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# Decision

**Matter of:** Chenega Federal Systems, LLC

**File:** B-417037.2

**Date:** September 6, 2019

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Kenneth A. Martin, Esq., Martin Law Firm, PLLC; William K. Walker, Esq., Walker Reausaw, for the protester.

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Heather Self, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest challenging the agency's past performance evaluation is denied where the agency properly considered the dollar value of offerors' past performance contracts when assessing relevance, and evaluated offerors consistent with the solicitation.

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## DECISION

Chenega Federal Systems, LLC, a small business of Lorton, Virginia, protests the award of a contract to Delaware Resource Group of Oklahoma, LLC (DRG), of Oklahoma City, Oklahoma, under request for proposals (RFP) No. FA5215-17-R-0002, issued by the Air Force for aircrew training and security services. Chenega argues that the agency's evaluation of past performance was improper, that the agency conducted an unreasonable best-value tradeoff decision based on the flawed past performance evaluation, and that the agency failed to take the corrective action it promised in response to an earlier protest filed by Chenega.

We deny the protest.

## BACKGROUND

The RFP, issued on February 9, 2018, pursuant to the provisions of Federal Acquisition Regulation part 15, contemplated the award of a single fixed-price contract with a 1-year base period, three 1-year option periods, and two 1-year incentive option periods. Agency Report (AR), Tab 4, RFP, at 1, 2-28, 85, 116. The solicitation's statement of work (SOW) required the contractor to provide all personnel and materials to perform

aircrew training and site security management services at six air bases located in Alaska, Hawaii, South Korea, and Japan. Id. at 136-137.

The solicitation established that award would be made using a best-value tradeoff source selection process, considering four factors: (1) technical submission; (2) small business subcontracting plan; (3) past performance confidence rating; and (4) price. RFP at 116. The technical submission and subcontracting plan factors were to be evaluated on a pass/fail basis, with the tradeoff based on a consideration of past performance and price.<sup>1</sup> Id.

Regarding the past performance factor, the solicitation required the agency to evaluate the relevance and quality of offerors' recent<sup>2</sup> past performance. RFP at 118-119. The agency evaluated relevance by considering the degree to which an offeror's past performance reference contract involved similar scope, complexities, and magnitude of effort as compared to the SOW. Id. Whether an offeror's reference contract involved a similar scope and complexity depended on the degree to which the contract involved performance of five specific task areas identified in the solicitation. Id. at 118. The solicitation did not, however, specify how the agency would evaluate magnitude of effort. The solicitation provided that the agency reserved the right to give greater consideration to contracts deemed more relevant to the SOW requirements. Id. at 119.

The agency gave past performance reference contracts one of four relevancy ratings: (1) very relevant--past performance involved essentially the same magnitude of effort as the SOW and met four or more of the scope and complexity task areas; (2) relevant--past performance involved similar magnitude of effort as the SOW and met three or more of the scope and complexity task areas; (3) somewhat relevant--past performance involved some of the magnitude of effort of the SOW and met two or more of the scope and complexity task areas; and (4) not relevant--past performance involved little to none of the magnitude of effort of the SOW and met one or fewer of the scope and complexity task areas. RFP at 119.

The solicitation provided that the agency would consider an offeror's relevancy ratings, and the quality of the offeror's past work, to assess the degree of confidence the agency had that each offeror could perform successfully if awarded the contract, resulting in the assignment of a performance confidence rating for each offeror. RFP at 118-119. The solicitation established five performance confidence ratings--substantial, satisfactory, limited, no, and neutral. Id. at 119. As relevant here, the solicitation defined substantial

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<sup>1</sup> The solicitation provided that the non-price factors, when combined, were significantly more important than price, however, past performance was the only non-price factor that was evaluated on other than a pass/fail basis. RFP at 116.

<sup>2</sup> The solicitation defined recent as contracts performed within three years of the RFP's issuance date for which a minimum of six months' performance had been completed. RFP at 118.

confidence as “a high expectation that the offeror will successfully perform” and satisfactory confidence as “a reasonable expectation that the offeror will successfully perform.” Id. For purposes of evaluating past performance, the solicitation directed offerors to submit no more than four past performance references, and to include the dollar value of each submitted contract, among other things. RFP at 112-113.

