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Decision

Matter of: Global Integrated Security (USA) Inc.

File: B-408916.3; B-408916.4; B-408916.5

Date: December 18, 2014

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Paul E. Pompeo, Esq., Kara L. Daniels, Esq., and Lauren J. Schlanger, Esq., Arnold & Porter, for Triple Canopy, Inc., the intervenor.

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DIGEST

1. Agency's evaluation of the protester's and awardee's past performance is unobjectionable where the evaluation was in accordance with the terms of the solicitation and reasonably based.

2. Agency's post-protest clarification of a factual inconsistency in its past performance evaluation will be considered and weighed appropriately by our Office, where the error was factual in nature, did not constitute a reevaluation of proposals, and was consistent with other statements set forth in the contemporaneous evaluation documents.

DECISION

Global Integrated Security (USA) Inc., of Herndon, Virginia, protests the issuance of a task order to Triple Canopy, Inc., of Reston, Virginia, under Task Order Request for Proposals (TORFP) No. 2013-0012, issued by the Department of State, for security, logistical, and support services in Basrah, Iraq. Global argues that the agency's evaluation of proposals was unreasonable and evidenced bias.

We deny the protests.

BACKGROUND

The TORFP was issued on April 15, 2013, under the provisions of Federal Acquisition Regulation (FAR) subpart 16.5, to firms that had been awarded Worldwide Protective Services (WPS) indefinite-delivery, indefinite-quantity contracts. Contracting Officer's Statement at 1-2. The TORFP provided for the issuance of a task order, with cost-reimbursable and fixed-price line items, for a base period of one year with four 1-year options.¹ TORFP at 1-2.

The solicitation stated that the task order would be awarded to the offeror submitting the proposal found to provide the best value to the government, based upon price and the following non-price factors listed in descending order of importance: past performance, transition plan, and technical approach.² Id. at 20. The TORFP specified that the non-price evaluation factors, when combined, would be considered significantly more important than price in determining which proposal represented the best value. Id.

The TORFP included detailed proposal preparation instructions, which required the submission of a price proposal and a technical proposal, and informed offerors that oral presentations would be required. Id. at 5. The offerors' technical proposals were to include their oral presentation slides, transition plans, past performance references, and any assumptions made in the preparation of their proposals. Id.

The agency received and evaluated proposals from six offerors, and included the proposals of Triple Canopy and another offeror in the competitive range. Agency Report (AR), Tab 6A, Competitive Range Determination, at 1, 10. Global's proposal was excluded from the competitive range. Id. at 10. Discussions were held with the two competitive range offerors, and final proposal revisions were received and evaluated. On September 9, 2013, a task order was awarded to Triple Canopy as the offeror submitting the proposal determined to represent the best value to the

¹ The services required under this TORFP were provided by Global under a task order it was awarded on March 11, 2011 (hereinafter "the predecessor task order"). Contract Officer's Statement at 1; Agency Report (AR) at 2. Although option periods remained on the predecessor task order, the agency declined to exercise these options because of numerous concerns regarding Global's performance. AR, Tab 4, Decision Not to Exercise Option Year Two of Global's Task Order, at 1-5. The services are currently being provided by Global through a bridge contract pending the resolution of these protests. Contract Officer's Statement at 1.

² The TORFP provided that the technical approach factor was comprised of the following subfactors: personnel staffing; risk management and mitigation; and program and logistics management. TORFP at 20.

government. Contracting Officer's Statement at 8; AR, Tab 6B, Recommendation for Award, at 9.

Global received a post-award debriefing, and filed a protest of the award with our Office on September 18, 2013. Contracting Officer's Statement at 8. The agency took corrective action in response to Global's protest, stating that it would, among other things, include Global's proposal in the competitive range, conduct discussions, and make a new source selection decision. AR at 2. On October 21, our Office dismissed Global's protest as academic. Global Integrated Security (USA) Inc., B-408916, Oct. 21, 2013.

