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Decision

Matter of: Shimmick Construction Company, Inc.

File: B-420419.2

Date: May 9, 2022

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Elisabeth A. Dixon, Esq., Matthew R. Keiser, Esq., and Tarrah M. Beavin, Esq., Department of the Army, for the agency.
Uri R. Yoo, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's consideration of the protester's past performance on an ongoing project, retrieved from the Contractor Performance Assessment Reporting System, is denied where the agency's evaluation was reasonable and consistent with the terms of the solicitation.
2. Protest alleging that agency's discussions were misleading and not meaningful is denied where the agency was not required to discuss adverse past performance information to which the offeror has had an opportunity to respond.
3. Protest alleging bias is denied where the protester failed to provide convincing evidence of bad faith and instead relied upon inferences drawn from the existence of an ongoing dispute.
4. Protest challenging the agency's technical evaluation is denied where the evaluation was reasonable and consistent with the terms of the solicitation.
5. Protest challenging the agency's tradeoff decision is denied where the decision was supported by a qualitative comparison of proposals and adequately documented.

DECISION

Shimmick Construction Company, Inc., of Oakland, California, protests the award of a contract to C.J. Mahan Construction Company, LLC, of Columbus, Ohio, under request for proposal (RFP) No. W912QR21R0075, issued by the Department of the Army, U.S. Army Corps of Engineers, for dam maintenance support services at Olmsted Locks and Dam in Olmsted, Illinois. Shimmick argues that the agency's evaluation of its past performance and technical proposal was unreasonable, contrary to the solicitation, and motivated by bias. The protester also challenges the agency's discussions and best-value tradeoff decision.

We deny the protest.

BACKGROUND

The agency issued the solicitation on September 13, 2021, for support services necessary to perform all operations associated with lifting and setting a dive deflector box at Olmsted Locks and Dam in Olmsted, Illinois. RFP at 7.¹ The contractor would support the maintenance operation performed by agency personnel by "anchoring and positioning the floating plant, transporting a dive deflector box weighing 62 tons, picking and setting the dive deflector box in slack water with dam raised, moving the government dam-raising floating plant across and around wicket holes, and underwater excavation." *Id.* The RFP contemplated award of a fixed-price contract for a base period of 89 days for a modified high-water season, with nine alternating option periods consisting of five 7-month periods for low-water seasons (May through November) and four 5-month periods for high-water seasons (December through April). *Id.* at 5.

The solicitation advised offerors that award would be made to the responsible offeror whose proposal is determined to represent the best overall value to the government, when all factors were considered. *Id.* at 58. Proposals would be evaluated considering the following three non-price factors, listed in descending order of importance: (1) past performance; (2) technical; and (3) small business participation plan. *Id.* at 61. The technical factor consisted of three subfactors, listed in descending order of importance: (a) winch and anchor line loads and factors of safety; (b) trench cleaning schedule and process; and (c) approaches to lateral and up/downstream movement. *Id.* All non-price factors, when combined, were considered approximately equal in importance to price, and the agency reserved its right to accept other than the lowest-priced offer as a result of the best-value tradeoff. *Id.* at 58, 61.

¹ The solicitation was amended five times. Contracting Officer's Statement (COS) at 1; see Agency Report (AR), Tabs 2-6, RFP Amendment Nos. 0001-0005. Citations to the solicitation are to the conformed RFP provided by the agency on March 25, 2022, at Electronic Protest Docketing System (EPDS) No. 38. Citations to the agency report are to the Adobe PDF document pages.

For past performance, the solicitation instructed offerors to provide descriptions of up to three projects “substantially complete or completed by the prime contractor as of the date of [the] solicitation within the last seven (7) years which are similar to this project in scope.” *Id.* at 63. The RFP specified that a project would be considered substantially complete “if enough work has been performed such that it demonstrates the ability to successfully complete all phases of the project.” *Id.* In addition, a project would be considered similar in scope if it included “performing floating plant construction in a river environment which involves: a. placing objects or construction materials weighing 55 tons or greater under water; or b. dredging,” and similar in size if it had a “minimum of \$1 Million in contract value, and a minimum of eight months of effort in the river environment.” *Id.* The RFP also listed several further considerations that could be taken into account, including experience with: projects with the Corps; working on an Ohio River Locks and Dam project; picking and setting equipment weighing 55 tons or more with a crane working radius of 40 feet or more from the deck on the working end; or performing crane operations that are coordinated with a diver. *Id.* at 64.

