



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: ASRC Federal Data Network Technologies, LLC

File: B-419519.4

Date: September 19, 2022

Amy L. O’Sullivan, Esq., Zachary Schroeder, Esq., and William B. O’Reilly, Esq., Crowell & Moring LLP, for the protester.
Robert K. Tompkins, Esq., Hillary J. Freund, Esq., Kelsey M. Hayes, Esq., and Sean R. Belanger, Esq., Holland & Knight, LLP, for Bowhead Total Enterprise Solutions, LLC, the intervenor.
Karl W. Kuhn, Esq., Department of the Army, for the agency.
Uri R. Yoo, Esq., Christopher Alwood, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee failed to notify the agency that proposed key personnel were unavailable is denied where the record contains no evidence that the awardee had actual knowledge of the alleged unavailability.
2. Errors in an agency’s past performance evaluation do not provide a basis to sustain a protest where the errors did not affect the agency’s best-value tradeoff decision and therefore did not competitively prejudice the protester.

DECISION

ASRC Federal Data Network Technologies, a small business of Reston, Virginia, protests the award of a contract to Bowhead Total Enterprise Solutions, LLC, a small business of Springfield, Virginia, under request for proposals (RFP) No. W912DY-19-R-0001, issued by the Department of the Army, U.S. Army Corps of Engineers, for integrated technical services in support of the agency’s High Performance Computing Modernization Program. The protester challenges the agency’s evaluation of the awardee’s past performance and argues that the agency’s award decision erroneously relied on the awardee’s key personnel who became unavailable prior to award.

We deny the protest.

BACKGROUND

The agency issued the solicitation as a small business set-aside on December 28, 2018, seeking technical and professional support services for the operation of the agency's High Performance Computing Modernization Program Office. Agency Report (AR), Tab 1a, RFP at 1, 4.¹ The RFP contemplated the award of an indefinite-delivery, indefinite-quantity (IDIQ) contract, on a best-value tradeoff basis, with fixed-price and cost-reimbursement contract line items for a 5-year ordering period. *Id.* at 4, 99.

The solicitation advised offerors that proposals would be evaluated based on the following three factors: (1) technical capability; (2) past performance; and (3) cost/price. *Id.* at 99. The RFP provided that technical capability was the most important factor and past performance was "slightly less important" than technical capability. *Id.* For purposes of award, the non-cost/price factors, when combined, were significantly more important than cost/price. *Id.*

As relevant here, under the technical capability factor, offerors were instructed to identify and discuss the qualifications of two key personnel described in section 2.7 of the performance work statement (PWS): overall program manager and alternate program manager. *Id.* at 15-16, 88. The PWS also provided that additional key personnel may be identified at the task order level. *Id.* at 16. In this regard, the solicitation included two "seed" or sample task orders that reflected requirements the agency anticipated under the contract and required offerors to provide, for evaluation purposes, their proposed technical approach and cost/price for performing the requirements of those task orders. *Id.* at 88-89, 91. The task order PWS for each of the two seed task orders identified an additional key personnel position: a task order technical manager for seed task order 1; and a project manager/technical advisor for seed task order 2. AR, Tab 1b, RFP attach. J-1, Seed Task Order 1 PWS at 3; Tab 1c, RFP attach. J-2, Seed Task Order 2 PWS at 4.

Under the past performance factor, the solicitation provided for the assessment of the offeror's ability to perform based on relevant examples of work performed "by the offeror (including joint venture partners and key subcontractors) as a prime contractor within the past three years." RFP at 100. The RFP further noted that, "[i]f a subcontractor is not a key subcontractor," then its past performance would not be evaluated. *Id.* The RFP defined "key subcontractor" as "any subcontractor or teaming partner that will be performing more than 20% of the work." *Id.* at 87.

