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Decision

Matter of: Theodor Wille Intertrade GmbH

File: B-419269.4; B-419269.5; B-419269.6; B-419269.7

Date: February 1, 2022

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DIGEST

1. Protests challenging the evaluation of proposals and source selection decisions are denied, where the evaluation and source selections were reasonable and consistent with the terms of the solicitation.
2. Where a solicitation requires separate proposals for the award of multiple zone contracts, an agency is not required to consider past performance information that the protester submitted in its proposals for other zones, but elected not to include in its proposal for the zone challenged here.

DECISION

Theodor Wille Intertrade GmbH (TWI), of Zug, Switzerland, protests the award of two contracts to EFS Ebrex Sarl (EFS), of Geneva, Switzerland, under request for proposals (RFP) No. SPE300-17-R-0016, issued by the Defense Logistics Agency (DLA) for food distribution to the Department of Defense (DOD) and other authorized government customers in the following zones: (1) Northern Europe; (2) Southern Europe/Northern Africa; (3) Western Africa; and (4) Naval Forces ships in Europe and Africa. The protester challenges multiple aspects of the evaluation of proposals and the source selection decisions for zones 2 and 4.

We deny the protests.

BACKGROUND

The RFP was issued on December 1, 2016, using the combined commercial item and negotiated procurement procedures of Federal Acquisition Regulation (FAR) parts 12 and 15. Agency Report (AR), Tab 15, RFP at 1, 131.¹ The RFP contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity contract with economic price adjustment in each of the four zones. *Id.* at 43. The RFP required that offerors submit proposals for all four zones to be considered for award. *Id.* at 44. The solicitation will require the contractor to perform as a full line food distributor that will be required to supply all chilled products, semi-perishable food products, frozen fish, meat and poultry, other frozen foods (*i.e.*, fruits, vegetables, prepared foods, etc.), dairy and ice cream products, fresh and frozen bakery products, beverage base and juices (for dispensers), beverages and juices (non-dispenser), fresh fruits and vegetables, non-food items, and government furnished material, including but not limited to unitized group rations, meals ready to eat, health and comfort packs, and other operational rations items either currently in existence or to be introduced during the term of the contracts. *Id.* at 43-44.

The RFP stated that proposals would be evaluated under the following technical factors: (1) warehouse location and capacity; (2) experience; (3) quality control, assurance, and warehouse management systems/procedures; (4) resource availability (cash flow, equipment, and carrier agreements); and (5) implementation and management plans. RFP at 131. To evaluate proposals, the agency used a source selection plan (SSP) “that supplemented the evaluation language of the Solicitation.” Zone 2 Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 7. For each evaluation factor, the SSP provided a detailed definition of the ratings to be assigned by the evaluators following their assessment of proposals as follows: outstanding, good, acceptable, marginal, and unacceptable. AR, Tab 16, SSP at 5, 9-19.

The RFP further stated that the agency would evaluate each offeror’s past performance. RFP at 131. The RFP and SSP provided that the evaluators would assess each offeror’s past performance contract references and assign ratings for recency, relevancy, and quality of performance, and then assign an overall confidence rating as follows: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. *Id.* at 135; SSP at 5-7, 22-23.

The RFP stated that award would be made “to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered.” RFP at 131. Specifically, the RFP stated that award would be made on the basis of a best-value tradeoff where the five technical factors combined

¹ The RFP was amended 13 times. Citations to the RFP are to the conformed version of the solicitation provided by the agency.

were of equal importance to past performance, and the technical factors and past performance combined were significantly more important than price.² *Id.* at 132.

The agency received proposals from four offerors by the January 20, 2017, closing date for receipt of proposals, including EFS and TWI. Zone 2 COS/MOL at 13. The agency engaged in multiple rounds of discussions with competitive range offerors, culminating in a request for final proposal revisions on February 27, 2020. *Id.* On September 9, the agency notified the offerors that TWI was selected for award for zone 1, and EFS was selected for award for zones 2 and 3. AR, Tab 50, TWI Successful Offeror Letter; Tab 48, TWI First Unsuccessful Offeror Letter. An award for zone 4 was not made at that time. See Zone 4 COS/MOL at 15 (indicating that the agency advised offerors that it would conduct a reverse auction for zone 4 on September 16, 2020).

Following a debriefing, TWI filed a protest with our Office challenging the award of the zone 2 contract to EFS, and filed two supplemental protests. The agency advised that it would take corrective action, reevaluate proposals, and make a new award decision. Accordingly, our Office dismissed the protests as academic. *Theodor Wille Intertrade GmbH*, B-419269 *et al.*, Dec. 1, 2020 (unpublished decision).

When the agency completed its corrective action, the final evaluation of the zone 2 proposals was as follows:

	EFS	TWI
Warehouse Location and Capacity	Good	Good
Experience	Outstanding	Acceptable
Quality Control, Assurance, and Warehouse Management System/Procedures	Outstanding	Good
Resource Availability (Cash Flow, Equipment, and Carrier Agreements)	Outstanding	Good
Implementation and Management Plans	Good	Good
Past Performance	Substantial Confidence	Satisfactory Confidence
Price	\$30,655,298	\$25,081,374

AR, Tab 72, Zone 2 Source Selection Decision Document (SSDD) at 7-8.

² The RFP stated that price proposals would be evaluated to determine the aggregate distribution price and the weighted aggregate product price. RFP at 131.

Regarding zone 4, the agency's final evaluation of proposals was as follows:

	EFS	TWI
Warehouse Location and Capacity	Good	Good
Experience	Outstanding	Acceptable
Quality Control, Assurance, and Warehouse Management System/Procedures	Outstanding	Good
Resource Availability (Cash Flow, Equipment, and Carrier Agreements)	Outstanding	Good
Implementation and Management Plans	Good	Good
Past Performance	Substantial Confidence	Substantial Confidence
Price	\$15,864,987	\$13,183,658

AR, Tab 42, Zone 4 SSDD at 7.

On October 5, 2021, the agency notified TWI that EFS was again selected for contract award for zone 2, and was also selected for contract award for zone 4. AR, Tab 46, TWI Second Unsuccessful Offeror Letter. TWI received debriefings, and these protests followed.

DISCUSSION

TWI challenges numerous aspects of the agency's evaluation of proposals under the technical factors, as well as the agency's evaluation of past performance. In addition, the protester argues that the errors in the evaluation resulted in flawed source selection decisions. Although we do not specifically address all of TWI's arguments, we have fully considered all of them and find that they afford no basis on which to sustain the protests.

When reviewing a protest challenging an agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency's discretion. *Primary Care Sols., Inc.*, B-418799.3, B-418799.4, Sept. 8, 2021, 2021 CPD ¶ 314 at 4. Rather, we will review the record to determine whether the agency's evaluation was reasonable; consistent with the stated evaluation criteria, applicable procurement statutes, and regulations; and adequately documented. *Id.* An offeror's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *KSC BOSS Alliance, LLC*, B-416334, B-416334.2, July 27, 2018, 2018 CPD ¶ 267 at 5.

Experience

The protester argues that a weakness assigned to its zone 2 and 4 proposals under the experience factor was unreasonable and prejudicial. TWI argues that the agency misread its proposals and incorrectly concluded that the proposals contained

discrepancies concerning the value of the experience references that simply do not exist. The protester further alleges that the agency failed to engage in meaningful discussions on this issue, and but for this weakness, it should have been rated as outstanding or good. Zone 2 Protest at 14-20; Zone 4 Protest at 14-18. The agency argues that TWI's proposals were not clear, and TWI failed to address the agency's concerns regarding its proposals during discussions. The agency further argues that the weakness did not in any event impact the appropriately assigned rating of acceptable. Zone 2 COS/MOL at 24-30; Zone 4 COS/MOL at 26-29.

The RFP required that offerors identify up to five of their highest dollar value and most comparable contracts performed within the 18-month period preceding the closing date of the solicitation. RFP at 122. The RFP stated that no more than two of the contracts identified could be team member contracts--as opposed to contracts performed by the prime offeror, which the solicitation called the offering entity--and that proposals must demonstrate that the team member would have meaningful involvement in the performance of the resultant contract in order for its experience to be considered. *Id.*

For each contract reference, offerors were to provide the following information: (1) contract or account number or identifier; (2) contract holder point of contact information; (3) time period of performance; (4) annual sales dollar value; (5) number of customers receiving deliveries; (6) a brief statement of the work performed, to include a discussion of experience performing deliveries as a full line food distributor; and (7) a narrative to explain how the contract is similar in size and/or complexity to the solicited requirements. *Id.* The RFP stated that offerors would be evaluated as follows:

In establishing what is relevant for experience, consideration shall be given to those aspects of an offeror's contract history which provide the most confidence that the offeror will satisfy the current procurement. Those aspects of relevancy include experience performing deliveries as a full line food service distributor, dollar value and number of customers.

The most relevant experience from the 18-month period preceding the closing date of the solicitation [that] will receive the most credit, however, is the information directly related to the offering entity. Proposals that provide more relevant experience, similar in size and scope, may be rated higher.

Id. at 133. The RFP stated that the estimated requirements for the zone 2 contract were annual sales of \$25 million to support 46 customers; for zone 4, the RFP estimated annual sales of \$14 million to support 72 customers. *Id.*

Further, as relevant here, the SSP provided definitions for the highest three ratings under the experience factor:

OUTSTANDING: Proposal indicates an exceptional approach and understanding of the requirements and contains multiple strengths, and

risk of unsuccessful performance is low. The primary offeror provided evidence of its own experience performing on contracts that exceed the scope and magnitude of the required effort as to the aspects of relevancy that provide confidence that the offeror will satisfy the requirements of the current procurement. The primary offeror provided evidence of its own experience on at least one contract demonstrating most or all of the following characteristics: full line food distribution, exceeding the annual dollar value and exceeding the number of customers as this requirement.

GOOD: Proposal indicates a thorough approach and understanding of the requirements and contains at least one strength, and risk of unsuccessful performance is low to moderate. The primary offeror provided evidence of its own experience performing on contracts that are similar to the scope and magnitude of the required effort as to the aspects of relevancy that provide confidence that the offeror will satisfy the requirements of the current procurement. The primary offeror provided evidence of its own experience on at least one contract demonstrating most or all of the following characteristics: full line food distribution, at a magnitude similar to the annual dollar value and to a similar number of customers as this requirement.

ACCEPTABLE: Proposal meets requirements and indicates an adequate approach and understanding of the requirements, and risk of unsuccessful performance is no worse than moderate. The offeror provided evidence of collective experience under its own and/or team member contracts that are similar to the scope and magnitude of the required effort as to the aspects of relevancy that provide confidence that the offeror will satisfy the requirements of the current procurement. The offeror and/or team member provided evidence of collective experience on contracts demonstrating most or all of the following characteristics: full line food distribution, at a magnitude similar to the annual dollar value and to a similar number of customers as this requirement.

