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**Comptroller General
of the United States**

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

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Decision

Matter of: JWK International Corporation

File: B-297758.3

Date: August 31, 2006

Wayne A. Keup, Esq., for the protester.

David B. Dempsey, Esq., and Kristen E. Ittig, Esq., Holland & Knight LLP, for Four Winds Services, Inc., an intervenor.

Major Jeffrey Branstetter, 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

1. Protest that agency should have considered experience of protester's proposed key personnel in evaluating protester's past performance is denied where record demonstrates that agency had a reasonable basis for deciding not to consider the qualifications of individual employees under the past performance evaluation factor.
 2. Agency reasonably determined that exceptional performance by protester's proposed subcontractor on contracts that involved only a portion of the work required under the solicitation was insufficient to demonstrate that protester could be expected to perform the effort solicited at issue successfully.
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DECISION

JWK International Corporation (JWK) protests the failure of the Department of the Air Force to select its proposal for award under request for proposals (RFP) No. FA8601-05-R-0050, for fuels management services at Wright-Patterson Air Force Base, Ohio. This protest follows the agency's reevaluation of proposals and reselection of an awardee in response to our decision sustaining a protest by United Paradyne Corporation (UPC). United Paradyne Corp., B-297758, Mar. 10, 2006, 2006 CPD ¶ 47. JWK argues that the Air Force's evaluation of its past performance and the agency's "best value" tradeoff determination were unreasonable.

We deny the protest.

BACKGROUND

The RFP, which was issued on June 2, 2005, contemplated the award of a fixed-price contract and provided for the evaluation of proposals on the basis of three factors: mission capability, past performance, and price. Mission capability was to be evaluated on an acceptable/unacceptable basis, with only those proposals receiving ratings of acceptable proceeding to evaluation of past performance and price. Past performance and price, which were of approximately equal weight, were to be traded off against one another to determine which proposal represented the best value to the government.

The solicitation provided for the assignment of performance confidence ratings to offerors based on their past performance. There were six possible ratings: exceptional/high confidence, very good/significant confidence, satisfactory/confidence, neutral/unknown confidence, marginal/little confidence, and unsatisfactory/no confidence. RFP at 45. Of significance to this protest, the RFP defined a rating of marginal/little confidence as follows:

Based on the offeror's performance record, substantial doubts exist that the offeror will successfully perform the required effort. Changes to the offeror's existing processes may be necessary in order to achieve contract requirements.

Id. The RFP advised that the evaluation of past performance would be accomplished by reviewing offerors' relevant present and recent past performance; the solicitation defined relevant contracts as contracts for similar services with similar scope and complexity. The RFP provided that a "relevancy determination" of the offeror's present and past performance, including joint venture partners and/or major subcontractors, would be made. Contracts were to be rated for relevance in accordance with the following scale:

Highly Relevant: Past/present effort involved essentially the same magnitude of effort and complexities this solicitation requires including both facility and support operations.

Relevant: Past/present effort involved much of the magnitude of effort and complexities this solicitation requires including both facility and support operations.

Somewhat Relevant: Past/present effort involved some of the magnitude of effort and complexities this solicitation requires including facility or support operations.

Not Relevant: Past/present effort involved little of the magnitude of effort and complexities that solicitation requires.

RFP at 46.

Nine proposals were received by the July 13, 2005 closing date. All were determined to be technically acceptable. After evaluation of past performance and price, the source selection authority (SSA) selected the proposal of Four Winds Services, Inc. (FWSI), to which the agency evaluators had assigned a performance confidence rating of satisfactory/confidence and which offered a price of \$7,898,073, as representing the best value to the government. The agency awarded FWSI a contract on December 1.

UPC subsequently filed a protest with our Office challenging the Air Force's evaluation of its past performance. By decision dated March 10, 2006, we sustained UPC's protest, finding that the agency's approach to evaluating offerors' past performance was unreasonable. We explained that the agency had used the following methodology, which was not disclosed to offerors in the RFP, to arrive at a performance confidence rating for each offeror. After assessing the relevance of each contract identified by the offeror in its proposal, the Air Force had averaged these ratings to arrive at an overall relevance rating. It had then integrated this rating with a quality of performance rating, which it obtained by averaging the point scores on the performance questionnaires furnished by the offeror's references. We found that the agency's approach--averaging together relevant and non-relevant experience--was unreasonable because it penalized offerors with relevant experience, such as UPC, for their non-relevant experience. We concluded that the agency's methodology was further unreasonable in that it gave equal weight in the calculation of offerors' quality of performance ratings to highly relevant and non-relevant performance. We recommended that the agency reevaluate the past performance of UPC and the other offerors using an appropriate methodology, that is, one that took into consideration the relevance of a particular contractual effort in determining the weight to be assigned the offeror's performance of it. We further recommended that the agency make a new source selection decision, and, if a firm other than FWSI were selected, that it terminate the award to FWSI and make award to the offeror selected.

