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# Decision

**Matter of:** Hughes Coleman, JV

**File:** B-417787.5

**Date:** July 29, 2020

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Captain Jeremy D. Burkhart, Zachary F. Jacobson, Esq., and Stephen Hernandez, Esq., Department of the Army, for the agency.  
Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest challenging the evaluation of past performance is denied where the evaluation was reasonable and consistent with the terms of the solicitation.
  2. Protest that the agency failed to explain the basis for selecting a higher-priced, higher-rated proposal for award is denied where the agency reasonably identified the advantages associated with the awardee's proposal that merited its higher price.
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## DECISION

Hughes Coleman JV (HCJV), a service-disabled veteran-owned small business (SDVOSB), of Tacoma, Washington, protests the award of a contract to Pegasus Support Services, LLC (PSS), of Woodstock, Georgia, also an SDVOSB, by the Department of the Army, under request for proposals (RFP) No. W9124M-19-R-0017, for base operations and maintenance support services. HCJV argues that the agency unreasonably evaluated the offerors' past performance and made an unreasonable award decision.

We deny the protest.

## BACKGROUND

The Army issued the RFP on June 14, 2019, seeking proposals to provide base operations and maintenance support services at Fort Stewart, Georgia, and Hunter

Army Airfield, Georgia. Agency Report (AR), Tab 6, Conformed RFP at 1, 3.<sup>1</sup> The solicitation was set aside for SDVOSB firms. *Id.* at 74. The contractor will be required to provide services in the following areas: solid waste management, grounds maintenance, pavement clearance, facility maintenance, heating and cooling, wastewater, and pest management. *Id.* at 36. The RFP anticipated the award of single indefinite-delivery, indefinite-quantity contract, with a performance period of 5 years and a 6-month option, and a maximum ordering value of \$205 million. *Id.* at 2, 18, 76.

The RFP advised offerors that proposals would be evaluated based on the following three factors: (1) mission capability, which was to be evaluated on an acceptable/unacceptable basis; (2) past performance; and (3) price. *Id.* at 108. Under the past performance factor, the RFP stated that the agency would evaluate the recency and relevance of past performance references to assess overall performance confidence for each offeror. *Id.* at 109-10. For purposes of award, past performance was “approximately equal” to price. *Id.* at 107.

The Army received proposals from three offerors, including PSS and HCJV, by the closing date of July 29. Contracting Officer’s Statement (COS) (B-417787.2) at 1; AR, Tab 17, Initial Source Selection Decision Document (SSDD) at 2. The agency evaluated HCJV’s and PSS’s proposals as follows:<sup>2</sup>

	<b>HCJV</b>	<b>PSS</b>
<b>Mission Capability</b>	Acceptable	Acceptable
<b>Past Performance Relevance<sup>3</sup></b>	Relevant	Very Relevant
<b>Past Performance Confidence</b>	Satisfactory Confidence	Substantial Confidence
<b>Evaluated Price</b>	\$174,348,384	\$195,511,382

AR, Tab 15, Initial Past Performance Evaluation at 5, 8, 18; Tab 17, Initial SSDD at 3, 11-12.

<sup>1</sup> All citations to the solicitation are to the conformed version of the RFP.

<sup>2</sup> For past performance relevance, the agency assigned one of the following ratings: very relevant, relevant, somewhat relevant, or not relevant. AR, Tab 15, Initial Past Performance Evaluation, at 3. For past performance confidence, the agency assigned one of the following ratings: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. *Id.* at 4-5.

<sup>3</sup> The initial SSDD did not separately identify a past performance relevance rating for HCJV. The initial past performance evaluation, however, assigned a rating for each offeror. AR, Tab 15, Initial Past Performance Evaluation, at 8, 18. As discussed below, the revised SSDD identified overall past performance relevance ratings for each offeror. AR, Tab 32, Revised SSDD, at 3.

The Army selected PSS's proposal for award on November 22, and notified HCJV of the decision the same day. COS at 3; AR, Tab 18, HCJV Award Notice at 1. HCJV filed a protest (B-417787.2) with our Office on December 10 challenging the award to PSS. The Army filed its report on the protest on January 13, 2020, and the protester and intervenor filed comments on January 23. The protester's comments included a supplemental protest (B-417787.3), arguing that the awardee's proposal failed to state that it would comply with the limitations on subcontracting required by Federal Acquisition Regulations (FAR) clause 52.219-14, and that the agency unreasonably and unequally evaluated the relevance of the awardee's proposed subcontractor's past performance. Supp. Protest, Jan. 23, 2020 at 5-19. Our Office requested that the agency file a supplemental report addressing the new arguments by February 3. GAO Notice, Jan. 24, 2020 at 1.

