



United States Government Accountability Office
Washington, DC 20548

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Decision

Matter of: Vectrus Systems Corporation

File: B-412581.3; B-412581.4; B-412581.5

Date: December 21, 2016

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Jason A. Carey, Esq., John W. Sorrenti, Esq., Luke W. Meier, Esq., and Andrew R. Guy, Esq., Covington & Burling LLP, for URS Federal Services, Inc., the intervenor.

Debra J. Talley, Esq., and Richard M. Murphy, Esq., Department of the Army, 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 miscalculated offerors' proposals under the solicitation's evaluation factors is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Vectrus Systems Corporation, of Colorado Springs, Colorado, protests the issuance of a task order to URS Federal Services, Inc., under request for proposals (RFP) No. W52P1J-15-R-0005, by the Department of the Army, Army Material Command, Rock Island, for logistics support services in Kuwait and Qatar under the Enhanced Army Global Logistics Enterprise (EAGLE) Program. The protester challenges the agency's evaluation of its proposal and the proposals of three other offerors under the RFP's "strict compliance review" and the technical, past performance, and cost/price evaluation factors.

We deny the protest.

BACKGROUND

In October 2015, the Army issued the solicitation to contractors holding EAGLE basic ordering agreements (BOA). The solicitation sought proposals to provide

logistics support services in Kuwait and Qatar. The solicitation contemplated a single best-value award of a cost-plus-fixed-fee task order, referred to as the Army Prepositioned Stock (APS)-5 Kuwait/Qatar task order, consisting of a base year and three option years.¹ RFP, Amend. 1, § M.1.1.² The RFP established a two-stage evaluation. First, the Army would conduct a procedural “strict compliance review” of over 20 requirements set forth in section L of the RFP. RFP § M.3. Any proposal determined to be non-compliant would not advance to the next stage and would not be evaluated further. Id. In the second stage, the Army would evaluate proposals under the following evaluation factors: technical, past performance, and cost/price. RFP § M.4.1.

Under the technical factor, the RFP provided that proposals would be evaluated on an acceptable/unacceptable basis. Id. Only proposals deemed to be acceptable would be evaluated under the past performance and cost/price factors. RFP §§ M.4.1, M.5.1.1. Under the past performance factor, the RFP provided that proposals would be evaluated using a qualitative assessment and would be assigned one of the following confidence ratings: substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence (neutral). RFP §§ M.4.1.a, M.5.2. Under the cost/price factor, proposals would be evaluated for cost realism and price reasonableness, but would not be assigned a rating. RFP §§ M.4.1.b, M.5.3. A tradeoff analysis would be conducted between the past performance and cost/price factors. RFP § M.4.1.b. Past performance was significantly more important than cost/price. Id.

The Army received six proposals in response to the solicitation. Combined Contracting Officer’s Statement & Memorandum of Law (COS/MOL), Oct. 13, 2016, at 4. The Army determined that four proposals satisfied the strict compliance review criteria, including the proposals submitted by Vectrus, URS Federal, and two other offerors (hereinafter “Offeror A” and “Offeror B”). Id. at 13. Accordingly, the Army evaluated these four proposals under the RFP’s three evaluation factors.

Under the technical factor, all four proposals were ultimately determined to be technically acceptable,³ and therefore, all four proposals were evaluated under the

¹ The RFP included two fixed-price contract line item numbers (CLINs): transition-in and contractor proposed life support expenses.

² Unless otherwise indicated, all citations to the RFP refer to the version provided in Tab 6 of the Agency Report (AR), which contains amendment 1 of the RFP.

³ The RFP provided that the Army “may” conduct discussions if all proposals were deemed to be technically unacceptable. RFP § M.4.1. After its initial evaluation of proposals, the Army determined all four proposals were technically unacceptable. COS/MOL at 16; AR, Tab 155, Source Selection Evaluation Board (SSEB) Report, at 5. Therefore, the Army established a competitive range, including all four

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past performance and cost/price factors. The final evaluation ratings and proposed costs were as follows:

Offeror	Technical	Past Performance	Cost/Price
URS Federal	Acceptable	Substantial Confidence	\$392,972,435
Offeror A	Acceptable	Substantial Confidence	\$426,618,405
Vectrus	Acceptable	Satisfactory Confidence	\$536,717,378
Offeror B	Acceptable	Substantial Confidence	\$569,156,145

AR, Tab 158, Source Selection Decision Document (SSDD), at 2. The source selection authority (SSA) determined that URS Federal’s proposal represented the best value to the government and the Army issued the order to URS Federal on August 31, 2016. Vectrus requested a debriefing, which it received on September 8. It filed a timely protest with our Office on September 13.