The Air Force performed a reevaluation of offerors' past performance in response to our decision. To avoid penalizing offerors with more relevant experience for their less relevant experience, the agency evaluators assigned each offeror the relevance rating of its most relevant contract. In JWK's case, this resulted in a contract relevance rating of somewhat relevant, while in FWSI's case, it resulted in a rating of highly relevant.¹ The agency also reevaluated offerors' quality of performance,

¹ While JWK submitted information on four contracts that it had performed itself and five contracts that its proposed subcontractor, Maytag Aircraft Corporation, had performed, the Air Force determined that none of JWK's own contracts was even

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excluding from consideration performance on non-relevant contracts. The reevaluation resulted in quality of performance ratings of exceptional for JWK (and all other offerors except FWSI); FWSI's quality of performance was rated as very good.

The evaluators then integrated the relevance ratings with the quality of performance ratings to derive a performance confidence rating for each offeror. In JWK's case, the agency assigned a performance confidence rating of marginal/little confidence, finding that since the protester's most relevant performance was only somewhat relevant, there was substantial doubt that it would perform successfully.² In this connection, the evaluators noted that it was "a logical conclusion . . . to have little confidence in a contractor that only performed a small portion of the critical elements, even though those few elements were performed exceptionally." Reevaluation Summary Assessment, May 12, 2006, at 3-4. The evaluators assigned FWSI a performance confidence rating of very good/significant confidence.

The performance confidence ratings and prices of all offerors were as follows:

<u>Offeror</u>	<u>Performance Confidence rating</u>	<u>Price</u>
JWK	Marginal/Little Confidence	\$7,411,769
FWSI	Very Good/Significant Confidence	\$7,898,092
Offeror A	Exceptional/High Confidence	[deleted]
Offeror B	Marginal/Little Confidence	[deleted]
Offeror C	Exceptional/High Confidence	[deleted]
Offeror D	Exceptional/High Confidence	[deleted]
Offeror E	Exceptional/High Confidence	[deleted]
Offeror F	Exceptional/High Confidence	[deleted]
Offeror G	Exceptional/High Confidence	[deleted]

Source Selection Decision Document, Reevaluation, May 15, 2006, at 2.

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somewhat relevant since none of its contracts was a fuels management contract and only two of the Maytag contracts were somewhat relevant. FWSI submitted information on seven contracts; of the seven, four were determined to be not relevant, two were determined to be somewhat relevant, and one was determined to be highly relevant. Five of the remaining seven offerors were assigned relevance ratings of highly relevant and two were assigned ratings of somewhat relevant.

² The other two offerors with relevance ratings of somewhat relevant and quality of performance ratings of exceptional also received performance confidence ratings of marginal/little confidence, whereas the five offerors with relevance ratings of highly relevant and quality of performance ratings of exceptional all received performance confidence ratings of exceptional/high confidence.

The SSA determined that FWSI's offer represented the best value to the government, reasoning as follows:

The price for JWK is 6.56% lower than the cost of the selected contractor (FWSI), and I considered the \$486,304 savings. However, JWK received a Marginal/Little Confidence Integrated Assessment rating, that as defined, indicates, "substantial doubts exist that the offeror will successfully perform the required effort." I felt this was a fair [rating] since this offeror had only limited experience in Fuels Management. I considered the savings offered but compared it against the associated risks. The environmental and safety issues, which are a significant part of this contract, rely on the experience level of the contractor and the Very Good/Significant Confidence rating received by FWSI is well worth the 6.56% additional cost.

I also considered [Offeror A], with a rating of Exceptional/High Confidence, and the third lowest [price]. However, with past performance and price being considered as approximately equal on this acquisition, the expenditure of additional monies for a degree of better performance is not considered to be in the best interest of the Government.

