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Decision

Matter of: KR Contracting, Inc.

File: B-422346.2

Date: January 14, 2025

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Michael Kiffney, Esq., and Christopher J. Curry, Esq., Department of Homeland Security, for the agency.

Christine Milne, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency unreasonably evaluated the protester's proposal and conducted a flawed best-value tradeoff analysis is denied where the record shows that, although the solicitation contained a latent ambiguity, the protester was not competitively prejudiced by the ambiguity, and the agency's evaluation and best-value tradeoff analysis were otherwise reasonable.

DECISION

KR Contracting, Inc., of McLean, Virginia, protests the issuance of a task order to VMD Corporation, of Fairfax, Virginia, under task order request for proposals (TORFP) No. 70T05024R5900N002, issued by the Department of Homeland Security, Transportation Security Administration (TSA), for comprehensive security screening services at Orlando Sanford International Airport in Sanford, Florida. KR asserts that the agency unreasonably evaluated its proposal and conducted a flawed best-value tradeoff analysis.

We deny the protest.

BACKGROUND

The TORFP was issued on January 19, 2024, pursuant to Federal Acquisition Regulation (FAR) section 16.505, under TSA's screening partnership program indefinite-delivery, indefinite quantity (IDIQ) contract for security screening services. Agency Report (AR), Tab 1, TORFP at BATES 0011¹; Contracting Officer's Statement (COS) at 1. The primary services to be performed were security screening of passengers and baggage, and monitoring and ensuring the security of designated security areas. *Id.* at BATES 0012.

The agency intended to award a fixed-priced contract to be performed over a 1-year base period (including a 4-month transition period), and four 1-year option periods. *Id.* at BATES 0011. Award would be made to the firm whose proposal provided the best value to the government considering price and the following non-price factors: (1) cost efficiency; (2) operational readiness approach; (3) transition approach; (4) program management and training approach; and (5) past performance. *Id.* at BATES 0091.

Proposals were to be evaluated first under the cost efficiency factor and rated acceptable or unacceptable. *Id.* at BATES 0092. Only proposals rated acceptable would be evaluated under the remaining factors. *Id.* For factors 2-4, proposals would receive ratings of outstanding, good, acceptable, or unacceptable. *Id.* For factor 5, proposals would receive a rating of high confidence, satisfactory confidence, limited confidence, unknown confidence (neutral), or no confidence. *Id.* Only proposals rated at least acceptable under factors 1-4 and at least satisfactory confidence under factor 5 would be eligible for award. *Id.* at BATES 0093. For purposes of determining which proposal was the best value, the solicitation established that factor 2 was more important than factor 3, factor 3 was more important than factor 4, factors 2-4 were more important than factor 5, and factors 2-5 when combined, were significantly more important than factor 6, price. *Id.* at BATES 0092.

As relevant here, factor 4, program management and training approach, required offerors to describe an approach that detailed the processes and procedures to manage the total work and meet the requirements detailed in section L.3.3. of the solicitation. *Id.* at BATES 0093, 0085. This section required each offeror to include an organizational chart consistent with its approach and to identify the location where all assistant training instructors (ATIs) would perform their duties. *Id.* at BATES 0085-0086. The approach was also to list the required key personnel positions, one of which was "[t]ask order certified security training instructor(s) (STI)(s)." *Id.* at BATES 0086. The solicitation directed offerors to propose task order certified STI(s) who met the qualifications for "Task Order Security Training Instructor (STI)" established in the underlying IDIQ contract. *Id.*; Comments, attach. 1, IDIQ at 27-28. The qualifications in the IDIQ stated that a task order STI had to meet all the qualifications of a security training instructor in

¹ The agency assigned sequential BATES page numbers to tabs 1-17 of the agency report. All other tabs and documents in the agency report are cited using that document's pagination.

addition to other qualifications. Comments, attach. 1, IDIQ at 27-28. The qualifications for an STI were listed in a separate section of the IDIQ contract. *Id.* at 125-126. This separate section for STI qualifications was not referenced by the solicitation. The solicitation required offerors to provide resumes or capability statements² for all task order certified STIs. TORFP at BATES 0086. Offerors were also to include a description of any contractor positions “above that of [a supervisor transportation security officer (STSO)], and not otherwise designated as key personnel, that [have] management authority over screening operations.” *Id.*

Under the past performance factor, offerors were to provide up to three past performance references to include contract summaries for each reference. *Id.* at BATES 0086, 0093. The agency would evaluate past performance references for relevancy and performance. *Id.* at BATES 0093. Relevance would be determined based on the size, scope, and complexity of a reference. *Id.* Performance would be assessed under several factors, including quality, cost control, management, and regulatory compliance. *Id.* The solicitation stated that the agency would obtain and utilize information from sources other than those provided by offerors at its discretion, such as from the contractor performance assessment reporting system (CPARS). *Id.* at BATES 0087, 0093-0094.

