



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Logistics Management International, Inc.; Al Raha Group for Technical Services, Inc.; Dalma Tech² Company

File: B-411015.4; B-411015.5; B-411015.6

Date: November 20, 2015

Ron R. Hutchinson, Esq., and Gerard F. Doyle, Esq., Doyle & Bachman LLP, for Logistics Management International, Inc.; David Z. Bodenheimer, Esq., John E. McCarthy, Esq., Jason M. Crawford, Esq., and Robert J. Sneckenberg, Esq., for Al Raha Group for Technical Services, Inc.; and Michael A. Gordon, Esq., Michael A. Gordon PLLC, for Dalma Tech² Company, the protesters.

William E. Hughes III, Esq., and Emily A. Constantine, Esq., Whyte Hirschboek Dudek S.C., for SupplyCore, Inc., the intervenor.

Erika L. Whelan Retta, Esq., and Jennifer Leavengood, Esq., Department of the Air Force, for the agency.

Evan D. Wesser, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protests challenging the agency's reevaluation of the awardee's past performance are sustained where the record shows that the reevaluation was inconsistent with the terms of the solicitation and not adequately documented.
2. Protest challenging the agency's reevaluation of one protester's past performance is sustained where the record shows that the agency's reevaluation was unequal where the agency sought out and considered additional information for at least two other offerors, but unreasonably refused to consider information in its possession regarding the protester.
3. Protest challenging the agency's reevaluation of another protester's past performance is denied where the record shows that the agency reasonably

considered a pattern of performance concerns involving the same issue that resulted in the assignment of a lower past performance confidence assessment.

DECISION

Logistics Management International, Inc. (LMI), of Eastman, Georgia, Al Raha Group for Technical Services, Inc. (RGTS), of Riyadh, Saudi Arabia, and Dalma Tech² Company (DTC), of Riyadh, Saudi Arabia, protest the award of a Foreign Military Sales contract to SupplyCore, Inc., of Rockford, Illinois, by the United States Air Force under request for proposals (RFP) No. FA8505-13-R-31138, for F-15 fighter jet transportation support services (TSS) for the Royal Saudi Air Force (RSAF). Our Office previously sustained in part protests filed by LMI and RGTS challenging the Air Force's prior award to SupplyCore. See Al Raha Grp. for Tech. Servs., Inc.; Logistics Mgmt. Int'l, Inc., B-411015.2, B-411015.3, Apr. 22, 2015, 2015 CPD ¶ 134.¹ Following corrective action, the agency again selected SupplyCore's proposal for award. The three protesters challenge the agency's reevaluation of SupplyCore's past performance, and LMI and RGTS also challenge the agency's reevaluation of their own respective past performance.

We sustain the protests in part and deny them in part.

BACKGROUND

The Solicitation & Initial Evaluation of Proposals

The RFP sought proposals for comprehensive fleet management for various special-purpose vehicles and trailers to support base stand-ups and continued RSAF operation of F-15s. RFP, Performance Work Statement (PWS), at 3. The contractor will provide all transportation and support services required to source, procure, track, warehouse, and deliver assets needed within the Kingdom of Saudi Arabia to support RSAF F-15 operations. Id. The RFP contemplated the award of a single, indefinite-delivery/indefinite-quantity (ID/IQ) contract, with a 12-month basic ordering period and four 12-month option ordering periods. RFP at 3.

For purposes of award, the Air Force was to evaluate proposals under the following three factors: technical; past performance; and cost/price. Id. at 143. With regard to past performance, the agency was to assess an offeror's ability to successfully accomplish the proposed effort based on its demonstrated present and past work record. Id. at 145. Relevant here, the RFP directed offerors to submit no more than four past performance references. Id. at 131. As discussed in greater detail herein, the RFP directed offerors to submit past performance information regarding task or

¹ Our Office denied DTC's protest challenging the agency's prior award to SupplyCore. See Dalma Tech² Co., B-411015, Apr. 22, 2015, 2015 CPD ¶ 135.

delivery orders, as opposed to the underlying ID/IQ contract against which an order was issued. Id.

The RFP advised offerors that the Air Force would evaluate the recency and relevance of each past performance reference.² Id. at 145. Recency was defined as active or completed efforts performed within the past 5 years from the issuance date of the RFP. Id. For purposes of evaluating relevance, the RFP provided that the agency would evaluate the scope, magnitude of effort, and complexities for each reference. Id. at 146. The RFP also provided that the evaluation would address logistical and programmatic considerations, including but not limited to, the quantity procured, length of effort, complexity of the required delivery timeline, and dollar values of the submitted efforts. Id.

In addition to comparing the scope and magnitude of effort and complexities relative to those required by the RFP, the Air Force was also to evaluate whether an offeror's past performance references demonstrated experience in the following seven specific areas: (1) foreign military sales or direct commercial sales material procurement; (2) procurement negotiations; (3) electronic asset visibility tracking and reporting; (4) subcontractor management; (5) international teaming agreements and/or international operations management; (6) packing, handling, shipping, and transportation management; and (7) quality assurance management. Id. at 145-46. The RFP stated that the relevance rating for each reference would be based on the scope, magnitude, and complexity of the effort, and whether the reference demonstrated experience in the seven enumerated areas of experience as follows:

	Very Relevant	Relevant	Somewhat Relevant	Not Relevant
Scope & Magnitude / Complexity of Effort	Essentially the same	Similar	Some	Little or none
Specific Experience	7 of 7	5-6 of 7	2-4 of 7	N/A

Id.

Additionally, the agency was to evaluate the number and severity of performance problems, the appropriateness and effectiveness of corrective actions taken, and the overall work record; the solicitation warned that prompt corrective action in isolated instances might not outweigh overall negative performance trends. Id. at 147. After evaluating the recency, relevance, and quality of an offeror's past

² A newly formed entity, which the RFP defined as in existence for less than 5 years, with either no prior contracts or without relevant corporate experience, could rely on the verifiable past performance of its key personnel. RFP at 131.

performance, the Air Force was to assign an overall past performance confidence assessment using the following ratings:

Substantial Confidence – Based on the offeror’s recent/relevant performance record, the Government has a high expectation that the offeror will successfully perform the required effort.

Satisfactory Confidence – Based on the offeror’s recent/relevant performance record, the Government has a reasonable expectation that the offeror will successfully perform the required effort.

Limited Confidence – Based on the offeror’s recent/relevant performance record, the Government has a low expectation that the offeror will successfully perform the required effort.

No Confidence – Based on the offeror’s recent/relevant performance record, the Government has no expectation that the offeror will be able to successfully perform the required effort.

Unknown Confidence (Neutral) – No 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.

Id. at 147-48.

Under the technical factor, the Air Force was to evaluate an offeror’s proposal for acceptability on a pass/fail basis. Id. at 143. Among the technically acceptable proposals, the agency was then to make a best value tradeoff between past performance and cost/price, wherein past performance was to be significantly more important than cost/price. Id.

The Air Force received seven proposals in response to the RFP, and included six of those proposals in the competitive range for the purpose of holding discussions. Agency Report (AR), Tab 20, Source Selection Decision (Nov. 5, 2014), at 3-4. The agency’s final evaluation for the six offerors was as follows:

	Technical	Past Performance Confidence	Total Evaluated Price
LMI	Acceptable	Limited	\$105,954,044
RGTS	Acceptable	Limited	\$108,197,639
SupplyCore	Acceptable	Substantial	\$110,571,663
DTC	Acceptable	Satisfactory	\$116,162,636
Offeror #5	Acceptable	Satisfactory	\$126,021,788
Offeror #6	Acceptable	Satisfactory	\$149,025,562

Id. at 112.

The Source Selection Authority (SSA) determined that SupplyCore’s proposal, based on its “substantial confidence” past performance assessment, warranted paying a price premium of 4.18 percent over LMI’s proposal and 2.15 percent over RGTS’s proposal, both of which received “limited confidence” assessments. Id. at 113. Based on the tradeoff, the SSA determined that SupplyCore’s proposal offered the best value to the government, and selected the proposal for award. Id.

Protests & Reevaluation of Proposals

LMI and RGTS filed protests with our Office challenging the Air Force’s initial award to SupplyCore.³ Relevant to the issues in this protest, the protesters challenged the agency’s past performance evaluation. First, the protesters challenged the Air Force’s determination that SupplyCore’s past performance warranted a “substantial confidence” assessment because the agency failed to reasonably evaluate the awardee’s past performance in accordance with the RFP’s relevance and recency criteria, and the evaluation was otherwise not adequately documented. The protesters also challenged the agency’s evaluation of their respective past performance as warranting only “limited confidence” assessments. LMI primarily argued that the Air Force unreasonably failed to consider the positive past performance questionnaires (PPQ) received for its proposed key personnel because such information could not be “verified,” and relied on unsupported adverse information. RGTS primarily argued that the agency unreasonably deviated from the assigned adjectival ratings in its Contract Performance Assessment Reports (CPAR), and did not meaningfully consider available mitigating information.

³ As discussed above, DTC also protested the Air Force’s initial award to SupplyCore. We denied the protest, which was limited to challenging the awardee’s technical acceptability and the agency’s evaluation of the protester’s past performance. See Dalma Tech² Co., supra.

Our Office sustained LMI's and RGTS's protests in part and denied them in part. With respect to the evaluation of SupplyCore's past performance, we found that the Air Force's evaluation was inconsistent with the terms of the RFP and not adequately documented. Specifically, we found unreasonable the agency's determination that the awardee's four submitted past performance references--which were orders with dollar values ranging from \$465.90 to \$143,461.67 and periods of performance ranging from 3 days to 1 year--that were issued against larger ID/IQ contracts were relevant to this procurement, which has an estimated value of approximately \$110 million and a 5-year period of performance. See Al Raha Grp. for Tech. Servs., Inc.; Logistics Mgmt. Int'l, Inc., supra, at 6-7. In so finding, we rejected the agency's argument that relevance was only one component of the past performance confidence assessment, and thus the awardee's small-value performance references could reasonably support the highest possible confidence assessment. Id. at 8.

We also found unreasonable the Air Force's argument that its "substantial confidence" past performance rating for SupplyCore was supported by the awardee's record performing the underlying ID/IQ contracts against which SupplyCore's four submitted orders were issued. First, we found an absence of any support in the contemporaneous evaluation record that the agency had considered the ID/IQ contracts, or, if it had considered them generally, that the agency had evaluated the ID/IQ contracts in accordance with the RFP's relevance and recency criteria. Id. at 9. Furthermore, we found that the agency's post-protest arguments were inconsistent with both: (1) the terms of the RFP, which stated that only individual orders under an ID/IQ contract would be considered by the agency; and (2) the agency's contemporaneous conduct during discussions where it directed SupplyCore to submit specific order information, as opposed to just information for the underlying ID/IQ contracts which the agency deemed "Not Relevant." Id. at 9-10.

Additionally, we found that the Air Force's evaluation of other past performance information for SupplyCore, which was independently identified by the agency, was also unreasonable and not adequately documented. First, we found that the agency's evaluation of a SupplyCore contract for body armor warehousing services, with a total value of \$11.299 million and a 2-year period of performance, as being relevant was unreasonable where: (1) the contemporaneous evaluation record failed to include adequate detail for the agency's evaluation findings; and (2) the agency's post-protest assertion that the contract met 3 of the 7 specific relevancy criteria correlated to, at best, a "somewhat relevant" rating, under the terms of the solicitation. Id. at 11-12. Next, we found unreasonable the agency's evaluation of two past performance references for SupplyCore identified by the agency in the Past Performance Information Retrieval System (PPIRS). As addressed in our prior decision, the only information available to the agency was the applicable North American Industry Classification System (NAICS) codes for the projects and the associated delivery scores and quality performance ratings. Id. at 12. We found

that the agency's determination that the projects, which were for "All Other Pipeline Transportation" and "Other Support Activities for Road Transportation," were relevant to this procurement for F-15 TSS was not adequately documented. Id. Therefore, we sustained the protests challenging the agency's evaluation of SupplyCore's past performance.

