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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:** Walden Security; Akal Security, Inc.

**File:** B-413523.6, B-413523.7, B-413523.8, B-413523.9

**Date:** March 22, 2017

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C. Joseph Carroll, Esq., Department of Justice, for the agency.

Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest contention that the agency improperly evaluated past performance is sustained where, contrary to the terms of the solicitation, the agency failed to allow one of the protesters an opportunity to address adverse past performance information to which the offeror was not previously given an opportunity to respond.
  2. Protests challenging the agency's evaluation of the awardee's past performance are denied where the evaluation was reasonable and consistent with the stated evaluation criteria.
  3. Protests that the agency failed to properly evaluate technical proposals are denied where the record shows the agency reasonably evaluated proposals in accordance with the terms of the solicitation.
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### DECISION

Walden Security, of Chattanooga, Tennessee, and Akal Security, Inc., of Española, New Mexico, protest the award of three contracts to Paragon Systems, Inc., of Herndon, Virginia, under request for proposals (RFP) No. DJM-16-A32-R-0001, issued by the Department of Justice (DOJ), U.S. Marshals Service (USMS), for court security officers (CSO) for three federal judicial circuits. The protesters

challenge the agency's evaluation of the offerors' technical proposals and past performance, and argue that the best-value tradeoff and source selection was unreasonable.

We sustain Walden's protest; we deny Akal's protest.

## BACKGROUND

On April 22, 2016, the USMS issued the RFP, for court security officer services for the 3rd, 4th, and 12th federal judicial Circuits.<sup>1</sup> RFP at 2. The solicitation anticipated the award of indefinite-delivery, indefinite-quantity, time-and-materials/labor-hour contracts, for a base year, with four 12-month options. The solicitation contemplated the award of a separate contract for each judicial circuit, but specified that offerors should provide a single technical proposal for all circuits proposed.<sup>2</sup> Id. at L-4.

The RFP provided for award on a best-value basis, considering three evaluation factors: technical, past performance, and price. RFP at M-1, M-2, M-5. The technical factor included three subfactors: (1) recruitment program and vetting applicants; (2) training and qualifications program; and (3) quality assurance/quality control plan. For purposes of award, the technical factor and past performance factor were equal in importance, as were the three technical subfactors. The technical factor and past performance factor, when combined, were "significantly" more important than price. Id. at M-1. The RFP also explained, however, that to the extent the agency determined that the nonprice factors of each offeror were not significantly different among competing proposals, "the proposal with the lowest evaluated price [would] be selected for award." Id. at M-2. A more expensive proposal might be selected for award "where [the agency] determine[s] that the value of the selected proposal is worth the price differential." Id. The RFP also provided that the agency intended to make award without discussions, but that the agency reserved the right to conduct discussions if necessary. Id.

For the recruitment program and vetting subfactor, the RFP required offerors to furnish both a written narrative in the technical proposal, and a separate, written draft standard operating procedures (SOP), as an attachment to the proposal. Id. at L-6, M-4. Specifically, the solicitation explained that the government required a "timely multi-faceted and systematic recruitment program" to independently verify

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<sup>1</sup> Specifically, the solicitation contemplated that the services would be performed for the following: (1) 3rd Circuit, which includes the districts of Delaware, New Jersey, Pennsylvania, and the U.S. Virgin Islands; (2) 4th Circuit, which includes the districts of Maryland, North Carolina, South Carolina, Virginia, and West Virginia; and (3) 12th Circuit, which includes the District of Columbia. RFP at B-1.

<sup>2</sup> Offerors were not required to submit offers for all three circuits.

and filter potential applicants, and provide qualified CSOs. For the written narrative, offerors were to explain how their proposed recruiting programs and vetting methods would “independently verify and filter potential applicants and provide qualified CSOs, maximizing quality while minimizing delays.” RFP at L-6. The solicitation further specified that “[a]t a minimum, the offeror shall acknowledge all qualification and vetting requirements.” Id. at M-4. With regard to the draft SOP, offerors were to explain “the specific processes demonstrating how [they] will realize their narrative,” as well as demonstrate how they planned to “independently verify all minimum qualifications and provide comprehensive oversight and quality control through recruiting, vetting, selecting and submitting the best qualified applicants.” Id. at L-6. The solicitation provided that “[a]ny proposal failing to address all of the elements of Section L may be considered indicative of the offeror’s lack of understanding in response to the Government’s requirements and may be considered unacceptable.” Id. at M-3.

As for the training and qualifications subfactor, the RFP explained that the agency required “an effective and efficient high quality continuous training program for CSOs/LCSOs [lead court security officers] performing under this contract,” and required that offerors provide, at a minimum, acknowledgment of “all training administration, training, and qualification requirements identified in the SOW [Statement of Work] § L.5.2.1.” In addition, offerors were required to provide the following documents as attachments to their proposals: draft training plan, draft sample lesson plan, and narrative statement addressing compliance with various training requirements. Id. at M-4.

With regard to past performance, the RFP advised offerors that a separate reference sheet must be submitted for three federal government or commercial contracts performed during the last three years that are similar in size and scope and relevant to the performance requirements in the solicitation. RFP at L-10. The solicitation further provided that, “[s]hould the Offeror not have three (3) relevant contracts that are of similar size and scope to the requirements of this solicitation, the Contractor shall provide additional relevant references.” Id. The RFP also indicated that in the evaluation of past performance, the “currency and relevance of the information, source of the information, context of the data, and general trends in contractor’s performance [would] be considered.” Id. at L-9.

The agency received nine proposals for the 3rd Circuit, eight proposals for the 4th Circuit, and nine proposals for the 12th Circuit. Combined Contracting Officer Statement and Memorandum of Law (COS/MOL) (Akai) at 12; COS/MOL, Walden at 11. Both Akai and Paragon submitted a proposal for all three circuits; Walden submitted a proposal for the 3rd and 4th Circuits. COS/MOL (Akai) at 15; COS/MOL (Walden) at 14. After evaluating proposals, the agency concluded that Paragon’s proposal represented the best value to the government for all three circuits, and awarded all three contracts to Paragon. Id. The USMS notified the unsuccessful offerors of the contract awards, and on August 2, 2016, Akai and Walden received written debriefings from the agency. Id.

On August 8, Akal and Walden filed protests with our Office. On September 23, in response to the protests, the agency advised our Office that it intended to take corrective action. Specifically, the agency stated that it intended to reevaluate the technical proposals of Paragon, Akal, and Walden, and that, based upon the reevaluation, it would make new source selection decisions for all three of the judicial circuits. Agency Report (AR), Tab 29, Agency Notice of Corrective Action (Sept. 23, 2016), at 1. Accordingly, on September 27, 2016, our Office dismissed the protests as academic.