The RFP advised offerors that the agency would first evaluate the relevancy of recent past performance efforts identified in the proposal by comparing them to the “scope, size, and magnitude of effort and complexities of the solicited project,” then reviewing how well the offeror performed on those projects. *Id.* at 64. As relevant here, the RFP also expressly reserved the agency’s right “to review any other sources of relevant information for evaluating past performance, including projects other than those submitted by the offeror,” specifically stating that the agency would “at a minimum” review past performance information retrieved through the Contractor Performance Assessment Reporting System (CPARS). *Id.* at 64-65. The agency would then review “all past performance information collected and determine the quality of the offeror’s performance, general trends, and [the] usefulness of the information and incorporate this information into the performance confidence assessment.”² *Id.* at 65.

The agency received proposals from Shimmick and Mahan. AR, Tab 12, Summary Evaluation Report (SER) at 1. A source selection evaluation board (SSEB) evaluated the proposals, conducted discussions, and requested final proposal revisions. *Id.* at 13. Based on the SSEB’s evaluation of the final proposal revisions, the source selection

² The solicitation provided that the agency would rate the relevance of past performance as very relevant, relevant, somewhat relevant, or not relevant, where very relevant was defined as “[p]resent/past performance effort involved essentially the same scope and magnitude of effort and complexities this solicitation requires.” RFP at 61. The agency would then assign a final performance confidence assessment rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown (neutral) confidence. *Id.* at 62. As relevant here, the highest rating of substantial confidence was defined as “[b]ased on the offeror’s recent/relevant performance record, the Government has a high expectation that the offeror will successfully perform the required effort,” while the next highest rating of satisfactory confidence was defined as “[b]ased on the offeror’s recent/relevant performance record, the Government has a reasonable expectation that the offeror will successfully perform the required effort.” *Id.*

authority (SSA) concluded that Mahan's proposal provided the best value to the government. *Id.* at 13; AR, Tab 19, Source Selection Decision Document (SSDD) at 1. After receiving notice of the agency's award decision and a requested debriefing, Shimmick filed a protest with our Office challenging the agency's best-value tradeoff decision and its evaluation of Shimmick's proposal under the past performance and technical factors. See generally, *Shimmick Construction Company, Inc.*, B-420419.1, Dec. 28, 2021 (unpublished decision). On December 21, the agency requested dismissal of the protest on the basis of the agency's intent to take corrective action by re-evaluating Shimmick's proposal under the past performance and technical factors, and making a new source selection decision. Agency's Request for Dismissal, Dec. 21, 2021, at 1. We dismissed the protest as academic based on the agency's proposed corrective action. *Shimmick Constr. Co., Inc.*, *supra*.

Following the reevaluation under the corrective action, the SSEB concluded that all ratings initially assigned to Shimmick's proposal were justified and consistent with the RFP's evaluation criteria. AR, Tab 18, SER Addendum at 3; AR, Tab 19, SSDD at 2. Accordingly, the SSA affirmed the following final ratings assigned to Shimmick's and Mahan's proposals:

	SHIMMICK	MAHAN
Past Performance	Satisfactory Confidence	Substantial Confidence
Technical	Good	Outstanding
Winch and Anchor Line Loads and Factors of Safety	Good	Outstanding
Trench Cleaning Schedule and Process	Outstanding	Outstanding
Approach to Lateral and Up/Downstream Movement	Good	Outstanding
Small Business Participation	Acceptable	Acceptable
Price	\$35,771,720	\$37,107,000

AR, Tab 19, SSDD at 4-5.

