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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: C. Lawrence Construction Company, Inc.

File: B-289341

Date: January 8, 2002

Doug R. Lawrence for the protester.

Larry E. Beall, Esq., and Joseph A. Gonzales, Esq., Army Corps of Engineers, 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

Protest that solicitation's past performance evaluation criteria are unnecessarily restrictive is denied where the record shows that the provisions are reasonably related to the agency's minimum needs.

DECISION

C. Lawrence Construction Company, Inc. protests the terms of request for proposals (RFP) No. DACA01-02-R-0007, issued by the Army Corps of Engineers, Mobile District, for the construction of an F-22 squadron maintenance hangar at Tyndall Air Force Base, Florida. The protester contends that the solicitation's past performance evaluation criteria are unnecessarily restrictive.

We deny the protest.

The successful offeror will be awarded a fixed-price contract to construct a 55,000 square-foot maintenance hangar with an attached squadron operations center and maintenance unit. The facility will be constructed of a pre-engineered steel frame with standing seam metal roof, fabric hangar doors, a combination metal panel and architectural concrete masonry unit exterior. The contractor is also required to demolish a concrete aircraft ramp and perform general paving and grading and other general site utilities. The estimated cost of the project is between \$5 and \$10 million. RFP § 952.000-4214.

The agency will conduct a competitive "best value" source selection in which competing offerors' past and present performance history will be evaluated on a

basis equal to price or other considerations. RFP § 00110. In the past performance information volume of its proposal,¹ each offeror is required to

[p]rovide a list of at least five (5), but no more than ten (10), of the most relevant contracts performed for Government or commercial customers within the last 5 years. ‘Relevant’ contracts are construction projects that are similar in scope and magnitude to this project, including but not limited to, aircraft hangars and/or light industrial type facilities which may include pre-engineered metal building frame, paving and utility work; and within the range of \$5,000,000 to \$10,000,000.

RFP § 00110 ¶ 2.1.1(a).

For each listed contract, offerors must furnish information such as the name and owner of the project, its general scope, the firm’s role and work on the project, the extent and type of work subcontracted, and the construction cost, as well as a performance survey form completed by the project owner. RFP § 00110 ¶¶ 2.1.1(a), (b). Offerors can also provide any information for any other project that demonstrates customer satisfaction with overall job performance and quality of completed contracts of similar scope and magnitude. RFP § 00110 ¶ 2.1.1(b).

The RFP states that a technical evaluation team (TET) will evaluate past performance information on the lowest-priced offerors and perform a performance risk assessment. The TET will use each offeror’s past performance information to evaluate the quality of its performance on recent, relevant projects of similar scope and magnitude to make an overall assessment of its ability to perform the work required by the solicitation. RFP § 00120 ¶ 2.2.2.1. Pricing information will be provided to the TET after the conclusion of its evaluation, and the TET will recommend award to the offeror whose proposal is fair and reasonable and most advantageous to the government considering past performance and price.

C. Lawrence Construction contends that the solicitation’s past performance evaluation criteria are unnecessarily restrictive in two respects. The protester first objects that the requirement to provide a list of at least five contracts within the range of \$5 to \$10 million is unnecessarily restrictive because it will “automatically exclude small, emerging businesses from being awarded the contract.” Protest at 1. The protester next objects to the solicitation’s provision regarding evaluation of past performance on the ground that, in its experience, the agency’s past performance

¹ Offerors were to submit a proposal in two volumes, one containing past performance information and the other containing such information as representations and certifications, bonds, and pricing schedules.

evaluations focus primarily on the name of the project and do not consider any other factors. Protest at 2.

The Competition in Contracting Act generally requires that solicitations permit full and open competition and contain restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs. 10 U.S.C. § 2305(a)(1) (1994). The determination of the agency's minimum needs and the best method of accommodating them is primarily within the agency's discretion. Leon D. Matteis Constr. Corp., B-276877, July 30, 1997, 97-2 CPD ¶ 36 at 3. Agencies enjoy broad discretion in the selection of evaluation criteria, and we will not object to the use of particular evaluation criteria so long as the criteria used reasonably relate to the agency's minimum needs in choosing a contractor that will best serve the government's interests. Id. at 4. Where a protester alleges that a solicitation provision is unduly restrictive, we will review the record to determine whether the provision is reasonably related to the agency's minimum needs. See Systems Application & Techs., Inc., B-270672, Apr. 8, 1996, 96-1 CPD ¶ 182 at 3.

