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Decision

Matter of: Sodexo Federal Services, Inc.

File: B-412052; B-412052.2

Date: December 16, 2015

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Avi M. Baldinger, Esq., Edwin G. Doster, Esq., Loni Gardner, Esq., Central Intelligence Agency, for the agency.
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DIGEST

1. Protest is denied where the record demonstrates that the source selection authority reasonably disagreed with lower-level evaluators concerning the merits of the protester's proposal under the solicitation's most important evaluation factor.
2. Protest challenging the agency's past performance evaluation is denied where the record shows that the agency's evaluation was reasonable and was not based on unequal treatment of the offerors.

DECISION

Sodexo Federal Services, Inc., of Gaithersburg, Maryland, protests the award of a contract to Guest Services, Inc. (GSI), of Fairfax, Virginia, under request for proposals (RFP) No. 2014-13120500002, which was issued by the Central Intelligence Agency (CIA), for combined hospitality and executive food services (CHEFS). Sodexo challenges the CIA's evaluation of proposals and selection decision.

We deny the protest.

BACKGROUND

The RFP was issued on June 30, 2014, and sought a variety of food services for the CIA's cafeteria at its headquarters in Langley, Virginia, and [DELETED] other facilities in the Washington, DC metropolitan area.¹ See Agency Report (AR) at 1-2. The contractor will be required to provide a variety of branded theme "concepts" in the food services facilities, which include restaurant, regional, national, manufacturer, and signature (i.e., company) brands; food services for three formal agency dining rooms (ADRs); and catering for special events. Id.; RFP, Statement of Work (SOW), at 1. The RFP contemplated the award of a multi-year CHEFS contract with a 3-year base period and four 3-year options.² See RFP at 7-10. The RFP included three contract line item numbers (CLIN): (1) CLIN 0001, which was solicited on a no-cost basis, and anticipated that the contractor would receive funds from operating dining concessions at the agency's facilities; (2) CLIN 0002, which was a fixed-price level-of-effort line item for providing labor for catering, a special events manager, ADR support staff and preventive maintenance technicians; and (3) CLIN 0003, which was a cost-reimbursement line item for the contractor's other direct costs (ODC). Id. at 6-10.

The RFP provided for award on a best-value basis considering six evaluation factors³: (1) management; (2) technical; (3) workforce; (4) past performance; (5) security; and (6) cost/price. Id. at 77. For evaluation purposes, the management factor was "slightly more important" than the technical factor; the technical factor was "slightly more important" than either of the equally-weighted workforce and past performance factors; the security factor was to be evaluated on a pass/fail basis; and the cost/price factor was "significantly less" than the combined weight of the other factors. Id. at 78, 80.

As relevant here, the RFP identified five evaluation subfactors for the management factor, listed in descending order of importance: (1) corporate commitment, (2) business concept plan, (3) oral presentation, (4) transition approach, and (5) subcontractor management. Id. at 78. The corporate commitment subfactor stated that the evaluation would consider the extent to which an offeror illustrates its corporate commitment to the program and its short-term and long-term investment strategies. Id. In this regard, the RFP required an offeror to describe its corporate

¹ The agency issued three amendments to the RFP. All citations to the RFP herein are to the RFP, as amended. See AR, Exh. 12c, Final RFP, Amend. 3.

² The RFP provided that option periods, after option period one, would be award-term options to be exercised based upon the quality of performance. See RFP at 10.

³ The solicitation referred to these factors as "items." See RFP at 78. For purposes of our decision we refer to these items as factors.

commitment to the requirement and its on-site staff, including on-site management's access to corporate resources and the types of resources. Further, the offeror was to address its procedures for communication between the offeror, government and on-site management, and information regarding the offeror's short-term investment approach, including details of its proposed initial corporate investment in bringing in branded theme food service and upgrades. Also, this section was to address the offeror's long-term corporate investment to keep its food service abreast of current trends, and those industry best practices that can be implemented within the confines of CHEFS' high security environment. RFP at 69.

As also relevant here, the past performance factor contained five equally-weighted subfactors: (1) management performance, (2) technical performance, (3) workforce performance, (4) cost/price past performance, and (5) site visits. Id. at 79-80. The RFP stated that the past performance evaluation would consider the extent that an offeror's relevant past performance demonstrates success on efforts of similar size, scope and complexity. Id. at 79. The workforce performance subfactor stated that the agency would evaluate the extent to which an offeror's past performance demonstrates its ability to successfully staff, recruit, retain and train qualified employees to successfully meet the needs of its customers. Id. The site visits subfactor stated that the agency would evaluate the extent to which an offeror's current performance at sites visited for evaluation purposes illustrates its ability to provide a pleasant, clean, efficient dining experience at a good value while providing a variety of creative menu offerings, at locations with similar size, scope and complexity. Id.