DISCUSSION

Vectrus challenges various aspects of the Army’s evaluation of all four proposals. Although our decision does not address all of Vectrus’ arguments, we have fully considered each of them and find that none provides a basis to sustain the protest.⁴

It is well-established that the evaluation of proposals is a matter within the discretion of the contracting agency. MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4; Serco Inc., B-406061, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61 at 9. An offeror’s disagreement with the agency’s judgment, without more, is insufficient to establish that the agency acted unreasonably. MicroTechnologies, LLC, *supra*; STG, Inc., B-405101.3 *et al.*, Jan. 12, 2012, 2012 CPD ¶ 48 at 7. In reviewing an agency’s evaluation, we will not substitute our judgment for that of the agency, but instead will examine the agency’s evaluation to ensure that it was reasonable and consistent with the solicitation’s stated evaluation criteria and with procurement statutes and regulations. MicroTechnologies, LLC, *supra*, at 4-5.

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proposals, and conducted a total of four rounds of discussions. AR, Tab 155, SSEB Report, at 6-7.

⁴ Our decision focuses primarily on those challenges that, if sustained, would have placed Vectrus in line for award. For instance, because we conclude that the Army’s evaluation of URS Federal’s proposal was reasonable, we have no need to address the majority of Vectrus’ challenges to the Army’s evaluation of Offeror A’s and Offeror B’s proposals.

Strict Compliance Review

Vectrus alleges that URS Federal's proposal failed to satisfy the RFP's strict compliance review criteria, namely the criterion pertaining to maximum labor hours. Vectrus 2d Supp. Protest, Oct. 24, 2016, at 13. The solicitation limited the number of hours offerors could propose per employee per year to 2,284 hours for Kuwait and 2,792 hours for Qatar. RFP § L.5.1.10. The solicitation stated, however, that offerors could exceed this limitation provided that the proposal included "a plan . . . describing how compliance with Kuwait and Qatar labor laws will be achieved" accompanied by "certifications affirmatively attesting that the Offeror[']s plan complies with Kuwait and/or Qatar" law. RFP § L.5.1.10.2. The certifications had to be provided by either a labor broker/sponsor or an attorney licensed in Kuwait and/or Qatar, as applicable. RFP § L.5.10.2(a)(2). As part of the strict compliance review, the RFP provided that "the proposal will be checked for compliance with the maximum hours stated in paragraph L.5.1.10 above OR for inclusion of the aforementioned plan and certification(s) for Kuwait and/or Qatar, as applicable." RFP § M.3.c.

URS Federal proposed to exceed the stated maximum labor hours in Kuwait, but not in Qatar. AR, Tab 129, Final Cost/Price Report, at 6. Hence, URS Federal submitted a plan with its proposal, explaining how it would comply with Kuwaiti labor laws. AR, Tab 81, Maximum Hours Plan, at 1-2. The plan was accompanied by a certification from attorneys licensed in Kuwait. Id. at 3. The Army reviewed URS Federal's proposal and determined that it complied with the RFP's requirements. AR, Tab 268, Strict Compliance Review, Row 7; Tab 129, Final Cost/Price Report, at 6.

Vectrus attacks both the plan and accompanying certification. With respect to the plan, Vectrus claims that it failed to "describe how" URS Federal would comply with Kuwaiti law. Vectrus 2d Supp. Protest at 13, 55. We disagree. Despite Vectrus' allegation that the plan is "nothing more than a table of hourly totals per employee that does not 'describe how' the plan complies with Kuwaiti Labor law as required by the RFP[,]" id. at 13-14, the record supports the Army's conclusion that the plan met the requirements in subsection L.5.1.10 of the RFP.

The plan included a detailed breakdown of the hours in various "hours categor[ies,]" such as [DELETED], and included, for each category, a reference to a specific provision of Kuwaiti law. AR, Tab 81, Maximum Hours Plan, at 2. The plan also contained a narrative in which URS Federal represented that it was "fully cognizant of all provisions of Kuwait Labor Law as they might apply[,]" and was "prepared to take responsibility for all Kuwait Labor Law compliance obligations that may be applicable to this project and to our company as we perform the APS-5 contract." Id. at 1. The plan also stated that URS Federal had "consulted with qualified, experienced and licensed attorneys in Kuwait, who have reviewed and certified our plan as compliant with Kuwait Labor Law limitations on working hours." Id.

Although Vectrus may have envisioned a more robust legal analysis in the plan, we see nothing objectionable in the Army's conclusion that the plan satisfied the requirements of the RFP.

With respect to the accompanying certification, Vectrus argues that it is unclear whether the plan URS Federal submitted to the Army is the same plan that the attorney reviewed. Vectrus 2d Supp. Protest at 16, 55-56. Vectrus claims that because the certification refers to reviewing "the relevant portions" of URS Federal's "draft" proposal and because the certification is dated prior to the date URS Federal submitted its proposal, the certification may not refer to the plan URS Federal actually included with its proposal. Id. at 15-16 (citing AR, Tab 81, Maximum Hours Plan, at 3). We find both claims to be speculative. Although Vectrus may view the certification with skepticism, we see nothing in the cited language that should have caused the Army to suspect that URS Federal submitted one plan to its attorney and a different plan with its proposal. Rather, the Army was justified in relying upon the certification and the conclusions contained therein.

