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Comptroller General
of the United States

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Decision

Matter of: The Ross Group Construction Corporation LLC

File: B-424718; B-424718.2

Date: November 6, 2026

Edward DeLisle, Esq., Joseph Berger, Esq., Andres Vera, Esq., and Amaiya Johnson, Esq., Thompson Hine LLP, for the protester.
Stacy K. Birkel, Esq., Department of the Army, for the agency.
Christopher Alwood, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of protester's past performance is denied where the agency's evaluation was reasonable and in accordance with the solicitation criteria.

2. Protester is not an interested party to challenge agency's evaluation of other offerors' past performance where its proposal was reasonably not selected to proceed to phase two of the procurement.

DECISION

The Ross Group Construction Corporation LLC, of Tulsa, Oklahoma, protests its exclusion from the competition under request for proposals (RFP) No. W9128F26RA011, issued by the Department of the Army, Corps of Engineers (Corps), for design and construction of Department of Defense (DOD) fuels infrastructure within the United States. The protester challenges various aspects of the agency's evaluation of past performance.

We deny the protest.

BACKGROUND

On January 23, 2026, the Corps issued the RFP under the two-phase design-build procedures of Federal Acquisition Regulation (FAR) subpart 36.3. Agency Report (AR), Tab 3, RFP at 1; AR, Tab 4, RFP amend. 0001 at 2.[1] The solicitation sought proposals to provide design-build and design-bid-build construction and related services for DOD petroleum oil and lubricants (POL) fuel storage facilities and infrastructure throughout the United States. RFP at 217-218. The solicitation established a two-phase procurement that contemplated the award of up to five fixed-price, indefinite-delivery, indefinite-quantity (IDIQ) contracts with a 4-year base period, a 3-year option period, and a 6-month option period. *Id*. at 7-8, 123.

The solicitation provided that phase one would be evaluated considering two evaluation factors in descending order of importance: (1) past performance and (2) overall program management/technical approach. AR, Tab 4, RFP amend. 0001 at 2. The RFP stated that the Corps would evaluate the offerors' qualifications in phase one and invite a maximum of eight of the most highly qualified offerors to compete in phase two. *Id*. at 3; AR, Tab 7, RFP amend. 0004 at 1.

As relevant here, the RFP required offerors to submit, as part of their phase one proposals, four past performance projects that demonstrate the "competence, breadth, and depth of experience as it relates to the scope of work for this requirement." AR, Tab 5, RFP amend. 0002 at 12. The solicitation specified that the projects should "illustrate the types of projects described" in the RFP's summary of work. *Id*.

The RFP provided that the Corps would evaluate past performance considering the recency, relevancy, and quality of the offerors' submitted projects. AR, Tab 4, RFP amend. 0001 at 3. A project would be considered recent if it had been completed within 10 years from the due date for receipt of proposals; however, the solicitation provided that more recently completed work could have more impact on the overall past performance evaluation. *Id*.

The agency would evaluate the relevancy of each submitted project by determining how similar the project was to the tasks described by the RFP's summary of work, including, but not limited to, the "complexity, nature of work, work elements, schedule duration, and scope." *Id*. at 3, 6-7. The RFP also specified that projects completed on a military installation would be considered more relevant. *Id*. at 7. In determining the relevance of each submitted project, the agency would also consider the award value of the project, the extent to which the project demonstrates how the offeror participated in design and construction aspects of the project, and whether it was performed by the

[1] The solicitation documents do not contain a uniform set of page numbers. For clarity, unless otherwise noted, all citations to the solicitation documents in this decision are to the consecutive numbering of the pages in the Adobe PDF documents provided by the agency.

offeror or a proposed subcontractor. *Id*. The solicitation provided that the agency would assign each project a relevancy rating of very relevant, relevant, somewhat relevant, or not relevant.[2] *Id*. at 7. The agency would evaluate the quality of an offeror's past performance by determining how well the offeror performed on its submitted projects. *Id*. at 3, 9.

