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Decision

Matter of: Wadsworth Builders, Inc.

File: B-291633

Date: January 24, 2003

Michael B. Galletch, Esq., Barokas Martin & Tomlinson, for the protester.
John D. Inazu, Esq., and Nancy Anderson Sinclair, Esq., Department of the Air Force, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of past performance evaluation is denied where record supports agency's rating of protester's past performance, including its determination regarding which contracts were recent and relevant within the meaning of the solicitation. To the extent that one prior contract should have been considered relevant but was not, the protester was not prejudiced as a result, given that the record shows no reasonable possibility that the agency would have rated protester's past performance more favorably had this contract been considered.

DECISION

Wadsworth Builders, Inc. protests the award of a contract to Falls Construction Company under request for proposals (RFP) No. F24604-02-R-0045, issued by the Department of the Air Force for the replacement of gas lines in Capehart Military Family Housing at Malmstrom Air Force Base (AFB), Montana. The protester contends that the agency misevaluated both offerors' past performance.

We deny the protest.

The RFP, which was issued on August 8, 2002, contemplated the award of a fixed-price contract to the offeror whose proposal represented the best value to the government, price and past performance considered. The solicitation provided that in the award determination, the two factors would be of approximately equal weight.

Four offerors submitted proposals prior to the September 9 closing date. After reviewing offerors' past performance information, the evaluators assigned the following ratings:

Offeror	Past Performance/ Performance Risk Rating	Price
Falls	Exceptional/High Confidence	\$226,810
Wadsworth	Satisfactory/Confidence	\$207,600
Offeror A	Satisfactory/Confidence	\$310,623
Offeror B	Very Good/Significant Confidence	\$324,195

The contracting officer determined that the difference between Falls' and Wadsworth's past performance ratings outweighed the difference of approximately 8 percent in their prices and that Falls' proposal therefore represented the best value to the government. On September 28, the agency awarded a contract to Falls.

The protester objects to the agency's evaluation of both its own and Falls' past performance. Specifically, the protester contends that in evaluating Falls' past performance, the Air Force improperly considered a contract on which Falls had not yet completed performance. Wadsworth further argues that in evaluating its own past performance, the agency failed to consider recent, relevant contracts that it had performed and rated its performance under one contract less favorably than warranted.

Where a solicitation requires the evaluation of offerors' past performance, we will examine an agency's 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. Thomas Brand Siding Co., Inc., B-286914.3, Mar. 12, 2001, 2001 CPD ¶ 53 at 4.

The RFP provided that in evaluating offerors' past performance, the agency would consider contracts for similar work that were current or had been completed within the past 3 years. RFP § L-505(b)(1)(c). The solicitation further provided that the agency would obtain past performance information from offerors' proposals, the Construction Contractor Appraisal Support System (CCASS) (a centralized, automated database of performance evaluations on construction contractors), the Past Performance Retrieval System, documentation filed with the 341st Contracting Squadron (the contracting activity here), and data independently obtained from government and commercial sources. RFP § M-2.b.

In evaluating Falls' past performance, the contracting officer considered four contracts performed by Falls that she determined to be both recent and relevant. On two of the contracts, Falls received overall ratings of very good, while on the

other two, it received ratings of outstanding/exceptional. All four projects involved underground utilities, and two of the four were gas line projects similar in scope and complexity to the project here. Acquisition Memorandum at 4.

Wadsworth argues that the agency should not have considered one of the above contracts—a project identified on the evaluation worksheet for Falls as “Drainage Restoration at Missile Launch Facility,” for which Falls received a rating of outstanding—because the performance evaluation questionnaire completed by the contract administrator for this project indicates that performance is not expected to be completed until October 31, 2003. The protester contends that because the project has yet to be completed, the agency should not have taken it into account in determining Falls’ overall past performance rating, and that had the project not been considered, the agency would have assigned Falls a rating of very good rather than a rating of exceptional.

While the protester contends that the agency should have considered only completed contracts in its evaluation, as noted above, the RFP provided for consideration of both current and completed contracts. Accordingly, we see nothing inappropriate in the agency’s having considered Falls’ performance under this ongoing contract. As a consequence, we have no basis upon which to question the agency’s assignment to Falls of a past performance rating of exceptional.

In evaluating Wadsworth’s past performance, the agency considered only one contract: a contract to upgrade the missile alert facility at Malmstrom AFB completed on September 30, 2001, on which the protester received a performance rating of satisfactory. The contracting officer identified five other contracts completed by the protester, but determined that three of the five should not be considered because, while recent, they were not relevant, and that one should not be considered because, while relevant, it was not recent. The contracting officer did not consider the fifth contract because, although she considered it both recent and relevant, she was unable to obtain a reference regarding the protester’s performance on it in a timely manner.¹

The protester argues that the Air Force should have rated its performance on the missile alert facility upgrade as better than satisfactory. Wadsworth further argues that the contracting officer incorrectly found one of its recent contracts to be not

¹ The agency report includes a memorandum from the contract administrator documenting her efforts to obtain a reference concerning the protester’s performance on this contract. The agency notes that a completed questionnaire was eventually received from the reference 2 days after contract award, and that the reference rated the protester’s performance as very good. The protester has not objected to the contracting officer’s failure to take this reference into consideration.

relevant and one of its relevant contracts to be not recent. The protester contends that had the contracting officer properly considered the above contracts, she would have assigned Wadsworth an overall past performance rating of very good rather than satisfactory.

Regarding the missile alert facility upgrade contract at Malmstrom AFB, Wadsworth argues that the project was divided into two phases, and that its performance on each phase was separately evaluated. The protester maintains that it received a rating of very good/outstanding² on the first phase and a rating of satisfactory on the second, and that taking the two ratings into account, the Air Force should have rated its overall performance on the contract as very good.

While it is clear that the first evaluation of Wadsworth's performance on the missile alert facility upgrade project pertained to only its first phase of performance (the evaluation form identifies the evaluation as "interim 50%"), contrary to the protester's argument, there is no indication that the second evaluation pertained to only its second phase of performance; instead, the second evaluation form indicates that the evaluation was a "final" one, encompassing the entire period of performance. Thus, the record does not support the protester's argument that the evaluations pertained to two independent phases of contract work and should have received equal weight in the evaluation.

Furthermore, it is apparent from the record that the contracting officer did not rely exclusively on the above evaluations, which the contracting officer had obtained from the CCASS, in evaluating Wadsworth's performance under the missile alert facility upgrade contract; in addition, she contacted the contract administrator for the project, who confirmed the rating of satisfactory. The contracting officer reports that the contract administrator informed her that Wadsworth's performance on the project was, in fact, "at best . . . satisfactory," i.e., its quality of workmanship was only satisfactory; it had completed identified deficient workmanship items without subsequent write-ups only after the government had brought them to its attention; and it had not initiated and maintained coordination with its subcontractors. Statement of Facts at 2-3.

Wadsworth further argues that the contracting officer incorrectly concluded that its performance on a previous project to install gas mains in Capehart Military Family Housing was not recent. The protester contends that it was still completing work on

² While Wadsworth's vice-president asserts that the Air Force rated his company's performance on the first phase as outstanding, Affidavit of Wadsworth's Vice-President, Dec. 6, 2002, ¶ 9, counsel for the protester recognizes that the documentation furnished by the agency in fact shows that the contract administrator rated Wadsworth's performance as above average in his first evaluation. Protester's Comments, Dec. 9, 2002, at 3.

the project until August 31, 1999, and that the project therefore qualifies as recent within the solicitation definition.³

The Air Force disputes the protester's assertion that it was completing work on the project during August 1999. According to the agency, Wadsworth completed performance on the previous gas main project by July 1, 1999, over 3 years prior to issuance of the instant RFP.

Both parties have submitted documentation purporting to support their positions. The Air Force's documentation consists of a contract progress report for contract No. F24604-98-C-0833, which the agency identifies as the only prior contract for the replacement of gas lines in Capehart Housing. The report is for the period June 16 to June 30, 1999, and shows that the contract work had been 100 percent completed by the end of the period. The Air Force also furnished a copy of a construction inspection record pertaining to the above contract, which identifies the completion date as July 1, 1999.

The protester's documentation consists of a contract progress report for the period August 15, 1999 to August 30, 1999 and a contract modification dated August 27, 1999. Neither document references contract number F24604-98-C-0833, however. Moreover, the progress report shows that no work was completed on the referenced contract during the time period covered and that the contract was already 100 percent complete prior to the period. In addition, the modification furnishes no information regarding the status of performance.

While the documentation furnished by the agency supports its position that performance on the previous Capehart gas main contract had been completed by July 1, 1999, the documentation furnished by the protester does not support its argument that performance on the project continued into August 1999. Accordingly, the record does not support the protester's argument that its performance on the previous gas main project qualified as recent within the meaning of the RFP.

Finally, the protester argues that the contracting officer erred in finding non-relevant its performance on a project identified on the evaluation worksheet as "Combat Arms Range Phase II," on which it received a performance rating of very good. Wadsworth contends that the project encompassed work similar to the work to be

³ As previously noted, the RFP provided for consideration of contracts completed within "the past 3 years"; however, the RFP did not specify the date to be used to establish the end of the 3-year period. Wadsworth argues that the date used should be either the date the RFP was issued (August 8), or the date by which past performance information was to be submitted to the agency (August 30). As explained above, using either date, the record shows that the agency reasonably concluded that the contract was not recent within the meaning of the RFP.

performed here, i.e., it installed approximately 5,000 linear feet of gas main, which totaled about 27 percent of the contract value. Affidavit of Wadsworth's Vice-President, Dec. 6, 2002, ¶ 7.

The protester has made a prima facie showing of similarity between the work performed under the combat arms range project and the project to be performed here, which the Air Force has neither taken issue with nor attempted to rebut. Even assuming that the agency should have regarded the combat arms range project as relevant and considered it in evaluating the protester's past performance, however, we see no basis to conclude that consideration of this contract would have resulted in an increase in Wadsworth's past performance rating. In this regard, prejudice is an essential element of a viable protest, and we will sustain a protest only where a reasonable possibility of prejudice is evident from the record. Lithos Restoration, Ltd., B-247003.2, Apr. 22, 1992, 92-1 CPD ¶ 379 at 5-6. Here, Wadsworth's performance on the missile alert facility project, which was over six times greater in dollar value than the combat arms range project, was rated as "at best" satisfactory. In addition, only about a quarter of the value of the combat arms contract was for work similar to the work to be accomplished here, meaning that while the contract was relevant, its relevance was limited. In light of these factors, we see no reasonable possibility that the contracting officer would have raised the protester's overall past performance rating to very good based on its performance on the latter project.

The protest is denied.

Anthony H. Gamboa
General Counsel