With regard to the agency's evaluation of the past performance of LMI's key personnel, we found that the Air Force's determination to downgrade LMI's past performance confidence assessment based on the past performance team's inability to "verify" the information in the submitted PPQs was unreasonable. Specifically, we found unreasonable the agency's decision to effectively disregard the PPQs received for LMI's key personnel that were authored by officials knowledgeable about the key personnel's performance. Id. at 15-16. Furthermore, we questioned why the agency disregarded certain positive information due to the agency's purported inability to "verify" the information, but simultaneously credited certain adverse information raised by an agency official with no cognizance over three of the four LMI submitted past performance references and gleaned from CPARs that were not "verified" by another agency source. Id. at 15-16 n.10. Therefore, we sustained LMI's protest challenging the evaluation of its past performance.

With regard to the Air Force's evaluation of RGTS's past performance, we found no basis to sustain the protest challenging the agency's evaluation, because even though the evaluators' ratings deviated from the protester's CPARs, the agency reasonably identified a pattern of concerns arising across several of RGTS's contracts. Id. at 18. We also found reasonable the agency's decision not to consider a CPAR reflecting "satisfactory" ratings for a contract for which the agency had identified significant performance concerns where the CPAR was issued after the past performance evaluation team had concluded its evaluation. Id. at 20. Therefore, we denied RGTS's protest challenging the evaluation of its past performance.

Based on the above, we sustained the protests in part and recommended that the Air Force, consistent with our decision, reevaluate offerors' past performance and make a new source selection decision. Id. at 21. In response to our decision, the agency reevaluated offerors' past performance and issued a new source selection decision. The Air Force elected not to amend the solicitation, reopen discussions, or solicit revised proposals. See Contracting Officer's Statement of Facts (COSF) (Sept. 15, 2015) at 10; AR, Tab 50, Source Selection Decision (Aug. 5, 2015), at 5. Following the reevaluation, all offerors' past performance confidence assessments remained unchanged and SupplyCore's proposal was again selected for award as representing the best value to the government following a tradeoff between past performance and cost/price. See AR, Tab 50, Source Selection Decision (Aug. 5, 2015), at 123-25. These timely protests followed.

DISCUSSION

LMI, RGTS, and DTC challenge the Air Force's reevaluation of SupplyCore's past performance as again warranting a "substantial confidence" assessment, and RGTS and LMI separately challenge the agency's evaluation of their own respective past performance as warranting "limited confidence" assessments. As addressed in our prior decision, the critical question when reviewing an agency's past performance evaluation is whether the evaluation was conducted fairly, reasonably, and in accordance with the solicitation's evaluation scheme. Al Raha Grp. for Tech. Servs., Inc.; Logistics Mgmt. Int'l, Inc., *supra*, at 5. We will question an agency's evaluation conclusions where they are unreasonable or undocumented. OSI Collection Servs., Inc., B-286597, B-286597.2, Jan. 17, 2001, 2001 CPD ¶ 18 at 22. On the other hand, a protester's disagreement with the agency's judgment, without more, 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. Here, we find that the agency's reevaluation with respect to SupplyCore's past performance was unreasonable, inconsistent with the terms of the solicitation, and not adequately documented. We also find that the agency engaged in disparate treatment with respect to its refusal to consider additional past performance information in its possession for RGTS, while simultaneously seeking and considering additional information for SupplyCore and LMI. Therefore, we sustain the protests on these grounds. We deny LMI's protest challenging the evaluation of its past performance because we find that the agency's evaluation was reasonable and consistent with the terms of the RFP.⁴

Evaluation of SupplyCore's Past Performance

The protesters allege that the Air Force's reaffirmance of the "substantial confidence" assessment of SupplyCore's past performance was unreasonable and inconsistent with the terms of the RFP. The protesters challenge the agency's determination during the reevaluation that the four SupplyCore ID/IQ contracts, against which the four low-value orders identified in the awardee's proposal were issued, were relevant to the scope and magnitude of effort and complexity of the RFP. The protesters argue that the agency's determination is inconsistent with the express terms of the RFP and not supported by the contemporaneous evaluation record. Additionally, the protesters contend that the agency's evaluation of three additional past performance references for SupplyCore that were independently identified by the agency was inconsistent with our Office's previous decision sustaining LMI's and RGTS's protests. The protesters allege that the Air Force

⁴ The protesters raise other collateral arguments. While our decision does not specifically address every argument, we have considered all of the protesters' additional assertions and find that none provides any independent basis for sustaining the protests.

failed to evaluate these three additional references in accordance with the RFP's recency or relevance criteria and did not adequately document its evaluation.

SupplyCore's ID/IQ Contracts

In large part, this protest turns on the parties' competing interpretations of the following RFP provision regarding what types of past performance would be considered by the Air Force:

If the contract you are submitting is an ordering type contractual vehicle (e.g., an Indefinite Delivery "D" type contract per [Federal Acquisition Regulation (FAR)] 16.5), only after issuance of a delivery/task order does performance occur. Given this, an individual order (or orders) under the basic ordering contract should be submitted in lieu of just the basic ordering contract itself. Each submitted order shall be considered a separate effort unless information is provided indicating follow-on or series of orders for continued performance of the same scope and such can be verified by the user/customer. In this event, such submitted multiple orders shall be considered as a single effort for evaluation purposes.

RFP at 131.

SupplyCore initially submitted past performance information concerning four ID/IQ contracts, but the Air Force stated during discussions that, in accordance with the RFP, only order-related information would be evaluated and that ID/IQ contract-related information would be assessed as "not relevant." AR, Tab 8, SupplyCore Evaluation Notices and Responses, at 1. In response, SupplyCore amended its past performance proposal to include information about a representative task order for each of the ID/IQ contracts. Id. In its response to the initial protest, however, the agency contended that it had reasonably considered the overall ID/IQ contracts in evaluating SupplyCore's past performance confidence assessment. See, e.g., Supp. COSF in B-411015.2 and B-411015.3 (Mar. 2, 2015) at 11-12. We sustained LMI's and RGTS's protests challenging this aspect of the agency's evaluation for three independent reasons: (1) there was no contemporaneous evidence that the agency had in fact considered the ID/IQ contracts generally, or specifically in terms of the RFP's relevance criteria; (2) the agency's reliance on the ID/IQ contracts was inconsistent with the RFP's instruction that offerors submit only order-related past performance; and (3) the agency's reliance on the ID/IQ contracts was inconsistent with its contemporaneous interpretation of the applicable RFP provision during discussions. Al Raha Grp. for Tech. Servs., Inc.; Logistics Mgmt. Int'l, Inc., supra, at 8-10.

During its corrective action reassessment, the Air Force investigated the underlying ID/IQ contracts against which the four orders submitted by SupplyCore were

issued.⁵ Specifically, the agency contacted the Defense Logistics Agency (DLA), the agency that awarded the ID/IQ contracts against which SupplyCore’s orders were issued, to obtain additional information regarding the nature of the contracts and the resulting orders. AR, Tab 47, Email from Air Force Contracting Officer to DLA (Apr. 29, 2015), at 2. DLA provided the Air Force with copies of the applicable ID/IQ contracts. AR, Tab 67, SupplyCore ID/IQ Contracts. Additionally, two DLA contracting officers spoke to the Air Force by phone. The Air Force summarized one DLA contracting officer’s discussion of two of SupplyCore’s ID/IQ contracts as follows:

[The DLA Contracting Officer] confirmed the [evaluators’] evaluation that DLA uses unique ordering procedures for its IDIQ contracts. She stated that DLA drops delivery orders constantly based on their customers’ mission. Orders can range anywhere from a few dollars to over a million dollars. The scope and magnitude of the orders is based on the customers’ various “projects.” Some orders simply meet an immediate need for material, while others have associated services. The vendor works directly with the customer to support their needs.

⁵ The expected program value for this procurement is currently \$92 million over the contract’s 5-year period of performance, which is a reduction from the previous expected program value of \$110 million. See AR, Tab 48, Past Performance Report (July 29, 2015), at 168. During its reevaluation of past performance, the evaluation team established “yardsticks” for measuring the programmatic scope and magnitude of effort and complexities of past performance references as follows:

	Very Relevant	Relevant	Somewhat Relevant
Dollar Value (Millions (M))	X > \$50M	\$50M > X > \$1M	\$1M > X > \$1
Duration	X > 3 years	3 years > X > 1 year	1 year > X > 1 day

Id. (also stating “[n]o efforts were considered Not Relevant” for any offerors).

Although no protester specifically challenged the reasonableness of these “yardsticks,” we conclude that the Air Force’s position that all potential past performance references, including one for as little as \$1 with a 1-day period of performance, were at least somewhat relevant to this \$92 million, 5-year contract, is unreasonable and contrary to the RFP’s requirements that the agency compare the scope and magnitude of the effort and complexity of the past performance reference to the RFP’s requirements. See Al Raha Grp. for Tech. Servs., Inc.; Logistics Mgmt. Int’l, Inc., supra, at 6.

AR, Tab 45, Notes from Apr. 30, 2015, Phone Call (May 11, 2015), at 1; see also Tab 46, Notes from May 5, 2015, Phone Call (May 11, 2015), at 1 (noting the second DLA contracting officer stated that “[o]rders can range anywhere from a few cents to thousands of dollars depending on the need”).

The Air Force also reviewed the associated ordering histories for the DLA ID/IQ contracts that were available through the Department of Defense’s Electronic Document Access (EDA) system. The EDA system included only the following information for each order: (1) the order number; (2) the number of modifications, if any; (3) the obligated amount; and (4) the effective date. AR, Tab 47, EDA Data, at 6-2337. Based on the EDA data (and other supplemental data from DLA), the Air Force calculated: (1) the duration of the ordering periods falling within the RFP’s 5-year recency period; and (2) the number and total value of orders placed against each of the four ID/IQ contracts during the “recent” periods of performance, as follows:

	SPM7LX-10-D-9009⁶	SPM500-05-D-BP04	SPM500-05-D-BP06	SPM500-02-D-0122
Recent Duration	1 year, 11.5 months	3 years, 2 months	5 years, 4 months	3 years, 3 months
Total Orders Placed	88,022	1,336	76,490	6,129
Total Dollar Value	\$28,340,026	\$147,702,804	\$294,833,055	\$31,832,889

AR, Tab 48, Past Performance Report (July 29, 2015), at 113, 115-16, 118, 120-21.

Next, the Air Force considered the general scopes of these contracts, and whether they satisfied the 7 specific experience areas identified in the RFP. The agency’s evaluation considered the information provided by SupplyCore in its proposal, which consisted of general information regarding the ID/IQ contracts and specific information regarding four individual orders. See AR, Tab 8, SupplyCore Evaluation Notices and Responses. Based on this analysis, the Air Force concluded that SupplyCore’s ID/IQ contracts met the RFP’s exception as a series of orders for continued performance of the same scope of work. The Air Force evaluated the relevancy of the four ID/IQ contracts as follows:

⁶ This contract was formally designated as contract No. SPM7LX-09-D-9003. AR, Tab 48, Past Performance Report (July 29, 2015), at 113.

	SPM7LX-10-D-9009	SPM500-05-D-BP04	SPM500-05-D-BP06	SPM500-02-D-0122
Scope & Magnitude	Similar	Essentially the Same	Essentially the Same	Similar
Specific Experience	5 of 7	6 of 7	6 of 7	4 of 7
Overall Relevance	Relevant	Relevant	Relevant	Somewhat Relevant

AR, Tab 48, Past Performance Report (July 29, 2015), at 113-15, 116-20, 121-23.

Based on these findings, the SSA determined that the aggregate value of SupplyCore’s past performance work was \$502,708,775.94 under the four ID/IQ contracts, and that the prior work was “very relevant” to the RFP’s requirements and warranted a rating of “substantial confidence.” AR, Tab 50, Source Selection Decision (Aug. 5, 2015), at 83.

The protesters first challenge the agency’s determination that SupplyCore’s ID/IQ contracts satisfied the RFP’s exception to the requirement that only orders issued against ID/IQ contracts would be evaluated. The protesters contend that the agency’s determination is inconsistent with the RFP’s terms because: (1) only four representative orders, one for each ID/IQ contract, were submitted in the awardee’s proposal for the agency’s review; (2) the agency unreasonably assumed, based on its review of a single order issued against each of SupplyCore’s ID/IQ contracts, that the other orders issued against the contracts were for follow-on or continuous performance of the same scope; (3) other information available to the agency demonstrates that the tens of thousands of orders issued against the contracts were not for follow-on or continuous performance; and (4) the information was not reasonably verified by DLA or the end user/customer of the orders. The protesters also argue that the Air Force failed to reasonably consider whether the “series of orders” had similar logistical and programmatic considerations as those required by the RFP or satisfied the seven specific experience areas.

The Air Force responds that it reasonably evaluated the tens of thousands of orders issued against SupplyCore’s ID/IQ contracts as constituting a “series of orders” for continuing performance of the same scope. COSF (Sept. 15, 2015) at 12-15. The agency argues that DLA uses “unique” ordering procedures on its ID/IQ contracts, whereby DLA constantly issues many small value orders that, when aggregated, demonstrate a similar scope and magnitude of effort and complexity as compared to the RFP’s requirements. Id. at 13-14. The Air Force contends that DLA’s placement of many thousands of orders under the overall ID/IQ contracts’ broad statements of work demonstrates that the orders were for the continuing performance of the same scope. Id.

We find unreasonable the Air Force's conclusion that the many thousands of orders issued against SupplyCore's four individual ID/IQ contracts constituted, collectively, four discrete references. First, it appears that the agency evaluated SupplyCore's ID/IQ contracts, as opposed to the individual orders issued against the contracts, in violation of the RFP's instruction that only orders would be considered. We also find that the agency's reliance on the overall, general scopes of work for the ID/IQ contracts was insufficient to satisfy the RFP's requirements that, to be considered as a single effort, multiple orders had to be for follow-on performance or continued performance of the same scope. Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. TransAtlantic Lines, LLC, B-411242, B-411242.2, June 23, 2015, 2015 CPD ¶ 204 at 16.

Here, we conclude that the protesters reasonably interpreted the "series of orders" provision to be an exception to the general requirement that only order-related information would be considered in the past performance evaluation. The protesters argue that the text of this provision applies only where: (1) orders were submitted or provided; (2) for follow-on or continuous performance of the same scope; and (3) such information could be verified by the user/customer. RFP at 131. We agree. In this regard, the agency's interpretation of the provision that all orders issued under the awardee's ID/IQ contract references are necessarily for follow-on or continuous performance, would effectively make every ID/IQ contract a "series of orders" eligible for consideration, which in turn would render superfluous the requirement that only order-related information be submitted and evaluated. Additionally, the Air Force's evaluation of only a single representative task order, and each ID/IQ contract's general scope of work, ignores the RFP's requirement that the agency evaluate only order-related information, as opposed to the ID/IQ contracts against which the orders were issued. The agency failed to meaningfully evaluate whether the orders demonstrated follow-on or continuing performance because it did not seek any information regarding the scopes of the tens of thousands of orders upon which its evaluation conclusion relies.

Even the limited information in the record collected by the Air Force about the orders does not support the Air Force's argument that the orders demonstrated a pattern of continued performance of the same scope. The Air Force's notes of its conversations with DLA reflect that the DLA contracting officers represented that the scope and magnitude of effort and complexity of the orders varied based on the unique project or customer requirements resulting in the issuance of each order. See AR, Tab 45, Notes from Apr. 30, 2015, Phone Call (May 11, 2015), at 1; Tab 46, Notes from May 5, 2015, Phone Call (May 11, 2015), at 1. Similarly, the record shows that the goods or services performed under the "series of orders," while tangentially related under the umbrella ID/IQ contracts, varied significantly in terms of dollar value, duration, scope, and magnitude of effort and complexity. For

example, based on the EDA data available for contract No. SPM-500-05-D-BP04, SupplyCore had 6 orders, all of which had an effective date of April 11, 2012 and ranged in value from \$130.20 to \$19,714.08. See AR, Tab 47, EDA Data, at 1929. While no additional information about the scope or programmatic considerations pertinent to the orders was provided, the fact that the orders: (1) all had the same effective date; and (2) were for divergent amounts, suggests that they were not for follow-on or continuous work of the same scope.⁷

Additionally, under contract No. SPM500-05-D-BP06, SupplyCore's proposal reflected seemingly distinct projects that were not for follow-on work or continuous performance of the same scope. First, under order No. NMM6, SupplyCore discussed a \$143,461.67 project for the replacement and installation of three doors at the Misawa Air Base Hospital in Misawa, Japan. AR, Tab 8, SupplyCore Evaluation Notices and Responses, at 21-25. The proposal, however, also discussed SupplyCore's other work under the contract, including the installation of a large solar project (exceeding \$1 million) in Okinawa, Japan, and other facility and maintenance projects, including: (a) heating, ventilation, and air conditioning; (b) plumbing; (c) electrical; (d) roofing and flooring; (e) procurement of construction supplies; and (f) perimeter security. Id. at 24, 27. Thus, based on the awardee's own description of the work under the contract, it appears that the orders issued against the contract were for discrete projects located at U.S. government sites throughout Japan. On this record, we conclude that there is insufficient evidence to demonstrate that the various orders issued against SupplyCore's ID/IQ contracts were for follow-on work or a series of orders for the continuous performance of the same scope of work. We therefore find that the Air Force's evaluation of the tens of thousands of orders under SupplyCore's ID/IQ contracts as constituting a series of orders for continuing performance of the same scope of work, and thus warranting treatment as a single reference, was inconsistent with the RFP's express terms, unreasonable, and not adequately documented.

Additional SupplyCore Past Performance References

In addition to the above concerns regarding SupplyCore's ID/IQ contract references, we also find that the Air Force's reevaluation of SupplyCore's past performance was unreasonable with respect to three additional past performance references for the awardee that were independently identified by the agency--which we previously

⁷ The EDA data available to the Air Force did not include any details regarding the agency for whom these orders were performed, or the logistical or programmatic considerations involved. The record is devoid of any evidence that the agency sought additional information regarding the specific orders. On this record, we also find that the Air Force's determination regarding SupplyCore's "series of orders" was unreasonable because it was not "verified by the user/customer" or otherwise confirmed based on other reasonable documentation. RFP at 131.

addressed in our prior decision. For the reasons discussed below, we conclude that the agency's reevaluation was unreasonable regarding these references.

First, we find that the agency's reevaluation of the relevance of the awardee's body armor warehousing contract did not address the specific concerns identified in our prior decision. We previously found that the agency's evaluation of this contract was unreasonable, in part, because "the contemporaneous evaluation record fails to include any analysis comparing the contract against the RFP's articulated relevancy criteria." Al Raha Grp. for Tech. Servs., Inc.; Logistics Mgmt. Int'l, Inc., *supra*, at 11.

During its corrective action reassessment, the agency represents that it determined that the contract was relevant because it had a dollar value of \$11.299 million, a 2-year period of performance, and met 5 of the 7 specific areas of experience. AR, Tab 48, Past Performance Report (July 29, 2015), at 127, 135; COSF (Sept. 15, 2015) at 17. The agency's assertion that the contract met 5 of the 7 specific experience areas, however, is again unsupported by any analysis or reference to the body armor contract's scope of work, or why it was relevant to the RFP. Where an agency fails to document, as the Air Force did here, or retain evaluation materials, it bears the risk that there may not be an adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for its source selection decision. Navistar Def., LLC; BAE Sys., Tactical Vehicle Sys. LP, B-401865 *et al.*, Dec. 14, 2009, 2009 CPD ¶ 258 at 13. On the record provided by the agency, we cannot conclude that the evaluation of this contract was reasonable.

Next, the Air Force's reevaluation of the two additional SupplyCore projects identified in PPIRs, which were for "All Other Pipeline Transportation" and "Other Support Activities for Road Transportation," respectively, also did not address the specific concerns identified in our prior decision. We previously found that the agency's evaluation of these references was unreasonable because the contemporaneous record did not adequately document: (1) how the scopes of the two projects were relevant to the scope of the RFP; and (2) that the agency had evaluated the magnitude of the effort and complexity of the projects or whether they met any of the 7 specific experience areas. Al Raha Grp. for Tech. Servs., Inc.; Logistics Mgmt. Int'l, Inc., *supra*, at 12. The agency's corrective action past performance report states, without substantiation, that the projects' relevant NAICS codes "have a clear correlation to the instant [TSS] effort, in that they both involve transportation services." AR, Tab 48, Past Performance Report (July 29, 2015), at 135.

Contrary to the agency's unsupported assertion, and as we previously found, however, it is not evident how "all other pipeline transportation," under NAICS code 486990, or "other support activities for road transportation," under NAICS code 488490, are "clearly" relevant to the instant procurement, which is for process, physical distribution, and logistics consulting services, under NAICS code 541614. RFP at 1. Furthermore, even assuming that this correlation could be established,

the Air Force concedes that its determination is not based on a review of the underlying contracts, FACTS Sheets, CPARs, or other documentation for the projects because the agency represents that “[a]dditional detail was not available within the system.” AR, Tab 48, Past Performance Report (July 29, 2015), at 135; see also COSF (Sept. 15, 2015) at 18 (stating that “since there was no additional detail available within the system the [evaluators were] unable to do any further analysis”). Thus, the agency’s perfunctory “reevaluation,” which again failed to evaluate the projects in accordance with the RFP’s relevance criteria, was not based on any meaningful consideration of the projects. As a result, we again find that the Air Force’s evaluation of these two past performance references was unreasonable and inadequately documented.

In sum, the Air Force’s reevaluation of SupplyCore’s past performance was unreasonable, undocumented, and contrary to the terms of the RFP. The agency’s reevaluation also failed to effectively address several of the significant concerns previously identified in our prior decision. On this record, we sustain the protests.

Evaluation of RGTS’s Past Performance

RGTS argues that the Air Force engaged in disparate treatment of offerors during its reevaluation of past performance. Specifically, RGTS argues that the agency made multiple attempts to obtain information from DLA regarding SupplyCore’s past performance. In contrast, the Air Force refused to consider potentially mitigating past performance information for RGTS from the same Air Force contracting activity that was presented to the agency during the prior protest. Based on the circumstances of this case, we find that the agency engaged in disparate treatment of offerors during the reevaluation of past performance.

It is fundamental that a contracting agency must treat all offerors equally, and therefore it must evaluate offers evenhandedly against common requirements and evaluation criteria. See FitNet Purchasing Alliance, B-410263, Nov. 26, 2014, 2014 CPD ¶ 344 at 11 (finding an agency engaged in disparate treatment where it relied on potentially adverse information for the protester without further investigation despite not conducting the same type of evaluation of the awardee); Family Entm’t Servs., Inc., B-298047.3, Sept. 20, 2006, 2007 CPD ¶ 59 at 7 (same, where the agency imposed less stringent response times for and made multiple attempts to contact the awardee’s past performance references).

Our Office previously denied RGTS’s protest challenging the Air Force’s evaluation of its past performance. Specifically, we found that the agency reasonably had identified a pattern of concerns arising across several contracts, and therefore found nothing unreasonable in the agency’s conclusion that these concerns, in the aggregate, merited a lower confidence assessment than recorded on RGTS’s individual CPARs. See Al Raha Grp. for Tech. Servs., Inc.; Logistics Mgmt. Int’l, Inc., supra, at 18. In this regard, we rejected RGTS’s argument that the agency had

unreasonably refused to consider a CPAR for RGTS's relevant Depot Prime Vendor Support (DPVS) contract that was issued after the past performance evaluation team had concluded its evaluation, while simultaneously relying on adverse information about the DPVS contract obtained through discussions with agency program officials. Id. at 19-20. Although the CPAR for the DPVS contract covered the recent period of performance of June 2012 to June 2014, it was not issued until December 16, 2014, which was after the evaluators had concluded their evaluation. Id. at 20. We found nothing objectionable about the agency's failure to consider information that was not available to the evaluators at the time they performed their evaluation. Id. Because we recommended that the agency reevaluate the awardee's past performance, however, we also made the following recommendation:

[I]n light of the importance of the DPVS follow-on contract to the agency's evaluation of RGTS's past performance, the subsequently issued CPAR for the contract, and our recommendation that the agency conduct a new past performance evaluation and source selection decision, we suggest that the agency consider whether the subsequently issued CPAR for the DPVS follow-on contract affects RGTS's past performance confidence assessment.

Id. at 20-21 n.14.

On corrective action, the Air Force determined that it would not consider the DPVS contract CPAR because:

Given that the CPAR in question was completed on 16 Dec 14, which was after the cutoff date for the original past performance data pull, consideration of that CPAR in this re-evaluation would provide RGTS with an unfair advantage (CPAR past performance data completed after the cutoff date would be introduced and considered for RGTS but not for any of the other five offerors).

AR, Tab 48, Past Performance Report (July 29, 2015), at 110 n.3.

While the Air Force's refusal to consider the CPAR issued after the evaluation team concluded its evaluation of RGTS's past performance, standing alone, may not have been unreasonable, once the agency elected to seek out additional past performance information for other offerors during the reevaluation, it was unfair for the agency to reject, out-of-hand, potentially mitigating past performance information for RGTS in the agency's possession. Whereas the agency elected to

seek additional information for SupplyCore and LMI⁸ that was not already available to the agency, the completed CPAR from the same agency contracting activity was already available to the agency during the reevaluation. Furthermore, the CPAR at issue did not pertain to a period of performance arising after the evaluation of proposals. Rather, as addressed in our prior decision, the CPAR at issue pertained to the relevant period of performance, but was not issued until after the evaluation team had concluded its initial evaluation. See Al Raha Grp. for Tech. Servs., Inc.; Logistics Mgmt. Int'l, Inc., supra, at 20 n.14 (noting there was no explanation in the record for why the CPAR was not prepared in the time limits required by FAR § 42.1502(a)). Thus, contrary to the agency's suggestion, RGTS would not have received an unfair advantage of having more recent past performance evaluated; rather, the agency would have merely considered the formal CPAR ratings and information pertaining to the applicable period of performance for the reference. On this record, we find that the agency's additional efforts to obtain more past performance information for other offerors, while refusing to consider relevant past performance information for RGTS already in the agency's possession, constituted disparate treatment. Thus, we sustain RGTS's protest on this basis.⁹

Evaluation of LMI's Past Performance

LMI challenges the Air Force's evaluation of its key personnel's past performance as warranting only a "limited confidence" assessment. The protester primarily alleges that the agency unreasonably relied on adverse past performance information derived from an agency program official and information in CPARs regarding three references performed in part by LMI's chief executive officer (CEO). LMI challenges the adverse information as unreasonable and unsupported.

⁸ We note that although the agency's actions concerning LMI, another non-awardee, did not specifically prejudice RGTS, the agency's unequal treatment in favor of SupplyCore clearly prejudiced RGTS.

⁹ The Past Performance Report also concludes that "[c]onsideration of the DPVS 'Satisfactory' CPAR ratings would not bump RGTS up to a 'Satisfactory' confidence level, as a negative performance trend and repeated areas of concern would still exist for this contractor." AR, Tab 48, Past Performance Report (July 29, 2015), at 110 n.3. This conclusory assertion, however, is unreasonable. The RFP specifically stated that the agency was to evaluate the number and severity of performance problems, the appropriateness and effectiveness of corrective actions taken, and the overall work record. RFP at 147. While the agency, after reasoned consideration of the information in the CPAR, could ultimately reach the same conclusion, its conclusory assertion without consideration of the underlying potentially mitigating information relating to the DPVS contract was inconsistent with the express terms of the RFP.

In our previous decision, we sustained LMI's challenge to the Air Force's evaluation of its past performance. LMI, as a newly formed entity, relied on the past performance of two of its senior executives, as permitted by the RFP. See RFP at 131. LMI had obtained PPQs for each of its four submitted references. Notwithstanding that the PPQs contained detailed information and were prepared by individuals with direct, personal knowledge regarding the LMI key personnel's performance, the Air Force effectively rejected the PPQs because they could not be "verified." The agency official who could not "verify" the information had in fact only been the program manager on part of one of LMI's four submitted references. The agency's inability to "verify" the LMI key personnel's past performance was a significant contributor to the "limited confidence" assessment. We sustained LMI's protest because the agency failed to advance a reasonable explanation for how the second program official's inability to verify the LMI CEO's performance negated the verification provided by the knowledgeable agency officials in the PPQs. See AI Raha Grp. for Tech. Servs., Inc.; Logistics Mgmt. Int'l, Inc., supra, 12-16.

During its corrective action review, the Air Force contacted the PPQ authors to obtain verification regarding the LMI key personnel's past performance. See AR, Tab 44, Air Force Communications with SupplyCore Past Performance References. Based on these communications, the agency found that its previous concerns regarding "verification" of the past performance were resolved. See AR, Tab 48, Past Performance Report (July 29, 2015), at 50. The evaluators, however, nonetheless determined that a "limited confidence" assessment was still warranted based on an evaluated pattern of concerns identified in the CPARs for the LMI CEO's references and in discussions with the agency official who was the cognizant program manager on part of one of LMI's references. Id. at 51-52. LMI was afforded the opportunity during discussions to address the adverse past performance information. Id. at 41-45. Based on the information gathered by the agency and LMI's rebuttal, the evaluators determined that:

Although the positive feedback related to LMI's key personnel was considered, the team is most concerned with the fact that customer feedback showed [the LMI CEO's] (while employed by [his previous company] supporting the [third party logistics (TPL)] contracts) documented repeated performance issues in 1 of the 7 relevancy technical criteria for TSS:

- Electronic asset visibility tracking and reporting

* * * * *

The negative performance trend/repeated concerns exist regarding RGTS's [management information system (MIS)] for the TPL program. . . . MIS concerns were documented in the CPARs for all three TPL contracts. Electronic Asset Visibility Tracking and

Reporting (of which the aforementioned MIS is an example) is a major technical component under which the TSS vendor will be measured. . . . Given the negative performance trend/repeated concerns related to the MIS documented throughout all three TPL contracts submitted by LMI, the [evaluation team] lacks confidence that LMI's key personnel will be able to successfully perform in the Electronic Asset Visibility Tracking and Reporting [] area of expertise for the instant TSS effort.

AR, Tab 48, Past Performance Report (July 29, 2015), at 52-53.

LMI challenges the accuracy and probative value of the adverse past performance information relied upon by the Air Force regarding the LMI CEO's experience with electronic asset visibility, tracking, and reporting. The protester contends that the adverse information from the agency program official is unreasonable and inconsistent with the record. LMI also argues that the CPAR data relied upon by the Air Force was taken out of context, and the agency failed to reasonably consider the documented corrective actions taken to rectify the issues. The agency responds that it afforded LMI a reasonable opportunity through discussions to address the adverse past performance information, and, in accordance with the RFP, reasonably determined that the same negative performance concerns identified in multiple CPARs constituted a significant concern justifying a "limited confidence" assessment. We find that the agency's evaluation, which relied upon similar, documented performance concerns in the CPARs for the LMI CEO's past performance references, was reasonable.¹⁰

The agency was to evaluate the number and severity of performance problems, the appropriateness and effectiveness of corrective actions taken, and the overall work record. RFP at 147. The RFP, however, also warned that prompt corrective action in isolated instances might not outweigh overall negative performance trends. Id. As discussed below, the CPARs for the LMI CEO's references demonstrate that his prior company experienced initial issues with its MIS on the relevant TPL contracts. The record also demonstrates that the company implemented effective corrective action to the Air Force's satisfaction, including actions specifically taken by LMI's CEO in his prior capacity. For example, the CPAR for order No. F8505-12-D-0001-0001 states:

The RSAF F-15 Logistics Section was concerned with the inaccuracy of the [contractor's] Management Information System. . . . These issues caused the RSAF to do additional research to find

¹⁰ Because the CPAR information reasonably supports the Air Force's evaluation, we need not resolve whether the agency's reliance on the adverse information provided by the program official was also reasonable.

the required information. The [U.S. Government Program Manager] has spent an inordinate amount of time managing a program the RSAF funded [the contractor] to manage. [The contractor] did solicit input from the customer to ensure a pending MIS enhancement contract award met the customer's requirements. [The contractor's] actions to improve the MIS significantly contributed to this rating of Satisfactory.

LMI Protest (Aug. 17, 2015) at 15.

Relatedly, on contract No. F8505-10-D-0006, the CPAR states:

When the customer expressed concern over issues with the Management Information System (MIS), the contractor took immediate action to hire additional personnel to meet the customer's expectations. The noteworthy progress made in this area resulted in a significant improvement to the contractor's MIS.

Id. at 18.

Thus, the CPARs demonstrate that the LMI CEO's previous company experienced initial difficulties with the implementation of its MIS, but then took prompt and effective corrective action to resolve the issues. Consistent with the RFP, however, the agency found that the recurrence of the issues across multiple contracts gave rise to a material concern with LMI's prospective performance of similar requirements under this RFP. AR, Tab 48, Past Performance Report (July 29, 2015), at 52-53. Although LMI argues that the agency unreasonably failed to consider the positive information in the record, including the effective corrective action implemented by the LMI CEO and his team, the protester does not rebut that the LMI CEO's former employer did experience initial issues in areas of his purported responsibility with his former employer. See, e.g., LMI's Protest (Aug. 17, 2015) at 16 ("The full text of the assessing official narrative makes clear that while there were problems . . . the [LMI CEO's former employer] corrected those problems to the satisfaction of the Air Force."). Since the evaluation of past performance is subjective by its very nature, and a procuring agency is responsible for defining its needs and the best method for accommodating them, we will not substitute our judgment for an agency's reasonably based past performance ratings. Charles F. Day & Assocs., LLC, B-411164, June 2, 2015, 2015 CPD ¶ 173 at 5.

Similarly, LMI's disagreement over the relative weight that the agency should have afforded to the documented and apparently successful corrective action taken by the LMI CEO and his prior company is an insufficient basis on which to question the agency's evaluation. Beretta USA Corp., supra. In this regard, the record shows that the agency considered both positive and negative past performance information

concerning LMI, and concluded, on balance, that the protester's negative performance trend was a significant concern. AR, Tab 48, Past Performance Report (July 29, 2015), at 52-53. On this record, we find no basis to sustain LMI's challenge to the agency's evaluation of its past performance.

CONCLUSION AND RECOMMENDATION

In summary, we find that the Air Force's evaluation of SupplyCore's past performance was inconsistent with the relevancy requirements of the RFP and not adequately documented. We also find that the agency engaged in disparate treatment by refusing to consider past performance in its possession regarding RGTS, while simultaneously seeking and considering additional past performance information for at least two other offerors, including the awardee.

We recommend that the Air Force, consistent with our decision, reevaluate offerors' past performance information. Based on that reevaluation, we recommend that the agency make a new source selection determination. Alternatively, to the extent that the agency determines that the solicitation's evaluation criteria fail to reasonably reflect the agency's needs, the agency should consider whether it is necessary to amend the solicitation, engage in discussions with offerors, and solicit revised proposals. We also recommend that the agency reimburse the protesters their respective costs associated with filing and pursuing their protests, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protesters' respective certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. Id. at (f).

The protests are sustained in part and denied in part.

Susan A. Poling
General Counsel