The solicitation provided that the agency would assign each offeror's past performance a performance confidence assessment rating of substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. *Id*. at 4. As relevant here, the RFP defined a rating of limited confidence as: "Based on the offeror's recent/relevant performance record, the Government has a low expectation that the offeror will successfully perform the required effort." *Id*.

The Corps received 14 timely phase one proposals in response to the solicitation. Contracting Officer's Statement (COS) at 2. The agency evaluated Ross's proposal and assigned it a rating of limited confidence under the past performance factor and a rating of outstanding under the overall program management/technical approach factor. AR, Tab 14, Source Selection Evaluation Board (SSEB) Report at 50-54; AR, Tab 15, Source Selection Advisory Council (SSAC) Report at 6; AR, Tab 16, Source Selection Authority (SSA) Phase Two Selection Memorandum at 13.

The agency concluded that Ross's proposal did not demonstrate that the firm was among the most highly qualified offerors that should continue to phase two. AR, Tab 15, SSAC Report at 6; AR, Tab 16, SSA Phase Two Selection Memorandum at 13. When documenting the limited confidence past performance rating, the SSA specifically noted that two of Ross's past performance projects were not completed on military installations and that Ross's submitted past performance did not collectively capture all of the types of work from the RFP's summary of work. AR, Tab 16, SSA Phase Two Selection Memorandum at 13. In addition to Ross, the agency concluded that three other offerors were clearly not among the most highly rated due to aspects of their proposals that the agency found to "impose a risk of unsuccessful performance[.]" AR, Tab 15, SSAC Report at 6. The agency then conducted a "more detailed comparative analysis" between the other ten proposals to determine the eight that would proceed to phase two. *Id*. at 7.

On July 16, 2026, the agency notified Ross that it had not been selected to proceed to phase two. COS at 5; AR, Tab 17, Unsuccessful Offeror Notice. The agency provided

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[2] The RFP defined the different relevancy ratings based on the extent to which the past performance project involved the "scope and magnitude of effort and complexities this solicitation requires." *Id*. at 7. In this regard, a very relevant project would involve "essentially the same" scope, a relevant project would involve "similar" scope, a somewhat relevant project would involve "some of the" scope, and a not relevant contract would involve "little or none" of the scope. *Id*.

Ross with a written pre-award debriefing on July 23, and this protest followed. COS at 5.

DISCUSSION

Ross challenges various aspects of the agency's evaluation of past performance and its selection of offerors to proceed to phase two. For the reasons that follow, we find no basis to sustain the protest.[3]

Ross's Past Performance

Ross initially contends that the Corps's evaluation of the relevance of each of the firm's past performance references was unreasonable and inconsistent with the solicitation's evaluation criteria. Protest at 9-30; Comments & Supp. Protest at 23-24. In this regard, the protester argues that each of its four submitted past performance projects met the RFP's requirements for relevancy and should have been found to be either very relevant or relevant. Protest at 12-13; Comments & Supp. Protest at 23-24.

The agency responds that its evaluation was reasonable and consistent with the solicitation's evaluation criteria. Memorandum of Law (MOL) at 6-18. The agency argues that it holistically evaluated the relevancy of each project by using each of the relevancy considerations set forth in the RFP. *See id*. at 17. The agency explains that while each of Ross's projects were at least somewhat relevant, all four projects only demonstrated one of the types of work set forth in the RFP's summary of work, which led to the agency reasonably finding that the projects involved "similar" or "some of" the instant solicitation's scope. *Id*. at 9, 11, 13, 16.

An agency's evaluation of past performance, which includes its consideration of the significance of an offeror's performance history, is a matter of discretion, which we will not disturb unless the assessment is unreasonable or inconsistent with the solicitation criteria. *CIMA JV, et al.*, B-422813 *et al.*, Oct. 28, 2024, at 6. When a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria as well as applicable procurement statutes and regulations. *Id*. The evaluation of past performance, by its very nature, is subjective, and we will not substitute our judgment for reasonably based evaluation findings. *Intercontinental Constr. Contracting, Inc.*, B-415040 *et al.*, Nov. 8, 2017, at 7. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. *APC Constr., LLC*, B-419771, July 13, 2021, at 6.

[3] Ross raises several collateral arguments. While our decision does not address every issue, we have considered each of the protester's arguments and find that none provides a basis to sustain the protest.

As noted above, the agency would evaluate the relevancy of each submitted project by determining how similar the project was to the tasks described by the RFP's summary of work, including, but not limited to, the "complexity, nature of work, work elements, schedule duration, and scope." AR, Tab 4, RFP amend. 0001 at 3. 6-7. In short, the RFP described four scope categories of the types of tasks the agency expected to issue task orders for under the resultant contracts: (a) Design and construction of POL facilities and infrastructure; (b) fuel tank rehabilitation; (c) fuel tank cleaning; and, (d) inspections for repairs and emergencies.[4] RFP at 217-218. The RFP also required the agency to consider whether the project was performed on a military installation, the award value of the project, the extent to which the project demonstrates how the offeror participated in design and construction aspects of the project, and whether it was performed by the offeror or a proposed subcontractor. AR, Tab 4, RFP amend. 0001 at 6.

Here, in evaluating the relevance of the protester's past performance, the agency documented its consideration of each of the above relevancy aspects for all four of Ross's past performance projects. AR, Tab 14 SSEB Report at 50-52. The agency found that all four of Ross's projects met or exceeded the relevancy requirements related to contract value and were performed by Ross as the prime contractor. *Id*. However, the agency also found that two of the four projects were not performed on

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[4] The complete definitions of the types of work contemplated by the RFP are as follows:

> a. 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.
>
> b. 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.
>
> c. Tank cleaning prior to inspection and upgrades. Work includes cleaning to remove residual fuel products, water/sludge removal, and preparation of tank for inspection.
>
> d. 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.

RFP at 217-218.

military installations, and that Ross was not the designer of record on the other two projects. *Id*.

Further, for each project, the evaluators detailed the aspects of the work performed by the protester that demonstrated its similarity to the work required under the instant solicitation. *Id*. The SSA concluded that the projects submitted by Ross did not demonstrate experience with all of the types of work described in the RFP's summary of work. AR, Tab 16, SSA Phase Two Selection Memorandum at 13. Based on the above considerations, the agency concluded that one of Ross's projects was relevant, while the other three were only somewhat relevant. AR, Tab 14 SSEB Report at 50-52.

On this record, we find that the protester has not shown that the agency acted unreasonably or inconsistently with the solicitation. The protester does not meaningfully explain why its contention that its projects "met" the solicitation's relevancy requirements is inconsistent with the agency's relevancy findings that Ross's past performance projects involved "similar" or "only some" of the scope and magnitude of effort required by this solicitation. Protest at 12-14; AR, Tab 14 SSEB Report at 50-52. In this regard, the agency did not find any of Ross's past performance projects to be not relevant, which it presumably would have if it found Ross's projects to not meet the RFP's relevancy requirements.[5]

In light of the RFP's evaluation criteria and the broad discretion afforded to the agency, we find no basis to question the agency's assessment that Ross's past performance projects were either relevant or somewhat relevant. Where, as here, a solicitation contemplates the evaluation of past performance, the contracting agency has the discretion to determine the relevance and scope of the performance history to be considered, and our Office will not question the agency's judgment unless it is unreasonable or inconsistent with the terms of the solicitation or applicable procurement statues and regulations. *Williams Building Co., Inc.*, B-413262.2, B-413262.3, Nov. 15, 2016, at 6. Here, the record shows that the agency reasonably evaluated the relevancy of Ross's past performance projects considering the relevancy aspects set forth in the RFP. Ross's contentions to the contrary amount to no more than disagreement with the agency's evaluation judgements.[6]

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[5] The RFP defined a not relevant project as a "[p]resent/past performance effort involved little or none of the scope and magnitude of effort and complexities this solicitation requires." AR, Tab 4, RFP amend. 0001 at 7.