After the agency reevaluated the technical proposals and past performance of Akal, Walden, and Paragon, the evaluation results for the three offerors were as follows:

	<b>AKAL</b>	<b>WALDEN</b>	<b>PARAGON</b>
<b>Technical</b>	<b>Very Good</b>	<b>Very Good</b>	<b>Very Good</b>
Recruitment Program & Vetting Applicants	Satisfactory	Very Good	Exceptional
Training & Qualifications Program	Very Good	Very Good	Very Good
Quality Assurance/ Quality Control Plan	Very Good	Very Good	Very Good
<b>Past Performance</b>	<b>Very Good</b>	<b>Very Good</b>	<b>Very Good</b>
<b>Price</b>			
3rd Circuit	\$138,976,998	\$138,834,184	\$139,025,117
4th Circuit	\$206,451,574	\$207,717,865	\$207,775,949
12th Circuit	\$136,220,294	N/A	\$138,092,691

AR, Tab 43, Source Selection Decision Memo (SSDM), at 4; Tab 41, Source Selection Recommendation Memo (SSRM), at 4.<sup>3</sup>

#### Evaluation of Akal

The technical evaluation board (TEB) assessed numerous significant strengths to Akal’s proposal under all three of the technical subfactors. Under the second and third technical subfactors, the TEB rated Akal’s proposal as very good, and did not assign any weaknesses. In contrast, under the first technical subfactor (recruitment program and vetting applicants), the TEB rated Akal’s proposal as satisfactory based on the assessment of two weaknesses. The weaknesses were assigned

<sup>3</sup> The solicitation provided that proposals would be evaluated under the technical factors as exceptional, very good, satisfactory, or marginal, and under the past performance factor as exceptional, very good, satisfactory, marginal, unsatisfactory, or neutral. RFP §§ M.4, M.5.

because Akal's draft SOP lacked sufficient detail to support Akal's technical narrative and to explain the specific processes Akal would use to independently verify all of the CSO qualifications listed in the SOW. Notwithstanding the satisfactory rating for this technical subfactor, the TEB assigned Akal's technical proposal an overall very good rating. AR, Tab 33, Supp. TEB Report at 3. Under the past performance factor, the agency also rated Akal very good, finding that based on the offeror's performance record, the agency had an above average expectation that Akal would successfully perform the required effort. AR, Tab 37, Supp. Past Performance Report at 5.

#### Evaluation of Walden

The TEB assigned Walden a rating of very good under each of the three technical subfactors based on the assessment of numerous significant strengths, and no weaknesses, for each subfactor. AR, Tab 32, Supp. TEB Report at 12-15. Ultimately, the TEB rated Walden's technical proposal very good overall. Under the past performance factor, the evaluators noted that while Walden's performance has "demonstrated capacity to successfully perform the required effort without heavy USMS oversight," Walden's capacity has shown difficulty in "maintaining performance while scaling up services." AR, Tab 36, Supp. Past Performance Report at 13-14. Despite the minor performance issues, the agency found Walden's past performance was very good.

#### Evaluation of Paragon

The TEB assigned Paragon an excellent rating under the first technical subfactor (recruitment program and vetting applicants), based on numerous significant strengths and no weaknesses assessed under that subfactor. AR, Tab 33, Supp. TEB Report, at 1, 7-10. Paragon received a rating of very good for the other two technical subfactors, based on numerous significant strengths and no weaknesses. Id. The TEB assessed Paragon an overall rating of very good for the technical factor. Id. at 1. Under the past performance factor, the agency also rated Paragon very good, finding that based on the offeror's performance record, the agency had an above average expectation that Paragon would successfully perform the required effort. AR, Tab 37, Supp. Past Performance Report at 12.

#### Award Decision

The source selection authority (SSA) agreed with the TEB's evaluation, ratings, and recommendation to award all three contracts to Paragon as the best-value offeror. Specifically, the SSA agreed with the TEB that all three offerors' proposals were essentially equal under the second and third technical subfactors, and with regard to past performance. AR, Tab 42, SSDM at 1-2. The SSA further agreed with the TEB that Paragon's proposal was technically superior to Walden's and Akal's proposals under the first technical factor (recruitment program and vetting applicants) based on three items proposed by Paragon, which were not matched by

Akal's or Walden's proposals. Id. at 1-3. Specifically, the SSA concluded that, while all three proposals received the same overall technical rating, Paragon's proposal was "superior in comparison to Walden's and Akal's and warrant[ed] the government paying a slight premium for the additional benefits." Id. The SSA noted that "[t]hese Paragon advantages," which were in the area of CSO recruitment and vetting, were "significant and help[ed] to enhance the protection of the federal judiciary, the primary mission of the USMS." Id. at 5. The SSA further explained: "I am convinced that the unmatched benefits in the Paragon proposal are significant since they directly relate to the quality of the CSOs assigned to protect the federal judiciary." Id. The SSA found that "[t]he advantages that Paragon offers far exceed the extremely slight price differentials." Id. Accordingly, the USMS concluded that Paragon's proposal offered the best value to the government for the 3rd, 4th, and 12th Circuits, and awarded all three contracts to that firm. Id. These protests followed.

## DISCUSSION

Walden and Akal argue that the agency failed to reasonably evaluate the offerors' proposals under the past performance and technical factors, and challenge the agency's tradeoff determination and source selection decision. For the reasons discussed below, we find that the agency improperly failed to provide Walden with an opportunity to address adverse past performance information identified by the agency in its evaluation to which the contractor had not previously been provided an opportunity to respond, as required by the RFP, and sustain Walden's protest in part on this basis. We deny the remaining protest grounds.

## EVALUATION OF PAST PERFORMANCE

Walden and Akal raise a number of arguments challenging the agency's evaluation of past performance. Walden challenges the agency's evaluation of its own past performance, and both protesters challenge the agency's evaluation of the awardee's past performance. With regard to its own past performance, Walden challenges the agency's reliance on adverse information concerning Walden's performance obtained from the agency's contract file to which the agency did not provide the company an opportunity to respond. With regard to the awardee's past performance, Walden asserts that the agency failed to properly evaluate negative information concerning Paragon's performance of a contract with the Social Security Administration, while Akal contends that Paragon lacks relevant experience providing court security officers, and therefore, did not merit a "very good" rating under the past performance factor. Finally, both protesters challenge the agency's conclusion that the past performance of all three offerors was "substantially equal."

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of agency discretion which we will not disturb unless the agency's assessments are unreasonable inconsistent with the solicitation criteria, or undocumented. SIMMEC

Training Sols., B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. The evaluation of past performance, by its very nature, is subjective, and we will not substitute our judgment for reasonably based evaluation ratings. American Env'tl Servs., Inc., B-406952.2, B-406952.3, Oct. 11, 2012, 2013 CPD ¶ 90 at 4.

### Evaluation of Walden's Past Performance

Walden first challenges the agency's assessment that Walden has experienced degradation in service since beginning the performance of CSO contracts in three other judicial circuits. The protester asserts that both the agency's critique of Walden's performance, as well as the agency's reliance on that critique, was unreasonable. Specifically, the protester argues that, because the RFP advised that offerors would be given an opportunity to address adverse past performance information to which an offeror had not previously had an opportunity to respond, the agency's failure to give it an opportunity to respond to the agency's conclusions regarding its alleged degradation in service was unreasonable and failed to comply with the plain terms of the RFP.

