



United States Government Accountability Office
Washington, DC 20548

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: J.E. McAmis, Inc.

File: B-412321; B-412321.2

Date: January 14, 2016

Joseph Yazbeck, Jr., Esq., Brent Carpenter, Esq., and David H. Bowser, Esq., Jordan Ramis PC, for the protester.

Neil H. O'Donnell, Esq., Jeffery M. Chiow, Esq., and Joshua M. Deitz, Esq., Rogers Joseph O'Donnell, PC, for Kiewit Infrastructure West Company, an intervenor. Autumn Lovato, Esq., and Thomas J. Warren, Esq., Department of the Army, Corps of Engineers, for the agency.

Young H. Cho, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation and comparative assessment of technical proposals under past experience, past performance, and quarry production factors is denied where the record shows that the agency's evaluation and comparative assessment were reasonable and consistent with the solicitation.

DECISION

J.E. McAmis, Inc. (JEM), of Chico, California, protests the award of a contract to Kiewit Infrastructure West Company (Kiewit), of Vancouver, Washington under request for proposals (RFP) No. W9127N-15-R-0003, issued by the Department of the Army, Corps of Engineers (Corps), for the rehabilitation of Jetty A on the mouth of the Columbia river, in Washington state. JEM challenges numerous aspects of the agency's evaluation of its own and Kiewit's technical proposals.

We deny the protest.

BACKGROUND

The RFP, issued on August 4, 2015 pursuant to Federal Acquisition Regulation (FAR) part 15 procedures, contemplated the award of a fixed-price contract on a best-value basis, considering the following evaluation factors: past experience, past performance, management plan, procurement, project execution, small business

participation plan, and price. RFP¹ at 2, 6-16. The solicitation stated that all evaluation factors other than price were approximately equal in importance, and that these factors, when combined, were more important than price. Id. at 2.

For the past experience factor, the solicitation instructed offerors to submit information on at least 1 project for the prime and each proposed major subcontractor. The RFP required that each project have been completed or substantially completed² in the past 15 years, and that the projects be comparable in size, scope, and complexity with the Jetty A project. Id. at 7. Offerors were also required to include in their past experience information a “[b]rief summary of the challenges and solutions; [and] [i]nformation on significant problems encountered, customer dissatisfaction, and corrective actions.” Id. The RFP stated that “[p]rojects demonstrating that the prime and [the] major subcontractor(s) have a history and are capable of completing the following major features of work will be more highly rated: Working in a marine environment including atop of jetties along the Pacific Ocean, successful experience working with > 15 ton stones.” Id. The solicitation also stated that “[m]ore favorable ratings will be assigned to more recent projects, and projects similar in size, scope and complexity to the requirement in this solicitation. Less recent and smaller dollar value projects may be given less consideration.” Id.

For the past performance factor, the solicitation instructed offerors to provide past performance information--a completed Contractor Performance Assessment Reporting System (CPARS) evaluation, or a completed past performance questionnaire (PPQ) if a completed CPARS evaluation was not available--for each project listed by the offeror as past experience. Id. at 8.

The solicitation advised offerors that there were two aspects to the past performance evaluation. Id. at 9. The first was “to determine how relevant a recent effort accomplished by the offeror is to the effort to be acquired.” Id. In this regard, the solicitation provided that similarity of service/support, complexity, dollar value, contract type, and degree of subcontract/teaming were “common aspects of relevancy.” Id. The solicitation also stated that “more relevant past performance will typically be a stronger predictor of future success and have more influence on the past performance confidence assessment than past performance of lesser complexity, dollar value, contract type, and degree of subcontract/teaming.” Id. The second aspect of the past performance evaluation was to determine how well the contractor performed on the referenced contract(s). Id. The solicitation advised

¹ The RFP was amended four times. All citations to the RFP are to the final version, as amended on September 1, 2015.

² The solicitation defined “substantially completed” as having completed more than 75% of the project work at the time of proposal submission. RFP at 7.

offerors that “Past Performance on projects that are similar in size and scope to this project may be considered to be more advantageous to the Government. Thus, the Government will take into consideration the age and relevance of past performance information and the offeror’s overall performance record.” Id. The solicitation also stated that “[i]f any performance issues are identified, the Government will consider the number, type and severity of the problems and effectiveness of corrective action taken.” Id.

The solicitation also provided a past performance relevancy rating table and a performance confidence assessment table. Id. at 3-4. The available relevancy ratings were very relevant, relevant, somewhat relevant, and not relevant.³ Id. at 3. The available confidence assessment ratings were substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence.⁴ Id. at 3-4.

The procurement factor had two subfactors: quarry production and delivery plan. Id. at 10-12. For the quarry production subfactor, offerors were required to provide detailed project work plans describing the methodology for procuring stone for the jetty, and to address “any quarry related challenges and proposed solutions.” Id. at 11. The solicitation advised offerors that “[a] highly rated proposal for this factor will demonstrate that the offeror’s methodology for procurement of jetty stone will be effective and the offeror is prepared with solutions to any challenges.” Id.

The agency received five timely proposals, including those from JEM and Kiewit. A technical evaluation board (TEB)⁵ evaluated the proposals, and formed a competitive range that included JEM, Kiewit and one other offeror. The agency

³ Very relevant was defined as “Present/past performance effort involved essentially the same scope and magnitude of effort and complexities this solicitation requires.” Id. at 3. Not relevant was defined as “Present/past performance effort involved little or none of the scope and magnitude of effort and complexities this solicitation requires.” Id.

⁴ Substantial confidence was defined as “Based on the offeror’s recent/relevant performance record, the Government has a high expectation that the offeror will successfully perform the required effort.” Id. Satisfactory confidence was defined as “Based on the offeror’s recent/relevant performance record, the Government has a reasonable expectation that the offeror will successfully perform the required effort.” Id. at 3-4.

⁵ The agency report and agency report documents, including the source selection decision document (SSDD) refer to the TEB as the source selection evaluation board (SSEB). Because the role the board played in the procurement was to evaluate technical proposals, and not to recommend the source selection, our decision refers to the evaluation board as the TEB.

conducted written discussions with all competitive range offerors. The agency received final proposal revisions (FPRs) from these offerors on September 24, 2015. The FPRs submitted by JEM and Kiewit were evaluated as follows:

		JEM	Kiewit
Factor 1 – Experience⁶		Good	Outstanding
Factor 2 – Past Performance		Very Relevant/ Satisfactory Confidence	Very Relevant/ Substantial Confidence
Factor 3 – Management Plan⁷			
	Prime Contractor Personnel	Good	Good
	Subcontractor	Good	Acceptable
Factor 4 – Procurement			
	Quarry Production	Good	Outstanding
	Jetty Stone Delivery Plan	Good	Outstanding
Factor 5 – Project Execution			
	Jetty Stone Placement	Outstanding	Good
	Schedule	Good	Good
	Safety	Good	Good
Factor 6 – Small Business Participation Plan		Outstanding	Good
Total Evaluated Price⁸		\$20,015,001	\$21,490,700

AR, Tab 5, TEB Report at 4.

JEM submitted one project under the past experience factor for itself and its proposed major subcontractor (Columbia Granite): the Mouth of Columbia River North Jetty Critical Repairs project (North Jetty project). See Agency Report (AR), Tab 6, JEM Proposal, Factor 1, Past Experience. The North Jetty project was ongoing and 80% complete at the time of proposal submission. Id. at 6. This

⁶ The adjectival ratings available for the evaluation factors and subfactors other than past performance were outstanding, good, acceptable, marginal, and unacceptable. RFP at 3.

⁷ The TEB did not assign an overall rating for factors 3-5. See AR, Tab 5, TEB Report at 4.

⁸ Because the solicitation included FAR § 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, a factor of 10% was added to Kiewit's proposal for the purpose of comparing prices with JEM, a HUBZone firm that qualified for the preference and did not elect to waive it. See AR, Tab 4, SSDD at 9.

project was valued at \$9.8 million and involved placing 52,000 tons of jetty stones ranging from 7 to 28.5 tons. Id. at 1. JEM submitted a PPQ that was completed by the Corps's Portland District office (the same office for this procurement, the Jetty A project) for evaluating the North Jetty project under the past performance factor.⁹ See AR, Tab 7, JEM Proposal, Factor 2, Past Performance.

JEM submitted a project work plan for the quarry production subfactor that proposed to utilize Columbia Granite as JEM's primary quarry, but also identified three additional contingency quarries to ensure that sufficient jetty stone could be procured on time. See AR, Tab 9, JEM Proposal, Factor 4, Subfactor 1, Quarry Production. For factors 1 (Past Experience), 2 (Past Performance), and 4 (Procurement), JEM's proposal specifically discussed the quarry production problems it had with Columbia Granite on the North Jetty project. See AR, Tab 6, JEM Proposal, Factor 1, Past Experience at 3, 5-6; AR, Tab 7, JEM Proposal, Factor 2, Past Performance at 12; AR, Tab 9, JEM Proposal, Factor 4, Subfactor 1, Quarry Production.

Kiewit identified three completed projects and submitted their respective CPARS reports: Tillamook North Jetty Capping (completed in 2010) (Tillamook), Mouth of Columbia River South Jetty Interim Repairs (completed in 2007) (South Jetty), and Yaquina North Jetty Repairs (completed in 2001) (Yaquina). See AR, Tab 12, Kiewit Proposal, Factor 1, Past Experience; AR, Tab 13, Kiewit Proposal, Factor 2, Past Performance. These projects, which were also performed for the Corps's Portland District, were valued at \$16.1 million, \$21.5 million, and \$7 million; and involved placing a total of 37,000 tons of jetty stones, each ranging from 21-48 tons; a total of 154,700 tons, each ranging from 4-28 tons; and a total of 33,080 tons, each ranging from 12-46 tons, in a marine environment including atop of jetties along the Pacific Ocean. AR, Tab 12, Kiewit Proposal, Factor 1, Past Experience at 2-4. Kiewit stated that there were no significant problems encountered on the projects and that they received outstanding evaluations, which were also reflected in the past performance information Kiewit submitted. Id.; see also AR, Tab 13, Kiewit Proposal, Factor 2, Past Performance.

In its project work plan for the quarry production subfactor, Kiewit proposed [DELETED] Beaver Lake Quarry, which has been [DELETED] utilized for Kiewit's Tillamook, South Jetty, and Yaquina projects as its primary quarry. See AR, Tab 14, Kiewit Proposal, Factor 4, Subfactor 1, Quarry Production at 38. Kiewit, further, proposed to develop a contingency quarry. Id. at 33, 38.

⁹ JEM's performance was appraised on the PPQ as overall very good. However, the PPQ included comments that because "the project has not yet been completed, the extent of end user satisfaction is unknown" and that the "current stone supplier is causing schedule to slip again." AR, Tab 7, JEM Proposal, Factor 2, Past Performance at 12.

The TEB prepared a technical evaluation report and briefed the source selection authority (SSA). After reviewing the TEB report, the SSA performed an independent review of each offeror's FPR. Contracting Officer's Statement of Facts (COSOF) at 13-14. Using the TEB report and his independent review of proposals, the SSA performed a comparative assessment of the offerors' proposals. See AR, Tab 4, SSDD at 10-16. As a result, the SSA found Kiewit's past experience, past performance, quarry production, and jetty stone delivery plan to be advantageous over those in JEM's proposal, while JEM had advantages over Kiewit in its jetty stone placement plan, small business participation plan, and lower evaluated price.¹⁰ Id.; see also id. at 17. As relevant here, the SSA found that in comparing the past experience and past performance between the two offerors,

Kiewit provides significant advantages over [JEM]. In particular, Kiewit has completed three very relevant jetty projects with no significant problems and has received overall outstanding performance evaluations for those projects. On the other hand, [JEM] is in the process of completing its first jetty rehabilitation project. Many challenges and significant problems have been encountered which have been or are being addressed. Kiewit has demonstrated more relevant experience than [JEM], and I have substantial confidence in its ability to successfully perform this project. Consequently, I concluded that Factor 1, Past Experience, and Factor 2, Past Performance, weigh in favor of award to Kiewit over [JEM].

Id. at 12. For the quarry production subfactor, the SSA found

[A] significant advantage in Kiewit's plan [DELETED]. Although JEM has developed a plan to overcome the challenges encountered on their current project by signing purchase agreements with several quarries so that back-up stone is ready when/if needed, the plan offered by Kiewit [DELETED] is an outstanding solution to this common problem.

Id. at 14.

The SSA further found that the advantages offered by Kiewit's proposal outweighed those in JEM's proposal, and because the solicitation stated that the technical criteria, when combined, were more important than price, that those advantages

¹⁰ With regard to the remaining factors and subfactors (management plans, schedules, and safety records), the SSA found that neither firm offered any significant advantages or disadvantages. See AR, Tab 4, SSDD at 17.

were worth the 7% premium in Kiewit's evaluated price over JEM's price. Id. at 17. Accordingly, the SSA selected Kiewit for award.

On September 30, 2015, the agency notified the offerors of the award decision. Protest at 2. The protester was debriefed on October 7, 2015. Id.; see also Tab 15, JEM Debriefing Letter. This protest followed.

DISCUSSION

JEM challenges numerous aspects of the agency's evaluation of its own and Kiewit's technical proposals.¹¹ The protester argues that its proposal should have received higher adjectival ratings than assigned to its proposal for the past experience, past performance, management plan (prime contractor personnel), and procurement (quarry production and delivery plan) factors. Protest at 6, 9-10; Comments and Supplemental (Supp.) Protest at 3-19. The protester also challenges the adjectival ratings assigned to Kiewit under the past experience, past performance, and quarry production factors as unreasonably high, and the SSA's comparative assessment of its proposal and Kiewit's under these factors. Comments and Supp. Protest at 21-30. Although we do not specifically address all of JEM's arguments, we have fully considered all of them and find that they afford no basis on which to sustain the protest.¹²

¹¹ For example, JEM raised a number of arguments that its proposal merited higher adjectival ratings because its proposal contained strengths and no weaknesses and the agency applied its adjectival rating system unequally. See, e.g., Comments and Supp. Protest at 6, 13-19. It is well-established that adjectival ratings are merely guides for intelligent decision-making in the procurement process. Env'tl. Restoration, LLC, B-406917, Sept. 28, 2012, 2012 CPD ¶ 266 at 5. Moreover, there is no legal requirement that an agency must award the highest possible rating, or the maximum point score, under an evaluation factor simply because the quotation contains strengths and/or is not evaluated as having any weaknesses. See Applied Tech. Sys., Inc., B-404267, B-404267.2, Jan. 25, 2011, 2011 CPD ¶ 36 at 9. The essence of an agency's evaluation is reflected in the evaluation record--the underlying merits of particular strengths and the proposal as a whole--rather than a comparison of the adjectival ratings. URS Fed. Servs., Inc., B-408893, B-408893.2, Dec. 23, 2013, 2014 CPD ¶ 14 at 4. Accordingly, we do not find that these arguments have any merit.

¹² JEM also raises a number of arguments challenging the agency's conduct of discussions. Protest at 3-6, 8-9; Comments and Supp. Protest at 1-3. For example, JEM argued that the agency failed to conduct meaningful discussions because it failed to notify JEM of issues which "appeared to directly result in [JEM] being denied award," including past performance information that "results in anything less than an excellent score." JEM also complains that the agency identified "uncertainties," which JEM characterizes as "a discrete category of concerns which
(continued...)

Past Experience and Past Performance

Underlying JEM's numerous challenges to the agency's evaluation and comparative assessment is the protester's insistence that because it was currently performing the North Jetty project--which, in JEM's view, is the most recent and relevant project--it alone possesses the most advantageous past experience and past performance. In this regard, it is the protester's view that recentness is the "key part of the past experience evaluation." See Comments and Supp. Protest at 21. Similarly, the protester argues that in order for a project to be deemed relevant under the past performance factor, a project must be recent, because the solicitation stated that the first aspect to the past performance evaluation included an evaluation of "the offeror's past performance to determine how relevant a recent effort accomplished by the offeror is to the effort to be acquired." Id. at 23 (underscore in original). The protester also contends that while the solicitation does not define what "recent" is, it should be considered to mean a project that has been performed in the previous three years because "the construction industry is such a fast-changing industry." Id. at 21. As a result, the protester claims that because none of the projects submitted by Kiewit fit this definition, i.e., performed in the last three years, the agency's evaluation and comparative assessment under these factors were flawed.

In response, the agency points out that the RFP required offerors to submit projects that are comparable in size, scope, and complexity to the Jetty A project and have been substantially completed in the last 15 years--a requirement that was changed in amendment 0001 from 5 years to increase competition because the agency recognized that jetty projects similar in scope and complexity to the Jetty A project are performed infrequently. Supp. Memorandum of Law (MOL) at 18-19, 23. The agency also states that for the past experience factor, the solicitation indicated that more recent projects **and** projects similar in size, scope, and complexity to the Jetty A project would receive more favorable ratings; in contrast, there was no indication that for the past performance factor, more recent projects would be assigned higher relevancy ratings or greater confidence ratings. Id. at 23.

(...continued)

warrant discussions," but raised only issues pertaining to price during discussions. See Protest at 4-5, 8-9; Comments and Supp. Protest at 1-3. There is nothing in the FAR or our decisions to support any of JEM's arguments. In this regard, in order to be meaningful, discussions must identify deficiencies, significant weaknesses, and adverse past performance to which the offeror has not yet had an opportunity to respond. FAR § 15.306(d)(3); Paragon Sys., Inc.; SecTek, Inc., B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 5. As such, these arguments fail to state a valid basis for protest.

The evaluation of experience and past performance, by its very nature, is subjective; we will not substitute our judgment for reasonably based evaluation ratings, and an offeror's disagreement with an agency's evaluation judgments, by itself, does not demonstrate that those judgments are unreasonable. Bryan Constr., Inc., B-409135, Jan. 14, 2014, 2014 CPD ¶ 51 at 7 n.6 (citing MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10).

There is nothing in the solicitation here to support the protester's contention that the recentness of the offerors' project was the most important consideration in evaluating both factors. As shown above, the protester's contention is inconsistent with the plain language of the solicitation. The solicitation, further, stated that "[p]rojects demonstrating that the prime and the major subcontractor(s) have a history and are capable of completing the following major features of work will be more highly rated: Working in a marine environment including atop of jetties along the Pacific Ocean, successful experience working with > 15 ton stones." RFP at 7. As such, the solicitation simply did not contemplate that the recentness of a project alone, would be determinative of the evaluation results for the past experience factor.¹³ Similarly, the solicitation clearly contemplated that for the relevancy prong of the past performance evaluation, it was the degree of similarity in scope and magnitude of the referenced contracts compared to the Jetty A project that would be assessed, not recentness. For instance, neither the solicitation's stated "common aspects" of relevancy nor the definitions for relevancy ratings include recentness. See RFP at 3-4, 9. Consequently, we find unavailing the protester's arguments that Kiewit's three contracts were not very relevant because they were not recent enough.¹⁴

¹³ The protester's contention that to be recent under the past experience factor, a project must have been performed within the last three years is also not supported by the solicitation or reasonable given the frequency of jetty projects. In this regard, JEM itself acknowledged, in a bidder's inquiry about a different aspect of the solicitation, that jetty projects are performed infrequently. See AR, Tab 19, Bidder Inquiry from JEM.

¹⁴ Similarly, we also find unavailing JEM's arguments that because Kiewit's referenced contracts should not have been found to be relevant, Kiewit's past performance could not be rated as substantial confidence. Comments and Supp. Protest at 24-25. Here, the solicitation clearly advised offerors that the second prong of the past performance evaluation would be to determine how well the contractor performed on the contracts based on the offeror's past performance record, i.e., as demonstrated by CPARS reports or PPQs. RFP at 9. While the solicitation stated that "[w]ith respect to relevancy, **more relevant past performance will typically be a stronger predictor of future success and have more influence on the past performance confidence assessment** than past performance of lesser relevancy," this language in no way suggests that the

(continued...)

Further, on this record, we find the agency's evaluation and comparative assessment unobjectionable. Here, JEM submitted a single project for itself and its major subcontractor, that was ongoing and 80% complete at the time of proposal submission and faced many challenges, some of which were still being addressed at the time of proposal submission.¹⁵ Kiewit, on the other hand, submitted three completed projects with no significant problems. All four projects were for the Corps' Portland District and involved working in a marine environment including atop of jetties along the Pacific Ocean placing stones sized in excess of 15 tons. While JEM's project may have been the most recent project and involved work that was similar in scope and complexity, including placing 52,000 tons of jetty stones in excess of 15 tons (7-28.5 tons), with a value of \$9.8 million, it was considerably smaller in size than the Jetty A project. Kiewit's projects, while not as recent as JEM's, were also similar in scope and complexity, and included placing 37,000 tons of jetty stones ranging from 21-48 tons (Tillamook), 154,700 tons ranging from 4-28 tons (South Jetty), and 33,080 tons ranging from 12-46 tons. Two of these projects were similar in size with the Jetty A project (Tillamook was valued at \$16.1 million and South Jetty was valued at \$21.5 million). Collectively, Kiewit's projects represented more extensive experience that was similar in size, scope, and complexity to the Jetty A project, albeit, not the most recent experience. JEM's single project, while recent and similar in scope and complexity to the Jetty A project was not similar in size.

Additionally, Kiewit demonstrated a history of successful experience, including, primarily, experience with the exact type of work that the solicitation identified as meriting a higher rating, performed without any significant problems, while JEM's single project for the same type of work was in the process of being completed and

(...continued)

relevancy ratings, alone, would control the confidence assessment ratings. See RFP at 7 (emphasis added).

¹⁵ JEM also argued that the agency improperly considered JEM's past performance in its past experience evaluation. Comments and Supp. Protest at 7. We disagree. The solicitation specifically required offerors to include information regarding the challenges and significant problems encountered, and the solicitation explicitly included language indicating to offerors that, as part of the past experience evaluation, certain aspects of the offeror's performance would be considered. See RFP at 7. In fact, JEM used five of the eight pages of its past experience proposal to discuss the problems that occurred on the project, including ongoing issues with Columbia Granite. See AR, Tab 6, JEM Proposal, Factor 1, Past Experience at 2-6; see also id. at 6 ("*Admittedly, the issue of quarry production with Columbia Granite is ongoing but being resolved. [JEM] has addressed the Columbia Granite issue in the current proposal and will not be caught at the mercy of a supplier on the Jetty A Project.*") (italics in original). As such, we do not find the SSA's consideration of some aspects of JEM's performance on the North Jetty project in his comparative assessment to be improper. See AR, Tab 4, SSDD at 11-12.

faced numerous challenges and problems throughout the project, with some that were still outstanding. In this regard, JEM also argued that Kiewit's performance "was not as flawless as the Agency presents," based on CPARS reports for the three projects, for which fewer than half of the ratings were outstanding, and the remaining ratings were above average and satisfactory. Further, for the Tillamook project, Kiewit had schedule problems, did not complete certain aspects of the work by the completion date, did not submit its payroll on a weekly basis, and had some minor labor law issues. Comments and Supp. Protest at 25.

While the protester is correct that several issues were noted on the Tillamook project, the record shows that those issues occurred at the beginning of the project but were addressed and resolved, resulting in the agency commending Kiewit for doing "an outstanding overall job." See AR, Tab 13, Kiewit Proposal, Factor 2, Past Performance, Performance Evaluation for Tillamook project. In fact, the past performance assessments submitted by Kiewit for all three projects were generally positive and reflected overall outstanding ratings. By contrast, while JEM's past performance information was also generally positive, the PPQ indicated that the extent of end user satisfaction was still unknown, since the North Jetty project has not yet been completed.¹⁶ Moreover, the PPQ shows that JEM fell behind on schedule early on in the project--a problem that JEM addressed by adding additional shifts and working weekends to get back on schedule; yet, the stone supplier (Columbia Granite) was causing the schedule to slip again when the PPQ was completed. AR, Tab 7, JEM Proposal, Factor 2, Past Performance at 12.

On this record, we find the agency's evaluation and comparative assessment that Kiewit's past experience and past performance provide a significant advantage over JEM to be reasonable and consistent with the stated evaluation factors.

Quarry Production Subfactor

JEM also challenges the agency's evaluation of the quarry production subfactor, and the SSA's comparative assessment, which finds Kiewit's proposed plan under this subfactor more advantageous than JEM's. The protester argues that

¹⁶ The protester, further, argues that its past performance should have been rated as substantial confidence but was downgraded because the agency unreasonably assigned its proposal an "uncertainty". Comment and Supp. Protest at 10. The RFP defined an uncertainty as "any aspect of a non-cost/price factor proposal for which the intent of the offer is unclear." RFP at 4. Here, the TEB found the fact that the North Jetty project was not yet completed raised an uncertainty. AR, Tab 5, TEB Report at 32. While, as acknowledged by the agency, the TEB did not use the term uncertainty as defined in the RFP but rather used it to note aspects of the proposal that the TEB did not have absolute certainty about, our review of the record does not show that JEM's past performance was downgraded because of this uncertainty. *Id.* at 31-32; Supp. MOL at 6 n.6; AR, Tab 4, SSDD at 11-12.

“[DELETED] Beaver Lake quarry does not necessarily mean that it will produce rock more consistently [DELETED].” Comments and Supp. Protest at 26. JEM also argues that the agency’s preference for [DELETED] was an unstated evaluation criterion. Id.

In reviewing a protest challenging the agency’s evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency’s discretion. Advanced Techs. & Labs. Int’l, Inc., B-411658 et al., Sept. 21, 2015, 2015 CPD ¶ 301 at 5. Rather, we will review the record only to assess whether the agency’s evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. FP-FAA Seattle, LLC, B-411544, B-411544.2, Aug. 26, 2015, 2015 CPD ¶ 274 at 7. An offeror’s disagreement with an agency’s judgment, without more, is insufficient to establish that the agency acted unreasonably. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5. Further, while solicitations must inform offerors of the basis for proposal evaluation, and the evaluation must be based on the factors set forth in the solicitation, agencies are not required to specifically list every area that may be taken into account, provided such areas are reasonably related to or encompassed by the stated criteria. MicroTechs., LLC, B-403713.6, June 9, 2011, 2012 CPD ¶ 131 at 3.

The solicitation clearly stated that “A highly rated proposal for this factor will demonstrate that the offeror’s methodology for procurement of jetty stone will be effective and the offeror is prepared with solutions to any challenges.” Id. at 12. Here, the offerors proposed two different solutions in order to ensure sufficient jetty stone could be procured on time. JEM’s proposed solution was essentially to have an “over-commitment from suppliers to ensure that sufficient jetty stone could be procured on time,” as it recognized “the vast importance of reliable quarry sources capable of scaling up,” as necessary, based on its experience working with Columbia Granite on the North Jetty project. See AR, Tab 9, JEM Proposal, Factor 4, Subfactor 1, Quarry Production. Kiewit, on the other hand, [DELETED].¹⁷ See AR, Tab 14, Kiewit Proposal, Factor 4, Subfactor 1, Quarry Production at 38. We disagree that the agency applied an unstated evaluation criterion here. See AR, Tab 4, SSDD at 14, 17.

Further, the protester’s argument that Kiewit has no proven record of [DELETED] is not supported by the record. See Comments and Supp. Protest at 26. Kiewit indicated in its proposal that the Beaver Lake Quarry [DELETED] had been utilized for its Tillamook, South Jetty, and Yaquina projects and that its “mining experience at Beaver Lake has allowed us to streamline our mining techniques in this quarry.”

¹⁷ And, by JEM’s own account, being “caught at the mercy of a supplier,” was a significant problem on this type of project. See AR, Tab 6, JEM Proposal, Factor 1, Past Experience.

See AR, Tab 14, Kiewit Proposal, Factor 4, Subfactor 1, Quarry Production at 38. As such, JEM's arguments amount to nothing more than disagreement with the agency's judgment, which is insufficient to establish that the agency acted unreasonably.

The protest is denied.

Susan A. Poling
General Counsel