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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Industrial Construction & Trading Company

File: B-403849

Date: December 13, 2010

Michael A. Hordell, Esq., and Heather Kilgore Weiner, Esq., Pepper Hamilton LLP, for the protester.

Leslie A. Nepper, Esq., and Joyce Conner-Gale, Esq., Department of the Army, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's rejection of proposal for failure to submit past performance information is unobjectionable where the protester asserts that it sent the information, but there is no evidence in the record which demonstrates that the agency received it.

DECISION

Industrial Construction & Trading Company (ICTC), of Amman and Kuwait, protests the rejection of its proposal under solicitation No. W52P1J-10-R-0132, issued by the Department of the Army for line haul, heavy lift, and transport services throughout Kuwait, Iraq and Saudi Arabia. ICTC asserts that the Army improperly downgraded its proposal for failure to include adequate past performance information.

We deny the protest.

The solicitation provided for award on a "best value" basis considering price and three non-price evaluation factors—technical, management, and past performance. Past performance information was to be submitted by June 25, 2010, while the technical, management, and price proposals were due on July 20. With respect to past performance, offerors were to list up to six contracts performed in the past 3 years, with current points of contact. RFP § L, at 3.4. The solicitation further provided as follows: "[the] government will evaluate the quality and relevance of the offeror's past performance. Relevant present and past performance pertain to work that was: similar to or greater than the kind of requirement appearing in this

solicitation with regard to location, size, scope, type, dollar value, complexity and performed as prime.” RFP § M, at 3.

On June 25, ICTC submitted a spreadsheet—with 12 entries listing 13 prior contracts¹— as its past performance information, and later timely submitted its technical, management, and price proposals. On July 20, the agency notified ICTC that its proposal was not evaluated because it had failed to submit the required past performance volume on June 25. More specifically, the agency found that the spreadsheet ICTC submitted did not include full periods of performance, full descriptions of the listed contracts, or points of contact, as required by the solicitation. Accordingly, the agency rejected the proposal because it could not evaluate ICTC’s past performance.

ICTC does not argue that the information in the spreadsheet the agency evaluated should have been found acceptable. Rather, it claims that it submitted a spreadsheet that did in fact include the required information. In support of its claim, ICTC has furnished a copy of the spreadsheet it allegedly sent to the agency by e-mail on June 25; it is different from the agency’s version—which supports its evaluation—and does include the required information.

A finding that a protester submitted a proposal or other information as claimed requires evidence that the agency received the information; absent such evidence, there is no basis for us to question the agency’s representation as to what was or was not received. See, e.g., Latvian Connection Trading and Constr., LLC, B-402410, Feb. 25, 2010, 2010 CPD ¶ 58 at 3.

Notwithstanding that ICTC has furnished our Office an acceptable version of the spreadsheet, there is no evidence in the record—aside from the protester’s unsupported assertion—that this latter version of the spreadsheet is the one received by the agency. In this regard, in response to a request from ICTC, the agency searched for e-mails it received on June 25, and reports that it did not locate an e-mail with the spreadsheet that ICTC now references. Beyond this total absence of supporting evidence, it is not apparent—if ICTC submitted only the acceptable spreadsheet, as it claims—how the agency obtained the unacceptable spreadsheet that it evaluated.² We conclude that, while the circumstances surrounding submission of the spreadsheet are not clear, there is no basis to question the agency’s representation as to the spreadsheet it received, or otherwise to conclude

¹ The spreadsheet lists 2 Army contracts under entry 1 and 11 separate contracts with Kellogg Brown and Root as entries 2 through 12.

² We further note that, while ICTC states that the acceptable spreadsheet it submitted to the agency listed 12 contracts, the spreadsheet ICTC has furnished our Office has only 10 entries listing 11 contracts.

that the agency misevaluated the information submitted by ICTC. Consequently, there is no basis to question the agency's rejection of ICTC's proposal.

The protest is denied.

Lynn H. Gibson
Acting General Counsel