As relevant here, the solicitation explained that past performance would be evaluated in accordance with Federal Acquisition Regulation (FAR) § 15.306(a)(2), and based on the "currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance." RFP at M-5, L-9. The RFP defined "relevant present/past performance" as "effort involving a similar scope and similar magnitude of effort and complexity as this solicitation requires," and "recent" performance as "performed during the last three years." Id. at M-5. In addition, the solicitation provided that the government would consider information registered in PPIRS [Past Performance Information Retrieval System] and FAPIIS [Federal Awardee Performance and Integrity Information System], and might consider information provided by the program office, contracting officer, and end users. Id. Significantly, the RFP also provided that "[o]fferors will be given an opportunity to address adverse past performance information to which the offeror has not previously had an opportunity to respond." Id. at L-10.

Walden's proposal included four past performance references--two for its incumbent USMS CSO contracts for the 4th and 6th Circuits, one for a contract with the Centers for Disease Control and Prevention (CDC), and one for a contract with the State of Tennessee. AR, Tab 14, Walden Past Performance Proposal, at 2-3, 22-23, 27-28. Walden's proposal also included CPARS [Contractor Performance Assessment Reporting System] records for the three federal contracts referenced. Id. at 3-16 (Fiscal Year (FY) 2015 CPAR for USMS CSO contract, 4th Circuit), at 8-11 (FY 2014 CPAR for USMS CSO contract, 4th Circuit), at 2-16 (FY 2013 CPAR for USMS CSO contract, 4th Circuit), at 18-21 (FY 2015 CPAR for USMS CSO contract, 6th Circuit), at 24-26 (2014 CPAR for CDC contract).

The agency found all four of the contracts submitted by Walden to be recent (performed within the past three years), as well as relevant in terms of scope

(armed and unarmed security officers) and relevant in magnitude of effort and complexity (approximately \$25 million or greater). Id. at 13-14. Walden's performance was rated exceptional in all areas on both the CDC and the State of Tennessee contracts, and the CPARS for the 4th and 6th Circuits reflected exceptional to very good ratings in the areas of quality, schedule, and management. AR, Tab 14, Walden Past Performance Proposal, at 3-26. Although Walden received satisfactory ratings in the three remaining areas, the evaluators explained that a "satisfactory assessment" is "generally the highest assessment a contractor is able to obtain in CPARS/PPIRS" for quality, schedule, cost, and utilization of small business "due to the CSO Program's use of a design/detail statement of work and contract limitation on subcontracting." AR, Tab 16, Past Performance Evaluation, at 25. <sup>4</sup>

In addition, the agency considered information from its "CSO contract files" regarding Walden's performance on three more recent USMS CSO contracts for the 1st, 5th, and 8th Circuits.<sup>5</sup> Based on the information from the agency's contract files, the evaluators concluded that Walden's "capacity has shown difficulty in maintaining performance while scaling up services," and "has required comparatively heavier oversight with five (5) Circuits than they required when they held one (1) to two (2) Circuits." AR, Tab 36, Supp. Past Performance Evaluation, at 13-14. In particular, the evaluators noted that, "[s]ince the acquisition of these three additional circuits[,] the USMS program offices have observed some difficulty from Walden in some areas of program administration, most especially in processing applicant packages and medical qualification information on deadline." AR, Tab 16, Past Performance Evaluation, at 14; Tab 36, Supp. Past Performance Evaluation, at 14.

The evaluators concluded that, "[o]verall, the records of Walden's performance for the CSO Program provide an above average expectation that the offeror will successfully perform the required effort." AR, Tab 36, Supp. Past Performance Evaluation, at 14. Specifically, the evaluators explained that "[t]he records show that Walden has successfully performed the required efforts for the last three years," but "this record of performance has demonstrated areas of weakness and risk by trending down in maintaining administrative performance with increased contract loads." Id. As a result, the evaluators stated that "[t]he above considerations prevent [the agency] from forming a high expectation that the offeror will successfully perform the required effort." Id.

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<sup>4</sup> Specifically, Walden received satisfactory ratings in the areas of utilization of small business, regulatory compliance, and cost control. AR, Tab 16, Past Performance Evaluation, at 25.

<sup>5</sup> The agency explained that these contract files included "deliverables and reports, correspondence records, and meeting minutes." Id.



The protester argues that, because the agency identified, and relied upon, in its evaluation, adverse past performance information regarding Walden, which Walden had not previously been provided an opportunity to address, the agency was required by the terms of the solicitation to provide Walden with an opportunity to address the adverse past performance information. The protester contends that, by failing to provide Walden with this opportunity, the agency failed to comply with the ground rules for the competition as set forth in the RFP, which prejudiced Walden.

The agency acknowledges that Walden has never been provided an opportunity to respond to the information from the agency's contract file regarding Walden's performance on the 1st, 5th, and 8th Circuits that the agency considered during its past performance evaluation. In addition, the agency acknowledges that the RFP, includes a provision providing that offerors "will be given an opportunity to address adverse past performance information to which the offeror has not previously had an opportunity to respond." RFP at L-10. The agency argues, however, that despite this clear statement in the solicitation, it was not obligated to provide Walden with this opportunity. We find the agency's arguments in this regard unavailing.

For example, the agency argues that it was not required to comply with the RFP language because the solicitation's inclusion of FAR § 15.306 "takes precedence over [the] conflicting language in the RFP instructions." Agency Email, Mar. 13, 2017, at 1. The protester disagrees that the RFP language conflicts with the FAR provision.

As relevant here, FAR § 15.306(a)(2) provides that, "[i]f award will be made without discussions, offerors may be given the opportunity to clarify certain aspects of proposals," such as "adverse information to which the offeror has not previously had an opportunity to respond." FAR § 15.306(a)(2) (emphasis added). This FAR provision is permissive, thereby granting discretion to the agency to decide whether to provide an offeror with an opportunity to clarify adverse past performance information.<sup>6</sup> The RFP language, on the other hand, clearly provided that offerors "will be given" an opportunity to respond to such adverse past performance information. Given that clarifications are not legally required when the agency awards without discussions, and that the agency awarded without discussions here, the RFP language clearly placed an obligation on the agency not required by the FAR provision.

Next, the agency argues that it was not required to provide Walden with an opportunity to respond to the alleged adverse past performance information

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<sup>6</sup> In contrast, FAR § 15.306(d)(3) requires that, when discussions are held, the contracting officer "must" discuss with an offeror "adverse past performance information to which the offeror has not yet had an opportunity to respond." FAR § 15.306(d)(3).

because, in the agency's opinion, the information at issue did not constitute "adverse past performance information." In support of this argument, the agency asserts that the past performance information at issue was not "adverse" because it did not result in the protester receiving "an unfavorable or less than satisfactory" past performance rating. Agency Email, Mar. 13, 2017, at 1. We disagree.

