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Decision

Matter of: American Tech Solutions, LLC

File: B-421585.6; B-421585.7

Date: November 20, 2023

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Colonel Frank Yoon, Michael J. Farr, Esq., Geoffrey R. Townsend, Esq., and Ryan C. Springer, Esq., Department of the Air Force, for the agency.
Michelle Litteken, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of proposals under technical factor is denied where the evaluation was reasonable and consistent with the solicitation.
 2. Protest that the agency unreasonably evaluated the awardee's proposal under past performance factor is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.
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DECISION

American Tech Solutions, LLC (ATS), a small business joint venture¹ of Chantilly, Virginia, protests the issuance of a task order to Obsidian Global LLC, a small business of Washington, D.C, under fair opportunity proposal request (FOPR) No. FA3002-22-R-0026, issued by the Department of the Air Force for services and equipment to sustain and deploy software and architecture for the agency's graduate/training integration management system (G/TIMS). The protester challenges various aspects of the agency's evaluation of the offerors' technical proposals and the Air Force's evaluation of Obsidian's proposal under the past performance factor.

¹ American Tech Solutions, LLC is a mentor-protégé joint venture, comprised of BlueWater Federal Solutions, as the mentor, and American Operations Corporation, as the protégé. Protest at 2.

We deny the protest.

BACKGROUND

The Air Force's Air Education and Training Command (AETC) uses the Graduate/Training Integration Management System to support its mission of training aircrew personnel for a variety of aircraft and roles. Agency Report (AR), Tab 6b, Performance Work Statement (PWS) at 1.² On September 30, 2022, the Air Force issued the FOPR to holders of the agency's Small Business Enterprise Application Solutions multiple award indefinite-delivery, indefinite-quantity (IDIQ) contract pursuant to Federal Acquisition Regulation part 12, commercial products and services, and subpart 16.5, indefinite-delivery contracts. Contracting Officer's Statement (COS) at 2; AR Tab 4d, Evaluation Criteria at 1. The scope of work for the effort includes sustainment of the G/TIMS software and architecture to maintain operational suitability, implementation/deployment of G/TIMS to new sites, support of platform migrations at existing sites, information assurance support, platform management support, interface and interoperability support, product management support, and cloud environment sustainment support. AR, Tab 6b, PWS at 1. The solicitation contemplated a task order with a 12-month base period and three 1-year option periods. *Id.* at 29.

The FOPR established that award would be made using a best-value tradeoff considering the following factors: technical, past performance, and price. AR, Tab 4d, Evaluation Criteria at 1. The solicitation provided that the technical and past performance factors were equally important, and when combined, were significantly more important than price. *Id.* The solicitation stated that the technical factor would consist of three equally weighted subfactors: software sustainment, operations management, and quality control. *Id.* at 2-4.

As relevant here, the FOPR provided the technical evaluation would assess the offeror's capability to satisfy the requirements. AR, Tab 4d, Evaluation Criteria at 2. The solicitation stated: "Proposals must display a clear understanding and reasonable, well-thought-out approach and methodology that meets the requirements of the PWS." *Id.* The solicitation provided that the agency would use the following ratings in the evaluation of technical proposals: outstanding, good, acceptable, marginal, and unacceptable. *Id.* at 4-5. Additionally, the Air Force would identify significant strengths, strengths, weaknesses, significant weaknesses, and deficiencies in the offerors' proposals.³ *Id.* at 5.

² The agency used a Bates numbering system to provide page numbers for the exhibits it submitted with the agency report; citations to these exhibits refer to the Bates numbers assigned by the agency.

³ As relevant here, the FOPR defined a significant strength as "an aspect of an Offeror's proposal with appreciable merit or will exceed specified performance or capability requirements to the considerable advantage of the Government during contract performance" and a strength as "an aspect of an offeror's proposal with merit or will

(continued...)

As also relevant here, for the past performance factor, the solicitation stated that the agency would assess how well the offeror had performed work relevant to the G/TIMS requirement.⁴ AR, Tab 4d, Evaluation Criteria at 5. The agency would consider the offeror's past performance references and ratings provided in Contractor Performance Assessment Reporting System (CPARS) reports.⁵ *Id.* The solicitation provided that the Air Force would not assign relevancy and quality ratings to each past performance reference. Rather, the agency would assign each offeror an integrated performance confidence assessment rating after considering the offeror's past performance information in the aggregate for recency, relevancy, and performance quality. The past performance ratings were: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, and no confidence.⁶ *Id.* at 5-6.

The agency received timely proposals from three offerors, including ATS and Obsidian.⁷ COS at 5. After evaluating proposals, the Air Force issued the task order to Obsidian, and ATS protested that source selection decision to our Office. COS at 12. We dismissed the protest as academic after the agency advised our Office of its intent to take corrective action by reevaluating technical proposals and making a new source selection decision. *American Tech Solutions, LLC*, B-421585.3, B-421585.4, May 31, 2023 (unpublished decision), *recon. denied, American Tech Solutions, LLC*, B-421585.5, July 25, 2023, 2023 CPD ¶ 192.

Following dismissal of ATS's first protest, the agency established a new technical evaluation team (TET). COS at 13. The Air Force sent each offeror "interchange" notices that identified deficiencies and weaknesses in the offeror's proposal, and the offerors were given the opportunity to respond. *Id.* The agency evaluated the offerors' responses, as follows:

exceed specified performance or capability requirements to the advantage of the Government during contract performance." AR, Tab 4d, Evaluation Criteria at 5.

⁴ The FOPR stated that the agency may consider the past performance of subcontractors that will perform major or critical aspects of the requirement. AR, Tab 4d, Evaluation Criteria at 6.

⁵ The agency also reserved the right to use information obtained from other available sources. AR, Tab 4d, Evaluation Criteria at 6.

⁶ As relevant here, the FOPR defined a substantial confidence rating as follows: "Based on the Offeror's recent/relevant performance record, the Government has a high expectation that the Offeror will successfully perform the required effort." AR, Tab 4d, Evaluation Criteria at 6.

⁷ ATS's proposed subcontractor, Segue Technologies, Inc. (Segue), is the incumbent contractor. Protest at 5. Obsidian's proposed subcontractor, Data Systems Analysts, Inc. (DSA), is a subcontractor on the incumbent contract. COS at 29.

	Obsidian	ATS
Technical		
Software Sustainment	Outstanding	Outstanding
Operations Management	Outstanding	Outstanding
Quality Control	Acceptable	Acceptable
Past Performance	Substantial Confidence	Substantial Confidence
Cost/Price	\$86,369,412	\$94,111,716

AR, Tab 31, Source Selection Decision (SSD) at 5.

The source section authority (SSA) reviewed the results of the technical, past performance, and price evaluations.⁸ AR, Tab 31, SSD at 5-16. The SSA noted that Obsidian's and ATS's proposals were each rated as outstanding under two of the technical subfactors, and the TET assigned the same number of strengths to the proposals under the technical subfactors. *Id.* at 25. The SSA examined the strengths identified in each proposal and found that they provided the same benefits to the Air Force. *Id.* For example, the SSA wrote:

[Obsidian] proposed a Continuous Integration/Continuous Deployment to manage the automated execution of software code test which will minimize code rework and maximize early detection of code vulnerabilities and proposed to enhance the G[/]TIMS transition by employing current G/TIMS staff, minimizing the need for a lengthy transition from the current contractor and increasing the likelihood to immediately perform at a high level with no disruption to the G/TIMS mission. . . . [ATS] proposed an [DELETED] to enhance the ability to ease the process of [DELETED] and proposed the use of [DELETED]. The two strengths mentioned above for [Obsidian] and [ATS] provide approximately the same benefit to the Government.

Id. at 25-26. With respect to past performance, the SSA noted that although both proposals received substantial confidence ratings, ATS had received a rating of exceptional in a CPARS report, while the highest CPARS rating that Obsidian received was very good. *Id.* at 26. The SSA found that ATS's technical proposal and past performance did not warrant a \$7,742,304 price premium, and the SSA determined that Obsidian's proposal provided the best value. *Id.*

⁸ The SSA in the corrective action evaluation did not serve as the SSA in the original evaluation. *Compare* AR, Tab 15, Original SSD at 23, *with* AR, Tab 31 SSD at 26.

The Air Force notified ATS that its offer was unsuccessful and provided ATS with a debriefing. COS at 15. ATS then filed this protest with our Office.⁹

DISCUSSION

ATS challenges various aspects of the agency's evaluation of the offerors' technical proposals and the Air Force's evaluation of Obsidian's proposal under the past performance factor. As discussed below, we find no basis to sustain any of ATS's protest allegations.¹⁰

Evaluation of Technical Proposals

The protester challenges multiple aspects of the Air Force's evaluation of the offerors' technical proposals. First, ATS contends that the agency failed to explain why the evaluation findings of the corrective action evaluation differed from the findings in the original evaluation. Protest at 18. Next, the protester contends that the Air Force failed to credit multiple strengths and significant strengths in its proposal. *Id.* at 22-30. Lastly, ATS asserts that the evaluation was unequal because the agency identified two strengths in Obsidian's proposal and did not assign strengths to ATS's proposal when ATS proposed similar features. Comments & Supp. Protest at 1-2.

⁹ Because the value of the protested task order exceeds \$25 million, this protest is within our jurisdiction to hear protests of task orders placed under defense agency IDIQ contracts. 10 U.S.C. § 3406(f)(1)(B).

¹⁰ In its various submissions, ATS presents arguments that are variations of, or additions to, those discussed below. Although we do not specifically address every argument raised by the protester, we have considered them and find none to be meritorious. For example, the protester complains that the agency's evaluation of technical proposals was unreasonable because the agency did not assign the proposals an overall adjectival rating under the technical factor. Protest at 37; Comments & Supp. Protest at 18.

However, as the protester acknowledges, nothing in the FOPR required the Air Force to assign an overall adjectival rating in the technical evaluation. Comments & Supp. Protest at 21-22. Additionally, our Office has stated that point scores and adjectival ratings are mere guides to decision-making, and failing to assign adjectival ratings is inconsequential where the evaluation otherwise provides meaningful narrative regarding the technical merit of the proposals. *Fisher Bioservices, Inc.*, B-413982.4, B-413982.6, Nov. 29, 2017, 2018 CPD ¶ 49 at 7 n.11. Here, the record demonstrates that the Air Force meaningfully considered the advantages of each proposal. See AR Tab 29a, Obsidian TET Report Software Sustainment; AR, Tab 29b, Obsidian TET Report Operations Management; AR, Tab 29c, Obsidian TET Report Quality Control; AR, Tab 30a, ATS TET Report Software Sustainment; AR, Tab 30b, ATS TET Report Operations Management; AR, Tab 30c, ATS TET Report Quality Control. As such, we deny this protest ground.

At the outset, we note that in reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *Computer World Servs. Corp.*, B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Vertex Aerospace, LLC*, B-417065, B-417065.2, Feb. 5, 2019, 2019 CPD ¶ 75 at 8.

Differences Between Original and Corrective Action Evaluation

As noted above, ATS protested the agency's original evaluation, in response to which the agency took corrective action, resulting in a new evaluation (with different evaluation findings) and a new source selection decision.¹¹ The protester asserts that "the same inputs resulted in different outputs, and absent any explanation, as is the case here, this result necessarily is irrational." Protest at 18. The agency responds that the differences in the evaluation findings are explained by the fact that a new TET evaluated the offerors' proposals. Memorandum of Law (MOL) at 18-19 (*quoting PAE Aviation & Tech Servs. LLC*, B-417704.7 *et al.*, Jun. 8, 2021, 2021 CPD ¶ 293 at 20-21).

Our Office consistently has stated that the fact a reevaluation of proposals varies from the original evaluation does not constitute evidence that the reevaluation was unreasonable. *FreeAlliance.com, LLC*, B-420000.3 *et al.*, June 28, 2022, 2022 CPD ¶ 165 at 5-6; *PAE Aviation, supra*; *CACI, Inc.-Fed.*, B-418400.7, B-418400.8, Apr. 29, 2021, 2021 CPD ¶ 192 at 8; *eAlliant, LLC*, B-407332.6, B-407332.10, Jan. 14, 2015, 2015 CPD ¶ 229 at 10. We have recognized that it is not unusual for different evaluators, or groups of evaluators, to reach different conclusions and assign different scores or ratings when evaluating proposals, as both objective and subjective judgments are involved. *MILVETS Sys. Tech., Inc.*, B-409051.7, B-409051.9, Jan. 29, 2016, 2016 CPD ¶ 53 at 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.* The overriding concern in our review of a reevaluation following corrective action is not whether the final evaluation is consistent with an earlier evaluation, but rather, whether it is reasonable and consistent with the solicitation. *HeiTech-PAE, LLC*, B-420049.9, B-420049.10, June 8, 2022, 2022 CPD ¶ 162 at 11-12.

¹¹ The corrective action evaluation of the offerors' technical proposals differed from the original evaluation in the re-evaluation as follows: ATS's proposal was assessed fewer strengths and no significant strengths; no weaknesses; and the rating for one subfactor increased while another decreased. In re-evaluating Obsidian's proposal, the agency assigned an additional strength, and increased the rating under the software sustainment subfactor from good to outstanding. Protest at 18; AR, Tab 31, SSD at 6.

We find no basis to question the agency's evaluation solely because it did not explain the differences between the prior evaluation and the new evaluation conducted by the new TET. We have in very limited circumstances reached a different result. For example, in *eAlliant, LLC, supra* at 11-12, we found that where an SSA was personally involved in reviewing proposals and affirmed specific conclusions by an initial source selection board (SSEB) about an offeror's proposal, the SSA was obligated to reconcile or explain in the subsequent award decision why a second SSEB's evaluation differed so starkly from prior evaluation conclusions she had personally confirmed. Here, in contrast, when the agency took corrective action, it composed a new TET and appointed a new SSA. COS at 13; *Compare* AR, Tab 15, Original SSD at 23, *with* AR, Tab 31 SSD at 26. Additionally, the changes in the evaluation findings do not rise to the level of "starkly different" evaluation findings. See *CACI, Inc.-Fed.*, B-420729.2, Mar. 1, 2023, 2023 CPD ¶ 51 at 4 (denying challenge to reevaluation when changes in strengths, weaknesses, and adjectival ratings were not starkly different from the original evaluation); *HeiTech-PAE, supra* (denying challenge to reevaluation that no longer described three aspects of protester's proposal as "beneficial" where the protester failed to demonstrate the reevaluation was starkly different from the original evaluation). As such, the circumstances present in *eAlliant* are not present here, and the Air Force was not required to reconcile the evaluations. Accordingly, we deny this protest ground.

Additional Strengths

ATS complains that its proposal should have received at least four additional strengths or significant strengths.¹² Protest at 21-22. Based on our review of the record, we find the protester's allegations lack merit. We discuss below two representative examples of the protester's assertions, the agency's responses, and our conclusions.

An agency's judgment that the features identified in a proposal did not significantly exceed the requirements of the solicitation--and thus did not warrant the assessment of unique strengths--is a matter within the agency's discretion and one that we will not disturb where the protester has failed to demonstrate that the evaluation was unreasonable. *Protection Strategies, Inc.*, B-416635, Nov. 1, 2018, 2019 CPD ¶ 33

¹² In ATS's protest, the protester identified 10 aspects of its proposal that, it argued, deserved to be recognized as at least 10 additional strengths or significant strengths. Protest at 22-30. The Air Force provided a detailed response to these allegations. MOL at 17-36; COS at 17-23. In its comments to the agency report, the protester did not respond to the agency's arguments concerning six of the claimed strengths. (The six purportedly overlooked strengths were: a database design description deliverable, the approach to ensure Capability Maturity Model Integration Level 3 compliance, the approach to syllabus development, the proposed quality control methodology, the risk management approach, and the proposal to perform a preliminary assessment of the pre-award and transition risks). Accordingly, we deem these aspects of the protest abandoned and will not address the allegations further. 4 C.F.R. § 21.3(i)(3) (GAO will dismiss any protest allegation where the agency's report responds to the allegation, but the protester's comments fail to address that response).

at 8 n.4. In that regard, an agency's contemporaneous evaluation record is not required to "prove a negative," or document determinations of adequacy (*i.e.*, why a proposal did not receive a strength or weakness). See, *e.g.*, *Cognosante MVH, LLC*, B-418986 *et al.*, Nov. 13, 2020, 2021 CPD ¶ 3 at 8; *CSRA LLC*, B-417635 *et al.*, Sept. 11, 2019, 2019 CPD ¶ 341 at 10 n.15. When a protester raises a challenge regarding why a proposal was not assigned a strength or weakness, we review whether the agency's explanation or documentation--contemporaneous or otherwise--demonstrates that the evaluation was reasonable and consistent with the stated evaluation criteria. See *Cognosante, supra* at 7-8 (finding the statements from the evaluators and contracting officer responding to the protester's arguments demonstrated the reasonableness of the agency's decision not to assign the challenged strengths).

The protester asserts that the Air Force failed to credit ATS for its experience with and understanding of the cybersecurity policies that govern the G/TIMS risk management framework.¹³ Protest at 27-28. ATS points to the following discussion from its proposal as evidence that it exceeded the PWS's requirements concerning personnel skills and certifications, maintaining authority to operate compliance on required security controls, and establishing a quality control methodology:

Team ATS [information assurance] personnel have the technical skills, meet 8570 Information Assurance Manager (IAM) Level II requirements, and have the deep G/TIMS knowledge to effectively manage the G/TIMS [information assurance] tasks on behalf of the PMO. Our team provided outstanding [information assurance] support, to include obtaining Authority to Operate (ATO) renewals. Team ATS transitioned AETC G/TIMS from a

¹³ The agency and the intervenor contend that this argument is untimely because ATS did not argue that its proposal should have received a strength for its experience with and understanding of the cybersecurity policies in its original protest. Supp. COS/MOL at 16-18; Intervenor's Comments at 3-4. The protester responds that the allegation is timely because in its original protest, it claimed the agency should have assigned a strength for ATS's experience and understanding of the cloud migration process, and the arguments concern the same PWS requirements, as the FedRAMP cloud migration process is a component of the cybersecurity policies that govern the G/TIMS risk management framework. Supp. Comments at 2. ATS states that although the protests "do not contain identical language, the substantive arguments and key points are the same." *Id.* Protest arguments raised after corrective action and re-award of a contract are untimely when the information underpinning such arguments was available to the protester as part of its earlier protest, and the protester failed to raise these arguments in a timely manner. *Gryphon Techs., L.C.*, B-420882.2 *et al.*, Jan. 17, 2023, 2023 CPD ¶ 42 at 4. We find the argument timely because the substance of the arguments is the same as the allegation in the original protest. In the original protest and the post-corrective action protest, ATS relied on the same PWS sections, it quoted the same language from its proposal discussing its experience and achievements concerning the ATO process, and it argued the strength was warranted under the same technical subfactor. AR, Tab 20a, Original Protest at 24-25; Protest at 27-28.

traditional ATO to a “Fast Track” ATO while supporting the AETC [Authorizing Official] Blue Team Assessment. We accomplished this without any findings and established a solid benchmark for AETC.

Protest at 28 (*quoting* AR, Tab 10b, ATS Technical Proposal at 39-40). The Air Force responds that ATS’s proposed personnel met, but did not exceed, the PWS requirements concerning personnel certifications. MOL at 27. The agency also states that the proposal’s discussion of ATS’s prior achievements constitutes past performance information that is not relevant in the technical evaluation. *Id.* at 28.

Based on our review of the record, we find no basis to object to the agency’s evaluation of this aspect of ATS’s proposal. The protester has not shown that its personnel exceeded the applicable PWS requirements. We also find the agency’s decision not to credit ATS’s prior achievements in the technical evaluation reasonable. Here, although the solicitation required the offeror to provide “a clear understanding and reasonable, well-thought-out approach and methodology that meets the requirements of the PWS” (AR, Tab 4d, Evaluation Criteria at 2), the protester relied instead on a recitation of its experience. The protester provided ample discussion of its relevant past performance, but proffered little or no detailed, specific explanation of particular methods and techniques to be used in performing under the task order. Because the proposal provided information about ATS’s experience and not an actual technical approach and methodology, the evaluators reasonably decided not to assign a strength. *Biswas Info. Tech. Sols., Inc.*, B-413104.35, B-413104.38, Apr. 18, 2019, 2019 CPD ¶ 163 at 6 (agency reasonably found proposal unacceptable when the “proposal provided only brief summaries of the firm’s experience, and not an actual technical approach and methodology”); *see also Dexis Consulting Grp.*, B-415483, Dec. 26, 2017, 2018 CPD ¶ 10 at 4-5.

As a second example, the protester complains that its proposal should have received a strength for its proposed functional community leads.¹⁴ Protest at 26. ATS asserts that its proposed functional community leads exceeded the PWS’s requirements because they had more years of experience than required and were active-duty military G/TIMS users with experience across commands. Comments & Supp. Protest at 14-15. The agency responds that this aspect of ATS’s proposal did not warrant a strength because the proposed personnel met, but did not exceed, the requirements to provide subject matter expertise and serve as points of contact for their respective functional community. MOL at 24-25; COS at 19. The agency adds that ATS’s proposal to use “previous Active-Duty G/TIMS users with experience and expertise” was vague. COS at 19.

¹⁴ The PWS required the contractor to provide a functional community team lead for each community/enclave (*e.g.*, Air Mobility Command, AETC, Air Combat Command, U.S. Army Aviation Center of Excellence, and Air Force Special Operations Command). AR, Tab 6b, PWS at 16.

Here, the FOPR defined a strength as “an aspect of an offeror’s proposal with merit or [which] will exceed specified performance or capability requirements to the advantage of the Government during contract performance.” AR, Tab 4d, Evaluation Criteria at 5. The TET did not find that ATS’s proposed functional community leads exceeded the requirements in a manner that would benefit the agency, and ATS fails to demonstrate that the agency’s conclusion was unreasonable. Accordingly, we reject the protester’s assertions that it was unreasonable for the agency not to assess an additional strength for its proposed functional community leads. See *Cognosante*, *supra* at 7-8.

Unequal Evaluation

The protester contends that the Air Force evaluated the offerors’ proposals disparately under the software sustainment and operations management subfactors because the agency identified one strength in Obsidian’s proposal under each of these subfactors and did not assign strengths to ATS’s proposal when ATS proposed similar features. Comments & Supp. Protest at 2-9. Specifically, ATS asserts that the agency should have assigned strengths to its proposal for its proposed use of continuous integration/continuous deployment features and for its proposed transition plan. Our review of the record here finds no basis to sustain the protester’s allegations of disparate treatment. As a representative example, we examine the allegation of disparate treatment in the evaluation of the offerors’ proposed transition plans.

When a protester alleges disparate treatment in a technical evaluation, to prevail, it must show that the agency unreasonably evaluated its proposal in a different manner than another proposal that was substantively indistinguishable or nearly identical. *Battelle Mem’l Inst.*, B-418047.5, B-418047.6, Nov. 18, 2020, 2020 CPD ¶ 369 at 5-6. In other words, a protester must show that the differences in evaluation did not stem from differences between the proposals in order to establish disparate treatment. *IndraSoft, Inc.*, B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10; *Paragon Sys., Inc.; SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9.

The TET assigned Obsidian’s proposal a strength for its transition plan and summarized the basis for the strength as follows: “By employing current G/TIMS staff, the offeror minimizes the need for a lengthy transition from the current contractor and increases the likelihood to immediately perform at a high level with no disruption to the G/TIMS mission.” AR, Tab 29b, Obsidian TET Report Operations Management at 2. In its proposal, Obsidian stated that it employs [DELETED] percent of the current G/TIMS staff, including approximately [DELETED] percent of the onsite staff, [DELETED] percent of the U.S. Army Aviation Center for Excellence staff, and [DELETED] percent of the central product support desk staff. AR, Tab 43, Obsidian Technical Proposal Excerpt at 4. Obsidian proposed to provide a “Rapid, low risk transition of crucial customer and onsite support” and have critical personnel in place on the first day of performance. *Id.* The TET found this aspect of Obsidian’s proposal was beneficial because the specific staffing areas identified in Obsidian’s proposal require immediate support during the transition period. AR, Tab 42, Decl. of TET Lead at 4.

The protester contends that “ATS proposed an even more seamless transition,” and points to generalized statements from its proposal regarding the experience of its personnel. Comments & Supp. Protest at 7-8 (*quoting* AR, Tab 10b, ATS Technical Proposal at 23). ATS also points to the section of its proposal where it identified the incumbent prime contractor as its subcontractor and stated this teaming arrangement would provide the agency with “Current staff with G/TIMS knowledge and Flying Training expertise” and “No impact on G/TIMS mission from transition, knowledge ramp up, and staff retention risks.” Comments & Supp. Protest at 8 (*quoting* AR, Tab 10b, ATS Technical Proposal at 6). The agency states that the TET did not assign a strength to ATS’s proposal for its transition plan because ATS did not propose to retain incumbent personnel in the same areas that Obsidian proposed, and the protester did not provide specific, quantitative information concerning the incumbent personnel who would transition to the new task order. AR, Tab 42, Decl. of TET Lead at 4.

ATS’s allegation of unequal treatment concerning the evaluation of the offerors’ transition plans fails. The record reveals that ATS’s proposal did not contain the same features as the awardee’s. ATS did not propose to retain incumbent personnel in the same areas, and it did not specify the number of incumbent personnel who would transition to the new task order. This protest ground is denied.

Past Performance Evaluation

ATS argues that the agency’s evaluation of Obsidian’s proposal under the past performance factor was unreasonable because the Air Force failed to consider adverse past performance information concerning Obsidian’s proposed subcontractor, DSA. Protest at 40. Specifically, ATS contends that there were “a host of performance problems” when DSA was the prime contractor on a predecessor contract. Comments & Supp. Protest at 24-25. The protester relies on a declaration provided by an employee of its proposed subcontractor, Segue, to support its allegations.¹⁵ The Air Force responds that the recent and relevant performance record it reviewed when evaluating Obsidian’s and DSA’s past performance did not identify any negative past performance information for DSA. MOL at 42-43.

An agency’s evaluation of past performance, including its 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 agency’s assessments are unreasonable or inconsistent with the solicitation criteria. *Metropolitan Interpreters & Translators, Inc.*, B-415080.7, B-415080.8, May 14, 2019, 2019 CPD ¶ 181 at 10. A protester’s disagreement with the agency’s judgment does not establish that an evaluation was

¹⁵ As noted above, ATS’s proposed subcontractor, Segue, is the prime contractor on the incumbent contract, where DSA is a subcontractor. Protest at 5; COS at 29. DSA was the prime contractor on a predecessor contract, after completion of which, Segue commenced performance. Protest, exh. U, Decl. of Segue Employee at 1-2.

unreasonable. *CrowderGulf, LLC et. al*, B-418693.9 *et al.*, Mar. 25, 2022, 2022 CPD ¶ 90 at 20.

The record shows that Obsidian submitted three past performance references, and the ratings in the CPARS reports for those contracts ranged from satisfactory to very good. AR, Tab 14a, Obsidian Past Performance Evaluation at 2. The agency also reviewed all available CPARS reports for Obsidian's and DSA's other contracts, and the ratings in those CPARS reports ranged from satisfactory to exceptional. COS at 29; AR, Tab 21, DSA CPARS Reports. Based on this information, the agency assigned Obsidian's proposal a rating of substantial confidence under the past performance factor. Tab 14a, Obsidian Past Performance Evaluation at 2.

The protester maintains that the agency was in the possession of adverse past performance information, *i.e.*, the declaration provided by ATS's subcontractor. Protest at 50. The protester also argues that information concerning DSA's performance problems "would indisputably be included in the Government's administrative records relating to the G/TIMS program" and was "too close at hand" to ignore. Comments & Supp. Protest at 24. The agency states that none of the shortcomings alleged in the protester's subcontractor's declaration are documented in CPARS reports, past performance summary sheets, or any other official government database. MOL at 43; COS at 29-30. The agency notes that the draft CPARS report for the predecessor contract recommended DSA for similar requirements. MOL at 44. Additionally, with regard to ATS's too-close-at-hand argument, the Air Force states that the predecessor contract was managed by a different agency, and none of the current evaluators had any involvement with the predecessor contract. *Id.*

In certain limited circumstances, an agency has an obligation to consider information bearing on the offeror's past performance when it is "too close at hand" to require offerors to shoulder the inequities that spring from an agency's failure to obtain and consider the information. *See, e.g., Affordable Eng'g. Servs., Inc.*, B-407180.4 *et al.*, Aug. 21, 2015, 2015 CPD ¶ 334 at 13. Our Office has generally limited application of this principle to situations where the allegedly "too close at hand" information relates to past performance under contracts for the same services with the same procuring activity, or information personally known to the evaluators. *Thoma-Sea Marine Constructors, LLC*, B-416240, B-416240.2, July 16, 2018, 2018 CPD ¶ 245 at 8; *Orbital Scis. Corp.*, B-414603, B-414603.2, July 26, 2017, 2017 CPD ¶ 249 at 10.

The protester's argument is unavailing. As an initial matter, the only evidence of DSA's purported performance problems is a self-serving declaration provided by the protester. The Air Force states that it searched government databases and found no corroborating evidence. COS at 30-31. Instead, the draft CPARS report for the predecessor contract recommended DSA for similar requirements. MOL at 44. In any event, even were we to assume that there are administrative records documenting DSA's alleged performance problems on the predecessor contract, ATS has not met the "close at hand" standard. The predecessor contract was managed by a different agency, and the

evaluation team had no knowledge of DSA's performance of that contract. MOL at 44; see *also* COS at 31. The protester's challenge of the agency's past performance evaluation is denied.

The protest is denied.

Edda Emmanuelli Perez
General Counsel