The agency held discussions and received final proposal revisions from Global, Triple Canopy, and the other competitive range offeror. Contracting Officer's Statement at 8-9. The proposals of Global and Triple Canopy were evaluated as follows:

	Global	Triple Canopy
Past Performance	Yellow/Marginal ³	Blue/Excellent
Transition Plan	Blue/Excellent	Green/Good
Technical Approach	Green/Good	Green/Good
Price	\$314,986,728	\$327,668,050

AR, Tab 12B, Source Selection Decision, at 1. The source selection authority determined that the proposal submitted by Triple Canopy represented the best value to the government, and a task order was awarded to that firm. Id. at 4-7; Contracting Officer's Statement at 29. After requesting and receiving a debriefing, Global filed these protests.⁴

DISCUSSION

Past Performance Evaluation

Global argues that the agency's evaluation of its and Triple Canopy's proposals under the past performance factor was unreasonable and evidenced unequal treatment. Although we discuss only certain representative examples of the arguments

³ Proposals could be assigned the following ratings under the non-price evaluation factors: blue/excellent; green/good; yellow/marginal; or red/unacceptable. AR, Tab 12B, Source Selection Decision, at 2.

⁴ The value of the task order at issue is in excess of \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery, indefinite-quantity contracts. 41 U.S.C. § 4106(f)(1)(B).

raised by Global regarding the agency's evaluation of its and Triple Canopy's past performance, we have reviewed each of the protester's arguments here, and find no basis to sustain the protest.

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. SIMMEC Training Solutions, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. Where 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 and procurement statutes and regulations, and to ensure that it is adequately documented. Falcon Envtl. Servs., Inc., B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7. A protester's disagreement with the agency's evaluation judgments concerning the merits of past performance does not establish that the evaluation was unreasonable. Sam Facility Mgmt., Inc., B-292237, July 22, 2003, 2003 CPD ¶ 147 at 3.

The solicitation required that offerors list in their proposals "three past performance references that are recent (performed within the last 3 years, including any current WPS task orders) who can provide information on the Contractor's experience/ability with projects of similar size, scope, complexity and environment." TORFP at 19. Offerors were also required to provide, among other things, project summaries that explained the similarities between the referenced projects and the task order to be awarded here. Id. at 19-20. The solicitation explained that the past performance information would be used "to assess an Offeror's capability to meet the task order performance requirements," and that the agency would give the past performance information "such weight as it deems reasonable based on the [information's] currency and relevance." Id. at 21.

Global

Global's proposal provided information regarding its performance of three different efforts, including its performance under the predecessor task order here. AR, Tab 9, Global Proposal-Past Performance, at 4-13; Global Final Proposal Revision--Past Performance, at 4-10a. In evaluating Global's past performance, the agency received and reviewed questionnaires from references regarding two of these efforts. AR, Tab 6D, Technical Evaluation Panel (TEP)-Global, at 5; Tab 6E, TEP Final Report, at 27. The agency also accessed and reviewed six contractor performance assessment reports (CPARs), one contractor past performance evaluation, three program management reviews, four cure notices, and four letters of deficiency. Id. The cure notices and letters of deficiency all pertained to Global's performance of the predecessor task order. AR, Tab 11, Global Past Performance Information.

In evaluating Global's past performance, the agency specifically noted that Global "had performed successfully on several U.S. Army Corps of Engineers contracts in Afghanistan." AR, Tab 6D, TEP-Global, at 5; Tab 6E, TEP Final Report, at 27. The agency found that this aspect of Global's past performance constituted a "strength," and demonstrated Global's "ability to successfully perform on contracts similar in nature" to the task order to be awarded here. AR, Tab 6D, TEP-Global, at 6. However, the agency found that Global's past performance evidenced a number of "weaknesses" with regard to Global's performance of the predecessor task order. AR, Tab 6D, TEP-Global, at 7-11; Tab 6E, TEP Final Report, at 23, 27-33. These weaknesses, which were detailed by the TEP in its evaluation, all pertained to instances where the agency issued cure notices and letters of deficiency. Id. The agency, while noting that Global had ultimately addressed the aspects of its performance under the predecessor task order that had led to the issuance of the cure notices and letters of deficiency, concluded that Global merited a rating of "marginal" under the past performance factor. AR, Tab 6E, TEP Final Report, at 23-24, 27-28.

