



# Decision

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**Matter of:** US&S-Pegasus JV, LLC

**File:** B-421681.8; B-421681.9

**Date:** November 19, 2024

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## DIGEST

1. Protest that the agency failed to conduct a price realism analysis is denied where the record shows that the agency was not required to perform a price realism analysis.
2. Protest that the agency unreasonably evaluated past performance is denied where the record shows that the agency evaluated past performance in accordance with the terms of the solicitation.
3. Protest that the agency made a flawed best-value determination is denied where the record shows that the agency qualitatively compared proposals and made a reasonable best-value determination.

## DECISION

US&S-Pegasus JV, LLC, of Greenville, South Carolina, protests the award of a contract to Criterion Corporation, of Marquette, Michigan, under request for proposals (RFP) No. FA670323R0001, issued by the Department of the Air Force for base operations support services at Dobbins Air Reserve Base in Cobb County, Georgia. The protester contends that the agency failed to perform a price realism analysis, unreasonably evaluated past performance, and made a flawed best-value determination.

We deny the protest.

## BACKGROUND

The agency issued the RFP on March 30, 2023, pursuant to Federal Acquisition Regulation (FAR) subpart 15.3, for base operations support services. Agency Report (AR), Tab 5, RFP at 1, 18. The services included materiel management, ground transportation and vehicle management, traffic management, real property maintenance, and fuel management. *Id.* at 18. The RFP contemplated the award of a hybrid fixed-price, time-and-materials, and cost-reimbursement, indefinite-delivery, indefinite-quantity contract, to be performed over a 60-day phase-in period, a 1-year base period, four 1-year option periods, a 6-month period, and a 60-day phase-out period. *Id.* at 52.

Award would be made to the proposal representing the best value to the government considering price and two non-price factors: technical and past performance. RFP at 52, 736; AR, Tab 12, RFP amend. 0007 at 29. Under the technical factor, offerors were required to provide an approach that met the requirements of the performance work statement (PWS). RFP amend. 0007 at 30. Proposals were to be assigned ratings of acceptable or unacceptable under the technical factor. *Id.* at 31.

Under the past performance factor, offerors were required to identify at least two but no more than five past performance references. *Id.* at 18. Identified contracts could reference performance of the offeror, or its joint venture partners, teaming partners, or significant subcontractors. *Id.* at 33. The references had to be recent, relevant, and demonstrate quality performance. *Id.* at 37. To be recent, references could be active or completed, but at least one year of the contract effort's period of performance had to have been completed within the past seven years from the date the RFP was issued. *Id.* at 19. To be relevant, references had to be similar to the current requirement in terms of scope, complexity, and magnitude. *Id.* at 34-35. References would receive a rating of very relevant, relevant, somewhat relevant, or not relevant. *Id.* at 34.

Regarding performance quality, the agency would assess how well the offeror or its joint venture partners, teaming partners, or significant subcontractors had performed the contract by considering information such as past performance questionnaires. *Id.* at 35-36. Proposals were to be assigned overall past performance ratings of substantial confidence, satisfactory confidence, neutral confidence, or limited confidence. *Id.* at 36.

Under the price factor, the RFP stated that the agency would evaluate price for completeness, fairness and reasonableness, balance, and “realism (if necessary).” *Id.* at 37. As relevant here, the RFP further provided that:

The Government reserves the right to conduct a price realism analysis on the lowest price proposal(s). Proposals are understood to reflect the Offerors' understanding of the technical requirements of the PWS in its entirety. Proposals with an unrealistic price (price too low) may be determined ineligible for award.

AR, Tab 12, RFP amend. 0007 at 38.

