



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: All Phase Services, Inc.

File: B-294640; B-294640.2

Date: December 1, 2004

Edward J. Kinberg, Esq., Kinberg & Associates, for the protester.
Clarence D. Long, III, Esq., Department of the Air Force, for the agency.
Glenn G. Wolcott, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. In evaluating past performance, agency properly considered prior contracts performed by awardee's proposed subcontractor where solicitation expressly advised offerors that such information would be considered, and awardee submitted a letter from the proposed subcontractor expressly authorizing consideration of its past performance information.
2. In awarding contract for demolition services, agency reasonably determined that various demolition contracts performed by the awardee and the awardee's proposed subcontractor were relevant for purposes of evaluating past performance.
3. Agency's procurement record reasonably supports the determination that awardee's higher priced, higher rated proposal represented the best value to the government where solicitation advised offerors that past performance was "significantly more important" than price and the contracting officer expressly documented the bases for concluding that the risks associated with protester's lower past performance rating outweighed the protester's price advantage.

DECISION

All Phase Services, Inc. protests the Department of the Air Force's award of a contract to Fencon Corporation pursuant to request for proposals (RFP) No. FA4418-04-R-0009 to perform various demolition services at Charleston Air

Force Base (AFB), South Carolina. All Phase protests that the agency improperly evaluated Fencon's past performance and failed to make a reasonable best value determination.

We deny the protest.

BACKGROUND

The agency issued RFP No. FA4418-04-R-0009 on June 10, 2004, seeking proposals to provide all personnel, vehicles and equipment necessary to perform demolition of military family housing units and various industrial facilities at Charleston AFB, South Carolina. The solicitation limited the competition to small disadvantaged businesses under the Small Business Administration's section 8(a) program and contemplated award of an indefinite-delivery requirements contract for a 1-year base period and four 1-year option periods.

The solicitation provided that proposals would be evaluated only with regard to price and past performance, and advised offerors that past performance was "**significantly more important**" than price. Agency Report, Tab 4, at 49 (bold in original). Regarding the evaluation of past performance, the solicitation stated that "[r]elevant contracts include, but are not limited to, those contracts . . . of similar scope, magnitude and complexity to the services required to be performed at Charleston AFB," and provided that each offeror's past performance would be rated as "exceptional," "very good," "satisfactory," "neutral," "marginal," or "unsatisfactory." *Id.* at 47-48. The solicitation also provided that "[t]he evaluation of past performance . . . will take into account past performance information regarding . . . subcontractors that will perform major or critical aspects of the requirement."¹ *Id.* at 47. Accordingly, offerors were directed to "[p]rovide with the proposal a letter from all subcontractors that will perform major or critical aspects of the requirement, consenting to the release of their past performance information." *Id.* at 48. Finally, the solicitation stated that, in selecting the awardee, the contracting officer would make an "integrated assessment best value award decision" based on price and past performance considerations. *Id.* at 49.

Proposals were submitted by several offerors, including All Phase and Fencon; thereafter, the agency obtained past performance information regarding the four lowest-priced offerors.² Consistent with the solicitation provision regarding

¹ The solicitation also advised offerors that the agency would consider past performance information regarding "predecessor companies" and "key personnel who have relevant experience," and that the agency "may use past performance information obtained from other than the sources identified by the Offeror." *Id.*

² Initial price proposals were submitted by twenty offerors. Agency Report, Tab 9, at 1. The solicitation provided that, following submission of price proposals, the

(continued...)

subcontractors, Fencon submitted a letter from S&A Services, Inc., stating: “Fencon Corporation is hereby authorized to use S&A Services, Inc. past performance information in the submission of your proposal for [the solicitation at issue here].” Agency Report, Tab 15, at 15. The proposals were evaluated by the agency with the following results:

Offeror	Price	Past Performance
Fencon	\$6,426,123	Very Good
Offeror A	[deleted]	Satisfactory
Offeror B	[deleted]	Satisfactory
All Phase	[deleted]	Satisfactory

Agency Report, Tab 9, at 1.

