



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: West Sound Services Group, LLC

File: B-406583.4; B-406583.5

Date: July 9, 2014

Adam K. Lasky, Esq., James F. Nagle, Esq., Howard W. Roth, Esq., and Brandon D. Young, Esq., Oles Morrison Rinker & Baker LLP, for the protester.

William A. Roberts, III, Esq., Richard B. O’Keeffe, Jr., Esq., and Gary S. Ward, Esq., Wiley Rein LLP, for Chugach Federal Solutions, Inc., the intervenor.

James McCormick, Esq., Department of the Navy, Naval Facilities Engineering Command, for the agency.

Nora K. Adkins, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency’s evaluation of the protester’s proposed staffing is denied where the agency reasonably determined that the proposal did not provide efficiencies or labor savings to account for its low direct labor staffing levels.
2. Protest challenging the agency’s evaluation of the protester’s proposal under the past performance factor is denied where the information the protester claims the agency should have considered was not presented or referenced by the protester in its response to discussions; the agency had no obligation to seek out and favorably consider information the protester should have included in its proposal.
3. Protest alleging that the agency improperly considered contracts performed by affiliates of the awardee in evaluating the awardee’s proposal under the corporate experience factor and the past performance factor is denied where the solicitation specifically permitted the evaluation of affiliates, and the awardee’s proposal demonstrated the relevance of its corporate affiliates in accordance with the solicitation’s terms.
4. Protest challenging the agency’s evaluation of the protester’s key personnel is denied where, despite an apparently disparate evaluation, the protester does not demonstrate that it was prejudiced.

DECISION

West Sound Services Group, LLC,¹ of Austin, Texas, protests the award of a contract to Chugach Federal Solutions, Inc. (CFSI), under request for proposals (RFP) No. N44255-10-R-5016, issued by the Department of the Navy, Naval Facilities Engineering Command, for base operations support services at various locations throughout the Northwest United States. The protester contends that the agency unreasonably evaluated the offerors' proposals and failed to conduct meaningful discussions.

We deny the protest.

BACKGROUND

The solicitation, originally issued on November 21, 2011, contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity contract for base operations support services at Navy installations and remote sites located in Washington, Oregon, Idaho, Montana, Wyoming, and Alaska. RFP at 12. The RFP, as amended, anticipated award on a best-value basis for a base period, which will run from contract award to September 30, 2014; four 1-year options; and an additional option starting October 1, 2018, and continuing until the total period of performance equals 60 months. RFP Amend. 16 at 6. The RFP stated that proposals would be evaluated on the basis of price and six non-price factors: (1) corporate experience, (2) technical approach/methods, (3) management approach/capability of key personnel, (4) past performance, (5) safety, and (6) small business utilization.² RFP Amend. 5 at 8. All non-price evaluation factors were equally-weighted and, when combined, were approximately equal to price. Id. The solicitation established that the Navy would evaluate whether the total price for each proposal was fair and reasonable. Id. at 11.

The solicitation advised that an offeror's non-price proposal must clearly and fully demonstrate a thorough knowledge and understanding of the performance requirements. RFP Amend. 3 at 12. With regard to the technical approach factor, the solicitation required offerors to address their staffing and technical approach for each "annex" provided in the RFP's performance work statement (PWS). RFP Amend. 5 at 13-14. As relevant here, the PWS explained that "[a]nnex 2 contains the on-site project management and administration requirements," and "[a]nnexes

¹ West is a joint venture of J&J Worldwide Services and EMCOR Government Services.

² Factor 6 contained two equally-rated subfactors: past performance in utilization of small businesses and small business participation. Id.

[4] through 18 contain the technical requirements.” RFP Amend. 13, PWS, at 3. The technical annexes addressed requirements such as: public safety, facility management, utilities, base support vehicles and equipment, and environmental work. Id.

With regard to the management approach factor, the solicitation advised offerors to clearly demonstrate a feasible approach for managing the RFP requirements, employing a quality management system, and mobilizing and hiring key personnel. RFP Amend. 5 at 14-15. The solicitation established that the agency’s evaluation of an offeror’s key personnel candidates for management positions would consider whether the proposed personnel meet the requirements of the solicitation based upon education, professional qualifications, and experience. Id.

With regard to the corporate experience and past performance factors, the RFP advised that an offeror could identify up to five reference contracts where the offeror was the prime contractor, which were completed within the last five years or are substantially completed. Id. at 13. The solicitation stated that the agency’s evaluation of corporate experience would consider an offeror’s recent and relevant experience as it relates to the RFP requirements. Id. at 12. The RFP advised that contracts which are not relevant would be considered by the Navy in its evaluation; however, the contracts would be viewed as less relevant and assigned lower ratings. Id.

With regard to past performance, the solicitation stated that the agency’s evaluation would be based upon the degree to which the offeror demonstrates a trend of satisfactory performance on relevant contracts. Id. at 17. As discussed below, the corporate experience and past performance factors also provided for the consideration of corporate affiliates. Id. at 12.

