



# Decision

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**Matter of:** JMark Services, Inc.

**File:** B-417331.2

**Date:** July 22, 2019

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Charles R. Lucy, Holland & Hart LLP, for the protester.  
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Elizabeth Witwer, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest alleging that the evaluation was tainted by bias on the part of an agency official is denied where the agency official was not involved in the evaluation, and where the protester has failed to provide any convincing proof to demonstrate that agency evaluators acted in bad faith or were biased.
  2. Protest challenging the agency's technical evaluation is denied where the evaluation was reasonable and performed in accordance with the solicitation's pass/fail evaluation methodology.
  3. Protest challenging the agency's failure to assess the risk associated with the awardee's low price is dismissed as factually and legally insufficient where the protester has failed to show that the solicitation required a price realism analysis.
  4. Protester challenging the agency's past performance evaluation is sustained where the agency failed to consider the relevancy of vendors' prior efforts.
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## DECISION

JMark Services, Inc., an 8(a) small business concern located in Colorado Springs, Colorado, protests the award of a contract to SierTek, Ltd., an 8(a) small business concern located in Beavercreek, Ohio, under request for quotations (RFQ) No. FA3030-18-R-0016, issued by the Department of the Air Force for intelligence instructor services at Goodfellow Air Force Base, Texas. The protester alleges that an agency official improperly influenced the award of the contract and that the award was tainted by bias

and bad faith. The protester also alleges that the agency's evaluation of quotations under all evaluation factors and its best-value tradeoff decision were unreasonable and inconsistent with the terms of the solicitation.

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

## BACKGROUND

The agency issued the solicitation on January 4, 2019, as a set-aside for participants in the Small Business Administration's (SBA) 8(a) program. RFQ at 1; Contracting Officer's Statement (COS) at 2. The RFQ was posted as a combined synopsis/solicitation using the simplified acquisition procedures for commercial items set forth in Federal Acquisition Regulation (FAR) subparts 12.6 and 13.5. RFQ at 1. The RFQ contemplated the award of a fixed-price contract with a period of performance of a base year followed by four option years for course instruction services at Goodfellow Air Force Base.<sup>1</sup> Id.

The solicitation provided for award on a best-value tradeoff basis considering the following three factors: (1) technical, (2) past performance, and (3) price. Id. at 2. More specifically, the solicitation provided that the Air Force would evaluate quotations on a pass/fail basis under the technical factor. RFQ at 2; Agency Report (AR), Tab 9, Responses to Vendors' Questions, at 1; COS at 3. A tradeoff analysis would be conducted between the past performance and price factors. RFQ at 2. The RFQ did not disclose the relative weight assigned to these two evaluation factors, but indicated that the agency reserved the right to award the contract to a higher-priced vendor if that vendor's "better past performance history" merited the price premium associated with the quotation.<sup>2</sup> Id.

In order to be deemed technically acceptable, vendors were required to: (1) provide proof of a top-secret facility clearance and (2) indicate in their quotations that they would fully comply with and perform all functions and duties as outlined in the performance work statement (PWS). Id. at 2. The Air Force referred to this latter requirement as a certification requirement. AR, Tab 9, Responses to Vendors' Questions, at 1.

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<sup>1</sup> The RFQ requires the contractor to provide five instructors to support the following courses: the Officer Intelligence Course, the All-Source Intelligence Analyst Course, the Geospatial-Imagery Analysis Course, and the Geospatial-Targeting Course Air Force Specialty Code (AFSC)-awarding courses. RFQ at 1.

<sup>2</sup> Because the procurement was conducted using simplified acquisition procedures, the RFQ was not prepared using the uniform contract format outlined in FAR part 15. Compare FAR § 13.105(b) with FAR § 15.204-1. Accordingly, the RFQ did not contain a distinct section L ("Instructions, conditions, and notices to offerors or respondents") or section M ("Evaluation factors for award").