For past performance, the SSEB evaluated the three projects submitted by Shimmick and found one project to be very relevant and the other two to be relevant, with positive performance ratings ranging from very good to exceptional for all three projects. AR, Tab 12, SER at 14, 17. The SSEB also reviewed two additional past performance records in CPARS, noting two marginal ratings found on one project--chamber replacement for the Chickamauga Lock in Chattanooga, Tennessee--as "an increased level of risk that the SSEB considered in determining the overall performance confidence assessment" for Shimmick. *Id.* at 10, 15.

The SSA reviewed and concurred with the findings of the SSEB and, after conducting a comparative analysis, concluded that Mahan's proposal represented the best value to the government. *Id.* at 1. In making his selection decision, the SSA found that Mahan's proposal offered advantages under the most important factors of past performance and

technical, and that these advantages warranted the payment of a \$1.33 million, or 3.66 percent, price premium. *Id.* at 13. Based on this conclusion, the agency made award to Mahan. After receiving a debriefing, Shimmick timely filed the current protest with our Office.

DISCUSSION

The crux of Shimmick's various challenges to multiple aspects of the agency's evaluation and award decision is its contention that the agency's consideration of the performance record on the Chickamauga Lock project was improper and contrary to the solicitation. First, Shimmick alleges that the agency should not have considered the CPARS information for the project because the project was neither recent nor relevant as defined by the solicitation. Protest at 19-21. The protester also alleges that the agency failed to conduct meaningful discussions with Shimmick regarding adverse past performance information about the project. *Id.* at 21-22. The protester further contends that the agency's consideration of the project was motivated by bias. *Id.* at 22-23. In addition, the protester alleges that the agency unreasonably evaluated Shimmick's proposal under the technical factor by improperly considering this adverse past performance information. *Id.* at 17-18. Finally, Shimmick challenges the agency's best-value decision resulting from this evaluation. *Id.* at 23-26. After reviewing the record, we find no basis to sustain Shimmick's protest.³

Past Performance Evaluation

The protester objects to the agency's consideration of the CPARS report for the Chickamauga Lock project in the evaluation of Shimmick's past performance, arguing that the project was neither recent nor relevant as defined by the solicitation. Protest at 19-21. Specifically, the protester contends that the Chickamauga Lock project is not recent because the work on the project is ongoing and not "substantially complete" as defined by the solicitation, and not relevant because the scope of the work did not involve underwater or dredging work. *Id.*

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

³ Shimmick also raises various collateral arguments. Although we do not address every argument, we have considered all of the additional contentions and find that none provides a basis on which to sustain the protest. For example, the protester alleges that the agency conducted an inadequate debriefing. Protest at 26-28; Protester's Comments at 14-16. Our Office has stated, however, that the adequacy of debriefings is a procedural matter that we generally do not review. See *Hallmark Capital Grp., LLC*, B-408661.3 *et al.*, Mar. 31, 2014, 2014 CPD ¶ 115 at 4 n.4 ("errors or misstatements in a debriefing are procedural matters that do not affect the validity of an otherwise reasonable award"). Thus, Shimmick's complaints regarding the agency's failure to provide an adequate debriefing do not state a legally sufficient ground of protest. See 4 C.F.R. §§ 21.1(c)(4) and 21.1(f).

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. The evaluation of past performance, by its very nature, is subjective and we will not substitute our judgment for reasonably based evaluation ratings; an offeror's disagreement with an agency's evaluation judgments, without more, does not demonstrate that those judgments are unreasonable. *GSI Constr. Corp.*, B-418084, Jan. 6, 2020, 2020 CPD ¶ 22 at 5; *FN Mfg., LLC*, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

In its proposal, the protester identified three projects for evaluation under the past performance factor. AR, Tab 9, Protester's First Revised Proposal at 6-41. The SSEB evaluated each of the three submitted references and concluded that one was very relevant and two were relevant, with the past performance questionnaires and CPARS reports for all three projects showing quality of performance ranging from very good to exceptional. AR, Tab 12, SER at 14-18.

In addition to the three projects submitted by the protester, the agency retrieved and considered the protester's other past performance information in CPARS, including Shimmick's marginally-rated performance on the Chickamauga Lock project. *Id.* at 10, 14; AR, Tab 18, SER Addendum at 1-2. In this regard, the SSEB evaluated the Chickamauga Lock project to be very relevant to the solicited project. AR, Tab 18, SER Addendum at 1. The SSEB noted as follows:

Based on the knowledge of the SSEB members, it is a current project over \$1M, includes placing objects or construction materials weighing 55 tons or greater under water, potentially includes dredging, is a US Army Corps of Engineers project, potentially includes diving operations, and includes crane operations that are coordinated with a diver. In addition, while not located at an Ohio River Locks and Dam project, the Tennessee River is a tributary of the Ohio River and considered part of the system, further bolstering the project's relevancy.

Id. at 1-2.

The SSEB then noted that the ratings of marginal in the CPARS report involved "Shimmick's schedule management and poor communication with the Government." *Id.* at 2. These details were of particular concern to the SSEB as "they deal with the most critical aspects of the solicited effort," where the "success of the solicited project relies upon constant, open communication and effective schedule management in order to maintain the operability of Olmsted Dam." *Id.* The SSEB concluded that the protester's "negative performance in these areas provides increased risk of successful performance." *Id.*; see AR, Tab 12, SER at 9.

Considering both the “[r]elevant and [v]ery [r]elevant projects with positive evaluations” in Shimmick’s proposal, as well as the “one project with negative ratings in CPARS,” the SSEB found that there was “a reasonable expectation that the offeror would successfully perform the required effort.” AR, Tab 12, SER at 15; AR, Tab 18, SER Addendum at 2. Accordingly, the agency assigned a final performance confidence assessment rating of satisfactory confidence. *Id.*

On this record, we find the agency’s evaluation of Shimmick’s past performance to be reasonable and consistent with the stated evaluation criteria. Specifically, we find no merit to the protester’s contention that the terms of the solicitation did not permit the agency to consider the Chickamauga Lock project CPARS information.

Where a dispute exists as to a solicitation’s actual requirements, we will first examine the plain language of the solicitation. *Intelsat Gen. Corp.*, B-412097, B-412097.2, Dec. 23, 2015, 2016 CPD ¶ 30 at 8. Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Crew Training Int’l, Inc.*, B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4.

As noted, the agency required that projects submitted in an offeror’s proposal be “substantially complete or completed by the prime contractor as of the date of [the] solicitation within the last seven (7) years.” RFP at 63; see AR, Tab 12, SER at 18. The agency would then evaluate each of the submitted projects to determine relevance. *Id.* Contrary to the protester’s contention, however, the solicitation did not state that the agency would only consider projects that met these recency parameters when evaluating other past performance information.

The RFP provided that the agency would evaluate the relevance of “recent past performance identified in the proposal” by comparing them to the “scope, size, and magnitude of effort and complexities of the solicited project.” *Id.* at 64. The solicitation, however, also expressly and separately reserved the agency’s right to “review any other sources of relevant information for evaluating past performance, including projects other than those submitted by the offeror,” specifically noting that the agency would “at a minimum” review past performance information retrieved through CPARS. *Id.* at 64-65. Notably, this provision did not limit the review of other sources of past performance information to only completed or substantially complete--or even recent--projects. *See id.*

Moreover, the solicitation informed offerors that the agency would review “all past performance information collected” to “determine the quality of the offeror’s performance, general trends, and usefulness of the information and incorporate this information into the performance confidence assessment.” *Id.* at 65. Finally, the solicitation stated that the final, overall performance confidence rating would be based on the SSEB’s assessment of “the *degree* of the offeror’s recent, relevant experience,

and . . . how well the offeror performed that experience.” *Id.* (emphasis added). This provision echoes an earlier part of the solicitation, which stated that the final confidence assessment rating would be “based on the *extent* of recent, relevant past experience and the quality of the offeror’s performance.” *Id.* at 60 (emphasis added).