As noted above, based on information in the agency's contract files regarding Walden's performance on USMS CSO contracts for the 1st, 5th, and 8th Circuits, the evaluators concluded that Walden's capacity had "shown difficulty in maintaining performance while scaling up services," and that Walden had "required comparatively heavier oversight with five (5) Circuits than they required when they held one (1) to two (2) Circuits." AR, Tab 36, Supp. Past Performance Evaluation, at 13-14. Further, the evaluators noted that since the acquisition of the three additional circuits, the USMS program offices had "observed some difficulty from Walden in some areas of program administration, most especially in processing applicant packages and medical qualification information on deadline." Id. Although the evaluators concluded that, "[o]verall, the records of Walden's performance for the CSO Program provide an above average expectation that the offeror will successfully perform the required effort," they found that Walden's "record of performance has demonstrated areas of weakness and risk by trending down in maintaining administrative performance with increased contract loads," which the agency specifically concluded, "prevent[ed] [the agency] from forming a high expectation that the offeror will successfully perform the required effort." Id. The record also reflects that the agency relied on these same performance concerns in determining that Walden's past performance was not a discriminator. AR, Tab 38, Past Performance Comparison at 1-3.

Although the agency contends that the information regarding Walden's performance was not "adverse" because it did not result in Walden receiving an unfavorable or less than satisfactory rating, the record reflects that the agency did not assign a rating with regard to the information, which concerned Walden's performance on contracts for the 1st, 5th, and 8th Circuits. Rather, the record reflects that the evaluators concluded that the information demonstrated "difficulty in maintaining performance," "difficulty in program administration," and "areas of weakness and risk by trending down in maintaining administrative performance with increased contract loads."<sup>7</sup> AR, Tab 36, Supp. Past Performance Evaluation at 14. In

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<sup>7</sup> In response to the protest, the agency provided two spreadsheets, which it states, "reflect the agency's tracking system for CSO applicant packages." Agency Email, Mar. 13, 2017, at 1. Specifically, the agency explains that the spreadsheets include information such as "the number of days late" for Walden's submission of applicant packages under the CSO program. Agency Email, Mar. 3, 2017, at 1. For example, one of the spreadsheets indicates that Walden was [DELETED] days late submitting an applicant package for a vacancy in the 5th District. Id., attach. 2, at 3. We note that the initial spreadsheets provided to us by the agency were

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addition, the record reflects that the information had an adverse impact on Walden's otherwise positive past performance, and prevented the agency from "forming a high expectation that the offeror will successfully perform the required effort." Id. The record also reflects that the evaluators relied on the information as a discriminator in comparing Walden's past performance with Paragon's. In light of these considerations, we conclude that the information was sufficiently adverse that the agency should have provided Walden with an opportunity to respond.

In sum, we find that the solicitation required that offerors be given the opportunity to address adverse past performance information to which they had not previously had an opportunity to respond, and that the agency relied on adverse past performance information to which Walden had not been given the opportunity to respond in its evaluation. Given that according to the agency, consideration of this information prevented it from forming a high expectation that Walden would successfully perform the required effort, we further find that there is a reasonable possibility that Walden suffered competitive prejudice as a result of the agency's failure to give it the opportunity to respond. DRS C3 Sys., LLC, B-310825, B-310825.2, Feb. 26, 2008, 2008 CPD ¶ 103 at 28; see Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996) (competitive prejudice is a necessary element of any viable bid protest). (We note in this connection that a high expectation of successful performance would have resulted in a past performance rating of exceptional, which exceeds Paragon's past performance rating of very good). As a result, we sustain Walden's protest on this issue.

#### Walden's Challenges to Paragon's Past Performance Evaluation

Walden next challenges the agency's evaluation of the awardee's past performance, arguing that the agency failed to properly evaluate negative information about Paragon's performance of a contract with the Social Security Administration.<sup>8</sup> For the reasons discussed below, we conclude that the agency's evaluation of Paragon's past performance was reasonable.

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subsequently replaced by "corrected versions" due to errors contained in the initial spreadsheets. See Agency Email Mar. 2, 2017, at 1; Agency Email, Mar. 3, 2017, at 1.

<sup>8</sup> The protester also points to a labor strike in Dallas, Texas by security guards allegedly employed by Paragon on a federal security guard contract, and asserts that the agency should have, but failed to consider this information in its evaluation. The agency responds that this contract was not held by Paragon, but rather, it was performed by a wholly-owned subsidiary of Paragon. The agency further states that "[t]here is no information in the CPAR/PPIRS report . . . for the Agency to determine what role (if any) Paragon" played in connection with the contract. Furthermore, the agency argues that, "even if contract performance could be imputed to Paragon, the CPAR/PPIRS report indicates contract performance was

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The record reflects that the agency contacted the Social Security Administration contracting officer for the referenced contract, and reviewed the CPAR reports in PPIRS pertaining to this performance. AR, Tab 36, Supp. Past Performance Report at 11. The evaluators stated that “Paragon was evaluated as satisfactory in areas of quality, schedule, and management and was rated as very good in business relations in [fiscal year 2014].” Id. The evaluators noted that “[t]his rating represents a negative trend from the prior year[s] evaluation in the category of schedule which had been evaluated as very good,” but that all other ratings remained the same in the evaluated categories in fiscal years 2013 and 2014. Id. The evaluators also noted that the contracting officer cited the following performance issues for Paragon: not ensuring the workforce has active personal identification numbers, workforce having trouble operating the visitor management system and traffic control, violations of the 10-hour rule, and instances of delays in notification to the Government. Id.

In contrast, however, the evaluators explained that “the Contracting Officer stated that Paragon’s proposed and implemented corrective actions have improved performance and communication barriers. Id. The evaluators noted that the contracting officer “cited turnover of three different contract managers as exacerbating these challenges, stating that the current contract manager has corrected issues swiftly.” Id. The evaluators found that the “SSA satisfactory record of performance does not lend itself to [either] a high or above average expectation that Paragon Systems could perform the required effort as detailed in the solicitation.” Id. Rather, “if this contract were the sole indicator of performance[,] it would form a reasonable expectation of performance.” Id.

Ultimately, however, despite the agency’s determination that Paragon’s performance on the Social Security Administration contract was only satisfactory, the evaluators concluded that Paragon’s overall past performance rating should remain as very good, based on the positive ratings received by Paragon for four other recent and relevant contracts, as well as positive ratings in the areas of quality, schedule, and management reflected in numerous additional PPIRS reports for contracts found recent and relevant. Id. Based on this record, we find nothing unreasonable about the agency’s evaluation.

#### Akal’s Challenges to Paragon’s Past Performance Evaluation

As noted above, Akal contends that the agency unreasonably assigned Paragon a past performance rating of “very good,” arguing that, although Paragon has performed other security guard work, it lacks experience performing the specific requirements of the USMS CSO contracts, which the protester asserts, differ in

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evaluated as very good.” COS/MOL, Walden, at 28. Based on this record, we find nothing unreasonable about the agency’s evaluation.

scope and complexity from other security guard contracts. The agency argues that the RFP did not limit its evaluation of relevance to experience under CSO contracts, and maintains that offerors could demonstrate relevant experience via contracts for similar services. For the reasons discussed below, we find that the protester's arguments provide no basis to sustain the protest.<sup>9</sup>

The RFP defined present/past performance as an "effort involving a similar scope and similar magnitude of effort and complexity as this solicitation requires." RFP § M.5, at M-5. As relevant here, the RFP requested that offerors provide reference sheets for three federal, state, and local government or commercial contracts for efforts similar to the government requirement, and performed during the last three years. Id. at L-10. The solicitation explained that past performance would be evaluated based on the "currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance." Id. at L-9. The RFP defined "relevant present/past performance" as "effort involving a similar scope and similar magnitude of effort and complexity as this solicitation requires." Id. at M-5.

