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Decision

Matter of: Sterling Medical Associates, Inc.

File: B-418674; B-418674.2

Date: July 23, 2020

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DIGEST

Protest alleging that agency misevaluated proposals and made an unreasonable source selection decision is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation

DECISION

Sterling Medical Associates (Sterling), of Cincinnati, Ohio, protests the award of a contract to Valor Healthcare, Inc. (Valor), of Addison, Texas, pursuant to request for proposals (RFP) No. 36C24419R0074, issued by the Department of Veterans Affairs (VA) for the operation of an outpatient primary care and mental health clinic in McKean County, Pennsylvania. Sterling challenges the agency's evaluation of technical proposals and past performance, and further alleges that the contracting officer was biased against it.

We deny the protest.

BACKGROUND

The agency issued the RFP on August 20, 2019, under the commercial item procedures of Federal Acquisition Regulation (FAR) part 12. Contracting Officer's Statement (COS) at 1. The RFP contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity contract for the operation of a community-based outpatient clinic (CBOC) in

McKean County, Pennsylvania, for a 5-year base period and five 1-year option periods. Agency Report (AR), Tab 3, RFP at 1, 8.

The RFP provided for award based on the following evaluation factors, listed in descending order of importance: (1) technical capability; (2) past performance; (3) socio-economic program participation; and (4) price. *Id.* at 133. The RFP indicated that award would be made to the responsible offeror whose offer conformed to the solicitation and would be most advantageous to the government, price and other factors considered. *Id.* The RFP noted that all non-price factors, when combined, were significantly more important than price. *Id.*

The technical capability factor consisted of four subfactors: (1) facility; (2) geographic location; (3) management, experience, and staffing; and (4) transition/start-up plan/retention. RFP at 133. The technical capability subfactors were of equal importance to one another. *Id.* at 133. The RFP did not specify an adjectival rating system for the technical factor. However, internal evaluation documents, which were not provided to offerors, provided that proposals would be evaluated under each subfactor, and that the evaluators would assign each subfactor, and the overall technical capability factor, a rating of either exceptional, good, satisfactory, poor, or unsatisfactory. See, e.g., AR, Tab 17, Source Selection Decision Document (SSDD), at 2-3.

With regard to past performance, the agency would evaluate each offeror's past performance under existing and prior contracts for similar primary care services. RFP at 127-128. The RFP noted that in addition to the past performance information submitted by the offerors, the agency may also obtain additional information from the Past Performance Information Retrieval System (PPIRS), other systems, agencies other than VA, and any other source. *Id.* The RFP further specified that the agency would focus on information that demonstrates quality of performance relative to the size and complexity of the procurement under consideration. *Id.* The RFP did not specify an adjectival rating system for the past performance factor, but internal evaluation documents provided that the evaluators would assign each offeror's past performance a rating of substantial confidence, satisfactory confidence, unknown confidence, or no confidence. See SSDD at 2-3.

On or before the November 5, 2019 closing date, the agency received timely proposals from four offerors, including Sterling and Valor. COS at 1. Following the evaluation of initial proposals, the agency conducted discussions and requested final proposal revisions. *Id.* at 2. The agency evaluated Sterling and Valor's final proposals as follows:

	Sterling	Valor
Technical Capability	Satisfactory	Excellent
Facility	Excellent	Excellent
Geographic Location	Excellent	Excellent
Management, Experience, and Staffing	Satisfactory	Excellent
Transition/Start Up Plan	Satisfactory	Excellent
Past Performance	Satisfactory Confidence	Substantial Confidence
Socio-Economic Program Participation	Favorable	Favorable
Price	\$12,529,365.60	\$12,912,030.60

Memorandum of Law (MOL) at 2-3.