The agency received five proposals by the submission due date, including that of KR. COS at 3. The price evaluation team first evaluated proposals under factors 1 and 6. AR, Tab 15, Tradeoff Report at BATES 0455. The technical evaluation team (TET) then evaluated proposals under factors 2-4, and the past performance evaluation team (PPET) evaluated proposals under factor 5. AR, Tab 13, TET Report at BATES 0381; AR, Tab 14, PPET Report at BATES 0410.

As relevant here, under factor 4, program management and training approach, the TET assigned KR’s proposal five significant strengths, four strengths, two weaknesses, and one significant weakness. AR, Tab 13, TET Report at BATES 0407. KR received two significant strengths for proposing two key personnel whose qualifications significantly exceeded the agency’s minimum requirements (one significant strength for each person); one significant strength for its proposal to use additional staff to [DELETED]; one significant strength for its comprehensive quality control and assurance approach; and one significant strength for providing additional [DELETED] to enhance the workforce skillset. *Id.* at BATES 0397-0400, 0404-0405.

KR’s proposal received two strengths for proposing two key personnel whose qualifications exceeded the agency’s minimum requirements (one strength for each person); a third strength for proposing additional [DELETED] not required by the TORFP to improve administrative operation; and a fourth strength for proposing additional STIs to ensure the workforce receives the necessary training. *Id.* at BATES 0400-0402, 0405-0406.

² A capability statement is a resume-like document for a labor category, rather than a particular individual. TORFP at BATES 0086.

KR's proposal received one weakness for failing to include two key personnel in its organizational chart, which the TET noted created confusion regarding how KR would ensure successful management of the security screening operation and increased the risk of unsuccessful performance. *Id.* at BATES 0402-0403. KR's proposal received an additional weakness for not identifying the location the ATIs would work from, which the TET noted created confusion as to how KR would utilize the ATIs and increased the risk of unsuccessful performance. *Id.* at BATES 0406.

The agency also assigned KR's proposal a significant weakness for failing to provide resumes for two of its proposed STIs, which were not listed as task order STIs. *Id.* at 0403-0404; AR, Tab 11, KR's Proposal Vol. II at 0350. The TET noted that the STIs are key personnel and play a critical role in managing the training program and delivering the required training, and the lack of resumes made it unclear whether they met the required qualifications. The TET concluded that this flaw significantly impacted the security screening posture of the airport and appreciably increased the risk of unsuccessful performance. *Id.* at BATES 0403-0404. Taking into consideration the strengths and weaknesses assigned, the TET concluded that KR's program management and training approach met the minimum requirements, and its strengths were balanced by the two weaknesses and one significant weakness. The TET also concluded that KR's approach was likely to result in satisfactory performance and demonstrated adequate comprehension and its proposal received an overall rating of acceptable under factor 4. *Id.* at BATES 0407.

Under the past performance factor, KR submitted three past performance references, all of which the PPET evaluated as relevant. AR, Tab 14, PPET Report at BATES 0441. The first reference was for the incumbent contract performed by KR's subsidiary, Trinity Technology Group (TTG), and the second and third were for contracts where KR was the prime contractor. *Id.* at BATES 0431, 0434, 0436. The agency reviewed CPARS for all three references and compiled all the ratings in a table. The agency prepared a separate table with all the past performance ratings TTG received during the last four years. *Id.* at BATES 0441. The agency also combined the ratings that KR and TTG received from all three references into another table. *Id.*

The agency's evaluation noted KR's positive past performance information, in particular that it consistently passed Federal Protective Services³ inspections, provided excellent customer service, and delivered quality services while dealing with the challenges of the COVID-19 pandemic. *Id.* at BATES 0441. While KR met contract requirements, the agency also found that TTG's past performance information indicated that TTG failed to meet some performance requirements, which resulted in serious issues that were not effectively addressed. The agency found that "TTG initially struggled with performance,

³ The Federal Protective Service provides integrated security and law enforcement services in support of federally owned and leased facilities. Department of Homeland Security, Federal Protective Service, Who We Are, <https://www.dhs.gov/who-we-are> (last visited Jan. 7, 2025).

requiring significant Government intervention . . . [and] failed to meet incident management and reporting requirements, leading to persistent issues and further government oversight.” *Id.* at BATES 0442. For these reasons, the agency concluded that it had satisfactory confidence that KR would successfully perform the contract, though the agency noted this rating came “at the low end of this confidence rating.” *Id.*

