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Decision

Matter of: Meltech Corporation, Inc.

File: B-421064; B-421064.2

Date: December 22, 2022

Daniel J. Strouse, Esq., and Laurel A. Hockey, Esq., Cordatis LLP, for the protester. Katherine B. Burrows, Esq., Jonathan T. Williams, Esq., and Eric A. Valle, Esq., Piliero Mazza PLLC, for Strongside Builders, LLC, the intervenor. Lieutenant Colonel Jason R. Hull, Max D. Houtz, Esq., William S. Whitman, Esq., and James E. Durkee, Esq., Defense Intelligence Agency, 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 that the agency unreasonably evaluated the protester's proposal under the management capability factor is denied where the evaluation was reasonable and consistent with the terms of the solicitation.
2. Protest challenging the agency's past performance evaluation of projects performed by both members of a mentor-protégé joint venture is denied where the evaluation was consistent with the terms of the solicitation and applicable small business regulations.

DECISION

Meltech Corporation, a small business of Landover, Maryland, protests the award of a contract to Strongside Builders, LLC, of Chevy Chase, Maryland, under request for proposals (RFP) No. HHM4022-22-R-0018, issued by the Department of Defense, Defense Intelligence Agency (DIA) for general construction services. The protester argues that the award to Strongside was improper because DIA unreasonably evaluated proposals under the management capability and past performance factors.

We deny the protest.

BACKGROUND

The agency issued the solicitation on May 26, 2022, seeking proposals to provide a broad range of construction maintenance, installation, repair, minor and major

construction, renovation, and reconfiguration work on real property occupied by DIA in Washington, District of Columbia. Contracting Officer's Statement (COS) at 1; Agency Report (AR), Tab 4, RFP, attach. 1, Statement of Work (SOW) at 7. The competition was set aside for small businesses. AR, Tab 6, RFP amend. 2 at 35.¹ The RFP contemplated the award of an indefinite-delivery, indefinite-quantity contract with a 1-year base period and four 1-year option periods. COS at 1; SOW at 7.

The RFP advised that award would be made on a best-value basis to the offeror with "the most advantageous, technically acceptable offer, considering justifiable trade-offs between past performance and price factors." RFP at 35. In the best-value decision, the agency would consider the following four factors: (1) facility security clearance; (2) past performance; (3) technical capability; and (4) cost/price coefficients. *Id.* at 35-36. Proposals would first be evaluated under the facility security clearance factor on a pass/fail basis as a "gateway factor," where proposals receiving a rating of fail would not be evaluated further. *Id.* at 35. The past performance and technical capability factors would be equally important, and the non-cost/price factors, when combined, would be significantly more important than the cost/price factor. *Id.* at 36.

For the past performance factor, the RFP instructed offerors to provide at least five, and no more than ten, recent and relevant past performance references from federal, state, and local government contracts over the past three years that were performed for at least one year. *Id.* at 26. The agency would consider the recency, relevancy, and quality of the past performance information provided and assign an overall confidence assessment rating.² *Id.* at 27. The RFP also informed offerors that the agency may use past performance information obtained from other sources, including "possible interviews with Program Managers and Contracting Officers." *Id.* at 37.

The technical capability factor was comprised of two parts: management capability and seed project. *Id.* at 28, 40-44. For management capability, the agency would assign an overall combined technical/risk rating considering the following three subparts: project management/technical support; quality control; and subcontract management.³ *Id.* at 40-42. For the seed project, the agency would evaluate the offeror's response to an actual task order and assign an overall rating of acceptable or unacceptable. *Id.* at 42.

¹ The RFP was amended twice. In the remainder of the decision, citations to the RFP refer to the final amended RFP provided at Tab 6 of the agency report. Citations to the SOW refer to attachment 1 of the initial RFP provided at Tab 4 of the agency report.

² For the past performance factor, the agency would assign an overall confidence assessment rating of substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. RFP at 37-38.

³ For the management capability portion of the technical capability factor, the agency would assign a combined technical/risk rating of outstanding, good, acceptable, marginal, or unacceptable. *Id.* at 40-41.