[6] The protester did not argue that the agency should have concluded that Ross's past performance (the majority of which the Corps judged to be only somewhat relevant) warranted at least a rating of neutral confidence. The RFP defined a rating of neutral confidence as "[n]o recent/relevant performance record is available, or the offeror's performance record is so sparse that no meaningful confidence assessment rating can be reasonably assigned." AR, Tab 4, RFP, amend. 0001 at 4.

Unstated Evaluation Criterion

The protester separately contends that the agency applied an unstated evaluation criterion where it found Ross's projects less relevant for not demonstrating experience with more of the types of work to be performed under this solicitation. Protest at 12; Comments & Supp. Protest at 24. In this regard, Ross argues the RFP did not require projects to demonstrate experience with multiple categories of the types of tasks the agency anticipated requiring to be found relevant or very relevant. Protest at 12. Ross acknowledges that its projects only demonstrated experience with one of the scope categories (design and construction of POL facilities), but contends that, given the solicitation's evaluation criteria, this should have been sufficient for its projects to merit the relevancy rating of either very relevant or relevant. Protest at 13; Comments & Supp. Protest at 24.

The agency responds that the solicitation provided for the consideration of how similar the work performed under a past performance project was to the scope of work described by the RFP. MOL at 15. The Corps argues that assessing greater relevancy to projects that "exhibit coverage of multiple specialized scope items" was reasonably encompassed by the stated evaluation criteria. *Id*. The agency contends that it therefore reasonably found Ross's past performance projects to be less relevant, in part, for not demonstrating experience performing the fuel tank rehabilitation, fuel tank cleaning, or inspection work described by the RFP. *Id*.

The protester's argument here ignores the plain language of the solicitation, which, as discussed above, set forth that the agency's evaluation of relevancy would consider how similar the project was to the work described by the RFP's summary of work, including the "complexity, nature of work, [and] work elements[.]" AR, Tab 4, RFP amend. 0001 at 3, 6-7. Moreover, when evaluating proposals, agencies properly may take into account specific matters that are logically encompassed by, or related to, the stated evaluation criteria, even if they are not expressly identified as evaluation criteria. *ASFA Int'l Constr., Inc.*, B-422594, Aug. 13, 2024, at 6 (*citing Linc Gov't Servs., LLC*, B-404783.2, B-404783.4, May 23, 2011, at 6). Here, the solicitation specified that relevancy would be "measured against the scope of work expected to be completed in the resulting contract(s), as identified in" the summary of work. AR, Tab 4, RFP amend. 0001 at 3, 6-7. Accordingly, we see no basis to object to the evaluators having considered projects that only demonstrated experience in one scope category to be less similar to the solicited work, and therefore less relevant than projects demonstrating experience in multiple RFP scope categories.

The protester maintains its disagreement with the evaluators' judgment that Ross's projects were less relevant where they only involved construction of PLO facilities and not fuel tank rehabilitation, fuel tank cleaning, or inspection tasks.[7] However, such

[7] The protester argues that, to the extent the agency's interpretation of the evaluation criteria is reasonable, an agency response to a pre-closing solicitation question created (continued...)

disagreement, without more, provides no basis for us to question the evaluation. We deny this ground of protest. *See e.g.*, *Linc Gov't Servs., LLC*, *supra* at 6 (denying challenge to assessment of significant weakness where agency reasonably considered lack of specialized experience at medical facilities to be encompassed in evaluation criteria for solicitation of repair and renewal of medical facilities).

Disparate Treatment

Ross alternatively contends that, even if the agency's relevancy evaluation of Ross's projects was reasonable, it nonetheless reflects disparate treatment. Comments & Supp. Protest at 13-20; Supp. Comments at 6-12. The protester objects to the agency's evaluation finding that every offeror that received a rating of satisfactory confidence or substantial confidence under the past performance factor was found to have submitted projects that "collectively captured requested specialized experiences contained within" the RFP's summary of work. Comments & Supp. Protest at 16 (*quoting* AR, Tab 16, SSA Phase Two Selection Memorandum at 5-10). The protester avers that this language from the SSA's memorandum means that each higher-rated offeror demonstrated experience with all four of the RFP's scope categories. *Id*. Ross argues that these conclusions reflect disparate treatment where several higher-rated offerors, like Ross, submitted projects that did not demonstrate experience with all four of the RFP's scope categories yet they received higher past performance ratings. *Id*.

(...continued)
a latent ambiguity. Protest at 26-27; Comments & Supp. Protest at 11-13. In this regard, the protester explains that an offeror asked the agency if, to maximize the relevancy of its past performance, it should submit projects with all four scope categories. AR, Tab 8, RFP Questions and Answers at 12. The agency responded that "[o]fferors shall submit the four projects that they believe demonstrates competence, breadth, and depth of experience as it relates to the scope of work for this requirement." *Id*. Ross contends that the agency's answer implies that an offeror did not need to demonstrate experience in multiple scope categories to be positively evaluated for relevancy, while the agency's evaluation demonstrates that there was such a requirement. Comments & Supp. Protest at 11-12.

An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. *Argus Int'l Risk Servs., LLC*, B-411682, B-411682.2, Sept. 25, 2015, at 5. Here, we find that there was no ambiguity because the agency did not adopt the interpretation of the evaluation criteria ascribed to it by the protester. That is, the agency does not argue that the solicitation required offerors to demonstrate experience in all four scope categories to receive a past performance rating of satisfactory or substantial confidence. Supp. COS/MOL at 2. The agency explains that, while higher-rated offerors tended to demonstrate experience in all four of the RFP's scope categories, there was no requirement to demonstrate a certain number of scope categories to achieve a particular rating. *Id*.

The agency responds that the solicitation did not require offerors to demonstrate experience in all four scope categories to receive a past performance rating of satisfactory confidence or substantial confidence. Supp. COS/MOL at 2. The agency contends that the protester failed to demonstrate disparate treatment because the differences in the agency's evaluation conclusions are a result of differences in the offerors' submitted past performance projects. *Id*. at 2-3. The Corps argues that the higher-rated offerors, unlike Ross, all submitted projects that, in the aggregate, demonstrated experience with multiple RFP scope categories. *Id*.

It is a fundamental principle of federal procurement law that a contracting agency must treat offerors fairly and equitably and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. *BC Site Servs., LLC*, B-420797.4, B-420797.5, Mar. 21, 2023, at 4. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings or relative standing do not stem from differences between the proposals. *Artek Constr. Co.*, B-418657, B-418657.2, July 17, 2020, at 11. Accordingly, to prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably downgraded its proposal for aspects that were substantively indistinguishable from, or nearly identical to, those contained in other proposals. *Id*. (*citing Transworld Systems, Inc.; Account Control Tech., Inc.*, B-414090.13 *et al.*, Dec. 22, 2017, at 9-10). Ross has made no such showing here.

The record reflects that the agency evaluated the relevancy of the protester's and the competing offerors' past performance projects by, in part, considering how similar each project was to the tasks described in the RFP's scope categories. *See* AR, Tab 14, SSEB Report at 7-73. For each project, the evaluators detailed the aspects of the work performed by the protester that demonstrated their similarity to the RFP's scope categories. *Id*. While Ross objects to the agency's failure to explicitly state which project aspects aligned with each scope category within the contemporaneous evaluation documentation, its arguments fail to establish that the projects submitted by other offerors (which involved multiple scope areas) were substantively indistinguishable or included nearly identical information as the projects submitted by Ross (which involved only one scope area).[8] Accordingly, we find that Ross has failed

[8] Ross complains that the agency's evaluation is undocumented in this regard where it did not contemporaneously identify exactly which scope categories it found each project to meet. *See* Comments & Supp. Protest at 15. However, an agency is not required to document every single aspect of its evaluation or explain why a proposal did not receive credit for a particular aspect. *See APC Constr.*, LLC, B-419771, July 13, 2021, at 9. Here, as discussed above, the evaluators described in detail the aspects of the work performed for each project that demonstrated their similarity to the work required under the instant solicitation. *See*, AR, Tab 14, SSEB Report at 7-75. Without more, we see no basis to object to the sufficiency of the agency's documentation simply because it did not interrupt its detailed narrative to specify which scope categories the past performance being described fit within.

to establish the necessary basis for its claim of disparate treatment. *See Artek Constr. Co.*, *supra*.

For example, the protester argues that the agency disparately evaluated its proposal and that of an offeror, which we will refer to as Offeror A, where that offeror's projects did not address all four scope elements but was still assigned a rating of satisfactory confidence. Comments & Supp. Protest at 16-17. Specifically, Ross states that the agency's evaluation did not demonstrate that Offeror A's projects included fuel tank rehabilitation or cleaning tasks. *Id*. at 17 (*citing* AR, Tab 14, SSEB Report at 39-43).

However, the contemporaneous record documents that the agency found that Offeror A's projects included work from at least three of the RFP's scope categories. AR, Tab 14, SSEB Report at 39-43. In addition to the design and new construction type work present in Ross's projects, Offeror A's projects also included multiple tank rehabilitation projects and a project that included fuel tank inspections.[9] *Id*. at 41-42. On this record, we find unobjectionable the agency's conclusion that Offeror A's projects demonstrated a broader scope of the relevant types of work performed than Ross's. The record here demonstrates that the differences in the agency's

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[9] The protester argues, for the first time in its comments and supplemental protest, that the agency should have considered work performed under one of Ross's projects to constitute fuel tank rehabilitation. Comments & Supp. Protest at 18-19. Ross explains that one of its projects involved the modification and integration of underground fuel infrastructure, including the installation of pre-fabricated fuel tanks. *Id*. at 18.

Under our Bid Protest Regulations, protests based on other than solicitation improprieties must be filed within 10 days of when the protester knew or should have known their basis. 4 C.F.R. § 21.2(a)(2). Further, our regulations do not contemplate the piecemeal presentation or development of protest issues; where a protester raises a broad ground of protest in its initial submission but fails to provide details within its knowledge until later, so that a further response from the agency would be needed to adequately review the matter, these later issues will not be considered. *22nd Century Technologies, Inc.*, B-413210, B-413210.2, Sept. 2, 2016, at 9.

Here, Ross received responses to debriefing questions from the agency on July 28, that explained the agency found the project at issue "did not demonstrate tank rehab[.]" AR, Tab 19, Response to Debriefing Questions at 2. Accordingly, Ross was required to raise this protest ground within 10 days of learning its basis. *See* 4 C.F.R. § 21.2(a). We therefore dismiss this protest ground as untimely because Ross failed to raise it until its September 14 Comments and Supplemental Protest, more than 10 days after July 28.

Regardless, even if this protest ground was timely raised, we see no basis to question the agency's evaluation judgment that the installation of a pre-fabricated fuel tank did not constitute the refurbishment of an existing fuel tank.

consideration of relevance stem from the differences in the details found in the proposals.

Remaining Challenges

Ross raises additional protest allegations challenging the Corps's evaluation of several other offerors' past performance, including that the agency improperly considered certain types of projects prohibited by the solicitation and that the agency unreasonably credited several offerors with having demonstrated experience performing certain scope categories. *See* Comments & Supp. Protest at 6-11, 16-20; Supp. Comments at 4-12. We dismiss these remaining allegations because Ross is not an interested party to raise them, having been found not to be among the most-highly rated offerors based on its rating of "limited confidence" for the past performance factor.