We also reject Vectrus' claims that URS Federal's plan indicated that it proposed to exceed the alleged maximum allowable number of overtime hours under Kuwaiti law, and that the Army should have rejected the plan during its strict compliance review. Id. at 13-14, 15. Specifically, Vectrus argues that URS Federal's plan and certification were deficient in light of this facial violation of Kuwaiti overtime laws. Id. To the extent Vectrus argues that URS Federal's plan is inconsistent with Kuwaiti law, the protester's argument is misplaced. Our review is limited to whether URS Federal's proposal met the strict compliance requirements under the RFP. Dalma Tech² Co., B-411015, Apr. 22, 2015, 2015 CPD ¶ 135 at 6; Per Aarsleff A/S et al., B-410782 et al., Feb. 18, 2015, 2015 CPD ¶ 86 at 10 n.8. In this regard, nothing in the relevant sections of the RFP requires the Army to independently assess an offeror's compliance with local labor laws as part of its strict compliance review. See RFP § L.5.1.10 (discussing the maximum hours requirement), § M.3.c (describing the strict compliance review of section L.5.1.10).

In fact, the Army explains that the RFP's language in this respect was intentionally narrow. The Army states that it expressly phrased this requirement in terms of "maximum hours per year" and not compliance with local labor laws because "the Agency deliberately declined to mandate any particular standard for meeting Kuwait or Qatar Labor Law." COS/MOL at 27. Instead, the Army intended to "place[] the burden of ensuring compliance on the Offerors." Id. The Army states that it "understandably did not want to set itself up as a body of legal review and act as the arbiter of offerors' differing interpretations of Kuwaiti and Qatari law." Army 1st Req. for Dismissal, Sept. 30, 2016, at 3.

In sum, we find that the record does not support Vectrus' challenges to the Army's strict compliance review of URS Federal's proposal.

Past Performance Evaluation

Vectrus raises three primary challenges to the Army's evaluation of the offerors' past performance. First, Vectrus argues that the Army unreasonably failed to recognize and give Vectrus the more favorable consideration that its performance as incumbent merited. Second, Vectrus argues that the Army unequally and disparately evaluated its past performance in relation to the past performance of Offerors A and B. Finally, Vectrus argues that the Army unreasonably ignored past performance problems that allegedly plagued a joint venture involving a subsidiary of URS Federal's parent company, AECOM. For the reasons below, we find the Army's evaluation of past performance to be reasonable.

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. Torres-Advanced Enterprise Solutions, LLC, B-412755.2, June 7, 2016, 2016 CPD ¶ 167 at 8; 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. Cape Envtl. Mgmt., Inc., *supra*, at 8-9.

Here, the RFP provided that the Army would assign proposals a confidence rating based on the offeror's demonstrated record of recent and relevant performance. RFP § M.5.2, M.5.2.9. Recent performance was defined as any contract under which performance, delivery, or corrective action occurred within five years prior to the RFP's closing date. RFP § M.5.2.7. Relevant performance was defined as an effort involving "similar scope and magnitude of effort and complexities [as] this RFP requires." RFP § M.5.2.8. With respect to relevancy, the RFP provided that prior efforts would be assigned one of two ratings: relevant or not relevant. *Id.* The RFP further stated that greater consideration "may be given" to experience with contracts involving maintenance services performed at two or more geographically separated locations outside the continental United States (OCONUS). RFP § M.5.2.2(a)(1).

As noted above, based on the Army's assessment of all recent and relevant past performance information, the RFP stated that offerors' proposals would be assigned an overall confidence rating. RFP § M.5.2.9. Of relevance here, substantial confidence and satisfactory confidence were defined as follows:

Substantial Confidence: Based on the Offeror's recent/relevant performance record, the Government has a high expectation that the Offeror will successfully perform the required effort.

Satisfactory Confidence: Based on the Offeror's recent/relevant performance record, the Government has a reasonable expectation that the Offeror will successfully perform the required effort.

Id. Under the past performance factor, the Army assigned Vectrus a rating of satisfactory confidence and the other three offerors a rating of substantial confidence. AR, Tab 158, SSDD, at 2. Vectrus challenges the Army's evaluation of all four offerors.

Vectrus' Past Performance

The record reflects that the Army's assessment of Vectrus' past performance was thorough, rational, and consistent with the terms of the RFP. The Army determined that Vectrus had 11 recent and relevant contract references, eight of which involved the performance of maintenance services in an OCONUS environment at two or more geographically separated locations. AR, Tab 155, SSEB Report, at 23. Accordingly, consistent with the RFP, the Army afforded these references greater consideration. Id. (citing RFP § M.5.2.2(a)(1)).

In evaluating Vectrus' past performance, the record reflects that the Army considered both positive and negative information regarding the protester's past performance. AR, Tab 158, SSDD, at 6-7; Tab 155, SSEB Report, at 23-28; Tab 116, Past Performance Team Evaluation, at 1-73; Tab 157, Source Selection Advisory Council (SSAC) Brief, at 18-24. The SSA, for example, noted that Vectrus' past performance references "reflect . . . many positive comments[.]" AR, Tab 158, SSDD, at 6. In particular, the SSA noted that Vectrus received predominately exceptional ratings for its performance of the Kuwait-Base Operations and Security Support Services (K-BOSS) contract. Id. Under this contract, the SSA explains that Vectrus "had a robust Quality Assurance Plan and Quality Management System; when mission support changed, [Vectrus] skillfully managed its resources to meet short suspense actions, meet mission needs, and prevent mission failure; and [Vectrus] reported cost underruns due to significant enhancements to its Earned Value Management System." Id.

