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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: SEI Group, Inc.

File: B-400829

Date: February 13, 2009

Charles T. Frew, Esq., for the protester.

Steven W. Feldman, Esq., Department of the Army, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's evaluation of a firm's past performance provided in its qualifications statement submitted in response to a synopsis for architect/engineer services is unobjectionable, where the evaluation was reasonable and conducted in accordance with the evaluation factors set forth in the synopsis.

DECISION

SEI Group, Inc., of Huntsville, Alabama, protests the evaluation and subsequent nonselection of its qualification statement for negotiation of an architect/engineering (A/E) services contract, pursuant to solicitation No. W912DY08R0002, issued by the United States Army Corps of Engineers, Huntsville, Alabama, to support the Range and Training Land program. SEI argues that the agency's evaluation of its past performance information was unreasonable and not in accordance with the terms of the solicitation.

We deny the protest.

This A/E procurement was conducted pursuant to the Brooks Act, 40 U.S.C. §§ 1101-1104 (Supp. V 2005) and its implementing regulations, Federal Acquisition Regulation (FAR) subpart 36.6. In accordance with those regulations, on November 27, 2007, the agency synopsisized its requirements on the Federal Business Opportunities website, announcing its intent to negotiate and award "[a]pproximately three indefinite delivery contracts." AR, Tab 1, Synopsis, at 1. The synopsis invited interested firms to submit a completed standard form 330 (A/E qualifications statement) detailing their qualifications to provide the A/E services. Firms were advised that their qualifications would be evaluated under the following four "primary" factors, listed in descending order of importance: specialized

experience and technical competence, professional qualifications, past performance, and capacity.¹ *Id.* at 2. The synopsis was amended several times.

The agency received A/E qualifications statements from five firms, including SEI, by the response date of January 7, 2008. The qualification statements were evaluated, with SEI's statement being ranked fourth of the five received. The agency notified SEI of its nonselection on April 18, and provided SEI with a debriefing on May 7. Contracting Officer's Statement at 2. The record reflects that in response to the debriefing, SEI contacted the agency on May 12, and noted its concerns with the agency's evaluation of SEI's qualifications statement under the past performance factor. AR, Tab 5, SEI E-mail to Agency (May 12, 2008).

Meanwhile, on May 5, another firm protested its nonselection to our Office, and on May 16, the agency notified our Office that it would be taking corrective action by revising the synopsis, and requesting and evaluating revised qualification statements from all firms. Contracting Officer's Statement at 2. Accordingly, our Office dismissed the protest as academic.

The agency received and evaluated the firms' revised qualifications statements, with SEI's qualifications statement being ranked fifth out of the five statements received. SEI filed an agency-level bid protest, arguing that the agency's evaluation of its qualifications statement under the specialized experience and technical competence, professional qualifications, and past performance factors, was unreasonable.² The agency denied SEI's agency-level protest, and this protest followed.

In its protest to our Office, SEI (an incumbent contractor) argues that the procedures followed by the agency in gathering past performance information

¹ The synopsis set forth evaluation subfactors for the specialized experience and technical competence and professional qualifications factors. It also included the following two evaluation factors that would only be considered "as a tie-breaker among technically equal firms"—small business, service disabled veteran-owned small business, small disadvantaged business, 8(a), and HubZone business participation; and volume of Department of Defense awards. AR, Tab 1, Synopsis, at 2.

² The firm that submitted the fourth-ranked qualifications statement protested to our Office. In response to this protest, the agency ultimately took the corrective action of issuing an RFP for negotiations to that fourth-ranked firm (as well as to the first-, second-, and third-ranked firms).

concerning SEI were inadequate, and that as a result, the agency's rating of SEI's qualifications statement as "satisfactory plus" was unreasonable.³

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. In reviewing a particular evaluation conclusion, we examine the record to determine whether the judgment was reasonable, adequately documented, and in accord with the evaluation criteria listed in the solicitation. Helicopter Transport Servs. LLC, B-400295, B-400295.2, Sept. 29, 2008, 2008 CPD ¶ 180 at 6.

The synopsis provided that in evaluating qualification statements under the past performance factor, the agency would consider the "[p]ast performance of the prime firm and any significant subcontractors on [Department of Defense] contracts for projects relevant in size, scope and similarity to the services being procured under this synopsis with respect to quality of work, and compliance with performance schedules, as determined from ACASS [Architect-Engineer Contract Administration Support System] and other sources." AR, Tab 2, Amended Synopsis (Dec. 27, 2008), at 3.