For cost/price proposals, the solicitation instructed offerors to submit price information relating to fixed-price seed task order 1 for information technology (IT) telecom engineering support, and cost information relating to the cost-plus-fixed-fee seed task order 2 for engineering network support. *Id.* at 91. The RFP indicated that the offeror's

¹ Citations to the solicitation in this decision are to the conformed copy provided at Tab 1a of the agency report. Citations to the agency report are to the Adobe pdf document pages.

total evaluated cost/price would be based on their proposed cost/price for the two seed task orders. *Id.* at 102. Offerors' cost/price proposals were also required to provide certain information supporting the cost of performing the work required under the contract, including detailed labor rates (base and burdened) for each labor category and "the percent of effort expected to be performed by any subcontractor/teaming member." *Id.* at 93-94, 102-103.

After evaluating proposals and conducting discussions with three offerors in the competitive range, including ASRC and Bowhead, the agency initially made an award to ASRC. Contracting Officer's Statement (COS) at 2. On January 11, 2021, Bowhead filed a protest with our Office challenging the agency's evaluation of Bowhead's proposal and the meaningfulness of the agency's discussions. *Bowhead Total Enterprise Solutions, LLC*, B-419519, Feb. 24, 2021 (unpublished decision). After the agency advised our Office that it intended to take voluntary corrective action in response to Bowhead's protest, we dismissed that protest as academic. *Id.*

First Corrective Action Reevaluation

After reevaluating proposals under the first corrective action, the agency evaluated the offerors' proposals as follows:²

	ASRC	Bowhead
Technical Capability	Good	Outstanding
Past Performance	Satisfactory Confidence	Satisfactory Confidence
Cost/Price	\$84,382,975	\$78,423,181

B-419519.2, AR, Tab 9, Source Selection Decision Document (SSDD) at 5. Based on this evaluation, the agency selected Bowhead's proposal for award. *Id.*

As relevant here, the record of the reevaluation under this first corrective action showed that Bowhead submitted past performance references for four projects, three of which were performed by proposed subcontractors: [DELETED] and [DELETED]. B-419519.2, AR, Tab 8, Source Selection Evaluation Board (SSEB) Report at 48-59. The agency evaluated all four past performance references, noting that Bowhead's proposal identified [DELETED] and [DELETED] as "Key Subcontractors in accordance with the RFP criteria" and included the required commitment letters from [DELETED] and [DELETED]. *Id.* at 48. The agency found each of the four references to be somewhat relevant on its own. *Id.* The agency also found that, when it considered the past performance references collectively, "Bowhead and its key subcontractor[s]" evaluated [past performance questionnaires] reflect that they have performed work which was determined to be of similar scope and magnitude of effort and complexities

² The agency used the adjectival ratings of outstanding, good, acceptable, marginal, and unacceptable for the technical capability factor, and used the ratings of substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence (neutral) for the past performance factor. RFP at 100-102.

[as] this solicitation requires.” *Id.* Based on this finding, and on Contractor Performance Assessment Reporting System (CPARS) reports showing ratings of satisfactory to exceptional for performance under the referenced projects, the agency assessed a rating of satisfactory confidence to Bowhead’s proposal under the past performance factor. *Id.* at 48-51.

On December 8, 2021, ASRC protested the new award decision with our Office, challenging the agency’s evaluations under all three evaluation factors. See Prior Protest Pleading, B-419519.2, Dec. 8, 2021. Among the various challenges raised in ASRC’s protest were allegations that the awardee’s proposed key personnel were no longer available and that the agency’s evaluation of Bowhead’s past performance was inconsistent with the terms of the solicitation. *Id.* at 10-14, 26-27.