The Navy received nine proposals by the initial closing date of February 28, 2012. Agency Report (AR), Tab H-1, Source Selection Decision, at H1. The agency issued amendments eleven and twelve thereafter, which permitted the nine offerors to submit revised proposals by August 9. Id. at H1-2. All nine offerors, including West, submitted timely revised proposals. Id. at H2. Following the evaluation of all nine offerors, a competitive range of four offerors was established; West was not included in the competitive range. Id.

On March 25, 2013, West filed a protest with our Office challenging its competitive range exclusion. On July 3, our Office issued a decision sustaining the protest, concluding that the Navy unreasonably excluded West’s proposal from the competitive range because the agency failed to conduct meaningful discussions with West, and failed to properly consider information provided by West in its revised non-price proposal. See West Sound Servs. Grp., LLC, B-406583.2, B-406583.3, July 3, 2013, 2013 CPD ¶ 276 at 17. We recommended that the Navy

reopen discussions, accept revised proposals, and make a new competitive range decision. Id.

Based upon our recommendation, the Navy requested revised proposals from the four competitive range offerors and West. AR, Tab H-1, Source Selection Decision, at H2. All five firms, including West, submitted revised proposals by the closing date of July 25. Id. The agency evaluated the offerors revised proposals and opened discussions. Id. On November 15, the Navy requested final proposal revisions; the agency received final revised proposals from all five offerors by November 26. Id.

The agency evaluators conducted a technical and price evaluation of the proposals, which resulted in the following ratings for the five offerors:

	CFSI	Offeror A	Offeror B	Offeror C	West
Corporate Experience	Good	Good	Good	Outstanding	Good
Tech. App.	Good	Good ³	Outstanding	Good	Good ⁴
Mgmt. App.	Good	Good	Outstanding	Acceptable	Good
Past Perf. Relevancy	Relevant	Relevant	Relevant	Relevant	Relevant
Past Perf Confidence	Substantial Confidence	Substantial Confidence	Substantial Confidence	Substantial Confidence	Limited Confidence
Safety	Outstanding	Good	Good	Good	Outstanding
Small Business (SB) Utilization	Good	Good	Good	Good	Good
Past Perf.	Good	Good	Outstanding	Outstanding	Good
SB Particip.	Good	Good	Good	Good	Good
Overall Tech. Rating	Good	Good	Good	Good	Good
Price	\$329,451,130	\$330,703,955	\$348,946,842	\$378,361,168	\$364,007,191

AR, Tab H-1, Source Selection Decision, at H3.

³ The source selection advisory council's (SSAC) evaluation changed the technical evaluation team's rating of Offeror A's technical approach factor from acceptable to good. AR, Tab G-1, SSAC Final Report, at G16.

⁴ The SSAC's evaluation changed the technical evaluation team's rating of West's technical approach factor from marginal to good. Id.

The source selection authority (SSA) reviewed the evaluations of the lower-level evaluators and independently reviewed and compared each offeror's proposal. The SSA concluded that CFSI provided the best value proposal, and ranked the remaining offerors as follows: (2) Offeror A, (3) Offeror B, (4) Offeror C, and (5) West. Id. at H1, H3.

With regard to West, the SSA concluded that the protester provided the weakest technical proposal. Id. at H8. The SSA noted that despite multiple rounds of discussions, in which West was given the opportunity to address its staffing, the protester did not provide an explanation to account for low staffing levels, and nothing in the proposal or the responses to the discussion questions reflected labor saving approaches or efficiencies that explained how West would be able to perform with the lower staffing. Id. The SSA assigned a significant weakness to the protester's proposal based on the risk of poor performance. Id. The SSA also noted that West was assigned a limited confidence past performance rating based primarily upon negative past performance information regarding the protester's performance of the incumbent contract (contract 1), which was the only contract assessed a very relevant rating. Id. at H9.

On March 21, 2014, the Navy awarded CFSI the contract. West received a debriefing on March 24, and filed the current protest on March 31.

DISCUSSION

West protests the Navy's evaluation of the offerors' proposals and the award decision. West also contends that the agency failed to conduct meaningful discussions with West. Although we discuss only certain representative examples of the arguments raised by the protester, we have reviewed each of the arguments, and find no basis to sustain the protest.⁵

⁵ For example, the protester argued that the agency failed to conduct meaningful discussions with West because it did not notify West of a significant weakness assessed under the small business participation subfactor of the small business utilization factor. We find no basis to sustain the protest because the record shows that the source selection authority did not consider this aspect of West's proposal to be a significant weakness, and the assigned weakness did not affect West's overall good rating for the small business utilization factor. See WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 5-6 (although discussions may not be conducted in a manner that favors one offeror over another, and offerors must be given an equal opportunity to revise their proposals, discussions need not be identical among offerors; rather, discussions need only be tailored to each offeror's proposal.) The protester also withdrew a number of protest grounds including price realism, misleading or inequitable discussions with regard to price, and the evaluation of certain of its key personnel.