In performing its initial evaluation of SEI's qualifications statement under the past performance factor, the agency queried the past performance information retrieval system (PPIRS), and found no relevant projects for SEI or its proposed subcontractors.⁴ Contracting Officer's Statement at 6. The agency thus initially assigned a "neutral" rating to SEI's qualifications statement under the past performance factor. AR, Tab 4, SEI Debriefing Letter (May 7, 2008), at 1. As indicated previously, SEI responded to the initial nonselection of its qualifications statement and subsequent debriefing by questioning its receipt of a "neutral" rating under the past performance factor, given SEI's status as the incumbent contractor, with SEI noting that it "has performed or [is] performing 10 tasks" under the contract. AR, Tab 5, SEI E-mail to Agency (May 12, 2008).

³ SEI did not pursue at our Office its protest grounds that the agency's evaluation of its qualifications statement under the specialized experience and technical competence and professional qualifications factors was unreasonable.

⁴ The agency explains that the "PPIRS is web-enabled, government-wide application that provides timely and pertinent contractor past performance information to the Federal acquisition community," and "functions as the central warehouse for performance assessment reports" received from a number of "federal performance information collection systems," including the ACASS. Contracting Officer's Statement at 5.

As indicated above, the agency amended the synopsis on May 23. In this synopsis amendment, the following statement pertaining to the evaluation of qualification statements under the past performance factor was added to the prior synopsis section (quoted above):

The Government will evaluate past performance in accordance with Engineer Pamphlet 715-1-7, Appendix R. If any adverse past performance information is obtained, vendors will be given an opportunity to comment via the interview process.

AR, Tab 7, Synopsis Amendment (May 23, 2008), at 4. Appendix R of Engineer Pamphlet 715-1-17 provides in relevant part:

PPIRS will be queried for all prime firms. Performance evaluations for any significant subcontractors may also be considered. Any credible, documented information on past performance can be considered, but a board is not required to seek other information on the past performance of a firm if none is available from PPIRS. . . . Evaluation boards must also consider any information that a firm submits on its past performance on recent similar contracts, including design-build contracts . . . It is the responsibility of the firm to explain how the past performance information is relevant to the proposed contract.

Contracting Officer's Statement at 6, Engineer Pamphlet 715-1-17, app. R, ¶¶ 3-4.

SEI submitted a revised qualifications statement, as well as a list of "Completed Projects Due for Past Performance Evaluation" for consideration by the agency. AR, Tab 10, SEI E-mail to Agency (May 29, 2008); Tab 17, SEI E-mail attach. (May 29, 2008). However, SEI's list of past performance projects failed to include any points of contact regarding these projects. The record reflects that because the projects listed by SEI were in large part the same projects which SEI had described in its qualifications statement for evaluation under the specialized experience and technical competence factor—for which SEI had included points of contact—the agency was able to send questionnaires to these points of contact. Contracting Officer's Statement at 6; AR, Tab 3, SEI Qualifications Statement, at 33-42; Tab 15, A/E Selection Board Report, at 95; Tab 17, SEI E-mail attach. (May 29, 2008).

The agency received completed past performance questionnaires, which addressed "quality of work, performance schedules, compliance with the proposed design cost and a history of designing projects to pre-defined cost limitations," for five of the projects identified by SEI, all of which were found to be relevant to the past performance evaluation to be performed here. AR, Tab 15, A/E Selection Board Report, at 95. The evaluators found that SEI's overall past performance was evaluated on one of the projects as "very good," two of the projects as "satisfactory plus," and two of the projects as "satisfactory." Given this information, the agency

evaluated SEI's qualification statement as "satisfactory plus" under the past performance factor. Id.

SEI specifically argues that the agency's evaluation of SEI's past performance was inconsistent with the terms of the solicitation, in that the agency considered the five completed past performance questionnaires it received rather than information obtained from the PPIRS and ACASS regarding SEI's past performance, which SEI asserts was required by the terms of the solicitation. Protester's Supp. Comments at 1-2.

