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Decision

Matter of: ASRC Federal Data Solutions, LLC

File: B-417655; B-417655.2; B-417655.3

Date: September 18, 2019

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DIGEST

1. Protest challenging agency's evaluation of awardee's quotation under technical capability factor is dismissed where the protester's arguments fail to state a valid basis for protest or are untimely challenges to the solicitation's terms.
 2. Protest challenging agency's evaluation of awardee's past performance is denied where the record shows that the agency's evaluation was reasonable and consistent with solicitation's stated evaluation criteria.
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DECISION

ASRC Federal Data Solutions, LLC (ASRC), of Beltsville, Maryland, protests the issuance of a task order to Unissant, Inc., of Herndon, Virginia, under request for quotations (RFQ) No. HT001519R0008, issued by the Department of Defense (DOD), Defense Health Agency (DHA), for integration support services. The protester challenges the agency's evaluation of the awardee's quotation.

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

BACKGROUND

The RFQ was issued on February 13, 2019, pursuant to Federal Acquisition Regulation (FAR) subpart 8.4, as a small business set-aside to vendors holding General Services Administration Federal Supply Schedule contracts under schedule 70, special item

numbers 132-56, health information technology (IT) services, and 132-51, IT professional services. Agency Report (AR), Tab 1, Conformed RFQ at 3, 41; Contracting Officer's Statement (COS) at 3; Supp. COS at 1.¹ The solicitation contemplated the issuance of a single fixed-price task order for integration and sustainment of the Armed Forces Health Longitudinal Technology Application-Composite Health Care System (AHLTA-CHCS).² RFQ at 41; COS at 2; AR, Tab 4, Performance Work Statement (PWS) at 1.

Award was to be made on a best-value tradeoff basis considering the following factors in descending order of importance: technical capability, past performance, and price. RFQ at 40. The RFQ stated that the technical capability factor was significantly more important than the past performance factor; the two non-price factors combined were significantly more important than price. Id. at 41.

The agency received five timely quotations, including those from ASRC and Unissant, which were evaluated as follows:

	ASRC	Unissant
Technical Capability	Outstanding	Outstanding
Past Performance	Substantial Confidence	Substantial Confidence
Total Evaluated Price	\$23,810,324	\$20,189,459

AR, Tab 9, Award Decision Document, at 5.

The contracting officer, who served as the source selection authority (SSA), reviewed and concurred with the evaluation board's assessment, performed a comparative assessment of the relative merits of Unissant and ASRC's quotations under each evaluation factor, and identified discriminators between the quotations. Under technical capability, the most important factor, the SSA identified strengths unique to each vendor's quotation, assessed their benefits, and concluded that Unissant's quotation was more advantageous when compared to ASRC's because the strengths identified for ASRC provided short-term advantages when compared to the strengths identified in Unissant's quotation. Id. at 6. The SSA also noted that ASRC was assessed a weakness under this factor while Unissant's quotation was not. Id. As a result, the SSA concluded that Unissant's quotation was superior to that of ASRC's. Id. Similarly, the SSA found that under the past performance factor, ASRC's past performance was

¹ The RFQ was amended four times. All citations to the RFQ are to the final conformed version provided by the agency.

² AHLTA is one of the world's largest clinical information systems--providing secure 24/7 access to TRICARE beneficiaries' medical records worldwide--and the centerpiece of the military health system's (MHS) electronic health record system. PWS at 2. The Composite Health Care System is the MHS's original computer-based provider order entry system and serves as the core medical information system for the DOD. Id. at 3.

superior as it was more relevant than that of Unissant. Id. at 6-7. With regard to price, the SSA found Unissant's quotation to be more advantageous to that of ASRC, whose price was the highest out of all five vendors. Id. at 7.

In selecting Unissant's quotation for award, the SSA concluded that given that "[t]echnical capability is the most important factor, and in this case the best technical [quotation] is significantly less expensive than the next alternative. I cannot justify paying an 18% price premium for a slightly less advantageous technical [quotation] with slightly better past performance history." Id.

On June 1, the agency notified ASRC that its quotation was not selected and provided a brief explanation of the agency's award decision. This protest followed.

