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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:** Global Science & Technology, Inc.

**File:** B-413765; B-413765.2

**Date:** December 22, 2016

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John E. Jensen, Esq., and Selena M. Brady, Esq., Pillsbury Winthrop Shaw Pittman LLP, for the protester.

James H. Roberts III, Esq., Van Scoyoc Roberts PLLC, for SGT, Inc., an intervenor.  
Florence N. Bridges, Esq., and Lauren Didiuk, Esq., Department of Commerce, for the agency.

Matthew T. Crosby, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest challenging a weakness assessed to the protester's technical proposal is denied where the record shows the weakness reflected a reasonable concern regarding the protester's ability to meet a solicitation requirement for data that was the same or similar to what the agency currently receives, notwithstanding the protester's status as the incumbent.

2. Protest challenging the weight given to the past performance of the awardee's subcontractor is denied where the solicitation provided that subcontractor past performance would be weighted relative to the amount of effort the subcontractor would perform and where the record shows the evaluation was consistent with the amount of work the awardee's subcontractor was proposed to perform.

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### DECISION

Global Science & Technology, Inc., of Greenbelt, Maryland, protests the award of a contract to SGT, Inc., also of Greenbelt, Maryland, by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), under request for proposals (RFP) No. EA-133W-16-RP-4036 for observational weather data and related services. Global alleges that the agency's evaluation of proposals was flawed in various respects.

We deny the protest.

## BACKGROUND

The solicitation, issued on April 6, 2016, contemplated the award of a fixed-price, indefinite-delivery/indefinite-quantity contract with a 38-month ordering period. RFP at 1, 20, 37. The solicitation included a statement of work (SOW) describing how the contemplated contract was to further the agency's National Mesonet Program, under which the agency purchases weather data for the entire United States from non-federal weather observation networks.<sup>1</sup> Id. at 4-5. As relevant here, the SOW established that the successful offeror was to provide weather data from all 50 states, and it stipulated that “[i]f data from a given network and platform within a specific state has been previously provided to the government under the [National Mesonet Program], substantially similar data within that state shall be provided to the government as part of the contractor's aggregate solution.” Id. at 7. Global is the agency's incumbent contractor for this requirement. Protest at 15.

The solicitation stated that the contract would be awarded on a best-value tradeoff basis, considering price and two additional factors: technical approach, and past performance. RFP at 39. The solicitation provided that the technical approach factor was more important than the past performance factor, and that the two non-price factors were significantly more important than price. Id.

Evaluation criteria were provided for both non-price factors. RFP at 39. As relevant here, the technical approach criteria included consideration of an offeror's understanding of the requirements of the SOW. Id. With regard to past performance, the solicitation instructed offerors to provide “information on no more than three (3) previous contracts whose effort was relevant to the effort required by this solicitation.” Id. at 35. The solicitation required the past performance to have occurred in the last five years and to involve work “relevant in magnitude and scope” to the instant requirement. Id. at 35, 39. The solicitation permitted the submission of past performance information for subcontractors, but it cautioned that offerors must “clearly indicate the percentage of work that the subcontractor(s) will perform under each task/category of effort throughout the course of the contract.” RFP, amend. No. 0001, at 3. In addition, the solicitation stated that subcontractor past performance would be “given weight relative to the amount of effort under the solicitation that the subcontractor is proposed to perform.” Id.

The agency received two proposals by the solicitation's closing date--one from Global and one from SGT. Contracting Officer's Statement ¶ 22. A technical evaluation team (TET) evaluated the proposals under the non-price factors. See Agency Report (AR), Tab 6.c, TET Rep. Under the technical approach factor, the TET assessed four strengths and one weakness to Global's proposal. Id. at 5-6. The weakness was documented as follows:

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<sup>1</sup> The solicitation defined a mesonet as a “surface observing network.” RFP at 4.

The proposal provides a contingency plan, in the form of a group of networks that could provide replacement data in the event that “[DELETED],” during the transition phase. However, [Global] does not sufficiently explain how these particular networks could replace current data providers in a “substantially similar” manner per [the SOW]. Specifically, they do not clearly demonstrate how the proposed contingency networks could provide all the types of observational data that are currently provided . . . across all 50 states. Instead, they propose to [DELETED]. This introduces a degree of uncertainty to successful performance . . . and poses a risk to continuity of operations.

