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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Presidio Networked Solutions, Inc.; Mercom Corporation;
MicroTechnologies, LLC

File: B-408128.33; B-408128.35; B-408128.36; B-408128.50

Date: October 31, 2014

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Wade L. Brown, Esq., and Brian Tuftee, Esq., Department of the Army, for the agency.

Cherie J. Owen, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency did not conduct discussions when it had limited communications with offerors regarding adverse past performance and proposal ambiguities; accordingly, the agency was not required to conduct discussions with protesters prior to eliminating their proposals from the competitive range.

2. Protests of elimination of protesters' proposals from the competitive range are denied where the record shows that agency's evaluations were reasonable and supported by record, or that protesters suffered no prejudice.

DECISION

Presidio Networked Solutions, Inc., of Greenbelt, Maryland; Mercom Corporation, of Pawleys Island, South Carolina; and MicroTechnologies, LLC, of Vienna, Virginia protest the exclusion of their proposals from the competitive range by the Department of the Army, Army Materiel Command, under request for proposals (RFP) No. W52P1J-11-R-0171 issued to procure what the Army terms as Information Technology Enterprise Solutions 3 Hardware (ITES-3H). The protesters raise various challenges to the evaluation of their own proposals, the conduct of discussions, and the competitive range determination.

We deny the protests.¹

BACKGROUND

The solicitation, issued on September 25, 2012, sought offers to “support the Army enterprise infrastructure and infostructure goals with a full range of innovative, world class information technology equipment and solutions at a reasonable price.” Presidio Agency Report (AR)², Tab 4, Amended RFP, at 41. The RFP contemplated a best-value award of multiple indefinite-delivery/indefinite-quantity (ID/IQ) contracts, with a base period of three years and two one-year options, under which various federal agencies will be able to issue fixed-price delivery orders for the procurement of IT products and related services. Id. The solicitation stated that the agency planned to make at least eight awards, with up to four of the awards reserved for small businesses. Id. The maximum value of the orders placed under this ID/IQ contract is \$5 billion. AR, Tab 3, RFP, at 3.

The RFP established a two-phase evaluation approach. Under Phase I, offerors would submit two proposal volumes—one which provided an equipment list and identified web-based support capabilities/data and reporting requirements; and a second which provided contractual documents. The Phase I proposals were to be evaluated as acceptable or unacceptable. RFP at 19, 96. Only offerors evaluated as acceptable in Phase I would be invited to submit Phase II proposals. Id. at 19. The solicitation stated that the Army did not intend to hold discussions under Phase I, but reserved the right to engage in discussions and clarifications, if necessary. Id. Under Phase II, the agency planned to conduct discussions after establishing a competitive range. Id. at 238.

In Phase II, offerors were to submit a mission support proposal, past performance proposal, and price proposal. RFP at 20. The Phase II proposals were to be evaluated on the basis of the following factors (in descending order of importance):

¹ The sections of this decision addressing the background of the procurement and the issue of discussions are nearly identical to a second, protected decision involving this procurement, also issued today. The parties in this decision proceeded either without the assistance of counsel, or with the assistance of counsel who did not seek admission to our protective order. In the other decision, iGov, et al., B-408128.24 et al., Oct. 31, 2014 the protesters were represented by attorneys who were admitted to our protective order.

² The agency report and contracting officer’s statement for each protest contained similar background information and documents. For ease of reference, we cite to the Presidio agency report and contracting officer’s statement, to the extent possible.

mission support, past performance, and price. RFP at 32. The non-price factors, when combined, were significantly more important than price. There were three subfactors under the mission support factor: management, technology, and small business participation. The mission support subfactors were also listed in descending order of importance.

With regard to the small business participation subfactor, the RFP provided that the agency would evaluate offerors' proposed participation of small businesses (SB), small disadvantaged businesses (SDB), women-owned small businesses (WOSB), historically underutilized business zone (HUBZone) small businesses, veteran-owned small businesses (VOSB), and service-disabled veteran-owned small businesses (SDVOSB). Presidio AR, Tab 3, RFP, at 115. In this regard, the solicitation specified that the agency would evaluate the extent to which an offeror identified and committed to utilizing each of the above small business categories in the performance of the proposed contract. Id. To do so, the RFP informed offerors that the agency would consider the percent of participation proposed for each small business category as compared to the percentage goals identified in the RFP. Id. Specifically, the RFP contained the following small business goals:

Total Small Business Participation	23.00%
Small Disadvantaged Businesses	5.00%
Women-Owned Small Businesses	5.00%
HUBZone Small Businesses	3.00%
Veteran-Owned Small Businesses	5.00%
Service-Disabled Veteran-Owned Small Businesses	3.00%

Id. at 71.