With respect to the evaluation of past performance, the RFQ incorporated FAR provision 52.212-1, see RFQ at 2, 4, pursuant to which vendors were required to submit past performance information regarding “recent and relevant contracts for the same or similar items[.]” FAR provision 52.212-1(b)(10). The terms “recent” and “relevant” were not defined in the solicitation. The solicitation also did not mandate the submission of past performance information in any particular format.<sup>3</sup> Vendors were permitted to request that prior customers complete and submit past performance questionnaires (PPQs).<sup>4</sup> RFQ at 3. Finally, the solicitation provided that the Air Force’s evaluation of past performance may include a number of sources of information and may take into account information regarding the experience of subcontractors. Id. at 4.

With respect to price, the solicitation required vendors to submit a fixed price for each year of the contract, including option years. RFQ at 3. The solicitation provided that the agency would evaluate vendors’ prices for reasonableness. Id. The RFQ did not provide for a price realism evaluation.

In response to the solicitation, the Air Force received 16 quotations, including quotations from JMark and SierTek. COS at 3. The agency determined all 16 quotations to be technically acceptable. AR, Tab 23, Price Competition Memorandum (PCM), at 2-3. After evaluating quotations under the past performance and price evaluation factors, the Air Force concluded that SierTek represented the best value to the government, and on February 8, the Air Force awarded the contract to SierTek. COS at 4.

On February 19, JMark filed a protest with our Office, challenging this initial award to SierTek. The protester alleged that the award to SierTek was tainted by bias and improper conduct on the part of an agency official and an individual associated with the awardee.<sup>5</sup> The protester also alleged that the agency’s evaluation of quotations and its

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<sup>3</sup> The record reflects that both the protester and the awardee included in their quotations a narrative description of their past efforts. AR, Tab 13, SierTek Quotation (Part II); Tab 14, JMark Quotation (Part II). SierTek also provided copies of reports obtained from the Contractor Performance Assessment Reporting System (CPARS) associated with a few of the past performance efforts described in its quotation. AR, Tab 13, SierTek Quotation (Part II), at 15-21.

<sup>4</sup> Although the solicitation did not expressly define the term “recent,” the RFQ limited the submission of PPQs to those pertaining to efforts “with periods of performance ending within the past three years.” RFQ at 3.

<sup>5</sup> The record does not disclose the exact nature of the alleged improper conduct, but it appears that there may have been a romantic relationship between the two individuals. See COS at 11. Moreover, the record reflects that the agency official may have played a role in both this initial award to SierTek and the administration of the predecessor contract, which is being performed by JMark. Id. at 11-14. See also AR, Tab 36, Memorandum for Record Re: Corrective Action.

award decision were unreasonable and failed to conform to the solicitation's stated evaluation scheme.

Subsequent to the filing of the protest, the Air Force informed our Office of its intent to take corrective action. Agency Corrective Action Notice, Mar. 1, 2019. Specifically, the contracting officer represented that, prior to receipt of JMark's protest, he was unaware of any allegations of improper conduct on the part of the agency official. The contracting officer further represented that, to resolve any possible impropriety associated with that individual's involvement in this procurement, he intended to: (a) cancel the award to SierTek; (b) evaluate the scope of any improper influence by the agency official upon the terms of the solicitation; and (c) reevaluate quotations using personnel "untouched by potential conflicts of interest." Id. The agency's proposed corrective action rendered the protest academic. As a result, our Office dismissed the protest on March 6. JMark Servs., Inc., B-417331, Mar. 6, 2019 (unpublished decision).

The record reflects that, in implementing the proposed corrective action, the contracting officer considered whether the terms of the solicitation provided an unfair competitive advantage to any particular vendor and concluded that, for a variety of reasons, they did not. COS at 4, 11-13. Next, to avoid any concerns of potential bias, the contracting officer, with the assistance of the contract administrator, personally conducted the reevaluation of quotations. Id. at 13; AR, Tab 23, PCM, at 2.

In evaluating quotations, the contracting officer first ranked the quotations by price. AR, Tab 23, PCM, at 2. The record reflects that the awardee's proposed price was the lowest price and the protester's proposed price was the third lowest price. Id. The contracting officer then evaluated quotations under the technical factor, determining all quotations to technically acceptable. Id. at 2-3.