On the other hand, however, the Army also noted "significant adverse performance" in Vectrus' references. AR, Tab 158, SSDD, at 7. See also Tab 155, SSEB Report, at 24-28. Of particular concern was Vectrus' record of performance on the incumbent contract, the APS-5 contract. AR, Tab 158, SSDD, at 7; Tab 155, SSEB Report, at 24-26, 28. In this respect, the SSA found that "[w]hile performing the APS-5 mission being solicited, [Vectrus] . . . received two Unsatisfactory ratings for schedule during the first two rating periods." AR, Tab 158, SSDD, at 7. The SSA also noted that Vectrus "received a Partial Termination by Mutual Agreement for Settlement Purposes Only[,] which terminated all tracked vehicle maintenance." Id. The SSA explained that "[t]he termination resulted from [Vectrus'] inability to

meet contractual deadlines[,] which placed in jeopardy the Army's ability to rapidly issue APS-5 equipment in accordance with operational timelines." Id.

The SSA also determined that Vectrus "had significant quality issues in the first rating period of the initial APS-5 contract and received an Unsatisfactory rating." Id. The record reflects that annual services on over 2,400 pieces of equipment had not been performed, reducing the readiness of the APS-5 program. AR, Tab 155, SSEB Report, at 25. One report found that Vectrus' lack of enforced safety resulted in two deaths. Id. After receipt of a cure notice, the Army found some improvement in safety. Id. Despite the improvement, however, Vectrus experienced two additional safety issues, which the Army concluded "presented an unacceptable safety risk." Id.

The SSA also details how Vectrus "had systemic cost related issues that resulted in [Vectrus] receiving an Unsatisfactory rating followed by four marginal ratings during the five years of performance on the initial APS-5 contract." AR, Tab 158, SSDD, at 7. These systemic cost issues "included numerous errors in billing, invoicing, cost tracking and proposals." Id. Vectrus also "experienced significant cost growth trying to implement its get-well plan during the first year of performance," id., requiring the Army and Vectrus "to expend additional resources to verify the accuracy of [Vectrus'] submitted cost data[.]" AR, Tab 155, SSEB, at 24. The SSA found that, although Vectrus improved under a subsequent APS-5 bridge contract, "the Assessing Official noted [Vectrus] still had invoicing delays and erroneous invoicing continued to be an issue." AR, Tab 158, SSDD, at 7. These cost-related issues were of particular concern to the Army because the current requirement will result in a cost-plus-fixed-fee type contract. AR, Tab 155, SSEB Report, at 25. The Army concluded that Vectrus' "prior APS-5 program cost control issues and lack of effective corrective action alone warrant an overall confidence rating less than Substantial." Id.

In sum, although the SSA recognized that Vectrus' overall "performance on the APS-5 program improved[.]" the SSA had "a lower expectation that Offeror [Vectrus] will successfully perform this effort" due to the "significant performance issues" Vectrus demonstrated under the APS-5 contract.⁵ AR, Tab 158, SSDD, at 7-8.

⁵ The SSEB report, with which the SSA expressly indicated he concurred, AR, Tab 158, SSDD, at 2, further explained that "[w]hile [Vectrus] had positive past performance in all three evaluated areas of quality of service, schedule, and cost, [Vectrus] also had significant systemic cost issues on the APS-5 program." AR, Tab 155, SSEB Report, at 28. Based upon this history of past performance, the SSEB concluded that "the Government has a reasonable expectation that [Vectrus] will successfully perform the required effort; therefore, [Vectrus is assigned a] SATISFACTORY Confidence rating[.]" Id.

Despite Vectrus' negative past performance, the Army assigned Vectrus' proposal a rating of satisfactory confidence--the second-highest rating under the RFP.

Although consideration of past performance trends and corrective actions is generally appropriate, an agency is not required to ignore instances of negative past performance. PAE Aviation and Tech. Servs. LLC., B-413338, B-413338.2, Oct. 4, 2016, 2016 CPD ¶ 283 at 5; The Bionetics Corp., B-405145, B-405145.2, Sept. 2, 2011, 2011 CPD ¶ 173 at 7-8. Further, the RFP here specifically warned offerors that “[a] significant . . . problem . . . can become an important consideration in the [past performance] assessment process,” elaborating that “[a]n adverse finding . . . in regards to a performance issue may result in an overall lower confidence assessment rating.” RFP § M.5.2.5. Here, based on our review of the entire record, none of Vectrus' various complaints and disagreements with the Army's documented judgment renders unreasonable the Army's determination that Vectrus' past performance was properly rated as satisfactory confidence, but did not warrant the highest rating of substantial confidence.⁶ Accordingly, Vectrus' protest challenging the agency's past performance evaluation of its proposal is denied.