As part of its evaluation of proposals, the agency noted significant concerns about Sterling’s performance on the incumbent CBOC contract and other CBOC contracts. COS at 6-8; SSDD at 17-19. Over the preceding three years, the agency noted numerous performance issues including, among other serious issues, persistent staff attendance issues resulting in unscheduled clinic closures, unannounced staff leave resulting in cancellation of appointments, and a prolonged period during which the clinic lacked a full-time permanent physician and instead relied on a rotating group of temporary physicians. *Id.* The agency also noted that attempts to communicate with Sterling about these concerns frequently went unanswered for extended periods, and culminated in several Contractor Performance Assessment Reporting System (CPARS) ratings of marginal and two recent cure notices (one on the incumbent contract, and one on another contract for a nearby clinic). *Id.* Finally, the agency noted that new issues, such as clinic staff failing to perform required suicide prevention screening, continued to develop on the incumbent contract during the pendency of this procurement. COS at 6-8. As a result, the agency noted that it was prepared to pursue a termination for default of the incumbent contract in early 2020, but ultimately elected not to do so because it would result in a temporary closure of the clinic, which would have negative impacts on patient care. *Id.*

Based on this evaluation, the source selection authority (SSA) concluded that Valor’s proposal provided the best value to the government. SSDD at 20-23. In coming to this conclusion, the SSA noted that Valor’s proposal had several technical advantages over Sterling’s and that Sterling’s past performance record was significantly less favorable than Valor’s, including significant problems in performing the incumbent contract. *Id.* The SSA also concluded that Valor’s \$382,635.00 price premium was minimal in comparison to the advantages offered by Valor’s proposal. *Id.* at 23. Accordingly, the agency made award to Valor on April 9, 2020. COS at 9. Following a written debriefing on April 13, this protest followed. *Id.*

DISCUSSION

The protester alleges that the agency erred in its evaluation of technical proposals and past performance, and further alleges that the contracting officer was biased against it. Comments and Supp. Protest at 3-31. With respect to the technical evaluation, the protester principally contends that the agency erroneously failed to assign its proposal numerous strengths, and, in some cases, assessed strengths to the awardee's proposal for the same or similar features. *Id.* at 3-19. Concerning past performance, the protester argues that the agency improperly failed to consider its positive past performance and unduly emphasized its negative past performance. *Id.* at 23-25. Additionally, the protester contends that the agency evaluated its past performance references differently than similar references for the awardee. *Id.* at 27-29. Moreover, the protester contends that the agency failed to appropriately consider the relevance of the past performance references it evaluated as required by the solicitation. *Id.* at 20-23. Finally, the protester contends that the contracting officer was impermissibly biased against the protester due to ongoing performance concerns related to the protester's performance of the incumbent effort.¹ *Id.* at 29-31.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *AECOM Mgmt. Servs., Inc.*, B-417639.2, B-417639.3, Sept. 16, 2019, 2019 CPD ¶ 322 at 9. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Vertex Aerospace, LLC*, B-417065, B-417065.2, Feb. 5, 2019, 2019 CPD ¶ 75 at 8.

Technical Evaluation

The protester argues that the agency engaged in disparate treatment in the technical evaluation and also ignored advantageous features of its proposal. See Comments and

¹ The protester also raised several additional arguments. While our decision does not address every issue, we have considered the arguments and find that none provides a basis to sustain the protest. For example, the protester additionally challenges the agency's best-value tradeoff as unreasonable and inadequately documented. Comments and Supp. Protest at 25-27. For example, the protester alleges that the best-value decision was based on an unreasonable evaluation and did not adequately document its analysis of past performance. *Id.* Preliminarily, the protester's arguments in this regard are generally derivative of the protester's evaluation challenges which we address below. Moreover, the SSDD in this case is lengthy and detailed, and engages substantively and reasonably with the offerors' past performance. See SSDD at 20-23. Accordingly, we see no basis to conclude that the best-value tradeoff was unreasonable or inadequately documented in this case.

Supp. Protest at 3-19. In this regard, the protester notes that the awardee was assigned numerous strengths for features that were substantially identical to features of the protester's proposal. *Id.* Specifically, the protester alleges that the awardee received strengths for its handicapped parking, paid time off (PTO) policy, staff resignation period, startup plan, credentialing process, clinical checklists, pay and benefits, buildout plan for future staffing, and use of *locum tenens*² staff as a backup. *Id.* By contrast, the protester's proposal received no strengths for those proposal features despite, in the protester's view, proposing similar or superior features. *Id.* Additionally, the protester contends that the agency erred by failing to assign its proposal strengths for its use of telehealth procedures, as well as strengths because, as the incumbent, its transition plan was inherently less risky. *Id.* at 9, 12-13.