On February 3, prior to filing its report responding to the supplemental protest, the Army advised our Office that it would take corrective action to resolve the protest, as follows:

The Army intends to: (1) re-evaluate the proposals of the offerors within the competitive range under Factor 2, Past Performance; (2) issue clarifications and/or conduct discussions, if appropriate; (3) make a new Source Selection Decision; and (4) if the awardee is other than the current awardee, terminate the existing contract and make a new contract award.

Notice of Corrective Action, Feb. 3, 2020 at 1. The agency also explained that: "After reviewing the supplemental protest and re-examining the Army's evaluation of PSS' and [the] Protester's past performance, the Army determined that it may have improperly credited both PSS and Protester with past performance that was not relevant." COS at 4. We found that the agency's proposed corrective action of reevaluating proposals and making a new award decision rendered the protest academic, and therefore dismissed the protest. *Hughes Coleman JV*, B-417787.2, B-417787.3, Feb. 5, 2020 at 1-2 (unpublished decision).

The Army conducted two rounds of clarifications with offerors to address the relevance of their past performance references, on April 6 and 14. COS at 4-5. Based on the additional information, the agency conducted new evaluations under the past performance factor. The revised evaluation ratings were as follows:

	HCJV	PSS
<b>Mission Capability</b>	Acceptable	Acceptable
<b>Past Performance Relevancy</b>	Somewhat Relevant	Relevant
<b>Past Performance Confidence</b>	Neutral Confidence	Satisfactory Confidence
<b>Evaluated Price</b>	\$174,348,384	\$195,511,382

AR, Tab 32, Revised SSDD at 3.

The source selection authority (SSA) stated that she reviewed and concurred with the evaluations of proposals. *Id.* at 1. As discussed below, the SSA found that PSS’s proposal merited higher past performance relevancy and confidence ratings as compared with HCJV and the third offeror. *Id.* at 21-22. The SSA concluded that the “large qualitative difference in performance confidence is worth paying the higher price” offered by PSS. *Id.* at 22.

The Army notified HCJV of the award on April 28, and provided a debriefing that closed on May 7. COS at 5-6. This protest followed.

## DISCUSSION

HCJV raises two primary challenges to the Army’s award to PSS: (1) the agency unreasonably and unequally evaluated offerors’ proposals under the past performance factor, and (2) the award decision was unreasonable because it did not explain why PSS’s higher-rated, higher-priced proposal merited award. For the reasons discussed below, we find no basis to sustain the protest.<sup>4</sup>

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<sup>4</sup> HCJV also raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find no basis to sustain the protest. For example, HCJV argues that PSS’s proposal should have been found unacceptable because the awardee “did not commit in its proposal to comply” with the Limitations on Subcontracting at FAR clause 52.219-14. Protest at 13-14. As a general matter, an agency’s judgment as to whether a small business offeror will be able to comply with a subcontracting limitation presents a question of responsibility not subject to our review. *Spectrum Sec. Servs., Inc.*, B-297320.2, B-297320.3, Dec. 29, 2005, 2005 CPD ¶ 227 at 6. A proposal need not affirmatively demonstrate compliance with the limitation on subcontracting clause. See *Dorado Servs., Inc.*, B-408075, B-408075.2, June 14, 2013, 2013 CPD ¶ 161 at 12. Rather, such compliance is presumed unless specifically negated by other language in the proposal. See *Express Med. Transporters, Inc.*, B-412692, Apr. 20, 2016, 2016 CPD ¶ 108 at 6. However, where a proposal, on its face, should lead an agency to the conclusion that an offeror has not agreed to comply with the subcontracting limitation, the matter is one of the proposal’s acceptability. *TYBRIN Corp.*, B-298364.6, B-298364.7, Mar. 13, 2007, 2007 CPD ¶ 51 at 5. Here, the

## Past Performance Evaluation

HCJV contends that the Army unreasonably evaluated the proposals under the past performance factor. The protester argues that the agency improperly lowered the assessment of its past performance references from relevant to somewhat relevant, and lowered the assigned confidence rating from satisfactory confidence to neutral confidence. The protester also argues that the agency evaluated the relevance of past performance references on an unequal basis, and improperly assigned the awardee's proposal a rating of satisfactory confidence. We find no basis to sustain the protest.

Our Office reviews an agency's evaluation of past performance to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. *Richen Mgmt., LLC*, B-409697, July 11, 2014, 2014 CPD ¶ 211 at 4. 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 agency discretion which we will not disturb unless the agency's assessments are unreasonable, inconsistent with the evaluation criteria, or undocumented. See *Fox RPM Corp.*, B-409676.2, B-409676.3, Oct. 20, 2014, 2014 CPD ¶ 310 at 3. An offeror's disagreement with an agency's evaluation, without more, does not demonstrate that those judgments are unreasonable. *Cape Envtl. Mgmt., Inc.*, B-412046.4, B-412046.5, May 9, 2016, 2016 CPD ¶ 128 at 8.

