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Decision

Matter of: Al-Razaq Computing Services

File: B-410491; B-410491.2

Date: January 7, 2015

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DIGEST

1. Protest alleging that agency was required to refer awardee to the Small Business Administration (SBA) for a size determination is denied where the agency reasonably concluded the awardee's proposal does not, on its face, indicate that the proposal violates ostensible subcontractor rule.
2. Protest challenging agency's affirmative responsibility determination is denied where the protester's allegations do not establish that the contracting officer failed to consider available relevant information.
3. Protest challenging an agency's technical evaluation is denied where the record was adequately documented to show that the evaluation was reasonable and consistent with the terms of the solicitation.
4. Protest challenging the evaluation of the awardee's past performance is denied where the solicitation did not prevent the agency from considering subcontractor performance and the protester has not demonstrated that it was prejudiced by any error.

DECISION

Al-Razaq Computing Services, LLC, of Houston, Texas, protests the award of a contract to Logical-R Joint Venture, LLC, issued by the National Aeronautics and Space Administration (NASA) under request for proposals (RFP)

No. NNA14408214R for financial support services at NASA's Ames Research Facility (ARC). Al-Razaq alleges that NASA failed to properly evaluate and act on information contained in Logical-R's proposal, showing that the company could not comply with the ostensible subcontractor rule. The protester also argues that the agency improperly and unequally evaluated offers it received in response to the solicitation, while also failing to properly document all necessary aspects of its evaluation.

We deny the protest.

BACKGROUND

NASA issued the solicitation on November 18, 2013, as a total small business set-aside. RFP at 00104.¹ The solicitation contemplated a single-award hybrid contract for various financial services, including but not limited to, support for resource management; financial management; program analysis and business integration; business systems support services; and special financial analysis. RFP, Statement of Work (SOW), at 00174-00203. The RFP consisted of a fixed-price "[c]ore requirement," and also included an indefinite-delivery, indefinite-quantity (ID/IQ) task order component, to be performed on a time and material (T&M) basis. Id. at 00133. The contract's resulting period of performance consisted of a two-year base period with three one-year option periods.² RFP at 00086-87.

The solicitation indicated that award would be made on a best-value basis, based on the evaluation of three factors: mission suitability, past performance, and price. Id. at 00163-73. The mission suitability evaluation factor consisted of two subfactors listed in descending order: management approach and technical understanding. Id. at 00166-69. Of the three evaluation factors, mission suitability was the most important. Id. at 00172. Price was significantly more important than past performance, and when combined, the RFP's non-price evaluation factors were moderately more important than price. Id. at 00172-73.

Nine offerors responded to the RFP by the December 18 closing date, including Al-Razaq and Logical-R.³ Agency Report (AR), Tab 69, SSA Briefing Charts,

¹ NASA used a Bates numbering system in preparing the agency report; citations in this decision use the Bates numbers assigned by the agency.

² The two-year base period was inclusive of a 45 day phase-in period. RFP at 00086.

³ Logical-R is a joint venture comprised of Logical Innovations, Inc. (LI²), and ReDe, Inc. Agency Report (AR), Tab 35, Logical-R Volume 1--Mission Suitability Written Proposal, at 00685.

at 00966-67. Proposals were evaluated by a NASA source evaluation board (SEB) and a NASA price/cost analyst. Id. at 00971. The SEB established consensus ratings for each offer received, which were then provided to the NASA source selection authority (SSA), who reviewed the record and selected Logical-R for award. AR, Tab 78, SSA Selection Statement at 01231.

NASA issued letters to unsuccessful offerors on July 15, informing them of NASA's intent to award a contract to Logical-R, while also notifying them of their rights to challenge the apparent awardee's size status.⁴ Contracting Officer (CO) Statement at 14. On September 10, the agency provided Al-Razaq notice of its award to Logical-R. Protest at 3. Al-Razaq filed a size protest challenging the awardee's size status on September 17, which was ultimately dismissed by the SBA on September 22.⁵ AR, Tab 77, Al-Razaq SBA Size Protest, at 01195-98. On September 23, Al-Razaq received its debriefing; it filed the current protest with our Office on September 27.