Evaluation of West's Technical Approach

West challenges the Navy's evaluation of its proposal under the technical approach factor, asserting that the agency unreasonably failed to account for differences in the offerors' technical approach. The agency contends that it reasonably evaluated the information contained within West's proposal and concluded that, even after multiple rounds of discussions with West, its proposal still provided the lowest number of direct labor staffing, which was considered a performance risk. We conclude that the agency conducted a reasonable evaluation based upon the information contained within West's proposal.

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 IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13; Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's mere disagreement with an agency's judgment in evaluating proposals is insufficient to establish that the agency acted unreasonably. See VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4; Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

The solicitation required an offeror to complete a worksheet (RFP attachment J.M-5) detailing the full time equivalent (FTE) staff and annual hours proposed for the performance of each element of the PWS. RFP Amend. 5 at 14. In addition, the solicitation stated that an offeror was to explain its methodology to accomplish the requirements in each annex. Id. As detailed above, the PWS explained that "[a]nnex 2 contains the on-site project management and administration requirements," and "[a]nnexes [4] through 18 contain the technical requirements." RFP Amend. 13, PWS, at 3. As also set forth above, the technical annexes addressed requirements such as: public safety, facility management, utilities, base support vehicles and equipment, and environmental work. Id. The RFP established that the Navy would evaluate whether an offeror's technical approach provided adequate staffing levels based upon the offeror's FTE worksheet and proposed methodology. RFP Amend. 5 at 14.

The Navy reviewed the offerors' technical approach proposals and found that "[w]hile offerors differed in their approaches or methods for meeting the RFP requirements . . . no firm provided an approach or method that was so unique that [it] would noticeably impact staffing due to increased or decreased efficiencies." AR, Tab G-1, SSAC Report, at G7. As a result, the technical team concluded that it was appropriate to compare offerors' proposed FTEs to each other with a standard deviation analysis. Id. The Navy's standard deviation analysis calculated the average (mean) of the offerors' proposed FTEs using the direct labor FTEs, annexes 4-18 (the technical requirements); as discussed below, this calculation did

not include FTEs under annex 2, which was for overhead. Based on this calculation, the average of the offerors' direct labor FTEs was [DELETED] FTEs with a standard deviation⁶ of [DELETED] FTEs. The offeror's direct labor FTEs, overhead annex FTEs, and overall FTEs, were summarized as follows:

	Direct Labor FTEs	Overhead Annex FTEs	Total Recurring FTEs (with overhead annex)
CFSI	[DELETED]	[DELETED]	[DELETED]
Offeror A	[DELETED]	[DELETED]	[DELETED]
Offeror B	[DELETED]	[DELETED]	[DELETED]
Offeror C	[DELETED]	[DELETED]	[DELETED]
West	[DELETED]	[DELETED]	[DELETED]

AR, Tab G-1, SSAC Report, at G9-10.

West proposed [DELETED] direct labor FTEs, which was [DELETED] FTEs below the average, and [DELETED] FTEs less than one standard deviation ([DELETED] FTEs) from the average. Id. at G12. The evaluators assigned a significant weakness for low overall direct labor and noted that West

offers the fewest direct labor FTEs and, is below the standard deviation. . . . [West] does not offer an approach or methodology with sufficient efficiencies to account for a direct workforce of this size. There is a concern the offeror has failed to fully understand the RFP's requirements thereby increasing successful performance risk.

Id. at G11.

The Navy acknowledged that if the calculation of direct labor were to include West's "Annex [2] or overhead FTEs, [West's] total FTEs are within the normal distribution." Id. The agency concluded, however, that "[s]ince it is not apparent how many FTEs in Annex [2] are allocated as direct vs. overhead . . . it is difficult to draw a hard conclusion from these numbers." Id. The evaluators concluded that West offered the fewest direct labor FTEs, noting that "[o]verall, its total FTEs are within the standard deviation range; however, its direct labor FTEs are [DELETED] lower than the lowest end of the standard deviation range and [DELETED] less than the mean." Id. at G12.

The SSA also found that "[n]o explanation was provided to account for [West's] lower staffing levels," and concluded that "nothing in the proposal or the responses

⁶ The standard deviation is the variance of each offeror's proposed FTEs from the established mean.

to the discussion questions highlighted labor saving approaches or efficiencies that would explain how W[est] would be able to perform the contract with the lower staffing.” AR, Tab H-1, Source Selection Decision, at H8. The SSA agreed with the evaluators’ assessment of a significant weakness for this aspect of West’s proposal because the low direct labor staffing levels represented additional performance risk to the Navy. Id.

