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**Comptroller General
of the United States**

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

Decision

Matter of: Hera Constructive S.A./Synthesis S.A., Joint Venture

File: B-297367

Date: December 20, 2005

Constantinos Fotiadis for the protester.

Damon A. Martin, Esq., Department of the Navy, the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's contention that the agency's evaluation of its and the awardee's proposals was unreasonable, and that the agency failed to consider the protester's extensive general experience, is denied where the record shows that the agency's evaluation of both proposals was consistent with the solicitation's stated scheme.

DECISION

Hera Constructive S.A./Synthesis S.A., Joint Venture protests the award of a contract to Ergodomi S.A. by the Department of the Navy pursuant to request for proposals (RFP) No. N33191-05-R-1206, issued for the demolition of an existing sewage treatment plant and the construction of a new reinforced concrete tertiary treatment plant at the Naval Support Activity located at Souda Bay on the island of Crete, Greece. Hera/Synthesis argues that the Navy's evaluation of its proposal, and the awardee's proposal, was unreasonable.

We deny the protest.

BACKGROUND

The Navy issued the RFP on May 12, 2005, seeking offerors to construct a new tertiary sewage treatment plant at its Souda Bay facility. The solicitation advised that the award would be made without discussions, if possible, to the offeror whose proposal provides the best value to the government considering price and technical merits. RFP at 22. The RFP identified three evaluation factors: organizational experience, organizational past performance, and price. Potential offerors were advised that organizational experience and organizational past performance would

be equal in importance, and together, would be approximately equal in importance to price. Id.

The RFP directed offerors to submit a list of five relevant previously-performed contracts, advised that the list would be used for the evaluation of both experience and past performance, and warned that the evaluation would not consider more than five contracts. In fact, the solicitation explained that if an offeror submitted more than five contracts, only the first five would be evaluated. Id. at 23. The RFP did reserve to the government the right to consider an offeror's performance of other contracts known to the government, regardless of whether those contracts were identified in the proposal. Id. at 24. The RFP also identified several indicia of relevance the agency would use in assessing the previously-performed contracts, including that the contract involve new construction or renovation completed during the past 5 years, and be similar in size, construction features and other contract features. The RFP explained that higher ratings "may" be awarded for identified contracts involving performance on an island, at other remote locations, in high security areas, or at airports. Id. Offerors were also required to identify key personnel in their proposal, and the experience of the proposed key personnel was to be considered as part of the evaluation of the experience factor.

The RFP advised that proposals would be rated overall, and under each factor, as either excellent, good, satisfactory, marginal, or poor. With respect to these ratings, the RFP explained that a rating of marginal or poor for any factor would result in a rating of marginal or poor overall; the RFP also explained that only those proposals rated satisfactory or higher would be eligible for award. Id. at 22, 25.

By the June 16 closing date, the Navy received four proposals, including those of the protester and the awardee. The Hera/Synthesis proposal identified five previously-performed contracts, as the RFP directed, and also included a list of 46 separate projects either completed or underway by Hera/Synthesis (or a predecessor version of the joint venture) for the U.S. government in Greece. The evaluators reviewed the five contracts identified in the proposal as directed; they did not review the 46 separate projects also identified.

In the evaluators' view, only three of the contracts identified in the Hera/Synthesis proposal were relevant to the work here. These were: a contract for construction of an earlier phase of a sewage treatment plant (also at the Navy's Souda Bay location in Crete), a contract for construction of a Bachelor Enlisted Quarters (BEQ) at Souda Bay, and a contract for construction of base offices at Souda Bay. The remaining two contracts were not viewed as relevant, and thus were not evaluated further. These were: a contract for construction of a Department of Defense Dependents School in Larissa, Greece; and a commercial contract for the conversion of an existing building to a four-star hotel in Thessalonica, Greece.

Under the experience factor, the evaluators noted certain strengths in the Hera/Synthesis proposal. For example, the key personnel team identified had

previously worked together on the sewage treatment plant contract. The evaluators considered it a weakness, however, that only one of the five identified contracts involved construction of a sewage treatment plant. Thus, the proposal was rated marginal for experience. Based on information received from the references, the proposal received a past performance rating of good, and consistent with the RFP’s admonition, the marginal rating received for experience resulted in a marginal rating overall.

The Ergodomi proposal also identified five previously-performed contracts as required. Four of the five contracts identified were for the construction of sewage or water treatment facilities, and all five contracts were viewed as relevant by the evaluators. In addition, all five of the identified contracts—including the four for the construction of sewage or water treatment facilities—were performed on the island of Crete, which the evaluators viewed as a strength. As a result, the Ergodomi proposal received a rating of excellent for experience. Although Ergodomi received excellent ratings for past performance from the references the Navy was able to reach, there were some references the Navy was not able to contact. Agency Report (AR), Tab 10, at 5-6. As a result, the Ergodomi proposal received a rating of good under the past performance factor, but still received an overall rating of excellent.

At the conclusion of the evaluation, the ratings, and prices of the offerors were as follows:

Offeror	Experience	Past Performance	Overall Rating	Price
Ergodomi	Excellent	Good	Excellent	€675,000
Offeror A	Satisfactory	Good	Satisfactory	€745,000
Hera/Synthesis	Marginal	Good	Marginal	€740,000
Offeror B	Marginal	Good	Marginal	€598,000

AR, Tab 10, at 6. Given these results, the selection official chose Ergodomi for award of this contract. This protest followed.