As relevant here, Paragon's proposal provided past performance reference sheets for eight contracts, which consisted of seven references for performance for Paragon, and one reference for performance by a joint venture in which Paragon was a joint venture partner. AR, Tab 37, Supp. Past Performance Report, at 6. The agency considered the information provided, as well as information found in the System for Award Management (SAM), FAPIIS, and PPIRS. With regard to the seven contracts for Paragon, the agency found that four of the contracts were relevant, recent, and met the magnitude of effort and complexity (minimum of \$25 million).<sup>10</sup> These included three contracts for the Department of Homeland Security (DHS), Federal Protective Services (FPS), and one contract for the Department of Health and Human Services (DHHS) Critical Infrastructure Security Office.

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<sup>9</sup> We note that Akal raises various other challenges to the agency's past performance evaluation. While we do not discuss all of the protester's arguments in detail, we have fully considered each of them, and conclude that none provide a basis to sustain the protests.

<sup>10</sup> The agency concluded that one of the contracts, which had a value significantly below the relevancy threshold of \$25 million, did not meet the magnitude of effort and complexity requirement. AR, Tab 17, Past Performance Summary Report at 2. The agency decided not to consider the performance on two of the other contracts because it did not receive the completed past performance surveys, and records for the contracts were not available in PPIRS. Id. With regard to the agency's evaluation of the joint venture, the evaluators found it was not necessary to support Paragon's very good past performance rating. AR, Tab 37, Supp. Past Performance Report, at 6.

Based on our review of the record, we see nothing unreasonable regarding the agency's evaluation. The record reflects that the evaluators noted that Paragon's three DHS contracts were for the provision of protective security officers at federal facilities, including at U.S. Courts in Akron, Ohio, and U.S. Attorney's Offices in Toledo, Youngstown, Columbus, and Cincinnati, and had contract values of \$114 million, \$40 million, and \$28 million, respectively. Id. at 22; Tab 15, Paragon Past Performance Proposal, at 7. Specifically, the evaluators explained that these three contracts were similar to the instant requirement in the following areas:

Uniformed security personnel (Protective Security Officer, armed workforce), workforce duties include operating screening equipment at duty stations (magnetometers, x-ray), workforce duties include threat detection (perimeter security, patrol and response), workforce management (site staffing, timekeeping, training, workforce performance, recruiting, screening, hiring, rapid response for requests to post personnel), contract administration performance monitoring (Quality Control, inspectors, monitoring, cost controls), contract administration deliverables (status reporting, incident reporting, record auditing), and business capacity (accommodates program changes, corrective actions).

AR, Tab 37, Supp. Past Performance Report, at 7-8.

Given that the contracts were for the performance of similar services, and exceeded the minimum \$25 million dollar value, the evaluators concluded that the contracts were relevant, finding that they were "within [the required] scope and size." Id. at 21-22. Similarly, the evaluators concluded that Paragon's contract for DHHS was relevant, noting that the contract involved armed security officers and had a contract value of \$53 million.<sup>11</sup> Id. at 9-10. Although Akal points to some of the instant SOW requirements, which the protester asserts Paragon's contract performance does not include, we see nothing in the RFP that required experience in all of the PWS requirements to merit a relevant rating. The protester has failed to demonstrate that the solicitation contained such a requirement, or the agency's evaluation was unreasonable or otherwise improper. On this record, we find no basis to sustain the protest.

## TECHNICAL EVALUATION

Next, Akal and Walden challenge the agency's technical evaluation. Specifically, Akal disputes two weaknesses assessed to its proposal under the first technical subfactor, and contends that the agency failed to recognize additional significant strengths assessed to its proposal under two of the technical subfactors. Both of

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<sup>11</sup> The evaluators noted that this contract had similar areas of scope as the three DHS FPS contracts. See AR, Tab 37, Supp. Past Performance Report, at 9-10.

the protesters allege disparate treatment regarding the agency's evaluation under the recruitment program/vetting applicants subfactor, arguing that the agency failed to evaluate proposals equally with regard to their approaches to medical exams, and operating style assessments. We discuss these arguments separately below.

#### Evaluation of Akal's Technical Proposal

As noted above, Akal argues that the agency improperly assessed two weaknesses to its proposal under the first subfactor--recruitment program/vetting applicants--for its draft standard operating procedures. The protester also contends that the agency failed to recognize an additional significant strength under this subfactor, as well as numerous additional significant strengths under the training and qualifications program subfactor. For the reasons discussed below, we conclude that Akal's allegations provide no basis to sustain the protest.<sup>12</sup>

In reviewing protests of an agency's evaluation of offerors' technical proposals, our Office does not reevaluate proposals; rather, we review the evaluation to determine if it was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6. With regard to adjectival ratings, technical evaluators have wide discretion when assigning such ratings, given that the ratings reflect both objective and subjective judgments concerning the relative merits of different proposals and their ability to meet the agency's needs. Interstate Gen. Gov't Contractors, Inc., B-290137.2, June 21, 2002, 2002 CPD ¶ 105 at 2. An offeror's disagreement with the agency's evaluation does not establish that the evaluation was unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

Akal first argues that the agency unreasonably assigned two weaknesses to its proposal under the recruiting/vetting subfactor based on the agency's determination that the firm's draft standard operating procedures (SOP) was "too general in nature" and "lacked sufficient detail" to support AKAL's technical narrative and explain the specific processes Akal would use to independently verify the CSO requirements in the SOW. AR, Tab 33, Supp. TEB Report at 3-4. Specifically, Akal contends that the agency's assessment of weaknesses for its draft SOP were not justified because the required information was included in Akal's technical narrative. The protester asserts that the RFP contemplated an integrated approach such that the technical proposal and draft SOP would be read and evaluated in a comprehensive fashion for purposes of evaluating this subfactor.

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<sup>12</sup> We note that although our decision does not specifically address all of Akal's and Walden's arguments, we have fully considered each of them, and with regard to the allegations not addressed herein, find that none provide a basis to sustain the protests.

We conclude that the agency's assessment was reasonable. As noted above, the RFP included separate requirements for the technical proposal and the draft SOP. The draft SOP was required to explain "the specific processes demonstrating how the offeror will realize [its] narrative." RFP at 6; COS/MOL (Akai) at 23. The record reflects that the TEB concluded that Akai's draft SOP was not tailored to the RFP's CSO requirements, and did not contain sufficient detail regarding the specific processes to demonstrate how Akai would realize the approach set forth in its technical proposal. AR, Tab 33, Supp. TEB Report, at 3-4. For example, the TEB explained that Akai's draft SOP "did not explain the specific process to independently verify a candidate's law enforcement certification or experience to insure it meets the [CSO qualification] requirements." Id. at 3. The TEB also noted that although "the medical exam process was summarily discussed in the narrative" of Akai's technical proposal, it was "omitted from the draft SOP entirely." Id. Although the protester contends that the agency should have considered the information provided in its technical narrative when evaluating its draft SOP, as noted above, the solicitation provided that the draft SOP was required to explain how the offeror would realize the narrative in its technical proposal. To the extent the protester contends that its proposal submission was sufficient or should have been interpreted differently, the protester's disagreement with the agency's evaluation provides no basis to sustain the protest. Ben-Mar Enters., Inc., supra, at 7. In any event, during the agency's reevaluation, the TEB Chair noted that "even if [the generic nature of Akai's draft SOP] were not deemed a weakness, [the awardee's] technical proposal is still technically superior for the added benefits provided by [the awardee] (and unmatched by Akai)." AR, Tab 41, SSRM at 4, n.1. On this record, we find no basis to sustain the protest.