AR, Tab 16, SSP at 11-12.

TWI identified the same five contracts in its zone 2 and 4 proposals. AR, Tab 37.1, TWI Final Zone 2 Technical Proposal at 72-83; Tab 19, TWI Final Zone 4 Proposal at 83-94. In its final evaluation, following discussions, the agency concluded that all of TWI's contracts were relevant, based on the following information provided in the proposals:

Reference	Offering Entity ³	Annual Sales	Customers	Food Service
1	No	\$40 million	167	Yes
2	Yes	\$45 million	68	No
3	Yes	\$45 million	1	Yes
4	Yes	\$17.5 million	1	Yes
5	No	\$1.7 billion	3,345	No

AR, Tab 69, TWI Zone 2 Non-Price Evaluation Report at 29-32; Tab 40, TWI Zone 4 Non-Price Evaluation Report at 24-27.

The agency identified three strengths and one weakness, and assigned overall ratings of acceptable for each of the protester's proposals. AR, Tab 69, TWI Zone 2 Non-Price Evaluation Report at 32; Tab 40, TWI Zone 4 Non-Price Evaluation Report at 27. The weakness identified by the agency stated that "TWI provided discrepant information regarding the dollar value of two contracts"; the discrepancies related to contract references 3 and 4. *Id.* During discussions, the agency identified this weakness as an item that "must be addressed in your revised non-price proposal" in all four zones. AR, Tab 22, TWI Negotiation Letter, Dec. 13, 2018, at 3-5.

Related to contract 3, TWI's proposals indicated annual sales of approximately \$45 million, but also stated that "[o]n average, TWI makes 4-8 food deliveries per month to [DELETED] which to date equates to approximately 140 trucks moving \$7.5 million of product." AR, Tab 37.1, TWI Final Zone 2 Technical Proposal at 78; Tab 19, TWI Final Zone 4 Proposal at 89. The agency noted that the \$45 million contract value exceeds the estimated \$25 million in sales for zone 2 and the estimated \$14 million for zone 4. AR, Tab 69, TWI Zone 2 Non-Price Evaluation Report at 30; Tab 40, TWI Zone 4 Non-Price Evaluation Report at 22. The agency also noted, however, that the proposal's statement that the contract involved moving \$7.5 million of product per month would equate to a contract value of \$90 million rather than the \$45 million as stated in TWI's proposal. *Id.*

With regard to contract 4, TWI's proposals indicated annual sales of \$17.5 million, but also stated that "[o]n average, TWI delivers nearly \$2 million dollars of food products to [DELETED] every month." AR, Tab 37.1, TWI Final Zone 2 Technical Proposal at 80; Tab 19, TWI Final Zone 4 Proposal at 91. The agency noted that moving \$2 million worth of food product per month would equate to \$24 million annually rather than the \$17.5 million as stated in TWI's proposal. AR, Tab 69, TWI Zone 2 Non-Price Evaluation Report at 31; Tab 40, TWI Zone 4 Non-Price Evaluation Report at 26.

³ According to TWI, its proposals included three contracts (1, 2, and 5) "performed directly for DLA involving experience as a prime vendor," and additionally provided two contracts where it performed as a subcontractor (3 and 4). Zone 2 and 4 Protests at 14-15. However, in a clarification with the agency, TWI confirmed that contracts 1 and 5 were held by affiliates of TWI. AR, Tab 36, TWI Clarification Letter, July 31, 2020, at 1.

For zone 2, the agency noted that TWI did not address the weakness in its proposal for providing discrepant information on contracts 3 and 4, but stated that the weakness did not factor into the overall rating of acceptable since TWI's contract 1 reference provided experience by a team member that exceeds the zone requirements. AR, Tab 69, TWI Zone 2 Non-Price Evaluation Report at 32. The agency further explained its rationale for assigning a rating of acceptable as follows:

TWI's proposal meets requirements and indicates an adequate approach and understanding of the requirements, and risk of unsuccessful performance is no worse than moderate[.] TWI provided evidence of experience as a full line food service distributor on team member contract [contract 1] with an annual dollar value of \$40 Million and supporting 167 customer locations. This contract exceeds the annual dollar value of \$25 Million and number of customers of 46 supported. In addition they are considered to have Relevant experience on four additional contracts, including another team member contract, where they performed as a full line food service distributor or had performance that shared some similarities as full line food service distributor [contract 5]. Out of the three contracts TWI submitted for their own experience, one was not a full line food service contract [contract 2], one only delivered to one customer location, and it is unclear what portion of the contract is considered full line food service [contract 3], and one had a dollar value of \$17.5 million with delivery to one customer location [contract 4]. Therefore, TWI did not provide their own experience on a singular contract that met or exceeded the Zone 2 requirements. The offeror provided evidence of collective experience under its own and team member contracts that are similar to the scope and magnitude of the required effort as to the aspects of relevancy that provide confidence that the offeror will satisfy the requirements of the current procurement.

Id.; see also AR, Tab 40, TWI Zone 4 Non-Price Evaluation Report at 27 (reaching similar conclusions as related to zone 4).

TWI argues that DLA improperly assigned its proposals a weakness based on alleged discrepancies between the stated annual sales values of contracts 3 and 4, and the estimated monthly sales values included in the brief statements of its work experience on the contracts. The protester contends it was unreasonable for the agency to find a conflict between the annual sales values and the agency's computations concerning the monthly sales values, because the monthly sales estimates simply provided descriptive information regarding its performance at fixed points in time, and were not intended to support or be consistent with the annual sales values. Zone 2 Protest at 14-18; Zone 4 Protest at 14-18.

