



## Decision

**Matter of:** A1 Procurement JVD

**File:** B-404800.4

**Date:** October 11, 2011

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Derrick Storms, Esq., Storms and Associates, P.A., for the protester.  
Maj. Christine C. Fontenelle, Department of the Army, for the agency.  
Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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Agency acted reasonably and in a manner consistent with the solicitation when it considered past performance evaluations from references for contracts not mentioned in the vendors' quotations, but found on a Department of Defense database.

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### DECISION

A1 Procurement JVD (A1), of Miami, Florida, a joint venture of A1 Procurement, LLC and Satellite Janitorial Company Inc., protests the award of a contract to HamHed LLC, of New Albany, Indiana, under request for quotations (RFQ) No. W911SA-11-T-0059, issued by the Department of the Army for custodial services. A1 protests the evaluation of its proposal and the selection of HamHed's higher-priced, higher-rated proposal for award.

We deny the protest.

The RFQ, issued December 23, 2010, as a service-disabled, veteran-owned, small business (SDVOSB) set-aside. The RFQ provided that award would be made to the offeror whose proposal was determined to represent the best value to the government, price and past performance considered. The past performance factor was more important than price.

The RFQ stated that the agency, in its past performance evaluation, would consider the information provided in the past performance survey responses from evaluating agencies on "similar (scope and work) contracts" referenced by the vendor in its quotation, information gathered from the Past Performance Information Retrieval

System (PPIRS), and “[a]ny other reasonable basis.” RFQ at 9. As to the survey responses, the RFQ stated:

The vendor shall ensure that the documentation required in support of Past Performance is supplied by the evaluating agency to the Contracting Officer. It is the vendor’s responsibility to follow up with the evaluating customer to ascertain if the required information has been forwarded prior to the established closing date. The Government will not seek out corrections to incomplete or insufficient information on behalf of vendors. Unverifiable information will not be considered in the past performance assessment. NOTES: No Past Performance Survey submittals (mailed, emailed, or faxed) will be accepted from the vendor being evaluated. The vendor should verify completion and submittal of the forms with the agencies/companies to which they provided the questionnaire.

RFQ at 9. According to the RFQ, vendors would receive one of the following adjectival ratings for past performance: exceptional, very good, satisfactory, marginal, and unsatisfactory. Vendors with limited or no relevant past performance history were to be assigned a neutral rating. Id.

Thirteen vendors, including A1 and HamHed, submitted quotations by the due date. A1 did not submit past performance references for the joint venture itself. Although there were past performance references for A1 Procurement included in A1’s quotation, no surveys of A1 Procurement’s past performance were received by the agency from the evaluating agencies. Consequently, A1 Procurement was given a past performance rating of neutral. The agency received one past performance survey on behalf of the other joint venture partner, Satellite. This reference rated Satellite’s past performance as exceptional on a contract that was determined by the agency to be recent and relevant. Satellite was given a past performance evaluation of exceptional. The contracting officer reviewed A1’s joint venture agreement, determined that Satellite was the “minor partner” in the joint venture, and assigned A1 a past performance rating of satisfactory. The agency made award to HamHed, which submitted a higher price and received an exceptional past performance rating.

On February 14, 2011, A1 filed a protest in our Office, in which it argued that the agency failed to reasonably consider Satellite’s exceptional past performance. In this regard, the protester noted that A1’s joint venture agreement, on which the agency relied in the past performance evaluation, clearly stated that A1 Procurement would only perform managerial services under the contract and that Satellite would perform all of the contract requirements. A1 correctly argued that its past performance rating was based upon the agency’s misunderstanding of A1’s joint venture agreement. A1 Procurement JVD–Costs, B-404800.2, B-404800.3, Aug. 24, 2011, 2011 CPD ¶ \_\_ at 3-4 (finding A1’s initial protest clearly meritorious).

In response to this protest, the agency elected to take corrective action. The agency stated that it would reevaluate past performance as part of its corrective action. It stated:

As a part of corrective action, past performance submitted prior to solicitation close for all interested offers will be reevaluated. . . .  
Reevaluation will include a closer examination of the past performance information supplied in consideration of the A1 Procurement JVD partnering agreement.

Agency Corrective Action Letter (March 28, 2011). Based on this promised corrective action, we dismissed the protest on March 30.

