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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: Trailboss Enterprises, Inc.

File: B-297742

Date: March 20, 2006

Julia M. I. Holden, Esq., Oles Morrison Rinker & Baker LLP, for the protester.
Michael J. O'Farrell, Jr., Esq., Department of the Air Force, for the agency.
Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency properly considered past performance record of predecessor company of awardee in evaluation where solicitation specifically provided that such information would be considered.

DECISION

Trailboss Enterprises, Inc. protests the award of a contract to GCH Services LLC under request for proposals (RFP) No. FA5240-05-R-0015, issued by the Department of the Air Force for transient alert services and supplies at Andersen Air Force Base, Guam. The protester argues that the agency improperly evaluated its and the awardee's past performance and made an unreasonable award decision.

We deny the protest.

The solicitation, issued August 4, 2005 as a small business set-aside, contemplated the award of a fixed-price contract for a base year, with four 1-year options. The evaluation scheme incorporated a two-step review. First, technical proposals were to be evaluated on a pass/fail basis applying four subfactors: ability to understand and meet the requirements of the statement of work (SOW), corporate profile/statement of qualifications, scheduling methodologies, and quality control procedures. An unacceptable rating under any subfactor would render a technical proposal's final rating unacceptable. RFP at 12. Under the second step, the agency would evaluate the technically acceptable proposals for past performance, conduct a past performance/price tradeoff among those proposals--with past performance significantly more important than price--and select the technically acceptable proposal determined to provide the "best value." Id.

Regarding the past performance evaluation, each technically acceptable offer was to receive a past performance confidence assessment rating based on information provided by the offeror and data independently obtained by the Air Force showing the offeror's past and present performance as it relates to the probability of successfully accomplishing the work under the RFP. This assessment would result in an overall risk rating of exceptional/high confidence, very good/significant confidence, satisfactory/confidence, neutral/unknown confidence, marginal/little confidence, or unsatisfactory/no confidence.¹ The RFP provided that “[p]ast performance regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement will be considered as past performance information for the principal offeror.” Id. at 13.

Ten proposals were received by the September 9 amended closing date. Five of the proposals, including Trailboss's and GCH's, were determined to be technically acceptable under the first step evaluation. For the second step past performance evaluation, the agency reviewed the references provided by the offerors and Contractor Performance Assessments Reports obtained by the agency. In making its final selection decision, the source selection authority (SSA) compared the offerors' price and past performance ratings. This review led the SSA to reject three proposals (for reasons unrelated to this protest), leaving GCH's proposal—rated exceptional/high confidence and priced at \$1,803,210.00—to be compared to Trailboss's, rated very good/significant confidence and lowest priced at \$1,535,800.80. Agency Report (AR), Source Selection Decision Document, Tab 8, at 1. In analyzing Trailboss's past performance, the SSA noted concerns under a prior contract regarding safety of operations, including problems with accountability regarding composite tool kits, unserviceable fire bottles, and failure to follow technical orders. Id. at 2. In contrast, the analysis of GCH's past performance revealed no known performance problems, and the SSA noted that the firm had been awarded “Contractor of the Year” in 2005 for its support of work at Travis Air Force Base, California. Id. at 3. Based on these findings, the SSA determined that GCH's documented record of exceptional performance justified award at its higher price. Award was made to GCH and, following a debriefing, Trailboss filed this protest in our Office.

In its initial letter of protest, Trailboss complains generally that the agency “failed to consistently evaluate the past performance information received for Trailboss and GCH.” Protest at 2. Trailboss specifically points only to its own evaluation, however, arguing that it was improperly downgraded for past performance because

¹ As relevant here, an exceptional/high confidence rating indicated that no doubt exists that the offeror would successfully perform the required effort; a very good/significant confidence rating indicated little doubt exists that the offeror would successfully perform the required effort. RFP at 13.

the agency's concerns regarding the firm's problems with the composite tool kits and its failure to follow technical orders "significantly overstate what occurred" on the project. Id. at 4.

In its report on the protest, the agency provided a detailed response to the protester's assertions that the agency had overstated performance problems and misevaluated Trailboss's past performance. In its comments responding to the report, Trailboss did not rebut the agency's position and, indeed, made no mention of its initial assertion that its past performance was improperly downgraded. Where, as here, an agency provides a detailed response to a protester's assertions and the protester either does not respond to the agency's position or provides a response that merely references or restates the original allegation without substantively rebutting the agency's position, we deem the initially-raised arguments abandoned. Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4. We conclude that Trailboss has abandoned this assertion and we therefore will not consider it.

