U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Avar Consulting, Inc.

File: B-417668.3; B-417668.4; B-417668.5

Date: June 10, 2020

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Erin M. Estevez, Esq., and Pablo A. Nichols, Esq., Cooley LLP, for TelaForce, LLC, the intervenor.
Jose Otero, Esq., and Virginia Ackerman, Esq., Department of Labor, for the agency.
Alexander O. Levine, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's award of a contract based on a proposal that the offeror subsequently revised is denied where the agency revived prior proposals in an even-handed manner that did not prejudice the competitive system.

2. Protest alleging that awardee's proposal contained material misrepresentations is denied where the statements did not rise to the level of misrepresentations and where the alleged misrepresentations were not relied upon in the agency's evaluation.

3. Protest challenging past performance evaluation is denied where the agency reasonably evaluated the awardee's past performance in accordance with the stated evaluation criteria.

DECISION

Avar Consulting, Inc., a small business located in Rockville, Maryland, protests the award of three contracts to TelaForce, LLC, a small business located in Niceville, Florida, under request for proposals (RFP) No. 1625DC-17-R-00003, issued by the Department of Labor (DOL) for employment data collection and processing services. The protester argues that the agency improperly revived TelaForce's extinguished proposal, engaged in unequal discussions, unreasonably evaluated past performance and experience, and overlooked material misrepresentations in the awardee's proposal.

We deny the protest.

BACKGROUND

On September 26, 2017, DOL issued the RFP seeking the award of three contracts for data collection and processing services for the job opening and labor turnover survey data collection center (JOLTS), the current employment statistics data collection center (CES), and the electronic data interchange center (EDI) respectively. The solicitation anticipated that the agency would award three hybrid fixed-price/labor-hour contracts with a 1-year base period and four 1-year options. Agency Report (AR), Tab 5, RFP at 61.[1]

For each contract, the RFP contemplated the evaluation of three factors, in descending order of importance: technical capability, past performance, and price. *Id.* at 75. While the non-price factors when combined were more important than price, the solicitation cautioned that DOL would not award the contracts at a significantly higher overall price to achieve slightly superior technical features. *Id.*

For the evaluation of technical capability, the agency anticipated evaluating four subfactors for each contract: experience, management plan, quality control plan, and phase-in plan. *Id.* at 76-80. The solicitation permitted offerors to identify the same experience for both CES and JOLTS as DOL considered these requirements "similar in nature." *Id.* at 68.

For the evaluation of past performance, the RFP required offerors to identify three references for each project; offerors were again permitted to identify the same references for the CES and JOLTS requirements. *Id.* at 71. Offerors intending to subcontract any portion of the requirement were to provide two references for each subcontractor. *Id.* at 72.

The solicitation contemplated a multiple phase process for awarding the contracts for the three data centers. *Id.* at 76. In phase one, the agency would use the evaluation criteria to determine which offeror provides the best value for each individual project. *Id.* In phase two, the agency would consider which offeror, if any, offers the best value when examining the three projects as a whole. *Id.* If DOL identified a single offeror as both the best-value offeror overall and for each of the three projects, then the agency would award all three projects to that offeror in phase three. *Id.* If this was not the case, the agency would conduct a best-value tradeoff to determine whether to award the contracts on an individual project basis or an overall basis. *Id.*

On or about November 21, 2017, DOL received seven proposals for the CES and JOLTS projects and four proposals for the EDI project. Contracting Officer's Statement (COS) at 28. The agency evaluated these proposals and conducted discussions. *Id.* On March 7, 2018, DOL issued solicitation amendment four, updating the pricing

[1] Unless otherwise noted, citations to the RFP refer to the version of the solicitation incorporating amendment four.

submission workbook and requesting the submission of revised proposals. *Id.* Offerors submitted revised proposals by March 26.

On May 30, the agency notified offerors of its intent to award the contracts to TelaForce. On June 1, Avar filed a small business size protest challenging TelaForce's status as a small business. On July 30, the U.S. Small Business Administration's (SBA) area office issued a determination that TelaForce was "other than small." *Id.* at 40. On August 13, TelaForce filed an appeal with the SBA's Office of Hearings and Appeals (OHA).

