



Decision

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Matter of: Matson Navigation Company, Inc.

File: B-416976.2; B-416976.3; B-416976.4

Date: January 24, 2019

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Jon D. Levin, Esq., and W. Brad English, Esq., Maynard Cooper & Gale, PC, for the intervenor.

Colonel C. Taylor Smith, Isabelle P. Cutting, Esq., Erika L. Whelan Retta, Esq., Todd Federici, Esq., and Robert D. Bowers, Esq., Department of the Air Force, United States Transportation Command, for the agencies.

Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency unreasonably evaluated protester's past performance is denied where agency considered the relevancy of the past performance examples provided by the protester.
 2. Protest that in evaluating awardee's past performance, agency failed to consider information in a Department of Defense Inspector General report is denied where the information was included in a contractor performance assessment report considered by the agency.
 3. Protest that agency failed to consider a potential Procurement Integrity Act violation is dismissed where protester did not report the alleged violation to the procuring agency within 14 days of when the protester first became aware of it.
 4. Protest that agency failed to consider whether awardee's price was unbalanced is denied where agency determined that awardee's low proposed prices for certain line items did not present an unacceptable risk to the government.
 5. Protest that agency made an unreasonable best-value tradeoff is denied where agency considered that awardee's superior past performance was worth the price premium.
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DECISION

Matson Navigation Company, Inc., of Honolulu, Hawaii, protests the award of a contract to International Auto Logistics, LLC (IAL), of Saint Simons Island, Georgia, under request for proposals (RFP) No. HTC711-18-R-R-001, issued by the Department of the Air Force, United States Transportation Command (USTRANSCOM) for global transportation and storage services for Department of Defense (DoD) sponsored shipments of privately owned vehicles (POVs) belonging to military service members and DoD civilian employees. Matson challenges the agency's evaluation of Matson's and IAL's past performance, failure to consider a possible Procurement Integrity Act violation, evaluation of IAL's price proposal, and best-value tradeoff decision.

We deny the protest.

BACKGROUND

The RFP, issued on March 6, 2018, provided for the award of a contract on a best-value tradeoff basis considering past performance and price, among offerors that were rated acceptable under business proposal and technical capability factors. Agency Report (AR), Tab 17, RFP, at 34.¹ Past performance and price were considered to be approximately equal. Id.

Following the submission and evaluation of initial proposals, multiple rounds of discussions, and the submission and evaluation of final proposal revisions, the agency rated IAL and Matson as follows:

Offeror	Business	Technical	Past Performance	Price
IAL	Acceptable	Acceptable	Substantial Confidence	\$973,403,573
Matson	Acceptable	Acceptable	Satisfactory Confidence	\$879,477,631

AR, Tab 119, Source Selection Evaluation Board Report (SSEBR), at 11. The agency conducted a best-value tradeoff and selected IAL for award. This protest followed.

DISCUSSION

Matson protests that the agency unreasonably evaluated its past performance on a multitude of bases and that in evaluating IAL's past performance, it failed to take into account negative past performance information. Matson also asserts that the agency failed to consider a possible Procurement Integrity Act violation, and challenges the agency's evaluation of IAL's price proposal and the best-value tradeoff decision. We

¹ Citations are to the conformed RFP and page numbers added by the agency.

have reviewed each of Matson's arguments and find that none provide a basis to sustain Matson's protest. We discuss several issues below.

Past Performance Evaluation--Matson

With respect to past performance, the solicitation instructed offerors to submit up to three examples for the offeror and for each major subcontractor for contracts that were similar to the services requested, and performed within the three previous calendar years. RFP at 31. For each example offerors were to provide, among other things, a description of the services provided, the value of the contract, and a detailed narrative explaining how the contract was relevant to this requirement. Id. Offerors were also required to provide a past performance questionnaire (PPQ) to a reference for each example, which was to be returned directly to the agency. Id. at 31-32. The questionnaire required the reference to rate the offeror's performance in the Continental United States (CONUS) and Outside the Continental United States (OCONUS) for POV processing, inland transportation services, ocean transportation, customer service, storage, small business utilization, and overall performance. Id. at 32, Attach. 7, PPQ, at 516-520.

The solicitation advised offerors that the agency would evaluate past performance information using the questionnaires and performance information independently obtained from government or commercial sources. RFP at 37. In evaluating past performance, the agency first assigned each past performance example a relevancy rating of very relevant, relevant, somewhat relevant or not relevant.² Id. After assigning relevancy ratings to each past performance example, the agency assigned a rating of substantial, satisfactory, neutral, limited, or no confidence.³ Id.

The agency considered the 17 past performance examples submitted for Matson and its major subcontractors. AR, Tab 115, Past Performance Evaluation Matson, at 1-13. Of the 17, nine were considered relevant, three were somewhat relevant, and five were not relevant. Id. We address Matson's challenges to the relevancy ratings of the following examples:

² The relevancy rating definitions were: very relevant--effort involved essentially the same scope and magnitude of effort and complexities the solicitation requires; relevant--effort involved similar scope and magnitude of effort and complexities the solicitation requires; somewhat relevant--effort involved some of the scope and magnitude of effort and complexities this solicitation requires; and, not relevant--effort involved little or none of the scope and magnitude of effort and complexities this solicitation requires. RFP at 37.

³ The confidence ratings relevant to the protest were: substantial confidence--the government has a high expectation that the offeror will successfully perform the required effort; and satisfactory confidence--the government has a reasonable expectation that the offeror will successfully perform the required effort. RFP at 37.

Matson Past Performance Example	Dollar Value	Purpose	Rating
[DELETED]	\$256,560,067	Ocean Liner and Distribution Services	Relevant
[DELETED]	\$14,074,486	Inland and Ocean Transportation of New Vehicles	Relevant
[DELETED]	\$12,304,301 \$6M annually	Inland and Ocean Transportation of New Vehicles	Somewhat Relevant

Id. at 1, 5. The agency rated Matson satisfactory for past performance based on the relevancy ratings it assigned to the past performance examples, and the performance ratings assigned by the references or otherwise located in agency records. AR, Tab 119, SSEBR, at 6.

The agency assigned the [DELETED] contract a rating of relevant because it found that while it involved a similar scope and magnitude of effort and complexities to the solicitation, it involved only minor POV processing. AR, Tab 117, Past Performance Evaluation Narrative, at 1. Specifically, Matson had only processed a total of 35 vehicles from 2017 through May 2018, while the current solicitation anticipates that approximately 70,000 vehicles will need to be processed. Contracting Officer's Statement (COS) at 13-14 (citing AR, Tab 52, Email on Matson Shipment of POVs). The [DELETED] contract was rated relevant, as opposed to very relevant, because it involved a similar scope and magnitude of effort and complexities to the solicitation, but did not provide long term storage, small business utilization, or POV processing. AR, Tab 117, Past Performance Evaluation Narrative, at 1; COS at 14 (citing AR, Tab 37, [DELETED] PPQ, at 2, 4). The [DELETED] contract was rated somewhat relevant because it involved only Alaska and Hawaii, not global services, it did not involve POV processing, storage, or small business utilization, and the magnitude of the contract was significantly less than the dollar value of the solicitation. AR, Tab 117, Past Performance Evaluation Narrative, at 2; COS at 15-16 (citing AR, Tab 77, [DELETED] PPQ, at 2-5).

Matson protests that if the agency reasonably rated the relevance of its past performance examples it would have been assigned a rating of substantial confidence. In this regard, Matson argues that it should have been assigned a relevancy rating of very relevant rather than relevant under the [DELETED] contract and the [DELETED] contract. Protest at 21; Protester's Comments at 8-15. For example, Matson asserts that with respect to the [DELETED] contract, the agency recognized that Matson performed essentially the same services, which is the definition the solicitation uses for a very relevant rating, and it addressed POV processing in its proposal in describing its

performance on the contract.⁴ Comments at 9. Matson also protests that it should have been assigned a relevancy rating of at least relevant, rather than somewhat relevant, for its performance on the **[DELETED]** contract. See Protest at 22; Protester's Comments at 17-20.

An agency's evaluation of past performance is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. Computer World Servs. Corp.; CompQSoft, B-411216 et al., June 17, 2015, 2015 CPD ¶ 184 at 4. Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations. Delaware Res. Grp. of Okla., LLC, B-408962.3, B-408962.4, Mar. 24, 2014, 2014 CPD ¶ 111 at 10. A protester's disagreement with the agency's evaluation judgments concerning the merits of past performance does not establish that the evaluation was unreasonable. TPMC-Energy Sols. Env. Servs. 2009, LLC, B-408343.2 et al., Aug. 23, 2013, 2013 CPD ¶ 215 at 8.

