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## Decision

**Matter of:** Sterling Medical Associates, Inc.

**File:** B-421659.6

**Date:** March 7, 2025

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### DIGEST

Protest challenging agency's past performance evaluation and exclusion of the protester's proposal from the competition is denied where the agency reasonably considered past performance information received in response to questionnaires and from the Contractor Performance Assessment Reporting System regarding the protester's recent and relevant performance consistent with the solicitation.

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### DECISION

Sterling Medical Associates, Inc., of Cincinnati, Ohio, protests the exclusion of its proposal from consideration for issuance of a task order under request for proposals (RFP) No. W9114F-22-R-0002, issued by the Department of the Army for medical services to supplement the medical staff of military treatment facilities and health clinics. The protester challenges various aspects of the agency's past performance evaluation.

We deny the protest.

### BACKGROUND

#### The Solicitation

The Army issued the solicitation pursuant to the procedures of Federal Acquisition Regulation (FAR) parts 12 and 15 on March 17, 2022, seeking a contractor to provide healthcare workers to supplement the medical staff at agency medical facilities outside of the Continental United States (OCONUS). Agency Report (AR), Tab 3, RFP

at 1, 348, 430. The solicitation contemplated the award of an indefinite-delivery, indefinite-quantity contract, with a 1-year base period and four 1-year ordering periods. *Id.* at 350.

Award would be made on the basis of a best-value tradeoff using the following factors, listed in descending order of importance: technical capability, performance risk (present and past performance), and price. RFP at 429-30. When combined, the nonprice factors were significantly more important than price. *Id.* at 430. The performance risk factor is relevant here, and we refer to it as the “past performance factor.” *Id.*

For past performance, the RFP’s instructions stated that an offeror should submit no more than five relevant past performance references for “contracts” performed or awarded during the 3 years prior to the issuance of the RFP.<sup>1</sup> RFP at 416. For purposes of offeror submissions, the solicitation specified that the term “contract” did not include individual task orders and defined “performance” as “at least 24 months of performance within the last three years.” *Id.* at 416, 436.

In evaluating past performance, the RFP provided that the Army would assess the “offeror’s record of Present and Past Performance to ascertain the probability of successfully performing the required efforts of the PWS [performance work statement].” RFP at 436. The RFP also reserved to the agency the right to consider other information by stating, among other things: “The Government may consider a wide array of information from a variety of sources, but is not compelled to rely on all of the information available.”<sup>2</sup> *Id.* After assessing recency, relevancy,<sup>3</sup> and quality, the evaluation findings would result in one of the following consensus performance confidence assessment ratings: substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence.<sup>4</sup> *Id.* at 436-438.

The RFP provided that the Army would use a phased approach to evaluate proposals, with past performance evaluated in the first phase. Pertinent here, the RFP stated:

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<sup>1</sup> For each past performance reference, the offeror was to provide a narrative and a past performance questionnaire (PPQ). RFP at 417.

<sup>2</sup> The RFP noted that as part of the quality assessment, the agency would consider information from phone interviews, the Contractor Performance Assessment Reporting System (CPARS), and other government sources. RFP at 437.

<sup>3</sup> The RFP defined “relevant,” for the purposes of offeror submissions, as “services/efforts that are the same as or similar to the effort . . . required by the RFP.” RFP at 416. The RFP further provided that, in evaluating the relevancy of prior efforts, the agency would consider “similarity of service/support, complexity, dollar value, contract type, and degree of subcontract/teaming.” *Id.* at 436.

<sup>4</sup> Relevant here, the RFP defined a rating of limited confidence as follows: “Based on the offeror’s recent/relevant performance record, the Government has a low expectation that the offeror will successfully perform the required effort.” RFP at 437.

“Offerors must receive a confidence rating of ‘Substantial,’ ‘Satisfactory,’ or ‘Unknown Confidence’ in order to move on to the Technical evaluation phase. If Performance Risk (Past and Present Performance) does not meet the criteria described in this paragraph, the proposal will be removed from further consideration.” RFP at 432.

