



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: MicroTechnologies, LLC

File: B-420196.3; B-420196.4

Date: January 6, 2023

Aron C. Beezly, Esq., Sarah S. Osborne, Esq., Gabrielle A. Sprio, Esq., Lisa A. Markman, Esq., and Nathaniel J. Greeson, Esq., Bradley Arant Boult Cummings LLP, for the protester.

Aleia Barlow, Esq., and Catherine R. Gilabert, Department of Veterans Affairs, for the agency.

David A. Edelstein, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of agency's technical evaluation and tradeoff decision is denied where agency reasonably concluded that protester's proposal met, but did not exceed, the solicitation requirements, and where source selection authority reasonably considered qualitative differences between proposals.
 2. Protest of agency's past performance evaluation is denied where agency reasonably determined that protester's submitted past performance project was not similar in size to the instant requirement.
 3. Protest of agency's affirmative responsibility determination is denied where protester has not demonstrated that contracting officer failed to consider information having a strong bearing on awardee's responsibility.
-

DECISION

MicroTechnologies, LLC, a small business of Tysons, Virginia, protests the award of indefinite-delivery, indefinite-quantity (IDIQ) contracts to four other firms¹ under request

¹ The awardees are All In Solutions, LLC, a small business of Fredericksburg, Virginia; Blue Water Thinking, LLC, a small business of Edgewater, Maryland; SAG Corporation, a small business of Annandale, Virginia; and Sprezzatura Management Consulting, LLC, a small business of McLean, Virginia.

for proposals (RFP) No. 36C10D21R001, issued by the Department of Veterans Affairs (VA) for project support services. The protester alleges that the agency improperly evaluated offerors' proposals under the technical and past performance factors, made an unreasonable best-value tradeoff decision, and failed to consider information relevant to the responsibility of one awardee.

We deny the protest.

BACKGROUND

The agency issued the RFP on February 26, 2021, seeking project management support and related business support services. Contracting Officer's Statement (COS) at 2. The solicitation was set aside for service-disabled veteran-owned small businesses. Agency Report (AR), Tab 3a, RFP at 1.² The solicitation stated that the agency intended to award three IDIQ contracts, but that the agency may award more than three if it determined that doing so would be advantageous. *Id.* The RFP anticipated an ordering period of five years. AR, Tab 3a, Performance Work Statement (PWS) at 5. The maximum aggregate value of task orders to be issued to each awardee was \$21.6 million. RFP at 6.

The solicitation stated that award would be made on a best-value tradeoff basis considering price, technical, and past performance factors. RFP at 44-45. The technical and past performance factors were equally important and, when combined, were significantly more important than price. *Id.* at 44. Evaluation of the technical factor was divided into two equally-important elements: (1) technical approach, and (2) capability and experience. *Id.* at 45-46.

The agency would evaluate the past performance of each offeror and its major subcontractor³ by considering if the offeror "demonstrated [a] recent and relevant record of performance in supplying services that met the contract requirements." *Id.* at 46. The RFP defined relevance as "a contract that is similar in size and scope [to] the requirements in this solicitation," and explained that "[s]imilar in size means the total price of the contract, the number of staff, the number of users served, the number of locations served, etc." *Id.* at 38. The RFP informed offerors that an offeror "with no recent and relevant [p]ast [p]erformance shall be evaluated as '[n]eutral.'" *Id.* at 47.

To facilitate the agency's evaluation of past performance, the solicitation required offerors to submit no more than two past performance questionnaires (PPQs) for work performed within the prior five years. RFP at 38. In response to several offeror questions, the agency stated that "one of the two PPQs must be for the prime." AR, Tab 3c, RFP Amendment 2 Questions & Responses. The PPQs were to be submitted

² The RFP was amended four times. Unless otherwise noted, citations to the RFP are to the original version, included in the agency report in tab 3a.

³ "Major subcontractor" was defined as "the subcontractor who received the highest percent of the value of the contract." RFP at 38.

directly by the evaluator completing them, and the RFP stated that it was the offerors' responsibility to send the PPQ form to the evaluators and to "ensure these PPQs are emailed to [the agency] no later than the proposal due date." RFP at 38-39. The RFP provided that "[a]ll PPQs received after the proposal due date and time will not be considered." *Id.* at 39. Further, while the RFP stated that the agency reserved the right to seek additional information, it informed offerors that "the burden of providing current accurate and complete [p]ast [p]erformance information rests with the [offeror]." *Id.* at 46-47.