By the solicitation closing date of July 15, 2022, DIA received proposals from five offerors, including Meltech and Strongside. COS at 2. Strongside is a mentor-protégé joint venture comprised of Greenway Enterprises, Inc., as the mentor, and Ascendant Program Services, LLC, as the protégé. AR, Tab 7, Strongside Past Performance Proposal at 4. Following the evaluation of proposals, Meltech and Strongside were rated as follows:

	Meltech	Strongside
Facility Security Clearance	Pass	Pass
Past Performance	Substantial Confidence	Substantial Confidence
Technical Capability		
Management Capability	Acceptable	Outstanding
Seed Project	Acceptable	Acceptable
Cost/Price/Coefficients⁴	1.255	0.947

AR, Tab. 12, Source Selection Decision Document (SSDD) at 2.

The source selection authority (SSA) reviewed the evaluation of the source selection evaluation board (SSEB) under each factor and concurred with its findings. *Id.* at 2, 9. The SSA compared the past performance of the protester and the awardee and found that Strongside had “a slight edge in terms of the number of projects that were essentially the same as will be performed under this requirement.” *Id.* at 22. The SSA also found that Meltech’s proposal presented several management capability weaknesses, including a weakness “that stood out the most”: a primary program manager without “the DIA security clearance adjudication needed for this requirement.” *Id.* at 23. In contrast, the SSA found that Strongside’s management capability had “many superior aspects.” *Id.* at 24.

Based on these findings, the SSA concluded that Strongside’s proposal was superior to Meltech’s proposal under the non-cost/price factors. *Id.* Since Strongside’s overall cost/price coefficient was 0.308 less than Meltech’s, the SSA determined that Strongside’s proposal offered the best overall value. *Id.* at 24, 30.

⁴ The solicitation required offerors to propose unit prices as coefficients representing a “net” of, a “decrease from,” or an “increase to” the unit prices listed in the RS MEANS database. See RFP at 8. RS MEANS is an industry database of construction costs providing the price of material, labor, and equipment recorded at the unit, assembly, or square foot level of detail. See <https://www.rsmeans.com/info/contact/about-us> (last visited Dec. 21, 2022). For example, a coefficient of 1.0 would represent a unit price equal to (or “net of”) the RS MEANS; 0.98 would represent a unit price of 0.02 (or 2 percent) below (or “decrease from”) the RS MEANS; and 1.10 would represent a unit price of 0.10 (or 10 percent) above (or “increase to”) the RS MEANS. *Id.* Offerors’ proposed unit price coefficients would be multiplied by percentages representing the estimated workload for that contract line item, and the resulting weighted total coefficient rate would constitute the total price for award consideration. RFP at 44.

On August 29, 2022, the agency selected Strongside's proposal for award. COS at 2. After requesting and receiving a debriefing, Meltech filed this protest.

DISCUSSION

Meltech raises two primary challenges to DIA's award to Strongside. First, the protester contends that the agency unreasonably evaluated the protester's proposal under the technical capability factor by assessing an unwarranted weakness for Meltech's proposed program manager. Second, the protester asserts that the agency unreasonably evaluated the awardee's past performance by failing to consider the lack of a performance record for the small business member of the Strongside joint venture. For the reasons discussed below, we find no basis to sustain the protest.⁵

Technical/Management Capability Evaluation

Meltech argues that DIA unreasonably assigned Meltech's proposal a rating of acceptable under the management capability portion of the technical capability factor.⁶ Specifically, the protester challenges a weakness identified in its proposal for proposing a program manager who did not possess a top secret (TS)/sensitive compartmented information (SCI) clearance at the time of proposal submission. Protest at 13-14. The protester contends that the agency applied an unstated evaluation criteria by requiring the proposed program manager to have a TS/SCI clearance "on Day 1." Protester's Comments at 9.

The agency responds that its assessment of a weakness for the proposed program manager's lack of a TS/SCI clearance was reasonable and consistent with the solicitation. Memorandum of Law (MOL) at 7-9. In this regard, the agency argues that

⁵ Meltech also raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find no basis to sustain the protest.