Global argues that the instances of its performance of the predecessor task order, that had led to the agency's issuance of cure notices and letters of deficiency, could not reasonably be evaluated by the agency as "weaknesses" under the TORFP's past performance factor. We disagree, and discuss below two representative examples of these instances of Global's performance under the predecessor task order.

First, the protester challenges the agency's assessment of a weakness for its performance under the predecessor task order with regard to Global's inability to effectively manage its explosive detection dog (EDD) subcontractor, which the agency determined "posed an unacceptable risk to the U.S. Government." AR, Tab 6D, TEP-Global, at 11; Tab 6E, TEP Final Report, at 33; Tab 11D, Global Past Performance Information-Deficiencies (Cure Notice: Failure to Mitigate Risks to EDDs (June 14, 2013)). The record reflects that in reaching this conclusion the agency noted a number of concerns regarding Global and its subcontractor's performance. For example, the record demonstrates that while in the care of the subcontractor, one EDD died from consuming a tennis ball. A few weeks later, another EDD required surgery after consuming a tennis ball. AR, Tab 11D, Global Past Performance Information-Deficiencies (Cure Notice: Failure to Mitigate Risks to EDDs (June 14, 2013)). These instances resulted in the agency's issuance of a cure notice to Global, in which the agency detailed its concerns, and notified Global that it was to take specific steps "to prevent further death and injury to ED canines." Id. A few months later, the agency issued a deficiency notice to Global citing further problems with Global's management of this subcontractor. AR, Tab 11D, Global Past Performance Information-Deficiencies (Deficiency Notice: Violation of Standards of Conduct, General Requirements, Disorderly Conduct, and Incident Reporting (September 26, 2013)).

Global makes a number of assertions in arguing that the agency's assessment of a weakness here was unreasonable. For example, Global asserts that after the death of the first EDD, the subcontractor did indeed take a number of actions "under the guidance and supervision of [Global]" to prevent the loss of a second EDD. Protester's Comments at 53. Global argues that "the second injury occurred *despite* the implementation of corrective actions, not because corrective actions had not been taken." Id. at 54. Global concludes that because of this, the agency's determination that Global had "failed to follow through in implementing corrective action" was inaccurate, and the assessment of the weakness was thus unreasonable. Id. at 54; see AR, Tab 6D, TEP-Global, at 11; Tab 6E, TEP Final Report, at 33.

Despite Global's concerns, we cannot find this aspect of the agency's evaluation of Global's past performance to be unreasonable. In this regard, Global does not argue that the agency's consideration of these instances was inconsistent with the terms of the solicitation, which provided for the consideration of the "currency and relevance" of past performance information. See TORFP at 21. As evidenced above, the issues identified by the agency were both relevant and recent. Nor does Global dispute the basic underlying facts that gave rise to the agency's assessment that this aspect of Global's past performance constituted a weakness, that is, that during the performance of the predecessor task order, one EDD died, and another EDD required emergency surgery, as the result of the EDD's care. As such, we view Global's arguments here to constitute nothing more than its disagreement with the agency's evaluation.

Next, the protester challenges the agency's assignment of a weakness for its performance under the predecessor task order with regard to Global's relationship with its third country national (TCN) armed guards. AR, Tab 6D, TEP-Global, at 7; Tab 6E, TEP Final Report, at 29-30. The agency noted here that "a large number of TCNs [armed guards] staged a work stoppage in January 2012 and refused to stand post." Id. The record additionally reflects that a TEP member was in Basrah during this work stoppage, and "watched on camera from the Tactical Operations Center while TCN guards knocked over trashcans and benches, threw water bottles, and borderline rioted in the muster area instead of heading to their night shift." AR, Tab 2, TEP Chairperson's Statement of Facts, at 31. The TEP member "was personally present when an [Assistant Regional Security Officer] and [Global's] Project Manager went to the muster area to address the guards and watched as the guards loudly and forcefully told both that they refused to work and wanted to be sent home." Id. The agency also noted that a second work stoppage took place a number of months later. AR, Tab 6D, TEP-Global, at 7; Tab 6E, TEP Final Report, at 29. The agency's evaluation of Global's past performance recognized that both work stoppages occurred as the TCN armed guards "were signing onto new contracts" with an affiliate of Global, and attributed the work stoppages to Global's failure to establish a direct "employer-employee relationship" with the TCN armed guards. Id.

Global responds by characterizing the January 2012 incident as a “simple pay dispute.” Protester’s Comments at 45. Global argues that the agency’s assessment of a weakness here was unreasonable because the agency assumed, rather than conclusively established, that the incidents resulted from Global’s failure to establish a direct employee-employer relationship with the TCN armed guards. Id. The protester, while acknowledging that “there were labor disturbances on January 31, 2012 and September 13, 2012,” asserts that contrary to the agency’s view, there were no actual work stoppages. Id. at 46. The protester contends that Global “quickly resolved these disturbances,” and asserts that “in both cases, the guards went to work without any gap in guard coverage.” Id.

Again, despite Global’s concerns, we cannot find this aspect of the agency’s evaluation of Global’s past performance to be unreasonable. In this regard, Global concedes that the “labor disturbances,” one of which involved a “borderline riot[],” occurred. Further, although Global argues that the agency unreasonably assumed that the “labor disturbances” were due to Global’s failure to enter into a direct employer-employee relationship with the TCN armed guards, Global does not provide any other explanation for the “disturbances.” Finally, although Global asserts that no work stoppages actually occurred, we cannot find, based upon Global’s assertion alone, that the agency’s characterization of the events as constituting work stoppages to be unreasonable.

Global further argues that the agency’s evaluation failed to adequately consider the actions taken by Global to address the instances of its performance that resulted in the agency’s issuance of cure notices and letters of deficiency, as well as Global’s most recent successful performance under the predecessor task order and under the bridge contract issued to Global as the result of its protests here.

The record specifically provides that the agency considered the positive aspects of Global’s performance of the predecessor task order, and recognized that Global had taken “tangible steps to resolve major issues.” AR, Tab 6D, TEP-Global, at 1; Tab 6E, TEP Final Report, at 28. The agency nevertheless determined that a marginal rating was justified given the repeated issues with Global’s performance of the predecessor task order. AR, Tab 6E, TEP Final Report, at 28. Based upon our review of the record, the agency’s conclusions are reasonable and consistent with the solicitation’s evaluation criteria.

Triple Canopy

Triple Canopy’s proposal provided information regarding its performance of three different efforts. These efforts include Triple Canopy’s performance of a task order, under the same WPS contract here, for U.S. Embassy and other Department of

State personnel in Baghdad, Iraq.⁵ AR, Tab 8, Triple Canopy Proposal-Past Performance, at C-5. In evaluating Triple Canopy's past performance, the agency received and reviewed questionnaires from references regarding the three efforts set forth in Triple Canopy's proposal. AR, Tab 6C, TEP-Triple Canopy, at 4; Tab 6E, TEP Final Report, at 43. The agency also accessed and reviewed 17 CPARs, three contractor past performance evaluations, and one program management review. Id.

In evaluating Triple Canopy's past performance, the agency noted as a "strength" that Triple Canopy had "demonstrated sustained successful performance on a variety of contracts and task orders." AR, Tab 6C, TEP-Triple Canopy, at 5; Tab 6E, TEP Final Report, at 44. The agency specifically noted Triple Canopy's successful and highly relevant performance on the Baghdad task order as a "strength." AR, Tab 6C, TEP-Triple Canopy, at 4; Tab 6E, TEP Final Report, at 43. The agency pointed out in the TEP report that each of the four evaluations it had received regarding Triple Canopy's performance on task orders issued under the WPS contract had rated Triple Canopy's performance as "good" to "exceptional." AR, Tab 6C, TEP-Triple Canopy, at 5; Tab 6E, TEP Final Report, at 44. The agency further found that 4 of the CPARs it had reviewed rated Triple Canopy's past performance as "very good to exceptional." Id.