Proposals were due on April 2, 2021. COS at 2. The agency received 35 proposals, including proposals from the protester and the four awardees. See AR, Tab 9f, Source Selection Report at 1-3.

Of relevance to this protest, MicroTechnologies's proposal identified two past performance projects, one it had performed as the prime contractor, and one performed by its major subcontractor. AR, Tab 7, MicroTechnologies Proposal, Past Performance Volume at 3-14. The agency received a PPQ for the major subcontractor project, but not the project on which the protester itself had been the prime contractor.⁴ COS at 7; see AR, Tab 7, MicroTechnologies Proposal (containing only one PPQ, for MicroTechnologies's major subcontractor). The PPQ for the major subcontractor's project was for a contract with a duration of approximately [DELETED] months, and a total value of \$[DELETED]. AR, Tab 7, MicroTechnologies Proposal, Past Performance Volume at 10.

In September of 2021, the agency made awards to three offerors. Two unsuccessful offerors (including MicroTechnologies) protested these awards with our Office, and a third unsuccessful offeror filed an agency-level protest. COS at 3. The agency elected to take corrective action by reevaluating proposals and making a new award decision. Our Office and the agency therefore dismissed the three protests as academic. *Id.* at 4; see *MicroTechnologies, Inc.*, B-420196.2, Oct. 8, 2021 (unpublished decision).

After dismissal of these protests, the agency convened a source selection evaluation board (SSEB) and reevaluated proposals. COS at 4. On the technical factor, the SSEB found no strengths, weaknesses, or deficiencies in MicroTechnologies's proposal. AR, Tab 9a, MicroTechnologies Technical Evaluation Team Worksheet at 1-4. With respect to each of the evaluation elements described in the RFP under the technical factor, the SSEB concluded that MicroTechnologies's "approach satisfied this element." *Id.* The

⁴ The protester initially alleged that a PPQ had been submitted for its prime contractor past performance project. Comments & Supp. Protest at 9-10. At our Office's request, the agency addressed this allegation, and provided declarations and contemporaneous evidence confirming that it never received this PPQ. Agency Resp. to GAO Req. for Additional Information, Dec. 22, 2022. The protester now concedes that the evaluator "apparently ignored [MicroTechnologies's] request" to submit the PPQ. Resp. to GAO Req. for Additional Documents, Dec. 23, 2022.

SSEB assigned MicroTechnologies an overall technical factor rating of satisfactory.⁵
Id. at 5

With respect to past performance, according to the agency, the SSEB mistakenly believed that the PPQ submitted for MicroTechnologies's major subcontractor was for a project that MicroTechnologies had itself performed as a prime contractor. COS at 9. The SSEB nevertheless determined that this project was not relevant because it was for a contract with a total value of \$[DELETED], which is more than 25 percent smaller than the contract ceiling for this requirement of \$21.6 million. The SSEB found that "[t]his is considered not relevant because the contract . . . is not similar in size." AR, Tab 9a, MicroTechnologies Past Performance Evaluation Worksheet at 1. Accordingly, the SSEB found that MicroTechnologies had not demonstrated recent and relevant past performance, and it assigned MicroTechnologies a rating of unknown under the past performance factor.⁶

The SSEB identified at least one strength in all four awardees' proposals, and assigned all four awardees a technical factor rating of good. AR, Tabs 9b-9f, Awardee Evaluation Reports. The SSEB assigned all four awardees a past performance rating of outstanding. *Id.* In making the award decision, the source selection authority (SSA) reviewed and concurred with the SSEB's analysis. AR, Tab 9g, Source Selection Decision Document at 223. The final consensus ratings and total proposed prices of the protester and four awardees were as follows:

	Technical	Past Performance	Price
All In Solutions	Good	Outstanding	\$13,969,026
Blue Water	Good	Outstanding	\$21,233,854
SAG Corp.	Good	Outstanding	\$21,568,750
Sprezzatura	Good	Outstanding	\$21,595,500
MicroTechnologies	Satisfactory	Unknown	\$19,167,441

Id. at 9-12.