Akai next challenges the agency's failure to credit its proposal with a significant strength under the recruitment/vetting subfactor. As relevant here, the RFP required that offerors explain how their proposed recruiting programs and vetting methods would "independently verify and filter potential applicants" and provide qualified court security officers, "maximizing quality while minimizing delays."<sup>13</sup> RFP at L-6.

In response to this requirement, Paragon's proposal stated, in relevant part:

Paragon has already [DELETED]. This includes [DELETED]. This [DELETED] further reduces the risk to the USMS of long delays in [DELETED].

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<sup>13</sup> Akai's initial protest also argued that the agency failed to properly assess two additional significant strengths to its proposal under the recruitment/vetting subfactor for its operating style assessment, and multi-layered approach to vetting. In responding to the agency report, however, Akai withdrew these arguments. Akai's Comments at 21 ("Akai respectfully withdraws its arguments concerning these now-recognized areas of significant strength.").



AR, Tab 11, Paragon Tech. Proposal at 8. In evaluating Paragon’s proposal under the recruitment/vetting subfactor, the TEB assessed a significant strength for the offeror’s approach to “leverage [DELETED] to quickly fill vacancies.” AR, Tab 33, TEB Supp. Report at 8.

Akal argues that its proposal was also entitled to a significant strength because it offered a benefit similar to the benefit offered by Paragon’s proposal. Specifically, the protester points to several statements in its proposal, which it asserts, show that it is “currently vetting, hiring, and training personnel for service in these districts as the incumbent.” Akal’s Comments at 19; AR, Tab 10, Akal Tech. Proposal, at 7.<sup>14</sup> In this regard, the protester, in essence, argues that its demonstrated experience recruiting and vetting qualified CSO candidates into the program in the relevant districts presented the same benefits to the agency as Paragon’s proposed approach to “leverage [DELETED] to quickly fill vacancies.”

Based on our review of the record, we find nothing unreasonable about the agency’s evaluation. As noted above, under this element, the solicitation stated that the agency would evaluate each offeror’s methods for providing qualified court security officers, including approaches “maximizing quality while minimizing delays.” RFP at L-6. Thus, the RFP clearly advised offerors that the agency was seeking recruitment and vetting approaches that “minimized delays.” While the protester’s proposal presented an approach based on recruiting and hiring CSOs in the pertinent judicial districts (and touted the volume of CSOs it has been successful in vetting and recruiting as the incumbent), the awardee’s proposal presented a recruitment approach based, in relevant part, on [DELETED], as a way to quickly fill vacancies once they arise. Considering that the agency was seeking approaches that “minimized delays,” we do not find it unreasonable that the TEB assessed a significant strength to Paragon’s proposal, but not the protester’s.

Akal next challenges the agency’s evaluation under the training and qualifications program subfactor, arguing that the agency improperly failed to assess significant strengths to its proposal for the following two items: requiring an 80 percent passing score on the 50-question written proficiency exam, and having a state accredited, in-house training program. Akal contends that, because the agency assessed significant strengths to Paragon’s proposal for offering these solutions, Akal’s proposal, which the protester asserts also offered these solutions, merited the same significant strengths.<sup>15</sup> The agency contends, with regard to these issues,

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<sup>14</sup> Specifically, Akal’s proposal stated the following: “Akal continues to recruit and vet fully qualified CSO candidates into the program, hiring [DELETED] over [DELETED],” and “Akal’s CSO Recruiting and Applicant Vetting program successfully hired [DELETED] new CSOs, across [DELETED], over [DELETED].” AR, Tab 10, Akal Tech. Proposal, at 7.

<sup>15</sup> Akal also argues that the agency failed to properly acknowledge and credit Akal’s proposal under the training/qualifications subfactor for ten aspects of its proposal  
(continued...)

that it reasonably evaluated the information in Akal's proposal, and concluded that these aspects of the protester's proposal did not exceed the requirements of the RFP such that they merited significant strengths. For the reasons discussed below, we conclude that the agency evaluation of Akal's proposal was reasonable.

As noted above, under the training and qualifications program subfactor, the RFP required that offerors explain how their proposed training and qualifications program would be utilized to strengthen the overall USMS court security officer training program. RFP at L-7. In addition, offerors were required to provide the following documents as attachments to their proposals: draft training plan, draft sample lesson plan, and narrative statement addressing compliance with various training requirements. Id. As relevant here, for the draft training plan, the solicitation provided that offerors must "acknowledg[e] all the training and qualification requirements and all training administration." One of the training and qualification requirements for the court security officers involved an examination during orientation. Specifically, the solicitation provided the following:

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that the protester asserts should have been seen as strengths. The supplemental agency report specifically addressed each of the ten aspects raised by the protester. See Supp. COS/MOL (Akal) at 17-19. For example, for five of the aspects, the contracting officer explains that in the reevaluation, the TEB, in fact, assessed significant strengths to Akal's proposal under this subfactor for Akal's approach. See AR, Tab 33, TEB Supp. Report, at 5; Supp. COS/MOL (Akal), at 17-19. With regard to the remaining five aspects, the contracting officer explains, with specific citations to the statement of work, that those aspects simply complied with the RFP's statement of work requirements, and therefore, were not considered significant strengths. See Supp. COS/MOL (Akal) at 17-19. In its supplemental comments, however, the protester merely argues that "[t]he record demonstrates that each of these aspects of Akal's protest warranted a strength," and that "[w]hile the Agency's re-evaluation acknowledged certain protest allegations it did not address these." Akal Supp. Comments at 11-12. The comments further added that "[i]nstead, [the agency] focused on selectively addressing issues that would serve to buttress its underlying award decision," and that "[t]he Agency's failure to give objective consideration to these issues and assign them strengths constitutes unequal treatment." Id. On this record, we find that Akal abandoned its challenge regarding the strengths that it did not specifically address in its supplemental comments. Where an agency provides a detailed response to a protester's assertions and the protester fails to rebut or otherwise substantively address the agency's arguments in its comments, the protester provides us with no basis to conclude that the agency's position with respect to the issue in question is unreasonable or improper. IntegriGuard, LLC d/b/a HMS Fed.--Protest & Recon., B-407691.3, B-407691.4, Sept. 30, 2013, 2013 CPD ¶ 241 at 5; Israel Aircraft Indus., Ltd.--TAMAM Div., B-297691, Mar. 13, 2006, 2006 CPD ¶ 62 at 6-7.

The examination shall consist of at least 50 questions and include all subject areas covered during the Phase I Orientation. A passing score of 70% is required to perform on the contract.

RFP, SOW § C.12.3.4.

In responding to this qualification requirement, Paragon's draft training plan explained its approach to the examination as follows:

Prior to attending Phase II, the [court security officer] will be retested against the Phase I training by retaking the [Learning Management System] academic test and if the test results are less than [DELETED] percent correct, remediation will be required. [DELETED].

AR, Tab 11, Paragon Tech. Proposal, attach. B, Draft Training Plan at B-7. The TEB assigned Paragon's proposal a significant strength for "[r]equir[ing] an [DELETED]% passing score on the 50-question writing proficiency exam, as reflected in its draft training plan." AR, Tab 33, TEB Supp. Report at 9; COS/MOL (Akal) at 28.

Akal asserts that it proposed [DELETED]. In support of this position, the protester points to a table in its draft quality control plan, which was included as an attachment to its proposal in support of technical subfactor 3 (quality assurance/quality control plan), which states with regard to training: "[Court security officers] pass each stage with [DELETED]% or better." Akal Protest at 25 (citing AR, Tab 10, Akal Tech. Proposal, attach. 6, at 6-7).

The agency responds that Akal did not receive a similar strength as Paragon because the TEB found that, while Akal's "Quality Control performance metric indicates [an] [DELETED]% score to pass," its "technical proposal and Draft Training Plan identifies the 70% passing score requirement." AR, Tab 33, TEB Supp. Report at 5. In this regard, both Akal's proposal and draft training plan stated: "Each CSO must attain minimum passing score of 70% or be required to attend remedial training and retest to attain a passing score." AR, Tab 11, Paragon Tech. Proposal, at 2-21; attach. 2, at 2-21. The agency notes that the TEB indicated this inconsistency in Akal's proposal as an area requiring possible clarification, and contends that, because of this ambiguity in Akal's proposal, its decision not to assess a significant strength to Akal's proposal was reasonable.

Akal acknowledges that its draft training plan identified a 70 percent threshold, but contends that this statement was a reference to the SOW requirement (which was 70 percent). Akal's Comments at 19-20. Akal asserts that, in contrast, its quality control plan clearly indicated that [DELETED] percent was required for passing.

Based on our review of the record, we conclude that the agency's evaluation was reasonable. Although Akal argues that the agency's evaluation improperly failed to credit its proposal for the statement indicating that court security officers "pass each

stage with [DELETED]% or better,” we think the agency reasonably concluded that this statement conflicted with the other statements in Akal’s proposal, and therefore, created, at best, an ambiguity regarding the protester’s test score requirements. See Phillips & Jordan, Inc., B-411551, Aug. 25, 2015, 2015 CPD ¶ 273 at 5 (proposal containing conflicting provisions rendered proposal ambiguous). On this record, we find no basis to sustain the protest.

Akal next contends that its proposal merited a strength under the training and qualifications program subfactor, for Akal’s state-accredited in-house training program. Specifically, Akal argues that the agency’s evaluation reflected unequal treatment because the agency credited Paragon’s proposal for proposing an [DELETED] training program,<sup>16</sup> but did not credit Akal’s proposal for an instructor training plan, which the protester asserts, was also already accredited and established with a federal law enforcement agency. For the reasons discussed below, we find no merit to the protester’s argument.

As relevant here, Paragon’s proposal stated the following:

Paragon’s Training Program is bolstered by [DELETED], as well as our [DELETED].

AR, Tab 10, Paragon Tech. Proposal, at 2-27. The TEB assessed a significant strength to Paragon’s proposal for “[DELETED].” AR, Tab 33, TEB Supp. Report, at 9.

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<sup>16</sup> Akal also argues that the agency erred in assessing this significant strength to Paragon’s proposal because the evaluators identified [DELETED] as an issue for clarification, which was never resolved. As relevant here, the record reflects that the TEB noted the following regarding Paragon’s proposal: “What is the estimated time to receive [DELETED] for Private Security Instructors?” AR, Tab 33, TEB Supp. Report, at 10. As the contracting officer explains in response to the protest, however, this statement referred to the status of the specific instructor training course for private security instructors, rather than to Paragon’s overall training program. Supp. COS/MOL (Akal) at 16. The contracting officer’s statement is supported by the text of Paragon’s proposal which, as noted above, clearly stated [DELETED].” AR, Tab 10, Paragon Tech. Proposal, at 2-27. Accordingly, we find no merit to the protester’s argument. Akal raises several similar challenges regarding other strengths assessed to Paragon’s proposal under the technical factor, which the protester contends are improper because they concern aspects of Paragon’s proposal that had been previously identified by the TEB as requiring clarification. While we do not discuss all of the protester’s arguments in detail, we have fully considered each of them, and conclude that none provide a basis to sustain the protests.

Akal contends that its proposal similarly “highlighted [Akal’s] already-established relationship with a federal law enforcement agency.” Akal Protest at 25. Specifically, Akal’s draft training plan stated the following:

Delivered by experienced, senior instructors, the [instructor development training program] is designed and developed with a foundation of general instructor skillsets, as contained in the Federal Law Enforcement Training Center (FLETC) Basic Instructor Training Program, [DELETED].

AR, Tab 10, Akal Tech. Proposal, attach. 2, at 2-27.

The agency argues that the above-quoted statement from Akal’s proposal does not reflect a relationship between Akal and FLECTC, nor evidence an already-established instructor training course with FLETC, as the protester asserts. Supp. COS/MOL (Akal) at 16-17. Rather, the agency contends that this statement indicates only that “Akal’s program was designed and developed based on the FLETC program.” Supp. COS/MOL (Akal) at 17.

Based on this record, we find nothing unreasonable about the agency’s evaluation. Although the protester maintains that Akal’s proposed instructor training plan is already accredited and based on an established relationship with a federal law enforcement agency, the protester has failed to identify where in its proposal it demonstrated or addressed this specific aspect of its training program. It is an offeror’s burden to submit an adequately written proposal with sufficiently detailed information to clearly demonstrate the merits of its proposal; an offeror risks rejection of its proposal if it fails to do so. See Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6. To the extent the protester contends that its proposal submission was sufficient or should have been interpreted differently, the protester’s disagreement with the agency’s evaluation provides no basis to sustain the protest. Ben-Mar Enters., Inc., supra.

#### Disparate Treatment

Finally, Akal and Walden challenge the agency’s evaluation of proposals under the recruitment program/vetting applicants subfactor, arguing that the agency failed to evaluate the offerors’ proposals equally with regard to their proposed approaches to medical exams, and operating style assessments.

As noted above, the agency found Paragon’s proposal technically superior to Akal’s and Walden’s proposals based on three solutions proposed by Paragon under this subfactor. With regard to two of the solutions, the protesters contend that their proposals included similar solutions, and that the agency’s failure to similarly credit

their proposals for their proposed solutions demonstrates unequal treatment.<sup>17</sup> The agency asserts that it did not evaluate the offerors unequally because the protesters' proposals either lacked sufficient detail to support their proposed solutions, or any benefits offered were not equal to those offered by Paragon's proposal. As discussed below, we conclude that the agency evaluated the offeror's proposals on an equal basis in accordance with the RFP.<sup>18</sup>

As discussed above, the RFP instructed offerors to describe their processes for recruiting and vetting CSO applicants in order to "independently verify and filter potential candidates and provide qualified CSOs, maximizing quality while minimizing delays." RFP at L-6, M-4.

