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**Comptroller General
of the United States**

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

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Decision

Matter of: Chicataw Construction, Inc.

File: B-289592; B-289592.2

Date: March 20, 2002

Lawrence J. Sklute, Esq., Sklute & Associates, for the protester.
Joel David Malkin, Esq., General Services Administration, for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

1. Protester's challenge to the evaluation of its past performance is denied where the record shows that the agency made reasonable efforts to contact the required minimum of three past performance references, and ultimately used a neutral rating for the reference it was unable to reach.
2. Agency's post-protest recalculation of the protester's past performance score, and corresponding redetermination that the awardee's proposal still represents the best value to the government, will be considered where the reevaluation is limited in scope, primarily involves a straightforward recalculation with little room for subjective judgment, and there is nothing in the record to support a conclusion that the resulting increase in the protester's score would materially alter the agency's selection decision.

DECISION

Chicataw Construction, Inc. protests the award of a contract to Hammond Corporation by the General Services Administration (GSA), pursuant to solicitation No. GS05P01GAC0174, issued to procure a chiller/cooling tower replacement for the Federal Building in Akron, Ohio. Chicataw argues that the agency's evaluation of past performance was unreasonable.

We deny the protest.

BACKGROUND

The solicitation here was issued on September 14, 2001, and anticipated award of a fixed-price contract for the demolition and removal of existing chiller and cooling

tower equipment, and the furnishing and installation of new equipment. In addition, the solicitation identified two optional requirements related to replacing additional cooling equipment in the building. The total price for the base effort and the two options was defined as the “total evaluated price,” and the solicitation advised that award would be made to the offeror whose proposal represented the best value to the government in terms of total evaluated price and past performance. Solicitation at 380, amend. 4, at 3. The solicitation also advised that past performance and total evaluated price were approximately equal in weight, but that as proposals became more equal in past performance, total evaluated price would become more important. Solicitation, amend. 3, at 3.

With respect to past performance, the solicitation advised that only an offeror’s experience as a prime contractor would be considered relevant, but that the experience of key personnel obtained from firms other than the offeror might also be considered, at the discretion of the contracting officer (CO). Solicitation at 380. With respect to the amount of past performance information to be provided, the solicitation included conflicting requirements. On page 380, the solicitation required offerors to provide a minimum of three references (but no more than six) for prior work completed no more than 5 years earlier (or for uncompleted work that was 90 percent completed by the time of proposal submission); on page 381, the solicitation required a minimum of six references, three for projects completed within the last 3 years and three for current projects.

The solicitation also included a standard form for the submission of the requested past performance information. This form required identification of the project and its location, identification of a reference and contact information, as well the dollar value, the completion date, and a description of the work and complexity of the project. Id. at 383. With respect to offerors who might lack past performance information, the solicitation advised that failure of an offeror to provide a minimum of three relevant references (or the inability of the government to reach at least three references, after making a reasonable effort to do so), “may result in the offeror not being rated on the past performance factor.” Id. at 381.¹

By the November 7 closing date set for the receipt of offers, GSA received proposals from four offerors, including Chicataw and Hammond. Chicataw’s proposal identified five prior projects for its past performance evaluation, but did not use the solicitation’s standard form for submitting such information; as a result, for certain of its past performance projects Chicataw did not provide all of the information

¹ For the record, we note that the solicitation also advised that “[i]n the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, that offeror will not be evaluated on past performance.” Id. Any distinction between these two provisions, however, is not at issue in this protest.

sought by the agency for its evaluation. In contrast, Hammond's proposal identified six prior projects, and did so on the standard form provided with the solicitation.

To evaluate past performance, the CO asked each of Chicataw's references to rate its performance in six areas using a 5-point scale, ranging as follows: excellent, 5 points; very good, 4 points; good, 3 points; fair, 2 points; and, poor, 1 point. There was also an N/A category for answers of "not applicable" or "no response." The reference's ratings in all six areas were averaged to obtain a single rating for each prior project; the ratings for all of an offeror's prior projects were averaged to obtain an overall past performance score. Agency Report (AR), Tab H.

Since its proposal failed to provide all of the necessary performance information, the CO made numerous calls to Chicataw seeking additional information about the projects identified. In addition, the CO requested that the company identify additional projects for evaluation, as at least one of the references would not return the CO's calls (alternatively, the CO asked Chicataw's president for his assistance in reaching this reference). We need not set forth here the details of these inquiries as the record of these calls and letters was provided to Chicataw in the agency's report; Chicataw has in no way challenged the agency's description of its repeated requests for information; and Chicataw failed to supplement its proposal with any of the requested additional performance information.

Ultimately, the CO did not evaluate three of Chicataw's five prior projects for the following reasons: in the first case, the CO learned from the reference that the project was completed in 1991, and thus the project was considered too stale for evaluation here; in the second case, the CO learned from the reference that the company was a subcontractor on the project, and not the prime contractor; and in the third case, the CO was unable to reach the identified reference. For the two projects that were rated, Chicataw received ratings of 4.75 and 3.5. Since the CO concluded that the solicitation required a minimum of three prior projects for evaluation, and since Chicataw had failed to identify additional projects, the CO averaged the two ratings received from valid references with a rating of zero for the third project to obtain an overall past performance score of 2.75. AR, Memorandum of Law, Tab H, and Tab O, at 2; Supplemental AR, Tab D.

In evaluating Hammond's past performance, the CO noted that on four of the six projects Hammond identified, it had served as a subcontractor, and not as a prime contractor. Thus, the CO sought, and Hammond provided, additional past performance information, including additional projects, for review. Ultimately, the CO received responses from references on three valid prior projects who gave Hammond ratings of 5, 5, and 4.88. These ratings were averaged to obtain an overall past performance score for all of Hammond's projects of 4.96. AR, Memorandum of Law, Tab O, Supplemental AR, Tab D.

Upon completion of the agency's review, the total evaluated prices and past performance scores for the four offerors were as follows:

Offeror	Total Evaluated Price	Past Performance Score
Chicataw	\$867,000	2.75
Hammond	\$913,223	4.96
Offeror A	\$946,100	4.61
Offeror B	\$1,248,000	4.39

Using this information, the CO concluded that Chicataw's lowest total evaluated price did not offer the best value to the government because the company's past performance score was significantly lower than the scores of the other offerors. As a result, the CO selected Hammond's proposal for award on the basis that its combination of price and past performance offered the best value to the government. Source Selection Decision, Dec. 3, 2001, at 2. This protest followed.

DISCUSSION

Chicataw's initial protest raised only two issues: that GSA failed to make reasonable efforts to contact one of its references, and that it improperly disregarded experience gained by Chicataw's president while working for a different company. In answer, the agency produced a report addressing the two issues raised. Specifically, the report defended the CO's efforts to contact Chicataw, its president, and its references, and explained why Chicataw was not credited with experience gained by its president; the report did not, however, provide a detailed explanation of the evaluation.

In response, Chicataw did not abandon its initial protest, but submitted only a single-sentence request that the protest be decided on the existing record. See 4 C.F.R. § 21.3(i) (2001). In addition, Chicataw filed a supplemental protest arguing that the agency's report showed that the evaluation of past performance was arbitrary, irrational, and in violation of Federal Acquisition Regulation (FAR) § 15.305(a)(2)(v), which requires that offerors lacking past performance information may not be evaluated favorably or unfavorably.

With respect to Chicataw's assertion that the agency did not make reasonable efforts to contact one of its past performance references, the record here shows that the CO made numerous attempts to reach Chicataw's reference, to advise the company of the problem, and to permit the company to either submit additional information or assist the CO in her efforts to contact the reference. As Chicataw has not taken issue with the agency's description of these actions, and as the actions themselves appear reasonable, we conclude that there was nothing improper about the failure of the

agency to reach this reference. Atmospheric Research Sys., B-240187, Oct. 26, 1990, 90-2 CPD ¶ 338 at 3. Similarly, with respect to whether the agency should have credited Chicataw with prior experience gained by its president, GSA points out that there was nothing in the company's proposal indicating that the identified project was anything other than a standard performance reference. Given that our review of the proposal confirms GSA's position, and given Chicataw's failure to offer any evidence or argument to the contrary, we conclude that the agency also acted reasonably in not crediting the company with its president's prior experience. Id. Put simply, in both of these instances, Chicataw, not GSA, bears responsibility for its evaluation shortfalls.