The RFP instructed offerors to provide "documentation regarding their relevant past performance as it directly relates to the work being procured under this solicitation." RFP at 104. The RFP stated that past performance information was required for "all subcontractors, teaming partners, and/or joint venture partners proposed to perform 10% or greater of the proposed effort based on the total proposed price." *Id.*

The RFP explained that the agency would evaluate the relevance of an offeror's past performance as follows:

A relevancy determination of the Offeror's (including joint venture partner(s) and major and critical subcontractor(s)) past performance will be made. In determining relevancy for individual contracts, consideration will be given to the effort, or portion of the effort, being proposed by the

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protester does not argue that the proposal takes exception to the clause, and instead argues only that the proposal failed to commit to perform in accordance with the clause. Moreover, the protest does not cite any part of the awardee's proposal that takes exception, on its face, to the clause. Without an allegation that the awardee's proposal took exception to the limitations on subcontracting clause, we view this argument as an assertion that the awardee is not responsible. As stated, such arguments generally are not for our review. We therefore dismiss this protest argument. See 4 C.F.R. §§ 21.5(a), (b), (f).

Offeror, teaming partner or subcontractor whose contract is being reviewed and evaluated.

*Id.* at 109-110. The RFP also stated that the agency would assign proposals a past performance confidence rating based on an assessment of “an Offeror’s recent and relevant Past Performance, focusing on and targeting performance which is relevant to the effort as it directly relates to the work being procured under this solicitation. . . .” *Id.* at 109.

HCJV is a joint venture between managing partner Hughes Group LLC and Coleman Spohn Corporation. AR, Tab 11, HCJV Proposal at V-III-1. The protester’s proposal identified two subcontractors, Inuit Services Incorporated (ISI), and Government Resources Group LLC (GRG). *Id.* at V-III-4. The protester identified eight past performance references. *Id.* at V-III-12.

During corrective action, the Army did not evaluate a reference for the Monte Ahuja Medical Center because it was not completed within the 6-year time period specified in the RFP and did not evaluate a reference for Mercy Health because the protester acknowledged that it was “submitted in error.” AR, Tab 31, Revised Past Performance Evaluation at 11. The agency found that a reference for the National Institute for Occupational Safety and Health was not relevant because its value of \$1.6 million was “significantly smaller” when compared to the \$205 million ceiling value of the RFP requirement. *Id.* at 10. The agency also found that a reference for the U.S. Army Garrison Missile Defense Complex in Fort Greely, Alaska was not relevant because it was not performed by one of the members of the HCJV joint venture or its proposed subcontractors, and was instead performed by a company that was affiliated with the corporate parent of one of the protester’s proposed subcontractors. *Id.* at 13. The agency found that references for the Ohio State University (OSU)-Wexner Medical Center, the U.S. Coast Guard Base in Kodiak, Alaska, Joint Base Langley Eustis, and the Dugway Proving Ground were each somewhat relevant, based on the scope and similarity of the work to the Fort Stewart and Hunter Army Airfield requirement. *Id.* at 9-14.

PSS’s proposal identified one major subcontractor, Tsay/Ferguson Williams Joint Venture (TFW), which is the incumbent contractor providing services at Fort Stewart and Hunter Army Airfield. AR, Tab 7, PSS Proposal at 1. The awardee also identified eight past performance references. *Id.* at 3.

During corrective action, the Army found that references for the Niagara Falls, New York Air Reserve Station, and two contracts for United States Strategic Command at Offutt, Air Force Base, which were performed by PSS, were somewhat relevant because the work was similar, but the scope and value were significantly smaller. AR, Tab 31, Revised Past Performance Evaluation at 26-27. The agency found that a reference for Dobbins Air Force Base, which was also performed by PSS, was somewhat relevant because the work involved the same diversity of tasks, complexities and type of effort as the RFP requirements, but was smaller in value and scope. *Id.* at 27-28. The

agency found a reference for subcontractor TFW was very relevant because it was for the incumbent contract at Fort Stewart and Hunter Army Airfield. *Id.* at 28-29. The remaining three references, two for Fort Leonard Wood and one for 14 Navy facilities in the West Sound, Washington area were found not relevant because they were performed by affiliates of TFW or its joint venture members, rather than TFW itself. *Id.* at 29-30.

#### Evaluation of HCJV's Past Performance

HCJV argues that the Army unreasonably evaluated a reference for HCJV joint venture partner Coleman Spohn as only somewhat relevant.<sup>5</sup> AR, Tab 11, Proposal at V-III-18. The protester's proposal identified a reference for "The Ohio State University-Wexner Medical," which was described as a contract for heating, ventilation, air conditioning (HVAC) and plumbing. *Id.* The "original awarded price" of the contract was \$96 million and the "[m]odified [p]rice/[c]ost" was \$127 million. *Id.* The reference identified an award date of December 1, 2011, and a completion date of March 1, 2014. *Id.* The protester described the contract performance as follows:

Coleman Spohn was one of the members of the HMPC Joint Venture Team that constructed the Wexner Medical Center. Coleman Spohn's contract for the installation of Mechanical systems totaled \$26,000,000.00 dollars.