In response to the protest, DLA states that the weakness did not affect the final rating of acceptable assigned to TWI's proposals.⁴ Zone 2 COS/MOL at 24-30; Zone 4 COS/MOL at 26-29. We think the contemporaneous record supports the agency's position. As an initial matter, the evaluations each state that the weakness did not affect the overall assignment of a rating of acceptable, in light of other information. AR, Tab 69, TWI Zone 2 Non-Price Evaluation Report at 32; see also Tab 40, TWI Zone 4 Non-Price Evaluation Report at 27.

For contract 3, the agency noted that the \$45 million in annual sales exceeded the estimated annual sales in zones 2 and 4, but that delivery to only one customer fell well short of the estimated number of customers. AR, Tab 69, TWI Zone 2 Non-Price Evaluation Report at 30; Tab 40, TWI Zone 4 Non-Price Evaluation Report at 25-26. For the zone 2 evaluation, the agency noted that the \$17.5 million annual sales value for contract 4 "falls slightly below the Zone 2 estimate of \$25 [million]," and that TWI "provide[s] delivery to only one location, which falls well short of the estimate for Zone 2 of 46 customers." AR, Tab 69, TWI Zone 2 Non-Price Evaluation Report at 31. For the zone 4 evaluation, the agency noted that the \$17.5 million annual sales value for contract 4 exceeded the zone 4 estimate of \$14 million, but again fell short of the estimate for zone 4 of 72 customers. AR, Tab 40, TWI Zone 4 Non-Price Evaluation Report at 26. On this record, we think the contemporaneous record supports the agency's argument that the discrepancies regarding the dollar values for annual sales was far less of a consideration than the fact that the contracts provided delivery to only one customer. See Zone 2 COS/MOL at 24-30; Zone 4 COS/MOL at 26-29. Accordingly, we find no basis to question the agency's representation that the weakness did not affect TWI's overall rating.

As a related matter, we find no merit to TWI's assertion that the agency failed to engage in meaningful discussions regarding the discrepancies in annual sales dollar values. When an agency engages in discussions with an offeror, the discussions must be meaningful, that is, discussions must be sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving award. *Education Dev. Ctr., Inc.*, B-418217, B-418217.2, Jan. 27, 2020, 2020 CPD ¶ 61 at 5. Here, the record shows that in a discussion letter to TWI, the agency identified "discrepant information regarding the dollar values of two contracts" as "items [that] must be addressed in your revised non-price proposal" in all four zones. AR, Tab 22, TWI Negotiation Letter, Dec. 13, 2018, at 3-5. Indeed, TWI submitted final proposal revisions, including revisions to the annual dollar values for four of its five contracts. See AR, Tab 69, TWI Zone 2 Non-

⁴ The SSP defined a weakness as "a flaw in the proposal that increases the risk of unsuccessful contract performance." SSP at 6. In response to the protest, the agency does not explain how or why the discrepancies in annual sales dollar values for these two contracts increases the risk that TWI would not successfully perform the contract. Nonetheless, as explained herein, we find reasonable the agency's explanation that the assessment of the weakness did not affect the overall evaluation of the protester's proposal for this factor.

Price Evaluation Report at 29; Tab 40, TWI Zone 4 Non-Price Evaluation Report at 24. We think the discussions were meaningful and reasonably informed TWI of the agency's concern, and that TWI failed to address the issue in its final proposal revisions.

We further find unobjectionable the agency's assignment of ratings of acceptable. TWI argues that its proposals satisfy the definition for a higher rating of good because they provided experience by the offering entity on three contracts, two of which (contracts 2 and 3) met two of the three characteristics for relevancy provided in the RFP. Zone 2 Protest at 18-20. TWI further argues that the definitions in the SSP establish minimum threshold requirements that were mechanically applied by the agency, and are contrary to the holistic evaluation criteria disclosed in the RFP. Zone 2 Comments & Supp. Protest at 3-7; Zone 4 Comments & Supp. Protest at 13-18.

As a general matter, when evaluating proposals an agency properly may take into account specific matters that, while not expressly identified, are logically encompassed by or related to the stated evaluation criteria. *Synaptek Corp.*, B-410898.6, Feb. 29, 2016, 2016 CPD ¶ 78 at 9; *Open Sys. Sci. of Va., Inc.*, B-410572, B-410572.2, Jan. 14, 2015, 2015 CPD ¶ 37 at 11. In this regard, agencies need not disclose evaluation standards or guidelines for rating proposals as more desirable or less desirable, since agencies are not required to inform offerors of their specific rating methodology. *Open Sys. Sci. of Va., Inc.*, *supra* at 11; *Arcus Properties, LLC*, B-406189, Mar. 7, 2012, 2012 CPD ¶ 107 at 8. Rather, the rating system used need only be consistent with the terms of the solicitation. *Id.* A protester's disagreement with the agency's evaluation, without more, does not establish that the agency acted unreasonably. *Babel St., Inc.*, B-418730.5, B-418730.6, June 15, 2021, 2021 CPD ¶ 230 at 9.

