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## Decision

**Matter of:** Wolff & Mueller Government Services GmbH & Co. KG

**File:** B-419181; B-419181.2

**Date:** December 28, 2020

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Seamus Curley, Esq., and Chelsea L. Goulet, Esq., Stroock & Stroock & Lavan LLP, for the protester.

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### DIGEST

1. Protest challenging the assignment of a weakness to the protester's technical proposal that was the result of an inadvertent transcription error from the evaluation in a related procurement is denied, where the record shows that the agency intended to assign a virtually identical weakness.
  2. Protest challenging the evaluation of the protester's past performance is denied where the agency reasonably relied on information outside of the protester's proposal in accordance with the terms of the solicitation, and where the protester does not establish that the agency unreasonably failed to consider relevant information.
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### DECISION

Wolff & Mueller Government Services GmbH & Co. KG (WMGS), of Stuttgart, Germany, protests the award of a contract to JV JOC Germany BMS (BMS), of Goldbach, Germany, by the Department of the Army, Corps of Engineers, under request for proposals (RFP) No. W912GB-20-R-0007, which was issued for real property support services. WMGS argues that the agency unreasonably evaluated its proposal under the management approach and past performance factors.

We deny the protest.

## BACKGROUND

The Corps issued the solicitation, known as the job order contract (JOC)-West RFP, on April 21, 2020, seeking proposals to provide real property support services at U.S. government facilities in the western region of Germany, Belgium, and the Netherlands. Agency Report (AR)<sup>1</sup>, Tab 5, RFP, at 1, 59.<sup>2</sup> The solicitation anticipated the award of an indefinite-delivery, indefinite-quantity job order contract with a base period of 3 years and two 1-year options. *Id.* at 59. The maximum ordering value under the contract will be \$95 million. *Id.*

The contractor will be required to provide the following services:

[R]eal property repair and maintenance, environmental work, force protection work, and construction services which primarily address general building renovation, road and pavement repair, and general environmental work including, but not limited to, incidental minor construction, excavation, plumbing, demolition, electrical, structural, mechanical, concrete work, and environmental remedial work. Project work may also include Force Protection type projects and other construction projects.

*Id.*

Along with this RFP, the agency also issued solicitation No. W912GB-20-D-0023 for the same services in the eastern region of Germany, known as the JOC-East RFP. Contracting Officer's Statement (COS) at 1-2. The JOC-West RFP sought the replacement of a contract awarded to BMS in 2017 for performance of similar services in the western region. *Id.* at 2. The JOC-East RFP sought the replacement of a contract awarded to WMGS in 2018 for performance of similar services in the eastern region. *Id.* at 2.

The solicitation stated that proposals would be evaluated on the basis of price and the following two non-price factors: (1) management approach, and (2) past performance. RFP at 19. For purposes of award, the past performance factor was more important than the management approach factor, and these two factors, when combined, were "approximately equal in importance to price." RFP at 20.

The Corps received proposals from WMGS and BMS by the closing date of June 5. COS at 13. The agency evaluated the proposals as follows:<sup>3</sup>

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<sup>1</sup> Citations to the agency report are to the PDF document pages.

<sup>2</sup> References to the RFP, without further distinction, are to the JOC-West RFP.

<sup>3</sup> For the management approach factor, the agency assigned one of the following ratings: outstanding, good, acceptable, marginal, or unacceptable. RFP at 22; AR, Tab 35, Source Selection Decision Document (SSDD) at 4. For the past performance

	WMGS	BMS
<b>Management Approach</b>	Good	Outstanding
<b>Past Performance</b>	Limited Confidence	Substantial Confidence
<b>Price</b>	€13.30 million	€14.98 million

AR, Tab 35, SSDD at 6.

The contracting officer, who was also the source selection authority, reviewed and agreed with the evaluations of the proposals, which were prepared by the technical evaluation board (TEB). *Id.* at 1. For the management approach factor, the contracting officer stated that “a comparison of the proposals reveals that JV JOC Germany BMS has an advantage over Wolff and Mueller” based on BMS’s proposed resources, key personnel, and understanding of the workload. *Id.* at 15. With regard to past performance, the contracting officer stated that, “[o]verall, I have substantial confidence that JV JOC Germany BMS is more than capable of successfully performing the work required by the solicitation.” *Id.* In contrast, the contracting officer found “limited confidence based on [WMGS’s] recent/relevant performance record that the Offeror will successfully perform the required effort.” *Id.* The contracting officer concluded that the advantages of BMS’s proposal merited award as compared to the “primary advantage” of WMGS’s proposal, which was its lower price. *Id.* at 16.