DISCUSSION

ASRC challenges the agency's evaluation of Unissant's quotation under the technical capability and past performance factors. In filing and pursuing its protest, ASRC has made arguments that are in addition to, or variations of, those discussed below. We fully have considered all of the protester's assertions and find no basis to sustain its protest.³

Technical Capability Factor

ASRC first argues that, in rating Unissant's quotation as outstanding under the technical capability factor, DHA improperly failed to evaluate the technical and performance risk associated with the firm's: lack of technical expertise to perform the requirements; inability to recruit the incumbent workforce and limit turnover; and as a result of these alleged shortcomings, materially higher transition risk. Protest at 14-19. Prior to the submission of the agency report, DHA asked our Office to dismiss these arguments for failure to state a valid basis of protest because they essentially amounted to a challenge to the agency's failure to assess risk for the lack of corporate experience, and because an assessment of risk for lacking corporate experience was not envisioned by the solicitation. Agency Partial Req. for Dismissal at 3-13. After reviewing the arguments and the solicitation, our Office advised the parties that we would not develop the record further on these arguments because they did not reflect a valid basis of protest and would be dismissed. Electronic Protest Docketing System Docket Entry 26.

³ ASRC also argues that the agency's best-value tradeoff decision was improper because of the flaws alleged by the protester in the evaluation of Unissant's quotation. Protest at 26-27; Protester's Supp. Protest and Comments at 14-15. Since, as discussed below, we find ASRC's protests of the evaluation of Unissant's quotation untimely or without merit, we find no basis to question the agency's reliance on those evaluation judgments in concluding that Unissant's technically-superior, lower-priced quotation provided the best value to the agency.

Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Cybermedia Techs., Inc., B-405511.3, Sept. 22, 2011, 2011 CPD ¶ 180 at 2. To achieve this end, our Bid Protest Regulations, 4 C.F.R. §§ 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3. ASRC's arguments do not meet this standard.

Under the technical capability factor, the solicitation instructed vendors to provide their proposed approach to seven specific areas. RFQ at 37-38, 41-42. For four of these areas, the agency would assess how well the vendor's proposed approach and techniques demonstrated their understanding of the required tasks, the feasibility of their intended approach, the completeness of their intended approach, the likelihood of successful accomplishment of tasks within the required timeframes, and whether any risks were present with the vendor's approach.⁴ Id. at 41-42. The remaining three areas included the agency's assessment of the vendor's proposed management approach to maintaining staffing; proposed approach to quality control; and proposed approach to transition-in activities. Id. at 38, 42. As relevant here, the RFQ stated that the agency would evaluate the vendor's management approach to assess the effectiveness of the proposed approach to maintaining staff to fulfill task order requirements and retention, and evaluate the vendor's draft task order management plan; resume for the proposed project manager; and risk in its proposed approach. Id. at 42. The transition-in plan area would be evaluated to assess the vendor's compliance with the PWS; demonstration of acceptable processes and procedures to ensure a successful transition; and risk. Id. The RFQ did not require the agency to evaluate the vendors' level of effort or labor mix under the technical capability factor.

ASRC's challenges to the evaluation of Unissant's quotation are founded on speculation about the firm's alleged lack of experience with "complex integration requirements," and its characterization of Unissant's ability to recruit and retain the incumbent workforce as "limited." Protest at 3-18. Based on these alleged shortcomings, ASRC alleges that there are material transition risks in Unissant's quotation. Id. at 18. However, as discussed above, the RFQ did not contemplate consideration of a firm's experience as part of the evaluation of the technical capability factor but, rather, focused on a firm's approaches to meeting the requirements. We therefore conclude that ASRC's protest arguments fail to provide a legally sufficient basis to challenge the agency's evaluation

⁴ The solicitation specifically identified PWS requirements to be addressed under four areas: integrating systems into AHLTA and CHCS; maintaining the integration 2nd test environments for in-house and cloud settings; performing information assurance and DOD cybersecurity procedures and processes; and managing simultaneously separate physical and cloud laboratories. RFQ at 37-38, 41-42.

and are dismissed. 4 C.F.R. §§ 21.1(c)(4) and 21.5(f); see Access Interpreting, Inc., B-413990, Jan. 17, 2017, 2017 CPD ¶ 24 at 4 (dismissing allegation for failing to state a legally sufficient basis of protest where plain terms of solicitation did not require what protester argued).

ASRC next argues that DHA's assignment of an outstanding rating to Unissant's quotation was unreasonable because the agency failed to consider the firm's level of effort and labor mix as required by FAR § 8.405-2(d).⁵ ASRC contends that had the agency performed this analysis, it would have discovered that Unissant's technical solution was based upon the utilization of what the protester views as "less experienced, less specialized labor categories at the expense of more specialized, critical categories," necessary to perform the PWS's "critical systems integration functions." Protester's Supp. Protest and Comment at 2-11.

DHA points out that "[t]ellingly, although [p]rotester asserts an in-depth labor analysis was required . . . it does not provide a single citation to the RFQ in support" of its assertion. Supp. Memorandum of Law, July 26, 2019, at 4. DHA explains that with the exception of the project manager (the only key person required), the RFQ contained no minimum qualification requirements for any labor category, and did not require vendors to map PWS requirements to any particular labor categories or provide detailed explanations regarding the qualifications or job descriptions of the proposed labor categories. Id. DHA further asserts that the RFQ did not specifically provide for a review of the staffing mix, labor categories, or level of effort. Id. In this regard, the agency maintains that the RFQ only required it to evaluate the vendors' overall proposed approach and technique to maintain staffing and sample management plans for the task order. Id. The agency considers ASRC's argument that DHA failed to consider Unissant's labor mix and level of effort a solicitation challenge and asks our Office to dismiss ASRC's protest ground as untimely. Id. at 9.

Our Bid Protest Regulations 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 procurement process. Verizon Wireless, B-406854, B-406854.2, Sept. 17, 2012,

⁵ Section 8.405-2 of the FAR sets forth the ordering procedures for services requiring a statement of work. As relevant here, this provision states that as part of the evaluation, "The ordering activity is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable." FAR § 8.405-2(d). As our decisions recognize, the FAR does not elaborate on the method or extent of consideration an agency is responsible for giving to a vendor's proposed level of effort and labor mix. See, e.g., Advanced Tech. Sys., Inc., B-296493.6, Oct. 6, 2006, 2006 CPD ¶ 151 at 6. Our decisions also have recognized that agencies conducting procurements using FAR part 8 are not required to conduct a formal evaluation of the kind typically performed in a negotiated procurement under FAR part 15. Id.

2012 CPD ¶ 260 at 4. Under these rules, a protest based on alleged improprieties in a solicitation must be filed prior to bid opening or the time established for receipt of proposals or in this case quotations. 4 C.F.R. § 21.2(a)(1). A review of the solicitation's terms shows that ASRC's allegations are untimely.

As part of the solicitation's price submissions, vendors were to provide their level of effort and labor mix to perform the requirement. Vendors were to quote a fixed monthly price for contract line item numbers (CLINs) that corresponded to the integration tasks described in the PWS.⁶ RFQ at 3-25, 39. Vendors also were to quote not-to-exceed costs or fixed prices for travel, other direct costs, transition-in, and contractor manpower reporting. Id. The agency referred to this portion of the vendors' submission as the "Standard Form (SF) 1449 Pricing." Id. at 39.

In addition, vendors were to complete the RFQ's pricing sheet template by identifying all proposed labor categories, the proposed number of labor hours, the hourly labor rates, and total amount for each CLIN for the entire period of performance. Id. at 40; RFQ, attach. 1, Pricing Sheet. While the pricing sheet template was populated with labor categories set forth in what the agency referred to as "estimated workload data," the RFQ advised vendors that they were not required to strictly adhere to these labor categories and hours, but were to quote what they deemed appropriate for their proposed technical solution. Id.; PWS, attach. 2, Estimated Workload Data.⁷ The vendors also were warned "not [to] include any pricing data of any kind in any other part of the quotation submission." RFQ at 40.