Offeror A's and Offeror B's Past Performance

Vectrus also alleges that the Army did not treat offerors equally in its evaluation of past performance. Vectrus 1st Supp. Protest, Oct. 17, 2016, at 17; Vectrus 2d Supp. Protest at 78. Vectrus contends that the Army received adverse past performance information for Offerors A and B that was “very similar” to the adverse past performance information for Vectrus, and yet, assigned these offerors a rating

⁶ For the most part, Vectrus does not challenge the Army's assessment of the quality of its past performance. Rather, the crux of Vectrus' challenge is that the Army was required to recognize Vectrus as having the “most” relevant past performance and to afford it some form of incumbent advantage as a result. See e.g., Protest at 29; Vectrus 2d Supp. Protest at 68 (“Vectrus' advantage in relevancy meant that the Army should have required [] another non-incumbent offeror with less relevant past performance [] to demonstrate a sufficient advantage in the quality of its past performance to overcome its disadvantage in relevancy.”). Vectrus, however, fails to identify any provision of the RFP that would have required the Army to give greater consideration to Vectrus' status as the incumbent or to assess degrees of relevancy. To the contrary, the RFP provided that past performance efforts were to be assigned either a rating of relevant or not relevant. RFP § M.5.2.8. The Army appropriately determined Vectrus' incumbent contract to be relevant. Moreover, Vectrus focuses almost exclusively on the relevance of its past performance, essentially ignoring the RFP's requirement that the Army also evaluate the quality of that performance. See e.g., Vectrus 2d Supp. Protest at 65-68.

of substantial confidence while assigning Vectrus a rating of satisfactory confidence. Vectrus 2d Supp. Protest at 78.

Although an agency's evaluation of past performance is a matter of agency discretion, agencies may not engage in disparate treatment of offerors in the evaluation of past performance. Torres-Advanced Enterprise Solutions, LLC, *supra*, at 8-9; Apptis, Inc., B-299457 *et al.*, May 23, 2007, 2008 CPD ¶ 49 at 17. Here, however, contrary to Vectrus' contentions, the record shows a marked difference in both the quantity and degree of adverse past performance information pertaining to efforts performed by Offerors A and B and fully supports the Army's conclusion that a qualitative difference existed between the past performance of Vectrus and the past performance of Offerors A and B. Vectrus' characterization of its own adverse past performance as "limited" and "very similar" to that of Offerors A and B is unpersuasive and unsupported by the record. In sum, we find no disparate treatment in the Army's evaluation of past performance.

URS Federal's Past Performance

Finally, Vectrus alleges that, in evaluating the awardee's past performance, the Army was required to consider the past performance of a joint venture involving a subsidiary of URS Federal's parent company, AECOM.⁷ Protest at 30, 35-36. In this respect, Vectrus alleges that URS Federal proposed to use AECOM management and resources to perform the APS-5 contract and, therefore, the Army was required to consider the performance record of the joint venture involving the AECOM subsidiary. Vectrus 1st Supp. Protest at 4, 13-14; Vectrus 2d Supp. Protest at 29, 30. In response, the Army argues that it had no basis to consider the past performance of a joint venture involving the subsidiary of a URS Federal affiliate because neither the joint venture nor the affiliated entity (AECOM) will have a role in performing or managing the contract at issue. COS/MOL at 56-57; Supp. COS/MOL, Nov. 4, 2016, at 38-39.

In determining whether one company's performance should be attributed to another, the agency must consider not simply whether the two companies are affiliated, but the nature and extent of the relationship between the two--in particular, whether the workforce, management, facilities or other resources of one may affect contract performance by the other. Systems Eng'g Partners, LLC, B-412329, B-412329.2, Jan. 20, 2016, 2016 CPD ¶ 31 at 5; Deloitte Consulting, LLP et al., B-411884 *et al.*, B-411884, Nov. 16, 2015, 2016 CPD ¶ 2 at 7. In this regard, although it is

⁷ Vectrus alleges that the joint venture involved URS Federal's parent company AECOM. Protest at 36. The Intervenor clarifies, however, that the joint venture involved AECOM Government Services, Inc., a subsidiary of URS Federal's parent company AECOM. Intervenor's Comments, Oct. 24, 2016, at 8; AR, Tab 89, URS Federal Proposal, Vol. 3, Attach. 3, at 2.

appropriate to consider an affiliate's performance record where the affiliate will be involved in the contract effort or where it shares management with the offeror, it is inappropriate to consider an affiliate's record where that record does not bear on the likelihood of successful performance by the offeror. Systems Eng'g Partners, LLC, supra; National City Bank of Indiana, B-287608.3, Aug. 7, 2002, 2002 CPD 190 at 10; ST Aerospace Engines Pte. Ltd., B-275725, Mar. 19, 1997, 97-1 CPD ¶ 161 at 3. See also Davis Strategic Innovations, Inc., B-413305, Sept. 26, 2016, 2016 CPD ¶ 267 at 4, 6 (An agency properly may consider the relevant past performance of predecessor companies where such experience is useful in predicting an offeror's performance under the contemplated contract.); Al Hamra Kuwait Co., B-288970, Dec. 26, 2001, 2001 CPD ¶ 208 at 4-5. Likewise, in the RFP here, the Army tied consideration of an affiliate's past performance to relevancy. RFP § M.5.2.6 (The Army "may also consider past performance information regarding predecessor companies, other corporate entities, or subcontracts, where such information is relevant to this acquisition.").

Here, the record shows that URS Federal did not propose to use the workforce, management, facilities, or other resources of the joint venture, AECOM, or AECOM affiliates to perform the present contract. Thus, the proposal did not provide any basis for the agency to consider the past performance of the joint venture.

In its proposal, URS Federal unequivocally stated that it "is not relying on any other AECOM entity for performance of the APS-5 requirements." AR, Tab 89, URS Federal Proposal, Vol. 3, Attach. 3, at 2. Rather, URS Federal represented that it possesses "the required experience and capabilities to successfully manage and perform the APS-5 contract." Id. Additionally, it stated that the joint venture in question "is not a subcontractor or teammate to URS and will not provide any support to URS for the APS-5 contract." Id. Indeed, the joint venture "will have no role in the performance of the APS-5 contract if awarded to URS." Id. URS Federal also explained, in narrative form and through a graphic, that the company structures and executive management teams of URS Federal and the joint venture are distinct; that neither URS Federal nor its parent company, AECOM, are involved in the day-to-day management of the joint venture; and that the joint venture is not involved in the day-to-day management of URS Federal. Id. at 3.

Vectrus' allegation that URS Federal intends to rely upon other entities is premised upon mere references to AECOM in URS Federal's proposal and mischaracterizations of language in the proposal, neither of which indicate that URS Federal intends to rely upon affiliates.⁸ Vectrus 2d Supp. Protest at 34-37.

⁸ For example, Vectrus cites a statement in URS Federal's cost proposal stating that URS Federal [DELETED]. Vectrus 2d Supp. Protest at 36 (citing AR, Tab 94, Assumptions, at 12). The statement did not define any role for AECOM (or more
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Accordingly, we conclude that there is no evidence in the record to indicate that the past performance of affiliates is of any relevance to the likelihood of successful performance by URS Federal. Based on our prior decisions and the terms of the RFP here, we find that the Army properly excluded other AECOM entities' past performance from its evaluation of URS Federal's past performance. ST Aerospace Engines Pte. Ltd., *supra*, at 3.

For the foregoing reasons, we conclude that the Army's evaluation of offeror's past performance was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations.⁹

Cost/Price Evaluation

Vectrus challenges the Army's cost realism analysis on numerous fronts. The crux of Vectrus' argument, however, is that URS Federal's proposal was 59 percent below the independent government cost estimate (IGCE) due to violations of Kuwaiti labor laws, as well as flawed cost estimation methodology. Vectrus 2d Supp. Protest at 29. The Army contends that the scope of the agency's cost realism evaluation was within the sound and informed discretion of the agency, and that it reasonably concluded that all offerors' proposed costs were realistic. Supp. COS/MOL at 11, 12.

When an agency evaluates a proposal for the award of a cost-reimbursement contract or order, an offeror's proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation (FAR) §§ 15.305(a)(1), 15.404-1(d); Federal Maintenance Logistics Solutions, LLC, B-412270.5, Nov. 15, 2016, 2016 CPD ¶ __ at 6 (applying FAR part 15 cost realism standards in a task order procurement under the EAGLE BOA). Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(2); Smartronix, Inc.; ManTech Adv. Sys. Int'l, Inc., B-411970 *et al.*, Nov. 25, 2015,

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importantly the joint venture in question); it simply explained why URS Federal was confident regarding the realism of its proposed wages.

⁹ Vectrus also claims that the Army's tradeoff analysis was flawed because the SSA allegedly weighed the adjectival past performance ratings mechanically, "automatically treating all offerors that received the same rating as equal." Vectrus 1st Supp. Protest at 9. Because we conclude that the past performance ratings were reasonably assigned, Vectrus, as the lower-rated offeror, is not an interested party to challenge the Army's tradeoff analysis in this respect. See CSC Gov't Solutions LLC, B-413064, B-413064.2, Aug. 10, 2016, 2016 CPD ¶ 347 at 12.

2015 CPD ¶ 373 at 5-6. An agency, however, is not required to conduct an in-depth cost analysis or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. AdvanceMed Corp.; TrustSolutions, LLC, B-404910.4 et al., Jan. 17, 2012, 2012 CPD ¶ 25 at 13. Although an agency’s cost realism analysis need not achieve scientific certainty, the methodology employed must be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency at the time of its evaluation. Tantus Techs., Inc., B-411608, B-411608.3, Sept. 14, 2015, 2015 CPD ¶ 299 at 10. Our review of an agency’s cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. TriCenturion, Inc.; Safeguard Servs., LLC, B-406032 et al., Jan. 25, 2012, 2012 CPD ¶ 52 at 6.

