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Decision

Matter of: Exelis Systems Corporation

File: B-407111; B-407111.2; B-407111.3; B-407111.4

Date: November 13, 2012

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Kathleen D. Martin, Esq., Department of State, for the agency.

Jonathan L. Kang, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the evaluation of offerors' proposed staffing is sustained where the agency did not reasonably evaluate the offerors' proposals in accordance with solicitation's staffing plan subfactor.
2. Protest challenging the agency's assignment of weaknesses to the protester's proposal based on the protester's lack of direct contracting experience with the procuring agency is sustained where the evaluation was unreasonable and was not reasonably related to the solicitation's evaluation scheme.
3. Protest that agency identified strengths in the awardee's proposal, but unreasonably failed to recognize similar strengths to the protester's proposal is sustained where the agency did not provide meaningful explanation as to why it did not treat the offerors equally.
4. Protest that agency failed to consider three inspector general reports in evaluating the awardee's past performance is denied where the agency evaluators were unaware of two of the reports--neither of which was "too close at hand" to ignore--and where the other report had not been issued at the time of award, and the contracting officer disagreed with the preliminary findings that would later be reported.

DECISION

Exelis Systems Corporation, of Colorado Springs, Colorado, protests the award of a contract to PAE Government Services, Inc., of Arlington, Virginia, under request for proposals (RFP) No. SAQMMA-12-R-0012, issued by the Department of State (DOS) for operations and maintenance support services (OMSS) for agency facilities in Iraq, including the Baghdad Embassy Compound (BEC). The protester argues that the agency's evaluation of the offerors' proposals was unreasonable under several of the technical evaluation factors, and that the selection decision was therefore flawed.

We sustain the protest.

BACKGROUND

The RFP was issued on March 23, 2012, and sought proposals to provide OMSS at DOS locations throughout Iraq under an indefinite-delivery/indefinite-quantity (ID/IQ) contract. The RFP identified two initial task orders to be issued under the contract: (1) the BEC OMSS requirements; and (2) the establishment and operation of a program management office (PMO), for the management of the ID/IQ contract and task orders. RFP § M.12. The RFP stated that the agency "intends to award the PMO task order as the first task order, concurrently with the ID/IQ contract," but also stated that the agency "does not commit to awarding either or both task orders." Id. The solicitation stated that other task orders under the ID/IQ contract are anticipated to include expanding OMSS services to DOS facilities in other areas in Central, Northern, and Southern Iraq. RFP § C.1. PAE is the incumbent for the OMSS requirements at the BEC.

The RFP anticipated award of a single ID/IQ contract with a base period of 1 year and four 1-year options. Task orders under the contract will be issued on a fixed-price, cost-reimbursement, labor-hour, or time-and-materials basis. The maximum order value for the contract is \$2 billion. The RFP advised offerors that proposals would be evaluated on the basis of price and the following non-price factors, listed in descending order of importance: (1) overall approach to ID/IQ and program management, (2) sample task order proposal for the BEC requirements, (3) technical proficiency, (4) task order proposal for the PMO requirements, and (5) past performance and experience. RFP § M.4. The BEC sample task proposal factor had five subfactors: (1) staffing plan, (2) key personnel, (3) operations and maintenance (O&M) plan, (4) sample quality control plan, and (5) preliminary transition plan. Id. The PMO task order proposal factor had three subfactors: (1) PMO key personnel, (2) sample program management plan, and (3) sample cost control plan. Id. The RFP did not state how the subfactors would be weighted. Offerors' were required to submit fixed unit prices for OMSS for particular types of buildings. Id. §§ B.7; L.16.2.2; § J, exh. F. For purposes of award, the RFP stated that the first three non-price factors were "significantly more important" than the last

two non-price factors and price, and that “the non-price factors as a whole are significantly more important than price.” Id. § M.4.

DOS received proposals from four offerors, including Exelis and PAE, by the closing date of May 30. The proposals were reviewed by a technical evaluation panel (TEP) and a price evaluation panel. The agency did not conduct discussions, but, as required by the RFP, offerors provided oral presentations. During these presentations, the agency asked offerors to address questions concerning their proposals.

Following the oral presentations, the TEP prepared a consensus report, which rated PAE’s and Exelis’ proposals as follows:¹

	EXELIS	PAE
OVERALL APPROACH TO IDIQ AND PROGRAM MANAGEMENT	SATISFACTORY	EXCELLENT
BEC SAMPLE TASK PROPOSAL	SATISFACTORY ²	EXCELLENT
Staffing Plan	Satisfactory	Excellent
Key Personnel	Satisfactory	Excellent
O&M Plan	Satisfactory	Excellent
Sample Quality Control Plan	Satisfactory	Excellent
Preliminary Transition Plan	Satisfactory	Excellent
TECHNICAL PROFICIENCY	EXCELLENT	EXCELLENT
PMO TASK ORDER PROPOSAL	SATISFACTORY	EXCELLENT
PMO Key Personnel	Excellent	Excellent
Sample Program Management Plan	Satisfactory	Excellent
Sample cost control plan	Satisfactory	Excellent

¹ The RFP stated that the offerors’ proposals would be assigned a rating under the non-price factors (except past performance) of either excellent, satisfactory, marginal, or unsatisfactory. RFP § M.10.2.1. The RFP stated that offerors’ past performance would be assigned a rating of either significant confidence, confidence, unknown confidence, or little confidence. Id. § M.10.2.2.

² As explained below, the TEP concluded that Exelis’ proposal merited a rating of satisfactory for the sample task proposal for BEC evaluation factor, but erroneously cited the rating as excellent in the summary of the TEP consensus report. Contracting Officer’s (CO) Statement (Sept. 4, 2012) ¶¶ 24-25, 63. This error was repeated in the CO award recommendation and the source selection decision (SSD).

PAST PERFORMANCE AND EXPERIENCE	CONFIDENCE	SIGNIFICANT CONFIDENCE
OVERALL RATING	SATISFACTORY	EXCELLENT
PRICE	\$[deleted]	\$347,883,498

Agency Report (AR), Tab 13, TEP Consensus Report, at 3; attach. 1, Summary of Consensus Evaluation.³ The TEP consensus report addressed strengths and weaknesses for each of the evaluation factors, but did not separately address or otherwise discuss the ratings for the offerors under the subfactors of the BEC sample task proposal or PMO task order proposal evaluation factors.