On February 22, 2022, after development of the protest record, the Government Accountability Office (GAO) attorney assigned to the protest conducted an “outcome prediction” alternative dispute resolution (ADR) conference.³ During the ADR conference, the GAO attorney advised the parties that our Office would likely sustain ASRC’s protest, as the record supported the protester’s contention that the agency’s evaluation of Bowhead’s past performance was unreasonable and contrary to the terms of the solicitation. The GAO attorney indicated that GAO would be unable to conclude that the agency reasonably considered the performance record of Bowhead’s proposed subcontractors because the existing record did not show that the agency evaluated whether the key subcontractors were proposed to perform more than 20 percent of the work. In response to the ADR, the agency advised our Office that it would take corrective action by reevaluating Bowhead’s proposal under the past performance factor and making a new source selection decision. B-419519.2, B-419519.3, Notice of Corrective Action at 1. The agency also stated that it would “consider renewed discussions or an amended solicitation as necessary to support its source selection decision.” *Id.* We found that the agency’s proposed corrective action rendered the protest academic and, on that basis, dismissed the protest. *ASRC Federal Data Network Techs., LLC*, B-419519.2, B-419519.3, Feb. 28, 2022 (unpublished decision).

Second Corrective Action Reevaluation

The agency subsequently reevaluated proposals under the past performance factor, confining its inquiry to confirming whether offerors’ proposed key subcontractors met the RFP’s criteria. See COS at 3; see *generally*, AR, Tab 4a, Memorandum for Record. The agency did not conduct additional clarifications or discussions with offerors. COS at 3.

³ In an outcome prediction ADR conference, the GAO attorney informs the parties what the GAO attorney believes will be the likely outcome of the protest and the reasons for that belief. A GAO attorney will engage in this form of ADR only if she or he has a high degree of confidence regarding the outcome. The outcome prediction reflects the view of the GAO attorney, but it is not an opinion of our Office and does not bind our Office should issuance of a written decision remain appropriate. *Africa Automotive Distribution Services, Ltd.*, B-418246.6, Aug. 24, 2021, 2021 CPD ¶ 308 at 5 n.7.

The agency concluded that [DELETED] and [DELETED]--Bowhead's two proposed key subcontractors--met the solicitation's definition for key subcontractors, and the agency therefore did not change its substantive evaluation of Bowhead's past performance. AR, Tab 4b, SSEB Report at 10, 52-65. As a result, the agency's final evaluation of proposals of ASRC and Bowhead remained unchanged. AR, Tab 5b, SSDD at 5-6. In addition, the source selection authority (SSA) considered an alternate past performance evaluation--if a rating of unknown confidence (neutral) had been assigned to Bowhead's past performance due to Bowhead not proposing any key subcontractors--and concluded that Bowhead's proposal would still represent the best value for the government. AR, Tab 5b, SSDD at 33.

Based on the results of the reevaluation, the agency again selected Bowhead's proposal for award. *Id.* at 34. After being advised of the agency's source selection decision, and requesting and receiving a debriefing, ASRC filed this protest.

DISCUSSION

ASRC raises two primary challenges to the agency's award decision. First, the protester asserts that the agency's technical evaluation and selection decision were unreasonable because the awardee's proposed key personnel were no longer available and the awardee misled the agency by not informing the agency of their unavailability. Protest at 10-17. Second, the protester contends that the agency unreasonably evaluated the awardee's proposal under the past performance factor by crediting the awardee for the performance record of two subcontractors that did not meet the solicitation's definition for key subcontractors. Protest at 17-20. As discussed below, we find no basis to sustain the protest.⁴

Key Personnel Unavailability

The protester argues that the agency should have found the awardee's proposal unacceptable because Bowhead failed to advise the agency that its proposed key personnel are no longer available. Protest at 10-15; Protester's Comments at 2-7. Relying primarily on statements allegedly made by Bowhead's management (when they were interviewing one of ASRC's current employees for a key personnel position after the first award to Bowhead), ASRC alleges that the awardee's management knew that its proposed key personnel were no longer available. Protest at 10-15; *see generally*, Protest exh. A, Decl. of ASRC Employee. The protester also contends that Bowhead had knowledge of the alleged unavailability of its proposed key personnel, none of whom were employees of Bowhead at the time Bowhead submitted its proposal, based on publicly available information. In this regard, ASRC asserts that Bowhead's proposed program manager is currently located in South Carolina, outside of the commuting distance to the contract's place of performance; and two other proposed key personnel have recently started new positions with new employers. Protester's

⁴ To the extent the protester raises other collateral arguments, we have considered each argument and find that none provides a basis to sustain the protest.