⁶ Meltech, in challenging the agency's assignment of a rating of acceptable to Meltech's proposal under management capability, also alleges that the three strengths and two weaknesses identified in Meltech's proposal merited an adjectival rating better than acceptable. Protest at 13. Our Office has found, however, that adjectival ratings are merely guides to intelligent decision-making in the procurement process and source selection officials must consider information behind identified strengths and weaknesses to discern meaningful differences between proposals. See *WellPoint Military Care Corp.*, B-415222.5, B-415222.8, May 2, 2019, 2019 CPD ¶ 168 at 9 n.10. In addition, our Office has rejected arguments that essentially seek a mathematical or mechanical consideration of the number of strengths and weaknesses assessed for each offeror. See *Enterprise Services, LLC, et al.*, B-415368.2, *et al.*, Jan. 4, 2018, 2018 CPD ¶ 44 at 9. Here, the record shows that the source selection authority looked behind the adjectival ratings and meaningfully considered the differences between proposals in making the award decision. See AR, Tab 12, SSDD at 22-24. Accordingly, we find this argument does not provide a basis to sustain the protest.

Meltech's proposal failed to provide any information demonstrating the proposed program manager's ability to obtain an SCI clearance within 30 days. *Id.*

For the evaluation of management capability, the RFP required offerors to address the "credentials of personnel fulfilling at a minimum the personnel requirements specified within paragraphs 5.1.1, 5.1.2, and 5.1.4 of the [SOW]." RFP at 29. The RFP informed offerors that the agency would evaluate offerors' ability to "clearly and logically address and meet the minimum requirements" and ability to "address[] their management organization, including a description of functions, authorities, and credentials of personnel fulfilling at a minimum the personnel requirements specified within" SOW paragraphs 5.1.1, 5.1.2, and 5.1.4. *Id.* at 41-42. As relevant here, paragraph 5.1.1 of the SOW set forth the requirements for the program manager and specified that the program manager "shall maintain a Top Secret/SCI Clearance or be able to obtain a clearance within 30 days after the contract award date." SOW at 14.

In its evaluation of the protester's technical proposal, the agency assigned a rating of acceptable to Meltech's management approach, based on seven strengths and three weaknesses. AR, Tab 11, Meltech Technical Evaluation at 5-8. One of the three weaknesses was assessed due to Meltech's proposed program manager having "only a TS clearance[,] [leading] to a potential risk of not being DIA adjudicated and cleared within 30 days of contract award." *Id.* at 7. The SSEB found that this created a "potential risk of [a] longer than 30-day transition period due to the applicant not having the required DIA clearance." *Id.* at 4. Finding that this "could cause a delay in transition/roll out of the new awarded contract while the required DIA clearance is obtained," the agency concluded that the combination of weaknesses in Meltech's proposal presented a "moderate risk of disruption of schedule, increased cost and degradation of performance that would likely require close Government monitoring." *Id.*

An agency's evaluation of technical proposals is primarily the responsibility of the contracting agency, since the agency is responsible for defining its needs and identifying the best method of accommodating them. *Airborne Tactical Advantage Co., LLC*, B-414929.2, B-414929.3, Sept. 28, 2018, 2018 CPD ¶ 342 at 8. In reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency, but rather examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. *Native Energy & Tech., Inc.*, B-416783 *et al.*, Dec. 13, 2018, 2019 CPD ¶ 89 at 3-4.

Here, we find the agency's conclusion to be reasonable and consistent with the solicitation. In this regard, the record shows that Meltech's technical proposal identifies the security clearance status of its proposed program manager by noting "(TS)" next to her name in the organizational chart and on her resume, in contrast to the "(TS-SCI)" notation for other proposed personnel, such as the alternate program manager and the project manager. *Compare* AR, Tab 10, Meltech Technical Proposal at 3-4, *with id.* at 3, 6-7. In addition, although the proposal stated that all program management

personnel would maintain appropriate TS clearance, *see id.* at 5, it provided no such additional information as to the SCI clearance of proposed personnel. *Id.* at 5. As the agency explains, “obtaining an adjudicated Top Secret clearance and obtaining favorable access to Sensitive Compartmented Information (SCI) are two related but different things,” and that while “some SCI information is classified at the Secret level, . . . no TS-cleared individual has access to the universe of all SCI information.” COS at 5; MOL at 8.