DISCUSSION

Hera/Synthesis challenges its overall rating of marginal and argues that the evaluation here was unreasonable. Specifically, the protester contends that its extensive contracting experience with the U.S. government should have resulted in a higher experience rating, argues that the agency’s relevance determinations about the contracts it identified were unreasonable, challenges the past performance ratings it received, and argues that the Navy unreasonably failed to consider certain negative performance information about Ergodomi that was clearly known to the government. We have reviewed all of the challenges raised by Hera/Synthesis, as well as the record as a whole, and in our view the Navy’s evaluation and selection decision had a reasonable basis. Although we will not discuss each of the

contentions raised by the protester, we set forth below representative examples of the protester's arguments in each area identified above.

Our Office examines an agency's evaluation of experience and past performance to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations; however, the necessary determinations regarding the relative merits of offerors' past performance records are primarily matters within the contracting agency's discretion. Kay & Assocs., Inc., B-291269, Dec. 11, 2002, 2003 CPD ¶ 12 at 4. In this regard, our Office will not question an agency's determinations absent evidence that those determinations are unreasonable or contrary to the stated evaluation criteria. Id.

As an initial matter, we recognize that the protester here has extensive experience as a valued contractor for the U.S. government. The protester's list of 46 separate projects completed or underway for the U.S. government, provided both in its proposal and to our Office, displays a wide range of construction experience. Nonetheless, the evaluation of proposals in a given procurement must follow the stated evaluation scheme set forth in the solicitation. Tennier Indus., Inc., B-286706.2, B-286706.3, Mar. 14, 2001, 2002 CPD ¶ 75 at 3.

Here, the solicitation limited the review of an offeror's experience to the five previously-performed contracts identified in the offeror's proposal. These contracts formed the pool of information to be considered by the evaluators for determining whether the contractor has performed work that is "comparable to the types of work covered by this requirement." RFP at 22. As a result, there was no basis for the agency's evaluators to look to the protester's performance of other U.S. government contracts to assess the proposal under the experience factor, and this evaluation is not, in any way, flawed because the evaluators limited their review in precisely the way the solicitation advised. See Tennier Indus., Inc., supra.

We also see nothing unreasonable in the agency's determinations about which of the protester's identified contracts were relevant, and which were not. For example, the protester complains that the Navy failed to recognize that renovation work performed on the Tobacco Hotel required certain types of effort that meet the standards for relevance identified in the technical evaluation board report. AR, Tab 7, at 4. Even assuming the protester is right about the relevance of the work involved in this renovation, it is the responsibility of the offeror to provide sufficient information about the projects in its proposal to ensure they will be assessed as relevant. See, e.g., Interstate Gen. Gov't Contractors, Inc., B-290137.2, June 21, 2002, 2002 CPD ¶ 105 at 5. On this subject, the proposal's narrative explanation of its previous effort related to the Tobacco Hotel, in its entirety, reads as follows:

Conversion of [a] scheduled (listed) monumental building into a four (4) star hotel on 25, Ag. Dimitriou street in Thessalonica. The construction included strengthening and reinforcement of the existing

structural frame of the building. The cell was maintained and a new hotel was built.

AR, Tab 4 (Protester's Past Performance Proposal), at 5. Given this description, we see nothing unreasonable about the agency's conclusion that the work covered by the identified contract has little relevance to the construction of a new sewage treatment facility.

With respect to the evaluation of its past performance, the protester argues it should have received a rating of excellent, rather than good. We need not address the protester's arguments regarding its past performance rating since it was not prejudiced by any alleged errors in this area.¹ As noted above, the RFP here specified that a rating of marginal under any factor would result in a rating of marginal overall, and that only those proposals rated satisfactory or higher would be eligible for award. Accordingly, given our conclusion that the agency reasonably rated the protester's proposal as marginal under the experience factor, the protester would be ineligible for award even if its rating under past performance factor were raised to excellent.² Med Optical, B-296231.2, B-296231.3, Sept. 7, 2005, 2005 CPD ¶ 169 at 4.

The protester also argues that the agency should have used its discretionary authority, expressly identified in the RFP, to consider certain negative information about Ergodomi's performance of a contract the company did not identify in its proposal. In this regard, the protester claims that the awardee is running over schedule in completing the construction of a small veterinary clinic and dog kennel for the Navy at Souda Bay. Under the evaluation scheme identified in this solicitation, we think the agency could reasonably decide not to view as relevant to the construction of a sewage treatment facility performance issues arising from the

¹ 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. McDonald-Bradley, B-290126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

² For the record, we recognize that the protester correctly argues that one of its references provided underlying performance ratings that appear inconsistent with the overall rating used by the Navy for that project. Assuming arguendo that there is an error in the protester's performance rating, the protester cannot overcome its marginal rating under the experience factor, which, as the RFP indicated, renders the proposal ineligible for award.

construction of a veterinary clinic and dog kennel. We see nothing about this situation that renders unreasonable the agency's evaluation of Ergodomi's past performance.

The protest is denied.

Anthony H. Gamboa
General Counsel