DISCUSSION

Al-Razaq presents multiple challenges to the agency's evaluation and award decision. First, the protester contends that the agency failed to obtain an SBA size determination review of Logical-R's proposal in accordance with the terms of the solicitation. Al-Razaq also contends that even if the RFP did not require such a review, the agency unreasonably failed to seek the SBA's review because NASA improperly ignored aspects of the awardee's offer that should have led the agency to question Logical-R's small business self-certification. The protester also alleges that the agency's evaluation of the offerors' non-price proposals was unreasonable and unequal. Finally, Al-Razaq argues that the agency's award decision was unreasonable and not adequately documented.⁶ For the reasons discussed below,

⁴ An initial size protest was filed by one of the nine offerors on July 21. AR, Tab 71, SBA Size Protest, at 01069-73. The protest was dismissed after the SBA determined that the company was not an interested party. AR, Tab 74, SBA Size Protest Decision (Aug. 22, 2014), at 01176-77.

⁵ The merits of Al-Razaq's size protest were never addressed because the protest was dismissed by the SBA as untimely. AR, Tab 81, SBA Al-Razaq Size Protest Decision (Sept. 22, 2014), at 01275-77. Subsequently, on October 7, Al-Razaq filed an appeal challenging the dismissal with the SBA's Office of Hearings and Appeals (OHA). AR, Tab 82, Al-Razaq OHA Appeal, at 01278-81. On October 29, OHA issued an opinion affirming the underlying dismissal of Al-Razaq's size protest. AR, Tab 84, OHA Dismissal of Al-Razaq Size Appeal, at 01337-40.

⁶ The initial protest alleged that Al-Razaq's price was improperly evaluated and that the award was made in bad faith. In response to the protester's allegations, the agency provided a detailed rebuttal in its agency report. Al-Razaq's comments on
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we find that the protester's multiple challenges to the agency's evaluation and award decision fail to provide a basis to sustain the protest.⁷

Size Status Challenge

The majority of arguments raised in Al-Razaq's protests relate to Logical-R's alleged affiliation with its subcontractor Booz Allen. As an initial matter, Al-Razaq contends that NASA failed to comply with the solicitation's requirement to refer Logical-R to the SBA for a size determination prior to award. The protester also contends that even if the solicitation did not require mandatory referral to the SBA, the contracting officer was required to seek a size determination because Logical-R's proposal demonstrated that the awardee was unusually reliant upon its major subcontractor. Al-Razaq complains that it was prejudiced by the agency's failure to refer the awardee for a size determination because the SBA would have concluded that Logical-R is other-than-small due to its affiliation with its major subcontractor.

The Small Business Act gives the SBA, not our Office, the conclusive authority to determine matters of small business status for federal procurements. Bid Protest Regulations, 4 C.F.R. § 21.5(b)(1) (2014). A limited exception applies where a protester argues that the awardee's quotation shows, on its face, that the awardee is not eligible for award as a small business; we will review the reasonableness of the contracting officer's decision not to refer the matter to the SBA. See Hydroid LLC, B-299072, Jan. 31, 2007, 2007 CPD ¶ 20 at 3. Here, the protester has not shown that anything on the face of Logical-R's proposal would have called into question its small business status.

As part of the mission suitability factor, the solicitation required an offeror to detail its organizational structure/partnering approach. RFP at 00144. This portion of the solicitation specifically requested a description and explanation of an offeror's approach to teaming and subcontracting for compliance with the SBA's ostensible subcontractor rule.⁸ In this regard, an offeror was required to "[i]nclude specific

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the agency report, however, failed to address the agency's responses. Consequently, we consider the protester to have abandoned these arguments and will not consider them further. See Organizational Strategies, Inc., B-406155, Feb. 17, 2012, 2012 CPD ¶ 100 at 4 n.3.

⁷ While our decision here does not specifically discuss each and every argument and/or variation of the arguments, we have considered all of the protester's assertions.

⁸ An ostensible subcontractor is a subcontractor that performs primary and vital requirements of a contract (or of an order under a multiple award schedule

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details so that the Government can determine that the prime Contractor making the offer will be performing the primary and vital requirements (at least 50% of the total contract value, Core and IDIQ).” RFP at 00160. For example, an offeror had to identify who would manage the contract; the contractor that led pursuit of the contract; the degree of collaboration; how management and control policies would be implemented; and how the work would be controlled, reported, and reviewed. Id.