In evaluating vendors' past performance, the record reflects that the contracting officer relied exclusively upon information obtained from CPARS. Id. at 3; Agency Resp. to GAO Request for Information (RFI), June 17, 2019, at 1. In this regard, the Air Force explains that CPARS automatically generates an "assessment chart" listing the percentage of exceptional, very good, satisfactory, marginal, and unsatisfactory ratings that a contractor has received while performing a prior effort. Agency Resp. to GAO RFI at 2. The ratings are assigned to a contractor's performance in the following five evaluation areas: (1) quality, (2) schedule, (3) cost control, (4) management, and (5) small business subcontracting. See e.g., AR, Tabs 41-43, CPARS Assessment Charts. The contracting officer contends that he "pulled" the percentages listed in CPARS for each vendor (including percentages associated with any subcontractors and teaming partners) and entered those numbers directly into a spreadsheet.<sup>6</sup> Agency Resp. to GAO RFI at 1-2, 6; AR, Tab 22, CPARS Data Spreadsheet.

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<sup>6</sup> The Air Force did not retain screenshots of the CPARS-generated assessment charts. Agency Resp. to GAO RFI at 6. Moreover, the agency explains that, because a vendor's statistics are changing constantly, it is unable to provide screenshots depicting  
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The following table shows the past performance data pertaining to JMark, SierTek, and SierTek’s two teaming partners, as depicted in the Air Force’s spreadsheet:

	SierTek	SierTek Teaming Partner A	SierTek Teaming Partner B	JMark
Total No. of Reports	4	23	0	42
Percentage of Exceptional Ratings	12	24.31	-	34.76
Percentage of Very Good Ratings	60	21.96	-	16.19
Percentage of Satisfactory Ratings	4	24.31	-	17.14
Percentage of Marginal Ratings	0	1.18	-	0
Percentage of Unsatisfactory Ratings	0	0	-	0

AR, Tab 22, CPARS Data Spreadsheet.<sup>7</sup>

After reviewing this data, the contracting officer concluded that the past performance of JMark and SierTek were “roughly equal” because “[o]n the whole, these numbers are very similar[.]” AR, Tab 23, PCM, at 4. In light of this conclusion and SierTek’s lower price, the contracting officer determined that SierTek’s quotation represented the best value to the government. On April 2, after finding SierTek’s price of \$2,419,680 to be fair and reasonable, id. at 5, the contracting officer awarded the contract to SierTek. JMark subsequently requested a debriefing, which the Air Force provided on April 5. COS at 5.

This protest followed on April 11.<sup>8</sup>

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the charts as they existed at the time the agency conducted its evaluation. Id. at 2, 6. For illustrative purposes, the agency produced screenshots showing the assessment charts for the relevant vendors as of June 2019. Id.

<sup>7</sup> The Air Force confirms that it did not calculate the percentages it used to evaluate past performance, but rather, relied entirely upon the percentages generated by CPARS. Agency Resp. to GAO RFI at 2, 6. The Air Force also confirms that, apart from two CPARS reports for SierTek’s Teaming Partner A demonstrating marginal ratings, the Air Force did not review any of the underlying CPARS reports. Id. at 3, 6.

<sup>8</sup> The Air Force initially sought dismissal of the protest, arguing that JMark is ineligible to receive contract awards that have been set aside for small business concerns in the SBA’s 8(a) program, and thus, is not an interested party. For support, the agency relied upon an email from the SBA’s District Counsel for Colorado, Wyoming, and New

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## DISCUSSION

JMark alleges that, despite the agency's corrective action, the procurement continues to be tainted by bias and bad faith. JMark also alleges that the Air Force's evaluation of quotations under all three evaluation factors and its best-value tradeoff decision were unreasonable. In this regard, the protester alleges that the Air Force abdicated its responsibility under the technical factor by accepting, at face value, the awardee's certification that it would comply with the requirements of the PWS. With respect to the price evaluation, JMark claims that SierTek's price is not reasonable or realistic, and that it was incumbent upon the Air Force to require the submission of pricing information to verify price reasonableness and realism. With respect to the past performance evaluation, JMark challenges the reasonableness of the Air Force's conclusion that the past performance of JMark and SierTek was "roughly equal." In this regard, JMark alleges that the Air Force failed to consider the relevancy of the vendors' past performance information. Finally, the protester alleges that the agency converted the source selection methodology from a best-value tradeoff methodology to a lowest-priced, technical acceptable (LPTA) methodology.