Comments at 2-7. The protester also argues that, considering the elongated procurement timeline, it was negligent and unreasonable for the awardee and the agency to fail to confirm the continued availability of proposed key personnel. *Id.*

The agency responds that Bowhead had no obligation to report this alleged unavailability of proposed key personnel because Bowhead has not had any reason to believe that its proposed key personnel are not available to fill the positions. Memorandum of Law (MOL) at 5-6. The agency points to declarations submitted by members of Bowhead's leadership that indicate none of the proposed individuals have rescinded letters of intent they previously signed indicating that they would accept their key personnel positions if Bowhead received the contract award, or otherwise notified Bowhead that they are no longer available to perform the contract. *Id.* at 6. Based on our review of the record, we agree with the agency.

Our Office has explained that offerors are obligated to advise agencies of material changes in proposed staffing, even after the submission of proposals. *General Revenue Corp., et al.*, B-414220.2 *et al.*, March 27, 2017, 2017 CPD ¶ 106 at 22. This premise is grounded in the notion that a firm may not properly receive award of a contract based on a knowing material misrepresentation in its offer. *M.C. Dean, Inc.*, B-418553, B-418553.2, June 15, 2020, 2020 CPD ¶ 206 at 4. While an offeror generally is required to advise an agency where it knows that one or more key employees have become unavailable after the submission of proposals, there is no such obligation where the offeror does not have actual knowledge of the employee's unavailability. *NCI Information Systems, Inc.*, B-417805.5 *et al.*, Mar. 12, 2020, 2020 CPD ¶ 104 at 8; *DZSP 21, LLC*, B-410486.10, Jan. 10, 2018, 2018 CPD ¶ 155 at 10.

As noted above, the solicitation established four key personnel positions: overall program manager; alternate program manager; task order technical manager for seed task order 1; and project manager/technical advisor for seed task order 2. RFP at 15-16, 88; AR, Tab 1b, Seed Task Order 1 PWS at 3; AR, Tab 1c, Seed Task Order 2 PWS at 4. The record shows that Bowhead proposed three individuals for these key personnel positions (with the same individual proposed for the two seed task order positions) and submitted resumes for each individual. AR, Tab 3a, Bowhead Technical Proposal at 79-83, 110-114, 266-272. Although not required by the solicitation, where these individuals were not employees of Bowhead, Bowhead also submitted letters of intent from each proposed key person. *Id.* at 83, 114, 269, 272. Each letter of intent indicated the individual's "commitment to Bowhead" that, should Bowhead be successful in obtaining the contract award, the individual "will be available to accept an offer of employment upon execution of the contract award." *Id.*

In response to this protest allegation, the agency provided declarations from three members of Bowhead's management, including those who interviewed the ASRC employee discussed above. See AR, Tab 6aa, Declaration of Bowhead Director of Business Development at 1; Tab 6bb, Declaration of Bowhead Project/Staffing Delivery Manager at 1; Tab 6cc, Declaration of Bowhead Director of Operations at 1. In these declarations, each manager stated that "[t]o [their] knowledge, all three key personnel proposed by [Bowhead] remain willing, able, and available to perform under the

contract.” *Id.* The intervenor also confirms that Bowhead’s proposed key personnel have not “withdrawn their letters of intent/commitment or otherwise inform[ed] [Bowhead] that they would be unavailable to fill the position for which they provided a signed letter of intent.” Intervenor’s Comments at 2.