The agency also noted that Triple Canopy had received one deficiency letter with regard to its performance of a task order issued under the WPS contract, and evaluated this aspect of Triple Canopy's past performance as a "weakness." AR, Tab 6C, TEP-Triple Canopy, at 6; Tab 6E, TEP Final Report, at 44. The agency noted here that the weakness related to an overbilling by Triple Canopy for certain personnel. Id. The agency found, however, that the overbilling had been discovered by Triple Canopy during its own internal audit and self-reported to the agency, and that the overbilled amount had been credited to the government on a subsequent labor invoice. Id. The agency determined that this evaluated "weakness," which was considered by the agency to be "non-operational in nature," had been adequately addressed and resolved by Triple Canopy. AR, Tab 6C, TEP-Triple Canopy, at 5; Tab 6E, TEP Final Report, at 44. The agency concluded that the identified weakness was completely mitigated by the evaluated strength in Triple Canopy's past performance regarding its successful performance of task orders and contracts, and in particular, Triple Canopy's successful performance of task orders under the same WPS contract as here. Id.

⁵ The Baghdad task order, issued under the WPS contract, has an estimated value of \$1.2 billion, and involves 902 Triple Canopy personal security specialists and associated support personnel conducting over 700 missions per month. AR, Tab 8, Triple Canopy Proposal-Past Performance, at C-5.

Global argues that the agency's evaluation of Triple Canopy's past performance as "blue/excellent" was unreasonable, given that the CPARs reviewed by the agency included a relatively high percentage of "satisfactory" ratings.⁶ Protester's Comments at 66. The protester continues here by pointing out that at least four of the CPARs reviewed that involved security services included all "satisfactory" ratings. Id. at 67. The protester concludes that the agency, in evaluating Triple Canopy's past performance, "cherry-picked" the past performance information, and in doing so, considered only information received that had evaluated Triple Canopy's past performance as "exceptional" or "very good," and disregarded the information received that was less favorable. Id. at 68.

Although we are mindful of the protesters' concerns here, we do not find the agency's evaluation of the Triple Canopy's past performance unreasonable. As an initial matter, our Office has consistently recognized that the evaluation of proposals and consideration of their relative merit should be based upon a qualitative assessment of proposals consistent with the solicitation's evaluation scheme, and should not be the result of a simple count of the relative strengths and weaknesses assigned to the proposals during the evaluation process. Palmetto GBA, LLC; CGS Administrators, LLC., B-407668 et al., Jan. 18, 2013, 2013 CPD ¶ 53 at 7. The same rationale applies to the circumstances here. That is, an agency's evaluation of an offeror's past performance should reflect its considered judgment of the quality of an offeror's past performance, consistent with the terms of the solicitation, and not a simple count of the differing ratings received. See Johnson Controls World Servs., Inc., B-289942; B-298942.2, May 24, 2002, 2002 CPD ¶ 88 at 10 (source selection authority's reliance upon the mere numbers of "outstanding" and "highly" satisfactory ratings reflected in the past performance questionnaires, without consideration of the type, nature, and value of the relevant contracts, was improper). As such, the protester's argument that the agency was precluded from evaluating Triple Canopy's past performance as "blue/excellent" solely because the CPARs reviewed by the agency included a high percentage of "satisfactory" ratings is without merit.

The record shows that the agency, in evaluating Triple Canopy's past performance, placed considerable weight on Triple Canopy's performance of the Baghdad task order issued under the same WPS contract as here. As there are no questions regarding Triple Canopy's successful performance of the Baghdad task order, or the "currency" and very high degree of "relevancy" of this past performance information, we find no basis to conclude that the agency's evaluation was unreasonable.

⁶ The protester calculates here that the CPARS reviewed by the agency included six "exceptional" ratings, 19 "very good" ratings, and 51 "satisfactory" ratings. Protester's Comments at 66. We have not verified that Global's count of the various ratings is accurate, given our view that a comparison of the precise number of differing ratings received has limited probative value.

Unequal Treatment

Global next argues that the agency's evaluation under the past performance factor evidences unequal treatment. Protester's Comments at 15. The protester points here to a past performance evaluation regarding Triple Canopy's performance, in 2010, of a Baghdad Embassy Security Force (BESF) contract.⁷ Id. Global notes that this past performance evaluation was referenced in the TEP reports and source selection statement and "indicated alleged performance issues." Id.; see AR, Tab 6C, TEP-Triple Canopy, at 5; Tab 6E, TEP Final Report, at 43; Tab 12, Source Selection Decision, at 3. Global concludes that the agency engaged in unequal treatment because it "forgave these issues" with regard to Triple Canopy in evaluating its past performance as "blue/excellent," while at the same time evaluating Global's past performance as "yellow/marginal" for its performance issues regarding the predecessor task order here.

The agency responds by explaining that, in fact, it did not consider Triple Canopy's performance of the BESF contract in evaluating Triple Canopy's past performance or in making its source selection. Agency Supp. Report at 1-3. The agency points out that Triple Canopy's performance of the BESF contract was "outdated" for the purposes of the evaluation here as it occurred more than 3 years ago, and that the inclusion of references to the BESF contract in the evaluation and source selection documents was "obviously a simple, unintentional, carry-over from the prior evaluation process in 2013." Id. at 2. In addition, the agency submitted a statement by the source selection authority in support of its position. Agency Supp. Report, Tab 1, Source Selection Authority's Statement of Fact, at 1.

Global argues that the agency's post-protest explanations of a mistake "should be accorded no weight because they are facially inconsistent with the contemporaneous record." Protester's Supp. Comments at 7. As explained in detail below, we will not dismiss the agency's explanations here. Rather, the agency's explanation will be weighed appropriately because the error pointed to by the agency was factual in nature, did not constitute a reevaluation of proposals, and the agency's explanation is consistent with other statements set forth in the contemporaneous evaluation documents.

In Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91, and its progeny, we questioned post hoc reevaluations by agencies during the protest process in response to protest contentions, because they were "prepared in the heat of an adversarial process" and thus "may not [have]

⁷ This contract, with a start date in July 2005 and an end date in July 2010, is not the same contract as the Baghdad task order Triple Canopy is currently performing. AR, Tab 10A, Triple Canopy Past Performance Information, at 73.

represent[ed] the fair and considered judgment of the agency, which is a prerequisite of a rational evaluation and source selection process.” Boeing Sikorsky, supra, at 15. The Boeing Sikorsky case involved a post hoc reevaluation and cost/technical tradeoff late in the protest process where no tradeoff had been made during the initial source selection. The agency in Boeing Sikorsky continued to assert that it had not erred, but nevertheless submitted its reevaluation (which it argued was unnecessary) in an attempt to immunize itself against losing the protest. In Boeing Sikorsky (and unlike the situation here), the substantial errors and resulting closeness of the proposals meant that even after the purported correction of the errors by the agency, the outcome of the competition was not clear. We thus concluded in Boeing Sikorsky that it was not appropriate to give substantial weight to the agency’s after-the-fact decisional materials (a new cost/technical tradeoff) prepared in an attempt to argue that there was no prejudice to the protester. Id.; see Uniband, Inc., B-289305, Feb. 8, 2002, 2002 CPD ¶ 51 at 8-9.

That being said, the Boeing Sikorsky decision and its progeny do not require that we disregard or accord “no weight” to the agency’s explanation here. First, and contrary to the protester’s assertion, neither our decision in Boeing Sikorsky nor its progeny provide for the automatic rejection of an agency’s judgments made in response to protest contentions. Rather, as explained in Boeing Sikorsky and the cases that follow, our Office will accord such post-protest judgments “lesser weight” than the contemporaneous source selection materials. Boeing Sikorsky Aircraft Support, supra, at 15. Indeed, in certain limited circumstances, our Office has considered post-protest agency judgments regarding the correction of evaluation errors in concluding that agencies’ source selections were unobjectionable. See, e.g., Uniband, Inc., supra; Scientific and Commercial Sys. Corp.; Omni Corp., B-283160 et al., Oct. 14, 1999, 99-2 CPD ¶ 78 at 18-19; Marathon Watch Co. Ltd., B-281876, B-281876.2, Apr. 22, 1999, 99-1 CPD ¶ 89 at 6-7; Advanced Data Concepts, Inc., B-277801.4, June 1, 1998, 98-1 CPD ¶ 145 at 4-5.

Next, as indicated previously, this is not a situation like that in Boeing Sikorsky where the agency offered a “hypothetical” reevaluation in an effort to defend the protest while continuing to argue that its initial evaluation was reasonable. Rather, the agency here has conceded only that it erred in including references to Triple Canopy’s performance of the 2010 BESF contract in the TEP reports and source selection statement. The limited nature of the agency’s concession here is significant, because it does not involve a reevaluation of proposals, or an attempt to establish through a hypothetical reevaluation that the protester could not have been prejudiced by the agency’s actions (as in Boeing Sikorsky). Rather, it is an attempt by the agency to clarify the record by rectifying an inconsistency.

Moreover, the agency’s explanation here is also consistent with the contemporaneous record and is not, as asserted by the protester, “facially inconsistent” with the evaluation documents. See Protester’s Supp. Comments at 7. In this regard, the narratives included in the TEP reports regarding the

evaluation of the offerors' past performance begin with what is essentially a restatement of the proposal preparation instructions and the past performance evaluation factor. AR, Tab 6C, TEP-Triple Canopy, at 3-4; Tab 6D, TEP Global, at 4-5; Tab 6E, TEP Final Report, at 26-27, 42-43. These sections of the TEP reports also include the following statements:

The focus of the RFP was currency and relevancy, and therefore the intent of the evaluation was to review current information **within the past three years**. The [contracting officer] **determined that Past performance prior to 2011 was irrelevant** given this information was assessed and evaluated at the award of the WPS base contract

AR, Tab 6C, TEP-Triple Canopy, at 4; AR, Tab 6D, TEP-Global, at 4; Tab 6E, TEP Final Report, at 27, 43 (emphasis added). The contemporaneous documents demonstrate that the TEP reports all specifically provided that past performance information prior to 2011, such as Triple Canopy's performance in 2010 on the BESF contract, would not be considered. Accordingly, the agency's contemporaneous documents are consistent with the agency's post-protest statements and do not support the protester's allegations.

In sum, the agency's explanation here does not involve a reevaluation, hypothetical or otherwise, of any aspect of Triple Canopy's proposal. Additionally, the agency's explanation is consistent with the contemporaneous record, and seeks only to rectify an apparent inconsistency as to what information the agency actually considered in its evaluation of Triple Canopy's past performance. Because of this, we find credible the agency's explanation that the references to Triple Canopy's performance in 2010 of the BESF contract were a simple mistake, that the past performance of the offerors prior to 2011 was outside the scope of the past performance evaluation, and the information was not considered. As the predicate for the protester's unequal treatment argument here is that the agency considered such information in its evaluation, where we find that in fact the agency did not, the protester's argument lacks an adequate factual basis and thus provides no basis on which to sustain the protest.⁸

Transition Plan Evaluation

⁸ In any event, where a protester alleges unequal treatment in the agency's evaluation of past performance, it must show that the differences in ratings did not stem from differences between the offerors' past performance, but rather, that the offerors were rated differently where there were similarities in their past performance. Myers Investigative and Security Servs., Inc., B-288468, Nov. 8, 2001, 2001 CPD ¶ 189 at 7-9; see Paragon Systems, Inc.; SecTek, Inc., B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9. Given the differences in the type of performance issues identified, their severity, and their recency, Global has made no such showing.

Global argues that the agency's evaluation of Triple Canopy's proposal under the transition plan factor as "green/good" was unreasonable.

The evaluation of offerors' technical proposals, including the determination of the relative merits of proposals, is primarily a matter within the contracting agency's discretion, since the agency is responsible for defining its needs and the best method of accommodating them. Highmark Medicare Servs., Inc., et al., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 12. In reviewing an agency's evaluation, we will not reevaluate the proposals, but will examine the record of the evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria as well as with procurement law and regulation. Id. A protester's mere disagreement with a procuring agency's judgment is insufficient to establish that the agency acted unreasonably. Id.