The agency awarded the contract to BMS on August 14 and notified WMGS the same day. COS at 1-2. The agency provided the protester a debriefing that included the opportunity to ask questions, which concluded on September 18. *Id.* at 2, 44. This protest followed.

## DISCUSSION

WMGS raises two primary arguments: (1) the evaluation of the protester’s proposal under the management factor was improper because it contained an erroneous reference to the evaluation of its proposal under the JOC-East RFP procurement, and also included other unreasonable findings; and (2) the evaluation of the protester’s proposal under the past performance factor was unreasonable because the agency considered negative information outside of the project references identified in the proposal, but did not consider other available information the protester says refutes the

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factor, the agency assigned one of the following ratings: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. *Id.* at 24; AR, Tab 35, SSDD at 4-5.

negative findings.<sup>4</sup> For the reasons discussed below we find no basis to sustain the protest.

### Management Approach Evaluation

WMGS challenges the assignment of two weaknesses to its proposal under the management approach factor. Protest at 18-35. For the reasons discussed below, we agree with the protester that the evaluation of the first weakness erroneously referred to information from its proposal for the JOC-East RFP, but agree with the agency that the error did not prejudicially affect the evaluation or the award decision. With regard to the protester's other arguments, we also find no basis to sustain the protest.

The evaluation of an offeror's proposal is a matter within the agency's discretion. *National Gov't Servs., Inc.*, B-401063.2 *et al.*, Jan. 30, 2012, 2012 CPD ¶ 59 at 5. In reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency, but rather examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. *22nd Century Techs., Inc.*, B-413210, B-413210.2, Sept. 2, 2016, 2016 CPD ¶ 306 at 8. An offeror's disagreement with the agency's evaluation judgment, without more, is insufficient to establish that the agency acted unreasonably. See *Vectrus Sys. Corp.*, B-412581.3 *et al.*, Dec. 21, 2016, 2017 CPD ¶ 10 at 3.

Our Office generally accords lesser weight to post-hoc arguments or analyses made in response to protest allegations because we are concerned that new judgments made in the heat of an adversarial process may not represent the fair and considered judgment of the agency. *Boeing Sikorsky Aircraft Support*, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. In contrast, we will consider agencies' explanations that provide a detailed rationale for contemporaneous conclusions and fill in previously unrecorded details, so long as the explanations are credible and consistent with the contemporaneous record. *Native Energy & Tech., Inc.*, B-416783 *et al.*, Dec. 13, 2018, 2019 CPD ¶ 89 at 4.

The management factor stated that the agency would assess "whether the Offeror's management and approach . . . is logical, feasible, and demonstrates a comprehensive understanding of the complexity of managing the contract." RFP at 24. The RFP provided for the evaluation of the following two aspects of proposals:

- i. Whether the proposal clearly delineates lines of authority, and communication with the Government, on the organizational chart organized in a precise and logical manner, including all offices involved with the management of the contract, including Key Subcontractors and [joint venture] partners.

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<sup>4</sup> WMGS also raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find no basis to sustain the protest.

ii. The extent to which the proposal describes a reasonable and logical plan for the performance of multiple projects within the geographic scope of this contract that illustrates a detailed understanding of multiple task order requirements, proposes personnel that meet the specification requirements, and provides subcontracting and staffing plans.

*Id.*

#### Weakness One – Personnel

The Corps assigned the first weakness because WMGS's proposal included personnel who did not meet the RFP's specification requirements, particularly the requirement to have completed mandatory contractor quality control (CQC) training and Occupational and Safety Hazard Administration (OSHA) training.<sup>5</sup> AR, Tab 29, TEB Report at 16. The weakness was assessed as follows:

Offeror's personnel do not appear to have the required training. For example, page 11 states that all WMGS superintendents have CQC and OSHA training. However, as reflected in their resumes, [Individual 1] has NO relevant course work, [Individual 2] has no safety training, [Individual 3]'s CQC is expired, and [Individual 4] has no safety training and expired CQC (p. 5 & 11). They state they intend to combine key personnel roles and have one person serve as site superintendent, [site safety & health officer (SSHO)] and CQC [system manager] on Task Orders less than \$2M. Although that's allowable per the specifications, historically the vast majority of JOC orders are less than \$2M, and these individuals the Offeror provides are not qualified.