Disparate Treatment

It is a fundamental principle of federal procurement law that a contracting agency must treat all vendors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. *Rockwell Elec. Commerce Corp.*, B-286201 *et al.*, Dec. 14, 2000, 2001 CPD ¶ 65 at 5. However, when a protester alleges unequal treatment in a technical evaluation, it must show that the differences in the evaluation did not stem from differences between the proposals. *IndraSoft, Inc.*, B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10; *Paragon Sys., Inc.*; *SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9. Accordingly, to prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably downgraded its proposal for deficiencies that were substantively indistinguishable from, or nearly identical to, those contained in other proposals. *Office Design Group v. United States*, 951 F.3d 1366, 1372 (Fed. Cir. 2020); *Battelle Memorial Inst.*, B-418047.3, B-418047.4, May 18, 2020, 2020 CPD ¶ 176 at 5. In this case, the protester's disparate treatment arguments are without merit either because the proposals are not meaningfully the same in the ways the protester suggests, or because the protester misreads the strengths assigned by the agency.

First, several of the protester's arguments rely on proposal features that were not, in fact, the same or even nearly the same. For example, with respect to the staff resignation period, the protester acknowledges meaningful differences between its proposal, and that of the awardee. Comments and Supp. Protest at 15-16. The protester notes that the agency assigned a strength to the awardee because it proposed staff contracts that require a [DELETED] notice period for resignation, but also proposed to provide a financial incentive for [DELETED]. *Id.* By contrast, the protester proposed contracts that included a [DELETED] notice period for resignations, but no similar incentive for [DELETED]. *Id.* The protester suggests that this difference in [DELETED] is not meaningful because [DELETED] provides ample time to replace staff, and most staff changes result, not from voluntary resignations, but from agency-directed staff replacements. *Id.* However, in this respect, the proposals are materially different. The

² In this context, *locum tenens* staff refers to medical staff who work in place for the regular clinical staff during their absence.

agency concluded that the incentive to [DELETED] was advantageous, and the protester simply disagrees with the agency's technical judgments.

As another example, the protester notes that the awardee received a strength for having PTO policies that aligned with the VA's PTO policy. Comments and Supp. Protest at 16. Specifically, the protester notes that the awardee proposed a [DELETED] advanced notice period for PTO for all staff. *Id.* By contrast, the protester contends that it proposed a [DELETED] advanced notice period for medical providers, but a [DELETED] advanced notice period for other staff. *Id.* The protester argues that medical providers are more significant to the operation of the clinic, so it was inappropriate to award a strength to the awardee's proposal and not to the protester's proposal as well. *Id.* However, again, the proposals were simply not meaningfully the same in these respects, and the awardee's policy provided more notice than the protester's for some staff and less for others. The agency viewed the alignment of the awardee's policy with its own policy as an advantage, and the protester's arguments amount to nothing more than disagreement with the agency's judgment about the significance of these proposal differences.

Furthermore, several of the protester's arguments simply misread the strengths assigned by the agency. For example, the protester contends that the awardee received a strength for its proposal to [DELETED] to meet possible increased demand for services in the future. Comments and Supp. Protest at 10-11. By contrast, the protester argues that it also proposed to increase staffing in year five by a greater amount, identified specific individuals, and addressed how it would meet additional space requirements, but did not receive a strength. *Id.*

The protester's argument, however, misunderstands what the agency found meritorious about the awardee's approach. The strength assigned Valor's proposal was for [DELETED]. SSDD at 7-8. That is to say, given the uncertain nature of possible growth in future demand for medical services, the agency found the incremental flexibility of the awardee's approach to staffing growth to be a strength. The protester's proposal does not appear to identify a similar level of detail or granularity in its staffing plan, but instead simply suggests that it will provide "staffing [. . .] at the appropriate full or part-time levels as determined by patient enrollment levels and according to the PACT model." AR, Tab 5b, Protester's Technical Proposal at 27. In short, the proposals were not the same in the respects the agency found meaningful.