After individual evaluations were completed, the chairs of the PET, TET, and the PPET met to conduct trade-off analyses between several pairings of all five offerors. AR, Tab 15, Tradeoff Report at BATES 0451, 0457. KR’s proposal was compared to Offeror A’s, and Offeror A’s proposal was compared to the awardee’s. *Id.* at BATES 0477-0487. The ratings for KR’s, Offeror A’s, and the awardee’s proposals are as follows:

	KR	Offeror A	VMD
Factor 1: Cost Efficiency	Acceptable	Acceptable	Acceptable
Factor 2: Operational Readiness Approach	Good	Good	Good
Factor 3: Transition Approach	Outstanding	Outstanding	Outstanding
Factor 4: Program Management and Training Approach	Acceptable	Good	Acceptable
Factor 5: Past Performance	Satisfactory Confidence	High Confidence	High Confidence
Factor 6: Price	\$74,205,823	\$75,445,731	\$74,421,970

AR, Tab 15, Tradeoff Report at BATES 0485; AR, Tab 17, Debriefing.

The chairs compared the significant strengths, strengths, weaknesses, and significant weaknesses of the proposals of KR and Offeror A under each factor and came to the following conclusions: for factor 1, KR and Offeror A’s proposals were essentially equal; for factor 2, Offeror A’s proposal exceeded the merits of KR’s proposal; for factor 3, KR’s proposal slightly exceeded the merits of Offeror A’s proposal; for factor 4, Offeror A’s proposal slightly exceeded the merits of KR’s proposal; for factor 5, Offeror A’s proposal presented a considerably higher expectation of successful contract performance when compared to KR’s; and for factor 6, Offeror A’s total evaluated price was only marginally higher than KR’s total evaluated price. AR, Tab 15, Tradeoff Report at BATES 0477-0485.

The chairs concluded that Offeror A’s small price premium was justified and insignificant given its proposal’s high likelihood of successful performance compared to the weaknesses assigned to KR’s proposal under factor 4 that increased the risk of unsuccessful performance, and the agency’s concerns over KR’s past performance. *Id.* at 0485. As a result, the agency determined that the merits of Offeror A’s proposal provided a better value overall. *Id.*

The chairs then compared the proposals of Offeror A and VMD and determined that VMD provided the best value to the government and recommended it for award. AR, Tab 16, Source Selection Authority (SSA) Decision Memorandum at BATES 0514. The SSA reviewed all the findings and ultimately concurred with them, and the agency made award to VMD on September 25, 2024. After KR received a debriefing, this protest followed.⁴

DISCUSSION

KR argues that TSA unreasonably evaluated its proposal under the program management and training approach factor and the past performance factor. KR also contends that the agency conducted a flawed best-value tradeoff analysis. We have considered KR's arguments and find no basis to sustain the protest. We address the firm's arguments below. In reviewing protests of awards in a task order competition, we do not reevaluate proposals but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *DynCorp Int'l LLC*, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7.

Program Management and Training Approach Factor

KR argues that the TSA unreasonably assigned its proposal a significant weakness under this factor for failing to provide resumes for its proposed STIs. KR contends that the TORFP only required resumes for key personnel, and its proposal included resumes for all of its proposed key personnel, including for the required task order STI position. KR asserts that it proposed two additional non-task order STIs not required by the solicitation and, because they were not task order STIs or other key personnel, KR was not required to include resumes or capability statements for these positions.

TSA responds that it reasonably assessed the significant weakness because all STIs were considered task order STIs or key personnel positions and required resumes. The agency asserts that the TORFP stated that resumes or capability statements were required for all proposed task order STI(s) – plural – implying that an offeror could propose multiple STIs, and regardless of whether they were labeled “task order STI” or “STI,” all would be considered key personnel and require resumes or capability statements. Memorandum of Law (MOL) at 5-6.

KR counters that the section of the TORFP the agency relies on to support its argument directed offerors to comply with the terms of the underlying IDIQ contract for the task order STI's qualifications. The protester asserts that the IDIQ contract lists the requirements for the STI position, and then lists the requirements for the task order STI

⁴ The value of the task order award exceeds \$10 million, and therefore falls within our statutory grant of jurisdiction to hear protests of task and delivery orders valued in excess of \$10 million issued under civilian agency multiple-award IDIQ contracts. 41 U.S.C. § 4106(f).

position separately, which incorporates all the requirements under the STI position and adds additional requirements. KR argues that, therefore, when the TORFP is read together with the IDIQ contract, it is clear that not every STI is considered a task order STI or key personnel. As a result, the agency cannot reasonably assert that all STIs are necessarily key personnel positions. Comments at 4-5. KR further asserts that, had it not been for this significant weakness, it would have received a rating of good under factor 4, and would have been considered a better value than Offeror A's proposal in the best-value tradeoff. *Id.* at 6.

Here, we find that the solicitation contained a latent ambiguity regarding whether STIs could be proposed as non-task order STIs or non-key personnel positions, however, KR has not shown that it was competitively prejudiced by this error. We first address the issue of the latent ambiguity.

Where a dispute exists as to a solicitation's actual requirements, we begin by examining the plain language of the solicitation. *Harper Constr. Co., Inc.*, B-415042, B-415042.2, Nov. 7, 2017, 2018 CPD ¶ 47 at 4. We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. *Id.* An ambiguity exists where two or more reasonable interpretations of the solicitation are possible. *Ashe Facility Servs., Inc.*, B-292218.3, B-292218.4, Mar. 31, 2004, 2004 CPD ¶ 80 at 10. If the ambiguity is an obvious, gross, or glaring error in the solicitation then it is a patent ambiguity; a latent ambiguity is more subtle. *Id.* at 11. Where there is a latent ambiguity, both parties' interpretation of the provision may be reasonable, and the appropriate course of action is to clarify the requirement and afford offerors an opportunity to submit proposals based on the clarified requirement. *Id.* at 12. Here, we conclude that the disputed terms of the solicitation were latently ambiguous because the terms are susceptible to two reasonable interpretations.

The TORFP required offerors to include the key personnel position "[t]ask order certified security training instructor(s) (STI)(s)." TORFP at BATES 0086. The TORFP required "[r]esumes or capability statements for [all] proposed task order STI(s), which demonstrate meeting the qualifications outlined in the IDIQ section C.4.1.[2.]" *Id.* Section C.4.1.2 of the IDIQ provided that a "Contractor's key management team shall, at a minimum, consist of the following: . . . [a] task order certified STI(s) . . ." and listed the qualifications and skills required for "Task Order Security Training Instructor (STI)." Comments, attach. 1, IDIQ at 27-28. The description for this position stated "[i]n addition to the STI requirements outlined in Attachment J.5., section J.5.3., at least one of the following experience requirements must be met. . . ." *Id.* at 28 (emphasis added). The description then listed three experience requirements, which as stated above, only one of which had to be met: (1) a minimum of two years adult-learning classroom instruction experience; (2) instructor certification from a recognized instructor-training program; or (3) formal instructor training from a recognized source. *Id.* at 28.

Section J.5.3 listed a description of the tasks to be performed and the requirements for "STIs," which were not referred to as "task order STIs" and did not include the additional

requirements listed under the “Task Order Security Training Instructor (STI)” description. *Id.* at 125. Section J.5.3 provided in part that “the STI is primarily a training specialist that screens to maintain screening awareness and technical proficiency . . . [and] STIs manage and deliver training material and maintain communication with supervisors concerning training issues that may reveal security-screening weaknesses or vulnerabilities.” *Id.*

Outside of the key personnel provision, the TORFP referred to “STIs” multiple times, not “task order STIs,” in the context of various training and screening duties to be performed. TORFP at BATES 0021, 0086, 0129. Offerors could propose additional key personnel that were not required by the solicitation and were to include a description of any contractor positions “above that of a [supervisor transportation security officer (STSO)], and not otherwise designated as key personnel, that [have] management authority over screening operations, if applicable.” TORFP at BATES 0086.

As the agency asserts, we agree that the TORFP’s plain language could be read as considering all STIs to be key personnel that required a resume or a capability statement. This is because the TORFP deems task order STIs as a key personnel position, references only the section of the IDIQ that lists qualifications for task order STIs, refers to task order STI(s) in plural, abbreviates task order STIs to just “STIs,” and repeatedly references STIs in plural. This interpretation does not conflict with any other TORFP provisions or the language of the IDIQ contract, because such an interpretation would simply narrow the type of STIs desired by the agency to only task order STIs and require all STIs to meet the requirements of task order STIs. However, this interpretation is not the only reasonable one.

The TORFP, when read in conjunction with the IDIQ contract, could also be reasonably interpreted as permitting offerors to propose non-task order STIs that were not key personnel. The TORFP required the “[t]ask order certified security training instructor(s) (STI)(s)” position, and then required offerors to meet the requirements in IDIQ section C.4.1.2. which distinguished between task order STIs and STIs. – “[i]n addition to the STI requirements outlined in Attachment J.5., section J.5.3, at least one of the following experience requirements must be met . . .” (emphasis added), and section J.5.3. describes the requirements for STIs as distinct from the requirements for task order STIs. Comments, attach. 1, IDIQ at 28, 125; TORFP at BATES 0086. The TORFP required resumes or capability statements for all “task order STI(s),” and then referred to only “STIs” a number of times regarding training and screening procedures that were not clearly only tasks for the key personnel position. For example, the solicitation states that “the Offeror shall submit: The number and location of STIs, and the time, stated in percentages, the STIs will perform screening vs. training duties.” TORFP at BATES 00086.