As noted, the RFP stated that the experience that would "receive the most credit" was the information directly related to the offering entity, and that proposals providing more relevant experience would be more highly rated. RFP at 133. Based on our review, we find that the rating definitions in the SSP for the experience factor are consistent with the evaluation criteria disclosed in the solicitation. Like the RFP, the SSP definitions for the higher ratings prioritize the experience performed by the offering entity and give greater credit to experience that demonstrates most or all of the relevancy characteristics (*i.e.*, contracts for full line food distribution exceeding the annual dollar value and number of customers as required by zone). As discussed, the agency found that none of the three contracts performed by TWI as the offering entity met all three characteristics identified in the RFP as comparable to the requirements in either zone, and only one contract performed by an affiliate proposed to have meaningful involvement in contract performance met all three characteristics. Accordingly, we deny these protest allegations.

TWI also argues that the evaluation under the experience factor was disparate because only three of the five contracts identified by EFS in its proposals were found to be relevant, as compared to the five relevant contracts identified by TWI, yet the agency rated EFS as outstanding. Zone 2 Comments & Supp. Protest at 8-9; Zone 4

Comments & Supp. Protest at 18-20. As noted, the RFP stated that the most credit would be given to information directly related to the offering entity, and proposals providing more relevant experience may be rated higher. RFP at 133. Here, the record shows that the agency rated EFS as outstanding because EFS identified a contract performed by the offering entity that met or exceeded all three relevancy characteristics identified in the RFP. In addition, the other two contracts performed by EFS's team member met or exceeded most or all of the following characteristics: full line food distribution, exceeding the annual dollar value and exceeding the number of customers as the estimated requirement. AR, Tab 70, EFS Zone 2 Non-Price Evaluation Report at 22-26; Tab 41, EFS Zone 4 Non-Price Evaluation Report at 19-23. In contrast, as discussed above, the agency found that TWI's contracts provided collective experience under its own and team member contracts that are similar to the scope and magnitude of the required effort, but that none of the contracts performed by TWI met all three characteristics identified in the RFP as comparable to the estimated requirements in either zone. AR, Tab 69, TWI Zone 2 Non-Price Evaluation Report at 32; Tab 40, TWI Zone 4 Non-Price Evaluation Report at 27.

Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. *Raytheon Co., Space and Airborne Sys.*, B-411631, Sept. 16, 2015, 2015 CPD ¶ 361 at 8. On this record, TWI has failed to make the requisite showing that the differences in ratings did not stem from differences between the offerors' proposals.

Past Performance

TWI argues that DLA's rating of its zone 2 past performance as satisfactory confidence was unreasonable because the agency rated TWI as substantial confidence in the three other zones in this procurement. TWI argues that even if its zone 2 proposal omitted information contained in the proposals for the other three zones, the agency was nonetheless obligated to consider in the zone 2 proposal evaluation any information that formed the basis of the substantial confidence ratings it received in connection with the evaluation for the other zone awards. Zone 2 Protest at 36-37. The agency argues that TWI provided different past performance references in its zone 2 proposal than it provided in the other three zones, and this difference provided a reasonable basis for the different ratings. Zone 2 COS/MOL at 44-47.

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 discretion which we will not disturb unless the agency's assessment is unreasonable or inconsistent with the solicitation criteria. *Metropolitan Life Ins. Co.*, B-412717, B-412717.2, May 13, 2016, 2016 CPD ¶ 132 at 14; *Cajun Constructors, Inc.*, B-409685, July 15, 2014, 2014 CPD ¶ 212 at 5. Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. *DynCorp Int'l., LLC*, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 14;

Falcon Env'tl. Servs., Inc., B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. *Babel St., Inc.*, *supra* at 7.

Like the experience factor, the RFP required that offerors provide up to five of their highest dollar value or most comparable contracts, including up to two team member contracts, from the 18-month period preceding the closing date of the solicitation. RFP at 124. Offerors were likewise advised that the proposal must demonstrate that the team member would have meaningful involvement in contract performance in order to be considered, and that the most relevant past performance, which would receive the most credit, was the information directly related to the offering entity. *Id.* The RFP did not require that the contracts provided be the same as the contracts identified by the offeror under the experience factor. *Id.* In addition to the seven items of information required under the experience factor, the RFP required that offerors "[d]iscuss problems that you have encountered during performance and what steps were taken to resolve the problems, along with their resolutions." *Id.* The RFP also directed offerors to distribute past performance questionnaires to the identified contract holders for submission directly to the government. *Id.*

The RFP stated that the government would evaluate the offeror's past performance "through its written proposal, Government in-house records (if applicable), and the information provided by the points of contact or references designated by the offeror." *Id.* at 134. The RFP further stated that the agency "may contact the offeror's listed references to confirm the accuracy of the provided information as well as further survey the performance of the offeror" and "may also obtain and use past performance information from sources other than those identified by the offeror, including those from publicly available, non-confidential sources." *Id.*

As noted, the RFP stated that each offeror's past performance references would be evaluated and assigned ratings for recency, relevancy, and quality of performance, and then assigned an overall confidence rating. *Id.* at 135. Regarding relevancy, the RFP stated that "similarity of experience performing as a full line food distributor in contingency operations, dollar value, and number of customers supported" would be considered to assess the agency's confidence that the offeror will satisfy the current procurement requirements. *Id.*

The record shows that TWI identified different contracts under the past performance factor for its zone 2 proposal than it included under the experience factor in its zone 2 proposal, or under either factor in its zone 4 proposal. While the first four contract references were identical to the contracts provided under the experience factor, TWI substituted its fifth contract reference with a contract for equipment and materials providing delivery to 16 customers with \$8 million in annual sales, rather than its affiliate's contract for special operations equipment and materials providing delivery to 3,345 customers with \$1.7 billion in annual sales. *Compare* AR, Tab 37.1, TWI Final Zone 2 Technical Proposal at 82-83, 239 *with* Tab 19, TWI Final Zone 4 Technical Proposal at 93-94, 270. In response to the RFP's requirement that TWI provide a

narrative explaining how the contract is similar in size and/or complexity, the proposal stated that “[m]any of the supply chain management processes and competencies TWI performs at a high level on [the contract] are similar to those required in the solicitation.” AR, Tab 37.1, TWI Final Zone 2 Technical Proposal at 249.

