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Decision

Matter of: Computer World Services Corporation

File: B-421495.2

Date: December 6, 2023

Matthew T. Schoonover, Esq., Matthew P. Moriarty, Esq., John M. Mattox II, Esq., Ian P. Patterson, Esq., and Timothy Laughlin, Esq. Schoonover & Moriarty LLC, for the protester.

Daniel R. Forman, Esq., and James G. Peyster, Esq., Crowell & Moring LLP, for Science Applications International Corporation, the intervenor.

Andrew J. Smith, Esq., Lieutenant Colonel Michael R. Tregle, Jr., and Major Brandon P. Mark, Department of the Army, for the agency.

Nathaniel S. Canfield, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's post-corrective action evaluation because it was not reconciled with an earlier evaluation is denied where the protester has not demonstrated any possibility of competitive prejudice.

DECISION

Computer World Services Corporation, of Falls Church, Virginia, protests the issuance of a task order to Science Applications International Corporation (SAIC), of Reston, Virginia, under request for task order proposal (RTOP) No. W911SA22R3004, issued by the Department of the Army for command, control, communications, computers, and information (C4IM) information technology (IT) support services. The protester contends that the agency's evaluation of its past performance was unreasonable for failing to reconcile the initial and post-corrective action evaluations.

We deny the protest.

BACKGROUND

The agency issued the RTOP pursuant to the fair opportunity source selection procedures of Federal Acquisition Regulation subpart 16.5 on August 9, 2022, and amended it seven times. Contracting Officer's Statement (COS) at 1; Agency Report

(AR), Tab 3, RTOP at 1, 3. The RTOP sought proposals from holders of the Army's information technology enterprise solutions-3 services (ITES-3S) indefinite-delivery, indefinite-quantity (IDIQ) contracts for the provision of C4IM IT services to support the United States Army Reserve Command G-6 in Fort Bragg, North Carolina. COS at 1; RTOP at 3-4. The RTOP contemplated issuance of a single task order with fixed-price and cost-reimbursement line items, with a 1-year base period of performance and four 1-year option periods, as well as a 6-month option to extend services. RTOP at 3, 129.

The RTOP provided for a best-value tradeoff using three evaluation factors: mission capability; past performance; and price. *Id.* at 125. The agency would evaluate mission capability--which comprised management approach; staffing approach; and phase-in plan subfactors--on an acceptable/unacceptable basis, with past performance being slightly more important than price in the tradeoff analysis. *Id.*

Relevant here, the RTOP's past performance submission instructions directed offerors to submit information regarding no more than five relevant contracts or task orders performed by the offeror or its major subcontractors--defined as those subcontractors proposed to perform 20 percent or more of the effort based on the total proposed price--within the previous three years. AR, Tab 3e, RTOP Amendment 5 at 38-39. The agency would determine whether each effort was recent, defined as completed or at least 20 percent complete within the previous three years. *Id.* at 31. The agency then would assess the relevancy of each recent effort, considering criteria such as similarity, complexity, and diversity of tasks, type of effort, scope, value, and performance period. *Id.* at 31-32. In determining relevancy, the RTOP advised that the agency would consider the effort, or portion thereof, that the offeror or major subcontractor was proposed to perform. *Id.* at 32. The agency would assign each recent effort a relevancy rating using the following definitions:

Rating	Description
Very Relevant	Present/past performance effort involved essentially the same scope and magnitude of effort and complexities this solicitation requires.
Relevant	Present/past performance effort involved similar scope and magnitude of effort and complexities this solicitation requires.
Somewhat Relevant	Present/past performance involved some of the scope and magnitude of effort and complexities this solicitation requires.
Not Relevant	Present/past performance effort involved little or none of the scope and magnitude of effort and complexities this solicitation requires.

Id.

Finally, the agency would evaluate how well offerors and their major subcontractors performed on the submitted efforts, to arrive at a performance confidence assessment using the following definitions:

Rating	Description
Substantial Confidence	Based on the offeror's recent/relevant performance record, the government has a high expectation that the offeror will successfully perform the required effort.
Satisfactory Confidence	Based on the offeror's recent/relevant performance record, the government has a reasonable expectation that the offeror will successfully perform the required effort.
Neutral Confidence	No recent/relevant performance record is available, or the offeror's performance record is so sparse that no meaningful confidence assessment rating can be reasonably assigned. The offeror may not be evaluated favorably or unfavorably on the factor of past performance.
Limited Confidence	Based on the offeror's recent/relevant performance record, the government has a low expectation that the offeror will successfully perform the required effort.
No Confidence	Based on the offeror's recent/relevant performance record, the government has no expectation that the offeror will be able to successfully perform the required effort.

Id. at 32-33.