The solicitation advised that the agency would review this information to ensure that no apparent ostensible subcontract relationship has been proposed and to verify an offeror’s eligibility for award as a small business. Id. at 00161, 167. If it appeared to the agency that an ostensible subcontract may have been proposed, the RFP notified offerors that a final determination would be made by the SBA. Id. at 00161. In this regard, the solicitation advised that the agency was “collecting this information in anticipation of the size determination by the SBA regarding any proposed final contract award.” Id.

Logical-R’s proposal, as required by the solicitation, specifically addressed the ostensible contractor rule in its proposal. In this regard, the awardee’s oral presentation slides established that Logical-R “[p]erforms 75% of the labor revenue” and its major subcontractor “[r]epresents 25% of the labor revenue, per [the parties’] teaming agreement.” AR, Tab 34, Logical-R Vol.I–Mission Suitability Oral Presentation Slides, at 00639. In its written proposal, Logical-R provided additional detail in response to the solicitation requirement, explaining as follows:

The Logical-R Joint Venture, LLC (Logical-R) leads a team composed of Logical-R as the prime and Booz Allen Hamilton (Booz Allen) as the major subcontractor. Logical-R performs the primary and vital requirements for the contract[.]

* * *

The Logical-R Joint Venture, LLC (Logical-R) manages the Financial Services Contract and the performance of the Logical-R Team as described in SOW 3.0, Administrative Management. Logical-R provides Contract Management (SOW 3.1), Task Management (SOW 3.2), and ensures adherence to Performance Standards (SOW 3.3) issued with task orders.

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contract), rather than the prime contractor, or a subcontractor upon which the prime contractor is unusually reliant. 13 C.F.R. § 121.103(h)(4). A contractor and its ostensible subcontractor are treated as joint venturers, and therefore affiliates, for size determination purposes. Id.

AR, Tab 35, Logical-R Vol. I--Mission Suitability Written Proposal, at 00693. The proposal additionally detailed that Logical-R will establish the management control and policies applicable to all personnel and performance on the contract; will control, report, and review the work--through its program manager; and will perform the more complex and costly requirements across the SOW elements. Id. at 00694. The proposal detailed that Booz Allen would “staff[] SOW 4.3 [Program analysis and Business Integration] and support[] SOW 4.2.3 [Reimbursable Agreements Management Services],” but explained that all employees are under the management control of Logical-R’s program manager. Id. Finally, the proposal made clear that Logical-R led the pursuit of the contract and managed proposal development. Id. at 00693.

The agency reviewed the proposal of Logical-R, including its ostensible subcontractor information provided as part of its mission suitability proposal. See AR, Tab 86, Individual Rating Sheets, at 01406, 01415, 01424. Based upon its review of the information submitted in the awardee’s proposals, the evaluators determined that no apparent ostensible subcontract relationship existed between Logical-R and Booz Allen. See id.; CO Statement at 12-13. The contracting officer nevertheless requested an eligibility determination from the SBA with respect to Logical-R’s ability to meet the solicitation’s small business size requirements.⁹ AR, Tab 68, NASA Letter to SBA (July 11, 2014), at 00961. In response to NASA’s request, an SBA size specialist informed the contracting officer that SBA “does not verify the size status of offerors unless there is a formal size challenge from the Contracting Officer or another offeror.” AR, Tab 70, SBA E-mail to NASA (July 15, 2014), at 01067. The SBA size specialist additionally recommended that the NASA contracting officer rely on the offeror’s self-certification of its size, unless he had adverse information or a formal size challenge. Id. Based upon Logical-R’s proposal, the offeror’s self-certification, and the evaluator’s assessment of all relevant information, the contracting officer determined that there was no evidence that the apparent awardee was not a small business. CO Statement at 13. Thus, the contracting officer concluded that he would rely upon Logical-R’s self-certification, as recommended by the SBA, because he did not have any reasonable basis to file a formal size challenge.¹⁰ Id.

⁹ Specifically, the letter requested that the SBA “conduct an eligibility determination as outlined in FAR [§] 19.101(7) Size Standards, as it pertains to small business joint ventures competitive award procedures.” AR, Tab 68, NASA Letter to SBA (July 11, 2014), at 00961.

¹⁰ In this respect, although a contracting officer generally may accept, at face value, an offeror’s self-certification, the contracting officer should refer the matter to the SBA if he has information prior to award that reasonably impeaches the certification. Creativision, Inc., B-225829, July 24, 1987, 87-2 CPD ¶ 78. As described herein, nothing on the face of Logical-R’s proposal impeached its small business self-certification.

First, Al-Razaq contends that the agency was required to refer the awardee to the SBA for a size determination in accordance with the terms of the solicitation.

The solicitation advised offerors that the agency was “collecting this [SBA ostensible subcontractor rule information] in anticipation of the size determination by the SBA regarding any proposed final contract award.” RFP at 00161. We do not agree with the protester that this language required the agency to reflexively refer the presumptive awardee for a size determination despite its own analysis. Rather, this portion of the solicitation was intended to notify offerors that the information was to be collected in the event a size determination was required. In this regard, the solicitation stated that the agency would perform its analysis to ensure that no apparent ostensible subcontract was proposed. Simply, the solicitation did not contain a mandate for the agency to automatically refer to the SBA--independent of the agency’s ostensible subcontractor rule analysis. Thus, it is not reasonable to conclude, as the protester does here, that even if the agency concluded that no ostensible subcontractor issue arose, that a referral was still required.

In any event, requirements provided in the instruction section (section L) of an RFP are not the same as evaluation criteria provided in the evaluation section (section M); rather than establishing minimum evaluation standards, the instructions of section L generally provide guidance to assist offerors in preparing and organizing proposals. See All Phase Envtl., Inc., B-292919.2 et al., Feb. 4, 2004, 2004 CPD ¶ 62 at 4; JW Assocs., Inc., B-275209.3, July 22, 1997, 97-2 CPD ¶ 27 at 3-4. Even if we agreed with the protester’s interpretation of the solicitation, which we do not, the language within the solicitation’s instructions section did not create an affirmative requirement on the agency in its evaluation of the offerors’ proposals.

Next, the protester contends that the contracting officer was required to refer Logicial-R for a size status determination because the awardee’s proposal demonstrates that Logicial-R and its major subcontractor--Booz Allen--are affiliated through an ostensible subcontractor relationship.

The SBA’s regulations do not prohibit a small business from proposing to subcontract with a large business to perform portions of a contract set aside for small business concerns. Creativision, Inc., B-225829, July 24, 1987, 87-2 CPD ¶ 78. The SBA’s regulations specifically provide, however, that a small business may be considered a joint venturer affiliate of an ostensible subcontractor proposed to perform primary or vital requirements of the contract to such an extent that it may be considered to have a controlling role. 13 C.F.R. § 121.103(h)(4). This is important because the applicable size standard for a set-aside applies to the offeror and its affiliates. Id. Here, we find that while Logical-R proposes to subcontract work to its major large business subcontractor, Booz Allen, the CO reasonably determined that there is nothing in the awardee’s proposal that demonstrates that it will violate the SBA’s ostensible subcontractor rule.

Contrary to Al-Razaq's various arguments alleging an unusual reliance upon Booz Allen and alleging that Booz Allen will perform primary and vital performance requirements here, we find that the awardee's proposal did not provide any information that would call into question its small business status. Indeed, its proposal specifically addressed its relationship with Booz Allen and provided ample examples to explain that no violation of the ostensible subcontractor rule would occur. Moreover, the record demonstrates that the agency evaluated the information provided in Logical-R's proposal for compliance with the ostensible subcontractor rule and determined that there was no evidence that the apparent awardee was not a small business. Given the absence of any express exception to the ostensible subcontractor rule, and the absence of any clear evidence that Logical-R would not meet the requirement, we find that the contracting officer could rely upon the firm's self-certification and was not required to file a challenge of the awardee's small business size status with the SBA. See Fiber-Lam, Inc., B-237716.2, Apr. 3, 1990, 90-1 CPD ¶ 351 at 4.