*Id.*; see also AR, Tab 35, SSDD at 10.

WMGS argues that the Corps' evaluation mistakenly cited personnel (Individuals 1-4), which were actually identified in the protester's proposal for the JOC-East RFP and not the JOC-West RFP at issue here. The protester contends that the assignment of the weakness was therefore improper because it was based on a proposal for a different procurement.

The Corps acknowledges that the evaluation erroneously referenced personnel from the protester's proposal for the JOC-East RFP. Memorandum of Law (MOL) at 55-56; COS at 52-53. In response to the protest, the chairperson of the four-member TEB for the JOC-West procurement explained that she prepared the TEB report by using as a

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<sup>5</sup> The Corps explains that CQC training is required for all personnel assigned to quality control positions. Agency Response to GAO Questions, Dec. 17, 2020, at 1-2. This training is valid for 5 years. *Id.* This training is referenced within the specification requirements in the RFP. *Id.*; RFP at 4; AR, Tab 5.1, RFP Specification Binder.

template the report prepared by the TEB that evaluated proposals in the JOC-East RFP procurement. AR, Tab 43, Decl. of TEB Chair, Oct. 22, 2020, at 2. She further explains that in the process of copying the TEB report for the JOC-East RFP procurement, “I inadvertently and unintentionally failed to ‘cut’ the reference from the JOC East TEB Report regarding the qualifications of the [WMGS] personnel identified in WMGS’ JOC East proposal.” *Id.* The four members of the TEB all state that the evaluation of WMGS’s proposal was based solely on its proposal for the JOC-West RFP, rather than its proposal for the JOC-East RFP. AR, Tab 42, Decl. of Evaluator 1, Oct. 22, 2020, at 1-2; Tab 43, Decl. of TEB Chair, Oct. 22, 2020, at 1-2; Tab 44, Decl. of Evaluator 2, Oct. 22, 2020, at 1-2; Tab 45, Decl. of Evaluator 3, Oct. 22, 2020, at 1-2. The contracting officer, who was also the source selection authority, states that she was unaware that the weakness set forth in the TEB report and copied into the SSDD referred to personnel proposed by the protester for the JOC-East RFP procurement. COS at 52-53.

The Corps states that the inadvertent inclusion of the weakness concerning the personnel for the JOC-East RFP proposal did not affect the evaluation and award decision because it was essentially the same as a weakness identified by the TEB for the personnel for the JOC-West RFP. MOL at 57, 81-82. In this regard, the evaluation notes prepared by Evaluator 1 identified essentially the same concerns cited above in the TEB report for four different personnel proposed by the protester for the JOC-West RFP:

Further, page 11 states that all WMGS superintendents have CQC and OSHA training. However, as reflected in their resumes, [Individual 5] has NO relevant course work, and [Individual 6], [Individual 7], and [Individual 8] have expired [CQC training].

AR, Tab 26, Evaluator 1 Notes at 1.

The members of the TEB all state that they agreed that WMGS’s proposal merited a weakness based on the concerns above regarding Individuals 5, 6, 7, and 8. AR, Tab 42, Decl. of Evaluator 1, Oct. 22, 2020, at 2; Tab 43, Decl. of TEB Chairperson, Oct. 22, 2020, at 2-3; Tab 44, Decl. of Evaluator 2, Oct. 22, 2020, at 2; Tab 45, Decl. of Evaluator 3, Oct. 22, 2020, at 2.

On this record, we find that the agency’s post-protest explanations for the error in the TEB report and SSDD are consistent with the contemporaneous record. See *Native Energy & Tech., Inc., supra*. We also agree with the agency that the weakness intended to be included in the TEB report and SSDD is substantially the same as the weakness actually cited, in that both concern missing or expired training for four individuals proposed by the protester.

Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency’s improper actions, it would have had a substantial chance of receiving the award. See *DRS ICAS*,

LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21-22. Where the record establishes no reasonable possibility of prejudice, we will not sustain a protest even if a defect in the procurement is found. See *Procentrix, Inc.*, B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 11-12. Here, we find no basis to conclude that the error in recording the intended weakness for the protester's proposal had any effect on the evaluation or the award; recording of the actual, essentially identical, weakness would not have improved WMGS's chance for receiving the award.