As another example, the protester notes that the awardee was assigned a strength for using *locum tenens* staff as backup, but that its own technical approach involved significant discussion and reliance on *locum tenens* staff. Comments and Supp. Protest at 14-15. Again, this misreads the agency's evaluation. The awardee's proposal received a strength for "[l]ocums used as final backup only." SSDD at 7-8. The plain language of the strength does not suggest that Valor was assigned a strength for its use of *locum tenens* staff, but rather for its avoidance of use of such staff except when necessary. Indeed, the SSDD specifically explained that a contributing factor in the protester's performance problems on the incumbent contract has been an overreliance

on *locum tenens* staff, and that [DELETED] would be a superior solution, which is precisely what Valor proposed. See SSDD at 17. In short, the proposals are different in this respect, and the protester simply disagrees with the agency's technical judgment concerning the merits of its technical approach.

Unacknowledged Strengths

The protester also contends that the agency failed to acknowledge strengths in its proposal. For example, the protester argues that the agency failed to assign its proposal a strength for its approach to using telecommunications technology to mitigate medical provider absences (*i.e.* telehealth procedures), instead finding that this aspect of its proposal was inadequately detailed. Comments and Supp. Protest at 9, 15. The protester notes that the agency assigned Valor a strength for mitigating absences by providing [DELETED], despite the fact that several key details of how such an approach would work were not documented in Valor's proposal. *Id.* Setting aside that these elements of the proposals are substantively entirely different, the protester appears to misunderstand the reason why it was not assigned a strength for its approach to telehealth. The SSDD noted that the approach of using telehealth as an emergency backup was potentially meritorious, but was not consistent with the solicitation requirements and would require significant additional training because it was not currently in use at the facility. SSDD at 17.

In response, the protester notes that the increased use of telehealth procedures during the current COVID-19 pandemic underscores the value of its innovative technical approach. Comments and Supp. Protest at 9. However, we note that the agency's guidance for converting in-person appointments to telehealth appointments in response to COVID-19 occurred on March 19, 2020, which was after the SSDD had made the award decision, but before the award was announced. COS at 8. Therefore, it is not clear that this information was appropriate for consideration in the agency's evaluation. Accordingly, we cannot conclude that the agency was unreasonable in concluding that the protester's proposed approach to using telehealth procedures as an emergency backup did not merit a strength.

The protester also contends that the agency failed to acknowledge that, as the incumbent, the protester's transition/start-up plan was "inherently less risky" than that of other offerors. See Comments and Supp. Protest at 12-13, 17-19. Sterling contends that it was unreasonable for the agency to assess its proposal a lower transition plan rating than the awardee when it was the only offeror that could provide staff who were already credentialed by the VA for the McKean County CBOC. *Id.* In response, the agency argues that there is no requirement that an offeror be given additional credit for its status as an incumbent. MOL at 7-8. The agency also points out that Sterling proposed to move the McKean County CBOC to a new site and perform renovations on that site, which involves potential risks. *Id.* Additionally, the record reflects the agency had significant, ongoing concerns about the performance of some of the protester's incumbent staff who were also proposed for this procurement, which would reasonably affect the agency's evaluation of transition risk. See SSDD at 18-19; COS at 6-8.

We have consistently stated that there is no requirement that an incumbent be given extra credit for its status as an incumbent, or that an agency assign or reserve the highest rating for the incumbent offeror. *Integral Consulting Servs., Inc.*, B-415292.2, B-415292.3, May 7, 2018, 2018 CPD ¶ 170 at 7. While the protester contends that the agency's arguments constitute *post hoc* rationalizations not documented in the evaluation record, we note that an agency is not required to document every single aspect of its evaluation or explain why a proposal did not receive a strength for a particular feature. *22nd Century Techs., Inc.*, B-417336, B-417336.2, May 24, 2019, 2019 CPD ¶ 198 at 5; *InnovaSystems Int'l, LLC*, B-417215 *et al.*, Apr. 3, 2019, 2019 CPD ¶ 159 at 10. Here, the agency found that the protester's transition approach was satisfactory, but did not conclude that it warranted a higher rating under the transition/start-up plan subfactor. SSDD at 16. We find the agency's post-protest explanations to be reasonable and consistent with the contemporaneous evaluation record. Accordingly, the protester's contention that its proposal's transition plan deserved a higher rating than the transition plans submitted by other offerors does not provide a basis to conclude that the agency's evaluation was unreasonable, and this protest ground is denied.