C. Lawrence Construction contends that the "real effect" of the requirement to submit a list of at least five projects valued at between \$5 and \$10 million is to "automatically exclude small, emerging businesses from being awarded the contract" because such firms will not be able to list this many relevant projects in the required dollar range. Protest at 1. The protester asserts that offerors should be permitted to submit a list of up to five relevant projects instead of a minimum of five.

The Army explains that this requirement was designed to provide a fair basis upon which to assess an offeror's overall ability to successfully perform this contract. The Army states that it must consider the general trends in a contractor's performance when conducting a past performance evaluation, Federal Acquisition Regulation (FAR) § 15.305(a)(2)(i), and asserts that one project does not reflect a trend. As the Army explains, in order to assess the general trend of a contractor's performance, it must be able to consider sustained, continuous performance on a number of projects. The Army believes that five or more projects provides an adequate number of projects to make this assessment, or a better "comfort zone" in which it can determine a contractor's overall performance and performance trends. Affidavit of Agency Technical Adviser, ¶ 6. Moreover, the dollar range for the required projects is the same as the estimated cost of the required work. Although it is possible for a firm to perform a project of similar construction type at a lower dollar amount, the protester has given us no basis to conclude that the Army's desire to ensure that the contractor chosen is capable of allocating funds for a project this size is unreasonable, especially considering that the Army states that the estimated cost of the project is closer to the higher end of the stated dollar range. See Leon D. Matteis Constr. Co., supra, at 5 n.3. It would be illogical and unreasonable to prohibit an agency from paying attention to the size of past contracts in its past performance evaluation. See J.A. Jones Grupo de Servicios, S.A., B-283234, Oct. 25, 1999, 99-2 CPD ¶ 80 at 7.

The protester does not specifically rebut the agency's rationale for this requirement. Instead, the protester's objection to the requirement is grounded in its view that it and other small emerging businesses will be improperly excluded from competing because they do not have experience with five projects in the stated dollar range. However, the fact that a particular prospective offeror is unable to compete under a solicitation that reflects the agency's needs does not establish that the solicitation is unduly restrictive. Micromass, Inc., B-278869, Mar. 24, 1998, 98-1 CPD ¶ 93 at 4.

C. Lawrence Construction next objects to the solicitation provision regarding evaluation of offerors' prior relevant contracts on the ground that, in its experience, the agency's past performance evaluations focus primarily on the name of the project and do not consider such factors as the similarity of the projects' construction methods and complexity, the contract types and environments, and subcontractor efforts. Protest at 2.

The solicitation's definition of relevant contracts is quite broad. Again, relevant contracts are "construction projects that are similar in scope and magnitude to this project, including but not limited to, aircraft hangars and/or light industrial type facilities which may include pre-engineered metal building frame, paving and utility work" and are within the range of \$5 to \$10 million. RFP § 00110 ¶ 2.1.1(a) (emphasis added). Offerors are also required to submit information regarding the scope of each contract, the firm's role and work on each contract, and the extent and type of work subcontracted on each contract. Hence, an offeror is free to provide a wealth of information about any contracts within the dollar range that it believes are similar in scope and magnitude to this project, including the information referenced by the protester, and the agency's responsibility is to consider such information in assessing performance risk in a manner that is reasonable and consistent with the solicitation's terms. See C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4. The protester asserts that the agency's past performance evaluations in prior procurements improperly have focused on the name of the project to the exclusion of other factors, suggesting that in this procurement the agency similarly will ignore pertinent information in its evaluation of offerors' past performance. However, each procurement stands on its own and protests that merely anticipate improper agency action, such as this one, are speculative and premature. See Saturn Indus.—Recon., B-261954.4, July 19, 1996, 96-2 CPD ¶ 25 at 5.

The protest is denied.

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General Counsel