The building represents approximately 1,000,000 [square feet (sq. ft.)] of new clinical space that will provide, but is not limited to, outpatient service, expanded [operating rooms], imaging suite, inpatient rooms, pharmacy, nutrition, translational research, public concourse, and meeting/support space.

OSU's overall campus encompasses 36,000,000 million sq. ft. of building space and Coleman Spohn is responsible for its plumbing maintenance,

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<sup>5</sup> HCJV also argues that the Army improperly revised the evaluation of the relevance of its past performance references during corrective action. For example, the protester contends that the initial finding that the OSU-Wexner Medical Center reference was relevant was "factual," and that this finding "should not be subject to varying interpretations." Protester's Comments at 9. The fact that a reevaluation of proposals after corrective action differs from the original evaluation does not establish that the reevaluation was unreasonable. *IAP World Servs., Inc.*, B-406339.2, Oct. 9, 2012, 2012 CPD ¶ 287 at 3-4. Rather, it is implicit that a reevaluation can result in different findings and conclusions. *QinetiQ North Am., Inc.*, B-405163.2 *et al.*, Jan. 25, 2012, 2012 CPD ¶ 53 at 13. The overriding concern for our Office's review is not whether the evaluation results are consistent with the earlier evaluation results, but whether they reasonably reflect the relative merit of offerors' proposals. *IAP World Servs., Inc.*, *supra*. For the reasons discussed, we find no basis to conclude that the agency's reevaluation was unreasonable.

medical gas maintenance, and refrigeration maintenance campus wide. Small projects generated by our maintenance work will be our responsibility.

The student dorms, classrooms and administration buildings are of similar [] complexity to the Ft. Stewart facility. However, because OSU is also a hospital complex, we have the added complexity of maintaining a major hospital in the City of Columbus, Ohio.

*Id.*

The Army's initial evaluation assigned a rating of relevant for this work, based on the assessment that Coleman Spohn had performed maintenance work for the Wexner Medical Center and "plumbing maintenance, medical gas maintenance, and refrigeration maintenance" campus wide. AR, Tab 15, Initial Past Performance Evaluation at 11. The agency found that the value of the contract was \$127 million, which represented construction and maintenance costs; the agency stated, however, that \$26 million of this amount was discounted from consideration because it represented installation work that was not relevant to the RFP. *Id.* The agency also noted that although the amount of square footage at the campus was larger than the area of Fort Stewart and Hunter Army Airfield, "the diversity of tasks (mechanical systems, HVAC and related services) is smaller when compared to" the RFP requirements. *Id.*

During the corrective action in response to HCJV's initial protest, the agency reassessed the relevance of the contract reference. COS at 13. The agency states that the initial evaluation mistakenly concluded that the past performance reference was for a \$101 million maintenance contract for the Wexner Medical Center and other areas at OSU. *Id.* Upon reevaluation, the agency determined that the reference addresses a construction contract that was performed from December 2011 to March 2014, and that the reference also addressed "mechanical maintenance that likely occurred under other contractual instruments not adequately described or included as part of the past performance proposal." *Id.*

On April 6, 2020, the agency requested that the protester address the following question:

The citation states, Coleman Spohn is a member of the HMPC Joint Venture Team and according to the past performance narrative, "Coleman Spohn's contract for the installation of Mechanical systems totaled \$26,000,000.00" with an award date of 1 December 2011 through 1 March 2014. The narrative also indicates that "OSU's overall campus encompasses 36,000,000 million sq. ft. of building space and Coleman Spohn is responsible for its plumbing maintenance, medical gas maintenance, and refrigeration maintenance campus wide. Small projects generated by our maintenance work will be our responsibility." It is



unclear whether this is encompassed in the construction contract that is listed and/or the extent. Please clarify the relevancy of this past performance citation.

AR, Tab 25, Clarification Request, Apr. 6, 2020 at 3.