Importantly, the TORFP permitted offerors to propose additional key personnel and separately propose positions “above that of an [supervisor transportation security officer (STSO)], and not otherwise designated as key personnel, that [have] management authority over screening operations, if applicable.” TORFP at BATES 0086. Although it

is clear the TORFP required at least one task order STI for the key personnel position, an offeror could have also interpreted these statements as permitting additional non-task order STIs that were not key personnel based on the separate qualifications in the IDIQ, the TORFP's reference to "STIs" in ways not clearly tied only to key personnel tasks, and the TORFP's allowance for positions not otherwise designated as key personnel. Such an interpretation does not conflict with any solicitation language and is consistent with the IDIQ contract. As a result, we find that the solicitation was latently ambiguous as to whether offerors were permitted to propose non-task order STIs or simply "STIs" that were not required to meet the qualifications of task order STIs and submit resumes or capability statements. See *Ashe Facility Servs., Inc.*, B-292218.3, B-292218.4, Mar. 31, 2004, 2004 CPD ¶ 80 at 11 (finding a latent ambiguity where the protester's interpretation of the solicitation did not directly conflict with any other solicitation provision and the ambiguity only came to light in the context of the agency's evaluation). Nevertheless, we do not sustain the protest because we find that KR has failed to establish prejudice.

Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. *CACI, Inc.-Federal; General Dynamics One Source, LLC*, B-413860.4 *et al.*, Jan. 5, 2018, 2018 CPD ¶ 17 at 26-27. Our Office will not sustain a protest, even if deficiencies in the procurement are found, where the protester has not demonstrated competitive prejudice. *The AEGIS Techs. Grp., Inc.; Wingbrace, LLC*, B-412884 *et al.*, June 28, 2016, 2016 CPD ¶ 175 at 10. KR asserts that had its proposal not been assigned a significant weakness, there is a reasonable possibility that it would have received a rating of good under factor 4 and that its proposal would have been evaluated as superior to Offeror A's proposal under this factor. Comments at 6. We are not persuaded.

As stated above, the agency assigned two weaknesses to KR's proposal under factor 4, program management and training approach, in addition to the significant weakness that was based on KR's failure to include resumes for its two STI's. The agency assigned one weakness because KR's organizational chart did not include two of KR's key personnel, which the agency noted created confusion regarding how KR would successfully manage the security screen operation and increased the risk of unsuccessful performance. AR, Tab 13, TET Report at BATES 0402-0403. The agency assigned the other weakness because KR's training approach did not specify where the ATIs would work from as required by the TORFP, which the agency noted created confusion regarding how KR would utilize the ATIs and increased the risk of unsuccessful performance. *Id.* at BATES 0406. These two weaknesses were as much a part of the basis for the TSA's decision to assign KR's proposal a rating of acceptable as the significant weakness. *Id.* at BATES 0407 (finding that the absence of two key personnel in the organizational chart failed "to provide the TET a clear understanding of how the Offeror will ensure successful management of the security screening operation," and that "the Offeror failing to identify the location the ATIs will work from will have a negative impact on the Offeror's ability to deliver necessary training to its

workforce,” and concluding that the “strengths may be balanced by two weaknesses and one significant weakness.”).

Although KR challenged these two weaknesses in its protest, the firm withdrew these challenges in its comments. Comments at 1 (“KR hereby withdraws the following protest grounds from its initial protest: . . . Protest Ground B.1; and Protest Ground B.3.” B.1 referred to its challenge to the assignment of a weakness for failing to include all of its key personnel in its organizational chart, and B.3 referred to its challenge to the assignment of a weakness for failing to identify where its ATIs would work from). Even if we were to find that the agency unreasonably assigned the significant weakness, the other weaknesses would remain. As a result, we are not persuaded that there is a reasonable possibility that KR’s rating under factor 4 would change.

Moreover, even if KR’s rating did change from acceptable to good under factor 4, KR has not shown that the agency’s conclusions in the best-value tradeoff determination would change. As described above, the agency compared the merits of the proposals of KR and Offeror A under each factor. The chairs of each team compared all of the strengths, weaknesses, and deficiencies assigned to each proposal under each factor and determined which strengths and weaknesses were present in both proposals, which ratings were offset, and which remained. The chairs made the following determination: For factor 1, KR and Offeror A’s proposals were essentially equal; for factor 2, Offeror A’s proposal exceeded the merits of KR’s proposal; for factor 3, KR’s proposal slightly exceeded the merits of Offeror A’s proposal; for factor 4, Offeror A’s proposal slightly exceeded the merits of KR’s proposal; for factor 5, Offeror A’s proposal presented a considerably higher expectation of successful contract performance when compared to KR’s; and for factor 6, Offeror A’s total evaluated price was only marginally higher than KR’s total evaluated price. AR, Tab 15, Tradeoff Report at BATES 0477-0485. As also mentioned above, factor 2 was more important than factor 3, factor 3 was more important than factor 4, factors 2-4 were more important than factor 5, and factors 2-5 when combined, were significantly more important than factor 6. TORFP at BATES 0092.

The chairs’ determination that Offeror A’s proposal was a better value was based on several findings: (1) under factor 2, operational readiness approach, Offeror A’s proposal included four strengths that KR’s did not; (2) under factor 4, program management and training approach, Offeror A’s proposal did not contain any risks, whereas KR’s included a significant weakness and a weakness that were not overcome by its two significant strengths; (3) under factor 5, past performance, Offeror A’s proposal gave the government a considerably higher expectation of successful performance than KR’s; and (4) under factor 6, price, Offeror A’s price was only marginally higher than KR’s. AR, Tab 15, Tradeoff Report at BATES 0479, 0483-0484. KR has challenged only part of the TSA’s findings under factor 4 regarding its own proposal, and the agency’s findings under factor 5 regarding its own proposal.

The protester attempts to frame the agency’s determination as though it was based entirely, or at least primarily, on the significant weakness in factor 4. This is not what

the record shows. The agency considered the two weaknesses also assigned to KR's proposal under this factor and determined that the weakness regarding ATIs was also present in Offeror A's proposal and was therefore offset.⁵ AR, Tab 15, Tradeoff Report at BATES 0482. The protester's argument ignores the remaining weakness regarding the lack of clarity in KR's organizational chart that formed part of the basis of the agency's concern regarding risk and ignores the agency's determination under factor 2 that Offeror A's proposal exceeded the merits of KR's, the most important factor, and under factor 5 that the agency had significantly more confidence in Offeror A's proposal.

As explained below, we do not find that KR has demonstrated that the removal of the significant weakness would alter the agency's findings between its and Offeror A's proposal under factor 4 as KR has conceded the weakness that still served as a basis for the agency's assessment of risk. Even if we did agree with KR that its rating as compared to Offeror A would change under factor 4, KR has not challenged the agency's other findings in the best-value tradeoff determination.

Under factor 4, the agency noted that there were benefits in each offeror's proposal that were not off-setting:

[T]he KRC proposal has a significant weakness and a weakness; whereas the [Offeror A] proposal does not contain *any* risks (weaknesses) that are not off-setting to the weaknesses found in the KRC proposal. The operational risks associated with the KRC significant weakness and weakness have a strong negative impact that increases the risk of unsuccessful contract performance that is not overcome by the two significant strengths of the KRC Factor 4 proposal.

AR, Tab 15, Tradeoff Report at BATES 0483 (emphasis added).

Even without the significant weakness, the agency still found that the one non-offsetting weakness increased the risk of unsuccessful performance. KR has not addressed any of the agency's findings or concerns regarding increased risk.

In any case, the strengths the agency found in Offeror A's proposal under factor 2 still remain, as well as the agency's findings under factor 5 and its strong confidence in Offeror A's likelihood of successful performance. The chairs specifically noted that:

The differences in [Offeror A] and KRC proposals . . . include four additional strengths for [Offeror A] in Factor 2, two additional strengths for KRC in Factor 3, and for Factor 4 KRC had two additional significant

⁵ Because the agency determined that the weakness regarding the failure to state where ATIs would work was present in both KR and Offeror A's proposals and was therefore offsetting, the agency refers to KR's proposal as having one significant weakness and one weakness as compared to Offeror A's. AR, Tab 15, Tradeoff Report at BATES 0482.

strengths and one additional (non-offsetting) strength as well as a weakness and a significant weakness that are not present in the [Offeror A] proposal. Further, for Factor 5, the [Offeror A] proposal presents a considerably higher expectation of successful contract performance.

Id. at BATES 0485-0486.

For these reasons, although we have determined that there is a latent ambiguity underlying the significant weakness, we are not convinced there is a reasonable possibility that the agency's conclusions about the respective merits of the proposals of KR and Offeror A under factor 4 or under the best-value tradeoff determination would change. We also note that KR never challenged the awardee's evaluation or any aspect of its proposal. Because the record establishes no reasonable possibility of prejudice to KR, we find no basis to sustain the protest despite our conclusion that the solicitation contained a latent ambiguity. *See The AEGIS Techs. Grp., Inc.; Wingbrace, LLC*, B-412884 *et al.*, June 28, 2016, 2016 CPD ¶ 175 at 11-12 (denying the protest where, although the solicitation was latently ambiguous, there was no reasonable possibility of prejudice); *see also Booz Allen Hamilton, Inc.*, B-417418 *et al.*, July 3, 2019, 2019 CPD ¶ 246 at 4-5 (denying a protest where, despite errors in the evaluation, the protester challenged only one of the weaknesses it was assigned and not the other weaknesses that also served as part of the basis for its rating); *and see XL Assocs., Inc. d/b/a XLA*, B-417426.3, Jan. 16, 2020, 2020 CPD ¶ 33 at 10-11 (denying a protest where the protester was not prejudiced by the evaluation error and the protester did not challenge all of the agency's findings with regard to its quotation or the awardee's quotation that served as part of the basis for award).

Past Performance

KR argues that the agency unreasonably evaluated its past performance. The protester first argues that the agency failed to consider its contract summaries as part of its past performance evaluation. Comments at 7-19. The protester also contends that the agency overemphasized what the protester refers to as its "negative" past performance information and underemphasized its positive, and had the agency not done so, the protester would have received a rating of high confidence and likely would have been considered in the agency's tradeoff decision with the awardee instead of Offeror A. *Id.*

TSA responds that it considered the contract summaries as part of its relevance determination. The agency asserts that the protester inaccurately asserts that the solicitation required the agency to make a performance determination based on the summaries and simply disagrees with the agency's consideration of the information in its CPARS as the basis for its performance determination. MOL at 8-9. The agency also responds that KR's argument regarding its positive and negative past performance information amounts to disagreement with the weight the agency gave this information as KR has not demonstrated that the agency's determination was unreasonable, for example, by relying on inaccurate ratings or reaching an illogical conclusion. *Id.* at 10-14.

We agree with the agency. Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the agency's discretion. *Perspecta Eng'g, Inc.*, B-420501.2, B-420501.3, Dec. 13, 2022, 2022 CPD ¶ 314 at 11. The evaluation of past performance, by its very nature, is subjective, and we will not substitute our judgment for reasonably based evaluation ratings; an offeror's disagreement with an agency's evaluation judgments, by itself, does not demonstrate that those judgments are unreasonable. *Id.*

KR has failed to establish that TSA did not evaluate KR's past performance information in accordance with the terms of the solicitation. The TORFP's evaluation methodology required offerors to provide up to three past performance references that were ongoing or completed within the last three years, no earlier than December 2020, and include contract summaries for each reference. TORFP at BATES 0086, 0093. The agency would evaluate past performance references for relevancy and performance. *Id.* at BATES 0093. The contract summaries were described in the proposal instructions section of the TORFP. *Id.* at BATES 0086-0087. The evaluation methodology required offerors to comply with the instructions. *Id.* at BATES 0091. The agency considered KR's summaries as part of its relevance determination. AR, Tab 14, PPET Report at BATES 0441. However, nothing in the instructions or in the evaluation methodology stated that the agency would base its performance evaluation on the contract summaries. TORFP at BATES 0086-0087, 0093-0094. Though KR goes to great lengths to attempt to show that the agency was required to base part of its performance determination on the summaries, in addition to its relevance determination, the solicitation simply did not require this. As a result, KR's argument amounts to disagreement with the agency's evaluation method and does not provide us a basis to sustain the protest. *CACI, Inc., supra* at 26.

KR has also failed to establish that the agency unreasonably evaluated its positive and negative past performance information. The only evidence the protester offers that the agency failed to consider its positive past performance information is its argument that the agency did not consider the positive information stated in its contract summaries. Comments at 14. As we have already discussed, the agency was not required to base its evaluation on the information in the contract summaries, and in any case as discussed below, the agency did consider KR's positive past performance.

KR submitted three past performance references that were all determined to be relevant. AR, Tab 14, PPET Report at BATES 0441. The first reference was for the incumbent contract performed by KR's subsidiary, TTG, and the second and third were for contracts where KR was the prime contractor. *Id.* at BATES 0431, 0434, 0436. The agency reviewed nine CPARS in total for all the references. *Id.* at 0431-0441. The agency compiled the ratings that KR and TTG received from all three references to show they received 8 exceptional, 15 very good, 6 satisfactory, 2 marginal, and 0 unsatisfactory ratings. *Id.* In a separate table, the agency also compiled all the past

performance ratings TTG received during the last four years to show TTG received 0 exceptional, 10 very good, 26 satisfactory, 4 marginal, and 0 unsatisfactory ratings. *Id.*

The agency noted that:

KR consistently passed Federal Protective Services [FPS] inspections and provided excellent customer service, meeting all FPS and local armed guards requirements. Despite the challenges of the COVID-19 pandemic, KR delivered quality services and flexibly scheduled [Protective Security Officers] to meet reduced coverage needs. The management team efficiently ensured compliance with contract requirements, proactively engaged with stakeholders, and adapted quickly to pandemic-related issues.

Id. at BATES 0441. The agency also noted that KR and TTG “have a history of meeting contract requirements, though not without challenges. TTG received four Marginal Ratings but also received ratings of Satisfactory, Very Good, and Exceptional throughout the performance periods, with most ratings being Very Good,” and that KR did not receive a rating of lower than satisfactory. *Id.* at BATES 0441. The agency further noted that although KR met contract requirements, TTG failed to meet some and serious issues arose that were not effectively addressed. *Id.* at BATES 0442. The agency noted that “TTG initially struggled with performance, requiring significant Government intervention . . . [and] failed to meet incident management and reporting requirements, leading to persistent issues and further government oversight.” *Id.* For these reasons, the agency concluded that it had satisfactory confidence that KR would successfully perform the contract, though the agency noted this rating came “at the low end of this confidence rating.” *Id.*

The only evidence the protester offers that TSA overemphasized its negative past performance information consists of misstatements of the record. For example, the protester asserts that the agency wrongly concluded that TTG received four marginal ratings, when they received only two. Comments at 14. However, as quoted above, the agency referenced TTG’s ratings over the last four years as produced by searching CPARS when it made this statement, not the three references submitted, and the protester does not argue that these ratings are incorrect. KR also asserts the agency erroneously concluded that KR never received a rating of lower than satisfactory because KR never received a rating lower than very good. Comments at 15. However, as quoted above, the agency was referencing the combined ratings of TTG and KR based on the three references submitted, which included six ratings of satisfactory for TTG. As TTG is a subsidiary of KR and KR chose to include TTG’s reference in its proposal, it is reasonable that the agency would consider their ratings as a group.

KR’s argument continues to assert the agency should have placed emphasis on different CPARS and attempts to reframe the agency’s conclusions, without ever demonstrating that the agency incorrectly recorded ratings or reached a conclusion unsupported by the ratings. Comments at 15-18. Therefore, the protester’s arguments

amount to disagreement with the agency's findings which do not provide us with a basis to sustain the protest. An agency's evaluation of past performance is a matter of agency discretion which we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. *CACI, Inc., supra* at 26. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. *Id.*

Best-Value Tradeoff Analysis

KR asserts that the agency's best-value tradeoff analysis was flawed because it relied on a "transitive falsity" by failing to compare KR's and VMD's proposals. Comments at 19-27. We deny this argument because the agency was not required to compare KR's and VMD's proposals. An SSA has broad discretion in determining the manner and extent to which he or she will make use of evaluation results, and this judgment is governed only by the tests of rationality and consistency with the stated evaluation criteria. *DirectViz Sols., LLC*, B-418706, B-418706.2, Aug. 7, 2020, 2020 CPD ¶ 313 at 8. A protester's disagreement with the agency's determinations as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency, without more, does not establish that the source selection decision was unreasonable. *Id.*

Moreover, our Office has stated that "indirect" comparisons of proposals is unobjectionable, and in particular that a transitive analysis of evaluated proposals is reasonable where the record shows that the agency considered all of the advantages offered by the proposals. *DMS Int'l*, B-409933, Sep. 19, 2014, 2014 CPD ¶ 278 at 5-6; see *Client Network Servs., Inc.*, B-297994, Apr. 28, 2006, 2006 CPD ¶ 79 at 9 ("Since the SSA determined that QSS's proposal was a better value than CNSI's, and that CSC's was a better value than QSS's, we think it follows that the agency effectively found that CSC's proposal was as better value than CNSI's, even without a direct comparison of the two.").

Here, the agency performed a tradeoff analysis between KR's and Offeror A's proposals and determined that Offeror A provided the best value between the two. AR, Tab 16, SSA Decision Memorandum at BATES 0506-0513. The agency was not required to compare KR's proposal to the awardee's after already determining it did not provide the best value, and KR has presented us with no evidence that the agency's method of evaluation was unreasonable.

The protest is denied.

Edda Emmanuelli Perez
General Counsel