The protester also contends that the weakness was unwarranted because Meltech’s proposal included the proposed program manager’s resume, showing that she is a current program manager with DIA. Meltech argues that this information should have been sufficient to assure the agency that the candidate had the ability to obtain a SCI clearance within 30 days after the contract award date. Protest at 13-14; Protester’s Comments at 9. We disagree.

An offeror has the responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation’s requirements and allows for a meaningful review by the procuring agency. *Amentum Services, Inc.; VS2, LLC*, B-418742.3, *et al.*, Sept. 30, 2021, 2021 CPD ¶ 334 at 8. An offeror that does not affirmatively demonstrate the merits of its proposal risks rejection of its proposal or risks that its proposal will be evaluated unfavorably where it fails to do so. *Johnson Controls, Inc.*, B-407337, Nov. 20, 2012, 2012 CPD ¶ 323 at 3-4.

Here, the solicitation required the program manager to be cleared at the TS/SCI level or be able to obtain a clearance within 30 days of the contract award date, but the protester’s proposal failed to clearly demonstrate that its proposed program manager could comply with this requirement. The agency was not required to infer the candidate’s ability to obtain the required clearance from the information in her resume. Agencies are not required to piece together general statements and disparate parts of a protester’s proposal to determine the protester’s intent. *Affolter Contracting Co., Inc.*, B-410878, B-410878.2, Mar. 4, 2015, 2015 CPD ¶ 101 at 7 (*citing Optimization Consulting, Inc.*, B-407377, B-407377.2, Dec. 28, 2012, 2013 CPD ¶ 16 at 9 n.17 (agency not required to infer information from an inadequately detailed proposal)).

In sum, we find it reasonable for the agency to view the lack of SCI clearance information in Meltech’s proposal as a potential risk with respect to whether Meltech’s proposed program manager would be cleared within 30 days of contract award, and to conclude that this risk warrants the assignment of a weakness. Accordingly, we find no basis to sustain this protest ground.

Past Performance Evaluation

Meltech next argues that the agency improperly evaluated the awardee’s past performance. As noted above, Strongside is a mentor-protégé joint venture, comprised of Greenway as the mentor partner and Ascendant as the protégé partner. AR, Tab 7, Strongside Past Performance Proposal at 4. The protester contends that the agency

improperly failed to account for Ascendant's lack of relevant past performance, and improperly relied solely on the record of the mentor partner, Greenway, contrary to the terms of the solicitation. Protest at 5-10.

The agency responds that its past performance evaluation was reasonable and consistent with the solicitation. In this regard, the agency argues that it reasonably attributed the awardee's past performance submissions to both joint venture members because they were for work performed by both partners, with Greenway serving as the prime contractor and Ascendant as the subcontractor.

An agency's evaluation of past performance is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. *Dextera Corporation*, B-415562.2, B-415562.4, Feb. 5, 2018, 2018 CPD ¶ 66 at 4. A protester's disagreement with such judgment, without more, does not provide a basis to sustain a protest. *Id.*

The applicable Small Business Administration (SBA) regulations provide as follows:

When evaluating the capabilities, past performance, experience, business systems and certifications of an entity submitting an offer for a contract set aside or reserved for small business[es] as a joint venture established pursuant to this section, a procuring activity must consider work done and qualifications held individually by each partner to the joint venture as well as any work done by the joint venture itself previously. A procuring activity may not require the protégé firm to individually meet the same evaluation or responsibility criteria as that required of other offerors generally. The partners to the joint venture in the aggregate must demonstrate the past performance, experience, business systems and certifications necessary to perform the contract.

13 C.F.R. § 125.8(e); *see also*, 13 C.F.R. § 124.513. SBA's notice promulgating these regulations explained that, while these "rules require a small business protégé to have some experience in the type of work to be performed under the contract," it would be "unreasonable to require the protégé concern itself to have the same level of past performance and experience . . . as its large business mentor." 85 Fed. Reg. 66167 (Oct. 16, 2020).

