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Decision

Matter of: Torres-Advanced Enterprise Solutions, LLC

File: B-412755.2

Date: June 7, 2016

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Kathleen D. Martin, Esq., Department of State, for the agency.

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

DIGEST

Protest that agency misevaluated offerors' past performance is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Torres-Advanced Enterprise Solutions, LLC (Torres), of Falls Church, Virginia, protests the award of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts, under request for proposals (RFP) No. SAQMMA15R0282, issued by the Department of State for diplomatic security and protective services. The protester challenges the agency's evaluation of past performance.

We deny the protest.

BACKGROUND

On May 15, 2015, the Department of State issued the RFP, which sought proposals to provide diplomatic security and protective services in elevated high risk/high threat environments in order to strengthen the Bureau of Diplomatic Security's security and protective posture in a surge or long-term capacity. RFP §§ B.1, C.1. The RFP contemplated the award of multiple IDIQ contracts, referred to as the Worldwide Protective Services (WPS) 2 contracts, consisting of a base year and four option years.¹ RFP §§ B.2, B.4.1, F.2. The WPS 2 IDIQ contracts include both fixed-price and cost-reimbursable contract line item numbers (CLINs). RFP § B.2; COS ¶ 2.

The RFP provided for award on a best-value basis consisting of the following three evaluation factors: mandatory minimum requirements, past performance, and price. RFP § M.1.1. Non-price evaluation factors, when combined, were significantly more important than price. Id. The RFP provided for a phased evaluation. RFP § M.1.2. First, proposals would be evaluated on a pass/fail basis to ensure compliance with the mandatory minimum requirements. RFP §§ M.1.2, M.2. Next, the agency would evaluate offerors' past performance; and, finally, the agency would evaluate the offerors' proposed prices. RFP §§ M.1.2, M.1.3. The RFP stated that the agency intended to make award without discussions, but reserved the right to conduct discussions if necessary. RFP § M.1.1.

Of relevance here, with respect to past performance, offerors were required to solicit three prior customers to complete past performance questionnaires (PPQs).² RFP §§ M.2, L.11. Customers were required to rate the firm's performance as excellent, good, marginal, unacceptable, or neutral with respect to a variety of performance criteria that fell within four categories: (1) management ability and effectiveness, (2) quality, (3) cost/price, and (4) general.³ RFP, Attach. B, PPQ. After each performance criterion, references could provide a narrative comment. Id. References were also asked to answer the following question: "Given the

¹ The WPS 2 contracts are follow-on contracts to the WPS IDIQ contracts awarded in 2010. Contracting Officer's Statement (COS) at 6 n.2. Torres was awarded a WPS contract, but was not issued any task orders under the contract. Id.

² Customers were instructed to return the PPQ form directly to the contracting officer. RFP § L, PPQ, at 1; § L.11 at 12-13.

³ For instance, under the "general" category, references were asked to assign a rating for each of the following statements: (1) compliance with contract terms and conditions, (2) willingness to cooperate with and assist the customer in routine matters when confronted by unexpected difficulties, (3) business integrity and business conduct. RFP, Attach. B, PPQ, at 6.

opportunity, would your organization enter into another contractual relationship with this contractor in the future?” Id. at 6.

The RFP stated that the agency would evaluate the PPQs returned by the three customers solicited by the offerors, in addition to “data obtained from *any other source* including by not limited to: the Contractor Performance Assessment Reporting System (CPARS); similar systems of other Government departments and agencies; Defense Contract Management Agency (DCMA) data; interviews with program managers and contracting officers; and other sources.” RFP § M.2 at 4 (emphasis in original). In the event the agency obtained adverse past performance information, which had not been previously shared with the offeror, the RFP provided that the agency would give the offeror the opportunity to address such information. Id. at 4-5.

The RFP indicated that the agency would assign one of the following ratings to an offeror’s past performance: substantial confidence, satisfactory confidence, unknown confidence (neutral), limited confidence, or no confidence. RFP § M.2. Relevant here, a rating of no confidence was defined as “[b]ased on the offeror’s recent/relevant performance record, substantial doubt exists that the offeror will be able to successfully perform the required effort.” Id.

In response to the RFP, the agency received timely proposals from the protester and the following seven offerors: Aegis Defense Services, LLC (Aegis); Chenega Patriot Group, LLC (CPG); GardaWorld Government Services, Inc. (GardaWorld); Sallyport Global Holdings, Inc. (Sallyport); SOC, LLC; Sterling Operations, Inc. (Sterling); and Triple Canopy, Inc. COS ¶ 3.

In accordance with the RFP’s phased evaluation scheme, after concluding that all eight offerors met the minimum mandatory requirements, the agency evaluated the offerors’ past performance. Agency Report (AR), Tab 10, Award Recommendation, at 5; COS ¶ 9. In evaluating this factor, the technical evaluation panel (TEP) considered: (1) the PPQs submitted by three customers selected by the offerors; (2) CPARS reports obtained by the contracting officer from the Past Performance Information Retrieval System (PPIRS); and (3) PPQs obtained by the contracting officer from post contracting personnel. AR, Tab 10, Award Recommendation, at 7; COS ¶ 9.⁴ Regarding the CPARS reports, the contracting officer also included the offeror’s response, if any, from PPIRS. AR, Tab 10, Award Recommendation, at 7. See e.g., AR, Tab 6b, Torres CPARS. Regarding the PPQs obtained by the contracting officer, in order to obtain the most recent information, the contracting

⁴ The contracting officer also reviewed the agency’s Global Financial Management System (GFMS) to ascertain whether any of the offerors were currently performing Department contracts other than the WPS IDIQ contract or local security guard contracts. COS ¶ 12. This search yielded no information. Id.

officer asked regional security officers to complete PPQs for any offeror currently performing a “local” security guard contract, i.e., non-WPS security guard contract. AR, Tab 8, Torres Evaluation Notices (ENs), at 10; COS ¶¶ 13, 14. Only two offerors, Torres and Sterling, were performing local security guard contracts. COS ¶ 14.