The solicitation closed on March 21, and the agency received five timely offers, including those from Chenega and DRG. RFP at 114-115; AR Tab 1, Contracting Officer’s Statement (COS), at 15. After completing evaluations, the agency selected DRG’s proposal as offering the best value to the government, and notified offerors of the award decision on September 26. COS at 2. After receiving a debriefing, Chenega filed a timely protest with our Office, in which it challenged the agency’s past performance evaluation and best-value source selection decision. Id. In response to Chenega’s protest, the agency submitted a notice of proposed corrective action, and we dismissed the protest as academic. Chenega Federal Systems, LLC, B-417037.1, Nov. 16, 2018 (unpublished decision).

Subsequent to our dismissal of Chenega’s first protest, the agency performed a partial reevaluation of offerors’ past performance, conducted a new best-value tradeoff analysis, and made a new source selection decision. COS at 6-8; AR Tab 19, Past Performance Corrective Action Report, at 1; Tab 20, Corrective Action Update to Source Selection Evaluation Board (SSEB) Final Report, at 1-2; Tab 21, Source Selection Decision (SSD), at 1-4. The agency limited its reevaluation under the past performance factor to re-examining the magnitude of effort of each offeror’s reference contracts by comparing the contracts’ annualized values<sup>3</sup> to the independent government cost estimate (IGCE) for the SOW. Id. The agency assigned new relevancy ratings, considering the prior scope and complexity assessments and the new magnitude of effort evaluations. Id. The agency then assigned each offeror a new performance confidence assessment rating based on the relevance and quality of the offeror’s past performance record. Id.

The record reflects that, Chenega submitted three past performance references. AR, Tab 5, Chenega’s Past Performance Proposal, at 9-20. The evaluators found that Chenega’s first reference, for its performance as the incumbent contractor, involved all five of the scope and complexity task areas and had an annualized contract value of approximately \$7.5 million. AR, Tab 19, Past Performance Corrective Action Report,

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<sup>3</sup> The agency derived the annualized value of offerors’ past performance references by dividing the value provided for each contract in an offeror’s proposal by the number of months of completed performance and multiplying the result by 12. AR, Tab 19, Past Performance Corrective Action Report, at 1; Tab 20, Corrective Action Update to SSEB Final Report, at 1-2. For federal past performance references, the agency checked available price information in government databases to corroborate its annualized value calculations. Id.

at 3-4. The evaluators considered Chenega's incumbent contract performance to meet the scope and complexity portion of the RFP's definition of very relevant, but considered it to involve only "some," rather than "essentially the same," magnitude of effort as the SOW. Id. at 4. In this regard, Chenega's incumbent contract had an annualized contract value approximately half that of the \$15.5 million estimated value of the SOW. Id.; Tab 3, IGCE. The agency explains that the SOW anticipates an increase in size from the incumbent contract's staffing level of 38 full-time equivalent personnel (FTEs) to 63<sup>4</sup> FTEs under the current solicitation--an FTE increase of approximately 40 percent. COS at 19-20; MOL at 13 (citing RFP at 141-142). Considering both the similarity in scope and complexity, and the dissimilarity in magnitude of effort, the evaluators assigned Chenega's incumbent contract performance a relevancy rating of somewhat relevant. AR, Tab 19, Past Performance Corrective Action Report, at 4.

The evaluators found that Chenega's second past performance reference involved four of the scope and complexity task areas and had an annualized contract value between \$7.5 and \$8.4 million. AR, Tab 19, Past Performance Corrective Action Report, at 5-6. The evaluators considered this to meet the scope and complexity portion of the RFP's definition of very relevant, but rated it as only somewhat relevant because the magnitude of effort, in terms of value, was approximately half as much as the IGCE for the SOW. Id. at 6. The evaluators found that Chenega's third past performance reference involved three of the scope and complexity task areas and had an annualized contract value of approximately \$6 million. Id. at 7-8. The evaluators found this reference also to be somewhat relevant. Id. at 8.