For the zone 4 proposal, TWI’s fifth contract reference was rated by the agency as somewhat relevant, and received a quality of performance rating of good. AR, Tab 40, TWI Zone 4 Non-Price Evaluation Report at 72, 93. TWI’s past performance for zone 4 was rated as substantial confidence, in part, because three of the five performance records were considered good or better. *Id.* at 95. In contrast, TWI’s zone 2 past performance was rated as satisfactory confidence, in part, because, with the substitution of the fifth contract, three of the five performance records were rated as acceptable for the quality of performance. AR, Tab 69, TWI Zone 2 Non-Price Evaluation Report at 110, 131.

The protester argues that although it proposed a different fifth contract in its zone 2 proposal, as compared to its zone 4 proposal, this was a “minor difference” that did not justify a lower rating. The protester also argues that the agency was in any event obligated to consider the reference included in the zone 4 proposal, but omitted from the zone 2 proposal, because “the individual evaluators and decision makers were also explicitly aware of that past performance, as they themselves had reviewed that information for the other Zones.” Zone 2 Comments & Supp. Protest at 32-34. TWI argues, in essence, that where an offeror is required to submit a limited number of past performance references, the agency is nonetheless obligated to consider additional favorable references that were not submitted.

Although the evaluators and source selection authority (SSA) were the same for all four zones, TWI does not explain why the agency should have disregarded past performance information it specifically chose to include in response to the requirement in favor of information it did not provide. We have recognized that in certain limited circumstances, an agency has an obligation (as opposed to the discretion) to consider outside information bearing on an offeror’s past performance about which the agency was aware. *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, the same services, and the same contracting officer--particularly where the protester had requested in its proposal that the agency consider this performance, and where the agency did not because agency personnel failed to complete a written assessment. Where, as here, however, an offeror is in control of the past performance information contained in its proposal--and not reliant on third parties to submit that information--it exercises its own judgment as to the information that the agency should consider, and the agency is not obligated to consider information that the protester elects not to submit. *Affordable Eng’g Servs., Inc.*, B-407170.4 *et al.*, Aug. 21, 2015, 2015 CPD ¶ 334 at 13. On this record, we find the agency’s evaluation to be unobjectionable.

The protester also argues that EFS's past performance should not have been rated as substantial confidence. Specifically, TWI argues that since it was awarded the zone 3 contract in September 2020, EFS failed to complete full implementation of the requirements within the required timeframe and has generally not performed well. TWI also argues that DLA overlooked adverse information about EFS's performance of its incumbent zone 2 contracts, and that EFS relies on a U.S. supplier that has prioritized its domestic retail customers due to increased demand from supermarkets since the start of the pandemic, causing EFS to experience delivery shortages. Zone 2 Protest at 38-40; Zone 2 Comments & Supp. Protest at 37-41; Zone 4 Protest at 23-24. The agency argues TWI's allegations amount to unsubstantiated speculation, and the agency reasonably relied on the most recent and available documented past performance for EFS to assign a substantial confidence rating. Zone 2 COS/MOL at 49-53; Zone 2 Supp. COS/MOL at 21-23; Zone 4 COS/MOL at 36-40; Zone 4 Supp. COS/MOL at 35-37.

The record shows the agency found that EFS's first contract reference (for its incumbent zone 2 contract) had annual sales of \$27.7 million that exceeded the \$25 million zone 2 requirement, but that delivery to 23 bases and 10 ships was below the 46 customer requirement. AR, Tab 70, EFS Zone 2 Non-Price Evaluation Report at 62. The agency further noted that EFS operates as a full line distributor of foods and operating supplies, provides support to customers in a contingency operation, and that "customers included in [zone 2] are the same customers that EFS support[s] under this contract"; on this basis the agency rated the contract reference as very relevant. *Id.*

The agency assigned a quality of performance rating of good for the first contract reference based on its consideration of the three most recent CPARS reports available for the contract, which covered a period of performance from July 5, 2017 to December 11, 2019. *Id.* at 88. The agency explained its rationale as follows:

Based on all three CPARS, EFS's overall performance is Good since they were rated at least acceptable and mostly very good or exceptional in all evaluation areas. EFS's performance declined slightly during most recent assessment period from 04/05/2019 to 01/13/2020 since they were downgraded from Exceptional to Very Good on two evaluation areas. Despite, the lower performance, EFS is still rated as Good overall. There were some minor issues noted in the narrative of each CPARS evaluation included above, however these issues were not significant enough for EFS to be assigned a rating in CPARS of less than Satisfactory for Small Business Subcontracting or less than Very Good on any other evaluation area.

Id. at 88. Based on this information, the agency assigned an overall rating of substantial confidence. *Id.* at 89; see also Tab 41, EFS Zone 4 Non-Price Evaluation Report at 56, 70-72 (reaching the same evaluation conclusions, except that DLA rated the contract reference as relevant, rather than very relevant).

