



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: Qi Tech, LLC

File: B-416711.8; B-416711.9

Date: November 27, 2019

John R. Tolle, Esq., and H. Todd Why, Esq., Baker, Cronogue, Tolle & Werfel, LLP, for the protester.

Richard B. Oliver, Esq., and J. Matthew Carter, Esq., Pillsbury Winthrop Shaw Pittman LLP, for Tatitlek Technologies, Inc., an intervenor.

Candice A. Thomas, Esq., Department of the Navy, for the agency.

Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of the awardee's retention rate of personnel covered by the Service Contract Act is sustained where the evaluation unreasonably considered an identified weakness to be resolved simply because the awardee chose to remove the adverse performance information, which did not change, from its final proposal.
 2. Protest challenging the agency's evaluation of the awardee's workforce proposal is denied where the evaluation was reasonable and consistent with the solicitation.
 3. Protest challenging the agency's evaluation of the awardee's past performance is denied where the evaluation was reasonable and consistent with the solicitation.
-

DECISION

Qi Tech, LLC, a small disadvantaged business of McLean, Virginia, protests the issuance of a task order to Tatitlek Technologies, Inc., of Anchorage, Alaska, under request for proposals (RFP) No. N0017817R3058, issued by the Department of the Navy for administrative and clerical support services for the Navy's Naval Surface Warfare Center Dahlgren Division (NSWCDD), Dahlgren, Virginia. Qi Tech argues that the agency's evaluation of proposals and resulting award decision were improper.

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

BACKGROUND

The history of this procurement is long and contentious.¹ The RFP was issued on August 10, 2017, pursuant to Federal Acquisition Regulation (FAR) subpart 16.5, to 8(a) small business holders of Navy SeaPort-e indefinite-delivery, indefinite-quantity (IDIQ) contracts.² Agency Report (AR), Tab 1, RFP at 4; Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 2. The solicitation provided for the issuance of a cost-plus-fixed-fee, level-of-effort task order for a base year with four 1-year options.³ The RFP required, in general terms, the contractor to provide qualified personnel to successfully perform all specified administrative and clerical support tasks. RFP, Statement of Work (SOW) §§ C.2, C.4. The RFP established that task order award would be made on a best-value tradeoff basis, based on six evaluation factors in descending order of importance: recruitment and retention of personnel (hereinafter recruitment/retention); scenario; management capability; workforce; past performance; and cost.⁴ RFP §§ M.1, M.3, M.7.

Eight offerors, including Qi Tech and the incumbent Tatitlek, submitted proposals by the September 26 closing date. A technical evaluation team (TET) evaluated the noncost proposals using various adjectival rating schemes that were set forth in the RFP as follows: outstanding, good, acceptable, marginal, or unacceptable for the recruitment/retention, scenario, management capability, and workforce factors; and substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence (neutral) for the past performance factor.⁵ A separate cost/price evaluation team assessed cost submissions for reasonableness and realism. Based on the initial evaluation of proposals, Qi Tech and Tatitlek were included within the competitive range. COS/MOL at 4.

The Navy conducted discussions, and offerors submitted their final proposal revisions (FPR) by May 30, 2018. On July 19, the Navy contracting officer, acting as the source

¹ See our prior decision in Tatitlek Techs., Inc., B-416711 et al., Nov. 28, 2018, 2018 CPD ¶ 410, for additional detail regarding this procurement.

² The solicitation was subsequently amended six times. Unless specified otherwise, all citations are to the final version of the solicitation.

³ Although firms that compete for task orders under IDIQ contracts are generally referred to as “vendors” who submit “quotations” and are “issued” task orders, the record and the parties’ briefings primarily use the terms “offerors,” “proposals,” and “award.” For the sake of consistency with the record, we refer to the firms that competed here as offerors who submitted proposals for award of a task order.

⁴ The recruitment/retention and scenario factors were of equal importance to each other, as were the workforce and past performance factors. RFP § M.7.

⁵ The agency also assessed the relevance of offerors’ references (*i.e.*, very relevant, relevant, somewhat relevant, or not relevant) as part of the past performance factor.

selection authority (SSA), determined that Qi Tech’s technical advantages outweighed Tatitlek’s lower evaluated cost, and concluded that Qi Tech’s proposal represented the overall best value to the government. Id.

On August 20, Tatitlek filed a protest with our Office challenging the Navy’s evaluation of offerors’ proposals and resulting award decision; Tatitlek also filed a total of four supplemental protests based on information received in the agency report to our Office. On November 28, our Office issued a decision denying Tatitlek’s initial and three subsequent supplemental protests. Tatitlek Techs., Inc., B-416711 et al., supra.

Tatitlek’s final supplemental protest challenged the evaluation of Qi Tech’s technical and cost proposals with regard to the RFP’s paid sick leave requirement. Tatitlek Protest, Oct. 24, 2018, at 1-11. Our Office conducted a hearing on these issues on December 18, and the Navy elected to take corrective action on December 21 by reevaluating Qi Tech’s technical and cost proposals and making a new award decision. We then dismissed the remaining supplemental Tatitlek protest as academic. Tatitlek Techs., Inc., B-416711.5, Jan. 3, 2019 (unpublished decision).

The Navy thereafter conducted another round of discussions, and both Qi Tech and Tatitlek submitted their second FPRs by March 18. On June 23, based on the reevaluation of proposals, the SSA determined that Tatitlek’s proposal represented the overall best value to the government. COS/MOL at 7.

On July 1, Qi Tech filed a protest with our Office, challenging the task order award to Tatitlek. On July 15, the Navy informed our Office that it again intended to take corrective action by reevaluating offerors’ technical proposals and making a new award decision. We then dismissed Qi Tech’s protest as academic on July 17. Qi Tech, LLC, B-416711.7, July 17, 2019 (unpublished decision).

The Navy then reevaluated the FPRs that had been submitted on March 18, with the final evaluation ratings and costs of the Qi Tech and Tatitlek proposals as follows:

	Qi Tech	Tatitlek
Recruitment/Retention	Outstanding	Outstanding
Scenario	Good	Good
Management Capability	Good	Good
Workforce	Outstanding	Acceptable
Past Performance	Very Relevant/ Substantial Confidence	Very Relevant/ Substantial Confidence
Overall	Outstanding	Good
Proposed Cost	\$51,308,383	\$49,103,293
Evaluated Cost	\$51,365,786	\$50,222,056

COS/MOL at 7; AR, Tab 10, Source Selection Decision Documents (SSDD) at 6.

On August 19, the Navy announced its decision that Tatitlek's proposal was the best value to the government and, therefore, was selected for task order award. The SSA, having reviewed and considered offerors' submissions, again concluded that Qi Tech's technical superiority did not outweigh Tatitlek's lower evaluated cost. Id. at 8. On August 22, Qi Tech filed its current protest with our Office.⁶

DISCUSSION

Qi Tech raises numerous issues regarding the evaluation of Tatitlek's proposal and the resulting award decision. Qi Tech first alleges the evaluation of Tatitlek's proposal under the recruitment/retention factor was improper. The protester also contends the evaluation of Tatitlek's proposal under the workforce and past performance factors was unreasonable. Lastly, Qi Tech contends the agency's best-value tradeoff determination was flawed and inadequately documented.⁷ Had the Navy performed a proper evaluation and award determination, Qi Tech argues, it would have been selected for award. As detailed below, we find the Navy's evaluation of Tatitlek's recruitment/retention proposal was improper. Although we do not specifically address all of Qi Tech's remaining issues and arguments, we have fully considered all of them and find they provide no other basis on which to sustain the protest.

Recruitment/Retention Evaluation of Tatitlek

Qi Tech protests the Navy's evaluation of Tatitlek's proposal under the recruitment/retention factor. Specifically, the protester contends the agency improperly ignored Tatitlek's low rate of employee retention on the incumbent contract, which was identified in Tatitlek's earlier proposal and the subject of the Navy's discussions with Tatitlek. Qi Tech argues that had the agency properly considered this information, it would have again identified this as a significant weakness in Tatitlek's proposal, and lowered the rating assigned to Tatitlek's proposal under this most important evaluation criterion.

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the contracting agency's discretion, because the agency is responsible for defining its needs and the best method of accommodating them. BAE Sys. Tech. Solutions & Servs., Inc., B-414931.2, B-414931.3, Dec. 20, 2017, 2018 CPD ¶ 54 at 4-5; Engility Corp., B-413120.3 et al., Feb. 14, 2017, 2017 CPD ¶ 70 at 15. Our Office will not reevaluate task order proposals, but we will review the record to determine whether the evaluation was

⁶ Because the value of the awarded task order is over \$25 million, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts issued by military agencies. 10 U.S.C. § 2304c(e)(1)(B).

⁷ Qi Tech also raised other evaluation challenges (i.e., the evaluation of Tatitlek's proposal under the management capability factor, the evaluation of its proposal under the scenario and management capability factors), but subsequently elected to withdraw these additional protest grounds. Comments and Supp. Protest at 1.

reasonable and consistent with the solicitation's evaluation criteria as well as applicable procurement laws and regulations. Ekagra Software Techs., Ltd., B-415978.3, B-415978.4, Oct. 25, 2018, 2018 CPD ¶ 377 at 2-3; Tribalco, LLC, B-414120, B-414120.2, Feb. 21, 2017, 2017 CPD ¶ 73 at 4.

With regard to the recruitment and retention of personnel, the RFP instructed offerors to "describe their personnel management plan to include . . . [the] retention of SCA [Service Contract Act] personnel."⁸ RFP § L.5.4.2. Relevant to the protest here, the RFP also required "[t]he Offeror [to] provide retention metrics of SCA personnel."⁹ Id. Similarly, the recruitment/retention evaluation factor established that the agency would assess, among other things, "the Offeror's personnel management policies and practices designed to motivate employee performance and encourage longevity with the firm, including its retention metrics of SCA personnel" RFP § M.7.1.

Tatitlek, in its first FPR, set forth the individual turnover rates for its three NSWCCD contracts that included SCA personnel. AR, Tab 13, Tatitlek FPR, May 30, 2018, Vol. 2, Technical Proposal, at 11. Relevant to the protest here, Tatitlek represented that the turnover rate for its incumbent administrative and clerical support services contract was 32%.¹⁰ Id. at 11.

The TET assessed a significant weakness for this aspect of Tatitlek's recruitment/retention proposal.¹¹ Specifically, the agency evaluators stated as follows:

Solicitation section L.5.4.2(1)(c) requires the Offeror to provide retention metrics of SCA personnel. . . . Tatitlek notes that the retention rate on the current NSWCCD Clerical, Administrative, and Access Control . . . Support Task Order is 68% or that turnover is 32%. This high turnover rate demonstrates that the company investment in staff retention is not effective. This is a significant weakness because it increases the risk to

⁸ Almost all of the positions included in this task order were covered by the SCA. Specifically, the RFP specified a total 120.5 full-time equivalent (FTE) positions in the base year, of which 119.5 positions were covered by the SCA. RFP §§ H.3, L.5.5.

⁹ The record reflects that the parties here often referred to the retention rate by its inverse, i.e., the turnover rate.

¹⁰ The record also reflects that Tatitlek's SCA-covered NSWCCD contracts were not equal in size. Tatitlek's incumbent administrative and clerical support services contract involved 125 FTEs, while the second referenced contract, for operational support services, consisted of 36 FTEs, and the third contract, for metrology and calibration laboratory support services, involved 13 FTEs. Id. at 43.

¹¹ Tatitlek challenged this assigned significant weakness in its earlier protest of the initial award to Qi Tech, and we found the agency's evaluation in this regard to be reasonable and consistent with the stated evaluation criteria. See Tatitlek Techs., Inc., B-416711 et al., supra, at 11-12.

the Government that continuity of services will not be provided and it increases the level of effort required to train and orient new personnel.

AR, Tab 14, TET Report, July 9, 2018, at 40. Overall, the TET rated Tatitlek's first FPR as "marginal" under the recruitment/retention factor. Id. at 38.

During the course of its corrective action taken in December 2018, the Navy conducted discussions with Tatitlek and specifically identified the aforementioned significant weakness. AR, Tab 2, Discussions with Tatitlek at 4. Tatitlek's response to the agency's discussions set forth its updated "policies and practices for retention of personnel to offset our turnover rate." AR, Tab 3, Tatitlek Responses to Discussions, at 5-7. Tatitlek subsequently submitted its revised FPR, to include its updated retention policies and practices. AR, Tab 8, Tatitlek FPR, Mar. 18, 2019, Vol. 2, Technical Proposal, at 15-16. This time, unlike its earlier proposal, Tatitlek's revised FPR no longer referenced its 32% turnover rate for the incumbent contract. Instead, with regard to its retention metrics of SCA personnel, Tatitlek deleted its individual contract turnover rates and substituted the average turnover rate for its SCA-covered NSWCCD contracts--i.e., "17%, with an average retention rate of 83%."¹² Id. at 14.

The TET, when evaluating Tatitlek's revised FPR, assigned several new strengths to the proposal resulting from the offeror's revised retention approach. AR, Tab 7, TET Report, July 17, 2019, at 7. Additionally, the agency evaluators found that Tatitlek's turnover rate on the incumbent contract was no longer a significant weakness, because Tatitlek's revised FPR "removed all verbiage related to the prior . . . significant weakness previously found by the evaluators." AR, Tab 11, Declaration of TET Chairperson, Sept. 20, 2019, at 1. The TET Chairperson further explained:

Specifically with respect to the retention rate, the TET previously found a significant weakness under the Recruitment/Retention factor related to Tatitlek's retention rate on the current, incumbent secretarial contract. However, in [its revised FPR], Tatitlek did not reference the retention rate of the current incumbent contract. Instead, Tatitlek provided an average retention rate across all of their . . . NSWCCD contracts with . . . SCA positions, which is in line with industry average retention rates. . . . Based on Tatitlek's retention rate in its [revised FPR], the prior weakness was no longer applicable.

Id. at 1-2.

¹² Although unstated, Tatitlek's turnover rate here appears to be a simple average of the turnover rates for the three SCA-covered NSWCCD contracts which it referred to separately in its initial FPR, including the incumbent administrative and clerical support services contract with a 32% turnover rate. There also is no recognition in the record that there were significant differences in the number of FTEs involved in these three prior efforts.

Overall, based on the newly-assigned strengths and the absence of any weaknesses or significant weaknesses in the revised FPR, the TET raised Tatitlek's rating from "marginal" to "outstanding" under the recruitment/retention factor. AR, Tab 7, TET Report, July 17, 2019, at 6.

Qi Tech argues the agency's evaluation of Tatitlek's final proposal was unreasonable, and that the evaluators could not ignore Tatitlek's historical SCA retention rate on the incumbent contract simply because it was no longer mentioned in Tatitlek's proposal. Protest at 16; Comments and Supp. Protest at 3-5. The Navy disagrees, and contends that its evaluation was reasonable because Tatitlek's revised FPR no longer referenced its 32% turnover rate on the incumbent contract, and because the average turnover rate now identified in the revised proposal was more in line with industry averages. COS/MOL at 10-11. We find the agency's evaluation here to be unreasonable.

As set forth above, the recruitment/retention evaluation factor established that the agency would assess "the [o]fferor's personnel management policies and practices designed to motivate employee performance and encourage longevity with the firm, including its retention metrics of SCA personnel" RFP § M.7.1. Thus, the recruitment/retention evaluation criterion as established by the agency was a combination of two considerations: an offeror's prospective plan, as well as its historic, or past, performance as reflected in the retention metrics for SCA personnel.

Under the circumstances here, we find the Navy failed to reasonably consider Tatitlek's SCA retention rate on the incumbent contract as part of its final evaluation and failed to adequately document its evaluation conclusions. First, Tatitlek's turnover rate on the incumbent contract was known to the agency evaluators; the same individuals had evaluated Tatitlek's first FPR which introduced this information. Second, it is clear the agency considered the past performance information in question, *i.e.*, Tatitlek's turnover rate on the incumbent contract, to be relevant to its evaluation. The TET had found Tatitlek's 32% turnover rate to be a significant weakness in its earlier evaluation even while also aware of Tatitlek's turnover rates for its other (smaller) NSWCDD contracts. AR, Tab 14, TET Report, July 9, 2018, at 40 ("[I]t increases the risk to the Government that continuity of services will not be provided and it increases the level of effort required to train and orient new personnel.").

Third, Tatitlek's 32% turnover rate on the incumbent contract is not disputed. There is no evidence to suggest that Tatitlek removed this figure from its final proposal because it was inaccurate information; instead, it appears to have been removed because it was prejudicial information. Fourth, inasmuch as Tatitlek's turnover rate on the incumbent contract is historical data, the previous issue that the TET had with Tatitlek's turnover rate is a matter that has not, and cannot, change between the awardee's first and revised FPRs. *See* AR, Tab 6, Agency Discussions Tracker at 1 ("[t]he [incumbent contract] retention rate remains the same regardless of [new] statements made by Tatitlek"). Lastly, the record reflects a single reason for the conclusion that Tatitlek's turnover rate on the incumbent contract was no longer a significant weakness--because

Tatitlek “removed all verbiage” of its turnover rate on the incumbent contract from its final proposal. AR, Tab 11, Declaration of TET Chairperson, Sept. 20, 2019, at 1.

While the agency might have reasonably concluded that other features of Tatitlek’s proposal served to ameliorate concerns about the company’s turnover rate on the incumbent contract, there are no such conclusions in the record here. In our view, it was unreasonable for the evaluators to consider this significant weakness to be resolved simply because Tatitlek chose to obscure the negative retention metric--which did not change--from its earlier proposal. See G. Marine Diesel; Phillyship, B-232619, B-232619.2, Jan. 27, 1989, 89-1 CPD ¶ 90 at 4-5 (sustaining protest where agency elected not to consider unsatisfactory past performance of awardee involving similar services with the same agency because awardee did not include the controversial contract on its list of references for the past performance review); see also Triad Int’l Maint. Corp., B-408374, Sept. 5, 2013, 2013 CDP ¶ 208 at 7; Shaw-Parsons Infra. Recovery Consultants, LLC; Vanguard Recovery Assistance, Joint Venture, B-401679.4 et al., Mar. 10, 2010, 2010 CPD ¶ 77 at 8. Moreover, the agency has failed to adequately document how the significant weakness it had identified regarding Tatitlek’s retention rate on the incumbent contract was actually addressed--by some means other than Tatitlek’s “remov[al] [of] all verbiage related to the prior . . . significant weakness” from its final proposal. AR, Tab 11, Declaration of TET Chairperson, Sept. 20, 2019, at 1. We therefore sustain the protest on this basis.

Workforce Evaluation of Tatitlek

Qi Tech also challenges the evaluation of Tatitlek’s proposal under the workforce factor. The protester contends the strength identified in Tatitlek’s proposal was unwarranted, and that the assigned weakness should instead have been considered a significant weakness or deficiency. Had the agency performed a proper evaluation, Qi Tech argues, Tatitlek would have instead received a “marginal” rating under the workforce factor. Comments and Supp. Protest at 9-15.

The workforce evaluation factor consisted of two components: resumes of key personnel, and staffing plan/matrix. RFP § M.7.4. The RFP instructed offerors to submit, as part of their proposals, a staffing matrix table which totaled 120.5 FTEs in the base year--119.5 clerical/administrative FTEs and 1 program manager FTE.¹³ RFP §§ L.5.4.5, L.5.5; attach. J.5, Staffing Matrix. The RFP also established that, with regard to the staffing plan/matrix, the agency would evaluate the adequacy of the offeror’s plan to support all areas of the SOW with qualified personnel, including the evaluation of “staffing implementation risks and risk mitigations proposed.” RFP § M.7.4.

¹³ For each FTE position in the staffing matrix table, offerors were to either identify a named individual, or indicate “To Be Determined (TBD)” or “Pending.” RFP § L.5.5.1.

Tatitlek's workforce proposal contained its staffing implementation risks and risk mitigation strategies. AR, Tab 8, Tatitlek FPR, Mar. 18, 2019, Vol. II, Technical Proposal, at 46. Tatitlek also included the required staffing matrix table in which it identified personnel for 72 of the 120.5 positions, with the remaining 48.5 positions listed as "pending." Id., attach. J.5., Staffing Matrix, at 1-8. Tatitlek also represented that "[a]ll of the personnel listed in our Staffing Matrix are available to begin work on Day 1 of contract performance." Id. at 46.

The TET identified Tatitlek's staffing risks and mitigation plans as a strength, "because it demonstrates an understanding of high impact risks and the actions that are being taken to reduce these risks, decreasing overall risk to the Government." AR, Tab 7, TET Report, July 17, 2019, at 10. The TET also found Tatitlek's staffing matrix to be a weakness as it did not identify named personnel for all base year positions, thereby "increase[ing] the risk to the Government that Tatitlek will not be able to provide additional skilled personnel beyond th[ose] proposed . . . [and] resulting in delays and missed deadlines." Id. at 10-11.

Qi Tech first contends that the strength identified in Tatitlek's workforce proposal was unwarranted. While acknowledging that staffing implementation risk was expressly part of the stated evaluation criterion, the protester argues that staffing risk was "peripheral to the main focus of this evaluation – adequacy of the offeror's staffing." Qi Tech Supp. Comments at 3-4. Qi Tech essentially disputes the agency's judgment regarding the weight given to this aspect of the awardee's proposal. Id. at 4 ('the weight [it] should be given is minimal'). Such disagreement with an agency's subjective evaluation judgments, however, does not render the evaluation unreasonable. Dev Tech. Grp., B-412163, B-412163.5, Jan. 4, 2016, 2016 CPD ¶ 10 at 10.

Qi Tech also challenges the weakness identified in Tatitlek's workforce proposal. The protester does not dispute that the identification of personnel for some positions as "pending" was permitted by the solicitation, or that the evaluators were aware of the number of staffing positions for which Tatitlek had not identified a specific individual. Rather, Qi Tech argues that the evaluation was irrational by "not downgrading Tatitlek's proposal enough" for the risk associated with the unnamed staffing positions. Qi Tech Supp. Comments at 4.

We find the agency's evaluation to be reasonable and consistent with the stated evaluation criteria. The record reflects the agency was clearly aware of the number of positions for which Tatitlek had not identified specific individuals--which Qi Tech does not dispute--and reasonably considered the risk associated with this aspect of the offeror's proposal as part of its evaluation. We have also repeatedly found that an agency is in the best position to judge the relative merits of offerors' proposals, including the associated risks. BAE Sys. Tech. Solutions & Servs., Inc., supra; Engility Corp., supra. Qi Tech essentially disagrees with the agency's judgment regarding the risk to the agency represented by this aspect of Tatitlek's proposal, which is insufficient to

establish that the agency acted unreasonably.¹⁴ Alliant Enter. JV, LLC, B-410352.5, B-410352.6, July 1, 2015, 2015 CPD ¶ 209 at 10-11.

Past Performance Evaluation of Tatitlek

Lastly, Qi Tech challenges the evaluation of Tatitlek's past performance. The protester contends that, based on the past performance references considered, it was improper for the Navy to assign Tatitlek a "substantial confidence" rating. Comments and Supp. Protest at 15-16.

In task order competitions conducted pursuant to FAR subpart 16.5, our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the agency's discretion. Engility Corp., *supra*, at 10; TeleCommunication Sys., Inc., B-413265, B-413265.2, Sept. 21, 2016, 2016 CPD ¶ 266 at 7. The evaluation of past performance, by its very nature, is subjective, and we will not substitute our judgment for reasonably based evaluation ratings; an offeror's disagreement with an agency's evaluation judgments, by itself, does not demonstrate that those judgments are unreasonable. Engility Corp., *supra*, at 10-11; Cape Env'tl. Mgmt., Inc., B-412046.4, B-412046.5, May 9, 2016, 2016 CPD ¶ 128 at 8-9.

The RFP established that the agency would evaluate the relevance and the quality of an offeror's past performance, in order to make a confidence assessment of the ability to successfully perform the contract requirements. RFP § M.7.5. Relevant to the protest here, the RFP defined the "substantial confidence" rating as "[b]ased on the Offeror's recent/relevant performance record, the Government has a high expectation that the Offeror will successfully perform the required effort," and the "satisfactory confidence" rating as "[b]ased on the Offeror's recent/relevant performance record, the Government has a reasonable expectation that the Offeror will successfully perform the required effort." *Id.*, § M.5.2.

¹⁴ Qi Tech also contends the Navy ignored Tatitlek's "misrepresentations" that "[a]ll of the personnel listed in our Staffing Matrix are available to begin work on Day 1 of contract performance," when Tatitlek had only identified named personnel for 72 of the 120.5 FTE positions. Comments and Supp. Protest at 12-13. We find no merit in Qi Tech's assertion here. It is clear, we think, that Tatitlek's assertion that "[a]ll of the personnel listed in our Staffing Matrix are available to begin work on Day 1 of contract performance" referred to the 72 named individuals, and not to all 120.5 FTE positions. Moreover, the record reflects the agency was clearly aware during its evaluation that it was Tatitlek's named personnel that were available to begin work on the first day of contract performance. AR, Tab 7, TET Report, July 17, 2019, at 10-11; Tab 12, TET Chairperson Declaration, Oct. 11, 2019, at 1-2.

Tatitlek submitted three past performance references with its revised FPR: (1) the incumbent NSWCCD clerical, administrative, and access control support services contract; (2) a professional, technical, and management support services contract for the Naval Surface Warfare Center in Crane, Indiana; and (3) an operational support services contract at NSWCCD. AR, Tab 8, Tatitlek FPR, March 18, 2019, Vol. II, Technical Proposal, at 71-76.

The TET found the first two Tatitlek references to be very relevant and the third to be relevant. AR, Tab 7, TET Report, July 17, 2019, at 11-12. Additionally, the evaluators considered the most recent contractor performance assessment reporting system (CPARS) reports available for Tatitlek's references. Id. at 12; Tab 15, Tatitlek CPARS Reports at 1-10. Here, the TET found that for each of the CPARS areas rated, Tatitlek had received "satisfactory," "very good," or "exceptional" ratings.¹⁵ AR, Tab 7, TET Report, July 17, 2019, at 12 ("[DELETED]% of the ratings on the CPARS for [Tatitlek] were Exceptional; [DELETED]% were Very Good; and [DELETED]% were Satisfactory"). Based on the CPARS reports, the TET assigned each of Tatitlek's references a substantial confidence rating, as well assigning the awardee an overall substantial confidence rating. Id. at 11, 13-14.

Qi Tech does not dispute the relevance of any of Tatitlek's references, nor the substantial confidence assessment for the first reference. The protester, however, challenges the substantial confidence ratings assigned to the remaining references where Tatitlek received satisfactory and/or very good CPARS area ratings, as well as an overall substantial confidence assessment. Qi Tech essentially argues that satisfactory and/or very good CPARS ratings represent only a "reasonable"--as opposed to "high"-- expectation the offeror will successfully perform the contract here, thus warranting only a satisfactory confidence assessment. Qi Tech Supp. Comments at 7. The agency argues that Tatitlek's satisfactory CPARS ratings indicated the contractor consistently performed contract requirements, from which it was "reasonable to conclude that there is a 'high expectation' that the Contractor will successfully perform the required effort" Supp. MOL at 9.

We find the agency's past performance evaluation of Tatitlek to be unobjectionable. As a preliminary matter, we note that Tatitlek's past performance references were uniformly found to be relevant or very relevant to the SOW requirements here. Further, Tatitlek's CPARS reports indicated that the offeror either met (i.e., "satisfactory") or exceeded (i.e., "very good" or "exceptional") contract requirements in all instances for all its past performance references. There is simply no requirement, as Qi Tech suggests, that Tatitlek's past performance exceed many or some contractual requirements (i.e.,

¹⁵ The CPARS defines "exceptional" as "[p]erformance meets contractual requirements and exceeds many to the Government's benefit"; a "very good" rating as "[p]erformance meets contractual requirements and exceeds some to the Government's benefit"; and a "satisfactory" rating as "[p]erformance meets contractual requirements." AR, Tab 15, Tatitlek CPARS Reports at 1-2.

“exceptional” or “very good” CPARS ratings) in order to warrant a substantial confidence assessment. In sum, while Qi Tech contends that it “does not necessarily follow” that consistently meeting contract requirements represents a high expectation of successful performance, Qi Tech Supp. Comments at 7, we find this amounts to disagreement with the agency’s judgment, which, without more, does not demonstrate that those judgments were unreasonable or provide a basis on which to sustain the protest.¹⁶

RECOMMENDATION

We recommend that the agency reevaluate Tatitlek’s recruitment/retention proposal and reasonably address whether the revised proposal has, or has not, ameliorated the previously-identified significant weakness regarding Tatitlek’s retention rate on the incumbent administrative and clerical support services contract. Based on that reevaluation, the agency should also make a new source selection determination. If, upon reevaluation, Qi Tech is determined to offer the best value to the government, the Navy should terminate Tatitlek’s task order for the convenience of the government and make award to Qi Tech. We also recommend that Qi Tech be reimbursed the costs of filing and pursuing the protest, including reasonable attorneys’ fees. 4 C.F.R. § 21.8(d)(1). Qi Tech should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained in part and denied in part.

Thomas H. Armstrong
General Counsel

¹⁶ Qi Tech also challenges the Navy’s best-value tradeoff determination and argues the SSA failed to document why Qi Tech’s identified superiority under the workforce factor was not worth the associated cost premium, and how the two offerors were found to be technically equal under the remaining noncost factors. Comments and Supp. Protest at 6-9, citing Cyberdata Techs., Inc., B-417084, Feb. 6, 2019, 2019 CPD ¶ 34 at 4 (finding the agency’s selection decision improper where the evaluation record contained no explanation for why the proposals were determined to be technically equal); see also NOVA Corp., B-408046, B-408046.2, June 4, 2013, 2013 CPD ¶ 127 at 6 (sustaining protest where tradeoff decision failed to adequately document the basis for concluding that selection of the protester’s higher-rated, higher-cost proposal was not justified). In light of our determination that certain aspects of the evaluation of Tatitlek’s technical proposal were not reasonable, and our corresponding recommendations, we need not address this aspect of Qi Tech’s protest. Innovative Test Asset Sols., LLC, B-411687, B-411687.2, Oct. 2, 2015, 2016 CPD ¶ 68 at 19 n.26.