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## Decision

**Matter of:** Arctic Slope Mission Services, LLC

**File:** B-410992.5; B-410992.6

**Date:** January 8, 2016

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### DIGEST

1. Protest is sustained where the record shows that the agency gave undue emphasis to one of the evaluation subfactors, and treated offerors unequally by reading some offerors’ proposals expansively and giving offerors the benefit of the doubt, while applying a much stricter standard when evaluating other proposals.
  2. Protest of past performance evaluation is sustained where agency failed to sufficiently evaluate the relevance of past performance, as required by the solicitation.
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### DECISION

Arctic Slope Mission Services, LLC,<sup>1</sup> of Beltsville, Maryland, an 8(a) small disadvantaged business, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DJJ-14-JAFMS-R-0002, issued by the Department of Justice (DOJ) for investigative support services for DOJ’s asset forfeiture program. Arctic Slope contends that the agency’s evaluation of proposals was unequal and otherwise unreasonable.

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<sup>1</sup> Arctic Slope is a subsidiary of ASRC Federal Holding Company, an Alaska Native Corporation. Agency Report (AR), Tab 19, Arctic Slope Business Proposal, at 7.

We sustain the protest.

## BACKGROUND

The RFP, issued on April 30, 2014 as a set-aside for small businesses, sought proposals to provide investigative, legal, analytical, and technical support services to DOJ's asset forfeiture program. RFP at 10. The solicitation advised that the agency planned to award multiple indefinite-delivery/indefinite-quantity (ID/IQ) contracts. RFP at 6. The solicitation provided for the awards to be made on a best-value basis considering two evaluation factors: technical and price. RFP at 67. In evaluating the technical factor, the agency was to consider the following six subfactors: technical approach, management plan, staffing plan, transition plan, corporate experience/capability, and past performance. RFP at 68-69. Technical approach and management plan were of equal importance to each other, and were more important than the remaining technical subfactors, which were of equal importance. RFP at 68.

Under the corporate experience subfactor, the agency was to assess the extent and relevance of each offeror's work history to determine whether the offeror has experience in effectively performing the services specified by the RFP. RFP at 69. In this regard, the RFP provided that the agency would give added preference for experience providing support under similar contracts, considering relative size, scope, complexity, and type of work within the federal government for services provided nationwide. In addition, the solicitation provided that "[i]f a team is proposed, added preference will be given where the team has experience working together, particularly under similar contracts with the Federal government." RFP at 69.

With regard to past performance, the solicitation provided that the agency would evaluate "the extent and relevance of each Offeror's past performance." RFP at 69. In this regard, the RFP stated that the agency would consider the size, scope, type, and complexity of the work, quality and timeliness of work, ability to stay within budget, and other considerations, and would contact references, if necessary, to obtain this information. Id.

The agency received 15 proposals in response to the solicitation. AR, Tab 23, Initial Technical Evaluation Panel (TEP) Report, at 2. After evaluating proposals, the TEP recommended that the proposals of six offerors--Professional Risk Management, Inc. (PRMI), Five Stones Intelligence (5SI), Sullivan Cove Consultants (SCC), Madison Associates, Inc. (MAI), Potomac River Group, LLC (PRG), and Renzulli & Associates, Inc. (RA)--be included in the competitive range. The agency made its initial competitive range determination on November 6, 2014, and awarded contracts to all six of the proposals in the original competitive range on December 4, 2014. Arctic Slope's proposal, which was not included in the

competitive range, was the eighth-highest ranked technical proposal and was lower-priced than all but one of the proposals included in the competitive range. AR, Tab 34, Competitive Range Determination, at 3, 5. The proposals included in the competitive range and Arctic Slope’s proposal were rated as follows:

	PRMI	5SI	SCC	MAI	PRG	RA	Arctic Slope
Technical	94 <sup>[2]</sup>	93	90	90	88	86	74
Technical Approach	Exceptional	Very Good	Exceptional	Exceptional	Exceptional	Very Good	Very Good
Mgmt Plan	Exceptional	Exceptional	Very Good	Very Good	Exceptional	Very Good	Very Good
Staffing Plan	Very Good	Exceptional	Exceptional	Very Good	Very Good	Exceptional	Good
Transition Plan	Exceptional	Exceptional	Exceptional	Exceptional	Very Good	Very Good	Very Good
Corporate Exper./ Capability	Exceptional	Exceptional	Very Good	Exceptional	Very Good	Very Good	Good
Past Perf.	Very Good	Very Good	Very Good	Very Good	Very Good	Exceptional	Very Good
Price	\$780,052,864	\$624,915,928	\$614,610,463	\$624,581,633	\$759,849,612	\$699,190,442	\$615,574,310

AR, Tab 34, Revised Competitive Range Determination, at 6.

