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

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Decision

Matter of: K-MAR Industries, Inc.

File: B-411262; B-411262.2

Date: June 23, 2015

Marilyn H. David, Esq., for the protester.

Jose M. Luya, Multi Media Marketing Associates, Inc., the intervenor.

Greg A. Harding, Esq., Department of the Air Force, for the agency.

Pedro E. Briones, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of an agency's past performance evaluation and source selection decision is denied where the record demonstrates that the evaluation and selection decision were reasonable and consistent with the terms of the solicitation.

DECISION

K-MAR Industries, Inc., of D'Iberville, Mississippi, protests the award of a contract to Multi Media Marketing Associates, Inc. (MMA), of Pembroke Pines, Florida, under request for proposals (RFP) No. FA3010-14-R-0009, issued by the Department of the Air Force for visual information services. K-MAR contends that the agency's past performance evaluation and source selection decision were inconsistent with the terms of the RFP and unreasonable.

We deny the protest.

BACKGROUND

The RFP, which was issued using the simplified acquisition procedures of Federal Acquisition Regulation (FAR) subpart 13.5, was set aside for small business concerns to provide multimedia services, such as photography, video production, graphic design, and illustration, at Kessler Air Force Base, Mississippi. RFP at 1; attach 1, Performance Work Statement (PWS) at 1; see Synopsis. The solicitation provided for the award of a fixed-price contract for a 6-month base period and 3 option years to the best value offeror based upon two evaluation factors: past performance and price. The solicitation stated that the past performance factor was significantly more important than price. See RFP, Schedule, at 3-6; RFP

at 8-10. Offerors were instructed to submit no more than three past performance references and propose a fixed price for each performance period. RFP at 42; Schedule at 3-6; see attach. 3, Past Performance References.

The solicitation explained the evaluation and award selection process as follows. First, the agency would rank offerors' proposals in order of price (including option year pricing) and evaluate prices for reasonableness. RFP at 8, 10. Next, the contracting officer "shall seek relevant performance information on all offerors" based on: (1) information obtained from the Contractor Performance Assessment Report (CPAR) system; (2) references provided by the offeror; and (3) data independently obtained from other government and commercial sources.¹ Id. at 8-9. The agency would then evaluate the offeror's past performance to assess its ability to perform the effort based on the offeror's demonstrated present and past performance, and assign an overall performance confidence assessment rating in that regard.² Id. at 9. The RFP reserved the agency's right to give greater consideration to contracts deemed most relevant to the requirement. Id.

The RFP explained the final steps of the evaluation and award process as follows:

If the lowest priced evaluated offer is judged to have a Substantial Confidence performance assessment, that offer represents the best value for the government and the evaluation process stops at this point. Award shall be made to that offeror without further consideration of any other offers.

If the lowest priced offeror is not judged to have a Substantial Confidence performance [] assessment, the next lowest priced offeror will be evaluated and the process will continue (in order by price) until an offeror is judged to have a Substantial Confidence performance assessment or until all offerors are evaluated. The Source Selection Authority shall then make an integrated assessment best value award decision.

Id.

¹ The RFP stated that relevant performance included efforts involving multimedia services that are similar or greater in scope, magnitude, and complexity to the requirement. RFP at 9.

² The RFP stated that the agency would assign a rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. RFP at 9. A substantial confidence rating, pertinent here, was defined as having a high expectation that the offeror will successfully perform based on its performance record. Id.

The agency received 10 proposals in response to the RFP, including from K-MAR (the incumbent) and MMMA. AR, Tab 16, Price Competition Mem., at 2. Because MMMA submitted the lowest-priced proposal (\$2,175,258), and its price was found reasonable, the agency proceeded to evaluate MMMA's past performance.³ Id. at 2, 5; Contracting Officer (CO) Statement at 3.

MMMA submitted references for four various media services contracts, at two Air Force Bases (AFB) and an Army base.⁴ AR, Tab 11, MMMA Past Performance Proposal, at 1. The contracts were reviewed by the agency's contract administrator, two contracting officer representatives, and the contracting officer to assess relevancy. The evaluators concluded that the contracts demonstrated a mix of very relevant, relevant, and somewhat relevant experience as to the magnitude, scope, and complexity of each contract. AR, Tab 16, Price Competition Mem., at 6-7; Tab 17, Past Performance Confidence Assessment Spreadsheet; CO Statement at 5. The evaluators assigned MMMA an overall performance confidence rating of substantial confidence considering MMMA's recent experience in photography, videography, graphic design, illustration, and video production; its exceptional past performance as uniformly assessed by MMMA's references; and those references' assessment that they "definitely would" award a new contract to MMMA if given the opportunity to do so. AR, Tab 16, Price Competition Mem., at 6-7; CO Statement at 8-9.