On September 25, while awaiting the resolution of TelaForce's appeal, DOL issued RFP amendment five and requested revised proposals from offerors. *Id.* at 2. The amendment changed the initial period of performance from one year to six months, included an additional option period of six months, and requested revised pricing sheets from offerors. *Id.* The amendment also included updated wage determinations. *Id.* On October 10, DOL issued amendment six, which corrected two spreadsheets and a wage determination included with amendment five. *Id.*

On November 2, OHA issued a decision vacating the SBA area office's initial size determination. Avar requested reconsideration of this decision, which OHA denied on March 25, 2019. On April 5, the SBA's area office issued a decision finding that TelaForce was a small business under the applicable size standard.[2]

On June 10, DOL issued RFP amendment seven, which stated:

> This Amendment 0007 is in accordance with [Federal Acquisition Regulation (FAR)] 15.206(c). Amendment 0007 will hereby cancel/withdraw Amendments 0005 and 0006.
>
> Amendments 0005/0006 were created due to the expected time impact of the pending size protest. The Government sought to obtain updated pricing based on an alternative schedule of performance (e.g. Base Period of Six Months rather than Twelve Months and inclusion of Option Period V). However, the Government has determined that such alternative scheduling does not meet its needs and is withdrawing Amendments 0005/0006 in order to return to the originally proposed contract schedule.

AR, Tab 8, RFP amendment seven at 1. That same day, the contracting officer contacted TelaForce's chief operating officer, and "indicated that [DOL was] going to send to TelaForce three contracts (EDI, CES and JOLTS) based upon their March 26, 2018 offers, and that they would shortly receive the contracts for their consideration." COS at 41. TelaForce signed and returned these contracts the same day. *Id.*

[2] Avar appealed this decision, and the appeal was denied on July 25.

Also on June 10, the agency notified Avar of the contract awards to TelaForce. *Id.* at 31. Avar filed a protest of the award, which our Office docketed as B-417668.1.[3] The protester challenged the agency's evaluation of proposals and its discussions with offerors, and argued that DOL erred in awarding the contracts based on proposals that were no longer valid due to a subsequent round of proposal submissions. Following this protest, DOL issued a stop work order to TelaForce.

In July, the agency notified our Office of its intent to take corrective action in response to Avar's protest. DOL stated that it would examine its evaluation and make a new source selection decision. In addition, the agency reserved the right to request new proposals. Based on this corrective action, and despite Avar's objection, our Office dismissed the protest as academic.

DOL reevaluated the March 2018 proposals submitted by Avar and TelaForce and rated these proposals as follows:

CES Project

	Technical Rating	Past Performance Rating	Individual Price Amount
Avar	Outstanding	Substantial Confidence	$107,711,604
TelaForce	Good	Substantial Confidence	$105,354,733

JOLTS Project

	Technical Rating	Past Performance Rating	Individual Price Amount
Avar	Outstanding	Substantial Confidence	$11,794,949
TelaForce	Good	Substantial Confidence	$11,461,195

EDI Project

	Technical Rating	Past Performance Rating	Individual Price Amount
Avar	Outstanding	Substantial Confidence	$18,141,470
TelaForce	Good	Satisfactory Confidence	$16,078,333

[3] Our Office docketed a subsequent supplemental protest filed by Avar as B-417668.2.

Multi-Award Pricing[4]

	Price Amount
Avar	$137,405,188
TelaForce	$126,576,838

Id. at 32-33.

The agency conducted a best-value tradeoff for each individual project and concluded that Avar's superiority in the technical factors (and, in the case of the EDI effort, the technical factors and the past performance factor) was not worth the price premium associated with Avar's proposal. *Id.* at 33-38. The agency also conducted an overall best-value tradeoff, and concluded that Avar's "slight" technical superiority in the three programs was not worth paying an 8.5 percent price premium. AR, Tab 52, Multi-Award Source Selection Decision Document at 43. Since TelaForce's proposal offered the best value both overall and for each individual project, the agency selected TelaForce as the awardee for the three contracts and accordingly lifted the stop work order in place. COS at 43-44.