The agency received 50 proposals by the November 28, 2012, due date. Presidio Contracting Officer's (CO) Statement at 4. After evaluating the Phase I proposals, the agency initially found 13 proposals acceptable and 37 unacceptable. Id. Offerors that had submitted acceptable Phase I proposals were invited to submit Phase II proposals; offerors that had submitted unacceptable proposals were notified of their elimination from the competition.

After several of the unacceptable offerors filed an earlier round of protests with our Office challenging their elimination from the competition, the agency took corrective action and we dismissed the protests.³ See, e.g., UNICOM Government, Inc.,

³ The corrective actions taken in response to the earlier protests took two forms. For some of the protesters, the agency determined that the RFP was ambiguous and their proposals were consistent with a reasonable interpretation of the instructions. Therefore, the agency determined that these Phase I proposals were acceptable and invited the offerors to submit Phase II proposals. With regard to the
(continued...)

B-408128.3, B-408128.13, May 20, 2013. As part of the agency's corrective action, it conducted discussions with Phase I offerors whose proposals had been initially evaluated as unacceptable. Presidio CO Statement at 4. Each offeror whose Phase I proposal contained deficiencies was informed of those deficiencies and given seven days in which to submit a revised proposal.⁴

Due to concerns that the proposals of offerors who had initially been evaluated as acceptable were growing stale while the agency conducted its corrective action, the agency invited all offerors, including those initially judged to be acceptable, to submit final revisions to their Phase I proposals. Id. at 5. The due date for revised Phase I proposals was September 4, 2013. AR, Tab 9, Aug. 28 Close Discussion Letter, at 1-4. In addition, since some offerors had already submitted their Phase II proposals, the agency's letter also stated the following:

[S]ince your company has already submitted pricing under Phase II for your Equipment List items, if you make any adjustments to your Equipment List in response to this letter, you will be permitted to update your pricing at a later date. Regardless of whether or not your company elects to make changes to your Equipment List at this time, all offerors who successfully pass into Phase II will be permitted a final opportunity to submit updated pricing for their Phase II proposals. The Government will request updated pricing for Phase II at some point prior to establishing the Competitive Range for Phase II proposals.

Id. at 2.

After reviewing the revised Phase I proposals submitted by offerors on September 4, the agency again opened discussions regarding Phase I proposals with four offerors whose Phase I proposals remained unacceptable. Presidio CO Statement at 6. Thereafter, the agency again allowed all offerors to submit final revised Phase I proposals by a new due date of December 5, 2013, at which time,

(...continued)

second group, which had been eliminated due to deficiencies in their proposals, the agency took corrective action after our Office advised, during outcome prediction alternative dispute resolution, that certain Phase I "clarifications" constituted discussions. In response, the agency conducted Phase I discussions with these offerors, advised them of their proposal deficiencies, and allowed them to submit revised proposals.

⁴ Due to the number of offerors, the agency staggered discussions, allowing each offeror a 7-day period to revise its proposal. iGov Contracting Officer's (CO) Statement at 5.

Phase I discussions closed. AR, Tab 10, Dec. 3 Close Discussion Letter, at 2. After the December 5 Phase I final proposal revisions, a total of 39 offerors were evaluated as acceptable under Phase I and invited to compete in Phase II.⁵ Presidio CO Statement at 6.

Thereafter, on January 29, 2014, the agency sent an e-mail message to all 39 offerors remaining in the competition, informing them of the option to submit revised Phase II price proposals. Specifically, the e-mail message stated:

The Government is now allowing all offerors in Phase II to submit a revised price model for the base and both option years. For any Price Model revisions, the revised proposed pricing shall be for the equipment in your final proposed equipment list that was deemed to be Acceptable. For those items that have been discontinued, the last valid price before the item was discontinued should be used for purposes of completing the Price Model. No other changes to your proposal including the equipment list are allowed or will be accepted. Submission of revised price model is due on 4:30 PM Central Time on 4 February 2014.

AR, Tab 12, Request for Phase II Revised Price Proposals, at 1.