We find this argument to be without merit. As mentioned previously, the agency queried the relevant PPIRS and ACASS, and found no entries regarding SEI's past performance, and as such, there was nothing for the agency to consider in this regard. Therefore, the agency, knowing that SEI had performed relevant contracts, given SEI's status as the incumbent contractor and the information submitted by SEI in both its initial and revised qualifications statements, obtained information from the points of contact identified by SEI in another section of its qualifications statement because of SEI's failure to provide points of contact in its revised past performance submission. We fail to see anything unreasonable or improper in the agency's actions here. Nor do we find that the agency's actions are inconsistent with the terms of the solicitation, which provided that past performance information could be obtained from sources other than the ACASS and PPIRS.⁵ AR, Tab 2, Amended Synopsis (Dec. 26, 2008), at 3; Tab 7, Amended Synopsis (May 28, 2008), at 4.⁶

The protester argues that the agency's past performance evaluation evidenced unequal treatment, in that the agency considered information obtained from the ACASS and PPIRS for the other vendors, but not for SEI, and that the agency's

⁵ SEI argues at length that during the performance of the incumbent contract, the agency improperly failed to prepare the requisite reports regarding SEI's performance for inclusion in the ACASS and PPIRS. This argument involves a matter regarding the administration of SEI's incumbent contract, and as a consequence, is not subject to review by our Office. Del-Jen Int'l Corp., B-297960, May 5, 2006, 2006 CPD ¶ 81 at 7; see Bid Protest Regulations, 4 C.F.R. § 21.5(a) (2008). Moreover, as explained below, and contrary to the protester's assertions, we see no evidence that the protester was prejudiced by the agency's alleged failure to properly enter information regarding SEI's past performance into the ACASS and PPIRS, given our view that during this acquisition, the manner by which the agency obtained information regarding SEI's past performance, and the conclusions drawn from that information, were reasonable.

⁶ Appendix R of Engineer Pamphlet 715-1-7 (quoted in part above) incorporated into the solicitation by the May 28, 2008 synopsis amendment, also recognizes that the agency can consider past performance information not included in the PPIRS.

failures here resulted in SEI's qualifications statement being downgraded because, according to the protester, past performance information obtained from the ACASS or PPIRS was given "more weight" by the agency than past performance information obtained through completed past performance questionnaires. Protester's Supp. Comments at 2, 10.

As explained previously, past performance information for SEI was not available from either the ACASS or PPIRS, and in our view, the agency, rather than treating firms disparately, reasonably obtained information regarding SEI's past performance through the use of the questionnaires discussed above. However, there is nothing in the record to suggest that the agency accorded more weight to information obtained from the ACASS or PPIRS in the comparative ranking of firms to those, such as SEI, for which such information was not available. Simply put, the record reflects that SEI's past performance rating of "satisfactory plus" was the result of the agency's reasonable evaluation of the information received by the agency regarding SEI's past performance, and SEI's arguments here reflect nothing more than its misunderstanding of the record.

The protester next raises numerous arguments with regard to the adequacy of the past performance questionnaire used by the agency, and the completed questionnaires received by the agency. For example, the protester argues that the questionnaire used by the agency and sent to the relevant points of contact was inadequate because it included six "open-ended" questions, and was thus different than the ACASS evaluation form, that according to the protester, "evaluates 32 design and engineering attributes." Protester's Comments at 6; Protester's Supp. Comments at 6.

Based upon our review of the questionnaires, we find nothing objectionable regarding their composition. As explained by the agency, "while the ACASS form has a number of different data points than the questionnaire, all factors mentioned on the ACASS form are reasonably related to both the synopsis criteria and to the factors in the questionnaire." Contracting Officer's Supp. Statement at 8. For example, the questionnaires asked respondents to rate and provide a brief narrative explanation regarding "the overall technical quality of A/E services provided," "the firm's ability to meet the design schedule and to comply with the contract's administrative requirements," and "the firm's cooperativeness, responsiveness, and commitment to customer satisfaction." AR, Tab 20, Completed Past Performance Questionnaires for SEI. Although the protester clearly disagrees, we find that the questionnaires were reasonably constructed and adequate for their intended purpose, even though they differed from the ACASS evaluation form.

The protester complains that one of the questionnaires was sent to the wrong point of contact, asserting here that the individual who completed the questionnaire was not the individual provided as the point of contact in SEI's revised qualifications statement, and in SEI's view, "would not have the same level of familiarity with the

project” as the individual designated as the point of contact in SEI’s revised qualifications statement. Protester’s Comments at 7. However, both individuals were identified by SEI—the individual contacted by the agency was in SEI’s initial qualifications statement, and the individual that SEI asserts should have been contacted was in SEI’s revised qualifications statement. Contracting Officer’s Supp. Statement at 9. Moreover, there is no requirement that an agency contact the specific individual designated by the vendor as the point of contact when seeking past performance information. Rather, the relevant inquiry as to who may furnish a past performance reference is whether the individual has a sufficient basis of knowledge to render an informed opinion regarding the vendor’s prior work efforts. Paragon Sys., Inc., B-299548.2, Sept. 10, 2007, 2007 CPD ¶ 178 at 8. SEI’s complaint here is that the individual contacted is not as familiar with SEI’s work as the individual SEI would prefer to have been contacted, not that the individual contacted was unfamiliar with SEI’s work. Additionally, we again note that the list of projects that SEI submitted with its revised qualifications statement failed to identify any points of contact in the past performance section, and the agency, on its own initiative, identified points of contact for these projects by referring to the section of SEI’s initial qualifications statement that addressed the specialized experience and technical competence factor. Although SEI would have preferred that the questionnaire be sent to the point of contact for this project SEI had listed in its revised, rather than initial, qualifications statement, we cannot find that the agency acted unreasonably given the circumstances here.