## Procedural History

This protest follows several prior rounds of protests and agency voluntary corrective action. On or before the initial closing date of May 2, 2022, the agency received proposals from four offerors and included all proposals in the competitive range. B-421659.3, B-421659.4, Contracting Officer’s Statement (COS) at 1. After engaging in discussions, soliciting revised proposals, and evaluating the revised proposals, the Army awarded the contract to Global Shield Health Consultants, LLC on April 14, 2023. *Id.* at 2. Sterling Medical filed its first protest with our Office, B-421659, challenging various aspects of the agency’s evaluation of the offerors’ proposals and the best-value tradeoff decision, as well as alleging that the awardee failed to comply with requirements regarding registration in the System for Award Management. Before submitting an agency report, the Army elected to take corrective action by reevaluating the offerors’ proposals and making a new award decision. Based on the proposed actions, our Office dismissed the protest as academic. *Sterling Med. Assocs., Inc.*, B-421659, B-421659.2, June 9, 2023 (unpublished decision).

Following the voluntary corrective action, on October 31, the agency again selected Global Shield’s proposal for award. Protest at 3. Sterling Medical filed its second protest with our Office, B-421659.3, repeating many of its earlier arguments. The Army elected to take voluntary corrective action by conducting discussions with all offerors, inviting all offerors to submit revised proposals, and evaluating the offerors’ revised proposals. Based on the proposed actions, our Office dismissed the protest as academic. *Sterling Med. Assocs., Inc.*, B-421659.3, B-421659.4, Jan. 12, 2024 (unpublished decision).

As part of the voluntary corrective action, the Army reopened discussions, and on July 11, 2024, the agency sent the protester two evaluation notices regarding unfavorable past performance information. COS at 2. One of the evaluation notices pertained to other information available to the agency about Sterling Medical’s performance of a task order for OCONUS dental services, which Sterling Medical began performing on October 1, 2022, and the notice included a redacted PPQ for the task order in which the contracting officer for the task order reported that he would not award the firm another contract and described multiple performance problems.<sup>5</sup> *Id.*; AR, Tab 18, Eval. Notice No. SM-24-03; AR, Tab 14, Task Order PPQ. The agency explains that the office responsible for this procurement is also responsible for the

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<sup>5</sup> For example, the contracting officer for the dental services task order wrote that Sterling Medical failed to perform the hours required, failed to fill multiple positions, and did not perform in accordance with a corrective action plan developed in response to a cure notice. AR, Tab 14, Task Order PPQ at 4-5.

dental services task order, and the PPQ was created after the contract specialist for this procurement asked the contracting officer for the dental services task order to provide feedback on the protester's performance. Memorandum of Law (MOL) at 11, 29; COS at 4.

On July 19, Sterling Medical filed a protest with our Office, challenging the agency's creation of the PPQ and consideration of the dental services task order in the past performance evaluation. We dismissed the protest as premature on September 6, finding the protester anticipated future agency actions in an ongoing evaluation. *Sterling Med. Assocs., Inc.*, B-421659.5, Sept. 6, 2024 (unpublished decision).

### Past Performance Evaluation

Subsequently, on September 11, the Army sent Sterling Medical six additional evaluation notices, providing the protester the opportunity to respond to adverse past performance information regarding the past performance references included in the protester's proposal, as well as the dental services task order. COS at 2-3. Sterling Medical submitted timely responses, and the Army proceeded with the past performance evaluation. *Id.* at 3.

For each of the five past performance contracts submitted by Sterling Medical in its proposal, as well as other projects known to the agency, the contracting officer discussed the contract requirements, the information provided in the PPQ, any evaluation notices and responses, and information from CPARS reports. AR, Tab 37, Past Performance Evaluation. For example, the contracting officer considered the PPQ for the dental services task order, noting that the reviewer had rated the protester's performance as unsatisfactory, and the PPQ described a cure notice issued for unperformed services, mismanaged leave, and failure to backfill a vacant position. *Id.* at 23.

As another example, the contracting officer considered the protester's [DELETED] contract, the predecessor contract to the current requirement, which the protester had submitted in its proposal. *Id.* at 6. The Army noted that Sterling Medical had received some ratings of very good on the PPQ, and the PPQ featured positive comments. *Id.* However, because the PPQ was more than 2 years old, the contracting officer reviewed more recent CPARS reports for task orders issued under the contract and observed that Sterling Medical did not have any adverse performance ratings prior to October 2020, but since then, there were 15 CPARS records with one or more marginal or unsatisfactory ratings. *Id.* The contracting officer found that the frequency of adverse ratings had increased over time, and the trend had not improved in the prior 6 months. *Id.* The Army noted that the CPARS reports with negative ratings mentioned excessively long vacancies, no backfilling for extended absences, ineffective corrective action plans, submission of candidates who were never onboarded, failure to comply

with reporting requirements, delays in communicating, and providers being removed for poor performance.<sup>6</sup> *Id.* at 7.

