



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

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## Decision

**Matter of:** HBC Management Services, Inc.

**File:** B-407585

**Date:** January 14, 2013

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Brad Miller, Esq., Cooper Morrison & Associates, LLC, for the protester.  
Captain Michael P. Grogan, Corps of Engineers, for the agency.  
Gary R. Allen, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest of an agency's past performance evaluation of awardee is denied where the evaluation was reasonable and consistent with the solicitation's evaluation criteria.
2. Protest that agency improperly awarded a contract to a firm that allegedly lacks the appropriate security clearances and lacks the financial capability to perform the contract constitutes a challenge to the agency's affirmative responsibility determination, which this Office will not review absent exceptions not applicable here.

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### DECISION

HBC Management Services, Inc., of Honolulu, Hawaii, protests the award of a contract to Swanson Services, LLC, of Richmond, Virginia, under request for proposals (RFP) No. W912HQ-12-R-0004, issued by the Department of the Army, Corps of Engineers, for armed guard services at the Humphreys Engineer Center, Fort Belvoir, Virginia. The protester challenges the agency's evaluation of Swanson's past performance and responsibility.

We deny the protest.

## BACKGROUND

The RFP, issued as a section 8(a) set-aside under the commercial acquisition procedures of Federal Acquisition Regulation (FAR) Subpart 12.6, provided for the award of a fixed-price contract for armed guard services at the Humphreys Engineer Center for a base year and two option years. RFP at 1, 28. Offerors were informed that award would be made on a lowest-price, technically acceptable basis considering the following factors: technical approach, management approach, past performance, and price. RFP at 26-28.

As relevant here with respect to past performance, the RFP instructed offerors to provide “performance history and references to demonstrate satisfactory performance for at least three (3) prior contracts that are similar in size, scope, and complexity to this requirement that have been performed over the past five (5) years.” RFP at 28 (emphasis in original). In this regard, offerors were informed that an offeror that did not have a record of relevant past performance, or for whom past performance information is unavailable, would be found acceptable. *Id.* at 29.

The agency received 10 proposals, including Swanson’s and HBC’s, which were evaluated by the agency’s source selection evaluation board (SSEB). Contracting Officer’s Statement at 2. All offers were found to be technically acceptable, and were included in the competitive range. Discussions were conducted, and revised proposals received and evaluated. *See* Agency Report (AR), Tab 6, SSEB Final Consensus Evaluation Report. Following the submission of revised proposals, the RFP was amended to provide an addendum to the wage scale and benefits of the Collective Bargaining Agreement between the current contractor and the International Union Security, Police and Fire Professionals of America union for the Humphreys Engineer Center.<sup>1</sup> Offerors were invited to submit revised proposals. RFP amend. 5, at 1-2. Swanson submitted the lowest-priced, technically acceptable proposal (deleted), and HBC submitted the second lowest-priced proposal (deleted). AR, Tab 9, Source Selection Decision, at 5.

Award was made to Swanson, and this protest followed.

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<sup>1</sup> The RFP was amended five times.

## DISCUSSION

### Past Performance Evaluation

HBC contends that Swanson does not have any relevant past performance and argues that therefore, the awardee's proposal should have been found unacceptable.

In reviewing protests of alleged improper evaluations and source selection decisions, it is not our role to reevaluate submissions; rather, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. Panacea Consulting, Inc., B-299307.4, B-299308.4, July 27, 2007, 2007 CPD ¶ 141 at 3. A protester's disagreement with an agency's judgment is not sufficient to establish that an agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3.

The record here shows that Swanson identified three guard services contracts that it was currently performing: a contract with the Department of the Air Force for unarmed guard services at Langley Air Force Base in Virginia; a contract with the City of Virginia Beach to provide armed guard services at 18 city facilities; and a contract with Greyhound Bus Lines for armed guard services for stations in five cities in Virginia. See Swanson Revised Technical Proposal at 55-59. The Army found that all three contracts were relevant and demonstrated the firm's ability to provide the required services. AR, Tab 6, SSEB Consensus Report, at 19; Tab 9, Source Selection Decision, at 4-5.

HBC argues, however, that Swanson's past performance should not be considered relevant because the awardee did not have experience providing armed guard services to the Department of Defense (DoD) or its agencies. See Comments at 1-2. The RFP, however, did not require offerors to demonstrate past performance of armed guard services with DoD agencies. Rather, the RFP provided that an offeror's performance of contracts of similar size, scope, and complexity would be considered relevant.<sup>2</sup> Although HBC disagrees with the agency's judgment with respect to the relevance of Swanson's past performance, it has not shown that the agency acted unreasonably.

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<sup>2</sup> In its comments, HBC complains that the RFP provided that an offeror without a record of relevant past performance, or for whom past performance information was unavailable, would nonetheless be found acceptable. Comments at 2. This post-award challenge to the terms of the RFP is untimely and is dismissed. Our Bid Protest Regulations require that protests of apparent alleged improprieties in the RFP be filed before the closing date for receipt of initial proposals. 4 C.F.R. § 21.2 (a)(1) (2012). In any event, the solicitation provision about which HBC complains appears to be consistent with FAR § 15.305(a)(2)(iv), which generally provides that an offeror without relevant past performance may not be evaluated favorably or unfavorably.

## Affirmative Determination of Responsibility

HBC also argues generally that Swanson will be unable to provide guards with a secret clearance and is not financially capable of performing the contract. Protest at 3-4; Comments at 2-3.

With respect to HBC's first argument, the RFP provided that all guard personnel are required to pass or have passed what the agency calls a "National Agency Check Local Agency Check Credit Check" (NACLIC) or equivalent examination, whether or not they will be given access to classified material. RFP at 12. Offerors were also informed that a "NACLIC is the same investigation required to attain a Secret Clearance for Contractors; however, guards at the entry gate or the Kingman building only need the NACLIC investigation not the access to classified information." RFP amend. 2, Questions/Answers No. 5, at 3. The RFP did not require offerors to provide clearances or certifications with their proposals.

Provisions such as those in the RFP here, that require personnel to obtain necessary clearances (or licenses or permits) and have adequate financial resources to perform the contract, establish performance requirements that must be satisfied by the successful offeror during contract performance; as such, offerors are not required to satisfy the requirements prior to award, and the requirements do not affect the award decision, except as a matter of a contractor's general responsibility. See Crown Worldwide Moving & Storage, B-406614, July 17, 2012, 2012 CPD ¶ 208 at 2.

Our Bid Protest Regulations generally preclude our review of a contracting officer's affirmative determination of an offeror's responsibility, except where a protester alleges that definitive responsibility criteria may not have been met or presents evidence that a contracting officer may have ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. Neither of these circumstances is alleged or demonstrated here. 4 C.F.R. § 21.5(c); CapRock Gov't Solutions, Inc.; ARTEL, Inc.; Segovia, Inc., B-402490 et al., May 11, 2010, 2010 CPD ¶ 124 at 26.

HBC's general challenge to Swanson's ability to perform the contract does not satisfy our standard for considering challenges to an agency's affirmative determination of responsibility. Moreover, because this procurement set aside for 8(a) small businesses, any issue concerning the awardee's responsibility is a matter

for the Small Business Administration under its certificate of competency program, not our Office. SoniTech NDT, B-407115, Nov. 2, 2012, 2012 CPD ¶ 311 at 4.

The protest is denied.

Susan A. Poling  
General Counsel