In initially evaluating past performance, the agency only considered the past performance surveys submitted by the vendors' references and the information contained in PPIRS. However, for the reevaluation the contracting officer decided to gather additional past performance information by conducting searches in the Department of Defense's (DOD) Electronic Document Access (EDA) database.<sup>1</sup>

In the reevaluation of the past performance of A1 Procurement, a search of the EDA revealed one contract that was performed by A1 Procurement within the past 3 years. That contract was determined to be not relevant to the work and scope of the present requirement. A1 Procurement was therefore assigned a past performance rating of neutral. Agency Report, Tab 12, Past Performance Reevaluation, at 1.

As for Satellite, besides considering the one past performance survey submitted on behalf of this firm, which rated Satellite as exceptional for a recent and relevant contract, the agency also searched the EDA and found four contracts performed by Satellite within the last 3 years. All of these contracts were found relevant to the scope and work of the present requirement. Past performance surveys were sent to the agency contacts for the four contracts found on the EDA, in response to which the agency received two past performance surveys. Both of these surveys rated Satellite's performance satisfactory in the area of schedule, business relations, and management of key personnel. One of the surveys rated Satellite's performance marginal with regard to quality of performance. While both surveys rated Satellite's performance satisfactory overall, the raters of both surveys indicated that they "would think twice about awarding another contract to this contractor." Based on the foregoing, the contracting officer assigned Satellite a satisfactory past performance rating. *Id.* at 1-2.

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<sup>1</sup> EDA is an online document access system designed to provide acquisition related information for use by all of the DOD.

Based on A1 Procurement's neutral rating and Satellite's satisfactory rating, the contracting officer assigned A1 a satisfactory past performance rating. HamHed's past performance rating was still rated exceptional after the reevaluation. Thus, on June 23, the agency affirmed the award to HamHed.

A1 protests its revised past performance rating, and argues that the evaluation scheme utilized by the agency to evaluate past performance "deviated" from the solicitation. Protester's Comments at 6.

Determining the relative merits of an offeror's past performance information is primarily a matter within the contracting agency's discretion; we will examine the record only to ensure that it was reasonable and consistent with the solicitation's evaluation scheme, as well as relevant procurement statutes and regulations. See Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 4. In evaluating the past performance of a joint venture, an agency generally may consider the individual venturer's past performance in assessing a joint venture's past performance. See Global Eng'g & Constr. Joint Venture, B-275999.4; B-275999.5, Oct. 6, 1997, 97-2 CPD ¶ 125 at 11.

A1 argues that the agency's use of the EDA database to find other past performance references and sending these references past performance surveys deviated from the solicitation. However, besides the specific options listed in the solicitation that would be used by the agency to collect past performance information for evaluation, the solicitation also stated that the agency may also use "[a]ny other reasonable basis." RFQ at 9. Moreover, contrary to A1's argument, the agency was not limited to considering only those past performance references that the vendors identified and authorized in their quotations. In this regard, an agency is not generally precluded from considering any relevant past performance information, regardless of its source. See, e.g., Bulltrack-Watts II, Joint Venture, B-403032.2, B-403032.4, Dec. 16, 2010, 2011 CPD ¶ 10 at 7; NVT Techs., Inc., B-297524, B-297524.2, Feb. 2, 2006, 2006 CPD ¶ 36 at 5. Thus, the agency's consideration of the past performance evaluation from the contracts found on the EDA database was neither unreasonable nor inconsistent with the RFQ.<sup>2</sup>

Based on the past performance information received regarding Satellite in the reevaluation, the agency reasonably rated that firm's past performance as

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<sup>2</sup> A1 also argues that considering the past performance references obtained from the EDA database was inconsistent with the corrective action promised by the agency of only considering past performance information submitted prior to the closing date for receipt of proposals. However, the corrective action letter did not so limit the exercise of the agency's discretion, but only stated that this was "part of [the] corrective action." Agency Corrective Action Letter (March 28, 2011).

satisfactory and A1's past performance as satisfactory.<sup>3</sup> Thus, the agency's decision to select HamHed's quotation as the best value based on its exceptional past performance was reasonable.<sup>4</sup>

The protest is denied.

Lynn H. Gibson  
General Counsel

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<sup>3</sup> A1 does not challenge the accuracy of the past performance comments obtained from the references contacted by the agency in performing the reevaluation.

<sup>4</sup> A1 also contends that the agency did not "rate" price in the reevaluation. This protest basis is meritless as the record shows that A1's low price was reasonably considered in the reevaluation, but was found to not outweigh HamHed's superior past performance.