With regard to the medical exam process, Paragon proposed [DELETED], and stated that it would remove from consideration the candidates with [DELETED]. AR, Tab 11, Paragon Tech. Proposal, at 11. According to Paragon's proposal, the [DELETED] will address "any issues that require further clarification," which "eliminate[s] the necessity for requests for clarification during the actual approval process." Id.

The TEB assigned Paragon's proposal a rating of excellent under this technical subfactor, and assessed a significant strength for its proposed approach to "[DELETED]." AR, Tab 33, Supp. TEB Report, at 7-8. The TEB also noted that Paragon "will employ [DELETED] to provide [DELETED]." The TEB explained that Paragon will be able to [DELETED]." Id. The TEB found that the "specific benefit" to the program in "having [DELETED]" was the reduction in [DELETED]. AR, Tab 43, SSDM, at 2; Tab 33, TEB Report, at 7. In addition, the TEB concluded that Paragon's approach will "reduce the administrative burden on the Government to [DELETED]." Id. The TEB found that Paragon's medical exam process was "both detailed and supported by the draft SOP." Id.

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<sup>17</sup> Akal also argues that, because the third solution proposed by Paragon relates to "incumbent employees" rather than "applicants," the agency improperly credited Paragon under the recruitment/vetting subfactor, and instead, should have credited Paragon under one of the other two technical subfactors. Akal's Comments at 12. To the extent Akal's assertion may be correct, however, the protester has failed to demonstrate how it was prejudiced by the agency's evaluation in this regard, considering that it has not asserted, or demonstrated, that it proposed a similar approach under either of the other two technical subfactors.

<sup>18</sup> In addition to the issues discussed above, Walden also argues that, based on the number of significant strengths it received under the other subfactors, it should have received higher adjectival ratings. To the extent Walden contends that the agency failed to adequately consider the strengths assessed to Walden's proposal under the other technical subfactors, the protester's disagreement with the agency's evaluation provides no basis to sustain the protest. Ben-Mar Enters., Inc., supra.

Akal and Walden contend that the agency's evaluation reflects unequal treatment because their proposals offered benefits similar to those offered by Paragon, but the agency failed to similarly credit their proposals.<sup>19</sup> Specifically, Akal states that its "[application tracking system] provides [DELETED], [which] results in [DELETED]." Akal's Comment's at 9, 11; AR, Tab 10, Akal's Tech. Proposal, at I-5. The protester asserts that this approach benefits the government by "reduc[ing] the likelihood of negative medical evaluations by [DELETED]." Id. In addition, Akal contends that its proposal noted significant timeliness benefits due to its fast and accurate medical screening. Id. at 9, 11; Akal's Tech. Proposal, at I-9.

Similarly, Walden asserts that it proposed "[DELETED]," and that this individual provides the same benefits to the agency as the awardee's approach to [DELETED]. Specifically, Walden explains that its [DELETED] serves to "facilitate the medical exam process." Id. Walden's Supp. Comments at 40; AR, Tab 9, Walden Tech. Proposal, at 13-14. Walden argues that these benefits are essentially the same as those noted by the TEB in finding Paragon's approach superior.

The agency responds that it specifically considered the approaches offered by Akal and Walden, but found their approaches to be lacking in comparison to Paragon's approach.

Based on this record, we find no merit to the protesters' allegations that the agency evaluated the offerors unequally. The record reflects that the agency considered the specific medical exam process proposed by each offeror, and in fact, assigned a significant strength to each of the protester's proposals for their respective medical exam process approaches. See AR, Tab 33, TEB Supp. Report, at 4 (assigning Akal a significant strength the recruitment/vetting subfactor for having a "[m]edical process established and detailed in the narrative),<sup>20</sup> AR, Tab 32, TEB Supp. Report

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<sup>19</sup> Walden does not challenge the agency's assessment of a strength to Paragon's proposal for its proposed approach to [DELETED]. Walden's Comments at 39-41.

<sup>20</sup> The TEB also noted that, while Akal discussed its proposed approach for the medical exam process in the narrative of its technical proposal, "the medical exam requirement . . . was omitted from the draft SOP entirely." AR, Tab 33, TEB Supp. Report, at 3. The protester contends that it was not required to address the medical exam process in its draft SOP because the medical exam requirement was not listed as one of the "minimum qualifications" in the pertinent provision of the SOW. As relevant here, the RFP specified that "[t]he offeror shall submit draft [SOPs] explaining the specific processes demonstrating how the offeror will realize their narrative." RFP at L-6. Considering that the RFP required that Akal "explain the specific processes demonstrating how [it] would realize [its] narrative," and that its narrative "addressed the medical exam processes," we find reasonable the agency's determination that Akal's draft SOP "lacked sufficient detail to support the

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at 12 (same for Walden). Despite finding strengths in these approaches, however, the record also reflects that the TEB concluded that the approach proposed by Paragon to [DELETED] was superior to the approaches proposed by the protesters. AR, Tab 43, SSDM, at 2; Tab 33, TEB Report, at 7. Id.

In addition, as the contracting officer explains, while the approaches proposed by the protesters, such as the use of a [DELETED], may help to “facilitate” the medical exam process, Paragon’s proposed [DELETED] approach, will “ensur[e] [DELETED].” Supp. COS/MOL (Walden), at 24. Significantly, the TEB also explained that “[DELETED] was offered by Paragon alone.” AR, Tab 35, TEB Supp. Comparative Analysis, at 2. Neither of the protesters disputes this statement.<sup>21</sup> On this record, we conclude that the protesters have failed to demonstrate that the agency’s evaluation was unequal, unreasonable, or otherwise improper. These protest allegations are denied.

## RECOMMENDATION

In sum, we sustain Walden’s protest challenge to the agency’s awards to Paragon for the 3rd and 4th Circuits because we find that the agency failed to provide Walden the opportunity to address adverse past performance information to which it had not previously had an opportunity to respond. We recommend that the agency give Walden the opportunity to address this adverse information; reevaluate Walden’s past performance including its response; and make a new source selection decision. We also recommend that the agency reimburse the protester’s reasonable costs associated with filing and pursuing its protest, including attorneys’ fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protester’s certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. 4 C.F.R. § 21.8(f).

The protest of Walden is sustained; the protest of Akal is denied.

Susan A. Poling  
General Counsel

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(...continued)

narrative and explain the specific processes” regarding Akal’s proposed medical exam approach. AR, Tab 33, Supp. TEB Report, at 3-4.

<sup>21</sup> Because, as noted previously, we the sustain the protest with regard to Walden’s past performance, and, as further explained, recommend that the agency allow Walden an opportunity to respond to its adverse past performance information, the agency’s implementation of our recommendation would necessarily require that the agency perform a new tradeoff determination and source selection decision. Accordingly, although the protesters argued that the agency’s tradeoff determination and source selection were unreasonable, we need not address those allegations here.