Following protests filed by Arctic Slope and another unsuccessful offeror, the agency notified our Office that it would reevaluate the technical proposals of the awardees and protester. AR, Tab 31, Notice of Corrective Action, at 1. Our Office subsequently dismissed the protests as academic. Arctic Slope Mission Services, LLC, B-410992.2; B-410992.3, Feb. 18, 2015 (unpublished).

In performing its corrective action, the agency did not seek proposal revisions. The TEP instead reviewed its initial TEP report and concluded that all of its findings and evaluations were correct. AR, Tab 33, Revised TEP Report, at 10. The TEP’s revised report included the initial report and responses to the protest issues raised in the initial round of protests. The TEP again recommended that the same six proposals be included in the competitive range. Id. at 10-11. On September 15, the agency made a new competitive range determination, again selecting the same six proposals for inclusion in the competitive range and excluding Arctic Slope’s proposal. AR, Tab 34, Revised Competitive Range Determination, at 18. After receiving a debriefing, Arctic Slope filed this protest with our Office.

<sup>2</sup> Although not set forth in the solicitation, the agency assigned specific numerical weights to each technical subfactor--technical approach and management plan were weighted “4” and the remainder of the technical subfactors were weighted “3”--and then converted each adjectival rating to a numerical rating, ranging from 5 for a rating of exceptional to 1 for a rating of poor.

## DISCUSSION

Arctic Slope contends that the agency's evaluation of technical proposals was unequal and otherwise unreasonable. In reviewing protests of an agency's evaluation and source selection decision, our Office will not reevaluate proposals; rather, we review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria, and applicable procurement laws and regulations. M&S Farms, Inc., B-290599, Sept. 5, 2002, 2002 CPD ¶ 174 at 6. Here, we have considered all of the protester's arguments. For the reasons discussed below, we conclude that the agency's evaluation of proposals was unreasonable.

### Undue Emphasis on Corporate Experience

Arctic Slope asserts that the agency in its evaluation afforded undue weight to corporate experience. Protest at 63-64. In this regard, the RFP provided that corporate experience was one of six technical subfactors, and was less important than either the technical approach or management plan subfactors. RFP at 68. According to the protester, the agency unreasonably elevated the importance of corporate experience, such that it was considered substantially more important than any other evaluation factor. The agency responds that while the solicitation required offerors to demonstrate their present understanding of the requirement and to discuss how they would perform the work in the future, the TEP nevertheless evaluated offerors' past experience because "past work and experience is the foundation of present understanding and of the ability to perform work in the future." AR, Tab 33, Revised TEP Report, at 49.

In J.A. Jones Mgmt. Servs., Inc., B-254941.2, March 16, 1994, 94-1 CPD ¶ 244, we held that where, as here, the RFP contains separate and independent technical evaluation factors encompassing separate subject areas, with each factor assigned separate weights under the RFP's evaluation scheme, an agency may not double count, triple count, or otherwise greatly exaggerate the importance of any one listed factor. In other words, where an RFP lists a number of evaluation factors or subfactors of stated importance, a single one cannot be accorded more than the weight prescribed in the RFP's evaluation methodology by the agency repeatedly considering the same factor in conjunction with the other major factors. Id. at 6-9; see Computer Sciences Corp., et al., B-408694.7 et al., Nov. 3, 2014, 2014 CPD ¶ 331 at 19 n.11; GlassLock, Inc., B-299931, B-299931.2, Oct. 10, 2007, 2007 CPD ¶ 216 at 6; Management Servs., Inc., B-206364, Aug. 23, 1982, 82-2 CPD ¶ 164; Earth Envtl. Consultants, Inc., B-204866, Jan. 19, 1982, 82-1 CPD ¶ 43; The Center for Educ. and Manpower Res., B-191453, July 7, 1978, 78-2 CPD ¶ 21 (protest sustained where agency considered offeror's experience under all of the other evaluation criteria rather than restricting it to the experience evaluation factor). Here, the record shows that the agency effectively gave corporate experience,

one of the six technical subfactors, undue weight in evaluating each of the other technical subfactors through the lens of corporate experience, and in doing so, competitively disadvantaged Arctic Slope, which was not an incumbent offeror.