The evaluators next considered the quality of Chenega's performance for its three somewhat relevant past performance references. AR, Tab 19, Past Performance Corrective Action Report, at 9-11; Tab 20, Corrective Action Update to SSEB Final Report, at 5-6. The evaluators reviewed Past Performance Questionnaire (PPQ) ratings for two of Chenega's references, which were mostly a mix of satisfactory (11/25 ratings) and very good (10/25 ratings), with one exceptional and three marginal ratings. Id. The three marginal ratings were for Chenega's work during the phase-in period of its incumbent contract, which occurred prior to the RFP's defined period of recency. Id. Accordingly, the evaluators discounted these marginal ratings. Id. The evaluators also reviewed Contractor Performance Assessment Reporting System (CPARS) ratings for two of Chenega's references, which were mostly satisfactory (14/23 ratings) with some very good (5/23 ratings) and exceptional (4/23 ratings) performance ratings also noted. Id. Based on Chenega's satisfactory to excellent range of quality ratings in performing the three somewhat relevant contracts, the evaluators found there was a reasonable expectation that Chenega would successfully perform the required effort, and assigned its proposal a satisfactory confidence rating. Id.

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<sup>4</sup> The agency incorrectly asserts that the solicitation requires 65 FTEs. COS at 20; AR, Tab 2, Memorandum of Law (MOL) at 13. The SOW lists 63 required positions. RFP at 141-142.

DRG also submitted three past performance references. AR, Tab 6, DRG's Past Performance Proposal, at 7-15. The evaluators found that DRG's first reference involved all five of the scope and complexity task areas and had an annualized contract value between \$2.8 and \$4.3 million. AR, Tab 19, Past Performance Corrective Action Report, at 41-42. The evaluators considered this reference too small in terms of magnitude of effort to be rated as very relevant despite involving all five task areas. Id. at 42. As a consequence, the agency assigned it a relevancy rating of somewhat relevant. Id. The evaluators found that DRG's second past performance reference involved three of the scope and complexity task areas and had an annualized contract value between \$8.5 and \$9.9 million. Id. at 43-44. The evaluators considered DRG's second reference to have only some of the magnitude of effort of the SOW and assigned it a relevancy rating of somewhat relevant. Id. at 44. The evaluators found that DRG's third past performance reference involved four of the scope and complexity task areas and had an annualized contract value between \$10.9 and \$11.7 million. Id. at 45-46. The evaluators considered DRG's third reference to have similar magnitude of effort as the SOW's \$15.5 million estimated value, and assigned it a rating of relevant. Id. at 46; Tab 3, IGCE.

The evaluators next considered the quality of DRG's performance for its three past performance references. AR, Tab 19, Past Performance Corrective Action Report, at 47-49; Tab 20, Corrective Action Update to SSEB Final Report, at 9-10. The evaluators reviewed PPQ ratings for one of DRG's somewhat relevant references and its relevant reference, which were all excellent. Id. Because some of DRG's excellent PPQ ratings were for its work during the phase-in period of one of its contracts, which occurred prior to the RFP's defined period of recency, the evaluators discounted these three excellent ratings. Id. The evaluators reviewed CPARS ratings for the second of DRG's somewhat relevant references, which were all satisfactory. Id. The evaluators also reviewed CPARS ratings for DRG's relevant reference, which were a mix of excellent (4/12 ratings), very good (5/12 ratings), and satisfactory (3/12 ratings). Id. Based on DRG's satisfactory to excellent range of quality ratings in performing two somewhat relevant contracts, and its mostly very good to excellent quality in performing one relevant contract, the evaluators found there was a high expectation that DRG would successfully perform the required effort, and assigned its proposal a substantial confidence rating. Id.

Utilizing the original technical acceptability ratings,<sup>5</sup> new past performance confidence ratings, and original total evaluated price for each offeror, the agency conducted a new best-value tradeoff analysis. AR, Tab 21, SSD, at 1-4, 23-26. The source selection authority (SSA) narrowed the choice to Chenega's lowest-priced (\$134,618,036) proposal with a satisfactory confidence past performance rating and DRG's second

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<sup>5</sup> The agency evaluated both Chenega and DRGs' proposals as technically acceptable. AR, Tab 21, SSD, at 23. Chenega does not challenge the agency's technical evaluation.

lowest-priced (\$141,346,302) proposal with a substantial confidence past performance rating. Id. at 25-26.