The agency received proposals from nine offerors, including the protester. COS at 6. On February 13, 2023, the agency notified the protester that its proposal had been excluded from the competitive range. AR, Tab 7, Notice of Exclusion at 1. As relevant here, the agency notified the protester at that time that its proposal had received a rating of satisfactory confidence under the past performance factor. AR, Tab 7a, February 13 Notice to Unsuccessful Offeror at 2.

The protester thereafter challenged the exclusion of its proposal from the competitive range with our Office. *See Computer World Servs. Corp.*, B-421495, Mar. 30, 2023 (unpublished decision). In response, the agency stated that it intended to take corrective action, specifically, that it would include the protester's proposal in the competitive range, conduct discussions with all offerors in the competitive range, and evaluate past performance in accordance with the RTOP's evaluation criteria. *See id.* We consequently dismissed that protest as academic. *See id.*

On April 19, the agency requested final proposal revisions from the protester. AR, Tab 8, April 19 Request for Final Proposal Revisions. The agency also provided the protester with an evaluation notice that contained conflicting information regarding the

evaluation of the protester's past performance. First, the evaluation notice stated that the protester's past performance had received a rating of satisfactory confidence, just as the previous notice of exclusion from the competitive range had stated. AR, Tab 8a, April 19 Evaluation Notice at 1; *compare also* AR, Tab 7a, Notice to Unsuccessful Offeror at 2.

The evaluation notice's enclosure providing further detail on the past performance evaluation, however, stated that the protester's past performance had received a rating of substantial confidence, with a relevancy rating of very relevant. AR, Tab 8a, April 19 Evaluation Notice at 7. That enclosure also included a chart of performance evaluations from the Contractor Performance Assessment Reporting System for another offeror, not the protester. *Id.*

Finally, the evaluation notice's enclosure listed the past performance examples submitted by the protester with a brief summary of the agency's recency and relevancy evaluation for each example. *Id.* at 9. Although, as noted above, a previous page of the enclosure had identified a relevancy rating of very relevant for the protester's proposal, only one of the protester's five past performance examples--project no. 1--was assigned a very relevant rating, with the remaining four--projects nos. 2-5--receiving ratings of relevant.¹ *Id.*

On April 20, the protester contacted the contracting officer, requesting in part that the agency confirm that the protester's proposal had received a rating of substantial confidence under the past performance factor. AR, Tab 8b, Emails Regarding April 19 Evaluation Notice at 1. The contracting officer responded the following day, stating that the protester's proposal "was assigned a performance confidence rating of substantial confidence." *Id.*

On April 26, the protester submitted final proposal revisions to the agency. See AR, Tab 5, April 26 Final Proposal Revision Email. The protester did not revise its past performance submission. See *id.*

On June 26, the agency issued the seventh amendment to the RTOP, which, among other changes, extended the proposal due date and revised the periods of performance. COS at 2. The agency also simultaneously issued another evaluation notice to the protester with a request to submit final proposal revisions. AR, Tab 9a, June 26 Evaluation Notice at 1. Contrary to the February 13 notice of exclusion and the April 19 evaluation notice--both of which stated that the protester's past performance had received a satisfactory confidence rating--and the enclosure to the April 19 evaluation notice and the contracting officer's April 21 email--both of which stated that the protester's past performance had received a substantial confidence rating--the June 26

¹ As noted above, the RTOP stated that the agency would assess the relevancy of each recent effort, not that the agency would assign an overall relevancy rating. See AR, Tab 3e, RTOP Amendment 5 at 31-32.

evaluation notice stated that the protester's past performance had received a neutral confidence rating. *Id.*

The June 26 evaluation notice also included the agency's full evaluation of the protester's past performance. See AR, Tab 9b, Protester Past Performance Evaluation. Whereas the April 19 evaluation notice stated that past performance project no. 1 was very relevant and the remaining efforts were relevant, the June 26 evaluation notice stated that projects nos. 1 and 4 were somewhat relevant, with projects nos. 2, 3, and 5 evaluated as not relevant. *Id.* at 1. The agency had evaluated projects nos. 3 and 5 as not relevant--despite finding that they were somewhat similar to the solicited effort--because they had been performed by proposed subcontractors, and the protester had not identified which portion of the requirement those subcontractors would perform. *Id.* at 3-4. The agency therefore was unable to determine how relevant those projects were to the protester team's proposed performance of the solicited requirement. *Id.* Because the agency found that the protester's past performance was "so sparse with relevant performance," it "determined that no meaningful confidence rating can be assigned[.]" and therefore assigned a neutral confidence rating. *Id.* at 7.

