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## Decision

**Matter of:** Noble Supply and Logistics

**File:** B-410788.4; B-410788.5; B-410788.6; B-410788.7

**Date:** July 29, 2015

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Michael A. Hordell, Esq., Kristopher Berr, Esq., and Andrew J. Victor, Esq., Pepper Hamilton LLP, for the protester.

William E. Hughes, Esq., and Emily A. Constantine, Esq., Whyte Hirschboeck Dudek SC, for SupplyCore Inc.; and William L. Walsh, Jr., Esq., Christina K. Scopin, Esq., and Nathaniel S. Canfield, Esq., Venable LLP, for Science Applications International Corporation, the intervenors.

John P. Patkus, Esq., Defense Logistics Agency, for the agency.

Paula J. Haurilesko, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that the agency failed to follow evaluation criteria with respect to past performance is denied, where the elements considered in determining relevance were not identified in the solicitation as evaluation subfactors, nor did the agency treat them as such.
  2. Protest that the source selection official failed to exercise his independent judgment, and instead cut and pasted portions of a selection document used in a similar procurement, is denied, where the record shows that the official considered the specifics of the individual proposals and the evaluation report, and exercised his independent judgment in making the source selection.
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### DECISION

Noble Supply and Logistics, of Rockland, Massachusetts, protests the Defense Logistics Agency's (DLA) award of contracts to SupplyCore Inc., of Rockford, Illinois, and Science Applications International Corporation (SAIC), of McLean, Virginia, under request for proposals (RFP) No. SPM8E3-14-R-0005, for maintenance, repair, and operations (MRO) supplies in the agency's south central region, geographical zones 1 and 2. DLA awarded the zone 1 contract to SupplyCore, and the zone 2 contract to SAIC. With respect to both awards, Noble argues that DLA placed undue emphasis on the dollar value of Noble's contract

references in determining relevance, resulting in an unreasonable award decision, and that the source selection official failed to exercise his independent judgment in making the award decisions.

We deny the protests.

## BACKGROUND

The RFP provided for the award of two 5-year, indefinite-delivery/indefinite-quantity (ID/IQ) contracts for MRO supply items and related services in DLA's south central region as part of DLA's tailored logistics support prime vendor program. The two contracts cover different geographical areas within the south central region: zone 1 includes Louisiana and Texas, and zone 2 includes Arkansas, Colorado, Kansas, New Mexico, and Oklahoma. The RFP permitted offerors to submit proposals for one or both zones, but precluded an offeror from receiving both contracts. RFP at 7-8.

The RFP provided that the awards would be made on a best value basis considering: past performance-confidence assessment, technical merit, and price.<sup>1</sup> The past performance-confidence assessment was more important than technical merit, and combined, the non-price factors were significantly more important than price. The RFP stated that the contract for zone 1 would be awarded first; the zone 1 awardee would then be eliminated from the competition for zone 2. RFP at 8, 71.

For the past performance evaluation, the RFP instructed each offeror to submit a list of its three highest dollar value contracts for MRO-type items, and its three highest dollar value supply contracts performed in the last five years, with overlap permitted. RFP at 60. The RFP provided that DLA would assess both the relevance and quality of an offeror's performance in order to assign a past performance-confidence assessment rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. Id. at 72, 73. The RFP further stated that relevance "includes, but is not limited, to: similarity, recency, length, volume, delivery points, and dollar value." Id. at 72.

DLA received ten proposals for both zones, including proposals from Noble, SupplyCore, and SAIC. Id. at 1. As relevant here, Noble submitted the same three MRO contract references for consideration under the past performance-confidence assessment factor for both zones. Noble's proposals explained that its three largest supply contracts provide MRO products and services, and that its top three highest

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<sup>1</sup> The technical merit factor consisted of three subfactors (in decreasing order of importance): product sourcing, distribution/delivery, and socio-economic objectives. RFP at 71.

value contracts did not include non-MRO supply contracts. Agency Report (AR) (Zone 1), Tab 8, Noble's Non-Price Proposal, at 14; AR (Zone 2), Tab 8, Noble's Non-Price Proposal, at 14.