On March 4, DOL notified Avar of the contract awards. This protest followed.

DISCUSSION

Avar argues that DOL's decision to award contracts based on the March 2018 proposals was improper for several reasons. As an initial matter, the protester contends that the agency could not accept TelaForce's March 2018 proposal because DOL subsequently requested and received revised proposals, which effectively extinguished the March proposals. The protester also asserts that DOL was required to solicit revised proposals due to the issuance of new Service Contract Act (SCA) wage determinations and the approval of a new collective bargaining agreement (CBA). Avar further contends that the revival process permitted TelaForce to change the terms of its proposal, and this revision constituted improper discussions.

In addition, Avar challenges the agency's evaluation of offerors' past performance and experience. In this regard, the protester contends that DOL should have disqualified TelaForce's proposal for misrepresenting when TelaForce's past performance and experience began. The protester also asserts that, in order to resolve uncertainties caused by these misrepresentations, the agency unequally conducted discussions with TelaForce. Avar further contends that the agency unreasonably evaluated the relevance of offerors' past performance.

[4] Multi-award pricing reflects discounts proposed by offerors based on the award of all three projects.

Last, the protester argues that the agency's best-value tradeoff was flawed due to these errors and was otherwise unreasonable. While we do not address in detail every argument raised by the protester, we have reviewed each issue and do not find any basis to sustain the protest.[5]

Revival of Proposals

The protester challenges the agency's revival of TelaForce's March 2018 proposal, noting that DOL solicited and received subsequent proposals from offerors in October of 2018. Avar asserts that the submission of these new proposals extinguished the prior proposals as a matter of contract law because they indicated the withdrawal and replacement of the prior proposals. Thus, in the protester's view, there was no proposal for the agency to accept.

In support of this argument, the protester cites our Office's decisions in *Integrated Bus. Sols., Inc.*, B-292239, July 9, 2003, 2003 CPD ¶ 122 and *Department of the Army--Recon.*, B-251527, B-251527.3, Sept. 17, 1993, 93-2 CPD ¶ 178, among others. In these cases, our Office considered situations where an offeror submitted a late or unacceptable final proposal revision and at issue was whether the agency could ignore the final proposal revision and evaluate, and make award based on, the offeror's initial proposal. In such circumstances, we have held that "submission of a [final proposal revision] generally demonstrates an offeror's intent to modify or replace its initial proposal, thus extinguishing an agency's ability to accept the earlier offer." *Integrated Bus. Sols., Inc.*, *supra* at 4.

We find the circumstances here to be distinguishable. Unlike in the above cases, the agency here revived proposals via an even-handed process that did not prejudice the competitive system. Specifically, rather than permitting only one offeror to rely on an earlier proposal, the agency issued an amendment that cancelled and withdrew its request for revised proposals. This effectively voided every offeror's subsequent proposal. Accordingly, no offeror was afforded special treatment; all offerors were evaluated on the basis of their March 2018 proposals.

[5] For example, the protester contends that the agency downplayed or ignored Avar's technical advantages in its best-value tradeoff. We find, however, that the agency reasonably considered and balanced Avar's technical superiority against its higher price. While DOL did not extensively document every strength offered by Avar's proposal, the agency was under no obligation to do so. *See ManTech TSG-1, Joint Venture*, B-411253.7, B-411253.8, Mar. 1, 2017, 2017 CPD ¶ 81 at 11. Instead, the agency's decision must demonstrate that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. *Wyle Labs., Inc.*, B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 11. We find that DOL's tradeoff meets this standard.

Our Office has long held that an agency may revive an expired proposal, where doing so is not prejudicial to the competitive system. *Scot, Inc.*, B-295569, B-295569.2, Mar. 10, 2005, 2005 CPD ¶ 66 at 9. While the March 2018 proposals had not only expired, they had also been superseded by later-submitted proposals (which were later voided), we do not find this distinction to be meaningful in this context. In either circumstance, the proposals could not be accepted absent a revival of some sort. Whether the proposals can be revived depends, in turn, not on what caused them to be nonviable, but instead on whether the revival process will cause prejudice to the competitive system. Here, where the agency cancelled its request for revised proposals and treated all offerors equally, we see no prejudice to the competitive system.

