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Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

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## Decision

**Matter of:** Al Raha Group for Technical Services, Inc.; Logistics Management International, Inc.

**File:** B-411015.2; B-411015.3

**Date:** April 22, 2015

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Maj. Michael G. King, Department of the Air Force, for the agency.

Evan D. Wesser, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protests challenging the agency's evaluation of the awardee's past performance are sustained where the record shows that the evaluation was inconsistent with the terms of the solicitation and not adequately documented.
2. Protests challenging the agency's evaluation of the protesters' past performance are sustained in part, where the record shows that, for one protester, the agency unreasonably failed to consider information verifying the protester's claimed past performance, and where the agency did not have a reasonable basis to discount positive past performance references.

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### DECISION

Al Raha Group for Technical Services, Inc. (RGTS), of Riyadh, Saudi Arabia, and Logistics Management International, Inc. (LMI), of Eastman, Georgia, protest the award of a Foreign Military Sales contract to SupplyCore, Inc., of Rockford, Illinois, by the United States Air Force under request for proposals (RFP) No. FA8505-13-R-31138, for F-15 fighter jet transportation support services (TSS) for the Royal Saudi Air Force (RSAF). RGTS and LMI challenge the agency's evaluation of the offerors' past performance, and LMI challenges the agency's tradeoff determination.

We sustain the protests in part, and deny them in part.

## BACKGROUND

The RFP sought proposals for comprehensive fleet management for various special-purpose vehicles and trailers to support base stand-ups and continued RSAF operation of F-15s. RFP, Performance Work Statement (PWS), at 3. The contractor will provide all transportation and support services required to source, procure, track, warehouse, and deliver assets needed within the Kingdom of Saudi Arabia to support RSAF F-15 operations. Id. The RFP contemplated the award of a single, indefinite-delivery/indefinite-quantity (ID/IQ) contract, with a 12-month basic ordering period and four 12-month option ordering periods. RFP at 3.

For purposes of award, the Air Force was to evaluate proposals under the following three factors: technical; past performance; and cost/price. Id. at 143.<sup>1</sup> With regard to past performance, the Air Force was to assess an offeror's ability to successfully accomplish the proposed effort based on its demonstrated present and past work record. Id. at 145. In addition to the present/past performance FACTS sheets prepared by offerors for four past performance references and the associated past performance questionnaires (PPQ) obtained by offerors, the agency also expressly reserved the right to obtain performance information from other sources. Id. at 146.<sup>2</sup> The RFP further provided that the agency was to evaluate the number and severity of performance problems, the appropriateness and effectiveness of corrective actions taken, and the overall work record; the solicitation warned that prompt corrective action in isolated instances might not outweigh overall negative performance trends. Id. at 147.

The RFP advised offerors that the Air Force would evaluate the recency and relevance of each past performance reference. Id. at 145. Recency was defined as active or completed efforts performed within the past 5 years from the issuance date of the RFP. Id. For purposes of evaluating relevance, the RFP provided that the Air Force would evaluate the scope, magnitude of effort, and complexities for each reference. Id. at 146. The RFP provided that the evaluation would include logistical and programmatic considerations, including but not limited to, the quantity procured,

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<sup>1</sup> The vast majority of contract line item numbers (CLIN) are firm-fixed price. See RFP at 3-102. Although the RFP stated that "cost/price" would be evaluated, the cost-reimbursable CLINs for local purchases within the Kingdom of Saudi Arabia and travel were not included in the total evaluated price (TEP). Id. at 152.

<sup>2</sup> The RFP directed offerors to submit required past performance information in the format of the Present/Past Performance "FACTS Sheet," which was included as RFP attachment No. 1. RFP at 134.

length of effort, complexity of the required delivery timeline, and dollar values of efforts submitted. Id. The relevance rating was dependent on the degree to which the past performance references reflected similar scope, magnitude of effort, and complexities as compared to the solicitation's requirements. For example, if the submitted contract met essentially the same technical complexities, but involved only some of the programmatic and logistical scope and magnitude of effort, a lesser relevancy rating was to be assigned. Id.

In addition to comparing the scope and magnitude of effort and complexities relative to those required by the RFP, the Air Force was also to evaluate whether an offeror's past performance references demonstrated experience with the following: (1) foreign military sales or direct commercial sales material procurement; (2) procurement negotiations; (3) electronic asset visibility tracking and reporting; (4) subcontractor management; (5) international teaming agreements and/or international operations management; (6) packing, handling, shipping, and transportation management; and (7) quality assurance management. Id. at 145-46. The RFP stated that the relevance rating for each reference would be based on the scope, magnitude, and complexity of the effort, and whether the reference demonstrated experience in the seven enumerated areas of experience as follows:

	<b>Very Relevant</b>	<b>Relevant</b>	<b>Somewhat Relevant</b>	<b>Not Relevant</b>
Scope & Magnitude / Complexity of Effort	Essentially the same	Similar	Some	Little or none
Specific Experience	7 of 7	5-6 of 7	2-4 of 7	N/A

Id.

After evaluating the recency, relevance, and quality of an offeror's past performance, the Air Force was to assign an overall past performance confidence assessment using the following ratings:

**Substantial Confidence** – Based on the offeror's recent/relevant performance record, the Government has a high expectation that the offeror will successfully perform the required effort.

**Satisfactory Confidence** – Based on the offeror's recent/relevant performance record, the Government has a reasonable expectation that the offeror will successfully perform the required effort.

**Limited Confidence** – Based on the offeror's recent/relevant performance record, the Government has a low expectation that the offeror will successfully perform the required effort.

No Confidence – Based on the offeror’s recent/relevant performance record, the Government has no expectation that the offeror will be able to successfully perform the required effort.

Unknown Confidence (Neutral) – No recent/relevant performance record is available or the offeror’s performance record is so sparse that no meaningful confidence assessment rating can be reasonably assigned.

Id. at 147-48.

Under the technical factor, the Air Force was to evaluate an offeror’s proposal for acceptability--essentially, a pass/fail evaluation. Id. at 143. Among the technically acceptable proposals, the Air Force was then to make a best value tradeoff between past performance and cost/price, wherein past performance was to be significantly more important than cost/price. Id.