Past Performance

The protester contends that the agency erred in evaluating past performance in several respects. First, the protester contends the agency erred in evaluating its past performance by assigning weaknesses for satisfactory past performance ratings. Comments and Supp. Protest at 23-25. Second, the protester argues the agency's past performance evaluation relied on a statistical analysis that failed to account for past performance relevance as required by the solicitation. *Id.* at 20-23. Finally, the protester alleges the agency treated offerors disparately by considering only positive past performance information for the awardee, and only negative past performance information concerning the protester. *Id.* at 27-29.

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. *Metropolitan Interpreters & Translators, Inc.*, B-415080.7, B-415080.8, May 14, 2019, 2019 CPD ¶ 181 at 10; *see also SIMMEC Training Sols.*, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. In addition, the relative merits of an offeror's past performance information is generally within the broad discretion of the contracting agency. *See Paragon Tech. Group, Inc.*, B-407331, Dec. 18, 2012, 2013 CPD ¶ 11 at 5. A protester's disagreement with the agency's judgment does not establish that an evaluation was unreasonable. *FN Mfg., LLC*, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7. Further, while an agency may properly consider past corrective actions, an agency is not required to ignore instances of negative past performance. *Dehler Mfg. Co., Inc.*, B-416819, B-416189.2, Dec. 19, 2018, 2019 CPD ¶ 45 at 4 (*citing The Bionetics Corp.*, B-405145, B-405145.2, Sept. 2, 2011, 2011 CPD ¶ 173 at 7-8).

First, the protester contends that the agency erred by assigning it weaknesses for satisfactory past performance ratings. Comments and Supp. Protest at 23-25. While the protester is correct that the initial Source Selection Evaluation Board (SSEB) consensus evaluation included a handful of satisfactory past performance narratives under a heading labelled weaknesses, the SSA explained that these were, in essence, errors. See AR, Tab 15b, SSEB Consensus Evaluation for Sterling at 3; COS at 5. In support of this position, the agency notes that the evaluation scheme did not provide for assignment of strengths or weaknesses in the evaluation of past performance. COS at 5.

Regardless of whether the assignment of the weaknesses was in error, however, the initial characterization of satisfactory past performance information as a weakness does not appear to have meaningfully factored into the SSA's evaluation: the subsequent post-discussions narratives and the source selection tradeoff narratives in the SSDD do not address or assign strengths or weaknesses for past performance. SSDD at 17-23. More significantly, those narratives do not appear to substantively carry forward any negative treatment of satisfactory past performance information. *Id.* Instead, the post-discussions evaluation and tradeoff narratives focused on substantive discussion of past performance information and gave the protester credit for its "abundance" of satisfactory past performance information. *Id.* at 18-19.

While the SSDD incorporated a copy of the SSEB's pre-discussions consensus evaluation, including the erroneous list of weaknesses, the absence of any discussion of past performance "weaknesses" in the SSA's analysis or tradeoff decision, as well as the positive treatment of satisfactory past performance information suggests that the SSA did not adopt the erroneous weaknesses assigned by the SSEB. See SSDD at 17-23. That is to say, the inclusion of those references in a column labelled "weaknesses" in the original SSEB evaluation was an error, but we do not believe that the protester was competitively prejudiced by that error because the award decision reflected appropriate consideration of the protester's satisfactory past performance. *Id.* Competitive prejudice is an essential element of every viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. See *Applied Bus. Mgmt. Solutions Inc., LLC*, B-405724, Dec. 15, 2011, 2012 CPD ¶ 14 at 9; *Joint Mgmt. & Tech. Servs.*, B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 7.

Next, the protester contends that the agency's source selection decision erred by relying on a statistical analysis³ that did not conform to the solicitation's requirement to

³ The discussion of past performance in the SSDD included both a narrative component and a statistical analysis of CPARS for the protester and the awardee. See SSDD at 17-22. Specifically, the SSDD included a chart with the total number of

consider relevance. Comments and Supp. Protest at 20-23. Specifically, the solicitation provided that the agency would “focus on information that demonstrates quality of performance relative to the size and complexity of the procurement under consideration.” RFP at 127. However, the protester contends the SSDD relied on a statistical analysis of all the offerors’ CPARS ratings without considering their relevance to the current procurement. Comments and Supp. Protest at 20-23. Of note, the protester contends that the agency’s CPARS data includes complexity ratings of low, medium, or high for each effort, and, had the agency limited its analysis to CPARS of comparable complexity to the instant procurement, which was coded as a medium complexity effort, the analysis would have been more favorable to the protester and less favorable to the awardee. *Id.*

In response, the agency notes that the CPARS it considered were all for the same primary service code and North American Industry Classification System code as the instant procurement, and all involved the operation of CBOCs providing primary care for the VA. Supp. MOL at 3-4. Accordingly, the agency viewed all of the CPARS it reviewed as comparable in scope and complexity to the current effort. *Id.* While the protester disagrees with the agency’s conclusion that all efforts involving the operation of CBOCs for the VA were similar in size and complexity to the current CBOC effort, we have no basis to find the agency’s judgment unreasonable. The scope of past performance information to consider is a matter within the agency’s discretion, and the fact that the agency could have, but did not elect to, further focus its review to only those efforts the protester views as most similar does not render the evaluation unreasonable or inconsistent with the solicitation. See *Metropolitan Interpreters & Translators, Inc., supra.*

Moreover, while the protester is correct that the SSDD included a statistical analysis of CPARS for the offerors, it is misleading to suggest that the analysis formed the entire basis of the evaluation. The SSDD also considered the specifics of certain past performance efforts that were similar in scope and complexity to the current procurement, including the protester’s performance on the incumbent contract and other similar contracts. See SSDD at 17-20. In short, the record does not support the protester’s contention that the agency disregarded the solicitation’s requirement to focus on efforts comparable in scope and complexity to the current procurement or failed to reasonably consider them.

The protester also contends that the agency’s past performance evaluation was unequal. Comments and Supp. Protest at 27-29. Specifically, the protester argues that the agency’s evaluation narratives focused only on its negative past performance, while not addressing its positive past performance. *Id.* By contrast, the protester notes that

CPARS for the protester and awardee that involved providing primary care at VA CBOCs, as well as a breakdown by total number of positive and negative CPARS ratings. *Id.* Additionally, the SSDD included a brief discussion of those data, as well as a longer discussion of evaluation narratives drawn from specific past performance efforts for both offerors. *Id.*

the agency's evaluation narratives focused only on positive past performance for the awardee. *Id.* The protester contends that this amounts to improper disparate treatment. *Id.*

The protester is correct that the evaluation narratives primarily focus on the protester's negative past performance information and on the awardee's positive past performance information. See SSDD at 17-22. However, the agency's statistical analysis, which the protester above challenged as too broad, included and summarized all relevant CPARS for the offerors, both positive and negative. *Id.* at 21. That is to say, the record clearly reflects that the agency did not selectively consider only negative information about the protester, or only positive information about the awardee. *Id.*

More significantly, the agency's analysis demonstrated that the protester received significantly more negative past performance ratings than the awardee. For example, of the ratings included in the analysis, the awardee received no ratings of unsatisfactory, while the protester received three. SSDD at 21. The protester also received more than seven times as many marginal ratings as the awardee. *Id.* By contrast, the awardee received more than double the number of exceptional and very good ratings as the protester. *Id.* In short, the agency's evaluation reflected clear trends in the underlying data, and supported assigning a higher confidence rating to Valor.⁴

Additionally, the SSDD includes a lengthy discussion of the contracting officer's concerns with the protester's performance problems on the incumbent effort and other similar efforts. SSDD at 17-19. These concerns extended over a period of years, were extensively documented, and were not resolved in all cases. *Id.* While the protester may prefer that the evaluators focus on other less relevant efforts on which the protester was more highly rated, the incumbent effort is unquestionably the most relevant effort to the agency's evaluation of the protester's past performance.

Despite the evaluators' knowledge of Sterling's performance problems on the incumbent contract, they note that Sterling "has an abundance of Quality and Management ratings of satisfactory," and ultimately assigned Sterling a rating of satisfactory confidence consistent with its overall record of past performance. SSDD at 19. The fact that the evaluators assigned Sterling a past performance rating consistent with its broader

⁴ Collaterally, the protester argues that the agency's statistical analysis was unsound because such an analysis favored offerors with fewer CPARS records because an increased number of CPARS records will tend to dilute positive performance. Comments and Supp. Protest at 22. The protester notes that the agency considered 815 CPARS ratings for the awardee and 935 for the protester--a difference of 120 ratings, or approximately 13 percent. *Id.* The record does not support this argument. Specifically, the awardee's positive CPARS ratings greatly exceeded the protester's not only in percentage terms, but also in terms of absolute numbers. SSDD at 21. That is to say, even if the awardee had 120 additional neutral or negative CPARS ratings, the number of the awardee's Very Good and Excellent ratings would still greatly exceed the number of the protester's Very Good and Excellent ratings. *Id.*

record of performance rather than assigning a negative confidence rating by narrowly focusing only on negative information concerning its performance, reinforces the reasonableness and evenhandedness of the agency's evaluation. *Id.* We cannot conclude that the evaluators erred by failing to assign Sterling a higher confidence rating.

