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Decision

Matter of: XPO Logistics Worldwide Government Services, LLC

File: B-412628.6; B-412628.7

Date: March 14, 2017

Frederick W. Claybrook, Jr., Esq., of Claybrook LLC; and Daniel R. Forman, Esq., Mark A. Ries, Esq., James G. Peyster, Esq., and Charles Baek, Esq., of Crowell & Moring LLP, for the protester.

Kara M. Sacilotto, Esq., Rand L. Allen, Esq., Brian G. Walsh, Esq., Gary S. Ward, Esq., and Cara L. Lasley, Esq., Wiley Rein LLP, for Crowley Logistics, Inc., an intervenor.

Col. C. Taylor Smith and Michael G. McCormack, Esq., Department of the Air Force; and Willie J. McAlister, Esq., Peter B. Ries, Esq., and Robert D. Bowers, Esq., United States Transportation Command, for the agency.

Matthew T. Crosby, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee's pricing is unbalanced under a solicitation for the award of an indefinite-delivery/indefinite-quantity contract is dismissed as untimely where the protest concerns the solicitation's estimates and price evaluation methodology but the protester failed to challenge these terms before the solicitation's closing date.

2. Protest challenging agency's relevancy determinations for the awardee's past performance efforts is sustained where the solicitation required an assessment of the magnitude of the offerors' past efforts relative to the solicited requirement and where the record fails to show how the awardee's comparatively low-value past efforts reasonably could have been assessed as somewhat relevant.

DECISION

XPO Logistics Worldwide Government Services, LLC, of High Point, North Carolina, protests the award of a contract to Crowley Logistics, Inc., of Jacksonville, Florida, by the Department of Defense, United States Transportation Command, under request for proposals (RFP) No. HTC711-15-R-R003 for freight transportation services. XPO alleges that the agency's evaluation of proposals was unreasonable and that its best-value tradeoff was flawed.

We sustain the protest in part and dismiss it in part.

BACKGROUND

The solicitation, issued on March 25, 2015, contemplated the award of a single indefinite-delivery/indefinite-quantity (ID/IQ), fixed-price-with-economic-price-adjustment contract¹ with a two-year base period and five one-year options.² RFP at 1, 3-12, 15, 20-21, 32, 46.³ The contract to be awarded under the solicitation is known as the Department of Defense Freight Transportation Services contract, or DFTS. See id. at 71. The solicitation included a lengthy performance work statement (PWS) outlining the needed freight services. Id. at 71-126. At the highest level, the PWS provided that the successful offeror would be responsible for transportation and transportation coordination services for United States government and Department of Defense freight shipments between locations within the continental United States, Alaska, and Canada. Id. at 72-73.

The solicitation established a maximum value of \$3 billion for all orders placed under the contract. RFP at 13. The agency prepared an independent government cost estimate (IGCE) that projected a slightly lower “total estimated value” for the procurement of approximately \$2.7 billion. AR, Tab 3, ICGE, at 3. The IGCE also included projections for the total value of the two-year base period and each of the five one-year option periods. Id. at 4-7; AR, Tab 4, DFTS Acquisition Strategy Panel Slides, at 4. These projections showed the value of each option period materially increasing over the predecessor period. See AR, Tab 4, DFTS Acquisition Strategy Panel Slides, at 4.

The solicitation provided that the award would be made on a best-value tradeoff basis, considering five factors: corporate experience, business proposal, technical capability, past performance, and price. RFP at 46. The technical capability factor included the following four subfactors, listed in descending order of importance: information technology/management, implementation, carrier management, and operational support. Id. The solicitation stated that proposals would be evaluated

¹ While the majority of the solicitation’s contract line item numbers (CLIN) were fixed-price-with-economic-price-adjustment-type CLINs for transportation services, the solicitation also included fixed-price CLINs for systems and site implementation, as well as cost-type CLINs for customs brokerage services. RFP at 4-13.

² The solicitation and other documents in the record refer to the fourth and fifth option years as “award term 1” and “award term 2.” RFP at 11-13. In this decision, we refer to them simply as option years four and five.

³ Citations to the solicitation refer to the “conformed” version that incorporated changes made under various solicitation amendments. Agency Report (AR), Tab 20, Conformed RFP.

under the corporate experience and business proposal factors on an acceptable/unacceptable basis. RFP at 46. Regarding the relative importance of the remaining factors, the solicitation stated that the technical capability factor was more important than the past performance factor, and that the technical capability and past performance factors, combined, were approximately equal in importance to price. Id.

Detailed evaluation criteria were provided for each factor and subfactor. RFP at 46-55. For the technical capability subfactors, the solicitation stated that two adjectival ratings would be assigned: one for technical merit, and one for risk. Id. at 48-49. The technical ratings were outstanding, good, acceptable, marginal, and unacceptable, while the risk ratings were low, moderate, and high. Id.

For the past performance factor, the solicitation required an offeror to identify “all of its most relevant contracts and/or efforts within the past three (3) years.”⁴ RFP at 37-38. For each contract or effort, offerors were to provide a variety of information, including the total contract value (including option years), a description of the work performed, and the performance period (including option years). Id. at 44. The solicitation stated that the agency would “determine . . . the relevancy of each past performance effort” and assign one of the following relevancy ratings to “each” effort: very relevant, relevant, somewhat relevant, or not relevant. Id. at 53 (emphasis in original). Definitions were provided for these ratings. Id. The solicitation further stated that after the agency “has determined the . . . relevancy of each past performance effort being evaluated,” the agency would assign an “overall Past Performance Confidence Assessment” rating of substantial confidence, satisfactory confidence, limited confidence, or no confidence. Id. (emphasis in original). Definitions also were provided for these ratings. Id. at 53-54.

With regard to price, the solicitation required offerors to propose over 470,000 individual freight rates in two large pricing sheets (also referred to as “rate tables”). See AR, Tab 20a, RFP Pricing Sheet; AR, Tab 20b, RFP Pricing Sheet. The high number of rates accounted for numerous variables, such as a vast number of possible origin/destination combinations, truckload versus less-than-truckload services, “time-definite” services, three tiers of service levels, and seven tiers of weight ranges. See RFP at 653-56. The RFP established that an offeror’s total evaluated price would be calculated by “totaling the extended prices for all proposed pricing . . . in the Rate Tables.” Id. at 54, 653. Formulas in the pricing sheets reflected that the “extended prices” would be calculated by multiplying the proposed

⁴ This requirement appeared in the section of the solicitation that addressed the preparation of the corporate experience volume of the proposal. RFP at 37-38. The solicitation, however, established that the “contracts/efforts” identified in the corporate experience volume would be the subject of the past performance evaluation. Id. at 44.

rates by estimated volumes that were provided in the sheets. See AR, Tab 20a, RFP Pricing Sheet; AR, Tab 20b, RFP Pricing Sheet. Formulas in the sheets also reflected that an offeror's total evaluated price would be evident when the sheets were completed with the proposed rates. See AR, Tab 20a, RFP Pricing Sheet; AR, Tab 20b, RFP Pricing Sheet.

The agency received four proposals by the solicitation's closing date, including proposals from XPO and Crowley.⁵ AR, Tab 120, Source Selection Decision Document (SSDD), at 1. Following an evaluation by a source selection evaluation board (SSEB), one offeror was eliminated from the competitive range. Id. After conducting discussions and requesting and evaluating final proposal revisions (FPR) from the competitive-range offerors, the agency selected the proposal of GENCO Infrastructure Solutions, Inc., for award. Id.

Crowley challenged the award to GENCO in a protest filed with our Office. We sustained Crowley's protest on the basis that the agency's discussions with the firm were not meaningful. Crowley Logistics, Inc., B-412628.2 et al., Apr. 19, 2016, 2016 CPD ¶ 120. We recommended that the agency reopen the competition, conduct meaningful discussions with the competitive range offerors, request and evaluate revised proposals, and make a new source selection. Id. at 12.

The agency followed our recommendation by reopening discussions and requesting another round of FPRs. AR, Tab 120, SSDD, at 2. At this point, GENCO withdrew from the competition. AR, Tab 86, GENCO Withdrawal Ltr., at 1. XPO and Crowley submitted FPRs, which the SSEB evaluated. The final ratings for the two proposals, as well as their total evaluated prices, are shown in the table that follows.

⁵ XPO's proposal was submitted by Menlo Worldwide Government Services, Inc. See Protest at 1 n.1. During the course of the procurement, however, Menlo was "fully acquired and absorbed" by XPO. See id.

	<u>XPO</u>	<u>Crowley</u>
Corporate Experience	Acceptable	Acceptable
Business Proposal	Acceptable	Acceptable
Technical Capability⁶		
Information Technology/ Management	Good/Low Risk	Good/Low Risk
Implementation	Good/Low Risk	Good/Moderate Risk
Carrier Management	Good/Low Risk	Good/Low Risk
Operational Support	Good/Low Risk	Good/Low Risk
Past Performance	Substantial Confidence	Satisfactory Confidence
Total Evaluated Price	\$7,741,505,204	\$7,116,365,688

AR, Tab 117, Addendum to SSEB Rep., at 8. As the table shows, XPO's proposal received more favorable ratings than Crowley's under the implementation subfactor and the past performance factor, but XPO's total evaluated price was approximately \$625 million higher than Crowley's. As the table also shows, both offerors' total evaluated prices were more than double the maximum contract value of \$3 billion and the IGCE of approximately \$2.7 billion. This occurred, in essence, because estimates of one or more units were included in the pricing sheets for vast numbers of rates for which the agency had no historical data.⁷ See Agency Response to GAO Inquiry (Mar. 7, 2017) at 5-7. As stated above, however, the estimates and the methodology for calculating the total evaluated price were evident from the pricing sheets themselves. See RFP at 54, 653; AR, Tab 20a, RFP Pricing Sheet; AR, Tab 20b, RFP Pricing Sheet.

A source selection advisory council (SSAC) reviewed the SSEB report and the underlying evaluation documents. AR, Tab 118, Addendum to SSAC Comparative Analysis, at 1. The SSAC documented a comparative analysis of the proposals and recommended Crowley's proposal for award. Id. at 3-8. The source selection authority (SSA) reviewed the SSEB and SSAC reports as well as the underlying

⁶ For the technical capability factor, ratings were assigned only at the subfactor level.

⁷ As explained above, the solicitation required offerors to propose over 470,000 individual rates to account for numerous variables, such as differing origin/destination combinations, three tiers of service, and seven weight ranges. See RFP at 653-56. Because the total evaluated price was calculated by totaling the extended prices for all of these rates, the total evaluated price exceeded the total price that ultimately could be paid under the contract.

evaluation documents. AR, Tab 120, SSDD, at 2-3. The SSA agreed with the evaluation findings and the SSAC's recommendation. Id. The SSA then documented a separate comparative analysis and best-value tradeoff decision. The SSA summarizes his selection of Crowley's proposal for award as follows:

[T]he cost difference of \$625,139,516, or 8.4%, is disproportionate to the benefit associated with [XPO]'s lower risk rating and more favorable past performance rating. Although Crowley has a higher risk rating, the risk associated with Implementation is not enough to offset the price difference. I recognize that [XPO]'s past performance assessment rating of Substantial Confidence is higher than Crowley's assessment rating of Satisfactory Confidence; however, the Government has a reasonable expectation Crowley will successfully perform the required effort. . . . [I]t is my determination that it is not beneficial to pay a price premium for [XPO]'s better past performance rating of Substantial Confidence or Low Risk rating for the subfactor of Implementation.

Id. at 5-6.

After the award was made to Crowley, XPO received a debriefing. The firm subsequently filed a protest with our Office.

DISCUSSION

XPO challenges the agency's evaluation of Crowley's pricing and past performance as well as the agency's best-value tradeoff analysis. As set forth below, we find XPO's allegations regarding the price evaluation untimely. As also set forth below, we sustain XPO's allegations regarding the evaluation of Crowley's past performance. Because a new best-value determination will be necessary to implement our recommendation regarding the past performance evaluation, we do not address XPO's allegations regarding the best-value tradeoff analysis.⁸

Evaluation of Crowley's Pricing

XPO alleges that the agency failed to identify Crowley's prices as unbalanced and that the award therefore was improper. Comments at 13-15; Supp. Comments at 16-27. As relevant to XPO's allegation, the roughly 470,000 rates that offerors were to propose generally can be divided into two types of freight services: trucking and time-definite delivery. See RFP at 653; AR, Tab 20a, RFP Pricing Sheet; AR,

⁸ We note that XPO also has alleged that the agency's evaluation of XPO's own proposal was unreasonable. Protest at 8-16; Supp. Comments at 41. Based on the record, we find these allegations furnish no basis on which to sustain the protest.

Tab 20b, RFP Pricing Sheet. The solicitation's pricing structure divided the rates into 80 sub-CLINs (SLIN). See AR, Tab 116, Price Analysis Addendum, at 4-29. Seventy-one of the SLINs were for trucking services (approximately 89 percent), while the other nine were for time-definite services (approximately 11 percent). Id.

XPO argues that Crowley's prices for the [DELETED] SLINs were understated and that Crowley's prices for the [DELETED] SLINs were overstated. Comments at 14-15; Supp. Comments at 16-17. To illustrate the disparity, XPO points out that Crowley's pricing was approximately \$[DELETED] higher than XPO's under the [DELETED] SLINs, but approximately \$[DELETED] lower under the [DELETED] SLINs. Comments at 14. Since an offeror's total evaluated price was the sum of its SLIN pricing, Crowley's total evaluated price was approximately \$625 million lower than XPO's, notwithstanding XPO's [DELETED] price advantage under the [DELETED] SLINs [DELETED].

As a backdrop to its unbalanced pricing argument, XPO describes how the estimates used in the calculation of an offeror's total evaluated price created a situation "uniquely ripe for unbalanced pricing to occur." Supp. Comments at 23. With regard to the [DELETED] SLINs, XPO explains the issue as follows:

For each and every one of the 442,768 total pricing line items in question, the agency utilized a quantity estimate as part of the [total evaluated price] computation, but for the vast majority of these line items, the estimate used was not based on any sort of historical data For routes with no historic or projected usage, the agency simply assumed an automatic plug "estimate" of four transactions so as to allow each and every item to be part of the [total evaluated price]. Multiplied out over hundreds of thousands of historically unused line items, this meant that a huge portion of the cumulative work quantity in the RFP was completely divorced from a real-world estimate. . . . Therefore, higher pricing for routes with historical usage could be masked by understated pricing on the many more line items for which no specific number of orders were projected The setting was perfect for unbalanced pricing.

Id. at 23-24 (footnotes omitted). With regard to the [DELETED] SLINs, XPO explains the issue as follows:

[The total evaluated price] was intentionally disconnected from historical and projected workload data in a manner that overstated the relative significance of [DELETED] pricing and understated the relative significance of the [DELETED] work. Such a scenario was ripe for price gaming, in which an offeror compensates for its likely higher prices on the work most likely to be ordered in high quantities by

significantly underpricing the type of orders expected to be only relatively rarely used.

Comments at 15. In other words, XPO alleges that the estimates used in the agency's calculation of the offerors' total evaluated prices led to a situation where offerors could "game" the solicitation's pricing structure by proposing unbalanced pricing. As described in the background section above, however, the estimates, and the way they would be applied in the price evaluation, were evident from the solicitation itself. Under these circumstances, we find XPO's allegation untimely.

Unbalanced pricing exists where, despite a proposal's low overall price, individual line item prices are either understated or overstated. Federal Acquisition Regulation (FAR) § 15.404-1(g). While unbalanced pricing may increase risk to the government, agencies are not required to reject an offer solely because it is unbalanced. Id. Rather, where an unbalanced offer is received, the contracting officer is required to consider the risks to the government associated with the unbalanced pricing in making the award decision, including the risk that the unbalancing will result in unreasonably high prices for contract performance. Id. § 15.404-1(g)(2).

In the context of an ID/IQ contract, as here, a key consideration is the accuracy of the government's quantity estimates; if the estimates are reasonably accurate, then evidence of mathematical unbalancing generally does not present a risk that the government will pay unreasonably high prices for contract performance. See Cherokee Painting LLC, B-311020.3, Jan. 14, 2009, 2009 CPD ¶ 18 at 3; Accumark, Inc., B-310814, Feb. 13, 2008, 2008 CPD ¶ 68 at 4. Where a solicitation for the award of an ID/IQ contract provides estimated quantities for individual items to be used in calculating a total price, and the estimated quantities used go unchallenged, there is no basis for our office to find a risk that the agency will pay unreasonably high prices, which is a necessary aspect of an unbalanced pricing argument. See Staples Contract & Commercial, Inc., B-409528.34, B-409528.37, Dec. 3, 2014, 2014 CPD ¶ 361 at 11; ABSG Consulting, Inc., B-404863.7, June 26, 2013, 2013 CPD ¶ 185 at 7.