Under the cost/price factor, the evaluation considered an offeror's proposed cost/price for reasonableness, price realism, and cost realism. Id. at 80. Under the security factor, the evaluation considered the extent to which an offeror's security plan demonstrates its ability to meet the personnel clearance, automated information systems, and other security requirements. Id. at 80.

Three offerors, including Sodexo⁴ and GSI, responded to the RFP by the closing date of September 5, 2014. The proposals were evaluated by a technical management evaluation team (TMET), a past performance evaluation team (PPET), a cost evaluation team (CET), and a security evaluation team (SET). See Contracting Officer's (CO) Statement at 4. The agency's initial evaluations were then reviewed by a source selection evaluation team (SSET), which prepared a report summarizing the evaluations of the TMET, PPET, CET, and SET. AR, Exh. 46, SSET Final Report, at 1. The SSET also made a recommendation for award. Id. at 25. A source selection evaluation board (SSEB) reviewed the offerors' final proposals and the SSET's report, and made a report and award recommendation. AR, Exh. 47, SSEB Recommendation, at 1, 14-16. The SSEB's

⁴ Sodexo has been the incumbent contractor for these services since 1998.

report was reviewed by a source selection official (SSO), who made an oral award recommendation to the source selection authority (SSA). CO's Statement at 5. The SSA was responsible for the final award decision, and prepared a source selection decision memorandum (SSDM) documenting his decision.

For the evaluation of proposals under the management, technical and past performance factors, the CIA utilized a color-coded adjectival rating scale that considered the number of strengths, weaknesses, and deficiencies assessed for each offeror's proposal.⁵ To rate past performance, the evaluators assigned color-coded confidence ratings⁶ and to evaluate cost/price the evaluators considered each offeror's proposed cost/price for reasonableness, price realism and cost realism. Based on the initial evaluation and oral presentations, the agency included all three offerors' proposals in the competitive range.

The agency conducted detailed discussions with each offeror on January 22 and 23, 2015. Final proposals were received from offerors on February 19. The pertinent results were as follows:

⁵ The evaluators identified slight, clear, or significant strengths, and slight, clear, or significant weaknesses, or deficiencies. See, e.g., AR, Exh. 46, SSET Final Report, at 5, 10, 15. Based on the strengths, weaknesses, and deficiencies identified in a proposal, the evaluators assigned ratings of purple/exceptional, blue/very good, green/acceptable, yellow/marginal, or red/unacceptable. See AR, Exh. 3, Source Selection Plan, at 25.

⁶ The past performance confidence ratings were purple/high, blue/full, green/moderate, white/neutral, and red/low. See AR, Exh. 3, Source Selection Plan, at 26.

	GSI	Sodexo
1.0 Management Factor	Blue/Very Good	Blue/Very Good
2.0 Technical Factor	Blue/Very Good	Green/Acceptable
3.0 Workforce Factor	Green/Acceptable	Yellow/Marginal
4.0 Past Performance Factor		
4.1 Management Performance	Green/Moderate	Blue/Full
4.2 Technical Performance	Green/Moderate	Blue/Full
4.3 Workforce Performance	Green/Moderate	Red/Low
4.4 Cost/Price Performance	Green/Moderate	Green/Moderate
4.5 Site Visit	Green/Moderate	Green/Moderate
Security	Pass	Pass
Reasonable Price	Yes	Yes
Realistic (Price & Cost)	Yes	Yes
Total Evaluated Price/Cost	\$18,013,968	\$17,196,163

See AR, Exh. 46, SSET Final Report, at 4.

Based on these evaluation results, the SSET recommended that award be made to GSI. See CO's Statement at 6. Specifically, the SSET concluded that the cost/price difference between GSI's and Sodexo's proposals was not significant; that GSI's ratings under the management, technical and workforce factors outweighed Sodexo's cost advantage; and that the advantages offered by GSI's proposal resulted in benefits to the government commensurate with its higher price. See AR, Exh. 46, SSET Final Report, at 25.

The SSEB reviewed the SSET's evaluation and recommendation, and disagreed with certain of the SSET's findings and the award decision. With regard to the evaluation ratings, the SSEB concluded that Sodexo's proposal should be rated exceptional under the management factor, instead of very good, and moderate confidence under the workforce performance subfactor, instead of low confidence. See AR, Exh. 47, SSEB Recommendation at 7-8, 11.

As discussed in detail below, the SSEB's evaluation of Sodexo's proposal under the corporate commitment subfactor of the management evaluation factor noted that the SSET assessed Sodexo's proposal with a slight strength for proposing a realistic long-term investment plan consisting of [DELETED]. Id. at 7-8. The SSEB concluded that Sodexo's proposed long-term investment approach merited a clear strength, noting that "[DELETED]." Id. at 8.