Bias

Finally, the protester contends that the contracting officer was impermissibly biased against it. Comments and Supp. Protest at 29-31. In this regard, the protester notes that the SSA for this procurement was also the contracting officer for the incumbent effort, and was proposing to terminate the protester for default under the incumbent contract. *Id.* Further, the SSA continued to identify performance issues to support a basis for termination at the same time the agency was evaluating proposals and making an award decision. *Id.* The protester contends, in essence, that because the SSA was currently advocating for terminating the protester for default and documenting ongoing performance issues that the SSA could not impartially consider the protester's offer on this procurement. *Id.*

Our decisions have consistently explained that government officials are presumed to act in good faith, and a contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not attribute unfair or prejudicial motives to procurement officials based upon mere inference, supposition, or unsupported speculation. *Lawson Env'tl. Servs. LLC*, B-416892, B-416892.2, Jan. 8, 2019, 2019 CPD ¶ 17 at 5 n.5. Where a protester alleges bias, it must not only provide credible evidence clearly demonstrating bias against the protester or in favor of the awardee, but must also show that this bias translated into action that unfairly affected the protester's competitive position. See *Graybar*, B-411229.2, June 22, 2015, 2015 CPD ¶ 188 at 5 (citing *Global Integrated Sec. (USA) Inc.*, B-408916.3, *et al.*, Dec. 18, 2014, 2014 CPD ¶ 375 at 14). Here, the protester has not made such a showing.

The protester expressly notes that it is not arguing that agency officials acted in bad faith or with prejudicial motive against the protester, but rather that the contracting officer was incapable of even-handedly evaluating the protester's proposal. Comments and Supp. Protest at 29. In this regard, the record before us shows a litany of performance issues documented over a period of years, many of which are ongoing or unresolved, and which involve performance issues concerning incumbent personnel. See COS at 6-8; SSDD at 17-19. Notably, the protester does not provide meaningful arguments that the performance issues which the SSA identified are substantively false or exaggerated.

Rather, the bulk of the protester's argument is that the SSA was incapable of being impartial, because the SSA in this case was also involved in documenting those ongoing issues, and believed the issues were sufficiently grave that they merited a termination for default. Comments and Supp. Protest at 29-31. For example, the protester argues that "[g]iven the [contracting officer's] presentation of events, in his

view, it is hard to imagine that he would ever be able to advocate for Sterling Medical being awarded the follow on procurement.” *Id.* at 30.

The fact that the SSA was involved in documenting negative information about performance problems that were ongoing at the time this procurement was conducted cannot be proof of impermissible bias. As noted above, many of the performance issues identified on the incumbent effort related to aspects of performance directly relevant to the current procurement. It is unclear how the fact that the SSA had firsthand knowledge of significant, directly relevant negative information which was appropriately documented in the SSDD amounts to impermissible bias against the protester. The additional fact that the SSA viewed the negative performance as sufficiently grave to pursue a termination of the incumbent contract for default, without more, does not alter that calculus. See *Veteran National Transportation, LLC*, B-415696.2, B-415696.3, Apr. 16, 2018, 2018 CPD ¶ 141 at 7-9 (contracting officer’s extensive consideration of negative past performance information, to include a termination for default, on incumbent effort does not amount to impermissible bias even though the contracting officer was personally involved in the documentation of that information).

In short, even if we concede the protester’s core argument--that it is hard to imagine the SSA advocating for an award to Sterling in light of significant, relevant, documented performance problems on the incumbent contract--that is not a credible allegation of bias or an unreasonable evaluation. It is entirely reasonable for a contracting officer to be reluctant to make award to a firm under these circumstances.

The protest is denied.

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General Counsel