GSA's supplemental report provides a more detailed explanation of the evaluation, and acknowledges certain deficiencies in the solicitation and errors in the evaluation process. In addition, the agency recalculates Chicataw's past performance score by removing the rating of zero the agency used for the project where the CO had been unable to reach the reference, and replacing it with a rating of 2.5 (out of 5 possible points), which the agency contends is, in essence, a neutral rating. It then averages the revised neutral rating with the ratings received from the two Chicataw references the CO was able to reach, to generate a revised past performance score of 3.58. Finally, the supplemental report includes an Amended Source Selection Decision, dated one day prior to submission of the report, which again concludes that Hammond's slightly higher-priced proposal, with its significantly higher past performance score of 4.96, offers the best value to the government. Amended Source Selection Decision, Feb. 21, 2001, at 2-3.

Chicataw answers that the supplemental report is inconsistent with the initial report, argues that the evaluation was irrational, and alleges that the CO apparently "made up" its past performance score. We disagree. Instead, we conclude that the more detailed explanations provided in the supplemental agency report are consistent with the record initially provided, and do not support the protester's contention that the evaluation was irrational or its speculation that its scores were arbitrarily created by the CO. In addition, under the circumstances here, we do not agree with Chicataw's assertion that the agency's recalculation of Chicataw's past performance score, and its revised tradeoff decision, should be given no weight by our Office under the rule established by our decision in Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. Our reasons for these conclusions are set forth below.

As a preliminary matter, we note first that the initial agency report filed with our Office did not attempt to provide a complete recounting of the agency's evaluation in this procurement. Under our Bid Protest Regulations, 4 C.F.R. § 21.3 (c), (d), an agency is required to answer a protest with a statement of the relevant facts, and with all relevant documents or portions of documents. In GSA's view, the facts and documents relevant to Chicataw's initial protest were those that answered the two specific allegations raised, and did not include a full explanation of the evaluation.

Thus, several of the protester's allegations that this evaluation was irrational are based on an admittedly incomplete explanation of the agency's actions.

Turning to the merits of Chicataw's allegations, we note that several of the protester's contentions are based on agency misstatements in the record that do not accurately reflect the actions they purport to describe, and thus, are easily answered by the underlying facts. For example, as the protester correctly argues, the initial Source Selection Decision quotes, and purports to follow, the solicitation's requirement that offerors identify six projects for the past performance evaluation--three current projects and three prior projects--during the last 5 years. Source Selection Decision at 1. Despite this statement, the document clearly indicates that each offeror's evaluation was based on three references, with the exception of Chicataw, whose evaluation was based on two references.

Another example is Chicataw's observation that the Source Selection Decision provided with the initial report erroneously describes the ratings received from Chicataw's two valid references as "one good rating, and one a little above fair." Source Selection Decision at 1. Our review of the evaluation scheme shows that the adjectival descriptors associated with the numerical ratings given by Chicataw's two relevant references were considerably more favorable than described by the CO in her decision document. Specifically, a rating of 4.75 approaches "excellent" under the agency's scheme, while a rating of 3.5 falls halfway between "very good" and "good." We note, however, that this error appears to be limited to the narrative description of Chicataw's evaluation results, as the tradeoff portion of the decision is based on the correct numerical ratings, rather than the erroneous adjectival ratings referenced earlier. Specifically, the tradeoff is based on the numerical past performance score obtained by averaging the two ratings received from relevant references, with a rating of zero.²

With respect to the protester's contentions that the more detailed explanations in the supplemental report are inconsistent with the record in the initial report, Chicataw's arguments are refuted by the facts. The supplemental explanation of the agency's averaging approach is supported both by the actual number used in the initial Source Selection Decision (which, as explained above, can be derived arithmetically using the averaging process the agency describes), and by the Memorandum of Law provided with the initial report, which states that "[w]ith only two relevant past performance ratings available, Chicataw received an average past performance

² For the record, we note that the score used in the tradeoff decision can be easily generated by averaging the ratings provided by Chicataw's two references, with a third rating of zero, which refutes the protester's assertion that its past performance score was fabricated. In addition, these calculations show that the agency did not refuse to rate the company at all under this factor--as the solicitation had warned it might if an offeror did not have three past performance references.

rating of 2.75.” AR, Memorandum of Law, at 4. In our view, this evidence corroborates the agency’s later-provided explanation of its approach.³

We turn next to the general question of whether the evaluation here was reasonable. The protester does not raise a specific challenge to the approach the agency used for offerors, like Chicataw, who had some, but not all, of the required past performance information. Rather, it argues that the agency’s initial use of a zero rating for Chicataw’s third past performance project violates FAR § 15.305(a)(2)(iv), and complains that our Office should accord little deference to GSA’s revised evaluation under the rule in Boeing Sikorsky Aircraft Support, *supra*.