After discussing Sterling Medical's past performance information, the contracting officer noted, in summary, that the protester had "extensive recent and very relevant past performance" and "was uniquely positioned" as the incumbent on the ADCMS contract. AR, Tab 37, Past Performance Evaluation at 24-25. Turning to quality concerns, however, the contracting officer concluded that: "Despite Sterling [Medical]'s extensive experience in this market, it has trends of poor and worsening performance," and its "most recent records have similar themes indicating that it does not consistently provide the required services." *Id.* at 25. The contracting officer summarized the protester's "noted failures" including poor communication, failing to retain and recruit healthcare workers, inefficient onboarding, and poor management, which "resulted in numerous unperformed hours, extended vacancies, removal of contract employees, and detrimental impact on patient care that created additional workload for military and civilian [healthcare workers]." *Id.* The contracting officer observed that the problems occurred on multiple efforts with different contracting activities, and Sterling Medical had not improved its performance. *Id.* The contracting officer concluded the evaluation as follows:

This pattern worries me to the extent that an award to Sterling [Medical] would be a continuation of problematic and worsening performance. Based on Sterling [Medical]'s evaluated performance record I have a low expectation that it would successfully perform our required effort. Therefore, Sterling [Medical]'s performance rating is 'Limited' Confidence.

*Id.*

On November 20, the Army notified the protester that its proposal received a rating of limited confidence under the past performance factor, and the proposal was therefore eliminated from the competition. COS at 3. This protest followed.

## DISCUSSION

Sterling Medical challenges the Army's consideration of the dental services task order and the agency's evaluation of the protester's past performance references.<sup>7</sup> Although

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<sup>6</sup> The agency acknowledged that the protester had received two CPARS reports with satisfactory ratings under the [DELETED] contract, but the Army noted that the reports also discussed performance problems (e.g., vacancies and unperformed services). AR, Tab 37, Past Performance Evaluation at 7.

<sup>7</sup> The protester also complains that the Army disfavored and disparately treated the protester by creating the PPQ for the dental services task order. Protest at 31. Before filing the agency report, the Army submitted a request for partial dismissal, asking our Office to dismiss these protest grounds because the allegation of disparate treatment is  
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we do not specifically address all of the protester's arguments, we have fully considered them and conclude that none furnishes a basis to sustain the protest.

#### Dental Services Task Order

As noted above, the Army considered past performance information for the protester's OCONUS dental services task order, including a PPQ that was created after the contract specialist for this procurement requested feedback on the protester's performance. Sterling Medical does not dispute the content of the PPQ, which, as noted above, described multiple performance problems and the contracting officer's conclusion that he would not award the firm another contract. AR, Tab 14, Task Order PPQ at 4-5. Yet, the protester argues that "the Army had no right" to review the record for its performance of the dental services task order because, in the protester's view: the task order did not satisfy the RFP's relevancy requirements, the RFP precluded the evaluation of task orders and performance of shorter than 24 months, and the protester did not include the task order as a past performance reference in its proposal.<sup>8</sup> Protest at 10-14; see *also* Comments at 8-12.

At the outset, we note that an agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance

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speculative. Req. for Partial Dismissal at 5. After reviewing the agency's request and the protester's response, we advised the parties that the agency need not respond to the allegation of unfair treatment in its agency report. GAO Notice Concerning Req. for Partial Dismissal. Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. §§ 21.1(c)(4), (f). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. *Criterion Sys., Inc.*, B-419749 *et al.*, July 21, 2021, 2021 CPD ¶ 261. Where a protester relies on bare assertions, without further supporting details or evidence, our Office will find that the protest ground amounts to no more than speculation and does not meet the standard contemplated by our regulations for a legally sufficient protest. *Chags Health Info. Tech., LLC*, B-420940.3 *et al.*, Dec. 14, 2022, 2022 CPD ¶ 315 at 5-6. Here, Sterling Medical does not know how the Army evaluated the past performance of other offerors; the allegation is based on speculation and conjecture and, therefore, dismissed.

