GAO U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Chenega Base & Logistics Services, LLC; Department of the Army—Reconsideration

File: B-421451.5; B-421451.6

Date: December 14, 2023

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Michael Willems, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Request for modification of a sustain recommendation is dismissed where it is premature because it anticipates improper agency action.

2. Request for reconsideration of decision sustaining a protest of the agency's evaluation is denied where the request provides no basis for reconsidering the decision.

DECISION

Chenega Base & Logistics Services, LLC, and the Department of the Army request reconsideration of our decision sustaining a protest filed by Chugach Logistics and Facility Services JV, LLC, against the award of a contract to Chenega under request for proposals (RFP) No. W912CN22R0013 issued by the Department of the Army for base operation and maintenance services. Chenega requests that we modify the recommendation made in our earlier decision, while the Army contends that our decision contains errors of fact and law that warrant reconsideration of that decision,

We dismiss Chenega's request for reconsideration and deny the agency's request for reconsideration.

BACKGROUND

On June 13, 2022, the Army issued the RFP to procure commercial base operation and maintenance services at Fort Wainwright in Fairbanks, Alaska. Agency Report (AR), Tab 3a, RFP at 1; AR, Tab 3r, RFP, amend. 2 at 24. Examples of the services to be provided include: solid waste management; grounds maintenance; snow removal; heating and cooling maintenance; and pest management. AR, Tab 3b, RFP, annex A. Overarching Performance Work Statement (PWS) at 46.

The RFP contemplated the award of a hybrid fixed-price and time-and-materials, indefinite-delivery, indefinite-quantity contract to be performed over a 60-day phase-in period, a 10-month base period, four 12-month option periods, and one 6-month extension period. RFP, amend. 2 at 10-24; AR, Tab 2, Contracting Officer's Statement (COS) at 2. Award would be made on a best-value tradeoff basis considering technical, past performance, property management plan, and price factors. RFP, amend. 2 at 37. When combined, the non-price factors were equal in importance to price. *Id.*

The technical factor included two subfactors, technical approach and management approach. RFP, amend. 2 at 38-39. The management approach subfactor consisted of two elements: (1) program management and staffing; and (2) key personnel. *Id.* at 39. When evaluating the technical factor, the RFP advised that the agency would evaluate both the proposed approach and the related risk of unsuccessful performance, and thereafter assign combined technical/risk ratings. RFP, amend. 2 at 37-38. The RFP provided the following color/adjectival rating combinations: blue/outstanding; purple/good; green/acceptable; yellow/marginal; and, red/unacceptable. *Id.* Relevant here, the solicitation explained that a blue/outstanding rating would be assigned for a proposal that "indicates an exceptional approach and understanding of the requirements and contains multiple strengths, and risk of unsuccessful performance is low." *Id.* By contrast the solicitation provided that a purple/good rating would be assigned when a proposal "indicates a thorough approach and understanding of the requirements and contains at least one strength, and risk of unsuccessful performance is low to moderate." *Id.*

For the past performance factor, the RFP advised that the agency would assess each offeror's quality of performance for recent and relevant contracts. RFP, amend. 2 at 39. Based on this assessment, the agency would assign an overall performance confidence assessment rating. *Id.* at 40.

Prior to the August 9, 2022, close of the solicitation period, three offerors, including Chugach and Chenega, submitted proposals. COS at 2. The agency's evaluation produced the following relevant results:

	Chugach	Chenega
Technical	Purple/Good	Purple/Good
Technical Approach	Blue/Outstanding	Purple/Good
Management Approach	Purple/Good	Purple/Good
Past Performance	Satisfactory Confidence	Satisfactory Confidence
Property Management	Outstanding	Good
Total Evaluated Price	$128,518,144	$121,448,537

AR, Tab 6f, Source Selection Decision Document (SSDD) at 12. After conducting the tradeoff analysis, the source selection authority (SSA) determined that Chenega's proposal represented the best value. *Id.* at 12-13. Of note, the SSA explained that, while both offerors had the same adjectival rating for management approach and past performance, Chenega's proposal had substantive advantages in both of those factors over Chugach's proposal that the SSA found to be discriminators between the proposals. *Id.* As a result, while Chugach offered a higher-rated technical approach and property management plan, those advantages were offset by Chenega's advantages, and the SSA concluded that any unique advantages Chugach's proposal offered were not worth the $7.1 million (5.82 percent) price premium. *Id.*

Chugach filed a protest and a supplemental protest with our Office alleging, in relevant part, that the agency unreasonably evaluated its technical approach, management plan, and its past performance. Protest at 21-32; Comments and Supp. Protest at 20-31. Our decision resolving the protest sustained the protest on two grounds: first, that the agency's assignment of risk to Chugach's management plan was inadequately documented and therefore unreasonable, and second, that the agency's evaluation of the relevance of one of Chugach's past performance references (the Fort Greely contract) was unreasonable and inadequately documented. *Chugach Logistics and Facility Services JV, LLC*, B-421451.3, B-421451.4, Sept. 8, 2023, 2023 CPD ¶ __. Our decision also specifically denied allegations that the agency should have assigned additional strengths to Chugach's management approach, and otherwise explained that the balance of the protester's allegations provided no basis on which to sustain the protest. *See Id.* at 8.

Our decision recommended that the agency reevaluate Chugach's proposal under the technical and past performance factors consistent with our decision. *Id.* at 13-14. Specifically, we recommended that the agency should reevaluate its assignment of risk to Chugach's management approach and document its reasons for the assignment of any risk, as well as reevaluating the relevance of the Fort Greely contract. *Id.* The requests for reconsideration followed.

DISCUSSION

The two requests for reconsideration are different in scope, so we will address them separately. Chenega requests modification of our recommended remedy. Chenega Req. for Recon. at 1-2. Specifically, Chenega notes that, to the extent the agency failed to adequately document the risk assigned to Chugach's proposal, the agency's evaluation of Chenega's proposal contained the same flaws. *Id.* Accordingly, were the agency to follow our recommendation strictly, and only reevaluate Chugach, such corrective action would unfairly work to the competitive prejudice of Chenega. *Id.* Accordingly, Chenega asks that we modify our recommendation to encompass a reevaluation of all proposals, not just Chugach's proposal, consistent with our decision. *Id.*

By contrast, the agency requests reconsideration of our decision to sustain the protest on several grounds. *See* Army Req. for Recon. at 1-33. First, the agency contends that our decision contains both errors of law and fact concerning the substance of the agency's evaluation of Chugach's management approach, and errors of fact concerning the evaluation of past performance. *Id.* Further the agency argues that our assessment of competitive prejudice was also flawed. *Id.* at 33-40.

To prevail on a request for reconsideration, the requesting party either must show that our decision contains errors of fact or law, or present information not previously considered, and which could not have been provided during the original protest, that warrants the decision's reversal or modification. 4 C.F.R. § 21.14(a) (2011); *Department of Veterans Affairs--Recon.*, B-405771.2, Feb. 15, 2012, 2012 CPD ¶ 73 at 3. The requests in this case do not meet this standard.

Chenega's Request

Chenega's request for reconsideration seeks modification of the recommendation in our original decision. *See* Chenega Req. for Recon. at 1-2. Specifically, our decision recommended that the agency reevaluate Chugach's proposal consistent with our decision and make a new selection decision. *Chugach Logistics and Facility Services JV, LLC*, *supra*, at 13-14. Chenega contends that our Office's findings concerning the inadequacy of the agency's risk evaluation of Chugach's proposal apply with equal force to the agency's evaluation of Chenega's proposal. Chenega Req. for Recon. at 1-2. As a result, if the agency were to follow our recommendation and solely reevaluate Chugach's proposal it would result in an unfair outcome and competitive prejudice for Chenega. *Id.*

Because any concerns that Chenega may have had with respect to its own evaluation were not before us, our decision did not assess whether the agency also erred in evaluating Chenega's proposal, so we have no basis on which to opine on the substance of Chenega's claims. However, even assuming that Chenega is correct, we would decline to modify our recommendation for two primary reasons. First, while our decision only specifically recommended that the agency reevaluate Chugach's proposal, our recommendation should not be understood as prohibiting the agency from doing more than we recommended. *Chugach Logistics and Facility Services JV, LLC*, *supra*, at 13-14. In general, the details of implementing corrective action are within the sound discretion and judgment of the contracting agency, and our Office will not object to any particular corrective action, so long as it is appropriate to remedy the concerns that caused the agency to take corrective action. *DGC Int'l*, B-410364.2, Nov. 26, 2014, 2014 CPD ¶ 343 at 3; *Northrop Grumman Info. Tech., Inc.*, B-404263.6, Mar. 1, 2011, 2011 CPD ¶ 65 at 3. That is to say, our recommendation in this case is a recommended minimum, and does not preclude the agency from taking other reasonable and appropriate corrective measures, and our recommendation would be entirely consistent with the agency choosing to reevaluate other proposals in line with the reasoning in our decision.

Second, Chenega's complaint is, in effect, premature and merely anticipates improper agency action. If Chenega is correct that the agency's evaluation of Chenega's proposal includes the same flaw identified in our decision, then the agency may well choose to address that issue as part of its corrective action. If the agency unreasonably declines to do so, Chenega is free to file a protest at the time that becomes apparent, consistent with our Bid Protest Regulations. 4 C.F.R. § 21.2. For these reasons, Chenega's request for reconsideration is dismissed as premature.

The Army's Request

The Army raises several arguments concerning our decision's analysis, alleging errors of fact concerning both grounds on which we sustained Chugach's protest as well as errors of law concerning one of the grounds. *See* Army Req. for Recon. at 1-33. Additionally, the agency argues that even if our decision were correct concerning our substantive findings, we erred by concluding that there was a reasonable possibility of competitive prejudice. *Id.* at 33-40. We address these allegations separately.

Errors of Fact Concerning Management Approach

The agency's allegations of factual error in our analysis of the management approach subfactor focus on two primary points. *Id.* at 9-17. Specifically, the agency contends that our decision ignored the actual rationale outlined by the SSA in the award decision, and erroneously suggested that the agency solely downgraded Chugach's proposal because of risk when the agency also considered Chugach's proposed approach. *Id.*

First, the agency contends that our decision did not engage with the full scope of the SSA's reasoning in comparing the offerors. *Id.* Specifically, the SSA concluded that Chenega's management approach was superior to Chugach's management approach because "Chenega proposed the stronger management approach and presented slightly less risk (the Project Manager on the prior [base operation support services] effort is proposed as key personnel on this effort as Assistant Transition Manager) and was the only Offeror with a Past Performance Information (PPI) relevancy rating of 'Very Relevant.'" *Id.* at 14 (*citing* AR, tab 6f, SSDD at 10). However, the agency notes that our decision did not discuss the second half of this sentence in which the SSA explained his reasoning, instead only quoting the initial portion of the sentence ("Chenega proposed the stronger management approach and presented slightly less risk") as part of our conclusion that the agency's assessment of risk to Chugach was unreasonable. *See Chugach Logistics and Facility Services JV, LLC*, *supra*, at 7. The agency contends that our decision erred by ignoring the actual rationale articulated by the SSA. *See* Army Req. for Recon. at 12-15.

We do not agree. Preliminarily, it is important to consider the quotation in context. Specifically, our decision quoted the relevant language in the context of assessing competitive prejudice related to our finding that the agency failed to adequately document its assignment of risk to Chugach's management approach proposal. *See Chugach Logistics and Facility Services JV, LLC*, *supra*, at 7. In this regard, the agency has not identified--either during the protest or in its request for reconsideration--any portion of the evaluation that specifically explains what risk the agency identified in Chugach's management approach proposal. In this context, our decision explained that this undocumented finding prejudiced Chugach because the SSA concluded that the level of risk posed by the offerors' management approaches was a significant distinguisher between the two proposals. *Id.*

Against that backdrop, while the agency is correct that our decision did not quote the identified section of the award decision in full, the remainder of the sentence is simply not relevant to the portion of our decision in which the quotation occurs. The agency is correct that the award decision identified two features of Chenega's proposal that the SSA believed rendered Chenega's proposal lower risk than Chugach's. However, neither the unquoted portion of the award decision nor any other portion of the evaluation record explained the agency's basis for determining what level of risk, if any, existed in Chugach's management approach proposal.[1]

Because it is entirely unclear in the evaluation record how the agency arrived at its baseline assessment of risk in Chugach's proposal, any comparison between the risk levels of the two proposals is necessarily vitiated. Put another way, the fact that the unquoted language explains that the agency found features of Chenega's proposal that lowered Chenega's risk is beside the point--it is impossible to say Chenega's risk is lower than Chugach's risk where, as here, the agency's record lacks a reasonable basis for comparison. In sum, while we understand the agency's concern that our decision did not discuss the omitted portion of the SSA's analysis, the relevant portion of our

[1] We note that, subsequent to our decision in this case, we considered a very similar protest allegation challenging a finding of low to moderate risk under similar evaluation criteria in *Gemini Tech Services, LLC*, B-421911; B-421911.2, Nov. 22, 2023, 2023 CPD ¶ 267 at 7-8. In contrast to the facts in this case, in *Gemini* we saw no basis to sustain the protest in large part because the contemporaneous evaluation record specifically linked the agency's risk assessment to concrete features of the protester's proposal. *Id.*

decision does not contain a factual error, but instead omitted information that was not directly relevant to the point being made.

Similarly, the agency objects that our decision concluded that the agency "downgraded Chugach's technical proposal solely because the firm's management approach demonstrated some level of risk that was above 'low,'" when, in fact, the record suggests that Chugach's "good" rating for its management approach was primarily a result of its assessed strengths, not merely its risk level. Army Req. for Recon. at 15-17 (*citing Chugach Logistics and Facility Services JV, LLC*, *supra*, at 5). Specifically, the agency notes that, in order to receive an outstanding rating for its management approach, Chugach needed multiple strengths, but Chugach only received one strength. *Id.* Moreover, our decision specifically rejected Chugach's allegations that it deserved additional strengths. *Id.* Additionally, the agency contends that characterizing a "good" rating as a downgrade is inappropriate as no offeror is entitled to the highest possible rating. *Id.* As a result, the agency notes that our decision's conclusion that Chugach was downgraded solely because of risk was clear error. *Id.*

While the agency is correct that the RFP defined the adjectival ratings in such a way that Chugach would have needed to receive multiple strengths to be eligible for an outstanding rating for any subfactor, the agency misreads our decision. The paragraph in question is not discussing the agency's decision to assign a "good" rating for the management approach subfactor, but rather the agency's decision to assign an overall "good" rating for the overarching technical factor, which combined both the technical approach and management approach subfactors. *See Chugach Logistics and Facility Services JV, LLC*, *supra*, at 5 (*e.g.* the paragraph in question begins "[r]elying on its assessment of both subfactors, the Army assigned a 'good' overall rating to Chugach's technical proposal.")

In this regard, we note that while Chugach only received a single strength for its management approach subfactor proposal, Chugach's technical subfactor proposal received one significant strength and seven strengths, so Chugach's overall combined technical factor rating was not limited by the number of assigned strengths. AR, Tab 6f, SSDD at 4-5. Indeed, Chugach received an outstanding rating for its technical approach subfactor proposal, alongside the good rating for its management approach subfactor proposal. *Id.* Significantly, our decision goes on to explain that the SSDD focuses on the risk presented by Chugach's management approach proposal in explaining why Chugach did not receive an outstanding rating for the overall technical approach factor.[2] *Chugach Logistics and Facility Services JV, LLC, supra*, at 5.

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[2] The agency argues that the award decision explains that Chugach could not receive an overall outstanding rating because it would conflict with the definition of outstanding as it relates to both "risk and approach." *See* AR, Tab 6f, SSDD at 5. The agency contends that this passing reference to Chugach's technical approach demonstrates that the agency considered strengths and Chugach's overall approach as well as risk when assigning the overall good rating. Army Req. for Recon. at 15-17. However, the (continued...)

In short, the sentence to which the agency objects refers to the agency's decision to assign Chugach an overall rating of "good" rather than "outstanding," when Chugach's technical approach received a rating of outstanding for one subfactor and a rating of good for the other subfactor. The contemporaneous record fully supports our conclusion that the agency chose "good" rather than "outstanding" for the overall rating due to perceived risk in Chugach's management approach, and not due to an insufficient number of strengths. AR, Tab 6f, SSDD at 5. While the agency bristles at our characterization of that decision as a downgrade, we see no basis to conclude that the phrase is inappropriate in a context where the agency must choose between two ratings assigned to Chugach's proposal and chose the lower of those two ratings. In short, the sentence is not erroneous in the way the agency suggests, and this argument provides no basis to reconsider our decision.

Errors of Fact Concerning Past Performance

Next, the agency notes that our decision disregarded a post-protest statement offered to explain Chugach's past performance ratings. Army Req. for Recon. at 17-21. The agency argues that our decision to disregard the Army's post protest statement concerning past performance as an improper *post hoc* explanation was premised on factual errors. *Id.* In this regard, the agency contends that it offered the statement in response to a supplemental protest allegation of disparate treatment, and the agency contends that our decision inappropriately ignored that context. *Id.* Further, the agency asserts that the contracting officer's post-protest statement was entirely consistent with the contemporaneous record and should have been considered. *Id.* But for these errors, the agency argues, our decision would not have sustained this protest ground. *Id.*

We do not agree that our decision erred in declining to consider the post-protest statement. To provide context, while the agency is correct that Chugach advanced a limited disparate treatment argument with respect to past performance, Chugach's

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award decision does not substantively discuss Chugach's technical or management approach strengths as part of assigning the overall rating, merely noting that Chugach proposed an exceptional approach for one subfactor and a thorough approach to the other subfactor. AR, Tab 6f, SSDD at 5. Moreover, there is no substantive comparison or weighing of Chugach's approach to the subfactors, or any discussion of why the overall technical approach should be considered thorough rather than exceptional. *Id.* Indeed, the only discussion of Chugach's overall technical approach is a conclusory statement that it is "thorough," without explanation. *Id.* ("The plans and information contained in the Chugach proposal are consistent with what the RFP requested; and resulted in a thorough approach to meeting the requirements of the RFP"). As our decision correctly explained, the only substantive explanation of the agency's overall technical rating in the award decision is framed entirely in terms of comparative risk. *Id.* ("In summary, to arrive at the overall adjectival rating, the 'low to moderate' risk assessed for sub-factor B is not overcome by the 'low' risk assessed for sub-factor A.")

supplemental protest grounds were overwhelmingly concerned with rebutting the agency's contemporaneous evaluation of Chugach's proposal. *Compare* Comments and Supp. Protest at 21-29 (providing an extensive, substantive critique of the agency's evaluation findings concerning Chugach) with 29-31 (briefly alleging disparate treatment). Of note, the contemporaneous record explained that Chugach's Fort Greely contract was not rated as very relevant because an offeror was required to meet three of four criteria, but the Fort Greely contract met only two of the four criteria. AR, Tab 6c, Chugach Past Performance Evaluation Report at 3-4. Specifically, the contract did not meet the other two criteria because it: (1) did not involve performing all the same kinds of work as the instant effort, such as refuse collection services, maintenance of unpaved surfaces, repair of paved and unpaved surfaces, or maintaining a wastewater treatment and collection system; and (2) did not involve snow removal services of the same scope and complexity. *Id.*

Chugach responded by explaining in detail that the Fort Greely contract did, in fact, involve performing all the same kinds of services as the current effort, and therefore met at least three of the four criteria and qualified for a rating of very relevant. Comments and Supp. Protest at 21-29. The agency's supplemental report acknowledged that this section of Chugach's comments and supplemental protest were identified as supplemental protest grounds. *See* Supp. Memorandum of Law (MOL) at 21 (noting that the protester designated the entire section concerning past performance as a supplemental protest). However, the agency did not directly rebut Chugach's substantive allegations about the contemporaneous evaluation, instead explaining that the SSA performed a previously undocumented independent evaluation that concluded the Fort Greely contract was not very relevant, because it was a contract covering a much smaller area and number of buildings and was generally not similar in scope and complexity to the current effort. *See* Supp. MOL at 21-26.

Preliminarily, it is not at all clear from the supplemental MOL that the post-protest statement was solely offered in response to Chugach's disparate treatment arguments, as the agency suggests. Rather, the supplemental MOL suggests that it was offered in response to the entirety of the Chugach's supplemental past performance arguments. *See* Supp. MOL at 21. However, even taking the agency at its word that the statement was offered only in response to the disparate treatment argument, it is unclear how that helps the agency's position, as in that case the agency simply did not respond to Chugach's voluminous allegations about the contemporaneous evaluation findings.

That is to say, the supplemental agency report offers an alternative post-protest explanation for the rating of relevant, but did not respond to the protester's critique of the substance of the agency's actual contemporaneous evaluation. Our decision concluded that the agency effectively failed to respond to the protester's critique of the contemporaneous evaluation, and that conclusion would remain true even had we considered the post-protest statement, which offers an entirely distinct rationale for the rating. *Chugach Logistics and Facility Services JV, LLC*, *supra*, at 10-12. In short, regardless of what allegations the post-protest statement was responding to, our decision was correct that it did not substantively respond to the protester's allegations concerning the contemporaneous evaluation.

Further, while the agency argues that we should have considered the post-protest statement because it merely explained previously unrecorded information and was consistent with the contemporaneous record, it is unclear in what sense it is consistent with the contemporaneous record. The Army does not, either in its original protest filings or in its request for reconsideration, explain how its post-protest statement is meaningfully consistent with the contemporaneous evaluation record.

The award decision does not discuss Chugach's Fort Greely contract, instead concluding with a comparative assessment that "Chenega has provided much of the exact same services as prescribed in the [PWS] during a previous contract effort[,] [f]or that reason, Chenega is assessed as slightly better than Chugach in regards to past performance." AR, Tab 6f, SSDD at 9. The only substantive discussion of the evaluation of the Fort Greely contract is found in the consensus evaluation, which concludes that the Fort Greely contract was not very relevant because the contract met only two criteria, rather than three, in part because the contract did not involve all the same types of work, not because the contract did not involve performing tasks of the same magnitude or complexity.[3] *See* AR, Tab 6c, Chugach Past Performance Evaluation Report at 3-4. That is to say, the post protest statement is inconsistent with a significant portion of the contemporaneous evaluation of the protester's proposal, as our decision correctly concluded.

Further, while the agency is correct that the award decision explains that the SSA relied on the underlying evaluation but also conducted an independent assessment of the proposals, the award decision does not explain the contours of that assessment with respect to this issue, and crucially did not reject or document a departure from the evaluator's findings. *See, e.g.,* AR, Tab 6f, SSDD at 7. In this regard, even if we read the facts in the light most favorable to the agency and assume that the SSA conducted a previously unrecorded independent evaluation that reached a different conclusion from the evaluators concerning the reason for rating the Fort Greely contract as relevant, an SSA must generally adequately document disagreement with the judgments of lower-level evaluators. *Cf. The Arcanum Grp., Inc.*, B-413682.2,

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[3] We note that the contemporaneous evaluation does explain that the Fort Greely contract involved snow removal services that were not of the same scope and complexity as the current effort. *See* AR, Tab 6c, Chugach Past Performance Evaluation Report at 3-4. However, the RFP explained that snow removal services were a separate evaluation criterion from the task similarity criterion discussed above, and the contract need only meet three of the four criteria to be considered very relevant. *See* RFP at 40. Accordingly, while the SSA's subsequent declaration may be consistent with the contemporaneous evaluation concerning snow removal services, it remains inconsistent with the contemporaneous evaluation concerning whether Chugach performed all the same types of services, which is enough to put the adjectival rating in question.

B-413682.3, Mar. 29, 2017, 2017 CPD ¶ 270 at 8; *IBM U.S. Fed., a division of IBM Corp.; Presidio Networked Solutions, Inc.*, B-409806 *et al.*, Aug. 15, 2014, 2014 CPD ¶ 241 at 14. In this case, the only documentation of that disagreement was offered *post hoc*, in the heat of litigation. We are unpersuaded that it was error to disregard such a declaration.

In short, Chugach challenged specific findings in the contemporaneous evaluation, and the agency failed to respond substantively to those challenges, instead offering a different post-protest rationale that was inconsistent with a key part of the contemporaneous analysis. Accordingly, we concluded that the agency's evaluation was either unreasonable or inadequately documented. As our decision noted, the agency's post-protest alternative assessment may ultimately prove to be a reasonable basis for concluding the Fort Greely contract is not appropriately rated as very relevant, but that rationale is emphatically not the basis advanced in the contemporaneous evaluation.

Errors of Law

Turning to the agency's arguments concerning errors of law, the core of the agency's argument is that our decision cited two older GAO decisions that in turn relied on Federal Acquisition Regulation (FAR) provisions that have been substantially revised since those cases were decided. Army Req. to Recon. at 21-22 (*citing Amtec Corp.*, B-240647, Dec. 12, 1990, 90-2 CPD ¶ 482 at 8 and *Eng'g & Computation, Inc.*, B-261658, Oct. 16, 1995, 95-2 CPD ¶ 176 at 5). The agency contends that these changes in the underlying FAR provisions render those decisions inapposite, because the revised FAR provisions, among other things, direct the SSA to rely on their independent business judgment in preference to rote reliance on lower-level technical analysis. *Id.* at 22-29. The agency contends that, had our decision considered more recent decisions that rely on the more permissive current FAR provisions, our decision would have reached a different conclusion. *Id.*

While the agency is correct that the underlying FAR provisions relied on by those older decisions have been revised, we did not cite those decisions for their interpretation of outdated FAR provisions. Rather, we cited them following a "cf." textual signal, indicating that they were offered by way of analogy, in support of the general proposition that an agency's evaluation findings concerning an offeror's proposal must be documented and appropriately grounded in that offeror's proposal. *Chugach Logistics and Facility Services JV, LLC*, *supra*, at 6. That proposition is entirely consistent with the current language of the FAR, and, moreover, is a long-standing principal that is well-attested in our more recent decisions. *See* FAR 15.308 ("The source selection decision shall be documented, and the documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs."); *see also AT&T Corp.*, B-421195, B-421195.2, Jan. 17, 2023, 2023 CPD ¶ 26 at 5-6; *Tech Marine Bus., Inc.*, B-420872 *et al.*, Oct. 14, 2022, 2022 CPD ¶ 260 at 6.

That is to say, while our older decisions cited to portions of the FAR that have been revised, the proposition for which we were citing the decisions by way of analogy has not meaningfully changed.[4] Indeed, the agency acknowledges that "some overarching principles remain" from those older decisions, and our citation was intended to illustrate precisely those surviving principles. *See* Army Req. for Recon. at 27. Accordingly, we see no basis to conclude that our decision contained an error of law that would merit reversal of our decision.

Competitive Prejudice

Finally, we turn to the question of competitive prejudice. The agency argues that, even if our decision was ultimately correct concerning the errors in the evaluation, there is no reasonable possibility of competitive prejudice to Chugach on the facts of this case. *Id.* at 33-39. Specifically, the agency notes with respect to the management approach subfactor that Chugach is ineligible for any rating higher than "good" because the protester only received one strength and the RFP defined an "outstanding" rating as requiring two or more strengths. *Id.* Therefore, reevaluating the risk of Chugach's management approach cannot change Chugach's adjectival rating.

Similarly, the agency contends that the SSA found Chenega's past performance to be superior to Chugach's primarily because Chenega performed well on the incumbent contract. *Id.* Regardless of whether Chugach's Fort Greely contract was rated as relevant or very relevant, Chenega's incumbent experience will remain a meaningful distinction between the proposals. *Id.* Finally, the agency notes that the RFP provided that price was equal in importance to all non-price factors and was therefore the most important evaluation factor. *See* Army Req. for Recon. at 33-39. Chenega enjoyed a significant $7.1 million (5.82 percent) price advantage, which our decision allegedly did not consider, and which also would not be altered by the reevaluation recommended by our decision. *Id.* For all of these reasons, the agency argues that our decision erred by finding that Chugach established a reasonable possibility of competitive prejudice. *Id.*

First, concerning the management approach subfactor evaluation, it is not the case that there is no possibility for Chugach's adjectival ratings to improve, nor would such a possibility even be necessary to establish competitive prejudice in this case. Here, Chenega received ratings of good for both technical subfactors and an overall rating of

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[4] We note that the agency also attempts, at length, to distinguish the two cases cited by contrasting their facts with those present in this case. Army Req. for Recon. at 29-32. While we do not agree that the facts are meaningfully distinguishable, we note, in any case, that the decisions were offered by way of general support for the proposition that an agency's assessment of risk to a proposal must be supported by adequate documentation. *Chugach Logistics and Facility Services JV, LLC*, *supra*, at 6. As discussed at length above, our decision did not err in concluding that the Army's findings of risk were inadequately documented and therefore unreasonable. Therefore, any minor factual distinctions between the older decisions and this case are not relevant to the outcome of our decision.

good. AR, Tab 6f, SSDD at 12. By contrast, Chugach received a rating of outstanding for one subfactor, a rating of good for the other subfactor, and an overall rating of good. *Id.* While the agency is correct that Chugach's management approach subfactor rating could not improve beyond a good rating, as discussed at some length above, our decision noted that the agency's rationale for giving Chugach an overall good technical rating was focused on an undocumented risk identified in Chugach's management approach. Therefore, if the agency reevaluates Chugach's management approach risk it is entirely possible that Chugach's overall technical rating could improve from good to outstanding consistent with the terms of the RFP.

But even setting that aside, Chugach need not establish that its adjectival rating could improve to establish competitive prejudice on these facts, because Chugach and Chenega received the same adjectival rating for the management approach subfactor. Our Office has consistently explained that evaluation ratings are merely guides for intelligent decision-making in the procurement process; the evaluation of proposals and consideration of their relative merit should be based upon a qualitative assessment of proposals consistent with the solicitation's evaluation scheme. *Highmark Medicare Servs., Inc., et al.*, B-401062.5 *et al.*, Oct. 29, 2010, 2010 CPD ¶ 285 at 19. Here, the agency concluded that while both offerors' management approaches were good, looking behind the rating, Chenega's management approach was, in effect, a better good. However, our decision concluded that the agency had no reasonable basis for the comparison because the baseline assessment of Chugach's risk was undocumented, and it is entirely possible that on reevaluation the agency might reach a different conclusion. Accordingly, even if Chugach's reevaluation results in no adjectival rating changes, it is nonetheless possible that the agency could reassess the offerors' competitive standing with respect to this subfactor.

Second, concerning past performance, while the agency is correct that Chenega will remain the incumbent regardless of the agency's reevaluation of Chugach's Fort Greely contract, it is not clear from the award decision that incumbency was the decisive factor. For example, as our decision noted, the award decision explained that Chenega was, among other things, the only Offeror that received a "very relevant" relevancy rating within the past performance volume, and also noted that Chugach "was assessed with a slightly higher amount of risk than Chenega, as Chugach did not demonstrate the same 'very relevant' experience as Chenega." AR, Tab 6f, SSDD at 7, 11. While the award decision does note that Chenega had an advantage because of its incumbent performance, the decision also repeatedly references Chenega's "very relevant" past performance in drawing a distinction between the offerors. *Id.* Therefore, because the reevaluation could result in Chugach's Fort Greely reference being rated as very relevant, there is a reasonable possibility that the agency may reach a different overall conclusion. While it is also possible that the agency may reasonably conclude after reevaluation that incumbent performance remains a meaningful distinguisher between the offerors, that is hardly a foregone conclusion on these facts.

Finally, we note that the overall competitive standing of the offerors here is complex. While Chenega did enjoy a meaningful price advantage, Chugach enjoyed a clear advantage on the technical subfactor and on the property management factor. *Id.* at 12. The agency's tradeoff decision turned, not solely on the price difference, but rather on the price difference in combination with Chenega's advantage on the management approach subfactor and past performance factor, both of which may change as a result of the reevaluation we recommended. *Id.* at 11.

It is entirely possible that the agency is correct that it will ultimately reach the same source selection decision following its corrective action but given the gaps in the evaluation record and the comparative closeness of the evaluation, we cannot say that our decision erred in concluding that there was a reasonable possibility of competitive prejudice on these facts. Indeed, our decisions have consistently concluded that we resolve doubts regarding prejudice in favor of the protester; a reasonable possibility of prejudice is sufficient to sustain a protest. *See Meridian Knowledge Solutions, LLC,* B-420150 *et al.*, Dec. 13, 2021, 2021 CPD ¶ 388 at 6-7; *Alutiiq-Banner Joint Venture,* B-412952 *et al.*, July 15, 2016, 2016 CPD ¶ 205 at 11; *Delfasco, LLC*, B-409514.3, March 2, 2015, 2016 CPD ¶ 192 at 7.

Accordingly, we see no basis to conclude that our decision contained a material error of fact or law concerning our finding that Chugach established a reasonable possibility of competitive prejudice.

The requests for reconsideration are dismissed and denied respectively.

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