The RFQ stated that the pricing submissions would be evaluated on the basis of fairness and reasonableness of the total evaluated price (TEP) and whether any of the CLIN prices were unbalanced. Id. at 45. The TEP would be calculated by first multiplying fixed monthly prices for each task by the unit quantities stated in the SF 1449 pricing section to confirm the extended total amount for each CLIN. Id. The extended total price for each CLIN in each performance period would be added together with the other pricing information required to be included in the SF 1449 pricing section to calculate the TEP. Id. The pricing sheet template would be "validated to ensure it is

⁶ These tasks are: AHLTA-CHCS product team integration support; training integration environment management services and support; wounded warrior product team integration support; blood management product team integration support; services product integration support; and environment support. PWS at 42-48.

⁷ The estimated workload data identified the labor categories and labor hours per CLIN for the integration and transition tasks based on historical data from the incumbent contract for the entire period of performance. PWS, attach. 2, Estimated Workload Data. In response to a question about the accuracy of the workload data provided, the agency reiterated that "the workload numbers are only an estimate, the [vendor] should quote the hours and categories appropriate to the technical solution they are proposing." AR, Tab 8, RFQ Questions and Answers (Q&As), at 9.

mathematically correct” by multiplying the quoted labor hours and labor rates to “confirm the total for each quoted labor category; the total for all labor categories for each CLIN will be added to confirm the total price of the CLIN and also verified to the total CLIN price entered in the SF 1449 pricing schedule.” Id. at 46-47. The RFQ neither incorporated FAR § 8.405-2(d) nor indicated that the evaluation would include a consideration of the vendor’s proposed level of effort or labor mix. Id. at 45-47.

It is well-settled that a party who has the opportunity to object to allegedly improper or patently ambiguous terms in a solicitation, but fails to do so prior to the time set for receipt of quotations, waives its ability to raise the same objection later. See, e.g., Baldt Inc., B-402596.3, June 10, 2010, 2010 CPD ¶ 139 at 2. We have noted that this rule prevents an offeror from taking advantage of the government, as well as other offerors, by waiting silently during the procurement process, only to spring forward after award with an alleged defect in an effort to restart the procurement. See, e.g., Del-Jen Educ. & Training Grp./Flour Fed. Sols. LLC, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 7 n.9. On this record, we agree with DHA that ASRC’s arguments that the agency failed to perform an analysis of Unissant’s level of effort and labor mix are untimely.

The fact that the RFQ did not require the agency to evaluate the vendors’ level of effort or labor mix--either as part of the technical capability factor or price factor--was apparent prior to the time for submission of quotations. As detailed above, the solicitation clearly lacked any indication that such an analysis would be conducted as part of any aspect of the evaluation of quotations. To the extent that such consideration was required by the FAR but not included in the RFQ, ASRC was required to raise any concerns prior to the closing time for the receipt of quotations. See JCB Inc., B-404946.4, Sept. 16, 2011, 2011 CPD ¶ 179 at 5 (protester’s post-award argument challenging solicitation’s failure to include in FAR 15 procurement past performance as an evaluation factor is untimely).

ASRC relies on Advanced Tech. Sys., Inc., B-296493.6, Oct. 6, 2006, 2006 CPD ¶ 151 at 6, to support its position; however, such reliance is misplaced. In Advanced Tech. Sys., the solicitation explicitly stated that the task order was to be issued to the vendor determined to be the best value to the government “in accordance with the [stated] evaluation criteria and FAR § 8.405-2, Ordering Procedures for Services Requiring a Statement of Work,” i.e., expressly incorporating the FAR § 8.405-2(d) requirements. Advanced Tech. Sys., Inc., supra at 2-3. The RFQ here neither incorporates FAR § 8.405-2(d) nor contemplated the type of evaluation set forth in that section. Because ASRC did not challenge prior to the solicitation’s closing date the absence of any consideration of vendors’ proposed level of effort or labor mix in the RFQ, its protest in this regard is dismissed as untimely.⁸

⁸ ARSC also argues that DHA failed to consider whether Unissant’s GSA schedule contract included labor categories necessary to perform the PWS requirements. Protest at 23-25; Protester’s Supp. Protest and Comments at 8-11. As discussed above, while the pricing sheet template identified various labor categories by title, the vendors were
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Past Performance Factor

ASRC argues that the agency unreasonably assigned a substantial confidence rating to Unissant's quotation under the past performance factor. The firm disputes DHA's finding that one of Unissant's past performance references was relevant, and argues that the agency improperly ignored information from a Contractor Performance Assessment Report (CPAR) that allegedly conflicted with the past performance questionnaire (PPQ) received for that reference. Protester's Supp. Protest and Comments at 11-14.