AR, Tab 6.c, TET Rep., at 5-6 (quoting AR, Tab 4.b, Global Technical Proposal, at 1, 13) (internal citations omitted). After completing the evaluation, the TET concluded that the strengths assessed to Global’s proposal were of only “some” or “marginal” benefit to the agency. Id. at 6. For this reason, and due to the performance risk attendant to the evaluated weakness, the TET assigned a rating of acceptable to Global’s proposal under the technical approach factor.<sup>2</sup> Id.

SGT’s proposal was assessed two significant strengths, four strengths, and no weaknesses under the technical approach factor. AR, Tab 6.c, TET Rep., at 13-14. Both significant strengths and one of the strengths are relevant here. The first significant strength concerned SGT’s proposed approach of providing a “very significant increase” in data compared to the amount required by the SOW. Id. at 13. The second significant strength and the strength concerned exclusivity agreements and letters of intent, respectively, that SGT obtained from network providers, including current providers. Id. The TET found that these agreements “significantly reduc[e], if not virtually eliminat[e] the risk [of key] data sources becoming unavailable after award.” Id. After completing the evaluation, the TET concluded that the significant strengths and strengths assessed to SGT’s proposal were “highly beneficial” to the agency. Id. at 14. For this reason, and due to the absence of any evaluated weaknesses, the TET assigned a rating of outstanding to SGT’s proposal under the technical approach factor. Id.

With regard to past performance, each firm submitted information for three past efforts. See AR, Tab 6.c, TET Rep., at 7,15. One effort listed in SGT’s proposal was performed by the firm’s primary subcontractor, Earth Networks, Inc. (ENI). See id. at 19. Consistent with the solicitation, SGT’s proposal indicated that ENI would perform 44 percent of the effort (nearly half). AR, Tab 5.b, SGT Technical Proposal, at II-2-7.

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<sup>2</sup> The available ratings under the technical approach factor were outstanding, good, acceptable, marginal, and unacceptable. AR, Tab 6.c, TET Rep., at 2.

The TET evaluated the relevancy and quality of the firms' past performance. For both proposals, the TET found that two efforts were highly relevant and one was relevant.<sup>3</sup> AR, Tab 6.c, TET Rep., at 7, 15. The TET also found that the quality of performance for all the efforts listed in both proposals was outstanding. Id. Based on all this, the TET assigned ratings of outstanding to both proposals under the past performance factor.<sup>4</sup> Id. Lastly, the TET assigned overall non-price ratings to both proposals. Id. at 4. The table below summarizes both firms' proposal ratings and shows their total evaluated prices.

	<b>Global</b>	<b>SGT</b>
<b>Technical Approach</b>	Acceptable	Outstanding
<b>Past Performance</b>	Outstanding	Outstanding
<b>Overall Non-Price Rating</b>	Good	Outstanding
<b>Evaluated Price</b>	\$38,710,438	\$44,554,608

AR, Tab 6.d, Business Clearance Mem., at 23.

The source selection authority (SSA) reviewed the evaluation materials and executed a source selection decision document (SSDD) that included a comparative analysis of the proposals. AR, Tab 7.a, SSDD, at 1-5. In the comparison, the SSA discussed the benefits of SGT's proposal, particularly the firm's approach of providing increased data to the agency. Id. at 3. With regard to SGT's exclusivity agreements and letters of intent, the SSA commented on the possibility that the agreements "may not be binding." Id. at 4. Nevertheless, she found the agreements to be a benefit because

they provide assurance that SGT will have access to and be able to distribute the data as they have proposed in their Technical Proposal[, which] significantly increases the likelihood that these data sources will be immediately available to the Government upon award and throughout contract performance.

Id. She contrasted this with the weakness assessed to Global's proposal regarding the firm's approach of [DELETED] if the current providers chose not to join Global's team after award. Id.

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<sup>3</sup> The available relevancy ratings were highly relevant, relevant, somewhat relevant, and not relevant. AR, Tab 6.c, TET Rep., at 3.

<sup>4</sup> The available past performance ratings were outstanding, acceptable, marginal, unacceptable, and neutral. AR, Tab 6.c, TET Rep., at 3.

Regarding past performance, the SSA considered the TET's findings and decided that since both proposals were assessed as outstanding in this area, past performance was "not . . . a discriminating factor." AR, Tab 7.a, SSDD, at 5. Ultimately, the SSA reached the following conclusion regarding the tradeoff between SGT's higher-rated, higher-priced proposal and Global's lower-rated, lower-priced proposal:

The value obtained from SGT's overall non-price rating of "Outstanding," including providing an average of 113% greater [data] quantities for only a 15% increase in price, far exceeds the price premium of \$5,844,170.00 over [Global]'s overall non-price rating of "Good."

Id. Accordingly, the award was made to SGT. After learning of the award and receiving a debriefing, Global filed a protest with our Office.

## DISCUSSION

Global alleges that the agency's evaluation of proposals under the technical approach and past performance factors was unreasonable in various respects. We have considered all of Global's arguments, and we conclude, based on the record, that none furnishes a basis on which to sustain the protest. Below, for purposes of illustration, we discuss the firm's leading contentions.

Global first challenges the weakness assessed to its proposal under the technical approach factor. Global claims that the agency assessed the weakness based on the firm's proposed "contingency plan" for the use of alternative networks if the current networks became unavailable. Protest at 10-12; Comments at 3-10. Global points out that the solicitation did not require a contingency plan and argues that "[i]t was unreasonable for the TET to conclude that the existence of a contingency plan means that current data providers are not available." Comments at 4-6. Global argues that if anything, the agency should have given the firm credit for offering a contingency plan. Id. at 4.

Global also argues that the assessment of the weakness was unreasonable because, according to Global, its proposal "specifically identifies the existing providers that satisfy the Solicitation's requirements" and it "provides additional details concerning the new providers." Comments at 6-10. In this regard, Global contends its proposal "clearly stated that current data providers were prepared to continue supplying data." Id. at 9. The contingency plan, Global maintains, was merely "a risk mitigation strategy for future performance issues and . . . is not an indication of an inability to perform." Comments at 10. Based on the record here, and for the reasons discussed below, we see no merit in Global's claim.

In reviewing an agency's evaluation, we do not conduct a new evaluation or substitute our judgment for the agency's, but, instead, examine the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria. See Gella LLC, B-409917.11, Jan. 6, 2016, 2016 CPD ¶ 14 at 2-3; West Constr., Inc., B-406511, June 15, 2012, 2012 CPD ¶ 184 at 4. A protester's disagreement with an agency's evaluation, without more, provides no basis to question the reasonableness of the evaluators' judgments. See Gella LLC, supra, at 3; West Constr., Inc., supra, at 5.

The SOW provision cited by the TET in its assessment of the weakness states as follows: "If data from a given network and platform within a specific state has been previously provided to the government under the [National Mesonet Program], substantially similar data within that state shall be provided to the government as part of the contractor's aggregate solution." RFP at 7. Thus, for purposes of providing the data that the agency currently receives, offerors either could have proposed to use the current networks, or proposed alternative networks capable of providing "substantially similar" data.

As outlined above, Global characterizes the challenged weakness as having arisen simply because its proposal included a contingency plan under which alternative networks would be used if the current networks became "unavailable." However, the record reflects that the assessment of the weakness was driven by a different issue--namely, the TET's concern that Global may be unable to reach agreements with the current networks and that the firm had not adequately explained how the alternative networks could provide "substantially similar" data. This is reflected in the TET's analysis of the weakness itself:

[Global's] proposal provides a contingency plan, in the form of a group of networks that could provide replacement data in the event that "[DELETED]" during the transition phase. However, [Global] does not sufficiently explain how these particular networks could replace current data providers in a "substantially similar" manner per [the SOW]. Specifically, they do not clearly demonstrate how the proposed contingency networks could provide all the types of observational data that are currently provided . . . across all 50 states. Instead, they propose to [DELETED].

AR, Tab 6.c, TET Rep., at 5-6 (quoting AR, Tab 4.b, Global Technical Proposal, at 1, 13) (internal citations omitted).

Our review of the record shows the TET's finding to be consistent with the content of Global's proposal. For example, the proposal discusses a transition to a new "data purchase" business model, and it describes how, after award, Global planned to negotiate "data buy subcontracts" with the current networks. AR, Tab 4.b, Global Technical Proposal, at 1, 13, 15, 19. The proposal recognized the possibility that

Global would be unable to reach agreements with the current network, stating as follows: “Should [DELETED] for consideration by NOAA.” Id. at 1. Similarly, Global’s transition plan stated that the firm “[DELETED]” beyond the current contract. Id. at 19. While it is true--as Global points out--that the proposal also included statements to the effect that the current networks were “ready” to continue,<sup>5</sup> it is clear from the above-quoted passages that negotiations between Global and the current networks would be required and that Global itself anticipated the possibility that agreements might not be reached.

SGT’s proposal, on the other hand, stated that the firm had teamed with and “secured full cooperation from all current [National Mesonet Program] network providers.” AR, Tab 5.b, SGT Technical Proposal, at II-1-16. SGT’s proposal further stated that the firm had “exclusive teaming agreements” in place with seven organizations that “provide 84% of the observing assets delivered currently to the [National Mesonet Program].” Id. at II-2. To buttress this representation, the firm’s proposal included letters of commitment from all seven organizations. Id. at II--Att. I-7 to I-13. The proposal also showed letters of intent from its other partners and offered “[a]dditional confirmation . . . to the Government upon request.” Id. at II--Att. 1-14 to 1-17. As stated above, the SSA recognized the possibility that the agreements “may not be binding,” but she found them to be a discriminator because “they provide assurance that SGT will have access to and be able to distribute the data as they have proposed[, which] significantly increases the likelihood that these data sources will be immediately available to the Government upon award and throughout contract performance.” AR, Tab 7.a, SSDD, at 4.

Based on the record here, we see no basis to question the TET’s assessment of the weakness to Global’s proposal or the SSA’s view that it was a discriminator. As shown above, the assessment of the weakness reflected the TET’s concern that Global may be unable to field the current networks and that it had not adequately explained how the alternative networks could provide “substantially similar” data, as required by the solicitation. As also shown above, the TET’s concern arose from statements within Global’s proposal itself. It is clear from Global’s filings in this protest that the firm disagrees with the TET’s findings. However, our review of the record does not show the findings to be unreasonable, and Global’s disagreement, without more, does not render the evaluation unreasonable. Global’s claim regarding the assessment of this weakness is denied.

Next, Global argues that the agency unreasonably evaluated the past performance of SGT’s primary subcontractor, ENI. As stated above, the solicitation instructed offerors to “clearly indicate the percentage of work that . . . subcontractor(s) will perform,” and it provided that subcontractor past performance would be “given

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<sup>5</sup> For example, the proposal included the statement that “the current network operators are [DELETED].” AR, Tab 4.b, Global Technical Proposal, at 15.

weight relative to the amount of effort under the solicitation that the subcontractor is proposed to perform.” RFP, amend. No. 0001, at 3. As also stated above, SGT’s proposal indicated that ENI would perform 44 percent of the effort. AR, Tab 5.b, SGT Technical Proposal, at II-2-7. Global alleges that the agency “made no effort to quantify the percentage of [ENI’s] level of effort relative to the whole contract” or “appropriately weigh[] ENI’s Past Performance.” Comments at 11-15; Supp. Comments at 2-6. Based on this, Global claims the past performance evaluation was flawed. Comments at 11-15; Supp. Comments at 2-6. For the reasons discussed below, we disagree.

The evaluation of an offeror’s past performance, including the agency’s determination of the relevance and significance of an offeror’s performance history, is a matter of agency discretion, which we will not find improper unless it is inconsistent with the solicitation’s evaluation criteria. CLS Worldwide Support Servs., LLC, B-405298.2 et al., Sept. 11, 2012, 2012 CPD ¶ 257 at 15; Nat’l Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4. In addition, the relative merits of an offeror’s past performance information is generally within the broad discretion of the contracting agency. See Paragon Tech. Group, Inc., B-407331, Dec. 18, 2012, 2013 CPD ¶ 11 at 5. A protester’s disagreement with the agency’s judgment does not establish that the evaluation was unreasonable. FN Mfg., LLC, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

Here, the TET’s evaluation report expressly states that SGT’s proposal “estimated that [ENI] will perform 44% of” the tasks outlined in the SOW. AR, Tab 6.c, TET Rep., at 19. The report also details the work ENI performed under the past effort. Id. Regarding the scope of the effort, the TET found as follows:

The contract is the same in scope because [ENI] was a prime contractor in the [National Mesonet Program] providing the same functions now sought with the present RFP. ENI collected detailed mesonet network observing system metadata and delivered this information to NOAA . . . for use in its operations.

Id. Regarding the magnitude of ENI’s effort, the TET noted that the contract’s annual value was approximately \$3 million, which was found to be “somewhat relevant” compared to the \$15 million annual value of the current requirement. Id. at 20. Ultimately, the TET concluded that based on its findings regarding both the scope and magnitude of the effort (including an “economy of scale” analysis in the area of magnitude<sup>6</sup>), ENI’s past performance was highly relevant to the current requirement. Id.

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<sup>6</sup> Regarding the “economy of scale,” the TET stated: “ENI performed th[e past] work with ten (10) subcontractors and thus at a lower overall dollar value, but the  
(continued...)



Returning to Global's claim, the firm is correct that the TET did not expressly state what specific weight ENI's past performance was given. It is inferential from the TET report, however, that the three past performance efforts listed in SGT's proposal--including ENI's effort--were given equal weight.<sup>7</sup> See AR, Tab 6.c, TET Rep., at 20-21. While Global apparently believes the TET should have given ENI's past performance less weight, we find the agency's actions unobjectionable for several reasons. First, the TET expressly recognized the percentage of effort that ENI was proposed to perform. Id. at 19. Second, that level of effort was significant (44 percent, or nearly half). Finally, ENI's past effort was found to involve precisely the same work as the current requirement. Id. On this basis, Global's claim regarding the evaluation of ENI's past performance is denied.

Global also claims that the agency's evaluation of the two firms' past performance was unequal. Comments at 15-19; Supp. Comments at 6-7. In this regard, Global notes that one of its past performance efforts, which was valued at approximately \$8 million, was assessed as relevant. Comments at 16. Global contrasts this with ENI's past effort that was valued at approximately \$3 million and assessed as highly relevant. Id. at 17. Because the dollar value of ENI's past effort was lower, Global argues, the agency's assessment of a higher relevancy rating to ENI's work reflects disparate treatment. Id.; Supp. Comments at 6-7. Based on the record here, again we disagree.

As previously stated, the TET found that ENI had served as "a prime contractor in the [National Mesonet Program] providing the same functions now sought with the present RFP." AR, Tab 6.c, TET Rep., at 19-20. In comparison, the TET found that Global's past effort involved "the design, development, operations, and maintenance of [the Comprehensive Large Array-data Stewardship System (CLASS)], a NOAA environmental data archive and distribution system." Id. at 10. In response to Global's protest, the TET chair explains the difference between the two efforts as follows:

The CLASS system is an [information technology] system for archiving federal (NOAA) satellite data, unlike the [National Mesonet Program] project[,] which requires a contractor to gather data from multiple non-federal entities that operate disparate types of observing networks

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(...continued)

material scope is the same for a higher value requirement with a larger number of contractors." AR, Tab 6.c, TET Rep., at 20.

<sup>7</sup> There is nothing in the record to suggest--and Global has offered nothing--that ENI's past performance reference was given any more or less weight than SGT's other two past performance references.

and then provide that data to the Government in real time and in an operational framework.

AR, Tab 16, TET Chair Supp. Statement, ¶ 11. We find the TET chair's statement to be not only consistent with the contemporaneous record, but to demonstrate a meaningful distinction between the scope of the two firms' past efforts. Since the different relevancy ratings assigned to the two firms' past efforts is attributable to this distinction, we find Global's claim regarding unequal treatment to be without merit.

Finally, Global challenges the "economy of scale" analysis in the agency's evaluation of ENI's past performance. Comments at 18; Supp. Comments at 6-7. Regarding this issue, Global points out that the TET initially found the approximately \$3 million annual value of ENI's past effort somewhat relevant compared to the approximately \$15 million annual value of the current requirement. Comments at 18 (citing AR, Tab 6.c, TET Rep., at 19-20). Global argues that the agency used the economy of scale analysis as an "improper justification to elevate the magnitude of ENI's [National Mesonet Program] reference." Comments at 18; Supp. Comments at 6-7. This claim also provides no basis on which to sustain the protest.

As an initial matter, the record shows the agency's economy of scale analysis pertained to only the magnitude element of ENI's past effort. AR, Tab 6.c., TET Rep., at 20. While magnitude was one consideration in the highly relevant rating that ultimately was assigned to ENI's effort, the driver of this rating, it appears, was the TET's finding that the scope of ENI's past effort was precisely the same as the current requirement. See id. at 19-20.

In any event, even assuming the economy of scale analysis was misplaced, we fail to see how Global was prejudiced by the matter. Competitive prejudice is an essential element of every viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. See Applied Bus. Mgmt. Solutions Inc., LLC, B-405724, Dec. 15, 2011, 2012 CPD ¶ 14 at 9; Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 8. As discussed in the background section above, the technical approach factor was weighted as more important than the past performance factor. RFP at 39. As also discussed above, the SSA's source selection decision turned on a number of clear discriminators between the two proposals under that factor, including SGT's offer to provide a significantly increased amount of data, and agreements shown in SGT's proposal that assured the agency that SGT could field the team presented in its proposal. AR, Tab 6.a, SSDD, at 3-4. Global has not shown these findings to be unreasonable. Given these circumstances, and given

that Global's claim regarding the economy of scale analysis had bearing on only one aspect of only one of the three past performance efforts in SGT's proposal, we see no reasonable possibility that Global would have had a substantial chance of receiving the award if the agency had not used the economy of scale analysis.

The protest is denied.

Susan A. Poling  
General Counsel