TWI's allegations that the agency's evaluation improperly failed to consider EFS's most recent and relevant past performance do not provide a basis to sustain the protest. We have no basis to question the agency's representation that it considered the most recent and available relevant past performance information in its evaluation of EFS, and specifically considered the most recent information available on EFS's most relevant past performance reference, EFS's incumbent zone 2 contract performance through December 2019.⁵ See Zone 2 Supp. COS/MOL at 21-23; Zone 4 COS/MOL at 36-38. Given that there is no general requirement that an agency continue to seek updated performance information once its past performance evaluation is complete, we find nothing objectionable in the agency's failure to seek out any available information regarding EFS's performance on its incumbent zone 2 contract since December 2019, or EFS's performance on its zone 3 contract awarded in September 2020. See *Affordable Eng'g Servs., Inc., supra* at 12-13 (finding the agency's past performance evaluation reasonable where one CPARS report remained incomplete, and another was completed only after the agency's final evaluation was complete). Accordingly, we deny these protest allegations.

Small Business Subcontracting Plan

The protester argues that the evaluation of TWI's and EFS's small business subcontracting plans under factor 5, implementation and management plans, was unreasonable. Specifically, TWI argues that the agency should have identified as a deficiency in EFS's proposals its failure to propose goals that met or exceeded DOD Small Business Program goals. The protester argues that the evaluation was unreasonable and prejudicial because TWI proposed to meet DOD's goals while EFS did not, and yet the agency concluded that proposals were essentially equal under this factor. Zone 2 Protest at 30-36; Zone 4 Comments & Supp. Protest at 38-44.

The RFP required that large or foreign businesses submit a small business subcontracting plan in accordance with FAR clause 52.219-9. RFP at 5. Further, the implementation and management plan factor required that offerors discuss how they intended to meet the small business subcontracting goals as set forth from the DOD

⁵ The record shows that EFS's most recent CPARS report covering the period of performance from April 5 to December 11, 2019, was completed by the reviewing official on July 21, 2020. AR, Tab 70, EFS Zone 2 Non-Price Evaluation Report at 87; Tab 41 EFS Zone 4 Non-Price Evaluation Report at 70. TWI provided declarations from a company official and an independent consultant to support its allegations of EFS's poor performance, knowledge of which is purportedly based on conversations with industry and government personnel, current and former TWI personnel statements, common knowledge within the industry, and the declarants' own awareness. See Zone 2 Protest, exhs. H and I. The agency disputes the allegations, and as discussed, we find reasonable the agency's reliance on the most recent and documented available past performance information.

Office of Small Business. *Id.* at 123. In addition, under the implementation and management plan factor, the RFP required that offerors submit a variety of information, such as an implementation plan to reach full operational capability within the required timeframe following contract award; any aspects of the proposal that are dependent on government action or information to achieve contract transition; and information regarding key personnel, including an organizational and management chart. *Id.* at 123. As relates to the small business subcontracting goals, the RFP stated that the government would evaluate “[e]ach offeror’s knowledge of small business concerns and their ability to meet each subcontracting goal.”⁶ *Id.* at 134.

The record shows that EFS proposed to exceed DOD’s overall small business subcontracting goal, but proposed goals below DOD’s goals in the small business subcontracting subcategories. AR, Tab 39, EFS Zone 2 Technical Proposal at 73 (proposing to subcontract 35 percent to small businesses; 1.8 percent to small disadvantaged businesses and women-owned small businesses; and 1 percent in all other subcategories). The agency assigned EFS an overall factor rating of good, concluding as follows with respect to EFS’s small business subcontracting plan:

The offeror included a detailed plan explaining how it intends on meeting its proposed small business subcontracting goals. The proposed goals on four of the small business subcategories were below the [DOD] Office of Small Business goals, however, the offeror included a discussion to reasonably explain the rationale for the lower goals and the challenges associated with achieving higher goals. The concept for meeting the proposed Small Business goals, including the offeror’s knowledge of small business concerns, is likely to ensure the goals are met.

AR, Tab 70, EFS Zone 2 Non-Price Evaluation Report at 54. The agency concluded that the explanation provided by EFS in its proposal for the lower goals in the small business subcategories were “legitimate,”⁷ and further noted that the goals proposed were identical to the subcategory contracting percentages EFS had experienced in its performance on its incumbent zone 2 contract, where it actually exceeded its total small business contracting goal of 35 percent (achieving 45.79 percent) while failing to meet all of the goals in the small business subcontracting subcategories. *Id.* at 53-54; see

⁶ The RFP included the following DOD Office of Small Business Programs subcontracting goals for fiscal year 2018: Small Business – 33%; HUBZone Small Business – 3.0%; Service Disabled Veteran-Owned Small Business – 3.0%; Small Disadvantaged Business – 5.0%; Women-Owned Small Business – 5.0%. RFP at 5.

⁷ In this regard, the agency notes that TWI’s proposal contains caveats to explain challenges it might face achieving DOD’s small business goals that are similar to the explanations provided by EFS in its proposal for why it proposed subcategory goals below DOD’s goals, and that a recent CPARS shows that TWI has not met all of its small business goals. Zone 2 COS/MOL at 41-44; Zone 2 Supp. COS/MOL at 14-17; see AR, Tab 37.1, TWI Zone 2 Technical Proposal at 211 (“[DELETED].”).

a/so AR, Tab 41, EFS Zone 4 Non-Price Evaluation Report at 45-49. The agency also identified as a weakness that EFS proposed goals below the DOD's goals in the small business subcontracting subcategories. AR, Tab 70, EFS Zone 2 Non-Price Evaluation Report at 55.