The evaluation of past performance, including the agency's determination of the relevance and scope of a vendor's performance history, is a matter of agency discretion, which we will not find improper unless it is unreasonable or inconsistent with the solicitation's evaluation criteria. LOUI Consulting Grp., Inc., B-413703.9, Aug. 28, 2017, 2017 CPD ¶ 277 at 3-4. Evaluating the relative merits of vendors' past performance information is generally within the broad discretion of the contracting agency. Id. Our Office will review the record to ensure that the evaluation was reasonable and conducted in accordance with the solicitation terms. CSR, Inc., B-413973, B-413973.2, Jan. 13, 2017, 2017 CPD ¶ 64 at 5.

The RFQ advised vendors that the agency would assign past performance confidence ratings⁹ based on the recency, relevancy,¹⁰ and quality of performance of the past

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not required to utilize those labor categories. In addition, the RFQ did not provide any position descriptions or qualifications for those labor categories that would allow vendors to determine whether their proposed labor categories were comparable, and did not require vendors to provide such explanation. As a result, we find that ASRC's reliance on our decisions in AllWorld Language Consultants, Inc., B-411481.3, Jan. 6, 2016, 2016 CPD ¶ 12 and US Investigations Servs., Prof'l Servs. Div., Inc., B-410454.2, Jan. 15, 2015, 2015 CPD ¶ 44 to be misplaced. The solicitations in those decisions included position descriptions and qualifications of the labor categories required under the task orders that would have allowed the vendors and the agencies to make such assessments. AllWorld Language Consultants, Inc., supra, at 4; US Investigations Servs., Prof'l Servs. Div., Inc., supra, at 4-5.

⁹ These ratings were: substantial confidence; satisfactory confidence; neutral confidence; limited confidence; and no confidence. RFQ at 45. A substantial confidence rating was defined as "[b]ased on the [vendor's] recent/relevant performance record, the government has a high expectation that the [vendor] will successfully perform the required effort." Id.

¹⁰ The agency would assess the relevancy (very relevant, relevant, somewhat relevant, or not relevant) of the vendors' past performance by considering whether the services performed were for the same or similar requirements as those in the RFQ considering the magnitude, scope, and complexity of the effort. RFQ at 44. A reference would be

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performance references submitted. See RFQ at 43-45. Vendors were instructed to identify no more than five “recent and relevant” contracts as references. Id. at 38.

In addition to providing a written narrative discussing each reference, the RFQ advised vendors to provide “any information currently available . . . that demonstrates customer satisfaction with overall job performance and/or quality of completed and/or ongoing contracts.” Id. at 39. However, the RFQ specifically advised that “PPQs shall be used by the [vendor] in obtaining and providing past performance information for the government.” Id. The RFQ specifically stated that the government “requires the [vendor] to send a PPQ to each of their [point of contacts] for each contract reference identified in the [p]ast [p]erformance [s]ubmission.” Id.

Unissant identified five references; three of these references involved past performance found to be relevant, and two were found to be somewhat relevant. AR, Tab 11, Past Performance Assessment Report at 32-39. The reference at issue here is a task order performed by Unissant for DHA as a prime contractor and referred to as the AHLTA-CHCS omnibus support services contract. See AR, Tab 19, Unissant Vol. III, Past Performance, at 4-10. The agency found that the scope of this task order was similar in 12 out of 14 areas used to assess the scope of the reference, and noted that the scope of the reference included “direct AHLTA-CHCS development and is highly applicable to the DHA-specific systems within the scope for this contract and directly applicable to the primary scope of conducting integration for AHLTA and CHCS.” AR, Tab 11, Past Performance Assessment Report, at 3-4, 33. As a result, the agency found that overall the past performance effort involved some of the scope of effort and complexities that the RFQ required. Id. at 33. With regard to magnitude, the agency found that the annual value of the omnibus support services contract was significantly larger than that of this effort. Id. The agency noted that no CPARs report was available for this reference; however, the PPQ ratings received ranged from outstanding to excellent. Id. at 32-33.

