



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This version has been approved for public release.

Decision

Matter of: Oak Ridge Environmental Partners, LLC

File: B-420358; B-420358.2

Date: February 1, 2022

Scott R. Williamson, Esq., and Daniel R. Williamson, Esq., Williamson Law Group, LLC, for the protester.

Jason A. Carey, Esq., J. Hunter Bennett, Esq., and Victoria A. Barnard, Esq., Covington & Burling, LLP, for United Cleanup Oak Ridge, LLC, the intervenor.

Stephanie B. Young, Esq., Kevin R. Hilferty, Esq., and Stephanie J. Villalta, Esq., Department of Energy, for the agency.

Evan D. Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of past performance is denied where the record demonstrates that the agency's evaluation was reasonable and in accordance with the solicitation's evaluation criteria.

DECISION

Oak Ridge Environmental Partners, LLC (OREP)¹, of Oak Ridge, Tennessee, challenges the award of a contract to United Cleanup Oak Ridge, LLC (UCOR)², of Germantown, Maryland, under request for proposals (RFP) No. 89303319REM000047, which was issued by the Department of Energy (DOE), for the Oak Ridge Cleanup Contract (ORCC) to provide cleanup and other associated services at East Tennessee Technology Park (ETTP), Y-12 National Security Complex (Y-12), and Oak Ridge National Laboratory (ORNL). OREP primarily challenges the agency's evaluation of its past performance.

We deny the protest.

¹ OREP is a joint venture between (i) VNS Federal Services, LLC (VNS), (ii) NorthStar Facility and Site Services Inc. (NFS), and (iii) Parsons Government Services Inc.

² UCOR is a joint venture between (i) AECOM Energy & Construction, Inc., (ii) Jacobs Technology Inc., and (iii) Honeywell International Inc.

BACKGROUND

One of DOE's strategic goals is to meet the challenges of cleaning up the nation's Manhattan Project and Cold War legacy. To accomplish this goal, DOE intends to reduce its environmental liabilities through accelerated cleanup of high-risk areas, resulting in risk reduction and returning land for its projected future use. Relevant here, the Oak Ridge Environmental Management (OREM) mission is to complete cleanup of the Oak Ridge Reservation (ORR) to protect the region's health and environment, make clean land available for future use, and enable DOE vital missions in science, energy, and national security. Agency Report (AR), Tab B.1, Source Evaluation Board (SEB) Rep. at 11.³

DOE issued the RFP for the ORCC on December 18, 2020, and subsequently amended the RFP twice. See Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 4. The RFP anticipated the award of a single indefinite-delivery, indefinite-quantity contract with a 10-year ordering period. AR, Tab A.1, RFP, ¶ B.2. Task orders may be issued on a fixed-price or cost-reimbursable basis, up to a potential contract ceiling of \$8.3 billion. *Id.* The scope of the ORCC includes the following principal tasks:

- *Cleanup*: Preparation for demolition and/or demolition of numerous facilities and remediation of environmental media at ETTP, ORNL, and Y-12, including disposal of all associated wastes, and improvements (e.g., repairs, stabilization, upgrades) for facilities planned for future use or historic preservation.
- *Construction and/or Startup of Mission Support Facilities*: Complete first phase construction and initiate operation of the Environmental Management Disposal Facility, and complete commissioning of the Outfall 200 Mercury Treatment Facility (MTF) at Y-12.
- *Operations*:
 - *Liquid and Gaseous Waste Operations (LGWO)*: Operate and maintain LGWO facilities to dispose of ORNL and OREM liquid and gaseous wastes and ensure reliability of these essential systems and services.
 - *Transuranic (TRU) and Solid Waste Debris Storage and Shipment Support*: Manage OREM's remaining TRU and legacy waste inventory and support shipments at the Waste Isolation Pilot Plant or other offsite disposal facilities.

³ References herein to page numbers of agency report exhibits are to the Bates numbering furnished by the agency.

- *Surveillance and Maintenance of Facilities and Sites at ORNL and Y-12 under OREM responsibility:* Maintain OREM's excess contaminated facilities and sites to ensure safe and stable condition that minimizes risk pending facility demolition, site remediation, and/or transfer.
- *Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Disposal Facilities and ORR Landfills:* Operate and maintain disposal facilities to ensure efficient disposal of cleanup debris and other wastes.
- *Outfall 200 MTF Operations:* Operate and maintain the newly constructed MTF to reduce mercury contamination in Y-12 surface waters.
- *ETTP Site Closure, Historic Preservation, Surveillance and Maintenance, and Environmental Monitoring:* Complete closure of ETTP as a DOE site, implement surveillance and maintenance and environmental monitoring responsibilities, and complete historic preservation commitments.

See, e.g., AR, Tab A.1, RFP, amend. No. 2, Performance Work Statement (PWS), ¶¶ C.3, C.4, C.5; Tab B.1, SEB Rep., at 11-12.

In addition to the foregoing principal tasks, the ORCC contractor will also be responsible for (i) contract transition, (ii) administration of post-retirement medical benefits, long-term disability, and pension contributions, and (iii) other core functions including, for example, health and safety, radiation protection, nuclear safety, engineering, federal facility agreement (FFA) and related support, public relations and media support, and historic preservation and cultural resource management. AR, Tab A.1, RFP, amend. No. 2, PWS, ¶¶ C.1, C.2, and C.6.

Award was to be made on a best-value tradeoff basis considering the following factors, which were of descending importance: (1) key personnel; (2) past performance; (3) management approach; and (4) price. AR, Tab A.1, RFP, ¶¶ M.6 and M.7. The non-price factors, when combined, were to be significantly more important than price. *Id.*, ¶ M.6. As addressed herein, only the past performance factor is relevant to our resolution of the protest.

As to past performance, the RFP provided that the agency would evaluate each offeror, including all members of a teaming arrangement pursuant to Federal Acquisition Regulation section 9.601(1), by considering relevant and recent past performance information obtained for the offeror performing work similar in scope, size, and complexity to the portion of the master ORCC PWS. *Id.*, ¶ M.3(a). Similar scope, size, and complexity was to be evaluated within the context of the portion of work that a particular entity was proposed to perform and defined as follows: (a) scope – type of work (e.g., work as identified in the master ORCC PWS, including similar work of a non-nuclear nature and/or similar non-DOE work); (b) size – dollar value (approximate average annual value in relation to the proposed work; for evaluation purposes, the

annual ORCC contract value was approximately \$200 million); and (c) complexity – performance challenges (e.g., overcoming barriers to safely accelerated work scope; maintaining, operating, and performing decommissioning and demolition of aging facilities; maintaining compliance in a complex regulatory environment; management of work through multiple funding sources; subcontractor management; management of large complex contracts in highly regulated industries; management of complex contractor human resource management (CHRM) requirements; and successful partnerships with the government, client and regulators). *Id.* The RFP advised that the higher the degree of relevance of the work, the greater the consideration that could be given to the corresponding past performance information. *Id.*

As to a contractor's teaming partners, the RFP provided that the agency would not apportion the assessment of past performance differently among the members on a past performance contract, as each entity was considered to be responsible for overall performance of the ongoing or prior contract. *Id.* ("All partner companies on past performance contracts will be equally credited (positively and negatively) for past performance information."). The RFP provided, however, that "relevancy determinations on a past performance contract may differ depending upon what scope each entity is proposed to perform." *Id.* As to teaming subcontractors, the RFP provided that the assessment of past performance information obtained for the subcontractors would be evaluated based on the performance of work similar in scope, size, and complexity to that proposed to be performed on the ORCC. *Id.*, ¶ M.3(b). The RFP further provided that the agency would only evaluate past performance information for work the agency considered relevant to the acquisition in terms of similar in scope, size, and complexity. *Id.*, ¶ M.3(f).

The agency received five proposals in response to the RFP. The final evaluation for each proposal was as follows:

| | Offeror A | Offeror B | Offeror C | OREP | UCOR |
|-----------------------|--------------|--------------|-----------|--------------|-------------|
| Key Personnel | Good | Satisfactory | Good | Good | Outstanding |
| Past Performance | Good | Good | Good | Satisfactory | Good |
| Management Approach | Satisfactory | Good | Good | Satisfactory | Good |
| Total Evaluated Price | \$207.40M | \$208.71M | \$205.64M | \$213.18M | \$210.71M |

AR, Tab B.1, SEB Rep. at 15.

Relevant here, OREP submitted 15 past performance references, three each for VNS, NFS, and Parsons--the three members of the prime joint venture--and two each for three proposed subcontractors. After establishing the relevant ORCC scopes of work by the PWS task that each entity was proposed to perform, the SEB detailed its analysis

of the size, scope, and complexity of each reference. AR, Tab B.1, SEB Rep. at 560-578. The SEB evaluated nine of the references as relevant in terms of size, scope, and complexity as compared to the ORCC (three for the three members of the prime joint venture and six for the proposed subcontractors), but found the remaining six not relevant because they reflected little or no similarity to the ORCC. The SEB then evaluated the quality of the nine relevant references, and assigned some strengths for positive past performance, while declining to assign strengths for other references with marginal ratings or information reflecting safety performance problems. *Id.* at 432-442.

The SEB then prepared a narrative summary explaining the basis for its assignment of an overall confidence rating of satisfactory. The SEB first explained that the three relevant references for the three members of the prime joint venture “combined are somewhat indicative of OREP’s capability to perform the PWS, given the limited past performance information and the degree of relevancy these contracts collectively have when compared to the [ORCC] solicitation size, scope, and complexity.” *Id.* at 443. The SEB found that only one of the three references warranted a strength based on performance quality. *Id.* The SEB further found that, although the references of the subcontractors were generally found to be relevant and were assessed strengths based on the agency’s quality evaluation, the subcontractors’ past performance was “not as important as the LLC member entity’s past performance because the member companies will have full responsibility for the execution of the contract.” *Id.* In sum, the SEB found that the totality of OREP team’s past performance demonstrated a reasonable expectation of acceptable performance and customer satisfaction with some risk, and, thus, resulted in an overall satisfactory confidence rating. *Id.* at 443-44. The source selection official concurred with the SEB’s evaluation of OREP’s past performance. AR, Tab B.5, Source Selection Decision at 36-37.

The source selection official, after reviewing the entirety of the SEB’s evaluation, conducted a detailed tradeoff decision. *Id.* at 46-51. The source selection official found that UCOR’s proposal offered a major discriminator over all other proposals under the most important factor (key personnel), and a discriminator over all other proposals under the second most important factor (past performance). *Id.* at 48. Additionally, although not a discriminator in the award decision, the source selection official noted that UCOR had an advantage over Offeror A and OREP under the management approach factor. *Id.* The source selection official concluded that UCOR’s advantages under the significantly more important non-price factors outweighed its slight price premium as compared to Offerors A, B, and C, and, therefore, was the most advantageous to the government. *Id.* at 51. Following a debriefing, this protest followed.

DISCUSSION

OREP raises two principal objections to the agency’s evaluation of the protester’s past performance. First, the protester contends that the agency unreasonably evaluated the relevance of its past performance because DOE ostensibly required that each reference demonstrate relevant past performance with all ORCC task areas that the entity was

proposed to perform. OREP contends that the agency was required to aggregate performance across all of an entity's respective references, as well as across all of the OREP team's past performance references. The protester argues that had the agency reasonably evaluated OREP's past performance in such an aggregated manner (as opposed to evaluating relevancy on a contract-by-contract basis), the protester's past performance would have reasonably been evaluated as very relevant and would have warranted an overall confidence rating of outstanding. Second, and relatedly, the protester argues that the agency unreasonably relied on an unstated evaluation criterion when it assigned less weight to the past performance of OREP's proposed subcontractors. For the reasons that follow, we find no basis on which to sustain the protester's objection to the agency's past performance evaluation.⁴

An agency's evaluation of past performance is, by its nature, subjective, and that evaluation, including the agency's assessments with regard to relevance, scope, and significance, are matters of discretion which we will not disturb absent a clear demonstration that the assessments are unreasonable or inconsistent with the

⁴ The protester raises a number of collateral arguments. Although we do not separately address all of these arguments herein, we have reviewed all of the protester's objections and find that none provides a basis on which to sustain the protest. For example, OREP also challenges DOE's evaluation of its proposal under the management approach factor. However, as a consequence of our decision addressed herein denying the protester's challenge to the evaluation of its past performance, we need not address the protester's objections to the management approach factor evaluation because the protester cannot establish a reasonable possibility that it was prejudiced by any such errors. In this regard, competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding competitive prejudice, and our Office will not sustain a protest, even if deficiencies in the procurement are found. *Equinoxys, Inc.*, B-419237, B-419237.2, Jan. 6, 2021, 2021 CPD ¶ 16 at 6; *Environmental Chem. Corp.*, B-416166.3 *et al.*, June 12, 2019, 2019 CPD ¶ 217 at 14.

Here, UCOR was evaluated as technically superior to OREP under all three non-price factors, including the most important key personnel factor and second most important past performance factor, and offered a lower total evaluated price. AR, Tab B.1, SEB Rep. at 15; *see also* Tab B.5, Source Selection Decision at 48 (finding UCOR had a "Major Advantage over all other Offerors" under the key personnel factor, an "Advantage over all other Offerors" under the past performance factor, and an "Advantage over [Offeror A] and OREP" under the management approach factor). Thus, even assuming that OREP prevailed on its challenges with respect to the management approach factor, the least important non-price factor, and either should have been rated as equal or superior to UCOR under that factor, the protester cannot establish that it would have had a substantial chance of receiving the award because UCOR was reasonably evaluated as superior to OREP under the two more important non-price factors and proposed a lower total evaluated price.

solicitation criteria. *22nd Century Techs., Inc.*, B-418029 *et al.*, Dec. 26, 2019, 2020 CPD ¶ 14 at 11. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. *FN Mfg., LLC*, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

As stated above, OREP's principal objection is that when DOE evaluated the past performance for each entity proposed to perform the contract, the agency improperly examined each past performance reference to ascertain whether it individually was relevant as compared to all of the ORCC PWS tasks the particular entity was proposed to perform. According to the protester, the agency should have instead aggregated the entity's contracts to determine whether they collectively reflected relevant past performance as compared to all of the ORCC PWS tasks the particular entity was proposed to perform. The protester's narrow objection about how the agency should have aggregated work performed across separate contracts, however, fails to address a more fundamental problem the agency had with the relevance of the protester's references. The agency's detailed contemporaneous analysis reflects serious concerns about the limited relevancy of the particular work actually performed by the protester under its past performance references, and the protester has not challenged these findings, which independently support the agency's relevancy analysis. For illustrative purposes, we discuss herein one of the prime joint venture member's past performance references.

VNS is proposed to perform approximately [DELETED] percent of the overall ORCC requirements (\$[DELETED] of the protester's \$216.4 million annual estimate), including work under ORCC tasks: (i) C.1, transition; (ii) C.2, post-retirement medical benefits, long-term disability, and pension contributions; (iii) C.3, cleanup; (iv) C.5, mission support activities (specifically, all subtasks other than C.5.4); and (v) C.6, core functions (specifically, C.6.1 and C.6.2). See, e.g., AR, Tab B.1, SEB Rep. at 560; Tab C.1, OREP Proposal Vol. 2 at 23, 75. VNS's first reference, titled the [DELETED], includes the design and delivery of an ion exchange system to treat and decontaminate seawater containing reactor cooling water and 200 tons of lubricants with cesium contamination at the Fukushima Nuclear Power Station in Japan. AR, Tab B.1, SEB Rep. at 561; Tab C.1, OREP Proposal Vol. 2 at 74-80.

OREP represented in its proposal that the [DELETED] reference was relevant to ORCC tasks C.1, C.2, C.3, C.5.1, C.5.8, C.5.9, and C.6. AR, Tab C.1, OREP Proposal Vol. 2 at 75. In its protest, OREP points to the SEB's finding that the reference included "limited scope" similar to tasks C.5.2, C.5.3, C.5.5, C.5.6, and C.5.7 because those elements were "not addressed," AR, Tab B.1, SEB Rep. at 561, and argues that DOE's evaluation of the reference as not relevant on this basis was unreasonable because the reference was not proposed to demonstrate relevant past performance with respect to those subtasks. OREP contends that the agency's evaluation of the relevancy of this reference should have been limited to the relevancy to tasks C.1, C.2, C.3, C.5.1, C.5.8, C.5.9, and C.6, and asserts, without further elaboration, that the reference in fact demonstrates relevant past performance with respect to these specific tasks and subtasks. See Protest at 12 (including a chart reflecting checkmarks for the assertion

that these tasks were demonstrated with respect to this reference, but providing no narrative argument or support for the assertions).

DOE defends the reasonableness of its evaluation, arguing that it reasonably evaluated each reference individually, comparing the size, scope, and complexity of the reference to the scope of tasks that the relevant entity is proposed to perform under the ORCC. The agency alternatively argues that the record otherwise supports the reasonableness of the agency's evaluation because the protester's references, individually and in the aggregate, otherwise fail to demonstrate substantial similarity compared to the size, scope, and complexity of the ORCC. See COS/MOL at 35-37. We agree with the agency that it reasonably evaluated the protester's past performance.

Even assuming for the sake of argument that DOE was required to aggregate together relevant work performed by an entity under multiple contracts, there is ample contemporaneous analysis reflecting the agency's concerns about the relevance of the work the protester is seeking to aggregate. In other words, even if DOE's relevancy analysis of the scope of the [DELETED] should have been limited to tasks C.1, C.2, C.3, C.5.1, C.5.8, C.5.9, and C.6, the record reflects (and OREP does not specifically contest) that the agency found the protester's work under these tasks to have been of limited similarity to the work required by the ORCC.

Under task C.1, transition, DOE found the reference included only limited scope similarity because "it was not similar in that it did not entail a 90-day transition of operation and maintenance of large and complex facilities (including nuclear facilities) and a large work force with the associated procedures, programs, business systems, etc., as is necessary for [ORCC]." AR, Tab B.1, SEB Rep. at 561. Under task C.2, post-retirement medical benefits, long-term disability, and pension contributions, the agency found that the reference demonstrated only some relevant experience, as it "does not entail managing and funding a site- and project/contract-specific post-retirement medical benefits plan and long-term disability plan in coordination with another site contractor." *Id.*

Under task C.3, cleanup, the contractor will be responsible for characterization, preparation for demolition, demolition, and environmental media remediation. As to environmental media remediation, the contractor will be responsible for remediating soil and water to meet regulatory requirements and enable transfer of remediated areas for reuse. Such remediation may include: removal or stabilization of slabs and subsurface structures and ancillary above-grade structures; soil treatment; soil excavation and disposal; and surface and groundwater monitoring and/or treatment systems. AR, Tab A.1, RFP, amend. No. 2, PWS at 1350. The SEB found that VNS's reference only had "limited similarity to the characterization, preparation for demolition, and demolition, as well as environmental media remediation of extensive contaminated facilities and environmental media similar to the scope of ORCC." AR, Tab B.1, SEB Rep. at 561.

Under subtask 5.1, LGWO and Life Extension, the evaluators found that the reference involved similar scope because it required VNS to stand up, operate and maintain a

system custom-designed to treat contaminated wastewater, but the “contract did not involve ensuring long-term reliability of an expansive aging facility like LGWO.” *Id.* Under subtask 5.8, legacy waste disposition, the evaluators found that the reference included only limited similar scope because it did not “involve disposition of the tanks as waste along with other difficult wastes similar to those of C.5.8.” *Id.* Under subtask 5.9, infrastructure enhancement, the SEB found that the reference included limited scope similar to ORCC because it did not “involve infrastructure enhancements to support a large and diverse cleanup project like [ORCC], nor did it involve design basis threat mitigation.” *Id.*

Finally, as to task C.6, core functions, the evaluators found that the reference included some scope elements similar to the ORCC’s requirements, but “scope similar to many core functions were not included in the reference contract, with some examples being environmental sustainability, FFA support, public relations, safeguards and security, [information technology], pension administration, reservation management, emergency management and fire protection, historic preservation and cultural resource management, and land use controls.” *Id.* Therefore, even if DOE’s consideration of scope should have been limited to tasks C.1, C.2, C.3, C.5.1, C.5.8, C.5.9, and C.6, the uncontested record reflects that the reference was still reasonably evaluated as being of limited similarity to the ORCC’s scope.

In addition to issues with the scope of this VNS reference, the agency also identified limitations as to the similarity of the size and complexity of the reference. As to size, the reference had an annual value of approximately \$30 million, which is less than half of VNS’s projected \$[DELETED] annual workshare under ORCC. *Id.* Additionally, as to complexity, although DOE found the reference had similar complexity in some regards, it also found that the reference had limited complexity in two respects. First, the reference only had limited similar complexity with respect to maintaining, operating, and performing decontamination, dismantlement, deactivation, and decommissioning (D4) of aging facilities. *Id.* Second, the reference only had limited similar complexity related to managing work through multiple funding sources and managing complex CHRM requirements. *Id.*

Thus, DOE’s concerns with the relevance of VNS’s first reference were not based solely on the fact that the reference did not reflect VNS’s experience with the entirety of its proposed workshare under the ORCC. Rather, the agency made detailed findings reflecting that the reference was of limited relevance to the specific areas of VNS’s proposed ORCC workshare that the reference ostensibly was submitted to demonstrate, as well as being comparably smaller than VNS’s proposed work under ORCC and having some limited similar complexity as compared to ORCC. OREP’s protest fails to meaningfully rebut these (and similar) detailed evaluation findings contributing to the agency’s evaluation of the protester’s past performance.

The record further reflects that DOE’s evaluation findings regarding the limits on the relevancy of the OREP team’s past performance were not isolated to only a few contracts. In this regard, the record reflects--and OREP did not specifically challenge--

common assessed concerns that cut across the OREP team's past performance references. Thus, we also find no basis to sustain the protester's general allegations that had the agency "aggregated" the past performance of the joint venture members and their subcontractors across all of their respective past performance references, the protester's past performance would have been evaluated as very relevant and warranted an outstanding overall rating.

For example, the three members of the prime joint venture all proposed to perform work under task C.3, cleanup. AR, Tab B.1, SEB Rep. at 560. As addressed above, the agency reasonably found that VNS's first reference was of only limited relevance to task C.3 because the reference included only limited similarity to the characterization, preparation for demolition, demolition, and environmental remediation of extensive contaminated facilities and environmental media similar to the scope of the ORCC. AR, Tab B.1, SEB Rep. at 561. Similar concerns, however, were identified in each of the eight other references submitted by the members of the prime joint venture. See *id.* at 562 (finding that VNS's second reference "did not include extensive characterization and other activities necessary to be prepared for D4 of numerous complex facilities and extensive environmental media remediation of [ORCC]"); 564 (finding that VNS's third reference did not discuss "characterization and preparation activities specifically for D4 or of environmental media remediation"); 565 (finding that NFS's first reference did not address environmental media remediation "beyond noting characterization of surrounding soils for asbestos, radiological, and chemical contamination supporting work planning and waste profiling; and the specific types and levels of contamination were not included"); 566 (finding as to NFS's second reference that "[a]lthough this is a significant demolition project, scope did not include significant characterization to address similar types or levels of contamination, safety basis documentation revision, and did not include environmental media remediation"); 567 (noting that for NFS's third reference C.3 scope was not addressed); 568 (finding that Parson's first reference "does not include extensive characterization and other activities in preparation for D4, D4 of numerous and vast radiologically contaminated facilities, or extensive environmental media remediation similar to the scope of [ORCC]"); 570 (finding that Parson's second reference had some scope activities "similar to some of environmental remediation work at [ORCC]," but finding that the reference's focus on munitions and chemical weapons "are not princip[al] contaminants of concern for ORCC and the scope did not include characterization and other preparatory activities for D4 of large radiologically-contaminated facility or D4 of many such facilities"); 572 (finding that Parson's third reference had some similar scope, but "it does not include characterization and other activities in preparation for D4 of vast contaminated facilities or extensive environmental media remediation").

As this representative example demonstrates, DOE reasonably (or at least without challenge from OREP) identified relevance concerns with all of the past performance

references of the members of the prime joint venture.⁵ Thus, the record does not support the protester's allegations that had the agency reasonably aggregated the joint venture members' past performance, its proposal would have collectively demonstrated very relevant past performance across the full scope of the ORCC's PWS such that its proposal would have warranted an outstanding confidence rating. To the contrary, the record reflects that such aggregation would not have resolved all of the agency's concerns with OREP's limited relevant past performance.

OREP also argues that the agency unreasonably relied on an unstated evaluation criterion when it discounted the relevant past performance of its proposed subcontractors. In this regard, although the SEB positively assessed the subcontractors' past performance and noted that it was important, the SEB also found that "it is not as important as the LLC member entity's past performance because the member companies will have full responsibility for the execution of the contract." AR, Tab B.1, SEB Rep. at 443. We find no basis to sustain the protester's objection.

As an initial matter, this argument is untimely. Our Bid Protest Regulations require that a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis of protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Where a protester initially files a protest, and later supplements it with new grounds of protest, the later-raised allegations must independently satisfy our timeliness requirements, since our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues. *Noble Supply & Logistics*, B-417269, Apr. 30, 2019, 2019 CPD ¶ 167 at 11.

OREP as part of its debriefing was provided with the SEB's evaluation findings, including the specific portion of the SEB Report addressing the weight assigned to the proposed subcontractors' past performance. See Protest, exh. 2, OREP Enclosure – Proposal Evaluation Summary, at 93. Thus, the protester knew or reasonably should have known of this basis for its protest at that time. Rather than challenge the SEB's finding in its initial protest, OREP did not raise this basis of protest until it filed a

⁵ As another example, the agency found that the three joint venture members demonstrated limited relevant past performance with respect to task C.2, administration of post-retirement medical benefits, long-term disability, and pension contributions. As discussed above with respect to VNS's first reference, the agency found that all three members had experience managing their own benefit and retirement programs for their respective employees, but did not demonstrate relevant past performance managing and funding a site- and/or project/contract-specific post-retirement medical benefits plan and long-term disability plan in coordination with another site contractor similar to ORCC. AR, Tab B.1, SEB Rep. at 561-62, 564-68, 570, 572. Additionally, DOE found that none of the nine references submitted by the members of the prime joint venture included similar complexity relating to maintaining, operating, and performing D4 of numerous, large aging facilities similar to those covered by the ORCC. *Id.* OREP similarly did not challenge these specific evaluation findings.

supplemental protest within 10 days of the agency's early production of documents. While the protester contends that its protest was timely filed within 10 days of the agency's disclosure of the source selection decision, the source selection decision did not provide any materially new information beyond what was previously disclosed to the protester in the SEB's evaluation report provided to OREP as part of its debriefing. AR, Tab B.5, Source Selection Decision at 37. Thus, because OREP failed to raise this objection within 10 days of when it first learned of the basis for its protest, its supplemental protest allegations are untimely and are dismissed.

Even if we were to consider the merits of the argument, however, we find no basis to sustain the protest. We have repeatedly explained that when evaluating past performance or corporate experience, the significance of, and the weight to be assigned to, a subcontractor's past performance or corporate experience is generally a matter of contracting agency discretion, and the agency may reasonably conclude that a subcontractor's past performance or corporate experience is less valuable. *Addx Corp.*, B-414749 *et al.*, Aug. 28, 2017, 2017 CPD ¶ 275 at 7; *MIRACORP, Inc.*, B-410413.2, Feb. 23, 2015, 2015 CPD ¶ 98 at 5; *Emax Fin. & Real Estate Advisory Servs., LLC*, B-408260, July 25, 2013, 2013 CPD ¶ 180 at 6. While the protester may have thought its subcontractor past performance information should have been given more weight in the agency's evaluation, such disagreement fails to demonstrate that the agency acted unreasonably or otherwise inconsistent with the terms of the solicitation.

In sum, while OREP quibbles with the overall summary level ratings for its past performance references, it fails to advance any credible objections to DOE's detailed underlying findings. On balance, the record demonstrates that the agency carefully evaluated the protester's past performance references, reasonably found that those references only included some of the size, scope, and complexity of the ORCC, and, therefore, assigned an overall rating of satisfactory confidence. On this record, we find no basis to sustain OREP's objections to the agency's evaluation.

The protest is denied.

Edda Emmanuelli Perez
General Counsel