In our view, these solicitation provisions, read as a whole and in a manner that gives effect to all of the provisions, informed offerors that the agency would consider the *degree* and *extent* of recency and relevance of the project in assessing past performance. The provisions did not, however, limit the agency’s review of other past performance to projects meeting the entirety of the definitions for recent and relevant applicable to projects submitted by the offeror. We note that the solicitation never expressly defined how the agency would determine recency for the purpose of evaluation: the requirement for “substantially complete or completed . . . as of the date of [] solicitation within the last seven (7) years” only appears in the instructions to offerors on the three projects they could submit in their proposal, and nowhere else in the solicitation. RFP at 63. Accordingly, we find that the agency did not violate the terms of the solicitation by considering the CPARS information for the Chickamauga Lock project--an ongoing project Shimmick was currently performing for the agency that the evaluators found to be relevant to the solicited project.⁴

The protester next challenges the agency’s finding that the Chickamauga Lock project was relevant, arguing that the work performed and evaluated in the CPARS report for the project did not involve underwater work or dredging. Protest at 20-21. The record shows, however, that the SSEB found the project to be relevant because it was “a current project over \$1M, includes placing objects or construction materials weighing 55 tons or greater under water, potentially includes dredging, is a US Army Corps of Engineers project, potentially includes diving operations, and includes crane operations that are coordinated with a diver.” AR, Tab 18, SER Addendum at 1.

We find the agency’s evaluation here to be reasonable and consistent with the terms of the solicitation providing for additional considerations in determining the relevance of past performance information. In this regard, the solicitation stated that additional consideration may be given for past performance involving certain elements, including: projects involving experience with the Corps; experience picking and setting equipment weighing 55 tons or more with a crane working radius of 40 feet or more; and experience performing crane operations that are coordinated with a diver. RFP at 64. The protester’s disagreement with the agency’s reasoned judgments in this regard, without more, does not demonstrate that those judgments are unreasonable. See *Cape Envtl. Mgmt., Inc.*, B-412046.4, B-412046.5, May 9, 2016, 2016 CPD ¶ 128 at 8.

⁴ Although the protester did not submit the Chickamauga Lock project as one of its three past performance submissions, the past performance section of its proposal included a detailed description of the project as one of its current projects with the agency. See AR, Tab 9, Protester’s First Revised Proposal at 5.

Discussions

The protester next asserts that the agency did not conduct meaningful discussions with Shimmick. Protest at 21-22; Comments at 9-10. Specifically, the protester argues that the agency was required, during discussions, to provide Shimmick with the opportunity to respond to the adverse past performance information the agency was considering in its evaluation, *i.e.*, the Chickamauga Lock project CPARS report. Protest at 21-22. The agency responds that, because Shimmick already had an opportunity to respond to the marginal ratings in the project's CPARS report, the agency was not required to raise this issue during discussions. Memorandum of Law (MOL) at 17-18.

Here, the record confirms that the SSEB considered the final version of the CPARS report for the Chickamauga Lock project, in which Shimmick provided extensive comments and additional information in response to the assessing official's ratings of marginal. AR, Tab 18, SER Addendum at 1-2; see AR, Tab 13, Chickamauga Lock CPAR at 12-14. The record also shows that the SSEB, in its evaluation, specifically noted that Shimmick had responded to the adverse CPARS and that this response did not lead the assessing official to change the marginal ratings. AR, Tab 18, SER Addendum at 2.

On this record, we find the agency's failure to discuss the negative CPARS information to be unobjectionable. When a protester has had an opportunity to respond to adverse past performance information contained in CPARS, an agency is not required to raise that information during discussions in an ongoing procurement. *Community Education Centers, Inc.*, B-418207, B-418207.2, Jan. 24, 2020, 2020 CPD ¶ 58 at 6; *Torres-Advanced Enter. Sols., LLC*, B-412755.2, June 7, 2016, 2016 CPD ¶ 167.