<sup>8</sup> Additionally, Sterling Medical contends that the Army violated FAR section 15.306(d)(3) by not providing Sterling Medical with the opportunity during discussions to respond to the interim CPARS report that was issued under the dental services task order. Protest at 11. However, the record demonstrates that the protester had the opportunity to respond to the adverse past performance information in the CPARS report, and the protester elected to not sign the report or provide any comments. AR, Tab 40, CPARS Records at 294. When a protester has had an opportunity to respond to adverse past performance information contained in a CPARS

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history, 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. *Cyber Prot. Techs., LLC*, B-416297.2, B-416297.3, July 30, 2018, 2018 CPD ¶ 270 at 6. In conducting a past performance evaluation, an agency has discretion to determine the scope of the offerors' performance histories to be considered, provided all proposals are evaluated on the same basis and consistent with the solicitation requirements. *Federal Prison Indus., Inc.*, B-417100, Jan. 25, 2019, 2019 CPD ¶ 71 at 5. An agency is not limited to considering only the information provided within the "four corners" of an offeror's proposal when evaluating past performance. *Brown Point Facility Mgmt. Sols., LLC*, B-420299, Jan. 24, 2022, 2022 CPD ¶ 47 at 4. Furthermore, an agency is generally not precluded from considering any relevant past performance information, including the evaluators' personal knowledge of an offeror. *Id.*

We find nothing improper about the Army's consideration of the dental services task order. As an initial matter, we find the agency reasonably determined that the task order satisfied the RFP's relevancy criteria. The RFP provided that the primary elements of relevance include similarity of services, complexity, dollar value, contract type, and degree of subcontracting. RFP at 436. The contracting officer observed that the dental services task order, among other things: required the provision of privileged and nonprivileged healthcare workers, and successful recruitment and relocation of healthcare workers; included several of the same performance locations; and also involved managing a geographically dispersed workforce. AR, Tab 37, Past Performance Evaluation at 23. As noted above, the RFP here sought a contractor to provide healthcare workers to supplement the medical staff at OCONUS agency medical facilities. RFP at 1, 348, 430. The agency recognized that the dental services task order had fewer full-time equivalents and a lower dollar value, but it found the task order was very relevant because of the similarity in the scope of work. AR, Tab 37, Past Performance Evaluation at 23; COS at 5. The protester's disagreement with the agency's relevancy determination does not provide a basis to sustain this protest. *Cyber Prot. Techs., supra.*

Moreover, we are not persuaded by the protester's arguments that the Army could not consider the dental services task order because the RFP precluded the evaluation of task orders or projects with fewer than 24 months of performance. In making this argument, the protester points to limitations that were set forth in the section of the RFP discussing the offeror's present and past performance *submissions*--not the universe of information that the Army could consider. RFP at 436. Specifically, the RFP required offerors to submit information about their "performance" of contracts "defined as at least 24 months of performance within the last three years," and which "does not include ... task orders." *Id.* at 416, 436. This language about offeror submissions, however, did

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report, an agency is not required to raise that information during discussions in an ongoing procurement. *Community Educ. Ctrs., Inc.*, B-418207, B-418207.2, Jan. 24, 2020, 2020 CPD ¶ 58 at 6; *Torres-Advanced Enter. Sols., LLC*, B-412755.2, June 7, 2016, 2016 CPD ¶ 167. Accordingly, Sterling Medical's complaint lacks merit, and we deny the allegation.

not limit the agency's consideration of other information--indeed, the RFP provided for the agency to have broad discretion, such that the agency "may consider a wide array of information from a variety of sources," and did not preclude the agency from considering task orders or performance limited to a minimum length. *Id.* at 436. We note that subsequent paragraphs in the RFP discussed the evaluation approach and provided definitions for recency and relevancy that did not include any of the limitations alleged by the protester. *Id.* at 436-437.

We also reject the protester's argument that the Army could not consider the dental services task order because it was not included in Sterling Medical's proposal. The RFP did not limit the past performance evaluation to the contracts that the offeror identified as past performance references in its proposal. Rather, we again note that the RFP allowed the agency to consider a wide array of information from a variety of sources. RFP at 436. Moreover, as noted above, our Office has stated that an agency is not limited to considering only the information provided within the "four corners" of an offeror's proposal when evaluating past performance. *Brown Point Facility Mgmt. Sols., supra*; see also *Snodgrass JV*, B-420376.2, Jan. 20, 2023, 2023 CPD ¶ 34 at 8 ("[A]n agency is generally not precluded from considering any relevant past performance information, regardless of its source."). Accordingly, we find there was nothing improper in the agency's consideration of the dental services task order.