Turning to the evaluation itself, the Corps' evaluation noted that the protester's proposal represented that all WMGS superintendents had completed the required CQC OSHA safety training. AR, Tab 29, TEB Report at 16 (*citing* AR, Tab 11, WMGS Proposal Vol. 1 at 11). As the agency's evaluation found, however, "[Individual 5] has NO relevant course work, and [Individual 6], [Individual 7], and [Individual 8] have expired [CQC training]." AR, Tab 26, Evaluator 1 Notes at 1. The agency's response to the protest explained that the agency assigned the weakness because personnel who lack training or whose training has expired "can impair the Offeror's ability to mobilize and begin work quickly after award." MOL at 79.

The protester does not dispute that the four individuals identified in the notes of Evaluator 1 do not have current CQC training, as stated in the notes of Evaluator 1. See Comments at 3. Rather, the protester contends that even if the record supports the agency's representation that it intended to assign this weakness, it was unreasonable because the RFP did not require all personnel to have "up to date coursework or qualifications" at the time of proposal submission. *Id.* Further, the protester notes that its proposal stated that all personnel "will be qualified" for their roles. Protest at 25.

We find no merit to the protester's argument that the solicitation stated that offerors were not required to propose personnel who met the requirements of the RFP specifications. As discussed above, the management approach factor stated the agency would evaluate "[t]he extent to which the proposal . . . proposes personnel that meet the specification requirements." RFP at 24. We therefore conclude that the agency reasonably identified a weakness in the protester's proposal based on the risk that the proposed individuals would not have valid training in time for the start of contract performance.

#### Weakness Two – Organizational Chart

The Corps assigned the second weakness to WMGS's proposal based on a concern relating to its organizational chart, as follows:

Regarding the Offeror[']s [organizational] chart, the lines of authority are not clear. For example, there are no key subcontractors shown (or mentioned anywhere), and the generic use of "subcontractor(s)" is not connected with any of the Prime's personnel. The [organizational] chart seems to show a line of authority from the SSHO to the CQC Manager (p. 25). This contradicts the management plan statement that the SSHO

has a direct line of authority to the JOC [program manager], as required by the [Engineer Manual (EM)] 385-1-1 and the Contract (p. 15).

AR, Tab 29, TEB Report at 16; see also AR, Tab 35, SSDD at 10-11.

With regard to the first part of the weakness, which concerns the role of subcontractors, WMGS argues that the evaluation was unreasonable because the RFP did not require offerors to identify key subcontractors and the protester did not identify any key subcontractors in its proposal. Protest at 27-29. Instead, the protester states that its proposal identified the role of non-specific subcontractors to reflect “the myriad of [subcontractors] which could be involved in the work, depending on the nature and number of awarded task orders.” *Id.* at 27. The protester also argues that its organizational chart appropriately depicted “blocks” showing the role of subcontractors within the management structure for the performance of the contract. *Id.* at 29.

The Corps states that this weakness was not assessed based on the failure to identify specific key subcontractors in the organizational chart.<sup>6</sup> MOL at 53-54. Instead, the agency explains that the weakness was assessed because the protester’s organizational chart identified the role of subcontractors, but showed unclear lines of authority. *Id.* at 53-54, 73-76. In this regard, the organization chart shows “Subcontractors” reporting directly to “Alternate Superintendents,” who in turn report to “Superintendents.” AR, Tab 11, WMGS Proposal Vol. 1 at 25. The agency notes that not all job orders placed under the contract will involve an alternate superintendent, leaving it unclear as to the lines of authority on the organizational chart for those circumstances. MOL at 76.

The protester contends that the agency should have understood the organizational chart to show that the line of authority involved an alternate superintendent only when a task order involved this position. Further, the protester argues there is a narrative in the management section stating that subcontracted workforce foremen report to the superintendent. See AR, Tab 11, WMGS Proposal Vol. 1 at 12. However, as the agency notes, the RFP required offerors to provide an organizational chart that “clearly delineates lines of authority,” and addresses “all offices involved with the management of the contract, including Key Subcontractors and [joint venture] partners.” RFP at 24. For this reason, we think the agency reasonably found the depiction of a line of authority that would not necessarily be in use for all job orders merited the assessment of a weakness.

In the second part of the weakness, the agency found that the organizational chart shows a line of authority from the SSHO position to the CQC manager position, despite a requirement that the SSHO have a “direct line of authority to the JOC [program manager].” AR, Tab 29, TEB Report at 16.

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<sup>6</sup> The agency notes that, contrary to WMGS’s statement in its protest, its proposal in fact referenced the role of key subcontractors. AR, Tab 11, WMGS Proposal Vol. 1 at 17 (referring to “Key Subcontractors”).