Our Office have previously found that while the above SBA regulations require agencies to consider the experience and past performance of both the mentor and protégé members of a joint venture, the regulations do not mandate a specific degree of consideration for the mentor or the protégé firm. *See Amaze Technologies, LLC*, B-418949 *et al.*, Oct. 16, 2020, 2020 CPD ¶ 347 at 8. Moreover, we have found that an agency properly may consider the relevant experience and past performance history of individual joint venture members, provided doing so is not expressly prohibited by the terms of the solicitation. *Carolina Linkages, Inc. d/b/a Safe Ports, Inc.*, B-417079, Jan. 24, 2019, 2019 CPD ¶ 28 at 2.

The solicitation here instructed offerors in teaming arrangements to “provide complete information as to the arrangement including any relevant and current recent past performance information on previous teaming arrangements with the same partner.” RFP at 27. The RFP informed offerors that, for an offeror in a teaming arrangement, including a joint venture, “recency, relevancy and quality of past performance information from all entities will be evaluated based on the percentage of work that each entity will perform [in accordance with] the teaming arrangement documentation,” resulting in an overall past performance rating for the teaming arrangement. *Id.* at 37.

The record shows that Strongside submitted 10 past performance references, prefacing its submission by describing the joint venture and stating that Ascendant and Greenway “have a long history of collaboration culminating in the creation of the Joint Venture.” AR, Tab 7, Strongside Past Performance Proposal at 4. Strongside’s proposal also explained that key personnel for both firms have supported the agency on its two predecessor contracts for the same work, and that Strongside’s construction projects “reflect the combined activities of its members.” *Id.* at 4-5. Each of the past performance questionnaires (PPQ) for the 10 submitted projects identified the contractor performing the work as “Strongside Builders, LLC (Greenway Enterprises, Inc. is the Mentor of the JV),” but did not specifically include or reference the portion of the work performed by Ascendant. AR, Tab 8, Strongside PPQs at 3-52.

In evaluating the awardee’s past performance, the SSEB found that “all Strongside Builders’ projects were assessed as recent, all of their projects were assessed as very relevant and all of their projects received the highest possible scores across all categories of quality review.” AR, Tab 9, Strongside Past Performance Evaluation at 15. Based on this finding, the SSEB concluded that there was a high expectation that Strongside would successfully perform the required effort; the SSEB therefore assigned an overall past performance rating of substantial confidence. *Id.* The agency explained that the SSEB attributed all 10 past performance records to Strongside, recognizing that all 10 projects were performed by both joint venture entities, with Greenway performing as the prime contractor and Ascendant as the subcontractor. COS at 3-4.

To explain this conclusion, the agency supplemented the record with a declaration of the chairperson of the past performance evaluation team (PPET) and the SSEB, who states that he served as the contracting officer’s representative (COR) for all 10 projects. AR, Tab 13, Decl. of PPET Chair at 1. The PPET chair states that he was “specifically aware that Ascendant worked as a subcontractor to Greenway on every single one of the task orders that were issued to Greenway under the prior . . . contract.” *Id.* The PPET chair attests that the PPET “understood in writing the evaluation that all 10 of the past performance references involved work that was performed by both Greenway as the prime contractor and Ascendant as a subcontractor” and “specifically verbally discussed the past performance contributions of both Ascendant and Greenway.” *Id.* The PPET chair further explains that when the PPET “simply cited to Strongside,” it intended to “convey that our evaluation applied to both Greenway and Ascendant equally as the work was performed by both.” *Id.* at 2.

On this record, we find the agency's evaluation to be reasonable. The solicitation specifically asked for offerors in teaming arrangements to provide "past performance information on previous teaming arrangements with the same partner" and permitted a small business prime contractor to "utilize the past performance of either a small or large business teaming arrangement partner." RFP at 27. While the solicitation stated that the agency would evaluate the past performance of joint venture partners based on the percentage of work the partner would perform, it did not prohibit the agency from attributing past performance arising from a previous teaming arrangement with the same partner as that of both joint venture partners. Here, it was reasonable for the agency to credit the past performance of both joint venture members with their prior work, as a team, on the projects in question. Meltech has not shown that the agency's evaluation in this regard was unreasonable or otherwise improper.