The SSA determined that the four awardees represented the best overall value to the agency. *Id.* at 222-223. In making this determination, the SSA compared each of the awardees' proposals against the proposals of all other offerors, identifying similarities and differences under both of the evaluation factors and concluding with a summary

⁵ The possible technical ratings, in descending order of merit, were exceptional, good, satisfactory, marginal, and unsatisfactory. AR, Tab 5, Source Selection Plan at 7.

⁶ The possible past performance ratings, in descending order of merit, were outstanding, good, acceptable, marginal, and unsatisfactory. AR, Tab 5, Source Selection Plan at 8. Unknown was considered "a neutral rating having no positive or negative evaluation significance." *Id.*

explaining why each awardee's proposal represented a better value to the government. *Id.* at 14-222.

For example, in explaining why awardee SAG's proposal represented a better value to the government than MicroTechnologies's proposal, the SSA noted that SAG was assigned two strengths under the technical factor: for prior experience with a tool that will be used on this contract, and for proposed personnel with relevant experience. *Id.* at 148. The SSA also noted that SAG had received a significant strength under the past performance factor, for a recent and relevant PPQ for a major subcontractor, predominantly indicating "[o]utstanding" performance of a prior contract. *Id.* at 149. The SSA concluded that these assigned strengths reduced risk and provided additional benefit to the government, and determined that the added benefits of SAG's proposal merited its higher price. *Id.*

The SSA performed and documented a similar analysis and tradeoff comparing the proposals of the other two higher-priced awardees against MicroTechnologies's proposal, in both cases determining that specific identified strengths in the awardee's proposal merited its higher price. *Id.* at 93-94 (Blue Water), at 199-200 (Sprezzatura). With respect to All In Solutions, which was lower priced than MicroTechnologies, the SSA determined that the identified strengths in its proposal meant that All In was more likely than MicroTechnologies to reduce performance risk, and that MicroTechnologies's proposal did not offer any advantages that would warrant paying its higher price. *Id.* at 40-41.

On September 28, 2022, the agency made award to the four awardees and notified the protester. AR, Tab 10, Unsuccessful Offeror Notice. This protest timely followed.

DISCUSSION

The protester alleges that the agency improperly evaluated the protester's proposal under the technical and past performance factors, failed to confirm the availability of the awardees' key personnel, and made an unreasonable best-value determination. The protester also specifically challenges the award to All In on the grounds that the agency improperly evaluated All In's technical proposal and unreasonably ignored information relevant to the determination that All In was a responsible offeror. As discussed below, we have reviewed the protester's arguments and find no basis to sustain the protest.

Technical Evaluation of Protester

The protester alleges that the agency failed to appropriately consider the substantive merits of MicroTechnologies's proposal. The agency responds that its evaluators reasonably determined that the proposal met the solicitation requirements, but did not exceed the requirements or provide material advantages to the government. COS at 10.

The evaluation of technical proposals, including determinations regarding the magnitude and significance of evaluated strengths and weaknesses, is a matter largely within the agency's discretion, and a protester's disagreement with the agency's judgment, without

more, does not establish a basis for our Office to sustain a protest. *Pemco Aeroplex, Inc.*, B-310372, Dec. 27, 2007, 2008 CPD ¶ 2 at 10. Our Office will not disturb an agency's evaluation of technical proposals unless it is shown to be unreasonable or inconsistent with the solicitation's evaluation criteria. *Wilson 5 Serv. Co., Inc.*, B-407047, Oct. 18, 2012, 2012 CPD ¶ 339 at 4. Further, an agency is not required to document determinations of adequacy or explain in the evaluation record why it did not assess a strength, weakness, or deficiency for a particular item. *Booz Allen Hamilton, Inc.*, B-417418 *et al.*, July 3, 2019, 2019 CPD ¶ 246 at 17.

Here, the protest includes a table that sets forth certain PWS requirements, accompanied by quotes or paraphrases from sections of MicroTechnologies's proposal that the protester contends demonstrate areas that exceeded the PWS requirements. Protest at 21-24.