The evaluation of quotations is a matter within the discretion of the procuring agency. Peregrine Integrated Mgmt., Inc., B-414788, B-414788.2, Sept. 11, 2017, 2017 CPD ¶ 286 at 2. In reviewing a protest of an agency's evaluation of vendors' quotations, it is not our role to reevaluate the quotations; rather, our Office will examine the record to determine whether the agency's judgment was reasonable and consistent with the solicitation criteria. Id. Based upon our review of the record, we find the agency's evaluation of past performance to be unreasonable. The protester's remaining allegations provide no basis upon which to sustain the protest.<sup>9</sup>

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Mexico, informing the Air Force that JMark was ineligible for both competitive and sole-source contracts set aside for 8(a) concerns. AR, Tabs 35, 39, 40, Correspondence with SBA District Office. Our Office requested the views of the SBA on this matter. The SBA urged our Office not to dismiss the protest on any grounds related to JMark's alleged ineligibility for 8(a) contracts. SBA Comments, June 6, 2019, at 1. The SBA explained that an 8(a) participant's eligibility for a competitive 8(a) contract is a contract-specific matter, and the SBA will only prepare an eligibility determination for the apparent awardee of the procurement. Id. at 3. Here, because JMark is not the apparent awardee, the SBA has not assessed JMark's eligibility for the instant procurement. Id. at 1. After reviewing the SBA's comments and its clarification of the district office's guidance, the Air Force withdrew its request for dismissal during a conference call with our Office on June 12, and later in writing. Agency Notice of Withdrawal, July 16, 2019.

<sup>9</sup> JMark raises other collateral arguments that our decision does not address. We have considered these arguments and concluded that none provides a basis upon which to sustain the protest.

## Bias and Bad Faith

As explained above, JMark argues that, despite the agency's corrective action, the procurement continues to be tainted by bias and bad faith. Protest at 1, 7-9; Comments at 11-14. In this regard, the protester asserts that the entire procurement "has been riddled with improprieties and favoritism that slanted the competition in SierTek's favor and to JMark's prejudice." Comments at 2. For support, the protester argues that the "pattern of improper conduct" is evident in a number of agency actions, including the Air Force's decision to raise an unfounded challenge to JMark's 8(a) status and to award a sole-source "bridge" contract to SierTek during the pendency of the protest. Comments at 12. The protester also argues that, during the reevaluation, the allegedly biased agency official continued to try to influence the outcome of the procurement. Id. at 11. The protester asserts that the procurement should be transferred to a "truly neutral venue." Id. at 14.

Our decisions have consistently explained that government officials are presumed to act in good faith, and a contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not attribute unfair or prejudicial motives to procurement officials based upon mere inference, supposition, or unsupported speculation. Lawson Envtl. Servs., LLC, B-416892, B-416892.2, Jan. 8, 2019, 2019 CPD ¶ 17 at 5 n.5. The burden of establishing bad faith is a heavy one. A protester must present facts reasonably indicating, beyond mere inference and suspicion, that the agency acted with specific and malicious intent to harm the protester. Id. Based on our review of the record, we find no basis to conclude that the agency's evaluation of quotations was tainted by bias or bad faith. Rather, we conclude that the contracting officer properly mitigated any potential improper influence on the outcome of the procurement.