While considering DRG's superior overall past performance rating, the record reflects that the SSA specifically considered the past performance ratings as they related to potential mission impact in terms of staffing, and how vacancies or even modest turnover rates could compromise mission performance. AR, Tab 21, Source Selection Decision, at 26. Focusing on the customer generated PPQ and CPARS ratings for employee retention, program management, and overall management, the SSA noted that DRG's ratings ranged from exceptional to very good while Chenega's ratings in the same areas ranged from very good to satisfactory with only one exceptional rating. Id. The SSA's decision indicates that he considered the distinction in the offerors' ratings for these areas to be an indicator of the offerors' ability to recruit, retain, and manage personnel for a contract on which staffing would be of critical importance. Id. The SSA further noted that DRG's overall past performance record reflected that it more consistently obtained performance quality ratings of exceptional, while Chenega's past performance record was more mixed, with the majority of its ratings being satisfactory. Id. Based on these considerations, the SSA decided that DRG's superior past performance was worth its five percent price premium, and selected DRG's proposal as providing the best value to the government. Id.

The agency notified offerors of the new source selection decision on May 28, 2019. AR, Tab 24, Award Notification and Debriefing, at 5. After receiving a debriefing, Chenega filed this protest with our Office.

## DISCUSSION

Chenega challenges the agency's evaluation of past performance, arguing that the agency: (1) improperly utilized an unstated evaluation criterion when it assessed magnitude of effort by comparing the IGCE to the annualized value of offerors' past performance contracts; (2) evaluated in a manner inconsistent with the solicitation when it engaged in a two-step process to assign relevancy ratings to offerors' past performance contracts; (3) unreasonably evaluated Chenega's incumbent performance as only somewhat relevant; and (4) engaged in disparate treatment of offerors. Protest at 9-16; Comments at 4-13, 16-17. In addition to challenging the agency's evaluation of past performance, Chenega alleges that the agency's IGCE is unreasonable. Comments at 6-7, 9, 16. As detailed below, we find no merit to the protester's arguments.<sup>6</sup>

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<sup>6</sup> Chenega also challenges the agency's source selection decision, alleging that the agency's best-value tradeoff was unreasonable insofar as it relied on the allegedly flawed past performance evaluation. Protest at 16-20; Comments at 13-15, 17-21. In addition, Chenega requests that we recommend reimbursement of Chenega's costs for filing its earlier protest where the agency failed to correct the matters identified in its prior protest. Protest at 20-22; Comments at 21-22. Because we conclude the

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## Past Performance Evaluation

### Use of IGCE in Evaluating Magnitude of Effort

Chenega argues that the agency improperly utilized an unstated evaluation criterion when it assessed magnitude of effort by comparing the IGCE to the annualized contract value of offerors' past performance references. Protest at 9-16; Comments at 4-13, 16-17. The protester maintains that the solicitation's use of the phrase "magnitude of effort" does not refer to the size of an offeror's prior contracts, but rather to the type of work involved. Protest at 12. The protester contends that IGCEs are tools for agencies to use in evaluating proposed prices, and that there was nothing in the solicitation alerting offerors to the agency's intended use of the IGCE to evaluate the relevance of offerors' past performance. Id.

An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the agency's assessment is unreasonable or inconsistent with the solicitation criteria. PricewaterhouseCoopers Public Sector, LLP, B-415504, B-405504.2, Jan. 18, 2018, 2018 CPD ¶ 35 at 10. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper.<sup>7</sup> WingGate Travel, Inc., B-412921, July 1, 2016, 2016 CPD ¶ 179 at 4-5.

Here, the solicitation's use of the phrase "magnitude of effort" reasonably refers to the size of an offeror's past performance references, and reasonably encompasses the agency's consideration of the dollar values of the contracts submitted by offerors as past performance references. The term magnitude is commonly understood to refer to

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protester's evaluation challenges are without merit, the protester's challenge of the agency's source selection decision and its request for reimbursement of protest costs, both of which are premised on the assumption that its evaluation challenges are meritorious, provide us no basis to sustain the protest.