With respect to the workforce performance subfactor of the past performance evaluation factor, the SSEB noted that the protester had experienced ongoing problems in staffing the agency dining rooms (ADRs) with staff that had appropriate security clearances. Id. at 11; see also Exh. 46, SSET Final Report, at 19-20. This

concern led to an initial low confidence rating for the protester's proposal under this subfactor. The SSET noted that although, in response to discussions, Sodexo proposed an approach to mitigate the agency's concern, the SSET did not find a basis to increase the low confidence rating. AR, Exh. 46, SSET Final Report, at 19-20. However, based on new information learned by the SSEB Chair and an SSEB member after the SSET completed its consensus evaluation, concerning Sodexo's revised strategy to staff the agency's ADRs, the SSEB raised its assessment of Sodexo's approach to a moderate confidence rating under this subfactor. AR, Exh. 47, SSEB Recommendation, at 11.

As discussed in detail below, the SSEB recommended award to Sodexo because it found Sodexo's proposal to be "much better" than GSI's proposal under the management factor, which was the most heavily-weighted evaluation factor, based in large part on the protester's advantages under the corporate commitment subfactor regarding its short-term and long-term investment approaches. See id. at 13-14. The SSO concurred with the SSEB's recommendation. Id. at 16.

The SSA did not accept the SSEB's findings regarding the evaluation of Sodexo's and GSI's proposals, or the recommendation to award to Sodexo. Instead, the SSA found that Sodexo's proposal warranted the same ratings assessed by the SSET (cited in the chart, above). See AR, Exh. 48a, SSDM, at 6, 11. With regard to the management factor, the SSA concluded that Sodexo merited a very good rating, rather than an exceptional rating, as assessed by the SSEB. As discussed in detail below, the SSA disagreed with the SSEB regarding its primary basis for assigning an exceptional rating to Sodexo's proposal for this factor, namely the protester's approach to long-term investments. Id. at 6.

Under the past performance factor, the SSA recognized that Sodexo proposed changes to address the agency concern with its past performance but found that "[t]his factor evaluates Past Performance, as opposed to future performance, and [Sodexo] has had issues in the past." Id. at 11. The SSA concluded that GSI's ratings were "slightly lower" than Sodexo's for this factor. Id. at 15.

Based on his review of the SSEB's evaluations and his own findings, the SSA concluded that GSI's proposal merited award. Although the SSA found that Sodexo's proposal was rated "slightly higher" than GSI's under the management factor, the SSA stated that the distinction between the offerors' proposals was a "wash" because both GSI's and Sodexo's proposals were assessed with very good ratings, and because there was "no clear advantage of one [offeror's] approach over the other." See AR, Exh. 48a, SSDM, at 16. The SSA found GSI's proposal to be a better value based on its higher ratings under both the technical and workforce factors. Id. at 16-17. Based on these conclusions, the SSA selected GSI for award on August 20. This protest followed.

DISCUSSION

Sodexo contends that the CIA unreasonably evaluated its proposal under the management and past performance evaluation factors and that these errors rendered the award decision unreasonable.⁷ Specifically, the protester argues that the SSA's decision to assign its proposal a rating under the management evaluation factor that was lower than the rating recommended by the SSEB was based on two unreasonable findings regarding Sodexo's and GSI's respective approaches to long-term investments. Sodexo also argues that the agency's evaluation of its proposal under the workforce subfactor of the past performance evaluation factor failed to take into account all of the relevant information in its proposal. Finally, the protester argues that the agency's assessment of Sodexo's and GSI's proposals with the same ratings under the site visits subfactor of the past performance factor was unreasonable, and reflected disparate treatment.

For the reasons discussed below, we find no basis to sustain Sodexo's challenge to the evaluation of offerors under the management factor because, despite clear errors in the contemporaneous record regarding the evaluation of the offerors' proposals, the record overall supports the SSA evaluations and award decision. We also find no basis to sustain Sodexo's challenge to the evaluation of the offerors' past performance based on the protester's disagreement with the agency's judgments.

It is a fundamental principle that agencies must evaluate proposals consistent with the terms of a solicitation and, while the evaluation of offerors' proposals generally is a matter within the procuring agency's discretion, our Office will question an agency's evaluation where it is unreasonable, inconsistent with the solicitation's stated evaluation criteria and requirements, or undocumented. Prism Mar., LLC, B-409267.2, B-409267.3, Apr. 7, 2014, 2014 CPD ¶ 124 at 4-5; Exelis Sys. Corp., B-407111 et al., Nov. 13, 2012, 2012 CPD ¶ 340 at 5; Public Commc'ns Servs., Inc., B-400058, B-400058.3, July 18, 2008, 2009 CPD ¶ 154 at 17. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. Beretta USA Corp., B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 10.