In evaluating Fencon’s past performance, the agency considered information regarding three demolition contracts Fencon had previously performed, assigning ratings of “satisfactory,” “exceptional,” and “very good” to the contracts, respectively.³ Agency Report, Tab 9, at 6-7. In summarizing Fencon’s past performance information, the contracting officer stated: “Fencon received numerous favorable comments. They have experience in large projects to include the demolition, asbestos removal and lead base paint abatement,” and further noted that one of the references had characterized Fencon as “very responsive” and “exceptional to work with.” Agency Report, Tab 9, at 6. In evaluating Fencon’s proposal, the agency also considered past performance information regarding four demolition contracts performed by S&A Services, Inc., the subcontractor for which Fencon had submitted an authorization letter. With regard to these four contracts, S&A’s performance was rated “exceptional” for three, and “very good” for the fourth. Agency Report, Tab 9, at 7. Overall, Fencon’s proposal was rated “very good” for past performance, based on the information relating to both Fencon’s and S&A’s prior performance history.

In evaluating All Phase’s past performance, the agency considered information regarding four demolition contracts All Phase had performed, assigning ratings of

(...continued)

agency would obtain past performance information “on the lowest priced offerors (usually the lowest three to five).” Agency Report, Tab 4, RFP at 49. Here, the agency obtained past performance information regarding the four lowest priced offerors, which included Fencon and All Phase.

³ A fourth Fencon contract for “Flooring, Carpeting, wallpaper,” was assigned a rating of “NR [not relevant]” because it did not involve demolition. Agency Report, Tab 9, at 6.

“satisfactory” for three of these contracts and “very good” for the fourth. Agency Report, Tab 9, at 2. Overall, All Phase’s proposal was rated “satisfactory” for past performance. In contrast to the discussion of Fencon’s performance, the contracting officer noted that one reference identified “areas of concern” with All Phase that included “cooperativeness from the contractor to maintain communication and attend meetings, providing a realistic project schedule and providing accurate line item proposals.” Id.

Following the agency’s evaluation, Fencon’s proposal was selected for award. In the source selection document, the contracting officer specifically recognized the higher price proposed by Fencon, but concluded that “[i]n my view the additional cost offsets the risk associated with the lower priced offerors.” Agency Report, Tab 9, at 8.

All Phase was subsequently notified of the agency’s source selection decision. This protest followed.

DISCUSSION

All Phase first protests that it was improper for the agency to consider the past performance of S&A in connection with Fencon’s proposal. We disagree.

As discussed above, the solicitation expressly advised offerors that, in evaluating past performance, the agency would include consideration of major subcontractors’ past performance. In this regard, the solicitation directed that an offeror must submit a written authorization from any subcontractor whom the offeror intended to perform “major or critical” aspects of the contract requirements. Agency Report, Tab 4, at 48. Here, Fencon’s proposal included the required letter of authorization. Supplemental Contracting Officer’s Statement, Nov. 2, 2004, at 1. Accordingly, the agency’s consideration of S&A’s past performance in evaluating Fencon’s proposal was consistent with the solicitation requirements.⁴

All Phase next complains that some of the contracts identified by Fencon for consideration in the past performance evaluation were not sufficiently similar in

⁴ All Phase complains that the language of Fencon’s proposal did not specifically state that Fencon was proposing S&A as a major subcontractor. In the context of this solicitation, which sought only submission of past performance and pricing information, and required submission of authorization letters from major subcontractors, Fencon’s submission of S&A’s authorization letter, which expressly stated that Fencon “is hereby authorized to use S&A past performance information in the submission of your proposal,” provided a reasonable basis for the agency to conclude that Fencon was proposing S&A as a major subcontractor.

“scope, magnitude and complexity” to the contract requirements at issue and therefore, should not have been considered relevant for evaluation purposes.

The evaluation of past performance, including the agency’s determination of the relevance and scope of the offeror’s performance history to be considered, is a matter of agency discretion, which we will not find improper unless unreasonable, inconsistent with the solicitation criteria, or undocumented. Acepex Mgmt. Corp., B-283080 et al., Oct. 4, 1999, 99-2 CPD ¶ 77 at 3, 5.

Here, as discussed above, the agency properly considered past performance information of both Fencon and S&A in evaluating Fencon’s proposal. In this regard, the record is unambiguous that the agency considered a total of seven demolition contracts, ranging in value from approximately \$84,000 to \$528,000. Agency Report, Tabs 8, 9, 15. The contracting officer concluded that these contracts, which required primarily demolition and abatement activities, were sufficiently similar to the contract requirements at issue to be considered relevant. We have reviewed the agency’s evaluation record and find nothing to support All Phase’s contention that the contracting officer’s relevance determinations were unreasonable.⁵ In any event, the solicitation specifically provided that, for past performance purposes, relevant contracts “include, but are not limited to, those contracts . . . of similar scope, magnitude and complexity” to the required services. Agency Report, Tab 4, at 47 (emphasis added). On this record, we find no merit in All Phase’s protest challenging the relevance of the contracts on which the agency relied for purposes of Fencon’s past performance rating.