Because MMMA's proposal was evaluated as the lowest, reasonably priced proposal with a substantial confidence rating, no further proposals were evaluated for past performance. CO Statement at 9. The contracting officer determined that MMMA provided the best value to the agency and made award to the firm. AR, Tab 16, Price Competition Mem., at 8. This protest followed.

DISCUSSION

K-MAR challenges every aspect of the Air Force's past performance evaluation. K-MAR complains that the agency failed to evaluate the past performance of any offeror other than MMMA, contrary to the terms of the solicitation. K-MAR argues that had the agency properly considered past performance and conducted a proper past performance/price tradeoff, as contemplated by the solicitation, it would have received the award because its incumbent experience provides the most relevant

³ K-MAR does not protest the agency's price evaluation.

⁴ The agency's contract administrator only identified two recent CPAR reports for MMMA's Tyndall AFB contract and one recent CPAR report for MMMA's Patrick AFB contract. CO Statement at 4-5. She verbally obtained past performance information on MMMA's Fort Benning contracts because no CPAR reports were available for those contracts. Id. at 5.

past performance. K-MAR also challenges the agency's evaluation of the awardee's past performance. In this respect, K-MAR compares every aspect of MMMA's four past performance contracts, to argue that they are not relevant in scope, magnitude, or complexity to the requirement.

The Air Force argues that it evaluated MMMA's past performance reasonably and consistent with the terms of the RFP, and that K-MAR's protest reflects little more than its untimely disagreement with the RFP's evaluation scheme.⁵

The evaluation of an offeror's past performance, including the agency's determination of the relevance and scope of an offeror's performance history, is a matter of agency discretion, which we will not find improper unless it is inconsistent with the solicitation's evaluation criteria. National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4; see MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. The evaluation of experience and past performance is, by its very nature, subjective, and an offeror's disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. Glenn Def. Marine-Asia PTE, Ltd., B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3 at 7. We find, based on our review of the record, that the agency's evaluation of MMMA's past performance was reasonable and consistent with the terms of the solicitation.

The RFP here plainly stated that if the lowest-priced proposal was evaluated as having an overall substantial confidence performance assessment, that proposal would represent the best value to the government. RFP at 9. Contrary to the protester's argument, the solicitation's requirement that the contracting officer seek relevant performance information for each offeror did not, in our view, also require the Air Force to evaluate the past performance, including past performance relevance, of each offeror. Instead, the agency was required to stop its evaluation process and make the award "without further consideration of any other offers." Id. at 9. Accordingly, we find that the agency properly awarded the contract to MMMA, as the lowest-price offer with a substantial confidence rating, and reasonably did not evaluate any other offeror's past performance.

With regard the agency's evaluation of the relevance of the awardee's past performance, we find the agency's evaluation unobjectionable. As demonstrated above, the agency did a thorough assessment of the relevancy of MMMA's past performance, including the scope, complexity, and magnitude of each of the four contracts. While the agency concluded that some of the contracts were only

⁵ K-MAR did not protest the terms of the solicitation. Under our Bid Protest Regulations, a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals must be filed before that time. 4 C.F.R. § 21.2(a)(1).

somewhat relevant in scope, magnitude, or complexity, others were very relevant or relevant in these areas. Thus, the protester has not demonstrated that the agency failed to reasonably consider the relevancy of the awardee's past performance. Furthermore, simply because an offeror is an incumbent does not require the agency to assign that offeror the highest past performance rating, or reserve the rating only for the incumbent. See Modern Techs. Corp. et al., B-278695 et al., Mar. 4, 1998, 98-1 CPD ¶ 81 at 7 (denying protester's contention that, as the incumbent, it should have received the highest past performance rating).

In short, K-MAR has not showed that the agency's past performance evaluation was unreasonable, and the protester's myriad allegations to the contrary only reflect its disagreement with the Air Force's evaluations, which provides no basis to question the reasonableness of the agency's judgments. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

The protest is denied.

Susan A. Poling
General Counsel