Avar also contends that the agency conducted unequal discussions with TelaForce by awarding it contracts containing different terms than the terms included in TelaForce's proposal. In this respect, the protester highlights that the contracts included a different start date and incorporated a new wage determination. With respect to the inclusion of the new wage determination, Avar asserts that this altered the terms of TelaForce's proposal because the proposal stated that TelaForce had based its pricing on the SCA wage determination and collective bargaining rates provided in the solicitation as of amendment four. Avar argues that TelaForce's acceptance of a contract that incorporated new wage determinations "eviscerated" the proposal's assumption that TelaForce would be entitled to equitable adjustments for changes to the applicable wage determinations. Avar Comments & Supp. Protest at 7. In the protester's view, TelaForce's failure to adjust its prices based on the new wage determination represented a change to its proposal terms.

We are not persuaded that the agency's inclusion in the awarded contracts of new start dates and a new wage determination constituted discussions. While the contracts, as awarded, have a later start date (and thus a later potential end date), the different start date does not change the statement of work, the evaluation scheme, or the length of time for which the contractor would be obligated. Our Office has concluded, in similar circumstances, that an agency was not obligated to obtain new proposals simply because the applicable contract start date has changed. *See Consolidated Eng'g Servs.*, Inc., B-293864.2, Oct. 25, 2004, 2004 CPD ¶ 214 at 5. Further, incorporation of the new wage determination in the awarded contracts did not change the terms of TelaForce's proposal and therefore did not constitute discussions. In this respect, TelaForce's pricing remained the same. And, while TelaForce's proposal noted that its prices were subject to equitable adjustment following contract award, this did not obligate TelaForce to seek adjustment of its proposal pricing prior to contract award.[6]

Avar also argues that the agency was required to seek revised pricing from offerors because the agency received notice of new SCA wage determinations and a newly

[6] Whether TelaForce will ultimately seek an equitable adjustment on the basis of the new wage determinations is a matter of contract administration that is beyond our Office's consideration. 4 C.F.R. § 21.5(a).

agreed CBA after the submission of the March 2018 proposals.[7] In this respect, in late 2018, DOL issued new SCA wage determinations applicable to various labor categories and localities included in this procurement. In addition, on October 12, 2018, the incumbent contractor, which is also Avar's proposed subcontractor, informed the contracting officer of a new CBA, covering Atlanta, effective May 2020. COS at 32. The protester argues that the agency was obligated to resolicit proposals based on these new wage rates rather than speculate as to their effect on the relative standing of proposals since "speculation as to the effect of a change in the governing wage determination should be avoided where possible." Avar Comments & Supp. Protest at 13 (*quoting Fred B. DeBra Co.*, B-250395.2, Dec. 3, 1992, 93-1 CPD ¶ 52 at 9).

As an initial matter, we find a portion of this challenge to be untimely. In this regard, we note that the agency awarded contracts in June of 2019 without seeking updated pricing from offerors to reflect the 2018 wage determinations. When the protester protested the June 2019 awards, however, it did not argue that the 2018 wage determinations obligated the agency to seek revised proposals. Instead, Avar waited until filing the instant protest to make this argument. The fact that an agency conducts corrective action or makes a new source selection decision does not provide a basis for reviving untimely protest allegations, however, where, as in this case, the otherwise untimely protest allegations are based on procurement actions that were not subsequently affected by the agency's corrective action. *Variq Corp.*, B-414650.11, B-414650.15, May 30, 2018, 2018 CPD ¶ 199 at 4. Here, the above protest challenge was not filed within 10 days of the date Avar first learned of the agency's decision to evaluate proposals without seeking updated proposals based on the 2018 wage determinations. Accordingly, we find this argument to be untimely.

We are also not persuaded that the agency was obligated to request revised proposals because of the new CBA. Our Office generally does not impose an absolute requirement for resolicitation under similar circumstances, because contracting agencies have a legitimate need to proceed with award in an orderly fashion and an incumbent contractor could manipulate the timing of labor negotiations in order to force an agency to resolicit its requirements. *See*, *e.g.*, *KCA Corp.*, B-236260, B-236260.2, July 2, 1990, 90-2 CPD ¶ 1 at 4-5.

In addition, the protester has not demonstrated competitive prejudice from the agency's failure to resolicit pricing based on the new CBA. Competitive prejudice is an essential element of every protest, and requires that the protester prove that, but for the agency's actions, it would have received the award. *Straughan Envtl., Inc.*, B-411650 *et al.*, Sep. 18, 2015, 2015 CPD ¶ 287 at 12. Here, the protester did not rebut the agency's contention that the CBA covers only one location, and "simply requires a minimal hourly

[7] The protester initially argued that the agency was obligated to seek revised proposals by FAR 22.404-5(c)(3), but later conceded that this section does not apply to this procurement. *See* Avar Comments & Supp. Protest at 10 n.3. In this respect, FAR 22.402 explains that the requirements of FAR subpart 22.4 apply to contracts involving construction work, which is not applicable here.

increase for one or two positions starting on May 9, 2020." Memorandum of Law (MOL) at 22. Further, Avar has not explained how the relative standing of the offerors' proposals would be affected, if at all, by factoring in the new CBA pricing. In the absence of such a showing, we see no basis to conclude that the agency was required to resolicit pricing based on the new CBA.

Misrepresentation of Experience and Past Performance

Avar contends that TelaForce "blatantly misrepresented the nature and extent of its experience and past performance by relying heavily on work performed by other large companies that will not be involved in this effort." Avar Comments & Supp. Protest at 17.

By way of background, in 2016, CACI International, Inc. acquired L-3 National Security Solutions (NSS), at which point the company became known as CACI NSS. AR, Tab 33c, Final SBA OHA Decision at 2. After the acquisition, CACI NSS divested its data collection/processing and call/contact center contracts. AR, Tab 28b, TelaForce EDI Tech. Proposal at 1. TelaForce, a company founded in June 2016 by L-3 NSS's former president, acquired the assets from these contracts, including the contracts and the staff supporting them. *Id.*

The protester argues that TelaForce's proposal claimed credit for L-3 NSS's and CACI NSS's past performance and experience despite the fact that TelaForce is a separate company from both companies. The protester contends that these claims constituted material misrepresentations because TelaForce was not a successor to these companies and because it did not actually begin performing the NSS contracts until 2017.

For example, the proposal lists the period of performance for a contract with the Okaloosa County School Board (OCSD) as beginning in July 2014, and positively cites "our 18 years of support to OCSD." AR, Tab 29d, TelaForce CES-JOLTS Past Performance Proposal at 12, 16. Similarly, for a contract with the Florida Virtual Schools (FLVS), the proposal states "[w]e received our first contract for FLVS in 2010, followed up with a second award in 2015 which included scope expansion." *Id.* at 8.

We have recognized that an offeror's material misrepresentation can provide a basis for the disqualification of a proposal and cancellation of a contract award based upon the proposal. A misrepresentation is material where an agency relied upon the misrepresentation and that misrepresentation likely had a significant impact upon the evaluation. *AVIATE L.L.C.*, B-275058.6, B-275058.7, Apr. 14, 1997, 97-1 CPD ¶ 162 at 11. Our decisions have been clear that, where an alleged misrepresentation had no effect on the evaluation, that misrepresentation was not material and does not implicate the validity of the award decision. *Insight Tech. Sols., Inc.*, B-417388, B-417388.2, June 19, 2019, 2019 CPD ¶ 239 at 5.