The protester further argues that discussions were unfair and misleading because the agency's discussion letter prompted Shimmick to provide additional information about "recent and relevant" past performance. Comments at 9-10. Shimmick contends that it was misled by this request into not providing information on the Chickamauga Lock project, which the protester believed to be neither recent nor relevant. *Id.* Because we conclude above that the agency reasonably considered the CPARS information on the Chickamauga Lock project, we find no merit to the protester's argument here. In this respect, we note that the agency's discussions letter stated that the agency reviewed Shimmick's records in CPARS and specifically "invited" Shimmick to "submit any additional information or documents that could supplement the information found in the CPARS project evaluations." AR, Tab 8, Discussion Letter at 1. On this record, we conclude that the protester was on notice that it could provide additional information to address any CPARS information that might be considered by the agency. Moreover, because the agency was not required to raise this CPARS report during discussions, its request that Shimmick provide any additional information about recent and relevant past performance information was not misleading.

Bias

As a related matter, the protester alleges that the agency's decision to rely on the Chickamauga Lock project in its past performance evaluation was motivated by bias. Protest at 22-23. The protester bases this allegation on the existence of "a bitter (and ongoing) dispute" between Shimmick and the agency over a request for equitable adjustment in the Chickamauga Lock project. *Id.* at 22. The protester argues that the unreasonableness of the agency's reliance on the Chickamauga Lock project is "too much to swallow" without concluding that the agency was "clearly biased against Shimmick." Protester's Comments at 13.

Our decisions have consistently explained that government officials are presumed to act in good faith, and a contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not attribute unfair or prejudicial motives to procurement officials based upon mere inference, supposition, or unsupported speculation. *Lawson Envtl. Servs. LLC*, B-416892, B-416892.2, Jan. 8, 2019, 2019 CPD ¶ 17 at 5 n.5. The burden of establishing bad faith is a heavy one: a protester must present facts reasonably indicating, beyond mere inference and suspicion, that the agency acted with specific and malicious intent to harm the protester. *Id.*

Our review of the record here provides no basis for us to conclude that the agency's evaluation was tainted by bias or bad faith. The mere existence of an ongoing dispute with the agency on another project and allegations of unreasonable evaluation do not, in and of themselves, constitute evidence of bias or bad faith. Rather, because we conclude above that the agency's consideration of the CPARS report on the Chickamauga Lock project was consistent with the solicitation and that the agency reasonably evaluated the information, we find no evidence of bias or bad faith here.

Technical Evaluation

Next, the protester contends that the agency unreasonably evaluated Shimmick's proposal under the technical factor by assigning a rating of good, instead of outstanding, despite assessing numerous strengths and no weaknesses or deficiencies. Protest at 17-18. The protester argues that the only explanation for the agency's failure to assign a rating of outstanding is that the agency improperly considered adverse past performance information in the technical evaluation. *Id.* at 18.

The agency counters that, under the terms of the solicitation, multiple strengths and a lack of weaknesses or deficiencies did not automatically entitle the protester to a technical rating of outstanding. MOL at 12-13. The agency also responds that the evaluators did not consider Shimmick's past performance record in their technical evaluation. MOL at 13-14.

Agencies have considerable discretion in making subjective judgments about the technical merit of proposals, and technical evaluators are given the discretion to decide

whether a proposal “deserves a ‘good’ as opposed to a ‘very good’ rating.” *JAM Corp.*, B-408775, Dec. 4, 2013, 2013 CPD ¶ 282 at 4 (*quoting CAS, Inc.*, B-260934.2, B-260934.3, Sept. 12, 1995, 95-2 CPD ¶ 239 at 4). The evaluation of proposals and the assignment of adjectival ratings should not generally be based upon a simple count of strengths and weaknesses, but upon a qualitative assessment of the proposals consistent with the evaluation scheme. *Sherrick Aerospace*, B-310359.2, Jan. 10, 2008, 2008 CPD ¶ 17 at 6.

