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Decision

Matter of: S³ LTD

File: B-288195; B-288195.2; B-288195.3

Date: September 10, 2001

Robert A. Klimek, Jr., Esq., Darrell Craft, Esq., and Nicholas H. Cobbs, Esq., Klimek, Kolodney & Casale, for the protester.

Daniel R. Weckstein, Esq., Michael L. Sterling, Esq., Walter T. Camp, Esq., and David W. Lannetti, Esq., Vandeventer Black, for Management Consulting, Inc., an intervenor.

Barbara J. Amster, Esq., and Theresa A. Chesnut, Esq., Department of the Navy, for the agency.

Tania Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests that contracting agency improperly evaluated offerors' past performance are denied where the record shows the evaluation was reasonable and consistent with the evaluation criteria; protester's disagreement with the agency's interpretation of the facts surrounding its past performance does not show that the agency's perception of that past performance was unreasonable.

DECISION

S³ LTD protests the award of a contract to Management Consulting, Inc. (MANCON) under request for proposals (RFP) No. N00244-00-R-0028, issued by the Naval Supply Systems Command's Fleet and Industrial Supply Center-San Diego (FISC-SD) to obtain Regional Business Support (RBS) services. S³ contends that the Navy improperly evaluated proposals with respect to past performance.

We deny the protests.

The Navy issued the solicitation on March 16, 2000 to meet anticipated labor support needs of Department of Defense and other federal agency customers in the southwest region of the United States. These anticipated needs include support services in such varied categories as administrative and clerical, technical, information technology, specialized technology, financial, medical, industrial, and education and training.

The RFP contemplated the award of an indefinite-delivery/indefinite-quantity, time-and-materials-type contract under which federal customers could place task orders through FISC-SD for specific services. The contract was to be awarded based on initial proposals, without discussions, to the offeror whose proposal offered the best value to the government. Proposals were to be evaluated under three factors, listed in descending order of importance: past performance, cost, and small business subcontracting.

The Navy planned to evaluate the past performance of offerors and their proposed subcontractors as it related to the probability of successful accomplishment of the work. Each offeror was asked to submit a list of its government contracts and a detailed description of each contract received or in performance during the past 5 years that was in any way relevant to the required effort. Offerors were also asked to forward risk assessment questionnaires to respondents for their contracts, who were to send the completed questionnaires to the government point of contact for this solicitation. The Navy intended to evaluate the risks associated with an offeror's past performance under seven factors: relevance, quality, timeliness, cost control, business relations, customer satisfaction, and subcontracting plans (if applicable).¹ Relevance was the most important of these factors; the remaining factors were equally important. Each performance risk assessment was to consider the number and severity of problems, the effectiveness of corrective actions taken and the overall work record. RFP § M.1.D.1.

The Navy received proposals from 15 offerors and the performance risk assessment group (PRAG) commenced its past performance evaluation. In addition to the information included in each proposal, the PRAG reviewed the completed questionnaires it received and conducted telephone interviews with respondents who failed to return questionnaires. After each PRAG member reviewed each response and arrived at overall adjectival ratings for each offeror, the PRAG met to develop consensus findings that are documented in its past performance report.

The PRAG rated MANCON's proposal "outstanding" overall and ranked its past performance first among all offerors. An "outstanding" rating was to be assigned when "essentially no doubt existed" that the offeror would successfully perform the required effort. Source Selection Plan (SSP) at 25. The PRAG rated MANCON's proposal "outstanding" under each subfactor and identified various strengths and no weaknesses. The PRAG stated that MANCON had broad experience under three contracts that clearly demonstrated its capabilities in all of the service categories of the RBS solicitation, and that the firm's subcontractors brought diversified backgrounds in various types of support services to the team. The PRAG concluded

¹ Neither the subcontracting plan subfactor nor the small business subcontracting factor, evaluated on a pass/fail basis, is at issue here.

that MANCON's successful background in managing numerous task/delivery order contracts and its well-rounded relevant experience garnered it the highest standing. PRAG Report at 1-2.

The PRAG rated S³'s proposal "good" overall and ranked its past performance thirteenth among all offerors. A "good" rating was to be assigned when "little doubt existed" that the offeror would successfully perform the required effort. SSP at 25. The PRAG rated the firm's proposal "outstanding" under two subfactors and "good" under four subfactors, and identified various strengths and weaknesses. The PRAG stated that S³ or its subcontractors had performed under several contracts similar to the RBS solicitation, but the proposal did not include any past performance data in the education and training area, and there was very little verification of past performance in the information technology area. The PRAG stated that comments received from respondents also contributed to S³'s ratings; these comments resulted in the PRAG's identification of various weaknesses associated with S³'s management abilities. PRAG Report at 5-6.

The source selection board (SSB) adopted the PRAG's findings. The SSB found that S³ was the only viable offeror to submit a lower cost than MANCON and based its cost/technical tradeoff analysis upon these two offers, notwithstanding its finding that numerous other offerors had better performance than did S³.²

The SSB concluded that MANCON's proposal represented the best value to the government. The SSB stated that MANCON's proposal was rated "outstanding" under the past performance factor with no weaknesses, and that its team clearly demonstrated exceptional experience under two relevant contracts associated with support services programs similar to the RBS program, the Inter-Service Supply Support Operations (ISSOP) and the Cooperative Administrative Support Unit (CASU) programs. The SSB found that the firm's performance in these programs demonstrated that there was essentially no doubt it was capable of successful performance under the requirements, and that its past performance history, organization and work history were significantly better than those of S³. The SSB found that MANCON and S³ submitted virtually identical cost proposals--S³'s cost was \$191,718,352 to MANCON's \$192,011,610--and believed the one percent difference between the two did not outweigh the significant past performance difference. The SSB concluded that S³'s past performance indicated an element of some performance risk that would be avoided with an award to MANCON. SSB Report at 34.

The contracting officer forwarded an acquisition summary, source selection summary and business clearance memorandum reflecting these conclusions to the

² All other technically acceptable offerors proposed costs that were substantially higher than those proposed by either S³ or MANCON.

Naval Supply Systems Command for its review and approval. Upon review, the procurement analyst recommended that clarifications be sought from S³ regarding the Navy's concerns with its past performance. The Navy requested clarifications from S³ by telephone and received additional written information from the firm. The Navy also verified information regarding its concerns from several sources from which it had previously heard, and contacted several new sources recommended by S³ to obtain more information about the firm's past performance.

The information obtained during clarifications did not change the SSB's view of S³'s past performance. The SSB stated that S³ still had limited past performance information in the information technology area, and that its education and training contacts indicated S³'s experience was mostly in the areas of training government employees on the repair of equipment and machinery, which was not considered strong relevant experience for the RFP's education and training categories. The SSB also found that the firm's management capabilities remained significantly weak, as the contacted respondents indicated there was a lack of management oversight and a lack of local chain of command, which negatively affected contract performance. The SSB concluded that all weaknesses were verified with the points of contact and the issues and ratings were still valid concerns; although some of the issues had since been corrected, at the time of the contracts they were serious issues affecting performance. SSB Report at 26. The initial source selection decision remained unchanged, and the Naval Supply Systems Command approved award to MANCON. These protests followed.

S³ contends that the Navy improperly failed to consider the information it received regarding the firm's past performance during clarifications. The protester asserts that if this information had been considered, its proposal would have had no significant weaknesses and received an "outstanding" rating.

Where a protest challenges an agency's evaluation of offerors' past performance, we will examine the evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria, since determining the relative merits of offerors' past performance information is primarily a matter within the contracting agency's discretion. DGR Assocs., Inc., B-285428, B-285428.2, Aug. 25, 2000, 2000 CPD ¶ 145 at 11. An agency may base its evaluation of past performance upon its reasonable perception of inadequate prior performance, regardless of whether the contractor disputes the agency's interpretation of the facts. See Quality Fabricators, Inc., B-271431, B-271431.3, June 25, 1996, 96-2 CPD ¶ 22 at 7. A protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5. Our review of the record leads us to conclude that the Navy's evaluation of proposals here was reasonable.

S³'s past performance proposal listed four government support services contracts: a [DELETED] contract; a [DELETED] contract; and two [DELETED] contracts

[DELETED]. For each contract, S³ identified “official contacts” in a position to evaluate its overall performance, such as a program manager, contracting officer, or contracting specialist. S³ also sent questionnaires to numerous users of its services under various task or delivery orders. The PRAG received questionnaires from or conducted telephonic interviews with an official contact for each contract and with almost all of these users.

The responses from two “official contacts” were generally positive but lacked supportive detail indicating superior performance. The contract specialist for the [DELETED] contract said S³ provided satisfactory logistics support but her only supporting statement was that the firm conducted its quarterly site visits with no problem. She rated the firm’s overall technical performance as “outstanding,” but her only support for this rating was that the firm quickly corrected employee tardiness problems. She responded “yes,” with no explanation, to other management- and customer satisfaction-related questions. The contracting officer’s representative (COR) for both [DELETED] contracts stated that S³’s management had been effective but his only supporting statement was that all of the firm’s tasks were managed satisfactorily. He responded “yes,” with no explanation, to other management- and customer satisfaction-related questions, and rated S³’s overall technical performance as both “good” and “acceptable.” The third “official contact” was more critical. The [DELETED] program director believed the firm’s management was not effective, citing the firm’s poor records and its high turnover in program managers. She responded “no,” with no explanation, to such questions as whether S³ demonstrated a business-like concern for customers’ interests and was committed to customer satisfaction. She rated the firm’s overall technical performance as “fair.”

Most users gave outstanding marks to S³’s personnel and its overall technical performance, but responded “yes,” with no explanation, to the various management and customer satisfaction-related questions. Some users did provide positive comments, such as the user who said S³ was very concerned with customer service and that he was “very, very pleased” with his experience, but other users were critical. One stated that S³ did not provide adequate assistance in turnover to the new contractor or information to employees at the completion of its contract; another stated that no employee was fully qualified to perform the work unless she had referred them to the firm; and a third said S³’s logistics support was not satisfactory because the firm had no local office with site management responsibilities, which meant the government was forced to act as a clearinghouse for employee questions back to their employer. This user stated that S³ said all the right things to indicate concern with customer satisfaction but that it is difficult to manage unless there is a management presence close enough to the actual operation to understand employee and performance issues; he indicated that S³ had made one site visit in 2 years.

S³'s proposal was rated "good" under the relevance subfactor, with the weaknesses discussed above concerning its lack of past performance data in the education and training area and the inadequate verification of its past performance in the information technology area. S³'s proposal was rated "good" under the quality, business relations, and customer satisfaction subfactors,³ with several related weaknesses based on the user comment that performance and customer satisfaction were negatively affected by its lack of site management or local chain of command; the user comment that none of S³'s personnel were qualified to perform the requested tasks unless she referred them to the firm; the user comment that S³ did not provide any turnover to the new contractor at the end of the contract; and the [DELETED] program director's statements that S³ had poor records and a high turnover in program managers, her negative view of the firm's customer satisfaction, and her rating of the firm's overall performance as "fair."

Turning first to the relevance subfactor, S³ advised the Navy during clarifications that it had not included information on its education and training experience because the contract under which it gained that experience ended prior to the cut-off time for past performance set forth in the solicitation. S³ later provided written information about work done under that contract and more recent education and training work.

S³'s contention that the agency did not consider this information is belied by the SSB report, which found that the firm's information indicated its experience was "mostly in the areas of training government employees on the repair of equipment and machinery, which is not considered strong relevant experience for the RFP Education and Training categories." SSB Report at 26. The initial agency report elaborated on this finding in detail, and S³, in its comments on that initial report, did not dispute the agency's position.

S³'s contention that the Navy waived the requirement for past performance experience in the education and training area for MANCON is without basis. MANCON's proposal includes a list of the labor categories it has provided the government in support of its contracts, which shows it has fielded numerous employees with more than 50,000 hours of experience in education and training labor categories. The firm's narrative description of its work also includes several

³ Quality was defined as "compliance with contractual requirements, accuracy of reports, retention of employees and key personnel, and training of personnel, and quality awards"; business relations as "effective management and communications with customers and business associates, business-like concern for the customer's interest, assistance and cooperation in problem solving"; and customer satisfaction as "concern for the interests of customers and satisfaction of the end users with the contractor provided services." RFP § M.1.D.1.(a).

tasks associated with these labor categories.⁴ In conclusion, S³ has given us no basis to find that the ratings assigned to either proposal under the relevance subfactor are unreasonable.

S³'s related contention that the Navy failed to treat the relevance subfactor as more important than the other past performance subfactors, as required by the solicitation, is also without basis. While the Navy did not use any quantitative means to weight the subfactor as more important than the others, the record is replete with evidence that the Navy made its decisions with this fact in mind, and the PRAG and SSB reports place particular emphasis on relevance.⁵

We now turn to S³'s "good" ratings under the remaining past performance subfactors at issue here. During clarifications, S³ addressed the [DELETED] program director's comments by stating that the contract as awarded did not allow for a program manager function and would have to be modified to permit the firm to charge such costs to the contract. S³ stated that the program director did not agree with its personnel coverage and advised that there were "differing personalities" between the program director and the firm. Clarifications Memorandum at 3. S³ asked the Navy to contact the contracting officer for more information because there were "issues" between the program director and the firm.⁶ *Id.* S³ also gave the Navy written information about the tenure of its [DELETED] program managers showing that the firm had three program managers in 4 years.

The Navy did contact the [DELETED] contracting officer. He stated that the contract as awarded did not account for the cost of a program manager, but the

⁴ Since S³ did not rebut the agency's evaluation of its proposal with regard to its education and training experience in its initial comments, S³'s later-raised allegation in this regard, in its supplemental comments, is untimely. Global Eng'g & Constr. Joint Venture, B-275999.4, B-275999.5, Oct. 6, 1997, 97-2 CPD ¶ 125 at 10 n.11. In any event, S³'s later-raised allegation--that several of its [DELETED] task orders reflect education and training experience comparable to that of MANCON--is unpersuasive because it is not clear how the work described is related to the RFP's education and training labor categories in view of the fact that S³'s proposal lists no past performance labor hours in any of these labor categories.

⁵ In any event, S³'s standing would obviously not improve if more importance were placed on its "good" relevance rating as compared with MANCON's "outstanding" rating.

⁶ At S³'s request, the Navy also contacted the deputy program manager for the [DELETED] contracts for his views of S³'s past performance and verified the response from the COR for these contracts. Both individuals essentially stated that S³ had performed adequately or successfully with no major problems.

contract grew larger than anticipated and S³ had to bring in more people to support the number of task orders. S³ had not included the cost for a program manager in its proposal and there was not enough money for such costs. An audit resulted in the conclusion that the costs were allowable, and he modified the contract accordingly. The contracting officer stated that, “[t]hereafter, there were disagreements between S³ program managers who worked closely with [the program director]” and that she “did not get along” with them. He stated that, in his opinion, S³ did an outstanding job. Summary of Clarification Phone Contacts at 5-6. The Navy also contacted the [DELETED] program manager for her opinion. After advising the Navy that they should talk to the program director because her response might differ, she stated that there may have been problems in the earlier years of the contract before she arrived (several years into the contract) but that she had experienced no performance problems and the customers were extremely happy. *Id.* at 6.

S³ also addressed the user comments about its lack of on-site management. S³ stated that the contract did not permit it to have an on-site supervisor unless it had a larger staff than it did at this location. S³ stated that its clients indicated it would be nice to have an on-site supervisor but the [DELETED] program director had denied the client’s request. S³ conceded that its customers knew it had no local management and turned to the government for answers. S³ also stated that it had a current contract at this location under which its management was highly regarded. When contacted for verification, the user did not revise his original comments but merely confirmed that, on its current supplies contract, S³ had a local office with a manager so the issues under the [DELETED] contract were not a problem.

S³ contends that the Navy improperly failed to consider the information it received during clarifications concerning the responses from the [DELETED] program director and this user.⁷ S³ contends that the Navy should have disregarded their responses because information provided during clarifications should have put it on notice that the problems raised by the [DELETED] program director resulted from a contract dispute and the problems raised by the user were the government’s fault. We do not agree.

The PRAG was concerned about the [DELETED] program director’s comment that S³ had poor records and a high turnover in program managers. The protester does not dispute the comment regarding the firm’s poor records. As for her comment about the high turnover in program managers, the information provided by S³ during clarifications shows that the firm had three program managers over the 4-year span of the contract, and information elsewhere in S³’s proposal showed that one of these program managers served for just 4 months. The Navy did not believe that this

⁷ S³ does not dispute the accuracy of the comments made by two other users whose responses were the basis of evaluated weaknesses under several subfactors.

information addressed its concerns with S³'s past performance, and we cannot find fault with the program director's view that its program manager turnover was high.

The PRAG was also concerned about the [DELETED] program director's negative opinion of S³'s commitment to customer satisfaction and her overall fair rating of the firm. During clarifications, S³ essentially advised the Navy that there was ill will between the firm and the program director based upon a disagreement as to whether the costs of a program manager could be charged to the contract. S³ asserts that, after the contract was modified to resolve the issue, the contracting officer informed the Navy that the program director "still believed she was correct and continued to denigrate S³." Protester's Comments, Aug. 7, 2001, at 4. S³ further asserts that both the contracting officer and program manager "told [the Navy] that [the program director] was prejudiced." Protester's Supplemental Comments, Aug. 29, 2001, at 8. S³'s characterization of the responses from these individuals is simply wrong.

Nowhere in his response does the contracting officer advise the Navy that the program director ever "denigrated" S³ or that she was "prejudiced" against the firm. He merely states that there were unspecified disagreements between S³ program managers and the program director, and that they did not get along. The mere existence of such disagreements is not indicative of prejudice. Similarly, the program manager never said that the program director was prejudiced against S³, but merely acknowledged that there may have been problems between the firm and program director before she came to work on the program. Again, the mere existence of such problems is not indicative of prejudice. Government officials are presumed to act in good faith; we will not attribute unfair or prejudicial motives to such officials on the basis of inference or supposition. See ABIC Ltd., B-286460, Jan. 12, 2001, 2001 CPD ¶ 46 at 7.

S³ has given us no basis to conclude that the program director's comments were tainted by the contractual dispute or based upon any reason other than S³'s performance under the [DELETED] contract, and there is no reason to find that the Navy should have disregarded her response. Her view of S³'s poor records is unrebutted; her opinion that S³ had high program manager turnover is reasonable; and her other negative comments are consistent with responses from several [DELETED] users. The fact that the contracting officer and program manager did not share her opinion of S³'s performance does not render her opinion invalid. Neither attempted to impugn her response despite the opportunity to do so, and the program manager in particular took care to acknowledge both that their views might differ and that she had no knowledge of events from the earlier stage of performance.

S³ next contends that the source of the problem cited by the user was the [DELETED] office. The protester states that it was unable to get the program director's approval for an on-site office but would have done so if authorized by contract. As the Navy points out in its supplemental agency report, however, there is

no evidence that S³ itself sought to solve the problem by obtaining direct compensation for a supervisor, and no evidence that the firm took any other steps to address the user's concerns, such as making more on-site visits than one in 2 years.

As for S³'s contention that the Navy did not consider the fact that this user is very happy with its current contract as "corrective action," the Navy explains that it did not think that performance under a subsequent, and apparently unrelated, supply contract outweighed its risk assessment associated with the oversight and supervision problems at this site. S³ uses this explanation to complain that the requirement to undertake quick corrective action in the current task order or contract was an unstated evaluation factor. We do not agree. Agencies are required to identify the major evaluation factors in a solicitation, but are not required to identify all areas of each factor which might be taken into account provided that the unidentified areas are reasonably related to or encompassed by the stated criteria. Mid-Atlantic Design & Graphics, B-276576, July 1, 1997, 97-2 CPD ¶ 132 at 3-4. In our view, when considering past performance in the context of such subfactors as business relations and customer satisfaction, the notion of "effective corrective actions" reasonably encompasses the timing and nature of such actions. Here, there is no indication that S³ took any corrective action in response to the identified problem over the life of the task order despite being on notice of its existence. Under the circumstances, the Navy reasonably found that the problem was not resolved or mitigated by S³'s subsequent performance on a different contract.

Turning to the evaluation of MANCON's past performance proposal, S³ contends that since three of its responses came from the same person, and contained nearly identical "glowing" comments, Supplemental Protest at 10, the Navy should have questioned the validity of the responses. We do not agree. As the deputy director for all of these contracts, this person was an appropriate contact, and the near identity of his responses does not trouble us, given the detailed nature of his comments, the similarity of the contracts, and the absence of any contradictory information in the record. S³'s assertion that this individual, who provided a response for S³ that was bereft of "glowing" comments such as those made about MANCON, is prejudiced against the firm is wholly without basis. See ABIC Ltd., supra.

S³ argues that the Navy divided past performance questionnaires into those that contained amplifying information and those that did not, and used these categories to mechanically analyze past performance. S³ has misinterpreted the SSB chair's statement, which simply explains that the Navy had more confidence in responses that included detail in support of their conclusions than those that did not, and conducted its evaluation accordingly. This explanation is borne out by the record and entirely reasonable. S³ has also misinterpreted a passage from this statement to argue that the Navy conducted a mechanical analysis based upon the presence or absence of weaknesses in an offeror's past performance. The statement that "[u]nresolved weaknesses, no matter how minor, cast some doubt as to the successful performance of the contract and, therefore, eliminated the possibility of

an Outstanding rating being assigned,” SSB Chair Statement at 2, is consistent with the requirement to assign an “outstanding” rating when “essentially no doubt existed” that the offeror would successfully perform the required effort. SSP at 25. In any event, the notion of a mechanical analysis is belied by the extensive discussion of offerors’ past performance in the PRAG report.⁸

S3 finally contends that the entity on whose behalf the contract was signed, “MANCON, Inc.,” is not the entity with past performance experience, “Management Consulting, Inc. (MANCON).” In this regard, while the firm’s proposal makes it clear that “Management Consulting, Inc.” does business as “MANCON,” and the past performance data uses the two interchangeably, the offer form was signed on behalf of “MANCON, Inc.” by the person identified elsewhere in the proposal as the vice-president of “Management Consulting, Inc. (MANCON).”

The name of an offeror need not be exactly the same in all of the offer documents, although the offer documents or other information available must show that differently-identified offering entities are in fact the same legal entity. See Trandes Corp., B-271662, Aug. 2, 1996, 96-2 CPD ¶ 57 at 2. Our review of the record confirms the Navy’s position that the available information was sufficient to make the requisite showing. While the offer form is signed on behalf of “MANCON, Inc.,” it is signed by the same individual listed as the vice-president of “Management Consultants, Inc. (MANCON)” elsewhere in the proposal and lists the same address as that given for “Management Consultants, Inc. (MANCON).” The record also shows but one data universal numbering system (DUNS) number and one taxpayer identification number (TIN). The fact that an offeror has only one TIN or DUNS

⁸ In addition to lacking a valid basis, S³’s related argument that the Navy improperly rated all offerors as “outstanding” or “good” and did not use other available ratings is untimely. The July 24 agency report put S³ on notice of all offerors’ ratings, but S³ did not raise this allegation until August 31, more than a month later. Protests not based upon alleged solicitation improprieties must be filed within 10 days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (2001).

number and only one address is often a reliable indicator of the offering entity.⁹ See Dick Enters., Inc., B-259686.2, June 21, 1995, 95-1 CPD ¶ 286 at 2, recon. denied, Dick Enters., Inc.--Protest and Recon., B-259686.3, Nov. 16, 1995, 95-2 CPD ¶ 223.

The protests are denied.

Anthony H. Gamboa
General Counsel

⁹ The intervenor has provided evidence showing it does operate under the name “MANCON, Inc.” in some states. While S³ asserts that an ambiguity regarding the offering entity exists simply because a firm called “ManCon, Inc.” is registered in the same state as the intervenor, neither the name “ManCon, Inc.” nor its address appear anywhere in the offer documents.