Contracting Officer's Responsibility Determination

The protester also argues that the agency unreasonably found Logical-R to be a responsible contractor. In this regard, the protester asserts that the contracting officer failed to consider available relevant information concerning Logical-R's reliance upon its major subcontractor. The protester contends that the awardee's major subcontractor, and not the awardee, will be performing the vital, critical, complex or otherwise important requirements of the contract. In effect, Al-Razaq's allegations concern Logical-R's ability to perform the contract.

The determination of a prospective contractor's responsibility rests within the broad discretion of the contracting officer who, in making that decision, must necessarily rely on his or her business judgment. Rotech Healthcare, Inc., B-409020, B-409020.2, Jan. 10, 2014, 2014 CPD ¶ 28 at 4. Our Office will generally not consider a protest challenging a contracting officer's affirmative responsibility determination except in circumstances where it is alleged that definitive responsibility criteria in the solicitation were not met, or protests that identify evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. 4 C.F.R. § 21.5(c); Active Deployment Sys., Inc., B-404875, May 25, 2011, 2011 CPD ¶ 113 at 2. In that context, we will review a challenge to an agency's affirmative responsibility determination where the protester presents specific evidence that the contracting officer may have ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. Verestar Gov't Servs. Group, B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68 at 4-5.

The protester asserts that had the contracting officer fully considered the relationship proposed between Logical-R and Booz Allen, he would have determined Logical-R to be unusually reliant upon Booz Allen and therefore nonresponsible. The record demonstrates that the contracting officer concluded, from the face of Logical-R's proposal, that he had no reason to question the firm's small business self-certification. The contracting officer reviewed the relationship information required by the solicitation, and concluded, as explained above, that Logical-R proposed to do the primary, vital, and core requirements of the work here. CO Statement at 12-13. On this record, we have no basis to question the adequacy of the review conducted by the contracting officer. To the extent the protester disagrees with the agency's conclusions, its disagreement does not provide a basis to sustain the protest.

Mission Suitability Evaluation

Al-Razaq challenges each aspect of the agency's mission suitability factor evaluation. Generally, the protester argues that the evaluation was unreasonable and unequal because the awardee's proposal should have received lower ratings, while the protester's proposal should have received higher ratings. We find no merit to these allegations; we provide a few illustrative examples below.

The evaluation of an offeror's proposals is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. 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. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3.

As an initial example, Al-Razaq challenges the agency's evaluation under the management approach subfactor of mission suitability. The RFP stated that the agency would evaluate proposals for the following six elements under this subfactor: the offeror's phase-in plan, organizational structure, key personnel, staffing and recruitment, total compensation plan, and organizational conflict of interest avoidance plan. RFP at 00166-68.

Al-Razaq argues that the agency's evaluation of its proposal under the management approach subfactor improperly ignored features offered under four of the six elements that the agency should have considered as significant strengths. For example, the protester alleges that it should have received a significant strength for its phase-in plan because, in addition to other features it offered, the "plan

clearly described [its] approach, rational[e], transitioning of responsibilities, schedule and timeline of 15 days instead of the 45 day[s] phase-in period allowed and at no cost to the Government.” Protest at 9. Likewise, Al-Razaq argues that it should have received significant strengths under the key personnel element because it offered a program manager with 25 years of highly relevant experience.¹¹ Protest at 9-10.

Here the record demonstrates that NASA reasonably evaluated proposals under the management approach subfactor. In responding to Al-Razaq’s allegations, the agency produced the SSA briefing charts and the SSA’s selection decision document. Furthermore, in its supplemental agency report, NASA also provided the individual rating sheets used by each voting member of the SEB. With respect to the evaluation of Al-Razaq under the management approach subfactor, the record reflects that the evaluators gave credit to the protester for its experience as the incumbent, for utilizing “in-place personnel, policies and processes,” and also for demonstrating a plan to “complete phase in within 15 days.” AR, Tab 85, Al-Razaq Individual Rating Report, at 01355, 01371. The evaluators also considered certain features related to Al-Razaq’s key personnel. *Id.* at 01353, 01355, 01357-58, 01365-69, 01373-76. While the SSA briefing charts did not characterize these aspects of Al-Razaq’s proposal as strengths, the record establishes that they were identified by the agency and fully considered.

Similarly, with regard to the evaluation of the awardee’s proposal, Al-Razaq argues that Logical-R did not merit the excellent ratings it received. The protester contends that but for the one significant strength assigned to Logical-R because of its program manager, there is nothing in the record to document or support the excellent rating.

The record demonstrates that the agency identified the awardee’s proposal as having a significant strength based on the program manager it proposed. AR, Tab 78, SSA Selection Statement at 01224. The agency’s record documented the rationale and discriminating factors upon which it formed the basis for this conclusion. For example, the program manager was assessed as offering a significant strength not only because of his years of experience, but also because of other discriminators, including but not limited to, his ability to make decisions on all contract matters, along with his educational background which included a Ph.D. and MBA in accounting, along with numerous other certifications. AR, Tab 69, SSA Briefing Charts at 00985-86. There is no legal requirement that an agency must award the highest possible rating, or the maximum point score, under an evaluation

¹¹ Al-Razaq also contends that significant strengths should have been attributed to its proposal for the qualifications of its deputy program manager, who has 35 years experience, as well as for its deputy manager, who has over 34 years experience. Protest at 9.

factor, simply because its proposal contains strengths and is not evaluated as having any weaknesses.¹² See, e.g., Applied Tech. Sys., Inc., B-404267, B-404267.2, Jan. 25, 2011, 2011 CPD ¶ 36 at 9; Archer Western Contractors, Ltd., B-403227, B-403227.2, Oct. 1, 2010, 2010 CPD ¶ 262 at 5. Moreover, the record demonstrates that NASA's evaluation of Al-Razaq's proposal was not disparate, but consistent with its treatment of Logical-R's proposal. The protester's belief that certain aspects of its proposal warranted a higher rating amounts to mere disagreement with the agency's evaluation, which does not provide a basis upon which to sustain the protest.

As another example, Al-Razaq challenges the agency's evaluation under the technical understanding subfactor. Here, the RFP stated that the agency would evaluate an offeror's overall understanding and technical approach to accomplishing the following statement of work requirements: reimbursable agreements management services, program planning and control, and cost estimating and analysis. RFP at 00168-69.

The protester alleges that it should have received an excellent rating under the technical understanding subfactor because the agency failed to credit it with significant strengths for features offered by its proposal. With respect to the program planning and control portion of the solicitation requirement, the protester argues that its offer "demonstrated a comprehensive and excellent understanding of the SOW requirements and provided an in-depth approach to accomplishing the work." Protest at 10.

The record confirms that the agency considered these aspects of Al-Razaq's proposal and credited the protester with both a significant strength and a strength. AR, Tab 69, SSA Briefing Charts at 01022-24; Tab 78, SSA Selection Statement at 01221. While the protester contends it is entitled to a higher rating, the record demonstrates that NASA's decision to assign a very good rating to Al-Razaq for this subfactor was reasonable and complied with the RFP's stated evaluation rating scheme. Again, and as above, the protester's mere disagreement with the agency's judgment does not establish a basis upon which to sustain its protest.¹³

¹² Al-Razaq raised numerous other challenges concerning aspects of NASA's mission approach and technical understanding subfactor evaluations. Although these arguments are not all specifically addressed in this decision, each was considered.

¹³ The protester also alleged that the information it submitted in response to the technical understanding subfactor, was no different than the information submitted by Logical-R, and therefore it was treated unequally and should have received a higher rating. In response, the agency established through the record that the higher rating assigned to Logical-R's proposal for this subfactor was based on the more detailed and comprehensive proposal submitted by the awardee, and that this
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With respect to the evaluation of Logical-R's proposal, Al-Razaq contends that the awardee should not have received an excellent rating under the technical understanding subfactor because Logical-R's sub-contractor, Booz Allen, and not Logical-R, was identified as performing the work being evaluated. Despite raising this argument, Al-Razaq failed to cite to any provision in the RFP or legal authority that would necessitate such an outcome. The RFP expressly permitted offerors to submit proposals contemplating the use of subcontractors for various aspects of the contract. RFP at 00145. Al-Razaq fails to identify any restrictions in the solicitation that would have prevented NASA from considering Logical-R's use of Booz Allen for the work to be evaluated under the technical evaluation factor.¹⁴

In sum, we find the agency's evaluation under the mission suitability factor to be unobjectionable.

Past Performance Evaluation

Al-Razaq also challenges the agency's decision to assign a very high confidence rating to Logical-R for its past performance.¹⁵

In reviewing a protest challenging an agency's past performance evaluation, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4. A protester's disagreement with an agency's past performance evaluation provides no basis to question the reasonableness of the evaluator's judgments. Citywide Managing Servs. Of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

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was the discriminator upon which the higher rating was based. Supp. CO Statement at 5.

¹⁴ The agency responded to this allegation by indicating that it did not focus on whether a prime or a subcontractor would be performing the work, as long as an ostensible subcontracting relationship did not exist and the offerors were in compliance with the RFP's limitation on subcontracting. Supp. CO Statement at 4.

¹⁵ In its initial protest, Al-Razaq argued that it should have been assigned a very high confidence rating for past performance and that NASA should have opened discussions with it under this evaluation factor. In response to the protester's allegations, the agency provided a detailed rebuttal in its agency report. Al-Razaq's comments on the agency report, however, failed to address the agency's responses. Consequently, we consider the protester to have abandoned these arguments and will not consider them further.

As relevant to this protest, the past performance evaluation was to measure the quantitative and qualitative aspects of each offeror's record of performing services or delivering products similar in size, content, and complexity to the requirements being solicited. RFP at 00169. The evaluation of past performance was to be based on a review of recent and active contracts, along with past performance questionnaires, which were to be submitted by offerors for relevant government and industry contracts. Id. at 00170-00171. The RFP contemplated a thorough review of the past performance of both the offeror itself, along with any major subcontractors included in the proposal. Id. at 00171. Offerors were to be assigned confidence ratings for past performance. Id. 00169-70. Offerors with no relevant history of past performance were to be assigned a rating of neutral. Id. at 00169.

As a part of its proposal submission in response to the RFP, Logical-R included past performance information pertaining to four separate contracts. AR, Tab 36, Logical-R Vol. 2--Past Performance, at 00745-00759. The first contract was a contract for NASA procurement support performed by Logical Innovations. Id. The second was a contract for NASA institutional support services performed by a joint venture entity identified as ReDe-Critique JV.¹⁶ Id. The remaining two contracts were performed by Booz Allen, one of which was for NASA financial and business support, and one for Navy program management, cost modeling, contract management, and acquisition support. Id. In addition to the information contained in Logical-R's proposal, NASA obtained past performance questionnaires that were relevant to each of the four contracts identified. The agency also obtained information on the Logical Innovations and ReDe-Critique JV contracts from the contractor performance assessment rating system (CPARS). The agency used this information when evaluating and formulating Logical-R's rating for past performance. CO Statement at 14-15.

Al-Razaq raises two main challenges to NASA's evaluation of Logical-R's past performance. First, the protester alleges that NASA improperly credited Logical-R for the past performance of its subcontractor, Booz Allen. Next, the protester argues that NASA improperly credited Logical-R with the past performance of an unrelated company that had no relationship to the awardee--the ReDe-Critique JV.

In response, the agency contends that its evaluation of the awardee's past performance was fair, reasonable, and in accordance with the solicitation's stated evaluation scheme. Supp. CO Statement at 3. NASA argues that the contracts included in its evaluation of past performance are in fact related, and of similar size, content, and complexity. Supp. Legal Memo at 5. Finally, the agency argues that the protester fails to establish that it was prejudiced by the agency's actions. Id. at 15.

¹⁶ ReDe, Inc. is one of two firms comprising the ReDe-Critique JV.

With respect to Al-Razaq's allegation that the agency improperly credited Logical-R with Booz Allen's past performance, the agency's evaluation is unobjectionable. Our Office has held that, in the absence of any prohibition in the solicitation, an agency may properly evaluate and give weight to the past performance of a proposed subcontractor. SIMMEC Training Solutions, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 5-6. In this regard, FAR § 15.305(a)(2)(iii) expressly provides that agencies "should take into account past performance [of] . . . subcontractors that will perform major or critical aspects of the requirement." FAR §15.305(a)(2)(iii). Where a solicitation allows for the use of subcontractors and does not prohibit the consideration of a subcontractor's experience in the evaluation, the significance of, and the weight to be assigned to a subcontractor's experience is a matter of contracting agency discretion. See Loral Sys. Co., B-270755, Apr. 17, 1996, 96-1 CPD ¶ 241 at 5.

Here, Logical-R's proposal expressly indicated that Booz Allen would be responsible for certain aspects of contract performance. Furthermore, the RFP expressly indicated that the past performance of major subcontractors would be reviewed. RFP at 00171. Based on this record, we find that NASA reasonably evaluated Booz Allen's past performance, as a part of its overall evaluation of Logical-R's past performance.

Next, there is no dispute that NASA attributed the past performance information belonging to a joint venture entity identified as ReDe-Critique when evaluating Logical-R's past performance. Supp. CO Statement at 2; Supp. Legal Memo at 3. Moreover, the agency does not dispute that it did not identify what role ReDe-Critique JV would play, if any, in the proposal submitted by Logical-R. Furthermore, the agency confirmed that NASA did not perform an investigation to determine if ReDe's performance under the ReDe-Critique JV contract was substantial enough to consider as part of the past performance evaluation of Logical-R. Supp. CO Statement at 2; Supp. Legal Memo at 3. To the contrary, NASA indicated that it evaluated the Rede-Critique JV as one entity--ReDe. Supp. CO Statement at 2; Supp. Legal Memo at 3.

Our Office has found that an agency properly may consider the experience or past performance of an offeror's affiliated companies where the firm's proposal demonstrates that the resources of the affiliated company will affect the performance of the offeror. See FAR § 15.305(a)(2)(iii); West Sound Servs. Grp., LLC, B-406583.4, B-406583.5, July 9, 2014, 2014 CPD ¶ 208 at 14. The relevant consideration is whether the resources of an affiliated company--its workforce, management, facilities or other resources--will be provided or relied upon for contract performance, such that the parent or affiliate will have meaningful involvement in contract performance. IAP World Servs., Inc.; EMCOR Gov't Servs., B-407917.2 et al., July 10, 2013, 2013 CPD ¶ 171 at 9. While it is appropriate to consider an affiliate's performance record where the affiliate will be involved in the

contract effort or where it shares management with the offeror, it is inappropriate to consider an affiliate's record where that record does not bear on the likelihood of successful performance by the offeror. Id.

Here we conclude that the agency improperly credited the awardee with performance of the ReDe-Critique JV. In this regard, the agency did not in any way consider whether the resources of ReDe-Critique JV, which is a separate and distinct entity from the Logical-R joint venture partner ReDe, would have meaningful involvement in contract performance. Nevertheless, the protester has not demonstrated how it would be prejudiced by such error.

Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3.

Here, even if the agency had concluded that it would not credit Logical-R with the performance of the ReDe-Critique JV when evaluating Logical-R's proposal, the protester does not show that Logical-R would have received a different rating. In this regard, as we stated above, the agency could properly credit Logical-R with the past performance of Booz Allen, which the agency found to be relevant and highly-rated.

Moreover, the record indicates that even if the agency concluded that Logical-R had no relevant experience, and assigned its proposal a neutral confidence rating, the protester would not be prejudiced because the agency did not consider past performance to be a major discriminator in its best value determination. In this regard, the RFP established that mission suitability was the most important factor; price was significantly more important than past performance; and past performance was the least important evaluation factor. RFP 00172. Indeed, the selection decision noted that the most important discriminator in favor of Logical-R was its mission suitability proposal, and Logical-R was lower priced than Al-Razaq. AR, Tab 78, SSA Selection Statement, at 01229-30. The protester received lower ratings under the most important evaluation factor of mission suitability and had a higher overall evaluated price. Thus, the protester has failed to demonstrate how the agency's error in its evaluation of the awardee's past performance would have resulted in it having a substantial chance of receiving the award.

The protest is denied.

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