On this record, we find that the protester has failed to establish either that Bowhead’s proposed personnel are no longer available or that Bowhead had actual knowledge of the alleged unavailability. We note that while the resumes of the key personnel in Bowhead’s proposal indicated that the proposed individuals were not employed by Bowhead, the resumes were accompanied by letters of intent noting those individuals’ willingness and availability to accept future employment with Bowhead if and when Bowhead is awarded the contract. Further, Bowhead states that it has not been notified by any of its proposed key personnel that they are unavailable to perform the contract and thus had no reason to believe that any of them were no longer available. In this regard, we note that a proposed key person’s current location or acceptance of a new position with another company is not probative of such person’s unavailability, especially when that person was not an employee of the offeror at the time of proposal submission. For instance, nothing precludes such key person from relocating or resigning from their new position to fulfill their stated intent to work for Bowhead upon contract award.

Under these circumstances, we find that Bowhead did not have actual knowledge of any unavailability and therefore had no obligation to inform the agency that any of its key personnel were unavailable. Accordingly, we deny this protest ground.⁵

Past Performance Evaluation

The protester next argues that the agency unreasonably evaluated Bowhead’s past performance. ASRC contends that the agency’s reevaluation failed to correct a previously identified error of crediting Bowhead for the past performance of its subcontractors that did not meet the solicitation’s definition for a key subcontractor. Protest at 17-20. In this regard, the protester argues that the agency used an unreasonable method to calculate the percentage of effort allocated to key

⁵ The protester also challenges the agency’s evaluation of Bowhead’s proposal under the technical capability factor, arguing that the agency unreasonably assigned a rating of outstanding when Bowhead lacks the required personnel as evidenced by Bowhead’s post-award recruiting efforts. Protest at 15-17; Protester’s Comments at 7-8. As we find no merit to the protester’s assertions with respect to the unavailability of the awardee’s proposed key personnel, we find the agency’s evaluation of the awardee’s technical proposal based on the proposed personnel to be unobjectionable. Moreover, the mere fact that Bowhead was seeking to hire additional qualified personnel to meet the requirements of the RFP does not demonstrate that Bowhead failed to propose appropriate staffing in its proposal or misrepresented the availability of its personnel. See *PricewaterhouseCoopers, LLP; IBM U.S. Federal, B-409885 et al.*, Sept. 5, 2014, 2014 CPD ¶ 289 at 11 n. 9.

subcontractors under the contract. Protester's Comments at 8-12. The protester also contends the agency failed to consider that the face of Bowhead's proposal demonstrated that its "key" subcontractors did not meet the solicitation's threshold to qualify as "key" subcontractors. As support, ASRC asserts that Bowhead's proposal represented that its "key subcontractors" would perform exactly 20 percent of the work. To be considered a key subcontractor, however, ASRC notes that the solicitation required a subcontractor to perform "more than 20%" of the work. *Id.*

The agency responds that it reasonably evaluated Bowhead's proposal under the past performance factor based on the relevant past performance record of Bowhead and its proposed key subcontractors. MOL at 10-14. The agency argues that it reasonably, in the context of the IDIQ contract awarded here, used the labor hours proposed for the two seed task orders in the offerors' proposals to assess whether proposed key subcontractors would perform the "more than 20% of the work" required by the solicitation. *Id.*

Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the agency's discretion. *Harmonia Holdings Group, LLC*, B-417475.3, B-417475.4, Sept. 23, 2019, 2019 CPD ¶ 333 at 17; *American Env'tl. Servs., Inc.*, B-406952.2, B-406952.3, Oct. 11, 2012, 2013 CPD ¶ 90 at 5. While we will not substitute our judgment for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, undocumented, or not reasonably based. *Conley & Assocs., Inc.*, B-415458.3, B-415458.4, Apr. 26, 2018, 2018 CPD ¶ 161 at 5.