The cost realism analysis in this case is well-documented and reasonable. Specifically, the Army analyzed the realism of offerors’ direct labor costs, subcontracts, indirect expense rates, fee, and other direct costs (ODCs). AR, Tab 129, Final Cost/Price Report. The record also shows that the Army performed a “cost-technical crosswalk,” in which it assessed the realism of URS Federal’s costs in light of its proposed technical approach. Id. at 7-8 (concluding that “URS Federal’s labor mix and labor hours . . . [were] realistic for the work to be performed, reflected a clear understanding of the requirements, and [were] consistent with the unique methods of performance described in the technical proposal”).

The record also shows that the Army compared the offerors’ total evaluated costs to each other and to the IGCE,¹⁰ yielding the following results:

Offeror	Labor Hours	Difference from IGCE	Total Evaluated Cost	Variance from Low Offeror	Variance from IGCE
URS Federal	23,917,148	-3.01%	\$392,972,435	-	-55.90%
Offeror A	23,966,621	-2.81%	\$426,618,405	8.56%	-52.12%
Vectrus	24,017,126	-0.71%	\$536,717,378	36.58%	-38.65%
Offeror B	24,063,320	-2.42%	\$569,156,145	44.83%	-36.12%
IGCE	24,659,011		\$891,035,256		

AR, Tab 158, SSDD, at 3. The record also reflects that Army explored the various reasons why URS Federal (and Offeror A) was able to offer costs lower than

¹⁰ For this reason, Vectrus’ claim that the Army failed to compare URS Federal’s cost proposal to any “baseline outside the proposal” or to compare it with the IGCE is simply incorrect. Vectrus 2d Supp. Protest at 2, 20, 21.

Vectrus (and Offeror B)¹¹ and why there was such a disparity between the proposed costs of all four offerors and the IGCE.¹² AR, Tab 156, SSAC Chairman Report, at 5 (indicating that the SSA expressly asked for an explanation regarding the distribution of costs and disparity between the offers and the IGCE). See also AR, Tab 158, SSDD, at 3; Supp. COS/MOL at 17.

As stated above, the crux of Vectrus' challenge is that the Army failed to recognize that URS Federal proposed an approach for staffing the contract in Kuwait that allegedly violates Kuwaiti overtime labor laws.¹³ Vectrus 2d Supp. Protest at 1, 8, 20, 51. Specifically, Vectrus claims that any approach involving more than 180 hours per year of overtime violates the law.¹⁴ Id. at 1, 8. URS Federal proposed 1,120 hours per year. AR, Tab 81, Maximum Hours Plan, at 2.

The Army strongly disputes Vectrus' claim that any approach involving more than 180 hours of overtime (which the parties explain equates to a 72-hour work week) violates Kuwaiti law. The Army correctly notes that such an interpretation is contrary to the legal opinions of three separate Kuwaiti attorneys consulted by the other offerors in this procurement. Supp. COS/MOL at 69, 70. Moreover, the Army claims that Vectrus [DELETED].¹⁵ Supp. COS/MOL at 5-8, 68-71; AR, Tab 280,

¹¹ Among other things, URS Federal used fewer personnel than Vectrus and [DELETED]. AR, Tab 158, SSDD, at 3. In particular, the SSA noted that URS Federal proposed to [DELETED]. Id. In this respect, the SSA concludes that URS Federal was able to significantly reduce its direct labor costs.

¹² URS Federal's total evaluated price was determined to be lower than the IGCE for three reasons: (a) the IGCE used U.S. expatriate (expat) hourly rates only, whereas URS Federal proposed [DELETED] hourly rates; (b) URS Federal proposed [DELETED] less hours than was used in the IGCE; and (c) URS Federal proposed indirect rates that were lower than those used in the IGCE. AR, Tab 158, SSDD, at 4; Supp. COS/MOL at 15, 73. All three approaches were determined to be acceptable and realistic. Id.

¹³ Vectrus claims that URS Federal's subcontractor proposes the same alleged violation of overtime law. Vectrus 2d Supp. Protest at 51 (citing AR, Tab 104, Subcontractor Assumptions, at 1-2).

¹⁴ For support, Vectrus includes a publication entitled Kuwaiti Labor Law in the Private Sector, 1st Ed., 2010, available at www.kuwaitlaborlaw.com/private-sector-kuwait-labor-law-detailed/ (last visited December 21, 2016). Vectrus 2d Supp. Protest, Exh. A.

¹⁵ The Army submits documentation [DELETED] in which the Army asks Vectrus to clarify whether [DELETED] 72-hour work week is permissible under Kuwaiti labor law. AR, Tab 279, Emails between Army and Vectrus, Feb. 6-10, 2015. See also AR, Tab 280, Contracting Officer's Memo. for Record, Nov. 4, 2016. Vectrus
(continued...)