The protester offers no convincing proof (or even an allegation) that the solicitation terms favored the awardee. Likewise, the protester offers no evidence of bias on the part of the contracting officer and the contract administrator--both of whom were exclusively responsible for the reevaluation. Importantly, despite the protester's contentions to the contrary, there is absolutely no evidence in the record that the agency official central to the protester's initial allegation of bias and bad faith was involved in the source selection process during the reevaluation, or tried to influence its outcome. In sum, we find the protester's allegations of bias and bad faith to be speculative and unsupported by any evidence in the record.

## Technical Evaluation

Next, the protester challenges the agency's evaluation of the awardee's quotation under the technical factor. Protest at 6-7; Comments at 2, 4, 10-11. In particular, JMark contends that the agency improperly relied upon the awardee's representation that it would comply with the requirements outlined in the PWS. Comments at 2. The protester argues that, rather than conduct a meaningful evaluation of the awardee's "unsupported" technical representations, the agency simply accepted them uncritically.

Comments at 2, 4. That is, however, exactly what the evaluation scheme here contemplated. Accordingly, we find no merit to this argument.

As noted above, under the technical factor, quotations were to be evaluated on a pass/fail basis. RFQ at 2; AR, Tab 9, Responses to Vendors' Questions. In order to be deemed technically acceptable, vendors had to: (1) provide proof of a top-secret facility clearance and (2) indicate in their quotations that they will fully comply with and perform all functions and duties as outlined in the PWS. RFQ at 2.

The record shows that the awardee complied with these requirements. SierTek provided proof of a top-secret facility clearance and provided the necessary certification that it would comply with the terms and conditions set forth in the PWS. AR, Tab 12, SierTek Quotation (Part I), at 4-5. Moreover, that is exactly what the protester did. AR, Tab 14, JMark Quotation (Part I), at 4. Neither vendor's quotation demonstrates compliance with the PWS; each simply represents that the vendor will comply.

We find nothing unreasonable in the agency's evaluation of vendors' technical quotations. Despite its arguments, the protester identifies no requirement in the solicitation that a vendor demonstrate compliance with the terms and conditions of the PWS, or that the agency verify, through independent analysis, whether vendors' assurances of compliance were accurate. In fact, the protester concedes this point. In its protest, the protester acknowledges that, under the technical factor, quotations were to be evaluated on a pass/fail basis based solely upon vendors' written assurances that they would comply with the PWS. Protest at 4. In this respect, the protester states, "[i]n other words, there was to be no formal evaluation of the [vendor's] ability to meet PWS requirements, just a written representation that the Contracting Officer was required to accept at face value."<sup>10</sup> Id.

The protester also objects to the Air Force's allegedly "wooden" or overly mechanical application of the pass/fail evaluation methodology, and, citing our decision in Cyberdata Technologies, Inc., B-417084, Feb. 6, 2019, 2019 CPD ¶ 34, argues that the Air Force was required to look beyond the pass/fail ratings. Comments at 5, 10. In essence, JMark argues that the Air Force was required to assess degrees of acceptability or to consider discriminators in the technical quotations. See id.

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<sup>10</sup> To the extent the protester now argues that the RFQ's evaluation methodology was improper, see Protest at 7; Comments at 10 (contending that strict application of the pass/fail criteria, without a comparative analysis of competing quotations, constitutes an improper evaluation methodology), its argument represents a challenge to the terms of the solicitation, which JMark was required to raise prior to the time set for receipt of quotations. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1). Accordingly, to the extent JMark is challenging the RFQ's evaluation methodology, its challenge is untimely.



Our decision in Cyberdata is inapposite because the solicitation at issue in that protest did not provide for the evaluation of offers on a pass/fail basis--a fact that JMark acknowledges. Id. Instead, our decision in CR/ZWS LLC, B-414766, B-414766.2, Sept. 13, 2017, 2017 CPD ¶ 288, is directly on point. In CR/ZWS, we concluded that, where a solicitation provides for the evaluation of offers on a pass/fail basis, an agency may not consider degrees of acceptability or discriminators in the technical approach. CR/ZWS LLC, supra, at 11. In this respect, the evaluation of offers on a pass/fail basis is fundamentally mechanical.