As noted above, although Torres was a WPS IDIQ contractor, it had not been issued a task order. COS ¶ 20. Therefore, the agency evaluated Torres’s performance on local guard contracts. Id. Torres’s three selected customers provided PPQs on its behalf for Department of State contracts performed in Peru and Pakistan, and for a Department of Defense contract;⁵ and, the contracting officer received four PPQs from post contracting personnel pertaining to Torres’s local guard contracts in Panama, Curacao, Argentina, and Mozambique.⁶ Id. ¶¶ 14, 24, 68; AR, Tab 5, Torres Solicited PPQs. The agency excluded the PPQ pertaining to Torres’s Department of Defense contract because the rater did not observe Torres’s performance in the rated performance criteria. COS ¶ 19. See AR, Tab 5, PPQ No. 3. The remaining six PPQs were evaluated by the TEP, along with 16 CPARS reports and correspondence pertaining to the Department of State’s decision not to exercise option year two of Torres’s Argentina contract, including a cure notice that had been issued in April 2015, for a total of 23 past performance “inputs” determined to be relevant by the TEP. AR, Tab 7, Initial TEP Report. These 23 inputs, i.e., sources of past performance information, pertained to contracts performed in a number of different locations: Argentina, Burundi, Curacao, Iraq, Jordan, Mozambique, Pakistan, Panama, Paraguay, Peru, Slovakia, Uganda, and Zambia. Id.

⁵ The Department of Defense PPQ does not indicate the location of the performance. AR, Tab 5, Torres Solicited PPQs, PPQ No. 5.

⁶ The contracting officer explains that he solicited PPQs from these locations because there was no recent information in CPARS. COS ¶ 24. The most recent CPARS reports related to these locations were CPARS reports from 2013 pertaining to the contracts performed in Curacao and Mozambique. See AR, Tab 6b, CPARS Nos. 6, 20.

On October 8, the TEP rated the offerors' past performance ratings as follows:

Offeror	Rating
Aegis	Satisfactory Confidence
Sterling	[redacted]
CPG	[redacted]
Triple Canopy	Substantial Confidence
GardaWorld	[redacted]
Torres	No Confidence
SOC	Substantial Confidence
Sallyport	Substantial Confidence

AR, Tab 10, Award Recommendation, 7-8.⁷

With respect to Torres's past performance, the TEP summarized each of the 23 inputs of past performance information individually, providing a detailed description of the content of the document, noting both positive and negative ratings and comments. AR, Tab 7, Initial TEP Report. For each of the inputs, the TEP assigned one of the ratings listed in section M.2 of the RFP. Torres received two substantial confidence ratings, 13 satisfactory confidence ratings, two limited confidence ratings, and six no confidence ratings. See id.

When reviewed by location, the past performance information demonstrated that Torres performed poorly in five locations, [delete], with evaluators in these locations stating that they would not recommend Torres for similar requirements in the future [delete]. Id. at 5, 8, 10-11, 13; COS ¶¶ 78-80. This included one of the PPQs solicited by Torres as part of its past performance proposal. AR, Tab 6a, PPQ No. 1 ([delete]); COS ¶ 18.

After considering both positive and negative information, the TEP summarized its findings, in part, as follows:

The TEP's review of recent performance documents revealed several negative reviews, to include "Limited Confidence" ratings for contracts at the U.S. Embassy in [delete] and the U.S. Mission to [delete][,] as well as "No Confidence" ratings at the U.S. Mission to [delete], the U.S. Mission to [delete], the U.S. Mission to [delete], and the U.S. Mission to [delete], and in a second evaluation from the U.S. Embassy in [delete]. At five U.S. Diplomatic Facilities, to include [delete], the government representatives stated that they would not

⁷ In its agency report, the agency redacted past performance information pertaining to the three offerors whose proposals Torres did not challenge.

recommend Torres for similar requirements in the future [delete]. The TEP members note that these negative ratings are on contracts that are smaller and less complicated than the average WPS contract and substandard corporate management was not uncommon. Taking into account all of the information, both positive and negative, on the past performance of Torres, the recent and relevant negative past performance reviewed provided substantial doubt to the TEP that Torres can provide the services/products required by the WPS 2 solicitation.

AR, Tab 7, Initial TEP Report, at 1. The TEP further explained that “[t]he negative comments covered a wide range of performance criteria, but the vast majority were managerial and administrative shortfalls.” Id. The TEP noted, that “[t]hese managerial problems appear even on contracts that received ‘satisfactory’ ratings for the quality of the guards.” Id. at 2. The TEP concluded that “[l]ooking at Torres’ recent/relevant performance record as a whole, with both the positive and negative past performance, the multiple negative past performance ratings at multiple U.S. Embassies proved to the TEP that substantial doubt exists that the offeror will be able to successfully perform the required effort.” Id.

After evaluating the offerors’ past performance, the agency evaluated the offerors’ prices, including the price proposed by Torres. AR, Tab 10, Award Recommendation, at 9. All eight offerors’ prices were determined to be fair and reasonable; however, the agency noted some “concerns” with respect to price. Id. at 9-10.

As a result of the agency’s initial evaluation, the contracting officer concluded that discussions were necessary. Id. Discussion letters were sent to all offerors. Id. at 10-11. Of relevance to Torres’s protest, the agency provided Torres the opportunity to address, pursuant to Federal Acquisition Regulation (FAR) § 15.306(d)(3), adverse past performance information to which it had not previously had an opportunity to respond. Id. at 8; COS ¶¶ 30-34, 83, 88b; Tab 8, Torres ENs. Specifically, the agency asked Torres to respond to adverse information contained in the four recent PPQs relating to contracts performed in [delete]. AR, Tab 8, Torres ENs, at 4-8; COS ¶ 32. The agency also asked Torres to address correspondence pertaining to the government’s decision not to exercise option year two of its Argentina contract.⁸ AR, Tab 20, Argentina Correspondence, at 14; AR, Tab 8, Torres ENs, at 7-8; COS ¶ 84. To assist Torres in responding,

⁸ Although Torres had previously been provided an opportunity to respond to the cure notice pursuant to FAR clause 52.249-8(a)(2) as part of the administration of the Argentina contract, see AR, Tab 20, Cure Notice, at 3, in the TEP’s opinion, Torres’s response did not address many of the more serious issues. AR, Tab 8, Torres ENs, at 8; Tab 7, Initial TEP Report, at 12; COS ¶¶ 34, 84.

the agency's letter listed the PPQs by location/contract and provided the rating and a summary of the raters' comments for each adversely rated performance criterion. AR, Tab 8, Torres ENs.