We have reviewed the statements challenged by the protester and conclude that they do not rise to the level of being material misrepresentations. We note, as an initial matter, that TelaForce's proposal disclosed, in several places, its company history, including its formation in 2016 and its acquisition of assets from CACI NSS. *See, e.g.,* AR, Tab 28b, TelaForce EDI Tech. Proposal at 1; AR, Tab 29c, TelaForce CES Tech. Proposal at 1; AR, Tab 30b, TelaForce JOLTS Tech. Proposal at 1. In addition, TelaForce's proposal explained that it had hired L-3 NSS's employees, and that many members of its leadership team had formerly been executives with L-3 NSS. *See*, *e.g.*, AR, Tab 29c, TelaForce CES Tech. Proposal at 3, 18. In light of these disclosures, we find that the statements challenged by Avar were, at worst, unclear statements by which TelaForce attempted to attribute the experience of its employees and leadership to TelaForce itself. While perhaps lacking in clarity, these statements do not rise to the level of misrepresentations since elsewhere in its proposal TelaForce detailed the fact that it was a newly formed company rather than the original awardee of the contracts.

Furthermore, the record fails to show that the agency relied on these statements in its evaluation. Instead, the record shows that DOL evaluated TelaForce's experience and past performance only for the time period after its acquisition of the contracts in question in February 2017. AR Tab 46b, TelaForce Past Performance Evaluation Report for CES/JOLTS at 28; AR Tab 47b, TelaForce Past Performance Evaluation Report for EDI at 17; AR Tab 45b, TelaForce Tech. Evaluation Report for EDI at 7-8; AR Tab 43b, TelaForce Tech. Evaluation Report for JOLTS at 8; AR Tab 44b, TelaForce Tech. Evaluation Report for CES at 8. In sum, we find that the statements challenged by Avar did not amount to misrepresentations, and, at any rate, were not relied upon by the agency.[8]

Unequal Discussions

Avar argues that the agency conducted unequal discussions with respect to TelaForce's experience and past performance. In this regard, the protester contends that DOL relied upon documentation provided by TelaForce during DOL's 2019 responsibility determination "in order to effectively revise and correct the inaccurate information" quoted above relating to the length of TelaForce's experience and past performance. Avar Supp. Comments at 9. Specifically, Avar contends that the agency used these documents to determine that TelaForce's past performance and experience should be evaluated as of February 2017, rather than from an earlier time period.

[8] Avar argues that the agency was required to disqualify TelaForce based on these statements rather than conduct a reevaluation in which the agency limited its review to considering TelaForce's experience and past performance from 2017 on. We do not agree. As noted above, we do not find that the statements in question rise to the level of misrepresentations. Even if the statements had constituted misrepresentations, however, our decisions have held that "the mere fact that an agency identified a misrepresentation that it believes had a material influence on the agency's evaluation of proposals does not obligate the agency to disqualify" the offeror. XYZ Corp., B-413243.2, Oct. 18, 2016, 2016 CPD ¶ 296 at 6.

The agency provided a sworn declaration from the contracting officer disputing the assertion that it relied upon documents submitted during the 2019 responsibility determination in its evaluation of TelaForce's proposal. *See* Contracting Officer's Clarifying Addendum at 1. We note that the date on which TelaForce acquired the NSS contracts was mentioned elsewhere in the evaluation record and was discussed within the SBA's final decision on Avar's size protest appeal. *See*, *e.g.*, AR, Tab 28d, TelaForce Proposal EDI Financial Statement at 1; AR, Tab 33c, SBA OHA Decision at 6.

Even if the agency had considered information provided as part of an earlier responsibility determination in its technical evaluation, however, we do not agree that this would constitute discussions. In our view, such a consideration would have been similar to considering information from sources outside the proposal or from within an evaluator's personal knowledge.[9] In this regard, we do not agree with the protester's contention that consideration of such information would have changed the terms of TelaForce's proposal. Rather, the information would have simply allowed the agency to contextualize and better understand the past performance listed in the proposal. Our Office has long held that in evaluating proposals, a contracting agency may consider evidence from sources outside the proposals, including, for example, an evaluator's personal knowledge. *See Continental Maritime of San Diego, Inc.*, B-249858.2 *et al.*, Feb. 11, 1993, 93-1 CPD ¶ 230 at 6.

