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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: DM Petroleum Operations Company

File: B-409004, B-409004.5

Date: January 15, 2014

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DIGEST

1. Agency reasonably evaluated protester's proposed management approach as reflecting a weakness based on the lack of detail regarding how and when cost reductions would occur.

2. Agency reasonably evaluated protester's proposed management approach as reflecting a weakness with regard to long-term advantages where the proposal did not clearly explain what the protester was offering to do.

3. Agency reasonably evaluated protester's proposed management approach as reflecting a weakness based on misstatements in the proposal regarding the respective responsibilities of the contractor and the agency.

4. Agency reasonably evaluated both protester's and awardee's proposals as good with regard to past performance.

DECISION

DM Petroleum Operations Company, of Kenner, Louisiana, protests the Department of Energy's (DOE) award of a contract to Fluor Federal Petroleum Operations, LLC, of Greenville, South Carolina, pursuant to request for proposals (RFP) No. DE-SOL-0003490 to provide management and operating (M&O) services for DOE's strategic petroleum reserve (SPR).[1] DM protests that the agency misevaluated DM's and Fluor's proposals under various evaluation factors and unreasonably selected Fluor's proposal for award.

We deny the protest.

BACKGROUND

In February 2012, the agency issued the subject solicitation, seeking proposals to perform M&O services for the SPR. AR, Tab A-13, RFP.[2] Pursuant to the solicitation, the contractor will be responsible for operations,[3] maintenance,[4] major maintenance,[5] utility operations,[6] environmental management,[7] security,[8] and

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[1] The SPR is a large crude oil stockpile that was mandated by the Energy Policy Conservation Act of 1975; it consists of four underground storage sites in Louisiana and Texas, a project management office in New Orleans, and a warehouse in Mississippi. Agency Report (AR), Tab A-13, RFP, at 10-11; Tab F-1, Source Selection Decision (SSD), at 1. The mission of the SPR is to store crude oil to reduce the adverse economic impact of a major supply interruption to the United States and to fulfill obligations of the United States under the international energy program. SSD at 1. Since 1985, the SPR has operated under a series of M&O contracts. SSD at 1. DM is currently the incumbent contractor.

[2] Separate page numbers for each of the attachments/tabs provided with the agency report were generated by the agency. This decision's citation to specific pages within the attachments/tabs refer to those agency-generated page numbers.

[3] Under the heading "Operations," the solicitation's performance work statement (PWS) provided that the contractor will "[p]erform management, planning, oversight, documentation, training, operational functions, energy management and crude oil activities associated with the operation of the SPR sites/facilities." RFP at 13.

[4] Under the heading "Maintenance," the PWS provided that the contractor will "[m]anage and perform preventive, corrective, predictive, and general maintenance on Government-owned equipment and facilities, including caverns, and wells." Id. at 15.

[5] Under the heading "Major Maintenance," the PWS provided that the contractor will "[d]evelop long-term plans and, as assigned, perform major maintenance projects and related construction management involving engineering, procurement, construction, fabrication, installation, and testing. . . ." Id.

[6] Under the heading "Utility Operations," the PWS provided that the contractor will "manage electric power usage and other SPR utilities programs tied to drawdown/fill readiness for ensuring their cost effectiveness. . . ." Id. at 15-16.

technical support/management.[9] RFP at 13-21. The solicitation contemplated award of a cost-plus-award-fee contract for a 5-year base period and a 5-year option period, provided for award on a best value basis, and established the following evaluation factors: management approach, key personnel, organizational structure, past performance, relevant experience, transition approach, and cost/price.[10] Id. at 232-33.

With regard to the most important evaluation factor, management approach, section L of the solicitation provided:

> The Offeror shall describe its proposed approach to managing and operating activities at the [SPR]. The Offeror shall demonstrate the depth, quality, effectiveness, and completeness of the Offeror's proposed approach to performing work described in the PWS, including implementing a contractor assurance system that identifies and corrects deficiencies; developing budgets and establishing cost

(...continued)
[7] Under the heading "Environmental," the PWS provided that the contractor will "[d]evelop, implement, and maintain a comprehensive Environmental Management System, which shall include all activities necessary to ensure that SPR operations do not adversely impact the environment. . . ." Id. at 16.

[8] Under the heading "Security," the PWS provided that the contractor will "develop, implement, and maintain a Security Program to protect personnel, Government property, and classified information from theft, sabotage, espionage, or other acts. . . ." Id.