Source Selection Decision, May 15, 2006, at 4.

DISCUSSION

JWK initially asserted that the assignment to its proposal of a relevance rating of only somewhat relevant was unreasonable because the proposal included a detailed explanation of the experience of JWK's proposed subcontractor, Maytag, in performing "undeniably relevant" fuels management contracts. Protest at 5. The protester also argued that it was inconsistent with the agency's original rating scheme, pursuant to which a relevance rating of somewhat relevant combined with a quality of performance rating of exceptional yielded a performance confidence rating of satisfactory/confidence, for the agency to have assigned its proposal a performance confidence rating of marginal/little confidence.

As we noted in our decision on UPC's protest, as a general matter, the evaluation of an offeror's past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. United Paradyne Corp., *supra*, at 4. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. Hard Bodies, Inc., B-279543, June 23, 1998 98-1 CPD ¶172 at 3.

The Air Force responded to the protester’s first argument by explaining that in assessing the relevance of previously performed contracts, the evaluators had considered the extent to which the contracts involved performance in each of five areas in which services were required under the instant RFP (i.e., distribution, bulk storage, cryogenics, fuels lab, and accounting). According to the agency, the protester and its subcontractor demonstrated little or no experience in several of these areas; accordingly, the agency argued, since the protester’s past efforts involved only some of the magnitude of the effort and complexities required by the instant RFP, a rating of somewhat relevant was appropriate. In support of its position, the agency furnished a “relevancy chart” for the contracts submitted by JWK/Maytag, which showed that the evaluators had assigned all four of the JWK contracts and three of the five Maytag contracts point scores of 0 for relevance, and that they had assigned the remaining two Maytag contracts point scores of 6 and 4 (out of 10) for distribution, 3 for bulk storage (both contracts), 8 for cryogenics (both contracts), 1 and 0 for fuels lab, and 0 for accounting (both contracts).³ The “relevancy chart” also showed that prior contracts had been evaluated in a final “roll-up” category based on the number of the above areas that they encompassed (i.e., a contract that involved work in all five areas was to be awarded a score of 10; a contract that involved work in four of the five, a score of 8; a contract that involved three of the five, a score of 6; etc.); both Maytag contracts received scores of 6 under this criterion.

With regard to the protester’s second argument, the agency explained that in its initial evaluation, it had given equal weight to relevance and quality of performance in determining performance confidence ratings, while in its reevaluation, it had “assigned greater weight to more relevant past performance by eliminating Non-Relevant contracts and considering only those contracts determined to be Somewhat Relevant, Relevant, or Highly Relevant.” Memorandum of Law at 4. According to the agency, “[s]ince the ‘quality’ and ‘relevancy’ components were weighted differently in the original evaluation and the re-evaluation, it is only logical that the integrated past performance confidence ratings resulting from the two evaluations would differ.” Id.

³ The “relevancy chart” contained very detailed guidelines for the assignment of points for relevance. In the area of “distribution,” for example, the chart provided for the assignment of points as follows:

All including mobile and hydrants and vehicle maintenance	10
Mobile and Hydrants only	7
Mobile with Vehicle Maintenance	6
Mobile only	4
Hydrants only	4
Vehicle Maintenance only	2

Agency Report, Tab 3(g).

In response to the agency's explanation, the protester took issue with the agency's rating of its past performance, arguing that it should have received a score of 8 rather than a score of 6 in the "roll-up" category for one of the Maytag contracts and that the agency had improperly failed to take into account the experience of its proposed key personnel. JWK further argued that in its reevaluation the agency had improperly reduced the significance of quality of performance and placed too much significance on relevance. According to the protester, since the RFP was silent as to the relative weights to be accorded these factors, they should have been treated as equal. The protester also argued that it was inconsistent with the terms of the RFP for the agency to have assigned its proposal a performance confidence rating of marginal/little confidence since this rating contemplated a finding by the agency that an offeror's performance was in need of improvement, and the agency made no such finding in its case.

In response to the protester's argument regarding the scoring of one of the Maytag contracts in the "roll-up" category, the contracting officer conceded that an error had been made and that the score should have been 8 rather than 6. The contracting officer maintained that the error had not resulted in any prejudice to JWK, however, because even with the additional points, the contract would still have been rated as somewhat relevant, a position that the protester does not dispute. Accordingly, we need not consider this argument further. See GC Servs. Ltd. P'ship, B-298102, B-298102.3, June 14, 2006, 2006 CPD ¶ 96 at 7-8 (prejudice is an essential element of every viable protest).