Next, All Phase challenges the adequacy of the agency’s best value determination, complaining that “a numerical evaluation” of Fencon’s and All Phase’s past performance ratings “discloses that there is only a 5% difference in their total points.” Supplemental Protest at 5. All Phase complains that this “relatively slight difference” in past performance rating was insufficient to support the agency’s best value determination. Id.

A determination regarding the relative merits of competing offerors’ past performance information is primarily a matter within the contracting agency’s discretion. Our Office’s review of such assessments is generally limited to determining that the agency assessments were reasonable and consistent with the stated evaluation criteria. DGR Assocs., Inc., B-285428, B-285428.2, Aug. 25, 2000, 2000 CPD ¶ 145. A protester’s mere disagreement with an agency’s past

⁵ With regard to comparable value, although the total price for the contract at issue is considerably greater than the individual values of Fencon’s prior contracts, the value of the protested contract covers a base year period and 4 option years, during which individual delivery orders will be issued for substantially less than the total contract price.

performance evaluation is not sufficient to overturn that evaluation. Grey Personnel Servcs., Inc., B-285002, B-285002.2, June 26, 2000, 2000 CPD ¶ 112.

Here, as the agency points out in responding to this aspect of All Phase's protest, the agency employed an adjectival—not numerical point scored—rating system in evaluating past performance;⁶ the numerical calculation of a “5% difference” reflects All Phase's assessment, not the agency's. In any event, the solicitation specifically advised offerors that past performance was “significantly more important” than price and the agency's documentation supporting the best value determination clearly shows that the contracting officer considered the difference between Fencon's and All Phase's proposed prices, but concluded that the lower risks associated with Fencon's past performance outweighed its higher price. Among other things, the contracting officer's source selection decision document states:

Fencon not only has the experience in demolition and asbestos paint abatement but they have also demonstrated their ability [to] successfully manage these projects and others with little government oversight or intervention. They have shown a very good history of performance with no problems identified by any of the references questioned. Based on this record, there is little doubt they will successfully perform the required effort. The potential cost difference of [deleted] (worst case; if all line items and estimated quantities are fully utilized) is [deleted] greater than [All Phase's proposed price] over a 5-year period. In my view the additional cost offsets the risk associated with [All Phase's proposal].

Agency Report, Tab 9, at 8.

On this record we find no basis to question the reasonableness of the agency's best value determination.

Finally, All Phase asserts that the agency relied on evaluation factors other than those identified in the solicitation, including the “[p]roximity of the offeror to the location of the work to be performed.” Supplemental Protest at 6. All Phase asserts that, based on its research, it has determined that “Fencon is the only offeror from the State [South Carolina] in which the work [is] to be performed” and, therefore, the agency must have used the geographic location of the offerors as an unstated evaluation factor. Supplemental Protest at 7.

⁶ As noted above, the solicitation expressly advised offerors that each offeror's past performance would be rated as “exceptional,” “very good,” “satisfactory,” “neutral,” “marginal,” or “unsatisfactory.” Agency Report, Tab 4, at 47.

An unsupported allegation, which amounts to mere speculation, is insufficient to form a basis for protest. King-Fisher Co., B-256849, July 28, 1994, 94-2 CPD ¶ 62. Here, the record is devoid of any indication that the agency relied on any unstated evaluation factors, including the geographic proximity of the offerors. Accordingly, All Phase's speculation in this regard provides no basis to challenge the agency's source selection decision.

The protest is denied.⁷

Anthony H. Gamboa
General Counsel

⁷ All Phase's protest submissions also contain various allegations, not specifically discussed above, including the assertion that the contracting officer was biased, that it was inappropriate for the agency to initiate telephone calls to obtain past performance information, that the agency provided an inadequate debriefing, and that the agency's 5-day delay in providing protester's counsel with a portion of the procurement record demonstrates that the procurement decision was flawed. We have reviewed all of All Phase's allegations and find no basis for sustaining the protest.