For example, the TEP assigned a weakness to Arctic Slope's proposal under the staffing subfactor for risks associated with Arctic Slope not being able to hire a sufficient number of incumbent personnel. In its initial evaluation, the TEP assigned a weakness to Arctic Slope's proposal to hire the majority of the incumbent workforce as employees, rather than as independent contractors. In its prior protest, Arctic Slope challenged this weakness, arguing that, under the terms of the solicitation, this approach was the only acceptable approach. During its corrective action, the TEP revised its report to explain that, while attempting to hire incumbents was a reasonable initial step, Arctic Slope's proposal had very little discussion of what it will do if its first step of attempting to hire incumbents does not prove successful, and that Arctic Slope's proposal "failed to provide any details regarding its contingency plan." AR, Tab 33, Revised TEP Report, at 66. Arctic Slope contends that the agency held other offerors to a lower standard and did not require the same level of detail regarding staffing and recruiting resources as that required of Arctic Slope. Protest at 30-31.

The record indicates that the evaluation in this regard was unequal, and resulted from the consideration of corporate experience in other than the corporate experience subfactor. As the protester notes, its proposal expressly addressed how it would staff the project if it was unable to hire a sufficient number of incumbent personnel. Specifically, Arctic Slope's proposal contained several pages of discussion of the firm's "contingency plan." AR, Tab 20, Arctic Slope Technical Proposal, at 58-62. The proposal identified nine sources for identifying potential staff, including the resume database of Arctic Slope's corporate parent, which contains over 150,000 candidate resumes. Id. at 59. While the agency contends that this approach was insufficient because Arctic Slope's proposal failed to "identify a single individual, let alone the source, skill, or ability of any individual . . . purportedly identified in this database," AR at 16, Arctic Slope's proposal provided that:

We populate the database by sourcing candidates through the external and internal organizations, retired investigator websites, and traditional employment search engines. We have posted AFISS [Asset Forfeiture Investigative Support Services] specific requisitions on several of these sites already . . . . The database includes AFISS candidates across all contract labor categories . . . . In 2013-2014, [DELETED]% of our candidates within that database held a clearance and [DELETED]% of the cleared individuals held a TS/SCI [top secret/sensitive compartmented information] or higher clearance.

AR, Tab 20, Arctic Slope Technical Proposal, at 56, 59.

Further, other offerors' proposals were not held to this exacting standard. Rather, the agency relied on offerors' corporate experience to justify higher ratings under the staffing subfactor. For example, [DELETED] also proposed as part of its staffing plan to hire incumbents as employees and back-fill with individuals from an applicant pool containing more than 1,000 resumes, including [DELETED] pre-screened candidates that either have a top secret clearance or are eligible to have one reinstated. AR, Tab 12, [DELETED] Technical Proposal, at 56. As a result, [DELETED] was assigned the following strength:

[DELETED]'s Staffing Plan is complete, thorough, and highly detailed. [DELETED] maintains a database of skilled and qualified candidates with secret or top secret clearances, performs a continuous recruitment effort to keep the database updated, and recruits utilizing websites targeted at former law enforcement agents. The eight-step staff recruitment and deployment process set forth . . . [in] its proposal has been successfully utilized and refined in support of the PACS contract.

AR, Tab 33, Revised TEP Report, at 18.