West argues that the Navy’s evaluation failed to consider that it proposed a centralized--as opposed to decentralized--management approach. Protest at 9. In this regard, West contends that its staffing approach placed more staff within the management and administration overhead annex (annex 2), which permitted it to have fewer staff within the direct labor annexes (annexes 4-18). See AR, Tab C7, West Non-Price Proposal (July 25, 2013), at C446-47. West asserts that the agency unreasonably failed to consider its unique approach, which proposed fewer FTEs in the “direct labor annexes,” because the agency analyses did not account for its overhead staff allocated to annex 2. Protest at 9.

On this record, we find that the agency reasonably evaluated West’s technical approach. As our Office has held, it is an offeror’s responsibility to submit a proposal that responds to, and demonstrates a clear understanding of, the solicitation requirements; where a proposal fails to do so, the offeror runs the risk that the procuring agency will evaluate its proposal unfavorably. 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.

Here, to the extent West argues that the agency should have understood its technical approach to include FTEs in annex 2 that were intended to be direct labor support for annexes 4 through 18, we do not think that the protester’s proposal clearly reflects this approach. In this regard, the protester’s proposal does not expressly state that FTEs assigned to annex 2 would provide direct labor support in the manner West argues in its protest, or otherwise clearly explain how its staffing for annex 2 would result in lower direct labor requirements for annexes 4-18. Based on our review of the record, we find that the Navy reasonably considered West’s staffing approach, and found that its proposal did not provide a labor-saving approach or efficiencies that accounted for its overall low direct labor. We agree with the agency that West’s proposal did not provide an explanation sufficient to show how its approach could be accomplished based on its low direct labor staffing, and therefore find no basis to sustain the protest.

West’s Past Performance Evaluation

Next, West challenges the Navy’s evaluation of its past performance, arguing that the agency failed to consider the protester’s most recent past performance information, and improperly considered past performance information from a

contract that was determined to be not relevant. Based upon the record, we find no basis to sustain the protest.

The evaluation of past performance, including the agency's determination of the relevance and scope of a firm's performance history to be considered, is a matter of agency discretion, which we will not find improper unless unreasonable, inconsistent with the solicitation criteria, or undocumented. Harris IT Servs. Corp., B-406067, Jan. 27, 2012, 2012 CPD ¶ 57 at 10. A protester's mere disagreement with the agency's judgment is insufficient to establish that an evaluation was improper. Id.

The solicitation established that an offeror could provide up to five contracts for evaluation under the past performance factor. RFP Amend. 5 at 16. The RFP required the offeror to submit past performance questionnaires (PPQs), which were to be completed by the offeror's reference. Id. The solicitation also required an offeror to address in its proposal any unfavorable past performance history, including unfavorable history related to the five identified reference contracts, or any documented unfavorable performance in any government performance assessment system, such as contractor performance assessment reports (CPARS). Id. The agency's evaluation of past performance was to evaluate the degree to which the offeror demonstrates a trend of satisfactory performance on relevant contracts. Id. at 17.

West identified the following five prior contracts in its proposal: contract 1--West Sound Operating Base Support, the incumbent contract;⁷ contract 2--Soto Cano Air Base; contract 3--Navy National Capital Region Base Operations Support; contract 4--Jet Propulsion Laboratory; and contract 5--U.S. Navy Kings Bay, security services.

The Navy's evaluation of West's performance record concluded that the first (incumbent) contract was very relevant, contracts two through four were relevant, and the last contract was not relevant because it involved performance of a subcontractor. AR, Tab D-1, Technical Evaluation, at D139-40. After completing its evaluation, the Navy provided discussion questions to West on November 7, 2012, noting concerns with regard to negative past performance information for: (1) the incumbent contract; (2) one of the relevant contracts (contract 3); and (3) a contract performed by EMCOR, which was not identified as a reference contract in West's proposal. Id. at D141. The agency's discussion questions identified specific concerns including: downward performance trends; significant weaknesses in utility

⁷ The two firms in the West joint venture--J&J Worldwide Services and EMCOR Government Services--are two of the three firms that comprised the incumbent contractor EJB Facility Services. AR, Tab C-7, West Proposal (July 25, 2013), at C510.

system inspections and maintenance; failure to comply with mandatory or established environmental practices or codes including hazardous waste management; unnecessarily lengthy problem resolution; and outage notification processes that do not ensure the Government learns of an outage from the contractor. Id.

On November 20, West submitted a revised proposal, which included a rebuttal to the agency's evaluation of its past performance. AR, Tab C-9, West Proposal (Nov. 20, 2012), at C944-73. The technical evaluators reviewed West's submission, but concluded that West's response to the negative performance information exceeded the page limit. AR, Tab D-1, Technical Evaluation, at D141. The evaluators found that the revised proposal did not provide "sufficient evidence . . . that warranted changing the rating of this factor." Id.