The protester does not dispute the requirement for the line of authority cited by the agency. See Comments at 5-6. The protester argues that the evaluation was unreasonable because its organizational chart contained an explanatory note which states that “SSHO are part of CQC organization but report to a senior project official (the WMGS Project/Program Manager).” See *id.* at 5; Protest at 33; AR, Tab 11, WMGS Proposal Vol. 1 at 25. The protester contends that to the extent the agency “maintains that WMGS should have included additional physical lines in its organization chart to further clarify the relationships,” such lines were “unnecessary” and “would have resulted in a difficult to read jumble which was properly avoided by the method WMGS employed [*i.e.*, the explanatory note].” Comments at 5-6.

The agency explains, however, that this explanatory note was in conflict with the chart, which shows that the SSHO position reports directly to the CQC Manager position, which in turn reports to the program/project manager position. See MOL at 77. On this record, we think the agency reasonably found that the chart, as depicted, failed to clearly delineate the lines of authority in a precise and logical manner. We therefore find no basis to sustain the protest.

#### Past Performance Evaluation

WMGS challenges the Corps’ evaluation of its proposal under the past performance factor, specifically with regard to the consideration of past performance references that were not included in its proposal. Protest at 36-53. For the reasons discussed below, we find no basis to sustain the protest.

Our Office reviews an agency’s evaluation of past performance to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. *Richen Mgmt., LLC*, B-409697, July 11, 2014, 2014 CPD ¶ 211 at 4. An agency’s evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror’s performance history, is a matter of agency discretion. *Cyber Protection Techs., LLC*, B-416297.2, B-416297.3, July 30, 2018, 2018 CPD ¶ 270 at 6. An offeror’s disagreement with an agency’s evaluation, without more, does not demonstrate that those judgments are unreasonable. *Cape Envtl. Mgmt., Inc.*, B-412046.4, B-412046.5, May 9, 2016, 2016 CPD ¶ 128 at 8.

The RFP provided that the agency would evaluate “the relevancy and quality of the Offeror’s past performance,” and “assess a confidence level on how likely the Offeror will be successful on the work under this Solicitation.” RFP at 24. Offerors were required to provide past performance information for at least two but not more than five projects completed within the past 6 years. *Id.* at 14. For each project reference, offerors were required to submit a record from the contractor performance assessment reporting system (CPARS), if available, or a past performance questionnaire from the client if no CPARS record is available. *Id.* The solicitation advised that “[a]n interim completed CPARS rating will be considered if a final record is not available.” *Id.* at 14-15. Offerors were also advised that the agency “reserves the right to review all

recent past performance records available to make a confidence determination to include other projects not submitted by the Offeror.” *Id.* at 25.

WMGS identified five project references in its proposal. AR, Tab 11, WMGS Proposal Vol. 1 at 79. The Corps evaluated the five project references and found that three were very relevant, and two were relevant. AR, Tab 29, TEB Evaluation at 17; see *also* AR, Tab 35, SSDD at 7. Consistent with the RFP provisions cited above, the agency also considered CPARS ratings for other JOC orders the protester performed for the Corps in Europe. AR, Tab 29, TEB Evaluation at 18-21; see *also* AR, Tab 35, SSDD at 7-8.

The Corps evaluation of WMGS’s past performance identified the following two strengths:

Four of the five projects submitted for experience show an overlap of about nine months, three have an overlap of about 15 months, and two have an overlap of about 21 months. This demonstrates an ability to handle multiple projects simultaneously in separate areas. (p. 62).

In CPARS, for the Air Force under contract FA561315D3001 there are 13 records for 11 task orders. All [of these were] performed between 2016 and 2020. Of those, the offeror received no less than satisfactory ratings with mostly Very Good and Exceptional ratings in all categories. The remainder of the evaluations in CPAR[S] are for performance with the [Army Corps] Europe District.

AR, Tab 29, TEB Evaluation at 18; see *also* AR, Tab 35, SSDD at 7-8.

The agency also identified a significant weakness, which was based on CPARS ratings for project references for JOC contracts not identified in the protester’s proposal. AR, Tab 29, TEB Evaluation at 18. The SSDD noted that “[w]hile CPARS ratings for the five projects submitted by the offeror all have ratings of ‘Very Good or Exceptional’ for quality, schedule, and management,” the agency’s review of the CPARS ratings for other contracts found the following negative information:

[A]n analysis of the CPARS for the Offeror shows the average rating is [] Satisfactory with several marginal and unsatisfactory ratings on previous [Army Corps Europe District] JOC orders for very relevant and recent projects. Nearly 10% of all ratings given to Wolff and Mueller were Unsatisfactory or Marginal, and several of the assessing officials provided a recommendation to NOT use the Offeror for similar requirements in the future.