Here, under the past performance factor, the solicitation instructed offerors to submit relevant and recent projects that "represent performance conducted as a prime contractor, by the offeror or its key subcontractors." RFP at 90. The solicitation provided for the evaluation of an offeror's past performance by assessing the offeror's ability to perform "based on relevant examples of work conducted by the offeror (including joint venture partners and key subcontractors)." *Id.* at 100. The solicitation also informed offerors that, "[i]f a subcontractor is not a key subcontractor" its past performance would not be evaluated. *Id.* at 90, 100. As noted above, the solicitation defined the term "key subcontractor" as "any subcontractor or teaming partner that will be performing more than 20% of the work." *Id.* at 87.

In its reevaluation of the percentage of contract work proposed for each subcontractor, the agency concluded that because of the undefined nature of the work under the required IDIQ contract, the term "the work" within the definition of a key subcontractor was "open to interpretation." AR, Tab 4a, Memorandum for Record at 3. After considering several different alternatives, the Army decided to interpret the term as referring to the labor hours required under the two seed task orders included in the solicitation. *Id.* In deciding on this methodology, the agency reasoned as follows:

The offerors had no information to determine the specifics of future requirements, and thus [were] unable to provide evidence of the percentages they would subcontract on the total [contract] value of \$249M. So, the government determined that defining key subcontractors based on the total [contract] value would be inappropriate. Due to the vagueness of “more than 20% of the work”, the crosswalk team determined that the government should accept an interpretation of the phrase, based on what the offerors were able to document in their proposals and likewise what the government was able to validate. Therefore, the government evaluated the key subcontractors meeting the “more than 20% of the work” definition, as any key subcontractor performing more than 20% of the labor hours for task orders 1 and 2 combined. This approach allows the government to validate the percentages based on the offerors’ proposals for task orders 1 and 2.

Id. at 5. Using this methodology, the agency calculated the percentage of labor hours that Bowhead proposed to allocate to [DELETED] and [DELETED] for the two seed task orders as [DELETED] percent and [DELETED] percent, respectively. *Id.* at 4. Based on this calculation, the agency concluded that both [DELETED] and [DELETED] were proposed to perform “more than 20% of the work” and therefore met the solicitation’s definition of a key subcontractor. *Id.*

The protester argues that this methodology was unreasonable and contrary to the solicitation’s terms. We agree.

First, the record does not support the agency’s conclusion that the term “the work,” as used in the RFP’s definition of a key subcontractor, could reasonably be interpreted to mean the work encapsulated by the two seed task orders. When 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. *Magellan Fed.*, B-416254, B-416254.2, June 7, 2018, 2018 CPD ¶ 206 at 4.

As noted above, the definition of the term “key subcontractor” appears in the section of the solicitation specifying submission requirements for the technical volume of the offeror’s proposal. RFP at 87. This section begins by stating that “[t]his volume will cover [the offeror’s] Technical proposal to accomplish the tasks identified in the PWS in Section C,” where section C of the RFP provided the PWS for the entirety of the IDIQ contract. *Id.* Key subcontractors were defined in the following paragraph as follows:

Organizational Structure and Teaming/Subcontract Arrangements:
Fully describe the structure of the proposed organization/team (including subcontractors/team members) *that will be utilized to accomplish the requirements identified in the PWS.* . . . For key subcontractors (defined as any subcontractor or teaming partner that will be performing more than

20% of the work), provide a detailed description of all teaming/ subcontracting arrangements.

Id. (emphasis added). Given this context, the only reasonable interpretation of the phrase “more than 20% of the work,” within the definition of key subcontractors, is more than 20 percent of the work required under the PWS for the base contract. *Id.*

Moreover, the solicitation plainly intended the seed task orders to represent only a portion of the work that will be required under the contract. The RFP contemplated the award of an IDIQ contract, under which the agency will issue task orders for a broad scope of services. See RFP at 11, 16, 30. Under the PWS for the IDIQ contract, the work required under the two seed task orders comprised just two of the eight “[s]pecific areas of coverage” required under the contract. *Id.* at 16. Contrary to the agency’s assertion otherwise, there is nothing in the solicitation to indicate that the work required under the seed task orders would comprise the entirety, or even the majority, of the work required under the contract.