On June 27, the protester contacted the agency, pointing out that the protester had not changed its past performance submission in its April 26 final proposal revisions, and requesting an explanation "why the [agency] now believes [the protester's] unchanged past performance proposal--which was previously assigned a substantial confidence rating--now inspires only neutral confidence." AR, Tab 9c, Emails Regarding June 26 Evaluation Notice at 2. The agency responded on June 28, stating that the protester's previously-filed protest had "pointed out that [the] initial past performance evaluation was based upon a mechanical evaluation[.]" *Id.* at 1. As a result of corrective action taken in response to that protest, the agency "evaluated past performance consistent with the solicitation evaluation criteria and corrective action identified during [the protest,]" and the protester's past performance "rating [had] changed with the rationale described in the [past performance evaluation included with the evaluation notice]." *Id.*

On July 3, the protester submitted final proposal revisions, including changes to its past performance submission regarding projects nos. 3 and 5, which the agency previously had found to be not relevant because they were performed by subcontractors and the protester had not identified which portions of the requirement those subcontractors would perform. AR, Tab 6, July 3 Final Proposal Revision Email; Tab 6c, Revised Past Performance Submission.

Following the agency's evaluation of the protester's revised proposal, the agency concluded that projects nos. 3 and 5 were somewhat relevant, rather than not relevant. AR, Tab 10, Task Order Decision Document at 4. The agency noted that the protester had identified percentages of effort that those subcontractors would perform, but that that effort was "spread across all functions" rather than targeted to specific tasks those subcontractors had performed under the past performance examples. *Id.* Consequently, they were only somewhat relevant to the solicited requirement. *Id.* Notwithstanding the increased relevancy ratings, the agency still concluded that the

protester’s record of recent and relevant past performance was so sparse that no meaningful confidence rating could be assigned. *Id.* at 5. The agency therefore assigned the protester’s proposal a neutral confidence rating under the past performance factor. *Id.*

On August 24, the agency notified the protester that it had selected SAIC’s proposal for award, based on the following evaluation results:

	CWS	SAIC
MISSION CAPABILITY	ACCEPTABLE	ACCEPTABLE
Management Approach	Acceptable	Acceptable
Staffing Approach	Acceptable	Acceptable
Phase-In Plan	Acceptable	Acceptable
PAST PERFORMANCE	NEUTRAL CONFIDENCE	SUBSTANTIAL CONFIDENCE
TOTAL EVALUATED PRICE	\$150,539,030.37	\$156,249,438.73

AR, Tab 11a, August 24 Notice to Unsuccessful Offeror at 1-2.

During the course of a debriefing, the protester requested an explanation “why our past performance examples did not provide an expectation of our successful performance, when the agency’s April [19] competitive range letter explained that it had substantial confidence in our ability to perform based on those same examples.” AR, Tab 14b, Enhanced Debriefing Responses at 3. The agency responded that the information contained in that letter “was based on initial evaluations prior to the corrective action in the GAO pre-award protest. As a result of the corrective action, proposals remaining in the competitive range were evaluated in strict accordance with the solicitation criteria.” *Id.*

This protest followed.²

DISCUSSION

The protester alleges that the agency’s evaluation of its past performance was unreasonable. The sole basis asserted by the protester is that the agency failed to reconcile the apparent change in the past performance rating from substantial confidence to neutral confidence. Protest at 10-12; Comments at 8-10. The agency responds that it evaluated the protester’s past performance reasonably and in accordance with the RTOP’s terms, and furthermore that it was not obligated to reconcile any rating changes resulting from the reevaluation of proposals.

² Because the value of the issued task order is over \$25 million, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts awarded under the authority granted in title 10 of the United States Code. 10 U.S.C. § 3406(f).

Memorandum of Law at 13-24. The intervenor additionally argues that the protester was not prejudiced by any failure to reconcile changed evaluation results because the agency informed the protester of both the rationale for the neutral confidence rating and provided the protester with an opportunity to revise its proposal in response. Intervenor Comments at 13-14. For the reasons discussed below, we conclude that there is no basis on which to sustain the protest.

Our Office has consistently stated that the mere fact that a reevaluation of proposals after corrective action varies from the original evaluation does not constitute evidence that the reevaluation was unreasonable, since it is implicit that a reevaluation can result in different findings and conclusions. See, e.g., *HeiTech-PAE, LLC*, B-420049.9, B-420049.10, June 8, 2022, 2022 CPD ¶ 162 at 11-12; *PAE Aviation and Tech. Servs., LLC*, B-417704.7, B-417704.8, June 8, 2021, 2021 CPD ¶ 293 at 9; *Hughes Coleman, JV*, B-417787.5, July 29, 2020, 2020 CPD ¶ 257 at 7 n.5; *MILVETS Sys. Tech., Inc.*, B-409051.7, B-409051.9, Jan. 29, 2016, 2016 CPD ¶ 53 at 6-7; *IAP World Servs., Inc.*, B-406339.2, Oct. 9, 2012, 2012 CPD ¶ 287 at 3-4. We generally also have found the argument that a reevaluation following corrective action was *per se* unreasonable because it was not reconciled with an earlier evaluation to be without legal or factual basis; this is because there generally is no requirement that an agency reconcile a later evaluation with an earlier one or explain why the evaluation changed. *Global Asset Techs., LLC*, B-416576.8, B-416576.9, Nov. 22, 2019, 2019 CPD ¶ 408 at 5; see also *AdvanceMed Corp.*, B-415360 *et al.*, Dec. 19, 2017, 2018 CPD ¶ 4 at 7. Quite simply, the overriding concern in our review is not whether an agency's final evaluation is consistent with an earlier evaluation, but rather, whether it is reasonable and consistent with the solicitation's stated evaluation criteria. See *Hughes Coleman, supra*; *SRA Int'l, Inc.*, B-407709.5, B-407709.6, Dec. 3, 2013, 2013 CPD ¶ 281 at 11.

Notwithstanding the foregoing general principles, GAO has found that under certain unique circumstances an agency is obligated to explain the reasons why an evaluation changed during corrective action. See *eAlliant, LLC*, B-407332.6, B-407332.10, Jan. 14, 2015, 2015 CPD ¶ 229 at 10. In *eAlliant*, we found that where a source selection authority was personally involved with reviewing proposals and affirmed specific conclusions about an offeror's proposal, and the record provided no other explanation for the difference in ratings, the source selection authority was obligated to reconcile or explain in the award decision why that evaluation differed so starkly from prior evaluation conclusions she had personally affirmed. *Id.* at 11-12.

The protester relies on the principles expressed in *eAlliant* to argue that the agency here was required to reconcile the apparent change from a rating of substantial confidence to neutral confidence. See Comments at 2-3; 8-10. We do not address whether our decision in *eAlliant* is relevant here since we conclude that the protester was not prejudiced by any failure to reconcile the evaluations of the protester's proposal that took place before and after corrective action.

Competitive prejudice is an essential element of every viable protest. *CBF Partners JV, LLC*, B-419846.2 *et al.*, Dec. 14, 2021, 2022 CPD ¶ 10 at 13. Where the protester fails

to demonstrate that, but for the agency's actions, it would have a substantial chance of receiving an award, there is no basis for finding prejudice, and our Office will not sustain the protest. *Id.*

Here, the protester alleges that the agency's evaluation of its past performance was unreasonable because the agency failed to reconcile the change from a rating of substantial confidence to neutral confidence. As an initial matter, it is questionable whether the agency did, in fact, assign a rating of substantial confidence to the protester's proposal. As discussed above, although the enclosure to the April 19 evaluation notice disclosed a substantial confidence rating--which the contracting officer then confirmed in response to the protester's request--that evaluation notice also disclosed a rating of satisfactory confidence and contained information regarding another offeror. To that end, the contracting officer states that the substantial confidence rating disclosed in the April 19 document was a clerical error, and that her subsequent confirmation of that rating similarly was based on that erroneous document.³ COS at 11-12.

In any event, to whatever extent the agency's evaluation of the protester's past performance changed during the course of corrective action, the protester was not prejudiced by any failure to reconcile those differing evaluation results. As discussed above, the June 26 evaluation notice informed the protester of both the neutral confidence rating and the full basis therefor, and the agency provided the protester an opportunity to submit a revised proposal in response to that notice. Furthermore, when the protester asked why its past performance rating had apparently changed, the agency made clear that it had reevaluated past performance as part of its corrective action, and that the full rationale provided in the evaluation notice explained the neutral confidence rating. The protester thus was fully aware of the basis for the neutral confidence rating when it submitted its final proposal revisions on July 3. Although those revisions resulted in slightly increased relevancy ratings assigned to two of the protester's past performance examples, the agency concluded that the proposal nevertheless merited a neutral confidence rating. The protester does not challenge the reasonableness of that conclusion on its merits, arguing only that the agency's failure to reconcile the apparently changed evaluation results renders the past performance evaluation unreasonable.

In these circumstances, we conclude that the protester was not prejudiced by any failure to reconcile the evaluation results. The protester was fully informed of the neutral confidence rating and was provided with the full evaluation record that served as the basis for that rating. The protester also had an opportunity to revise its proposal in response to that information and availed itself of that opportunity. Thus, to whatever extent the agency erred by not reconciling differing evaluation results, that putative error did not deny the protester a substantial chance of award. The protester therefore was not prejudiced by any failure to reconcile the evaluation results, and that alleged error

³ The agency did not produce a record of its evaluation of the protester's past performance as of April 19.

provides no basis to sustain the protest. See, e.g., *PredictiveIQ LLC*, B-421436.2, July 7, 2023, 2023 CPD ¶ 186 at 4 n.8 (denying protest where the protester could not establish any prejudice resulting from failure to reconcile evaluations).

The protest is denied.

Edda Emmanuelli Perez
General Counsel