As noted, the solicitation specifically asked offerors and references to address POV processing. RFP at 32, Attach. 7, PPQ, at 516-520. The solicitation also provided that in evaluating relevancy, the agency would consider scope and magnitude. Id. at 37. The solicitation specifically stated that part of the scope of work of the requirement was "processing and transportation of the POV from point of receipt to final delivery." Id. at 41. It was therefore reasonable for the agency to assign a past performance reference, which did not include POV processing, or, in the case of the **[DELETED]** contract only limited POV processing, with a relevant, rather than a very relevant rating.

Moreover, in assigning Matson's **[DELETED]** past performance example a relevant rather than a very relevant rating, the agency considered that Matson did not provide long term storage and there was no small business participation. The solicitation specifically asked offerors and references to address both long term storage and small business utilization. RFP at 32, Attach. 7, PPQ, at 516-520. In addition, the solicitation specifically stated that part of the scope of work was "storage of POVs." RFP at 41. The solicitation also set forth a need for long term storage when it stated that: "Stored POVs shall be driven no more than 0.5 miles per month unless approved by the

⁴ With respect to the **[DELETED]** and **[DELETED]** examples, Matson asserts that it processed new cars under these contracts, which the agency should have considered because processing new cars is the same as processing POVs. Comments at 12-13, 18-19. To the extent Matson argues that POV processing is the same as new vehicle processing its protest is untimely. In its October 16 debriefing, the agency stated that it did not consider POV processing the same as processing new vehicles. Protest, Exh. 13, Debriefing, at 1 (**[DELETED]** example "did not cover essentially the same scope. . . [as it was] missing POV processing."). Matson did not raise this issue until it submitted its comments to the agency report on December 3, more than 10 days after the debriefing. 4 C.F.R. § 21.2(a)(2).

[contracting officer's representative]. POVs shall be run (including cycling the air conditioning and heat) and moved every thirty (30) days to prevent flat spots on tires." Id. at 46. Likewise, the solicitation required the large business offerors to provide a small business subcontracting plan. Id. at 27. Accordingly, we agree with the agency that long term storage and small business participation were categories that offerors were advised would be considered in determining the relevancy rating.⁵ We also agree that the assignment of a relevant rating for Matson's **[DELETED]** past performance example was reasonable.

For the **[DELETED]** contract, in addition to not providing POV processing, the reference did not include a discussion of global services, storage, or small business utilization. AR, Tab 77, Nisan PPQ, at 2-5. Since Matson's performance on the **[DELETED]** contract did not include many of the solicitation's performance categories, there is no basis to find that the agency unreasonably assigned the **[DELETED]** example a rating of somewhat relevant.⁶

⁵ Matson notes that Federal Acquisition Regulation (FAR) § 15.306(d)(3), requires agencies to discuss with offerors being considered for award adverse past performance information to which the offeror has not yet had the opportunity to respond. Comments at 15-16. Matson protests that the agency considered two instances of adverse past performance that it had not yet had the opportunity to respond to, but did not discuss this past performance with Matson. Id. The first instance involved the **[DELETED]** contract, where Matson received one marginal rating for failing to reach its small business utilization goals. Protest at 21. The contractor performance assessment reporting system (CPARS) report for this contract, however, shows that Matson had the opportunity to address this rating, but chose not to do so. See AR, Tab 42, CPARS, at 3 (under contractor comments, Matson concurs with rating of quality and schedule but says nothing concerning its small business utilization rating).

The second instance involved a statement a reference made regarding the **[DELETED]** past performance example concerning a recent spike in damages in Hawaii. Comments at 16. It also appears that Matson had the opportunity to respond to this issue as the reference explained that Matson was working hard to correct the situation, and rated Matson's performance on the contract satisfactory to exceptional. See AR, Tab 115, Past Performance Evaluation Matson, at 1. With regard to acquisitions governed by FAR part 15, we have recognized that where an offeror was provided an opportunity to respond to adverse performance information during its performance of the affected contract, the agency need not provide an additional opportunity to respond during discussions. Erickson Helicopters, Inc., B-409903, B-409903.2, Sept. 5, 2014, 2014 CPD ¶ 288 at 7 n.12.