<sup>7</sup> As a general matter, throughout its protest Chenega challenges the evaluators' past performance assessments because they were subjective. See e.g., Comments at 8 ("[U]nconstrained by any disclosed standards, the evaluators subjectively assigned "relevance" ratings[.]"). We have explained in numerous decisions that the evaluation of experience and past performance is, by its very nature, subjective. See e.g., PricewaterhouseCoopers Public Sector, LLP, supra, at 11. Without more, Chenega's generalized disagreement with the agency's subjective past performance evaluation judgments does not demonstrate that those judgments were unreasonable. Id.

size,<sup>8</sup> and our decisions have repeatedly recognized that the dollar value of a past performance reference typically is probative of the contract's magnitude. See e.g., Metis Solutions, LLC; et al., B-411173.2 et al., July 20, 2015, 2015 CPD ¶ 221 at 9 n. 11; Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 22-23. Additionally, as set forth above, the solicitation's instructions expressly required offerors to include in their proposals the dollar value (i.e., the size) of their past performance references. An agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated evaluation criteria. WingGate Travel, Inc., supra, at 7 n. 11; Food Servs. Inc. of Gainesville, B-411032.2 et al., Aug. 10, 2015, 2015 CPD ¶ 249 at 5. Thus, the agency properly considered the dollar value of the offerors' prior efforts to assess magnitude as part of evaluating the relevance of offerors' past performance. WingGate Travel, Inc., supra, at 7.

### Two-Step Process in Assignment of Relevancy Ratings

Chenega contends that the agency improperly evaluated offerors' past performance in a manner inconsistent with the solicitation when it engaged in a two-step process to assess relevance, arguing that the agency "did not disclose a "two-step" evaluation process in its RFP." Protest at 12, 15; Comments at 18. As with its use of dollar value to assess magnitude of effort, the record reflects that the agency's "two-step" evaluation of relevance was consistent with the terms of the RFP.

The solicitation established four relevancy ratings, each of which was based on a consideration of two primary elements: (1) magnitude of effort of an offeror's contract reference as compared to the SOW; and (2) the degree to which a past performance reference reflected performance of the five task areas highlighted in the RFP for the purpose of assessing scope and complexity. RFP at 119. For example, the RFP defined a rating of very relevant as past performance that "involved essentially the same magnitude of effort this solicitation requires, and meets at least four of five areas identified" as part of the assessment of scope and complexity. Id. In assigning relevancy ratings, the record reflects that the evaluators rated each contract, considering both the magnitude of the effort, and whether it met the RFP's scope and complexity definition. AR, Tab 19, Past Performance Corrective Action Report, at 1; Tab 20, Corrective Action Update to SSEB Final Report, at 2; Tab 21, SSD, at 5.

Accordingly, when Chenega and DRG each submitted two past performance reference contracts, involving four or five of the scope and complexity task areas, yet the evaluators did not consider any of the four contracts to involve "essentially the same magnitude of effort this solicitation requires," the evaluators did not assign any of them a very relevant rating. AR, Tab 19, Past Performance Corrective Action Report, at 3-8,

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<sup>8</sup> Chenega's assertion that "magnitude of effort" refers to the type of work involved, would essentially render the phrase synonymous with the terms "scope" and "complexity," thereby making it superfluous. Accordingly, this argument is without merit.



41-46. As explained, the solicitation defined very relevant as a past performance contract with essentially the same magnitude of effort and involving at least four of the five scope and complexity task areas. Because the record reflects that the agency considered both aspects of the solicitation's relevance definition, we have no basis to conclude that the agency's evaluation was inconsistent with the terms of the solicitation as alleged by the protester. See e.g., WingGate Travel, Inc., supra, at 4-7; Metis Solutions, LLC, supra, at 8-10.

### Evaluation of Chenega's Incumbent Contract

Chenega challenges the agency's evaluation of its incumbent contract as only somewhat relevant, and argues that it was unreasonable for the agency to create a rating scheme where an incumbent contractor could not receive the highest relevancy rating. Protest at 11-12, 14, 16; Comments at 8-11. Chenega cites to our decision in Paragon Tech. Group, Inc., B-412636, B-412636.2, Apr. 22, 2016, 2016 CPD ¶ 113, to support its contention that its incumbent contract should have received a higher relevancy rating. Comments at 10.

As set forth above, in evaluating the relevance of offerors' past performance the agency utilized the IGCE for the solicited effort. The IGCE has an estimated annual value of \$15.5 million, as compared to the incumbent contract's \$7.5 million annualized value, and anticipates a near doubling in size of the incumbent requirement from 38 FTEs to 63 FTEs. COS at 19-20; MOL at 13 (citing RFP at 141-142); AR, Tab 3, IGCE. By contrast, in Paragon, we found the past performance evaluation unreasonable because the agency assessed the relevance of a vendor's references based on an estimate that was substantially greater than the agency's actual solicited requirements. As a consequence, even the incumbent contract for the solicited services was not eligible for the highest relevance assessment. Our decision in Paragon is inapposite here, where the agency assessed relevance utilizing an IGCE that reflected the actual anticipated requirements of the SOW. Because Chenega's incumbent contract did not actually reflect the full magnitude of work required by the solicitation, we have no basis to question the agency's conclusion that Chenega's incumbent contract was only somewhat relevant. See e.g., WingGate Travel, Inc., supra, at 8-9.

### Disparate Treatment

Chenega also argues that the agency did not treat offerors equally in its evaluation of past performance. Protest at 12-13, 16; Comments at 16-17. Although an agency's evaluation of past performance is a matter of agency discretion, agencies may not engage in disparate treatment of offerors in the evaluation of past performance. Vectrus Systems Corp., B-412581.3 et al., Dec. 21, 2016, 2017 CPD ¶ 10 at 10. Here, contrary to Chenega's contentions, the record shows that the agency fairly evaluated both offerors' past performance.

Chenega's initial argument in this regard is based on its belief that, as the incumbent, only it could demonstrate the most relevant past performance. As a general matter,

there is no requirement that an offeror be given additional credit for its status as an incumbent, or that the agency assign or reserve the highest rating for the incumbent offeror. National Gov't Servs., Inc., B-412142, Dec. 30, 2015, 2016 CPD ¶ 8 at 15. More importantly, as noted above, the agency properly evaluated Chenega's incumbent contract as only somewhat relevant because the incumbent contract had a significantly lower dollar value as compared to the magnitude of the RFP's requirements.

To the extent Chenega asserts that only it could satisfy all five of the RFP's scope and complexity elements, the assertion is not supported by the record. The evaluators found that one of DRG's three past performance references also involved all five of the scope and complexity task areas. AR, Tab 19, Past Performance Corrective Action Report, at 41-42. The record further reflects that--similar to Chenega's past performance reference for its incumbent contract, which involved all five of the scope and complexity task areas but received only a somewhat relevant rating due to the dollar value of the contract--the evaluators assigned DRG's reference a rating of somewhat relevant based on the dollar value of its contract. Id. This even-handed approach strongly rebuts Chenega's allegation of unequal treatment.

As additional evidence of unequal treatment, Chenega points to DRG's alleged lack of recent or relevant past performance at the four airbases located in Japan and Korea, where performance of the awarded contract will occur. Protest at 12-13, 16. The solicitation did not, however, require offerors' to demonstrate past performance at the specific air bases listed in the SOW. Rather, of the five task areas the solicitation established to assess the relevance of an offeror's past performance references' scope and complexity, only one related to the location of performance. This one task only required an offeror to demonstrate that the reference contract involved performance at two or more geographically separate locations including at least one requiring status of forces agreement coordination. RFP at 118. The evaluators gave DRG credit for this task area under one of DRG's past performance reference contracts where the contract had been performed at airbases in Italy, Germany, and the United Kingdom, and all three locations required status of forces agreement coordination.<sup>9</sup> AR, Tab 19, Past Performance Corrective Action Report, at 41. Accordingly, the protester's arguments in this regard are without merit.

The record further reflects that the evaluators equally applied the IGCE in assessing the magnitude of effort of offerors' past performance--finding both Chenega's past performance references with annualized contract values up to \$8.4 million and DRG's past performance references with annualized contract values up to \$9.9 million to involve only some of the magnitude of effort of the SOW's estimated annual value of

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<sup>9</sup> The record reflects that DRG and Chenega each submitted only one past performance reference involving performance at two or more geographically separate locations where at least one location required status of forces agreement coordination. AR, Tab 5, Chenega's Past Performance Proposal, at 9-20; Tab 6, DRG's Past Performance Proposal, at 7-15; Tab 19, Past Performance Corrective Action Report, at 3-8, 41-46.