In short, JMark provides no basis for our Office to question the reasonableness of the Air Force's evaluation of SierTek's quotation under the technical factor. Rather, the record reflects that the agency's evaluation was performed in accordance with the solicitation's pass/fail evaluation methodology. Accordingly, we deny this protest ground.

### Price Evaluation

The protester also challenges the Air Force's price evaluation, claiming that SierTek's price was not reasonable or realistic, and that it was "incumbent upon the Contracting Officer to require pricing information in order to verify price reasonableness and realism[.]" Protest at 6. See also Comments at 8 (asserting that SierTek's "unrealistically low price" required further review); id. at 9 (arguing that SierTek's "extremely low bid reflects a very real danger of nonperformance"). To the extent JMark's argument can be understood to suggest that the agency should have assessed the risk that SierTek's low price posed to the agency, JMark is describing a price realism analysis, which was not contemplated by the solicitation.

Absent a solicitation provision providing for a price realism evaluation, agencies are neither required nor permitted to conduct one in awarding a fixed-price contract. Beacon Grace, LLC, B-415529, Jan. 16, 2018, 2018 CPD ¶ 29 at 7. Accordingly, JMark's assertion that the agency failed to perform a proper realism analysis, where no such price realism evaluation was required, does not state a valid basis for protest, and we dismiss this allegation accordingly. IR Technologies, B-414430 et al., June 6, 2017, 2017 CPD ¶ 162 at 7.<sup>11</sup>

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<sup>11</sup> JMark also characterizes this argument as a challenge to the agency's affirmative determination of SierTek's responsibility. Protest at 6; Comments at 9. Pursuant to our Bid Protest Regulations, however, our Office will not review an agency's affirmative determination of responsibility except where the protest alleges that definitive responsibility criteria in the solicitation were not met, or where the protest identifies evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulations. 4 C.F.R. § 21.5(c). JMark's allegation does not fall within one of the regulatory exceptions, and we therefore decline to review the agency's responsibility determination.

## Past Performance Evaluation

Finally, JMark challenges the reasonableness of the Air Force's past performance evaluation and, more specifically, the Air Force's conclusion that the past performance of JMark and SierTek was "roughly equal." Protest at 5. In this regard, JMark alleges that the Air Force failed to consider the relevancy of the vendors' past performance information. Comments at 6-7; Protester's Response to GAO's RFI, June 19, 2019, at 1-2. Had the agency done so, JMark contends that the record would show that JMark possesses extensive experience performing the exact services sought here and that it has received "glowing" reviews for its efforts. Protest at 5. This includes its performance on the incumbent contract. Id. By contrast, JMark claims that SierTek and its teaming partners do not possess similarly relevant experience. Id.

Where a protester challenges an agency's evaluation of past performance, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. Recogniti, LLP, B-410658, Jan. 21, 2015, 2015 CPD ¶ 49 at 4. As a general matter, an agency's evaluation of vendors' past performance, including the agency's determination of the relevance and scope of a vendor's performance history, is a matter of discretion, which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. Government and Military Certification Sys., Inc., B-411261, June 26, 2015, 2015 CPD ¶ 192 at 8-9. Here, the record does not demonstrate that the agency possessed a reasonable basis upon which to evaluate vendors' past performance.

In this regard, the record does not show that the agency reviewed the past performance information contained in vendors' quotations. See generally AR, Tab 23, PCM. Nor does the record show that the agency reviewed any of the PPQs it received from vendors' prior customers.<sup>12</sup> Id. Moreover, as noted above, the Air Force also confirms that, apart from two CPARS reports demonstrating marginal ratings for one of SierTek's teaming partners, the Air Force did not review any CPARS reports. Agency Resp. to GAO RFI at 3, 6. Instead, the record reflects that, in evaluating vendors' past performance, the contracting officer relied exclusively upon the assessment chart generated by CPARS listing rating percentages. AR, Tab 23, PCM, at 3; Agency Resp. to GAO RFI at 1.