The protester does not explain how the cited proposal features exceed the PWS requirements, and our review of the protester's examples supports the agency's conclusion that MicroTechnologies's proposal met, but did not exceed, the solicitation requirements. For example, the protester identifies a PWS requirement to "perform analytical services in support of programmatic activities managed by [c]ompensation service." Protest at 22. The protester states that it "described, in exhaustive detail, its plan to provide 'program analysis services [to] support all [compensation service] functional areas.'" *Id.* Similarly, with reference to a PWS requirement to "facilitate strategic planning . . . with maintenance and refinement of existing strategic planning documentation," the protester states that it proposed to help the agency "link its strategic planning function to fulfilling the [agency's] strategic plan," and that its proposal identified relevant agency strategic planning documents. *Id.* at 23. These examples appear to restate, and commit to meeting, the requirements of the PWS. Contrary to the protester's arguments, they do not clearly indicate that the protester's proposal exceeds those requirements.

In sum, while the protester disagrees with the agency's judgments, it has not demonstrated that the agency's evaluation was unreasonable or inconsistent with the solicitation's evaluation criteria.⁷ *Wilson 5 Serv. Co.*, *supra* at 4. We note additionally that the agency was not required to document its determinations that these proposal features did not merit the assessment of strengths. *Booz Allen*, *supra* at 17. Accordingly, we deny the protester's challenge to the agency's evaluation of MicroTechnologies's proposal under the technical factor.

⁷ In addition to the examples discussed, our Office has reviewed the remainder of the protester's allegations of unconsidered technical merit. See Protest at 20-26. We conclude that all of these examples similarly represent disagreement with the agency's judgment but do not demonstrate that the agency's evaluation was unreasonable.

Past Performance Evaluation of Protester

MicroTechnologies also raises several challenges to the evaluation of its past performance. As discussed above, the agency received a PPQ only for work performed by MicroTechnologies's major subcontractor and determined that the PPQ did not demonstrate relevant work. The VA therefore assigned MicroTechnologies a neutral/unknown rating under the past performance factor.

An agency's evaluation of past performance, which includes consideration of the relevance, scope, and size 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. See *Metropolitan Life Ins. Co.*, B-412717, B-412717.2, May 13, 2016, 2016 CPD ¶ 132 at 14. When 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.

The protester contends that the agency applied unstated evaluation criteria in determining that the PPQ for MicroTechnologies's major subcontractor was not relevant. In this regard, the RFP stated that relevance would be analyzed with reference to "the total price of the contract," but did not disclose any specific threshold. RFP at 38. The agency applied a threshold of \$16.2 million, representing 75 percent of the instant contract value. See AR, Tab 9a, Past Performance Factor Worksheet at 1. In evaluating proposals, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by, or related to, the stated evaluation criteria. *AMI-ACEPEX, JV*, B-401560, Sept. 30, 2009, 2009 CPD ¶ 197 at 4. Our Office has previously found that, where the solicitation discloses that contract size will be used to evaluate the relevance of past performance projects, an agency's use of a threshold value is sufficiently related to this stated criterion. *Id.* Similarly here, we find the agency's use of a past performance threshold does not represent the application of unstated evaluation criteria.⁸

Next, the protester alleges that the RFP defined "similar in size" not only with respect to contract price, but also "the number of staff, the number of users served, the number of locations served, etc." See RFP at 38. The protester argues that the agency should have found the PPQ from MicroTechnologies's major subcontractor to be relevant because it involved services at 70 facilities, similar to the 58 locations to be served

⁸ In *AMI-ACEPEX*, we found reasonable a threshold of "approximately half" of the value of the solicited contract. *Id.* at 4. The protester here has not challenged the 75 percent threshold set by the agency (apart from challenging the agency's failure to disclose that threshold). However, we note that even under the lower threshold of *AMI-ACEPEX*, the PPQ for MicroTechnologies's major subcontractor--valued at approximately [DELETED] percent of the contract value here--would have been found not relevant.

under the current requirement. Protest at 16. Relying on the same solicitation language as the protester, the agency responds that the RFP stated that similar in size meant all of the following: “the total price of the contract, the number of staff, the number of users served, the number of locations served, etc.” RFP at 38. Accordingly, once the agency determined the PPQ was for a project not similar in total price, the PPQ could not meet the “whole definition of similar in size.” COS at 8. We see nothing unreasonable in this conclusion. That is, we do not find that the wording of the solicitation required the agency to consider a past performance contract relevant if it met one, but not all, of the similarity criteria set forth in the RFP.⁹