As explained above, West was initially excluded from the competitive range; on January 29, 2013, West was provided a debriefing as a result of its exclusion. As part of this debriefing, the Navy advised West that

The most recent past performance review for the project determined to be very relevant to the solicitation identifies significant deficiencies. It demonstrated a descending rating trend from Good to Acceptable. The board felt the quantity and severities of the issues discussed as well as deficiencies in Business Relations on Project 1, 3 and contract # GS06F0035R [the EMCOR contract] were enough of a trend to establish a significant weakness.

West Debriefing (Jan. 29, 2013) at 4. The debriefing also advised that the Navy "was not able to consider the majority of the response regarding the descending past performance because it exceeded the page limitations." Id.

As a result of our July 3, 2013, decision sustaining West's protest, the agency reopened discussions and requested revised proposals from West and the other competitive range offerors. On July 25, West submitted a revised proposal, which included additional information addressing its unfavorable past performance. In this regard, West's proposal provided a rebuttal to the agency's conclusions about the company's prior past performance and also included PPQs from the five reference contracts. With regard to contract one (the incumbent contract), the PPQ reference rated EJB's performance satisfactory in almost every category. AR, Tab C7, West Proposal (July 25, 2013), at C519-520. The reference also noted several issues with contract performance including: "instances of sub-par performance;" "difficulty in scheduling and executing portions of the contract;" "failed to provide adequate operation and maintenance procedures;" management that is "ineffective in assessing problem areas and instituting effective change;" and "systemic Management and Quality Control issues." Id. at C521.

The Navy requested final proposal revisions on November 15. West submitted its final revised proposal and price proposal on November 26. West's non-price proposal did not provide any additional information with regard to its past performance.

The Navy's evaluation of West's final proposal revision focused on the same three contracts identified in the initial, November 7, 2012, discussions. The agency concluded that "the number and magnitude of deficiencies as well as descending scores from Good to Acceptable" merited a limited confidence rating for this factor. AR, Tab D-1, Technical Evaluation, at D140. The evaluators concluded, with regard to West's first contract (the incumbent contract), that West's past performance information reflected "many significant weaknesses within the utilities Annex, safety issues, [and] environmental and code compliance issues." Id. The evaluators also noted that a contract not identified by West, but reviewed by the evaluators as a PPIRS⁸ reference for EMCOR, had very low ratings; in this regard, the contracting officer stated that she would not hire EMCOR again due to communications issues. AR, Tab D-1, Technical Evaluation, at D141. While the technical evaluators noted that the contract was "small in size and not relevant to the solicitation," the technical team had a concern given the nature of the problems described in the incumbent contract because "communication (business relations) factor exists in all contracts." Id.

The SSA agreed with the technical evaluators' limited confidence rating "based on the negative past performance information provided in the very relevant performance review of [West] under Project 1," the incumbent contract. AR, Tab H-1, Source Selection Decision, at H9. In this regard, the SSA noted that the performance review for contract 1 identified significant weaknesses, and demonstrated a descending rating trend from good to acceptable. The SSA additionally explained that the rating was "also based on deficiencies in business relations on Projects 1, 3, and a PPRIS reference for EMCOR." Id. The SSA concluded that the EMCOR reference, while not relevant in the sense of similar size, scope, complexity, or contract type, was relevant to the extent that it provided additional information about West's past business relationships with the government. Id.

West first argues that the Navy's evaluation was unreasonable because it failed to consider recent performance on the incumbent contract, which West alleges demonstrates an increasing trend of successful performance in contrast to the agency's evaluation. The Navy contends that it reasonably determined not to consider the performance information past the 2011 performance year in the interest of fairness to all offerors because at the time the evaluations were

⁸ The Past Performance Information Retrieval System (PPIRS).

conducted West had challenged its 2011 and 2012 CPAR ratings. AR (May 5, 2014) at 27-28.⁹

Based upon our evaluation of the record, we find that the agency properly evaluated West's performance under the incumbent contract. West was notified multiple times through discussions and its competitive range exclusion debriefing that the agency found significant deficiencies in its past performance review of contract 1, which constituted a negative performance trend that merited assessment of a significant weakness. Although the protester had full knowledge of the agency's evaluation of its past performance, West failed to submit information sufficient to alleviate that Navy's concerns. In this regard, the agency concluded that while West's July 25, 2013, revised proposal reflected a disagreement between EJB's perception of its performance and the agency evaluator's assessment of that performance, West's proposal failed to "provide any plan for improvement or alternative course of action that would shed a more positive light and improve communications and teamwork on future projects." AR, Tab D-1, Technical Evaluation, at D142.

West also asserts that the Navy's evaluation of its incumbent performance was unreasonable because the agency failed to consider certain improvements in West's performance during the course of the Navy's corrective action. The protester contends that information in an interim 2013 CPAR and the incumbent contractor's own self-assessment, established that performance on the incumbent contract is trending upward, not downward, as the agency concluded. West contends that the information regarding its incumbent contract performance for this period was "too close at hand" for the agency to disregard in its evaluation. The Navy argues that it reasonably did not consider the information in the 2013 CPAR because the CPAR was not released until after its final proposal revision evaluation was complete.

We have recognized that in certain limited circumstances, an agency has an obligation (as opposed to the discretion) to consider "outside information" bearing on the offeror's past performance when it is "too close at hand" to require offerors to shoulder the inequities that spring from an agency's failure to obtain and consider the information. See, e.g., International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. This doctrine, however, is not intended to remedy an offeror's failure to include information in its proposal. See Great Lakes Towing Co. dba Great Lakes Shipyard, B-408210, June 26, 2013, 2013 CPD ¶ 151 at 8; FN Mfg. LLC, B-407936 et al., Apr. 19, 2013, 2013 CPD ¶ 105 at 3. Where an offeror is in control of the past performance information contained in its proposal--and not reliant on third parties to submit that information--it exercises its own judgment as to the information that the agency should consider. See L-3 Servs., Inc., B-406292,

⁹ The agency also explained that even if these CPARs had been considered the agency's limited confidence rating would remain due to satisfactory ratings. Id.

Apr. 2, 2012, 2012 CPD ¶ 170 at 12 n.10. Such circumstances are instead governed by the well established principle that offerors are responsible for submitting a well-written proposal with adequately-detailed information that allows for a meaningful review by the procuring agency. See Hallmark Capital Group, LLC, B-408661.3 et al., Mar. 31, 2014, 2014 CPD ¶ 115 at 9.

Here, we conclude that the agency had no obligation to seek out and favorably consider information the protester should have included in its proposal. Even though West had multiple opportunities to address its negative past performance, including two requests for revised proposals during this 2013 performance period, West's final revised proposal in November 2013 did not include any reference to what it now contends is its upward trend of performance. Accordingly, we find that the agency's evaluation of West's past performance on the incumbent contract was reasonable.

Next, West alleges that the agency's consideration of the EMCOR contract in assessing the protester's past performance was unreasonable because the technical evaluators concluded that this contract was not relevant.¹⁰ Based on our review of the record, we have concerns about how the agency handled the evaluation of this non-relevant contract. Specifically, we think the agency has not adequately explained why the solicitation permitted it to consider a non-relevant contract in the evaluation of the protester's past performance. Nonetheless, we think the record shows that West cannot establish that it was prejudiced by the agency's actions. As discussed in detail below, even if West's past performance rating were adjusted upward, we have no reason to conclude that West's higher-priced proposal would have received the award here.

Evaluation of CFSI's Corporate Experience/Past Performance

Next, West argues that the agency improperly considered contracts performed by affiliates of CFSI in evaluating the awardee's proposal under both the corporate experience factor and the past performance factor.¹¹ West maintains that CFSI's proposal does not explain how the resources of the affiliates will be brought to bear

¹⁰ As discussed above, the solicitation here expressly contemplated the consideration of non-relevant contracts under the corporate experience factor. RFP Amend. 5 at 12. The RFP, however, did not provide for the consideration of non-relevant contracts under the past performance evaluation factor. Id. at 17.

¹¹ West also challenges the agency's evaluation of the three higher-ranked offerors' corporate experience alleging that the agency improperly credited performance of their affiliates. We need not resolve these challenges since, as explained below, we find that the agency reasonably evaluated the corporate experience of the best value offeror--CFSI.

in CFSI's performance of the current requirement, and that it was therefore improper for the Navy to have attributed the performance of these contracts to CFSI during its evaluation. The Navy contends that the agency properly attributed the performance of several contracts performed by CFSI's affiliates to CFSI during its evaluation of the awardee's proposal, because CFSI's proposal detailed how the resources of its parent and sister companies would be brought to bear during its performance of the contract. The Navy notes that the agency's evaluators performed a careful attribution analysis in evaluating CFSI's proposal, and concluded that CFSI met the requirements of the RFP. We deny this aspect of West's protest.

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. 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); Perini/Jones, Joint Venture, B-285906, Nov. 1, 2000, 2002 CPD ¶ 68 at 4. 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.

In contrast to these general requirements concerning the attribution to an offeror of the experience of its corporate parent or affiliate, the solicitation here included detailed instructions concerning a broader range of information the agency would consider in evaluating whether experience from any entity other than the offeror was relevant to the offer's ability to perform. In this regard, the solicitation required that corporate experience or past performance information supplied by a firm separate from the offeror be supported by a detailed written explanation of how the experience, past performance, and/or safety data is relevant. Specifically, the RFP provided additional instructions as follows:

[I]f the offeror is a newly formed subdivision of a parent company, is a new joint venture . . . , and the offeror provides experience, past performance, and/or safety data from any of the parent/partner/subdivision/originating firm(s) . . . , the offeror's proposal MUST clearly demonstrate how the same policies, procedures,

processes, management, and similar systems will be used in the newly formed offeror's firm and delineate why there is an expectation that the same high quality of experience, past performance, and/or safety will be achieved by the offeror in performance of the requirements of this contract. The proposal must clearly show how experience from any entity other than the offeror is relevant to the offer's ability to perform. The relevant considerations are whether the resources of the parent/partner/subdivision/originating firm(s) will be provided or relied upon for contract performance such that the other firm(s) will have meaningful involvement in contract performance.

RFP Amend. 5 at 12.

The five contracts submitted as part of CFSI's corporate experience/past performance proposal were prime contracts performed by sister companies of CFSI, under their parent company, Chugach Alaska Corporation (CAC), as follows: Contract 1--Chugach Industries, Inc.; Contract 2--Chugach Support Services, Inc.; Contract 3--Chugach McKinley, Inc.; and Contract 4--Chugach Industries, Inc.; and Contract 5--Chugach Support Services, Inc. AR, Tab D-1, Technical Evaluation, at D10-11.

The Navy's evaluation of CFSI's corporate experience noted that all corporate experience submitted was for subsidiaries of CAC. AR, Tab D-1, Technical Evaluation, at D9. The technical evaluators concluded that CFSI established that "all subsidiaries utilize CAC's formal management system which shares resources, corporate policies and procedures, meets regularly with a Board of Directors, and incorporates lessons learned from all subsidiaries." Id. The evaluators determined that this "relationship is further strengthened using references of success on other projects in the proposal demonstrating the corporate structure and support CAC provides to their subsidiary companies." Id. The evaluators also found that CFSI referenced corporate structure and methods in virtually every aspect of the work in its proposal. Id.

The SSA conducted his own analysis of the proposals to "ensure that a sufficient nexus was established between all offerors and affiliates or sister subsidiaries for whom corporate experience and past performance information was provided." AR, Tab H-1, SSA Decision, at H9. The SSA's analysis determined that each of the offerors remaining in the competitive range submitted corporate experience and past performance information for affiliates and subsidiaries that were different entities than the offeror itself. Id. With regard to CFSI, the SSA concluded that "[a]ll corporate experience submitted is for other subsidiaries of CAC." Id. at H10. The SSA noted that the management section of the proposal explains how all subsidiaries "utilize CAC's formal management system which shares resources, corporate policies and procedures, meets regularly with a Board of Directors, and incorporates lessons learned from all subsidiaries." Id. The SSA believed that the

“nexus of relationship” was further highlighted by CFSI’s use of examples to demonstrate “successful performance on other projects in the proposal that demonstrate the corporate structure and support CAC provides to their subsidiary companies.” Id.

Additionally, the SSA found that CFSI’s proposal referenced corporate structure and methods demonstrating that CFSI will be afforded the corporate resources to execute the contract, and the proposed Project Manager for CFSI had direct management experience on one of the referenced contracts--he was the Project Manager on contract 2 from 2002 to 2011. Id. Finally, the SSA noted that CFSI’s proposal demonstrated that CAC and representatives from affiliates assist with [DELETED]. Id. Based on the explanation and discussion in CFSI’s proposal, the SSA concluded that CFSI sufficiently demonstrated how the other affiliates or subsidiaries will be relied upon for contract performance and will have meaningful involvement in contract performance. Id.

On this record, we find that the Navy’s evaluation of CFSI’s past performance and corporate experience was consistent with the terms of the solicitation. The record shows that CFSI explained the structure of its business organization, and detailed how it would bring the resources of its parent and affiliates to bear on performance of the current requirement. AR, Tab C, CFSI Proposal, at C9-10. The Navy specifically examined CFSI’s proposal to determine whether or not to credit CFSI with the experience and past performance of its parent and affiliated concerns, and reasonably concluded that CFSI’s proposal demonstrated how the same policies, procedures, processes, management, and similar systems will be used by CFSI in performance of the contract. In this regard, the agency found that the awardee explained that CAC’s management approach was used successfully in the past with its sister subsidiaries, and that this success provided an expectation that the same high quality of experience, past performance, and/or safety will be achieved by the offeror in performance of the requirements of this contract. We therefore conclude that the agency’s evaluation was reasonable and in accordance with the solicitation.

Disparate Treatment

Finally, West maintains that the Navy disparately assigned strengths to offerors’ proposals in the evaluation of their key personnel under both the technical approach factor and the management approach factor. West asserts that, had the agency fairly evaluated its key personnel, the protester would have received additional strengths for these two positions because the other offerors received strengths for key personnel with similar experience. Here, we cannot determine on the record before us whether the agency reasonably considered the experience of West’s proposed key personnel with regard to these two positions. We conclude however, that if there was an error in this regard, West was not prejudiced by these errors.

The RFP required an offeror to submit a resume for the following six technical key personnel under the technical approach factor: facilities manager, utilities manager, health care facilities manager, heating ventilation and air conditioning and refrigeration (HVAC/R) supervisor, electrical supervisor, and contract security manager. RFP Amend. 5 at 13-14. The PWS listed the requirements for each of these six positions. For the HVAC/R supervisor position, the PWS specified in relevant part that a contractor “shall provide a Journeyman Level Heating Ventilation and Air Conditioning and Refrigeration (HVAC/R) Supervisor who has at least ten years experience in HVAC/R and DDC controls at a comparable level of responsibility in projects of similar size, scope and complexity.” RFP Amend. 13, PWS, at 32.

