in the evaluation of past performance 'from any and all sources[.]'" Id. (citing RFP at 36). Accordingly, the Navy argues that it was appropriate for it to obtain and consider interim CPARS evaluations regarding incomplete projects. Id. at 4.

¹⁰ Although the Navy cites no authority for its representation, we note the general statutory preference for the use of design-build or design-bid-build when entering into a contract for the design and construction of a public building, facility, or work. 10 U.S.C. § 2305a. See also FAR § 36.104. More importantly, the protester offers no support, such as the contract or solicitation, for its contention that the 6th Floor Project did not include design-build or design-bid-build work.

¹¹ The Navy did confirm on April 13, 2016, that no changes had been made to the CPARS report. AR, Tab 7, TET Report, at 49.

As a general matter, an agency is not precluded from considering any relevant information, regardless of its source, and is not limited to considering only the information provided within the “four corners” of an offeror’s proposal when evaluating past performance. Al Raha Grp. for Tech. Servs., Inc., supra at 10 (citing FAR § 15.306(a)(2)(ii)); Paragon Sys., Inc., B-299548.2, Sept. 10, 2007, 2007 CPD ¶ 178 at 8. Here, the solicitation also notified offerors that the past performance evaluation would not be limited to a review of the information provided in the offerors’ proposals, but that the agency could also obtain and review past performance information from other sources. RFP at 36. Accordingly, we agree with the Navy that it was permitted to obtain and consider information from other sources.

Our Office will question an agency’s past performance evaluation where the record indicates that the agency either failed to evaluate, or otherwise unreasonably considered, the relevance of past performance references in accordance with the solicitation’s stated evaluation criteria. Rotech Healthcare, Inc., supra, at 5-6; Artic Slope Mission Servs., LLC, B-410992.5, B-410992.6, Jan. 8, 2016, 2016 CPD ¶ 39 at 12; Al Raha Grp. for Tech. Servs., Inc. supra, at 6. This is true whether the information is furnished by the offeror or obtained independently by the agency. Al Raha Grp. for Tech. Servs., Inc., supra, at 8-12 (sustaining protest because information independently obtained by the agency failed to satisfy the RFP’s relevancy and relevance criteria); Logistics Mgmt. Int’l, Inc., supra, at 14-16.

Here, even if we accept, for the sake of argument, the Navy’s contention that the RFP’s relevancy criteria did not apply to information independently obtained by the agency, we find that the Navy did not treat offerors equally in this regard. The record reflects that, in evaluating the past performance of Offeror 7, the TET found that one of the 23 evaluations in the PPIRS database for Offeror 7 demonstrated “relevant adverse past performance.” AR, Tab 7, TET Report, at 22. Despite this conclusion, however, the TET did not assign Offeror 7’s proposal a weakness for this project. Id. at 23. Likewise, the project is not mentioned in the Navy’s tradeoff analysis. AR, Tab 9, SSAC Report, at 5. The contemporaneous record suggests that the project was not considered by the Navy.

After Halbert challenged this aspect of the Navy’s evaluation, Comments at 5-6, the Navy responded that the TET’s statement was a typographical error and that, indeed, Offeror 7’s project was not considered by the agency in its past performance evaluation because it did not meet the solicitation’s criteria for relevancy. Supp. MOL at 2 n.1. Specifically, the Navy alleges the project is not relevant because the dollar value fell below the solicitation’s \$3 million minimum construction cost requirement.¹² Id.

¹² As explained, the agency’s post-protest statement does not contradict the contemporaneous record. In fact, the record supports the agency’s representation
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Thus, the record reflects that the agency did not consider Offeror 7's adverse performance on a project because the agency concluded that it did not satisfy the RFP's relevancy criteria, while simultaneously considering Halbert's adverse performance on a project that did not satisfy the RFP's relevancy criteria. It is fundamental that a contracting agency treat all offerors equally, and therefore, it must evaluate offers evenhandedly against common requirements and evaluation criteria. Logistics Mgmt. Int'l, Inc., *supra*, at 16. On this record, we find the Navy's evaluation of the past performance of Halbert to be unreasonable because the Navy engaged in disparate treatment of Halbert.

Evaluation of Halbert's Past Performance on Design Projects

Next, Halbert argues that the Navy unreasonably assigned Halbert's design experience a neutral past performance rating when the Navy could not obtain completed PPQs from the three references listed by Halbert in its proposal. Protest at 7. As explained above, the record reflects that emails sent by the Navy to References A and B were returned as "undeliverable" and that the agency received no response to an email sent to Reference C. AR, Tab 12, Agency Emails to References; Tab 7, TET Report at 48, 49.

Halbert contends that the absence of past performance information "was ultimately the fault of the Agency." Comments at 5. In this respect, Halbert points out that all five of its prior projects were performed for NAVFAC Southwest, that all three of its references were NAVFAC Southwest personnel, and that the agency failed to make a reasonable effort to contact and to obtain information from its own employees. *Id.*; Protest at 6-7. Halbert argues that the agency was "uniquely situated here to obtain information from its own files and employees as to the evaluations of Halbert on these projects." Protest at 6-7.

In response, the Navy argues that, pursuant to the terms of the RFP, it was under no obligation to contact any of Halbert's references. COS/MOL at 13 (citing RFP at 36); Supp. MOL at 3. To the extent it attempted to do so, however, the Navy contends that its efforts were reasonable. In this respect, the Navy argues that Halbert mistakenly provided incorrect email addresses for References A and B and

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that, despite the TET's statement, the Navy did not consider this project in its evaluation of Offeror 7's past performance. See AR, Tab 7, TET Report, at 23; Tab 9, SSAC Report, at 5. Moreover, the agency produced a copy of the evaluation of this project, demonstrating that it fell below the \$3 million minimum construction cost requirement. AR, Tab 15, Offeror 7 CPAR. Accordingly, it is appropriate for our Office to consider the agency's post-protest representation in our review of the rationality of the selection decision. InGenesis, Inc., B-412101.2, Mar. 28, 2016, 2016 CPD ¶ 102 at 6.

that Reference C never responded. COS/MOL at 13. The Navy contends that it should not be held responsible for Halbert's mistakes and that it was under no duty to identify additional contacts not listed by Halbert on the PPQs. Id. The Navy further contends that, although the procuring activity is the same, i.e., NAVFAC Southwest, the contracts in question were administered by a different integrated product team (IPT). Id. at 14. The Navy represents that NAVFAC Southwest's IPTs are not co-located. Id.

As a general matter, an agency is only required to make a reasonable effort to contact an offeror's reference, and, where that effort proves unsuccessful, it is unobjectionable for the agency to proceed with its evaluation without the benefit of that reference's input.¹³ Richen Mgmt., LLC, B-409697, July 11, 2014, 2014 CPD ¶ 211 at 5; ITS Servs., Inc., B-298941, B-298941.2, Jan. 10, 2007, 2007 CPD ¶ 23 at 7 n.11; Lynwood Mac. & Eng'g, Inc., B-285696, Sept. 18, 2000, 2001 CPD ¶ 113 at 5. For our Office to sustain a protest challenging the failure to obtain a reference's assessment of past performance, a protester must show unusual factual circumstances that convert the failure to a significant inequity for the protester. MCS of Tampa, Inc., B-288271.5, Feb. 8, 2002, 2002 CPD ¶ 52 at 5; Kalman & Co., Inc., B-287442.2, Mar. 21, 2002, 2002 CPD ¶ 63 at 9; Advanced Data Concepts, Inc., B-277801.4, June 1, 1998, 98-1 CPD ¶ 145 at 10; Int'l Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. The factual circumstances here do not provide a basis to sustain Halbert's challenge. Rather, we conclude that the agency satisfied its duty to contact Halbert's references and was not required to identify alternative points of contact not listed by Halbert in its PPQs or to make repeated attempts to contact Halbert's references.

With respect to References A and B, Halbert does not dispute the Navy's contention that it provided incorrect email addresses for these references. Protest at 7; Comments at 5. Instead, Halbert argues that, because the references were NAVFAC Southwest employees, the burden shifted to the agency to obtain the requisite past performance information by, among other things, consulting its

¹³ The RFP's use of the word "may" did not absolve the Navy from making a reasonable effort to contact offerors' references. Although the word "may" implies discretion, having exercised that discretion, see e.g., AR, Tab 9, TET Report, at 42, 49, 76, the agency must make a reasonable attempt. Additionally, neither the RFP's instruction to offerors to "follow-up" with references to ensure timely submission of PPQs nor its notice that the Navy's inability to contact a reference or the references' unwillingness to provide the information requested may affect the Navy's evaluation, see RFP at 36, alters our conclusion. In similar situations, we have held that an agency still possesses a duty to make a reasonable effort to contact an offeror's references. Guam Shipyard, B-311321, B-311321.2, June 9, 2008, 2008 CPD ¶ 124 at 3-5; MCS of Tampa, Inc., B-288271.5, Feb. 8, 2002, 2002 CPD ¶ 52 at 2, 4-5.

“contact directory” to obtain correct contact information or to locate alternative references for the projects in question. Protest at 7; Comments at 5. We disagree. The RFP required offerors to identify a reference and to provide contact information for that reference. Thus, notwithstanding the fact that Halbert’s references were NAVFAC Southwest employees, to the extent Halbert attempts to shift the burden to the agency to identify and locate references for Halbert, it is well-established that offerors are responsible for submitting a well-written proposal with adequately detailed information that allows for meaningful review by the procuring agency. Wyle Laboratories, Inc., B-412964, B-412964.3, May 27, 2016, 2016 CPD ¶ 144 at 8. Hence, it was incumbent upon Halbert to provide the agency with accurate contact information for its references.

With respect to Reference C, the reference for which the Navy did not receive an “undeliverable” email message, we likewise conclude that the agency satisfied its duty to contact this reference. We have previously held that the failure of a reference to respond does not show that the agency’s effort was inadequate. Guam Shipyard, *supra*, at 4. Moreover, an agency is not required to make multiple attempts to contact such references. Dictyon LLC, B-405504, Nov. 16, 2011, 2011 CPD ¶ 253 at 4; OSI Collection Servs., Inc.; C.B. Accounts, Inc., B-286597.3 *et al.*, June 21, 2001, 2001 CPD ¶ 103. This is true even when the reference is an employee of the procuring agency. Sayres & Assocs. Corp., B-295946, B-295946.2, Apr. 25, 2005, 2005 CPD ¶ 90 at 5.¹⁴ In sum, we conclude that the agency reasonably attempted to contact Halbert’s references with the information Halbert provided.

¹⁴ Halbert raised several alternative arguments, which we deny. Specifically, Halbert suggests that, because four of the projects it submitted to support its design experience were the same four projects it submitted to support its construction experience, the Navy, at a minimum, should have contacted the references listed by Halbert in its construction data sheets for the four projects in common. Protest at 7; Comments at 5. Halbert also suggests that the Navy should have applied the same rating given to Halbert on these projects to the evaluation of the design team’s past performance. Protest at 7. Finally, Halbert suggests that the agency could have considered the comments from evaluators in the design-build construction evaluations addressing the performance of Halbert’s design team. Comments at 4. We find the agency’s failure to consider this information to evaluate the quality of Halbert’s design experience to be unobjectionable. Although it could have, Halbert did not submit the above information for the purposes of demonstrating the quality of its design experience. As noted previously, an offeror is responsible for submitting a well-drafted proposal. Wyle Laboratories, Inc., *supra*.

Comparative Assessment of Halbert's and Offeror 7's Proposals

Finally, Halbert challenges the Navy's tradeoff analysis, specifically the Navy's comparison of the relative merit of Halbert's proposal and Offeror 7's proposal under the experience and past performance factors.¹⁵ Comments at 2-4. First, Halbert contends that the analysis pertaining to the experience factor was premised upon the mistaken belief that the two offerors demonstrated equal experience self-performing major construction trade work. Second, with respect to the past performance factor, Halbert contends that the Navy erroneously concluded that Offeror 7 received higher past performance ratings for its submitted construction projects. Although we agree with Halbert on both counts, for the reasons discussed below, we sustain Halbert's protest based upon the second contention only.

As a general matter, source selection officials enjoy broad discretion in making tradeoffs between the comparative merits of competing proposals in a best-value setting; such tradeoffs are governed only by the test of rationality and consistency with the solicitation's evaluation criteria. Coastal Int'l Sec., Inc., B-411756, B-411756.2, Oct. 19, 2015, 2015 CPD ¶ 340 at 14; PricewaterhouseCoopers LLP, B-409537, B-409537.2, June 4, 2014, 2014 CPD ¶ 255 at 12. A protester's disagreement with the agency's judgments about the relative merit of competing proposals does not establish that the evaluation was unreasonable. General Dynamics Land Sys., B-412525, B-412525.2, Mar. 15, 2016, 2016 CPD ¶ 89 at 11.

In its first contention, pertaining to the experience factor, Halbert contends that the Navy erred in concluding that the two offerors had equal experience self-performing major construction trade work. Comments at 3. The RFP provided that offerors that submitted relevant projects demonstrating experience self-performing major construction trade work may receive a higher rating than those who do not demonstrate self-performance.¹⁶ RFP at 35. The record demonstrates that the Navy exercised its discretion to view such experience more favorably. See e.g., AR, Tab 9, SSAC Report, at 4 (weighing Offeror 2's experience more favorably than Offeror 3 due to additional experience self-performing projects).

Here, after evaluating the two offerors' proposals, the source selection advisory council concluded that "both [Offeror 7] and Halbert had equal experience in self-performing major construction trade work (4 projects)." AR, Tab 9, SSAC Report,

¹⁵ The tradeoff analysis was conducted by a source selection advisory council and its conclusions were adopted by the source selection authority. AR, Tab 9, SSAC Report; AR, Tab 10, Source Selection Decision.

¹⁶ The term self-performance was defined as "performing relevant and major construction trade work in-house without subcontractors." RFP at 32.

at 5. Halbert contends that the Navy should have credited it with five projects and Offeror 7 with only three projects. Comments at 3.

Although the record supports Halbert's contentions, we find that Halbert has failed to demonstrate prejudice resulting from this error. Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. HP Enter. Servs., LLC, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 6; Booz Allen Hamilton Eng'g Servs., LLC, B-411065, May 1, 2015, 2015 CPD ¶ 138 at 10 n.16.

Here, even if the Navy properly credited Halbert with five projects and Offeror 7 with three projects, there is no evidence that the revised numbers would have changed the agency's conclusion. The RFP in this regard provided that "Offerors who submit relevant projects that demonstrate experience on self-performing major construction trade work on two (2) or more relevant construction projects may receive a higher rating than those who do not demonstrate self-performance[.]" RFP at 35. Even by Halbert's revised calculations, both Halbert and Offeror 7 demonstrated self-performance on two or more relevant projects. Accordingly, the Navy's decision to credit both offerors with self-performance experience was reasonable.

Next, in challenging the Navy's tradeoff analysis, Halbert contends that the Navy erred in concluding that Offeror 7 received superior past performance ratings for its submitted construction projects. Comments at 2. Halbert bases its argument on the following statement in the source selection advisory council report:

In Factor 3, [Offeror 7] had better Past Performance Assessment ratings for construction projects with 1 Exceptional, 1 Outstanding and 2 Very Good (versus Halbert with 2 Outstanding, 2 Above Average and 1 Satisfactory).

AR, Tab 9, SSAC Report, at 5. Halbert contends that there is no meaningful distinction between the definitions of an exceptional and an outstanding rating as these terms were used here, nor is there a distinction between a very good and an above average rating. Comments at 2. The difference in the terminology, Halbert explains, is a result of the source of the information, *i.e.* CPARS evaluation versus PPQ.¹⁷ *Id.* Accordingly, Halbert argues that the two offerors received identical ratings and, therefore, the Navy erred in distinguishing between them. *Id.* We agree.

¹⁷ Offeror 7 submitted both PPQs and CPARS to demonstrate its past performance; whereas Halbert submitted CCASS and CPARS evaluations. AR, Tab 7, TET Report, at 21-22, 47-48; Tab 6, Halbert's Proposal, at 26, 30, 36, 40, 45.

The PPQ form provided with the RFP used the following ratings: exceptional, very good, satisfactory, marginal, and unsatisfactory. Protest, exh. B, Form PPQ-0, Rev 12/11.¹⁸ The CPARS and CCASS evaluation forms used the following ratings: outstanding, above average, satisfactory, marginal, and unsatisfactory. See e.g., AR, Tab 6, Halbert’s Proposal, at 31, 37. The definitions of exceptional and outstanding set forth in these two assessment tools are as follows:

Rating	Definition
Exceptional (from PPQ)	Performance meets contractual requirements and exceeds many to the Government’s/Owner’s benefit. The contractual performance of the element or sub-element being assessed was accomplished with few minor problems for which corrective actions taken by the contractor was [sic] highly effective
Outstanding (from CPARS and CCASS)	Performance meets contractual requirements and exceeds many to the Government’s benefit. The element being assessed was accomplished with few minor problems for which corrective actions taken by the contractor were highly effective.

The definitions of very good and above average in these tools are as follows:

Rating	Definition
Very Good (from PPQ)	Performance meets contractual requirements and exceeds some to the Government’s/Owner’s benefit. The contractual performance of the element or sub-element being assessed was accomplished with some minor problems for which corrective actions taken by the contractor were effective.
Above Average (from CPARS and CCASS)	Performance meets contractual requirements and exceeds some to the Government’s benefit. The element being assessed was accomplished with some minor problems for which corrective actions taken by the contractor were effective.

Protest, exh. B, Form PPQ-0, Rev 12/11; AR, Tab 6, Halbert’s Proposal, at 31, 37.

As shown, with the exception of a few immaterial differences, the definitions of exceptional and outstanding are identical, as are the definitions of very good and above average. Thus, we agree with Halbert that both offerors were assessed two exceptional/outstanding ratings and two very good/above average ratings.¹⁹

¹⁸ The record did not contain a copy of the PPQ form provided with the RFP but the agency confirmed that exhibit B of Halbert’s protest accurately reflects the version provided with the RFP. Agency Email, Aug. 25, 2016.

¹⁹ Halbert also argues that because it submitted a fifth relevant project with a satisfactory rating, “if anything, [it] should be rated higher than” Offeror 7.

(continued...)

The agency's conclusion, that Offeror 7 "had better Past Performance Assessment ratings for construction projects" than Halbert, AR, Tab 9, SSAC Report, at 5, is unsupported by the record. The record reflects, at a minimum, that the two offerors received identical ratings.

Competitive Prejudice

The record shows that the Navy's evaluation of Halbert's past performance was unreasonable because the Navy engaged in disparate treatment, and that the Navy's tradeoff decision was unreasonable because it was based upon a non-existent distinction in the definitions of the assigned adjectival ratings. As discussed above, however, our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. HP Enter. Servs., LLC, supra.

The record confirms that Halbert's ranking as eighth was due to the lower rating for its past performance. AR, Tab 9, SSAC Report, at 5. See also COS/MOL at 10 ("The reason that Halbert received a rating lower than the top seven (7) firms is because Halbert received a rating of only 'Satisfactory Confidence' for Factor 3, Past Performance, whereas the top seven (7) firms all received a rating of 'Substantial Confidence'."). In light of the fact that Halbert's submitted construction projects were viewed by the Navy as "highly successful performance" and its submitted design projects were viewed neither favorably nor unfavorably, the record strongly supports the conclusion that the Navy's overall assessment of Halbert's past performance as satisfactory was due to its assessment of a weakness for the 6th Floor Project. AR, Tab 7, TET Report, at 49. Offeror 7 possessed no weaknesses in this area. Id. at 22. Thus, we conclude that Halbert was prejudiced by the agency's decision to review a project for Halbert, but not for Offeror 7, that fell outside the RFP's definition of relevant projects.

We also conclude that Halbert was prejudiced by the agency's erroneous conclusion in its tradeoff analysis that Offeror 7 received superior past performance ratings for its submitted construction projects. There is no way to conclude with certainty that the agency would have made the same best-value tradeoff or would not have included Halbert's proposal in the pool of contractors invited to submit phase two proposals but for these errors. In such circumstances, we resolve any

(...continued)

Comments at 2. The record reflects, however, that the Navy did not view this project as either a weakness or strength. AR, Tab 7, TET Report, at 49. Despite this conclusion, in light of our recommendations, the Navy may view the impact (if any) of this fifth relevant project differently in its reevaluation.

doubts regarding prejudice in favor of the protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. Celta Servs., Inc., B-411835, B-411835.2, Nov. 2, 2015, 2015 CPD ¶ 362.

RECOMMENDATION

For the reasons discussed above, we conclude that the Navy's evaluation of Halbert's past performance was unreasonable and that its tradeoff analysis was flawed. We further conclude that Halbert was prejudiced by this evaluation. We recommend that the Navy conduct and document a new past performance evaluation and tradeoff analysis, consistent with our decision. We further recommend that, upon completion of a new evaluation, the agency prepare a new source selection decision. We also recommend that the agency reimburse the protester's reasonable costs associated with filing and pursuing its protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protester's certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Susan A. Poling
General Counsel