The protester also argues that the VA failed to explain why it did not find the major subcontractor PPQ to be relevant when the agency found the same PPQ relevant in its evaluation prior to the September 2021 award decision. The protester relies on our Office’s decision in *eAlliant, LLC*, B-407332.6, B-407332.10, Jan. 14, 2015, 2015 CPD ¶ 229. In *eAlliant*, we found that it is incumbent upon an SSA, when confronted with differing evaluation results of the same proposal, submitted by the same offeror, under the same solicitation, to seek some sort of explanation, or otherwise arrive at an understanding of the discrepancy. *Id.* at 11. We have explained that this is because the earlier evaluation conclusions call into question the reasonableness of the later conclusions. *Bowhead Mission Solutions, LLC--Costs*, B-419385.7, July 14, 2022, 2022 CPD ¶ 183 at 7. Here, we do not find *eAlliant* to be applicable because the evaluation discrepancy, as discussed above, is explained by the agency applying an objective threshold for determining whether past performance projects were similar in size. We found the agency’s use of that threshold to be reasonable and not to constitute the application of unstated evaluation criteria, and we note that the PPQ for the protester’s major subcontractor was for a project with a total price significantly below the agency’s threshold. Thus, we find that the evaluation record adequately documents the rationale for the discrepancy between the two evaluations, and the earlier evaluation does not call into question the reasonableness of the present evaluation.

The protester also argues that the agency should have evaluated the past performance project that MicroTechnologies performed as a prime contractor, for which the agency did not receive a PPQ. The protester contends both that the agency should have

⁹ In any event, we question MicroTechnologies’s representation that its major subcontractor PPQ demonstrates “support services across 70 discrete ‘facilities.’” Protest at 16. MicroTechnologies’s description of this project states that its major subcontractor conducted “70 town hall events across the country” in a “Virtual Town Hall format,” but only identifies on-site work at one national call center, two regional call centers, and one VA regional office. See AR, Tab 7, MicroTechnologies Proposal, Past Performance Volume at 10-12. To the extent that MicroTechnologies wanted the agency to understand that the major subcontractor’s PPQ involved work performed at 70 facilities, it was responsible for submitting a well-written proposal with adequately detailed information that allows for meaningful review by the procuring agency. *Abacus Tech. Corp.; SMS Data Prods. Grp., Inc.*, B-413421 et al., Oct. 28, 2016, 2016 CPD ¶ 317 at 19. We do not think it did so here.

reached out to the evaluator to obtain a copy of this PPQ, and that the past performance information--for a project at the same agency--was "too close at hand to ignore." Comments & Supp. Protest at 11.

With respect to the protester's first argument, we note that the RFP expressly informed offerors that it was their responsibility to ensure submission of the PPQs and that "[a]ll PPQs received after the proposal due date and time will not be considered." RFP at 38-39. It stated further that while the agency reserved the right to obtain additional past performance information, "the burden of providing current accurate and complete [p]ast [p]erformance information rests with the [offeror]." *Id.* at 46-47. Accordingly, nothing in the solicitation obligated the agency to seek out MicroTechnologies's missing PPQ.

Regarding the protester's second argument, our Office has previously recognized that there are certain limited circumstances in which an agency has an obligation (as opposed to the discretion) to consider past performance information that is simply too close at hand to require offerors to shoulder the inequities that spring from an agency's failure to obtain, and consider, such information. *Exelis Sys. Corp.*, B-407111 *et al.*, Nov. 13, 2012, 2012 CPD ¶ 340 at 22. However, we have generally limited application of this principle to situations where the alleged "close at hand" information relates to contracts for the same services with the same procuring activity, or information personally known to the evaluators. *Id.* Here, the contract that the protester contends should have been considered involved work for the VA, but it was not for the same services as required under the solicitation. See AR, Tab 7, MicroTechnologies Proposal, Past Performance Volume at 3 (identifying the contract as for "Microsoft Enterprise Agreement" services). Moreover, the record fails to establish that information concerning the protester's performance on that contract was personally known to the evaluators or contracting officer who conducted the evaluation here. Under these circumstances, we cannot conclude that information pertaining to the protester's performance on the contract at issue was so close at hand that the agency was obligated to consider it. See *Veterans Elite, Inc.*, B-409233, Feb. 10, 2014, 2014 CPD ¶ 64 at 4.

Accordingly, we deny the protester's challenge to the agency's evaluation of its past performance.

Key Personnel

The protester next argues that the agency "failed to confirm the availability of awardees' key personnel," and that given the passage of nearly 18 months between proposal submission and award, the agency should have done so. Protest at 26-28.