Meltech also contends that the agency did not adequately document its evaluation and objects to the agency's reliance on the declaration of the PPET chair. Protester's Comments and Supp. Protest at 5-6; Protester's Supp. Comments at 3-4. The protester argues that the agency's *post hoc* explanations are inconsistent with the contemporaneous record and should not be given any weight. *Id.* We disagree.

When reviewing an agency's evaluation, we do not limit our review to contemporaneous evidence, but consider all of the information provided, including the parties' arguments and explanations. *Jacobs Technology, Inc.*, B-420016, B-420016.2, Oct. 28, 2021, 2021 CPD ¶ 373 at 4 n.7; *Science Applications Int'l Corp., Inc.*, B-408270, B-408270.2, Aug. 5, 2013, 2013 CPD ¶ 189 at 8 n.12. Post-protest explanations that provide a detailed rationale for contemporaneous conclusions and simply fill in previously unrecorded details will generally be considered in our review of the rationality of selection decisions, so long as those explanations are credible and consistent with the contemporaneous record. *Jacobs Technology, Inc.*, *supra*; *Remington Arms Co., Inc.*, B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 12.

Here, we recognize that the evaluation record does not contain contemporaneous documentation of the PPET's consideration of the information provided by the PPET chair (the former COR for the projects in question) about the awardee's performance on the referenced projects. However, we also find that the PPET chair's explanation provides this previously unrecorded detail, including the rationale for the PPET's documented attribution of the awardee's past performance submissions to the entire joint venture, rather than to one or the other partner. In this regard, we conclude that the PPET chair, who was also a member of the SSEB, provides an explanation that is credible and consistent with the contemporaneous record.

In any event, we find that the protester has not shown that it was prejudiced by any failure in the agency's past performance evaluation to consider the percentage of work proposed to be performed by each entity comprising the awardee joint venture. Competitive prejudice is an essential element of every viable protest; we will not sustain a protest unless the protester demonstrates that, but for the agency's improper actions,

it would have had a substantial chance of receiving the award. *UltiSat, Inc.*, B-418769.2, B-418769.3, Feb. 26, 2021, 2021 CPD ¶ 110 at 7; *Converge Networks Corp.*, B-415915.2, B-415915.3, Aug. 20, 2018, 2018 CPD ¶ 334 at 8.

The record here shows that the 10 past performance references submitted by the awardee--for which Greenway was the prime contractor--were all evaluated to be recent, very relevant, and of the highest possible quality scores across all categories. AR, Tab 9, Strongside Past Performance Evaluation at 15. Even if the agency did not consider the subcontractor work that Ascendant performed on these projects, and decided that the protégé entity had no relevant past performance, the protester has not shown that the agency would have significantly changed its confidence assessment rating of the awardee's past performance. This is especially true in light of applicable SBA regulations requiring a more accommodating consideration of the past performance of a protégé entity. See 13 C.F.R. § 125.8(e) ("A procuring activity may not require the protégé firm to individually meet the same evaluation or responsibility criteria as that required of other offerors generally."); see also, *Enola-Caddell JV*, B-292387.2, B-292387 .4, Sept. 12, 2003, 2003 CPD ¶ 168 at 7-8 n.7 (citing SBA's view that it appeared contrary to the intent of SBA's mentor-protégé program for a procuring agency to downgrade a proposal based on the lack of experience/past performance of a protégé; in order to be a protégé, an entity must lack experience).

Moreover, the solicitation provided that the past performance and technical capability factors were equally important. RFP at 36. As noted above, the agency rated Meltech's management capability as acceptable, but assigned the highest rating of outstanding to Strongside's management capability. AR, Tab 12, SSDD at 2. Even if the agency had lowered the awardee's past performance rating to satisfactory confidence because of the lack of relevant past performance information for the protégé entity, the protester cannot show that Meltech would have had a substantial chance of receiving the award. In light of our decision above on the agency's evaluation of Meltech's technical capability proposal, and considering the agency's finding that Strongside's price represented a "0.308 coefficient" (or 30.8 percent) discount compared to Meltech's price, see AR, Tab 12, SSDD at 24, we do not find that the protester was prejudiced by the alleged failure of the agency to consider Ascendant's lack of relevant past performance.

The protest is denied.

Edda Emmanuelli Perez
General Counsel