The solicitation stated that the successful contractor would have 90 days from its receipt of a notice to proceed to fully mobilize operations. TORFP at 1. The solicitation required that proposals include transition/mobilization plans, as well as alternate transition plans. Id. at 18. The plans were required to address, among other things, recruitment, screening and vetting of personnel; training of new employees and/or incumbent contractor and subcontractor employees; and a timeline demonstrating the completion of the transition activities by the end of the transition period. Id. at 19.

The solicitation explained that the agency would evaluate proposed transition plans to ensure the effective and timely transition/mobilization of operations. Id. at 21. The solicitation informed offerors that in its evaluation of transition plans, the agency may consider, among other things, each offeror's proposed personnel, sources of labor, and ability to recruit and retain incumbent personnel. Id.

Global argues that the agency's evaluation of Triple Canopy's proposal under the transition plan factor as "green/good" was unreasonable. In doing so, however, the protester does not point to any specific aspect of Triple Canopy's proposal or the agency's evaluation as being flawed. Rather, the protester simply argues that "it is impossible, as a legal and practical matter," for Triple Canopy to meet the solicitation's requirement "to transition the required number of non-Iraqi guards within 90 days." Protest at 59. The protester claims that this is so primarily because, under Iraqi law, non-Iraqi personnel are required to obtain certain visas, and as a practical matter, the "Iraq Ministry of Interior/Residency Office typically takes around 45 days to process applications for new visas." Id. at 60. The protester calculates that given this, and the number of non-Iraqi personnel required,

Triple Canopy “cannot achieve full mobilization of personnel with the 90-day transition period.”⁹ Id.

The protester’s argument here is without merit. Specifically, the protester’s argument is predicated on its claim that the “Iraq Ministry of Interior/Residency Office typically takes around 45 days to process applications for new visas.” See id. The protester, however, has not provided any support for this claim, and its claim is contrary to the experience of the agency as well as Triple Canopy. AR at 87; Intervenor’s Comments at 22-24; Tab A, Decl. of Triple Canopy’s Country Manager, Iraq, at 1-2.

Conflicts of Interest

The protester also contends that two members of the TEP had a “conflict of interest” because they also participated in the administration of the predecessor task order performed by Global. Protester’s Comments at 4.

The protester has not adequately explained why the fact that these evaluators participated in the administration of the predecessor task order constitutes an impermissible conflict of interest, and we find no legal basis for precluding evaluators who participated in the administration of government contracts from evaluating proposals under subsequent contracts, absent other evidence of a conflict of interest or the appearance of a conflict of interest in government-contractor relationships. Marinette Marine Corp., B-400697 et al., Jan. 12, 2009, 2009 CPD ¶ 16 at 28-29; see FAR § 3.101-1.

The protester’s argument here is more akin to an allegation of bias than a conflict of interest, and in this regard, we note that government officials are presumed to act in good faith and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Marinette Marine Corp., supra, at 29. Where a protester alleges bias, it must not only provide credible evidence clearly demonstrating bias against the protester or in favor of the awardee, but must also show that this bias translated into action that unfairly affected the protester’s competitive position. Id. Not only has the protester made no such showing, but our review of the record has showed no evidence of bias on the part of these individuals against Global or in favor of Triple Canopy.

Award Decision

Global contends that the agency award decision was unreasonable. However, this contention is based upon its arguments that its and Triple Canopy’s proposals were

⁹ As pointed out by the intervenor and the agency, the protester is essentially arguing that only it, as the incumbent, can meet the TORFP’s requirements regarding transition/mobilization. Intervenor’s Comments at 21; see AR at 88.

unreasonably evaluated. Since, as explained above, we find the agency's evaluation of Global's and Triple Canopy's proposals to be reasonable, and the source selection authority reasonably explained and documented the bases for his selection of Triple Canopy's proposal for award, Global's contention here provides no basis for overturning the award determination. Marinette Marine Corp., supra.

The protests are denied.

Susan A. Poling
General Counsel