Under the management approach factor, offerors were required to submit resumes for the following positions: project manager(s), quality control manager(s), site safety and health officer(s), and environmental manager. RFP Amend. 5 at 15. For the environmental manager position, the PWS stated that the individual proposed for this position “shall have previously been employed in the environmental compliance field” and shall have “[a] minimum of three consecutive years experience in hazardous waste management and hazardous substance spill response” and “[a] minimum of two years experience in Spill Prevention Control and Countermeasures (SPCC) management [and] Underground Storage Tank (UST) management.” RFP Amend. 13, PWS, at 33.

West primarily argues that the Navy disparately assigned strengths to the competing proposals because its HVAC/R supervisor’s resume and its environmental manager’s resume demonstrated the same or greater experience than other offerors’ key personnel who were assigned strengths. In this regard, West asserts that the agency’s evaluation assigned strengths to offerors based upon the total years of experience of their proposed personnel, but did not similarly credit West. Instead, West contends the agency’s evaluation of West’s key personnel credited only relevant experience, as opposed to total years of experience. The protester contends that the record does not explain the basis for the agency’s distinction between relevant and non-relevant experience, and does not explain whether the agency evaluated the other offerors on this basis. Thus, West alleges that the agency applied a stricter standard to West’s key personnel evaluation.

Agencies are required to evaluate proposals on a common basis and in accordance with the terms of the RFP. Agencies may not properly engage in disparate treatment of offerors in the evaluation of proposals. Global Analytic Info. Tech. Servs., Inc., B-298840.2, Feb. 6, 2007, 2007 CPD ¶ 57 at 4.

Based upon a review of the record before us, we cannot determine why the agency did not credit West’s proposed HVAC/R supervisor and environmental manager with the total years of experience cited in their resumes, as it did for other offerors, and

instead seemingly focused only on years of relevant experience. Because the contemporaneous record does not provide an adequate explanation for these evaluations, we agree with the protester that the Navy disparately evaluated its HVAC/R supervisor's and its environmental manager's experience.

Notwithstanding these apparent evaluation errors, we conclude that West was not prejudiced. As discussed below, the record does not show that assigning strengths for the two individuals cited above would have led to a reasonable chance of award for the protester.

Prejudice

As discussed above, we agree with West that the record does not support the Navy's concern relating to EMCOR's performance of a non-relevant contract, nor does the record show why the agency did not credit the protester with additional strengths for its key personnel under the technical approach factor and the management approach factor. We do not agree, however, that the record shows that the protester was prejudiced by these errors.

Competitive prejudice is an essential element of every viable protest. We will not sustain a protest, even if deficiencies, such as an unreasonable or unequal evaluation of proposals, are found, where the record does not demonstrate that the protester would have had a reasonable chance of receiving award but for the agency's actions. Leisure-Lift, Inc., B-291878.3, B-292448.2, Sept. 25, 2003, 2003 CPD ¶ 189 at 10; Metropolitan Interpreters & Translators, B-285394.2 et al., Dec. 1, 2000, 2001 CPD ¶ 97 at 9.

Here, West and CFSI received overall ratings of good for the non-price factors. CFSI, however, received higher ratings under the past performance confidence subfactor (substantial vs. limited confidence). AR, Tab H-1, Source Selection Decision, at H3. CFSI's price was \$35 million lower than West's price. Id. As discussed above, the RFP stated that for purposes of award, price was approximately equal to the non-price factors. In order to demonstrate prejudice, West would need to show that its evaluation under the non-price factors would be sufficiently superior to CFSI's so as to require the agency to make a new best-value tradeoff between the protester's and awardee's proposals.

With regard to past performance, West contends that it was prejudiced by the agency's consideration of its non-relevant past performance on an EMCOR contract. Given the negative past performance information provided in the very relevant review of West's performance under the incumbent contract, it is unclear how West could have been prejudiced by the SSA's reliance on additional negative past performance information the technical team labeled not relevant, but nonetheless considered. Thus, even assuming the Navy had not considered the

EMCOR contract, the record does not demonstrate that West's past performance would have been rated as equal or better than CFSI's--which was rated superior.

With regard to the alleged disparate treatment of key personnel, our review of the record does not show any reasonable possibility of prejudice. Even if we accept West's arguments that it should have received an additional strength under each of these two evaluation factors, the record does not show, nor does the protester contend, that these strengths would make West's proposal superior to CFSI's in a manner that would offset the awardee's lower price. In sum, we find no basis to conclude that any of the potential errors discussed herein could have prejudiced West.

The protest is denied.

Susan A. Poling
General Counsel