Trailboss asserts in its comments on the agency report that GCH's proposal should have been rejected as technically unacceptable because a member of the evaluation team noted on his individual evaluation worksheet that GCH had "not met" the subfactor for the ability to understand and meet the requirements. Protester's Comments at 2; AR, Evaluation Documents, Tab 6, at 66. Trailboss also argues that the same evaluator's individual evaluation sheets for GCH show that he wavered between "not met" and "met" (ultimately indicating "met") under the scheduling methodologies subfactor, and notes that handwritten comments critical of GCH were marked out. Protester's Comments at 2. Trailboss concludes that, because the source selection document does not explain these concerns or explain why GCH's proposal was rated acceptable, the proposal should have been rejected.

The agency responded to Trailboss's assertions in a supplemental report, explaining that, while the record does show that individual evaluators had initial concerns with various aspects of GCH's proposal, these concerns were resolved through additional review and discussion among the evaluation team members. Regarding the subfactor for the ability to understand and meet the requirements, the solicitation required that the proposed contract manager have a Federal Aviation Administration Airframe and Power Plant (A&P) license. As noted above, one evaluation team member determined that GCH did not meet this requirement because, as stated on his evaluation sheet, GCH's proposed manager would have an "A&P and or military license." AR, Evaluation Documents, Tab 6, at 66. The agency explained that, following discussions among the evaluation team members, it was the consensus that GCH's "and/or" language was sufficient to meet the requirement, Contracting Officer's Supplemental Statement of Facts, at 1, and therefore did not render GCH's proposal technically unacceptable. Supplemental Report at 2-3; Contracting Officer's Supplemental Statement of Facts, at 1.

In its comments on the agency's supplemental report, Trailboss merely restated its protest argument--that there were critical remarks/evaluations made by an individual evaluation team member that were contrary to the final evaluation scores/determination, and that these inconsistencies were not explained in the source selection document--without taking specific issue with, or otherwise addressing, the agency's explanation of how it determined that GCH met the licensing requirement. As noted above, we view the mere restatement of a protest argument, without a substantive response to the agency's position, as an abandonment of the issue.²

Trailboss argues that GCH's exceptional/high confidence past performance rating was unreasonable because it was based on the performance record of a separate firm, GCA International, Inc. The protester concludes that GCH should have received a neutral past performance rating.

Agencies properly may consider the relevant experience and past performance history of key individuals and predecessor companies in evaluating the past performance of a newly-created company, since that experience may be useful in predicting success in future contract performance. United Coatings, B-291978.2, July 7, 2003, 2003 CPD ¶ 146 at 7; see Federal Acquisition Regulation (FAR) § 15.305(a)(2)(iii). As noted above, the solicitation here specifically stated that past performance regarding predecessor companies would be considered as past performance information for the principal offeror. The record shows that GCH submitted with its proposal an explanation that GCH previously operated as GCA International, Inc., and that all current contracts and past performance submitted reflected GCA contracts. GCH Proposal, Factor III Past Performance, at 1. GCH stated in its submissions that, in accordance with FAR § 42.1205, it had submitted a request to novate all current contracts and that only a name change and organizational structure had been affected. Id. Based on this information, the agency used GCA's past performance in evaluating GCH. We see nothing unreasonable in the agency's actions.

² The fact that evaluators' individual ratings may differ from the final rating, by itself, does not warrant questioning the evaluation. Agency evaluators may meet to discuss the relative strengths and weaknesses of proposals, as was done here, in order to reach a consensus rating, which often differs from the ratings given by individual evaluators, since such discussions are intended to provide evaluators an opportunity to correct mistakes or misperceptions that may have occurred in the initial evaluation. Resource Applications, Inc., B-274943.3, Mar. 5, 1997, 97-1 CPD ¶ 137 at 5. The overriding concern in the evaluation process is that the final ratings reasonably reflect the actual merits of the proposals, and not that they be mechanically traceable back to the scores initially given by the individual evaluators. Dragon Servs., Inc., B-255354, Feb. 25, 1994, 94-1 CPD ¶ 151 at 11.

Trailboss asserts that the agency did not adequately scrutinize the relationship of the two firms, including the possible change of management, or adequately document its findings and determinations in this regard. However, Trailboss points to nothing in the record suggesting that the novation is invalid or that the agency otherwise improperly attributed GCA's past performance to GCH. Indeed, the agency had no reason to question GCH's representations on the face of its proposal or its explanation of the status of the two companies.³ We conclude that the evaluation of GCH's past performance was reasonable.

The protest is denied.

Anthony H. Gamboa
General Counsel

³ Moreover, while the agency thus had no reason to review the novation agreement, it states that, in response to the supplemental protest, it requested and received from the awardee a copy of the novation agreement, dated May 5, 2005, which the agency submitted to our Office with its response to the allegation.