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Decision

Matter of: General Revenue Corporation; Account Control Technology, Inc.; Williams & Fudge, Inc.; Performant Recovery, Inc.; Collection Technology, Inc.; Alltran Education, Inc.; Texas Guaranteed Student Loan Corp.; Van Ru Credit Corporation; Global Receivables Solutions, Inc.; Progressive Financial Services, Inc.; Automated Collection Services, Inc.; Gatestone & Co. International, Inc.; Sutherland Global Services; Delta Management Associates, Inc.; Allied Interstate LLC; Collecto, Inc. d/b/a EOS CCA

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Date: March 27, 2017

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DIGEST

Protests that the agency misevaluated proposals are sustained in part where the record fails to show that the agency had a reasonable basis for its evaluation of proposals and its evaluation was not consistent with the terms of the solicitation or applicable procurement laws; the remaining protests are denied where, notwithstanding evaluation errors, the protesters failed to demonstrate competitive prejudice.

DECISION

General Revenue Corporation (GRC), of Mason, Ohio, Account Control Technology, Inc. (ACT), of Woodland Hills, California, Williams & Fudge, Inc.

(W&F), of Rock Hill, South Carolina, Performant Recovery, Inc., of Livermore, California, Collection Technology, Inc. (CTI), of Rancho Cucamonga, California, Alltran Education, Inc., of Woodridge, Illinois, Texas Guaranteed Student Loan Corp. (TGSL), of Round Rock, Texas, Van Ru Credit Corp., of Des Plaines, Illinois, Global Receivables Solutions, Inc. (GRS), of Omaha, Nebraska, Progressive Financial Services, Inc. (PFS), of Tempe, Arizona, Automated Collection Services, Inc. (ACSI)¹, of Nashville, Tennessee, Gatestone & Company International, Inc., of Phoenix, Arizona, Sutherland Global Services, of Reston, Virginia, Delta Management Associates, Inc. (DMA), of Chelsea, Massachusetts, Allied Interstate LLC, of Plymouth, Minnesota, and Collecto, Inc. d/b/a EOS CCA, of Norwell, Massachusetts, protest the award of multiple indefinite-delivery/indefinite-quantity (IDIQ) contracts under request for proposals (RFP) No. ED-FSA-16-R-0009, which was issued by the Department of Education (DOE), for debt collection services.² The protesters primarily challenge the agency's evaluation of proposals and resulting award decisions.

We sustain the protests in part and deny them in part.

BACKGROUND

The RFP, which was issued on December 11, 2015, and subsequently amended four times, sought proposals for the award of multiple IDIQ contracts for the collection of defaulted student loans. RFP, § B.³ The procurement utilized the procedures for commercial items set forth in Federal Acquisition Regulation (FAR) Part 12. Id., § E.2.⁴ Award was to be made to the responsible offeror or offerors that submitted a proposal conformed to the solicitation and was determined to be the “most advantageous” to the government. Id. For the purposes of determining which proposals were the most advantageous, the agency was to consider three

¹ ACSI submitted its own proposal, as well as an additional proposal as part of a contractor team. For the purpose of clarity, we will refer to ACSI when addressing the proposal submitted by ACSI, and the ACSI Team when addressing the proposal submitted by ACSI as part of a contractor team.

² Additional protesters have also challenged the agency's awards under the RFP. These protests have been, or will be, addressed in separate decisions.

³ For the purpose of clarity, references herein are to the RFP as amended.

⁴ As discussed below, consistent with FAR § 12.102(b), in addition to the procedures set forth in FAR Part 12, the agency also utilized the policies and procedures for negotiated procurements as set forth in FAR Part 15. For example, the agency issued a RFP and sought, and evaluated, proposals. In this regard, we note that the record uses both the terms “vendors” and “offerors”; for the purpose of clarity, we will refer to “offerors.”

factors: (1) past performance; (2) management approach; and (3) small business participation. Id.⁵ Past performance and management approach were equal in importance, and small business participation was less important than either of the other factors. Id., § E.2.2, Evaluation Methodology.

With respect to past performance, the RFP required offerors to submit information in two parts on three of their most recent and relevant contracts. First, offerors were to describe the work performed and explain in detail why each reference was relevant to the requirements of the performance work statement (PWS) with respect to size, scope and complexity. RFP, § E.1, § B, at (a). Offerors were required to identify a point of contact knowledgeable about their performance for each reference, unless information about a reference was available in the Contractor Performance Assessment Reporting System (CPARS) or the Past Performance Information Retrieval System (PPIRS). Id. Next, offerors were to provide a narrative addressing the quality of their performance for each reference, including: a description of their effectiveness and efficiency in achieving collections and resolving accounts; adherence to deadlines and cost controls; management of subcontractors; successful and timely management of complaints; high rates of recovery and cure rates and other performance metrics that may have applied; success in efforts to protect borrower rights; and information, adherence to local, state and federal laws and regulations governing collection activity, and prompt and satisfactory correction of performance issues. Id. at (b).

For the purpose of evaluating past performance, the RFP included two equally weighted subfactors (relevance and quality). RFP, § E.2.1, Factor 1.⁶ Regarding relevance, the agency was to consider the similarities in the size, scope, and complexity of the three references to the RFP's requirements. Id., Subfactor 1.a. Under quality, the agency was to evaluate the quality of an offeror's performance on their references. Id., Subfactor 1.b.

With respect to management approach, the RFP required offerors to submit a management plan of up to 10 pages, which was to address the following broadly identified topics: (1) how the offeror will mitigate the risk associated with a high volume of account transfers; (2) how the offeror will mitigate the risk of potential

⁵ Under the resulting contracts, the contractors will receive either fixed commissions based on the amounts collected or fixed fees based on other resolutions for defaulted accounts. RFP, § B.3. As a result, the RFP notified offerors that the agency would establish common pricing that would be finalized prior to award, and that price would not be a factor for award. Id., § E.2.2.

⁶ The RFP did not disclose the subfactors' respective weights. Accordingly, they are assumed to be approximately equal in importance. See Bio-Rad Labs., Inc., B-297553, Feb. 15, 2006, 2007 CPD ¶ 58 at 6.

unsuccessful performance; (3) the offeror's successful past experience managing requirements similar in scope, volume, and complexity; and (4) how the offeror will manage any inter-company transfers and transfers to subcontractors, including risk mitigation strategies. Id., § E.1, § A. Also, in section A of their respective proposals, offerors were required to submit resumes for their proposed key personnel. Id.⁷

Offerors were also required to submit a quality control plan (QCP) of up to 50 pages, which was to address the following: (1) performance management and quality control approach, including planning, compliance, internal assessment, prevention/mitigation, and monitoring of potential service performance deficiencies to ensure high quality performance; (2) existing processes the company has in place to ensure borrowers' interests are protected and all employees and subcontractors adhere to all applicable local, state, and federal laws and regulations; and (3) existing processes and practices to allow the government to wholly access and oversee vendor performance including, but not limited to, borrower contacts and communications. Id., § C. The PWS included additional general categories of information to be included in the QCPs. RFP, PWS, at 50-51.

The RFP established a single management approach evaluation factor that was to consider the management plan, key personnel, and QCP. See RFP, amend. No. 4, Questions & Answers (Q&A), at 3. Under the management approach factor, the agency was to evaluate the capability of the offeror to manage and perform the work effectively and in full compliance with applicable rules as evidenced by adequate quality controls; an effective management structure and approach; and qualified personnel. RFP, § E.2.1, Factor 2.

With respect to the small business participation factor, the RFP required all offerors to provide a small business participation plan proposing the level of small business participation (whether performing as a prime or subcontractor) in the performance of the resulting contract. RFP, § E.2.1, Factor 3, at (a). Offerors were required to meet the minimum mandatory total small business participation goal, which was established as "**31% of total contract value.**" Id. at (b) (emphasis in original). The RFP also established sub-category goals that were not mandatory, but, rather, would be evaluated as part of the qualitative assessment of the offeror's proposed participation plan. Id. Specifically, the agency was to evaluate, among other considerations, "[t]he extent of participation of small business prime offerors and 1st

⁷ The RFP also required offerors to provide a summary of any negative judgments assessed against the offeror since October 1, 2012, including addressing and providing explanation for any negative past performance information related to negative judgments. RFP, § E.1, § A. The RFP's only reference to the evaluation of negative judgments, however, was with respect to the agency's responsibility determination for a prospective awardee. Id., § E.2.4.

tier small business subcontractors in terms of the percentage of the value of the total acquisition and the extent to which the proposal meets or exceeds the small business participation goals for this acquisition.” Id. at (c)(5).

The agency received 47 timely proposals in response to the RFP. Consolidated Protests, Contracting Officer’s Statement of Fact (COSF) at 11-12.⁸ For the purpose of evaluating proposals, the agency constituted a technical evaluation committee (TEC). In evaluating the past performance factor, the TEC reviewed information contained in the past performance sections of the offerors’ proposals, available information in government systems such as CPARS and PPIRS, and, when contacted, feedback from the offerors’ references. The record reflects that the TEC only contacted references for offerors that did not have any CPARS or PPIRS reports. Id. Based on this information, the TEC assigned the offerors past performance ratings, which reflected the consensus evaluation of the TEC.

Regarding the management approach factor, the TEC evaluated the management plan and key personnel resumes (section A), while a separate quality control evaluator (QCE) reviewed the offerors’ quality control plans (section C). Neither the TEC nor QCE reviewed the section evaluated by the other. After completing their separate evaluations, the TEC and QCE met and assigned offerors consensus ratings based on each other’s analysis of the different aspects of the proposals they considered. See, e.g., GRC Protest, TEC Chair Decl., at 5; GRC Protest, QCE Decl., at 3. A separate small business evaluation committee evaluated and reached consensus ratings for offerors’ small business participation plans. Consolidated Protests, COSF, at 14.

After the respective evaluation committees concluded their consensus evaluations, the contracting officer, who was also the source selection authority (SSA), reviewed the evaluation results and communicated with the lower-level evaluators regarding their evaluations. Id. In several instances, the SSA disagreed with the ratings assigned by the lower-level evaluators, and adjusted the ratings. Id. at 14-15. Based on her review, the SSA evaluated the seven awardees as follows:

⁸ Several of these protests were consolidated and developed based on a consolidated agency report. Others, however, were not consolidated during development and, therefore, the agency submitted separate reports responding to those protests. References herein to the report submitted in response to the consolidated protests shall be designated as the “Consolidated AR,” while references to the other reports shall be designated as the “GRC AR,” the “W&F AR,” etc. Similarly, references to pleadings submitted in the consolidated protests shall include the designation “Consolidated Protests,” while references to pleadings in the other protests will include the designation “GRC Protest,” “W&F Protest,” etc.

	Factor 1 – Past Performance	Factor 2 – Management	Factor 3 – Small Business
Financial Mgmt. Inv. Corp. (FMS)	Satisfactory	Highly Satisfactory	Satisfactory
GC Servs. Ltd. P’ship (GCS)	Satisfactory	Highly Satisfactory	Satisfactory
Premiere Credit of N. Am., LLC	Highly Satisfactory	Satisfactory	Exceptional
The CBE Grp., Inc.	Satisfactory	Highly Satisfactory	Satisfactory
Transworld Sys., Inc. (TSI)	Satisfactory	Highly Satisfactory	Satisfactory
Value Recovery Holdings, Inc. (VRH)	Highly Satisfactory	Satisfactory	Highly Satisfactory
Windham Prof’ls, Inc.	Exceptional	Satisfactory	Satisfactory

Consolidated AR, Tab 125, Source Selection Decision (SSD), at 6-7.⁹

Based on her review, the SSA evaluated the protesters as follows:

	Factor 1 – Past Performance	Factor 2 – Management	Factor 3 – Small Business
ACT	Satisfactory	Marginal	Marginal
Allied	Highly Satisfactory	Marginal	Satisfactory
Alltran	Marginal	Satisfactory	Satisfactory
ACSI	Highly Satisfactory	Marginal	Highly Satisfactory
ACSI Team	Neutral	Marginal	Highly Satisfactory
CTI	Highly Satisfactory	Marginal	Satisfactory
Collecto	Satisfactory	Marginal	Satisfactory
DMA	Satisfactory	Satisfactory	Satisfactory

⁹ The SSA initially identified ten proposals as being among the “most advantageous,” and thus proceeded to conduct responsibility determinations of those prospective awardees. She subsequently found three of the prospective awardees nonresponsible, and therefore ineligible for award. See Consolidated Protests, COSF, at 17.

	Factor 1 – Past Performance	Factor 2 – Management	Factor 3 – Small Business
Gatestone	Satisfactory	Satisfactory	Highly Satisfactory
GRC	Satisfactory	Marginal	Satisfactory
GRS	Unsatisfactory	Marginal	Highly Satisfactory
Performant	Satisfactory	Marginal	Satisfactory
Progressive	Satisfactory	Satisfactory	Satisfactory
Sutherland	Neutral	Unsatisfactory	Unsatisfactory
TGSL	Satisfactory	Satisfactory	Satisfactory
Van Ru	Satisfactory	Marginal	Satisfactory
W&F	Marginal	Marginal	Highly Satisfactory

Id. at 7-8.

Based on her review, the SSA concluded that there was a natural break among the proposals. Specifically, she found that the “most advantageous” proposals received at least satisfactory ratings for all factors, and at least one highly satisfactory rating for past performance or management approach, which were the most important evaluation factors. Consolidated Protests, COSF, at 24-25. The SSA then consulted with agency program and operational staff, and determined that the group of prospective awardees was sufficiently large to meet the agency’s needs. Id. at 25-26.

The agency distributed award notices to offerors on December 9, 2016, which advised that “in accordance with FAR Part 15.506, Postaward Debriefing of Offerors, you may request a debriefing in writing within three days of the date of receipt of this letter.” See, e.g., Consolidated AR, Tab 126, Notices of Award, at 1-2. Following the receipt of debriefing requests, the agency responded to offerors in writing on December 29. The letters, which were styled as “informational briefings,” indicated that “[w]hile debriefings are not required in this procurement, [DOE] is voluntarily providing this debriefing in writing, in accordance with [FAR] 52.212-1(l), Debriefing.” See, e.g., Consolidated AR, Tab 128, ACSI Informational Briefing, at 1. With the exception of GRC, which filed its protest before the agency provided the December 29 “informational briefings,” the other protests were all filed following receipt of the informational briefings.

DECISION

The protesters generally challenge the agency’s evaluation of proposals and resulting award decisions. For the reasons that follow, we sustain in part and deny in part the protests. We note that the protesters raise many collateral arguments.

While our decision does not specifically address every argument, we have considered all of the protesters' additional arguments and find that none provides any independent basis on which to sustain the protests. Additionally, before addressing the merits of the protests, we address a few important procedural matters involving timeliness and the protesters' status as interested parties.

Timeliness

As a preliminary matter, several of the intervenors and the agency sought dismissal of a number of protest grounds arguing that they were untimely. Specifically, they contend that any protest grounds that were known or reasonably could have been known at the time of the agency's December 9 award notices had to be filed within 10 days of the notices, as opposed to within 10 days of receipt of the agency's voluntary "informational briefings" that were provided on December 29. According to the intervenors and the agency, the timeliness exception for requested and required debriefings set forth in our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2), is inapplicable in this FAR Part 12 procurement. We disagree.

As a general matter, for protests other than those challenging solicitation improprieties, our timeliness rules provide that a protest must be filed not later than 10 days after the protester knew or should have known of the basis for protest, whichever is later. 4 C.F.R. § 21.2(a)(2). Our regulations, however, contain an exception where a protest is "challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required." Id. In such cases, "with respect to any protest basis which is known or should have been known either before or as a result of the debriefing, the initial protest shall not be filed before the debriefing date offered to the protester, but shall be filed not later than 10 days after the date on which the debriefing is held." Id.

The procurement here was a commercial item procurement conducted in accordance with FAR Part 12, using the negotiated procurement policies and procedures established under FAR Part 15. In general, according to FAR § 12.102(b), when conducting a commercial item procurement "[c]ontracting officers shall use the policies [of Part 12] in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in Part 13, Simplified Acquisition Procedures; Part 14, Sealed Bidding; or Part 15, Contracting by Negotiation, as appropriate for the particular acquisition." The conclusion that the procurement at issue was conducted as a negotiated procurement pursuant to the policies and procedures of FAR Part 15, is evident where, among other factors, (a) the solicitation was issued as a request for proposals, which is provided for under FAR Part 15, as opposed to an invitation for sealed bids, which is used in connection with a FAR Part 14 procurement, and (b) the value of the procurement is \$2.8 billion, greatly exceeding the dollar thresholds for the use of the simplified acquisition procedures set forth under FAR Part 13. See also The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 (the use of negotiated

procedures and the issuance of a request for proposals constitutes a procurement conducted on the basis of competitive proposals). Accordingly, it is apparent that FAR Part 15's policies and procedures applied to the procurement. Cf. Gorod Shtor, B-411284, May 22, 2015, 2015 CPD ¶ 162 (applying FAR Part 13 brief explanation procedures in a commercial item procurement utilizing FAR subpart 13.5 simplified acquisition procedures).

Furthermore, notwithstanding arguments to the contrary, we do not find that FAR clause 52.212-1(l) is inconsistent with this conclusion. Specifically, that clause sets forth the information that will be disclosed "[i]f a post-award debriefing is given to requesting offerors." Id. It does not, however, establish when an agency is to provide a debriefing. Rather, consistent with the provisions of FAR § 12.102(b), whether a debriefing is to be given depends on the relevant policies and procedures that were applicable to the procurement (i.e., FAR Part 13, 14, or 15). Given our conclusion that the policies and procedures of FAR Part 15 applied, we find that the debriefings, which were requested within three days of the protesters having received notice of the awards, were required pursuant to the policies established by FAR Part 15, and thus the timeliness exception in 4 C.F.R. § 21.2(a) applies. See FAR § 15.506 (requiring an agency to provide an offeror with a debriefing when it is requested within three days of the offeror receiving notice of award).

Interested Party

Several intervenors and the agency also argue that the protesters are not interested parties to challenge the agency's evaluation of the awardees' proposals. They argue that, based on the most advantageous methodology used by the agency (i.e., a minimum of all satisfactory ratings and at least one highly satisfactory or better rating for past performance or management), any offeror that met the minimum ratings thresholds would have been eligible for a contract award. As a consequence, they contend that even if the protesters were to prevail on their challenges to the agency's evaluation of the awardees, the protesters would not be eligible for award because they still would not meet the minimum threshold to be evaluated as being among the most advantageous proposals.

Under the bid protest provisions of the Competition in Contracting Act of 1984, only an interested party may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. RELM Wireless Corp., B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. Whether a protester is an interested party is determined by the nature of the issues raised and the direct or indirect benefit or relief sought. Id.

As an initial matter, almost every party vigorously contests or defends the reasonableness of the agency's most advantageous methodology. The protesters contend that the agency's selected methodology mechanically relied on adjectival evaluation ratings and failed to engage in a meaningful comparative assessment of proposals. The protesters' objections, however, are not consistent with the evidence in the contemporaneous record showing that the SSA considered the relative merits of the individual proposals and ultimately re-rated several of the proposals based on her independent analysis. Similarly, we are mindful of the agency's reliance on our recent decision in Sevatec, Inc., et al., B-413559.3 et al., January 11, 2017, 2017 CPD ¶ 3, which recognized the flexibility afforded to agencies in the selection of evaluation schemes under FAR subpart 15.1, Source Selection Processes and Techniques.

Ultimately, however, we need not resolve the propriety of the agency's most advantageous methodology. As addressed above, the SSA represented that she selected the most advantageous methodology only after she had identified a natural break in the evaluation ratings following her independent review of the proposals, and after she had confirmed that the number of prospective awardees was sufficient to meet the government's minimum needs. See Consolidated Protests, COSF, at 24-25. But, as detailed herein, we recommend that the agency conduct and fully document a new evaluation of proposals under the past performance and management approach factors.¹⁰ Thus, the original source selection decision utilizing the challenged most advantageous methodology has been rendered moot. Furthermore, as it is impossible to know at this juncture whether the same most advantageous methodology will be used on any subsequent award determination, any analysis of the validity of the methodology would be purely academic.¹¹

¹⁰ Sutherland, ACT, and Van Ru challenged the agency's evaluation under the small business participation factor. As discussed below, we find no basis to sustain either Sutherland's or ACT's protests under that factor. Additionally, while not explicitly addressed herein, we have reviewed and find no basis to sustain Van Ru's protest of that aspect of the agency's evaluation.

¹¹ Separate from the methodology utilized, however, we did identify certain specific concerns with the SSA's analysis. For example, the contemporaneous SSD includes only minimal detail regarding the basis for her disagreement with the lower-level evaluators in a number of instances. While source selection officials may reasonably disagree with the evaluation ratings of lower-level evaluations, they are nonetheless bound by the fundamental requirements that their independent judgments be reasonable, consistent with the stated evaluation factors, and adequately documented. AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65; AIU N. Am., Inc., B-283743.2, Feb. 16, 2000, 2000 CPD ¶ 39 at 8-9.

In light of the foregoing, we conclude that the protesters are interested parties to challenge the awardees' evaluations. Based on our recommendation that the agency conduct new past performance and management evaluations that are reasonable, adequately documented, and consistent with the RFP's evaluation criteria and applicable procurement law, it is apparent that the relative competitive positions of many protesters and awardees could change. Therefore, we deny the requests to dismiss in part the protests based on the protesters' alleged lack of standing as interested parties.

Past Performance

The protesters challenge the agency's past performance evaluation in many respects. As set forth below, our Office identified a number of concerns with the agency's evaluation of proposals under this factor, and therefore sustain several of the protests challenging the agency's evaluation. Some of the errors appear to have impacted the evaluation of several proposals. In such circumstances, we address below the nature of the concern and highlight representative examples. In other instances, the errors appear to have been unique to individual proposals.

As a general matter, we will review an agency's past performance evaluation to determine whether the evaluation was conducted fairly, reasonably, and in accordance with the solicitation's evaluation scheme. Logistics Mgmt. Int'l, Inc., et al., B-411015.4 et al., Nov. 20, 2015, 2015 CPD ¶ 356 at 8. We will question an agency's evaluation conclusions where they are unreasonable or undocumented. OSI Collection Servs., Inc., B-286597, B-286597.2, Jan. 17, 2001, 2001 CPD ¶ 18 at 22. On the other hand, a protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. Beretta USA Corp., B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 10. Additionally, it is fundamental that a contracting agency must treat all offerors equally, and therefore it must evaluate offers evenhandedly against common requirements and evaluation criteria. Logistics Mgmt. Int'l, Inc., et al., supra, at 16.

Evaluation of Past Performance Information

The agency appears in several circumstances to have unreasonably either ignored or discounted relevant information bearing on the quality of offerors' past performance if it was not included in a CPARS report. For example, DMA identified three student loan collection references, its incumbent contract (for which the agency has a CPAR report) and two contracts with commercial entities. The TEC rated all the references as highly relevant. Under the quality subfactor, however, the agency appears to have only considered the incumbent contract. The TEC noted that DMA had received a satisfactory quality rating on its most recent CPARS report, and "compared favorably" against other incumbents due to its low error rate under the agency's 2015 focused review for regulatory compliance. Based on this one reference, the TEC concluded that "[t]he satisfactory past performance rating

received [on the incumbent contract] demonstrates that [DMA] performed at an acceptable level and that there is high confidence that the offeror will successfully perform the PWS requirements as outlined in the solicitation with minimum risk.” Consolidated AR, Tab 68, DMA TEC Report, at 1-2.

Absent from the TEC’s analysis, however, is the agency’s consideration of the quality of DMA’s performance on its other two highly relevant contracts. The contemporaneous record (and the agency’s response to the protest) is devoid of any indication that the agency considered the detailed information in DMA’s proposal regarding these past performance references, or made any effort to contact DMA’s references to inquire about the quality of the protester’s performance. In this regard, we note that DMA’s proposal includes detailed information supporting the quality of its performance on the contracts. See, e.g., Consolidated AR, Tab 29, DMA Proposal – § B, at 33 (noting the customer’s prior “exceptional” rating on another DOE past performance questionnaire), 37 (including a recommendation letter for the second contract).¹²

As another example, with respect to TGSL, the firm identified, as one of its three past performance references, its performance as a subcontractor in connection with the incumbent requirements. With respect to this reference, the TEC found that “TG[SL] did not provide indicators of performance quality.” TGSL AR, Tab P, TGSL TEC Report, at 2. The record, however, does not support this evaluation finding. Rather, the record reflects that the agency had past performance information from the prime incumbent contractor concerning TGSL’s subcontractor performance. Specifically, the prime contractor advised that: “TG[SL] continues to perform at a high level while maintaining thorough compliance and zero complaints for the pool of accounts they are servicing . . . [we are] extremely happy with TG[SL]’s service, training, and overall collections as a current subcontractor on our Task Order.” TGSL AR, Tab O, Email from TGSL Past Performance Reference, at 1-2. We have previously explained that an agency’s past performance evaluation is unreasonable where the agency fails to give meaningful consideration to available relevant past

¹² The prejudice to DMA is readily apparent based on the agency’s inconsistent treatment with respect to a materially similar contract reference for the same customer. The TEC also found ACSI’s work for the same customer to be highly relevant, and as support for the highly satisfactory quality rating noted that “ACSI met stringent onboarding requirements [] at [the customer] while scoring high in security technology.” Consolidated AR, Tab 66, ACSI TEC Report, at 2. The agency, however, seems to have ignored nearly identical positive, relevant past performance information presented in DMA’s proposal. See, e.g., Consolidated AR, Tab 29, DMA Proposal – § B, at 32 (“[The customer] requires each [contractor] to complete and pass [a] security audit prior to contract implementation and on an annual basis,” and DMA “has successfully passed the annual certification since onboarding with [the customer] three years ago”).

performance information. See, e.g., Shaw-Parsons Infrastructure Recovery Consultants, LLC; Vanguard Recovery Assistance, JV, B-401679.4 et al., Mar. 10, 2010, 2010 CPD ¶ 77 at 8 (sustaining protests where agency failed to reasonably consider past performance questionnaires); DRS C3 Sys., LLC, B-310825, B-310825.2, Feb. 26, 2008, 2008 CPD ¶ 103 at 26 (same regarding a CPARS report).

This pattern by the agency of neglecting to consider, or unreasonably discounting, relevant past performance information, based on what appears to be the agency's fixation on CPARS reports to the exclusion of other past performance information, is further highlighted by the agency's evaluation of the past performance of VRH, one of the awardees. VRH submitted three past performance references; one was for performance of the incumbent contract as a subcontractor, and the other two were student loan debt collection contracts with commercial entities. See GRC AR, Tab Q, VRH TEC Report, at 1. Although the TEC evaluated VRH's two commercial contracts as "highly relevant," it did not consider the quality of VRH's performance on these contracts. Instead, the TEC focused on CPARS reports for contract references not identified by VRH. Specifically, it focused on VRH's performance of a contract with the Department of Energy, which was for professional support services, including financial analysis and the development of policy recommendations, relating to the "evaluation and award of direct loans and loan guarantees to applicants seeking funding for the commercialization of technologies in the automotive, renewable and conventional energy fields". GRC AR, Tab M, VRH Past Performance Information, at 2. The record, however, lacks any analysis of how this Department of Energy reference was relevant to the student loan debt collection activities contemplated under this RFP, or any explanation for why the agency eschewed consideration of the highly relevant references cited by VRH. Here again, it is apparent that the agency unreasonably relied almost exclusively upon CPARS reports in lieu of reasonably considering available past performance information, which the agency itself identified as being highly relevant.

Other Past Performance Evaluation & Documentation Concerns

The record also reflects certain other anomalies in the evaluation of offerors' past performance. Notwithstanding the protesters' detailed rebuttals to the agency's contemporaneous evaluation findings, in many instances the agency's reports fail to respond--either specifically or generally--to the protesters' arguments. The following issues, in the absence of any detailed explanation from the agency in the contemporaneous record or its post-protest responses, further raise concerns with the reasonableness of the agency's evaluation.¹³

¹³ Where an agency fails to document or retain evaluation materials, it bears the risk that there may not be an adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for its source selection decision.

(continued...)

a. ACSI Team

The ACSI Team challenges the SSA's decision to change its past performance rating, which the TEC evaluated as highly satisfactory, to neutral. The protester, which is a contractor team, contends that the SSA erred in determining that the past performance of its individual members should not be evaluated, and further finding that the cited references did not involve student loan collections. We agree with the protester that the SSA's determination to change the ACSI Team's past performance rating was inconsistent with the terms of the solicitation, and was otherwise unreasonable.

The RFP allowed offerors to submit proposals both individually and as a member of a contractor team pursuant to FAR subpart 9.6, which were subsequently incorporated into the RFP by amendment. See, e.g., RFP, amend. No. 3, Q&A, at Line 337. As relevant, the RFP specifically provided that team members should submit relevant past performance information:

Q: If an offeror proposes a subcontractor, can one or more of the three past performances be from the subcontractor?

A: No, the past performance information must be on the prime contractor. If the Offeror is proposing as a member of the team, past performance should be provided on the members of the team.

Id. at Line 262 (emphasis added).

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Navistar Def., LLC; BAE Sys., Tactical Vehicle Sys. LP, B-401865 et al., Dec. 14, 2009, 2009 CPD ¶ 258 at 13. Additionally, in reviewing an agency's evaluation, we do not limit our consideration to contemporaneously-documented evidence, but instead consider all the information provided, including the parties' arguments, explanations, and any hearing testimony. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 10. While we accord greater weight to contemporaneous source selection materials as opposed to judgments made in response to protest contentions, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions--so long as those explanations are credible and consistent with the contemporaneous record. Glacier Tech. Solutions, LLC, B-412990.2, Oct. 17, 2016, 2016 CPD ¶ 311 at 7.

In response to the RFP, ACSI submitted its own proposal, as well as a proposal as part of a three member team. Consistent with the terms of the RFP, the TEC evaluated the team members' past performance and concluded that it was highly relevant and warranted a highly satisfactory rating. See Consolidated AR, Tab 77, ACSI Team TEC Report, at 2. The SSA, however, disagreed with the TEC's rating and instead evaluated the ACSI Team's past performance as neutral because there was no past performance information for the proposed team, as opposed to information for individual members. She also concluded that the past performance information presented "was not relevant to student debt loan collection or any other kind of debt collection." Consolidated AR, Tab 125, SSD, at 22. The SSA's decision was flawed for two reasons.

First, as set forth above, the RFP anticipated that team members' individual past performance would be evaluated, not just past performance as a team. Once the solicitation is issued and offerors are informed of the criteria against which their proposals will be evaluated, the agency must adhere to those criteria in making its award decision, or inform all other offerors of any significant changes made in the evaluation scheme. Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 5. Second, the SSA's finding that none of the references involved student loan debt collection is unsupported by the record. See, e.g., Consolidated AR, Tab 38, ACSI Team Proposal – § B, at 1-5 (discussing an ACSI reference for the collection of defaulted Federal Family Education Loan guaranteed loans involving billions of dollars in active accounts). Therefore, the SSA's downgrading of the ACSI Team's past performance was unreasonable.

b. TGSL

TGSL challenges the agency's assessment of an overall satisfactory rating of its past performance. We agree that the record does not support the reasonableness of the agency's evaluation of TGSL's past performance. The TEC found TGSL's three past performance references to be highly relevant, and the agency noted positive indicators of performance on TGSL's highly relevant contracts; nonetheless, the agency assigned TGSL a satisfactory rating overall. This rating was allegedly due to concerns that TGSL lacked demonstrated experience, which cannot be reconciled with the fact that the agency found TGSL's past performance references to have been "highly relevant" and there were no contemporaneously documented concerns regarding TGSL's lack of relevant experience.

More specifically, the contemporaneous record shows that TGSL's three past performance references were rated as highly relevant under the relevancy subfactor. See TGSL AR, Tab P, TGSL TEC Report, at 1.¹⁴ The three references

¹⁴ Pursuant to the agency's Source Selection Plan (SSP), a rating of "highly relevant" correlated to a finding that "[p]resent/past performance effort involved

(continued...)

all involved large student loan debt collection contracts, including two prime contracts with DOE and a subcontract for the incumbent requirements. Id. Under the quality subfactor, the agency rated TGSL as satisfactory. Id. at 2. The agency noted positive indicators of performance with respect to the prime contracts performed for DOE. Id.; see also TGSL Protest, TEC Chair Decl., at 1. There is no further contemporaneous analysis of TGSL's past performance in the record.

In her declaration submitted in response to the protest, the TEC Chair introduces several justifications for the agency's evaluation of TGSL's past performance as warranting only an overall "satisfactory" rating. Notwithstanding the TEC's determination that TGSL's past performance references were highly relevant (i.e., "essentially the same scope and magnitude of effort and complexities"), the TEC Chair explains that TGSL received a rating of only "satisfactory" under the quality subfactor because the past performance references did not demonstrate similar requirements as contemplated under the RFP. For example, with respect to the two prime contracts with DOE, the TEC Chair asserts that "there was no clear evidence of direct experience acting as a private collection agency with the ability in-house to accept multiple large account transfers per year," and "there was little indication of the connection between TG[SL]'s prior work and the specific items in the PWS." TGSL Protest, TEC Chair Decl., at 1, 2. This conclusion, however, directly contradicts the contemporaneous evaluation finding that the references demonstrated past performance that was "essentially the same scope and magnitude of effort and complexities" and the agency failed to provide any explanation to reconcile this apparent disconnect.¹⁵ Given the inconsistency, we afford the agency's post-protest explanations little weight, and conclude that the agency's documented evaluation does not reasonably support the agency's evaluation of TGSL's past performance.

(...continued)

essentially the same scope and magnitude of effort and complexities this solicitation requires." GRC AR, Tab J, SSP, at 7.

¹⁵ The TEC Chair also noted in her post-protest declaration that TGSL's rating under the quality factor reflected the agency's concern that it could not discern to what extent TGSL had utilized subcontractors on the two DOE prime contract references. See TGSL Protest, TEC Chair Decl., at 2, 3. This criticism, however, is not documented anywhere in the contemporaneous evaluation record. Further, it does not appear that the agency similarly evaluated other proposals--including for several of the awardees--to determine to what extent a reference was performed by the offeror or any subcontractors. To the extent DOE essentially applied a more exacting standard in reviewing TGSL's proposal than it did in reviewing the other proposals, this was improper. See Lockheed Martin Info. Sys., B-292836 et al., Dec. 18, 2003, 2003 CPD ¶ 230 at 12.

c. W&F

W&F argues that the SSA improperly downgraded its past performance to marginal. We agree. The record reflects that the TEC evaluated W&F's past performance as satisfactory. Under the relevance subfactor, the TEC evaluated W&F's three references, which were for student loan collection projects for a state agency and several state universities, as somewhat relevant because "the size of their projects, individually and collectively are not the same size as the projected workload as defined in the PWS." W&F AR, Tab N, W&F TEC Report, at 1. Under the quality subfactor, the TEC noted no quality concerns, and noted that the three projects all had positive performance indicators. *Id.* at 2. The SSA, while adopting the TEC's underlying evaluation findings, disagreed with the TEC's overall satisfactory rating, and instead rated W&F's past performance as marginal solely because of the relatively small size of the references. *See* Consolidated AR, Tab 125, SSD, at 50-51.

To the extent the SSA concluded that W&F did not have relevant past performance, the protester challenges the assignment of a marginal rating, arguing that it should have instead received a neutral rating, citing the FAR's prohibition against treating a company without relevant past performance unfavorably.¹⁶ In responding to the protest, the agency and intervenors argue that awarding W&F a neutral rating would be inappropriate where W&F has at least somewhat relevant past performance. We find that the SSA's assignment of a marginal rating for W&F's past performance was unreasonable.

The FAR is clear that in the case of an offeror without a record of relevant past performance, or where information on past performance is not available, the offeror may not be evaluated favorably or unfavorably with respect to past performance. FAR § 15.305(a)(2)(iv). As noted above, the TEC found that there were no concerns regarding the quality of W&F's performance, and instead identified positive performance indicators. Accordingly, the sole basis for the SSA's decision to downgrade W&F's past performance to marginal was W&F's perceived lack of sufficiently relevant past performance. This is precisely the type of adverse evaluation that is prohibited by the FAR.

In reaching this conclusion, we expressly reject the evaluation approach advanced by the intervenors and the agency since following their logic would yield an anomalous result. Specifically, under their reasoning, a firm with somewhat relevant past performance and a positive performance history, such as W&F, would

¹⁶ W&F also challenges the agency's determination that its references were only somewhat relevant due to their size and scope. We find the agency's assessment in this regard to be reasonable and adequately documented, and therefore find no basis to sustain the protest on that basis.

receive a lower rating than a firm without any past performance, which would receive a neutral rating. The firm with some past performance, albeit positive, would be at a disadvantage, as compared to the firm without any past performance. Such an evaluation is without a rational basis on its face. See, e.g., Shaw-Parsons Infrastructure Recovery Consultants, LLC; Vanguard Recovery Assistance, JV, supra (sustaining protest where the agency's approach to evaluating past performance was unreasonable because it had the effect of penalizing offerors based on the inclusion of somewhat relevant past performance); United Paradyne Corp., B-297758, Mar. 10, 2006, 2006 CPD ¶ 47 (same). Accordingly, at worst, W&F's past performance should have been rated neutral.

d. Collecto/TGSL/GRC

Collecto, TGSL, and GRC argue that the agency failed to adequately document and support their satisfactory ratings. In response to the protests, the TEC Chair asserted that the TEC declined to afford certain protesters more credit in the evaluation of their past performance because those protesters presented past performance information "in a self-serving manner" without providing "concrete details." See, e.g., Collecto Protest, TEC Chair Decl., at 3. These assertions are unreasonable for several reasons. First, these concerns were not documented and are not supported by the contemporaneous record. For example, while the TEC Chair raises these post-protest arguments with respect to Collecto's non-federal references, the contemporaneous TEC report specifically notes that Collecto's proposal includes rankings, quality statements, and statistics for the references. Collecto AR, Tab K, Collecto TEC Report, at 2. Based on our review of the record, it appears that the TEC's contemporaneous finding is consistent with the information included in the protester's proposal, including metrics showing that Collecto's performance on the two references exceeded the performance of several awardees. See, e.g., Collecto AR, Tab G, Collecto Proposal – § B, at 16 (showing Collecto had higher resolution rates and a total overall ranking than Windham, FMS, and TSI for the same customer).

Second, the nature of the TEC Chair's criticism is unreasonable and unsupported. The TEC Chair points to no specific examples of the statements that were, for example, unsupported or not based on quantitative or qualitative metrics that may have impacted the agency's confidence in the fidelity or reliability of the information. Indeed, as to Collecto, the protester included detailed qualitatively-derived customer metrics to validate its performance. See, e.g., id. at 16-21. Similarly, GRC and TGSL also appear to have provided objective and verifiable quality indicators in their proposals. See, e.g., GRC AR, Tab H, GRC Proposal -- § B, at 9, 11-12, 17, 19, 25-28; Tab P, GRC TEC Report, at 2 (finding "GRC provides evidence of quality performance" for its three references); TGSL AR, Tab G, TGSL Proposal -- § B, at 6-7, 17-18; Tab P, TGSL TEC Report, at 2 (finding TGSL provided indicators of positive performance for its two prime contract references); Tab O, TGSL Past Performance Reference, at 1-2 (for third reference, customer stated that it was

“extremely happy” with TGSL’s performance, and noted that TGSL has maintained “thorough compliance and zero complaints”). Therefore, we find the agency’s post hoc justifications for its ratings are unsupported by the record and unreasonable.

Failure of Awardees to Disclose Negative Judgments

Several protesters argue that certain awardees should be excluded from the competition for making material misrepresentations by failing to disclose relevant negative judgments as required by the RFP. The protesters further contend in the alternative that the agency unreasonably failed to consider the undisclosed negative judgments as part of its past performance evaluations and responsibility determinations. For the reasons that follow, we find that GCS unreasonably failed to disclose a relevant adverse judgment that the agency should have considered. Other than this one exception, however, we find no basis to sustain the protesters’ remaining allegations as alleged with respect to the other awardees.

The RFP required offerors to provide a summary of negative judgments assessed against the offeror since October 1, 2012. RFP, § E.1, § A. The RFP defined “Negative Judgments” to include: “loss of a civil lawsuit (not to include settlements), criminal conviction of a corporate official that was related to financial mismanagement of the Offeror’s organization, and/or a fine or loss of a license as determined by a governing body.” Id. The RFP contemplated that negative judgments would be considered as part of the agency’s responsibility determination. Id., § E.2.4. Additionally, the record reflects that information submitted in response to the section A instructions (whether they arguably fell within the required disclosure or not, for example, as in the case of disclosed settlement agreements) was also evaluated in connection with the agency’s past performance evaluation. See, e.g., Collecto AR, Tab K, Collecto TEC Report, at 2; Consolidated AR, Tab 81, Van Ru TEC Report, at 2.

As a general matter, we deny the majority of the protesters’ allegations that certain awardees failed to disclose or the agency otherwise failed to reasonably consider relevant negative judgments as defined by the RFP. For example, we disagree with the protesters that certain awardees failed to disclose negative judgments that were in fact stipulated judgments memorializing settlement agreements. The RFP’s definition of negative judgments expressly excludes “settlements.” RFP, § E.1, § A. Additionally, we find no merit to the arguments that the awardees unreasonably failed to disclose judgments that pre-date the RFP’s October 1, 2012 start of the relevancy period, or information about on-going, but unresolved civil actions or complaints.

With respect to GCS, the awardee represented in its proposal that “[w]e are pleased to report we have not had a negative judgment of any kind during the specified period of October 1, 2012, to present on any accounts company-wide.” Consolidated AR, Tab 32, GCS Proposal -- § A, at 2. Contrary to this

representation, however, the protesters identified one adverse court determination of liability that was not disclosed by GCS. Specifically, on November 5, 2014, the United States District Court for the District of South Carolina issued an order granting a plaintiff's motion for partial summary judgment against GCS for violation of the Fair Debt Collection Practices Act (FDCPA). The District Court ruled in the plaintiff's favor on the matter of liability, finding GCS had violated the FDCPA, but deferred ruling on the question of damages. Chatman v. GC Servs., LP, 57 F. Supp. 3d 560, 571 (D.S.C. 2014). This ruling appears to be a loss of a civil case on the question of liability that was issued after October 2012, and therefore should have been disclosed by GCS. In reaching this conclusion, we are unpersuaded by GCS's rebuttal that, because it subsequently settled the case, it was not required to disclose the District Court's adverse judgment on liability. See GCS Comments at 16; GCS Supp. Comments at 8. The settlement, however, was with respect to damages as a matter of quantum, and did not negate the underlying negative judgment concerning liability. Consistent with our recommendation that the agency conduct and document a new evaluation and award determination, the agency should consider this subsequently identified information in connection with GCS.

Management Approach

As set forth below, our Office identified a number of errors in the agency's evaluation of proposals under the management approach factor, and therefore sustain a number of the protests on this basis. Some of the errors appear to have been pervasive or impact the evaluation of several proposals. In such circumstances, we address below the nature of the concern and highlight representative examples. In other instances, the evaluation errors appear to have been limited to individual proposals.

As a general matter, in reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency. APEX-MBM, JV, B-405107.3, Oct. 3, 2011, 2011 CPD ¶ 263 at 4. Although we will not substitute our judgment for that of the agency, we will question the agency's conclusions where they are inconsistent with the solicitation criteria, undocumented, or not reasonably based. Sonetronics, Inc., B-289459.2, Mar. 18, 2002, 2002 CPD ¶ 48 at 2-3.

Material Changes in Key Personnel

Several protesters allege that the agency should have evaluated Premiere Credit, GCS, FMS, TSI, and CBE as ineligible for award due to the subsequent unavailability of certain of their respective proposed key personnel. The agency and intervenors argue, among other grounds, that the individuals at issue were not "key" personnel as defined in the RFP or that the agency otherwise did not materially rely on the availability of those individuals. For the reasons that follow, we find that all offerors had a duty to update the agency with respect to material

changes in their proposed key personnel that occurred prior to the time of award, more than nine months after proposals were submitted.

Our Office has explained that offerors are obligated to advise agencies of changes in proposed staffing and resources, even after submission of proposals. Pioneering Evolution, LLC, B-412016, B-412016.2, Dec. 8, 2015, 2015 CPD ¶ 385 at 9; Greenleaf Constr. Co., Inc., B-293105.18, B-293105.19, Jan. 17, 2006, 2006 CPD ¶ 19 at 10; Dual, Inc., B-280719, Nov. 12, 1998, 98-2 CPD ¶ 133 at 3-6. When the agency is notified of the withdrawal of a key person, it has two options: either evaluate the proposal as submitted, where the proposal would be rejected as technically unacceptable for failing to meet a material requirement, or open discussions to permit the offeror to amend its proposal. Pioneering Enters., LLC, supra.

The RFP here required offerors to submit resumes for its proposed key personnel. RFP, § E.1. While offerors were required to propose at minimum a contract representative and project manager, they were permitted to propose additional key personnel. RFP, § C.3.22(b); amend. No. 3, Q&A, Lines 153, 158, 214. Offerors' management approaches, which included proposed key personnel's resumes, were due by February 22, 2016. RFP, § E.1.1. Based on publically available information, the protesters contend that several individuals named in the awardees' proposals subsequently left the awardees' employ prior to the December 9, 2016 awards.

With respect to GCS, the protesters allege that both its proposed Assistant Vice President, Student Loan Division, and Director of Corporate Security departed from GCS prior to award. GCS identified both individuals as key personnel, and submitted resumes for the two individuals. Consolidated AR, Tab 32, GCS Proposal – § A, Key Personnel Resumes, at 2, 11-12, 18-20. Similarly, the protesters allege that TSI's proposed Director of Backend Operations and Vice President of Learning Services and Quality Monitoring departed from TSI prior to award. TSI identified both individuals as key personnel, and submitted resumes for the two individuals. Consolidated AR, Tab 40, TSI Proposal - § A, at 14, 18-19, 21.

In responding to the protest, GCS does not contest that the individuals identified above have left GCS's employ. Rather, GCS argues that there was no duty to update its proposal because the individuals were not key personnel as defined in the RFP, and the agency's evaluation did not rely on either of the individuals. We disagree. As an initial matter, it is immaterial whether the proposed key personnel were explicitly required by the RFP or were identified as key personnel by an offeror. See Patricio Enters. Inc., B-412738, B-412738.2, May 26, 2016, 2016 CPD ¶ 145 at 13-14. Here, the record shows that the protesters self-identified these individuals as key personnel and presented them as important parts of their management approaches.

Additionally, there is no indication that the agency restricted its evaluation only to the two required key personnel positions identified in the RFP. See Consolidated AR, Tab 71, GCS TEC Report, at 2 (“Key personnel proposed are working under the [incumbent] contract, and possess the experience and skills necessary to manage the requirements of this solicitation.”); Tab 79, TSI TEC Report, at 3 (making a similar finding). Based on this record, and our prior decisions with respect to an offeror’s duty to update the government of material changes in its proposal, we find that the parties were obligated under these circumstances to notify the agency of the withdrawal of their key personnel.¹⁷

As for the appropriate remedy to address these concerns, we do not adopt the protesters’ preferred course that we recommend that the affected awardees be automatically excluded from the competition. First, we note that no protester has convincingly demonstrated that the awardees made any knowing material misrepresentations with respect to the proposed key personnel (e.g., that the awardees proposed personnel that they knew at the time of proposal submission would not be available). Second, whether the agency chooses to exclude any materially changed proposals from further consideration or to open discussions is a matter entrusted to the agency’s discretion.

Finally, we note that with respect to six of the protesters that raised this basis of protest, intervenor CBE in its request for partial dismissal identified similar information demonstrating that individuals proposed by the protesters themselves were no longer available to the protesters (ACT, Alltran, CTI, Performant, PFS, and Sutherland). See CBE Request for Partial Dismissal (Mar. 1, 2017) at 12-13 and exh. Nos. A-E. The affected protesters uniformly failed to rebut the intervenor’s assertions. In light of the significant number of potentially affected offerors (both awardees and protesters), we do not believe that recommending automatic exclusion is necessarily required. Rather, the agency should determine the reasonable course it wishes to take in addressing these concerns.

¹⁷ Premiere Credit submitted information rebutting Performant’s allegation regarding the alleged unavailability of one of its proposed key personnel. Premiere Credit Supp. Comments at 3 and exh. A. CBE and FMS argue that the agency could not have materially relied on their former employees because, although designated as key personnel, no resumes were provided for the individuals and, therefore, they could not have reasonably been relied upon in the agency’s evaluation. See Consolidated AR, Tab 39, CBE Proposal, at 106 (including Director of Training in chart listing Key Personnel, but not providing a resume); Tab 30, FMS Proposal, at 5 (same with Director of Corporate Security). In light of our recommendation that the agency seek proposal validity confirmation from or open discussions with all offerors, however, we need not resolve these matters.

Failure to Consider Totality of the Proposals

Our Office has recognized that it is an offeror's responsibility to prepare an adequately written proposal for the agency to evaluate. Dorado Servs., Inc., B-402244, Feb. 19, 2010, 2010 CPD ¶ 71 at 4. In this regard, we have explained that an agency is generally not required to search other volumes of an offeror's proposal for information bearing on identified weaknesses. Carolina Satellite Networks, LLC; Nexagen Networks, Inc., B-405558 et al., Nov. 22, 2011, 2011 CPD ¶ 257 at 6 n.8. As set forth herein, however, we conclude that the agency's consideration of the offerors' information submitted in response to the single management approach evaluation factor was unreasonable.

The RFP provided instructions regarding the contents of the offerors' management plans and their quality control plans (QCPs). In their management plans, offerors were to address four broad topic areas: (1) how they will mitigate the risk associated with a high volume of account transfers; (2) how they will mitigate the risk of potential unsuccessful performance; (3) their successful past experience managing requirements similar in scope, volume, and complexity; and (4) the management of any inter-company transfers or transfers to subcontractors, including risk mitigation strategies. RFP, § E.1, § A, Management Plan. In their respective QCPs, offerors were to address the following three broad topic areas: (1) performance management and quality control approaches, including planning, compliance, internal assessment, prevention/mitigation, and monitoring of service performance deficiencies to ensure high quality performance; (2) existing processes in place to ensure borrower's interests are protected and all employees and subcontractors adhere to applicable laws and regulations; and (3) existing processes and practices in place to allow the government to wholly access and oversee vendor performance, including, borrower contacts and communications. Id., § C, QCP. Although requiring different information in two distinct sections, the RFP provided that the management plan, quality controls, and key personnel resumes would all be evaluated under the management approach factor. Id., § E.2.1, Factor 2, Management Approach; amend. No. 4, Q&A, at 3.

As discussed above, to reach the consensus management score, the TEC reviewed section A of the offerors' proposals (which included their management plans and key personnel resumes), while the quality control evaluator (QCE) evaluated the QCPs. The evaluators, however, do not appear to have contemporaneously reviewed the entirety of the offerors' proposals with respect to their complete management approaches (i.e., management plan, key personnel resumes, and QCP). The agency's cabined review of proposals under the management approach factor, however, resulted in an unreasonable evaluation in several instances. This was because offerors logically organized their proposals in accordance with the solicitation's instructions, but were penalized by the agency's failure to consider the merits of the management plan and QCP in a holistic manner as contemplated by the RFP's evaluation criteria.

For example, with respect to GRC, the TEC rated its management plan as “marginal” because it included insufficient detail on, among other matters, training, subcontractor management, call monitoring, and complaint handling. GRC AR, Tab P, GRC TEC Report, at 2. First, we note that the RFP did not explicitly require offerors to address many of these allegedly missing items in their management plans. Agencies are required to evaluate proposals based solely on the factors identified in the solicitation, and must adequately document the bases for their evaluation conclusions. Intercon Assocs., B-298282, B-298282.2, Aug. 10, 2006, 2006 CPD ¶ 121 at 5. While agencies properly may apply evaluation considerations that are not expressly outlined in the RFP, where those considerations are reasonably and logically encompassed within the stated evaluation criteria, there must be a clear nexus between the stated criteria and the unstated considerations. Global Analytic Info. Tech. Servs., Inc., B-298840.2, Feb. 6, 2007, 2007 CPD ¶ 57 at 4.

As addressed above, the RFP set forth four broad topic areas that offerors were supposed to address in their 10-page management plans, and three broad topic areas to be addressed in their QCPs. GRC contends that the specific areas that were allegedly not addressed in its management plan were not reasonably encompassed within the broad RFP criteria for the plan, and therefore constitute unstated evaluation criteria. In response to GRC’s (and other protesters’) challenges, the agency responds that the flaws in GRC’s management plan and other related matters evaluated by the TEC with respect to other protesters were reasonably encompassed within the RFP’s requirement for offerors to address in their management plans how they would “mitigate the risk of potential unsuccessful performance.” RFP, § E.1, § A, Management Plan.

We are not convinced that the RFP’s very open-ended request for how the contractor would generally mitigate the risk of “unsuccessful performance” was sufficient to put offerors on notice of the specific components that the TEC was looking for offerors’ to address in their management plans. In this regard, the protesters appear to address risk mitigation in their respective management plans, albeit sometimes not addressing each of the specific subcategories that the agency asserts should have been discernable from the RFP’s terms. Even assuming, however, that this type of information arguably was encompassed within the RFP’s terms, the information appears to be significantly more related to the enumerated requirements for the QCP, than to the requirements for the management plan. For example, details regarding employee training logically could be encompassed within the requirement to address existing processes for compliance, prevention/mitigation, and ensuring borrower’s interests are protected, all of which was to be included in the QCP. See RFP, § E.1, § C, QCP.

Accepting for the sake of argument that the identified areas of concern logically could have been encompassed within either proposal section covered by the

management approach factor, we are nevertheless concerned that the agency's failure to reasonably consider the totality of the management plan and QCP resulted in an unreasonable final single consolidated rating under the management approach factor. In response to GRC's protest, the agency argues that the TEC and QCE reasonably did not review both the management plan and QCP, instead they separately evaluated the proposal sections and then reached a consensus rating for the management factor.¹⁸ This position, however, ignores that both sections were to be evaluated under a single factor.

With respect to GRC, a review of the proposal reflects that much of the purportedly missing information is addressed in at least one section of the proposal. For example, with respect to training, GRC's management approach includes a section addressing the general contours of GRC's training curriculum. See GRC AR, Tab H, GRC Proposal – § A, at 7-8. The management plan then explicitly points to the QCP for additional details regarding GRC's training and performance development programs. Id. The QCP then provides several pages discussing training's role in GRC's overall three lines of defense risk mitigation approach, and additional detail regarding initial, ongoing, and annual recertification training. Id., § C, at 2-8. Similarly, the management plan addresses managing inter-company and subcontractor transfers, while the QCP provides additional information about subcontractor training and management (including a specific reference back to the discussion in the management plan). Id., § A, at 10-11; id., § C, at 8, 13-14, 41-42. Furthermore, call monitoring and complaint handling are addressed in the QCP. See, id., § C, at 33-41, 43, 47-48. On this record, we find that the agency unreasonably failed to consider the totality of GRC's management plan and QCP in evaluating GRC's proposal under the single management approach factor.¹⁹

¹⁸ In response to the protest, the QCE reviewed the QCP and concluded that the weaknesses identified by the TEC in the management plan were not adequately addressed in GRC's QCP. See GRC Protest, QCE Decl., at 3-5. The QCE's declaration, however, is unsupported by the contemporaneous record and inconsistent with the agency's position that no such analysis was required. Accordingly, we view the QCE's declaration as essentially a new evaluation offered in the heat of the adversarial process to which we accord little or no weight. See Target Media Mid Atlantic, Inc., B-412468.6, Dec. 6, 2016, 2016 CPD ¶ 358; Smartronix, Inc.; ManTech Advanced Sys. Int'l, Inc., B-411970 et al, Nov. 25, 2015, 2015 CPD ¶ 373.

¹⁹ In the contemporaneous record, the QCE determined that GRC's QCP "includes limited descriptions of the existing processes in place to ensure borrower's interests are protected and all employees and subcontractors adhere to laws and regulations required under this solicitation." Consolidated AR, Tab 83, QCE Summary Evaluations, at 8. This concern, however, is not addressed in the QCE's declaration submitted in response to the protest. In fact, the QCE appears to retract the contemporaneously assessed weakness. See GRC Protest, QCE Decl., at 5

(continued...)

Similarly, the TEC and SSD noted that CTI's management plan only provided high level overviews with respect to the management of subcontractors and employee training. See Consolidated AR, Tab 67, CTI TEC Report, at 2; Tab 125, SSD, at 25. Here again, however, there is no evidence that the TEC reasonably considered the more detailed information in the sections of the QCP titled "Training and Professional Development" or "Vendor Oversight." See Consolidated AR, Tab 28, CTI Proposal – § C, at 10-15, 42-45.

In several other cases, it appears that the agency similarly failed to reasonably consider the entirety of the offerors' management approaches (i.e., the management plan and QCP). Therefore, the evaluation of the following additional protesters' management approaches appear to have suffered from similar flaws as addressed in this section: ACSI; the ACSI Team; Collecto; and W&F.²⁰

Other Unstated Evaluation Criteria

In addition to the examples addressed in the previous section, the record reflects that the agency imposed additional unstated evaluation criteria in the evaluation of proposals under the management approach factor. For example, GRC, ACSI, the ACSI Team, CTI, Performant, PFS, Allied, and Collecto all received weaknesses with respect to their QCPs for failing to propose "quality control managers" with certain minimum educational and certification requirements. See GRC AR, Tab P, GRC TEC Report, at 2; Consolidated Protests, QCE Decl., at 6, 8, 11; Consolidated AR, Tab 96, PFS QCE Worksheet, at 4; Allied Protest, QCE Decl., at 2; Collecto

(...continued)

(stating that the QCP "provided the minimal requirements required for regulatory training"). In light of the absence of any specific rebuttal to GRC's protest arguments and based on the information contained in the QCE's declaration, we assume that the agency has effectively conceded that the originally assessed weakness was erroneous.

²⁰ Furthermore, the protesters argued that there was unequal application of these specific subcategories of granularity sought by the agency. See, e.g., ACSI Comments & Supp. Protest at 9-11; Performant Comments & Supp. Protest at 42-43. An agency is required to evaluate proposals in a manner that is consistent with the terms of the solicitation, and to evaluate offers on a common basis. Wackenhut Servs., Inc., B-402550.2, June 7, 2010, 2010 CPD ¶ 204 at 6. Where the agency's evaluation does not adhere to the solicitation's evaluation criteria, or where proposals are evaluated disparately, our Office will sustain the protest. Id. The agency did not respond to the specific instances of disparate treatment identified by the protesters. In the absence of any detailed contemporaneous analysis or a detailed rebuttal to the protests, we cannot conclude that the agency's evaluation was reasonable.

Protest, QCE Decl. at 2. Although the RFP identified certain positions as key personnel, and indicated that such positions would be evaluated by the agency, the quality control manager position was not identified as such, and the RFP did not provide any minimum requirements for this position. As provided by the RFP, offerors were merely instructed to address “[w]ho will be responsible for Quality Control [] during performance of the contract?” RFP, PWS, at 50.

Notwithstanding that a “quality control manager” was not a required key personnel position, and the RFP did not otherwise include any minimum educational or certification requirements for key personnel, the QCE evaluated proposals using the following standard:

Key Personnel Qualifications

Quality Control Manager

1. Education: Minimum of a bachelor degree from a 4-year accredited college or university with major study in information technology, engineering, quality assurance, or other related technical fields of study. Hold at least one of the following certifications from recognized industry and/or government program:
 - American Society for Quality (ASQ) Certified Quality Auditor (CQA)
 - Global Association for Quality Management (GAQM) Certified Software Quality Manager
 - American Society for Quality (ASQ) Certified Quality Manager (CQM)
2. Experience: Minimum 10 years of experience in the management of quality control & quality assurance [of] project[s] of similar size, type, and complexity as that stated in this solicitation.

See, e.g., GRC AR, Tab S, GRC QCP Evaluation, at 1-2.

As set forth above, the agency clearly expected offerors to propose a quality control manager satisfying specific educational and experience requirements as a required key personnel position. Such an evaluation was not reasonably encompassed by the RFP, and the application of this unstated evaluation criterion was unreasonable.

The agency applied another unstated evaluation criterion in its evaluation of offerors' QCPs. Specifically, the agency downgraded offerors for failing to provide revision control information (e.g., revision number, history, date, total pages) for

their QCPs. Based on the absence of this information, the agency inferred that offerors did not maintain sufficient internal document control and management techniques. See, e.g., GRC AR, QCE Decl., at 1-2. We find that the evaluation on this basis with respect to the following protesters was unreasonable: GRC, CTI, ACSI, the ACSI Team, Van Ru, Performant, PFS, Allied, and Collecto. Id.; Consolidated AR, QCE Decl., at 2, 5, 8, 10-11, 13; Allied Protest, QCE Decl., at 1; Collecto AR, QCE Decl., at 2.

Specifically, we find that the agency's demand for a specific proposal format and more general information about document control procedures are not reasonably encompassed in any of the stated RFP requirements for the QCP, nor was such a requirement identified with respect to the proposal submission instructions. Furthermore, absent some specific RFP instruction, we do not believe it was reasonable to generally assume that an offeror lacks adequate internal document control procedures where it does not include specific document control information for a specific proposal.²¹

Industry Standards

Additionally, the record reveals that the agency did not evaluate offerors consistently with respect to the level of detail required to demonstrate offerors' understanding and compliance with industry quality management standards. As addressed above, an agency is required to evaluate proposals in a manner that is consistent with the terms of the solicitation, and to evaluate offers on a common basis. Wackenhut Servs., Inc., supra.

The solicitation required offerors to demonstrate a thorough understanding and proven methodology for meeting or exceeding applicable industry-recognized

²¹ The TEC also assessed a weakness because W&F's resumes "were incomplete and did not adequately depict specific work experience with dates and locations of employment." W&F AR, Tab N, W&F TEC Report, at 2. This assessed weakness, which effectively elevated form over substance by requiring a specific formatting not set forth in the RFP, was unreasonable. Although the resumes did not include a format setting forth the individual's respective positions and years of service for every position, the provided narratives do in most instances include that general information. For example, with respect to W&F's proposed project manager, the submitted resume explains that he worked for W&F for four years as a sales representative, and then was promoted to his current position of Executive Vice President, Sales & Compliance in January 2003. W&F AR, Tab H, W&F Proposal -- § A, at 18. Thus, to the extent the agency downgraded W&F's proposal for failing to present its resumes in a particular, undisclosed format, as opposed to evaluating the qualifications of the proposed individuals, we find the assessed weakness to be unreasonable.

quality standards (e.g., International Organization for Standardization (ISO) 9001:2008 Quality Management Systems) in their QCPs. RFP, PWS, at 50. Several protesters argue that the assignment of weaknesses for failing to adequately address this requirement was unreasonable where their proposals explained that they were structured on such recognized quality standards, and, in any event, where their proposed level of detail was essentially the same as that provided by several of the awardees which received strengths. In response, the agency argues that it was not the certifications in accordance with industry standards themselves that were critical, but, rather, that offerors provide a meaningful demonstration of the incorporation of those standards into their QCPs. See, e.g., Agency Supp. Legal Memo. at 20.

Contrary to the agency’s post-protest arguments, however, there is no indication that the awardees, which were evaluated as having strengths in this area, provided more detailed information (e.g., specific discussion of applicable provisions of the standard, cross-referencing matrices). Rather, as the following examples show, the same general statements were treated much differently by the agency:

Offeror	Proposal References to Standard	Evaluation Finding
CBE (Awardee)	<p>“Our [QCP] is compliant with [ISO] 9001: 2015 Quality Management System.”</p> <p>“This [QCP] is compliant with [ISO] 9001: 2015 Quality Management System.”</p> <p>Consolidated AR, Tab 39, CBE Proposal – QCP, at 2, 44.</p>	<p><u>Strength:</u> “States they are compliant with ISO 9001:2015.”</p> <p>Consolidated AR, Tab 99, CBE QCP Evaluation, at 5.</p>
Windham (Awardee)	<p>“Windham’s comprehensive Compliance Management Program is a formal, written compliance program that is aligned with ISO 9000 principles, to prevent or reduce regulatory violations, protect consumers from non-compliance and associated harms, and help align business strategies with these outcomes.”</p> <p>AR, Tab 43, Windham Proposal – QCP, at 3 (emphasis in original).</p>	<p><u>Strength:</u> “Aligned with ISO 9000 principles.”</p> <p>Consolidated AR, Tab 103, Windham QCP Evaluation, at 5.</p>

Offeror	Proposal References to Standard	Evaluation Finding
ACSI Team	<p>“Industry standard practices, namely the Consumer Financial Protection Bureau’s Collection Agency Audit Guidelines [CFPB Guidelines] as well as ISO 9001:2015 (formerly ISO 9001:2008) Quality Management System, which form the baseline structure and approach for all of ACSI’s processes and related documentation.”</p> <p>“Our QC process methodology and Quality Management System are based on industry practices, namely the [CFPB Guidelines] as well as ISO 9001:2015 . . .”</p> <p>Consolidated AR, Tab 38, ACSI Team Proposal -- § C, at 3, 4.</p>	<p><u>Concern:</u> “The QCP discusses parts of standards including FISMA third-part confirmation, NIST, SSAE 16, ISO 27002 and PCI DSS. While these are worthy standards, they are security focused and do not address meeting or exceeding applicable industry recognized quality standards and objective like ISO 9001:2008 as requested in the solicitation.”</p> <p>Consolidated Protests, QCE Decl., at 10-11; <u>see also</u> Tab 98, ACSI Team QCP Evaluation, at 5 (noting the QCP’s references only to the standards identified above).</p>
Performant	<p>“Within the QCP, we apply the ISO 9001:2015 standards as a guide and framework to help ensure the needs of borrowers, the ED, and other stakeholders are met while meeting statutory and regulatory requirements.”</p> <p>Consolidated AR, Tab 34, Performant Proposal – QCP, at 4.</p>	<p><u>Concern:</u> “In its QCP, Performant claimed that [it applied ISO 9001:2015 standards]. However, this can’t be verified in the QCP. In fact the ISO standard is only referenced once.”</p> <p>Consolidated AR, QCE Decl., at 5-6.</p>

We fail to see how the agency can reasonably reconcile the fact that some offerors were awarded strengths for merely stating that their plans were aligned with relevant industry standards, while some offerors were assigned weaknesses or otherwise were not credited with strengths for making nearly identical representations. See Consolidated AR, Tab 27, ACSI Proposal – § C, at 98, 99 (same as the ACSI Team above), Tab 28, CTI Proposal – § C, at 1 (referencing ACA International’s Professional Practice Management System [PPMS]); W&F AR, Tab H, W&F Proposal - § C, at 10 (discussing PPMS); GRC AR, Tab H, GRC Proposal – § C, at 9 (referencing Institute of Internal Audit standards).

Our concern is further compounded where the QCE documented no findings, either positive or negative, for several awardees with respect to industry quality management standards, suggesting that the agency failed to evaluate several of the awardees in this regard. See Consolidated AR, Tab 95, Premiere Credit QCP Evaluation, at 5; Tab 100, TSI QCP Evaluation, at 5; Tab 101, VRH QCP Evaluation, at 5. As such, the agency's evaluation record lacks reasonable support.

Other Evaluation & Documentation Concerns

The record also raises other concerns with the agency's evaluation of offerors' management approaches. Again, the protesters provided detailed rebuttals to the agency's contemporaneous evaluation findings; however, in many instances the agency failed to respond--either specifically or generally--to the protesters' arguments. The following issues, in the absence of any detailed explanation from the agency in the contemporaneous record or its post-protest responses, further raise concerns with the reasonableness of the agency's evaluation. See Navistar Def., LLC; BAE Sys., Tactical Vehicle Sys. LP, supra.

a. DMA

As discussed above, while a SSA enjoys broad discretion to accept or reject lower-level evaluators' findings, the exercise of that discretion must be reasonable, adequately documented, and consistent with the solicitation's evaluation criteria. AT&T Corp., supra; AIU N. Am., Inc., supra. Furthermore, agencies may not base their selection decisions on adjectival ratings alone, since such ratings serve only as a guide to intelligent decision-making; source selection officials are required to consider the underlying bases for ratings, including the advantages and disadvantages associated with the specific content of competing proposals. Metis Solutions, LLC, et al., B-411173.2 et al., July 20, 2015, 2015 CPD ¶ 221 at 13. Here, the SSA unreasonably evaluated DMA's management approach.

The TEC evaluated DMA's management approach as warranting a highly satisfactory rating. Specifically, the TEC determined that:

[DMA's] Management Approach demonstrates a complete understanding of all of the requirements, and proposes cost effective approaches and solutions that utilize standard industry practices, technologies, methodologies, and processes.

[DMA's] proposed solution is currently implemented under [its incumbent] contract, and expected to result in the achievement of objectives with low risk.

Consolidated AR, Tab 68, DMA TEC Report, at 2.

The TEC report then proceeds to set forth various “highlights” of DMA’s management approach that support the highly satisfactory rating. Id. The SSA took no exception to the TEC’s findings, and included near verbatim portions of the findings in her SSD. Consolidated AR, Tab 125, SSD, at 29. The SSA, however, concluded that a highly satisfactory rating was not appropriate because the TEC’s consensus narrative used the phrase “low risk,” which aligned with a satisfactory rating according to the agency’s internal source selection plan. Id. at 28. We do not find the SSA’s conclusion to be reasonable because it represents a mechanical application of the SSP’s adjectival rating without due consideration to the relative merits of DMA’s proposal. In this regard, the TEC identified—and the SSA did not document any basis for disagreeing with—several strengths in DMA’s proposal, which provided the basis for the TEC’s “highly satisfactory” rating. The SSA’s mechanical overreliance on the SSP’s adjectival rating definition was not reasonable.

Furthermore, it appears that the SSA disparately treated DMA as compared to GCS, an awardee. Specifically, the SSA strictly relied on the TEC’s reference to DMA’s “low risk” management approach as the sole documented basis for reducing DMA’s management rating to satisfactory. She did not, however, similarly reduce GCS’s highly satisfactory rating, notwithstanding the fact that the TEC also referred to GCS’s management approach as “low risk.” Compare Consolidated AR, Tab 68, DMA TEC Report, at 2 (“[DMA’s] proposed solution is . . . expected to result in the achievement of the objectives with low risk.”) (emphasis added) with Tab 71, GCS TEC Report, at 2 (“[GCS] proposes a management plan that can support its efforts to achieve [the agency’s] objectives with low risk to the Government.”) (emphasis added). Indeed, the SSA specifically reiterates this finding verbatim in support of GCS’s highly satisfactory rating. Consolidated AR, Tab 125, SSD, at 10. Neither the contemporaneous record nor the post-protest responses from the agency attempt to reconcile this apparent unequal treatment.²²

²² Compounding our concern is the SSA’s treatment of Windham. The TEC rated Windham’s management plan unsatisfactory (and its overall management approach marginal) based on several specific, enumerated concerns. See Consolidated AR, Tab 82, Windham TEC Report, at 2. The SSA ultimately adjusted Windham’s overall rating up to satisfactory based entirely on its successful management of its incumbent contract. See Consolidated AR, Tab 125, SSD, at 17. The SSA’s willingness to disregard in total the TEC’s numerous documented concerns with Windham’s management plan, while fixating on one phrase in the TEC’s positive analysis of DMA’s plan (who also is an incumbent) was unreasonable. We also note that the SSA’s decision to overlook concerns with Windham’s management approach based on its prior successful management of its incumbent contract was not consistent with her treatment of other incumbents. See, e.g., Allied Protest, COSF, at 18 (“Past Performance [] was its own factor and evaluated separately from Management Approach []. Each portion of an Offeror’s proposal should stand (continued...)”) (continued...)

b. ACSI Team

The ACSI Team contends that the agency unreasonably evaluated its QCP. Although the agency provided a general defense of its evaluation, it failed to specifically respond to several of the protesters' arguments. For example, the ACSI Team questioned the reasonableness and consistency of the QCP evaluations on the basis that the ACSI Team's QCP, which was evaluated as marginal, was identical to the QCP submitted by ACSI, which was evaluated as satisfactory. See Consolidated AR, Tab 83, QCE Summary Evaluations, at 1-2. The QCE's post-protest declaration concedes that the two QCPs "were identical to each other's," but makes no effort to reconcile the disparate evaluation results. Consolidated Protest, QCE Decl., at 10. In the absence of any meaningful explanation for the disparate results, we cannot conclude that the contemporaneously evaluated weaknesses were reasonable.²³

c. GRC

The TEC assigned GRC a weakness for allegedly failing to address its processes for scaling up or down for changes in the volume of borrower accounts. GRC AR, Tab P, GRC TEC Evaluation Report, at 2. In response to GRC's protest challenging this evaluation finding, the TEC Chair asserted that "there is nothing in

(...continued)

on its own merit."); Collecto Protest, TEC Chair Decl., at 4 ("Collecto simply confirmed they would continue the same management approach they are using on their [incumbent contract]. Collecto did not provide sufficient detail in their proposal for this contract for the TEC to evaluate the proposed approach.") (internal citation and emphasis omitted); id., COSF, at 18 (confirming TEC Chair's position). The record is devoid of any meaningful explanation for the SSA's unequal treatment.

²³ As another example of the documentation concerns in this case, the QCE's post-protest declaration states that: "The individual worksheet I completed for ACSI incorrectly states that the QCP is rated 'Satisfactory.' This was a clerical error. As my contemporaneous notes in the Evaluators Worksheet indicate, the weaknesses in ACSI's QCP warranted a rating of 'Marginal.'" Consolidated AR, QCE Decl., at 11 n.1. This post-protest assertion, however, is entirely inconsistent with the contemporaneous record. Indeed, the contemporaneous record uniformly reflects that ACSI's QCP was assessed as being satisfactory/adequate. See, Consolidated AR, Tab 87, ACSI QCP Evaluation, at 1; Tab 83, QCE Summary Evaluations, at 1; Tab 125, SSD, at 22. In light of the consistency in the contemporaneous record, we afford no weight to agency's inconsistent post-protest assertions. In any event, we also find this additional anomaly in the record further substantiates our concerns with the adequacy of the agency's documentation of its evaluation.

the Management Plan (Section A of the proposal) that discusses GRC's ability to mitigate the risk of a high volume of account transfers or their ability to scale." GRC Protest, TEC Chair Decl., at 4 (emphasis added). The agency's evaluation in this regard is unreasonable for two reasons. First, GRC's management proposal contains a section titled "Mitigating Risk Associated with High Account Volume," which identifies a three component approach that is further expounded upon over several pages. See GRC AR, Tab H, GRC Proposal -- § A, at 3-6. Absent any detail in the contemporaneous or post-protest records explaining why the agency determined this information provided "nothing" in terms of detail regarding GRC's approach to mitigating the risk of a high volume of accounts, we cannot conclude that this evaluation finding was reasonable. Second, the RFP specifically requested that offerors address risk mitigation for "a high volume of account transfers." RFP, § E.1, § A. To the extent that GRC was penalized for not addressing risk mitigation associated with a decreasing volume, such consideration was based on an unstated evaluation criterion and was unreasonable. Intercon Assocs., supra; see also Collecto AR, Tab K, Collecto TEC Report, at 2 (assessing similar weakness).

d. Van Ru

Based on our review of the record and the parties' arguments, we conclude that several of the assessed weaknesses in Van Ru's QCP appear to be unreasonable. First, the QCE assessed a weakness because Van Ru's QCP did "not adequately address the company's capability to ensure all terms and conditions of [the resulting contract were] adhered to" as it "only identifie[d] training and limited reporting for federal laws." Consolidated AR, Tab 83, QCE Summary Evaluations, at 15. In his post-protest declaration, the QCE relies on brief snippets of Van Ru's proposal as supporting his contemporaneous conclusion. Consolidated Protest, QCE Decl., at 3-4. Van Ru's proposal, however, appears to include substantially more detail regarding its overall approach to ensuring compliance with applicable requirements and laws. Specifically, the protester addressed how its Executive Compliance Committee is responsible for establishing performance and compliance responsibilities, and outlined its change management control process for the revision of corporate policies and procedures to incorporate compliance matters. Consolidated AR, Tab 42, Van Ru Proposal -- § C, at 4-5, 7-10.

The proposal also discusses the responsibilities of the Management Compliance Committee and training departments in preparing communication and execution plans for the new policies and procedures. Id. at 6-7. Finally, the protester set forth its procedures for reviewing operations to ensure that responsibilities are carried out and legal requirements are met, including call reviews and control audits. Id. at 10-18. In the absence of any detailed analysis from the agency in support of its conclusion, we do not find that the evaluated weakness was reasonably supported by the record.

Similarly, the QCE relies on select provisions of Van Ru's proposal to support his assertion that the protester provided inadequate details regarding its root cause analysis procedures. The QCE explains that Van Ru's proposal did not adequately address its methods to measure, track, analyze, and report performance trends and deficiencies and implement preventative and corrective actions in order to ensure timely and acceptable performance other than in the context of responding to complaints. See Consolidated Protests, QCE Decl., at 3-4. Here again, however, the agency does not appear to specifically respond to the full substance of Van Ru's proposal and protest arguments. See, e.g., Consolidated AR, Tab 42, Van Ru Proposal -- § C, at 11-12 (discussing identification and mitigation of root causes for poor results and identification and application of best practices in connection with call reviews under the protester's quality assurance and control procedures).

e. Collecto

Collecto challenges the reasonableness of the agency's finding that it included only "limited descriptions of the existing processes in place to ensure borrower's interests are protected and all employees and subcontractors adhere to laws and regulations required under this solicitation." Consolidated AR, Tab 83, QCE Summary Evaluations, at 4. The evaluation record generally only includes high-level evaluation conclusions without specific references to the offerors' proposals. In response to the above generalized evaluation indicating that the information in Collecto's proposal was limited, Collecto pointed to specific detailed information in its proposal regarding its training and other proposed mechanisms for ensuring the protection of borrowers' interests and ensuring compliance with applicable laws.

In his declaration, responding to the protest, the QCE recognizes that Collecto did include: "detailed descriptions of protections of the borrowers' interests" for several case-resolution types; a description of its client access portal and other tools to provide the agency with the ability to monitor and oversee performance; and "full descriptions of their compliance management system summary." Collecto Protest, QCE Decl., at 6. Additionally, he noted that Collecto identified its hiring process and training program, but he asserted that "Collecto fails to describe how the hiring process and training program are used to ensure [the] protection" of borrowers' interests. Id. at 5. Setting aside the fact that these particular findings were not contemporaneously documented, the concern identified lacks a reasonable basis.

Collecto's proposal addresses the security and other pre-employment checks conducted to ensure the fitness of its employees, and identifies its new hire and ongoing training initiatives that include testing and training tracking. See Collecto AR, Tab G, Collecto Proposal – § C, at 13, 15. The merit of having qualified and properly trained personnel is apparent. While the agency certainly could have determined and adequately documented why Collecto's proposal did not offer any unique strengths, we do not find reasonable the agency's assessment of a

weakness in this respect for Collecto failing to provide further explanation for why having qualified and properly trained personnel is beneficial to ensuring borrowers' interests are protected.

Prejudice

As set forth above, the record shows that the agency's evaluation of proposals was unreasonable in numerous respects. Our Office will not sustain a protest, however, unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3.

It is unclear with respect to several of the protesters what precise effect the errors discussed above may have had on the assessment of the technical quality of the proposals or the evaluation as a whole. Our review shows that the proposals were reasonably evaluated in some respects, but that the evaluation was unreasonable in many other respects. Under these circumstances, we resolve any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. See Coburn Contractors, LLC, B-408279.2, Sept. 30, 2013, 2013 CPD ¶ 230 at 5; Supreme Foodservice GmbH, B-405400.3 et al., Oct. 11, 2012, 2012 CPD ¶ 292 at 13-14. Accordingly, we conclude that the following protesters have established a reasonable possibility of competitive prejudice to prevail in their bid protests: DMA; GRC; TGSL; ACSI; the ACSI Team; CTI; Performant; Allied; Collecto; Van Ru; PFS; Gatestone; and W&F.²⁴

In contrast, we find that the following protesters failed to establish competitive prejudice, notwithstanding the above addressed errors. In this regard, as discussed below, we find that the agency reasonably evaluated the following protesters' proposals as warranting a "marginal" or "unsatisfactory" rating on at least one evaluation factor. Accordingly, even if they were to prevail on the balance of their other challenges, we have no basis to conclude that their competitive positions would materially change given the reasonably assessed material deficiencies or significant weaknesses in their proposals.

Sutherland: We find no basis to question the agency's determination that Sutherland's proposal warranted an unsatisfactory rating under the small business participation plan factor. The record reflects that Sutherland failed to submit the required participation plan and otherwise failed to commit to meeting the 31 percent

²⁴ We sustained Gatestone's protest with respect to certain of the awardees' failure to update their proposals based on a material change. We have carefully reviewed the protester's remaining challenges, and find none provides an independent basis on which to sustain its protest.

minimum mandatory small business subcontracting set-aside requirement. See Consolidated AR, Tab 37, Sutherland Proposal – Subcontracting Plan, at 1; Tab 116, Sutherland Small Business Evaluation Report, at 1.

ACT: We find no basis to question the agency’s determination that ACT’s proposal warranted a marginal rating under the small business participation factor. The agency assigned ACT’s proposal a major weakness for failing to meet the non-mandatory small business goals for small disadvantaged businesses (SDB) (RFP goal of 5.0 percent versus ACT proposed goal of 0.1 percent), historically underutilized business zone businesses (RFP goal of 5.0 percent versus ACT proposed goal of 0.4 percent), and service-disabled veteran-owned small businesses (SDVOSB) (RFP goal of 3.0 percent versus ACT proposed goal of 0.2 percent). Consolidated AR, Tab 25, ACT Proposal – Small Business Participation Plan, at 1-2; Tab 104, ACT Small Business Evaluation Report, at 1. Additionally, the agency assigned ACT’s proposal a weakness because, in addition to missing the majority of the subcategory goals, ACT did not propose to subcontract to SDB or SDVOSB concerns any of the core debt collection-related activities. Consolidated AR, Tab 104, ACT Small Business Evaluation Report, at 1.

In light of the RFP’s express criteria establishing that the agency would consider both the offeror’s commitment to meeting the subcategory small business goals, and the complexity and variety of the work to be performed by small businesses as part of its qualitative assessment, we find that the agency’s enumerated concerns with ACT’s small business participation plan were consistent with the RFP and otherwise were reasonable. See RFP, § E.2.1, Factor 3 – Small Business Participation, at (b), (c).

GRS: We find no basis to sustain GRS’s protest because the agency reasonably determined that its past performance was less than satisfactory. The record reflects that the TEC rated GRS’s past performance as unsatisfactory due to performance issues on GRS’s incumbent contract, and a negative judgment relating to a corporate predecessor’s alleged violations of federal law. Consolidated AR, Tab 72, GRS TEC Report, at 2.

With respect to the negative judgment, we agree with the protester that the agency’s record is insufficient to support the TEC’s evaluated weakness. Specifically, the TEC found that “although GRS states [that] there were no negative judgments since 2012, [GRS’s predecessor] did have a negative judgment for FDCA violations in 2014.” Id. The record, however, contains no evidence substantiating this conclusion. Rather, the only “negative judgment” in the record is a stipulated final judgment and order for permanent injunction, dated March 14, 2011, which memorializes a settlement agreement between the United States and GRS’s predecessor. See Consolidated AR, Tab 53, GRS Past Performance Information, at 1-26. For the reasons addressed above, we find that it was

unreasonable for the agency to penalize GRS for failing to disclose what amounted to a settlement agreement that pre-dated the RFP's relevancy period.

Even agreeing, however, that consideration of the "negative judgment" was unreasonable, we nevertheless conclude that the agency's adverse evaluation of GRS's past performance was reasonable. Specifically, the TEC noted that the protester had received a marginal rating for quality on the most recent CPARS report for its incumbent contract. Consolidated AR, Tab 72, GRS TEC Report, at 2; Tab 53, GRS Past Performance Information, at 27-28. Additionally, following a 2015 call monitoring focused review for compliance with applicable laws and regulations conducted by the agency, the agency identified GRS as having one of the highest error rates (24 percent) of the 22 incumbent contractors, resulting in an unsatisfactory rating for regulatory compliance on its most recent CPARS report. Consolidated AR, Tab 72, GRS TEC Report, at 2; Tab 53, GRS Past Performance Information, at 28-29.²⁵ On this record, we have no basis to question the agency's adverse evaluation of GRS's past performance.²⁶

²⁵ Furthermore, although the TEC and SSA expressly relied on GRS's most recent CPARS report, the complete set of reports in the record reflects that GRS experienced consistent performance problems on the incumbent contract. Specifically, GRS received a marginal rating for quality on the incumbent contract for every assessment period dating back to July 2009. See Consolidated AR, Tab 53, GRS Past Performance Information, at 27-28 (for July 1, 2014 to April 21, 2015), 44 (for July 1, 2013 to June 30, 2014), 48 (for July 1, 2012 to June 30, 2013), 46 (for July 1, 2011 to June 30, 2012), and 34 (July 1, 2009 to June 30, 2011). In this regard, other than for the most recent CPARS report and one other instance where it did not dispute the rating but noted a positive performance trend, the protester expressly concurred with the evaluation ratings without providing any rebuttal or mitigating information. See id., at 30-33, 35, 45, 47, 49.

²⁶ GRS (as well as a number of other protesters) essentially argue that the underlying evaluation of its performance on the incumbent contract, and the resulting incorporation of that information into the CPARS reports, was unreasonable and materially flawed. We concluded, however, that our Office would not review the methodology used by the agency, or the resulting findings, in the evaluation of contractors' performance on the predecessor contract requirements or as set forth in the resulting CPARS reports. Such challenges to the methodology utilized for assessing the contractors' performance on the predecessor contracts, or the findings in connection with those performance reviews, involve matters of contract administration that are not for our review as part of our bid protest function. See 4 C.F.R. § 21.5(a); ProActive Techs., Inc.; CymSTAR Servs., LLC, B-412957.5 et al., Aug. 23, 2016, 2016 CPD ¶ 244 at 11 n.6

We also find no basis to conclude that GRS was treated disparately with respect to the agency's consideration of its performance difficulties on the incumbent contract. GRS received a marginal quality rating on its most recent CPARS report, and an unsatisfactory rating for regulatory compliance based on its 24 percent error rate during the focused review. AR, Tab 53, Global Past Performance Information, at 27-28. In contrast, of the six awardees that were incumbent prime contractors, all were rated as at least satisfactory for quality on their most recent CPARS reports, and received ratings ranging from marginal to exceptional for regulatory compliance based on error rates ranging from 5-18 percent. See Consolidated AR, Tab 50 FMS Past Performance Information, at 10-11; Tab 52, GCS Past Performance Information, at 7-8; Tab 55, Premiere Credit Past Performance Information, at 6-7; Tab 59, CBE Past Performance Information, at 18-19; Tab 60, TSI Past Performance Information, at 7-8; Tab 63, Windham Past Performance Information, at 6-7. Based on this record, we find insufficient evidence to support GRS's allegations of disparate treatment.

Alltran: We find no basis to question the SSA's determination that Alltran's proposal warranted a marginal rating for past performance. The TEC initially rated the protester's past performance as satisfactory. In reaching that conclusion the TEC noted that Alltran had highly relevant past performance, including as a prime contractor on the incumbent requirements. The TEC noted that Alltran received a very good quality rating on its most recent CPARS report for the incumbent contract, but also noted that Alltran was rated as unsatisfactory for regulatory compliance based on its 23 percent error rate during the agency's 2015 focused review. Consolidated AR, Tab 65, Alltran TEC Report, at 1-2; Tab 46, Alltran Past Performance Information, at 21. The SSA disagreed with the TEC's satisfactory rating, and instead determined that Alltran's past performance was marginal. Specifically, in addition to the unsatisfactory history of regulatory compliance on the incumbent contract, she also found that Alltran had been suspended for violating agency policies and procedures in performing debt collection activities for rehabilitation when performing its incumbent contract. Consolidated AR, Tab 125, SSD, at 30-31; see also Tab 130, Administrative Compliance Agreement.

Notwithstanding Alltran's remedial actions, we cannot conclude that the SSA's concerns were unreasonable. In this regard, we find nothing unreasonable with the SSA considering the conduct that lead to the suspension when the conduct arose in connection with Alltran's performance of the incumbent requirements, especially where the concerns were exacerbated by Alltran's subsequent unsatisfactory regulatory compliance rating following the agency's focused review. As we have explained, an agency's past performance evaluation may be based on a reasonable perception of a contractor's prior performance, regardless of whether the contractor disputes the agency's interpretation of the underlying facts, the significance of those facts, or the significance of corrective actions. PAE Aviation & Tech. Servs., LLC, B-413338, B-413338.2, Oct. 4, 2016, 2016 CPD ¶ 283 at 5. And, although consideration of past performance trends and corrective actions is generally

appropriate, an agency is not required to ignore instances of negative past performance. Id.; Vectrus Sys. Corp., B-412581.3 et al., Dec. 21, 2016, 2017 CPD ¶ 10 at 9.

RECOMMENDATION

We recommend that the agency conduct and adequately document a new evaluation of proposals under the management approach and past performance factors including, as appropriate, amending the solicitation to reasonably reflect the agency's needs, conducting discussions, and receiving revised proposals. After conducting its new evaluation, the agency should prepare and adequately document a new source selection decision. In the event that any of the current awardees are not evaluated as having a proposal among the most advantageous to the government, the agency should terminate any such awards for the government's convenience.

We also recommend that the following protesters be reimbursed their reasonable costs of filing and pursuing their protests: ACSI; the ACSI Team; Allied; Collecto; CTI; DMA; Gatestone; GRC; Performant; PFS; TGSL; Van Ru; and W&F. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protesters' respective certified claims for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. Id. § 21.8(f)(1).

The protests are sustained in part and denied in part.

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General Counsel