The source selection evaluation board (SSEB) evaluated Noble's contract references as follows:

<b>Contracting Activity</b>	<b>Contract Number</b>	<b>Annual Revenue<sup>2</sup></b>	<b>Zone 1 Relevance Rating</b>	<b>Zone 2 Relevance Rating</b>
General Services Administration	GS-06F-0032K	\$35.0 M	Very Relevant	Very Relevant
U.S. Postal Service	2CMROS-11-B-1027	\$7.9 M	Relevant	Relevant
Hawaii Industrial Supply Store	N00604-12-A-3006	\$6.2 M	Relevant	Relevant

AR (Zone 1), Tab 12, SSEB Report, at 31-34; AR (Zone 2), Tab 23, SSEB Report, at 35-38.

The SSEB rated the General Services Administration contract as very relevant because it is an ID/IQ contract for MRO items with a greater number of annual delivery orders and delivery locations, and a greater average annual dollar value, than the acquisition here. AR (Zone 1), Tab 12, SSEB Report, at 31-32. As for the U.S. Postal Service contract, the SSEB found that while it was an ID/IQ contract for MRO items that was of similar scope, magnitude and complexity, and involved a greater number of annual delivery orders and delivery locations than the acquisition here, the average annual dollar value (\$7.35 million) was far less than the estimated values of the zones 1 and 2 contracts here (\$30 million for Zone 1 and \$21 million for Zone 2). Based on these factors, the SSEB rated the U.S. Postal Service contract as relevant. Id. at 32-33. Likewise, the SSEB rated the Navy Hawaii Industrial Supply Store contract as relevant because, although the contract had similar characteristics to the requirements for zones 1 and 2, the annual dollar value of Navy contract was only \$6.2 million in 2013. Id. at 33-34. In reviewing the contracts for quality of performance, the SSEB rated Noble's performance on the contracts as outstanding. Id. at 34. Based on consideration of the relevance and quality of the contracts, the SSEB rated Noble's proposal as having a satisfactory performance-confidence. Id. at 37.

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<sup>2</sup> Highest annual dollar value submitted.

The source selection authority (SSA) reviewed the SSEB’s report and other documentation prior to making his selection decision. With respect to past performance, the SSA concurred with the SSEB’s assessment of relevancy and the assignment of satisfactory confidence for Noble’s past performance, noting that the annual dollar values for the U.S. Postal Service and Navy contracts were “considerably less” than the estimates for the acquisition. See AR, Tab 7, Source Selection Decision Document (SSDD), at 11-12. With respect to the technical factor, the SSA accepted the SSEB’s ratings except that he raised Noble’s rating under the distribution/delivery subfactor from good to outstanding, and added the following strengths:

- Noble is ISO 9001:2008 Certified.
- Noble has an established procurement team in the South Central region located in San Antonio, Texas.
- Noble undertakes [Deleted].

Id. at 17. After the SSA’s adjustments to the ratings of offerors’ proposals, the ratings, by zone, were as follows:

<b>ZONE 1</b>	<b>Factor I - Past Performance-Confidence</b>	<b>Factor II - Technical</b>	<b>Total Evaluated Price</b>
[Deleted]	Satisfactory Confidence	Outstanding	\$12,637,367.15
Noble Supply & Logistics	Satisfactory Confidence	Outstanding	\$12,999,305.75
SAIC	Substantial Confidence	Outstanding	\$13,230,142.77
SupplyCore	Substantial Confidence	Outstanding	\$13,101,663.07

<b>ZONE 2</b>	<b>Factor I - Past Performance-Confidence</b>	<b>Factor II - Technical</b>	<b>Total Evaluated Price</b>
[Deleted]	Satisfactory Confidence	Outstanding	\$8,177,873.32
Noble Supply & Logistics	Satisfactory Confidence	Outstanding	\$8,699,153.73
[Deleted]	Satisfactory Confidence	Outstanding	\$12,192,402.19
SAIC	Substantial Confidence	Outstanding	\$9,014,749.16

Id. at 33, 41.

The SSA found SupplyCore's proposal to represent the best value for the zone 1 contract and SAIC's proposal to represent the best value for the zone 2 contract. AR, Tab 7, SSDD, at 47-48. In conducting the tradeoff analysis between SupplyCore and Noble for the zone 1 contract, the SSA noted that while SupplyCore and Noble were considered equal under the technical factor and all technical subfactors, SupplyCore's past performance-confidence assessment of substantial confidence was superior to Noble's past performance-confidence assessment of satisfactory confidence. In this regard, the SSA noted that while the performance of SupplyCore and Noble on all of their contracts was rated outstanding, two of SupplyCore's contracts were very relevant and one was relevant, whereas only one of Noble's contracts was very relevant and two were relevant. The SSA concluded that SupplyCore's higher past performance confidence level was worth the \$102,357 (0.79 percent) price premium over Noble's lower-priced, but slightly lower-rated proposal. Id. at 36-37.

Likewise, in conducting the tradeoff analysis between SAIC and Noble for the zone 2 contract, the SSA concluded that SAIC and Noble were equal under the technical factor and all technical subfactors, but noted that SAIC's past performance-confidence assessment of substantial confidence was superior to Noble's past performance-confidence assessment of satisfactory confidence. In this regard, the SSA noted that while SAIC's and Noble's performance on all of their contracts was rated outstanding, three of SAIC's five contracts were very relevant and two were relevant, whereas only one of Noble's contracts was very relevant and two were relevant. The SSA concluded that SAIC's higher past performance confidence level was worth the \$313,595 (3.63 percent) higher evaluated price of \$9,014,749. AR, Tab 7, SSDD, at 43-45.

After learning of the resulting awards and receiving a debriefing, Noble filed these protests with our Office.

## DISCUSSION

Noble primarily objects to DLA's determination that its U.S. Postal Service and Navy Hawaii Industrial Supply Store contract references were relevant rather than very relevant for purposes of the past performance-confidence assessment, and contends that the award decisions for zones 1 and 2 were unreasonable as a result of this miscalculation. Noble also argues that the record contains evidence that the SSA failed to exercise his independent judgment in making this source selection decision, and instead cut and pasted portions of a selection document used in a similar procurement. While we do not address every aspect of Noble's arguments,

we have reviewed all of Noble's arguments and find that none furnish a basis for sustaining its protests.<sup>3</sup>

#### Relevance of Contract References

Noble asserts that DLA's evaluation of contract references under the past performance-confidence assessment factor placed undue weight on the annual revenue of an offeror's prior contracts. In this regard, Noble argues that this emphasis transforms annual revenue into an evaluation subfactor, and therefore the weighting was required to be disclosed to offerors in the solicitation. Protest at 15-16; Noble Comments at 19-22.

An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of agency discretion which we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. Green Earthworks Constr., Inc., B-410724, B-410724.2, Feb. 2, 2015, 2015, 2015 CPD ¶ 68 at 4; DynCorp Int'l LLC, B-406523.2, B-406523.3, Dec. 16, 2013, 2014 CPD ¶ 7 at 6. A protester's mere disagreement with the agency's judgment is insufficient to establish that an evaluation was improper. Beretta USA Corp., B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 10.

The particular method of proposal evaluation utilized must provide a rational basis for source selection and be consistent with the evaluation criteria set forth in the solicitation. Brown & Root, Inc. & Perini Corp., a Joint Venture, B-270505.2, B-270505.3, Sept. 12, 1996, 96-2 CPD ¶ 143 at 9. In this regard, while under Federal Acquisition Regulation (FAR) part 15, agencies are required to describe "[f]actors and significant subfactors that will be used to evaluate the proposal and their relative importance," FAR § 15.203(a)(4), they need not disclose evaluation standards or guidelines for rating proposal features as more desirable or less desirable, since agencies are not required to inform offerors of their specific rating methodology. Olympus Bldg. Servs., Inc., B-285351, B-285351.2, Aug. 17, 2000, 2000 CPD ¶ 178 at 5; ABB Power Generation, Inc., B-272681, B-272681.2, Oct. 25, 1996, 96-2 CPD ¶ 183 at 4.

The record here shows that the RFP did not identify annual revenue or the other aspects of relevancy as a subfactor, nor did the agency treat them as such. The

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<sup>3</sup> Noble initially argued that DLA unreasonably compared the estimated value for the contemplated contracts here against the actual annual sales under the past performance contracts. Protest at 15-17. However, Noble did not address the agency's response to this argument in its comments on the agency report. We therefore deem this basis for protest to have been abandoned. Cedar Elec., Inc., B-402284.2, Mar. 19, 2010, 2010 CPD ¶ 79 at 3 n.4.

RFP provided that, under the past performance-confidence assessment factor, DLA would assess both the relevance and quality of an offeror's performance, with the relevance evaluation "includ[ing], but . . . not limited, to: similarity, recency, length, volume, delivery points, and dollar value." RFP at 72-73. The RFP thus put the protester on notice as to the elements of the agency's relevance evaluation criteria; however, such disclosure did not transform the evaluation criteria into subfactors. See, e.g., Noble Supply & Logistics, B-411229.3 et al., June 24, 2015, 2015 CPD ¶ \_\_ at 10-11 (notice as to the elements of the relevance evaluation criteria did not transform the elements into subfactors); Kuhana-Spectrum, B-401270, July 20, 2009, 2010 CPD ¶ 61 at 2 n.2 ("[I]t is clear from the solicitation that relevance, quality, and quantity were not identified as subfactors, but were elements of past performance that the agency would take into account in evaluating overall past performance."); Roy F. Weston, Inc., B-274945 et al., Jan. 15, 1997, 97-1 CPD ¶ 92 at 9 (nothing in solicitation supports protester's claim that the four areas of consideration identified in this evaluation factor are separately-weighted subfactors).

Noble also argues that DLA's past performance evaluation was unreasonable because it departed from the definitions of the adjectival ratings as defined in the agency's source selection plan (SSP), which, though never provided to the offerors, was quoted in detail in the SSDD. Noble Comments at 22-24. In this regard, Noble states that its U.S. Postal Service and Navy contracts met all but one or two of the characteristics identified in the SSDD and therefore merited a very relevant rating.

We find no basis to object to the agency's evaluation of Noble's past performance. As an initial matter, an agency's internal guidance does not give rights to parties; it is the solicitation's evaluation scheme, not internal agency documents, to which an agency is required to adhere in evaluating proposals and making the award selection. See King Farm Assocs., LLC et al., B-404896.10 et al., Dec. 5, 2011, 2012 CPD ¶ 6 at 11 n.11; Sayres & Assocs. Corp., B-295946, B-295946.2, Apr. 25, 2005, 2005 CPD ¶ 90 at 6 n.9. Here, while the SSDD states that proposals were evaluated in accordance with the SSP, any failure to follow the SSP--the agency's internal guidance--would not provide a basis to sustain the protests.<sup>4</sup>

More importantly, Noble has not demonstrated that the agency's evaluation was inconsistent with the RFP's evaluation criteria. As set forth above, the RFP advised that relevance "includes, but is not limited, to: similarity, recency, length, volume, delivery points, and dollar value." RFP at 72. Given that the value of two of the contracts Noble identified for its past performance-confidence assessment was significantly lower than the contracts DLA was contemplating, we see nothing unreasonable about the agency's assessment of those contracts as relevant, rather

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<sup>4</sup> In addition, we have reviewed the portions of the SSP incorporated into the selection decision, and we do not agree with the protester's contention that the evaluation was inconsistent with even the language of that document.

than very relevant. See Brown & Root, Inc. & Perini Corp., a Joint Venture, supra, at 9 (contracting agencies have broad latitude in determining the particular method of proposal evaluation to be utilized; the only requirements are that the method provide a rational basis for source selection and be consistent with the evaluation criteria set forth in the solicitation).

### Best Value Determination

Noble argues that DLA's errors in the past performance evaluation rendered the best value tradeoff decision unreasonable. Protest at 18-19. Because we find no reason to object to the agency's evaluation of Noble's past performance, we have no basis to find that the agency's best value tradeoff was unreasonable on that basis.

Noble further argues that the SSA failed to exercise his independent judgment in making his selection decision, alleging that the SSA merely adopted the conclusions and rationale of the SSDD from a prior procurement for MRO contracts in DLA's southwest region, geographical zones 1 and 2.<sup>5</sup> Supp. Protest at 6. In this regard, Noble identifies multiple passages in the two SSDDs that are similar, if not identical, including typographical errors and the assignment of strengths identified in the southwest region's SSDD to the SSDD for this procurement. For example, Noble notes that with respect to the comparison of Noble's proposal with SupplyCore's, the two SSDDs contained the identical following paragraph:

SupplyCore versus Noble Supply: SupplyCore is selected for award over Noble as SupplyCore has received a higher Factor I, Past Performance-Confidence Assessment rating; however, SupplyCore's total evaluated price is higher than that of Noble. The findings of the SSEB/SSA as well as a comparative analysis are presented above for Factor I and Factor II and those considerations apply here as well. SupplyCore is only one of two offerors to receive the highest Factor I Past Performance-Confidence Assessment of Substantial Confidence and is considered better than Noble which received a Factor I Past Performance-Confidence Assessment of Satisfactory. Factor I, Past Performance is the most important factor.

Supp. Protest at 12; see AR, Tab 7, SSDD (South Central), at 36; AR, Tab 18, SSDD (Southwest), at 38-39. Noble also notes the inclusion in the south central SSDD of strengths that were identified in the southwest SSDD, but had not been identified by the SSEB in the south central procurement. Noble Supp. Comments

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<sup>5</sup> The procurement in question was the subject of a prior protest. See Noble Supply & Logistics, supra.



at 6 n.2. Noble further points out that the south central SSDD included the statement that, “by comparison, [Deleted], and Noble were given ratings of Satisfactory Confidence for Factor 1,” even though [Deleted] was not included in the competitive range for the south central procurement and therefore not evaluated in the SSDD. Supp. Protest at 17; see AR, Tab 7, SSDD (South Central) at 16.

FAR § 15.308 provides that:

The source selection authority’s (SSA) decision shall be based on a comparative assessment of proposals against all source selection criteria in the solicitation. While the SSA may use reports and analyses prepared by others, the source selection decision shall represent the SSA’s independent judgment.

FAR § 15.308.

Our Office conducted a hearing on the record to obtain testimony from the SSA regarding the basis for his source selection decision. The SSA testified that the RFP for the southwest region was used as a template for RFPs for other regions such as the south central region, and tailored for use in other regions with regard to details such as estimated values and number of delivery orders. Hearing Transcript (Tr.) at 12-13. The SSA explained that each procurement had a different contracting officer, who was responsible for preparing the price negotiation memorandum and making an award recommendation, as well as a separate SSEB with a different chairperson. The SSEBs for the southwest and south central regions had one member of the technical evaluation panel in common. Tr. at 15, 20.