As explained during testimony provided by the CO and contract specialist during a hearing conducted by our Office, the CO delegated many of the day-to-day activities concerning the procurement to the contract specialist.⁴ See Hearing Transcript (Tr.) at 395:7-10. The contract specialist prepared an award recommendation for the source selection authority (SSA) on behalf of the CO. Tr. at 211:6-13, 244:11-20. The CO award recommendation concurred with the TEP's technical evaluation ratings, and presented a tradeoff between PAE's and Exelis' proposals based on PAE's higher technical rating and Exelis' lower price that cited several strengths and weaknesses that distinguished the offerors' proposals.⁵ AR, Tab 19, CO Award Recommendation, at 6-7, 13-14. PAE's proposal was recommended for award based on the strengths identified in its technical approach, and its proposed price, which was the second-lowest of the three offerors considered for award. Id. at 2.

The SSA also concurred with the TEP's technical evaluation ratings. AR, Tab 20, SSD, at 1. The SSA concluded that PAE's technical proposal was superior to that of Exelis, and that the added technical benefit and reduced performance risk were worth the price premium of [deleted] percent as compared to Exelis' proposal. Id.

³ The ratings for the individual subfactors were identified in an attachment to the consensus report, which was signed by the evaluators.

⁴ Our Office conducted a hearing on October 15, 2012, to further develop certain protest issues, at which the source selection authority, CO, contract specialist, and the TEP Chair provided testimony.

⁵ The CO award recommendation also presented a tradeoff between PAE and a third offeror whose proposal was rated excellent overall, but was significantly higher priced than PAE or Exelis. AR, Tab 19, CO Award Recommendation, at 14-15. Neither the CO award recommendation nor the SSD presented a tradeoff between Exelis and the third offeror.

DOS notified Exelis of the award to PAE on July 24, and provided a debriefing on July 27. This protest followed.

DISCUSSION

Exelis raises four primary arguments: (1) the agency unreasonably evaluated the offerors' proposed staffing plans, primarily because the evaluation ignored relevant data concerning PAE's proposed staffing level; (2) the agency applied an unstated evaluation criterion in assessing weaknesses for Exelis' proposal because the protester lacked "direct contracting experience" with the agency; (3) the agency treated the offerors unequally by identifying strengths in PAE's proposal but ignoring similar strengths in Exelis' proposal; and (4) the agency unreasonably ignored negative past performance information concerning PAE's performance of similar contracts in Afghanistan and Iraq. For the reasons discussed below, we sustain Exelis' protest based on the first three arguments, but do not sustain the protest based on the fourth argument, concerning the evaluation of PAE's past performance.⁶

The evaluation of an offeror's proposal is a matter within the agency's discretion. National Gov't Servs., Inc., B-401063.2 et al., Jan. 30, 2012, 2012 CPD ¶ 59 at 5. A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. While we will not substitute our judgment for that of the agency, we will question the agency's conclusions where they are inconsistent with the solicitation criteria and applicable procurement statutes and regulations, undocumented, or not reasonably based. Public Commc'ns Servs., Inc., B-400058, B-400058.3, July 18, 2008, 2009 CPD ¶ 154 at 17.

Additionally, agencies are required to evaluate proposals based solely on the factors identified in the solicitation, and must adequately document the bases for their evaluation conclusions. Intercon Assocs., Inc., B-298282, B-298282.2, Aug. 10, 2006, 2006 CPD ¶ 121 at 5. While agencies properly may apply evaluation considerations that are not expressly outlined in the RFP if those considerations are reasonably and logically encompassed within the stated evaluation criteria, there must be a clear nexus between the stated and unstated criteria. Raytheon Co., B-404998, July 25, 2011, 2011 CPD ¶ 232 at 15-16.

⁶ Exelis has raised other collateral arguments concerning the evaluation of the offerors' proposals. We have reviewed all issues raised in the protests and find that none provides a basis to sustain the protest, apart from those discussed below.

This decision is based, in part, upon testimony provided by the agency SSA, CO, contract specialist, and TEP Chair during the hearing conducted by our Office. In reviewing an agency's evaluation of offerors' proposals, we do not limit our consideration to contemporaneously-documented evidence, but instead consider all the information provided, including the parties' arguments, explanations, and any hearing testimony. Navistar Def., LLC; BAE Sys., Tactical Vehicle Sys. LP, B-401865 et al., Dec. 14, 2009, 2009 CPD ¶ 258 at 6. While we generally give little or no weight to reevaluations and judgments prepared in the heat of the adversarial process, Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions--so long as those explanations are credible and consistent with the contemporaneous record. The S.M. Stoller Corp., B-400937 et al., Mar. 25, 2009, 2009 CPD ¶ 193 at 13.

Staffing Plan Evaluation

Exelis argues that DOS's evaluation of the offerors' proposals under the staffing plan subfactor of the BEC sample task proposal factor was unreasonable because the agency ignored relevant information concerning the proposed staffing levels. Specifically, the protester contends that the agency did not consider the effects of the PAE's proposed use of local nationals (LN) on the ability of the awardee to perform the task order requirements.

As discussed below, DOS acknowledges that it was required to evaluate the offerors' proposed staffing levels, and the record shows that the agency did in fact evaluate PAE's proposed staffing levels. The record also shows, however, that the agency's evaluation considered only the overall number of full-time equivalent (FTE) staff proposed by PAE and Exelis, and unreasonably ignored several relevant facts concerning the level of proposed LN staffing that made such a comparison incomplete and misleading, and thus rendered the evaluation of this subfactor unreasonable. As further explained below, we sustain the protest on this basis.

The staffing plan subfactor required an offeror to address how its proposed staffing will meet the requirements of the BEC task order. The RFP stated as follows:

The Offeror shall adequately describe the organizational structure and number of personnel (limited to 350 contractors living within the Compound; Local Nationals will not live within the Compound, but are limited to a 40-hour work week) proposed to provide direct services under this contract. The Government will specifically evaluate the Offeror's proposed approach to recruiting, hiring and training Local Iraqi Nationals, and the extent the Offeror commits to both a short term and long term engagement of a significant number of such

employees for the purpose of performance on this contract. The Offeror is required to commit to a percentage of Local Iraqi Nationals as part of its direct hires staffing. Further, a vision of how the Offeror will incorporate local subcontractors into contract performance is required.

* * * * *

The Government will examine the quality of the overall approach described by the Offeror for personnel staffing, including the training methodology the Offeror intends to utilize to maintain and update employees understanding of work related requirements, and the training program for Local Iraqi Nationals. The Government will also evaluate the degree to which the Offeror promotes high quality performance for this contract. The staffing demonstrates that the Offeror has a comprehensive understanding of the work involved with providing OMSS at EC Baghdad.

RFP § M.10.1.2.1.

The agency explains that the limit of 350 contractors living at the BEC was meant to reflect the maximum number of American nationals (AN) and third-country nationals (TCN) who could be housed during contract performance. Tr. at 23:5-16. Because LNs were barred from living at the BEC, there was no limit on the number of LNs that could be proposed. Id. As relevant here, the RFP provided that LNs were limited to a 40-hour workweek; other provisions in the RFP explained that the expected workweek for an AN or a TCN is 60 hours. RFP §§ B.7.f; L.16.2.2.21.

DOS concluded that PAE's proposal for this subfactor merited an excellent rating. As explained above, the TEP consensus identified strengths and weaknesses for the overall BEC sample task proposal factor, and did not separately address the individual subfactors; similarly, the CO recommendation and the SSD discussed the offerors' overall strengths and weaknesses, and did not specifically address each evaluation factor. None of these three consensus documents directly or specifically discussed the level of PAE's proposed staffing, or how or whether the agency concluded that the level of proposed staffing was adequate to perform the task order requirements.

The protester primarily argues that DOS did not consider the differences in PAE's and Exelis' proposed staffing levels, and that this failure led the agency to fail to recognize that PAE had proposed a [deleted] level of staffing. In particular, the protester contends that the agency's evaluation did not reflect consideration of the differences between an LN's 40-hour workweek and an AN's or a TCN's 60-hour workweek. The protester notes that although the offerors proposed similar numbers

of FTEs for the base year--[deleted] for PAE and [deleted]for Exelis--these numbers did not reflect the amount of work to be provided.

For example, the offerors' proposed staffing for the base year was as follows:

	PAE	EXELIS
ANs	[deleted]	[deleted]
TCNs	[deleted]	[deleted]
LNs	[deleted]	[deleted]
TOTAL FTEs	[deleted]	[deleted]

AR, Tab 6, Exelis Proposal, vol. 1, attach A, at 2; Tab 21, PAE Proposal, vol. 1, § 2.0, at 36. Based on the differences between the workweeks of LNs as compared to ANs and TCNs, (making certain assumptions about the place of performance for some ANs), and PAE's proposed use of approximately [deleted] times as many LNs as compared to Exelis, the protester contends that PAE's proposed staffing would result in an estimated [deleted] fewer productive hours per week of labor as compared to Exelis' proposed staffing. Supp. Protest (Sept. 20, 2012) at 15.

The protester further notes that PAE proposed to reduce the number of overall FTEs to [deleted] in the final option year, while increasing the percentage of LNs to [deleted], or [deleted] percent of the overall staffing. See AR, Tab 21, PAE Proposal, vol. 1, § 2.0, at 36. In contrast, Exelis proposed to transition to a [deleted]-percent LN staff in the base year, and to a [deleted]-percent LN staff by the final option year. See AR, Tab 6, Exelis Proposal, vol. 1, attach A, at 15. The protester states that its proposal reflected its intent to [deleted] to account for the differences between the hours worked by LNs as compared to TCNs and ANs. Supp. Protest (Sept. 20, 2012) at 13-14, citing AR, Tab 6, Exelis Proposal, vol. 1, attach F, at 12.

DOS acknowledges that the solicitation required the agency to consider the level of staffing proposed, and how it affected an offeror's ability to perform the task order requirements. See Tr. at 153:7-19 (TEP Chair); 333:15-19, 335:21-336:3 (contract specialist). The agency argues, however, that Exelis' protest lacks merit because the RFP did not specifically state that the agency would evaluate each offerors' proposed staffing based on the number of productive hours to be provided.

While the agency is correct that the solicitation did not expressly state that offerors' proposed staffing would be evaluated based on the number of productive hours provided by the staff, the RFP did not advise offerors that it would limit the evaluation to the numbers of proposed FTEs. Instead, the RFP advised offerors that the adequacy of their proposed staffing approach would be evaluated. In this regard, the RFP stated that offerors "shall adequately describe the organizational structure and number of personnel," and that the agency would evaluate the "quality

of the overall approach” and “the degree to which the Offeror promotes high quality performance for this contract.” RFP § M.10.1.2.1.

We next identify three reasons why the record shows that the agency was aware of the differences between the offerors’ proposed use of LNs--and, consequently the number of productive hours proposed--but unreasonably ignored these concerns in a manner that rendered the evaluation unreasonable.

First, while the TEP consensus report, CO recommendation, and the SSD do not clearly explain how the agency evaluated the offerors’ proposed staffing levels, the record shows that DOS asked PAE to address the level of staffing during its oral presentation. Based on a concern raised in the TEP Chair’s evaluation scoresheet, the agency asked PAE to explain why it had proposed [deleted] overall FTEs for the base year, instead of the 350 FTE cap provided in the RFP. AR, Tab 23, Summary of PAE Oral Presentation Questions and Answers (Q&A), at 1. In response, PAE responded that it based its proposed staffing level on the “Whitestone model” and the firm’s experience with the incumbent contract.⁷ Id. Also during the oral presentations, the agency asked PAE to explain how it would account for the differences in hours as TCNs, who work 60-hour workweeks, are replaced by LNs, who work 40-hour workweeks. Id. at 3. In response, PAE stated that it believed that differences in [deleted] and [deleted] would narrow the gap between the two categories of workers.⁸ Id.

The contemporaneous record, however, does not state how the agency evaluated PAE’s responses to the agency’s questions. Instead, during the hearing, the agency witnesses explained that the questions were asked during the oral presentations, and the TEP members present did not express to the TEP Chair or the contract specialist any concern with the answers. See Tr. at 72:9-93:9, 283:12-284:8, 295:7-18. The TEP Chair and contract specialist, however, did not explain the basis for the TEP evaluators’ apparent conclusion that PAE’s responses addressed the concerns raised in the questions regarding the awardee’s proposed staffing. Thus, the record shows that the agency raised questions regarding the

⁷ As discussed below, the “Whitestone model” refers to a service provided by a commercial firm for estimation of the resources necessary to provide support for a particular building.

⁸ PAE’s response to the question also stated that its LN staff had [deleted]-hour workweeks. See AR, Tab 23, Summary of PAE Oral Presentation Questions and Answers (Q&A), at 1. In its comments on the protest, however, the intervenor states that its response was not intended to suggest that its proposed LN staff would work [deleted] hours per week. Intervenor’s Comments (Oct. 4, 2012) at 7 n.3. In any event, as discussed above, the record does not show how DOS evaluated the awardee’s responses to the oral presentation questions.

adequacy of PAE's proposed staffing, but does not explain how those concerns were allayed.

Second, the record shows that DOS's evaluation unreasonably failed to consider the impact of the different workweeks for LNs, TCNs, and ANs. The TEP Chair and contract specialist acknowledged that the evaluation ratings did not take into account the difference between the 40-hour workweek for LNs and the 60-hour workweeks for TCNs and ANs. See Tr. at 168:17-169:14 (TEP Chair); 289:15-16, 292:8-17, 294:14-295:20 (contract specialist). Instead, the TEP Chair stated that the agency was concerned with the overall number of individuals proposed, rather than the type of worker (i.e., LN, TCN, or AN) or the number of hours the individuals would work. See Tr. at 153:22-154:7; 186:20-187:17.

As discussed above, the issue regarding the differences in workweeks was raised with PAE during oral presentations, but, according to the TEP Chair and contract specialist, was not a factor in the evaluation. In contrast, the record shows that the TEP Chair's evaluation scoresheet identified a strength for Exelis' proposal under the PMO task order proposal factor because the offeror "recognized the difference in productive hours between the TCN and LN work groups." AR, Tab 8, Exelis TEP Evaluator Scoresheet (TEP Chair). The record does not explain why this issue was not considered in evaluating PAE's proposed staffing levels.

During the hearing, the agency suggested that there may not be a significant difference between an LN's 40-hour workweek and an AN's or a TCN's 60-hour workweek. The TEP Chair and specialist both recalled that PAE had indicated during the oral presentation that differences in the leave time and holiday schedules between LNs, TCNs, and ANs might minimize the difference. Both witnesses, however, acknowledged that there was no analysis performed regarding this matter as part of the evaluation of proposals prior to award. Tr. at 146:13-148:4 (TEP Chair); 289:1-290:1 (Contract Specialist).

The agency also argues that it was not required to consider the different levels of effort provided by the offerors because they were required to propose fixed prices for the contract. Specifically, DOS argues that because offerors were required to propose fixed prices for OMSS based on types of buildings, which included labor costs, there was no requirement for the agency to consider differences between the offerors in terms of the number of productive hours. In this regard, the agency references the solicitation price proposal instruction requirement that offerors identify the basis for their fixed prices; this instruction suggested the Whitestone Research Facility Operations Cost Reference as a basis for establishing the fixed prices. RFP § L.16.2.2.45. The Whitestone modeling method provides an estimate for the costs, including staffing, of managing a particular type of building. See Tr. at 60:4-19.

This argument confuses the price evaluation with the technical evaluation. As discussed above, the staffing plan subfactor stated that the agency would evaluate the offerors' proposed staffing levels, including the quality of the approach and ability to achieve "high quality performance." RFP § M.10.1.2.1. Nothing in the RFP advised offerors that their technical approach to the staffing requirements would be evaluated with regard to the Whitestone model, or that the agency would limit its consideration of the offerors' proposed staffing levels.⁹

Further, the contemporaneous record concerning the technical evaluation does not discuss the evaluation of staffing with regard to the Whitestone model, nor did the hearing testimony illuminate this issue. In this regard, the contract specialist understood that Whitestone modeling was used by PAE and the other offerors to develop their costs, but was not certain whether the modeling specifically validated the level of staffing proposed. Tr. at 381:5-382:14. As the contract specialist acknowledged, PAE did not provide the calculations or underlying data upon which the Whitestone models were based. Tr. at 380:17-381:11. In light of this record, we see no reason why the agency's evaluation of the staffing plan ignored the apparent differences between PAE's and Exelis' proposed staffing levels, as indicated by their differing levels of productive hours.

Third, the agency states that, in considering the overall level of staffing proposed, it did not consider the differences between the work proposed by LN and TCN personnel. Instead, the agency treated these personnel as equivalent for purposes of assessing the level of proposed staffing. See Tr. at 170:6-15 (TEP Chair). The record shows, however, that this assumed equivalence is unreasonable.

The TEP Chair testified that LNs generally lack the skills required to perform the work under the BEC task order due to a lack of effective schools or training in Iraq since 2003. Tr. at 26:7-21, 125:19-126:7. For this reason, offerors were required to propose a training program for LNs, and were advised that their approach to training would be evaluated under the staffing plan subfactor. RFP §§ L.16.1.3.1, M.10.1.2.1. In contrast, TCNs, who are "typically" from Romania or Kenya, are

⁹ In a related argument, DOS contends that Exelis' challenge is, effectively, one concerning the realism of PAE's proposed pricing, and should be dismissed. As the agency notes, the RFP did not provide for a price realism evaluation, and in the absence of such a solicitation provision, an agency is not required to evaluate the realism of a contract awarded on the basis of fixed prices. See Puglia Eng'g of California, Inc., B-297413 et al., Jan. 20, 2006, 2006 CPD ¶ 33 at 6. However, it is clear that Exelis' protest does not challenge price realism, but instead is a challenge to the manner in which the agency evaluated PAE's technical proposal under the criteria set forth in the solicitation.

viewed as “highly skilled” and suitable for the task order requirements. Tr. at 126:8-17.

The agency concluded that there was no basis to distinguish between LNs and TCNs because the offerors’ training programs would ensure that the LNs would be capable of replacing TCNs. Tr. at 365:1-12. In the case of PAE, however, the agency appears to have assumed the awardee’s training program involved, in the TEP Chair’s words, “a phased approach where they’re [deleted] to [deleted] percent, [deleted] percent, [deleted] percent by the end of the contract.” Tr. at 130:19-22; see also Tr. at 365:13-15 (Contract Specialist indicating that PAE’s training program was a [deleted]-year process). As discussed above, however, the record shows that PAE proposed to begin the base year with LNs comprising [deleted] percent of its staff, and increasing to [deleted] percent LN staffing by the end of the base year; that number then increases over the four option years to [deleted] percent. AR, Tab 21, PAE Proposal, vol. 1, § 2.0, at 35.

With regard to the effects of the transition from ANs to LNs proposed by PAE, the TEP Chair and contract specialist testified that they did not know or consider what positions would be staffed by the new LN hires. Tr. at 188:9-21; 367:15-21. Also, while acknowledging the concerns regarding the skill level of LNs, the contract specialist testified that he was “more concerned” if an offeror’s staffing plan showed a “massive drop” in the level of ANs proposed by an offeror, as these individuals were generally viewed as filling the supervisory roles and were responsible for activities requiring a security clearance. Tr. at 345:18-22. PAE’s proposal shows that the number of ANs proposed for base year was [deleted], and would be reduced to [deleted] by the end of the last option year. In comparison, it appears that PAE had been performing the incumbent contract with approximately [deleted] ANs. Tr. at 347:14-18.¹⁰ On this record, the agency’s apparent assumption that PAE would be “slowly ramping up” the percentage of LNs over the course of the contract does not appear reasonable.

In sum, we find that DOS’s evaluation of the offerors’ proposals under the staffing approach subfactor was unreasonable. The RFP advised offerors that their proposed staffing plan would be evaluated based on the degree to which it provided high quality performance, and the agency acknowledges that it was required to

¹⁰ The [deleted] figure for ANs currently performing on the incumbent contract was extrapolated by Exelis in the course of this protest based on the current staffing level of [deleted] FTEs, the fact that the [deleted] FTEs are either TCNs or ANs, and PAE’s statement in its proposal that it will be reducing the number of TCNs from [deleted] to [deleted] in the first year. See Tr. at 360:16-361:4, citing AR, Tab 21, PAE Proposal, vol. I, attach. A, at 19. Neither the agency nor the intervenor challenge the protester’s calculations.

evaluate the overall level of staff proposed for the task order to perform OMSS at the BEC. The record shows that the agency did evaluate the offerors' proposed staffing levels, but only to the extent that the agency considered the total number of "bodies" or individuals proposed. See Tr. at 23:12-16; 75:16-21. In light of the RFP's admonishment concerning the differing levels of hours that LNs, TCNs, and ANs were expected or permitted to work, and the requirement to evaluate the proposed staffing level, the agency could not reasonably ignore the differences in productive hours provided under the offerors' proposed staffing plans. Additionally, the agency ignored or made unreasonable assumptions concerning the effects of PAE's transition to a [deleted] on the level of staffing it would provide. For these reasons, we sustain the protest.¹¹

Finally, in a matter related to the evaluation of the offerors' proposed staffing, the record shows that PAE was assigned a strength by several evaluators for proposing [deleted] to perform the BEC task order.¹² E.g., AR, Tab 22, PAE TEP Evaluator Scoresheets (TEP Chair). Although this strength was not reflected in the TEP Consensus Report, the CO recommendation, or the SSD, the TEP Chair testified during the hearing that it was a factor in the awardee's rating of excellent for the staffing plan subfactor and the overall rating for the BEC task order proposal factor. Tr. at 161:9-162:3, 196:8-11. Exelis argues that the RFP did not state that offerors would receive favorable evaluation credit for proposing [deleted].

The hearing testimony shows that a primary concern for the agency was the reduction of the number of contractor personnel living at the BEC, based on an agency policy to transition the workforce towards what it calls the norm at other embassies of relying primarily on LN staff. Tr. at 24:5-16, 196:12-22. Additionally, the agency was concerned with reducing costs by limiting the number of TCNs and ANs who would be required to live at the BEC. Tr. at 151:8-152:4.

To the extent that the protester argues that the agency could not reasonably credit PAE with a strength for proposing [deleted], we disagree. The RFP clearly stated

¹¹ The agency's post-hearing comments attached a chart from the awardee's proposal which the agency contends reflects the basis for its proposed staffing levels. Agency Post-Hearing Comments (Oct. 12, 2012) at 10, citing AR, Tab 21, PAE Proposal, vol. I, attach A, § 1.1.5. The contemporaneous consensus evaluation documents make no mention of this chart, however, and this chart was not the subject of testimony at the hearing that was convened in part to discuss the matter of the offerors' proposed staffing.

¹² As discussed above, PAE proposed a workforce of approximately [deleted] percent LNs at the start of the base year, increasing to [deleted] percent by the end of the base year, and then increasing to [deleted] percent by the end of the final option year. AR, Tab 21, PAE Proposal, vol. 1, § 2.0, at 35.

that “[t]he Contractor is encouraged to hire local nationals to the maximum extent practicable.” RFP § H.30. The RFP further required offerors to “commit to a percentage of Local Iraqi Nationals as part of its direct hires staffing,” and advised that “[t]he Government will specifically evaluate . . . the extent the Offeror commits to both a short term and long term engagement of a significant number of [LNs] for the purpose of performance on this contract.” RFP § M.10.1.2.1.

While we find the agency’s assignment of strengths to PAE’s proposal for proposing [deleted] was within the scope of the stated evaluation criteria, this issue is an area that the agency should more explicitly address as part of its corrective action in view of our conclusion above that the agency did not reasonably consider other aspects of the staffing approach subfactor, such as quality of performance, in considering PAE’s proposed use of LNs.

Experience with DOS Contracts

Next, Exelis argues that the agency applied an unstated evaluation criterion of specific experience performing contracts with DOS, and that the use of this criterion led the agency to unreasonably assess weaknesses in the protester’s proposal. For the reasons discussed below, we agree.

Evaluation factor 1, overall approach to ID/IQ and program management, stated as follows:

The Government will evaluate the Offeror’s approach to management of the overall contract and Program Management to include cost control. The Government will examine the quality of the integrated approach described by the Offeror.

RFP § M.10.1.1. Evaluation factor 5, past performance and experience, stated as follows:

The Government will use past performance information to include the responses to the questionnaires (Section J Exhibit C) primarily to assess the capability of the Offeror (to include proposed subcontractors, key personnel, and senior management) [to] meet the solicitation performance requirements, including the relevance and currency of the work experience of the Offeror. In determining relevance, consideration will be given to the similarity of the service performed in hostile, austere, and remote locations; complexity; technology; magnitude of effort; contract scope and type; and schedule. The Government may also use this data to evaluate the credibility of the proposal submitted by the Offeror.

RFP § M.10.1.5.

The TEP consensus report assigned the following weaknesses for Exelis' proposal:

Factor 1 . . . Weaknesses: Exelis[] lacks direct contracting experience with the Department of State. This lack of experience could lead to a misunderstanding of expectations and require some government intervention to ensure the required product and services are obtained.

* * * * *

Factor 5 . . . Weaknesses: Exelis does not have direct OMSS contracting experience with the Department of State. This lack of experience could lead to a misunderstanding of expectations and require some government intervention to ensure the required product and services are obtained.

AR, Tab 13, TEP Consensus Report, at 23, 25. The CO award recommendation and SSD both cited the following weakness for Exelis' proposal:¹³

Exelis' proposed approach to BEC and other potential expansion sites show a lack of direct contracting experience with the Department of State. This lack of experience could lead to a misunderstanding of expectations and require some government intervention to ensure the required product and services are obtained. Exelis has not clearly defined an understanding of handling O&M at other locations in Iraq for future Task Orders.

AR, Tab 19, CO Award Recommendation, at 10; Tab 20, SSD, at 6.

In contrast, the agency's evaluation of PAE found that "PAE has a long history and extensive experience in working with the US government and specifically with the Department of State." AR, Tab 13, TEP Consensus Report, at 18. The agency specifically cited the awardee's experience in performing contracts for DOS, concluding that "PAE's past performance at the BEC and other DOS locations is a major strength as they have [a] detailed understanding of DOS operations and expectations." Id. at 19.

Exelis argues that the weaknesses based on a "lack of direct contracting experience" with the agency was neither set forth in the solicitation nor reasonably

¹³ As discussed above, the CO award recommendation and the SSD list strengths and weaknesses, but do not specifically identify which evaluation factors the strengths and weaknesses address.

related to the stated evaluation criteria. As noted by the protester, this weakness was cited as a basis in the CO award recommendation for making award to PAE over Exelis. AR, Tab 19, CO Award Recommendation, at 13.

DOS agrees that the solicitation did not require offerors to demonstrate specific contracting experience with the agency, or specific experience performing contracts in Iraq. See Tr. at 90:3-17 (TEP Chair); 235:21-236:2 (Contract Specialist); 403:11-17 (CO); 433:2-8 (SSA). Instead, the agency contends that, while the contemporaneous record states that the weakness was based on a lack of direct experience with DOS, the weaknesses were intended to reflect a lack of detail in the protester's proposal regarding the unique challenges of work in Iraq.

The TEP Chair testified that the weaknesses identified in the TEP consensus report under the overall approach to ID/IQ and program management and past performance evaluation factors were "inartfully worded." Tr. at 92:9-14, 100:14-18. The TEP Chair stated that the weaknesses were not intended to reflect a lack of direct contracting experience with the agency, as stated, but were instead intended to reflect a lack of understanding of the specific challenges of performing work in Iraq and the BEC, such as Iraqi border and customs requirements and the lack of access to western companies and their resources. Tr. at 87:6-89:7, 92:9-14.

The contract specialist, who drafted the CO award recommendation, testified that, upon reading the TEP consensus report, he advised the TEP Chair that the weaknesses for Exelis' proposal should not be based on a lack of contract experience with DOS. Tr. at 235:17-236:7. The contract specialist states that the TEP Chair indicated that the TEP consensus report was not meant to indicate a weakness based on a lack of direct contracting experience with DOS, but was instead intended to reflect Exelis' "generic" approach to the requirements. Tr. at 235:10-236:16, 239:12-18.

Nonetheless, the contract specialist acknowledged that the CO award recommendation and selection decision, both of which he drafted, Tr. at 211:6-13, 244:11-20, 254:2-19, state that "Exelis' proposed approach to BEC and other potential expansion sites shows a lack of direct contracting experience with the Department of State." See Tr. at 254:2-19; AR, Tab 19, CO Award Recommendation, at 10; Tab 20, SSD, at 6. Furthermore, the CO's statement, which the contract specialist and his staff drafted on behalf of the CO in response to the protest, Tr. at 256:2-18, expresses a similar view regarding the Exelis weakness, as follows:

The TEP also noted a number of weaknesses in Exelis' proposal as to Factor 1. For example, the TEP noted that Exelis' lack of experience with the DOS "could lead to a misunderstanding of expectations and require some government intervention." . . . DOS had advised offerors in the RFP that they would be evaluated, in part, based on their ability

to work with DOS.” See, e.g., Tab 2 (Solicitation), Section M.10.1.2 (advising that DOS would evaluate how offerors would approach sample task order at the embassy compound in Baghdad); Section M.10.1.2.1 (discussing evaluation of offerors’ understanding of staffing at embassy compound.)

CO Statement (Sept. 4, 2012) ¶ 26. As discussed above, however, the RFP provisions cited by the CO statement do not state that offerors would be evaluated on their ability to work with the agency.

Moreover, the CO and SSA provided other testimony at the hearing, which confirmed that the lack of experience with DOS was considered a weakness for Exelis, based on the agency’s view that the agency has unique requirements that would not be satisfied by an offeror who had not performed contracts with the agency. The CO stated that such experience was not a pass/fail requirement, but was instead something that added value to a proposal.¹⁴ Tr. at 403:11-17. With regard to the importance of experience working with DOS, the CO stated as follows:

For the time being, we are currently only at the Embassy compound in Iraq. And the goal is to have the same level of operations and maintenance at the compound be extended throughout the country. So it requires a company to have knowledge of how the State Department works, how the State Department operates, in order to make that happen in a timely fashion.

* * * * *

We have--we, the State Department, has nuances that are completely different than working with any other agency. Like, for instance, DOD, we don’t even come close to how they operate. They are very--more detailed, they have a whole--they are--it’s like night and day, how we do things and how they do things. We have--we have a certain way of how you deal with embassy personnel that you have to have an appreciation for. You know, how you address and treat an ambassador and the [deputy chief of mission], which are the number one and two folks at any embassy around the world. But Iraq is an animal that is--if I may use the term--that is completely different than any other embassy in the world. It’s the largest embassy in the world. It’s got nuances in that you are not only dealing with other State

¹⁴ As relevant here, the CO testified that he was unaware that the CO award recommendation and the SSD assessed a weakness to Exelis’ proposal based on lack of direct experience with DOS. Tr. at 403:21-404:11.

people, you are dealing with a whole bunch of different agencies, you are dealing with DOD personnel, you are dealing with, you know, different avenues.

Tr. at 401:10-16, 402:6-403:3.

Consistent with these views, the SSA testified at the hearing that Exelis' proposal did not reflect an understanding of how to do business with DOS:

But they really did not understand how the Department conducted business. They did not understand--or did not appear to understand in the proposal how an embassy operated. We operate completely different than many other agencies, especially DOD.

Tr. at 434:8-14.¹⁵

As indicated above, agencies properly may apply evaluation considerations that are not expressly outlined in the RFP, but they are only permitted to do so if those considerations are reasonably and logically encompassed within the stated evaluation criteria, there must be a clear nexus between the stated and unstated criteria. Raytheon Co., B-404998, July 25, 2011, 2011 CPD ¶ 232 at 15-16. The RFP did not contain a requirement for an offeror to demonstrate "direct contracting experience with the Department of State," AR, Tab 20, SSD at 6, or the "ability to work with DOS."¹⁶ CO Statement (Sept. 4, 2012) ¶ 23. Moreover, the descriptions (quoted above) of evaluation factor 1, overall approach to ID/IQ and program management, and factor 5, past performance and experience, in no way suggest that "direct contracting experience with DOS" or the "ability to work with DOS" were matters reasonably related to or encompassed by these factors. While the

¹⁵ In addition, both the CO and the SSA stated that they would have expected a contractor that did not have prior contracting experience with DOS to hire a consultant or other individuals to help them understand how to do business with DOS. Tr. at 406:18-407:11 (CO); 433:18-21, 438:4-11 (SSA).

¹⁶ With regard to DOS's contention that--notwithstanding the contemporaneous record indicating its concern about Exelis' lack of experience with DOS--the evaluations were meant to reflect Exelis' lack of experience in Iraq, the RFP did not state that offerors would be evaluated based on their experience performing contracts in Iraq. Rather, the past performance factor stated that the relevance of an offeror's past performance would be evaluated based on the "similarity of the service performed in hostile, austere, and remote locations." RFP § M.10.1.5. As the agency acknowledged, Exelis' experience performing OMSS contracts in Afghanistan demonstrated relevant experience. Tr. at 174:2-9, 184:16-186:6.

solicitation required offerors to provide OMSS services at DOS facilities, the evaluation criteria did not inform offerors of the concerns reflected in the record and agency witness testimony. Specifically, it was not clear from the solicitation that the agency was seeking and would give more credit for experience of the type that DOS found desirable here, that is, general DOS practices or the ways in which DOS differs from other agencies. On this record, we conclude that the agency's evaluation of Exelis' proposal was not reasonably related to the solicitation's evaluation scheme, and sustain the protest on this basis.¹⁷

Unequal Evaluation

Next, Exelis argues that DOS's evaluation failed to identify strengths based on unreasonable evaluations or unequal treatment as compared to PAE. The protester raises numerous examples, certain of which were not specifically pursued in its comments on the agency report, and others of which we conclude lack merit. Discussed below are areas where we agree that the agency has not provided a reasonable explanation of the record for unequal evaluation of PAE's and Exelis' proposals.

For evaluation factor 1, Exelis argues that DOS identified strengths for PAE's proposal, but failed to recognize that the protester had proposed a similar strength. The strength assigned for the awardee's proposal was as follows:

PAE has approximately 6,200 personnel supporting O&M services around the world, including: facilities management, electrical/power distribution, water treatment, water treatment, [heating, ventilation & airconditioning] HVAC, fire suppression, security access control, carpentry, billeting, construction, warehousing, vehicle maintenance, janitorial, pest control, landscaping services, and [information technology] IT network and telecommunications support. PAE has aligned key partners with in-place supply chain capabilities and local labor serving all DoS Iraq locations.

AR, Tab 13, TEP Consensus Report, at 15. This strength was also cited as one of the discriminators in favor of award in the tradeoff between PAE's and Exelis'

¹⁷ DOS argued that "direct contracting experience" with the agency or in Iraq was not viewed as a requirement under the solicitation, because, had it been applied as a requirement, Exelis' proposal would have been rejected as unacceptable. The agency misunderstands the issue raised by the protester: the record does not show that the agency treated direct contracting experience as a pass/fail requirement, but instead applied it in a manner that was not consistent with the solicitation in assessing a weakness for Exelis' proposal.

proposal in the CO award recommendation. AR, Tab 19, CO Award Recommendation, at 14.

Exelis argues that its proposal should have merited a similar strength, as its proposal demonstrated a similar, if not greater level of experience and capabilities as compared to PAE. In this regard, the TEP Chair's evaluation scoresheet noted the following strength for Exelis' proposal:

Exelis is an experienced Operations and Maintenance (O&M) contractor, currently managing more than 13,000 employees in the region. Exelis uses a multi-level training approach that appears to be an effective program. Exelis' proposal supports the BEC OMSS contract with fully trained, certified, qualified, experienced personnel.

AR, Tab 8, Exelis TEP Evaluator Scoresheets (TEP Chair). Notwithstanding this finding, the agency did not identify a strength for Exelis' proposal in the TEP consensus report, the CO award recommendation, or the SSD.

The record and the agency's response to the protest do not explain why a strength was credited to PAE for this aspect of its proposal but not for Exelis. Instead, the agency argues that the basis for PAE's higher rating was unrelated to the unequal treatment cited by the protester, and that the protester's arguments express no more than disagreement with the agency's judgment. AR at 22. As discussed above, however, the disputed strength was cited in the CO award recommendation as a discriminator between the offerors' proposals.

For evaluation factor 2, Exelis argues that DOS found a strength for PAE's proposal because it demonstrated experience in 30 areas of the SOW. AR, Tab 13, TEP Consensus Report, at 16-17. The protester states that the agency identified a strength for Exelis' proposal based on the same list, but included only 15 of the 30 areas of SOW. See id. at 23-24. The protester contends that its proposal demonstrated experience in the same areas as PAE, but did not receive equal credit. See Supp. Protest (Sept. 7, 2012) at 6-8, citing AR, Tab 6, Exelis Proposal, vol. I, Tab 2.3; Supp. Protest (Sept. 20, 2012), at 29-32. The protester also argues that the agency unreasonably failed to assign a strength or otherwise recognize the value of its proposed personnel, citing as an example its operations manager, who, the protester contends, demonstrated qualifications and experience that exceed the RFP requirements. See Protest (Aug. 2, 2012) at 33, citing AR, Tab 6, Exelis Proposal, vol. I, Tab 2.1, at 1X. Here again, the agency did not directly respond to the protester's arguments.

Because the agency does not meaningfully respond to the protester's arguments above, we find no basis to conclude that the evaluation here was reasonable. Where, as here, the agency has assessed strengths for the awardee's proposal--particularly those that were cited as discriminators between the proposals in the

award recommendation--and has not provided a meaningful explanation as to why it did not assign similar strengths to the protester's proposal, we conclude that the evaluation was unreasonable.¹⁸ See TriCenturion, Inc.; SafeGuard Services, LLC, B-406032 et al., Jan. 25, 2012, 2012 CPD ¶ 52 at 17. In sum, we sustain the protests concerning unequal evaluation to the extent discussed herein.

PAE's Past Performance

Next, Exelis argues that DOS's evaluation of PAE's past performance was unreasonable because the agency did not consider three reports by the DOS Inspector General (IG) concerning the awardee's performance in Afghanistan and Iraq. We find no merit to this argument.

The first two reports concern PAE's performance of contracts in Afghanistan. A December 2010 DOS IG report concerning PAE's performance of an OMSS contract at the U.S. Embassy in Kabul identified concerns regarding PAE's provision of required escorts, subcontractor management, and cost accounting issues. See DOS IG Report No. MERO-I-11-05 (Dec. 2010) at 1-2. A February 2011 DOS IG report concerning PAE's performance of an OMSS contract for the

¹⁸ DOS also argues that, notwithstanding these issues, there was no prejudice to Exelis for two reasons. First, as discussed above, the TEP consensus report, CO award recommendation, and SSD all incorrectly listed the protester as having received an excellent rating for evaluation factor 2, rather than the satisfactory rating intended by the agency evaluators, and the award decision was based on an understanding that the protester had received an excellent rating. AR at 30-31; CO Statement (Sept. 4, 2012) ¶ 63. Our Office has consistently held that evaluation ratings are merely guides to assist agencies in evaluating proposals, and evaluators and selection officials should reasonably consider the underlying bases for ratings, including the advantages and disadvantages associated with the specific content of competing proposals. Pemco Aeroplex, Inc., B-310372, Dec. 27, 2007, 2008 CPD ¶ 2 at 6. Here, if the selection decision meaningfully considered the underlying strengths and weaknesses of the offerors' proposals, then Exelis was prejudiced because those strengths and weaknesses could change based on a reevaluation. Second, the agency argues that other weaknesses documented in the TEP consensus report would have precluded a higher rating for the protester. See CO Statement (Sept. 4, 2012) ¶¶ 64-67; Supp. CO Statement (Sept. 21, 2012) ¶¶ 11-15. As discussed above, however, the unequal treatment could have affected the strengths assessed to Exelis' proposal. The agency would therefore be required to consider whether additional strengths would improve the protester's chances for award. DOS' argument that it would have made the same evaluation judgments, notwithstanding the alleged unequal treatment, provides no basis to conclude that Exelis was not prejudiced. See Boeing Sikorsky Aircraft Support, supra, at 15.

Bureau of International Narcotics and Law Enforcement Affairs' Counternarcotics compounds identified concerns regarding subcontractor management, substantiation of costs, and security issues. See DOS IG Report No. MERO-I-11-02 (Feb. 2011) at 1. The agency states that the SSA, CO, and all other agency evaluators were not aware of the IG reports at the time of award. CO Statement (Sept. 4, 2012) ¶ 85; Tr. at 114:11-18 (TEP Chair); 307:10-21 (contract specialist); 408:4-12 (CO); 445:8-446:3 (SSA).

Despite the lack of actual knowledge, the protester argues that the DOS officials responsible for the procurement here should have been aware of these reports, and should have considered them in the evaluation of PAE's past performance.

While agencies generally need not evaluate all past performance references, or those not reflected in the proposals, our Office has recognized that in certain limited circumstances an agency evaluating an offeror's past performance has an obligation (as opposed to the discretion) to consider information that is "simply too close at hand to require offerors to shoulder the inequities that spring from an agency's failure to obtain, and consider, the information." International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. Our Office has generally limited application of this principle to situations where the alleged "close at hand" information relates to contracts for the same services with the same procuring activity, or information personally known to the evaluators. TRW, Inc., B-282162, B-282162.2, June 9, 1999, 99-2 CPD ¶ 12 at 5.

Here, the record shows that the evaluators, CO, and SSA were unaware of the DOS IG reports concerning PAE's contract performance in Afghanistan, and that different agency contracting personnel were responsible for the Afghanistan contract. CO Statement (Sept. 4, 2012) ¶ 85; see Tr. at 445:8-446:3. Under these circumstances--where the procurement officials are unaware of an IG report issued by the same agency--our Office has held that the report does not constitute information "too close at hand" to ignore. Compare Carthage Area Hospital, Inc., B 402345, Mar. 16, 2010, 2010 CPD ¶ 90 at 8 (VA IG report was not too close at hand where VA officials responsible for the challenged procurement were unaware of the report) with Contrack Int'l, Inc., B-401871.5 et al., May 24, 2010, 2010 CPD ¶ 126 at 7 (protest sustained where Army was aware of relevant Department of Defense inspector general report, but failed to evaluate that report as part of its past performance evaluation). For these reasons, we find no merit to the protester's arguments regarding the agency's failure to consider the DOS IG reports for PAE's performance in Afghanistan.

The third DOD IG report identified by Exelis was issued on August 30, 2012, and concerns PAE's performance of the incumbent OMSS contract for the BEC. The protester contends that this report stated that the CO's representative (COR) approved invoices for unallowable and unsupported costs in three areas: (1) \$2.7 million for unallowable transportation costs; (2) \$1.7 million for

unsupportable reimbursable costs; and (3) \$34,000 for goods not delivered. See DOS IG Report No. AUD-MERO-12-43 (Aug. 2012) at 2-3.

The CO states that he and the SSA became aware of the DOS IG's investigation sometime between July 9 and July 11, 2012--which was after the TEP had presented its consensus findings. Supp. CO Statement (Sept. 21, 2012) ¶ 51; Tr. at 408:16-20. The CO and SSA state that they did not relate to the evaluators information regarding the investigation for further consideration, and did not revise PAE's past performance rating. See Tr. at 411:8-13. The CO and SSA also testified that the IG report provided no basis to revisit the TEP's ratings for PAE under the past performance factor because the report had not been issued as of the July 20 award date, and because the CO and SSA disagreed with the IG's preliminary findings concerning PAE's performance. In this regard, the CO states that the findings "required follow-on discussions between my office and the Office of the Inspector General" and were therefore not final for purposes of determining whether the costs were in fact "unallowable and unsupported." Supp. CO Statement (Sept. 21, 2012) ¶¶ 51-52; see also Tr. at 410:13-411:7. Additionally, the CO states that he viewed the magnitude of the disputed costs to be "within the range of allowable unsupported costs for a contract of this size and complexity." Supp. CO Statement (Sept. 21, 2012) ¶ 52.

The evaluation of past performance is a matter of agency discretion, and we will review the evaluation only to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable statutes and regulations. Guam Shipyard, B-311321, B-311321.2, June 9, 2008, 2008 CPD ¶ 124 at 3. A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. The McConnell Group, Inc., B-405377, Oct. 21, 2011, 2011 CPD ¶ 225 at 4. Here, the record shows that the agency considered the available information concerning the DOS IG's report concerning PAE's performance of the incumbent contract, and reasonably concluded that it did not warrant reconsideration of the awardee's past performance rating. For these reasons, we find no merit to the protester's argument.

CONCLUSION AND RECOMMENDATION

For the reasons discussed above, we conclude that DOS's evaluation of the offerors' proposals was unreasonable under the staffing plan subfactor; the evaluation was inconsistent with the terms of the solicitation with regard to the evaluation of Exelis' contracting experience with the agency; and the record does not demonstrate that the agency treated the offerors equally in the evaluation of their technical proposals.

If the solicitation reflects the agency's actual needs, we recommend that the agency reevaluate the offerors' proposals in a manner consistent with the solicitation that

addresses the bases on which we sustained the protest, conduct discussions if necessary, and make a new award decision. On the other hand, because the record indicates that DOS's evaluation may have been based on concerns or criteria that were not reflected in the solicitation, the agency may want to reconsider its requirements, amend the RFP to reflect the agency's actual needs, obtain and evaluate revised proposals, and make a new award decision. We further recommend that Exelis be reimbursed the costs of filing and pursuing its protest, including reasonable attorney's fees. 4 C.F.R. § 21.8(d)(1) (2012). The protester should submit its certified claim for costs, detailing the time expended and cost incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
General Counsel