HCJV responded on April 9 that Coleman Spohn was the “the managing member of the HMPC Joint Venture (HMPC JV), that was awarded the construction and maintenance contract.” AR, Tab 26, Protester’s Clarification Response, Apr. 9, 2020 at 3. The protester explained that the \$26 million amount referenced in the proposal “was for the installation of the mechanical systems” for the hospital. *Id.* The protester further stated that “[u]pon completion of the construction phase, HMPC JV continues with the operation and maintenance of the hospital and OSU campus facilities to date which encompass 36,000,000 [square feet].” *Id.*

On April 14, the Army sent a second request for clarification to the protester. The agency noted that the proposal described a “major construction project to build the Ohio State Wexner Medical Center [from] Dec 2011-March 2014 with [Coleman Spohn] providing mechanical systems installation for \$26M,” and that the protester also stated that it “provided campus wide maintenance work commencing after construction.” AR, Tab 29, Clarification Request, Apr. 14, 2020 at 1. The agency requested that the protester explain whether the “campus wide maintenance after construction” was part of the original construction contract, or whether it was awarded separately after the completion of the construction contract in March 2014. *Id.* The agency further requested that the protester clarify if the \$26 million construction contract was “attributable to ongoing campus wide maintenance, and explain the time frame as well as the portion that is allocated to maintenance efforts as this is still not clear.” *Id.*

On April 15, the protester responded that HMPC JV was “awarded the follow-on maintenance contract and is still (currently) providing maintenance at the OSU/Wexner Medical Center Complex.” AR, Tab 30, Protester’s Clarification Response, Apr. 15, 2020 at 1. The protester further stated that “[t]he \$26M for the mechanical systems installation (2011 – 2014) completed by [Coleman Spohn] is not attributable to the current maintenance being performed by HMPC, JV.” *Id.* With regard to the maintenance work, the protester stated that HMPC JV performed work at the Wexner Medical center under a warranty from 2014 to 2015, and that “[s]ince 2015 all work being performed by HMPC, JV/[Coleman Spohn] at the OSU/Wexner Medical Center Complex is 100% maintenance.” *Id.* The protester also explained that Coleman Spohn “provides maintenance services [for] the entire 36 million Sf. OSU Campus,” including “all work in OSU Medical Facilities, Athletic facilities, administration building and student facilities with plumbing maintenance ending in 2023 and HVAC maintenance ending in 2025.” *Id.*

The Army’s revised evaluation for the OSU Wexner Medical center concluded that the reference was somewhat relevant. AR, Tab 31, Revised Past Performance Evaluation at 10. The agency noted that the initial evaluation found the reference relevant based

on “inaccurate conclusions” that the \$127 million stated value of the contract was comprised of \$26 million for construction and \$101 million for maintenance for the period of December 2011 to March 2014. *Id.* Based on the clarifications with the protester during corrective action, the agency concluded that the entirety of the \$127 million was associated with the construction of the medical center and that \$26 million of that amount was Coleman Spohn’s portion of the mechanical installation work. *Id.* The agency also concluded that the construction work was not relevant to the operations and maintenance requirements of the RFP. *Id.*

Based on the clarifications, the agency found that after March 2014, HMPC JV continued to provide maintenance work at the Wexner Medical Center, and also provided HVAC and plumbing maintenance for the entire OSU campus. *Id.* The agency found the “warranty maintenance and the follow-on maintenance provides some of the type of tasks and scope when compared to the Fort Stewart performance requirements for vertical facility maintenance [demand maintenance orders] covering small maintenance work for heating and cooling and plumbing.” *Id.* The agency concluded, however, that “the magnitude of effort was not quantified despite the clarifications asking for this specific information.” *Id.* The contracting officer further explains that even though the protester did not provide the requested information about the nature and value of the maintenance work, the agency “still credited HCJV with performance of HVAC and plumbing maintenance” involving over 36 million square feet at the OSU campus. COS at 13. Although the narrative for the evaluation did not assign a specific value for the work, the summary charts in the revised past performance evaluation and the SSDD state that the contract was valued at \$26 million. AR, Tab 31, Revised Past Performance Evaluation at 7; Tab 32, SSDD at 9.

HCJV argues that the Army should have understood based on its proposal and clarifications during corrective action that Coleman Spohn, as a member of HMPC JV, has performed work since 2014 that involves the maintenance of “36 million square feet of building space” at the Wexner Medical Center and the OSU campus, and that the value of this work was \$127 million. Protester’s Comments at 8, 12. The protester contends that the work described was “more complex and larger in magnitude” than the RFP requirements for Fort Stewart, and that the agency improperly credited it with a contract value of only \$26 million. *Id.* at 12.

We think the agency reasonably found that HCJV’s proposal described a construction contract for 2011 to 2014, and also described--but did not provide details regarding--the other maintenance work, such as the value of the maintenance work or when it began. See AR, Tab 31, Revised Past Performance Evaluation at 10. We also think the agency reasonably found that while the protester’s responses during clarifications explained that the maintenance work began after 2014, the protester did not identify the contracts under which the work was performed or the value of those contracts. See *id.*

With regard to the scope of work for this reference, we find that the agency reasonably determined that the HVAC and plumbing work over 36 million square foot at the OSU campus was similar to some of the work required by the RFP, but did not encompass all

of the required work. In this regard, the protester's proposal does not address the RFP's requirements for solid waste management, grounds maintenance, pavement clearance, wastewater services, or pest management. See RFP at 36. The protester's disagreement with agency's judgment regarding the relevance of the work does not provide a basis to sustain the protest. See *Cape Env'tl. Mgmt., Inc., supra*.