Regarding JWK's argument that the experience of its proposed key personnel should have been considered in the evaluation of its past performance, we recognize that the Federal Acquisition Regulation (FAR) advises that "[t]he evaluation [of past performance] should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition." FAR § 15.305(a)(2)(iii). We have previously interpreted this section as permitting an agency to decide that information concerning key personnel is not relevant, however. Olympus Bldg. Servs., Inc., B-282887, Aug. 31, 1999, 99-2 CPD ¶ 49 at 3-4; see also Blue Rock Structures, Inc., B-287960.2, B-287960.3, Oct. 10, 2001, 2001 CPD ¶ 184 at 5. Here, the contracting officer explains that the agency assessed the potential ability of offerors to perform under the mission capability evaluation factor and their actual experience in performing the type of work required under the past performance factor. In the contracting officer's view, the individual skills and qualifications of personnel do not provide information as to how the company or its subcontractors have performed the requirements of the performance work statement on other contracts, nor do they give any indication as to the offeror's quality of performance on contracts similar in scope and complexity to the effort here. Addendum to Contracting Officer's Statement of Facts, July 12, 2006, at 1. We think that this explanation provides a

reasonable basis for the agency's decision not to consider the experience of proposed key personnel in evaluating JWK's past performance. Accordingly, we conclude that the agency reasonably exercised its discretion in deciding not to consider the qualifications and experience of proposed key personnel in its evaluation of JWK's past performance.

The protester also argues that because the RFP was silent as to the weights to be assigned relevance and quality of performance, these two subfactors should have been treated as equal in the evaluation of past performance. The cases cited by the protester in support of its argument, Stone & Webster Eng'g Corp., B-255286.2, Apr. 12, 1994, 94-1 CPD ¶ 306 and Informatix, Inc., B-194734, Aug. 22, 1979, 79-2 CPD ¶ 144, are distinguishable from the case at hand in that they involved solicitations that identified separate subfactors to be considered in the evaluation under a factor, which the RFP here did not do. In this connection, while the solicitation here clearly contemplated consideration of relevance and quality of performance as part of an integrated assessment of past performance, it did not establish relevance and quality of performance as separate subfactors. In any event, we do not think that the record before us demonstrates that the agency in fact gave greater weight to relevance than to quality of performance in the evaluation of past performance; rather, the record demonstrates that the agency considered the relevance of the protester's prior performance in determining the weight to give that performance, and that, in the protester's case, because the relevance of the performance was low, the weight given to the quality of that performance was low.

In support of its argument that the solicitation contemplated the assignment of a performance confidence rating of marginal/little confidence only where the agency found an offeror's prior performance to be in need of improvement, the protester cites the second sentence of the RFP definition of that rating: "Changes to the offeror's existing processes may be necessary in order to achieve contract requirements."⁴ The protester contends that this language indicates that an offeror's ability to perform will be questioned only to the extent that the agency has identified changes that the offeror will need to make to perform successfully. We disagree. The sentence in question provides that changes to the offeror's existing processes may be required, not that they necessarily will be required. Thus, we think that it

⁴ As previously noted, the RFP defined a rating of marginal/little confidence as follows:

Based on the offeror's performance record, substantial doubts exist that the offeror will successfully perform the required effort. Changes to the offeror's existing processes may be necessary in order to achieve contract requirements.

RFP at 45.

was consistent with the solicitation for the agency to conclude that, based on the protester's lack of more than minimally relevant experience, there existed substantial doubt as to its ability to perform successfully.

Finally, with regard to the protester's complaint that under the first evaluation, exceptional performance on somewhat relevant contracts yielded a performance confidence rating of satisfactory/confidence, whereas under the reevaluation, exceptional performance on somewhat relevant contracts yielded a performance confidence rating of marginal/little confidence, the methodology used by the agency in its initial evaluation was flawed in that, among other things, it failed to take into account the relevance of a particular contractual effort in determining the weight to be assigned an offeror's performance of it; as a result, the fact that the second evaluation yielded a different result in no way indicates that the reevaluation was flawed.

The protest is denied.

Gary L. Kepplinger
General Counsel