Following the agency's receipt of revised price proposals, it conducted exchanges with some offerors regarding their proposals. For example, the agency contacted several offerors regarding "less than favorable" past performance information. See, e.g., AR, Tab 22, Phase II Exchanges, at 13, 18, 30. With regard to Presidio, the agency noted that it had identified "less than favorable" performance information in a CPARS report involving a GSA contract. Id. at 14. In response, Presidio provided a page and a half of text explaining the circumstances surrounding the CPARS report and providing additional information about how the firm would avoid similar performance problems in the future. Id. at 14-16.

In evaluating proposals, the agency prepared a short evaluation report for each of the two non-price factors. See, e.g., Presidio AR, Tab 13, Evaluation of Presidio's Mission Support Factor; Presidio AR, Tab 14 Past Performance Factor. With regard to price, the agency prepared a single price evaluation report containing all of the

⁵ Offerors submitted Phase II proposals at different times. For example, offerors whose initial Phase I proposals were evaluated as acceptable were informed on April 11, 2013, that they would have 30 days in which to prepare and submit their Phase II proposal. iGov CO Statement at 6-7. Other offerors were invited to submit Phase II proposals in June 2013 or December 2013. Id. at 7. Regardless of the date on which the Phase II proposal was requested, each offeror was given 30 days from the date of the request to submit its Phase II proposal. Id. at 6.

offerors' proposed prices. See, e.g., Presidio AR, Tab 15, Price Evaluation Report. Thereafter, the source selection advisory council presented the source selection authority (SSA) with a briefing that summarized the evaluation results for each offeror. See, e.g., Presidio AR, Tab 16. This briefing included the numbers of strengths, weaknesses, and deficiencies identified under each evaluation factor and subfactor, as well as the evaluators' adjectival ratings. The briefing also contained a brief description of the basis for each strength, weakness, or deficiency. For example, with regard to Presidio's rating under the management subfactor, the briefing stated that the proposal was rated "Good, with three strengths for its formal quality processes[;] processes for ensuring timely delivery, installation, and integration of equipment[;] and processes for providing timely and efficient customer support." Id. at 3.

Thereafter, the SSA established the competitive range on July 11, 2014. In doing so, the SSA made her own independent assessments of the proposals. Presidio AR, Tab 17, Competitive Range Determination, at 46. Although the SSA accepted many of the evaluators' ratings, she also disagreed with a number of them and recorded her basis for changing the rating. After independently assessing each of the offerors' ratings, the SSA, consistent with Federal Acquisition Regulation (FAR) § 15.306(c), decided to select only the most highly-rated proposals, and to further reduce the competitive range for efficiency purposes. Presidio AR, Tab 17, Competitive Range Determination, at 52. In this regard, the SSA decided to limit the competitive range to those proposals that received a rating of at least good under the mission support factor, and at least satisfactory confidence under the past performance factor. Id. at 52-54.

Specifically, with regard to the mission support factor, the SSA explained:

Given the large number of Offerors with Mission Support ratings of Good, and with prices which are relatively low, I do not consider any Offerors with a Mission Support rating of Acceptable to be among the most highly[-]rated proposals. Keeping in mind the target number of awards, it would not be reasonable to include any Offeror who did not have a Mission Support rating of at least Good, as offerors with a Mission Support rating of Acceptable are unlikely to receive award.

Id. at 54.

With regard to the past performance factor, the SSA stated that:

Given the large number of Offerors that had a Past Performance rating better than Limited Confidence or No Confidence, there was no reason to consider Offerors with a rating of Limited Confidence or No Confidence, regardless of how low those Offeror's proposed prices may be. . . . Even though some of these offerors have relatively low

prices, I would be willing to pay a significant premium for offerors who do not have such negative Past Performance ratings. Accordingly, the Offerors with Limited Confidence and No Confidence will not be included in the Competitive Range.

Id.

Finally, in considering price, the SSA observed that there was a large pool of offerors with ratings of good under the mission support factor and satisfactory confidence or better under past performance ratings, all with reasonable prices. Id. The SSA found that the “price break between the 12th and 13th [lowest-priced] offeror meeting this criteria was significant” (the 13th priced offeror was approximately 35% higher than the 12th priced offeror). Id. Therefore, the SSA concluded that offerors whose prices were ranked 13th and higher were not among the most highly-rated proposals, and were unlikely to receive an award. Id. On this basis, the SSA identified for inclusion in the competitive range the 12 lowest-priced proposals that received a mission support rating of good and a past performance rating of satisfactory confidence or better.

After the agency notified the unsuccessful offerors of their elimination from the competitive range and provided debriefings, these protests followed.

The protesters raise various challenges to the evaluation of their own proposals, the conduct of discussions, and the competitive range determination. In reviewing protests challenging an agency’s evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency’s evaluation to ensure that it is consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int’l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. We have long held that the evaluation of proposals is a matter within the discretion of the procuring agency; we will question the agency’s evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the RFP. Hardiman Remediation Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3.

Here, we find none of the protesters’ arguments provides a basis to sustain the protest. We discuss several examples below.

SHARED CHALLENGES RELATED TO DISCUSSIONS

Presidio and Mercom contend that the agency's actions at various points in the procurement process constituted discussions. As a result, the protesters contend that the agency conducted discussions with some, but not all, offerors, resulting in competitive prejudice to the offerors who did not receive discussions. We will address these assertions below.

As a general matter, where an agency engages in discussions, it must afford all offerors remaining in the competition an opportunity to engage in meaningful discussions. See Lockheed Martin Simulation, Training & Support, B-292836.8 et al., Nov. 24, 2004, 2005 CPD ¶ 27 at 8. The FAR requires agencies conducting discussions with offerors to address, "[a]t a minimum ... deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond." FAR § 15.306(d)(3).

The protesters contend that the agency conducted discussions with some offerors during Phase I of the procurement process, which allowed certain offerors to improve their Phase I proposals to the level of acceptable. The protesters argue that it was improper for the agency to conduct Phase I discussions with some, but not all, offerors. Alternatively, the protesters argue that once discussions were opened in Phase I, the agency was required to conduct discussions regarding Phase I and Phase II proposals.

The agency does not dispute that it conducted discussions with offerors during Phase I, but contends that it was not obligated to conduct discussions with offerors whose Phase I proposals had already been deemed acceptable, since acceptable was the highest available rating in Phase I, and since a proposal rated acceptable could not be further improved. The agency also argues that its Phase I discussions did not obligate it to conduct discussions with offerors regarding their Phase II proposals because the solicitation put offerors on notice that the two phases would be considered separate for purposes of the evaluation and the conduct of discussions.

We find nothing objectionable in the agency's decision to conduct discussions during Phase I with only those offerors whose Phase I proposals were deemed unacceptable. The scope and extent of discussions are a matter of contracting officer judgment. FAR § 15.306(d)(3); Tritech Field Eng'g, Inc., B-255336.2, Apr. 13, 1994, 94-1 CPD ¶ 261 at 5. Where proposals are to be rated acceptable/unacceptable, a proposal rated "acceptable" cannot be further improved. Therefore, we have recognized that in such situations, an agency properly may conduct discussions with only those offerors whose proposals are unacceptable. See Zodiac of North America, B-409084 et al., Jan. 17, 2014, 2014 CPD ¶ 79 at 4; Commercial Design Group, Inc., B-400923.4, Aug. 6, 2009, 2009 CPD ¶ 157 at 3. Thus, the agency was not obligated to conduct Phase I discussions with offerors

whose proposals had already been rated acceptable, since those proposals could not have been further improved at that point in the competition.

Further, we disagree with the protesters that the conduct of discussions during Phase I obligated the agency to conduct discussions with offerors regarding their Phase II proposals. In this regard, we note that the solicitation put offerors on notice that the agency considered the two phases separate and distinct with regard to discussions. Specifically, the RFP stated the following:

4.2 Phase I - Acceptable/Unacceptable

The Government does not intend to hold discussions under Phase I. However, the Government reserves the right to engage in discussions and clarifications if necessary.

4.3 PHASE II

The Government intends to award contracts after conducting discussions with offerors in the competitive range under Phase II. Only those offerors within the competitive range will be engaged in discussions and be requested to submit a final proposal revision.

RFP at 237, 238.

Given that offerors were informed that the agency “reserve[d] the right to engage in discussions” during Phase I, but planned to conduct discussions during Phase II only after establishment of the competitive range, we find that the offerors were on notice that the agency considered the Phases to be separate and distinct for purposes of conducting discussions. Therefore, we find nothing improper in the agency’s decision to conduct Phase I discussions, without engaging all of the offerors in discussions regarding their Phase II proposals.

Next, the protesters contend that various communications between the agency and some of the offerors regarding Phase II proposals constituted discussions and, having opened discussions with some offerors, the agency was required to also conduct meaningful discussions with each offeror regarding its Phase II proposal.

FAR § 15.306 describes a range of exchanges that may take place with offerors during negotiated procurements. Clarifications are “limited exchanges” between an agency and an offeror for the purpose of eliminating minor uncertainties or irregularities in a proposal, and do not give an offeror the opportunity to revise or modify its proposal. FAR § 15.306(a)(2); Tetra Tech, Inc., B-409095, B-409095.2 Jan. 17, 2014, 2014 CPD ¶ 108 at 8. Discussions, on the other hand, occur when

an agency communicates with an offeror with the intent to obtain proposal revisions and include bargaining, give and take, persuasion, and alteration of assumptions and positions. Companion Data Servs., LLC, B-410022, B-410022.2, Oct. 9, 2014, 2014 CPD ¶ __ at 14; see FAR § 15.306(d); Dynacs Engineering Co., Inc., B-284234 et al., Mar. 17, 2000, 2000 CPD ¶ 50 at 4. An agency is required to hold communications with offerors whose past performance information is the determining factor preventing their proposals from being placed in the competitive range; otherwise, an agency may, but is not required to, engage in communications with offerors whose exclusion from, or inclusion in, the competitive range is uncertain. FAR § 15.306(b)(1); Government Telecommunications, Inc., B-299542.2, June 21, 2007, 2007 CPD ¶ 136 at 8 n.10. As with clarifications, communications are not to be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. FAR § 15.306(b)(2); Int'l Medical Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 9.

Here, the agency engaged in a number of communications with offerors during Phase II, but we find that none of these communications constituted discussions. For example, the agency allowed several offerors to address negative past performance information that the agency identified during its evaluation. See, e.g., AR, Tab 22, Record of Phase II Exchanges Prior to Competitive Range, at 13, 17, 23, 27, 30, 33, 36. For example, as set forth above, the agency notified Presidio that it had identified negative past performance information in a CPARS report and allowed Presidio to respond to the information. Presidio's response explained the circumstances surrounding the CPARS report and provided additional information about how the firm would avoid similar problems in the future. Id. at 14-16. In another example, after the agency identified several negative CPARS reports that had not been self-reported by another offeror, it contacted the firm and asked it to describe the delivery schedule issues it had encountered and to explain the corrective actions taken in response to the problems. Id. at 51. In response, the offeror submitted a five-page explanation of the past performance problems it had encountered and the steps it had taken in response to the problems. Id. at 52-56.

The FAR provides that agencies "shall" hold communications with offerors whose past performance information is the determining factor preventing them from being placed within the competitive range, and may hold communications with offerors whose exclusion from, or inclusion in, the competitive range is uncertain. FAR § 15.306(b)(1); see Professional Performance Development Group, Inc., B-408925, Dec. 31, 2013, 2014 CPD ¶ 78 at 9. The FAR also allows agencies to hold communications with offerors to enhance the agency's understanding of proposals, allow reasonable interpretation of the proposal, or facilitate the evaluation process. FAR § 15.306(b)(2). We find that the agency's exchanges with offerors regarding their negative past performance information constituted the type of pre-competitive range exchanges anticipated by FAR § 15.306(b), and did not constitute discussions. None of these exchanges were used to cure material omissions,

materially alter the technical or cost elements of proposals, or otherwise revise proposals. Therefore, we find that the agency's exchanges with offerors regarding their negative past performance did not constitute discussions.

The agency also contacted some offerors regarding ambiguities or minor flaws in their proposals that needed to be clarified or corrected. For example, the agency contacted offerors that failed to provide a statement that the offeror had no contracts that experienced performance problems within the past three years, as required by the RFP.⁶ See AR, Tab 22, Record of Phase II Exchanges Prior to Competitive Range, at 39, 42. The agency also contacted one offeror to inform it that a price on one document in its proposal did not match the price in another document of its proposal. Id. at 8. The offeror responded that the inconsistency was the result of a rounding error, and corrected the error. Id. at 9.

After reviewing each of these exchanges, we find that none of them rose to the level of discussions. Again, these exchanges constituted the type of pre-competitive range communications anticipated by FAR § 15.306(b). Specifically, the agency's exchanges permitted the correction of minor flaws, allowing the agency to reasonably interpret the proposals. None of the communications were used to cure material omissions, materially alter the technical or cost elements of proposals, or otherwise revise proposals. Therefore, we find that the agency's limited communications with offerors regarding their Phase II proposals did not constitute discussions.

Finally, the protesters contend that the agency conducted discussions when, on January 29, 2014, it allowed all offerors in Phase II to submit revised price proposals. See AR, Tab 12, Request for Phase II Revised Price Proposals, at 1. As set forth above, discussions occur when an agency communicates with an offeror with the intent to obtain proposal revisions, and include bargaining, give and take, persuasion, and alteration of assumptions and positions. Companion Data Servs., LLC, supra; see FAR § 15.306(d); c.f., Global Analytic Information Tech. Servs., Inc., B-298840.2, Feb. 6, 2007, 2007 CPD ¶ 57 at 5 (where agency personnel comment on, or raise substantive questions or concerns about, an offeror's proposal in the course of an oral presentation, and either simultaneously or subsequently afford the offeror an opportunity to make revisions in light of the agency's comments or concerns, discussions have occurred).

⁶ The solicitation provided that offerors were required to identify "every relevant contract it was awarded that experienced any performance problems related to deliverables, warranties, or services; and every recent contract that was terminated, or cancelled for any reason, in whole or in part within the past three (3) years of issuance of the RFP." AR, Tab 4, Amended RFP, at 28. If there were no such contracts, offerors were required to provide a statement to that effect. Id. at 29.

Here, the agency uniformly allowed offerors to update their prices prior to beginning the evaluation. The agency had not evaluated proposals and had not communicated with offerors regarding the contents of their proposals prior to allowing these revisions. The agency had not asked questions or sought information regarding areas of concern in the offerors' proposals. Rather, the opportunity to submit revised price proposals was not accompanied by any communications for the purpose of correcting problems in the proposals, or seeking proposal changes to improve an offeror's competitive position. In short, there was no bargaining, no give-and-take, no attempt at persuasion, no alteration of assumptions and positions, and no negotiations involved in the agency's decision to allow offerors to update their prices. Rather, the agency uniformly afforded offerors the opportunity to update their price proposals due to the passage of time. While we have held that an agency is not required to provide for the submission of revised proposals merely because of the passage of time, Inchscape Shipping Servs. Holding, Ltd., B-403399.3, B-403399.4 Feb. 6, 2012, 2012 CPD ¶ 65 at 4, we will not hold that an agency's decision to do so, in order to enhance competition and allow offerors to be evaluated based on the most up-to-date information, constitutes discussions. Therefore, we find that none of the agency's actions here required it to conduct Phase II discussions with offerors.

Each of the protesters also raises challenges to the agency's evaluation of its proposal. While our decision does not specifically address each of the protesters' arguments, we have fully considered them all and find that none provides a basis to sustain the protest. Several of the arguments are discussed below.

In response to challenges like these, our Office will review an agency's evaluation and exclusion of proposals from the competitive range for reasonableness and consistency with the solicitation criteria and applicable statutes and regulations. Cylab Inc., B-402716, July 13, 2010, 2010 CPD ¶ 163 at 4. Contracting agencies are not required to retain in the competitive range proposals that are not among the most highly-rated or that the agency otherwise reasonably concludes have no realistic prospect of being selected for award. FAR § 15.306(c)(1); General Atomics Aeronautical Sys., Inc., B-311004, B-311004.2, Mar. 28, 2008, 2008 CPD ¶ 105 at 5. In this regard, a protester's mere disagreement with an agency's evaluation and competitive range judgment does not establish that the agency acted unreasonably. CEdge Software Consultants, LLC, B-409380, Apr. 1, 2014, 2014 CPD ¶ 107 at 6.

PRESIDIO NETWORKED SOLUTIONS, INC.

Presidio received a mission support rating of good and a past performance rating of limited confidence. Presidio's proposed price was \$1.80 billion⁷. Presidio AR, Tab 17, Competitive Range Determination, at 5-6, 46. Under the criteria used by the SSA to establish the competitive range, Presidio's past performance rating of limited confidence was the reason the proposal was not included in the competitive range. See id. at 52-54.

In the agency's evaluation of past performance, it identified negative performance information in a CPARS report that had not been identified by Presidio. Presidio AR, Tab 14, Evaluation of Presidio's Past Performance, at 3. On this CPARS report, involving a contract to provide the Centers for Disease Control and Prevention Information Technology (IT) Services Office with Uninterruptable Power Supplies (UPSs) and UPS card upgrades under the NASA SEWP IV contract, Presidio received ratings of marginal in the areas of schedule, business relations, and management of key personnel on. Id. The agency evaluators recorded the following additional information regarding this CPARS report:

The GSA representative added that although the products were received in good condition, the quality of services provided were lacking. The deliveries were not well-managed resulting in the deliveries being late. Presidio had not notified GSA that the deliveries were going to be late. Presidio's communications also were lacking as it was necessary for GSA to contact Presidio for delivery status. Presidio had been reactive rather than proactive on this contracted work. The deliveries were ultimately received. Presidio needs to improve its inventory management, shipment tracking and customer communications.

Id. at 4. The evaluators stated that this CPARS report had a significant influence on Presidio's past performance rating. Id.

Presidio does not challenge the poor performance described in this CPARS report, but instead complains that a different past performance reference, submitted in Presidio's proposal, was deemed to be not relevant. Presidio Comments at 2. The reference was for Presidio's performance as a subcontractor, providing incidental services that included configuration and integration services, site analysis and warranty services. Presidio AR, Tab 14, Evaluation of Presidio's Past Performance, at 3. The agency evaluators determined that Presidio's role as a subcontractor on this contract "involved little of the scope and magnitude of effort and complexities this solicitation requires . . . The contract encompassed none of the commercial

⁷ Prices throughout the decision are rounded.

equipment as identified within the ITES-3H [statement of work].” Presidio AR, Tab 14, Evaluation of Presidio’s Past Performance, at 3. Presidio contends that the agency was required to raise during communications the fact that this reference was not considered to be relevant. Presidio Comments at 2; see Presidio AR, Tab 14, Evaluation of Presidio’s Past Performance, at 3.

We disagree. An agency’s evaluation judgments regarding the recency and relevance of past performance references generally does not constitute adverse past performance information of the type that must be raised in communications or discussions. See JAM Corp., B-408775, Dec. 4, 2013, 2013 CPD ¶ 282 at 6; ProLog, Inc., B-405051, Aug. 3, 2011, 2012 CPD ¶ 84 at 7. While FAR § 15.306(b) requires an agency to raise certain “adverse past performance information” with offerors, it does not require that the agency inform an offeror of its evaluation judgments regarding the relevance of its past performance reference information.

Moreover, despite Presidio’s general statement that the contract encompassed some of the same commercial equipment required here, Presidio did not identify, in its past performance proposal, or in its protest here, what equipment it provided under the referenced contract that is also required under the ITES-3H procurement. See Presidio AR, Tab 8, Presidio’s Phase II Proposal, at 79. An agency’s evaluation of past performance, which includes its consideration of the relevance of an offeror’s performance history, is a matter of agency discretion which we will not disturb unless the agency’s assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. ProLog, Inc., supra at 5-6. Based on the record before us, we will not second-guess the evaluators’ judgments that the contract was not relevant. Therefore, this protest is denied.⁸

MERCOM CORPORATION

Mercom received a mission support rating of unacceptable (with ratings of unacceptable under the management subfactor, marginal under the technology subfactor, and outstanding under the small business participation subfactor), and a past performance rating of substantial confidence. Mercom’s total proposed price was \$6.81 billion. Mercom AR, Tab 17, Competitive Range Determination, at 43-44, 52. Under the criteria used by the SSA to establish the competitive range, Mercom’s mission support rating of unacceptable and its high price were the reasons the proposal was not included in the competitive range. See id. at 52-54.

⁸ Presidio also suggests that the SSA changed its past performance ratings after they were assigned by the evaluators. However, the record reflects that the evaluators assigned a rating of limited confidence, which was accepted by the SSA. See Presidio AR, Tab 14, Evaluation of Presidio Past Performance, at 1; Presidio AR, Tab 17, Competitive Range Determination at 6, 46.

Mercom's unacceptable rating under the management subfactor was due to a deficiency for failing to address how it would respond to at least 500 RFQs per week. Mercom AR, Tab 13, Evaluation of Mercom's Mission Support, at 1. In this regard, the RFP stated that "The Offeror shall: . . . Describe its methodology for providing quotes to at least 500 Request for Quotes (RFQs) per week through IT e-mart and/or a reverse auctioning site such as FedBid." Mercom AR, Tab 4, RFP Amendments, at 154.

Mercom challenges the agency's evaluation, arguing that its mission support rating is inconsistent with the agency's assignment of a substantial confidence past performance rating. Specifically, Mercom notes that the RFP defined a past performance rating of substantial confidence as indicating a "high expectation that the offeror will successfully perform the required effort." Mercom AR, Tab 3, RFP, at 116. Mercom contends that the agency's assignment of a rating of unacceptable under the mission support factor is unreasonable because it is inconsistent with the agency's "high expectation" of successful performance under the past performance factor. Mercom Comments at 5.

We find no merit in this argument. The evaluation of past performance generally uses the offerors' performance on prior contracts as a predictor of its performance under the contract at issue; in contrast, technical evaluation factors are generally based on the offerors' proposal representations regarding how it will satisfy the solicitation's requirements. Thus, these factors evaluate different areas. See PN&A, Inc., B-406368, Apr. 23, 2012, 2012 CPD ¶ 145 at 4 (denying protest that offeror's unsatisfactory technical ratings were inconsistent with its exceptional past performance rating). Here, Mercom's performance of recent and relevant contracts gave the agency a high expectation that Mercom would successfully perform the required effort. However, Mercom failed to provide sufficient detail in its mission support proposal to demonstrate that the firm would comply with all of the solicitation's requirements. Therefore, the agency reasonably assigned Mercom's proposal a mission support rating of unacceptable. As a result, the proposal was also reasonably excluded from the competitive range.

MICROTECHNOLOGIES, LLC (MicroTech)

MicroTech received a mission support rating of acceptable (with ratings of acceptable under the management subfactor, acceptable under the technology subfactor, and good under the small business participation subfactor), and a past performance rating of unknown confidence. MicroTech's total proposed price was \$4.87 billion. MicroTech AR, Tab 17, Competitive Range Determination, at 4-5, 46. Under the criteria used by the SSA to establish the competitive range, MicroTech's mission support rating of acceptable was the reason the proposal was not included in the competitive range. See id. at 52-54.

MicroTech raises several challenges to the agency's evaluation of its past performance. For example, MicroTech contends that the agency improperly determined that some of its past performance references were not relevant, Protest at 10, that the agency's efforts to contact past performance points of contact were insufficient, Comments at 18, and that the assignment of a weakness for failure to clearly identify a six-month period meeting the solicitation's \$5 million threshold for two past performance references was unreasonable. Comments at 13. However, MicroTech fails to show that it was prejudiced by any of the agency's alleged errors in evaluating past performance. Specifically, even if we agreed with the protester that its past performance should have been rated higher, MicroTech's mission support rating of acceptable (which it did not challenge) would nevertheless disqualify MicroTech from the competitive range. Competitive prejudice is an essential element of a viable protest, and where the protester fails to demonstrate prejudice, our Office will not sustain the protest. Optimal Solutions & Techs., B-407467, B-407467.2, Jan. 4, 2013, 2013 CPD ¶ 20 at 7; McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. Therefore, we find no basis to sustain the protest.⁹

The protests are denied.

Susan A. Poling
General Counsel

⁹ Moreover, we find no merit in MicroTech's challenges to the past performance reference. For example, MicroTech challenges the agency's determination that the firm's performance on the Information Technology Services-Small Business (ITS-SB) contract, which MicroTech admits is classified as an IT "services" contract, was not relevant. MicroTech Comments at 10. The protester also admits that the agency has "very close, first-hand knowledge of the work MicroTech has performed" under this contract, since the contracting officer for that contract is the same contracting officer for the instant procurement. Id. at 11. MicroTech also contends that the type of item sold is not determinative, since "a contract to sell automobiles, parts and mechanical services through an emart type website would be the same or similar in complexity to the requirements of the SOW." Id. at 6. However, the solicitation defined a relevant contract as one that involves commercial equipment and related incidental services that are the same or similar in complexity as described in the requirements of the Statement of Work. MicroTech AR, Tab 3, RFP, at 116. Based on the record here, the agency reasonably determined that MicroTech's performance under the IT services contract did not meet the solicitation's definition of a relevant contract.