The SSA further explained that he reviewed the RFP, the SSP, the final technical report, the price negotiation memorandum, and the offerors’ proposals, and then checked to ensure there was consistency between the technical report and price negotiation memorandum. He stated that he took notes on what should go into the SSDD with respect to the technical subfactors and past performance information. Tr. at 17, 53-54. With respect to drafting the actual SSDD, the SSA stated that he used the southwest SSDD as a template because of the similarity between the two procurements, highlighting the draft, then adjusting based on the facts of the south central documents and removing the highlights. As a result, some typographical errors transferred to the south central SSDD. Tr. at 18-19, 21.

The SSA also noted that the same past performance reference contracts were submitted by the offerors in response to both the southwest and south central RFPs, and the evaluators reached the same conclusions; therefore the summary conclusions in the SSDD were the same. Tr. at 24-25, 26. With respect to additions the SSA made to the technical evaluations for the south central procurement, the SSA explained, for example, that he added SAIC’s [Deleted] as a

strength to SAIC's proposal not because it was listed in the southwest SSDD, but rather because [Deleted] was included as a strength in the south central SSDD for other offerors. Tr. at 29-30.

In reviewing an agency's evaluation, we do not limit our consideration to contemporaneously-documented evidence, but instead consider all the information provided, including the parties' arguments, explanations, and any hearing testimony. The S.M. Stoller Corp., B-400937 et al., Mar. 25, 2009, 2009 CPD ¶ 193 at 13. While we generally give little or no weight to reevaluations and judgments prepared in the heat of the adversarial process, Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions--so long as those explanations are credible and consistent with the contemporaneous record. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 12.

Here, the record--including the SSA's testimony--indicates that the SSA exercised his independent judgment with respect to the SSDD for the south central procurement. As the SSA explained, the RFPs were very similar, contemplating contracts for MRO items for two geographic zones within the same region. In addition, the RFPs identified evaluation criteria that were almost identical. In response, the record shows that offerors submitted similar proposals, and that both teams of evaluators evaluated the same contract references. Thus, we see no support for concluding that the selection official did not make an independent assessment based on the fact that the two SSDDs included many instances of similar language.

Further, where the two teams of evaluators differed, the record includes evidence that the SSA exercised his independent judgment. For example, when the SSA raised the performance ratings for [Deleted] contract reference in the south central SSDD to equal those of the southwest SSDD, he provided an explanation. In this regard, for one contract, the SSA noted that the most recent "CPARS ratings were very good to exceptional with customers stating they Definitely Would do business with [Deleted] again." AR, Tab 7, SSDD (South Central), at 10-11; AR, Tab 18, SSDD (Southwest), at 11.

With respect to the additional strengths included by the SSA in the south central procurement SSDD, which in the protester's view evidenced a lack of independent judgment, we conclude that these strengths support DLA's position. For example, the SSA added three strengths to the assessment of SAIC's proposal in the south central SSDD that were not reflected in the south central SSEB report. While all three of the strengths mirrored those in the southwest SSDD, one strength added by the SSA (concerning [Deleted]) included information not included in the southwest SSDD. Additionally, the south central SSDD included a strength for

SAIC for a Defense Contract Management Agency approved ordering system that was not a strength in the southwest SSDD. AR, Tab 7, SSDD (South Central), at 18-19; AR, Tab 18, SSDD (Southwest), at 20-21.

In sum, while there is clear evidence that the SSA utilized the southwest SSDD as a template, the record—including credible hearing testimony provided by the SSA—supports the agency’s contention that the SSA exercised his independent judgment in making his selection decision for the south central awards for zones 1 and 2. Moreover, Noble has not demonstrated that the errors incorporated into the decision document as a result of using the southwest SSDD as a template (e.g., a passing reference to [Deleted], a company that was not included in the competitive range for the south central procurement), resulted in any competitive prejudice to the protester. Interfor US, Inc., B-410622, Dec. 30, 2014, 2015 CPD ¶ 19 at 7 (competitive prejudice is an essential element of every viable protest, and where none is shown or otherwise evident, we will not sustain a protest).

The protests are denied.

Susan A. Poling  
General Counsel