## Evaluation Challenges

The protester alleges that the Army's past performance evaluation was unreasonable because the agency ignored the evaluation criteria and overweighted negative comments and ratings in CPARS reports and PPQs. Comments at 1-3. Below, we discuss two representative examples of Sterling Medical's arguments.

### [DELETED] Contract

As the first example, we discuss Sterling Medical's allegations concerning the agency's evaluation of a past performance reference submitted in its proposal, the [DELETED] contract, which is the predecessor to the current contract. The protester contends that the agency should have given more weight to the contract-wide assessment in the PPQ than information for individual task orders in CPARS records.<sup>9</sup> Comments at 16-19. The Army responds that the evaluation was reasonable, thorough, and consistent with the solicitation. MOL at 40.

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<sup>9</sup> Similar to its arguments concerning the dental services task order, the protester contends that the Army deviated from the terms of the RFP when it considered CPARS records for task orders issued under the [DELETED] contract with fewer than 24 months of performance. Protest at 18; Comments at 16. As discussed above, the RFP did not impose the constraints that applied to offeror submissions to the information the agency could consider, and we reject this argument. See RFP at 436-38.



As discussed above, when the Army reviewed information for the [DELETED] contract, it first reviewed the PPQ for the contract, which featured positive comments but was more than 2 years old. AR, Tab 37, Past Performance Evaluation at 6. The agency then reviewed 59 CPARS reports, which pertained to 15 task orders issued under the contract and were more recent. *Id.* The Army observed that 15 of the CPARS records featured one or more marginal or unsatisfactory ratings. *Id.* The Army also analyzed the most recent CPARS records and found that the reports for six of the eight task orders had at least one marginal rating. *Id.* at 7. The agency noted that the protester received ratings of satisfactory for two of the 15 task orders, but those CPARS records also reflected performance failures. For example, on one of the task orders, Sterling Medical failed to fill two positions for an entire year. *Id.* The contracting officer found that on another one of the task orders, Sterling Medical received unsatisfactory ratings due to its inability to manage a physician's assistant who ordered opioid therapy without express direction, failed to adequately document patient records, and exhibited unprofessional conduct. *Id.* at 11. The Army also found that more than 1,500 hours of services were de-obligated under the [DELETED] "bridge" or interim contract (issued to acquire services during Sterling Medical's protests and the resultant corrective actions) because of unfilled positions. *Id.* at 8-9. The contracting officer wrote that Sterling Medical did not dispute the number of unperformed hours when it responded to the adverse past performance information in an evaluation notice, and the protester did not describe any efforts to mitigate vacancies or backfill positions despite requests from the agency to do so. *Id.* at 9.

As stated above, 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. *Cyber Prot. Techs., supra.* In this regard, an agency's past performance evaluation may be based on a reasonable perception of a contractor's prior performance, regardless of whether the contractor disputes the agency's interpretation of the underlying facts or the significance of those facts. *PAE Aviation & Tech. Servs. LLC, B-413338, B-413338.2, Oct. 4, 2016, 2016 CPD ¶ 283 at 5.* While consideration of past performance trends and corrective actions is generally appropriate, an agency is not required to ignore instances of negative past performance. *Id.* Additionally, in making an overall past performance assessment, an agency is not compelled to adopt wholesale the adjectival ratings assigned to an offeror in its CPARS reports. *Brown Point Facility Mgmt. Sols., supra* at 5. For example, receiving a rating of "satisfactory" on one or more CPARS reports categories does not prevent an agency from considering the protester's past performance in the aggregate to determine whether the CPARS reports identify a negative performance trend or repeated areas of concern. *Id.*

On this record, we find unobjectionable the agency's evaluation of the [DELETED] contract. The record shows that the agency reasonably considered positive and negative information regarding Sterling Medical's performance of the [DELETED] contract. AR, Tab 37, Past Performance Evaluation at 6-12. The contracting officer acknowledged that the PPQ featured positive comments and ratings, and that Sterling Medical did not have any adverse ratings on CPARS reports prior to September 2020.

*Id.* at 6-7. The contracting officer was aware that some of the CPARS reports did not have ratings of unsatisfactory or marginal, but he noted that the frequency of adverse ratings had increased over time. *Id.* at 6; see also COS at 10. The contracting officer also considered that the protester had failed to implement effective corrective actions.<sup>10</sup> *Id.* at 11. The contracting officer considered the protester's performance record for the [DELETED] contract as a whole and reasonably concluded it supported a rating of limited confidence. Accordingly, we deny this allegation.<sup>11</sup>

#### [DELETED] Contract

As a second representative example, we address the protester's arguments concerning the agency's evaluation of Sterling Medical's third past performance reference, a [DELETED] contract for multispecialty healthcare worker services, where the protester performed as a subcontractor to the protester's subsidiary, [DELETED]. The protester argues that the Army's evaluation was unreasonable because the agency disregarded the positive aspects of the PPQ and the CPARS records. Comments at 21-23. Sterling Medical also complains that the Army did not give Sterling Medical the opportunity to address the adverse past performance information. *Id.* at 23.

In the evaluation, the contracting officer first considered the PPQ submitted for the contract, which assigned Sterling Medical an overall rating of satisfactory and included ratings ranging from marginal to very good.<sup>12</sup> AR, Tab 37, Past Performance Evaluation

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<sup>10</sup> In one instance, the contracting officer noted that Sterling Medical eventually filled a position after a 9.5 month vacancy, and he wrote: "While that is an improvement over very poor performance, it does not refute the higher number of negative ratings or the lack of performed services due to unperformed labors hours and poor personnel fill rates detailed in the most recent CPARS." COS at 10.

<sup>11</sup> The protester also complains that it was unreasonable for the agency to rely upon CPARS reports under the [DELETED] contract because Sterling Medical has filed a claim disputing the ratings under the Contract Disputes Act. Protest at 20. We reject the protester's complaint because an agency's past performance evaluation, as here, may be based on a reasonable perception of a contractor's prior performance, regardless of whether the contractor disputes the agency's interpretation of the underlying facts, the significance of those facts, or the significance of corrective actions. *Rocky Mt. Mobile Med.*, B-418788.2 *et al.*, Dec. 23, 2020, 2020 CPD ¶ 413 at 7. Accordingly, a protester's "continued disagreement with the agency's interpretation of these issues since they arose during performance . . . is insufficient to demonstrate that the agency's evaluation was unreasonable or otherwise inconsistent with the solicitation." *C2G Ltd. Co.*, B-416460.3, B-416460.5, May 14, 2019, 2019 CPD ¶ 193 at 5.

<sup>12</sup> The three items where the protester received marginal ratings were: achieving fill rates, effectively responding to performance issues, and providing proactive and effective management of subcontractors. AR, Tab 37, Past Performance Evaluation

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at 18-19. The reviewer stated that they would not award Sterling Medical another contract because the “contractor was not proactive at managing employee conflict or poor performance.” AR, Tab 6, [DELETED] PPQ at 4.

The Army identified the PPQ as adverse past performance information and sent the protester an evaluation notice with the PPQ attached. AR, Tab 24, Eval. Notice No. SM-24-04. In its response, Sterling Medical directed the Army to CPARS reports for the prime contract, which included positive ratings and recommended the prime contractor, [DELETED], for award. AR, Tab 30, Resp. to Eval. Notice No. SM-24-04 at 1-2. The protester then disputed the marginal ratings in the PPQ and described two instances in which it addressed performance issues with certain employees. *Id.* at 5-6.

The contracting officer considered the PPQ and the protester’s response, and he concluded that the “marginally rated items and remarks in this PPQ regarding fill rates and managing poor performance are consistent with other PPQ responses and CPARS evaluations.” AR, Tab 37, Past Performance Evaluation at 20. The Army noted that CPARS reports with positive ratings had been issued under the contract, but the contracting officer focused on the PPQ because the CPARS reports did not differentiate between the contributions of the prime contractor and the protester. *Id.* at 19-20; COS at 14. The contracting officer concluded that the past performance reference did not “inspire confidence in Sterling [Medical]’s ability to perform[.]” AR, Tab 37, Past Performance Evaluation at 20.