⁷ Sodexo raised several additional challenges regarding the CIA's evaluation of the offerors' proposals. The protester subsequently withdrew all of its challenges, other than those challenging the agency's evaluations under the management and past performance subfactors. See Protester's Supp. Protest and Comments (Oct. 19, 2015) at 2-3; Protester's Post-Hearing Comments (Dec. 4, 2015) at 1. Sodexo also raises other collateral issues regarding the arguments discussed herein; although we do not address every issue raised by the protester, we have reviewed all of them and find that none provides a basis to sustain the protest.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of technical and price evaluation results; price or cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the evaluation criteria. MVM, Inc., B-407779, B-407779.2, Feb. 21, 2013, 2013 CPD ¶ 76 at 11. The propriety of a price/technical tradeoff decision does not turn on the difference in the technical scores or ratings per se, but on whether the selection official's judgment concerning the difference was rational and consistent with the RFP's evaluation scheme. Id. Indeed, point scores and adjectival ratings are merely guides for intelligent decision making. Information Ventures, Inc., B-407478.4, July 17, 2013, 2013 CPD ¶ 176 at 6. Further, while source selection officials reasonably may disagree with the evaluation conclusions of lower-level evaluations, they are nonetheless bound by the fundamental requirements that their independent judgments be reasonable, consistent with the stated evaluation factors, and adequately documented. AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 16; AIU N. Am., Inc., B-283743.2, Feb. 16, 2000, 2000 CPD ¶ 39 at 8-9.

Additionally, in reviewing an agency's evaluation and award decisions, we do not limit our consideration to contemporaneously-documented evidence, but instead consider all the information provided, including the parties' arguments, explanations, and any hearing testimony. The S.M. Stoller Corp., B-400937 et al., Mar. 25, 2009, 2009 CPD ¶ 193 at 13. While we generally give little or no weight to reevaluations and judgments prepared in the heat of the adversarial process, see Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, 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--provided that those explanations are credible and consistent with the contemporaneous record. NWT, Inc.; PharmChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16. Further, errors in the contemporaneous evaluation record do not provide a basis to sustain the protest where agency witnesses provide credible testimony that the errors did not reflect their contemporaneous evaluation judgments, and where the witnesses provide credible testimony as to these contemporaneous judgments. See Noble Supply & Logistics, B-410788.4 et al., July 29, 2015, 2015 CPD ¶ 243 at 10-11.⁸

Management Factor Evaluation

⁸ On December 1, 2015, our Office conducted a hearing to take the testimony of the SSA concerning his evaluation of the offerors' proposals under the management approach and past performance evaluation factors.

Sodexo argues that the CIA unreasonably evaluated its proposal under the corporate commitment subfactor of the management evaluation factor. As discussed above the record shows that the SSA disagreed with the SSEB's assessment of a clear strength for Sodexo's proposed long-term investment approach, and found that only a slight strength was merited for the following two reasons: (1) the value of Sodexo's proposed long-term investment was only slightly larger than GSI's, and (2) the SSEB's assessment of a strength based on the protester's proposal to [DELETED] was offset by the SSA's concerns regarding the risks of [DELETED]. AR, Exh. 48a, SSDM, at 6. In sum, the SSA concluded that there was no basis to increase Sodexo's rating for the management factor based on the protester's long-term investment approach, nor was there any basis to conclude that this approach was a discriminator in favor of the protester as compared to GSI under this factor. Id. at 6, 14, 16.

Sodexo proposed [DELETED]. See AR, Exh. 37, Sodexo Final Proposal, Vol. II, at 3-6; Exh. 34, GSI Final Proposal, Vol. II, at 3-4. For its long-term investment approach, Sodexo proposed [DELETED]. AR, Exh. 37, Sodexo Final Proposal, Vol. II, at 5. Based on [DELETED] Sodexo stated that it would provide [DELETED]. Id. The proposal explained that [DELETED]. Id. The proposal further explained that [DELETED]. Id.

GSI's long-term investment approach was based in pertinent part on the awardee's proposal to upgrade the branded concepts to be provided in the agency dining facilities:

[DELETED].

AR, Exh. 34, GSI Final Proposal, Vol. II, at 14.

As discussed above, the SSET found that Sodexo's proposal merited a very good rating under the management evaluation factor. AR, Exh. 46, SSET Final Report, at 4. Although the SSET assigned a clear strength for the protester's proposal under the corporate commitment subfactor of the management factor, based on its short-term investment approach, the SSET did not specifically discuss the protester's long-term investment approach. See id. at 10. The SSET also did not specifically cite long-term investment as a basis to distinguish between Sodexo's and GSI's proposals under the management factor. See id. at 23.

The SSEB reviewed the SSET's findings and determined that Sodexo's proposal should have received a rating of exceptional under the management evaluation factor, rather than a lower rating of very good, based on what the SSEB found was an advantage in the protester's long-term investment approach. AR, Exh. 47, SSEB Recommendation, at 8. Specifically, the SSEB concluded that Sodexo's proposal warranted a clear strength because "[DELETED] are important advantages for the Government." Id. Based, in significant part, on the SSEB's conclusion that

Sodexo's proposal merited a higher rating than GSI under the management factor, which was the most important of the non-price evaluation factors, the SSEB concluded that the protester's proposal was the highest-ranked for the non-price factors, and merited award. Id. at 15-16.

The SSA disagreed with the SSEB's findings regarding Sodexo's proposal under the corporate commitment subfactor with regard to the protester's long-term investment approach. The SSA cited two bases for disagreeing with the SSEB's conclusion that Sodexo's long-term investment approach merited a slight strength, rather than a clear strength:

[Sodexo was] assessed a Slight Strength for their realistic long-term investment plan. The SSEB didn't agree with this only being assessed a Slight Strength and instead recommended it be raised to a Clear Strength due to [DELETED]. The SSEB assesses these as important advantages for the Government. However, I don't concur with the SSEB's recommended change. The [DELETED] investment is only [DELETED] more than GSI, and I also see the Government being involved in their investment decisions as a risk. In turn, I don't think upgrading this strength is warranted.

AR, Exh. 48a, SSDM, at 6. We now address the protester's challenge to the SSA's two findings.

Value of Sodexo's and GSI's proposed long-term investments

Sodexo first argues that the record contains inconsistencies regarding the CIA's evaluation of the offerors' proposals under the corporate commitment subfactor, and further argues that the agency's response to the protest is based on improper post-hoc rationalizations that are materially different from the contemporaneous record. We conclude that the record here, including the agency's response to the protest and the hearing testimony, reasonably shows that the SSDM contained errors, but that the SSA understood the correct information regarding the offerors' proposals when making the award decision.

With regard to the SSA's first basis for disagreeing with the SSEB's evaluation of Sodexo's long-term investment approach, the protester notes that the references to a [DELETED] investment by Sodexo, and to a [DELETED] advantage as compared to GSI, were in error because those amounts related to the offerors' proposed short-term investments. In response to the protest, the SSA acknowledged that the references to the protester's and awardee's proposed short-term investments, in the discussion of the offerors' long-term investment approaches, was a mistake. Decl. of SSA (Oct. 26, 2015) at 1; see also AR at 14. Nonetheless, the SSA stated in response to the protest that "[i]n fact[,] Sodexo had no advantage at all in its long term investment." Decl. of SSA (Oct. 26, 2015) at 1. The SSA explained that GSI's

proposal had a “sizable advantage in its proposed long term investment of approximately [DELETED], based on historical averages . . . when compared to Sodexo’s [DELETED], which was conditioned upon [DELETED].” Id. The SSA stated that “if I had considered the proposed long-term, rather than short-term, investments, that could and would only have served to bolster my decision to agree with the TMET and SSET, rather than [the] SSEB.” Id. at 2.

Based on the foregoing record, the parties all agree that the SSA’s reference in the selection decision to Sodexo’s and GSI’s short-term investments [DELETED] was incorrect. The CIA and GSI argue, however, that this error could not have been prejudicial to Sodexo because the error was in the protester’s favor, with regard to the dollar amounts. In this regard, as noted in the SSA’s declaration in response to the protest, the SSDM’s statement that Sodexo’s proposed long-term investment was “only” [DELETED] more than GSI’s was incorrect; in fact, Sodexo’s proposed long-term investment [DELETED] was in fact [DELETED] less than GSI’s [DELETED]. We find no basis to conclude that a correction of the SSA’s erroneous reference could have possibly prejudiced the protester, as such a correction would favor the awardee, rather than the protester. In this regard, competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency’s errors in conducting a procurement, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice. DynCorp Int’l LLC, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 12-13.

Sodexo nonetheless argues that the SSA’s error with regard to the amounts of the protester’s and the awardee’s proposed long-term investments demonstrates that the SSA did not understand the offerors’ respective proposals. Protester’s Post-Hearing Comments (Dec. 4, 2015) at 38-39, 43-45. For this reason, the protester contends that the entirety of the agency’s response to the protest reflects improper post-hoc rationales that are not supported by the contemporaneous record, and that these rationales should therefore be disregarded. See id. We conclude, however, that the hearing testimony reasonably shows that the SSA understood the differences between the offerors’ proposals, and that the erroneous reference to the protester’s and awardee’s proposed short-term investments in the SSDM does not demonstrate that the SSA’s overall judgment was in error.

The SSA testified that, although the SSDM contained an error regarding the value of the offerors’ proposed long-term investments, he was aware of the offerors’ correct short-term and long-term investment amounts at the time he made the decisions documented in the SSD. Hearing Transcript (Tr.) at 18:13-19:9, 176:5-177:17. The SSA further testified that he understood that each offeror proposed a different approach to long-term investments. Id. at 13:8-16:22. The SSA explained that he understood that Sodexo proposed to fund investments [DELETED]. Id. at 13:18-14:2, 59:12-59:20. In contrast, the SSA explained that GSI proposed to upgrade or replace concepts as needed, and that the awardee had

based its estimate of [DELETED] long-term investments on assumptions about the number and likely schedule of changes. Id. at 16:8-16:19.

The SSA explained that although the offerors' approaches to their long-term investments were different, his contemporaneous judgment was that neither offeror proposed a "guarantee[d]" amount. Id. at 15:2-15:7, 16:14-16:22. Specifically, the SSA noted that while Sodexo proposed investing [DELETED] based on an approach that would be [DELETED], this amount was not guaranteed because the [DELETED] amount was merely an estimate. Id. at 59:7-59:20, 178:8-179:4. The SSA stated that he understood that the proposed investment could therefore be higher or lower than the [DELETED] estimate. See id. at 68:13-68:19. With regard to GSI, the SSA also acknowledged that the awardee's total long-term investment would be based on the number of changes made, and that there was no guarantee that the awardee's projections would be accurate. Id. at 16:8-16:22, 17:1-17:8, 131:4-132:18. In light of these uncertainties, the SSA explained that neither approach had a clear advantage over the other. Id. at 26:9-27:9.

We think that the SSA's testimony was credible, and that it reasonably explains his basis for his conclusion in the SSDM that Sodexo's proposed approach to long-term investments did not merit the higher rating assigned by the SSEB. Specifically, we think that the SSA reasonably explained that he did not conclude that Sodexo's proposed long-term investment reflected an advantage over GSI's in terms of its approach or the size of the investment in a manner that supported the SSEB's assessment of a clear, rather than a slight strength for Sodexo.

We also think that the SSA's testimony reasonably explains his basis for concluding that neither offeror had an advantage in the management evaluation factor with regard to their long-term investment approaches. In this regard, the SSA's declaration in response to the protest explained that Sodexo's proposed long-term investment approach provided "no advantage at all" as compared to GSI's approach. SSA Decl. (Oct. 26, 2015) at 1. We note that the SSA's selection decision did not state that Sodexo had an advantage over GSI. Rather, the SSA stated that the dollar difference between the protester's and awardee's proposed long-term investments was not very large. AR, Exh. 48a, SSDM, at 6. This, combined with concern over risk, led the SSA to conclude that the strength for Sodexo should be slight, rather than clear. See id. The SSDM did not state that Sodexo had an advantage over GSI in terms of long-term investments. See id. at 14, 16. Thus, we conclude that the SSA's declaration stating that there was "no advantage at all" in Sodexo's proposed long-term investment approach is not inconsistent with the contemporaneous record. See SSA Decl. (Oct. 26, 2015) at 1.

Sodexo also argues that, even if the SSA's conclusions were based on a contemporaneous understanding of the offerors' respective long-term investment approaches, there were substantive differences between those approaches that should have led the SSA to rate Sodexo's proposal higher. Specifically, the

protester contends its proposal to fund its long-term investments based on a [DELETED] should be considered more of a guarantee than the awardee's proposal to fund changes to concepts, as needed.

Once again, however, the SSA's testimony reasonably reflects that he did not find that either offeror's approach resulted in a guaranteed level of investment. See Tr. at 15:2-15:7, 16:14-16:22. We find no basis to conclude that the SSA's judgment was unreasonable. To the extent the protester argues that GSI's proposed approach gives the awardee unfettered discretion to make investment decisions of any amount, including the discretion to make no investments at all, we do not think that the awardee's proposal reflects such an approach, or that the SSA unreasonably failed to draw the same inference as the protester. Additionally, to the extent the protester argues that the SSA failed to recognize what the protester contends is the inherent superiority of its own approach to long-term investment, we conclude that the protester's view does not provide a basis to sustain the protest.

In sum, while the record clearly shows that the SSDM contained an error regarding the evaluation of the value of Sodexo's and GSI's proposed long-term investments, we think that the record, including the SSA's testimony, shows that this error did not prejudice the protester or otherwise show that the SSA's conclusions were unreasonable. See The S.M. Stoller Corp., supra; NWT, Inc.; PharmChem Labs., Inc., supra; Noble Supply & Logistics, supra.

Risk of government involvement in investment decisions

Next, Sodexo argues that the SSA unreasonably found that Sodexo's proposal to involve the government in the process of making long-term investments posed a risk. We conclude that the record here, including the SSA's hearing testimony, provides no basis to sustain the protest.

As discussed above, the SSEB assigned Sodexo's proposal a clear strength under the corporate commitment subfactor of the management factor based on its long-term investment approach. Specifically, the SSEB found that [DELETED] are important advantages for the Government." AR, Exh. 47, SSEB Recommendation, at 8.

As also discussed above, the SSA disagreed with the SSEB's assessment of a clear strength for Sodexo's proposed long-term investment approach, and found instead that the proposal merited a slight strength. AR, Exh. 48a, SSDM, at 6. In this regard, the SSA stated that "I also see the Government being involved in their investment decisions as a risk." Id.

The SSA's hearing testimony further explained that he considered collaboration to be a risk because contractors should "make their own independent business decisions" and that in his experience, the government can get into "dicey" situations.

See Tr. at 20-21. The SSA stated that he believed that the purpose of the contract was to obtain the contractor's best judgment and expertise to identify the appropriate investments to meet the government's needs. Id. at 20:4-21:10. The SSA further testified that he generally believed that involving the government in a contractor's investment decision could lead to a financial loss to the government in the event of a breakdown in contractual relations, such as a termination. See id. at 104-105. In this regard, the SSA explained that he had experienced a situation wherein a contractor had requested the government's input regarding a choice to invest in a subcontractor. The SSA stated that the government's approval of the contractor decision subsequently became a basis for the contractor to defend against the government's attempt to hold the contractor responsible for contract cost and schedule problems. See id. at 20:4-21:10; 104:10-105:10.

Sodexo argues that the SSA's conclusion regarding the risk of the government's involvement in a contractor's investment decisions was unreasonable. In this regard, the protester notes that the SSA acknowledged in his testimony that collaboration between the government and a contractor is not always a risk, and that there are, generally, advantages to collaboration between the government and contractors. See Tr. at 109-111. Sodexo further contends that the SSA's concerns that its proposal to seek input from the government on investment decisions ignores what the SSEB believed were advantages to such collaboration.⁹ See AR, Exh. 47, SSEB Recommendation, at 8.

As discussed above, in reviewing a protest, our Office does not substitute our judgement for that of an agency. Where an SSA has a reasonable basis for an evaluation judgment or award decision, our Office will not sustain a protest based on a protester's argument that a more reasonable alternative could have been made. On the record here, we conclude that the SSA's concern regarding risk was in response to the SSEB's conclusion that Sodexo's proposed collaborative approach to investments provided a basis for a higher evaluation rating. To the extent the SSA was concerned with the risks of involving the government in the contractor's investment decisions, and the potential for obscuring a contractor's

⁹ The protester also notes that several areas of the solicitation anticipate that the contractor must receive approval from the agency before proceeding with certain investment decisions. For example, the protester cites the requirement to obtain government approval for "changes to the Government provided spaces/layouts." SOW at 35. These approvals, however, concern changes to the government's property that must occur regardless of the investment decision made by the contractor. See id. For this reason, we do not agree with the protester that the solicitation required the kinds of government involvement in investment decisions that were cited by the SSA as a risk.

liability for performance problems, we cannot conclude that the SSA's concerns were unreasonable or outside his discretion.¹⁰

Past Performance Factor Evaluation

Next, Sodexo argues that the CIA unreasonably evaluated its proposal under the workforce performance and site visits subfactors of the past performance evaluation factor. Specifically, the protester argues that the agency unreasonably failed to take into account its proposed corrective actions in response to performance problems cited in the evaluation. The protester also argues that the agency's assessment of equal ratings for Sodexo and GSI under the site visits subfactor was unreasonable, in light of what the protester contends were more significant problems for the awardee. For the reasons discussed below, we deny this basis of protest.

The evaluation of an offeror's past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. MFM Lamey Grp., LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. Where a solicitation calls for the evaluation of past performance, we will examine the record to ensure that the evaluation was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations. Divakar Techs., Inc., B-402026, Dec. 2, 2009, 2009 CPD ¶ 247 at 5. An agency's evaluation may take into consideration recent trends in performance, as well as actions taken to resolve performance problems. See FAR § 15.305(a)(2)(i)-(ii); Yang Enter., Inc.; Santa Barbara Applied Research, Inc., B-294605.4 et al., Apr. 1, 2005, 2005 CPD ¶ 65 at 6-7. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

As noted above, with respect to the workforce performance subfactor, the SSEB received information after the SSET's evaluation, which addressed Sodexo's plan to address its problems in providing adequate staff for the ADRs. In this respect, Sodexo advised the agency during a monthly meeting under the current contract

¹⁰ Sodexo also notes that the CIA asked it to address the following concern during discussions: "Sodexo proposed a long-term investment strategy which failed to illustrate how it will realistically and feasibly partner with the Government to fund future upgrades to the food services operation. Please provide further detail on how Sodexo plans to fund future upgrades." AR, Exh. 31a, Sodexo Discussion Questions, at 1. The protester, however, does not specifically argue that it was misled during discussions, nor does the protester request as a remedy that the agency reopen discussions and allow the protester to submit a new proposal. In any event, the discussion question here sought a response from the protester concerning its proposal to "fund future upgrades"; the discussion question did not clearly request that the protester propose the kinds of collaborative investment decisions that were cited as a concern by the SSA.

that it planned to move away from using the agency's security firm as a conduit for filling ADR vacancies. AR, Exh. 47, SSEB Recommendation, at 11. The SSEB found that Sodexo proposed to implement a plan to establish a pipeline of clearable, skilled, wait staff to ensure its ability to successfully provide staff for the ADRs without degradation in service. Id. Based on this new information, the SSEB increased Sodexo's rating for this subfactor from low to moderate confidence. Id.

The SSA found that this new information did not warrant increasing the protester's past performance rating from low to moderate confidence. See AR, Exh. 48a, SSDM, at 11. The SSA concluded that a lower rating of low confidence was warranted because the past performance factor was to consider a contractor's prior performance and mitigation efforts, as opposed to its proposed or future mitigation efforts. Id. At the hearing, the SSA explained that his evaluation was actually based on the fact that the situation with Sodexo properly staffing ADRs has persisted over several years, that the protester had made similar promises to correct the problem in the past, and that the problem had yet to be corrected by the protester. See Tr. at 37:4-38:5

Sodexo argues that the SSA's analysis unreasonably failed to recognize that, an agency's evaluation may consider actions taken to resolve performance problems for the future, and that the SSA's statements are evidence that the proposal was unreasonably evaluated. We disagree. The contemporaneous record shows that the SSA considered the protester's proposed corrective action, but did not find that these actions warranted changing the rating to moderate confidence because this problem has been an ongoing concern with the protester's performance under the current contract. AR, Exh. 48a, SSDM, at 11, 15; see also Tr. at 40. In this connection, the record reflects that the SSA considered each of the protester's proposed actions to cure this problem in its performance, and found that although the protester was taking steps to address the agency's concerns, there had not been a satisfactory resolution of the concerns in a manner that merited a higher evaluation rating. See AR, Exh. 48a, SSDM, at 11. Thus, the record reflects that the SSA meaningfully considered the protester's past performance record. While Sodexo disagrees with the SSA's judgement on this matter, we conclude that the protester's disagreement does not provide a basis to sustain the protest.

Sodexo also argues that the CIA's evaluation of its proposal under the site visits subfactor was flawed because GSI and Sodexo were both assessed with moderate confidence ratings. As noted above, the agency's site visit of GSI's operation revealed a variety of issues, including food safety and sanitation problems. See AR, Exh. 46, SSET Final Report, at 13. The protester contends, in contrast, that the agency's findings regarding its visit to Sodexo's worksite were more positive and that the problems identified related to cashiers and long lines. See id. at 20-26.

The record reflects that the SSET and SSEB each had concerns--regarding GSI's overall food safety and sanitation practices, and its food quality--based on what the

agency observed during its site visit. The SSET and SSEB, however, concurred in raising GSI's initial rating from low confidence to moderate confidence based on corrective actions taken by the awardee to address these concerns, including changes to its sanitation and food safety practices, and corporate policies. AR, Exh. 46, SSET Final Report, at 13; Exh. 47, SSEB Recommendation, at 11. The SSA concurred with the SSEB's view, finding that GSI's corrective action was an adequate response to "feedback," as anticipated by the RFP, that satisfied the agency's concerns regarding these site visit issues. AR, Exh. 48a, SSDM, at 11, 15; see RFP at 73.

With regard to Sodexo, the agency's site visit identified concerns regarding long lines for certain food options and a limited number of cashiers. AR, Exh. 46, SSET Final Report, at 20. The agency initially assigned a rating of moderate confidence for this subfactor. Id. at 20-21. The SSET concluded, after considering Sodexo's proposed corrective action, that the agency still had concerns as to whether Sodexo would sufficiently address its problems with long lines, and staffing shortfalls, which resulted in the agency not changing Sodexo's moderate confidence rating. Id.; see also Exh. 47, SSEB Recommendation, at 11; Exh. 48a, SSDM, at 11, 15.

Sodexo argues that while the CIA did not increase its rating for the site visit subfactor, despite its proposal to make changes to address the concerns identified with its performance during the agency's site visit, the agency accepted GSI's corrections and increased the awardee's rating. We do not agree with the protester that the agency's evaluations reflected unequal treatment. Instead, we find that the record reflects the agency's reasonable judgment concerning the merits of each offeror's site visit and response. Specifically, the record shows the agency reasonably found that GSI had addressed its more serious site visit problems in a manner that merited increasing its low confidence rating to moderate confidence, but found that Sodexo had not addressed its own less serious site visit problems in a manner that merited increasing its moderate confidence rating.

The protest is denied.

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