Contracting Officer's Memo. for Record, Nov. 4, 2016 (claiming that Vectrus [DELETED]). See also AR, Tab 282, Vectrus Proposal for APS-5 Kuwait Bridge #2, Apr. 13, 2016; Tab 284, Contract Mod. PZ0009, Apr. 22, 2016.

For our purposes here, we need not decide whether a 72-hour work week violates Kuwaiti labor law because we conclude that the RFP did not require the Army to evaluate compliance with local labor law as part of its evaluation under the cost/price or technical factors. Sections M.4 and M.5 of the RFP describe the evaluation methodology and evaluation criteria, respectively. Neither section provides that the Army will evaluate compliance with local labor laws under the cost/price or technical factors. Moreover, the RFP provisions upon which Vectrus relies also provide no support for its argument.¹⁶ See Vectrus 2d Supp. Protest at 53-55. Because we conclude that the RFP did not require the Army to evaluate compliance with local labor laws under the cost/price or technical factors, we deny this challenge to the Army's evaluation.

Finally, we have reviewed Vectrus' other challenges to the agency's cost realism analysis and find no basis to sustain the protest. We note, however, that even if Vectrus' additional challenges had merit, it has not established that it was prejudiced by these alleged errors.

(...continued)

responds that “[e]mployees can work additional hours over the regular 48, i.e., 72 hours per week, provided the employee agrees and the employee is paid the overtime rate per the Kuwait Labor Law (KLL).” AR, Tab 279, Emails between Army and Vectrus, at 1. We note that Vectrus' statement here is consistent with interpretations in the plans of Offerors A and B. See AR, Tab 144, Offeror A Maximum Hours Plan, at 1 (“Over time in excess of 180 hours per year would be performed on a voluntary basis.”); Tab 171, Offeror B Maximum Hours Plan, at 2 (Offeror B “will achieve compliance with Kuwaiti labor laws by ensuring that all [] US Expat workers . . . voluntarily agree[] to work up to 72 hours per week and that the employer agrees to pay all overtime hours at the applicable overtime rates prescribed by the Kuwait labor law.”).

¹⁶ For instance, Vectrus cites subsection L.5.4.2.3 of the RFP, describing cost/price proposal submission instructions. This subsection requires offerors to “provide an affirmative statement that they understand and will fully comply with the current Kuwait and Qatar labor laws throughout contract performance.” RFP § L.5.4.2.3. URS Federal provided such a statement in its proposal. AR, Tab 94, Assumptions, at 2, 3. This subsection of the RFP does not, however, require the Army to evaluate whether an offeror's proposal actually complies with local labor laws as part of its cost/price evaluation.

In this case, the total evaluated cost was \$536,717,378 for Vectrus, and \$392,972,435 for URS Federal--a difference of \$143,744,943. Vectrus contends that URS Federal's alleged violation of Kuwaiti overtime labor laws "explains in large part how URS [Federal] was able to propose such an aggressively low cost[.]" Vectrus 2d Supp. Protest at 2, 9 (The alleged violation of law had "an enormous impact" on URS Federal's proposed costs.). Vectrus estimates that URS Federal was able to decrease its costs by over \$54.6 million as a result of this alleged violation of law alone. Id. at 9 (citing Decl. of Consultant, Oct. 24, 2016, ¶¶ 15-17). However, as discussed above, we find no merit to the protester's argument regarding the alleged violation of law. Hence, even if the protester's remaining cost realism arguments had merit, the sum of those adjustments would, at a minimum, have to reduce the difference in the offerors' proposed prices by \$143,744,943.¹⁷

Vectrus has not alleged, nor established, that its remaining arguments, if sustained, would be sufficient to close such a delta.¹⁸ We find that the protester has failed to provide a basis for us to conclude that there is a reasonable possibility of prejudice in this case. Thus, we find no basis to sustain its additional arguments. See Odyssey Marketing Grp., Inc., B-412695, B-412695.2, Apr. 21, 2016, 2016 CPD ¶ 109 at 5-6 (protester fails to demonstrate possibility of prejudice where allegations concerning evaluation of price, even if meritorious, would not give it a substantial chance for award).

The protest is denied.

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General Counsel

¹⁷ Due to the importance of the past performance factor, the record reflects that Vectrus' price likely would need to be significantly lower to overcome its lower rated past performance. See AR, Tab 156, SSAC Chairman Report, at 4-5 (In comparing the proposals of Vectrus and Offeror B, the Chairman states, Offeror B's "price is 6.0% higher than that of [Vectrus]. Given that the non-cost factors are significantly more important[,] it would be justifiable to pay the 6.0% difference in price.").

¹⁸ For instance, Vectrus alleges that the Army engaged in misleading discussions, insisting on a higher supervisor-to-employee ratio and forcing Vectrus to raise its price by \$12.2 million. Protest at 38-40; Vectrus 2d Supp. Protest at 82. The record reflects that the Army raised the same concern regarding the ratio with URS Federal, which, according to Vectrus' cost consultant, caused URS Federal to raise its price by \$ 8.1 million. Decl. of Consultant ¶ 20. Thus, even if Vectrus' argument were correct, this error would only impact the delta between the offeror's prices by \$4.1 million.