In support of its challenge to the agency’s relevancy assessment of this reference, ASRC submitted a declaration from a division manager from its proposed subcontractor essentially alleging that under the referenced contract Unissant did not perform any systems integration work, all functional teams were led by and staffed by the subcontractor, and Unissant merely performed “high-level project control, scheduling[,] and project management activities.” Protester’s Supp. Protest and Comments at 13; exh. 1, Declaration of Subcontractor Division Manager at 2-3.¹¹ ASRC further contends

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considered relevant if it involved “*similar* scope and magnitude of effort and complexities this solicitation requires.” Id. (emphasis in original).

¹¹ ASRC’s subcontractor also was a subcontractor to Unissant under its omnibus support services contract. Protester’s Supp. Protest and Comments, exh. 1, Declaration of Subcontractor Division Manager at 2. The declarant also served as a technical manager on Unissant’s omnibus support services contract. Id. at 3.

that “[a]s stated by [the subcontractor], Unissant only staffed the Omnibus Services contracts with eight [full-time equivalents (FTEs)]” and it would have been impossible for those FTEs to perform the magnitude of services the agency determined was performed under the contract. Protester’s Supp. Protest and Comments at 13-14.

ASRC’s arguments provide no basis to sustain the protest. The record shows that Unissant was the prime contractor for the contract at issue. Even if ASRC’s subcontractor staffed and performed most of the functional work under that contract, an agency may properly credit the prime contractor with experience involving functions performed, if the work was performed by a subcontractor under the prime contractor’s supervision. As a general rule, a prime contractor under a government contract is responsible for the performance of its subcontractors. See, e.g., ITT Corp., Sys. Div., B-310012.6 et al., Dec. 4, 2009, 2010 CPD ¶ 12 at 7 (citing NV Servs., B-284119.2, Feb. 25, 2000, 2000 CPD ¶ 64 at 15 n.17; Battelle Mem’l Inst., B-278673, Feb. 27, 1998, 98-1 CPD ¶ 107 at 22. Our Office has also found no requirement that an agency must decide whether the work was performed by the offeror as the prime contractor or a subcontractor in its evaluation of an offeror’s corporate experience or past performance. Id.

Further, while Unissant’s quotation provided information that purportedly was taken from a CPARs report, the record shows that the agency was unable to locate any CPARs for Unissant’s reference. Compare AR, Tab 19, Unissant Vol. III, Past Performance, at 23 with AR, Tab 11, Past Performance Assessment Report, at 32. As a result, we find no merit to ASRC’s argument that DHA failed to meaningfully consider allegedly “conflicting” CPARs information in Unissant’s quotation or the underlying CPARs.¹² We also see nothing improper in the agency’s reliance on the responses received in the PPQs for its evaluation where here the RFQ clearly contemplated the reliance on PPQs in the agency’s assessment of past performance.¹³ Accordingly, ASRC’s challenges to the agency’s evaluation of Unissant’s past performance provide us no basis to sustain the protest.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong
General Counsel

¹² The excerpt provided in Unissant’s quotation reflected the assignment of satisfactory ratings in all of the assessed areas; the responses to the PPQ were excellent and outstanding. Compare AR, Tab 19, Unissant Vol. III, Past Performance, at 23 with AR, Tab 13, Unissant Past Performance Reference Documents, at 2-5.

¹³ When asked if DHA would “consider accepting CPARs . . . a more accurate record of performance for [completed] contracts . . . in lieu of [PPQs],” DHA responded that “submission of the PPQ is required as the questionnaire is specifically tailored to the AHLTA-CHCS [i]ntegration requirement.” AR, Tab 8, RFQ Q&As, at 11-12.