Here, as shown above, XPO contends that the estimates and the way they were applied in the price evaluation allowed Crowley to "game" the solicitation by proposing unbalanced pricing. As also shown above, however, the estimates and the way they were to be applied in the price evaluation were evident from the solicitation. See RFP at 54, 653; AR, Tab 20a, RFP Pricing Sheet; AR, Tab 20b, RFP Pricing Sheet. Our Bid Protest Regulations require that protests based on alleged improprieties in a solicitation must be filed before the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1). XPO could have, but did not, challenge the solicitation terms underlying its protest claim. We find that XPO's failure to timely challenge the estimates or the manner in which they were to be applied in the

pricing evaluation precludes us from now considering the firm's allegation regarding unbalanced pricing.

We recognize that XPO could not have raised a protest specifically challenging Crowley's pricing prior to award. However, the record, including XPO's filings before our Office, demonstrates that the underlying issue in XPO's protest is the solicitation's terms. Accordingly, it was incumbent on XPO to raise its concerns regarding the potential for offerors to "game" the solicitation through unbalanced pricing prior to the solicitation's initial closing date. Since the firm failed to do so, we decline to further consider the matter. See Allstate Van & Storage, Inc., B-247463, May 22, 1992, 92-1 CPD ¶ 465 at 5-6 (allegation that awardee's pricing is unbalanced based on inaccuracies in the estimates of a solicitation for an ID/IQ contract is untimely where the protester failed to challenge the estimates prior to award); see also Staples Contract & Commercial, Inc., supra ("Where a solicitation for the award of an ID/IQ contract provides estimated quantities for individual items to be used in calculating a total price, and the estimated quantities used go unchallenged, there is no basis for our office to find a risk that the agency will pay unreasonably high prices . . ."); Accumark, Inc., supra (under a solicitation for the award of an ID/IQ contract, an allegation that the awardee's price was unbalanced amounts to an untimely challenge to the estimates in the solicitation).

Evaluation of Crowley's Past Performance

XPO alleges that the agency's evaluation of Crowley's past performance was flawed because Crowley's past efforts were substantially smaller in magnitude than the effort required under the solicitation. Comments at 15-22; Supp. Comments at 27-40. As related to this allegation, the record reflects that the agency evaluated more than 200 of Crowley's past efforts. AR, Tab 119, Crowley Past Performance Summary Addendum, at 2-34. Of these efforts, 16 were found somewhat relevant. Id. All of the others were found not relevant. Id. After completing its relevancy evaluation, the agency determined that the 16 somewhat relevant efforts, combined, supported an overall past performance confidence assessment rating of satisfactory confidence. Id. at 35.

XPO argues that the 16 efforts assessed as somewhat relevant were "too miniscule compared to the current procurement to merit such a rating." Comments at 19. To illustrate, XPO analyzed the relative magnitude of 15 past efforts deemed somewhat relevant by calculating each effort's value as a percentage of the \$3 billion maximum value of the contract awarded under the solicitation.⁹ Id. at 20-21. The calculations show that the value of one Crowley effort was

⁹ Crowley's past performance evaluation report does not indicate the value of the 16th somewhat relevant effort. AR, Tab 119, Crowley Past Performance Summary Addendum, at 29-30.

approximately 2 percent of this procurement's \$3 billion maximum value, one effort was approximately 1 percent of the maximum value, and all 13 of the other efforts had values of less than 1 percent of this procurement's maximum value.¹⁰ Comments at 20-21. Based on this disparity in values, XPO argues that the agency's assessment of the efforts as somewhat relevant was unreasonable. Id. at 21. XPO further argues that because the efforts should not have been found somewhat relevant, the satisfactory confidence rating assigned to Crowley's proposal was improper. Id.

In response, the agency argues that XPO's comparison of the value of Crowley's efforts to the total value of this procurement is flawed. Supp. AR at 15-16. The proper comparison, according to the agency, begins with a calculation of a "value per year equivalency" for each of Crowley's past efforts. Id. at 15. This amounts to an average annual value of each effort, calculated by dividing the effort's total value by the total months of performance, then multiplying that number by 12. Id. at 16. After presenting these calculations, the agency argues that its evaluation was reasonable because the aggregate of the average annual value of 12 of the Crowley efforts exceeds \$[DELETED]. Id. The agency chooses \$[DELETED] as its benchmark because this figure is the maximum value for the transportation CLIN for the 2-year base period of the contract awarded to Crowley under the solicitation. Id. (citing AR, Tab 122, Crowley Contract, at 3). The agency justifies its choice of this value--rather than the significantly higher total contract value, or any of the significantly higher-valued option periods--on the basis that "the option years only reflect 'potential' contract value" if additional military services use the contract. Id. at 17.

As explained in detail below, the agency's response is problematic for a number of reasons. First, the analysis presented by the agency is not reflected in the contemporaneous record. In addition, the agency's selection of only the relatively low-value base period of the contract as awarded to Crowley unreasonably distorts the comparison of the magnitude of Crowley's past efforts to the magnitude of the solicitation.

Before proceeding further, we observe that as a general matter, 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. See Al Raha Grp. for Tech. Servs., Inc.; Logistics Mgmt. Int'l, Inc., B-411015.2, B-411015.3, Apr. 22, 2015, 2015 CPD ¶ 134 at 5. However, we will question an agency's evaluation conclusions where they are unreasonable or undocumented. See id. The critical question is whether the evaluation was conducted fairly,

¹⁰ XPO also points out that combined, the value of all 15 efforts was approximately only [DELETED] percent of this procurement's maximum value. Comments at 21.

reasonably, and in accordance with the solicitation’s evaluation scheme. See id. Finally, we have found the assessment of a somewhat relevant rating to an offeror’s past effort to be unreasonable where the solicitation requires the agency to consider the magnitude of the past effort compared to the solicited requirement, and the agency fails to reasonably explain why a past effort involving a minimal amount of the requirement justifies such a rating. See id. at 7-8; Health Net Fed. Servs., LLC, B-401652.3, B-401652.5, Nov. 4, 2009, 2009 CPD ¶ 220 at 17; see also Si-Nor, Inc., B-292748.2 et al., Jan. 7, 2004, 2004 CPD ¶ 10 at 17 (low dollar value of awardee’s past effort showed agency’s determination that the effort was similar to the solicited requirement to be unreasonable); Cont’l RPVs, B-292768.2, B-292768.3, Dec. 11, 2003, 2004 CPD ¶ 56 at 12 (agency’s conclusion that the awardee’s past effort was similar to the solicited requirement was unreasonable because the past effort involved less than three percent of the solicited requirement).

Returning to the merits of the protest here, we begin with the solicitation’s evaluation criteria for the past performance factor. As stated at the outset, the solicitation provided that the agency would evaluate “the relevancy of each past performance effort” submitted by an offeror. RFP at 53 (emphasis in original). The solicitation defined the relevancy ratings to be assigned to “each past performance effort” as follows:

Rating	Definition
Very Relevant	Present/past performance effort involved essentially the same scope and magnitude of effort and complexities this solicitation requires.
Relevant	Present/past performance effort involved similar scope and magnitude of effort and complexities this solicitation requires.
Somewhat Relevant	Present/past performance effort involved some of the scope and magnitude of effort and complexities this solicitation requires.
Not Relevant	Present/past performance effort involved little or none of the scope and magnitude of effort and complexities this solicitation requires.

Id. These definitions show that to warrant a rating of somewhat relevant, an effort must involve “some” of the magnitude of effort required under the solicitation. The definitions further show that if an effort involved “little or none” of the solicitation’s magnitude, a rating of not relevant was appropriate. At issue here is whether the relatively low value of Crowley’s past efforts renders unreasonable the agency’s conclusion that Crowley’s efforts involved “some” of the solicitation’s magnitude.

We begin our analysis by noting that it is not clear from the contemporaneous record how the agency determined that the magnitude of Crowley’s past efforts

supported the ratings of somewhat relevant. In this regard, the past performance evaluation report for Crowley shows the following information for most of the past efforts at issue: the number of monthly shipping transactions, the period of performance, and an approximate total value. AR, Tab 119, Crowley Past Performance Summary Addendum, 2-29. However, there is no evidence that the agency calculated an average annual value for the efforts in order to make an “apples-to-apples” comparison of the efforts’ magnitude relative to the magnitude of the solicitation; i.e., there is no evidence that the agency employed the methodology that it has argued to be the appropriate methodology in response to XPO’s protest. There also is nothing in Crowley’s past performance evaluation report to reflect what benchmarks might have been used to assess whether Crowley’s past efforts met the criteria for the various relevancy ratings defined in the solicitation. While such benchmarks might have included the total or average annual dollar value of an effort (or the number of total or monthly shipment transactions under the effort¹¹), it is not evident if or how the agency took this information into consideration.

We turn now to the agency’s argument that the evaluation was reasonable because the sum of the average annual value of 12 Crowley past efforts exceeds the \$[DELETED] maximum value of the transportation CLIN for the 2-year base period of the contract awarded to Crowley. The agency’s argument is based on the general proposition that where the period of performance of an offeror’s past effort materially differs from the period of performance in a solicitation, some method of making an “apples-to-apples” comparison of the magnitude of the two efforts is necessary. We agree with the agency that to make such an “apples-to-apples” comparison, it may be appropriate to consider the average annual value of an offeror’s past efforts. Under a solicitation with numerous option years with significantly differing values, such as the one here, the question becomes, what annual value under the solicitation should be used as the basis of comparison--the smaller value at the start of performance, or the significantly higher values anticipated in the later years? Here, the value the agency has chosen is the base period of Crowley’s contract, as awarded. As explained below, given the circumstances of this procurement, we find the agency’s choice unreasonable.

¹¹ We note that the evaluation criteria for the corporate experience factor required that an offeror’s corporate experience reflect support of at least 20,000 shipments per month and that Crowley’s proposal was found acceptable under this factor. RFP at 47; AR, Tab 118, Addendum to SSAC Comparative Analysis, at 2. Although Crowley’s past performance evaluation report indicates the number of shipments per month for nearly all of the past efforts at issue, it does not explain if or how this information was used. See AR, Tab 119, Crowley Past Performance Summary Addendum, at 2-29. Additionally, the total shipments per month for all 16 efforts at issue is approximately only [DELETED]. See id.

The record reflects that the agency prepared an IGCE that included projections of the value of each period of performance under the solicitation. AR, Tab 3, ICGE, at 4-7; AR, Tab 4, DFTS Acquisition Strategy Panel Slides, at 4. The table below shows these values, as well as the maximum values for each period of performance in Crowley’s contract, as awarded.

Period of Performance	IGCE Value	Value as Awarded
2-Year Base	\$272,142,626	\$(DELETED) ¹²
Option Year 1	\$333,550,052	\$(DELETED)
Option Year 2	\$394,810,220	\$(DELETED)
Option Year 3	\$458,488,010	\$(DELETED)
Option Year 4	\$464,848,290	\$(DELETED)
Option Year 5	\$479,398,041	\$(DELETED)

See AR, Tab 4, DFTS Acquisition Strategy Panel Slides, at 4; AR, Tab 122, Crowley Contract, at 3-9. The table shows that [DELETED]. It also shows that the value of each option year is significantly higher than the value of the base period. The IGCE explained that this increase was due to the “potential addition” of military users of the contract. AR, Tab 3, ICGE, at 2. The IGCE explained the basis for including the additional military users as follows:

There is currently a concerted effort for the [Department of Defense] to move away from awarding non-FAR based tenders for freight transportation. As there are no known feasible acquisition alternatives, it seems reasonable that the military services might opt to be included as customers under [the] DFTS [contract].

Id. Thus, the record reflects that the agency anticipated the value of the option years to be significantly higher than the value of the base period--both at the time it prepared the IGCE and when it awarded Crowley’s contract. The record also reflects that the agency included option year pricing in its calculation of the offerors’ total evaluated prices and that the SSA considered the offerors’ total evaluated price in his tradeoff decision. RFP at 54, 653; AR, Tab 120, SSDD, at 5-6. For all of these reasons, we find the agency’s selection of the significantly lower-valued transportation CLIN for the base period of Crowley’s contract to be an unreasonable benchmark for assessing the relevance of the magnitude of Crowley’s past efforts.

¹² This value is slightly higher than the \$(DELETED) used by the agency because it includes several non-transportation CLINs. AR, Tab 122, Crowley Contract, at 3-4.

The question of which annual value is selected as a comparative benchmark has a material effect on whether Crowley's past efforts reasonably can be assessed as somewhat relevant versus not relevant. For instance, if the annual value of the base period of Crowley's contract is used (as the agency has proposed), the value of 2 of the 12 Crowley past efforts at issue are in the range of 60 to 70 percent of the solicited requirement, 2 are in the range of 25 to 35 percent, 6 hover in the range of 10 to 15 percent, while the final 2 are approximately 5 and 0.5 percent. See Supp. Comments at 37-38. Some of these figures could support assessments of somewhat relevant. As discussed above, however, we conclude that using only the base period of Crowley's contract is not reasonable under the circumstances here.

One reasonable benchmark under the circumstances here could be the average value of each year of performance (including options) of the contract. When the average value of each year of performance is used as the benchmark, 2 of Crowley's past efforts are approximately 10 percent of the solicited effort, 2 are in the range of 4 to 6 percent, while the others are approximately 2 percent or less. See Supp. Comments at 35-36. As discussed above, the solicitation's distinction between the ratings of somewhat relevant and not relevant was whether the effort involved "some" versus "little or none" of the solicitation's effort. While the 2 efforts involving 10 percent of the requirement's average annual effort might reasonably be assessed as involving "some" of the effort, the vast majority of Crowley's efforts involve 6 percent or less of the effort. Under the ratings definitions established by the solicitation, this level of effort appears to be more closely aligned with an assessment of "little or none" of the requirement, which would result in ratings of not relevant.

As established above, it is not clear from the contemporaneous record how the agency concluded that Crowley's past efforts supported ratings of somewhat relevant. Additionally, the evaluation methodology that the agency has advanced in response to XPO's protest uses only the value of the base period as a comparative benchmark, despite the agency's estimates--both at the time of preparing the IGCE and at the time of awarding Crowley's contract--that the option years would be of significantly higher values. In addition, this approach is inconsistent with the agency's decision to include option year pricing in the offerors' total evaluated prices, and to consider the offerors' total evaluated prices in the tradeoff decision. In sum, the value of Crowley's past efforts are extremely small relative to the value of the requirement, indicating that the agency's assessment of ratings of somewhat relevant to these efforts was misplaced. For these reasons, we sustain XPO's allegation regarding this aspect of the evaluation.

Before concluding, we note XPO also argues that the agency's evaluation of several of Crowley's past efforts was unreasonable because these efforts involved very low numbers of shipments per month or, in the case of an effort that was evaluated for the use of special equipment, because the record lacks specific information

regarding Crowley's experience. Comments at 22; Supp. Comments at 39-40. We have considered the agency's responses to these allegations and we find, based on the record, that these allegations also have merit. However, we do not discuss these allegations in detail because the issues raised necessarily would be addressed through the implementation of our recommendation--discussed below--that the agency reevaluate Crowley's past performance in a manner that is reasonable and consistent with both the solicitation and this decision.

Finally, we note that XPO argues that it was improper for the agency to aggregate Crowley's past performance efforts in its determination of Crowley's overall confidence assessment rating. Comments at 17-19; Supp. Comments at 27-30. We do not reach this issue because the record does not support the agency's findings that Crowley's past performance efforts were somewhat relevant, which should be a prerequisite to aggregating the results.

Prejudice

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. We cannot say whether the SSA would have concluded that XPO's lower risk and higher past performance ratings did not justify the payment of a price premium if the agency's evaluation of Crowley's past performance was adjusted to account for the flaws discussed above. In such circumstances, we resolve any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. See Kellogg, Brown & Root Servs., Inc.--Recon., B-309752.8, Dec. 20, 2007, 2008 CPD ¶ 84 at 5. Accordingly, we conclude that XPO has established the requisite competitive prejudice to prevail in a bid protest.

RECOMMENDATION

We recommend that the agency reevaluate Crowley's past performance in a manner that is reasonable and consistent with both the solicitation and this decision, and then make a new source selection determination. Alternatively, if the agency determines that the solicitation's evaluation criteria do not reasonably reflect its needs (particularly in the area of past performance), we recommend that the agency amend the solicitation, engage in discussions with offerors, and request revised proposals. Finally, we recommend that the agency reimburse XPO for its costs of

filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d). XPO's certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. Id. § 21.8(f)

The protest is sustained in part and denied in part.

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General Counsel