The agency provides no reasonable justification for the difference in treatment between the two offerors, and cites no substantive difference between the two offerors' contingency plans. Rather, the record shows that the evaluators gave [DELETED] credit for its prior experience under the incumbent contract. In this regard, the agency stated that the "TEP is aware that [DELETED]'s primary business is providing the highly specialized asset forfeiture financial services that this RFP was seeking, so [DELETED]'s resumes actually mean something, while Arctic has very limited experience and is offering resumes of a corporate parent that . . . does not do this kind of specialized work at all."<sup>3</sup> AR at 19. However, both proposals only identified key personnel, and the record contains no indication that the evaluators had access to the resumes in [DELETED]'s 1,000-resume database or the resumes in Arctic Slope's 150,000-resume database, or that there was any other basis on which the TEP could conclude that the resumes in [DELETED]'s database were superior to those in Arctic Slope's database. Thus, despite apparently similar proposal approaches, Arctic Slope's staffing proposal was considered to be inferior to that of another offeror based solely on the fact that the

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<sup>3</sup> The agency similarly justifies its favorable view of RA's proposal, which referenced "many" candidates, again stating simply that "RA is an expert in this field . . . . The TEP was quite reasonable to conclude that the people RA will have available are not biologists, shoe salesmen, or clerks, but rather experts in the financial investigative asset forfeiture work the Department is seeking." AR at 20.

other offeror could be presumed to have better candidates in its databases or candidate pool due to its corporate experience in this area.<sup>4</sup>

In sum, the record indicates that rather than limiting the evaluation of corporate experience to that subfactor, the agency penalized nonincumbent offerors such as Arctic Slope for a lack of experience when evaluating under the other technical evaluation subfactors. The agency thus greatly exaggerated the significance of the corporate experience subfactor, which resulted in an unreasonable evaluation that was not in accordance with the evaluation scheme set forth in the solicitation.

### Unequal Treatment

Arctic Slope also protests that the agency's evaluation was unequal in several other respects. For example, the protester challenges the agency's assignment of strengths and weaknesses in evaluating whether teams demonstrated prior experience working together under the corporate experience subfactor. Arctic Slope also challenges the agency's evaluation under the staffing plan subfactor, noting that Arctic Slope's proposal was assigned a weakness based on proposal language that was nearly identical to language in another offeror's proposal that did not receive a weakness. Arctic Slope also notes several areas of the evaluation in which incumbent offerors were given the benefit of the doubt, while nonincumbent offerors such as Arctic were held to a higher standard. See Comments at 24.

It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. Cubic Applications, Inc., B-411305, B-411305.2, July 9, 2015, 2015 CPD ¶ 218; Rockwell Elec. Commerce Corp., B-286201 et al., Dec. 14, 2000, 2001 CPD ¶ 65 at 5. Further, where an agency treats offerors unequally by, for example, reading some offerors' proposals in an expansive manner and resolving doubt in favor of the offeror, while reading other offerors' proposals narrowly and applying a more exacting standard that requires affirmative representations within the four corners of the proposal, we have found such evaluations to involve disparate treatment. Lockheed Martin Information Systems, B-292836 et al., Dec. 18, 2003, 2003 CPD ¶ 230 at 11-12.

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<sup>4</sup> In another example, under the technical approach subfactor, the TEP downgraded another offeror that lacked corporate experience, concluding that "[w]hile [DELETED]'s Technical Approach overall is thorough and complete," the offeror could not demonstrate experience performing prior contracts that were sufficiently similar. AR, Tab 33, Revised TEP Report, at 48. As a result, since [DELETED] could not demonstrate corporate experience performing the particular work required under the contract, its technical approach was downgraded, despite the TEP's conclusion that it was "thorough and complete." Id. at 48.

Here, the record indicates that when evaluating the proposals of the competitive range offerors, the agency tended to be expansive, resolving doubts in favor of the offeror. In contrast, when evaluating the proposal of Arctic Slope, the agency tended to read proposals narrowly and apply a more exacting standard that required affirmative representations within the four corners of the proposal.

For example, in evaluating the resume of RA's proposed project manager under the key personnel subfactor, the TEP was willing to assume that the project manager proposed by RA, whose proposal was included in the competitive range, had experience not identified in his resume. In this regard, the RFP described the education and experience requirements for the key personnel position of project manager as follows: "An undergraduate degree is required (graduate degree preferred and/or significant experience with Forfeiture, Financial, or White Collar investigations). Experienced in managing task orders of similar size, scope and complexity." RFP Attach. 2, AFISS Labor Category Descriptions at 1. The resume for RA's proposed project manager stated that the individual had 25 years of experience working for the FBI, including duties such as: (1) managing Asia Pacific Rim investigations and intelligence for terrorism; (2) developing and managing broad-based emergency response initiatives; (3) developing private sector and local law enforcement terrorism prevention programs for special entertainment groups, such as the Emmys, Oscar, and Golden Globe awards; (4) managing the FBI's global telecommunications and computer networks; (5) crisis management with kidnappings, hostage situations, and a terrorist attack on an airport; and (6) planning and monitoring the construction of a multi-million dollar local network connection center. AR, Tab 6, RA Technical Proposal, at 34. Although the RA key employee's resume contained no reference to experience with forfeiture, financial or white collar investigations, and also did not indicate a graduate degree, this offeror's staffing plan was assigned a strength for proposing a contract manager and project managers that "are well qualified with significant asset forfeiture and law enforcement experience." AR, Tab 33, Revised TEP Report, at 44.

Arctic Slope's proposed project manager, on the other hand, submitted a resume that stated the following: "17 plus years as a Federal Special Agent and IRS Revenue Officer conducting various security-related investigations that include financial." However, despite a specific reference to experience in conducting financial investigations in the resume, the agency assigned the following weakness to Arctic Slope's staffing proposal: "Proposed Project Manager . . . has limited financial investigative experience." AR, Tab 33, Revised TEP Report, at 65.

During its corrective action, the TEP's evaluations and conclusions remained largely unchanged from the initial evaluation. However, the TEP added additional sections to its report addressing specific issues raised in the initial round of protests. In addressing this apparent unequal treatment between an offeror included in the competitive range and Arctic Slope, the TEP explained that the resume for RA's proposed project manager was considered to meet the experience requirements



because “[t]he TEP, based on its collective knowledge and experience working with FBI offices in major cities, is confident that these jobs would have given [the individual] in-depth experience in financial, white collar, and forfeiture work.” AR, Tab 33, Revised TEP Report, at 67. In other words, in evaluating RA’s key personnel, the TEP was willing to assume “in depth” relevant experience not listed in the key personnel’s resume. On the other hand, despite a specific reference in Arctic Slope’s proposed project manager’s resume to experience with financial investigations, the TEP complained that “his resume does not . . . provide any specific details regarding the nature or extent of his experience with financial investigations other than to mention them.” AR, Tab 33, Revised TEP Report, at 66. Thus, the agency read RA’s proposals in an expansive manner, resolving doubt in favor of the offeror, while reading Arctic Slope’s proposal narrowly and applying a more exacting standard that required affirmative representations within the four corners of the proposal. This amounted to an unequal evaluation. See Lockheed Martin Information Systems, supra.

In another example, Arctic challenges a weakness the TEP assigned its proposal under the corporate experience factor. Protest at 32. As set forth above, the RFP provided that if a team was proposed, offerors were required to describe the team’s experience working together, particularly under similar contracts with the federal government. RFP at 64. The RFP further provided that the agency would give added preference where the team had experience working together, particularly under similar contracts with the federal government. RFP at 69.

Arctic Slope proposed to team with two other companies: [DELETED] and [DELETED]. Arctic Slope’s proposal demonstrated that it had experience working with [DELETED] under several contracts, including an IRS asset forfeiture contract,<sup>5</sup> an EPA information management center contract (EPA IMCS 3),<sup>6</sup> and a DEA contract involving investigative and analytical support for the El Paso Intelligence Center.<sup>7</sup> AR, Tab 20, Arctic Slope Technical Proposal, at 100. Arctic Slope did not indicate prior experience working with its other teammate, [DELETED].

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<sup>5</sup> Arctic Slope’s proposal described the size, scope, and complexity of the contract as follows: “Size \$62M[illion]. Scope: Virtually identical SOW [statement of work] for functional work. Complexity: support to 30 IRS offices.” AR, Tab 20, Arctic Slope Technical Proposal, at 100.

<sup>6</sup> Arctic Slope’s proposal described the size, scope, and complexity of the contract as follows: “Size \$189M[illion]. Scope: Records and financial analysis and training for legal process. Complexity: support to 10 regional offices and 9 laboratories.” AR, Tab 20, Arctic Slope Technical Proposal, at 100.

<sup>7</sup> Arctic Slope’s proposal described the size, scope, and complexity of the contract as follows: “Size \$41M[illion]. Scope: Similar investigative and analytical support as AFISS. Complexity: works across multiple organizations locally and manages

(continued...)

The evaluators assigned two weaknesses to Arctic Slope’s proposal under the corporate experience subfactor, both of which related to experience working with teammates:

- a. While ASMS and [DELETED] have established relationships and have worked together extensively in the past, those projects appear to be smaller in size and scope than AFISS.<sup>8</sup>
- b. ASMS does not indicate the extent of its experience working with the proposed team member [DELETED].

AR, Tab 33, Revised TEP Report, at 69.

In contrast, another offeror whose proposal was included in the competitive range, also proposed to team with a company with which it had not previously worked. Specifically, [DELETED] proposed to team with two companies. [DELETED]’s proposal explained with regard to the first teammate, [DELETED], that the two companies had over a decade of experience working together, including work under the incumbent PACS contract. AR, Tab 6, [DELETED] Technical Proposal, at 47. In contrast, the proposal did not indicate any prior experience working in any context with RA’s second teammate, [DELETED]. See AR, Tab 6, [DELETED] Technical Proposal, at 47-49. The evaluators, however, did not assign a weakness to [DELETED]’s proposal for failure to indicate the extent of its experience working with [DELETED] as they did with Arctic Slope. Rather, the evaluators assigned the following strength:

[DELETED] clearly addresses its existing relationships with its teaming partners and specifically how the organizations have worked together in the past on similarly scoped projects.

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(...continued)

the information relationship for support to 2 Departments, 7 Agencies, 20+ geographically dispersed field offices, and multiple jurisdictions nationwide.” AR, Tab 20, Arctic Slope Technical Proposal, at 100.

<sup>8</sup> We note that while the agency criticized the contracts under which Arctic Slope and [DELETED] worked together as “smaller in size and scope,” AR, Tab 33, Revised TEP Report, at 69, as discussed below, for purposes of the past performance evaluation, the agency found another contractor’s performance of a contract valued at \$71,768 to be relevant to the RFP’s requirements here, which exceed \$600 million. See AR, Tab 10, Sullivan Cove Consultants Technical Proposal, at 85; AR, Tab 33, Revised TEP Report, at 91.

AR, Tab 33, Revised TEP Report, at 45.

In its corrective action, the agency did not revise the above strengths and weaknesses, but instead sought in its revised TEP report to provide an explanation for this apparent unequal treatment. The report provided four “very important facts” that the evaluators believed justified the differing evaluation results with respect to Arctic Slope and [DELETED]: (1) although [DELETED] and its teammate have not previously worked together, “[DELETED] has established, through its proposal and through the Department’s extensive real world experience with [DELETED]’s performance under the current PACS contract, that [DELETED] is fully capable, by itself, of performing all work required under the AFISS procurement”; (2) because [DELETED] is fully capable of performing the work by itself, [DELETED] did not propose its teammate to perform, or assist in performing, the day-to-day work required by the AFISS solicitation, and [DELETED]’s teammate instead will be providing analytical and reports expertise; (3) “from past experience, the TEP understood [DELETED]’s reporting role as proposed by [DELETED] clearly, as [DELETED] is currently providing financial management services to AFMS under a different contract”; and (4) the teammate “has in-depth experience with and knowledge of the Department’s Asset Forfeiture Program.” AR, Tab 33, Revised TEP Report, at 73-74. Thus, the TEP concluded that since both [DELETED] and the teammate with which it had never worked both had “considerable knowledge and experience regarding the AFP [asset forfeiture program],” the assignment of a weakness was not appropriate here.

The evaluation in this regard was unreasonable. As an initial matter, we note that under the language of the solicitation, offerors were to be given added preference for demonstrating prior experience working with teammates on similar projects, not penalized for failing to demonstrate such prior experience working together. In this regard, we do not believe that the assignment of a weakness in this area is encompassed by the RFP’s promise of “added preference” for those teams that demonstrated experience working together. That is, the RFP led offerors to believe that the proposal of a team with no prior experience working together on similar projects would be fully acceptable, and would not result in a downgrading of the proposal. Offerors were not on notice that failure to strive for the “added preference” would result in the assignment of one or more weaknesses. RFP at 69.

Furthermore, nothing in the RFP supported the agency’s unequal approach of assigning two separate weaknesses to Arctic Slope’s proposal for failure to sufficiently demonstrate prior experience working together, while assigning a strength to [DELETED]’s proposal for “specifically [addressing] how the organizations have worked together in the past on similarly scoped projects,” even though [DELETED] had never previously worked with one of its two teammates. While the agency seeks to justify the apparent inconsistency by reference to other considerations, such as [DELETED]’s ability to perform the work itself or the agency’s familiarity with [DELETED]’s experience, the solicitation preference for

teaming with firms with which the offeror had previously worked did not provide for considering either of these two factors. Thus, the evaluation in this area was unreasonable.

#### Failure to Consider Relevance in Evaluation of Past Performance

Arctic Slope next contends that the agency's evaluation of past performance was unreasonable because the agency failed to evaluate the relevance of the past performance references. Comments at 15-20.

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. Al Raha Group for Technical Servs. Inc.; Logistics Mgmt. Int'l, Inc., B-411015.2, B-411015.3, Apr. 22, 2015, 2015 CPD ¶ 134 at 5. An agency's evaluation of an offeror's past performance is unreasonable where the solicitation requires the agency to consider the relevance of the offerors' references as compared to the solicited requirement, and the agency fails to document any evaluation of relevance. Id.; Health Net Fed. Servs., LLC, B-401652.3, B-401652.5, Nov. 4, 2009, 2009 CPD ¶ 220 at 16; Continental RPVs, B-292768.2, B-292768.3, Dec. 11, 2003, 2004 CPD ¶ 56 at 8.

Here, the RFP required that offerors submit past performance references of similar size and scope to the RFP requirements, and stated that the agency would evaluate the "extent and relevance" of each offeror's past performance. RFP at 64, 69. The solicitation further indicated that, in conducting this evaluation, the agency would contact references (if necessary) to obtain additional information about the contract's "size, scope, type, and complexity of the Offeror's work." RFP at 69. In addition, the Federal Acquisition Regulation (FAR) requires that past performance evaluations consider the "currency and relevance" of past performance information. FAR § 15.305(a)(2)(i).

The agency's past performance evaluation is documented in a one-page chart in the TEP report, and consists of averaged past performance questionnaire ratings for each offeror. AR, Tab 33, Revised TEP Report, at 91. The evaluation does not appear to reflect any consideration of the relevance of the references in relation to the RFP requirements. In this regard, the proposal of [DELETED], a competitive range offeror, contained three past performance references for [DELETED], two references for its first subcontractor, and no references for its second subcontractor.<sup>9</sup> AR, Tab 10, [DELETED] Technical Proposal, at 81-90. The first past performance reference for [DELETED] involved the provision of one senior

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<sup>9</sup> The RFP instructed offerors to submit two references for each proposed subcontractor. RFP at 64.

Freedom of Information Act (FOIA) analyst, three junior FOIA analysts, and three paralegals, with a total contract value of \$4.9 million over 5 years. Id. at 81. The second reference was a contract for legal services with a total value of approximately \$400,000 over 5 years. Id. at 83. The third reference was a contract for legal services, with a total contract value of approximately \$72,000.<sup>10</sup> Id. at 85. In contrast, [DELETED], another competitive range offeror, submitted a reference for a \$1.8 million contract involving analytical support and forfeiture training; a \$1 million contract for analytical support of DOJ's asset forfeiture and money laundering section; and a \$7.2 million contract with the Department of Defense Inspector General's asset forfeiture program. AR, Tab 6, RA Technical Proposal, at 51-57.

The evaluation record contains no analysis or evaluation of the extent of the relevance of these references to the solicitation's requirements. AR, Tab 33, Revised TEP Report, at 91. Rather, the TEP's chart merely totals the assigned scores and averages them. In response to the protest, the agency contends that it "conducted a high level assessment of relevance . . . to make sure that the references were generally meaningful and relevant to the work at issue here." AR at 45. However, the TEP explained that:

The TEP . . . does not consider it necessary to conduct a detailed examination of the possible gradations of relevance . . . [and that] the effort required to do such a detailed comparative analysis<sup>[11]</sup> . . . is not worth the theoretical benefit of slightly greater accuracy in past performance scoring.

AR, Tab 33, Revised TEP Report, at 75-76.

The solicitation, however, required the agency to consider the relevance of the past performance references. RFP at 64, 69. As a result of the agency's apparent failure to comply with the solicitation requirement for consideration of relevance, it appears that [DELETED]'s performance of a contract for \$72,000 involving legal services performed in 2011 was evaluated as identical in terms of relevance to [DELETED]'s \$7.8 million contract for asset forfeiture work, and neither contract

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<sup>10</sup> This entire amount was attributed to the year 2011, which was apparently the only year in which [DELETED] performed under the contract. AR, Tab 10, SCC Technical Proposal, at 85. We note that the RFP instructed offerors to submit references to projects that were in progress or completed within the past twelve months. RFP at 64.

<sup>11</sup> In total, the agency assigned scores for 35 past performance references submitted for the prime offerors and their teammates. AR, Tab 33, Revised TEP Report, at 91.

was considered in relation to the overall magnitude of the required effort here (i.e., \$615 to \$780 million). Given the RFP's requirement that offerors submit past performance references of similar size and scope to the RFP requirements, and the solicitation requirement that the agency evaluate the relevance of each offeror's past performance, we find that the agency's past performance evaluation failed to comply with the solicitation requirements to consider the relevance of past performance references. See Tantus Tech., Inc., B-411608, Sept. 14, 2015, 2015 CPD ¶ 299 at 7-8; Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 22.

### Prejudice

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. Raytheon Co., B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 17; McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3.

Here, the numerous, systemic flaws in the agency's evaluation were such that it is not possible to determine what the competitive range determination would have been had the agency conducted a reasonable evaluation. On the record before us, there simply is no basis for concluding that Arctic Slope would not have been included in the competitive range had the agency conducted the evaluation in a reasonable manner, consistent with the solicitation evaluation scheme.

In this regard, we note that the competitive range determination contained a comparison of the proposals of Arctic Slope to those of the offerors included in the competitive range. For example, in comparing Arctic Slope's proposal with that of PRMI, the agency noted four "risks" associated with Arctic Slope's proposal that distinguished it from that of PRMI: (1) risk associated with Arctic Slope not being able to capture a sufficient number of personnel; (2) risk associated with Arctic Slope's project manager's lack of financial investigative experience; (3) risk associated with Arctic Slope and [DELETED] not having experience performing together; and (4) risk associated with the limited details regarding the extent to which Arctic Slope and [DELETED] have worked together previously. AR, Tab 34, Revised Competitive Range Determination, at 12. As a result, the contracting officer concluded that the benefits provided by PRMI's proposal justified its \$165 million price premium, and included PRMI's proposal in the competitive range, while excluding Arctic Slope's proposal from further consideration.

However, as set forth above, we find that each of these discriminators cited by the contracting officer was the result of an unreasonable evaluation or unequal treatment. Thus, if proposals had been properly evaluated, we cannot say what ratings would have been assigned to the proposals, or whether Arctic Slope's

proposal would have been considered to be among the most highly rated proposals. In such circumstances, we resolve any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. See Kellogg, Brown & Root Servs., Inc.--Recon., B-309752.8, Dec. 20, 2007, 2008 CPD ¶ 84 at 5. Accordingly, we conclude that Arctic Slope has established the requisite competitive prejudice to prevail in a bid protest.

#### RECOMMENDATION

We recommend that the agency reevaluate proposals in a manner consistent with the terms of the solicitation and the discussion above, and make a new competitive range determination based on that reevaluation. We also recommend that the agency reimburse Arctic Slope its reasonable costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claim for costs, detailing the time spent and the cost incurred, must be submitted to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Susan A. Poling  
General Counsel