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# Decision

**Matter of:** GSINA-Pacific JV II, LLC

**File:** B-424314.2

**Date:** June 18, 2026

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## DIGEST

1. Protest challenging the agency's evaluation of proposals under the past performance and management/technical approach evaluation factors is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.
  2. Protest that agency unreasonably and disparately evaluated proposals is denied where the record shows the agency evaluated proposals in accordance with the terms of the solicitation and did not engage in disparate treatment.
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## DECISION

GSINA-Pacific JV II, LLC (GSI), a small business located in Flemington, New Jersey, protests the evaluation and exclusion of its proposal from the competition under request for proposals (RFP) No. W9128F26RA024, issued by the Department of the Army, Army Corps of Engineers (Corps), to acquire design-build and design-bid-build construction services. GSI alleges that the agency's evaluation of its phase one proposal was arbitrary, unsupported, and disparate in multiple areas.

We deny the protest.

## BACKGROUND

On October 17, 2025, the Corps issued the RFP as a small business set aside for the award of up to six indefinite-delivery indefinite-quantity (IDIQ) multiple award task order

contracts (MATOC) for a 7-year ordering period. Contracting Officer Statement (COS) at 1. Task orders would be solicited and competed among the IDIQ contract holders, with the total value up to \$699 million for the entire pool of contracts. Agency Report (AR), Exh. 8, RFP amend. 3, section 00 21 00 at 2.<sup>1</sup>

The scope of construction services includes support of the military petroleum oil and lubricants (POL) facility requirements and mission of the Department of Defense fuels infrastructure within the continental United States, Alaska, Hawaii, and outlying areas. COS at 1; AR, Exh. 8, RFP amend. 3, section 00 21 00 at 2. The scope of work includes but is not limited to replacement of aging fuel infrastructure and/or components, repair of storage tanks and containment areas, POL system upgrades and maintenance, facility demolition, construction of fuels support facilities, regulatory compliance, and design to support the construction work projects for the primary customer, Defense Logistics Agency. COS at 1.

The RFP further stated that the selected MATOC contractors will be required to perform various design and construction services described in RFP section 01 11 00 Table 1 as specialized work requirements. These specialized work requirements are as follows:

1. Construction, maintenance, repair and demolition of POL facilities and infrastructure, to include design. Facilities and infrastructure include, but are not limited to, facilities in direct support of the fuel receipt, pipeline, storage, transfer, containment, laboratory testing, POL operations, quality control, equipment, and dispensing systems.
2. Tank rehabilitation. Work consists of construction, repairing, replacing, and upgrading coatings, worn components, corrosion, and deficiency to the tank systems necessary to make the tank fully functional for support of mission requirements. Components typically include valves, pumps, piping, controls, dikes/berms, structural components (shell/tank bottom), life safety, and fire safety systems.
3. Tank cleaning prior to inspection and upgrades. Work includes cleaning to remove residual fuel products, water/sludge removal, and preparation of tank for inspection.
4. Repairs and Emergency Inspections Only. This includes POL facility inspections to determine condition. The inspection report documents current conditions and requirements for servicing, repairs, and upgrades.

AR, Exh. 10, RFP section 01 11 00, Specialized Work Requirements at 2.

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<sup>1</sup> The RFP was amended three times. Citations to the record in this decision are to the Adobe PDF pagination of the documents produced by the parties.

The RFP established a two-phase competition. For phase one, which is the subject of this protest, offerors were required to submit proposals to address the following evaluation factors listed in descending order of importance: (1) past performance; and (2) overall program management/technical approach.<sup>2</sup> AR, Exh. 9, RFP amend. 3, section 00 22 00 at 2. Relevant here, the RFP stated that up to eight of the most highly qualified offerors would be invited to phase two of the competition. AR, Exh. 8, RFP amend. 3, section 00 21 00 at 5.

For past performance, the RFP instructed offerors to submit past performance summaries for four contract references describing how each contract reference is relevant in demonstrating the offeror's ability to perform the full range of projects identified as the RFP's specialized work requirements. AR, Exh. 8, RFP amend. 3, section 00 21 00 at 11-12. The RFP stated that at least two contract references had to be design-build projects; the other two could be either design-build or design-bid-build projects. *Id.* at 11. Additionally, the RFP instructed offerors to provide completed contractor performance assessment reporting system (CPARS) reports or past performance questionnaires (PPQs) for each contract reference. *Id.* at 14.

Relevant to this protest, the RFP stated that: “[p]ast project summaries should illustrate the types of projects described in [RFP section 01 11 00], Summary of Work. The Offeror should present projects that demonstrate competence, breadth, and depth of experience as it relates to the scope of work for this requirement.” *Id.* at 12.

The agency would assess the recency, relevancy, and quality of the offeror's past performance based on information in the contract summaries submitted by the offeror, CPARS, PPQs, and data independently obtained from other government sources to determine the agency's level of expectation that the offeror would successfully perform the required effort.<sup>3</sup> AR, Exh. 9, RFP amend. 3, section 00 22 00 at 3. Notably, the RFP stated that in determining relevancy, the agency would consider the extent to which a submitted project met or exceeded a minimum contract/task order award value of \$1 million; the extent to which a submitted design-build project demonstrated how the offeror actively participated in the design and construction aspects; whether the project was performed by the prime offeror or a first-tier subcontractor; whether the project was completed on a military installation; and the similarities of the submitted projects to

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<sup>2</sup> Although not at issue here, phase two proposals would be evaluated under the following factors in descending order of importance: technical approach for the sample project (factor 3); resumes of key personnel (factor 4); and proposed price for the sample project (factor 5). AR, Exh. 9, RFP amend. 3, section 00 22 00 at 2; Exh. 16, Phase Two Selection Memorandum at 2.

<sup>3</sup> Recency was defined as a project completed within 10-years from the date phase one proposals are due. AR, Exh. 9, RFP amend. 3, section 00 22 00 at 3, 6. Projects whose completion date is closer to the phase one proposal due date would have more impact on the overall past performance evaluation. *Id.*

those described in RFP section 01 11 00 including the complexity, nature of work, work elements, schedule duration, and scope. AR, Exh. 9, RFP amend. 3, section 00 22 00 at 7-8. The agency was to assign a relevancy rating of either very relevant, relevant, somewhat relevant, or not relevant. *Id.* at 7.

The quality of an offeror's performance on its contract references would be considered and may include performance evaluation ratings of responsiveness to customer concerns; cost growth and adherence to budget; timeliness and adherence to schedule; quality and quality control measures; management of personnel and subcontractors; compliance with safety standards/safety plan; overall customer satisfaction; and other areas. AR, Exh. 9, RFP amend. 3, section 00 22 00 at 8. Finally, the solicitation stated that based on the agency's consideration of the recency, relevancy, and quality assessment of the evaluated references, the agency would assign a performance confidence assessment rating of either substantial, satisfactory, neutral, limited, or no confidence.<sup>4</sup> *Id.* at 4. The evaluation was to be "a holistic view of the offeror's history with respect to the present acquisition." *Id.* at 3.

Under the overall program management/technical approach factor, offerors were required to describe their proposed approach and organizational structure to adequately perform the solicited requirements. AR, Exh. 8, RFP amend. 3, section 00 21 00 at 15-17. The agency would evaluate proposals under this factor to determine the effectiveness of the offeror's proposed management approach and organization through an assessment of the strengths, weaknesses, deficiencies, and risks in the proposal. The combined technical/risk adjectival ratings for this factor were: outstanding, good, acceptable, marginal, or unacceptable.<sup>5</sup> AR, Exh. 9, RFP amend. 3, section 00 22 00 at 4-5.

The agency received 21 proposals by the November 17 phase one proposal due date, including one from GSI. COS at 2; AR, Exh. 16, Phase Two Selection Memorandum at 3. In its proposal, GSI identified itself as a joint venture offeror whose joint member

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<sup>4</sup> The RFP defined "substantial confidence" as "the Government has a high expectation that the offeror will successfully perform the required effort." AR, Exh. 9, RFP amend. 3, section 00 22 00 at 4. The solicitation defined "limited confidence" as "the Government has a low expectation that the offeror will successfully perform the required effort." *Id.*

<sup>5</sup> The RFP defined "outstanding" as "[p]roposal demonstrates an exceptional approach and understanding of the requirements and contains multiple strengths and/or at least one significant strength, and risk of unsuccessful performance is low." AR, Exh. 9, RFP amend. 3, section 00 22 00 at 5. The RFP defined "good" as "[p]roposal indicates a thorough approach and understanding of the requirements and contains at least one strength or significant strength, and risk of unsuccessful performance is low to moderate." *Id.*

partners are GSI North America, Inc., and GSI Pacific, Inc.<sup>6</sup> AR, Exh. 12, GSI Proposal, Vol. 2, Joint Venture Agreement at 5. In its past performance proposal, GSI submitted four references: three were design-build projects (projects 1, 2, and 3); and the fourth, a design-bid-build project.<sup>7</sup> AR, Exh. 11, GSI Proposal Vol. 1, Past Performance at 6-24. GSI's proposal also included a project relevancy matrix which identified the specific areas where each of the four references demonstrated GSI's prior experience in performing the RFP's specialized work requirements. *Id.* at 5. GSI also submitted completed CPARS for each contract reference with its proposal. *Id.* at 8-11, 14-16, 19-22, and 25-27.

In evaluating GSI's past performance proposal, the agency's source selection evaluation board (SSEB) found all four contract references were recent, performed on military installations by either GSI Pacific or GSI North America as the prime contractor, and each reference had a contract value in excess of \$1 million. COS at 6; AR, Exh. 14, Revised SSEB Consensus Report at 20. The SSEB assessed one reference (project 2) as very relevant based on the protester's demonstrated experience performing all four of the RFP's specialized work requirements; two references were assessed as relevant (projects 1 and 3) based on GSI's demonstrated experience performing one of the four specialized requirements, and the fourth reference (project 4) was assessed as somewhat relevant based on the offeror's demonstrated experience performing one of four specialized work requirements.<sup>8</sup> AR, Exh. 14, Revised SSEB Consensus Report at 20-21.

To assess the quality of GSI's prior performance, the SSEB reviewed the submitted CPARS, noting that two references (projects 1 and 3) had initial CPARS ratings of unsatisfactory for performance quality, project schedule, and project management.

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<sup>6</sup> GSI represents that GSI Pacific is currently an incumbent contractor on the existing Army Corps of Engineers Omaha POL MATOC. AR, Exh. 11, GSI Proposal Vol. 1, Past Performance at 5; *see also* Protest at 2.

<sup>7</sup> Project 1, completed in 2019, was a design-build task order project for fueling facility repairs at the Army Aviation Support Facility in Iowa. Project 2, completed in 2018, was a design-build task order project to clean, inspect, and repair tanks at Defense Fuel Support Point in Wake Island. Project 3, completed in 2023, was a design-build project to repair and replace a military service station at Andersen Air Force Base in Guam. Project 4, completed in 2021, was a design-bid-build project to repair hydrant pumphouses at Andersen Air Force Base in Guam. AR, Exh. 11, GSI Proposal Vol. 1, Past Performance at 5-27; *see also* Exh. 14, Revised SSEB Consensus Report at 20-21.

<sup>8</sup> The RFP defined a rating of "somewhat relevant" as describing an effort involving "some" of the scope and magnitude of effort and complexities that the effort here requires. AR, Exh. 9, RFP amend. 3, section 00 22 00 at 7. Ratings of "relevant" or "very relevant" required findings that the effort involved "similar" or "essentially the same" scope and magnitude of effort and complexities, respectively. *Id.*

After GSI took corrective actions to resolve these performance issues, GSI earned final CPARS ratings of either very good or satisfactory. *Id.* at 20. For projects 2, and 4, GSI earned CPARS ratings of satisfactory in all evaluated areas. *Id.* at 21. Based on an overall assessment of GSI's evaluated past performance references for recency, relevancy, and quality of performance, GSI's proposal was assigned a confidence assessment rating of limited confidence; that is, the government has a low expectation that GSI will successfully perform the required effort. *Id.* at 20.

For the overall program management/technical approach factor, GSI's proposal received a combined technical/risk rating of acceptable based on one identified strength and one weakness in its proposal. *Id.* at 21-22.

The agency's source selection advisory council (SSAC) reviewed the evaluation assessments and ratings assigned by the SSEB for all 21 phase one proposals and performed a comparative analysis. The SSAC prepared a report for the source selection authority (SSA) with its recommendations for the eight most highly qualified offerors that should be selected to participate in phase two of the competition. AR, Exh. 15, SSAC Report.

The SSA reviewed the evaluation reports from the SSEB and the SSAC and concurred with the evaluation findings and recommendations. AR, Exh. 16, Phase Two Selection Memorandum at 3. The SSA identified seven offerors as the most highly qualified and invited those offerors to submit phase two proposals.<sup>9</sup> AR, Exh. 16, Phase Two Selection Memorandum at 23. The SSA did not include GSI as one of the most highly qualified offerors invited to phase two of the competition. *Id.* The agency notified GSI that its phase one proposal was excluded from phase two of the competition. AR, Exh. 17, Notification of Non-Selection. GSI requested and received a written pre-award debriefing that explained the agency's rationale for the exclusion of its proposal from phase two of the competition. AR, Exh. 18, Pre-Award Debriefing.

This protest followed.

## DISCUSSION

GSI challenges several aspects of the agency's evaluation of its proposal under both evaluation factors. In evaluating its past performance proposal, GSI primarily argues

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<sup>9</sup> The seven offerors invited to submit phase two proposals were: Bering-Weston JV, LLC; Bristol Engineering Services Company, LLC; Dawson Federal, Inc. (Dawson); Goshawk, LLC (Goshawk); Jack Wayte CMS JV; Reliable Contracting Group, LLC; and SES Energy Services, LLC. AR, Exh. 16, Phase Two Selection Memorandum at 23.

Of note, six of the seven selected offerors had received a past performance rating of substantial confidence; the other offeror, a past performance rating of satisfactory confidence. Under the overall program management/technical approach factor, all of the selected offerors had received a combined technical/risk rating of outstanding. *Id.*

that the agency assigned relevancy ratings to three performance references (projects 1, 3, and 4) that were unreasonable and based on unstated criteria. The protester also complains that the agency deviated from the stated evaluation criteria when it assigned a confidence assessment rating of limited confidence; and alleges that the agency disparately evaluated the proposals of GSI and two other competing offerors selected to participate in phase two of the competition--Dawson and Goshawk.<sup>10</sup> The agency responds that its well documented evaluation of proposals was reasonable and consistent with the solicitation criteria and that the protester's allegations reflect its disagreement with the agency's evaluative judgments. COS at 5-6; Memorandum of Law (MOL) at 7-10. While we do not address every argument raised by the protester challenging the agency's evaluation and exclusion of its proposal, we have considered each of GSI's allegations and find none provide a basis on which to sustain the protest.

### Past Performance Evaluation

GSI raises the following principal arguments regarding the agency's evaluation of its past performance proposal: (1) the relevancy ratings assigned to GSI's past performance references (projects 1, 3, and 4) were unreasonable, based on unstated evaluation criteria, and disparate; (2) the agency deviated from the stated evaluation criteria when it assigned a limited confidence rating to GSI's past performance proposal; and (3) the agency disparately evaluated the past performance of GSI and two other competing offerors, Dawson and Goshawk. We address a few representative examples of GSI's allegations below.

When a protester challenges an agency's evaluation of past performance, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criterion and procurement statutes and regulations, and to ensure that it is adequately documented. *Jacobs Tech., Inc.*, B-420016, B-420016.2, Oct. 28, 2021, at 5. The evaluation of an offeror's past performance, which includes the agency's determination of the recency, relevancy, and quality of an offeror's performance references, is a matter of agency discretion that we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation's criteria, or undocumented. *Teya Enters., LLC*, B-420907, Oct. 24, 2022, at 3-4; *Zafer Taahhut Insaat Ve Tiaret AS*, B-420280, Jan. 19, 2022, at 7; *Metropolitan Interpreters & Translators, Inc.*, B-415080.7, B-415080.8, May 14, 2019, at 10. Our Office consistently recognizes that the evaluation of past performance is, by its very nature, subjective and we will not substitute our judgment for reasonably-based past performance evaluation

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<sup>10</sup> Under the past performance factor, Dawson's proposal received a confidence assessment rating of substantial confidence and under the overall program management/technical approach factor a combined technical/risk rating of outstanding. For past performance, Goshawk received a confidence assessment rating of satisfactory confidence and under the overall program management/technical approach factor a combined technical/risk rating of outstanding. AR, Exh. 16, Phase Two Selection Memorandum at 23.

ratings. *Nexsys Elecs. Inc., d/b/a Medweb*, B-419616.4, Jan. 7, 2022, at 5; *DynCorp Int'l LLC; AAR Supply Chain, Inc.*, B-415873 *et al.*, April 12, 2018, at 17; *Pricewaterhouse-Coopers Public Sector, LLP*, B-415504, B-415504.2, Jan. 18, 2018, at 10-11. An offeror's disagreement with an agency's evaluative judgments, without more, does not establish that those judgments are unreasonable. *Zafer Taahhut Insaat Ve Tiaret AS, supra; Trilogy Fed., LLC*, B-418461.11, B-418461.18, Feb. 23, 2021, at 5.

As noted, in evaluating the relevancy of a project, the agency would consider the extent to which the project demonstrated the offeror's experience in performing work similar to the specialized work requirements set forth in section 01 11 00 of the RFP, including, but not limited to the complexity, nature of work, work elements, schedule duration, and scope. AR, Exh. 9, RFP amend. 3, section 00 22 00 at 7-8. The RFP further provided that the agency was to consider the extent to which a project met or exceeded a minimum contract/task order award value of \$1 million; the extent to which a design-build project demonstrated how the offeror actively participated in the design and construction aspects; whether the project was performed by the prime offeror or a first-tier subcontractor; and whether the project was completed on a military installation. *Id.* at 7.

As further noted, the agency assigned GSI's past performance proposal a confidence rating of limited confidence with one of its four references assessed as very relevant (project 2), two others assessed as relevant (projects 1 and 3), and the fourth reference assessed as somewhat relevant (project 4). AR, Exh. 14, Revised SSEB Consensus Report at 20-21. As is relevant, in evaluating projects 1, 3 and 4, the SSEB noted inconsistencies between the project relevancy matrix included in GSI's proposal that listed tank rehabilitation and tank cleaning services under these three projects (see AR, Exh. 11, GSI Proposal Vol. 1, Past Performance at 5), the project relevancy summaries for projects 1 and 3 (*id.* at 6, 17) that also identified tank rehabilitation and tank cleaning as demonstrating relevancy, and the actual supporting project descriptions that did not indicate that GSI had performed any tank rehabilitation or tank cleaning services under any of these projects. See *id.* at 6-7, 17-18, and 23-24; AR, Exh. 14, Revised SSEB Consensus Report at 20. Therefore, for projects 1, 3, and 4 the SSEB determined the level of relevancy for each project based on GSI's demonstrated experience in performing one of, and not two of, the RFP's specialized work requirements. *Id.* at 20-21.

GSI disagrees with the agency's relevancy assessments and complains that the SSEB used those conclusions to justify a confidence rating of limited confidence to its detriment. See *generally*, Protest at 8-9. The protester contends that the agency erred in its conclusion that these references (projects 1, 3, and 4) only demonstrated GSI's experience in performing one of the four specialized work requirements and did not consider its performance of the additional specialized work requirement--tank rehabilitation and tank cleaning services--in its assessment of relevancy. Protest at 9. For example, for project 1, the protester claims that it should have received credit for tank rehabilitation and tank cleaning because the title of this project is "Tank Rehabilitation and Cleaning" and the project description includes substantial work on

fuel system components associated with tank operations, including filter separators, control valves, drains, “water draw off,” catwalks and access components on aboveground storage tanks, along with the design and reconfiguring of piping and associated valves. *Id.* According to the protester, the project description for this prior effort (project 1) falls within the RFP’s broad definition for tank rehabilitation (includes repairing/replacing/upgrading “worn components” and “deficiency to the tank systems”) and tank cleaning (includes cleaning to remove residual fuel products, water/sludge removal, and preparation of tank for inspection). *Id.*

Importantly, however, the SSEB assessed GSI’s project 1 as relevant, because the major scope of work for that project “included constructing a refueler parking area, installing site flow indicators, sampling points, flow switch, receipt meter, filter separator, air eliminator, control valve, slow fill, pressure gauges, strainer drains, water draw off, emergency shut off, backup power connection, and ground verification, replacing drain line, pipe supports and return piping, and extending catwalks.” See AR, Exh. 14, Revised SSEB Consensus Report at 20. In other words, the SSEB determined that this scope of work demonstrated GSI’s experience in performing one of the four RFP specialized work requirements (*i.e.*, paragraph 1(a) of section 01 11 00, construction, maintenance, repair and demolition services). MOL at 8 (*citing* AR, Exh. 14, Revised SSEB Consensus Report at 20).

Our review of the record confirms the SSEB’s findings that nothing in the narrative description of the work performed under project 1 actually described tank rehabilitation and tank cleaning services as GSI now claims. See AR, Exh. 11, GSI Proposal Vol. 1, Past Performance at 6-7. In light of the RFP’s evaluation criteria and the broad discretion afforded to the agency, we find no basis to disagree with the agency’s assessments of relevancy for these projects (1, 3 and 4). It is an offeror’s responsibility to submit an adequately written proposal with sufficient information for the agency to evaluate and determine compliance with the solicitation’s requirements. *Patriot Def. Grp., LLC*, B-418720.3, Aug. 5, 2020, at 7. An offeror that does not affirmatively demonstrate the merits of its proposal risks rejection of its proposal or risks that its proposal will be evaluated unfavorably where it fails to do so. *PAE Aviation and Tech. Servs., LLC*, B-417639, Sept. 11, 2019, at 6. Although GSI disagrees with the agency’s judgments, its disagreement does not demonstrate that those judgments were unreasonable or otherwise provide a basis to sustain the protest. See *Trilogy Fed., LLC, supra*. We deny this basis of protest.

GSI also contends that the agency arbitrarily and unreasonably assigned its proposal a past performance rating of limited confidence despite the fact that each of GSI’s four submitted references were recent and relevant because each past performance reference satisfied at least one of the four RFP specialized work requirements necessary to establish project relevance. The protester reasons that since its successful completion of the four submitted references met the criteria for relevance, as defined in the solicitation, this should have resulted in a performance confidence rating of satisfactory confidence (reasonable expectation that the offeror will successfully perform the required effort). See *generally* Comments at 2-3.

This argument is without merit. Consistent with the terms of the solicitation, the SSEB considered the competence, depth and breadth of GSI's evaluated performance references and concluded that GSI's references while recent had been assessed as very relevant, relevant, and somewhat relevant and the final documented CPAR ratings for the quality of GSI's performance were all satisfactory, including for projects that had received initial unsatisfactory ratings. See MOL at 9. After considering GSI's performance record as a whole, the agency assigned a past performance rating of limited confidence, rather than satisfactory confidence, to GSI's proposal. GSI's various complaints and disagreement with the agency's considered and documented judgment does not render unreasonable the agency's determination that GSI's past performance was properly assigned a rating of limited confidence.<sup>11</sup> See *Trilogy Fed., LLC, supra*.

### Disparate Treatment

GSI argues the evaluation record reflects disparate treatment by the agency under the past performance factor in two areas--the evaluation of project relevancy and the evaluation of the quality of offerors' performance records.<sup>12</sup> Comments at 2-6.

With regard to the evaluation of project relevancy, the protester maintains that while it was assessed a somewhat relevant rating for project 4 based on its demonstrated

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<sup>11</sup> While we find no basis to object to the agency's overall past performance evaluation for GSI, even assuming for the sake of argument that GSI should have received an overall rating of satisfactory, we can discern no basis on which GSI would have been competitively prejudiced. Competitive prejudice is an essential element of every viable protest, and where none is shown or otherwise evident, we will not sustain a protest even where a protester may have shown that an agency's actions arguably were improper. *Interfor US, Inc.*, B-410622, Dec. 30, 2014, at 7. As explained below, we find no basis to sustain the protester's objections to its rating of acceptable under the program management/technical approach evaluation factor. All of the most highly-rated offerors under that factor, program management/technical approach, received a rating of outstanding along with receiving a past performance rating of at least satisfactory confidence.

<sup>12</sup> GSI also contends that the past performance evaluation records for both itself and two additional competing offerors also evidence disparate treatment. We will not address these allegations because these two additional competing offerors were not invited to proceed to phase two of the competition. See Comments at 3-4; AR, Exh. 16, Phase Two Memorandum at 23-24; see also *Environmental Chemical Corp.*, B-416166.3 *et. al*, June 12, 2019, at 6 n.5 (finding no competitive prejudice arising from alleged disparate treatment as compared to other unsuccessful offerors because, even if such evaluation was disparate, the protester could not establish it was competitively prejudiced as its competitive standing would not change as compared to the other successful offerors).

experience performing one of the four specialized work requirements, one of the references submitted by Dawson (project 1) was assessed as very relevant based on Dawson's demonstrated experience performing only two of four specialized work requirements. Comments at 3. In this regard, GSI questions how a prior past performance project submitted by Dawson that satisfied only two specialized work requirements was determined to be very relevant whereas a past performance project submitted by GSI that met the criteria for only one less specialized work requirement was considered somewhat relevant that resulted in a significantly lower confidence assessment rating. See Comments at 3 (*citing* AR, Exh. 14, Revised SSEB Consensus Report at 12, 21).

It is well established that the evaluation of the relative merits of an offeror's past performance information is generally within the broad discretion of the contracting agency. *Vectrus Sys. Corp.*, B-412581.3 *et al.*, Dec. 21, 2016, at 3. In addition, it is a fundamental principle of federal government procurement that agencies must treat offerors equally, which means, among other things, that they must evaluate proposals in an even-handed manner against common requirements and evaluation criteria. *Fluor Intercontinental, Inc.--Advisory Op.*, B-417506.14, Nov. 5, 2019, at 31; *Advanced Alliant Sols. Team, LLC*, B-417334, Apr. 10, 2019, at 4-5. Where a protester alleges disparate treatment in a past performance evaluation, it must show that the differences in ratings did not stem from differences between the offerors' respective performance records. *Advanced Alliant Sols. Team, LLC, supra* at 5.

Our review of the record does not support GSI's contention that the agency's evaluation involved disparate treatment. As stated above, relevancy would be evaluated for each submitted project to determine the extent to which the project demonstrated work similar to the specialized work requirements set forth in RFP section 01 11 00, including, but not limited to: complexity; nature of work; work elements; schedule duration; and scope. See AR, Exh. 9, RFP amend. 3, section 00 22 00 at 7-8. The agency also would consider the offeror's competence, depth, and breadth of experience as it relates to the RFP's specialized work requirements. See AR, Exh. 8, RFP amend. 3, section 00 21 00 at 12.

Here, on this record, we find no basis to sustain the protest. GSI has not shown that the offerors' past performance projects at issue here were substantively indistinguishable from each other. As evidenced by the evaluation record presented, the SSEB assessed in detail the project narratives submitted by GSI (for project 4) and by Dawson (for project 1) to determine the relevancy of each project on their own merits. *Compare* AR, Exh. 14, Revised SSEB Consensus Report at 21 (finding GSI's project "consisted of somewhat relevant work items to include repair") *with id.* at 12 (finding Dawson's project "consisted of very relevant work items to include incidental POL design, construction/repair of POL facilities and infrastructure, and emergency inspections," as well as "emergency inspection and assessment, mechanical and electrical rehabilitation of pumps, motors, valves, and control systems, replacement of the motor control center and [programmable logic controller], coating and restoration of the product recovery tank and exterior piping, and full system testing and commissioning"). The protester's

disagreement, without more, is insufficient to demonstrate that the agency's judgments were unreasonable. See *Trilogy Fed., LLC, supra*.

Next, GSI also alleges that the agency disparately evaluated the quality of its own and Goshawk's past performance records. More specifically, the protester alleges that while both offerors had submitted past performance projects that had negative performance information in the relevant CPARS, GSI was penalized for its interim negative ratings and not given credit for its performance improvement and this resulted in its proposal receiving a confidence rating of limited confidence. On the other hand, Goshawk's proposal received a confidence rating of satisfactory confidence despite experiencing similar performance issues as GSI on one of the projects Goshawk had submitted as a past performance reference. Comments at 3-4.

Here, the agency evaluated four references for each offeror, and each was determined to be recent; however, the agency identified differences in the relevancy and quality of the offerors' performance records. For GSI, the agency assigned an overall confidence rating of limited confidence. As to relevancy, GSI's project 2, clean, inspect and repair tank at Defense Fuel Support Point, was assessed as very relevant, two other references project 1, fueling facility repairs at Army Aviation Support facility, and project 3, military service stations at Air Force Base in Guam were assessed as relevant, and the fourth reference project 4, repair hydrant pump houses at Andersen Air Force Base in Guam was assessed as somewhat relevant. AR, Exh. 14, Revised SSEB Consensus Report at 20-21. By contrast, the agency assigned Goshawk a confidence rating of satisfactory confidence with each of its four design-build references assessed as relevant. *Id.* at 17.

Turning to quality, GSI received initial CPAR ratings of unsatisfactory in the areas of performance quality, project schedule, and project management for projects 1 and 3, respectively.<sup>13</sup> *Id.* at 20; AR, Exh. 11, GSI Proposal, Vol. 1, CPAR Project 1 at 11; Exh. 11, GSI Proposal, Vol. 1, CPAR Project 3 at 21. Based on the corrective actions undertaken by GSI, the final CPAR ratings for projects 1 and 3 were satisfactory in all areas. *Id.* For project 2, GSI received all satisfactory ratings and for project 4, the CPAR noted all satisfactory ratings. AR, Exh. 14, Revised SSEB Consensus Report at 20-21; Exh. 11, GSI Proposal, Vol. 1, CPAR Project 2 at 15, CPAR Project 4 at 26.

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<sup>13</sup> The primary focus of GSI's claim of disparate treatment by the agency is the evaluation of project 1, fueling facility repairs at the Army Aviation Support facility. See Comments at 3-4. While the protester does not mention or otherwise discuss project 3, repairs and replacement of the military service stations in Guam, as documented in the related CPAR, the SSEB additionally noted that GSI had received initial unsatisfactory ratings in the areas of performance quality, project schedule, and project management. See AR, Exh. 14, Revised SSEB Consensus Report at 20; see *also* AR, Exh. 11, GSI Proposal, Vol. 1, CPAR Project 3 at 21. Thus, GSI's performance record reflected multiple projects with initial performance difficulties, as compared to Goshawk's record that only included one such project.

In comparison, for Goshawk's project 1, POL design, tank rehabilitation, and tank cleaning at Kirkland Air Force Base, the CPAR noted all satisfactory ratings; however, the CPAR narrative indicated that there were some performance issues related to project schedule and project management. The CPAR narrative further indicated that after Goshawk undertook corrective actions, "the project ran much smoother." See AR, Exh. 14, Revised SSEB Consensus Report at 17. For project 2, POL repairs at Keesler Air Force Base, the CPAR noted one rating of very good for performance quality and satisfactory for all other areas. *Id.* For project 3, repairs of existing fuel filter separator vessels at select military installations, Goshawk's submitted CPAR indicated a mix of very good and satisfactory ratings. *Id.* at 18. Finally, for project 4, POL design and repairs in Guam, Goshawk received all satisfactory ratings and in its review of project 4, the SSEB noted the various unique constraints and logistical challenges encountered in performing construction services in Guam. *Id.*

Here, GSI has not shown that both its own and Goshawk's performance records included substantively indistinguishable efforts in their prior project references. Nor has the protester shown that the agency actually penalized or failed to credit GSI for the corrective actions taken to resolve the identified performance issues in both project 1 and project 3, or that the agency actually credited Goshawk for the corrective actions taken to resolve the identified performance issues in its proposal (*i.e.*, project 1). An agency's assessment of past performance may be based on a reasonable perception of a contractor's prior performance, even where the contractor disputes the agency's interpretation of the underlying facts, the significance of those facts, or the significance of corrective actions. *Fluor Intercontinental, Inc.--Advisory Op.*, *supra* at 29.

While consideration of past performance trends and corrective actions is generally appropriate, an agency is not required to ignore instances of negative past performance. See *PAE Aviation and Tech. Servs., LLC*, B-413338, B-413338.2, Oct. 4, 2016, at 5-6. As such, the SSEB reasonably considered that GSI had submitted two past performance references (projects 1 and 3) that had initially received CPAR ratings of unsatisfactory and that GSI's corrective actions under both projects resulted in final CPAR ratings of very good or satisfactory. AR, Exh. 14, Revised SSEB Consensus Report at 20. GSI's various complaints and disagreement with the agency's considered and documented judgment does not render unreasonable the agency's determination that GSI's past performance was properly assigned a rating of limited confidence. See *Trilogy Fed., LLC*, *supra*. On this record, we have no basis to question the evaluators' assessments of the differences in the quality of performance between GSI's and Goshawk's performance records that resulted in the differing evaluation results of limited confidence assigned to GSI's past performance proposal and satisfactory confidence assigned to Goshawk's proposal. Accordingly, this protest ground is denied.

#### Overall Program Management/Technical Approach Evaluation

Finally, the protester alleges that the Corps misevaluated its proposal under the overall program management/technical approach factor. In its initial protest, GSI argued that

under this factor the agency unreasonably assessed a weakness and otherwise unreasonably assigned an acceptable rating, as opposed to a rating of good, based on the proposal receiving at least one evaluated strength for GSI's approach to implementing the three phases of quality control. See Protest at 8,10.

In its comments on the agency report, GSI for the first time alleged that its proposal in fact should have been evaluated as outstanding based on a number of alleged unacknowledged strengths in its proposal. See Comments at 7-8. The protester also alleges that the record demonstrates that the agency engaged in disparate treatment when it evaluated strengths in certain successful offerors' proposals that were materially similar to aspects of GSI's proposal. *Id.* at 9. The agency disagrees, arguing that the SSEB evaluated all aspects of GSI's program management/technical approach proposal and reasonably determined that its proposal had one strength and one weakness and merited an overall technical/risk rating of acceptable. In other words, the agency insists that the evaluators did not simply rely on the definition of the assigned adjectival ratings; rather, the evaluators considered and documented the relative merits of GSI's, and other firms' proposals, based on the underlying evaluation findings. MOL at 12-15. For the reasons that follow, we find no basis on which to sustain the protest.

Turning first to GSI's supplemental protest allegations regarding unacknowledged strengths, such arguments amount to improper, prohibited piecemeal presentation of protest issues. For the first time in its comments on the agency report, GSI alleged that "the Agency repeatedly failed to account for substantive strengths within the proposal" and proceeded to identify several specific aspects of the proposal that it claims warranted the assignment of unique strengths in support of an overall rating of outstanding. See Comments at 7-8. None of these alleged unacknowledged strengths, however, were raised in the initial protest notwithstanding that the agency disclosed all of the assessed strengths and weaknesses in GSI's proposal as part of the written debriefing provided to GSI. See, e.g. Protest at 7-8. Our regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternative or more specific legal arguments missing from earlier general allegations of impropriety. *Magellan Fed., Inc.*, B-422803, B-422803.2, Nov. 13, 2024, at 11 n.10.

As to its allegations of disparate treatment, we find that the arguments are legally and factually insufficient. Our Bid Protest Regulations require that protests include a detailed statement of the legal and factual grounds of protest and that the stated grounds are legally sufficient. 4 C.F.R. § 21.4(c)(4) and (f). This requirement contemplates that protesters will provide, at a minimum, credible allegations that are supported by evidence and are sufficient, if uncontradicted, to establish the likelihood of the protester's claim to improper agency action. *Warfighter Focused Logistics, Inc.*, B-423546, B-423546.2, Aug. 5, 2025, at 4. Protesters must provide more than a bare allegation; the allegation must be supported by some explanation and evidence that establishes the likelihood the protester will prevail in its claim of improper agency action. *Navarre Corp.*, B-423602, Aug. 14, 2025, at 2.

Relevant here, to prevail on an allegation of disparate treatment, a protester 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, at 6. GSI's threadbare allegations fail to satisfy this threshold because they fail to allege, let alone demonstrate, how the proposals were indistinguishable or nearly identical.

For example, GSI complains that Goshawk was unreasonably credited with a strength for its "well-conceived, detailed health and safety program" that was "specifically focused on the health and safety dangers inherent to the types of work which may be performed under the contract," AR, Exh. 14, Revised SSEB Consensus Report at 19, where the protester similarly proposed a "comprehensive safety plan, expressly tailored by GSI to address project hazards particular to POL work generally, as well as work performed under this [contract], and individual task orders, respectively." Comments at 9. The protester's argument, however, cherry-picks a single aspect of the strength assessed to Goshawk without explaining how other enumerated aspects of the assessed strength find an indistinguishable comparison in the protester's own proposal. For example, the evaluators noted that Goshawk provided a chart with five years' worth of experience modification rate (EMR) data,<sup>14</sup> has implemented numerous tools and processes to assist field personnel in administering a safe and successful project and has initiated proactive leading indicator programs and awards. AR, Exh. 14, Revised SSEB Consensus Report at 19. The protester fails to address what, if any, features of its proposal are indistinguishable from or nearly identical to these other features of Goshawk's proposal that supported the SSEB's overall assignment of a strength. Thus, we have no basis to conclude that the agency engaged in disparate treatment.

Turning to the protester's initial allegations, we find no basis to sustain the protest on either basis. First, even assuming for the sake of argument that the alleged weakness was assessed in error, we can discern no possibility of competitive prejudice. In this regard, even removing the weakness, the protester would have received only one assessed strength under factor 2, program management/technical approach, and paired with its lower past performance rating, the protester's proposal would still not have ranked among the most highly-rated proposals. Specifically, six of the seven most highly-rated proposals would still have higher substantial confidence past performance ratings and at least two assessed strengths under the program management/technical approach factor. See *generally* AR, Exh. 16, Phase Two Selection Memorandum. The remaining most qualified offeror would have a higher satisfactory confidence past performance rating and three assessed strengths under the program management/technical approach factor. *Id.* at 17-18. Thus, even assuming that the weakness was assessed in error, such determination had no competitively prejudicial impact on the phase two selection process.

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<sup>14</sup> A company's EMR is used to calculate a company's insurance premiums and is based on the average amount of claims against its insurance reported over a 3-year period. See *Dependable Disposal and Recycling*, B-400929, Feb. 3, 2009, at 2 n.2.

We also find no merit as to GSI's claim that the agency erred in not rating its overall program management/technical approach proposal as good rather than acceptable, as contemplated by the solicitation's evaluation and rating scheme. Comments at 6-7. Agencies have considerable discretion in making subjective judgments about the technical merit of proposals, and technical evaluators are given the discretion to decide whether a proposal "deserves a 'good' as opposed to 'very good' rating." *JAM Corp.*, B-408775, Dec. 4, 2013, at 4 (quotation omitted). Moreover, it is well established that adjectival descriptions and ratings serve only as a guide to, and not a substitute for, intelligent decision-making. *PAE-Parsons Global Logistics Servs., LLC--Advisory Op.*, B-417506.13, Oct. 18, 2019, at 15. Where, as here, an agency reasonably considers the underlying bases for evaluation ratings, including advantages and disadvantages associated with the specific content of competing proposals in a manner that is fair and equitable and consistent with the terms of the solicitation, a protester's disagreement over the actual adjectival or color rating assigned is essentially inconsequential in that it does not affect the reasonableness of the judgments made in the evaluation and source selection decisions. *Id.*

The protest is denied.

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