Second, the agency cannot ignore that the solicitation specifically required offerors to provide their proposed subcontractor allocation for the work required under the IDIQ contract, and that each offeror provided this required information in its proposal. As noted, the solicitation here instructed offerors to provide, as part of their price proposals, “the percent of effort expected to be performed by any subcontractor/teaming member.” RFP at 93. In response to this instruction, both offerors provided the required information in their respective price proposals, breaking down the percentage of effort proposed to be allocated to each subcontractor “[a]cross the IDIQ” and “based upon contemplated work areas per the RFP.” B-419519.2, AR, Tab 5c, ASRC Price Proposal at 57; Tab 7d, Bowhead Price Proposal at 70-71.

In the rationale for its methodology, the agency reasons that “it would be impossible for the government to validate that [the offerors] will subcontract more than 20% of the total [contract] value to any particular subcontractor/s,” and that offerors would be “unable to provide evidence of the percentages they would subcontract on the total [contract] value of \$249 [million].” AR, Tab 4a, Memorandum for Record at 3, 5. The solicitation, however, did not require offerors to provide “evidence” of the percentage of work that would be allocated to each subcontractor or the agency to “validate” such evidence. Rather, the solicitation required the offeror to propose its allocation of effort for work required under the solicitation and for the agency to evaluate whether the offeror proposed to allocate more than 20 percent of the work under the contract to each of its key subcontractors. Here, the record shows that both offerors’ proposals provided sufficient information for the agency to make this assessment.

The record shows that Bowhead’s proposal expressly stated that [DELETED] and [DELETED] were each proposed to perform 20 percent of the effort required under the contract, while Bowhead as prime will be performing “at least [DELETED]” and the

“remaining [DELETED]% is split” among the remaining subcontractors.⁶ B-419519.2, AR, Tab 7d, Bowhead Price Proposal at 71. Even after acknowledging that Bowhead’s proposal provided this information, the agency chose to disregard it. See AR, Tab 4a, Memorandum for Record at 3. Instead, the agency chose to use the level of effort proposed for the seed task orders to derive the percentage of work that would be allocated to Bowhead’s proposed key subcontractors under the contract. *Id.*

On this record, we find the methodology the agency used to determine whether proposed key subcontractors met the solicitation’s definition for key subcontractors to be unreasonable and contrary to the unambiguous terms of the solicitation. As a result of this flawed methodology, the agency erroneously concluded that Bowhead’s proposed subcontractors met the solicitation’s threshold to be considered “key” subcontractors. As alleged by the protester, Bowhead’s proposal expressly allocated exactly 20 percent of the work to each of its proposed key subcontractors ([DELETED] and [DELETED]), and not more than 20 percent as required by the solicitation. Because the proposed allocation of effort to [DELETED] and [DELETED] did not meet this required threshold, it was unreasonable and contrary to the terms of the solicitation for the agency to credit the past performance of [DELETED] and [DELETED] in its evaluation of Bowhead’s past performance.

Prejudice

We are not, however, persuaded that the protester was prejudiced as a result of this error. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was competitively prejudiced by the agency’s actions; that is, unless the protester demonstrates that, but for the agency’s actions, it would have had a substantial chance of receiving the award. *XPO Logistics Worldwide Gov’t Servs., LLC*, B-412628.6, B-412628.7, Mar. 14, 2017, 2017 CPD ¶ 88 at 15.

Here, the agency assigned the rating of outstanding to Bowhead’s proposal under the technical capability factor, based on four significant strengths and four strengths, while assigning the rating of good to ASRC’s proposal under that factor based on one significant strength and three strengths. AR, Tab 5b, SSDD at 5, 13. The protester has not challenged this evaluation other than with respect to the availability of proposed key personnel as discussed above. See *generally*, Protest. In conducting its best-value tradeoff, the SSA compared the relative merits of proposals under each evaluation factor. AR, Tab 5b, SSDD at 13-20. The SSA concluded that Bowhead offered the

⁶ In contrast, ASRC’s price proposal provided, in a table titled “Proposed Subcontractors Across the IDIQ,” that each of its proposed key subcontractors, [DELETED] and [DELETED], would be performing 21 percent of the required effort. B-419519.2, AR, Tab 5c, ASRC Proposal, Price at 57. Moreover, ASRC’s technical proposal included commitment letters from these subcontractors, stating that ASRC “will target a 25% workshare of Total Proposed Contract direct labor value” for [DELETED]. AR, Tab 2a, ASRC Proposal, Technical at 117. ASRC’s proposal also committed to “subcontract a total of 21% of awarded labor dollars” under the contract to [DELETED]. *Id.* at 119.

overall best value to the government based on the “identified strengths and significant strengths” in Bowhead’s technical approach and its lower total evaluated price. *Id.* at 33. The SSA also noted that “the Government has satisfactory confidence in [Bowhead’s] ability to perform the requirement based on the evaluation of their past performance.” *Id.*

The record also shows that the past performance evaluation team, at the SSA’s request, provided an alternate evaluation using a scenario where Bowhead proposed no key subcontractors. AR, Tab 5a, Memorandum for Record--Alternate Past Performance Evaluation at 1-3. Under this scenario, the evaluation team evaluated Bowhead’s past performance based only on the past performance questionnaire and CPARS report for the one reference performed by Bowhead. *Id.* at 2. In this alternate evaluation, the evaluation team assessed a past performance rating of unknown confidence/neutral to Bowhead’s proposal, noting that the “performance record for this prime offeror is so sparse that no meaningful confidence assessment rating can be reasonably assigned.” *Id.* Based on this alternate past performance evaluation, the SSA conducted an alternative tradeoff analysis and concluded as follows:

This would have resulted in [Bowhead] receiving an unknown confidence (neutral) for the past performance factor. In [this scenario], the past performance would result in equal footing with [ASRC] being Satisfactory confidence and [Bowhead] being Unknown confidence . . . and the effect would still have [Bowhead] identified as providing the best value to the Government based on their Outstanding technical factor evaluation.

AR, Tab 5b, SSDD at 33.

Our Office has explained that an agency may reasonable conclude that a vendor with somewhat relevant performance nonetheless merits an overall past performance rating of neutral confidence. *Integrated Finance & Accounting Sols., LLC*, B-420526, B-420526.2, May 19, 2022, 2022 CPD ¶ 129 at 6. Moreover, the Federal Acquisition Regulation (FAR) is clear that in the case of an offeror without a record of relevant past performance, or where information on past performance is not available, the offeror may not be evaluated favorably or unfavorably with respect to past performance. FAR 15.305(a)(2)(iv); see *General Revenue Corp. et al.*, B-414220.2, *et al.*, Mar. 27, 2017, 2017 CPD ¶ 106 at 18-19.

The solicitation here provided that past performance was less important than technical capability when conducting the best-value tradeoff. RFP at 99. Moreover, the agency reasonably found that the awardee’s technical capability was superior to that of the protester and that the awardee’s total evaluated price was lower than that of the protester. AR, Tab 5b, SSDD at 33. Based on this record, we find reasonable the SSA’s conclusion that Bowhead’s proposal, even with a neutral past performance rating as compared to ASRC’s rating of satisfactory confidence, would still represent the best value to the government based on its technical merit and lower price. Because the agency’s tradeoff analysis reasonably concluded that the agency would have reached

the same award decision even if the error in its past performance evaluation was remedied, we find that the protester was not prejudiced by the error.

The protest is denied.

Edda Emmanuelli Perez
General Counsel