Past Performance Evaluation

Avar challenges the agency's relevancy determinations with respect to past performance references submitted by TelaForce for the JOLTS, CES, and EDI projects. In this regard, the protester contends that DOL unreasonably credited TelaForce's past performance with meeting relevancy criteria it did not meet. Avar also asserts that, for the EDI project, TelaForce's past performance references were improperly credited as being of similar magnitude, when they involved a far smaller number of data elements than the instant requirement.

The evaluation of an offeror's past performance falls within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based evaluation ratings. *MFM Lamey Group, LLC*, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. Where a protester challenges an agency's evaluation of past performance, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that it is adequately documented. *Veteran Technologists Corp.*, B-413614.3, B-413614.5, Nov. 29, 2016, 2016 CPD ¶ 341 at 6. A protester's disagreement with the

[9] Here, the documents in question were provided to the agency prior to the May 2018 award decision, and the information in question was then known by the agency. In light of these facts, we see no reason to obligate the agency to ignore or unlearn this information in conducting its subsequent evaluation.

agency's evaluation judgments concerning the significance of past performance, without more, does not establish that the evaluation was unreasonable. *Advanced C4 Solutions, Inc.*, B-416250.2, B-416250.3, Oct. 2, 2018, 2018 CPD ¶ 344 at 7.

Here, we conclude that the agency's relevancy judgments were reasonable and consistent with the solicitation's evaluation criteria. For example, the protester argues that TelaForce's OCSD contract should not have been evaluated as very relevant, because it only met four of the RFP's six relevancy areas. The RFP defined a very relevant effort as involving performance in at least five of the following six areas: computer-assisted telephone interviewing survey collection; multiple locations; ongoing data collection from the same respondent (such as monthly, quarterly, semi-annually, or annually); call center; survey enrollment/solicitation; and sales. RFP at 84. Avar contends that, in determining that the OCSD effort met five of these criteria, the agency improperly credited the contract with meeting the relevancy criteria for "ongoing data collection from the same respondent," despite the fact that the contract involved data collection from a changing student population. Avar Comments & Supp. Protest at 24.

We find that the agency reasonably concluded that the OCSD contract met the relevancy criteria for involving "ongoing data collection from the same respondent." RFP at 84. In this respect, the agency's evaluators examined the relevancy of this effort and found that the OCSD contract met the "ongoing data collection from the same respondent" criteria because "although the student population may change from year to year," the contractor was "[r]outinely. . . in contact with the same participants." AR, Tab 46b, Past Performance Evaluation for TelaForce for CES & JOLTS at 12. We find this determination to be reasonable since the criterion did not specify that such ongoing data collection had to be over the span of multiple years and instead stated it could be "monthly, quarterly, semi-annually, or annually." RFP at 84.

As another example, Avar argues that the agency unreasonably evaluated TelaForce's past performance on two contracts (the FLVS contract and a contract for Montgomery County (MONTCO)) as relevant to the EDI project. For the EDI project, the RFP defined a relevant past performance effort as involving a "similar magnitude of data processing efforts [as] this solicitation requires." *Id.* at 85. The protester contends that the MONTCO and FLVS contracts do not meet this standard because they involved the processing of approximately 26,000 and 77,000 data elements per month, respectively, while the EDI project involves the processing of approximately 500,000 data elements per month.

The agency responded to this argument by noting that in examining the magnitude of each effort it considered more than just the quantity of data elements, it also considered the "importance and caliber" of offerors' past performance. Supplemental MOL at 14. We find that the evaluation record supports the agency's contention that its assessment of magnitude considered more than simply the number of data elements processed. For instance, for the MONTCO contract, the agency acknowledged that the number of data elements was much smaller, but noted that the work also involved "all processing steps (file retrieval, pre-processing, processing, and post-processing), data analysis,

and project timeframes." AR, Tab 47b, Past Performance Evaluation for TelaForce EDI Project at 11. While the protester argues that the quantity of data elements should have received greater weight in the agency's calculus, we find that this criticism simply amounts to disagreement with the agency's considered evaluation judgment.

In sum, we conclude that the agency reasonably evaluated TelaForce's past performance in accordance with the stated evaluation criteria.

The protest is denied.

Thomas H. Armstrong
General Counsel