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# Decision

**Matter of:** Horizon Strategies, LLC

**File:** B-419419.5; B-419419.6

**Date:** March 15, 2023

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Andrew J. Smith, Esq., Lieutenant Colonel Seth B. Ritzman, Captain Dmitrius R. McGruder, and Captain Natalie W. McKiernan, Department of the Army, for the agency. Paula A. Williams, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest challenging numerous aspects of agency's evaluation of competing offerors' technical, past performance, and cost/price proposals is denied where the evaluation was reasonable and consistent with the terms of the solicitation.
  2. Protest that award was tainted by personal conflicts of interest is denied where the contracting officer meaningfully considered protester's allegations and reasonably concluded that no disqualifying conflicts existed.
  3. Protest that agency did not perform a proper best-value tradeoff and essentially converted the basis for award from a tradeoff to a lowest-priced, technically acceptable source selection methodology is denied where the record shows that the agency performed a best-value tradeoff that was reasonable and adequately documented.
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## DECISION

Horizon Strategies, LLC, a service-disabled veteran-owned small business located in Winston Salem, North Carolina, protests the award of a contract to SilverStar Consulting, Inc. (SilverStar), a service-disabled veteran-owned small business located in Falls Church, Virginia, under request for proposals (RFP) No. W9124D20R0016. The RFP was issued by the Department of the Army, Mission and Installation Contracting Command, to obtain support services for the Army's soldier for life transition assistance

program (SFL-TAP). Horizon challenges various aspects of the agency's evaluation of proposals, best-value tradeoff, and source selection decision. Horizon also challenges SilverStar's eligibility for award based on alleged personal conflicts of interest.

We deny the protest.

## BACKGROUND

### Procedural History

By way of background, this is the fifth protest filed with our Office challenging various aspects of the agency's source selection process.<sup>1</sup> On July 9, 2021, the agency originally awarded the contract to Horizon. Contracting Officer Statement (COS) at 10. On July 23, Oban Corporation filed a protest with our Office challenging the exclusion of its proposal from the competitive range and the award to Horizon, which we dismissed as untimely. See *Oban Corp.*, B-419419.2, Sept. 2, 2021 (unpublished decision). On July 28, SilverStar and another offeror separately filed timely protests challenging the agency's evaluation of proposals and selection decision. In response to the protests, the Army advised our Office that it would take voluntary corrective action including: terminating the award to Horizon; requesting final proposal revisions (FPRs) from the nine competitive range offerors; evaluating the FPRs received; and making a new source selection decision. As a result, our Office dismissed the protests as academic. *SilverStar Consulting, Inc.*, B-419419.3, Aug. 27, 2021 (unpublished decision); *Crowned Grace, Inc. dba Crowned Grace Int'l*, B-419419.4, Aug. 27, 2021 (unpublished decision).

### The RFP and Most Recent Evaluation Results

On February 28, 2020, the Army issued the RFP as a set-aside for service-disabled veteran-owned small businesses, in accordance with Federal Acquisition Regulation (FAR) part 15 procedures. RFP at 101.<sup>2</sup> As amended, the RFP sought proposals for contractor support to provide SFL-TAP services for soldiers retiring or transitioning from active duty to civilian life. The RFP's PWS included a full spectrum of transition assistance requirements such as: operation of all identified transition assistance places of performance; providing pre-separation and initial counseling; personalized transition

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<sup>1</sup> A competing offeror filed a pre-award protest challenging the evaluation of its proposal and exclusion from the competitive range. In response to that protest, the agency notified our Office that it would take voluntary corrective action to address the protest allegations, and we dismissed the protest as academic. *MyRevelations, LLC*, B-419419, Dec. 29, 2020 (unpublished decision).

<sup>2</sup> The RFP was amended 14 times. Unless otherwise noted, all references to the RFP and performance work statement (PWS) are to the conformed copy provided as exhibit 98 of the agency report.

and financial counseling; individual transition planning advice; career skills program support; and assisting employers with connecting their open positions with the transitioning service member population of approximately 87,000 persons annually. *Id.* at 13.

The PWS also included several technical exhibits (TE), which delineated various performance requirements and various required deliverables. For example, TE 3 established a baseline staffing plan for the base and option periods;<sup>3</sup> TE 3A provided the qualifications and experience requirements for key personnel; and TE 5 provided the transition assistance places of performance. RFP at 54-55.

The RFP contemplated award of a combination-type contract with fixed-price line items for labor, and cost-reimbursable line items for other direct costs (travel, training, and marketing materials). *Id.* at 108, 112. The updated performance period consists of a 2-month phase-in period, a 10-month base period, and four 1-year option periods. RFP amend. 0012 at 1; COS at 6.

The RFP provided for award on a best-value tradeoff basis, considering cost/price and two non-cost/price factors: technical capability; and past performance. RFP at 109. The technical capability and past performance factors, both individually and collectively, were more important than cost/price; and the technical capability factor was significantly more important than past performance. However, the degree of importance of cost/price as a factor in determining award could become greater depending on the equality of proposals evaluated under the non-cost/price factors. *Id.*

The technical capability factor included three subfactors, of equal importance: (1) staffing plan; (2) management approach; and (3) proposed execution of the program. *Id.* at 109. Proposals would be evaluated for the adequacy of the response and the feasibility of its approach. Proposals would be assigned an adjectival rating under each subfactor, and at the factor level, which were identified as: outstanding, good, acceptable, marginal, or unacceptable.<sup>4</sup> *Id.* at 110. As part of the best-value determination, significant strengths, strengths, weaknesses, risks, deficiencies or uncertainties identified in each proposal would be considered in selecting the proposal that represented the best value. *Id.* at 111. To be considered for award, proposals had

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<sup>3</sup> The RFP advised that offerors could adopt the government-provided staffing plan (TE 3) or propose an alternate staffing plan. RFP at 104. Horizon and SilverStar both adopted the government-provided staffing plan. COS at 21.

<sup>4</sup> Of relevance here, a rating of good was assigned to a proposal that indicated “a thorough approach [to] and understanding of the requirements and contains at least one strength, and risk of unsuccessful performance is low to moderate.” RFP at 111. A rating of acceptable was assigned to a proposal that reflected “an adequate approach [to] and understanding of the requirements, and risk [] of unsuccessful performance is no worse than moderate.” *Id.*

to receive a rating of no less than acceptable under the technical capability factor and each of the corresponding subfactors. *Id.* at 109.

As to past performance, the RFP required offerors to submit past performance information for the prime offeror and each major subcontractor,<sup>5</sup> about past efforts that were similar to the solicited effort. *Id.* at 105. Each offeror's past performance would be evaluated to ascertain the probability of successfully performing the required effort. *Id.* at 112. The agency would assess the record of performance as it relates to all solicitation requirements including, cost, schedule, performance, and management of subcontractors. *Id.* The past performance factor consisted of four aspects: (1) recency;<sup>6</sup> (2) relevancy;<sup>7</sup> (3) quality of performance; and (4) confidence assessment. *Id.* at 113. The agency would assign a confidence assessment rating of substantial, satisfactory, neutral, limited, or no confidence.<sup>8</sup> *Id.* at 114. To be considered for award, past performance proposals had to receive a rating of at least satisfactory confidence or neutral confidence. *Id.* at 113.

Regarding cost/price, the solicitation incorporated by reference FAR clause 52.222-41, Service Contract Labor Standards. RFP at 70. This clause provides that the contract is subject to the Service Contract Labor Standards and each service employee employed in the performance of the contract must be paid not less than the minimum wages and

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<sup>5</sup> The RFP defined a major subcontractor as a member of an offeror's overall team that would perform ten percent or more of the proposed effort. RFP at 112.

<sup>6</sup> Recency was defined as performance must be ongoing or must have been performed during the past three years from the issuance date of the RFP. *Id.* at 113.

<sup>7</sup> Relevant efforts were defined as "services/efforts that are the same as or similar to the effort . . . required by the RFP." RFP at 105. The RFP provided that the criteria for assessing relevance "shall include similarity of service/support, complexity, contract type, and degree of subcontract/teaming." *Id.* at 113.

The RFP further provided that the agency would assign relevancy ratings of: very relevant (effort involved is essentially the same scope, magnitude, and complexity as required by this RFP); relevant (effort involved is similar in scope, magnitude, and complexity as required by this RFP); somewhat relevant (effort involved some of the scope, magnitude, and complexity required by this RFP); and not relevant (effort involved little or none of the scope, magnitude, and complexity required by this RFP). *Id.*

<sup>8</sup> A substantial confidence rating was defined as: based on the offeror's recent/relevant performance record, the government has a high expectation that the offeror will successfully perform the required effort. RFP at 114. A satisfactory confidence rating was defined as: based on the offeror's recent/relevant performance record, the government has a reasonable expectation that the offeror will successfully perform the required effort. *Id.*

fringe benefits determined by the Department of Labor (DOL) in an attached wage determination.<sup>9</sup> FAR clause 52.222-41(b), (c).

The RFP established multiple contract line item numbers (CLINs) for the base and option periods and identified each CLIN as either fixed-price or cost-reimbursable. RFP at 2-12. Of relevance here, offerors were to propose loaded labor rates for all employee positions not covered by DOL's wage determinations; the RFP, however, put offerors on notice that these rates would not be evaluated by the Army during the source selection. Rather, they would be incorporated into the resulting contract and used solely for contract administration purposes. *Id.* at 105. For the cost-reimbursable CLINs (travel, training, and marketing materials), offerors were to include government-provided "plug" numbers, as their proposed prices for each cost-reimbursable CLIN. *Id.* If any general and administrative (G&A) or other indirect rates were applicable, offerors were instructed to enter that proposed G&A rate in their proposal for each cost-reimbursable CLIN. If no handling rate, G&A rate, or other indirect rate was proposed, the agency would assume that no such indirect rate was applicable. *Id.*

The RFP further provided that fixed-price CLINs would be evaluated for completeness, reasonableness, and unbalanced pricing and those proposed fixed-prices would not be scored or rated. *Id.* at 111. The RFP also provided that the cost-reimbursable CLINs would not be evaluated for realism because the agency would use the provided "plug" numbers as the basis for these costs. *Id.* at 110. The total evaluated cost/price would be calculated by adding the offeror's total price of the phase-in CLIN; total price of the fixed-price CLINs (base and option years); total price of the cost-reimbursable CLINs (base and option years);<sup>10</sup> total price of the option to extend services; and total price of the fixed-price contractor manpower reporting CLINs (base and option years)." *Id.* at 111-112.

In accordance with the Army's August 2021 proposed corrective action, the agency requested and received revised FPRs by September 20, 2021. COS at 11. The agency's source selection evaluation board (SSEB) and the cost/price analyst evaluated revised FPRs and prepared reports which documented the evaluation results.<sup>11</sup> The

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<sup>9</sup> The Army issued several amendments that, among other things, included updated DOL wage determinations. Amendment 0014, issued on September 15, 2022, included the current list of applicable wage determinations. COS at 6.

<sup>10</sup> The solicitation provided that the evaluated price for the cost-reimbursable CLINs was the amount provided by the government ("plug" numbers) plus the material handling amount proposed by the offeror. RFP at 112.

<sup>11</sup> An SSEB had been established, which was comprised of a technical evaluation team (TET) and a past performance evaluation team (PPET), to evaluate proposals under the non-cost/price factors. The SSEB also included a cost/price analyst to evaluate proposals under the cost/price factor. AR Exh. 25, Source Selection Advisory Council (SSAC) Comparative Analysis Report at 5.

SSEB’s evaluation reports indicated that some evaluation ratings were changed even if the offeror had not revised its proposal. *Id.* The agency subsequently decided to reopen discussions and conducted several rounds of discussions over the next several months.<sup>12</sup> *Id.* at 11-12. Discussions closed on September 27, 2022. *Id.* at 12.

In requesting FPRs, the agency instructed offerors to ensure that their price proposals reflected any pricing changes due to updated wage determinations, and advised that any section of their proposals could be revised. See AR Exh. 49, Request for FPR (SilverStar) at 1-2. FPRs were due by October 4. *Id.* at 2. All eight offerors submitted timely responses to the request for FPRs.

After completing the evaluation, the SSEB provided its consensus evaluation results to the agency’s SSAC. The SSAC reviewed the SSEB’s and cost/price analysis reports, conducted a comparative analysis of all proposals, and in its report, provided an award recommendation to the source selection authority (SSA). AR Exh. 25, SSAC Comparative Analysis Report at 1-30.

The final ratings, as reflected in the SSAC’s report to the SSA, for Horizon’s and SilverStar’s proposals were as follows:<sup>13</sup>

	<b>Horizon</b>	<b>SilverStar</b>
<b>Overall Technical Capability</b>	Good	Good
Staffing Plan	Good	Good
Management Approach	Good	Good
Execution of Program	Good	Acceptable
<b>Past Performance</b>	Substantial Confidence	Satisfactory Confidence
<b>Total Evaluated Cost/Price</b>	\$285,374,145.45	\$244,203,205.00

AR Exh. 25, SSAC Comparative Analysis Report at 10, 15; Exh. 50, SSAC Briefing Slides at 4; Exh. 22, Price Analysis Report at 3-5.

In its report, the SSAC summarized and compared the evaluation results of the eight competitive range offerors. As it relates to this protest, in comparing Horizon’s and SilverStar’s proposals, the SSAC noted that both proposals had received an overall rating of good under the technical capability factor based on the ratings assigned under the equally weighted underlying subfactors. AR Exh. 25, SSAC Comparative Analysis

<sup>12</sup> One offeror was eliminated from the competitive range after the second round of discussions and a new competitive range comprised of the remaining eight offerors was established. COS at 12.

<sup>13</sup> The evaluation reports prepared by the agency identified Horizon as “Offeror 11” and SilverStar as “Offeror 23.” See, e.g., AR Exh. 17, Source Selection Decision (SSD) at 2.

Report at 20. Under the technical capability factor, the agency evaluated Horizon's proposal as good, and identified one significant strength, five strengths, and no weaknesses, deficiencies, or uncertainties. *Id.* at 10. The significant strength was assigned under subfactor 2, management approach, for Horizon's proposed approach to [DELETED], which the agency noted would be beneficial because it will permit real time monitoring of actual staffing levels. *Id.* at 6. The five strengths were assigned as follows: under subfactor 1, staffing plan, one strength; under subfactor 2, management approach, two strengths; and under subfactor 3, execution of program, two strengths. *Id.* at 4-8.

In evaluating SilverStar's proposal as good under the technical capability factor, the agency identified four strengths, and no weaknesses, deficiencies, or uncertainties. *Id.* at 15. The four strengths were assigned as follows: under subfactor 1, staffing plan, one strength; under subfactor 2, management approach, two strengths; and under subfactor 3, execution of program, one strength. *Id.* at 16-17.

The SSAC compared the evaluation results for both offerors under subfactor 1, staffing plan, and concluded that the identified strengths in Horizon's and SilverStar's proposals were comparable, with no measurable benefits for trade-off purposes. *Id.* at 19-20. Under subfactor 2, management approach, the SSAC compared the identified strengths in both proposals for their proposed organizational charts, noting that each offered its own separate benefits and were comparable, but with no measurable difference in benefits for trade-off purposes. *Id.* at 21-22. As to the offerors' approach to ensuring minimal interruption of services and management of contractual functions, the report noted that Horizon's approach was assigned a significant strength which was viewed as providing enhanced benefits to the government. The SSAC concluded, however, that the identifiable strengths in both proposals under subfactor 2 were comparable, with no measurable benefits for trade-off purposes. *Id.* at 22-23. Under subfactor 3, execution of the program, the SSAC noted that Horizon had received a rating of good and SilverStar a rating of acceptable. In comparing the identified strengths in both proposals, the SSAC explained that both offerors had comparable strengths associated with their respective knowledge and execution of filling positions, but other offerors, including Horizon, had received additional identifiable strengths for their respective quality control plans to monitor and track issues. *Id.* at 23-25.

The SSAC also summarized and compared the results of the cost/price analysis and the past performance assessments in its report. Regarding past performance, the SSAC noted that Horizon had a superior and higher quality record of past performance, which served as the basis for its rating of substantial confidence. In comparison, SilverStar received an overall rating of satisfactory confidence. In this respect, the SSAC recognized that Inverness, SilverStar's proposed major subcontractor, had previously received marginal ratings for consistently having a 10-percent vacancy rate on the incumbent Army SFL-TAP contract. The SSAC, however, noted that Inverness has shown improvements in this area, resulting in a final rating of satisfactory on the incumbent effort. *Id.* at 26-29. In comparing the superior confidence and relevancy ratings for Horizon with the less than superior ratings for SilverStar, the SSAC could not

identify any measurable benefits between the two proposals for trade-off purposes. *Id.* at 29.

The SSAC summarized its findings and award recommendation to the SSA as follows:

All offerors in the competitive range submitted revised pricing as their final proposal revisions. All technical proposals received during original submission and during discussions received final ratings of “Acceptable” or “Good.” The lowest priced offeror, [SilverStar], received a technical rating of “Good.” We reviewed the proposals and the SSEB report to determine if any of the other proposals would be an overall better value to the Government . . . giving appropriate consideration to the evaluation criteria set forth in the solicitation.

When comparing the benefits of each offeror’s proposal, the SSAC could not identify any measurable benefits to justify paying more money for equivalent or less equivalent [technical] proposals. While the solicitation provides that past performance is more important than cost/price, the proposals were essentially equal. Based on the above detailed assessment, the SSAC determines that [SilverStar] is the best value to the Government.

*Id.* at 29-30.

The SSA reviewed the SSAC report, the SSEB consensus evaluation reports, dated November 21, 2021, June 29, 2022, and August 11, 2022; the cost/price analysis report dated November 14, 2022; as well as the past performance reports dated July 9, 2020, September 10, 2020, March 28, 2022, and April 21, 2022, respectively. AR Exh. 17, SSD at 3.

In his review, the SSA affirmed the SSAC’s determination that SilverStar’s proposal should have been rated good, not acceptable, under subfactor 2. *Id.* at 4. The SSA summarized the evaluation record created by the SSEB and the SSAC and adopted the SSAC’s analysis, conclusions, and award recommendation. In his decision, the SSA stated:

[B]ased upon my independent judgement and integrated assessment of all proposals, I agree with the SSAC's analysis that there are no measurable benefits or superior past performance that justify the price trade-off between [SilverStar], with the lowest [total evaluated cost/price] of \$244,203,205.00, and any of the other higher-priced, higher-rated [offerors]. [SilverStar's] proposal met and, in some instances, exceeded the Government's requirements and demonstrates some advantages for the successful performance of this requirement. In considering the quality of their past performance, I am confident that they will successfully perform the TAP services. Based on the above, I consider [SilverStar's] proposal to be the most advantageous overall and represents the best value to the Government. I direct award of this requirement to [SilverStar].



AR Exh. 17, SSD at 13.

On November 22, 2022, Horizon was notified that its proposal had not been selected for award. AR Exh. 26, Email to Unsuccessful Offeror at 2. After receiving a written debriefing, Horizon filed this protest with our Office.

## DISCUSSION

Horizon raises a multitude of challenges to nearly all aspects of the agency's evaluation of proposals and the best-value tradeoff decision. With regard to SilverStar's proposal, Horizon argues that: (1) the agency's evaluation under the technical capability factor was unreasonable; (2) the agency's past performance evaluation was unreasonable; (3) the agency unreasonably evaluated SilverStar's cost/price proposal; and (4) the agency failed to properly investigate potential personal conflict of interests involving members of the SSEB and Inverness personnel, which should have precluded award to SilverStar. Specific to its own proposal, Horizon contends that the agency's evaluation under the technical capability and past performance factors was unreasonable. Beyond these allegations, Horizon raises challenges to the best-value tradeoff decision. We have reviewed all of Horizon's arguments and find none provides a basis to sustain the protest.<sup>14</sup> We discuss the principal arguments below.

### Technical Evaluation

#### Evaluation of SilverStar's Proposal

The protester first objects to the assessment of two distinct strengths for SilverStar's proposal under subfactor 1, staffing plan, and subfactor 2, management approach. The assigned strengths were based on the agency's conclusion that SilverStar had demonstrated its ability to recruit and retain qualified personnel, finding its ability to retain and hire highly qualified individuals to fill announced and unannounced vacancies would reduce the time a position remained unfilled. Horizon alleges that the Army unreasonably "double-counted" what were allegedly materially indistinguishable strengths under both subfactors 1 and 2

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<sup>14</sup> In filing and pursuing this protest, Horizon presents other arguments that are in addition to, or variations of, those discussed in this decision. While our decision does not address every allegation, we have considered all of them and conclude that none provides a basis to sustain the protest. For example, Horizon alleged that the Army failed to conduct a reasonable responsibility determination for SilverStar and a major subcontractor, and to reasonably assess a number of additional strengths in Horizon's non-cost/price proposal or to otherwise assign sufficient significance to assessed strengths. Based on our review of all of Horizon's submissions, we conclude that none of the arguments raised by Horizon provide a basis to sustain its protest.

The Army responds that the evaluation of SilverStar's proposal was reasonable and consistent with the stated evaluation criterion for each subfactor. The agency explains that the awardee's proposed approach to recruiting and retaining qualified personnel demonstrated both a sound method for reducing turnover and responsive timeliness for hiring, training, and replacing personnel (subfactor 1, staffing plan) as well as a sound approach to ensuring minimal interruption of services (subfactor 2, management approach), and, thus, strengths were appropriate under each distinct evaluation subfactor. Supp. Memorandum of Law (MOL) at 15-17. Specifically, the contracting officer states: "[T]he strength assigned for subfactor 1[,] is specific to the retention of personnel in hard to fill areas. The strength assigned for subfactor 2, while the same initiative, is for the management approach. This strength impacts more than one aspect of the requirement; the distinct benefits to the [g]overnment were clearly annotated." Supp. COS at 6. Accordingly, the agency maintains that Horizon's complaints regarding allegedly "double-counted" strengths represents only the protester's disagreement with the evaluation. We agree that the agency reasonably assessed distinct strengths for this aspect of the awardee's proposal.

In reviewing a protest challenging an agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency regarding a proposal's relative merits, as the evaluation of proposals is a matter within the agency's discretion. *Peraton, Inc.*, B-417088, B-417088.2, Feb. 6, 2019, 2019 CPD ¶ 190 at 5; *22nd Century Techs., Inc.*, B-413210, B-413210.2, Sept. 2, 2016, 2016 CPD ¶ 306 at 8. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations, and adequately documented. *VSolvit, LLC*, B-418265.2, B-418265.3, July 30, 2020, 2020 CPD ¶ 259 at 5; *Mgmt. Sys. Int'l, Inc.*, B-409415, B-409415.2, Apr. 2, 2014, 2014 CPD ¶ 117 at 5. A protester's disagreement with the agency's evaluation judgments, without more, is insufficient to establish that an evaluation was improper or lacked a reasonable basis. *Wolverine Tube Inc. d/b/a Wolverine Indus.*, B-418339.4, B-418339.5, July 26, 2022, 2022 CPD ¶ 219 at 4-5; *MicroTechnologies, LLC*, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4-5.

Here, the record does not support the protester's argument that the agency double-counted the same strength under subfactors 1 and 2. Under subfactor 1, staffing plan, each offeror was required to demonstrate, among other things and as relevant here, "its ability to fill vacant positions with qualified personnel" and to "address problems associated with hiring and retaining personnel for difficult overseas assignments and backfilling vacant positions." RFP at 103. The agency would evaluate the offeror's ability: (1) to recruit and retain an adequate quantity of properly qualified personnel, in the appropriate labor categories, to perform the solicited requirements; and (2) to identify sound methods to reduce personnel turnover and responsive timeliness for hiring, training and replacing personnel during contract performance. *Id.* at 110. The record reflects that the agency found that SilverStar offered to maintain a team of "at least one qualified candidate [for each overseas labor category for each overseas country] [as] outlined in TE 3 and TE 5 . . . [which would prevent] protracted

vacancies from adversely impacting TAP service levels” merited a strength. AR Exh. 23, SSEB Consensus Tech. Evaluation Report at 18-19.

In general terms, under subfactor 2, management approach, offerors were to describe their management procedures that would “ensure minimal interruption of services and management of the contractual functions” within the continental United States (CONUS) and outside the contiguous United States (OCONUS). RFP at 104. Under this subfactor, the agency would evaluate the offeror’s management approach “to ensure minimal interruption of services and management of the contractual functions over CONUS and OCONUS operations with emphasis given to the management of a dispersed workforce.” *Id.* at 110.

The record indicates that the evaluators determined that SilverStar provided a detailed approach for maintaining a team of at least one person for each overseas labor category for each overseas country as outlined in TE 3 and TE 5 to ensure “protracted vacancies do not impact TAP services to clients.” AR Exh. 23, SSEB Consensus Tech. Evaluation Report at 18-19. The agency evaluators concluded that this approach provided a benefit to the government because the offeror’s ability to “retain and hire highly qualified individuals to fill announced and unannounced vacancies” would reduce the time period a position remains open and “the ability to provide transition services to the client.” *Id.* at 19.

Horizon does not dispute that the RFP required an offeror to describe its approach for accomplishing the PWS requirements as specified in subfactors 1 and 2. Rather, to buttress its claim that the agency had assigned the same identical strength under both subfactors, Horizon submitted a sentence-by-sentence comparison table of the strengths and benefits to the agency as documented in the contemporaneous evaluation record to illustrate its claim that the strengths were not distinct and separate but were actually one and the same. Protester’s Supp. Comments at 21-22. Essentially, Horizon argues that the strengths were “unquestionably substantively identical” and asserts that the agency “elevates form over substance” in defending the unreasonable evaluation of SilverStar’s proposal. *Id.* at 22.

On this record, we find agency’s evaluation of SilverStar’s proposal under both subfactors to be reasonable and consistent with the RFP’s evaluation criteria. As noted above, the solicitation explicitly stated that proposals would be evaluated to determine the adequacy of the offeror’s response and the feasibility of its approach, which is precisely what the agency did here. The strength assigned to SilverStar’s proposal under subfactor 1, was specific to the retention of personnel in hard-to-fill areas and the consensus evaluation described the benefit to the government associated with this strength. In contrast, the strength assigned under subfactor 2 focused on the offeror’s management approach to ensuring minimal interruption of TAP services at hard-to-fill overseas locations and management of the contractual functions over CONUS and OCONUS operations. In sum, Horizon’s objections reflect disagreement with the agency’s evaluation conclusions, but do not show that the evaluators’ conclusions were unreasonable. *See, e.g., SMS Data Prods. Grp., Inc., B-418925.2 et al.*, Nov. 25, 2020, 2020 CPD ¶ 387 at 8 (denying protest that agency unreasonably assessed duplicate

strengths where the agency's underlying evaluation was reasonable and adequately documented the multiple ways that the awardee's proposed approach provided benefits to the agency). Accordingly, we deny this ground of protest.

Next, Horizon generally complains that the record does not support the reasonableness of the agency's reevaluation of proposals as part of the agency's corrective action taken in response to earlier protests. Specifically, the protester objects that the record fails to provide sufficient rationale explaining the basis for the change in SilverStar's initial rating of acceptable under subfactor 2, management approach, based on one assessed strength, to a final rating of good based on the assessment of two assigned strengths. We find no basis to object to the agency's evaluation.<sup>15</sup>

Our Office has consistently explained that the mere fact that a reevaluation of proposals after corrective action varies from the original evaluation does not constitute evidence that the reevaluation was unreasonable, as it is implicit that a reevaluation can result in different findings and conclusions. *MILVETS Sys. Tech., Inc.*, B-409051.7, B-409051.9, Jan. 29, 2016, 2016 CPD ¶ 53 at 6-7. Absent a factual or legal basis indicating why a reevaluation was improper, an agency is generally not required to explain the differing evaluation results. *Id.* In this regard, the overriding concern is not whether the final ratings are consistent with earlier, individual ratings, but whether they reasonably reflect the relative merits of proposals. *QinetiQ N. Am., Inc.*, B-405163.2, *et al.*, Jan. 25, 2012, 2012 CPD ¶ 53 at 13.

SilverStar initially received a strength under the management approach subfactor based on its approach for ensuring minimal interruption of services at hard-to-fill overseas locations. The evaluation team, however, in its cumulative subfactor narrative supporting an overall subfactor rating of acceptable found that this strength was "not significant enough" to warrant a rating other than acceptable. AR Exh. 58, Sept. 10, 2020 Consensus Tech. Evaluation Report at 58. Following reevaluation of proposals after corrective action, the TET ultimately assigned a second strength to SilverStar under the management approach subfactor. Specifically, the evaluators explained that based on its reevaluation of SilverStar's proposed organizational chart, the awardee:

[P]rovides substantial detail outlining both the prime and subcontractor experience providing TAP services to clients as outlined in TE 5, Places of

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<sup>15</sup> As addressed below and in addition to the arguments addressed in this section, Horizon advances a theory that the increase in SilverStar's initial evaluation rating under subfactor 2 was the result of SilverStar's subcontractor, the incumbent contractor, gaining an unfair advantage based on information obtained during a September 2022 SFL-TAP symposium. Comments & Supp. Protest at 39-40. This allegation is unfounded. The record confirms that SilverStar's proposal received a second strength under subfactor 2 in November 2021, well before the September 2022 SFL-TAP symposium and was not based on any subsequent proposed proposal revisions. AR Exh. 16, Nov. 2021 Consensus Tech. Evaluation Report, at 35-36. Thus, the alleged "cause and effect" lacks any supporting facts.

Performance, aligning task order requirement to the contractor/ subcontractor with the skill set to perform the required tasks. The benefit to the government is the elimination of any lapse in transition services to the clients at all locations outlined in the provided TEs.

AR Exh. 16, Nov. 1, 2021 Consensus Tech. Evaluation Report at 35 (internal citation omitted).

In addition to the newly assessed strength, the TET provided a new cumulative subfactor narrative supporting the overall rating of good. *Id.* at 35 (explaining the basis for the TET's determination that the awardee's proposal "indicates a thorough approach and understanding of the requirements of subfactor 2 and risk of unsuccessful performance is low to moderate").

We further note that the contemporaneous SSAC report demonstrates that the agency's reevaluation sought to consistently assess similar evaluated strengths and apply similar adjectival rating determinations across proposals. For example, the SSAC report reflects that Horizon received a nearly identical assessed strength for its detailed organizational chart, and that the SSAC reasonably considered the comparable strengths received by the protester, awardee, and other additional offerors for providing "details outlining the prime and subcontractors['] experience and functions." AR Exh. 25, SSAC Comparative Analysis Report at 11, 21. Additionally, the contemporaneous record reflects that the SSAC normalized adjectival ratings to "good" for subfactor 2 for three offerors that similarly were assessed as warranting two strengths. *Id.* at 5; see *Fluor Intercontinental, Inc.--Advisory Opinion*, B-417506.14, Nov. 5, 2019, 2020 CPD ¶ 46 at 24 (indicating that GAO would have denied protest challenging the reasonableness of changes to assigned adjectival ratings during a reevaluation where the record reflected that the changes were the result of a reasonable consideration of the substantive merits of the proposals and recognizing that the merits of the proposals more appropriately reflected a certain rating in accordance with solicitation's adjectival ratings).

In sum, where the record demonstrates a reasonable underlying evaluation consistent with the solicitation, Horizon's objections to the agency's ultimate identification and weighting of strengths and resulting assignment of adjectival ratings provide no basis on which to sustain the protest.

#### Evaluation of Horizon's Technical Proposal

Horizon protests the agency's assignment of an overall rating of good under the technical capability factor, and the corresponding adjectival ratings assigned to each underlying subfactor. Had the agency reasonably considered all of the meritorious aspects of Horizon's technical approach, and not arbitrarily dismissed or diminished meritorious elements of its proposal, Horizon claims its proposal should have received a rating of outstanding at the factor and each of the subfactor levels. Supp. Comments at 33-35. In this regard, Horizon alleges that because its proposal received multiple

strengths, one significant strength, and no weaknesses, its proposal should have received the highest possible rating of outstanding for each subfactor and overall at the factor level. Protest at 37-38.

Agencies have considerable discretion in making subjective judgments about the technical merit of proposals, and technical evaluators are given the discretion to decide whether a proposal “deserves a ‘good’ as opposed to a ‘very good’ rating.” *JAM Corp.*, B-408775, Dec. 4, 2013, 2013 CPD ¶ 282 at 4 (*quoting CAS, Inc.*, B-260934.2, B-260934.3, Sept. 12, 1995, 95-2 CPD ¶ 239 at 4). The evaluation of proposals and the assignment of adjectival ratings should not generally be based upon a simple count of strengths and weaknesses, but upon a qualitative assessment of the proposals consistent with the evaluation scheme. *Sherrick Aerospace*, B-310359.2, Jan. 10, 2008, 2008 CPD ¶ 17 at 6. Moreover, it is well established that adjectival descriptions and ratings serve only as a guide to, and not a substitute for, intelligent decision-making. *INDUS Tech., Inc.*, B-411702 *et al.*, Sept. 29, 2015, 2015 CPD ¶ 304 at 4. Where an agency reasonably considers the underlying bases for the ratings, including advantages and disadvantages associated with the specific content of competing proposals, in a manner that is fair and equitable and consistent with the terms of the solicitation, a protester’s disagreement over the actual adjectival or color ratings is essentially inconsequential in that it does not affect the reasonableness of the judgments made in the source selection decision. *Fluor Intercontinental, Inc.--Advisory Opinion, supra* at 23.

As an initial matter, as it did with the change in ratings arising during the post-corrective action reevaluation of SilverStar’s proposal, Horizon objects to the agency’s adjustments to the initial evaluation of the protester’s own proposal. Horizon contends that the agency arbitrarily removed strengths previously assigned, downgraded identified significant strengths to strengths, and downgraded its technical ratings from outstanding to good, without any documented rationale in the contemporaneous evaluation record. Protest at 36-40; Comments & Supp. Protest at 56-57; Supp. Comments at 33-36. Consistent with our discussion above regarding the reevaluation of SilverStar’s proposal, we find no merit to the protester’s objections.

Contrary to the protester’s assertions, the record demonstrates that the agency’s reevaluation was reasonable, adequately documented, and equitable across offerors. As a representative example, Horizon originally was rated as outstanding for subfactor 2, management approach, based on two assessed significant strengths and two assessed strengths. AR Exh. 58, Sept. 10, 2020 Consensus Tech. Evaluation Report at 25-26. Following the agency’s reevaluation, the Army reduced the protester’s overall rating for the subfactor down to good, based on one assessed significant strength and two assessed strengths. AR Exh. 16, Nov. 1, 2021 Consensus Tech. Evaluation Report at 17.

The consensus evaluation report explained that it subsequently determined that one of the originally identified strengths, which was based on the protester’s demonstrated experience managing TAP services at multiple locations, did not rise to the level to

warrant the assessment of a unique strength because it demonstrated compliance with the government's requirements as opposed to appreciably exceeding the government's standards. *Id.* Similarly, the evaluators explained that while the TET had originally assigned a significant strength based on the details included in the protester's organizational chart, upon reevaluation the evaluators determined that this aspect of the proposal only warranted a strength because it offered some, but not appreciable, benefit. *Id.* In this regard, the SSAC report reflects that all five of the offerors, including the protester and awardee, received equivalent strengths for this aspect of their proposals, and the Army reasonably found that they offered comparable benefits to the government. AR Exh. 25, SSAC Comparative Analysis Report at 21-22.

The TET further explained that based on the evaluators' reevaluation, they determined that the protester's approach to subfactor 2, management approach indicated a thorough, as opposed to an exceptional, approach and understanding of the requirements. AR Exh. 16, Nov. 1, 2021 Consensus Tech. Evaluation Report at 17. Thus, contrary to the protester's arguments, we find that the agency reasonably explained the basis for its reevaluation, and the protester's disagreement with the agency's evaluation judgments, without more, provides no basis on which to sustain the protest.

The protester further alleges that, irrespective of the changes in the evaluation, its final technical proposal nevertheless warranted a rating of outstanding based on the assessment of a significant strength, multiple strengths, and no weaknesses or deficiencies. The agency counters that, pursuant to the RFP, to receive a rating of outstanding, a proposal should indicate "an exceptional approach and understanding of the requirements and contains multiple strengths, and risk of unsuccessful performance is low." MOL at 15 (*quoting* RFP at 111). In this context, the agency contends that after considering the overall merit of Horizon's proposal, the TET assessed Horizon's technical risk of unsuccessful performance as low to moderate. On that basis, the agency determined that the protester's proposal merited a rating of good and not outstanding.

Based on our review of the record, we find no basis to question the agency's conclusions. The RFP does not require the agency to assign a rating of outstanding when the agency determines that a proposal contains only strengths or significant strengths under a particular factor. See RFP at 111. Conversely, to assign a rating of good, the RFP does not require the agency to identify a weakness or deficiency. *Id.* (a rating of good requires a thorough approach and understanding of the requirements and contains at least one strength, and risk of unsuccessful performance is low to moderate). While the record reflects that Horizon's proposal was evaluated as having merit and presenting low to moderate risk, the agency reasonably exercised its business judgment in assigning an appropriate rating. See, e.g., AR Exh. 16, Nov. 1, 2021 Consensus Tech. Evaluation Report at 16 (noting that while Horizon's proposed key personnel [DELETED] and [DELETED], they [DELETED]). On this record, we find no basis to sustain the protest where the record demonstrates that the agency

reasonably and fairly evaluated the protester's proposal in accordance with the solicitation's requirements.

#### Evaluation of Cost/Price

Horizon alleges that the agency failed to evaluate SilverStar's labor rates for compliance with the Service Contract Act (SCA) which, according to the protester, was required by the RFP. By failing to evaluate proposals for SCA compliance, Horizon contends that the agency unreasonably accepted SilverStar's low offer. Comments & Supp. Protest at 66-68; Supp. Comments at 38-39.

The agency responds that nothing in the solicitation required the agency to review offerors' SCA labor rates, and in the absence of such a requirement, it properly evaluated cost/price proposals in accordance with terms of the solicitation. Supp. MOL at 24-25. According to the agency, the protester is essentially advocating for a price realism evaluation which was neither required nor permitted by the RFP. *Id.*; see also Intervenor's Supp. Comments at 38-40. We have previously explained that where a solicitation for a fixed-price contract, such as the one here, does not require a price realism analysis or other price verification (e.g., a representation that the agency will evaluate prices for SCA compliance), there is no basis to sustain a protest alleging that the agency failed to conduct a reasonable price realism evaluation. *Phoenix Mgmt., Inc.*, B-406142.3, May 17, 2012, 2013 CPD ¶ 154 at 8.

The protester nevertheless argues that the following provision within the RFP's proposal submission requirements created an obligation for the agency to evaluate the awardee's proposed labor rates for SCA compliance:

Offerors shall submit proposed loaded labor rates for all positions which are not covered by the US Department of Labor Wage Determinations, such as exempt employees and OCONUS position employees. The proposal shall include position titles, and the fully loaded labor rates, which includes the hourly rate and all applicable burden rates. These rates will be incorporated into the resulting contract and will be used solely for contract administration purposes including the Position Vacancy Notification/Deduction described in Paragraph 5.4.1. These rates will not be evaluated by the Government during the source selection.

RFP at 105.

In the protester's view, offerors were required to submit labor rates for positions not covered by the SCA and the RFP unequivocally stated that the agency would not evaluate those rates for award purposes. Horizon contends that because the RFP explicitly represented that the agency would not evaluate non-SCA covered labor rates, the RFP's silence as to SCA-covered labor rates indicated that the agency would evaluate covered rates. Comments & Supp. Protest at 67-68; Supp. Comments at 38-39. We disagree.



There is nothing in the express language of the solicitation supporting Horizon's position that the agency was required to evaluate proposals for SCA compliance specifically, or price realism, generally. We have consistently explained that, although not required, an agency may also provide for a price realism analysis in a solicitation for the award of a fixed-price contract for the purpose of assessing whether an offeror's low price reflects on its understanding of the contract requirements or the risk inherent in an offeror's approach. *Triad Int'l Maintenance Corp.*, B-408374, Sept. 5, 2013, 2013 CPD ¶ 208 at 8. Agencies may not conduct a price realism analysis without first adequately advising offerors in the solicitation that the agency intends to do so. *Id.*; *Milani Constr., LLC*, B-401942, Dec. 22, 2009, 2010 CPD ¶ 87 at 4-6. The protester's contention that the agency's representation that it did not intend to evaluate non-SCA labor rates by implication created a price realism requirement for SCA-covered rates is without merit. Because the solicitation did not provide for evaluation of SCA compliance, the agency was not required to conduct one. This protest allegation is denied.

#### Evaluation of Past Performance

Horizon next alleges that the agency improperly evaluated the awardee's past performance. As noted above, SilverStar is a team comprised of SilverStar as the prime offeror, Inverness as a major subcontractor, and two other subcontractors. AR Exh. 20, PPET Consensus Past Performance Report at 3. In this context, Horizon contends the agency improperly failed to account for SilverStar's lack of relevant past performance as a prime contractor, and improperly relied solely on the record of SilverStar's major subcontractor, Inverness (the incumbent prime contractor for the solicited effort). Additionally, the protester contends that the agency failed to reasonably evaluate the quality of Inverness's past performance. Protest at 54-55; Comments & Supp. Protest at 19-20; Supp. Comments at 11-13. The agency responds that the evaluation of SilverStar's and Inverness's past performance was reasonable and consistent with the stated evaluation criterion. In this regard, the agency argues that it reasonably evaluated both the past performance of SilverStar, a subcontractor on the incumbent effort, as well as Inverness, a major proposed subcontractor for this effort that is the incumbent prime contractor, as the RFP did not preclude the consideration of a major subcontractor's relevant past performance. Additionally, the agency contends that it reasonably assessed the quality of Inverness' past performance.

An agency's evaluation of past performance, which includes consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion, which we will not disturb unless the assessment is unreasonable or inconsistent with the solicitation criteria. *BillSmart Sols., LLC*, B-413272.4, B-413272.5, Oct. 23, 2017, 2017 CPD ¶ 325 at 4. Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. *DynCorp Int'l, LLC*, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 14. A protester's disagreement with the agency's judgment, without more, is insufficient to

establish that an evaluation was improper. *WingGate Travel, Inc.*, B-412921, July 1, 2016, 2016 CPD ¶ 179 at 4-5.

As noted above, the RFP required offerors to submit past performance information for the prime offeror and each major subcontractor that were recent (performed within 3-years of the issue date of solicitation) and relevant (demonstrated efforts similar to the solicitation requirements). RFP at 105. Offerors were required to indicate whether they performed the contract as the prime contractor, or as a subcontractor. *Id.* The solicitation explained that the agency would evaluate relevancy by considering the extent of similarity between the efforts, complexity, contract type, and degree of subcontract/teaming. *Id.* at 113. Contracts were assigned a relevancy rating of very relevant, relevant, somewhat relevant, or not relevant. *Id.* The agency would also evaluate performance quality. *Id.* at 113-114. The solicitation advised offerors that sources of past performance information included information provided by the offeror, information obtained from questionnaires, and information from sources available to the government including databases such as the contractor performance assessment reporting system (CPARS), and interviews with relevant government officials. *Id.* at 112. Based on the assessment of relevancy and quality for recent contracts, past performance would be assigned an overall rating of substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. *Id.* at 114.

The record shows that SilverStar submitted six past performance references, four were Army SFL-TAP contracts being performed by Inverness as the incumbent prime contractor with SilverStar performing as a subcontractor to Inverness. The other two references were DOL TAP contracts performed by Inverness as a subcontractor. AR Exh. 6, SilverStar Proposal, Vol. III, Past Performance Proposal at 3-1.

In evaluating SilverStar's past performance, the PPET found that the Army SFL-TAP contract references were recent and very relevant. The agency explains that the incumbent efforts were assessed as very relevant because Inverness, the incumbent prime contractor, has five years of direct SFL-TAP experience performing nearly identical requirements as those solicited here, and SilverStar, performing as the subcontractor, has three years of direct SFL-TAP experience providing the requested services being solicited under this solicitation.<sup>16</sup> AR Exh. 20, PPET Consensus Past Performance Report at 3.

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<sup>16</sup> We note that there is a discrepancy between the PPET report and the SSAC report concerning Inverness and SilverStar's SFL-TAP experience. The PPET report indicates Inverness has five years and SilverStar has three years of direct Army SFL-TAP experience, respectively. On the other hand, the SSAC report indicates Inverness has four years and SilverStar has two years of direct Army SFL-TAP experience, respectively. This discrepancy may be a result of the SSAC's failure to update its narrative summary following the PPET's reevaluation of past performance as part of the agency's corrective action resolving the prior protests. This discrepancy is immaterial to our resolution of the protest.

As an initial matter, we find no merit to the protester's argument that the agency could not reasonably consider the collective past performance of SilverStar, a subcontractor on the incumbent effort, and Inverness, a proposed major subcontractor and current incumbent, in determining that SilverStar demonstrated relevant prior performance. The RFP specifically provided for consideration of subcontractor past performance. RFP at 112 ("The Government will focus its inquiries on the offeror's (and major subcontractor's) record of performance . . ."). Thus, the agency properly considered both SilverStar's and Inverness' relevant past performance -- including performance as the incumbent prime and subcontractor -- in determining that SilverStar demonstrated relevant past performance. See *MCR Fed., LLC*, B-401954.2, Aug. 17, 2010, 2010 CPD ¶ 196 at 9; *Roca Mgmt. Educ. & Training, Inc.*, B-293067, Jan. 15, 2004, 2004 CPD ¶ 28 at 5. To the extent that Horizon merely disagrees with the weight the Army may have given to the subcontractor's past performance, such an argument fails to state a basis to object to the agency's evaluation. We have explained that the significance of, and the weight to be assigned to, a prime contractor's versus subcontractor's past performance, is principally a matter of contracting agency's discretion. *ASRC Research & Tech. Solutions, LLC*, B-406164, B-406164.3, Feb. 14, 2012, 2012 CPD ¶ 72 at 11. On this record, we find no basis to object to the agency's relevancy evaluation.

Turning to the protester's allegations that the agency failed to reasonably evaluate the quality of the awardee's past performance record, the record reflects that the agency checked CPARS records for SilverStar and Inverness to assess the quality of their past performance on these recent and relevant contracts. There were no available CPARS records for SilverStar. The record shows that six total CPARS records for Inverness were reviewed by the PPET, including four records for Inverness's performance on the Army SFL-TAP efforts and two related to Inverness's performance as a subcontractor on the DOL TAP contracts.

For the Army SFL-TAP incumbent contract, an interim CPARS report for the period between July 2017 and July 2018, showed that Inverness predominately received satisfactory ratings, although it did receive a marginal rating for staffing. The assessing official explained that "Inverness has consistently held a vacancy rate round 10 [percent]. While they are satisfactory in contract performance, [I] believe that this would improve if locations were fully staffed at the authorized staffing level." AR Exh. 80, Inverness CPARS Reports at 8. On the subsequent final CPARS report, which also covered the work Inverness performed between July 2018 and July 2019, although staffing was not individually assessed, Inverness received two satisfactory ratings for schedule and DOL wage conformance investigation, and three ratings of very good for quality, management, and regulatory compliance. *Id.* at 11. The assessing official noted that Inverness was "passionate about ensuring our Soldier[s] received the necessary support to facilitate a successful transition for the Soldier and family to civilian life," and indicated that they would recommend Inverness for similar requirements in the future. *Id.* at 12.

Contrary to the protester's argument, the record does not demonstrate that the agency ignored or arbitrarily discounted the performance issues identified in the interim CPARS report. Rather, the record reflects that both the lower-level evaluators and the SSA specifically considered both the underlying performance issue, as well as the positive trend in Inverness' performance to determine that a satisfactory confidence rating was warranted. See, e.g., AR Exh. 23, SSEB Consensus Tech. Evaluation Report at 12; Exh. 54, Consensus Past Performance Report at 3-4. We have previously stated that an agency's past performance evaluation may be based on a reasonable perception of a contractor's prior performance, regardless of whether the protester disputes the agency's interpretation of the underlying facts, the significance of those facts, or the significance of any corrective actions. See e.g., *PAE Aviation & Tech. Servs., LLC*, B-413338, B-413338.2, Oct. 4, 2016, 2016 CPD ¶ 283 at 5. On this record, we do not find that the agency ignored or overlooked instances of deficient past performance in Inverness's CPARS records in its evaluation of both SilverStar's and Inverness's past performance history; Horizon's disagreement as to the weight afforded to the positive trend in performance fails to provide a basis on which to sustain the protest. See *Vectrus Sys. Corp.*, B-412581.3 *et al.*, Dec. 21, 2016, 2017 CPD ¶ 10 at 9.

Horizon raises other challenges to the agency's evaluation of Inverness's past performance, alleging that the agency ignored or otherwise failed to reasonably consider alleged instances of adverse information. We find no basis to sustain the protest on these grounds. As one representative sample, Horizon argues that the agency unreasonably failed to consider an apparent termination for default of one of Inverness's DOL TAP contracts. Comments & Supp. Protest at 25 (*quoting* AR Exh. 66, Inverness CPARS Records at 1, 15).

The agency counters that the protester effectively gloms onto an obvious typographical error in the CPARS reports at issue. Specifically, the agency notes that the CPARS at issue reflect predominately satisfactory ratings, and in both instances the assessing official indicated that they would likely recommend Inverness for similar requirements in the future. AR Exh. 80, Inverness CPARS Reports at 3-4, 17-18. Additionally, the agency demonstrated that a search of the Federal Procurement Data System (FPDS) clearly indicates that the contract and resulting task order were terminated for the government's convenience. AR Exh. 97, FPDS Record. Based on the record presented, we find no basis to conclude that the agency's consideration of this issue was unreasonable.

#### Conflict of Interest

Next, we consider Horizon's complaint that the agency failed to reasonably investigate an actual or apparent personal conflict of interest on the part of an agency official and individuals associated with Inverness, SilverStar's major subcontractor. Protest at 26-36; Comments & Supp. Protest at 2-17; Supp. Comments at 3-8.

Contracting agencies are to avoid even the appearance of impropriety in government procurements. FAR 3.101-1; *KOAM Eng'g Sys., Inc.*, B-420157.2, July 6, 2022,

2022 CPD ¶ 174 at 7. Where, as here, a protester alleges bias or conflict of interest on the part of a procurement official, the question is whether the official exerted improper influence in the procurement on behalf of the awardee or against the protester. *Lancaster & Co.*, B-254418, Dec. 14, 1993, 93-2 CPD ¶ 319 at 6.

The protester contends that an SFL-TAP program analyst (whom we identify as Mr. X) has an improper personal conflict of interest “based on his ongoing personal relationship with Inverness employees working on SFL-TAP and [his] acceptance of entertainment and/or gifts.” Protest at 27-28. According to the protester, social media “photographs indicate” that Mr. X attended an Inverness-sponsored event, styled as a symposium, which included “an awards dinner involving extravagant personal gifts, and a chartered bus tour of bourbon facilities and the entertainment venue ‘Amp at Dant’ in New Haven, Kentucky” during the ongoing evaluation and source selection process at issue here. *Id.* at 28. The protester further asserts that it has reason to believe Mr. X “was involved with the acquisition planning for the subject procurement, in light of [Mr. X’s] position as an analyst on SFL-TAP and familiarity with the needs of the program.” *Id.* at 34-35. The protester contends that Mr. X’s attendance “at these extravagant Inverness company events” created an actual or apparent conflict of interest “as the result was the improper acceptance of entertainment and perhaps other gifts by an [a]gency employee” which may have impermissibly “influenced the procurement decision and award to SilverStar and its major subcontractor, Inverness.” *Id.* at 35.

The contracting officer investigated the allegations and found no basis to conclude that SilverStar was ineligible for award because of a personal conflict of interest. COS at 17. In this regard, the contracting officer asserts that the Inverness-sponsored symposium referenced by the protester was actually an Army-sponsored symposium *i.e.*, an approved Army Human Resources Command training event which is held bi-annually at Fort Knox, Kentucky, for members of the TAP community. COS at 17; MOL at 12. The agency explains that members of the TAP community consist of both government civilian and military personnel, current contractors and their employees including Inverness, and TAP corporate partners.<sup>17</sup> The stated purpose of the symposium was to set an overall common operating picture for the direction of the program as well as to discuss best practices. COS at 17; AR Exh. 96, Decl. of SSA at 2. The agency further explains that Mr. X, and other government employees, were assigned to speak on different aspects of the TAP at this government-sponsored symposium. COS at 17.

Moreover, the contracting officer determined that Mr. X had no role in the procurement at issue here. In this regard, the contracting officer noted that Mr. X has never been a

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<sup>17</sup> We note that the RFP specifically contemplates that the SFL-TAP contractor will be responsible for planning the biennial transition symposium, including “[r]egister[ing] attendees at the symposium, assist[ing] with organization and execution of event.” RFP at 46. Indeed, Horizon specifically represented in its approach to program staffing that it would “plan and assist with the organization and execution of the biennial transition symposium, including all associated activities, programs, and the registration of attendees.” AR Exh. 8, Horizon Tech. Proposal at 32-33.

member of the SSEB or the SSAC; he has never served as the SSA; he was never involved in the development or revisions of the PWS; and he was never involved in the drafting of the evaluation criteria for the RFP at issue here. AR Exh. 34, Contracting Officer's Memorandum For Record. The contracting officer further attests that she did not disclose any information regarding the source selection process for this procurement to Mr. X nor was she aware of any attempts by Mr. X to impact the outcome of this source selection process. *Id.* The contracting officer concluded that Mr. X was not, and had never been, in a position that would allow him to exert improper influence on this procurement either on behalf of SilverStar or against Horizon. *Id.* In light of this, the contracting found the protester's allegations that there was an actual or apparent conflict of interest due to Mr. X's role at the government-sponsored symposium were unfounded. COS at 17.

Nevertheless, in its supplemental protest, Horizon challenges the agency's investigation into the events surrounding the government symposium and Inverness's side events that it alleges created the appearance of personal conflicts of interest for Mr. X in addition to members of the TAP source selection team. Comments & Supp. Protest at 2-17. Specifically, the protester identified the SSA (whom we identify as Mr. Y), two members of the technical evaluation team, and one member of the past performance evaluation team, as members of the SSEB who were present at the symposium. *Id.* at 5-7.

In response to these supplemental protest allegations, the contracting officer investigated the allegations and, again, concluded that the protester's claims were speculative and devoid of facts needed to establish even the appearance of conflict of interests. Supp. COS at 2-4; Supp. MOL at 3-10. The contracting officer explained that she contacted the four SSEB members who attended the symposium; two of whom were assigned speakers and the other two were attendees. Supp. COS at 2. The four attendees responded that they did not discuss this follow-on procurement with any contractor personnel including Inverness; they were not invited to any of Inverness's events such as the chartered bourbon tour event, the Amp at the Dant venue, or the truck award presentation; and they had no knowledge of Inverness's events prior to their occurrence. *Id.* at 2-3.

As to Mr. Y and his role at the symposium, Mr. Y submitted a declaration in which he identified himself as the [DELETED], and, as [DELETED], he oversees the planning and preparation of the TAP symposiums. AR Exh. 96, Decl. of Mr. Y at 1. Mr. Y stated that executives and management of the TAP community typically attend the symposiums and executives/management of Inverness, an incumbent contractor, were present at the symposium at issue here. As the [DELETED] at this symposium, Mr. Y stated that while he interacted with all attendees including Inverness's personnel, that "at no time" did he discuss the current ongoing solicitation. *Id.* at 2. He also stated that he did not attend any events hosted by Inverness but he did observe "some individuals in the parking lot conducting a truck presentation" while walking to his car to go home. *Id.* According to Mr. Y, the Inverness events were not announced at the symposium nor were invitations issued to "our employees" to attend any of these events. *Id.*

Most pertinent to the protester's allegations, the contracting officer found that no non-public information regarding the agency's desired attributes and plans for the SFL-TAP procurement at issue here was disclosed to Inverness or any other offeror. In any event, the contracting officer states, and the record confirms, SilverStar made no changes to its technical proposal after the symposium ended; any revisions to SilverStar's technical proposal were made prior to the symposium. Supp. COS at 3; Supp. MOL at 6-8. The protester's speculation that Inverness personnel might have obtained competitively useful, non-public information at the symposium was entirely baseless. Supp. MOL at 8 (*quoting* AR Exh. 96, Decl. of Mr. Y).

Furthermore, as the agency and the intervenor both point out, there is nothing inherently improper about incumbent contractor personnel and agency employees' attendance at a government-sponsored TAP symposium. As addressed above, the SFL-TAP contract requires the SFL-TAP contractor to provide support for the bi-annual symposium to include, assisting with the organization and execution of the event. See RFP at 46.

Based on our review of the record, we find the contracting officer's investigation and conclusions to be reasonable. The record here establishes that attendance by members of the SSEB at a government-sponsored symposium where incumbent contractor employees were also present did not create any actual personal conflict of interest that improperly tainted the Army's SFL-TAP source selection or evaluation process. Supp. MOL at 6. Accordingly, we deny the protester's allegations.

#### Best-Value Tradeoff Decision

Finally, Horizon alleges that the agency's best-value tradeoff analysis was unreasonable because: (1) the evaluation of its own and SilverStar's proposals under the technical capability, past performance, and cost/price factors were materially flawed and cannot provide a reasonable basis to conduct a tradeoff; (2) the best-value tradeoff was unreasonable and inadequately documented; and (3) the agency ignored the relative merits of competing offerors' proposals and effectively improperly converted the basis for award to a lowest-priced, technically acceptable source selection methodology. Supp. Comments at 41-42.

As to the protester's first line of argument, for the reasons set forth herein we find no basis to object to the agency's underlying evaluation of proposals, and, thus, these derivative challenges to the agency's best-value tradeoff are denied.

With respect to the remaining challenges, the agency responds that the SSA was fully aware of the comparative value of the competing proposals, as the SSA adopted the SSEB, PPET, cost/price analysis, and SSAC reports that described, in detail, the non-cost/price strengths and other evaluation findings for each offeror. MOL at 39-43. The agency also maintains that the SSA considered and compared the various strengths and significant strength between Horizon and SilverStar, and concluded that the

\$41 million price premium associated with Horizon's higher-rated proposal was not warranted. *Id.*

In a best-value tradeoff procurement, such as this one, it is the function of the SSA to perform a tradeoff to determine whether one proposal's technical superiority is worth a higher cost/price. *General Dynamics–Ordnance & Tactical Sys.*, B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8. Even where cost/price is the least important evaluation factor, as here, an agency properly may select a lower-priced, lower-rated proposal if the agency reasonably concludes that the cost/price premium involved in selecting a higher-rated, higher-priced proposal is not justified in light of the acceptable level of technical competence available at a lower cost/price. *Id.* The extent of such tradeoffs is governed only by the test of rationality and consistency with the evaluation criteria. *Hillstrom's Aircraft Servs.*, B-403970.2, Dec. 28, 2010, 2010 CPD ¶ 303 at 5. Thus, a protester's disagreement with an agency's determinations as to the relative merits of competing proposals or disagreement with its judgment as to which proposal offers the best value to the agency does not establish that the evaluation or source selection was unreasonable. *Id.*

Here, we find unobjectionable the SSA's tradeoff and source selection decision. We disagree with the protester that the agency converted the procurement to one where award was made on a lowest-priced, technically acceptable basis. In this regard, the record shows that in conducting his tradeoff, the SSA comparatively assessed Horizon's and SilverStar's proposals and analyzed the evaluators' findings, including the strengths assigned to proposals. See *generally* AR Exh. 17, SSD at 3-13. Acknowledging that Horizon "received one significant strength that demonstrated strong management of a dispersed workforce," the SSA agreed with the "SSAC's analysis that there are no measurable benefits or superior past performance that justify the price tradeoff between [SilverStar], with the lowest TEP of \$244,203,205.00, and any other higher-priced, higher-rated offerors." *Id.* at 12-13.

The fact that the SSA, in a best-value procurement where the technical factors are more important than cost/price, determines that the technically lower-rated offeror is a better value than the higher cost/price offeror, does not show that the source selection was improper. *General Dynamics-Ordnance & Tactical Sys.*, *supra* at 8. Here, the source selection decision acknowledged and documented the advantages of the higher-cost, higher-rated offer, and explained why it was not worth the cost premium. In these circumstances, the selection of SilverStar was reasonable.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel