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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: KIC Development, LLC

File: B-309869

Date: September 26, 2007

William K. Walker, Esq., Walker Reausaw, for the protester.

Daniel L. Winand, Esq., Department of Homeland Security, U.S. Coast Guard, for the agency.

Peter D. Verchinski, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Allegation that awardee's prior contracts were not sufficiently similar in dollar value to work being solicited to be deemed relevant under past performance evaluation factor is denied where solicitation did not contain dollar threshold for relevance and past performance evaluation was otherwise reasonable and consistent with solicitation.

DECISION

KIC Development, LLC protests the award of a contract to Sergeant Mechanical Systems, Inc. under request for proposals (RFP) No. HSCG88-07-R-623221, issued by the Department of Homeland Security, U.S. Coast Guard, for construction services. KIC asserts that the agency improperly determined that the awardee had relevant past performance.

We deny the protest.

The RFP, issued on March 30, 2007 as a small business set-aside, sought proposals for all labor, materials, and equipment necessary to rehabilitate six buildings, design and construct a seventh building, and demolish and reconstruct an eighth building at the Coast Guard facility on Yerba Buena Island, San Francisco, California. Award was to be made to the offeror whose proposal provided the "best value," with the evaluation to be based on two equally-weighted factors--"price and relevant past performance." RFP at 37 (emphasis in original). The past performance evaluation factor was further broken down into seven subfactors (of equal importance): relevant experience, timeliness, quality of project execution, quality of construction services, management/business relations, effective subcontractor coordination, and

customer satisfaction. RFP at 37. While the RFP defined “relevant experience” under the subfactor as similar services and “comparability of dollar value,” id., it did not provide a similar definition of relevance under the relevant past performance evaluation factor; rather, the solicitation included only a general statement that “... the source selection authority shall determine the relevance of similar past performance information.” RFP at 36.

Under section L of the RFP, offerors were to identify past or current contracts for “efforts similar” to those being procured here and were to submit with their proposals a past performance evaluation—to be filled out by the company providing the reference—for each contract. RFP at 36. This form consisted of a general introductory paragraph explaining the work to be performed, and then listed the seven past performance subfactors, providing space for the reference to rate the offeror and provide comment. Under the first subfactor, the form stated “Relevant Experience: Contract involve[s] construction work: rehabilitate facilities and construct new pre-engineered facilities. \$1mil-\$5mil.” Agency Report (AR), Past Performance Survey, Tabs 15, 16. The reference was to explain the design and/or construction services the offeror had provided, and to list the contract dollar value.

The agency received five proposals in response to the solicitation. In evaluating KIC’s proposal, the agency found its past performance sources to be not relevant (on the basis that the contracts, for elevator maintenance work, were unrelated to the work here) and so evaluated its past performance as neither favorable nor unfavorable (i.e., neutral). Sergent’s past performance was evaluated as acceptable based on four prior contracts for related work, valued at \$707,000, \$535,000, \$317,000, and \$148,000,¹ as well as on comments from a Coast Guard contracting officer technical representative regarding his experience with Sergent’s performance. KIC’s proposed price was \$4.5 million, and Sergent’s \$4.6 million. The Coast Guard subsequently selected Sergent for award, concluding that its proven past performance, quality work, and cooperation under previous contracts (based on the comments the agency received) warranted paying its \$85,719 higher price.

KIC challenges the agency’s determination that the awardee had relevant past performance.² Specifically, KIC asserts that the awardee’s four past performance

¹ We note that the protest submissions state that the awardee’s prior contracts were valued at \$561,500, \$481,543, \$275,000, and \$114,400, respectively. It appears that the lower amounts were the value of the original contract awards, while the higher amounts are the net amount paid to the contractor after contract modifications. AR, Tab 21. Since the source selection memorandum identifies the net amounts, including modifications, those are the amounts relevant here.

² KIC raised additional arguments in its initial protest (e.g., that the agency unreasonably discounted the relevance of KIC’s prior contracts, and improperly relied upon personally-known information in assessing the awardee’s past

(continued...)

contracts should not have been found to be relevant, since the value of each was not sufficiently similar to the work being solicited here. In support of this argument, the protester asserts that the solicitation established a \$1 million relevance threshold, which the awardee's past performance contracts failed to meet.

In reviewing a protest challenging an agency's past performance evaluation, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4.

We find nothing unreasonable in the agency's evaluation here. First, contrary to the protester's assertion, the RFP did not establish a \$1 million value as necessary for prior contracts to be considered relevant under the past performance factor. Rather, as noted above, the solicitation stated with regard to past performance only that the determination of what was "relevant past performance" would be made by the source selection authority; it established no specific requirements for a contract to be found relevant. RFP at 36. As also noted above, the rating forms for contract references did include a \$1-\$5 million range; however, this was solely in reference to the "relevant experience" subfactor, not the past performance factor. Thus, under this scheme, while contract value would be considered under the past performance evaluation through the relevant experience subfactor, the agency nevertheless reasonably could evaluate an offeror's past performance as relevant even in the absence of similarly valued prior contracts.

As for the evaluation itself, as noted above, Sergent's four prior contracts were valued at approximately \$150,000 to \$700,000. While the total cost of the work here was approximately \$5,000,000, this was divided among eight different line items for various buildings, and Sergent proposed line item pricing of approximately \$40,000 to \$2 million. AR, Sergent's Proposal, Tab 14, at 2-3. Finding that Sergent's prior contracts were similar in magnitude (and scope) to many of the line items here (for example, there were line items priced at approximately \$250,000, \$370,000, \$119,000, \$725,000, \$113,000, and \$44,000), the agency concluded that those contracts were sufficiently similar to the current requirements to be deemed relevant. In this regard, the agency noted that

the [total project] consisted of multiple smaller projects ("rehabilitate portions of six separate buildings, design/construct a 4,800 square foot, concrete boat maintenance/public works building and

(...continued)
performance). The agency responded to these arguments in its agency report. Since KIC did not then rebut the agency's position in its comments on the report, we consider these arguments to be abandoned. Planning Sys., Inc., B-292312, July 29, 2003, 2004 CPD ¶ 83 at 6.

demolish/construct a new pre-engineered buoy paint storage building...”). The magnitude and similarity of services of many of the distinct parts of the entire [project] closely approximated projects for which the SSA [source selection authority] had found excellent and outstanding past performance evaluations [for Sergent].... The SSA’s consideration of the known facts and evaluation under the appropriate criteria clearly meets the standards of “reasonableness[]” and “rationality[]” required by the GAO.

Agency Letter to GAO, Sept. 10, 2007, at 5. We think the agency’s approach in determining relevance—considering the comparability of the magnitude and similarity of Sergent’s prior contracts to the significant component parts of the current project—was reasonable. Since this approach also was not prohibited by the RFP, there is no basis for us to question the agency’s evaluation conclusion.

The protest is denied.

Gary L. Kepplinger
General Counsel