Under our Bid Protest Regulations, a protester must be an interested party, that is, an actual or prospective offeror whose direct economic interest would be affected by the award of a contract. 4 C.F.R. § 21.0(a). A protester is not an interested party where it would not be in line for contract award if its protest were sustained. *See, e.g., Guidehouse Inc.*, B-422115.2, Jan. 19, 2024, at 7-8*; Durocher Dock & Dredge/Black & Veatch, A Joint Venture*, B-280853, Nov. 24, 1998, at 8-9.

As noted above, the solicitation was issued under the two-phase design-build procedures of FAR subpart 36.3.[10] AR, Tab 4, RFP amend. 0001 at 2. Under those procedures, an agency evaluates phase one proposals and selects the most highly qualified offerors to proceed to phase two. FAR 36.303-1(b). The regulations require that the solicitation specify a maximum number of offerors that can proceed to phase two, but do not similarly mandate a minimum number of most highly qualified offerors. FAR 36.303-1(a)(4), (b).

Here, the solicitation stated that the agency would invite a maximum of eight of the most highly qualified offerors to compete in phase two. AR, Tab 4, RFP amend. 0001 at 2-3; AR, Tab 7, RFP amend. 0004 at 1. The RFP did not mandate a minimum number of firms that would continue to phase two. *See id*. Further, the solicitation specified that "[o]nly those Offerors who submitted the most highly rated proposals in Phase [one] will be invited to submit a proposal for Phase [two], and they will be the only Offerors eligible to compete in Phase [two]." AR, Tab 4, RFP amend. 0001 at 2.

In determining which firms were the most highly rated, the SSA specifically noted that past performance was the most important factor and that, for phase two, the non-price

[10] While the solicitation cites to the FAR, the DOD adopted the updated version of FAR part 36, issued as part of the Revolutionary Far Overhaul (RFO) through a class deviation. DOD FAR Class Deviation 2026-O0019. The parties do not argue, and our review of the regulations do not reveal, that any distinctions between the FAR and RFO affect the analysis of the agency's actions in this procurement.

factors would be significantly more important than price. AR, Tab 16, SSA Phase Two Selection Memorandum at 14. The SSA stated he would eliminate "firms with poor ratings" because they would have "little to no chance to be selected for award" in phase two. *Id*. at 4; AR, Tab 16, SSA Phase Two Selection Memorandum at 14-15. In essence, the SSA explained that he would not consider an offeror that had been assigned a low rating under the past performance or overall program management/technical approach factors to be among the most highly rated offerors.[11]

After evaluating phase one proposals, the agency found that Ross's and three other offerors' proposals were not among the most highly rated due to aspects of their proposals that the agency found to "impose a risk of unsuccessful performance[.]" AR, Tab 15, SSAC Report at 6. The agency conducted a "more detailed comparative analysis" between the other ten proposals to determine eight that would proceed to phase two. Tab 15, SSAC Report at 7. Notably, no offeror with a past performance rating of limited confidence was even considered in the more detailed competitive analysis, much less invited to participate in phase two. *Id*. at 7-10; AR, Tab 16, SSA Phase Two Selection Memorandum at 14-15.

As discussed above, we have found no basis to question the agency's evaluation of Ross's past performance as warranting a rating of limited confidence. Accordingly, even if we found that Ross's remaining allegations had merit, they would not result in an improved evaluation of Ross's past performance. Given the basis of the agency's determination of what constituted the most highly qualified offerors, including highly rated past performance, we find that Ross cannot demonstrate that it would proceed to phase two of the competition even if its remaining protest allegations were sustained. Therefore, we conclude that Ross is not an interested party to challenge the other offerors' past performance evaluations. *Durocher Dock & Dredge/Black & Veatch, A Joint Venture*, *supra*.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

[11] As noted above, the RFP defined a rating of limited confidence as: "Based on the offeror's recent/relevant performance record, the Government has a low expectation that the offeror will successfully perform the required effort." AR, Tab 4, RFP amend. 0001 at 4.