AR, Tab 35, SSDD at 7.

The agency cited as examples two contracts: (1) a JOC for performance in Germany with performance between 2016 and 2018 that involved 98 task orders and 134 CPARS

records, and (2) a JOC for performance in Germany with performance between 2015 and 2016 that involved 68 task orders and 112 CPARS records. *Id.* at 8. The agency noted that for the first contract, “5.1% of the Task Orders were rated Marginal and Unsatisfactory for Quality, 13.27% for schedule, and 9.18% for Management of Key personnel.” *Id.* For the second contract, “7.35% were rated Marginal and Unsatisfactory for Quality, 13.24% for Schedule and 8.82% for Management of Key Personnel.” *Id.*

Additionally, the SSDD cited and appended to the decision a letter from a Corps contracting officer (who was not involved in this procurement), dated June 4, 2019 (June 2019 letter). *Id.* at 8. This letter identified concerns regarding WMGS’s performance of contracts for the Corps in Europe, as follows:

From 2016 to present day, Wolff & [Mueller] has 98 individual ratings below satisfactory recorded in CPARS across 52 different projects. Furthermore, Assessing Officials continue to report difficulties with your firm pertaining to quality, schedule, and safety deficiencies on active task orders and contracts, including the following more recent evaluations:

- W912GB17C0018 Brussels American School
- W912GB17F0306 Upgrade Fire Alarm and Lighting System Hohenfels, Germany

Additionally, the Europe District has routinely experienced difficulties with untimely response to JOC Task Order Requests for Proposal from your firm, and in finding agreement on appropriate use of the JOC Unit Price Book during Task Order negotiations.

AR, Tab 35.1, Letter from Agency to Protester, June 4, 2019, at 1. As a result of these concerns, the agency advised that the Corps’ Europe District contracting officers will “indefinitely suspend” issuing “new Requests for Proposals” to the protester under “active Europe District JOC contracts.” *Id.*

The SSDD found that “[t]he June 2019 letter from the Government expressed a lack of confidence in Wolff and Mueller’s ability to successfully perform JOC task orders in the future.” AR, Tab 35, SSDD at 8. The SSDD further stated that “[i]t is important to note that one of the contracts affected by their negative past performance was W912GB18D0007 FY17 Germany East Belgium and Netherlands JOC; which has a very similar scope as the FY20 Germany West JOC.” *Id.* at 14.

WMGS contends that the Corps unreasonably assigned its proposal a limited confidence rating for the past performance factor based on the June 2019 letter. The protester does not dispute that the agency was permitted under the terms of the RFP to consider past performance information apart from the five project references identified in its proposal. Instead, the protester primarily argues that the agency improperly

considered the letter without also considering what the protester contends are countervailing arguments provided by the protester in correspondence to the contracting officer who issued the 2019 letter.<sup>7</sup> Comments at 7-8. As a result of the agency's consideration of the letter without considering what the protester contends was its rebuttal, the protester argues that the agency "improperly allowed that unreasonable analysis to entirely supplant the top rating the WMGS's exemplary proposal entitled it to." Comments at 6.

As a preliminary matter, the record shows that the agency's basis for assigning the rating of limited confidence was not based only on information in the June 2019 letter. The record shows that the SSDD found "[n]early 10% of all ratings given to Wolff and Mueller were Unsatisfactory or Marginal, and several of the assessing officials provided a recommendation to NOT use the Offeror for similar requirements in the future." AR, Tab 35, SSDD at 7. Thus, while the agency's assessment of WMGS's past performance, and the performance problems cited in the June 2019 letter both refer to negative CPARS ratings, it does not follow that the June 2019 letter was the sole basis for the limited confidence rating.

Next, the protester argues that the agency's consideration of the June 2019 letter obligated it to also consider the protester's subsequent correspondence disputing the findings and conclusions of the letter. Comments at 6-7. The protester sent four letters, from June to August 2019, in response to the agency's June 2019 letter. Protest exh. E, Letter from WMGS to Agency, June 7, 2019; exh. F, Letter from WMGS to Agency, June 25, 2019; exh. G, Letter from WMGS to Agency, July 1, 2019; exh. H, Letter from WMGS to Agency, Aug. 8, 2019. The protester contends that these letters dispute the agency's basis for identifying concerns regarding the protester's performance--in particular, the reliance on what the protester contends are unreasonable or incomplete CPARS ratings.