With regard to the value of the maintenance work performed, we agree with the agency that neither HCJV's proposal nor its responses during clarifications explained this matter. The proposal, for example, did not differentiate between the overall awarded value of the Wexner Medical Center construction contract and any associated maintenance work. Additionally, the protester's responses to the agency's requests for clarification did not provide information about the value of the OSU campus maintenance work performed after 2014.

On the other hand, we agree with the protester that the record does not reasonably explain why the agency assigned the contract reference a value of \$26 million. AR, Tab 31, Revised Past Performance Evaluation at 10; Tab 32, SSDD at 9. In this regard, both the protester's proposal and its responses during clarifications stated that \$26 million was the value of the mechanical installation work associated with the construction of the Wexner Medical Center. AR, Tab 11, HCJV Proposal at V-III-18; Tab 26, Protester's Clarification Response, Apr. 9, 2020 at 3; Tab 30, Protester's Clarification Response, Apr. 15, 2020 at 1. Moreover, the agency's initial evaluation found that the mechanical installation work was valued at \$26 million, and both the initial and revised evaluations found that this work was not relevant. AR, Tab 15, Initial Past Performance Evaluation at 11.

Although we find that the agency's assessment of the value of this past performance reference did not have a reasonable basis, we find no basis to conclude that the protester was prejudiced by this action. Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. *DRS ICAS, LLC*, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21-22.

While the protester is correct that \$26 million is not a reasonable value of the maintenance work, the protester provides no support for its contention that the maintenance work performed since March 2014 should be valued at \$127 million. See Protester's Comments at 8, 12. In this regard, the \$127 million amount is identified in its proposal as the value for work performed from December 2011 to March 2014, rather than the maintenance performed after March 2014. AR, Tab 11, HCJV Proposal at V-III-18. Despite requests from the agency, the protester did not identify the contracts under which it has been performing maintenance since 2014, or the value of those contracts.

Moreover, as the agency notes, HCJV stated in its questions during the debriefing for the current award that the value of the maintenance work performed at the Wexner

Medical Center is “\$2M/year for maintenance. . . [which] totals \$10 [million] to-date,” and the value of the HVAC and plumbing maintenance work performed for the other parts of the OSU campus is “\$8 [million]/year . . . [which totals] \$18 [million] to-date.” AR, Tab 35, Debriefing Questions, May 4, 2020 at 2-3. Although the contracting officer’s statement cited these questions as evidence that the protester failed to address the value of the work performed during clarifications, COS at 13-14, we note that the protester did not respond to this matter in its comments on the agency report. In light of the protester’s failure to provide information regarding the value of the work in its proposal or during clarifications that supports its claim that the contract should be valued at \$127 million, we find no basis to conclude that the record demonstrates any possibility of competitive prejudice. In sum, we find no basis to conclude that the agency’s evaluation of the relevance of the protester’s reference for the OSU-Wexner Center provides a basis to sustain the protest.

### Unequal Evaluation of HCJV’s and PSS’s Past Performance

HCJV argues that the Army evaluated the relevance of offerors’ past performance references in an unequal manner. We find no merit to these arguments.

First, HCJV argues that the Army treated offerors unequally by not evaluating past performance references for prime contractors in the same manner as those for proposed subcontractors. Where HCJV and PSS provided a past performance reference for a contract that was performed by the identified firm as a prime contractor, the agency credited the firm with all of the work performed under the contract. For example, PSS identified a past performance reference for work it performed as a prime contractor for base operating support services at Niagara Air Reserve Station. AR, Tab 31, Revised Past Performance Evaluation at 26-27. The agency credited PSS for having performed a contract that encompassed the entire scope of work, including tasks performed by PSS’s subcontractors. *Id.*

Similarly, the agency gave credit to the protester’s proposed subcontractor ISI for all relevant work performed under a contract awarded to Kodiak Support Services Joint Venture (KSS-JV) because “Intuit Services, Inc. [was] the managing partner (51%) directly performing/responsible for the KSS-JV.”<sup>6</sup> *Id.* at 11. Further, the agency credited HCJV’s joint venture partner Coleman Spohn with all relevant work performed under the reference for the OSU-Wexner Medical Center. *Id.* at 10.

In contrast, where an offeror provided past performance references for work performed as a subcontractor, the agency gave credit only for the work performed by the subcontractor, rather than the entire scope of work under the contract. For example,

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<sup>6</sup> The Army noted, however, that certain parts of the work were not relevant to the RFP, and that the scope of the relevant work was small in value as compared to RFP. AR, Tab 31, Revised Past Performance Evaluation at 11. Additionally, as discussed below, the agency considered the amount of work HCJV proposed Intuit would perform in factoring the overall relevance of this reference. *Id.*

HCJV submitted a reference for Joint Base Langley Eustis to demonstrate the past performance of its proposed subcontractor ISI. AR, Tab 11, HCJV Proposal at V-III-26. The contract was awarded to ISI's corporate affiliate Global Management Services, LLC (GMS). *Id.* at V-III-8.

During clarifications, HCJV explained that GMS and ISI have common corporate personnel, and argued that ISI should therefore be credited with the past performance of GMS. AR, Tab 26, Protester's Clarification Response, Apr. 9, 2020 at 4; Tab 26b, Explanation of Relationship Between ISI and GMS at 1-2. The agency concluded, however, that in the context of this reference, GMS is not performing work on the Fort Stewart and Hunter Army Airfield effort. The agency also noted that although there is common ownership between ISI and GMS that performs oversight for both, this is "tangentially but not directly connected" to ISI, and ISI could not be credited for performing work under this contract. AR, Tab 31, Revised Past Performance Evaluation at 12. Instead, the agency credited HCJV's proposed subcontractor GRG with the scope of work it performed as a subcontractor to GMS under a reference for Joint Base Langley Eustis. *Id.* Based on this scope of work performed by GRG, the agency found the reference somewhat relevant. *Id.*

HCJV argues, in effect, that the Army should have evaluated past performance references for prime contracts in the same manner it evaluated references for subcontracts--that is, excluding consideration of any work that was not performed by the firm that will perform under the respective offerors' proposals. Protester's Comments at 13-14. We find no basis to conclude that the agency's evaluation was unreasonable. In essence, the agency treated a prime contract as different from a subcontract by finding that the prime contractor was responsible for the entirety of contract performance. See AR, Tab 31, Revised Past Performance Evaluation at 10-11, 26-27. In contrast, the agency discounted the relevance of references for subcontractors for work that was neither performed nor supervised by these firms in their roles as subcontractors. See *id.* at 12, 29. The protester does not show that the agency's evaluation was prohibited under the terms of the solicitation, nor does the protest point to any applicable law or regulation or decision by our Office which shows that the agency's evaluation was improper. See *K2 Sols., Inc.*, B-417689, Sept. 24, 2019, 2019 CPD ¶ 330 at 7.

Next, HCJV argues that the Army evaluated offerors' past performance unequally because it discounted the relevance of HCJV's proposed subcontractors by noting the percentage of work to be performed by the subcontractor, but failed to do the same for PSS's proposed subcontractor. Protester's Comments at 19-20. For example, the agency credited HCJV's proposed subcontractor ISI for a contract awarded to KSS-JV, for work that was relevant to the Fort Stewart and Hunter Army Airfield requirement in the areas of solid waste management, water distribution systems, and wastewater management. AR, Tab 31, Revised Past Performance Evaluation at 11. The agency also noted, however, that the scope of the work was "quite a bit smaller" than the RFP requirements. *Id.* The agency concluded that the reference merited a somewhat relevant rating based on the "smaller scope, smaller magnitude of effort and

complexities” of the reference as compared to the RFP, “coupled with the limited 13% performance that” ISI would perform as a subcontractor to HCJV. *Id.* at 11-12.

The record shows that the agency’s evaluation likewise noted the percentage of work to be performed by PSS’s proposed subcontractor TFW. For TFW’s performance of the incumbent contract, both the revised past performance evaluation and the SSDD specifically noted that TFW was proposed to perform [DELETED] percent of the work as a subcontractor to PSS. *Id.* at 28; AR, Tab 32, SSDD at 16. The protester acknowledges that these evaluations specifically cited the percentage of work to be performed by TFW, but contends that the agency nonetheless should have found TFW’s work less relevant based on the amounts of work and functions to be performed by PSS and TFW. Protester’s Comments at 19-20. In light of the agency’s express acknowledgement of the percentages of work to be performed by both HCJV’s and PSS’s proposed subcontractors, we find no basis to conclude that the agency treated PSS and HCJV unequally.

#### Assignment of Past Performance Ratings

Finally, HCJV argues that the Army should have assigned its proposal higher ratings, and assigned PSS’s proposal lower ratings under the performance factor. We find no merit to these arguments.