Moreover, it is well established that adjectival descriptions and ratings serve only as a guide to, and not a substitute for, intelligent decision-making. *INDUS Tech., Inc.*, B-411702 *et al.*, Sept. 29, 2015, 2015 CPD ¶ 304 at 4. Where an agency reasonably considers the underlying bases for the ratings--including advantages and disadvantages associated with the specific content of competing proposals--in a manner that is fair and consistent with the terms of the solicitation, a protester’s disagreement over the actual adjectival ratings, without more, does not render the agency’s judgment unreasonable. *See id.*

The RFP here reserved the rating of outstanding under the technical factor for a proposal that met requirements and indicated “an exceptional approach and understanding of the requirements” with strengths that “far outweigh any weaknesses” and a very low risk of unsuccessful performance. RFP at 62. On the other hand, the RFP stated that a rating of good would be assigned for a proposal that met requirements and indicated “a thorough approach and understanding of the requirements” with strengths that “outweigh any weaknesses” and a low risk of unsuccessful performance. *Id.*

Based on our review of the record, we find the agency’s evaluation to be reasonable and consistent with the solicitation. First, contrary to the protester’s contention, nothing in the RFP required the agency to assess a rating of outstanding for a proposal with multiple strengths and no weaknesses or deficiencies. Rather, the rating definitions included in the RFP allowed the agency to make qualitative assessments with respect to strengths and weaknesses by assessing whether the proposal indicated an exceptional approach or just a thorough one, and the extent to which strengths outweighed any weaknesses. Here, the SSEB based its rating on a careful and well-documented analysis of Shimmick’s strengths under each of the three technical subfactors. *See AR*, Tab 12, SER at 18, 21; Tab 18, SER Addendum at 2. The protester has not shown how its technical proposal indicated an exceptional approach, rather than a thorough one, and its disagreement with the agency’s evaluative judgments, without more, does not show that the evaluation was unreasonable.

The protester next argues the agency improperly used Shimmick’s adverse past performance information in the evaluation under the technical factor. The protester contends that the SSEB’s initial assignment of technical weaknesses for “increased risk to schedule” was in fact based on the rating of marginal Shimmick received for scheduling problems noted in its Chickamauga Lock project CPARS report. Protester’s Comments at 11, *citing*, *AR*, Tab 12, SER at 10.

Even setting aside that these weaknesses, and associated agency concerns, were fully resolved through discussions and removed from the final evaluation, the very record the protester cites directly refutes the protester's arguments in this regard. The record shows that the remark about an "increased risk to schedule" was in direct reference to one of the two weaknesses initially assigned to Shimmick's proposal under the subfactor of winch and anchor line loads and factors of safety. AR, Tab 12, SER at 10-11. Specifically, the SSEB found that Shimmick's "[DELETED] adds lead time to the review and submittal process after award, thereby increasing schedule risks." *Id.* at 11. Thus, the record demonstrates that the SSEB's initial concern with an increased risk to schedule was properly and reasonably based on its initial evaluation of Shimmick's technical proposal and not on any part of Shimmick's past performance information. Accordingly, we find no basis to conclude that the agency erred in its evaluation of Shimmick's technical proposal.

Tradeoff Decision

Finally, Shimmick argues that the agency's best-value tradeoff decision was flawed because it was tainted by unreasonable underlying evaluations. Protest at 23-26; Comments at 13-14. As set forth above, we see no basis to object to the agency's evaluation of proposals. In addition, we find the agency's tradeoff decision to be reasonable. Source selection decisions must be documented, and include the rationale and any business judgments and tradeoffs made or relied upon by the source selection authority. Federal Acquisition Regulation (FAR) 15.308; *Metropolitan Life Insurance Co.*, B-412717, B-412717.2, May 13, 2016, 2016 CPD ¶ 132 at 17. The record here shows that the SSA conducted a detailed comparative analysis of the advantages of the proposals under each of the evaluation criteria and ultimately determined that Mahan's technically higher-rated proposal warranted the payment of a price premium of 3.66 percent. AR, Tab 19, SSDD at 12-13. Although Shimmick disagrees with that judgment, it has not shown that the judgment was unreasonable or inadequately documented.

The protest is denied.

Edda Emmanuelli Perez
General Counsel