Notably, the protester does not contend that any specific key person for any awardee is known to be unavailable, or that any awardee failed to advise the agency of changes in its proposed staffing. *Id.* That is, the protester's argument relies entirely on its contention that, due solely to the passage of time, the agency was required to seek updated key personnel information from offerors.

Our Office has found that an agency reasonably may request updated key personnel information from offerors due to the passage of time. *Consolidated Eng'g Servs., Inc.*, B-293864.2, Oct. 25, 2004, 2004 CPD ¶ 214 at 3. We have also explained that offerors are obligated to advise agencies of changes in proposed staffing and resources, even after the submission of proposals. *General Revenue Corp., et al.*, B-414220.2 et al., Mar. 27, 2017, 2017 CPD ¶ 106 at 22. However, the protester does not cite any instance--nor are we aware of any--where we found that an agency was required to proactively confirm the availability of key personnel based on the passage of time between proposal submission and award. We decline to do so now.

We therefore find that MicroTechnologies's argument fails to state an adequate legal ground of protest, and dismiss it on that basis. See 4 C.F.R. § 21.5(f).

Best-Value Tradeoff Decision

The protester also raises a number of challenges to the agency's tradeoff decision. Specifically, the protester alleges that the SSA did not exercise her independent judgment, relied on adjectival ratings rather than the underlying merits of proposals, and did not follow the weighting of evaluation factors specified by the RFP. We find that the protester's arguments are not supported by the record.

With respect to the exercise of independent judgment, the protester argues that the source selection decision (SSD) was improperly "prepared by" the agency's contract specialist, and that the SSA merely "rubber-stamped" the document. Comments & Supp. Protest at 15. The SSA responds that she conducted an independent analysis of the evaluation of proposals, met with the SSEB and with the contract specialist to discuss the evaluation of proposals and the source selection decision, reviewed drafts of the SSD, and ultimately approved the final SSD based on her review and her independent judgment. Supp. COS at 7.

Consistent with the SSA's representations, the record shows that the SSD was reviewed and executed by the SSA. AR, exh. 9, SSD at 223. The SSD itself states that the SSA made the award decision based on her review and independent substantive analysis, and we note that nothing in the evaluation record indicates otherwise. *Id.* at 222-223. We have consistently found that an SSA may properly base his or her independent judgment on documentation prepared by others. *Comprehensive Health Servs., Inc.*, B-310553, Dec. 27, 2007, 2008 CPD para. 9 at 11; *Detica*, B-400523, B-400523.2, Dec. 2, 2008, 2008 CPD ¶ 217 at 8 n.6. Accordingly, we find no merit to this protest ground.

With respect to the merits of the SSA's tradeoff decision, source selection officials in negotiated best-value procurements have broad discretion in making price/technical tradeoffs, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the solicitation's stated evaluation criteria. *Millennium Eng'g & Integration Co.*, B-417359.4, B-417359.5, Dec. 3, 2019, 2019 CPD ¶ 414 at 14; *Diversified Tech. & Servs. of Va., Inc.*, B-412090.2, B-412090.3, Dec. 16, 2015, 2016 CPD ¶ 34 at 11. Source selection decisions must be documented,

and the documentation must include the rationale for any business judgments and price/technical tradeoffs made, including the benefits associated with any price premium. Federal Acquisition Regulation (FAR) 15.308; *General Dynamics Info. Tech., Inc.*, B-406059.2, Mar. 30, 2012, 2012 CPD ¶ 138 at 4. However, there is no need for extensive documentation of every consideration factored into a tradeoff decision; rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. *Diversified Tech. & Servs. of Va., Inc.*, *supra* at 12; *Wyle Labs., Inc.*, B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 11.

Here, the contracting officer expressly identified specific strengths in each awardee's proposal, explained why those strengths provided benefit and reduced risk to the agency over and above MicroTechnologies's proposal, and (where necessary) documented her conclusion that these strengths merited the payment of the awardee's higher prices. See AR, Tab 9g, SSD at 40-41 (All In), at 93-94 (Blue Water), at 148-149 (SAG), at 199-200 (Sprezzatura).

The SSA's qualitative analysis is in accord with our consistently stated guidance that evaluation ratings, be they adjectival, numerical, or color, are but a guide to, and not a substitute for, intelligent decision-making. See, e.g., *NCI Info. Sys., Inc.*, B-412680, B-412680.2, May 5, 2016, 2016 CPD ¶ 125 at 9; *Shumaker Trucking and Excavating Contractors, Inc.*, B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 8. The protester has not demonstrated that the SSA's conclusions were unreasonable.

Challenges to Award to All In Solutions

Finally, in addition to the overall challenges discussed above, the protester raises two challenges specific to the award to All In Solutions. The protester alleges that All In should have been assessed a deficiency instead of a weakness for one aspect of its proposal, and that the agency failed to consider material information bearing on All In's responsibility.

The protester's challenge to the technical evaluation of All In's proposal relies on the agency's finding that the proposal "[did] not outline experience providing [DELETED] which is slightly below standards/expectations." See AR, Tab 9b, All In Technical Evaluation at 4. The agency considered this to be a weakness, but not a significant weakness or deficiency. The protester alleges that this proposal omission should have led to the assessment of a deficiency, because the solicitation instructed offerors to submit a written "[c]apability and [e]xperience" narrative detailing their experience in six tasks, including [DELETED]. See RFP at 37.

The agency responds that it considered this a weakness and not a deficiency because All In demonstrated experience in the other five tasks. All In's omission of the SharePoint task was "not considered a material failure of the proposal to meet the [agency's] requirements because an omission of one out of the six tasks does not increase the probability of unsuccessful contract performance to an unacceptable level." Supp. COS at 8. The agency further explains that the purpose of this proposal

instruction, and its corresponding evaluation criterion, was to permit the agency to “determine the extent to which the offeror has previously provided recent and relevant services” similar to those required by the PWS. *Id.* at 8-9. The agency notes that an offeror’s lack of experience with one of the many PWS tasks did not mean the offeror would be incapable of performing that task. *Id.* at 9; see RFP at 47.

As noted above, the evaluation of technical proposals, including determinations regarding the magnitude and significance of evaluated strengths and weaknesses, is a matter largely within the agency’s discretion, and a protester’s disagreement with the agency’s judgment, without more, does not establish a basis for our Office to sustain a protest. *Pemco Aeroplex, supra* at 10. Here, we find that the agency’s explanation of why it viewed this proposal omission to be a weakness rather than a deficiency is reasonable, and we deny this aspect of the protest.¹⁰

The protester’s other challenge to the award to All In relates to the agency’s affirmative determination that All In was a responsible offeror.

Since the determination that an offeror is capable of performing a contract is largely committed to the contracting officer’s discretion, our Office will generally not consider a protest challenging an affirmative determination of responsibility except under limited, specified exceptions. 4 C.F.R. § 21.5(c); *FCi Fed., Inc.*, B-408558.4 *et al.*, Oct. 20, 2014, 2014 CPD ¶ 308 at 7. One specific exception is where a protest identifies evidence raising serious concerns that a contracting officer, in making an affirmative determination of responsibility, unreasonably failed to consider available relevant information. 4 C.F.R. § 21.5(c); *Verestar Gov’t Servs. Group*, B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68 at 3-4. This includes protests where, for example, the protest includes specific evidence that the contracting officer may have ignored information that, by its nature, would be expected to have a strong bearing on

¹⁰ Similarly, the agency found that the weakness in All In’s proposal was “outweigh[ed]” by a strength, and assessed All In a technical rating of good. AR, Tab 9b, All In Technical Evaluation at 5. The protester argues that--per the agency’s source selection plan--a proposal with “offsetting” strengths and weaknesses should have been rated satisfactory rather than good. We find no merit to this argument. Moreover, we note that source selection plans do not give outside parties any rights, because “it is the evaluation scheme in the solicitation, not internal documents, to which the agency is required to adhere in evaluating proposals and making the source selection.” *DynCorp Int’l LLC, AAR Supply Chain, Inc.*, B-415873 *et al.*, Apr. 12, 2018, 2018 CPD ¶ 157 at 10. The solicitation here did not require any particular adjectival rating for proposals with offsetting strengths and weaknesses. See RFP at 44-47. In any event, as noted above, the SSA performed a qualitative comparison of proposals, and did not merely rely on adjectival ratings. The protester has therefore not demonstrated prejudice from any alleged error in the adjectival ratings assigned to offerors. See *ICI Services Corp.*, B-418255.5, B-418255.6, Oct. 13, 2021, 2021 CPD ¶ 342 at 13-14.

whether the awardee should be found responsible. *Universal Marine & Indus. Servs., Inc.*, B-292964, Dec. 23, 2003, 2004 CPD ¶ 7 at 2.

In this context, our Office has reviewed credible allegations that an agency failed to properly consider that a contractor committed fraud, *FN Mfg., Inc.*, B-297172, B-297172.2, Dec. 1, 2005, 2005 CPD ¶ 212 at 11-12, that principals of a contractor had criminal convictions, *Southwestern Bell Tel. Co.*, B-292476, Oct. 1, 2003, 2003 CPD ¶ 177 at 7-8, or that a contractor engaged in improper financial practices and improperly reported earnings. *Verestar Gov't Servs. Group, supra*. In contrast, we will not review unsupported allegations of illegal action, such as insider trading, *MD Helicopters, Inc.; AgustaWestland, Inc.*, B-298502 et al., Oct. 23, 2006, 2006 CPD ¶ 164 at 41 n.40, or allegations of poor financial or business performance. *Hendry Corp.*, B-400224.2, Aug. 25, 2008, 2008 CPD ¶ 164 at 2.

Here, the protester alleges that the agency failed to consider information about the “questionable integrity and business ethics” of two of All In’s executives, and that this information was available and known to the agency because MicroTechnologies included it in its first protest of this procurement, filed on September 27, 2021.

First, the information included with the protest indicates that one All In executive was indicted, but not convicted, of theft of moveable property in 2002.¹¹ See Protest, exh. 10, Theft Offense Detail. Without more, this is an unsupported allegation of illegal action. See *MD Helicopters, supra*. And, the protester has not demonstrated that this alleged offense--a personal property offense by one All In executive--has any bearing whatsoever on the integrity and business ethics of All In itself. Further, the alleged incident occurred, at the latest, in 2002, and proposals on this solicitation were due and submitted in 2021. We note therefore that even if this incident had resulted in a criminal conviction, that conviction would now be outside the disclosure period required by the FAR provision governing certifications for responsibility matters. See FAR provision 52.209-5(a)(1)(i)(B) (requiring disclosure of convictions or civil judgment for fraud or certain criminal offenses “within a three-year period preceding this offer”). Our Office has found that even a criminal conviction does not preclude an affirmative determination of responsibility, particularly where the conviction occurred outside the 3-year threshold of the FAR certification. *Nilson Van & Storage, Inc.*, B-310485, Dec. 10, 2007, 2007 CPD ¶ 224 at 5.

The protester also submitted information indicating that a second All In executive resigned from a prior position with a federal agency after that agency’s Inspector General questioned the reliability of reports issued by the executive’s office. Protest,

¹¹ The agency argues that it is not clear that the individual involved is All In’s executive (rather than another person who shares the same name). The protester responds that it discovered this indictment as part of a “company investigator report” into All In. Because, as explained below, we find that this is not the type of information that would be expected to have a strong bearing on whether the awardee should be found responsible, we need not resolve this issue.

exh. 11. The protester provided further information that this executive had faced congressional inquiry into accusations that others in the executive's office used their positions to obtain jobs and reimbursed moving expenses. Protest, exh. 12. In this regard, an Inspector General report provided by the protester makes clear that the All In executive was not accused of improperly obtaining any benefit from the government; rather, the executive was found to have approved allegedly improper moving expenses for others, in 2014. Comments & Supp. Protest, exh. A, VA Inspector General Report at 18. Accordingly, it does not appear that the executive was accused of any fraud or illegal action. Instead, the accusations appear to be of poor business performance or, at worst, of poor judgment in allowing subordinates to behave improperly. This is not the type of allegation that our Office will review in the context of a protest of an affirmative determination of responsibility. See *Hendry, supra* at 2. In any event, we note that these allegations, too, relate to activity that predates the instant proposal by more than seven years, well outside the FAR's three-year disclosure period. See provision FAR 52.209-5(a); *Nilson Van, supra*.

In short, we find that the information provided by the protester is not of the type that would be expected to have a strong bearing on whether the awardee should be found responsible. *Universal Marine, supra* at 2. We therefore find that the contracting officer did not unreasonably fail to consider this information, and we deny this aspect of the protest.

The protest is denied.

Edda Emmanuelli Perez
General Counsel