The record does not show, as the protester contends, that the contracting officer had in her possession, but failed to review, the protester's June through August 2019 correspondence with the agency concerning the June 2019 letter. See Comments at 7-8. The contracting officer stated in response to the protest: "I have reviewed some, but not all of the communications between [the Corps] and WMGS concerning [] WMGS' performance on the then pending Agency JOC contracts." COS at 51. She

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<sup>7</sup> WMGS also argues that the Corps unreasonably failed to assign any strengths for the five project references identified in its proposal, and that these references merited the assignment of the highest possible rating for the past performance factor of outstanding. Comments at 6-7. As the record cited above shows, however, the TEB assigned two strengths to the protester's proposal based on its five project references, and these strengths were cited in the SSDD. AR, Tab 29, TEB Report at 18; Tab 35, SSDD at 7. To the extent the protester believes that these project references, alone, merited the assignment of an outstanding rating, the protester's disagreement with the agency's judgment, without more, does not provide a basis to sustain the protest. See *Cape Envtl. Mgmt., Inc., supra*.

explains, however, that “[w]hat transpired between [the Corps] and WMGS on the FY18 JOC East contract in June 2019 and thereafter has been relayed to me by various [Corps] Contracting personnel and the Office of Counsel attorney involved in the discussions with WMGS and its counsel in June 2019.” *Id.*

The Federal Acquisition Regulation (FAR) requires agencies to provide offerors an opportunity to “provide information on problems encountered on the identified contracts and the offeror’s corrective actions.” FAR 15.305(a)(2)(ii). The RFP authorized offerors to address adverse past performance, as follows: “If an Offeror has any Cure Notices or Show Cause Letters for each submitted project, the Offeror shall provide them with a description of any corrective action implemented by the Offeror.” RFP at 15. Apart from this opportunity, the FAR does not require agencies to provide an opportunity to further address adverse past performance where, as here, the agency does not conduct discussions. FAR 15.306(d)(3); *see Rod Robertson Enters., Inc.*, B-404476, Jan. 31, 2011, 2011 CPD ¶ 129 at 3 (where agency elects not to hold discussions, agency is not required to seek clarification of adverse past performance information unless agency has a reason to question its validity).

As the SSDD specifically noted, the protester addressed the concerns regarding its past performance in its proposal. AR, Tab 35, SSDD at 8. Specifically, the protester’s proposal stated as follows:

WMGS has an extensive history of past performance with the U.S. Government, the overwhelming majority of which has been evaluated quite positively. However, in some cases, WMGS has received ratings of less than Satisfactory in evaluated areas under CPARS. WMGS takes this quite seriously and has used the critical client feedback, together with our own internal audits, to make process improvements and changes in personnel, where required, when trends so indicated. WMGS frequently monitors critical project metrics for success and uses the data together with client feedback to constantly improve our services.

WMGS respectfully requests that any reviewers of past performance evaluations posted to CPARS note that some ratings of less than satisfactory appear in Interim evaluations. WMGS then took action to make improvements, resulting in improved final CPARS evaluations. In some other cases, WMGS has not concurred with a CPARS evaluation and awaits either the adjudication foreseen by FAR 42.1503, finalization of a Change under FAR 52.243-4. or a response due under FAR 52.233-1. WMGS respectfully submits that in such cases, the evaluations should not be considered in the assessment of its past performance, as the final evaluation may change.

AR, Tab 11, WMGS Proposal Vol. 1 at 4.<sup>8</sup>

The protester's proposal also requested that the agency's review of its past performance "note that some ratings of less than satisfactory appear in Interim evaluations." *Id.* As discussed above, however, the RFP advised that interim CPARS ratings would be considered, in the absence of final ratings. RFP at 14-15.

The protester's proposal further stated that, in some instances, it took corrective action in response to past performance concerns, "resulting in improved final CPARS evaluations." AR, Tab 11, WMGS Proposal Vol. 1 at 4. The contracting officer noted that WMGS's proposal "acknowledged the past performance issues in the proposal's executive summary section and indicated that it has used feedback to make process improvements and personnel changes." AR, Tab 35, SSDD at 8. The contracting officer also noted the protester's explanation that "many of the subpar past performance evaluations were interim with improvements by the final review," and that "[t]he CPARS ratings that include dates after the Government's June 2019 letter do not include any unsatisfactory or marginal ratings." *Id.* The contracting officer stated that the CPARS ratings assigned after the issuance of the letter "has increased the Government's confidence to some degree," but found that "that confidence remains limited" because "[t]here is insufficient data to provide a higher confidence that the Offeror's improvement in performance will continue and last." *Id.* The contracting officer concluded that the protester's proposal merited a limited confidence rating "because based on the Offeror's recent/relevant performance record, the Government has a low expectation that the Offeror will successfully perform the required effort." *Id.*

On this record, we find no basis to conclude that the agency improperly considered the June 2019 letter, or that the agency improperly failed to seek out and review the protester's correspondence replying to the letter.<sup>9</sup> The protester was aware of the

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<sup>8</sup> FAR 42.1503(d) provides a process through which contractors may dispute CPARS ratings. The protester's proposal states it has availed itself of this opportunity: "In some . . . cases, WMGS has not concurred with a CPARS evaluation and awaits either the adjudication foreseen by FAR 42.1503, finalization of a Change under FAR 52.243-4 [Changes], or a response due under FAR 52.233-1 [Disputes]." AR, Tab 11, WMGS Proposal Vol. 1 at 4.

<sup>9</sup> Additionally, WMGS argues that the correspondence constituted past performance information that the agency was required to consider. Protest at 37-38. Our Office has recognized that in certain limited circumstances an agency evaluating a proposal has an obligation (as opposed to the discretion) to consider outside information bearing on the offeror's proposal. *International Bus. Sys., Inc.*, B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. In *International Business Systems*, for example, we concluded that the agency could not reasonably ignore information regarding the protester's performance of a recent contract involving the same agency, virtually the same services, and the same contracting officer, simply because an agency official failed to complete the necessary paperwork to complete the past performance assessment. *Id.* at 5. Here, in

existence of the June 2019 letter and the agency's views and actions concerning the protester's performance of relevant work, as set forth in the letter. The protester specifically addressed the matter of negative past performance in its proposal, and the evaluation shows that the agency was aware of and considered the protester's improvements in response to the CPARS ratings relied upon by the evaluation. See AR, Tab 35, SSDD at 8. Under these circumstances, we find no basis to conclude that the agency was obligated to seek out or consider additional correspondence which detailed information that the protester already did or could have addressed in its proposal.<sup>10</sup> See FAR 15.306(d)(3); *Rod Robertson Enters., Inc.*, *supra*.

Finally, to the extent WMGS argues that the agency's consideration of the June 2019 letter improperly "overshadowed" the positive information regarding the five project references identified in its proposal, Comments at 7, we find no merit to this argument. As discussed above, we find that the agency reasonably evaluated the protester's past performance and assigned a significant weakness. The protester's disagreement with the agency's conclusions about the importance of its negative CPARS ratings, relative to the positive information identified in the two strengths assigned for the five project references identified in its proposal, does not provide a basis to find that the agency's judgment was unreasonable. A protester's disagreement with the agency's judgment, without more, does not provide a basis to sustain the protest. See *Cape Env'tl. Mgmt., Inc.*, *supra*.

The protest is denied.

Thomas H. Armstrong  
General Counsel

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contrast, the letters that the protester says the agency should have considered were not specifically brought to the attention of the agency by the protester in its proposal, nor were they within the sole control of the agency, that is, beyond the protester's ability to present. We therefore find no basis to conclude that the agency was obligated to consider this information, as was the case in *International Business Systems*.

<sup>10</sup> We also note that the protester's contention that the agency failed to consider its correspondence concerning the June 2019 letter relies on the argument that the correspondence refuted the findings of the June 2019 letter. To the extent the protester challenges the contents of the CPAR and disputes the CPARS ratings assigned by the agency, this is a matter of contract performance that we do not review. *ProActive Techs., Inc.; CymSTAR Servs., LLC*, B-412957.5 *et al.*, Aug. 23, 2016, 2016 CPD ¶ 244 at 11 n.6; see also *Wittenberg Weiner Consulting, LLC*, B-413460, Oct. 31, 2016, 2016 CPD ¶ 319 at 4. Rather, we review whether the agency's evaluation of a past performance information was reasonable and consistent with the terms of the solicitation with regard to the conclusions drawn from the available past performance information. See *Cyber Protection Techs., LLC*, *supra*.