\$15.5 million.<sup>10</sup> AR, Tab 19, Past Performance Corrective Action Report, at 3-8, 41-44; Tab 3, IGCE. The only past performance reference contract the evaluators considered to involve a similar magnitude to the RFP's SOW was the largest contract submitted by either offeror, DRG's past performance reference with an annualized contract value of approximately \$10.9 to \$11.6 million. AR, Tab 19, Past Performance Corrective Action Report, at 4, 6, 46. In sum, we find no disparate treatment in the agency's evaluation of past performance. See e.g., Vectrus Systems Corp., supra, at 9-10.

### Reasonableness of the Agency's IGCE

In its comments on the agency's report, Chenega expanded its challenge to the agency's use of its IGCE to assess the magnitude of effort of offerors' past performance references, arguing that the IGCE is unreasonable. Comments at 4-7, 9, 16. Chenega argues that it was unreasonable for the agency to base its IGCE on Chenega's proposal for its "five year old incumbent contract proposal" and to then arbitrarily increase the rates based on "guesses" and "uncertainties" without adjusting the rates to reflect current day costs under Chenega's incumbent contract. Id. We dismiss as untimely Chenega's challenge to the reasonableness of the agency's IGCE.

The agency submitted its report responding to Chenega's protest on July 8, 2019. Electronic Protest Docketing System (EPDS) Docket Entry No. 15. Included in the agency's report was a statement of facts from the contracting officer (CO), in which he provided a description of how the agency developed the IGCE. COS at 20-21. Specifically, the CO indicated that the agency developed the IGCE's fully burdened labor rate utilizing direct labor estimates based on the incumbent contract as performed and indirect cost elements from Chenega's proposal for the incumbent contract. Id. The CO further indicated that the COR increased the rates from the incumbent contract to account for "increases that the [agency] evaluators were uncertain of." Id. at 21.

On July 9, Chenega objected to the scope of the agency's document production, and requested the production of additional documents related to the development of the IGCE and to the agency's calculation of offerors' total evaluated prices. EPDS Docket Entry No. 16. On July 11, the agency produced seven additional documents, one of which was related to the IGCE. EPDS Docket Entry No. 17, Agency Response to Protester's Request for Production of Documents, at 1-2. Also, on July 11, the protester

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<sup>10</sup> In its comments, Chenega supplements its argument in this regard, contending that because the agency's IGCE was based on Chenega's proposal for the incumbent contract it suffered unique additional harm from the agency's improper application of the IGCE to assess the magnitude of effort of offerors' past performance references. Comments at 16-17. As discussed above, we find unobjectionable the agency's use of its IGCE as part of the assessment of relevance of offerors' past performance. Nor do we find any merit in the protester's argument that because the IGCE was based on its prior proposal, the agency's application of it to the protester's current proposal somehow resulted in an unequal evaluation.

requested and was granted an extension of time to file its comments on the agency's report. EPDS Docket Entry No. 18. In granting the requested extension, our Office cautioned the protester that "[t]his extension does not toll the time for filing supplemental protests." Id.

In challenging the reasonableness of the agency's IGCE, Chenega relies almost exclusively on the CO's description of the agency's development of the IGCE. Comments at 4-7, 16 (citing COS at 20-21). The only reference Chenega makes to the one supplemental IGCE-related document provided by the agency on July 11 is to assert, in a footnote, that the document "did not exist at the time the [agency's] COR and Contracting Specialist prepared the IGCE." Id. at 9 n. 3.

Our bid protest rules contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the protest process. Verizon Wireless, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Our timeliness rules specifically require that a protest based on other than alleged improprieties in a solicitation be filed not later than ten days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2); see People, Technology & Processes, LLC, B-417208, Mar. 21, 2019, 2019 CPD ¶ 113 at 12. Because Chenega's challenge to the reasonableness of the IGCE is based on information contained in the agency's July 8 report, but Chenega waited to bring its challenge until July 22, more than ten days after it knew or should have known the basis of its protest, we dismiss this argument as untimely.

The protest is denied.

Thomas H. Armstrong  
General Counsel