Proposals were first evaluated under the technical and price factors. *Id.* at 30. The proposals were then sorted by total evaluated price and assigned past performance ratings. *Id.* Once sorted, the source selection authority (SSA) conducted a past performance and price tradeoff analysis. *Id.* Past performance was significantly more important than price. *Id.*

The agency received nine proposals in response to the solicitation, eight of which were evaluated for technical acceptability, including those of US&S and Criterion. AR, Tab 24, Source Selection Decision Document (SSDD) at 2. Both proposals were rated technically acceptable. *Id.* at 3. The total evaluated prices of both US&S and Criterion, which were \$44,635,491, and \$39,208,953, respectively, were found to be fair, reasonable, and balanced, and the agency determined that none of the proposals required a price realism analysis. *Id.* Both US&S and Criterion received overall past performance ratings of satisfactory confidence. *Id.* at 4. The agency determined that Criterion offered the best value to the agency and made award to Criterion, and notified US&S on April 3. *Id.* at 4-5; AR, Tab 25, Award Notice at 1.

US&S filed a protest with our Office on April 12, asserting that the agency improperly failed to conduct a price realism analysis and unreasonably evaluated Criterion's past performance. *US&S-Pegasus JV, LLC, B-421681.4 et al.*, June 5, 2024 (unpublished decision). On June 3, the agency informed our Office that it was taking corrective action by reconsidering whether a price realism analysis would be conducted, reevaluating the past performance of proposals for which past performance was previously evaluated, and making a new award determination. *Id.* On June 5, we dismissed the protest as academic.<sup>1</sup> *Id.*

In conducting its corrective action, the agency reconsidered whether it was necessary to perform a price realism analysis. The agency conducted a detailed review of the technical evaluation team's (TET) findings and determined that Criterion's proposal demonstrated that it fully understood the technical requirements of the PWS and did not present an unacceptable risk to the government. AR, Tab 42, Price Evaluation Report at 12-13. The agency also determined that none of the other proposals indicated a lack of understanding. *Id.* at 13.

The agency then reevaluated past performance. During its reevaluation, the agency determined that three offerors, including Criterion and US&S, had significant subcontractors, teaming partners, joint-venture partners, or mentor-protégé partners who performed significant portions of their past performance references, but would not be participating in this requirement. AR, Tab 46, Past Performance Evaluation Report at 5. In those situations, when reviewing the references for relevancy, the agency only

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<sup>1</sup> The protester filed a request for a recommendation for reimbursement of costs which we denied. *US&S-Pegasus JV-- LLC--Costs, B-421681.7*, Sep. 10, 2024, 2024 CPD ¶ 219.

evaluated the magnitude and scope of the effort performed by firms that would be performing for this requirement. *Id.* at 5-7. For Criterion, this caused the agency to reduce its assessment of the magnitude of effort for one of its contract references, and for US&S, this caused the agency to reduce its assessment of the magnitude of effort for three of its references. *Id.* The relevancy ratings of the individual references for both Criterion and US&S remained unchanged. *Id.* at 7-9. The overall past performance ratings for both Criterion and US&S also remained unchanged, with both receiving a rating of satisfactory confidence. *Id.*

The source selection evaluation board (SSEB) recommended that award be made to Criterion based on its technically acceptable rating, its past performance rating of satisfactory confidence, and because its price did not present an unacceptable risk to the government. AR, Tab 45, SSDD at 5-6.

The source selection authority (SSA) took the SSEB's recommendation into consideration and conducted his own integrated assessment of the proposals. AR, Tab 45, SSDD at 2, 6; AR, Tab 53, SSA Declaration 1-2. The SSA noted that both offerors received a rating of technically acceptable and a past performance rating of satisfactory confidence. AR, Tab 53, SSA Declaration at 1-2. The SSA determined that Criterion's and US&S's proposals were equal in all areas, except price. *Id.* at 1. The SSA noted that Criterion's price was 12 percent lower than US&S's, and he did not see any value in awarding to US&S's higher-priced proposal where the proposals were otherwise equal. *Id.* As a result, the SSA determined that Criterion's proposal represented the best value to the government as it was equal in quality to US&S's and a lower price. AR, Tab 45, SSDD at 5-6; AR, Tab 53, SSA Declaration at 2.

The agency made award to Criterion for \$39,580,040, and notified US&S on July 29. AR, Tab 47, Award Notice at 1. This protest followed.

## DISCUSSION

US&S raises several challenges to the agency's evaluation. US&S asserts that the agency failed to conduct a price realism analysis, or, in the alternative, if one was not required, the agency abused its discretion in deciding not to conduct one. US&S also asserts that the agency unreasonably evaluated past performance and made a flawed best-value determination. We have reviewed all of these challenges and find that none provide us with a basis to sustain the protest. At the outset we note that, when reviewing an agency's evaluation of proposals and source selection decision, it is not our role to reevaluate submissions; rather, we examine the supporting record to determine whether the evaluation and selection decision were reasonable, consistent with the solicitation, and adequately documented. *Horizon Strategies, LLC*, B-419419.5, B-419419.6, Mar. 15, 2023, 2023 CPD ¶ 71 at 10. A protester's disagreement with the agency's judgments, or with the agency's determination as to relative merits of the competing proposals, does not establish that the evaluation or selection decision were unreasonable. *Id.*

## Price Realism

US&S first asserts that the solicitation required the agency to perform a price realism analysis. The protester cites to the portion of the solicitation that states “Proposals with an unrealistic price (price too low) may be determined ineligible for award,” (RFP amend. 0007 at 38) and asserts that this language implies that a price realism analysis would be performed. Protest at 8-11; Comments at 4. The agency responds that the protester ignores the language in the solicitation immediately preceding the cited portion above, which gave the agency express discretion whether to conduct one. Memorandum of Law (MOL) at 27.

Here, we find that the solicitation gave the agency discretion whether to conduct a price realism analysis by reserving to the agency the right to conduct such an evaluation, rather than requiring it. As quoted above, the solicitation stated as follows:

The Government *reserves the right to conduct a price realism analysis* on the lowest price proposal(s). Proposals are understood to reflect the Offerors’ understanding of the technical requirements of the PWS in its entirety. Proposals with an unrealistic price (price too low) may be determined ineligible for award.

AR, Tab 12, RFP amend. 0007 at 38 (emphasis added).

While the solicitation stated several times that a proposal’s price may be determined to be unrealistic, this language was always coupled with the condition that such a determination would only be made “if necessary,” which is consistent with the statement quoted above that the agency reserved the right to conduct a price realism analysis. RFP amend. 0007 at 27, 28, 38. In this regard, our decisions have explained that where, as here, an agency states in a solicitation that it “reserves the right” to conduct a price realism analysis, the agency is under no obligation to conduct such an analysis because the terms of the RFP do not mandate one, and because price realism analyses are not required for fixed-price contracts. *Guident Techs., Inc.*, B-405112.3, June 4, 2012, 2012 CPD ¶ 166 at 13 n.9.

Moreover, where a dispute exists as to the meaning of a solicitation requirement, we resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. *DUCOM, Inc.*, B-285485, Aug. 23, 2000, 2000 CPD ¶ 144 at 4-5. To be reasonable, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Id.* The protester’s assertion that the solicitation required a price realism analysis despite the language that the agency reserved the right to conduct one is an unreasonable interpretation because it would render the discretionary language meaningless. Our Office has explained that we do not read solicitation language in such a way as to render other portions of the solicitation meaningless. *Id.*

The protester next asserts that even if the agency was not required to perform a price realism analysis, the agency's decision not to conduct one was unreasonable. The protester asserts that the difference between Criterion's price, the independent government cost estimate (IGCE), and its own price is substantial enough to warrant a price realism analysis. Comments at 12. The agency responds that it reasonably concluded that a price realism analysis was not necessary because Criterion's technical proposal indicated a thorough understanding of the technical requirements. MOL at 17.

An agency's decision to conduct or not to conduct a price realism analysis where a solicitation "reserves the right" to the agency is afforded broad discretion, which we generally will not review. *See HeiTech-PAE, LLC*, B-420049.9, B-420049.10, June 8, 2022, 2022 CPD ¶ 162 at 4, n.3 (dismissing as legally insufficient allegation that an agency failed to conduct a price realism evaluation where the solicitation provided that the agency "reserved the right" to perform that analysis); *accord Asteri Consulting Servs., LLC d/b/a Asteri EMS*, B-421799, B-421799.2, Oct. 16, 2023, 2023 CPD ¶ 240 at 14 ("However, where, as here, a solicitation reserves the right to conduct a price realism evaluation, the decision to conduct such an evaluation is a matter within the agency's discretion."); *cf. Steel Point Sols., LLC*, B-418224, B-418224.2, Jan. 31, 2020, 2020 CPD ¶ 45 at 7 (where a solicitation contemplated the award of a fixed-price contract and provided that the "Government reserves the right, but is not obligated, to conduct a realism analysis," GAO found no basis to question the agency's decision not to conduct that analysis since the request for quotations did not limit the agency's discretion). This is because, as noted above, a solicitation that "reserves the right" to conduct a price realism evaluation does not impose any obligation on the agency to do so, and there is otherwise no procurement statute or regulation requiring the agency to perform such an analysis for a fixed-price contract. *Guident Techs., Inc., supra*.

Here, US&S has provided no basis, and we see none in the record, to call into question the agency's decision not to conduct a price realism analysis. In any case, we note that the price evaluation report shows that the agency noted that Criterion's proposal was the lowest-priced, and considered that its price of \$39,208,953, was 19 percent lower than the competition average of \$48,595,369, and 22 percent lower than the IGCE of \$50,314,959. AR, Tab 42, Price Evaluation Report at 11-12. The agency concluded that based on these comparisons, Criterion's price did not represent an unacceptable risk to the government. *Id.* at 12. Therefore, the record demonstrates that the agency analyzed Criterion's price by comparing it to the competition average and the IGCE, and reasonably determined that a price realism analysis was not necessary. Furthermore, the record shows that the agency reviewed Criterion's technical approach and determined that it demonstrated an understanding of the technical requirements. *Id.* at 12-13. As a result, we are unpersuaded the agency unreasonably elected not to conduct a price realism evaluation. *Cf. Asteri Consulting Servs. LLC d/b/a Asteri EMS, supra* (agency reasonably exercised its discretion not to conduct a price realism evaluation where the solicitation reserved discretion to the contracting officer, and the contracting officer, after comparing proposed prices, did not find any to be too low).

## Past Performance

The protester next asserts that the agency unreasonably evaluated Criterion's and US&S's past performance. The protester asserts that the agency improperly excluded from its consideration portions of any reference that included work performed by joint venture partners, teaming partners, or significant subcontractors that would not be performing on this contract. Under the protester's theory, the agency's exclusion of these aspects of a reference's past performance is contrary to the terms of the solicitation. Comments at 13. The agency responds that evaluating the scope and magnitude of references for work actually performed by the members of an offeror's team that were actually proposed to perform the solicitation requirements is consistent with the RFP. In support of its position, the agency points to language in the solicitation providing that the government would consider the work performed by the offeror and its joint venture partners, teaming partners, and significant subcontractors. Contracting Officer's Statement (COS) at 20-21.

Here, we find that the protester has not demonstrated that the agency's evaluation of past performance was unreasonable. An agency's evaluation of past performance, which includes consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion, which we will not disturb unless the assessment is unreasonable or inconsistent with the solicitation criteria. *Horizon, supra* at 17. 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. *Id.* A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. *Id.* at 17-18.

The RFP provided that the agency would assess its confidence in an offeror's ability to perform the contract based on the past performance of the offeror and its joint venture partners, teaming partners, or significant contractors. RFP amend. 0007 at 32-33. The RFP also stated that the agency would review information available for teaming partners and significant subcontractors. *Id.* at 35. Consistent with this language, the agency explained that it considered the scope of work and magnitude of each past performance reference only with respect to work performed by the offeror and its significant subcontractors, teaming partners, joint venture partners, or mentor-protégé partners expected to perform on this contract. AR, Tab 46, Past Performance Evaluation Report at 5.

It is logical that the agency would discount or exclude from its consideration the performance of parties that were not proposed. This approach reasonably ensures that the confidence ratings were based on the performance history of firms that will actually perform the contract. As noted above, the agency has broad discretion in how it chooses to consider relevance, scope, and the relative weight of the performance of offeror's and their team members, and the protester has not shown that the agency's exercise of discretion was unreasonable or that the selected methodology was

inconsistent with the language of the solicitation. *Chenega Fed. Sys, LLC*, B-417037.2, Sep. 6, 2019, 2019 CPD ¶ 314 at 7. As a result, we deny this protest ground.

#### Best-Value Determination

Finally, US&S asserts that the agency's best-value determination is flawed because the agency failed to qualitatively compare US&S's and Criterion's proposals and simply chose Criterion's proposal because of its lower price.<sup>2</sup> Comments at 14.

We deny this protest ground as the record shows that the SSA performed an integrated assessment of the proposals and concluded that US&S's and Criterion's proposals were essentially equal in their offerings and therefore Criterion's lower-priced proposal represented the best value to the agency. 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. *The SI Org., Inc.*, B-410496, B-410496.2, Jan. 7, 2015, 2015 CPD ¶ 29 at 14. In reviewing an agency's source selection decision, we examine the supporting record to determine if it was reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *Id.*

The SSDD refers to an integrated assessment performed by the SSA and notes the ratings received by US&S and Criterion's proposals. AR, Tab 45, SSDD at 5-6.<sup>3</sup> Here, the record shows that the SSA reviewed all of the documents pertaining to the acquisition, including the proposals, past performance references, the evaluation worksheets, and the consensus documentation and recommendations. *Id.* at 1. The SSA's integrated assessment noted that both offerors received a rating of technically

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<sup>2</sup> US&S also asserts that the agency's best-value determination was flawed given the alleged flaws in the agency's evaluation. Supp. Protest at 14. As we have denied the protester's challenges to the agency's evaluation, we dismiss this allegation for lack of a valid basis of protest. *TechOp Sols. Int'l, Inc.*, B-419964.2, B-419964.3, Jan. 18, 2022, 2022 CPD ¶ 34 at 12.

<sup>3</sup> We note that in reviewing an agency's evaluation, we do not limit our consideration to contemporaneously documented evidence, but instead consider all the information provided, including the parties' arguments and explanations. *Kevcon, Inc.*, B-406024.3, Jun. 18, 2012, 2012 CPD ¶ 221 at 5-6. While we generally give little or no weight to reevaluations and judgments prepared in the heat of the adversarial process, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions so long as those explanations are credible and consistent with the contemporaneous record. *Id.* Here, the SSA provided us with a declaration to support his statements made in the SSDD. We have reviewed this declaration and consider it consistent with the underlying evaluation.

acceptable, a past performance rating of satisfactory confidence, and concluded that there was no meaningful difference between each offeror's likelihood of successful performance. AR, Tab 53, SSA Declaration at 1-2; AR, Tab 45, SSDD at 3, 6-7. The SSA determined that Criterion's and US&S's proposals were equal in all areas, except price. *Id.* at 2. The SSA noted that Criterion's price was 12 percent lower than US&S's, and he did not see any value in awarding to US&S's higher-priced proposal where the proposals were otherwise equal. *Id.* As a result, the SSA determined that Criterion's proposal represented the best value to the government as it was equal in quality to US&S's and had a lower price. AR, Tab 45, SSDD at 5-6; AR, Tab 53, SSA Declaration at 2. Accordingly, we deny the protest allegation.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel