U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Comptroller General
of the United States

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Decision

Matter of: Battelle Memorial Institute

File: B-424575; B-424575.2

Date: September 10, 2026

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John J. Cho, Esq., National Science Foundation, for the agency.
Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Allegation that the agency unreasonably failed to consider a corporate transaction concerning the awardee is denied where the record shows the agency analyzed the scope and ramifications of the pending transaction.

2. Allegation that the agency's cost realism evaluation was unreasonable is denied where the record shows the agency examined the awardee's labor rates and the supporting data to determine they realistically could support recruiting and retaining labor.

3. Allegation that the agency unreasonably evaluated the awardee's proposed key person is denied where the record shows that the agency did not relax any material solicitation requirements to accommodate the proposed individual's "cooling off" period.

4. Allegation that the agency unreasonably considered whether the awardee unfairly accessed competitive information through its hiring of a former agency official is denied where the record shows the contracting officer meaningfully investigated and reasonably determined that the individual did not have access to non-public competitively useful information and the scope of his duties and nature of his prior employment did not create the appearance of an impropriety.

5. Allegations that the agency unreasonably evaluated the protester's management approach are denied where the record shows that the evaluation was consistent with the contents of the proposal and the terms and conditions of the solicitation.

6. Allegations that the agency unequally evaluated management approach proposals are denied where the record shows that any differences between the evaluations were supported by distinctions between the proposals.

7. Allegation that the agency unreasonably credited the awardee with the experience and past performance of its affiliate company is sustained where the record shows that the firm's proposal did not articulate what resources or services the affiliated company would provide in supporting performance of this contract.

DECISION

Battelle Memorial Institute, of Columbus, Ohio, protests the award of a contract to KBR Services, LLC, of Houston, Texas, under request for proposals (RFP) No. 49100425R0006, issued by the National Science Foundation (NSF) for science and engineering support services in Antarctica. Battelle argues that the agency unreasonably evaluated proposals and improperly made the selection decision.

We sustain the protest in part and deny it in part.

BACKGROUND

On May 9, 2025, the NSF issued the RFP to procure scientific and engineering support services for the United States Antarctic Policy and Programs (USAP). Agency Report (AR), Tab 2A, RFP, amend. 5, at 1, 6, 11.[1] The USAP supports scientific research and related logistics in Antarctica and the Southern Ocean. *Id.* at 11. Examples of services to be provided include management and budget planning; research and development; laboratory services and science support; manage and operate a research vessel; and field support for Antarctic stations.[2] *Id.* at 16-19.

The RFP contemplated the award of a single indefinite-delivery, indefinite-quantity (IDIQ) contract to be performed over a 20-year ordering period with an $8 billion ceiling

[1] All references to the agency report utilize the Adobe PDF page numbers.

The agency explains that this solicitation was issued prior to the Revolutionary Federal Acquisition Regulations Overhaul (RFO). While the agency has incorporated the RFO clauses into the awarded contract, the solicitation conformed to the Federal Acquisition Regulations (FAR) as it existed prior to overhaul. Contracting Officer's Statement (COS) at 18.

[2] This contract is referred to as the Antarctic Science and Engineering Support contract (ASESC). RFP, amend. 5 at 11.

on all orders placed. RFP, amend. 5 at 6, 97. Orders would be placed on fixed-price, cost-reimbursable, cost-plus-fixed fee, cost-plus-award, or hybrid bases. *Id.* Award would be made on a best-value tradeoff basis considering technical and price/cost factors. *Id.* at 96. Non-price/cost factors were prior experience, past performance, small business utilization, management approach, key personnel, and small business participation. *Id.* at 97.

Proposals would be evaluated in two phases. In Phase I, the agency would conduct an initial evaluation by examining each offeror's proposal under the prior experience, past performance, and small business utilization factors. RFP, amend. 5 at 96-97. The NSF would then issue an advisory recommendation detailing whether each offeror should proceed to Phase II. *Id.* at 96. Phase II proposals would address each offeror's management approach, key personnel, small business participation, and price/cost. *Id.* at 97. To evaluate price/cost, offerors were required to provide cost information for two sample task orders and pricing information for a pre-transition task order. *Id.* at 87. When combined, the non-price/cost factors were significantly more important than the price/cost factor, which would increase in value as proposals' non-price/cost factors were evaluated equally. *Id.* at 97.

Among the non-price/cost factors, the management approach and key personnel factors were of equal importance and considered the most important. RFP, amend. 5 at 97. The remaining non-price/cost factors were assigned descending levels of importance in the following order: prior experience, past performance, small business utilization, and small business participation. *Id.*

Prior to the May 30, 2025, close of the solicitation period, four offerors submitted Phase I proposals. AR, Tab 3A, Source Selection Decision (SSD) at 3. All four were considered to be among the most highly rated, and each submitted a Phase II proposal. *Id.* at 4. After evaluating Phase II proposals, the agency established a competitive range consisting of all four offerors, and conducted discussions with each. *Id.* Each offeror submitted final proposal revisions. *Id.*; COS at 17. The agency's evaluation produced the following relevant results:

	Battelle	**KBR**
Management Approach	Some Confidence	Some Confidence
Key Personnel	Some Confidence	Some Confidence
Prior Experience	High Confidence	High Confidence
Past Performance	Some Confidence	Some Confidence
Small Business Utilization	High Confidence	High Confidence
Small Business Participation	Acceptable	Acceptable
Cost/Price	$13,780,506	$8,423,908

AR, Tab 3A, SSD at 26. After comparing proposals, the source selection authority (SSA) determined that KBR's proposal was the most advantageous. *Id.* at 30-31. In particular, the SSA concluded that KBR's proposal was superior under the management approach and key personnel factors. *Id.* The SSA determined that KBR's proposal had strong approaches to managing costs and maximizing science, and workforce management. *Id.* at 27. The SSA also determined that KBR's proposal was extremely beneficial under the key personnel factor because its proposed program director demonstrated extensive experience. *Id.* at 29.

While Battelle's prior experience and past performance were evaluated as more advantageous than KBR's prior experience and past performance due to having more relevant experience, the SSA concluded that KBR's advantages under the management approach and key personnel factors still made its proposal more attractive overall. AR, Tab 3A, SSD at 30. Finally, the SSA noted that KBR's total evaluated cost/price was the lowest overall, while Battelle's total evaluated cost/price was the highest overall. *Id.* As a result, the agency identified KBR's proposal as representing the best value.

On June 2, 2026, the NSF awarded the IDIQ contract to KBR. COS at 17-18. After receiving its debriefing, Battelle filed this protest with our Office on June 12.

DISCUSSION

Battelle raises numerous allegations challenging the agency's evaluation and selection decision. Principally, Battelle argues that the NSF unreasonably failed to consider a pending corporate restructuring concerning KBR, erroneously evaluated KBR's proposed costs as realistic, unreasonably investigated the awardee's alleged unfair competitive advantage through its hiring of a former government employee, and improperly evaluated proposals under multiple technical factors.

We have reviewed all of Battelle's challenges and conclude that the agency unreasonably credited KBR with the experience and past performance of its affiliated company, [DELETED]. We do not find any other allegation persuasive.[3] We discuss the principal allegations below, but note, at the outset, that in reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. *IAP World Servs., Inc.*, B-418566.2 *et al.*, Aug. 20, 2020, at 3.

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[3] To the extent we do not discuss a particular allegation, it is denied.

Corporate Restructuring

Battelle contends that the agency unreasonably failed to evaluate the impact that KBR's pending corporate restructuring will have on the firm's performance. Battelle argues that the contemporaneous record contains no documentation whatsoever memorializing any consideration of the restructuring. The protester also argues that, had the agency considered the restructuring, it would have determined that the successor entity will not have access to all the assets, resources, and experience which were formerly with KBR.

NSF responds that it reasonably considered the corporate restructuring. Supp. Memorandum of Law (MOL at 2. The agency explains that the contracting officer (CO) received a letter from KBR detailing the prospective restructuring, and determined it would not have any material or substantive change to the entity performing the contract. *Id.* The NSF also explains that it reasonably determined the restructuring had no material impact on KBR's proposal because all the relevant corporate assets would transfer from KBR to the new entity. *Id.* at 3.

As additional background, during the solicitation period, KBR sent a letter informing agency officials about a prospective development related to the firm's corporate structure. AR, Tab 7A, Email from KBR to Agency Officials at 1. KBR explained that KBR Services, LLC (the offeror) would spin off the entirety of its Mission Technology Solutions (MTS) business in the third quarter of 2026. AR, Tab 7B, Letter from KBR to Agency Officials at 1. Significantly, KBR explained the following:

> This corporate restructuring will not have any material effect on the pending proposal or the proposed resources or capabilities described in the proposal. All of KBR Services' business will remain with the KBR spin off company with no change to KBR Services. Specific to our [proposal], all proposed elements of our offer, including past performance references, key personnel, and management tools remain wholly with MTS. The current MTS business will continue as an independent, publicly traded company at the close of the transaction in calendar year Q3 2026.

Id. KBR also provided a press release explaining that it expected to reorganize into two separate companies, MTS and Sustainable Technology Solutions (STS). *Id.* at 3.

After receiving this information, the agency explains that it did the following:

> While NSF did not contemporaneously document its assessment of the transaction, NSF did consider the proposed corporate restructuring transition and determined that since there was no material or substantive change in the organization that would be performing the contract, there would be no effect on KBR's proposal submission or questions to raise during evaluation or subsequent discussions as the entity proposed perform the ASESC contract, and all of its assets, appeared to be

> materially the same organization and remain intact after the corporate reorganization.

COS at 18-19.

Our decisions regarding matters of corporate status and restructuring are highly fact specific and turn largely on the individual circumstances of the proposed transactions and timing. *Spatial Front, Inc.*, B-424251 *et al.*, May 28, 2026, at 12; *DecisionPoint Corp.--f/k/a Emesec, Inc.*, B-422245.5, Nov. 13, 2024, at 8. Generally, we focus on the reasonableness of an agency's conclusions regarding a corporate transaction. *Spatial Front, Inc.*, *supra*. Where a corporate acquisition or restructuring does not appear likely to have a significant cost or technical impact on contract performance, the corporate transaction does not render the agency's evaluation and award decision improper. *Id.*

As an initial matter, we disagree with the protester that the fact that NSF did not formally document its determination requires sustaining the protest. Where an agency fails to document or retain evaluation materials, it bears the risk that there may not be adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for its evaluation conclusions. *Vertex Aerospace, LLC*, B-420073, B-420073.2, Nov. 23, 2021, at 9. Here, the record contains KBR's letter and press release, which unequivocally expressed that the spinoff would not have any impact on performance. As a result, the agency's failure to document its determination is not fatal in this context because its conclusion was self-evident based on the information provided.

Further, we do not object to the NSF's conclusion that the corporate spinoff had no impact on contract performance. As noted above, the record shows that KBR promptly notified the agency that it planned to spin off its government contracts business as a separate entity later this year. Significantly, KBR communicated that the spinoff would not have any material effect on contract performance, and that all resources identified in its proposal would remain wholly with MTS. Thus, we have no basis to question the agency's conclusion because the record contains affirmative statements from KBR assuring that the transaction would not impact contract performance.

An agency may reasonably rely on information provided by an offeror, so long as it has no reason to question that information. *See HCR Construction, Inc.; Southern Aire Contracting, Inc.*, B-418070.4, B-418070.5, May 8, 2020, at 7-8. In this regard, we do not find that Battelle has identified any concrete evidence that should have reasonably caused the agency to question KBR's assurance. For example, Battelle argues that KBR's press releases characterize MTS as focusing on national security and space priorities and therefore will lack the science and engineering support necessary for this contract. Battelle also argues that KBR recently hired two chief executives, and that their hiring indicates that the transaction is not only a change in stock ownership but rather a change in direction which could affect performance. Supp. Comments at 8-9.

We are unpersuaded because KBR's press releases explain that the purpose of the transaction is to divide the current company into STS, which will explore sustainable technology solutions, and MTS, which will be a "pure play global government services solutions provider." AR, Tab 10C, KBR Spin Off Presentation at 6. Additionally, KBR's press releases explain that the company will maintain a cadre of 20,000 employees, retain engineering capabilities, and derive 20 percent of its revenue from science and space support contracts. *Id.* at 6, 9-10. Likewise, the hiring of two chief executives does not reasonably impugn KBR's assurance because, as the agency explains, "hiring a new executive does not render a contractor a materially different entity." Supp. MOL at 4. We view the information cited as either consistent with KBR's assurance or as insignificant, and deny the protest allegation.

Cost Realism Analysis

Battelle contends that the agency unreasonably conducted the cost realism analysis for the two sample task orders. First, Battelle alleges that the agency failed to consider KBR's drastically low labor rates for [DELETED] under the Long Duration Balloon (LDB) sample task order. Comments and Supp. Protest at 12-17. For example, Battelle argues that KBR proposed extremely low labor rates for skilled positions, which were significantly below the Department of Labor (DOL) Occupational Employment and Wage Statistics (OEWS) hourly median rate mean wage rates. *Id.* at 12-14. Battelle further argues that, even if the rates were not extremely low, the agency unreasonably concluded that the rates were supported by sufficient substantiating data. *Id.* at 14-17. In this regard, Battelle argues that KBR provided wage data for [DELETED] from locations very different from Antarctica. *Id.* at 15; Comments and Supp. Protest, Decl. of Protester's Cost Expert at 67.

Second, Battelle alleges that the NSF failed to reasonably consider KBR's proposed labor rates for the Christchurch, New Zealand, (CHCH) sample task order. Battelle asserts that KBR proposed to staff this contract with [DELETED] but, since KBR does not have any current [DELETED] employees, it used labor rates from unrelated [DELETED] employees to substantiate the proposed rates. Battelle contends there is no meaningful connection between the proposed rates and the substantiating evidence.

NSF counters that it reasonably performed the cost realism assessment. Regarding the LDB sample task order, NSF explains that KBR's proposal demonstrated that the proposed rates were consistent with actual rates currently paid to [DELETED] for other contracts in similar settings. Supp. MOL at 8-9. As for the CHCH task order, NSF explains that it reasonably concluded that the proposed labor rates were realistic since they were consistent with current labor rates paid to [DELETED] personnel. *Id.* at 11-12.

As relevant here, the RFP instructed offerors to complete two sample orders as part of their cost proposals. RFP, amend. 5 at 87. Sample Order A required offerors to provide proposed costs for operating administrative offices and other support facilities at the International Antarctic Center and Harewood Airport in Christchurch, New Zealand.

AR, Tab 2D, RFP, attach. 4, Order Specifications at 3. Sample Order B required offerors to provide proposed costs for conducting the annual planning and operational field support of the Long Duration Balloon facility located near McMurdo Station, Antarctica.[4] *Id.* at 6. For both sample orders, offerors were required to complete cost spreadsheets by entering direct labor and indirect rates for a series of positions with prescribed labor hours. RFP, amend. 5 at 87-88; AR, Tab 2E, RFP, attach. 5, Cost Template. For each labor rate, offerors were required to explain how the proposed rate was calculated and provide a screen-capture (or equivalent) from its payroll system substantiating the proposed rate. RFP, amend. 5 at 90.

The RFP advised that proposed costs submitted as part of the sample orders would be evaluated for realism and reasonableness. RFP, amend. 5 at 102. If proposed costs were determined to be unrealistic, the proposed costs would be adjusted upward to reflect the agency's best estimate of the actual cost. *Id.*

As part of its proposal, KBR submitted complete cost spreadsheets for both sample orders. The cost spreadsheets included direct labor and indirect rates for all positions, and substantiating information. *See* AR, Tab 4F, KBR Cost Spreadsheets. The agency evaluated proposed direct labor rates by comparing them to the DOL OEWS hourly median rates. AR, Tab 3F, Price and Cost Evaluation Report at 70. If the proposed rate deviated by less than 33 percent from the hourly mediate rate, then the proposed rate was considered realistic. *Id.* at 72. If, however, the rate deviated negatively by more than 33 percent, then the agency would examine the substantiating data to determine whether the rate was realistic. *Id.*

The NSF determined that many of KBR's proposed rates were below the mean. AR, Tab 3F, Price and Cost Evaluation Report at 75. Nevertheless, the agency determined that all proposed rates were sufficiently substantiated and therefore realistic. *Id.* For example, the agency noted that KBR proposed a direct labor rate for the LDB carpenter position which was significantly less than the median rate ([DELETED] vs. $28.84); however, the agency concluded that the rate was nevertheless realistic because KBR provided a screenshot from its payroll system showing that this was an actual wage paid to a current employee. *Id.* at 73, 75.

The agency also noted that KBR's approach involved using [DELETED] to fulfill labor requirements, and that [DELETED] utilize labor rates significantly less than those of other offerors. AR, Tab, 3F, Price and Cost Evaluation Report at 66. Further, the agency evaluators stated:

[4] The LDB facility launches large (400 foot diameter) unmanned, high-altitude (120,000 feet) balloons carrying scientific payloads in Antarctica. AR, Tab 2D, RFP, attach. 4, Order Specifications at 6.

> [T]he use of [DELETED] is a typical KBR business practice, and KBR has provided sufficient evidence that their use of [DELETED] is realistic . . .. Therefore, no upward adjustment for these rates is necessary.

Id. In other words, the agency evaluators recognized that KBR has a unique advantage of having low direct labor rates due to its experience employing [DELETED].

When an agency evaluates a proposal for award of a cost-reimbursement contract, an offeror's proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR §§ 15.305(a)(1), 15.404-1(d). Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(1). An agency is not required to conduct an in-depth cost analysis, or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. *BEAT, LLC*¸ B-418235, B-418235.2, Jan. 30, 2020, at 7. Because the agency is in the best position to make the cost realism determination, our review is limited to determining whether its cost evaluation was reasonably based and not arbitrary. *Id.*

We have no basis to object to the NSF's determination that KBR's proposed rates were realistic. We are unpersuaded by Battelle's argument that the analysis was flawed because KBR's proposed rates for the LDB sample task order were so low that they were "facially absurd." Supp. Comments at 13. The record shows the NSF compared the proposed rates against the DOL's OEWS median labor rates and identified those that were more than 33 percent lower. The NSF then determined that KBR provided substantiating data showing that each low rate was supported by an actual wage rate currently paid. Thus, even if we were to agree that the rates appeared low, we still would have no basis to object, because the record shows that the agency made a reasoned and informed judgment supported by existing wage data.

We are also not persuaded that KBR's substantiating data should have been considered irrelevant because the data pertained to [DELETED] in allegedly dissimilar environments. An agency's cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency at the time of its evaluation. *Stargates, Inc.*, *supra* at 13.

As described above, the agency determined that KBR has unique experience hiring [DELETED] at cheaper wage rates and employing them in different environments successfully. The NSF reviewed KBR's proposal, which explained that it has employed [DELETED] in cold and/or remote environments, such as [DELETED] and [DELETED], and used wage data from those contracts to substantiate its proposed costs. *See* Supp. MOL at 7-8. Given that the agency was aware of the nature of the requirement and considered KBR's technical approach as capable of recruiting [DELETED] at the proposed rates, we decline to find that the agency's analysis did not provide some measure of confidence that the rates were realistic. To the extent Battelle contends otherwise or argues that the Antarctic environment is simply too harsh to assume that KBR could recruit [DELETED] to that location, that argument merely represents disagreement with the agency's judgment and does not provide us with a basis to sustain the protest.[5] *Stargates, Inc.*, *supra* (disagreement with agency's judgments made as part of a cost realism analysis does not provide a basis to sustain a protest).

Likewise, we are not persuaded that the NSF unreasonably conducted its cost realism assessment of KBR's proposed costs for the CHCH sample task order. KBR explained that it intended to hire [DELETED] as employees, but, since it currently did not employ any [DELETED], the firm explained that it would substantiate its proposed labor rates using wage data from [DELETED].[6] AR, Tab 6I, KBR Revised Price and Cost Proposal at 97. KBR also explained that the selected labor rates were derived from [DELETED] in similar labor roles with wages that exceeded minimum requirements under New Zealand labor law. *Id.*

Again, the NSF evaluated most of KBR's proposed rates as realistic. For rates 33 percent below the DOL OWES median wage, the NSF determined that they were realistic because they reflected actual wage rates paid to [DELETED] employees. AR, Tab 3F, Price and Cost Evaluation Report at 76 ("The evidence that KBR pays the proposed rates on current government contracts is sufficient evidence that the rates could be realized in future.").

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[5] Battelle also argues that the analysis was defective because KBR did not propose "uplift" pay (*i.e.*, a wage premium) for [DELETED], which would be necessary to recruit them to Antarctica. Comments and Supp. Protest at 15-16. KBR's proposal shows that it elected not to apply "uplift" pay to positions staffed with [DELETED]. *See* AR, Tab 6I, KBR Revised Price and Cost Proposal at 252-253. The agency concluded, and we do not find objectionable, that this strategy was reasonable given KBR's experience and success employing [DELETED]. Supp. MOL at 10. To the extent that Battelle effectively argues that [DELETED] must receive an "uplift" fee, see Supp. Comments at 18-19, we think that position disputes the agency's judgment of KBR's unique experience and ability to employ [DELETED], and does not provide us with a basis to sustain the protest.

Similarly, Battelle argues that the KBR's fringe benefits rate for [DELETED] is unrealistically low. Supp. Comments at 19-20. The agency responds, and we find reasonable, that it reviewed the rates, determined that they were consistent with Defense Contract Management Agency forward pricing recommended rates, and therefore that they were realistic. Supp. MOL at 10-11.

[6] KBR explained that New Zealand protects New Zealand workers by establishing minimum wage requirements for [DELETED] and imposing strict visa requirements, which makes hiring [DELETED] a more viable solution. AR, Tab 6I, KBR Revised Price and Cost Proposal at 97.

Battelle argues that this evaluation was unreasonable because the substantiating data was taken from unrelated contracts and provides no meaningful insight into whether KBR could employ [DELETED] at the proposed rates. Contrary to the argument, we find no basis to object to the agency's evaluation. We think the agency reasonably determined that the rates were realistic because, consistent with the agency's position, [DELETED]-based wage rates are generally accepted to be extremely competitive (or higher) than most other countries. *See* Supp. MOL at 12. Thus, we agree with the NSF that if the labor rates are competitive in the [DELETED] market, then that fact provides sufficient evidence that the rates could be realized in the CHCH contract. *See* AR, Tab 3F, Price and Cost Evaluation Report at 76-77. Accordingly, we deny the allegation.

Key Personnel

Battelle alleges that the NSF unreasonably evaluated KBR's proposal under the key personnel factor. The firm contends that the NSF unreasonably relaxed a material solicitation requirement when evaluating KBR's proposal because KBR's program director would not be fully available during the first-year of contract performance owing to his status as a former agency employee. Battelle also argues that the NSF failed to investigate whether KBR's relationship with a former agency employee resulted in an OCI. Finally, Battelle argues that the agency unreasonably evaluated its proposal under the key personnel factor. After providing additional context about this evaluation factor, we discuss the challenges separately.

The RFP instructed offerors that the only key person was the program director, and that offerors should provide a resume and, if available, a corresponding statement of commitment. RFP, amend. 5 at 85. When evaluating proposed program directors, the RFP advised that the agency would consider education, experience, and accomplishments to determine whether the proposed person possesses the qualifications necessary to perform the requisite duties. *Id.* at 101. Specifically, the agency would evaluate whether the proposed person has performed relevant efforts, as well as his or her training and academic qualifications. *Id.* The RFP also advised that a proposed person who has recruited, retained, and managed a seasonal, deployed workforce would be evaluated more favorably. *Id.*

Relaxation of Material Solicitation Requirement

As noted above, Battelle argues that the agency unreasonably relaxed the RFP's requirement to propose a program director who is available at the start of contract performance. According to Battelle, KBR's proposed program director is a former NSF employee who will not be able to negotiate or communicate directly with the NSF under applicable regulations. Supp. Comments at 25-28. Battelle explains that KBR will need to use a substitute negotiator during this period, and therefore, the protester argues that the agency unreasonably permitted KBR to propose a program director with partial availability and a "work-around" approach, while other offerors were not similarly given that opportunity. *Id.* at 25.

NSF responds that the agency did not relax any requirement because the RFP did not require "the [p]rogram [d]irector to communicate directly with NSF on the first day of performance, be personally available on day one, or refrain from using a negotiator to interface with NSF during the transition period." Supp. MOL at 14-15. Instead, the agency explains that KBR's proposed program director will be immediately available but will communicate through a substitute negotiator during the transition period. *Id.* at 15. Further, NSF explains that it recognized this feature as a risk associated with KBR's proposal. *Id.*

KBR proposed Employee A as its program director. AR, Tab 4D, KBR Tech. Proposal, Vol. IV, at 29. Employee A offered more than 35 years of extensive experience managing and guiding large geographically dispersed scientific teams. *Id.* Most recently, KBR explained that Employee A served as an NSF employee providing oversight for multidisciplinary research teams addressing national priorities in sustainability and emerging technologies, and as an independent reviewer. *Id.* at 31. Prior to that role, he was a senior program director with NSF leading integrated project teams in project management, workforce development, and facility operations. *Id.* at 32. Employee A's commitment letter explained that he would serve in this role following the award of any contract to KBR. *Id.* at 38.

Because Employee A was an NSF employee up until contract award, he is subject to a one-year cooling off period under 45 C.F.R. § 680.12, where he is unable to represent himself or any firm in dealings with any NSF official on any proposal, project, or other particular matter.[7] AR, Tab 6B, Discussion Letter at 3-4. During this period, KBR

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[7] As relevant here, 45 C.F.R. § 680.12(a) provides as follows:

> For one year after leaving NSF employment, a former NSF employee, including a special Government employee who has performed work for NSF on more than 60 days in the previous twelve months, shall not represent himself, herself, or any other person in dealings with any NSF official on any proposal, project, or other particular matter.

45 C.F.R. § 680.12(a).

Additionally, subsection (e) provides as follows:

> As soon as his or her NSF employment ceases, a former NSF employee . . . may again be listed as principal investigator on an NSF award, may be listed as principal investigator in any proposal or award, and may sign a proposal as principal investigator. However, the former employee and the grantee institution shall formally designate, subject to NSF approval, a "substitute negotiator" who, though not principally responsible for the work, will represent the former employee and the institution in dealings with NSF officials on any proposal or project for as long as the former employee

(continued...)

explained that Employee A will perform the duties of the program director by providing full internal program leadership and technical and scientific management direction, but all representational communications will be conducted through a "designated, fully empowered Substitute Negotiator[.]" AR, Tab 6D, KBR Final Proposal Revisions at 10. KBR explained that this arrangement is consistent with 45 C.F.R. § 680.12(e).

The NSF evaluated this aspect of KBR's approach as a weakness because, even though it was confident in the substitute negotiator's capability and support from other staff, NSF still was concerned with whether the set-up would degrade the efficiency of the contract transition between the former contractor and KBR. AR, Tab 3E, Management Approach and Key Personnel Evaluation Report at 20. NSF's concern was rooted in the gap in communication between Employee A and agency officials. *Id.*

In a negotiated procurement, a proposal that fails to conform to the material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award. *Platinum Bus. Corp.*, B-415584, Jan. 19, 2018, at 3. We will not disturb an agency's determination of the acceptability of a proposal absent a showing that the determination was unreasonable, inconsistent with the terms of the solicitation, or in violation of procurement statutes or regulations. *Id.*

We agree with NSF that it did not waive or relax any key personnel requirement. The solicitation required each offeror to propose a program director who will oversee the selected contractor's operations. Our review of KBR's proposal shows that it proposed Employee A to fulfill this role with the assistance of a subordinate substitute negotiator owing to his particular status. While Battelle challenges the "availability" of KBR's program director, the agency explains, the protester does not contest, and our review confirms, that the solicitation did not state that the program director must be the sole point of communication between the agency and the contractor. Supp. MOL at 14; *see also* Supp COS at 4 ("Nowhere in the solicitation does it say that representational contact with NSF is a requirement of the Program Director or that the [program director] must engage directly with NSF, either on day one, or at any time.").

We also disagree with Battelle's argument that Employee A should be considered "unavailable" as that term is used in the solicitation because the RFP's reference to availability concerned a person's employment status (*i.e.*, whether the person left for another position), not whether the employee was aided in performance of his duties by a subordinate employee. RFP, amend. 5 at 101. Thus, we reject Battelle's argument because we disagree that the agency waived or relaxed any solicitation requirement.

(...continued)

> would be barred from representational contacts with NSF by paragraph (a) of this section or by statute.

45 C.F.R § 680.12(e).

Unfair Competitive Advantage

As a related allegation, Battelle contends that the agency unreasonably failed to evaluate KBR's unfair competitive advantage through its hiring of Employee A. Supp. Comments at 28-33. Battelle argues that Employee A had access to competitively useful non-public information because Employee A had critical knowledge of NSF's oversight on and understanding of the lifecycle of NSF large projects. Comments and Supp. Protest at 25-26. Further, Battelle argues that the agency unreasonably investigated Employee A's access to non-public information because it did not disqualify KBR even though Employee A apparently inquired twice about the status of this procurement from other agency officials showing that he attempted to acquire procurement sensitive information. Supp. Comments at 31.