It is not entirely clear that the FAR admonition against rating offerors lacking past performance information favorably or unfavorably applies to the situation here—*i.e.*, where an offeror has some portion of the required minimum of past performance information, but not as much as the agency requested. However, we see nothing unreasonable in the agency’s adoption of this principle for this analysis. We have held that, when FAR § 15.305(a)(2)(iv) applies, ratings of zero generally cannot be reasonably viewed as neutral ratings, and they thus violate the requirement that an offeror without past performance information may not be evaluated favorably, or unfavorably. Meridian Mgmt. Corp., B-285127, July 19, 2000, 2000 CPD ¶ 121 at 3 n.2. Thus, if the FAR rule is assumed to apply, the initial selection decision’s best value tradeoff was improperly based on an unfairly low past performance score generated by using a rating of zero for Chicataw’s third prior project.

As explained above, however, the agency recalculated Chicataw’s score using a rating of 2.5 for neutral. That score is the mid-point of the five-point range used to rate an offeror’s prior performance, and appears to be consistent with the above-cited FAR requirement, and with our prior decisions. See Braswell Servs. Group, Inc., B-278921, B-278921.2, June 17, 1998, 98-2 CPD ¶ 10 at 7-8; Oceaneering Int’l, Inc., B-278126, B-278126.2, Dec. 31, 1997, 98-1 CPD ¶ 133 at 7-8. On that basis, Chicataw’s amended past performance rating of 3.58 appears reasonable, and Chicataw has not challenged the recalculation in any specific way other than its assertion that the recalculation should be disregarded.

In Boeing and its progeny, we have been generally skeptical of reevaluations prepared by agencies during the protest process in response to protest contentions, because they were “prepared in the heat of an adversarial process” and thus “may not [have] represent[ed] the fair and considered judgment of the agency, which is a prerequisite of a rational evaluation and source selection process.” Boeing, *supra*,

³ Similarly, the protester’s assertion that the CO disregarded past performance information from commercial projects—as opposed to disregarding projects where the offeror was a subcontractor, rather than the prime contractor—is not supported by the record.

at 15. As opposed to here, the Boeing case involved a reevaluation and a cost/technical tradeoff late in the protest process where no tradeoff had been made during the initial source selection. Further, the agency continued to assert that there was no error, but, in order to immunize itself against a losing protest, submitted a reevaluation that it argued was not necessary. In our view, the substantial nature of the agency's errors and the resulting closeness of the proposals meant that, after the errors were corrected in Boeing, the outcome was not clear. We thus concluded that it was appropriate to give little weight to the agency's after-the-fact decisional materials prepared for the purpose of ensuring that our Office would conclude there was no prejudice to the protester.

Here, the agency's reevaluation is less a matter of judgment, and more a matter of mathematics. Essentially, the need for recalculation springs from the agency's decision (with which the protester clearly agrees) that the initial rating of zero for Chicataw's third prior project was inconsistent with the FAR's admonition that offerors should not be evaluated favorably or unfavorably when they lack prior experience. Removing this rating, replacing it with a neutral rating, and recomputing the average of the three ratings to generate a revised past performance score is a straightforward computation that raises fewer concerns than we might have when an agency is revisiting matters that are entirely discretionary, and are, as a result, less amenable to objective review.⁴ See Advanced Data Concepts, Inc., B-277801.4, June 1, 1998, 98-1 CPD ¶ 145 at 4-5.

A matter of greater discretion than the assignment of a neutral rating is the tradeoff decision that follows. In this regard, there is nothing in this record to lead us to conclude that the resulting increase in Chicataw's past performance score—from 2.75 to 3.58 on a 5-point scale—would materially alter the agency's decision to select Hammond's proposal for award. While the increase in Chicataw's score cannot be termed de minimis, it remains the lowest past performance score received by any offeror in this competition. It also remains significantly lower than Hammond's score of 4.96. Given the great disparity in these scores, together with the minimal price advantage offered by Chicataw's proposal, we find reasonable the CO's redetermination that Hammond's proposal continues to offer the best value to the government. Scientific and Commercial Sys. Corp.; Omni Corp., B-283160 et al., Oct. 14, 1999, 99-2 CPD ¶ 78 at 18-19.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁴ Specifically, the only exercise of discretion in the recalculation is the decision to use a rating of 2.5 for a neutral score, which, as explained above, appears reasonable.