Torres subsequently requested that the agency provide it copies of the four PPQs. Id. at 10. In response, the agency provided Torres the rater's comments extracted *verbatim* from the PPQs.⁹ Id. at 11-17. Torres provided a detailed response to the agency's ENs on November 10. See AR, Tab 6c, Torres Response.

The TEP reconvened over several days to review Torres's responses regarding its performance on contracts in [delete]. The TEP issued a second consensus report, in which the TEP summarized: (a) its initial findings, (b) Torres's responses, (c) the TEP's analysis of the responses, and (d) the TEP's justification for the final assigned rating. See generally AR, Tab 9, TEP Evaluation of Torres Response. The TEP performed this analysis for each adversely rated performance criterion listed in each of the four PPQs to which Torres had been asked to respond. Id. The TEP also analyzed Torres's response to the correspondence pertaining to the government's decision not to exercise the option year in its Argentina contract. Id. at 14-15.

As a result of this analysis, the individual rating for one of the inputs, i.e., a PPQ for the [delete] contract, changed from a rating of no confidence to a rating of unknown confidence. Id. at 13. The TEP's overall rating for Torres's past performance, however, did not change as a result of Torres's responses. Id. at 2. As the TEP explained, any of the negative inputs that were reviewed a second time alone "would create a 'low expectation' or 'substantial doubt' that Torres would be able to successfully perform the required work for the WPS 2 contract." Id.

On December 3, the TEP Chairman provided a final, summary report of the TEP's findings with respect to the past performance of the eight offerors. AR, Tab 21, Final TEP Report. Attached to the report were the final, consensus summary reports for each offeror. See e.g., AR, Tab 21, Final TEP Report, Attach. 8 (Torres).

⁹ It appears the only substantive information not provided was information that was not adverse to Torres and the identity of the rater.

The final evaluated prices are set forth below:

Offeror	Total
Aegis	\$2,804,634,000
Sterling Operations	\$2,911,391,742
CPG	\$3,536,704,749
Triple Canopy	\$3,666,294,805
GardaWorld	\$3,799,378,110
Torres	\$4,283,391,617
SOC	\$4,586,828,659
Sallyport	\$4,922,357,517

Protest, Attach. D, Unsuccessful Offeror Notice.

On February 10, the source selection authority (SSA) determined that awards should be made to all offerors other than Torres due to Torres's past performance rating of no confidence. AR, Tab 11, SSA Decision, at 10. Torres received a written debriefing letter on February 19, AR, Tab 23, Debriefing, and filed the subject protest on February 29.

DECISION

Torres challenges the Department of State's evaluation of its past performance and that of four of the awardees, Aegis, Sallyport, SOC, and Triple Canopy. The protester raises four main arguments. Protest at 1-2, 8-9. First, Torres argues that the agency ignored Torres's positive past performance on recent and relevant contracts, and instead, focused exclusively on inaccurate adverse information drawn from a handful of contracts. Second, Torres argues that the agency failed to conduct meaningful discussions. Third, Torres argues that the agency unequally and disparately evaluated its past performance in relation to the awardees' past performance. Finally, Torres argues that, as a result of these alleged errors, the agency's best-value analysis was fundamentally flawed. Although our decision does not address all of Torres's arguments in detail, we have fully considered each of them and find that none provides a basis to sustain the protest.

Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations because determining the relative merit of an offeror's past performance is primarily a matter within the agency's discretion. Cape Envtl. Mgmt., Inc., B-412046.4, B-412046.5, May 9, 2016, 2016 CPD ¶ 128 at 8. The evaluation of past performance, by its very nature, is subjective, and we will not substitute our judgment for reasonably based evaluation ratings; an offeror's disagreement with an agency's evaluation judgments, by itself, does not demonstrate that those judgments are unreasonable. Id. at 8-9. Agencies, however, may not engage in disparate treatment of offerors in the

evaluation of past performance. Apptis, Inc., B-299457 et al., May 23, 2007, 2008 CPD ¶ 49 at 17.

Torres's Past Performance

Torres contends that the agency unreasonably assigned Torres a past performance rating of no confidence, despite Torres's allegedly "extensive and excellent performance on numerous relevant and recent contracts." Protest at 1, 8. In this regard, Torres alleges that the agency failed to consider "any" positive past performance information or, in the alternative, failed to properly weigh the positive and negative past performance information. Torres also contends that the agency unreasonably rejected its explanations regarding its adverse past performance information. Finally, Torres alleges that the sources of information were unreliable. We find no merit to these arguments.

Consideration of Positive Information

First, Torres alleges that the agency failed to consider "any" of Torres' positive past performance information when assigning a no confidence rating to Torres, id. at 10, and, more specifically, that the agency failed to consider mitigating positive information in its possession that was "too close at hand" to ignore. Id. at 8, 10-11; Comments at 1-2. In particular, Torres references CPARS reports for its contracts in [delete], and a PPQ for its contract in [delete]. See Protest at 11-13 (citing Protest, Attachs. H, I, J, K, & M).

We have recognized that, in certain limited circumstances, an agency has an obligation to consider information bearing on the offeror's past performance when it is "too close at hand" to require offerors to shoulder the inequities that spring from an agency's failure to obtain and consider the information. See e.g., Affordable Eng'g. Servs., Inc., B-407180.4 et al., Aug. 21, 2015, 2015 CPD ¶ 334 at 13. Our Office has generally limited application of this principle to situations where the alleged "too close at hand" information relates to contracts for the same services with the same procuring activity, or information personally known to the evaluators. Exelis Sys. Corp., B-407111 et al., Nov. 13, 2012, 2012 CPD ¶ 340 at 22.

Here, the record does not support Torres's allegations. All three TEP reports describe, in great detail, Torres's positive performance on a number of efforts. See AR, Tab 7, Initial TEP Report; Tab 9, TEP Evaluation of Torres Response; Tab 21, Final TEP Report, Attach. 8. In fact, as noted above, the TEP assigned Torres a rating of satisfactory confidence for 13 of its past performance inputs and a rating of substantial confidence for two of its past performance inputs. AR, Tab 21,

Final TEP Report, Attach. 8. Moreover, TEP positively rated Torres's performance in eight of the evaluated locations.¹⁰ Id.

The record also shows that the agency considered the CPARS reports that Torres contends were "too close at hand" to ignore, see AR, Tab 6b, CPARS Nos. 1-2 ([delete]); 5, 8, 9 ([delete]); 20 ([delete]); 21 ([delete]); and that the TEP assigned Torres ratings of satisfactory confidence or substantial confidence for these inputs. AR, Tab 21, Final TEP Report, Attach. 8, at 3-4, 6-7, 12-13. With respect to the PPQ pertaining to Torres's contract in [delete], the record reflects that the agency did not consider this particular PPQ. See generally, id. Torres, however, provides no information whatsoever to establish that the agency knew or should have known of this PPQ. See Protest at 13. To the contrary, our review of the PPQ indicates that the PPQ was submitted by the rater to an individual within the Department of Defense in conjunction with solicitation No. W913FT-16-Q-0006, issued by the Department of the Army on February 29, 2016 for logistics support services for the Department of Defense's Security Cooperation Office (SCO) Colombia.¹¹ Protest, Attach. H. at 1. Accordingly, there is no evidence to suggest that the agency knew or should have known of the PPQ; thus, the protester has failed to establish the information was "too close at hand" to ignore.¹² For this reason, Torres's reliance on our prior decisions in DKW Communications, Inc., B-411182, B-411182.2, June 9, 2015, 2015 CPD ¶ 178, and Shaw-Parsons Infrastructure Recovery Consultants, LLC; Vanguard Recovery Assistance, Joint Venture, B-401679.4 et al., Mar. 10, 2010, 2010 CPD ¶ 77, is unavailing.

Weighing of Positive and Negative Information

Next, Torres argues, in the alternative, that, even if the agency did consider both positive and negative information, the agency placed too much emphasis on negative comments. In particular, Torres contends the agency failed "to consider Torres['] adverse past performance against the backdrop of its overwhelmingly positive body of past performance references, as required[.]" Comments at 2.

¹⁰ These locations were: [delete]. AR, Tab 21, Final TEP Report, Attach. 8.

¹¹ The PPQ was to be returned to an individual with a Department of Defense email address. Protest, Attach. H., at 1. Although the PPQ is undated, it was likely prepared and submitted sometime after the date the solicitation was issued, February 29, 2016, which is after the TEP completed the evaluation here.

¹² The agency, of course, did not ignore past performance information in its possession relating to Torres's State Department contract in [delete]. The record shows that the TEP considered three CPARS reports pertaining to this effort from 2013, 2014 and 2015, which were completed by the contracting officer and to which Torres provided comments. See AR, Tab 6a, CPARS Nos. 14, 17, 19; Tab 21, Final TEP Report, Attach. 8, at 9-10.

Torres argues that the adverse information relied upon by the agency constitutes “only a handful of negative ratings, in a few performance categories, under a limited number of contracts that are being performed under the most challenging of circumstances.” Protest at 10. Torres argues that the adverse information “cannot reasonably outweigh Torres’[s] extensive positive history[.]” Id. Rather, the “great mass of positive information” renders the agency’s rating unreasonable. Id. at 13.

Contrary to Torres’s contentions, the record demonstrates that the adverse past performance attributed to Torres was not comprised of a “handful” of ratings, in a “few” performance areas, under a “limited number of contracts.” Rather, the record shows that the TEP found Torres’s performance in five of 13 locations to be very poor. AR, Tab 21, Final TEP Report, Attach. 8, at 5, 8, 10-11, 13; COS ¶¶ 78-80.¹³ Raters evaluating these five contracts stated they would not recommend that a similar contract be awarded Torres in the future.¹⁴ AR, Tab 21, Final TEP Report, Attach. 8, Inputs Nos. 7, 13, 19, 20, 23. Notably, the TEP also found that some of these comments pertained to “contracts that are smaller and far less complicated than the average WPS contract[.]” Id. at 1.

Of course, the relevant consideration in assessing an agency’s past performance evaluation is not the number of positive versus negative ratings. The evaluation of proposals should not be based upon a simple count of strengths or weaknesses, but on a qualitative assessment of the underlying basis for the ratings. Addvetco, Inc., B-412702, B-412702.2, May 3, 2016, 2016 CPD ¶ 112 at 4. Here, after reviewing the TEP’s reports and the underlying past performance information, we find the agency’s analysis of Torres’s past performance to be thorough and balanced. To provide a representative example, in describing Torres’s performance

¹³ The contracting officer states that there were 12 locations evaluated, COS ¶ 78, with one location, Forward Operating Base (FOB) Shield, Iraq, excluded because it “did not meet the higher WPS standards.” Id. ¶ 75, 76. The record, however, appears to contradict this statement, as the TEP assigned a rating of satisfactory confidence to the CPARS report for FOB Shield. AR, Tab 21, Final TEP Report, Attach. 8, Input No. 18. See also COS ¶ 71 (acknowledging the same). The contracting officer’s characterization of the record does not alter our decision or render the underlying TEP evaluation unreasonable.

¹⁴ Moreover, as the TEP noted, Torres’s performance on efforts for which it received a positive rating of satisfactory confidence or substantial confidence was not “overwhelmingly positive,” as Torres contends. Comments at 2. See e.g., AR, Tab 21, Final TEP Report, Attach. 8, Input Nos. 1-2 ([delete]); Nos. 4, 6 ([delete]); No. 10 ([delete]); No. 11 ([delete]); No. 12 ([delete]); No. 14 ([delete]); Nos. 15, 17 ([delete]). [delete]. Id., Input No. 1.

on its contract in [delete], the TEP summarized a 2013 CPARS report and a 2015 PPQ as follows:

One of the two evaluations for the guard program at the U.S. Mission to [delete] (a CPARS report) rated Torres as 'Unsatisfactory' for 'Business Relations' and the other evaluation (a PPQ) rated the company as 'Unacceptable' for accurate and timely invoices, effective corrective actions, providing adequate resources to fulfill the contractual requirements, and compliance with contract terms and conditions.

AR, Tab 21, Final TEP Report, Attach. 8, at 1. The TEP further explained:

[delete]

Id., Input No. 8 ([delete]). Reviewing the 2015 PPQ, which was solicited by Torres from in-country personnel, the TEP noted that "the contract required multiple modifications (eleven in total, with another in the works) that were necessary adjustments so that the contractor could meet the basic contractual standards." Id., Input No. 7 ([delete]). Additionally, "[t]he quality of services provided to the government has been inconsistent and contract compliance has been inconsistent." Id. The TEP further noted that Torres had been rated as unacceptable in providing accurate and timely invoices and that the rater would not enter into another contractual relationship with Torres. Id.

In response to the PPQ, Torres contended, among other things, that the multiple modifications were necessary due to changes in [delete] gun control laws, which was an issue beyond Torres's control. AR, Tab 6c, Torres Response, at 119-20. The TEP disagreed, finding that Torres's explanation did not correspond to the rater's comments in the CPARS report--comments that were not rebutted or addressed by Torres at the time. AR, Tab 9, TEP Evaluation of Torres Response, at 4 (citing Tab 6b, CPARS No. 7). As a result, the TEP assigned a rating of limited confidence to the CPARS report and a rating of no confidence to the PPQ.

In its protest, Torres continues to assert that the issues relating to weapons licensing is "wholly outside Torres' control." Protest at 14-15. Torres's challenge in this respect, however, represents mere disagreement with the agency's evaluation, which, without more, does not establish that the agency acted unreasonably. Trade Eastern, Inc., B-411857, Nov. 9, 2015, 2015 CPD ¶ 350 at 3.

As noted above, the TEP determined that any one of Torres's negative inputs would create substantial doubt that Torres would be able to successfully perform the WPS 2 contract. Although we do not discuss each of the negative inputs, we agree with the agency's conclusion, especially because, as the contracting officer explains, "the WPS program is critical to ensure the lives, safety and security of

[U.S. Government] personnel in some of the highest threat areas[.]” COS ¶ 74. Torres’s argument that the adverse information “cannot reasonably outweigh Torres’[s] extensive positive history[.]” Protest at 10, represents mere disagreement with the agency’s judgment. In assessing past performance, an agency may reasonably assign a no confidence rating despite the fact that portions of the offeror’s prior performance may have been rated satisfactory or better.

Torres’s EN Reponses

Torres also argues that the agency unreasonably failed to consider its responses to the adverse information. Comments at 2. Torres alleges that “the Record confirms that the Agency failed to reasonably consider Torres’ responses and did not raise Torres’ score in a single instance.” Id. at 9 (citing AR, Tab 9, TEP Evaluation of Torres’s Response). To the contrary, the record demonstrates that the agency methodically and thoroughly considered Torres’s responses rating-by-rating in a 16-page document. See AR, Tab 9, TEP Evaluation of Torres’s Response.

To provide a representative example, the agency asked Torres to respond to the following comment provided by a Department of State Consul General pertaining to Torres’s contract in [delete]:

One of the major deficiencies by the contractor is the accuracy and timeliness of the invoices (period July 2014 – January 2015). For example, the contractor omitted major line items for MONTHS, used incorrect rates, template failures resulting in wrong amounts etc. This required a great deal of staff time to identify the mistakes, work with the financial office on resolving obligated funds, and created major budgeting issues. And despite multiple emails from the Consulate, Torres HQ took their time to resolve the issues. Post is still not confident that the invoicing was done correctly.

AR, Tab 6a, PPQ No. 5, at 5; Tab 8, Torres ENs, at 13. In discussions, Torres responded that it “is not aware of any recent invoicing issues in [delete] pertaining to accuracy and timeliness and believes that this comment is not accurate.” AR, Tab 6c, Torres Response, at 126. In evaluating Torres’s response, the TEP noted the information provided by Torres was:

. . . in direct contradiction to the Consul General stating that there are “major invoicing issues”. The [Bureau of Diplomatic Security, Office of Overseas Protective Operations] desk officer and Acquisitions Management Assistant assigned to this contract both confirmed the information provided by the Consul General and stated that Torres was aware of the issues; consequently, the TEP considers the report by the Consul General to be accurate and does not consider the response by Torres a mitigation of this information.

AR, Tab 9, TEP Evaluation of Torres Response, at 7. In its protest, Torres does not dispute this evaluation, but presents older evidence from 2012-2013 pertaining to the Torres's contract in [delete] and evidence from other contracts indicating that Torres submitted timely and accurate invoices. Comments at 5. Torres contends that this "strong history of positive performance" should outweigh the adverse comments. Id. at 4. Torres's arguments, in this respect, reflect mere disagreement with the agency's analysis and do not render the agency's evaluation unreasonable.¹⁵

Moreover, Torres is mistaken when it states that the agency did not raise Torres's score in a single instance. The TEP changed the rating for the PPQ pertaining to Torres's [delete] contract from no confidence to unknown confidence (neutral).¹⁶ AR, Tab 9, TEP Evaluation of Torres Response, Input No. 20 ([delete]).

¹⁵ In contending that the agency ignored positive information, Torres also claims that the agency's discussion of Torres's positive past performance information is a mere "regurgitation" of positive ratings, "with ***not a single mention*** of the positive narratives accompanying them." Comments at 3 (emphasis in original). This claim is unsupported by the record, which demonstrates numerous instances in which the TEP documented a rater's positive comments. See AR, Tab 21, Final TEP Report, Attach. 8, Input Nos. 1, 2, 3, 5, 6, 10, 14, 15, 17. For example, in considering a PPQ pertaining to Torres's contract in [delete], the TEP discussed the following positive comment from the rater:

[T]he Regional Security Officer (RSO) and local [delete] ([delete]) leadership in [delete] have an excellent business relationship (and the) [delete] program manager and Guard Force Commander are exceptionally responsive to the needs of the Mission, as is the local [delete] representative[.]

Id., Input No. 1.

¹⁶ The TEP explains the basis for the change as follows:

The tone of the questionnaire that was filled out by the [rater], and the vitriol from Torres, show that there is a significant issue between the Embassy and Torres; however, due to the extreme disdain between both Torres and the Local Guard Force Coordinator, the TEP concluded that there is no way of determining the validity of any of the claims being made by either party. The TEP does not believe a meaningful confidence assessment can be reasonably assigned based solely off of the PPQ, resulting in a change to the rating of "Unknown Confidence (Neutral)."

(continued...)

Sources of Information

Finally, Torres questions the reliability of the source of the adverse past performance information, alleging that the agency unreasonably relied upon isolated, negative comments provided in PPQs by agency officials located in Washington, D.C., and ignored positive comments provided by agency officials located in-country, including the Diplomatic Security Office personnel, who observed Torres's performance on a daily basis. Protest at 1-2, 7, 10. Torres further alleges that "all of the adverse information for contracts being performed around the world derives from a very small number of reviewers who lack personal knowledge of Torres'[s] in-country performance." Id. at 8.

Torres also raises allegations of misconduct involving an agency contracting officer, who, although not the contracting officer for the WPS 2 procurement, appears to have been involved in the administration of Torres's contracts at the embassies in Argentina and Uganda. See id. at 2-3, 9-10, 19; AR, Tab 6b, CPARS No. 22. Torres alleges, among other things, that its no confidence rating "is due, in no small part, to [this contracting officer's] actions, including [the contracting officer's direction] that the past performance questionnaires ('PPQs') relating to Torres' performance not be filled out by the Agency's in-country personnel -- those most knowledgeable about the challenges faced by Torres and the quality of its past performance -- but instead that the PPQs be forwarded to [this contracting officer's] office in Washington." Protest at 3. See also id. at 9 (claiming that "[i]n-country personnel have informed Torres that the Agency's contracting officer did not allow in-country personnel (who have direct, personal knowledge of Torres' contract performance) to fill out PPQs on Torres' behalf.").

The record demonstrates Torres's allegations to be unfounded. Of the six PPQs considered by the agency, only two were completed by agency personnel stationed at Department of State headquarters: (1) the PPQ for Torres's performance on a task order in [delete] was completed--at Torres's request--by the contracting officer's representative for the task order, who spends the majority of his time in-country;¹⁷ and (2) the PPQ for Torres's performance on a task order in [delete] was completed by the contracting officer for the task order. AR, Tab 6a, PPQ Nos. 2 & 3; COS ¶ 68. We conclude that both individuals possessed personal knowledge of Torres's performance on the respective contracts. Furthermore, the agency assigned a rating of satisfactory confidence to these two PPQs. AR, Tab 21, Final TEP Report, Attach. 8, Input Nos. 1 & 3. Accordingly, contrary to Torres's allegations, the PPQs relied upon by the agency in assigning the rating of

(...continued)

AR, Tab 9, TEP Evaluation of Torres Response, Input No. 20, at 13.

¹⁷ This PPQ was one of the three solicited by Torres. AR, Tab 5, Torres Solicited PPQs; COS ¶ 68.

no confidence were not provided by personnel located at headquarters. Rather, the adverse information in the PPQs was provided entirely by in-country personnel, including a PPQ for Torres's performance on a task order in [delete] completed--at Torres's request--by the Senior Regional Security Officer at the embassy in [delete]. AR, Tab 6a, PPQ No. 1.

Importantly, none of the PPQs were completed by the contracting officer who was involved the administration of Torres's contracts at the embassies in Argentina and Uganda, nor is there any evidence that any of the PPQs were completed at this contracting officer's direction. See generally, AR, Tab 6a, PPQs; COS ¶¶ 25, 69. Moreover, as the WPS 2 contracting officer points out, "[p]rotester fails to provide names of individuals that were not allowed to provide references [and] I am not aware of any individuals that this statement applies to." COS ¶ 67. In sum, the record demonstrates that the agency's evaluation of Torres's past performance was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations.

The Agency Conducted Meaningful Discussions

Torres second main argument is that the agency failed to conduct meaningful discussions pertaining to its past performance. Protest at 2, 7, 23, 24-25. Torres contends that: (1) it was provided with ENs that "consisted of short, generic phrases devoid of any context or detail[;]" and (2) in assigning weaknesses, the agency relied upon information that was not identified during discussions, specifically adverse information pertaining to Torres's contract in [delete] and three significant weaknesses relating to its contracts in [delete]. Id. at 7, 23-25.

As a general matter, where an agency engages in discussions, it must afford all offerors in the competitive range an opportunity to engage in meaningful discussions. iGov et al., B-408128.24 et al., Oct. 31, 2014, 2014 CPD ¶ 329 at 8. The FAR requires agencies conducting discussions with offerors to address, "[a]t a minimum . . . deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond." Id. (citing FAR § 15.306(d)(3)). Here, the agency explains that it provided Torres an opportunity to respond to adverse information to which Torres had not yet had an opportunity to respond. Legal Memo. at 14-15; COS ¶¶ 34, 83-84, 88a. The record supports the agency's contention.

Weaknesses pertaining to Torres's contracts in [delete] were based upon CPARS reports, to which Torres had already provided a response. See AR, Tab 6b, CPARS Nos. 7, 17, 22. Thus, the agency was not required to provide Torres further opportunity to respond to the information. With respect to the weakness pertaining to pricing and invoicing on Torres's contract in [delete], Torres had not previously been provided an opportunity to address this information because it was derived from a PPQ obtained by the contracting officer during the pendency of the

procurement. AR, Tab 23, Debriefing, Weakness No. 6, at 5; Tab 6a, PPQ No. 5; COS ¶¶ 32. Despite Torres's contentions, however, the record shows that this weakness was raised during discussions and that Torres responded to the allegation.¹⁸ AR, Tab 8, Torres ENs, at 5, 13; Tab 6c, Torres Response, at 126.

Awardees' Past Performance

Torres's third main argument is that the agency unreasonably and disparately assigned higher past performance ratings to four other awardees, Aegis, Sallyport, Triple Canopy, and SOC. Protest 2, 8, 26-28; Comments at 13-21. In this regard, Torres alleges that the agency failed to consider information "too close at hand" demonstrating that these awardees had significant past performance issues. Protest at 8. We find no basis to question the agency's evaluation of the awardees' past performance.

Evaluation of Aegis

Torres alleges that the agency failed to consider a 2014 Department of State Office of the Inspector General (OIG) report investigating a 2012 Aegis task order under the predecessor WPS IDIQ contract for security services at the U.S. Embassy in Kabul, Afghanistan. Protest at 26; Comments at 19-20. The OIG report found, among other things, that Aegis failed to keep required records, failed to properly support its invoices with time and attendance records, and may have received unsupported payments. See Audit of Bureau of Diplomatic Security Worldwide Protective Services Contract Task Order 10 Kabul Embassy Security Force, October 2014, available at: <https://oig.state.gov/system/files/aud-mero-15-03.pdf> (last visited June 7, 2016) (hereinafter OIG Report). Torres contends that the agency's assignment of a rating of satisfactory confidence is indefensible in light of the OIG's report and contends that the invoicing problems identified by the OIG report relating to Aegis's contract in Afghanistan are similar in nature to those Torres experienced relating to its contracts in [delete]. Protest at 26.

In response, the agency contends that "Torres has not demonstrated that any member of the source selection team knew or should have known about the OIG report."¹⁹ Legal Memo. at 21-22. However, the OIG's report investigated the

¹⁸ Moreover, despite Torres's complaint that it would have preferred more information regarding the comments in the four PPQs to which it had not yet responded, the record demonstrates that the agency transmitted the PPQ comments *verbatim* to Torres. See AR, Tab 8, Torres ENs, at 11-17.

¹⁹ The contracting officer represents, "I can confirm that this information was not considered by the TEP, myself or the SSA." COS ¶¶ 92, 40. The contracting officer further explains that "[b]ecause there was ample past performance information in the record . . . the Department did not look for OIG reports." COS ¶¶ 40, 92.

contract management of the Bureau of Administration, Office of Logistic Management, Office of Acquisitions Management (A/LM/AQM), which is the procuring activity here. OIG Report at 1; RFP at 1 (Block 7). Moreover, the information in the OIG report relates to a contract for the same services as the RFP here, because it pertains to AQM's management of Aegis's task order under the WPS contract, which is the predecessor to the WPS 2 contract. OIG Report at 1; COS at 6 n.2. Further, the point of contact and one of the drafters of AQM's response to the draft OIG report was the SSA for this procurement. OIG Report at 23, 27; AR, Tab 11, SSA Decision, at 10. Accordingly, the SSA was personally aware of the OIG's investigation and draft report, and should have been aware of the final report. Other members of the procurement team may also have been personally aware of the OIG report because an unnamed OIG report pertaining to WPS contracts in Afghanistan is discussed in the acquisition plan for this procurement. AR, Tab 3, Acquisition Plan at 3, at 3.

The agency argues that Torres was not prejudiced by the agency's failure to consider the OIG report. Legal Memo. at 22. We agree. The contemporaneous evaluation record shows that, in evaluating Aegis's performance on the task order in Kabul, the agency was aware of, and considered, the performance problems Aegis experienced on that task order.

With respect to the OIG's finding that Aegis failed to maintain required records and to properly support its invoices, the OIG observed that, in general, the vast majority of problems occurred within the first six months of the task order, i.e., latter part of 2012, and that, by the time the OIG completed its underlying investigation in February 2014, issues had "improved significantly." OIG Report at 6-7. This conclusion is bolstered by the more recent past performance information obtained by the contracting officer and considered in evaluating Aegis's proposal here. For instance, the TEP considered and discussed two recent PPQs, dated July 2015 and September 2015, in which the raters provided positive comments, almost exclusively, with respect to Aegis's recent performance of security requirements on the same task order reviewed by the OIG. AR, Tab 21, Attach. 1 (Aegis), at 2-3; Tab 13, PPQ Nos. 1 & 4. In particular, the raters assigned a rating of good to Aegis's submission of invoices. Tab 13, PPQ Nos. 1 & 4. One rater stated that "Aegis has been successful in meeting the complex WPS Contract requirements in the areas of documentation, clearance processes, personnel recruitment, vetting, tracking and QA/QC, and receives a 'good' evaluation for this category for security." Id., PPQ No. 1, at 7.

Importantly, both raters commented on Aegis's improvement since the initial period of performance of the task order. Id. at 8 ("Aegis' efforts [regarding] the security requirements have improved steadily since its very difficult and poor effort at the beginning of Task Order performance in June 2012, and are currently performing to a level that likely would ensure consideration by this reviewer for future security work."); id., PPQ No. 4, at 5 (Invoicing "has improved significantly in the current

option year however the government still receives invoices for work performed in the base year of the contract.”). Both raters said they would award a similar contract to Aegis, with one rater stating that he “definitely” would. Id., PPQ No. 1, at 8, PPQ No. 4, at 6. This is in sharp contrast to Torres’s more recent evaluations of its [delete] contracts, for which it received ratings of unacceptable and marginal, respectively, for invoicing and for which the raters stated they would not recommend Torres for future award. AR, Tab 6a, PPQ No. 5; Tab 6b, CPARS No. 22.

With respect to alleged unsupported payments noted by the OIG, the contracting officer explains that the agency’s internal audit revealed a much lower percentage of unallowable costs. COS ¶ 93. See also Aegis Comments at 4 (stating that the agency “officially acknowledged and accepted” a reduction in the questioned amounts by nearly 87 percent). Moreover, the contracting officer explains that he does not consider the revised dollar amount to be substantial enough, especially in light of the number of invoices that were being processed, to have affected the agency’s evaluation of Aegis’s past performance. COS ¶ 93. We find the agency’s conclusion in this regard to be unobjectionable.²⁰

Evaluation of Sallyport

Citing a February 2, 2016, news article, Torres alleges that WPS 2 awardee Sallyport provided security for a U.S. contractor whose employees were reported as kidnapped in Iraq in January 2016. Protest at 27 (citing Protest, Attach. AA). Torres alleges that this news article “should have been reflected in the Agency’s evaluations.” Protest at 27.

The contracting officer represents that the evaluation team was not aware of this information. COS ¶ 103. Torres contends the agency should have been aware of the information because the news was “widely covered.” Comments at 20. We find no merit to Torres’s contentions. An agency is not required to hunt down and investigate any and all negative news articles concerning offerors when conducting past performance evaluations. Here, even assuming for the sake of argument that the agency had conducted a search of publicly available news articles, it would not have uncovered the referenced article because the incident occurred months after the agency concluded its evaluation of Sallyport’s past performance. In any event, the agency’s subsequent research reveals conflicting reports regarding Sallyport’s involvement in the matter, COS ¶ 106, which lends further support to the proposition

²⁰ In its protest, Torres also alleged that the agency failed to consider a class-action lawsuit filed against Aegis. Protest at 26. The agency responded to this allegation. COS ¶ 96; Legal Memo. at 23. In its comments, Torres abandons this argument; and thus, we will not consider it further. 22nd Century Techs., Inc., B-412547 et al., Mar. 18, 2016, 2016 CPD ¶ 93 at 10.

that uncorroborated news articles generally are not reliable sources of past performance information.

Evaluation of Triple Canopy

With respect to Triple Canopy, Torres alleges that there is an on-going False Claims Act case brought by the United States against the company relating to allegedly falsified marksmanship certifications for guards performing on the firm's contract in Iraq. Protest at 27; Comments at 20. For support, Torres cites to an October 2012 press release. Protest at 27 (citing Protest, Attach. BB).

The contracting officer represents that the source selection team was unaware of the lawsuit. COS ¶ 108; Legal Memo. at 32-33. In response, Torres claims "the Agency's suggestion of ignorance for a large lawsuit based on a contract that its own office administered on **this very same program** holds no weight." Comments at 20 (emphasis in original). Torres is mistaken. The lawsuit upon which Torres relies relates to Triple Canopy's performance on the Department of Defense's Theatre-Wide Internal Security Services Contract (TWISS I)--not the WPS contract or other contracts administered by the procuring activity here. United States v. Triple Canopy, Inc., 775 F.3d 628, 632 (4th Cir. 2015). Accordingly, Torres has made no showing that the agency's evaluators were aware or should have been aware of the information in the lawsuit.²¹ See TriWest Healthcare Alliance Corp., B-401652.12, B-401652.13, July 2, 2012, 2012 CPD ¶ 191 at 32-33.

Evaluation of SOC

Finally, with respect SOC, Torres alleges that the agency should have considered the negative information contained in two private lawsuits filed against the firm. Protest at 27; Comments at 18-19. The agency contends that it was unaware of the lawsuits. COS ¶ 100. We find no basis to conclude that the agency disregarded relevant past performance information about SOC. See TriWest Healthcare Alliance Corp., supra.

In its comments, Torres also alleges that SOC had significant performance issues on several of its contracts, which were the same as, or worse than, Torres's issues. Comments at 19. See also id. at 14-19. The record demonstrates that the agency considered both positive and negative information with respect to SOC's past performance. See AR, Tab 21, Final TEP Report, Attach. 5. Although we do not discuss each input of SOC's past performance or Torres's challenge to the agency's evaluation of each input, we have reviewed them and find no basis to sustain the

²¹ Torres also raises other information that it claims the agency should have considered. Protest at 28. The agency responded to these claims. COS ¶ 110. In its comments, Torres did not respond; and, thus we will not consider them further.

protest. Importantly, we note that, with one exception, in the 20 inputs considered by the agency with respect to SOC, the raters stated that they “probably would,” “would,” or “definitely would” award a similar contract to SOC.²² AR, Tab 12, SOC CPARS & PPQs. Unlike several of the inputs for Torres, not a single rater stated that they “would not” award a similar contract to SOC. As a result, we see no basis to conclude that the agency disparately evaluated the past performance of Torres and SOC.²³

The protest is denied.

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General Counsel

²² In the one noted exception, the contracting officer stated that he “might or might not” award a similar contract to SOC. AR, Tab 12, CPARS No. 11. However, the same rater in a subsequent CPARS report pertaining to the same effort stated that he “would” recommend an award, implying that performance had improved. Id., CPARS No. 12.

²³ Because we find the agency’s evaluation of the past performance of Torres and that of the four awardees to be reasonable, we do not consider Torres’s final argument that the agency’s allegedly flawed past performance evaluation undermined the agency’s best-value analysis. Protest at 2, 9.