[9] Under the heading "Technical Support and Management," the solicitation identified various specific activities the contractor will be required to perform in connection with engineering, quality assurance, project management, information systems and knowledge management, financial management, procurement/contracts, property management, human resource management, safety and health, fire protection and emergency management, and internal audit. Id. at 17-21.

[10] The solicitation provided that the non-cost/price factors were significantly more important than cost/price. With regard to the non-cost/price factors, the solicitation provided that management approach was the most important; followed in importance by key personnel; followed by organizational structure and past performance, which were equally important; followed by relevant experience and transition approach, which were also equally important. RFP at 233. With regard to cost/price, the solicitation provided that an offeror's evaluated cost/price would reflect its key personnel costs, transition costs, and proposed fee, and that each offeror's cost/price would be evaluated for reasonableness, realism, and completeness. Id. at 237.

controls; achieving safe and environmentally responsible performance of work; assuring the operational readiness of the storage sites/facilities; managing a large workforce; ensuring the integrity, including optimal storage capacity, of the crude oil storage caverns; and identifying specific actions to reduce contract cost.

RFP at 187.

In June 2012, proposals were submitted by five offerors, including DM and Fluor.[11] Thereafter, each offeror participated in oral presentations, responding to various questions and addressing a sample problem posed by the agency. The agency's source evaluation board (SEB) evaluated the offerors' proposals, presentations, and responses as follows:[12]

Evaluation Factor	**DM**	**Fluor**
Management Approach	Satisfactory	Good
Key Personnel	Outstanding	Outstanding
Organizational Structure	Good	Good
Past Performance	Good	Good
Relevant Experience	Outstanding	Good
Transition Approach	Outstanding	Satisfactory
Evaluated Cost/Price	$96,660,755	$98,056,245

SEB Report at 10, 16.

In evaluating DM's proposal as satisfactory under the most important evaluation factor, management approach, the agency identified various strengths, but also identified the following weaknesses: (1) lack of detail regarding proposed cost reductions; (2) lack of detail regarding long-term advantages; and (3) misstatements regarding the M&O contractor's role in drawdown sales. SEB Report at 39-44.

[11] DM consists of two "parent" companies: Jacobs Technology, Inc. and International Matex Tank Terminals. SSD at 4. Fluor consists of one "parent" company--Fluor Federal Services, Inc.--and three major subcontractors: MRIGlobal, Booz Allen Hamilton, and ASRC Petroleum Operations and Maintenance (APOM). Id. This decision does not discuss the other offerors or their proposals.

[12] In evaluating proposals under the non-cost/price evaluation factors, the agency identified strengths, weaknesses, deficiencies, and favorability of relevant past performance for each proposal and assigned ratings of outstanding, good, satisfactory, marginal, and/or unsatisfactory (as well as neutral for past performance). AR, Tab E-1, SEB Report at 28-32.

In evaluating DM's proposal as good under the past performance evaluation factor, the SEB noted multiple favorable past performance references, and one unfavorable reference. With regard to the unfavorable reference, the SEB stated:

> In 2011, DM experienced a fatality in connection with grass cutting at one of the SPR sites and a DOE Type A investigation was performed. This investigation presented two Root Causes consisting of (1) failure to follow supervisor's direction and (2) organizational stop work policy and its implementation did not address less than imminent danger situations. . . .

SEB Report at 57-58.

In March 2013, the SEB presented its report to the agency's source selection official (SSO). Thereafter, the SSO conducted an assessment of the proposals and concluded that Fluor's proposal offered the best value to the government stating, among other things, that:

> Fluor's proposal is superior under the Management Approach criterion to that of DM. As discussed above . . . Fluor was rated "Good" and DM was rated "Satisfactory". . . .
>
> The specific advantages of Fluor's management approach proposal that make it superior to that of DM's and worth the slight price differential of $2,398,490 are . . . [redacted]. The [SPR] is a national asset and the strategic path forward is important to the Government. The [SPR] is currently configured to meet vulnerabilities that the United States faced in the 1970s and 1980s. [redacted].
>
> Further, advantages that align with the recognition of and planning for future issues that will be faced by the [SPR] was Fluor's proposed approach . . . [redacted]. The importance of the above is that Fluor recognizes an opportunity for improvement and provided a proposed effective forward looking approach for cavern or geotechnical issues being faced by the [SPR]. [redacted].
>
> I recognize that DM is superior under Relevant Experience and Transition Approach, and it offers advantages that Fluor's proposal does not under these two criteria.[[13]] I also recognize that Relevant Experience and Transition Approach are the least important criterion. . . . I further recognize that . . . DM's evaluated price is lower than Fluor's evaluated price. However, I find Fluor's proposal is

[13] As noted above, DM is the incumbent contractor.

> technically superior overall to DM's proposal, due primarily to the advantages, as set forth above, of Fluor's proposed Management Approach (the most important criterion) as compared to DM's Management Approach, and warrants the slight price premium of $2,395,490.

SSD at 25-28.

On September 18, DM was notified that Fluor's proposal had been selected for award. This protest followed.

DISCUSSION

DM protests various aspects of the agency's evaluation and source selection decision, primarily complaining that the agency rated its proposal only satisfactory under the management approach evaluation factor, and only good under the past performance factor. As discussed below, we find no merit in DM's complaints.[14]

Management Approach

As noted above, the agency found weaknesses in DM's proposal in that it: lacked detail regarding cost reductions; lacked detail regarding long-term advantages; and misstated the contractor's role regarding drawdown sales. DM asserts that each of these evaluated weaknesses was unreasonable and/or contrary to the terms of the solicitation. We disagree.

A. Cost Reductions

In assessing the first weakness in DM's proposed management approach, the agency noted that DM had listed various cost saving activities, but stated:

> DM's discussion of how it will achieve cost reductions lacks depth and completeness. "Potential cost savings initiatives" are identified, but there is a lack of detail on how and when cost reductions would occur.

[14] In its various protest submissions, DM has raised arguments that are variations of, or additions to, the arguments discussed below, including complaints that DM's proposal should have received evaluated strengths with regard to its organizational structure; that the agency's evaluation of DM's transition approach was improper; that the agency's evaluation of proposals was unequal; that assignment of a strength to Fluor's proposed [redacted] approach was improper; and that the agency's evaluation of Fluor's cost/price was improper. We have considered all of DM's allegations and find no basis to sustain its protest.

> The information provided was insufficient for the SEB to conclude that the offeror's approach to achieving cost reductions would be effective.

SEB Report at 37.

The agency concluded that DM's failure to provide sufficient details regarding how it would actually achieve the identified cost reductions constituted a weakness that "increase[d] the risk of unsuccessful contract performance." Id.

In challenging the agency's determination that DM's proposal lacked detail with regard to cost reductions, DM maintains that the agency applied an unstated evaluation factor, asserting that the solicitation "only require[d] offerors to identify specific actions to reduce contract costs," and "d[id] not require offerors to provide in-depth substantiation regarding cost reduction initiatives." Protest, Sept. 30, 2013, at 12 (underlining in original). The record is to the contrary.

It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which demonstrates its clear understanding of, and compliance with, the solicitation requirements. See, e.g., United Contracting, LLC, B-408279, June 25, 2013, 2013 CPD ¶ 150 at 3; International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7. The offeror runs the risk that a procuring agency will evaluate its proposal unfavorably where it fails to do so. International Med. Corps, supra.

Here, as noted above, section L of the solicitation provided the following direction to offerors regarding their proposed management approach:

> The Offeror shall describe its proposed approach to managing and operating activities at the Strategic Petroleum Reserve. The Offeror shall demonstrate the depth, quality, effectiveness, and completeness of the Offeror's proposal approach to performing work described in the PWS, including . . . developing budgets and establishing cost controls; . . . and identifying specific actions to reduce contract cost.[[15]]

RFP at 187 (underlining added).

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[15] In advising offerors as to the scope of evaluation under the management approach evaluation factor, section M of the solicitation contained virtually identical language, stating: "DOE will evaluate the depth, quality, effectiveness, and completeness of the Offeror's approach to performing work described in the PWS, including . . . developing budgets and establishing cost controls . . . and identifying specific actions to reduce contract cost." RFP at 234.

Accordingly, DM's assertion that the solicitation "only require[d] offerors to identify specific [cost reduction] actions" ignores the provisions of the solicitation that expressly advised offerors that their proposals must demonstrate, and that the agency would evaluate, the "depth, quality, effectiveness and completeness" of various aspects of each offeror's proposed management approach, including the offeror-identified "actions to reduce contract cost" and "establishing cost controls." DM's protest challenging the agency's assignment of a weakness in this regard is without merit.[16]

B. Long-Term Advantages

In assessing the second weakness in DM's proposed management approach, the agency noted that, "notwithstanding" a significant strength DM's proposal received for "offer[ing] . . . near-term benefit[s]," DM's proposal was "much less clear on the longer term advantages being offered by its approach for future enhancements and improvements in contract performance." SEB Report at 33, 37-38. Noting that "[m]ost of the [long-term] ideas [DM] mentioned relate to information technology," the agency stated, "[t]here is a lack of detail in the concepts presented," adding, "[i]t is not clear as to what exactly the M&O contractor will do, when and how it will be done, expected outcomes, practical issues or problems to overcome, and cost to implement." Id. at 38. Accordingly, the agency assessed a weakness with regard to the long-term benefits reflected in DM's proposal, concluding that this weakness "increase[s] the risk of unsuccessful contract performance." Id.

DM, again, protests that the agency's evaluation reflects the application of an unstated evaluation factor. Specifically, DM asserts that "the Solicitation does not require offerors to address long-term advantages associated with their respective Management Approaches." Protest, Sept. 30, 2013, at 16 (underlining in original). DM asserts that, although its proposal, in fact, "highlighted" various aspects of DM's long-term approach, those aspects of its proposal were merely "enhancements." Id. Accordingly, DM maintains that the agency's assignment of a weakness regarding

[16] DM's protest makes various other assertions challenging the agency's evaluation of this weakness, including arguments that its proposal did, in fact, contain sufficient detail and that the agency's evaluation of other strengths regarding DM's proposed management approach was inconsistent with--and precluded--the agency's assignment of weaknesses. We have considered all of DM's arguments and find no merit in them. For example, with regard to the level of detail, DM listed its cost saving initiatives on a single page of its proposal and, in many instances, stating generally that it would "review" and/or "perform analysis" of various activities. AR, Tab C-1, DM Technical Proposal at 75. We also reject DM's assertion that the agency's recognition of various strengths regarding DM's proposed management approach precluded the reasonable identification of the specific weakness discussed above.

the lack of detail in this portion of DM's proposal was improper and was "entirely unrelated to any evaluation criterion." Id.

A solicitation must inform offerors of the basis for proposal evaluation by stating all significant evaluation factors and their relative importance. Federal Acquisition Regulation (FAR) § 15.605(d)(1); Israel Aircraft Indus., Ltd, MATA Helicopters Div., B-274389 et al., Dec. 6, 1996, 97-1 CPD ¶ 41 at 6-7. However, a solicitation need not identify each element to be considered by the agency during the course of the evaluation where such elements are intrinsic to, or reasonably subsumed within, the stated evaluation factors. AT&T Gov't Solutions, Inc., B-406926 et al., Oct. 2, 2012, 2013 CPD ¶ 88 at 7; Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 6, 15.

Here, as noted above, the solicitation expressly advised offerors that their proposals "shall demonstrate the depth, quality, effectiveness, and completeness of the Offeror's proposed approach to performing work described in the PWS." RFP at 187. Additionally, the solicitation's PWS advised offerors: "it is the Contractor's responsibility to develop and implement innovative approaches and adopt practices that foster continuous improvement in accomplishing the mission of the SPR." RFP at 10. Clearly, these solicitation requirements regarding "depth," "completeness," and "continuous improvement" are applicable throughout the life of the contract. Accordingly, the agency's specific consideration of the long-term advantages proposed are intrinsic to, and subsumed within, these solicitation provisions. DM's assertions that the solicitation did not contemplate submission of long-term advantages, and that the agency's consideration of such was "entirely unrelated to any evaluation criterion," are without merit.[17]

C. Misstatement of Contractor's Role

Finally, in assessing the third weakness in DM's proposed management approach, the agency found that the proposal included various misstatements regarding the role of the M&O contractor in connection with drawdown sales.[18] Specifically, the agency concluded that DM's proposal represented that it has in the past, and

[17] DM also challenges the SEB's favorable consideration of, and the SSO's reliance on, the long-term advantages reflected in Fluor's proposed management approach. Our conclusion that the agency reasonably considered long-term advantages in evaluating DM's proposal is equally applicable to the agency's consideration of, and reliance on, the strengths in Fluor's proposal regarding long-term advantages.

[18] A drawdown of oil reserves occurs upon authorization of the President in accordance with the Energy Policy and Conservation Act, which requires competitive sale(s). AR, Tab H-2, Declaration of DOE Assistant Project Manager, at ¶ 4.

intends in the future, to perform various actions that the agency states "are performed by DOE, not the M&O contractor." SEB Report at 38. For example, the agency noted that DM's proposal stated that, as the continuing M&O contractor, DM would "evaluate the offers to purchase oil," "develop the SPR Response Plan," "deliver the oil and issue invoices," and "establish[] a [sale] price through use of the tabletop exercise we designed." AR, Tab C-1, DM Technical Proposal, at 35, 37, 46. The agency criticized DM's proposal as misstating the role of the M&O contractor and failing to recognize that DOE, not the contractor, performs each of these actions, concluding that DM's misstatements "are flaws that increase the risk of unsuccessful contract performance." SEB Report at 38.

DM asserts that, in each instance, the agency misread DM's proposal. With regard to the statement that DM would "evaluate the offers to purchase oil," DM asserts that its proposal meant it would "work in concert" with DOE to evaluate the offers. Protest at 18. With regard to the statement that DM would "develop the SPR Response Plan," DM asserts that this statement should have been viewed as meaning that DM and DOE would "work together" to develop the SPR response plan. Id. With regard to DM's statement that it "issues invoices" for delivered oil, DM maintains that other portions of its proposal reflect DM's recognition that DOE is responsible for issuing the invoices. Id. at 19. Finally, with regard to the statement that it "establishes a price" for the sale of crude oil, DM asserts that this should have been interpreted to mean that DM would "establish a price recommendation." Id. Based on these assertions, DM protests that the agency's evaluation of a weakness in its proposal was "not consistent with the actual content of DM Petroleum's proposal." Id. at 17.

The evaluation of proposals is generally a matter within the agency's discretion, and such evaluation properly reflects the reasoned and reasonable judgment of the procuring agency officials. J5 Sys., Inc., B-406800, Aug. 31, 2012, 2012 CPD ¶ 252 at 6; Naiad Inflatables of Newport, B-405221, Sept. 19, 2011, 2012 CPD ¶ 37 at 6. As noted above, it is the offeror's responsibility to submit a proposal which demonstrates its clear understanding of the solicitation requirements, and the offeror runs the risk that the procuring agency will evaluate its proposal unfavorably where it fails to do so. International Med. Corps, supra. A protester's mere disagreement with an agency's judgment in evaluating proposals is insufficient to establish that the agency acted unreasonably. See Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

Here, we find nothing unreasonable in the agency's evaluation of DM's proposal with regard to the statements addressing the respective responsibilities of the M&O contractor and the agency. In challenging the agency's evaluation, DM's own protest submissions provide clarifying language that DM could have, but did not, include within its proposal. On this record, DM's protest challenging the assignment of a weakness for misstatements in DM's proposal is without merit.

Past Performance

Next, DM challenges the agency's evaluation of DM's proposal under the past performance factor, first complaining that, in assigning a rating of good, rather than outstanding, the agency "failed to properly account" for DM's "tremendous incumbent advantage." Protest, Sept. 30, 2013, at 23. DM also asserts that, in rating its proposal good, rather than outstanding, the agency improperly considered the unfavorable "grass cutting" incident discussed above. In this regard, DM asserts that, although the incident was "tragic and unfortunate," it was a "freak accident" for which DM was not to blame, referring to an Office of Safety and Health Administration (OSHA) review of the matter which attributed the accident to the deceased's willful disobedience. Protest, Sept. 20, 2013, at 23; Supp. Protest, Nov. 8, 2013, at 25. Finally, DM complains that the agency's consideration of this matter was unreasonable because DM instituted "a series of additional safety enhancements" as a result of the incident which, in DM's view, precluded DOE's unfavorable consideration of the matter. Protest, Sept. 30, 2013, at 24; Supp. Protest, Nov. 8, 2013, at 25.

The evaluation of past performance is a matter of agency discretion which we will not disturb unless those assessments are unreasonable. <u>Yang Enters., Inc.; Santa Barbara Applied Research, Inc.</u>, B-294605.4 <u>et al.</u>, Apr. 1, 2005, 2005 CPD ¶ 65 at 5-7; <u>Acepex Mgmt. Corp.</u>, B-283080 <u>et al.</u>, Oct. 4, 1999, 99-2 CPD ¶ 77 at 3, 5; <u>TPL, Inc.</u>, B-297136.10, B-297136.11, June 29, 2006, 2006 CPD ¶ 104 at 12. While consideration of past performance trends and corrective actions is generally appropriate, an agency is not required to ignore instances of negative past performance. <u>Wisconsin Physicians Service Insurance Corp.</u>, B-401068.14, B-401068.15, Jan. 16, 2013, 2013 CPD ¶ 34 at 9-12; <u>The Bionetics Corp.</u>, B-405145, B-405145.2, Sept. 2, 2011, 2011 CPD ¶ 173 at 7-8. Further, a procuring agency is not required to evaluate the past performance of the incumbent contractor as superior to its competitors simply because the incumbent has the most relevant past performance. <u>See</u>, <u>e.g.</u>, <u>United Concordia Companies, Inc.</u>, B-404740, Apr. 27, 2011, 2011 CPD ¶ 97 at 6-8; <u>Oceaneering Int'l, Inc.</u>, B-287325, June 5, 2001, 2001 CPD ¶ 95 at 8-9.

Here, as noted above, the agency concluded that the fatal incident was caused by "two Root Causes consisting of (1) failure to follow supervisor's direction and (2) organizational stop work policy and its implementation did not address less than imminent danger situations." SEB Report at 58. The record further shows that "judgments of needs" were identified by the agency following the incident, which resulted in DM's "completion of corrective actions and a series of additional safety enhancements." <u>Id.</u> The contemporaneous record also shows that this incident resulted in "a significant reduction in otherwise earned performance fee." Protest, Sept. 30, 2013, exh. D, at 2. In advising DM of this fee reduction, the agency stated: "I expect and am confident that you will make the necessary performance improvements, including the timely and effective completion of the corrective actions." Id.

On this record, we reject DM's assertion that it was unreasonable for the agency to view DM as bearing some responsibility for the incident. Further, as noted above, while consideration of a contractor's corrective actions is generally appropriate, an agency is not required to ignore instances of negative past performance. Accordingly, we find nothing improper in the agency's consideration of the "grass cutting" incident as unfavorable past performance information. Further, it is clear that the agency, in fact, recognized the advantages associated with DM's incumbency; nonetheless, it was not obligated to evaluate DM's past performance higher than Fluor's on the basis of those advantages. Overall, based on the record here, we find nothing unreasonable in the agency's assignment of a good, rather than outstanding, past performance rating to DM's proposal, and DM's various assertions regarding the agency's past performance evaluation are denied.[19]

Best Value Determination

Finally, DM protests that the agency failed to give "meaningful consideration to the lower cost/price offered by DM Petroleum in making its best-value decision." Protest, Sept. 30, 2013, at 31.

An agency must meaningfully consider cost or price in making its source selection decision and, in selecting a higher-priced proposal, the decision must address why the proposal's technical superiority warrants paying a price premium. J.R. Conkey & Assocs., Inc. dba Solar Power Integrators, B-406024.4, Aug. 22, 2012, 2012 CPD ¶ 241 at 9; e-LYNXX Corp., B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 7. Nonetheless, there is no requirement that the source selection official quantify the

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[19] Among other things, DM complains that, in also rating Fluor's past performance as good, the agency improperly failed to downgrade Fluor for the negative past performance of an affiliate of one of Fluor's subcontractors. Protest, Sept. 30, 2013, at 27-28. The agency responds that it had no basis to conclude that the resources of the subcontractor's affiliate will be used in Fluor's performance of the contract requirements. Contracting Officer's Statement/Agency Memorandum of Law (COS/MOL), Oct. 29, 2013, at 26. The agency further notes that the negative past performance occurred at an SPR site while DM was the M&O contractor and, thus, if the matter were properly considered, it would be attributable to DM as well as to Fluor's subcontractor. Id. Finally, the record contains the SSO's explicit recognition of the negative past performance information, along with his express, contemporaneous conclusion that, even if he were to consider the matter in connection with Fluor's past performance, he would still assign a rating of good. SSD at 19. On this record, we find no merit in DM's complaint regarding the past performance evaluation of Fluor's proposal.

value to the agency of the technical superiority of an awardee's proposal. Structural Pres. Sys., Inc., B-285085, July 14, 2000, 2000 CPD ¶ 131 at 7.

Here, the record contains an extensive source selection decision document, significant portions of which are quoted above, in which the SSO comprehensively considered the various strengths and weaknesses associated with both Fluor's and DM's proposals, considered the magnitude of the price premium associated with Fluor's proposal and concluded:

> I find Fluor's proposal is technically superior overall to DM's proposal, due primarily to the advantages, as set forth above, of Fluor's proposed Management Approach (the most important criterion) as compared to DM's Management Approach, and warrants the slight price premium of $2,395,490.

SSD at 28.

Based on our review of the entire record, we find no merit in DM's assertion that the agency failed to give meaningful consideration to the difference in cost/price between DM's and Fluor's proposals in selecting Fluor for award.

The protest is denied.

Susan A. Poling
General Counsel