The Army assigned PSS’s past performance references an overall rating of relevant based on four somewhat relevant references performed by PSS and one very relevant reference performed by PSS’s proposed subcontractor TFW. AR, Tab 31, Revised Past Performance Evaluation at 36. Based on the performance assessments from questionnaires and contractor performance assessment reports (CPARs) for these five references, the agency assigned a performance confidence rating of satisfactory confidence. *Id.*

HCJV argues that the agency unreasonably assigned overall relevant and satisfactory ratings for PSS’s past performance because it placed improper weight on the past performance of PSS’s proposed subcontractor TFW. Protester’s Comments at 24-26. The protester contends that the awardee’s evaluation ratings should have been lower because none of the four references for PSS were of the same size, scope, and complexity as the Fort Stewart and Hunter Army Airfield requirement. *Id.*

As the Army notes, however, the RFP expressly provided for the consideration of the past performance of “joint venture partner(s) and major and critical subcontractor(s).” RFP at 109. To the extent the protester argues that the agency should not have considered the relevance or quality of the protester’s proposed subcontractor’s past performance, this contention is clearly at odds with the plain terms of the solicitation. To the extent the protester argues that the agency should have given less overall consideration to the relevance and quality of past performance for a firm proposed to do [DELETED] percent of the work as a subcontractor, the protester’s disagreement with

the agency's judgment does not provide a basis to sustain the protest. See *Cape Envtl. Mgmt., Inc., supra*.

HCJV also argues that the Army improperly assigned its proposal somewhat relevant and neutral confidence ratings under the past performance factor. The agency found that four of the protester's eight past performance references were somewhat relevant, and that the remainder were either not relevant or could not be evaluated. AR, Tab 31, Revised Past Performance Evaluation at 8-14. The agency noted that the four somewhat relevant references showed performance that reflected "limited scope, magnitude of effort and complexities as compared to Fort Stewart." *Id.* at 19. The agency further noted that "even though performance ratings showed successful accomplishment from 'satisfactory' to 'exceptional' in the categories assessed," the information provided by the protester "simply does not provide a basis to determine the relative risk of successful performance of this requirement." *Id.* Consistent with these findings, the SSDD stated that HCJV's "performance record is so sparse that no meaningful confidence assessment rating for a contract of similar size, scope and complexity as the instant acquisition could be reasonably assigned." AR, Tab 32, SSDD at 12.

As discussed above, we find no basis to conclude that the agency's assessment of the relevance of the protester's past performance references was unreasonable. To the extent the protester disagrees with the agency's finding that the limited relevance of these references precluded the assignment of a confidence rating higher than neutral confidence, we find no basis to sustain the protest.

#### Tradeoff Decision

HCJV argues that the award decision was unreasonable because the Army did not explain the basis for selecting PSS's higher-rated, higher-priced proposal for award. We find no basis to conclude that the agency's tradeoff decision was unreasonable.

As a general matter, source selection officials enjoy broad discretion in making tradeoffs between the comparative merits of competing proposals in a best-value award scheme; such tradeoffs are governed only by the test of rationality and consistency with the solicitation's evaluation criteria. *Coastal Int'l Sec., Inc.*, B-411756, B-411756.2, Oct. 19, 2015, 2015 CPD ¶ 340 at 14. Where, as here, a solicitation provides for a tradeoff between price and non-price factors, an agency may properly select a higher-rated, higher-priced proposal, if doing so is in the government's best interest and is consistent with the solicitation's stated evaluation and source selection scheme. *All Points Logistics, Inc.*, B-407273.53, June 10, 2014, 2014 CPD ¶ 174 at 13-14. A protester's disagreement with the agency's determinations as to the relative merits of competing proposals does not establish that the source selection decision was unreasonable. *General Dynamics-Ordnance & Tactical Sys.*, B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8.

HCJV argues that the Army did not explain why PSS's proposal was worth a \$21.1 million price premium as compared to the protester's proposal. Protester's Comments at 26-28. The record shows, however, that the SSA identified specific bases for finding PSS's proposal superior to HCJV's under the past performance factor.

The SSA noted that "PSS was the only Offeror who demonstrated past performance as a prime contractor in base operations, covering the majority of the functional areas involved in this requirement." AR, Tab 32, SSDD at 22. The SSA also noted that PSS proposed the incumbent contractor as a major subcontractor for [DELETED] percent of the RFP requirements. *Id.* In comparison, the SSA found that the past performance record of HCJV was "too sparse to form a meaningful confidence assessment." *Id.*

The SSA noted that the RFP provided that past performance and price were approximately equal in importance for purposes of award. *Id.* The SSA found that PSS's past performance record was "substantially superior" to HCJV's record, and therefore merited the \$21.1 price premium. The SSA therefore concluded that "there is a significant, meaningful separation between PSS and either HCJV or [the third offeror] that provides the Army with a reasonable level of performance confidence that is worth" PSS's higher proposed price. *Id.* On this record, we find that the protester's disagreement with the SSA's judgment regarding the relative merits of the offerors' past performance records conclusion that PSS's proposal merited award at a higher price does not provide a basis to sustain the protest.

The protest is denied.

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General Counsel