⁶ Matson and IAL both proposed one of the same subcontractors, but provided the agency with different past performance examples relating to different contracts for the subcontractor. Compare AR, Tab 27, IAL Past Performance, at 12 (referencing **[DELETED]** contract for subcontractor) with AR, Tab 46, Matson Past Performance, at 9-10 (referencing **[DELETED]** and **[DELETED]** contracts for the same subcontractor).

(continued...)

Matson also protests that even if the agency concluded that none of the individual past performance examples provided for Matson and its subcontractors covered all of the performance areas listed in the solicitation (performance in CONUS and OCONUS for ocean transportation and inland transportation services, POV processing, customer service, storage, small business utilization), the agency should have considered that when the past performance examples for Matson and its subcontractors are considered together, all performance areas are covered. Comments at 5-8. Matson asserts that at best, the solicitation was ambiguous with regard to whether the past performance examples of the prime and subcontractors would be considered in the aggregate in assigning the confidence rating. Id. at 7-8. The agency asserts that the solicitation did not contemplate that in assigning the relevance and confidence ratings all past performance examples would be considered in the aggregate. COS at 16-17. Rather, asserts the agency, the solicitation provided that the agency would evaluate the relevancy of each effort, and then would assign a confidence rating. Id.

An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. ArmorWorks Enters., LLC, B-405450, Oct. 28, 2011, 2011 CPD. ¶ 242 at 3. Where a dispute exists as to the meaning of a particular solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of the provisions; to be reasonable, an interpretation must be consistent with such a reading. Id.

Here, we do not find that the solicitation was ambiguous with regard to whether the agency would consider the relevance of the past performance examples cumulatively in assigning a confidence rating. The solicitation states that:

- i. The evaluation team will determine the recency and relevance of each past performance effort being evaluated. . . .
- ii. After the government performance evaluation team has determined the recency and relevance of each past performance effort being evaluated, one of the following overall Past Performance Confidence Assessment ratings will be assigned.

RFP at 37 (emphasis in original). While the protester may have read the above solicitation requirements to mean that the agency intended to cumulatively consider the

(...continued)

Matson argues that the agency should have considered the past performance information it received for the example that IAL submitted for the subcontractor in assessing the relevance of the subcontractor's past performance for Matson. Comments at 22-25. We disagree. Matson was responsible for choosing the past performance example that it submitted for the subcontractor. In evaluating Matson's past performance, the agency was not obligated to consider past performance information about a contract that Matson did not submit.

past performance examples in assigning a confidence rating, the use of the word each in both the discussion of the relevancy rating, and the discussion of the confidence rating indicates that the agency would consider the relevancy of each contract separately in assigning the confidence rating. Accordingly, we find that the agency's past performance evaluation of Matson to be reasonable.

Past Performance Evaluation--IAL

Matson protests that the agency failed to consider negative past performance information concerning IAL's performance on the incumbent contract that was detailed in a Department of Defense, Office of Inspector General (DoDIG) report. Protest at 26-29. According to Matson, if the agency considered this information it would not have rated IAL substantial confidence.

In response, the agency explains that Congress requested a DoDIG audit to determine whether USTRANSCOM contracting personnel incorporated adequate controls to properly monitor contractor performance, and to address performance concerns on the incumbent contract. COS at 22. The agency reports that while it did not cite the DoDIG report in its past performance evaluation, the performance issues identified in the report, and other issues, were discussed in a CPARS which the agency did consider. Id. at 22-23.

Specifically, the CPARS detailed, among other things, issues with the Chester storage facility which included a leaky roof, and IAL's failure to meet required delivery dates more than 50 percent of the time during the first six months of contract performance. AR, Tab 22, CPARS, Performance Period 5/1/2014-4/30/2015, at 3. The performance issues were discussed with IAL, which cooperated in addressing them. Id. With respect to the late deliveries, the CPARS noted that IAL was forced to begin performance earlier than expected during peak season, and was presented with numerous obstacles which resulted from the previous contractor's failure to comply with the transition plan. Id. Further, more recent reports showed that IAL has complied with the delivery requirement. AR, Tab 23, CPARS, Performance Period 5/1/2015-4/30/2016, at 3; AR, Tab 60, CPARS, Performance Period 5/1/2017-4/30/2018, at 2.

Matson argues that consideration of the CPARS instead of the actual DoDIG report was not sufficient because the CPARS does not contain all the information included in the DoDIG report, and does not contain the DoDIG's conclusions regarding IAL's performance. Comments at 31-32. According to Matson, the CPARS also takes pains to minimize IAL's responsibility for the poor performance. Id. at 33-35.

As Matson notes, the CPARS does not contain identical information to the DoDIG report. For example, the CPARS discusses the leaky roof at Chester and other issues, while the DoDIG report details that vehicles were parked in standing water, dirt and debris accumulated on uncovered vehicles, vehicles were left unlocked, and numerous leaks were present throughout the facility. AR, Tab 128, DoDIG Report, at 13. These issues addressed in the DoDIG report, however, primarily resulted from the leaky roof.

Id. Given that the agency was aware of the substance of the report, including the leaky roof, the late deliveries, and other performance issues, we find no prejudice to Matson because the agency did not cite the report directly.⁷ Torres-Advanced Enter. Sols, LLC, B-412755.2, June 7, 2016, 2016 CPD ¶ 167 at 18 (protester not prejudiced by failure to consider Inspector General report where contemporaneous evaluation record shows that agency was aware of and considered problems noted in the report).

Further, in assigning the confidence rating, the agency could reasonably consider that IAL addressed the performance issues and had received satisfactory or better ratings for its recent past performance on this contract that was considered very relevant. AR, Tab 113, Past Performance Ratings Chart, at 1. In this regard, where an agency has considered reasonably available and relevant past performance information, its judgments regarding the relative merits of competing offerors' past performance are primarily matters within the contracting agency's discretion, the protester's disagreement with such judgments, without more, does not establish a basis for our Office to sustain a protest. TPMC-Energy Sols. Env. Servs. 2009, LLC, supra. For these reasons, we have no basis to sustain this protest allegation.

Pricing

With respect to price, the solicitation provided that in order to be considered for award the total evaluated price must be determined fair and reasonable. RFP at 38. The solicitation further provided that a proposal might be determined unacceptable if the proposed prices are unbalanced. Id. The solicitation defined unbalanced pricing as occurring when, despite a fair and reasonable total evaluated price, the price of one or more line items is significantly overstated or understated and poses an unacceptable risk to the Government. Id.

Matson proposed an initial total evaluated price of \$899,499,006. AR, Tab 118, Price Analysis, at 3. IAL proposed an initial total evaluated price of \$1,069,666,094. Id. As relevant to this protest, during the first round of discussions, the agency issued Matson an evaluation notice (EN) that informed the protester that its proposed prices for certain line items appeared high, and requested Matson to address line items for transportation services (previously referred to as hard and partial lifts) and vehicle storage where Matson proposed to perform for **\$[DELETED]**. AR, Tab 119, SSEBR, at 7; AR, Tab 98, EN(MAT) 0006; AR, Tab 99, EN(MAT) 0007; AR, Tab 100, EN(MAT) 0008.

⁷ Matson also asserts that the agency misconstrued positive information stating that IAL reached a 99 percent customer satisfaction rating as evidenced by customer comment cards, when the statement in the CPARS was actually that IAL's customer satisfaction rating remained above the required 95 percent threshold. Comments at 33-34. While it appears that agency misstated the customer satisfaction rating in its evaluation report, we find no prejudice to Matson, as the rating was above the required 95 percent threshold in any case.

In response, Matson explained that it entered a price of **[DELETED]** for line items for transportation services that had four or fewer autos shipped per year over the last five years, and priced the line items with expected traffic at a level which will pay for the few cars that may have to be moved **[DELETED]** to the government. AR, Tab 98, EN(MAT) 0006. Matson acknowledged that it was exposed to some risk, but indicated its commitment to providing quality services for all vehicles, including those priced at zero dollars. Id.

During the first round of discussions, the agency requested IAL to address proposed prices for certain line items that appeared high, and to confirm that it intended to offer transition services at **[\$DELETED]**. AR, Tab 119, SSEBR, at 5; AR, Tab 69, EN(IAL) 0004; AR, Tab 70, EN(IAL) 0005). In response, IAL reduced its total price by \$4,630,380.20 to \$1,065,035,713, by reducing the price of the line items that the agency had identified as priced high. IAL also confirmed its commitment to providing transition services at **[\$DELETED]**. AR, Tab 69, EN(IAL) 0004; AR, Tab 70, EN(IAL) 0005. The agency reviewed IAL's revisions and determined that while IAL's proposed prices were fair, and reasonable, its overall price still was high. The agency sent IAL another evaluation notice in which it requested IAL to review and if appropriate, revise its overall total evaluated price, which appeared high. AR, Tab 72, EN (IAL) 1001. IAL responded by reducing its price to \$989,903,622.01. Id. IAL did so by reducing many of the line items for regional/other moves (previously identified as hard and partial lifts) to **[\$DELETED]**. Id. IAL explained the price reduction as follows:

The changes made to IAL[s] pricing were made in the Regional pricing section or other moves previously referred to as Hard Lift and Partial moves. Many of the Regional/other move [contract line item numbers (CLINs)] now read **[\$DELETED]**. We have made this decision for two reasons:

1) to provide USTRANSCOM with the best realistic value pricing we can offer for [this contract] and 2) to compete with those who may be placing artificially low numbers in these cells. IAL firmly recognizes a customer may present a vehicle for shipment in any of the **[\$DELETED]** CLIN lanes. When this occurs, IAL is committed to transporting the vehicle in the same workmanlike manner and with all of the same timeliness, insurance, commitment, and dedication these moves are entitled as outlined in our proposal. In other words there [would] be no difference in the service provided for these moves[].

IAL has examined our proposal for the program. We then closely reviewed the historical volumes for these moves. Next we consulted with our Operational team, our Regional (Other Moves) team and our Parent (IAP) company's Board of Directors to fully vet our offering. We can confirm IAL possesses and will dedicate the necessary operational, technical and financial resources to absorb the full costs related to these **“[\$DELETED]”** moves as they occur. IAL views this work as a contribution toward additional cost savings via the [] program beyond what has already

been offered to date including our **[DELETED]** Transition plan, reduced CLINs in the zone to zone lanes where we have been able to generate ocean carrier savings and a highly competitive total evaluated price.

AR, Tab 72, IAL response to EN 1001, at 1.

After receiving the agency report, on November 29, Matson submitted a supplemental protest to our Office in which it argued that the agency failed to consider if IAL's revised price was unbalanced. Supp. Protest, Nov. 29, 2018, at 13-15. The agency responded to that protest on December 6, in a supplemental agency report. On December 10, Matson submitted comments in response to the agency's supplemental report. In those comments, Matson also submitted a second supplemental protest in which it argued that the agency failed to determine whether IAL's response to the second round of evaluation notices informing IAL that its total evaluated price was high evidenced a violation of the Procurement Integrity Act. We address this issue next.

Procurement Integrity Act

Matson explains that the agency held the second round of price discussions with IAL in which it informed IAL that its total evaluated price was high, after Matson submitted its response to the agency's first round of price discussions. Supp. Comments and Supp. Protest, Dec. 10, 2018, at 8-9. As noted, in the first round of discussions with Matson, Matson explained that it priced the hard lift and partial move line items at **[\$DELETED]** because the estimates for these line items showed less than 4 vehicles per year being moved. AR, Tab 98, EN(MAT) 0006. Matson believed that the prices it offered on line items with a greater number of cars would allow it to absorb the **[DELETED]** cost. *Id.* Matson asserts that following the second round of discussions with IAL, IAL reduced its price to **[\$DELETED]** for the same hard lift and partial move line items for which Matson proposed **[\$DELETED]**. Supp. Comments and Protest, Dec. 10, 2018, at 8-9. IAL explained that part of its rationale was to compete with offerors who may have offered artificially low numbers for these items. AR, Tab 72, IAL response to EN 1001, at 1. Matson reasons that this information demonstrates that IAL may have been provided information about Matson's pricing strategy, a violation of the Procurement Integrity Act. Supp. Comments and Protest, Dec. 10, 2018, at 12.

The procurement integrity provisions of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. §§ 2101-2107, known as the Procurement Integrity Act, provide, among other things, that a federal government official "shall not knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates." 41 U.S.C. § 2102(a)(1). Additionally, the Act provides that "[e]xcept as provided by law, a person shall not knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates." *Id.* § 2102(b). Subpart 3.1 of the FAR sets forth the requirements for an agency to investigate allegations raised regarding potential violations of the PIA. FAR provision 3.104-7. Under our Bid Protest Regulations, GAO "will not review an

alleged violation of [41 U.S.C. §§ 2102-2104], where the protester failed to report the information it believed constituted evidence of the offense to the Federal agency responsible for the procurement within 14 days after the protester first discovered the possible violation. 4 C.F.R. § 21.5(d); see also 41 U.S.C. § 2106; Raytheon Co., B-416211, et al., July 10, 2018, 2018 CPD ¶ 262 at 5.

Matson reported the violation to the agency at the earliest on December 10, the date that it filed its second supplemental protest with our Office asserting that the agency failed to investigate a potential violation of the Procurement Integrity Act. According to Matson, it was not aware of the possible violation of the Act, or the agency's alleged failure to investigate the violation, until December 6, when it received the agency's response to Matson's first supplemental protest which included the contracting officer's memorandum for the record. Supp. Comments and Protest, Dec. 10, 2018, at 1, 4-5. In that memorandum, the contracting officer stated that after receiving IAL's response to the second price discussion evaluation notice, she confirmed with her staff working on the procurement that Matson's information was not released. AR, Tab 156, Memorandum for Record. She concluded that IAL may have inferred Matson's pricing strategy from a question that Matson's representative asked at the pre-proposal conference about whether offerors were permitted to offer \$[DELETED] for some line items. Id.

The crux of Matson's argument is that someone potentially released its pricing strategy to IAL. The facts supporting this argument are that IAL reduced to \$[DELETED], the prices for the same line items that Matson proposed to perform at [DELETED] to the government, and indicated that in part it did so to compete with offerors that may be proposing artificially low prices for these items. Matson knew these facts when it received the initial agency report on November 19, because this information was set forth in IAL's response to an evaluation notice, which was included in the agency's report. See AR, Tab 72, IAL response to EN 1001, at 1. Matson did not inform the agency of a possible violation of the Procurement Integrity Act until, at the earliest, December 10, more than 14 days later.⁸ Accordingly, we will not review this issue.

Unbalanced Pricing

In addition, Matson protests that the agency did not consider whether IAL's revised pricing was unbalanced. Supp. Protest at 13-17. Specifically, according to Matson, the agency did not consider whether IAL's revisions to its transportation services (hard lift and partial moves) CLINS reflected a decrease that evidenced significantly understated

⁸ Matson argues that we should consider the issue pursuant to the significant issue or good cause exceptions to our timeliness rules. Those exceptions apply to protests that are being dismissed as untimely pursuant to 4 C.F.R. § 21.2. They are not applicable where, as here, we are dismissing a Procurement Integrity Act issue in accordance with 4 C.F.R. § 21.5(d) because the protester failed to inform the agency of a potential violation within 14 days of when the protester first discovered the possible violation.

prices. Id. In this regard, Matson asserts that while it offered to perform these services for \$0.00, Matson, but not IAL, explained how it intended to cover the risks of its pricing strategy. Id. at 15.

As a general matter, unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated. See, e.g., FAR § 15.404-1(g)(1); Serco, Inc., B-406683, B-406683.2, Aug. 3, 2012, 2012 CPD ¶ 216 at 10. Unbalanced pricing may increase risk to the government, but agencies are not required to reject an offer solely because it is unbalanced. Id. Thus, where an unbalanced offer is received, the agency is required to consider the risks to the government associated with the unbalanced pricing in making the award decision, including the risk that an unbalanced offer will result in unreasonably high prices for contract performance. FAR § 15.404-1(g)(2); Semont Travel, Inc., B-291179, Nov. 20, 2002, 2002 CPD ¶ 200 at 3. Our Office will review for reasonableness an agency's determinations regarding unbalanced prices. Serco, Inc., supra.

Here, the agency did consider whether IAL's price proposal was unbalanced, and presented an unacceptable risk to the government. AR, Tab 118, Price Analysis, at 12-13. The agency found that the explanation that IAL submitted with its revised pricing provided a rationale for offering the hard lift and partial move services at **\$(DELETED)**, adequately addressed how they are capable of covering the costs associated with these CLINs, and confirmed it understood the requirements and was committed to transporting vehicles priced at **\$(DELETED)**, if ordered. Id. at 13. The agency concluded that IAL's pricing did not pose an unacceptable risk to the government. Id. While Matson disagrees that this is sufficient, Matson's disagreement does not demonstrate that the evaluation was unreasonable.

Best-Value Tradeoff

Matson protests that the agency made an unreasonable best-value tradeoff in awarding the contract to Matson. Protest at 33-36; Comments at 44-51. Specifically, Matson argues that the agency could not have reasonably concluded that a marginal difference in past performance justifies a \$100 million price premium.

Source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results, and their judgments are governed only by the tests of rationality and consistency with the stated evaluation criteria. 2H&V Constr. Serv., B-411959, Nov. 23, 2015, 2015 CPD ¶ 368 at 8. Where, as here, a solicitation provides that price and non-price factors are of approximately equal weight and a price/technical tradeoff may be made--we will not disturb an award based on a proposal with higher technical merit and a higher price so long as the award is consistent with the evaluation factors and the agency reasonably determined that the technical superiority of the higher-priced proposal outweighs the price advantage of the lower-priced proposal. See Financial & Realty Servs., LLC, B-299605.2, Aug. 9, 2007, 2007 CPD ¶ 161 at 5.

The solicitation advised that award would be made to the offeror that represented the best value to the government. RFP at 33. In addition, the solicitation stated that this could result in an award to a higher-rated, higher-priced offeror where the source selection authority reasonably determines that the superior past performance of the higher-priced offeror outweighs the cost difference. Id.

In making the tradeoff, the source selection official considered the difference in price and the benefits it expected as a result of IAL's past performance. Specifically, the source selection official found:

Considering the criticality of these contracted services to DoD's ability to transfer Service Members worldwide, and its attendant effects upon worldwide DoD readiness across all the Military Services, it is in the Government's best interest to pay this higher price for a contractor with a Substantial Confidence past performance confidence assessment. Stated differently, IAL's consistent Substantial Confidence past performance is worth the 10% price premium over the life of the program (5.5 years). Performance of this service requires an integrated network of more than 40 Vehicle Processing Centers (VPCs) globally, including personnel and management for each, as well as the coordination of inland and ocean transportation within and between a multitude of CONUS and OCONUS locations, shipping an average of 70,000 POVs annually with more than 8,000 in storage at present. The disparity in the performance confidence levels is major considering the criticality of the services the contractor will provide. IAL's higher rated past performance is worthy of a higher price; the benefit of a higher expectation of successful performance [e.g., the consistent, reliable transportation of POVs of Service Members and DoD employees] directly translates into higher expectation of increased warfighter assurance, which positively affects readiness, and the Military Service's ability to accomplish their missions. The stress and anxiety of uprooting Soldiers, Sailors, Airmen, Marines and Coast Guardsmen and their families to a new home around the world should not be compounded by the worry and fear of lost, damaged, or late vehicles. IAL has consistently shown the ability to take the burden and stress off the families of our Service Members by providing excellent customer service and ensuring their vehicles arrive on-time and damage-free.

Since May 2015, IAL's customer service ratings have been 99% or better, as indicated on comment cards provided by Service Members after their experience shipping or storing their POV through IAL. These benefits, as manifested in IAL's higher rated proposal, are directly proportional to the margin of service superiority and merit [of] the proposed price premium, something Matson's Satisfactory Confidence rating does not provide. . . .

AR, Tab 121, Source Selection Decision Document, at 1-2. The source selection official further stated that the “price premium is proportionate to the benefits associated with the proposed margin of service superiority. . . [and] Matson’s lower [evaluation] does not outweigh the benefits associated with IAL’s higher Substantial Confidence past performance at a higher price.” Id. In addition, the selection official concluded that there were “risks associated with Matson’s lack of performance experience [which] overrides lower cost.” Id. We find that the selection official reasonably justified the finding that IAL’s higher-rated past performance warranted the additional price premium and offered the best value to the government.

The protest is denied.

Thomas H. Armstrong
General Counsel