Furthermore, nothing in the record indicates that the agency considered the relevancy of vendors' past performance. Indeed, the Air Force confirms that it decided "to conduct a past performance evaluation without considering relevancy in order to maximize competition[.]" Agency Resp. to GAO RFI at 5. In this respect, the Air Force explains that it "did not want to limit the potential pool of vendors by restricting the past

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<sup>12</sup> For example, a PPQ was submitted on behalf of JMark, describing JMark's performance of the incumbent contract as exceptional in all rated categories. AR, Tab 21, JMark PPQ.

performance standard to only consider work that was the same as this requirement.” Id. at 4. For this reason, the Air Force decided not to consider any information other than the percentages generated by CPARS.<sup>13</sup> As explained below, we find the Air Force’s evaluation to be irrational and inconsistent with the terms of the solicitation.

First, we note that the data relied upon by the agency is incomplete and misleading. For example, when calculating the percentage of each rating (e.g., exceptional, very good, satisfactory), CPARS appears to include instances in which a contractor’s performance of a particular evaluation area (e.g., quality, cost control, schedule) was not rated for an effort.<sup>14</sup> This is reflected by the fact that the respective percentages total 100 percent only when the percentage of unrated aspects is included. See Agency Resp. to GAO RFI at 2 n.2. Consequently, depending upon the number of unrated areas, a comparison of contractors’ percentages may not result in an apples-to-apples comparison.

We also note that CPARS does not include, in its computer-generated assessment chart, ratings associated with two evaluation areas. More precisely, there are a total of seven evaluation areas that can be rated by agency officials, see e.g., AR, Tab 46, JMark CPARS, at 2, but only five evaluation areas are included in the assessment chart. As an example, JMark received multiple exceptional ratings under the “regulatory compliance” evaluation area in CPARS, see generally AR, Tab 46, JMark CPARS, but this evaluation area is not included in the assessment chart, see e.g., AR, Tab 43, JMark Chart, at 3. Hence, the methodology employed by the agency here fails to take into account the entirety of a vendor’s ratings on prior efforts. In short, both the failure to exclude unrated aspects of a contractor’s performance and the failure to include all rated aspects of a contractor’s performance have the potential to distort the data and reduce its usefulness in performing the type of comparison the Air Force performed here.

Finally, we note that the agency was unable to confirm whether the CPARS-generated percentages include ratings from reports that may not be relied upon for source selection purposes. In this regard, one of the CPARS reports pertaining to SierTek

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<sup>13</sup> Although the Air Force’s decision to forego any analysis of relevancy was motivated by a desire to maximize competition, the Air Force does not provide any basis for its assumption that it would have been required to exclude from the competition a vendor without a record of relevant past performance. The Air Force also appears to assume that had it considered relevancy, the only contracts that it could consider to be relevant would be contracts for the exact same work here, i.e., intelligence instructor services. See Agency Resp. to GAO RFI at 4-5. We note, however, that the RFQ here did not define relevancy, thereby affording the agency significant discretion to determine the relevance of vendors’ past performance.

<sup>14</sup> These unrated aspects of a contractor’s performance are included in the denominator.

expressly states that it may “not to be used for Source Selection process.” AR, Tab 15, SierTek CPARS, at 2. For these reasons, we find the agency’s reliance on the CPARS data to be irrational.

We also find the agency’s evaluation to be inconsistent with the terms of the solicitation. The solicitation here required vendors to submit past performance information regarding “recent and relevant contracts for the same or similar items[.]” RFQ at 2 (incorporating by reference FAR 52.212-1(b)(10)). We further note that the PPQ itself, which was included as an attachment to the solicitation, notified respondents that “[a] primary consideration in our selection process is the contractor’s past performance in similar efforts.” RFQ, Attach. 3, PPQ, at 1. The solicitation’s stated purpose for requesting such “recent and relevant” past performance information was to assess the likelihood that the vendor would successfully perform the services being procured here. In this respect, the RFQ provided: “Present and past performance information will be used to evaluate the contractor’s ability to perform the services proposed.”<sup>15</sup> RFQ at 3. In our view, the agency’s failure to consider the relevancy of vendors’ past performance is inconsistent with the foregoing terms of the solicitation, which required the submission of relevant past performance information for the purpose of evaluating a vendor’s ability to perform the requirement.

Although our decision here is grounded in the inadequacy of the data reviewed to support any rational comparison and on the terms of the solicitation, the Air Force also argues that, in a procurement conducted pursuant to the streamlined acquisition procedures of FAR part 13, an agency properly may disregard the concept of relevancy when evaluating past performance. Agency Resp. to GAO RFI at 4. The agency’s assertion is based upon the absence of an express regulatory requirement in FAR part 13 that an agency consider the relevancy of past performance information, in contrast to a procurement conducted pursuant to FAR part 15, which expressly mandates that an agency consider the “currency and relevance” of past performance information.<sup>16</sup> See FAR § 15.305(a)(2)(i).

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<sup>15</sup> The Air Force argues that this language should be interpreted to mean that the agency would use the information to evaluate the contractor’s ability to perform any government contract, not to perform the services proposed here. Agency Resp. to GAO’s RFI at 5. We find the agency’s interpretation to be unreasonable because it contradicts the plain language of the RFQ, *i.e.*, that the data will be used “to evaluate the contractor’s ability to perform the services proposed.” RFQ at 3.

<sup>16</sup> The agency relies upon FAR § 13.106(b)(3) for support. Agency Resp. to GAO RFI at 4-5. The agency’s reliance upon this provision, however, is misplaced. This provision merely lists sources of information a contracting officer may consider when evaluating past performance, including personal knowledge, customer surveys and PPQs, information in the Past Performance Information Retrieval System (PPIRS), and other reasonable bases of information. FAR § 13.106(b)(3)(ii). It does not purport to address the relevancy of information obtained from these sources.

We reach no definitive conclusion on this issue--given the terms of the solicitation here--but we note that the statutory purpose for soliciting and considering past performance information is to allow the agency to assess the likelihood that a contractor will successfully perform the contract. See Federal Acquisition Streamlining Act of 1994, Pub. L. No. 103-355, title I, § 1091(b)(1)(B), 108 Stat. 3243, 3272 (Oct. 13, 1994). See also FAR § 15.305(a)(2)(i) (explaining that past performance “is one indicator of an offeror’s ability to perform the contract successfully”). In addition, the Department of Defense’s own internal guidance on the use of past performance information provides that “[r]elevancy is a threshold question when considering past performance. . . . Irrelevant past performance must not form the basis of a performance risk evaluation.” A Guide to Collection and Use of Past Performance Information (May 2003), at 6, available at [www.acq.osd.mil/dpap/Docs/PPI\\_Guide\\_2003\\_final.pdf](http://www.acq.osd.mil/dpap/Docs/PPI_Guide_2003_final.pdf) (last visited July 19, 2019).

We sustain this protest ground because the Air Force had no rational basis to conclude that these vendors were equal under the past performance evaluation factor before conducting this simplified past performance/price tradeoff. Instead, the record shows that the agency based its past performance evaluation upon information that was insufficient to allow the agency to assess a vendor’s ability to successfully perform the services required here.<sup>17</sup>

## RECOMMENDATION

For the reasons discussed above, we conclude that the Air Force’s evaluation of past performance was unreasonable and, as a result, that its tradeoff analysis was flawed. We recommend that the Air Force conduct and document a new past performance evaluation and tradeoff analysis, consistent with our decision. We further recommend that, upon completion of a new evaluation, the agency prepare a new source selection decision. We also recommend that the agency reimburse the protester’s reasonable costs associated with filing and pursuing its protest, including attorneys’ fees. 4 C.F.R. § 21.8(d). The protester’s 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. 4 C.F.R. § 21.8(f).

The protest is dismissed in part, denied in part, and sustained in part.

Thomas H. Armstrong  
General Counsel

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<sup>17</sup> Because we conclude that the source selection decision was flawed due to an unreasonable underlying past performance evaluation, we need not address the protester’s allegation that the agency converted the source selection methodology from a best-value tradeoff methodology to a LPTA methodology.