SEI also complains that two of the questionnaires were inadequately completed given that they provided, for the most part, ratings of “satisfactory” without narrative explanation. However, SEI does not assert or provide any evidence that the overall ratings of its performance as “satisfactory” for these two projects was unreasonable, and as such, SEI has not explained and we fail to see how SEI was prejudiced by the allegedly inadequate questionnaires considered by the agency here.

In addition, SEI complains that on one project, SEI received a contemporaneous rating of “exceptional” for its past performance as indicated on a survey form prepared by a government representative, which was provided by SEI with its revised qualifications statement, whereas that same individual also completed a questionnaire for this procurement regarding SEI’s performance on that same project and assessed it as “satisfactory plus.”⁷ Protester’s Comments at 6-7; Protester’s Supp. Comments at 7; see AR, Tab 15, A/E Selection Board Report, at 114; Tab 18, Performance Survey Form (Fort Carson Project); Tab 20, Completed Past Performance Questionnaire for SEI (Fort Carson Project). The agency recognized this difference and explained that during the evaluation it gave “deciding weight to

⁷ The protester made a similar argument regarding the past performance evaluation for another contract, but in its supplemental comments stated that the agency reasonably reconciled the differences. Protester’s Supp. Comments at 7.

the questionnaire rather than to the survey form [because] the questionnaire more closely tracked the synopsis criteria.” Contracting Officer’s Supp. Statement at 5. In this regard, the agency has provided a detailed analysis of the survey form and past performance questionnaire, pointing out that the survey form contained items not relevant to this A/E procurement, which were “more suited to a construction procurement as opposed to one for A/E services.” *Id.* Although the protester disagrees with the agency’s actions here and suggests that because they were not reported in the contemporaneous evaluation documentation they should be discounted, we find the agency’s explanation to be reasonable and consistent with the evaluation record.

SEI argues that past performance information regarding contracts performed by two of its proposed subcontractors that SEI had included in the section of its revised qualifications statement addressing the specialized experience and technical competence factor was unreasonably found by the agency not to be “relevant in size, scope and similarity to the services being procured” here. Protester’s Comments at 9; Protester’s Supp. Comments at 4. In response, the agency has provided a detailed explanation as to why, in its view, the projects were not considered relevant because, rather than being for design, one of the projects involved the preparation of an environmental impact statement and the other involved planning and siting. Contracting Officer’s Statement at 7; Supp. Contracting Officer’s Statement at 11. While the protester asserts that the agency’s determination to only consider design projects to be relevant past performance was too narrow because the services to be provided here could include the type of services that were provided under the referenced projects, we find that the agency reasonably determined that these projects were not relevant to the agency’s evaluation of SEI’s qualifications statement under the past performance factor, given the basic scope of services included in this A/E procurement.

Finally, SEI argues that it should have been provided with an opportunity to respond to any adverse past performance information during discussions. Protester’s Comments at 5, 8; *see* FAR § 15.306(a)(2). The requirement that an agency raise during discussions adverse past performance information to which the offeror has not yet had an opportunity to respond is set forth in FAR Part 15, which is inapplicable to A/E procurements under FAR subpart 36.6. FAR § 36.601-3(b); *HydroGeoLogic, Inc.*, B-311263; B-311263.2, May 27, 2008, 2008 CPD ¶ 218 at 7. In any event, even though the revised synopsis indicated that firms would be given the opportunity to address adverse past performance information, the past performance questionnaires least favorable to SEI rated its performance as “satisfactory” and generally provided throughout the questionnaires that all aspects of SEI’s performance were “satisfactory.” Thus, there is simply no merit to the protester’s contention that the agency was required to raise the matter of SEI’s past

performance in discussions. See Symplicity Corp., B-297060, Nov. 8, 2005, 2005 CPD ¶ 203 at 8; ITT Fed. Servs. Int'l Corp., B-283307; B-283307.2, Nov. 3, 1999, 99-2 CPD ¶ 76 at 15.

The protest is denied.

Gary L. Kepplinger
General Counsel