NSF responds that it reasonably investigated the alleged conflict and determined that KBR did not enjoy an unfair competitive advantage. Supp. MOL at 19. Prior to awarding the contract, the contracting officer investigated whether KBR's proposed employment of Employee A presented any conflicts. AR, Tab 12, OCI and Procurement Integrity Memorandum (OPIM) at 1. The CO examined whether Employee A had access to procurement sensitive information during his employment with NSF and concluded that he did not. *Id.* at 2; *see also* Supp. COS at 5-6.

As part of the investigation, the CO discovered that Employee A had twice improperly asked about the status of this procurement, but no evidence showed that Employee A had learned any sensitive information. AR, Tab 12, OPIM at 2. Specifically, while discussing matters related to Employee A's position with the technology and innovation partnership directorate, Employee A asked contracting personnel about the status of this procurement, and Employee A was told to redirect his questions to the contracting officer. Supp. COS at 2. No contracting personnel divulged any information about the procurement to Employee A. *Id.* The CO also checked all procurement related files and confirmed that Employee A never accessed the information. *Id.*

Additionally, the CO confirmed that Employee A never had any role in any phase or part of this procurement. AR, Tab 12, OPIM at 2; Supp. COS at 2-3, 5-6. Indeed, Employee A's employment with NSF did not include any involvement with this procurement or the prior contract for these services. Supp. COS at 2-3, 5-6. Employee A also did not work with any staff members who were involved with this procurement or had access to information related to this procurement. *Id.* at 2-3. Based on these findings, the CO concluded that Employee A did not have access to any competitive or procurement related information, and that, as a result, KBR did not have a disqualifying OCI. AR, Tab 12, OPIM at 2.

Government business shall be conducted in a manner above reproach, and, to this end, contracting agencies are to avoid strictly any conflict of interest, or even the appearance of a conflict of interest in government-contractor relationships. Federal Acquisition Regulation (FAR) 3.101-1; *Verisys Corp.*, B-413204.5 *et al*, Oct. 2, 2017, at 9. In this regard, where a firm may have gained an unfair competitive advantage through its hiring of a former government official based on the individual's knowledge of non-public information, the firm can be disqualified from a competition based on the appearance of impropriety which is created by this situation, that is, even if no actual impropriety can be shown, so long as the determination of an unfair competitive advantage is based on hard facts. *Verisys Corp.*, *supra*.

We review the reasonableness of a contracting agency's investigation and, where an agency has meaningfully considered whether a significant conflict of interest exists, we will not substitute our judgment, unless the record contains clear evidence showing that the agency's conclusion is unreasonable. *Pioneer Corporate Servs., Inc.*, B-418678.5, Aug. 31, 2021, at 5. Substantial facts and hard evidence are necessary to demonstrate a conflict; mere inference or suspicion of an actual or potential conflict is insufficient. *Id.* Also, a person's familiarity with the work obtained via a prior position in the government is not, by itself, evidence of an unfair competitive advantage. *Id.*

On this record, we have no basis to find that the agency unreasonably investigated and determined that Employee A's prior employment did not give rise to an actual or potential disqualifying unfair competitive advantage. First, the record shows that, despite Employee A's general questions, Employee A never gained any access to procurement sensitive information because the CO confirmed that agency procurement officials did not divulge any information and Employee A did not have access to physical or computer files containing procurement sensitive information. In other words, the record shows that the agency reasonably determined that Employee A did not have an actual disqualifying unfair competitive advantage through Employee A's access to procurement sensitive information.

Second, the record contains no hard facts showing that the NSF unreasonably considered whether Employee A's prior employment created the appearance of an impropriety. Indeed, the CO meticulously considered the scope of Employee A's duties and positions, and determined that his prior work did not involve any cross-collaboration with this procurement, the prior contract, or any NSF work supporting the ASESC program. While Employee A may have led agency efforts in accelerating science and engineering convergence research and managing large research facilities, we agree with NSF that Employee A's familiarity with other agency programs does not constitute evidence of an unfair competitive advantage. Because the CO meaningfully considered whether an actual or potential unfair competitive advantage existed and the record contains no evidence that Employee A accessed any information either through his queries or as part of his former employment duties, we find no basis to sustain this allegation.

Battelle's Program Director

Battelle contends that the agency unreasonably assigned a weakness to its proposed program director. Battelle explains that the agency assigned a weakness because its proposed program director lacked management experience in long-chain logistics, recruitment/retention of a deployed workforce, remote field deployments, and remote base operations or large-scale base operations including station services and airfields. Battelle argues that this evaluation evidences the application of unstated evaluation criteria because the RFP did not establish qualification requirements in terms of specific operational environments or geographic experience. To this end, Battelle argues that the agency's comparison between its proposed program director's experience and Antarctic-specific conditions was an unstated criterion.

The agency responds that it reasonably evaluated Battelle's proposed program director's experience. MOL at 36. It explains that evaluating a candidate's prior efforts for relevance to the ASESC, including work in similarly remote and austere environments, is expressly contemplated by the RFP. *Id.*

As explained above, the RFP advised that the NSF would consider each proposed program director's education, experience, and accomplishments to determine whether the proposed person possesses the qualifications necessary to perform the requisite duties. RFP, amend. 5 at 101. The agency would evaluate whether the proposed person has performed relevant efforts, as well as his or her training and academic qualifications. *Id.* A proposed person who has recruited, retained, and managed a seasonal, deployed workforce would be evaluated more favorably. *Id.*

Battelle proposed one of its employees (Employee B) as its program director. AR, Tab 5B, Battelle Tech. Proposal, Vols. III and IV at 49. Employee B has held leadership positions in national laboratories within the United States, and directed programs in Qatar and Georgia. *Id.* at 51-52.

NSF evaluated Employee B's education and experience as warranting an adjectival rating of "Some Confidence." AR, Tab 3E, Management Approach and Key Personnel Evaluation Report at 28. The agency evaluators concluded that Employee B possessed some of the education, experience, and accomplishments to perform the proposed duties under the contract. *Id.* It assigned four strengths against one weakness. *Id.* at 28-29. As relevant here, the weakness was assigned on the following basis:

> [Employee B's] resume did not include management of remote field deployments (e.g., distributed, field-based science support); remote base operations or large-scale base operations including station services, airfield and flight operations, long-chain logistics; or recruitment/retention of a deployed workforce. While the offerors discussion response provided more information in these areas, specifically work in Georgia and Qatar, the response overall strengthened the [technical evaluation board's (TEB)] conviction of a weakness in these areas. The experience that was provided--especially in regard to remote operations and long-chain logistics--are not analogous to those of the ASESC. To use Qatar as an example--while there are remote locations in Qatar, there are still existing and commercially operated major shipping lanes and aviation hubs. Neither exist near U.S. Antarctic stations, and for USAP there are limited

opportunities for accessing the stations (i.e., extremely limited during the winter period).

Id. at 29.

We find no basis to conclude that the evaluation was unreasonable. In this regard, we agree with the agency that the RFP expressly contemplated a comparison between the scope of each proposed director's experience and the duties under this contract. RFP, amend. 5 at 101. Indeed, the RFP specifically provided "[t]he evaluation of the ASESC Program Director will be based upon the individual's execution of relevant efforts, relevant training, and academic qualifications." *Id.* Thus, the agency's comparison of Employee B's experiences in Qatar, Georgia, and domestic United States locations with Antarctic conditions is unobjectionable because such comparison probes the relevance of the proposed candidate's experiences to the duties set forth under this acquisition which were to take place in Antarctica. While Battelle argues that the standard was functional equivalence, not environmental equivalence, that argument lacks any support in the text of the evaluation criteria. Accordingly, we deny the protest allegation.

Management Approach

Battelle argues that the agency unreasonably and unequally evaluated its proposal under the management approach factor. We discuss the specific challenges separately.

When detailing their management approach, the RFP instructed offerors to address four objectives: quality; workforce management; managing costs and maximizing science; and safe work environment. RFP, amend. 5 at 85. For quality, offerors were required to explain how they would achieve the performance objectives set forth in the Statement of Work (SOW), discuss their approach to coordinating across stakeholders, and the Integrated Safety Management System. *Id.* For workforce management, the RFP instructed offerors to discuss their hiring and recruiting methods, and how permanent and seasonal workforces would be used. *Id.* As to managing costs and maximizing science, the RFP instructed offerors to detail their approach to managing costs and how they would spur operational innovation for science delivery. *Id.* Regarding safe work environment, offerors were instructed to explain their plans for ensuring a workplace free from sexual assault and other improper conduct. *Id.*

The agency would evaluate each management approach to determine whether it would result in successful performance under four categories. RFP, amend. 5 at 100.

Battelle's Management Approach

Battelle contends that the agency unreasonably assigned four weaknesses to its management approach. We do not find that any of the weaknesses were unreasonable. As an illustrative example, Battelle argues that the agency unreasonably evaluated its management approach under the quality objective as lacking a dedicated safety manager. Battelle argues that this evaluation finding was based on unstated criteria since the solicitation did not require offerors to include a dedicated safety manager. Further, Battelle argues that its proposal demonstrated a quality safety management system. Additionally, Battelle argues that this weakness contradicts strengths assigned based on its safety management system.

The agency responds that it reasonably assigned this weakness because it determined that Battelle's safety leadership structure was concerning. MOL at 27. It explains that Battelle relied on a program director and performance assurance manager to drive safety accountability, and that the dedicated safety manager was too low in the reporting chain. *Id.* In other words, the agency determined that Battelle's structure lacked a high-level focal point for safety, which indicated that the firm did not place sufficient emphasis on safety. *Id.*

Under the quality objective, the RFP instructed offerors to discuss their integrated safety management system and how it would ensure the safety of contractor and other personnel. RFP, amend. 5 at 85. The agency would evaluate proposals to determine whether the approach would result in successful performance. *Id.* at 100.

When discussing its safety approach, the firm explained that it would implement a customized safety approach using best practices to protect personnel. AR, Tab 5B, Battelle Proposal, Vols. III and IV at 34. The firm's program director would oversee the safety program and that the performance assurance manager would lead the program. *Id.* at 34-35; AR, Tab 6E, Battelle Discussion Questions Response at 3. A safety manager would report to the performance assurance manager to lead the safety management implementation. AR, Tab 6E, Battelle Questions Response at 3.

In practice, Battelle explained that, after receiving a task order, the program assurance manager and safety manager would assess the task order for security risks. AR, Tab 6E, Battelle Discussion Questions Response at 3. Then, the program assurance manager and safety manager would identify a safety coordinator to implement the plan at the specific station and ensure successful implementation. *Id.*

The agency evaluated this leadership structure as a weakness. AR, Tab 3E, Management Approach and Key Personnel Evaluation Report at 14. Initially, the agency assigned a weakness because the firm did not include a dedicated safety manager as part of its plan. *Id.* However, after receiving the firm's final proposal revision, the agency updated the weakness to as follows:

> Battelle's discussion response clarified their intent to have a Safety Manager reporting to the Performance Assurance Manager; however, having this position lower in the reporting chain is not a best practice in the [technical evaluation board's (TEB)] view. The weakness in this area was retained.

Id. (internal citation omitted).

An agency is required to evaluate proposals based solely on the factors identified in the solicitation. *SOC LLC*, B-418487.2, B-418487.3, Feb. 4, 2021, at 10. An agency may apply evaluation considerations that are not expressly outlined in the RFP, so long as those considerations are reasonably and logically encompassed within the stated evaluation criteria. *Id.*

We have no objection to the assignment of this weakness. The record shows that the agency considered Battelle's safety management structure as unattractive because the safety manager was not a more senior person, which we agree is consistent with the Battelle's proposal.

Further, we disagree with the protester that this evaluation consideration was not logically encompassed within the stated criteria. The RFP provided a fairly open-ended criterion providing that the agency would evaluate safety management approaches to determine whether they would ensure personnel safety and result in successful performance. In this regard, we agree with the agency that considering whether a safety management plan will protect personnel logically encompasses considerations of the persons in charge of the program and the scopes of their positions. What is more, we have no objection to the NSF's view that persons who are solely focused on safety management will prioritize the success of the safety management plan, and that having such persons among senior leadership will make the safety program more successful. MOL at 28 ("Nevertheless the Agency reasonably found that Battelle still failed to emphasize the importance of safety by relegating the position to a lower reporting role.").

Also, we are unpersuaded that this weakness was inconsistent with other strengths assigned to the firm's proposal. The record shows that Battelle received strengths because the agency concluded that the firm's safety program included best practices and strong aspects, such as including medical partners, and because the firm's organizational structure gives management insight into the safety program. AR, Tab 3E, Management Approach and Key Personnel Evaluation Report at 13-14; *see also* Comments and Supp. Protest at 44. Consistent with the agency's position, our review confirms that the strengths and weaknesses were assigned based on different aspects or features of the safety program. *See* MOL at 28 ("Having management visibility into safety is very different from Battelle's actual safety management structure under the Safe Work Environment element."). Accordingly, we deny this allegation.

Unequal Evaluation of Proposed Management Approaches

Next, Battelle argues that the agency unequally evaluated its and KBR's proposals. Specifically, Battelle argues that KBR was assigned strengths for three features, but that its proposal was not assigned strengths even though it proposed the same features. Comments and Supp. Protest at 51-57. We do not find the allegation persuasive. As an illustrative example, Battelle complains that the agency assigned KBR a strength for its plan to engage academic institutions, military veterans, alumni networks, and trade schools, but did not credit Battelle with a similar strength even though it proposed a substantively indistinguishable plan. *Id.* at 52-53; *see also* Supp. Comments at 48.

NSF responds that the proposed engagement plans were not substantively indistinguishable. Supp. MOL at 36. NSF explains that the proposals are different in the way that the firms proposed to recruit at academic institutions and trade schools; whereas, KBR proposed to engage college partners through [DELETED], Battelle proposed to attend targeted [DELETED]. *Id.* at 37-38. NSF also explains that KBR proposed a dedicated talent acquisition team consisting of more than [DELETED], while Battelle [DELETED]. *Id.* at 38.

As part of the workforce management objective under the management approach factor, offerors were instructed to discuss their methodology for hiring, retaining, and replacing personnel to ensure a highly qualified workforce, and discuss how permanent and seasonal workforces would be used. RFP, amend. 5 at 85. The NSF would evaluate the approach to determine whether it would result in successful performance. *Id.* at 100.

As relevant here, the agency assigned a strength to KBR based on the firm's recruitment approach. Specifically, the agency noted the following:

> KBR's plan to engage with not only academic institutions, but also military veterans, alumni networks, and trade schools -- combined with monitoring industrial and commercial closures nationwide for pools of talent -- is beyond the reach of any other offeror's proposal. Their recruitment team includes [DELETED], and they report already having more than [DELETED] prospective employees.

AR, Tab 3E, Management Approach and Key Personnel Report at 18 (internal citations omitted).

Federal procurement law requires as a fundamental principle that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. *Sumaria Sys., LLC*, B-422527.3, B-422527.4, Oct. 23, 2024, at 12. Where a protester alleges unequal treatment in a technical evaluation, it must show that alleged inequality in technical evaluations was not reasonably based on differences between the offerors' proposals. *Id.*

Here, the record does not support the protester's contention because our review of the proposals confirms the agency's position that there were, in fact, meaningful differences between the two offerors' approaches. As the agency points out, KBR's proposal described a recruiting approach encompassing a dedicated talent acquisition team consisting of more than [DELETED]. AR, Tab 4D, KBR Proposal, Vol. IV at 17. These employees leverage college partners through a particular [DELETED] and trade schools to ensure rapid access to skilled, deployment-ready personnel. *Id.* at 18. To this end, KBR's proposal explains that the firm has over [DELETED] prospective employees already identified. *Id.* at 9.

In contrast, Battelle's proposal explains that the firm uses recruiting tools, including LinkedIn Recruiter, paid sponsored advertisement campaigns, Indeed for Employers, recruiting from military officers, partnerships with trade schools, and targeted job fairs to identify and recruit external talent. AR, Tab 5B, Battelle Tech. Proposal, Vol. III, IV at 37. Battelle's proposal also explains that it uses a university recruiting partner to engage directly with specific trade schools, community colleges, and technical institutions nationwide to find polar-science support professionals. *Id.* Thus, the recruiting approaches were different in that KBR articulated that it had a specific talent acquisition team using a particular [DELETED], while Battelle relied more on recruiting tools and leveraging its relationship with a particular university recruiting partner. Accordingly, we deny the protest allegation.

Prior Experience and Past Performance

Battelle contends that the agency unreasonably evaluated KBR's proposal under the prior experience and past performance factors. Specifically, the firm argues that the agency unreasonably attributed the experience and past performance of its affiliated company, [DELETED], to KBR because KBR's proposal failed to explain what resources the affiliated company would provide, so as to demonstrate that the affiliated company would be meaningfully involved in the performance of the contract. Comments and Supp. Protest at 34-38.

NSF counters that it reasonably credited KBR with the experience and past performance of the affiliated company because "KBR's proposal references [the affiliated company] and KBR MTS government contracting business's resources such that it would be clear to any reasonable observer that [the affiliated company] will have meaningful involvement in contract performance." Supp. MOL at 26. The agency points out that KBR's proposal states that its approach reflects a strong collaborative approach and references a "one-team delivery model." *Id.* at 26-29. It also argues that KBR's proposal demonstrated that the affiliated company would be meaningfully involved by providing the firm's unique entity identification (UEI), which was required for any entities participating as part of a teaming arrangement or other partnership under the terms of the RFP, and included the firm's cost accounting standards (CAS) disclosure statement. *Id.* at 26-27.

By way of additional background, when responding to the prior experience factor, offerors were instructed to submit a narrative statement of recent and relevant prior experience that demonstrates a proven record of fulfilling similar requirements in terms of size, scope, breadth, and complexity. RFP, amend. 5 at 83. Offerors were permitted to reference no more than five examples. *Id.* The RFP also provided that "[i]n the event the prime contractor will use subcontractor(s) or teaming arrangements to perform major or critical aspects of this requirement, the Offeror shall submit prior experience information on the proposed subcontractor or teaming arrangement." *Id.*

Prior experience would be evaluated based on the extent to which referenced experience demonstrates a breadth of recent and relevant prior experience. RFP, amend. 5, at 98. Further, offerors demonstrating prior experience in developing and implementing innovative approaches and adopting practices that foster continuous improvement shall be valued more favorably. *Id.*

For the past performance factor, the RFP instructed each offeror to submit past performance information for each contract cited as demonstrating prior experience. RFP, amend. 5 at 83. Additionally, if the offeror proposed to use a teaming arrangement or subcontractors to perform major or critical aspects of the procurement, then the RFP instructed the offeror to submit past performance information for the teaming members of subcontractors. *Id.* When evaluating past performance, agency evaluators would use contractor performance assessment reporting system (CPARS) reports or surveys to assess the quality of demonstrated performance and then estimate each offeror's risk of unsuccessful performance. *Id.* at 99.

KBR referenced five examples of prior experience and provided past performance information for each example. Two of the referenced contracts were performed by the affiliated company, and the remaining three contracts referenced performance by KBR. AR, Tab 4B, KBR Tech. Proposal, Vol. II at 9-28. As part of its proposal, KBR explained that the affiliated company was part of its "one-team delivery model," which constitutes a purpose-built team "featuring KBR Services, LLC . . . as the prime contractor, including its affiliate, [DELETED]. . ., and [DELETED] subcontractors to supplement KBR's capabilities in critical mission need areas." AR, Tab 4A, KBR Tech. Proposal, Vol. I at 13. KBR also provided the UEI (which was required by the RFP to be provided for any entity used to satisfy the requirements) and CAS disclosure statements for the affiliated company. *Id.*; AR, Tab 4E, KBR Cost and Price Proposal at 760; RFP, amend. 5 at 83.

The agency evaluated KBR's prior experience as warranting an adjectival rating of "high confidence." AR, Tab 3C, Prior Experience Evaluation Report at 9. NSF determined that KBR demonstrated experience in 12 of 13 Statement of Work (SOW) areas (*e.g.*, SOW § 5.4, Antarctic Operations), and assigned six strengths to the firm's proposal. *Id.* at 9-10. Additionally, the agency evaluators noted that KBR did not receive a weakness because the affiliated company's referenced contracts demonstrated experience with science and laboratory support services. *Id.* at 11.

As for past performance, KBR's proposal was evaluated as demonstrating "some confidence" of successful performance. AR, Tab 3D, Past Performance Evaluation Report at 23. The agency evaluated both contracts referencing the affiliated company's performance as recent and somewhat relevant with high-quality performance ratings. *Id.* at 24-28.

An agency may properly attribute the experience or past performance of an affiliated company to an offeror where the firm's proposal demonstrates that the resources of the affiliated company will affect the performance of the offeror. *Ecompex, Inc.*, B-292865.4 *et al.*, June 18, 2004, at 5; *see also MetroStar Sys., Inc.*, B-416377.5, B-416377.8, Apr. 2, 2020, at 7; *Booz Allen Hamilton, Inc.*, B-418125 *et al.*, Jan. 15, 2020, at 6. The relevant consideration is whether the resources of the parent or affiliated company (*i.e.*, its workforce, management, facilities, or any other relevant resource) will be provided, or relied upon, for contract performance, such that the parent or affiliate will have meaningful involvement in contract performance. *MetroStar Sys., Inc.*, *supra*. While it is appropriate to consider a parent or affiliated company's performance where the related company will be involved in the contract effort, it is not appropriate to consider that company's record where the record does not bear on contract performance. *Id.*

Recently, the Court of Federal Claims examined this issue in *Noblis MSD, LLC v. United States*, 180 Fed. Cl. 667 (2026). In *Noblis MSD*, the protester challenged the award of a contract made by the Navy to another firm, Solute, Inc.. *Noblis MSD, LLC*, *supra*. As one of its challenges, the protester argued that the agency unreasonably evaluated Solute's past performance as meriting a rating of "substantial confidence." *Id.* at 681. The protester argued that the Navy unreasonably credited Solute with the past performance information for Solute's parent company, Sigma, because Solute's proposal failed to indicate how Sigma's resources, personnel, or expertise would be made available to Solute in the performance of this contract. *Id.* at 694.

In deciding the protest, the Court of Federal Claims extensively reviewed GAO and Court of Federal Claims decisions in this area and explained that where, as in that case, a solicitation is silent as to how or what an offeror must demonstrate in its proposal to obtain credit for the past performance of an affiliated company, a default rule applies--that is, the procuring agency may consider the experience or past performance of subcontractors or affiliates of an offeror, so long as the offeror explains how the subcontractors or affiliates will be used to perform the work. *Noblis MSD, LLC*, *supra* at 700. Consistent with the decisions of our Office, the Court of Federal Claims explained that general statements of corporate unity or the mere fact that companies are affiliated were insufficient evidence to demonstrate that the affiliated company's experience is relevant. *Id.* at 701.

Applying that standard to the procurement under review, the Court of Federal Claims determined that the agency had, in fact, unreasonably evaluated Solute's past performance. *Noblis MSD, LLC*, *supra* at 703. The Court of Federal Claims found that, while Solute's proposal explained that Sigma was the parent company, Solute failed to articulate what Sigma systems, personnel, or other resources would be dedicated to Solute's performance. *Id.* at 703-704. Indeed, the Court of Federal Claims summarized its conclusion as, "[t]he simple fact is that an evaluator reviewing Solute's [proposal] would have no way to understand . . . what role Sigma would play in performance." *Id.* at 704.

On the record here, we conclude that the agency unreasonably credited KBR with the experience and past performance of the affiliated company. As in *Noblis*, the solicitation did not specify what an offeror must demonstrate to obtain credit for the past performance of an affiliated company. Additionally, like the awardee in *Noblis*, KBR's proposal did not articulate what resources (*e.g.*, personnel, systems, or management tools) from the affiliated company would be dedicated to support KBR directly. This failure meant that the agency could not reasonably give KBR credit for the experience and past performance of its affiliate. *Compare Ecompex, Inc.*, *supra* (agency reasonably attributed experience of affiliated company to awardee where the awardee's proposal included a letter stating that the financial resources of the affiliated company, including lines of credit and operating capital, would be used to complete the contract) *and United States Textiles, Inc.*, B-289685.3, Dec. 19, 2002, at 4 (agency reasonably credited the awardee with the experience of an affiliated company where the awardee's proposal explained that the affiliated company would provide equipment and training for senior personnel) *with MetroStar Sys., Inc.*, *supra* at 8 (agency unreasonably attributed experience and past performance information of affiliated companies to the awardee where the awardee's proposal did not mention what resources or personnel the affiliated companies would use to perform the contract, and generalized references to the awardee's team were too vague to evidence their meaningful involvement).

While KBR referenced the affiliated company as a member of its team and stated that the firm would assist in driving efficient execution of the contract, vague statements of corporate unity or oblique references to general involvement do not meet the standard. *Noblis MSD, LLC*, *supra* at 703 ("Vague statements about affiliation, shared management, or corporate unity are insufficient."); *MetroStar, Sys. Inc.*, *supra*. Similarly, we recognize that KBR provided the affiliated company's UEI and CAS disclosure information, but these do not demonstrate what specific resources, if any, will be available to support KBR. Thus, we conclude the agency unreasonably evaluated KBR's proposal because the proposal did not include a sufficient factual basis for the firm to be credited with the affiliated company's experience and past performance.[8]

COMPETITIVE PREJUDICE

NSF argues that our Office should decline to sustain the protest because, even if it improperly attributed the affiliated company's experience and past performance to KBR,

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[8] As another challenge, Battelle argues that the agency unreasonably evaluated the relevancy of one of its referenced contracts detailing the experience and past performance of one of its affiliated companies. Comments and Supp. Protest at 39; Supp. Comments at 43. As an initial matter, we note that this reference appears to suffer the same defect as KBR's references--that is, we do not find any aspect of Battelle's proposal that explains what resources the affiliated company will contribute to the performance of this contract. Furthermore, even if the agency could reasonably consider the affiliated company's referenced past performance, the record appears to show that the scope and contract value of that referenced contract was reasonably viewed as less than the instant acquisition, which supports the "somewhat relevant" rating, and there does not appear any evidence of disparate treatment because the scope and contract values of KBR's remaining past performance was higher.

the effect of that unreasonable action did not cause Battelle to suffer any competitive prejudice. Supp. MOL at 27, 29. NSF argues that the prior experience and past performance factors were the third and fourth most important factors, and that KBR had a superior proposal under the management approach and key personnel factors, which were the first and second most important factors. *Id.* NSF also points out that KBR had a significantly lower proposed evaluated cost and price. *Id.*

Battelle responds that it suffered competitive prejudice because it and KBR received the same technical evaluation ratings and "the inflated ranking of KBR's prior experience impacted Battelle's status as the most highly ranked offeror, even given its higher [evaluated cost and price]." Comments and Supp. Protest at 35; *see also* Supp. Comments at 40 ("Had the Agency properly evaluated KBR's prior experience, it would have resulted in a lower technical rating for KBR, resulting in award to Battelle, the next offeror in line.").

To sustain a protest, our Office must find that, but for the agency's action, the protester would have had a substantial chance of receiving award--that is, the protester must demonstrate that it suffered competitive prejudice. *N&S Property Servs., LLC*, B-423852.2, B-423852.3, Mar. 10, 2026, at 14. Under this standard, a protester need not demonstrate that it was likely or even probable that it would have received award; rather, the protester need only demonstrate a reasonable possibility of prejudice. *Chugach Logistics and Facility Servs. JV, LLC*, B-421451.3, B-421451.4, Sept. 8, 2023, at 6. Where there is no basis for GAO to know what the ultimate source selection might have been, had the evaluation errors not occurred, we resolve any doubts regarding prejudice in favor of a protester. *N&S Property Servs., LLC*, *supra*.

As noted above, our Office determined that the agency unreasonably evaluated KBR's prior experience and past performance because it improperly credited the firm with the experience of the affiliated company. On this record, we cannot say that the unreasonable action did not result in any competitive prejudice because the agency's consideration of the affiliated company's referenced contracts led the agency to conclude that KBR demonstrated critical experience in laboratory services and science support services, which narrowed the evaluation disparity between Battelle and KBR. Indeed, as part of the tradeoff analysis, the SSA noted the following:

> KBR did not demonstrate strengths in science support, which ranked them lower than Battelle. Despite the lower ranking, KBR's [experience credited from the affiliated company] demonstrates awareness of the type of activities within ASESC, which combined with the superior rankings in the two more important rating factors maintains KBR's overall rank above Battelle.

AR, Tab 3A, SSD at 29.

Additionally, the SSA noted that the affiliated company's referenced past performance demonstrated high quality of performance ratings, which "slightly improve[d] the indication that KBR will be able to perform the requirement at a Satisfactory level." *Id.* at 11. Thus, had the agency not considered that information, then there is at least a reasonable possibility that Battelle's competitive standing may have improved because Battelle might have been evaluated as demonstrating significantly greater relevant experience and a much higher likelihood of successful contract performance. Accordingly, we sustain the allegation.

RECOMMENDATION

We recommend that the agency reevaluate KBR's proposal under the prior experience and past performance factors consistent with this decision. NSF should then conduct a new tradeoff analysis and make a new selection decision. We also recommend that the agency reimburse Battelle its costs of filing and pursuing its allegations challenging the prior experience and past performance evaluations and the selection decision, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after receiving this decision. 4 C.F.R § 21.8(f).

The protest is sustained in part and denied in part.

Edda Emmanuelli Perez
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