The Air Force received seven proposals in response to the RFP, and included six of those proposals in the competitive range for the purpose of holding discussions. Agency Report (AR), Tab 4, Source Selection Decision, at 3-4. The agency’s final evaluation for the six offerors was as follows:

	<b>Technical</b>	<b>Past Performance Confidence</b>	<b>Final TEP</b>
<b>LMI</b>	Acceptable	Limited	\$105,954,044
<b>RGTS</b>	Acceptable	Limited	\$108,197,639
<b>SupplyCore</b>	Acceptable	Substantial	\$110,571,663
<b>Dalma Tech<sup>2</sup> Co.</b>	Acceptable	Satisfactory	\$116,162,636
<b>Offeror #5</b>	Acceptable	Satisfactory	\$126,021,788
<b>Offeror #6</b>	Acceptable	Satisfactory	\$149,025,562

Id. at 112.

The Source Selection Authority (SSA) determined that SupplyCore’s proposal, based on its “Substantial” confidence past performance assessment, warranted paying a price premium of 4.18 percent over LMI’s proposal and 2.15 percent over RGTS’s proposal, both of which received “Limited” confidence assessments. Id. at 113. Based on the tradeoff, the SSA determined that SupplyCore’s proposal offered the best value to the government, and selected the proposal for award. Id.

## DECISION

RGTS and LMI both challenge the Air Force’s evaluation of SupplyCore’s past performance as warranting a “substantial confidence” assessment, and each separately challenges the agency’s evaluation of its past performance as warranting

a “limited confidence” assessment.<sup>3</sup> As a general matter, 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. Computer Scis. Corp. et al., B-408694.7 et al., Nov. 3, 2014, 2014 CPD ¶ 331 at 12. However, we will question an agency’s evaluation conclusions where they are unreasonable or undocumented. OSI Collection Servs., Inc., B-286597, B-286597.2, Jan. 17, 2001, 2001 CPD ¶ 18 at 6. The critical question is whether the evaluation was conducted fairly, reasonably, and in accordance with the solicitation’s evaluation scheme. Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 22. Here, we find that the agency’s evaluation with respect to SupplyCore’s and LMI’s past performance was unreasonable, inconsistent with the terms of the RFP, and not adequately documented and sustain these protest arguments.<sup>4</sup> We find that the agency’s evaluation with respect to RGTS’s past performance was reasonable and in accordance with the terms of the RFP and deny these protest arguments.

#### Evaluation of SupplyCore’s Past Performance

RGTS and LMI contend that the Air Force’s evaluation of SupplyCore’s past performance as warranting a “substantial confidence” assessment was fundamentally flawed because the agency failed to evaluate SupplyCore’s past performance in accordance with the RFP’s relevancy criteria. Specifically, the protesters argue that the agency failed to meaningfully consider the limited scope and magnitude of effort and complexities of SupplyCore’s past performance references when it assigned the awardee the highest possible past performance confidence assessment. See, e.g., RGTS Comments at 4-12; LMI Comments at 10-14, 16-18; RGTS Supp. Comments (Mar. 5, 2015) at 3-10. As discussed below, we find that the agency’s evaluation of SupplyCore’s past performance was inconsistent with the terms of the RFP and not adequately documented. Therefore, we sustain the protests on these grounds.

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<sup>3</sup> RGTS and LMI initially protested the Air Force’s determination regarding the technical acceptability of SupplyCore’s proposal, but both protesters subsequently withdrew those challenges after receiving the AR. See RGTS Comments (Feb. 23, 2015) at 1 n.2; LMI Comments (Feb. 23, 2015) at 3 n.1. Our Office, in a separate decision, denied a third disappointed offeror’s challenge to SupplyCore’s technical acceptability. Dalma Tech<sup>2</sup> Co., B-411015, Apr. 22, 2015, 2015 CPD ¶ \_\_\_\_.

<sup>4</sup> The protesters raise other collateral arguments. While our decision does not specifically address every argument, we have considered all of the protesters’ additional assertions and find that none provides any independent basis for sustaining the protests.

As discussed above, our Office will question an agency's past performance evaluation where the record indicates that the agency either failed to evaluate, or otherwise unreasonably considered, the relevance of past performance references in accordance with the solicitation's stated evaluation criteria. As relevant here, an agency's evaluation of an offeror's past performance is unreasonable where the solicitation requires the agency to consider the value of the offerors' references as compared to the value of the solicited requirement, and the agency fails to reasonably explain why comparatively small-value references provide a basis to justify a high past performance rating, or in this case the highest possible rating. E.g., Health Net Fed. Servs., LLC, B-401652.3, B-401652.5, Nov. 4, 2009, 2009 CPD ¶ 220 at 16 (sustaining a protest where an agency assigned the highest possible past performance rating based on three contracts covering less than 3 percent, and one contract covering 11 percent, of the requirements contemplated by the solicitation); Continental RPVs, B-292768.2, B-292768.3, Dec. 11, 2003, 2004 CPD ¶ 56 at 8 (finding prior contracts no larger than 4 percent of the solicitation requirements were not similar or relevant). Additionally, where an agency fails to document or retain evaluation materials, it bears the risk that there may not be an adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for its source selection decision. Navistar Def., LLC; BAE Sys., Tactical Vehicle Sys. LP, B-401865 et al., Dec. 14, 2009, 2009 CPD ¶ 258 at 13.

SupplyCore submitted four task order references, which was consistent with the RFP's instruction that orders, not the ID/IQ contracts against which the orders were placed, were relevant for the past performance evaluation. See RFP at 131. Based on the RFP's stated relevancy criteria regarding scope and magnitude of effort and complexities, we agree with the protesters that the four past performance references cited by SupplyCore appear to have little, if any, relevance to the effort required under the RFP. The effort contemplated by the RFP will require the contractor to provision vehicles and related materials in support of the RSAF's F-15 operations, and has an estimated value of approximately \$110 million and a 5-year period of performance. The references identified by the awardee, and the agency's evaluation of relevancy, were as follows:

Reference #	Dollar Value	Period of Performance	Scope	Relevancy Criteria
1	\$465.90	5/5 – 5/8/14 (3 days)	Automotive control assemblies	5 of 7
2	\$1,621.16	3/2 – 4/1/11 (1 month)	Reinforcing and plastic bars	6 of 7
3	\$143,461.67	9/28/12 – 10/3/13 (1 year)	Fire-rated doors	6 of 7
4	\$6,487.80	10/2/13 – 1/3/14 (3 months)	Fire-rated doors	4 of 7

AR, Tab 6, Final Past Performance Report, at 87-94; SupplyCore Updated FACTS Sheets.

As addressed above, the RFP here required the Air Force to evaluate the relevancy of an offeror's past performance based on both the scope and the magnitude of effort and complexities of the cited references relative to those required by the RFP, and whether the references demonstrated experience with the RFP's seven enumerated areas of experience. RFP at 145-46. With regard to the first component of the relevancy analysis, the agency was to consider logistical and programmatic considerations, including, for example, the dollar values of the submitted references. Id. at 146.

We conclude that, on their face, SupplyCore's references are not comparable, as their combined value of \$152,036.53 is only approximately 0.14 percent of the estimated value of the effort required by the RFP.<sup>5</sup> Although the Air Force rated all four references as only "somewhat relevant," meaning that the references included "some" of the scope and magnitude of effort and complexities as required by the RFP, the record includes no basis for the determination that the cited efforts could reasonably be said to include even "some" of the effort required by the RFP given the extremely small value and short duration of the references. Indeed, the contemporaneous record demonstrates that the SSA specifically expressed concerns regarding the relevance of the past performance references identified by SupplyCore in light of "the magnitude and complexity of some of their efforts." AR, Tab 4, Source Selection Decision, at 113. Based on the cited references including only a mere fraction of the effort required by the RFP, the references appear more consistent with the RFP's relevance assessment of "not relevant," meaning little or none of the effort required by the RFP.

Notwithstanding the small dollar value and short duration of the four references cited by SupplyCore, the Air Force argues that it nonetheless reasonably assigned the awardee a substantial confidence rating for its past performance. The Air Force

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<sup>5</sup> The agency also suggests that, although the estimated value of the ID/IQ contract contemplated by the RFP is approximately \$110 million with a 5-year period of performance, a more appropriate measure for comparing the scope and magnitude of effort and complexities of cited past performance references should be against the anticipated value of the first task order to be issued against the ID/IQ contract, which has an estimated value of \$34.9 million and delivery turnaround times of 90-180 days. See Supp. Contracting Officer's Statement of Facts (COSF) (Mar. 2, 2015) at 11. Although the agency does not specifically state that it evaluated offerors based on this alternative measure, and the contemporaneous record does not reflect that this measure was used, SupplyCore's cited past performance references, in aggregate, would still only be 0.44 percent of the total effort required by the first task order contemplated by the RFP.

argues that although the relevance assessment for an offeror's past performance references was "a consideration in the overall confidence rating," the relevance ratings did not "dictate a particular confidence rating." Supp. COSF at 2. Although the Air Force is correct that the RFP's past performance evaluation criteria provided for consideration of other factors for the overall past performance rating, such as the quality and recency of the past performance, we do not find reasonable the agency's position that the small-value performance references identified by the awardee could support the highest possible confidence assessment. Relevance was an essential component of the overall confidence assessment, as demonstrated by the fact that the definitions for the past performance confidence assessments state that the assessment will be based on "the offeror's recent/relevant performance record." RFP at 147-48 (emphasis added). The agency's contemporaneous evaluation and post-protest arguments here are very similar to the circumstances in Health Net Federal Services, LLC, where we sustained a protest challenging an agency's past performance evaluation:

While we recognize that the past performance evaluation was not to be based on size alone, [the agency's] assertion that its integrated assessment of [the awardee's] past performance information justified giving [the awardee] the highest past performance rating is unpersuasive. Not one of [the awardee's] contracts was evaluated as "relevant"; rather, they were all considered to be only "somewhat relevant." Whether it was reasonable to consider some of the contracts even "somewhat" relevant given that their beneficiary populations were a small fraction of the size of the beneficiary population covered by the [contract to be awarded under the solicitation] is itself questionable. At a minimum, absent some further support in the record, it was not reasonable to give [the awardee] the highest past performance rating in reliance on the "exceptional" performance ratings associated with the prior contracts of such smaller size. On the contrary, the value of the "exceptional" ratings as predictors of [the awardee's] success on the [to be awarded] contract is inherently diminished by their lack of relevance due to their relatively small size.

Health Net Fed. Servs., LLC, *supra*, at 17.

The Air Force's evaluation here, which relied on unsupportable past performance relevance ratings to support the highest possible confidence assessment, is similarly flawed.

We now turn to the Air Force's arguments that it considered other past performance information, aside from the four references provided by SupplyCore, that supported

the awardee's past performance rating. As discussed below, none of these additional arguments provide a basis to find the agency's evaluation reasonable.

First, the Air Force argues that it reasonably relied on the aggregate values and periods of performance of SupplyCore's ID/IQ contracts against which the four cited references were issued in reaching its overall confidence assessment. These ID/IQ contracts, according to the agency, represent a \$5.36 billion portfolio spanning more than 11 years. See Supp. COSF at 12. There are several significant problems with the agency's reliance on the overall ID/IQ contracts. As an initial matter, there is no evidence in the contemporaneous record that the agency considered the impact of the ID/IQ contracts in the overall confidence assessment of SupplyCore's past performance. Additionally, even if the agency did consider the ID/IQ contracts, there is no evidence in the contemporaneous record that it conducted the requisite relevancy and relevance analyses concerning this past performance information as required by the RFP. Instead, the contemporaneous record reflects that the agency looked at contractor performance assessment reports (CPAR) issued at the ID/IQ contract level for the task order references cited by SupplyCore, and concluded, without analysis of or comparison to the RFP's relevancy criteria, that the ID/IQ contracts were each "somewhat relevant to the current requirement." AR, Tab 6, Final Past Performance Report, at 95-97.

Another significant problem with the agency's argument is that consideration of the ID/IQ contracts is directly in conflict with the terms of the RFP. The RFP directed offerors that:

If the contract you are submitting is an ordering type contractual vehicle (e.g., an Indefinite Delivery "D" type contract per FAR 16.5), only after issuance of a delivery/task order does performance occur. Given this, an individual order (or orders) under the basic ordering contract should be submitted in lieu of just the basic ordering contract itself.

RFP at 131.

Consistent with the RFP, the record in fact indicates that the agency did not consider the ID/IQ contracts as a whole. In its initial proposal, SupplyCore filled out the four required FACTS sheets for ID/IQ-level contracts. In response, the Air Force issued four evaluation notices (EN), one for each reference, directing SupplyCore, in accordance with the RFP's proposal instructions, to provide specific task order-related information for its four references, and specifically stated that "[u]ntil such time that the offeror responds to the EN with the information identified for evaluation, this effort will be assessed as 'Not Relevant.'" AR, Tab 6, Final Past Performance Report, at 99-100 (including text from SupplyCore EN Nos. 02 - 05) (emphasis added).

Where an agency offers an explanation of its evaluation during the heat of litigation that is not borne out by the contemporaneous record, we give little weight to the later explanation. E.g., Solers Inc., B-409079, B-409079.2, Jan. 27, 2014, 2014 CPD ¶ 74 at 11-12; System Eng'g Int'l, Inc., B-402754, July 20, 2010, 2010 CPD ¶ 167 at 5 n.3. Here, the agency's post-hoc justification relying on SupplyCore's ID/IQ contracts runs counter to the RFP's terms that only orders issued against ID/IQ contracts, as opposed to the ID/IQ contracts themselves, were relevant. RFP at 131. Thus, the agency's argument regarding its reliance on SupplyCore's "portfolio" of ID/IQ contracts does not reasonably support the agency's contemporaneous evaluation of SupplyCore's past performance.

Finally, the Air Force argues that, in addition to the four performance references identified by SupplyCore in its proposal, the agency also independently identified other past performance information that supports the reasonableness of its past performance evaluation. We find, however, that none of the additional information relied upon by the agency reasonably supports the "substantial confidence" assessment given to SupplyCore's past performance.

Where a solicitation contemplates the evaluation of offerors' past performance, the agency has the discretion to determine the scope of the performance history to be considered, provided all proposals are evaluated on the same basis and the evaluation is consistent with the terms of the solicitation. Weidlinger Assocs., Inc., B-299433, B-299433.2, May 7, 2007, 2007 CPD ¶ 91 at 8. An agency is generally not precluded from considering any relevant information, regardless of its source, and is not limited to considering only the information provided within the "four corners" of an offeror's proposal when evaluating past performance. FAR § 15.305(a)(2)(ii); Paragon Sys., Inc., B-299548.2, Sept. 10, 2007, 2007 CPD ¶ 178 at 8. Here, the RFP also explicitly notified offerors that the past performance evaluation would "not [be] limited to review of the information provided in the offeror's Present/Past Performance volume," and that the agency would obtain past performance information from other sources, including CPARs available from government past performance databases. RFP at 146.

The Air Force argues that it reasonably relied on a "relevant" SupplyCore contract for interceptor body armor warehouse services. See AR, Tab 6, Final Past Performance Report, at 97. The SSA specifically relied on the relevance of the body armor contract, noting that the agency discounted the relevance of the four references submitted by the awardee, discussed above, "reduced the relevancy ratings on efforts submitted by SupplyCore because of concerns with the magnitude and complexity of the orders reviewed by the government," but that "the team did find another relevant contract of SupplyCore's through [the Past Performance Information Retrieval System (PPIRS)] that was considered relevant to this effort with a greater magnitude and complexity than some of their other efforts." AR, Tab 4, Source Selection Decision, at 113.

The protesters both argue that the body armor contract is irrelevant to the effort required by the RFP, which is mainly for the provision of vehicles in support of RSAF F-15 operations within Saudi Arabia. See RGTS Comments at 9-10; LMI Supp. Comments (Mar. 6, 2015) at 5. Additionally, the protesters both argue that, even if the scope of the body armor contract could reasonably be considered relevant, the agency still failed to document its analysis that the contract was otherwise relevant in accordance with the RFP's enumerated relevancy criteria. See RGTS Supp. Comments at 9; LMI Comments at 16. The agency responds that it reasonably evaluated the contract as being relevant to the effort required by the RFP because it involved similar warehousing and logistics services, and that its relevancy determination was adequately documented. See Supp. COSF at 10; Second Supp. COSF (Mar. 10, 2015) at 2-3.

We find that the Air Force's contemporaneous record does not support the agency's determination that SupplyCore's body armor contract is "relevant." Here, the contemporaneous evaluation record fails to include any analysis comparing the contract against the RFP's articulated relevancy criteria.<sup>6</sup> Indeed, the entirety of the relevance analysis in the contemporaneous past performance evaluation report is: "this contract was determined to be relevant to the TSS work scope, as the [period of performance] was two years and the dollar value was \$11.299M." See AR, Tab 6, Final Past Performance Report, at 103. The agency's response to the protests similarly does not provide a detailed analysis regarding the relevancy of the body armor contract under the RFP's explicit relevancy criteria. See Supp. COSF at 10. In this regard, the agency's post-protest response further calls into question the reasonableness of the agency's assessment that the contract is "relevant," as the agency lists, without detail or analysis, only three of the seven specific relevancy criteria that the body armor contract purportedly satisfies. Id. Under the RFP's definitions, the body armor contract, at best, could only be "somewhat relevant" because, by the agency's own admission, it only meets 3 of the 7 enumerated relevancy criteria. RFP at 146. Thus, both the contemporaneous and post-award

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<sup>6</sup> We are not persuaded by the protesters' repeated arguments that in order for a past performance reference to be "relevant" (or "very relevant") it had to demonstrate specific experience with delivery to the RSAF or the provision of vehicles. The RFP set forth specific relevancy criteria that the agency was to evaluate in connection with offerors' respective present and past performance; none of those criteria specifically required demonstrated past performance with the RSAF, within Saudi Arabia, or in delivering vehicles. Rather, the relevancy criteria more generally sought experience with such matters as, for example, foreign military sales, quality assurance monitoring, and subcontract management. See RFP at 145-46. While specific experience with the RSAF or in the provision of vehicles could arguably justify a higher past performance rating, we find nothing unreasonable in the agency declining to penalize offerors for not satisfying non-existent relevancy requirements.

records fail to include sufficient evidence to demonstrate that the agency reasonably evaluated the body armor contract’s relevance in accordance with the RFP’s specific relevancy requirements.

The contemporaneous record also suggests that the Air Force considered two additional past performance references for SupplyCore. Specifically, the agency identified in the PPIRS two records involving service-related North American Industry Classification System (NAICS) codes. AR, Tab 4, Source Selection Decision, at 73; Tab 6, Final Past Performance Report, at 98-99. The only information in the record about the two references is the following:

<b>NAICS Code</b>	<b>NAICS Description</b>	<b>Weighted Delivery Score</b>	<b>Weighted Quality Performance</b>
486990	All Other Pipeline Transportation	98	Green
488490	Other Support Activities for Road Transportation	97	Green

AR, Tab 6, Final Past Performance Report, at 98-99.

LMI argues that reliance on these references was unreasonable because the record is devoid of any evidence that the Air Force considered the recency or relevance of the references under the RFP’s articulated criteria. See LMI Comments at 17. We agree. Here again, the contemporaneous record (and even the agency’s response to the protests) fails to demonstrate that the agency adequately evaluated the recency or relevance of these references in accordance with the RFP’s requirements. See AR, Tab 6, Final Past Performance Report, at 98-99. Furthermore, the record contains no explanation regarding how services related to “pipeline transportation” and “road transportation” are relevant to the RFP at issue. Therefore, neither of these references provides a basis to find that the agency’s evaluation of SupplyCore’s past performance was reasonable.

In sum, based on the fact that SupplyCore’s past performance submitted for evaluation was with respect to references that were small fractions of the size of the effort required by the RFP and the Air Force’s reliance on other past performance information did not adequately evaluate relevance pursuant to the RFP’s applicable criteria, the agency’s decision to assign SupplyCore the highest past performance confidence assessment of “substantial confidence” is not supported by the record. Therefore, we sustain the protests on these bases.

#### Evaluation of LMI’s Past Performance

LMI also challenges the Air Force’s determination that its past performance warranted only a “limited confidence” assessment. While the protester raises a number of collateral arguments, we address herein the two primary challenges to the agency’s evaluation of the protester’s past performance. LMI first argues that

the Air Force determined that it could not verify the past performance of LMI's key personnel, but unreasonably failed to contact knowledgeable agency personnel regarding LMI's past performance. See LMI Comments at 23-27; LMI Supp. Comments at 6-8; LMI Second Supp. Comments (Mar. 11, 2015) at 4-8. The protester also argues that the agency unreasonably relied upon selective adverse past performance information, and contests the factual bases for the adverse information. See LMI Protest at 16; LMI Comments at 27-39. For the reasons that follow, we find that the agency unreasonably ignored or did not fully consider the available past performance information for LMI's key personnel. We therefore sustain the protest on these bases.

According to the RFP, offerors that were newly formed entities, which the RFP defined as in existence for less than five years, with either no prior contracts or without relevant corporate experience, could rely on the past performance of its key personnel. RFP at 131. The RFP further stated "that the quality of the key personnel's performance under the submitted contract must be able to be verified by the Past Performance Team in order to be considered in the assessment of confidence." Id. LMI, which was formed in 2010, submitted three past performance references for its chief executive officer (CEO), and one reference for another senior official. See AR, Tab 6, Final Past Performance Report, at 18-26. The Air Force determined that two of the references, both for RSAF third party logistics (TPL) services submitted for LMI's CEO, were "relevant," because they demonstrated experience with all seven of the enumerated relevancy criteria and involved similar scope and magnitude of effort and complexities required by the RFP. See id. at 19-21. The agency determined that the other references, one for TPL services submitted for LMI's CEO and one for an F-15 secondary power system roadmap for the other LMI official, were "somewhat relevant," because they demonstrated experience with all seven of the enumerated relevancy criteria, but involved only some of the scope and magnitude of effort and complexities required by the RFP. See id. at 22-26.

The Air Force received PPQs for the three past performance references for LMI's CEO. One PPQ was completed by an Air Force Director of Operations (working with the RSAF), and two PPQs were completed by the Air Force program manager who oversaw the contracts during the LMI CEO's performance. See id. at 19-24. The PPQs consistently reflected positive ratings and identified a number of strengths and no weaknesses. See id. Based on the information on the FACTS sheets and the PPQs, the agency determined that for all three of the references "7 of the 7 relevancy criteria were met," and included narrative discussions outlining how the references demonstrated experience under each of the seven criteria. AR, Tab 6, Final Past Performance Report, at 19-20, 21, 22-23. For one of the three references, the agency expressly stated that the "completed questionnaire provided sufficient detail." Id. at 22.

Regarding LMI's CEO, the agency sought additional information, but did not request further information from the authors of the PPQs; rather, the agency contacted the subsequent agency program manager for one of the references for LMI's CEO. See id. at 37.<sup>7</sup> The subsequent program manager was unable to verify certain aspects of the LMI CEO's past performance, and identified certain concerns regarding the contractor's performance on the references. See id. Additionally, the agency reviewed available CPARs in the PPIRS relating to the cited references, and identified adverse past performance information pertaining to certain areas of experience claimed by LMI's CEO as falling within the areas of his former responsibilities. See id. at 30-32. The Air Force afforded LMI the opportunity to address the adverse past performance information identified through the agency's interview of the subsequent program manager and CPARs, and LMI submitted comments in rebuttal to the adverse information. See id. Based on LMI's response, the agency went back to the subsequent program manager, who did not rescind his original feedback for the specific areas of concern, but did confirm that the overall CPAR ratings of satisfactory were correct, as stated by LMI. Id. at 32.

The Air Force ultimately determined that LMI's past performance warranted only a "limited confidence" assessment because:

Upon discussion with the cognizant Government Program Manager (not the same as the questionnaire respondents) for the TPL program, *some of the data for [LMI's CEO] on the three FACTS sheets could not be validated.* For example, the Government PM stated that he had no day-to-day interactions with [LMI's CEO] in the areas of program management, quality assurance, and [packing, handling, shipping, and transportation management], despite the experience claimed in the FACTS sheets. *As such, in accordance with the RFP, these areas could not be considered by the PET in the overarching confidence assessment.*

For the areas of [LMI's CEO's] experience that could be validated by the PET, there were documented quality concerns (ex: CPAR)

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<sup>7</sup> LMI asserts, and the Air Force does not specifically rebut, that the agency program manager who completed the PPQs was the cognizant program manager over LMI's cited references until his retirement from the agency in January 2012. See Decl. of LMI CEO (Mar. 4, 2015) at 1. Two of the references had periods of performance that ended on July 31 and September 16, 2011, respectively. See AR, Tab 6, Final Past Performance Report, at 20, 22. The third reference had a period of performance of March 3, 2012 to May 31, 2014; LMI's CEO left the contractor in July 2013. See id. at 19; Decl. of LMI CEO at 1. The subsequent program manager ceased management over the third reference around the end of 2013. Decl. of LMI CEO at 1.

. . . Although the overall ratings were satisfactory because corrective action was noted for each instance, the fact that similar issues continued throughout multiple contracts is concerning to the team.

Id. at 37-38 (emphasis in original).<sup>8</sup>

We find that the Air Force's negative assessment of the LMI CEO's past performance was not reasonable. Although the agency stated that it could not verify the past performance claimed by LMI's key personnel, the agency expressly found that the information in the FACTS sheets and in the PPQs for the three references submitted for LMI's CEO demonstrated that "7 of 7 relevancy criteria were met." AR, Tab 6, Final Past Performance Report, at 19-20, 21, 22-23. In light of the fact that the PPQs were submitted by current and former agency officials with direct knowledge regarding the LMI CEO's performance on the three references, it appears that the past performance information was sufficiently "verified" in accordance with the RFP's requirements.<sup>9</sup>

Notwithstanding that the past performance information claimed for LMI's CEO was verified by knowledgeable agency officials in the written PPQs, the Air Force effectively elected to "verify" the verification set forth in the PPQs by seeking further information from the subsequent program manager. That individual, who was not the program manager for two of the three cited references, could not verify certain aspects of the LMI CEO's performance. The agency, however, has failed to advance any reasonable explanation for how the subsequent program manager's inability to verify the LMI CEO's performance negates the verification provided by knowledgeable agency officials in the PPQs.<sup>10</sup> We have held that an agency is

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<sup>8</sup> The conclusion that several areas of experience claimed by LMI's key personnel could not be verified appears to be inconsistent with the agency's comments that LMI's key personnel had "documented experience in all 7 of 7 [relevancy] aspects." See AR, Tab 6, Final Past Performance Report, at 36.

<sup>9</sup> Additionally, with regard to the past performance reference for a subcontract performed by LMI's other senior official, the Air Force determined that "7 of the 7 relevancy criteria were met," and represented that no interviews were conducted with the prime contractor because the "completed questionnaire provided sufficient detail." AR, Tab 6, Final Past Performance Report, at 24-25. The agency, however, simultaneously determined that it could not verify the full scope of work performed by the LMI senior official under the subcontract. See id. at 37-38. This inconsistency raises another concern regarding the reasonableness of the agency's past performance evaluation.

<sup>10</sup> We also question the reasonableness of the agency's decision to rely, without any supporting rationale, on selective adverse information identified in the interview with the subsequent agency program manager and in certain CPARs where it  
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required to consider PPQs in its possession. Shaw Parsons Infrastructure Recovery Consultants, LLC; Vanguard Recovery Assistance, JV, B-401679.4 et al., Mar. 10, 2010, 2010 CPD ¶ 77 at 8. The agency's wholesale discounting of the verification provided by the PPQs, on the basis that it could not confirm LMI's past performance information through yet an additional source, was unreasonable.<sup>11</sup>

As a consequence, the Air Force failed to meaningfully consider available agency information regarding LMI's past performance of similar requirements for the Air Force, and therefore we sustain the protest on this basis.

#### Evaluation of RGTS's Past Performance

RGTS challenges the Air Force's determination that its past performance warranted only a "limited confidence" assessment. While the protester raises a number of collateral arguments, we address herein the three primary challenges to the agency's evaluation of the protester's past performance. RGTS first argues that the Air Force unreasonably disregarded or contradicted the positive CPARs prepared by the Air Force in connection with RGTS's performance of other relevant work for the RSAF. See RGTS Protest at 16-28; RGTS Comments at 13-19; RGTS Supp. Comments at 12-14. The protester also argues that the agency unreasonably relied upon selective adverse past performance information, and contests the factual bases for the adverse assessments. See RGTS Protest at 29-39; RGTS Comments at 25. Additionally, RGTS contends that the agency unreasonably ignored or failed to obtain positive or mitigating past performance information prepared by the Air Force relating to other relevant past performance performed by RGTS for the RSAF because a final, formal CPAR was not yet available during the evaluation. See RGTS Comments at 19-23. For the reasons that follow, we find that the agency did not unreasonably ignore or contradict RGTS's CPARs, rely on

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represents that it was unable to verify LMI's past performance information and where at least some of the adverse information appears to be inconsistent with the comments in the PPQs.

<sup>11</sup> Moreover, to the extent the Air Force believed that verification of the PPQ data was required, the agency does not provide any reasonable explanation for why it failed, notwithstanding its concerns regarding its ability to verify the past performance information, to contact the current and former agency officials who authored the PPQs relating to the LMI CEO's past performance. In addition to not attempting to contact the authors of the PPQs, there is no evidence that the Air Force attempted to contact the assessing officials who authored the CPARs, or the Air Force and Defense Contract Management Agency primary points of contact identified in LMI's FACTS sheets. See, e.g., LMI Comments, exh. F, Updated FACTS Sheet for FA8505-10-D-0006-0001, at 10; exh. K, CPAR for FA8505-10-D-0006, at 2.

adverse past performance information, or ignore relevant past performance information not yet captured in a final, formal CPAR.

First, the Air Force evaluated the four past performance references identified by RGTS on its submitted FACTS sheets for relevancy, both in terms of the scope and magnitude of effort and complexities and against the seven relevancy criteria. See AR, Tab 6, Final Past Performance Report, at 53-60. The agency then considered available CPARs or contacted agency personnel familiar with the contracts to obtain performance information regarding the references. See id. In addition to the four references identified by RGTS, the agency also identified CPARs for a number of other relevant RGTS contracts. See id. at 60-66. Further, the agency conducted interviews within the Air Force's F-15 Contracting Branch regarding RGTS's performance on other projects for the RSAF. See id. at 66-71.

After obtaining past performance information from all of these varied sources, the Air Force issued EN Nos. 03 to 09 to RGTS to afford it the opportunity to address adverse past performance information identified by the agency, including, for example, "marginal" CPAR ratings, weaknesses identified in CPARs and in interviews, and corrective action reports and letters of concern issued to RGTS. See id. at 72-79. In most instances, RGTS responded to the ENs and objected to the adverse past performance information. See id. The Air Force subsequently followed-up with agency personnel with cognizance of the RGTS contracts at issue to discuss RGTS's responses. See id.

Following this process, the Air Force identified a number of strengths and weaknesses regarding RGTS's past performance. See id. at 79-82. In assessing a "limited confidence" assessment with respect to RGTS's performance, the Air Force explained, based on its cumulative assessment of CPARs and exchanges with RGTS and agency officials, that:

Customer feedback was very mixed as to RGTS' performance, ranging from marginal/poor (weaknesses identified) to very good/exceptional (strengths identified). Poor business relations was a common area of concern among the respondents. CPARS data was available for all four FACTS sheet efforts, and the feedback was positive throughout, ranging from "Satisfactory" to "Exceptional." There were 7 additional service NAICS coded contracts under RGTS' CAGE code in the [PPIRS]; these contracts were determined to be somewhat relevant to very relevant to the TSS work scope, and the CPARS ratings ranged from "Marginal" to "Very Good."

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The limited confidence assessment stems from RGTS' repeated failure to correct major performance issues on several RSAF programs involving work scope essentially the same as TSS, despite being notified of the concerns by Government personnel. Although RGTS provided a rebuttal in response to the adverse past performance feedback ENs issued, the Government personnel stood by their original assessment of RGTS' performance and provided additional data to support [their previous assessment].

More specifically, documented performance issues exist for the current [Depot Prime Vendor Support (DPVS) follow-on contract] and [Integrated Fleet Support (IFS) contract], which are two large dollar, high-visibility programs that contain essentially the exact same work scope as TSS--services in support of consumables (DPVS) and spares/support equipment (IFS), vs. vehicles/trailers (TSS).

Id. at 83-84.

We find that, contrary to RGTS's allegations, the record does not show that the Air Force ignored or contradicted the CPARs for RGTS's past performance references, but, rather, reasonably considered both the positive and the adverse information identified by the agency. Many of the identified concerns and negative performance issues were apparent from the face of the CPARs or other available documentation, such as corrective action reports and letters of concern. In this regard, merely because RGTS, notwithstanding the identified concern, received a "satisfactory" rating on one or more CPARs does not mean that the agency could not consider whether RGTS's past performance in the aggregate demonstrated a negative performance trend or repeated areas of concern. Indeed, the RFP specifically warned offerors that limited instances of effective corrective action might not be sufficient to outweigh a negative performance trend. RFP at 147. Furthermore, the RFP specifically advised offerors that the agency reserved the right to obtain past performance information from additional sources. Id. at 146.

Here, the agency identified a pattern of concerns arising across several contracts, and we find nothing inherently unreasonable in the aggregate concerns resulting in a different confidence assessment than recorded on individual CPARs. In this regard, the agency was not compelled to adopt wholesale the adjectival ratings from the CPARs. See, e.g., Lockheed Martin MS2 Tactical Sys., B-400135, B-400135.2, Aug. 8, 2008, 2008 CPD ¶ 157 at 10-11 (finding reasonable an agency's determination that a past performance reference warranted a "marginal" rating notwithstanding mixed CPAR ratings and narrative comments); DeLeon Tech. Servs., Inc.; TekStar, Inc., B-288811 et al., Dec. 12, 2001, 2002 CPD ¶ 10 at 4-5 (finding agency reasonably relied on responses to past performance questionnaires (PPQ) in evaluating past performance, notwithstanding different ratings from

applicable award fee determination, because the PPQs were tailored to assess past performance as it related to performance under the RFP).<sup>12</sup>

RGTS also argues that the agency unreasonably failed to consider additional information which could have affected the agency's evaluation. Specifically, the protester contends that the agency unreasonably considered only negative information from additional sources of information concerning its past performance, but failed to consider positive or mitigating information available from agency sources regarding the same references. RGTS contends that this positive or mitigating past performance information was simply "too close at hand" for the agency not to consider. RGTS Comments at 19-23. For the reasons that follow, we find that the protester's challenge fails to provide a basis on which to sustain the protest.

While there is no legal requirement that an agency consider all past performance references, some information is simply "too close at hand" to require offerors to shoulder the inequities that spring from an agency's failure to obtain and consider information. West Sound Servs. Grp., LLC, B-406583.4, B-406583.5, July 9, 2014, 2014 CPD ¶ 208 at 12; Triad Int'l Maint. Corp., B-408374, Sept. 5, 2013, 2013 CPD ¶ 208 at 7. For example, we have held that, in evaluating past performance, an agency must consider an offeror's performance of a similar contract about which the contracting officer or agency evaluators had personal knowledge. See, e.g., GTS Duratek, Inc., B-280511.2, B-280511.3, Oct. 19, 1998, 98-2 CPD ¶ 130 at 14; G. Marine Diesel, B-232619.3, Aug. 3, 1989, 89-2 CPD ¶ 101 at 4-6.

The agency here considered adverse past performance information prior to the assessing agency's completion of a final, formal CPAR in connection with RGTS's RSAF IFS and DPVS follow-on contracts.<sup>13</sup> See, e.g., AR, Tab 6, Final Past

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<sup>12</sup> We have also considered RGTS's specific objections and challenges to various parts of the agency's adverse findings. While RGTS advances many challenges and objections, in the end, the protest largely amounts to disagreement with the agency's evaluation, which is not sufficient to establish that the agency acted unreasonably. Lockheed Martin MS2 Tactical Sys., supra, at 8.

<sup>13</sup> RGTS complains that it was unreasonable for the Air Force to consider the adverse past performance information relating to the RSAF IFS contract, or, at a minimum, not to discount the relevancy due to the relatively short performance to date, in the absence of a final, formal CPAR. For the reasons discussed above, we find nothing objectionable in the agency's consideration of all available past performance information, whether or not it was formally captured in a CPAR or pertained to only a relatively small period of performance. Further, RGTS was afforded an opportunity to address the adverse information if RGTS had not previously been afforded an opportunity to respond. See AR, Tab 6, Final Past Performance Report, at 75.

Performance Report, at 74-79 (assessing contracts based on feedback from government personnel and other documentation when the final CPARs were not issued during the agency's evaluation); COSF (Feb. 13, 2015) at 12-13, 14-15.

RGTS argues that while the Air Force sought out and considered adverse past performance information not yet captured in a formal, final CPAR, the agency did not similarly consider potentially positive or mitigating past performance information available from sources within the agency regarding the same contracts that had not yet been captured in a final, formal CPAR. For example, with respect to the RSAF DPVS follow-on contract, which the agency found to be "very relevant" and expressly relied on in its cumulative assessment to support a "limited confidence" assessment for RGTS, the agency, in the absence of an available final CPAR, spoke to agency program officials and relied on adverse past performance information regarding RGTS's performance on the contract. See AR, Tab 6, Final Past Performance Report, at 77-79.

RGTS argues that the final CPAR for the DPVS follow-on contract for June 2012 to June 2014, which was issued on December 16, 2014, reflected all "satisfactory" ratings, generally included positive views on corrective actions taken by RGTS, and concluded with a determination from the agency assessing official that he would "recommend [RGTS] for similar requirements in the future." See RGTS Comments at 20-22. The Air Force does not contest RGTS's representations regarding the CPAR, but instead argues that the CPAR relied on by RGTS was not available to the agency during its evaluation because it was issued after the agency completed the evaluation of RGTS's past performance. See COSF at 14-15; Supp. COSF at 12-13; AR, Tab 6, Final Past Performance Report, at 1, 125 (dated October 17, 2014). We find nothing objectionable in the agency's failure to consider information that was not available to it at the time it performed the past performance evaluation. CMJR, LLC d/b/a Mokatron, B-405170, Sept. 7, 2011, 2011 CPD ¶ 175 at 8; Honolulu Shipyard, Inc., B-291760, Feb. 11, 2003, 2003 CPD ¶ 47 at 6. The CPAR at issue was issued almost two months after the agency completed its evaluation of RGTS's past performance. In the absence of any evidence that the evaluation team had access to the CPAR identified by RGTS prior to the completion of their evaluation, the record does not demonstrate that the outside information was so "close at hand" regarding RGTS's prior performance that the agency either improperly ignored or erroneously failed to obtain the information. Trailblazer Health Enters., LLC, B-406175, B-406175.2, Mar. 1, 2012, 2012 CPD ¶ 78 at 15.<sup>14</sup>

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<sup>14</sup> The FAR requires that "[p]ast performance evaluations shall be prepared at least annually and at the time the work under a contract or order is completed." FAR § 42.1502(a). The record contains no explanation for the Air Force's apparent delay in the preparation of CPARs for the contract. Although we do not sustain RGTS's protest, in light of the importance of the DPVS follow-on contract to the agency's evaluation of RGTS's past performance, the subsequently issued CPAR for the

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In sum, we find that none of RGTS's objections to the Air Force's evaluation of its past performance provides a basis on which to sustain the protest.

## CONCLUSION AND RECOMMENDATION

In summary, we find that the Air Force's evaluation of SupplyCore's past performance was inconsistent with the relevancy requirements of the RFP and not adequately documented. Because the reevaluation of SupplyCore's past performance could result in a new rating for that offeror, which could in turn require a new source selection decision, we conclude that RGTS and LMI, both of whom submitted lower-priced offers, were prejudiced by this error.<sup>15</sup> We also find that the agency unreasonably failed to consider information regarding LMI's past performance on similar efforts for the agency, and that the protester was also prejudiced by this error.

We recommend that the Air Force, consistent with our decision, reevaluate offerors' past performance information. Based on that reevaluation, we recommend that the agency make a new source selection determination. We also recommend that the agency reimburse the protesters their respective costs associated with filing and pursuing their protests, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protesters' respective certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. Id. at (f).

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contract, and our recommendation that the agency conduct a new past performance evaluation and source selection decision, we suggest that the agency consider whether the subsequently issued CPAR for the DPVS follow-on contract affects RGTS's past performance confidence assessment.

<sup>15</sup> We also note that LMI, in part, challenged the tradeoff on the basis that, adjusting for subsequent deletions of work scope, SupplyCore's evaluated price on this unrestricted procurement exceeded the evaluated price proposed by LMI when the procurement was initially set-aside for small business concerns, which the agency made unrestricted after finding LMI's price exceeded fair market value. See LMI Protest at 30-31. We interpret LMI's allegation to effectively challenge the agency's decision to award the contract on an unrestricted basis. We dismiss this argument because it amounts to an untimely challenge that the RFP should have been set-aside for small business concerns. Under our rules, LMI was required to protest this issue prior to the deadline for the submission of proposals. See 4 C.F.R. § 21.2(a)(1).

The protests are sustained in part, and denied in part.

Susan A. Poling  
General Counsel