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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: Weidlinger Associates, Inc.

File: B-299433; B-299433.2

Date: May 7, 2007

Daniel B. Abrahams, Esq., Howard A. Wolf-Rodda, Esq., and Pamela A. Reynolds, Esq., Epstein Becker & Green PC, for the protester.

Pamela J. Mazza, Esq., Philip M. Dearborn, Esq., and Isaias Alba, IV, Esq., Piliero Mazza, PLLC, for Merrick & Company, an intervenor.

Blane B. Lewis, Esq., Defense Threat Reduction Agency, for the agency.

Glenn G. Wolcott, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly evaluated awardee's technical/management approach as "exceptional," and protester's as "acceptable," where awardee's proposed approach offered evaluated strengths that exceeded the solicitation requirements and protester's proposed approach met, but did not exceed, the requirements.
 2. Agency properly considered all of the past performance information submitted by protester, including information submitted prior to solicitation amendment that revised and provided additional detail regarding past performance evaluation criteria.
 3. Agency properly concluded that protester's proposal did not offer the lowest evaluated cost/price where solicitation provided that the proposed costs for two sample tasks would constitute the evaluated cost/price, and protester's proposal for the sample tasks offered higher costs than the awardee's proposal.
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DECISION

Weidlinger Associates, Inc. (WAI) protests the Defense Threat Reduction Agency's (DTRA) award of a contract to Merrick & Company for engineering services pursuant to request for proposals (RFP) No. HDTRA2-06-R-0001. WAI protests that the agency erred in evaluating various aspects of WAI's proposal.

We deny the protest.

BACKGROUND

In March 2006, the agency issued this solicitation, seeking professional engineering services to support DTRA's testing activities.¹ Agency Report (AR), vol. 1-6, RFP, at 286.² The solicitation contemplates award of an indefinite-delivery/indefinite-quantity contract with a 5-year base period and a 5-year option period, with a maximum value of \$10 million over 10 years. Section M of the solicitation provided for award on a "best value" basis and established the following three evaluation factors: mission capability, past performance, and cost/price. *Id.* at 279, 280.

With regard to mission capability, the solicitation initially established the following subfactors: personnel qualifications, technical/management approach, sample task 1,³ sample task 2,⁴ and sample task 3.⁵ *Id.* at 280. Of relevance to this protest, the solicitation provided that offerors "shall identify their team structure, team member roles, responsibilities, and experience for the area of work they will perform," and that, under the technical/management approach subfactor, the agency would assess whether an offeror's proposal offered, among other things, an "[e]ffective management organization that defines responsibilities, staffing and percentage of work of prime and key subcontractors, and prime field and home offices" and a "[c]omplete and clear description of the methods and means planned to accomplish effort under each of the required work areas." AR, vol. 1-6, RFP, at 267, 282.

¹ DTRA is responsible for fielding and conducting effects testing of high explosives, phenomenology, electromagnetic, chemical, biological, and thermal radiation.

² The agency report responding to WAI's protest employed a pagination system frequently referred to as "Bates stamping"; this decision's citations to specific page number refer to the "Bates stamped" numbers.

³ Pursuant to sample task 1, offerors were required to "prepare a 35% tunnel design package . . . to include preliminary construction drawings, specifications, construction cost estimates, material take-offs, and design support calculations." *Id.* at 290.

⁴ Sample task 2 was subsequently deleted from the solicitation's requirements, and the tasks contemplated thereunder were acquired under a separate contract with WAI.

⁵ Pursuant to sample task 3, the solicitation directed offerors to "prepare a cost proposal to provide a single full-time engineering design technician to DTRA for up to 5 years," identified this as a "key position," and stated that the design technician would be "co-located" and work "side by side" with DTRA personnel. AR, vol. 1-6, RFP, at 295.

With regard to past performance, the solicitation directed offerors to submit past performance references, but also provided, “Offerors are cautioned that the Government will use . . . data obtained from other sources in the evaluation of past and present performance.”⁶ *Id.* at 269.

With regard to cost/price, RFP section L, as amended, advised offerors that “sample task 1 and 3 cost proposals will be used for the cost evaluation,” and RFP section M, as amended, provided: “The proposed total costs for recurring requirements (Sample Task 3, Work Area 2⁷) and Sample Task 1 will constitute the evaluated cost.” AR, vol. 1-7j, RFP amend. No. 10, at 329. Accordingly, each offeror was required to propose appropriate labor categories, along with applicable labor rates, to perform the sample tasks.⁸ AR, vol. 1-6, RFP, at 270-71. In evaluating an offeror’s proposed approach to performance of the sample tasks, the solicitation further provided that the agency would assess whether the offeror had proposed a “cost effective comprehensive plan outlining the technical and management approach, labor mix, schedule, and personnel (that meet the appropriate skill levels) for the sample task[s] in accordance with the SOW.” *Id.* at 282.

On May 8, Merrick and WAI timely submitted proposals, which were thereafter evaluated by the agency.⁹ In evaluating WAI’s initial proposal, the agency expressed concern regarding the extent to which WAI’s proposal relied on subcontractors for contract performance.¹⁰ More specifically, the agency noted in its contemporaneous evaluation documentation that, while WAI’s substantial reliance on multiple

⁶ In June 2006, the solicitation was amended to provide more detailed criteria regarding evaluation of offerors’ past performance. AR, vol. 1-7h, RFP amend. No. 8, at 325-26.

⁷ The solicitation identified five work areas: (1) engineering design; (2) design technician, construction drawing and drafting; (3) survey; (4) construction inspection; and (5) materials properties determination and testing. *Id.* at 298-88. As noted above, sample task 3 required a “single full-time engineering design technician”—that is, work area 2.

⁸ Offerors were also required to propose labor categories and applicable labor rates that would be generally available to perform other, as yet undefinitized, task orders during the 5-year base period and the 5-year option period. AR, vol. 1-6, RFP, at 270-71.

⁹ A third offeror submitted a proposal after the closing date; that proposal was not evaluated by the agency and is not relevant to this protest.

¹⁰ WAI proposed to use [deleted] subcontractors, and the agency’s evaluators expressed concern that the subcontractors would be performing a majority of the contract effort. AR, vol. 3-10a, Technical Evaluation, at 360, 362.

subcontractors could be beneficial in providing a broader range of capabilities, it also constituted a weakness in that it could “complicate reporting, allegiance and chain of command,” as well as “increase management costs.” AR, vol. 3-10a, Preliminary Price Competition Memorandum, at 380. The agency’s evaluation documentation further reflected specific concern that WAI’s proposal offered a subcontractor employee to fill the key position of in-house design technician, required by sample task 3. The agency noted that reliance on a subcontractor to fill this position could create “problems with technical direction.” Id.

Following its evaluation of initial proposals, the agency conducted discussions with the offerors. In conducting discussions with WAI, the agency questioned WAI regarding the concerns identified above. Specifically, in one written evaluation notice (EN), the agency asked WAI to: “Please explain your plan to control the large number of subcontractors to avoid complications in reporting, allegiance, chain of command, and potentially increased management costs.” AR, vol. 3-11c, at 214. In another EN, the agency asked WAI to: “Please explain why the in-house technician is sourced from a subcontractor rather than the prime, and subsequently how you intend to avoid complicating issues since the government does not have privity with the subcontractor while the in-house technician directly work[s] on-site with DTRA personnel.” Id. at 213.

Following discussions, the agency requested final proposal revisions (FPR), which Merrick and WAI submitted on December 1. In its FPR, WAI provided additional information regarding its proposed reliance on subcontractors,¹¹ but did not alter its technical/management approach in any significant way.

Thereafter, the agency evaluated Merricks and WAI’s FPRs under the mission capability factor as follows:¹²

¹¹ For example, WAI’s FPR represented that, together, WAI and one of its subcontractors “will perform over [deleted]% of the work on this contract,” but did not further identify the amount of work to be performed by WAI or the amount to be performed by the subcontractor.

¹² The solicitation advised offerors that adjectival ratings of “exceptional,” “acceptable,” “marginal,” and “unacceptable” would be assigned. AR, vol. 1-6, RFP, at 280-81. Of relevance here, the solicitation defined an “exceptional” rating as applicable to a proposal that “exceeds specified requirements in a way beneficial to the Government by providing strengths with significant merit,” and an “acceptable” rating as applicable to a proposal that “meets specified requirements necessary for acceptable contract performance, and any identified weaknesses are not significant and are readily correctable.” Id.

	Merrick	WAI
Personnel Qualifications	Exceptional	Exceptional
Technical/Mgmt. Approach	Exceptional	Acceptable
Sample Task 1	Acceptable	Acceptable
Sample Task 3	Acceptable	Acceptable

AR, vol. 4-13, Source Selection Decision, at 2.

As shown, both offerors received the same ratings for each mission capability subfactor, except technical/management approach—under which WAI’s proposal was rated “acceptable,” and Merrick’s proposal was rated “exceptional.” In rating WAI’s FPR “acceptable” under this subfactor, the agency repeated its earlier concerns that WAI’s “large number of subcontractors with large percentage of work may complicate reporting, allegiance and chain of command, and increase management costs,” and again noted that WAI’s continued reliance on a subcontractor to provide the required in-house design technician could create “problems with technical direction.” *Id.*; AR, vol. 4-13, Source Selection Evaluation Board Briefing, at 19. In rating Merrick’s proposal “exceptional” under this evaluation subfactor, the agency identified various strengths in Merrick’s technical/management approach that the agency viewed as exceeding the solicitation requirements, summarizing those strengths as follows:

[deleted].

AR, vol. 4-13, Source Selection Decision, at 2.

With regard to past performance, both Merrick’s and WAI’s FPRs were rated “very good/significant confidence,”¹³ and the agency concluded that “little doubt exists that [either] offeror will successfully perform the required effort.” *Id.* at 3.

With regard to cost/price, the offerors’ evaluated costs for sample tasks 1 and 3, which the solicitation expressly provided “will constitute the evaluated cost,” were as follows:

¹³ The solicitation provided that adjectival ratings of “exceptional/high confidence,” “very good/significant confidence,” “satisfactory/confidence,” “neutral/unknown confidence,” “marginal/little confidence,” or “unsatisfactory/no confidence” would be assigned under the past performance factor. AR, vol. 1-6, RFP at 283.

	Merrick	WAI
Sample Task 1	[deleted]	[deleted]
Sample Task 3	[deleted]	[deleted]
Total	[deleted]	[deleted]

Id.

In addition to reviewing each offeror’s proposed costs to perform the sample tasks, the agency also reviewed the labor categories and rates the offerors proposed to provide during the base and option periods, noting that WAI’s proposed labor rates were generally higher than Merrick’s proposed rates.¹⁴ Id. at 3-4. The agency also performed an analysis of WAI’s proposed labor mix, comparing it to an internal government estimate, finding that WAI had proposed three times more senior staff than the agency estimated to be appropriate, and concluding that WAI’s proposed labor mix was “disproportionately skewed toward Senior Staff positions (as well as subcontracted work) which likely accounts for their higher cost per labor hour.” AR, vol. 4-14, at 43-44.

Based on the evaluation discussed above, the source selection official concluded, “I find the benefits associated with the Merrick proposal represent the best value to the Government,” and selected Merrick’s proposal for contract award. AR, vol. 4-13, Source Selection Decision, at 4. WAI was thereafter notified of Merrick’s selection; this protest followed.

DISCUSSION

WAI first protests that it was unreasonable for the agency to evaluate WAI’s proposal as merely “acceptable” under the technical/management approach subfactor, complaining that the agency “ignored” WAI’s responses to issues raised by the agency during discussions. WAI further asserts that its FPR “provided a detailed explanation of its approach to project and organization management” and that it had “clarified the relationship between the parties” with regard to the in-house design technician, but complains that the agency’s evaluation “failed to account for or even react to WAI’s proposal revisions” and “applied ill-defined evaluation criteria.” Finally, WAI asserts that the “acceptable” rating “cannot reasonably be reconciled with elements of [WAI’s] proposal.” Protest at 20-21. WAI’s arguments are without merit.

¹⁴ In comparing the two offerors’ rates, the agency calculated an average hourly rate for the two offerors. WAI’s average hourly rate was calculated as [deleted]; Merricks’ average hourly rate was calculated as [deleted]. Id. at 4.

In reviewing a protester's challenge to an agency's evaluation of proposals, our Office will not reevaluate proposals, but rather, will examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. UNICCO Gov't Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

As noted above, the solicitation specifically advised offerors that their proposals should "identify their team structure, team member roles, responsibilities and experience for the area of work they will perform," and that the agency would assess whether an offeror's proposal offered an "effective management organization that defines responsibilities, staffing and percentage of work of prime and key subcontractors," and provided a "clear description of the methods and means planned to accomplish effort under each of the required work areas." AR, vol. 1-6, RFP, at 267, 282. Here, the agency concluded that WAI's substantial reliance on multiple subcontractors to perform the contract requirements, including the key position of in-house design technician, met, but did not exceed, the solicitation requirements. Further, the agency specifically advised WAI of its concerns during discussions and, although WAI responses discussed those concerns, WAI did not substantially alter its approach, nor did it provide detailed information to assist the agency in determining the extent to which WAI would, itself, perform the contract requirements or the extent to which the requirements would be performed by a subcontractor. Accordingly, the agency concluded that WAI's proposal met, but did not exceed the solicitation requirements.¹⁵

In contrast, as noted above, the agency identified various strengths in Merrick's technical/management approach that exceeded the solicitation requirements. WAI's protest has not identified any error in the agency's evaluation of Merrick's evaluated strengths, but WAI argues that various aspects of its own proposal should also have been evaluated as strengths exceeding the solicitation requirements; the agency disagrees. We have reviewed all of WAI's arguments in this regard, and conclude that they represent mere disagreement with the agency's judgment. Based on our

¹⁵ WAI argues that the agency was precluded from considering whether the prime or a subcontractor would perform the various contract requirements due to a solicitation provision regarding teaming arrangements that indicated an offeror and subcontractor would be considered as a whole where teaming agreements had been executed. AR, vol. 1-6, RFP, at 280. We do not view the solicitation's provisions regarding teaming arrangements as effectively eliminating the RFP requirements, noted above, that required the offerors to disclose their team members' respective roles, nor to preclude the agency from concluding that WAI's substantial reliance on subcontractors constituted a management approach that met, but did not exceed, the solicitation requirements.

review of the record we find nothing unreasonable in the agency's evaluation of either WAI's or Merrick's proposal with regard to the technical/management approach subfactor.

Next, WAI asserts that the agency's evaluation of past performance was flawed, complaining that the agency "improperly amended the evaluation criteria for the past performance factor after receipt of the initial proposals," and then improperly considered the past performance information submitted by WAI both before and after the solicitation amendment. Protester's Comments, Mar. 16, 2007, at 19-20. WAI asserts that the agency should have considered only the past performance information WAI submitted with its FPR, and that consideration of all the information WAI submitted unreasonably "diluted the overall evaluation score."¹⁶ Id. at 20. WAI concludes that, if the agency had properly limited its review to only the past performance information submitted with its FPR, WAI's proposal would have received a higher past performance rating than Merrick's proposal.

Where a solicitation contemplates the evaluation of offerors' past performance, the agency has the discretion to determine the scope of the performance history to be considered, provided all proposals are evaluated on the same basis and the evaluation is consistent with the terms of the RFP. USATREX Int'l, Inc., B-275592, B-275592.2, Mar. 6, 1997, 98-1 CPD ¶ 99 at 3. In this regard, an agency is not generally precluded from considering any relevant past performance information, regardless of its source, see, e.g., NVT Techs., Inc., B-297524, B-297524.2, Feb. 2, 2006, 2006 CPD ¶ 36 at 5, and, in fact, in some circumstances has an affirmative obligation to consider past performance information that is "close at hand." See, e.g., International Bus. Sys., Inc., Mar. 3, 1997, 97-1 CPD ¶ 114 at 5; G. Marine Diesel, B-232619.3, Aug. 3, 1989, 89-2 CPD ¶ 101 at 5-6. Regarding the relative merits of offerors' past performance information, this matter is generally within the broad discretion of the contracting agency, and our Office will not substitute our judgment for that of the agency. See, e.g., Clean Harbors Emtl. Servs., Inc., B-296176.2, Dec. 9, 2005, 2005 CPD 222 at 3. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was improper. Id.

Here, the record shows that the offerors provided past performance information with their initial proposals and that, thereafter, the solicitation was amended to provide more detail regarding the relative relevance of previously performed tasks and subtasks to the solicitation requirements.¹⁷ With its FPR, WAI provided

¹⁶ WAI does not argue that the past performance information it initially submitted was not relevant, as defined by the terms of the solicitation--only that it was less relevant than the past performance information submitted with its FPR.

¹⁷ For example, the amended solicitation stated that: "Engineering design includes general and experiment specific design work for test bed and test facilities," and, similarly, "Design Tech, Construction Drawing and Drafting includes initiation,

(continued...)

additional past performance information that had not been submitted with its initial proposal, and asserts that the agency was precluded from considering anything other than that information. We disagree.

As discussed above, an agency is not generally precluded from considering any relevant past performance information. As also noted above, WAI does not argue that the past performance information it initially submitted was not relevant, as defined by the terms of the solicitation¹⁸—only that it was less relevant than the past performance information submitted with its FPR.¹⁹ WAI maintains that, because its past performance for most of its “highly relevant” contracts was rated “exceptional,” the agency was required to rate WAI’s overall past performance as “exceptional.” We disagree. As noted above, the agency properly considered all of the past performance information WAI submitted for multiple contracts, some of which indicated WAI’s past performance was “exceptional” and some of which indicated WAI’s past performance was “very good.” We decline to apply what might be described as a “mathematical calculation” to the agency’s discretionary past performance assessment and, on the record here, we find no basis to conclude that WAI’s rating of “very good” was unreasonable.²⁰ See, e.g., University Research Co., LLC, B-294358.6, B-294358.7, Apr. 20, 2005, 2005 CPD ¶ 83 at 16 (protester’s argument that its most highly relevant past performance ratings were improperly diluted when averaged with other relevant performance ratings was denied; GAO held there is no per se requirement than an agency weight differently the ratings given offerors based on an assessment of the relative relevance of the offerors’ prior contracts).

(...continued)

development, production, and distribution of construction drawings.” AR, vol. 1-7j, RFP amend. No. 8, at 326.

¹⁸ The solicitation provided definitions with regard to past performance that was considered “highly relevant,” “relevant,” “somewhat relevant,” and “not relevant.” AR, vol. 1-6, RFP, at 283-84; AR, vol. 1-7h, RFP amend. No. 18, at 325-26.

¹⁹ The record shows that the agency considered both offerors’ prior performance on multiple contracts that were designated “highly relevant,” “relevant,” or “somewhat relevant,” and that their prior performance of these contracts were nearly all rated either “very good” or “exceptional.” AR, vol. 4-13, Source Selection Decision, at 3.

²⁰ Following receipt of the agency report, WAI identified a minor clerical error in the source selection decision document with regard to the number of contracts the agency considered to be “highly relevant,” “relevant,” or “somewhat relevant.” The record supports the agency’s explanation that this error did not exist in the briefing documents presented to the source selection official on which the decision was based. In any event, based on our review of the entire record, we do not view the error as material.

Finally, WAI protests that its proposal should have been evaluated as offering the lowest evaluated cost/price due to the fact that its proposal for the base period and option period reflected fewer total hours than that of Merrick's, and accordingly, reflected a lower total cost for the base and option periods.²¹ WAI's protest regarding the agency's cost/price evaluation ignores the express language of the solicitation.

As noted above, solicitation amendment No. 10 expressly amended RFP section L to advise offerors that "sample task 1 and 3 will be used for the cost evaluation," and amended RFP section M to state: "The proposed total costs for recurring requirements (Sample Task 3, Work Area 2) and Sample Task 1 will constitute the evaluated cost." AR, vol. 1-7j, RFP amend. No. 10, at 329. As discussed above, WAI's proposed cost/price for sample tasks 1 and 3 was [deleted], while Merrick's proposed cost/price for the sample tasks was [deleted]. Accordingly, pursuant to the express provisions of the solicitation, Merrick's proposal was properly evaluated as offering the lowest evaluated cost/price.

The protest is denied.²²

Gary L. Kepplinger
General Counsel

²¹ The solicitation advised offerors that the maximum value of the contract would be \$5 million for the base period and \$5 million for the option period, and asked that offerors submit a "Labor Mix Table" for each period, in which the offeror identified a total number of hours offered per labor category, along with associated labor rates. WAI's Labor Mix Tables reflected fewer total hours, but generally higher rates, than Merrick's proposal.

²² In its protest submissions, WAI presented various additional arguments, including assertions that the agency failed to conduct meaningful discussions, the agency evaluators were biased, the deletion of sample task 2 from the solicitation requirements was improper, and the agency was required to submit a size protest to the Small Business Administration challenging Merrick's size status. We have reviewed all of WAI's assertions and find no basis for sustaining its protest.