Contrary to TWI's argument, the DOD small business subcontracting goals were not established as mandatory minimum requirements such that failure by an offeror to propose to meet them provided a basis for rejecting EFS's proposal as unacceptable. Rather, the RFP stated that the agency would evaluate each offeror's knowledge of small business concerns and their ability to meet each subcontracting goal. RFP at 134. As noted, EFS proposed to exceed DOD's overall small business subcontracting goal and DLA concluded that EFS provided a detailed plan demonstrating its knowledge of small business that would ensure the goal is likely to be met. AR, Tab 70, EFS Zone 2 Non-Price Evaluation Report at 54; *see a/so* Tab 41, EFS Zone 4 Non-Price Evaluation Report at 49. On this record, we find the agency's evaluation of EFS's proposal to be reasonable.

To the extent the protester also argues that, despite differences in the offerors' proposed subcontracting plans, the agency improperly assigned the same overall rating for the implementation and management plan factor, we find no merit to this argument. As discussed above, the agency found that EFS's proposal merited a weakness for not proposing to meet the individual subcategory subcontracting goals despite its proposed approach to meet the overall small business subcontracting goal. AR, Tab 70, EFS Non-Price Evaluation Report at 55. Thus, the record shows that the agency properly noted a difference between the proposals in this regard.

Moreover, as noted, the implementation and management plan factor required offerors to submit a variety of information. RFP at 123. TWI has not challenged any other aspect of the agency's evaluation under this factor, and we find reasonable the agency's evaluation of EFS's small business subcontracting goals, thus we have no basis to question the agency's conclusion that offerors were essentially equal under this factor. Accordingly we deny these allegations.

Source Selection Decision

The protester argues that the alleged errors in the evaluation resulted in an unreasonable and improper best-value tradeoff. TWI argues that its ratings were lower than deserved, and EFS received higher ratings than it deserved, leading the SSA to incorrectly conclude that EFS was worth the 22 percent price premium. TWI argues that in a reasonable evaluation, TWI would have been found to be equal or superior to EFS, and its lower price would make TWI the best value to the government. Zone 2 Protest at 43-45; *see a/so* Zone 4 Protest at 27-29 (arguing the same regarding EFS's 20 percent price premium).

The essence of an agency's evaluation is reflected in the evaluation record itself, not in the adjectival ratings or adjectival characterizations of proposal features as strengths or

weaknesses. *Systems Eng'g Partners, LLC*, B-412329; B-412329.2, Jan. 20, 2016, 2016 CPD ¶ 31 at 7. Moreover, it is well-established that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision making in the procurement process. *Centerra-Parsons Pac., LLC*, B-414686, B-414686.2, Aug. 16, 2017, 2017 CPD ¶ 249 at 8. Where the evaluation record and source selection decision reasonably consider the underlying basis for the ratings, a protester's disagreement over the actual numerical, adjectival, or color ratings is essentially inconsequential in that it does not affect the reasonableness of the agency's judgments. *A&T Sys., Inc.*, B-410767, Feb. 10, 2015, 2015 CPD ¶ 95 at 4. The relevant inquiry, therefore, is whether the agency's evaluation of the relative merits of each proposal was reasonable. *Id.*

Because we deny the protester's challenges to the agency's evaluations of proposals, we find no merit to the protester's challenges to the selection decisions based on the alleged challenges. With regard to the zone 2 tradeoff decision, the record shows that the SSA looked behind the adjectival ratings to recognize the substantive differences between the proposals for each non-price factor, and concluded that the technical ratings were accurate and in accordance with the stated evaluation criteria in the RFP and SSP. AR, Tab 72, Zone 2 SSDD at 8-19. In this regard, the SSA concluded that EFS's proposal was more advantageous under three technical factors and past performance, explaining in pertinent part as follows:

The lower risk of unsuccessful performance demonstrated by EFS's own performance on contracts that exceed the requirements for this effort in [the experience factor] as well as the lower risk of unsuccessful performance as demonstrated by Good performance on a Very Relevant contract for Past Performance and well documented resources, coupled with the benefits of exceeding the Government requirements in regard to supply chain management, including surge requirements, provides significant benefits to the Government. Therefore, although EFS's proposal had an evaluated price that was 22% higher than the offer from TWI, given the level of technical superiority demonstrated by EFS for this Zone, and where technical merit is more important than price, those benefits warrant a 22% price premium.

Id.

For zone 4, the SSA concluded that EFS's proposal was more advantageous under three technical factors, and though the SSA considered the proposals equal under past performance, for reasons similar to zone 2 found that EFS's technical superiority warranted the 20 percent price premium. AR, Tab 42, Zone 4 SSDD at 15-16.

As noted, the RFP stated that the technical factors combined were of equal importance to past performance, and both combined were significantly more important than price. As a general matter, source selection officials enjoy broad discretion in making tradeoffs between the comparative merits of competing proposals in a best-value evaluation scheme; such tradeoffs are governed only by the test of rationality and consistency with

the solicitation's evaluation criteria. *Qwest Gov't Servs., Inc. d/b/a Centurylink QGS*, B-416658.4, B-416658.5, June 17, 2019, 2019 CPD ¶ 220 at 12. On this record, we find no basis to conclude that the source selection decisions are unreasonable.

The protests are denied.

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