As stated above, 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. *Cyber Prot. Techs., supra.* Based on our review of the record, we find nothing unreasonable in the Army’s consideration of the PPQ and CPARS reports. The record establishes that, contrary to the protester’s view, the contracting officer did not ignore the positive aspects of the PPQ. The contracting officer recognized that Sterling Medical received an overall rating of satisfactory; he discussed the areas where the protester received ratings of very good, but he found those positive aspects were outweighed by the negative comments and the fact the reviewer would not recommend Sterling Medical for future contracts.<sup>13</sup> AR, Tab 37, Past Performance Evaluation at 18-19. The record also shows that the Army did not ignore the CPARS reports; the record demonstrates that the contracting

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at 19. In its response to the evaluation notice, Sterling Medical asserted that the contract did not establish fill rates, suggested that the government was responsible for delays in filling positions, and stated that because the contract was a personal services contract, it had no way to know of poor performance absent government notification. AR, Tab 30, Resp. to Eval. Notice No. SM-24-04 at 2-5.

<sup>13</sup> In response to the protest, the contracting officer states: “When a contracting officer will not even recommend a contractor for future awards, that is reasonably assessed as a negative comment about the contractor’s performance that the Army takes very seriously.” COS at 14.

officer considered them but gave more weight to the PPQ because the PPQ pertained specifically to Sterling Medical's performance rather than the prime contractor, [DELETED].<sup>14</sup> *Id.* at 19-20; COS at 14. Notwithstanding the protester's general disagreement with the weight the agency gave the PPQ and CPARS records, we find no basis to disturb the agency's evaluation in this regard. See *Cotton & Co., LLP*, B-418380.4, Mar. 10, 2021, 2021 CPD ¶ 150 at 4 n.4.

We are also not persuaded by the protester's allegation that the Army failed to give Sterling Medical the opportunity to address adverse past performance information. The record shows that in responding to the evaluation notice's comments regarding Sterling Medical's ineffective responses to performance issues, the protester cited two examples of instances in which it addressed employee performance issues. AR, Tab 30, Resp. to Eval. Notice No. SM-24-04 at 6-7. In the evaluation, the contracting officer considered this information provided by Sterling Medical and noted that the performance issues occurred 3 months apart. Yet, in this regard, the protester asserts that the agency never gave Sterling Medical the opportunity to address the temporal "link" between the incidents. Comments at 23.

When an agency conducts discussions, the FAR requires the contracting officer to discuss "adverse past performance information to which the offeror has not yet had an opportunity to respond." FAR 15.306(d)(3). Here, since the information the agency received and reviewed was provided by Sterling Medical, we reject the assertion that the protester did not have an opportunity to respond to that information. *Honeywell Tech. Sols., Inc.*, B-406036, Jan. 3, 2012, 2012 CPD ¶ 43 at 8-9. The evaluation was based on adverse information provided by Sterling Medical and reflected the agency's observation about when the instances occurred, and the record shows that the protester had ample opportunity to comment about the instances of poor performance and its efforts to address them. Accordingly, we reject this argument.

In sum, we find no basis to question the agency's past performance evaluation and elimination of Sterling Medical's proposal from the competition. The record reflects the agency's thorough consideration of Sterling Medical's past performance, including the references submitted in the protester's proposal and--consistent with the terms of the solicitation--other information available to the agency. The Army's assignment of a "limited confidence" rating reasonably reflected its concerns with Sterling Medical's

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<sup>14</sup> We also reject the protester's argument that the agency should have given more weight to the CPARS reports for the [DELETED] contract because [DELETED], the prime contractor on that effort, was proposed as a team member for the protested contract. The record shows that Sterling Medical's proposal stated that [DELETED] would assist with recruiting and administrative matters "as needed[.]" and it would not provide any healthcare workers. AR, Tab 15, Past Performance Proposal at 18. Given the limited role, if any, that [DELETED] would have in performance, it was not unreasonable for the agency to give more weight to past performance information directly relevant to Sterling Medical, the proposed prime contractor. See *Wolf Creek Fed. Servs., Inc.*, B-409187 *et al.*, Feb. 6, 2014, 2014 CPD ¶ 61 at 7-8.

“poor and worsening performance” and problems across multiple efforts with different contracting agencies. AR, Tab 37, Past Performance Evaluation at 25.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel