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Decision

Matter of: CSlope Solutions, LLC

File: B-422249.2; B-422249.3; B-422249.4

Date: December 10, 2025

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Daniel J. Strouse, Esq., and Laurel Hockey, Esq., Cordatis Law LLP, for the intervenor, JCS Solutions, LLC.

Jonathan A. Hardage, Esq., and Alex M. Cahill, Esq., Department of the Army; and Tanner M. Hatch, Esq., Small Business Administration, for the agencies.

Jacob M. Talcott, Esq., Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of proposals is denied where the evaluation was reasonable and in accordance with the terms of the solicitation.

DECISION

CSlope Solutions, LLC, an 8(a) small business of Arlington, Virginia, protests the issuance of a task order to JCS Solutions, LLC, an 8(a) small business of Fairfax, Virginia, under request for proposals (RFP) No. W519TC-23-R-0111, issued by the Department of the Army, for services in support of the Arlington National Cemetery (ANC) customer care support center. The protester contends that the agency unreasonably evaluated proposals, resulting in a flawed source selection decision.

We deny the protest.

BACKGROUND

On November 3, 2023, the Army issued the solicitation under the General Services Administration's (GSA's) 8(a) Streamlined Technology Acquisition Resource for

Services III governmentwide acquisition contract.¹ Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 5-6. The solicitation, which was issued in accordance with FAR section 16.505, contemplates the issuance of a fixed-price task order with a 1-year base period (including a 30-day transition period) and four, 1-year option periods. *Id.* at 6. The initial due date for proposals was December 13, 2023. *Id.* at 7.

JCS's Protest of the Solicitation Terms

Prior to the due date for proposals, JCS filed a protest with our Office, challenging the terms of the solicitation. *Id.* Specifically, as relevant here, JCS argued that (1) the solicitation was unclear where it provided for the issuance of the task order on a best-value tradeoff basis and a lowest-price, technically acceptable (LPTA) basis, and (2) use of an LPTA source selection process violated the FAR and the Defense Federal Acquisition Regulation Supplement (DFARS). *Id.*

During the pendency of the protest, the agency informed our Office that it intended to take partial corrective action. *Id.* Specifically, the Army stated that it would amend the solicitation to remove any reference to a best-value tradeoff source selection process, as well as revise the solicitation to specify that only those proposals that received a rating of substantial confidence for past performance would be eligible for award. *Id.* Accordingly, the only remaining protest ground for our Office to resolve was the protester's argument that the solicitation improperly provided for an LPTA source selection process in violation of the FAR and DFARS.

Our Office denied the remaining protest ground. See *JCS Sol/s., LLC.*, B-422249.1, Mar. 13, 2024, 2024 CPD ¶ 71. We concluded that the source selection process did not qualify as an LPTA because the solicitation provided for a comparative assessment of past performance. *Id.* at 5 (explaining that the solicitation provided for the evaluation of past performance on a scale, which included possible ratings of no confidence, limited confidence, neutral confidence, satisfactory confidence, or substantial confidence).

The Amended Solicitation, Initial Task Order Award, and Subsequent Protest

The amended solicitation provided for the evaluation of proposals based on the following evaluation criteria: technical, past performance, and cost/price. Agency Report (AR), Tab 28, RFP at 4. The technical factor consisted of the following subfactors: management and staffing plan, and staffing/labor mix. *Id.* at 50-51. Under the management and staffing plan subfactor, the agency was to evaluate each offeror's

¹ Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for performance of those contracts through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) 19.800. This program is commonly referred to as the 8(a) program.

plan to determine whether it adequately detailed a realistic and feasible approach to delivering the required services. *Id.* at 50. Under the staffing/labor mix subfactor, the agency was to evaluate whether the proposed staffing solution was realistic and feasible for successful performance. *Id.* at 51. The solicitation provided that the technical factor would be rated as acceptable or unacceptable. *Id.* at 50.

Under the past performance factor, offerors were to submit three references for recent and relevant contracts or task orders performed within the last five years prior to the solicitation closing date. *Id.* at 51-52. As relevant here, the solicitation defined relevance as references similar in magnitude, scope, and complexity to the subject requirements. *Id.* at 51. The RFP provided that the agency would evaluate each offeror's references as very relevant, relevant, somewhat relevant, or not relevant. *Id.* at 51-52. The agency then would conduct a performance confidence assessment of each offeror's recent and relevant references, assigning an overall confidence rating of substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. *Id.* at 52. For price, the agency would evaluate whether the proposed price was fair and reasonable. *Id.*

The solicitation provided for a three-step evaluation scheme. *Id.* at 50. Under step one, the agency would evaluate the technical factor for the three lowest-priced proposals on an acceptable/unacceptable basis. *Id.* Under step two, the agency would conduct a past performance evaluation and price analysis for the three lowest-priced, technically acceptable proposals. *Id.* As noted above, in evaluating past performance, the agency would assign relevance and confidence ratings. *Id.* Under step three, the agency would issue the task order to the offeror that submitted the lowest-price, technically acceptable proposal with a past performance rating of substantial confidence. *Id.*

The agency received proposals from CSlope and JCS by the amended due date of February 12, 2024. COS/MOL at 8, 12. Prior to conducting its evaluation, the agency noted that the solicitation did not identify a metric for measuring the complexity of past performance references. *Id.* at 15. The agency opted to use annual call volume to measure the complexity because "the crux" of the required work for the task order involved the operation of a call center. *Id.* at 16. In this regard, the agency explains in response to the protest that while the proposals submitted by CSlope and JCS contained sufficient information for evaluating scope and magnitude, they did not contain sufficient information regarding annual call volume. *Id.* Accordingly, the agency issued requests for clarification to CSlope and JCS on August 30, 2024, and September 11, 2024, respectively. *Id.* at 16-17. Specifically, the agency requested information regarding annual call volume for each of the past performance referrals submitted. See AR, Tab 56, Clarification Email to CSlope at 1; COS/MOL at 16-17. Both CSlope and JCS submitted responses to the agency's request. See COS/MOL at 16-17.

After evaluating the proposals, the agency assigned CSlope's and JCS's proposals the following ratings:

	CSlope	JCS
Technical	Acceptable	Acceptable
Past Performance	Substantial Confidence	Substantial Confidence
Total Evaluated Price	\$11,312,588	\$16,968,086

AR, Tab 60, Initial Task Order Decision Document (TODD) at 6. Based on the evaluation results, the agency selected CSlope's proposal for receipt of the task order on September 30, 2024. *Id.* at 7. JCS filed a protest with our Office on October 28, 2024, challenging the agency's evaluation of proposals and source selection decision. COS/MOL at 13. Thereafter, the agency informed our Office that it intended to take corrective action. AR, Tab 62, Nov. 26 Notice of Corrective Action at 1-2. Specifically, the agency stated that it would reevaluate proposals and make a new source selection decision. *Id.* Our Office dismissed the protest as academic on December 2, 2024. *JCS Solutions, LLC*, B-423136, Dec. 2, 2024 (unpublished decision).

Reevaluation and Issuance of Task Order to JCS

The evaluation results following corrective action were largely unchanged, except that the agency assigned CSlope's proposal a past performance rating of satisfactory confidence instead of substantial confidence. AR, Tab 68, Corrective Action TODD at 9. The agency found that the contracting officer never reviewed the initial past performance report and the report was never finalized or signed. *Id.* Upon reevaluation, the agency revised its assessment of the relevance of the CSlope's past performance, which resulted in the change in the agency's confidence assessment rating for CSlope's past performance.

Specifically, in its initial evaluation of CSlope's past performance, the agency rated two of CSlope's references ratings as relevant and one as somewhat relevant; all three references were determined to be recent. AR, Tab 58, Initial Past Performance Report at 15. In conducting its reevaluation, the agency rated each of CSlope's three past performance references as recent and somewhat relevant. AR, Tab 67, CSlope Corrective Action Past Performance Report at 14-15. The agency based these results on its finding that CSlope's first past performance reference was significantly less than the ANC requirement in terms of magnitude, and the remaining two references were significantly less complex. See *id.* at 8-13. With regard to the first reference, the agency explained that the magnitude of the ANC requirement is approximately \$22.6 million with an average value of one year of performance around \$4.5 million. *Id.* at 9. In contrast, CSlope's first past performance reference had a total ceiling value of approximately \$8 million with an average value of one year performance around \$1.6 million. *Id.* Although the scope and complexity were essentially the same, the agency assigned this reference a rating of somewhat relevant, given the disparity in magnitude. *Id.* For the remaining two references, the agency noted that while both were similar to

the ANC requirement in terms of magnitude, they differed vastly in terms of complexity. *Id.* at 11-13. Specifically, the agency noted that these two references were significantly less complex than the ANC requirement because the annual call volume for these references was “significantly lower” than the call volume for the ANC requirement. *Id.* The agency therefore assigned CSlope’s past performance proposal an overall rating of satisfactory confidence. *Id.* at 15.

Following the reevaluation, the agency selected JCS’s proposal for receipt of the task order. AR, Tab 69, Corrective Action TODD at 10. The agency issued an unsuccessful offeror notice and debriefing to CSlope on June 27, 2025. AR, Tab 70, CSlope Unsuccessful Offeror Notice and Debriefing at 1-2. CSlope submitted debriefing questions on July 11, to which the agency responded on July 15. AR, Tab 73, CSlope Enhanced Debriefing Questions at 2; AR, Tab 74, Army Resp. to CSlope’s Enhanced Debriefing Questions at 1. This protest followed.²

DISCUSSION

CSlope raises numerous challenges to the agency’s past performance evaluation of its and JCS’s proposals. With regard to the evaluation of both offerors’ past performance, the protester contends that the agency’s evaluation was based on an unstated evaluation criterion by using call volume as the sole measure of complexity for past performance. Consolidated and Supp. Protest at 18. With regard to its own proposal, the protester argues that the agency unreasonably measured the magnitude of its past performance references by comparing it to an independent government cost estimate (IGCE) based on historical pricing for the ANC requirement. *Id.* at 16. CSlope also contends that the agency’s past performance rating of its proposal as satisfactory confidence was, in essence, a non-responsibility determination that the agency failed to refer to the SBA. *Id.* at 21. Finally, CSlope argues that the agency should have permitted offerors to submit revised proposals. *Id.* at 27. With regard to JCS’s proposal, CSlope challenges the agency’s rating of JCS’s past performance as substantial confidence and asserts that the agency engaged in disparate treatment. *Id.* at 28. The protester also contends that the agency failed to consider a purported misrepresentation of annual call volume by JCS in its proposal. Comments and 2nd Supp. Protest at 43. For the reasons discussed below, we find that none of these

² The value of this task order exceeds \$10 million. Accordingly, this protest is within our jurisdiction to resolve protests of task orders issued under the authority of title 41 of the United States Code. 41 U.S.C. § 4106(f)(1)(B); *Alliant Sols., LLC*, B-415994, B-415994.2, May 14, 2018, 2018 CPD ¶ 173 at 4 n.8. The authority under which we exercise our task order jurisdiction is determined by the agency that awarded the underlying indefinite-delivery, indefinite-quantity task order contract, which in this instance is GSA. *Alliant Sols., LLC*, *supra*.

arguments provide a basis to sustain the protest.³

In reviewing protests of an agency's evaluation and source selection decision, even in a task or delivery order competition as here, we do not reevaluate proposals; rather, we review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. See *Ball Aerospace & Techs. Corp.*, B-411359, B-411359.2, July 16, 2015, 2015 CPD ¶ 219 at 7. A protester's disagreement with the agency's judgment, by itself, is not sufficient to establish that an agency acted unreasonably. *Id.*

Unstated Evaluation Criterion

The protester argues that the agency applied an unstated evaluation criterion by using annual call volume as the "sole basis" for evaluating the complexity of an offeror's past performance references. Consolidated and Supp Protest at 18. Specifically, the protester contends that taking calls was only a portion of the work contemplated by the solicitation, and that call volume is more appropriately a measure of size, not complexity. *Id.* at 18-19. The agency contends that, although the RFP did not expressly define how the agency would evaluate complexity, it was reasonable for the agency to consider the annual call volume because "the crux" of the ANC requirement involves the operation of a call center. COS/MOL at 35.

In reviewing a challenge to an agency's past performance evaluation, our Office will examine the agency's evaluation to ensure only that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the agency's discretion. *American Envtl. Servs., Inc.*, B-406952.2, B-406952.3, Oct. 11, 2012, 2013 CPD ¶ 90 at 5. The evaluation of past performance, by its very nature, is subjective; an offeror's disagreement with an agency's evaluation judgments, by itself, does not demonstrate that those judgments are unreasonable. *Cape Envtl. Mgmt., Inc.*, B-412046.4, B-412046.5, May 9, 2016, 2016 CPD ¶ 128 at 8. Moreover, agencies may properly evaluate a proposal based on considerations not expressly stated in the solicitation where those considerations are reasonably and logically encompassed within the stated evaluation criteria and where there is a clear nexus between the stated and unstated criteria. *SupplyCore, Inc.*, B-411648.2, B-411648.3, Feb. 21, 2017, 2017 CPD ¶ 72 at 9.

As mentioned above, the solicitation established that the agency would evaluate the degree of relevance of an offeror's past performance references by considering their similarity to the subject requirement with respect to magnitude, scope, and complexity.

³ Although we do not address every argument raised by the protester, we have considered all of them and find that none provide a basis upon which to sustain the protest.

Id. at 51. The RFP did not further explain how or what information it would consider in its assessment of complexity. To conduct its evaluation of complexity, the agency compared the annual call volume for each of the offeror's past performance references to the base period estimated annual call volume for the ANC requirement. See AR, Tab 67, CSlope Corrective Action Past Performance Report at 13.

Based on our review of the record, we have no basis to object to the agency's evaluation. The protester argues that it was unreasonable for the agency to use call volume as the "sole measure" of complexity. Consolidated and Supp. Protest at 18. The protester's primary objection is that the agency should have considered other things where the solicitation "contemplated much more work than just call center support." *Id.* While it may be true that the agency could have considered other factors in its complexity analysis, the question is whether it was outside the bounds of the agency's discretion to consider call volume to assess a reference contract's complexity. We have no basis to find that the agency's exercise of its discretion in this regard was unreasonable.

As the agency points out and the record reflects, "the crux of the ANC effort" involved the operation of a call center. COS/MOL at 16. The performance work statement (PWS) expressly provides that the agency sought an offeror to operate a call center for the ANC, which included facilitating telephonic interactions, including requests for information, scheduling funerals/wreath laying ceremonies, and providing feedback. AR, Tab 03b, PWS at 16. The PWS further required offerors to provide customer service desk support with an average number of 11,300 interactions per month. *Id.* Given the requirements, it is not a stretch for the agency to have considered that the more calls a contractor had to field on a reference contract, the greater the complexity of the contractual effort. Accordingly, we have no basis to conclude that it was unreasonable, or otherwise inconsistent with the terms of the solicitation, for the agency to use call volume as a basis to assess a reference contract's complexity in comparison to the solicitation's requirements. *SupplyCore, Inc., supra.*

To the extent the protester asserts that call volume is more appropriately a measure of size and therefore should have been used to evaluate magnitude instead of complexity, the protester has failed to demonstrate that the agency was required to do so or that the agency's current evaluation was unreasonable. While the agency could have considered other metrics in evaluating complexity or could have used call volume to evaluate magnitude, we find nothing unreasonable regarding the agency's chosen method of evaluation. This protest ground is therefore denied.

Evaluation of CSlope's Past Performance

As noted above, CSlope argues that the agency unreasonably evaluated the magnitude of its past performance references based on a comparison to the agency's IGCE. Consolidated and Supp. Protest at 16. The protester also contends that the agency's past performance rating of its proposal as satisfactory confidence was, in essence, a non-responsibility determination that the agency failed to refer to the SBA. *Id.* at 21.

Finally, the protester argues that the agency should have permitted offerors to submit revised proposals. *Id.* at 27. As discussed below, we find none of these arguments provides a basis to sustain the protest.

Agency's IGCE

CSlope argues that the agency unreasonably measured the magnitude of the protester's past performance by comparing it to an IGCE that was based on the average annual dollar value for the ANC requirement. Consolidated and Supp. Protest at 17. CSlope contends that, rather than using the IGCE to evaluate the magnitude, the agency should have used a comparison of past references to each offeror's current proposed price. *Id.* The agency responds that its use of the IGCE was reasonable as it provided an objective, common comparison tool based on historical information for this procurement. COS/MOL at 29.

In reviewing a protester's challenge to an agency's reliance on an IGCE, our Office does not independently evaluate cost estimates or substitute our judgment for that of the agency. See *NCI Info Sys., Inc.*, B-405589, Nov. 23, 2011, 2011 CPD ¶ 269 at 6-7. Instead, we examine the record to determine whether the agency's estimate was reasonably prepared and provided a rational basis for its evaluation. *Id.* A protester's disagreement with the assumptions or methodologies underlying the IGCE does not, without more, render it unreasonable. *Id.*

In response to the protest, the agency explains that this requirement has involved the same service desk positions since 2017, and that it used those positions, as well as two additional positions included for the modernization effort, to calculate the IGCE for this procurement. AR, Tab 88, Decl. of Chief for Quality Assurance and Accountability at 1. Once the agency identified the positions, it used an IGCE tool from GSA to provide an average price with the standard deviation for each position. *Id.* The agency then used the IGCE as the basis for its evaluation of the magnitude of the offerors' past performance references. As noted above, in evaluating the magnitude of CSlope's three past performance references, the agency concluded that two of the protester's references were essentially the same in terms of magnitude, and that the third was significantly lower. AR, Tab 67, CSlope Corrective Action Past Performance Report at 9-13.

CSlope disagrees with the agency's rationale for its IGCE, arguing that it fails to take into account "CSlope's efficiencies, labor, resources, and processes," and therefore, was an unreasonable measure of magnitude. Consolidated and Supp. Protest at 17. Based on the record, we find nothing unreasonable regarding the agency's evaluation. The record reflects that the solicitation did not specify a method for the evaluation of magnitude. See RFP at 51-52. As such, the agency opted to evaluate magnitude based on a comparison of the contract value of each offeror's past performance references to the IGCE, and that the IGCE was based on average annual dollar value for the ANC requirement. AR, Tab 69, Corrective Action TODD at 7. While in the protester's view, the agency's use of the IGCE was improper because it fails to take into

account each offeror's efficiencies, labor resources, and processes, the protester provides no response to the agency's position that an evaluation of magnitude based on a comparison to the IGCE provides an objective, common comparison tool based on historical information for this procurement. COS/MOL at 29.

Nor does the protester provide support for its position that it was unreasonable for the agency's IGCE to rely on data from the average annual dollar value of the current requirement. See Consolidated and Supp. Protest at 16-18. Instead, the protester points to the fact that the solicitation "did not require the Army to analyze magnitude in this manner." Consolidated and Supp. Protest at 18. The fact that the solicitation did not require a specific method for measuring magnitude, however, does not in and of itself mean that the agency's chosen method was necessarily unreasonable. To the extent the protester contends that the agency should have used some other method for its evaluation--such as comparing the magnitude of CSlope's references to CSlope's own proposed price for the ANC requirement--the protester's disagreement with the evaluation, without more, does not render the evaluation unreasonable. This protest ground is denied.

Non-Responsibility Determination

The protester argues that the agency's assignment of a rating of satisfactory confidence to the protester's proposal under the past performance factor was, in essence, a *de facto* nonresponsibility determination. Consolidated and Supp. Protest at 21. In this regard, the protester contends that the solicitation's restriction of award to only those offerors that received a past performance rating of substantial confidence means that the solicitation provided for evaluation of past performance on a non-comparative basis--that is, on a pass/fail, go/no go, or acceptable/unacceptable basis. See *id.* at 22. As a result, in the protester's view, the agency's evaluation of the protester's past performance as satisfactory confidence, rather than substantial confidence, constituted a nonresponsibility determination that the agency was required to refer to the SBA for the issuance of a certificate of competency (COC).⁴ *Id.* at 21-22. The agency argues that a referral to the SBA was not required because the agency evaluated the degree of its confidence in CSlope's past performance and specifically found CSlope's past performance to be acceptable, which did not constitute a determination of no responsibility for CSlope. COS/MOL at 46. As discussed below, we deny this protest ground.

⁴ We note that the SBA filed a brief in support of the protester's position, arguing that "whenever a contracting officer's evaluation of a firm's eligibility for an award involves a binary choice . . . the contracting officer must refer the matter to SBA for a COC." SBA Comments at 4. As discussed herein, we find that the solicitation did not specify that the agency's past performance evaluation would involve a binary choice; rather, the solicitation required the agency to perform a comparative assessment of past performance. RFP at 52; COS/MOL at 46.

As relevant here and noted above, the RFP required that offerors submit three contract references with their proposals and provided that the agency would evaluate each offeror's references as very relevant, relevant, somewhat relevant, or not relevant. RFP at 51-52. The solicitation provided that the agency then would conduct a performance confidence assessment of each offeror's recent and relevant references, assigning an overall confidence rating of substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. *Id.* at 52. In addition, the RFP provided that only those proposals that received a rating of substantial confidence would be eligible for award. *Id.* at 50. In finding that CSlope's past performance merited a rating of satisfactory confidence, the agency concluded that all three of CSlope's references were somewhat relevant. AR, Tab 67, CSlope Corrective Action Past Performance Evaluation Report at 15 (stating that the magnitude of CSlope's first reference was significantly lower than the ANC requirement, and the call volume for CSlope's second and third references were significantly lower than the ANC requirement). In contrast, in evaluating JCS's past performance, the agency concluded that its past performance demonstrated substantial confidence. AR, Tab 82, JCS Corrective Action Past Performance Evaluation Report at 9-14 (stating that the magnitude of JCS's first reference was slightly lower than the ANC requirement, and its second and third references were essentially the same in terms of scope, magnitude, and complexity).

Under the SBA's COC program, agencies must refer to SBA a determination that a small business is not responsible if that determination would preclude the small business from receiving an award. 15 U.S.C. § 637(b)(7); 13 C.F.R. § 125.5; FAR subpart 19.6. SBA's regulations require a contracting officer to refer a small business concern to the SBA for a COC determination when the contracting officer has refused to consider a small business concern for award of a contract "after evaluating the concern's offer on a non-comparative basis (e.g., pass/fail, go/no go, or acceptable/unacceptable) under one or more responsibility-type evaluation factors (such as experience of the company or key personnel or past performance)." 13 C.F.R. § 125.5(a)(2)(ii). That said, an agency may use traditional responsibility factors, such as past performance, as technical evaluation factors where a comparative evaluation of those areas is to be performed. *JCS Sol's., LLC*, B-422249, Mar. 13, 2024, 2024 CPD ¶ 71 at 3; *Zolon Tech, Inc.*, B-299904.2, Sept. 18, 2007, 2007 CPD ¶ 183 at 8. No SBA referral is required where a small business offeror's technically acceptable proposal is not selected for award because another offeror's proposal is evaluated as superior under a comparative analysis or because of a cost/technical tradeoff analysis. *Zolon Tech, Inc.*, *supra*, at 8.

Our Office addressed a similar argument to the protester's argument here in *JCS Sol's., LLC*, *supra*. In that protest, which was filed regarding the same solicitation that is at issue here, JCS argued that the solicitation improperly provided for an LPTA source selection process in violation of the FAR and DFARS. *Id.* at 4. Specifically, JCS argued that, because the solicitation required a past performance rating of substantial confidence to receive the task order, the solicitation essentially evaluated past

performance on a pass/fail basis, improperly converting the procurement into an LPTA. *Id.*

In denying the protest, we concluded that the solicitation did not provide for a pass/fail evaluation scheme. *Id.* at 5. Our Office explained that the agency evaluated past performance using a comparative assessment as it assigned past performance ratings on a scale. *Id.* Because the solicitation provided for a variety of past performance confidence ratings, it did not provide for a past performance evaluation on a pass/fail basis. *Id.* The fact that the agency required a rating of substantial confidence to receive the task order did not affect this analysis. *Id.*

We find that the same rationale applies in considering whether the agency's evaluation of the protester's past performance as satisfactory confidence, rather than substantial confidence, constituted a nonresponsibility determination that the agency was required to refer to the SBA for the issuance of a COC. The solicitation here has not changed in any meaningful way since our decision in *JCS Sol., LLC*--that is, the RFP still assigns past performance ratings on a scale and still requires a rating of substantial confidence to be eligible for award. RFP at 52. As discussed above, this scheme differs from an evaluation of past performance on a pass/fail basis because it uses a comparative analysis. Put another way, because proposals could receive ratings of no confidence, limited confidence, neutral confidence, satisfactory confidence, or substantial confidence, there was not a "binary choice," as argued by the protester and the SBA. We thus conclude that the agency did not engage in a nonresponsibility determination when it assigned the protester's proposal a past performance rating of satisfactory confidence, and therefore, that no referral to SBA for a COS was required. This protest ground is denied.

Failure to Allow Submission of Revised Proposals

The protester next contends that the agency should have permitted offerors to submit revised proposals because, according to the protester, the agency's request for information on call volume numbers for their contract references constituted discussions. See Consolidated and Supp. Protest at 27 (arguing that "the information called for was relied upon almost exclusively to determine the acceptability of proposals, because . . . [s]ubstantial [c]onfidence [p]ast [p]erformance rating served as a pass/fail function that determined whether an offeror was eligible for award."). The agency argues that the request for information on call volume numbers constituted clarifications and therefore, offerors were not entitled to an opportunity to revise their proposals. COS/MOL at 60. As discussed below, we find that the request for information constituted clarifications.

As noted above, the RFP was issued in accordance with FAR section 16.505. As a general matter, the regulations concerning discussions under FAR part 15 do not govern task and delivery order competitions conducted under FAR part 16, such as the one challenged by CSlope here. *NCI Info. Sys. Inc.*, B-405589, Nov. 23, 2011, 2011 CPD ¶ 269 at 9. That said, our Office has looked to the standards in FAR part 15 for

guidance when a protester contends that discussions occurred outside of a FAR part 15 procurement. See *Aurotech, Inc.*, B-413861.4, Jun. 23, 2017, 2017 CPD ¶ 205 at 10.

Based on our review of the record, we have no basis to sustain the protester's argument that the agency's request for offerors to provide call volume numbers for their contract references constituted discussions and not clarifications. Part 15 of the FAR defines clarifications as "limited exchanges" that agencies may use to allow offerors to clarify certain aspects of their proposals, such as "the relevance of an offeror's past performance." See FAR 15.306(a)(1),(2). Here, the email sent to CSlope asking for the annual call volume information expressly provided that the agency was "requesting clarifications concerning the relevance of the past performance referrals submitted." AR, Tab 56, Clarification Email to CSlope at 1. As noted in the discussion above, the agency then used this information to assess the relevance of references with respect to complexity. Section 15.306(a)(2) of the FAR expressly defines a request for information concerning the relevance of an offeror's past performance as clarifications, not discussions. Because this exchange pertained to the relevance of CSlope's past performance references, it definitionally does not qualify as discussions. See FAR 15.306(a)(2); see also *Information Tech. & Applications Corp.*, B-288510, B-288510.2, Nov. 7, 2001, 2002 CPD ¶ 28 at 9-10 (concluding that the agency's request for information on subcontractor experience did not constitute discussions because it "related to the agency's assessment of the relevance of the subcontractors' past performance to the current effort"). Therefore, because the communication constituted clarifications, rather than discussions, the agency was not required to allow offerors to submit revised proposals. Accordingly, this protest ground is denied.

Evaluation of JCS's Past Performance

CSlope raises various challenges to the agency's past performance evaluation of JCS's proposal.⁵ Consolidated and Supp. Protest at 31; Comments and 2nd Supp. Protest at 35. First, the protester argues that the agency failed to reasonably evaluate the magnitude of one of JCS's past performance references. Second, the protester contends that the agency engaged in disparate treatment by applying a more lenient standard to JCS's proposal in evaluating magnitude than was applied to other offerors. Comments and 2nd Supp. Protest at 35. Third, CSlope maintains that the agency failed to consider a purported misrepresentation made by JCS concerning its call volume.⁶ *Id.* As discussed below, none of the protester's arguments provide a basis to sustain the protest.

⁵ The protester acknowledges that the protest grounds in its second supplemental protest "touch upon" the arguments raised in its first supplemental protest. Comments and 2nd Supp. Protest at 35. Accordingly, we will reference the protester's second supplemental protest when addressing these arguments.

⁶ CSlope raised additional challenges to this portion of the evaluation but later withdrew them. See Comments on Supp. AR at 1, n.1.

Magnitude of JCS's Second Reference

The protester contends that the agency should have assigned one of JCS's references a lower relevancy rating because the reference was a 6-month interim or "bridge contract," which in the protester's view, should have indicated that it was less in terms of magnitude. Comments and 2nd Supp. Protest at 40. As relevant here, JCS submitted three contract references in its proposal. AR, Tab 69, Corrective Action TODD at 8. With respect to reference two, the 6-month bridge contract at issue, the agency explained that the scope, complexity, and magnitude were essentially the same as the subject requirement. AR, Tab 82, JCS Corrective Action Past Performance Evaluation Report at 12. In evaluating JCS's past performance the agency assigned this reference a rating of very relevant. *Id.*

We find nothing unreasonable regarding the agency's evaluation. As the agency points out and the record reflects, the solicitation contained no restriction on the minimum period of performance for a reference. Supp. COS/MOL at 20; see RFP at 51. Our Office has previously explained that absent a specific provision in the solicitation, there is no minimum duration requirement for past performance. *Diversified Tech. & Servs. of Va., Inc.*, B-412090.2, B-412090.3, Dec. 16, 2015, 2016 CPD ¶ 34 at 8.

Here, the fact that one of JCS's references was of less duration because it was a bridge contract and for a lower overall dollar value does not indicate that the reference is not relevant. The agency noted that while this reference covered only a period of six months, it essentially was the same in terms of magnitude for a 6-month period of the ANC requirement. AR, Tab 82, JCS Corrective Action Past Performance Evaluation Report at 12 (noting that the contract value for this reference was \$2,033,909, and the anticipated value for a 6-month period at the ANC was approximately \$2.26 million). Furthermore, as provided in the solicitation, magnitude was only one consideration in evaluating relevancy. See RFP at 51. Given that the challenged reference is a bridge contract for the incumbent contract and therefore shared essentially the same scope of work as the work required by the instant solicitation, we have no basis to object to the agency's assignment of a rating of "very relevant," even if it covered only a 6-month period. That fact alone does not render the evaluation unreasonable. Accordingly, this protest ground is denied.

Disparate Treatment

CSlope also asserts that the agency's evaluation constitutes disparate treatment because it applied a "more lenient" standard when evaluating the complexity of JCS's second reference than when evaluating the protester's references. Comments and 2nd Supp. Protest at 40. Specifically, the protester contends that the agency unreasonably "halved its annual numbers" to evaluate the call volume of JCS's second reference, the 6-month bridge contract. *Id.* In the protester's view, it was unfair for the agency to use the ANC's call volume for a 6-month period to evaluate the complexity of JCS's reference to a 6-month bridge contract. *Id.*

To prevail on a claim of disparate treatment, the protester must show that the proposals were “substantively indistinguishable.” *Koniag Mgmt. Sols., Inc.*, B-423051, B-423051.2, Jan. 10, 2025, 2025 CPD ¶ 25 at 7. In other words, the protester must show that the difference in the evaluation did not stem from differences in the proposals. *See id.* Here, the protester has failed to do so. As the agency points out, the evaluators reduced the annual call volume by half for this portion of the evaluation because the reference submitted by JCS was for a 6-month bridge contract. Supp. COS/MOL at 23. In this regard, rather than comparing JCS’s call volume over a 6-month period to the ANC’s call volume over a 12-month period, the agency compared the numbers for a 6-month range. In contrast, the protester’s proposal did not provide a past performance reference of similar duration, nor does the protester argue that this shortened call volume metric should have been applied to any of its references. Contrary to CSlope’s argument, this portion of the evaluation does not reflect that a more lenient standard was used for the evaluation of JSC’s past performance or that the agency evaluated proposals unequally. Accordingly, we find nothing unreasonable regarding the agency’s evaluation.

Material Misrepresentation

The protester argues that the agency unreasonably failed to consider a purported material misrepresentation by JCS concerning its annual call volume. Comments and 2nd Supp. Protest at 43. Specifically, the protester contends that JCS, in responding to the agency’s request for numbers on annual call volume, combined the number of its annual calls with the number of its “interactions” to inflate its annual call volume numbers. *Id.* The protester asserts that combining interactions with call volume constituted a material misrepresentation. *Id.* The agency argues that there was not a material misrepresentation because none of the information provided in JCS’s proposal regarding call volume or interactions was false. Supp. COS/MOL at 34, n.11.

Based on the record, we have no basis to sustain this protest ground. For a protester to prevail on a claim of material misrepresentation, the record must show that the information at issue is false. *Commercial Design Group, Inc.*, B-400923.4, Aug. 6, 2009, 2009 CPD ¶ 157 at 6. Here, there is no indication in the record that the information included by JCS in its proposal was false. The record reflects that, in response to the clarification issued by the agency for annual call volume, JCS expressly provided information regarding its number of interactions and calls. See AR, Tab 82, JCS Corrective Action Past Performance Evaluation Report at 9. JCS did not represent these interactions as calls, and the protester has not provided any evidence to suggest that the numbers for the interactions were false. We further note that in its evaluation, the agency did not combine interactions and call volume numbers to inflate JCS’s annual call volume. Instead, as shown in the evaluation report, the agency determined

the number of calls within each reference. *See id.* Accordingly, we find that the agency's evaluation was not based on a material misrepresentation, and therefore, this protest grounds is denied.

The protest is denied.⁷

Edda Emmanuelli Perez
General Counsel

⁷ The protester also contends that the agency's decision to take corrective action was improper, arguing that the initial source selection decision was proper. Consolidated and Supp. Protest at 29. The agency requests dismissal of this argument on the basis that it is untimely. COS/MOL at 65, n.26. We agree with the agency. To be considered timely, a protest, other than one challenging the terms of the solicitation, must be filed within 10 calendar days of when the protester knew, or should have known, its basis for protest. 4 C.F.R. § 21.2(a)(2). Here, CSlope was aware of the agency's decision to take corrective action November 26, 2024. *See* AR, Tab 62, Notice of Corrective Action at 1. CSlope did not challenge the agency's decision to take corrective action until it filed its initial protest on July 21, 2025. *See* Initial Protest at 1. Accordingly, this protest ground is dismissed.