

DOCUMENT FOR PUBLIC RELEASE

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

Decision

Matter of: MAXIMUS Federal Services, Inc.

File: B-419487.2; B-419487.3

Date: August 6, 2021

Brian A. Darst, Esq., Odin Feldman Pittleman PC, for the protester.
Alexander B. Ginsberg, Esq., and Meghan D. Doherty, Esq., Pillsbury Winthrop Shaw Pittman LLP, for Cognosante, LLC, the intervenor.
Dorothy M. Guy, Esq., Brandon Dell'Aglio, Esq., and Jonathan Meyer, Esq., Social Security Administration, for the agency.
Michael P. Grogan, Esq., Evan D. Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that the agency unreasonably evaluated proposals is denied where the record shows the evaluation and award decision were reasonable and in accordance with the stated evaluation criteria, and, to the extent there were any errors, the protester cannot establish any reasonable possibility of competitive prejudice.
 2. Protest alleging that the agency did not conduct meaningful discussions regarding the protester's key personnel is denied where the agency was under no obligation to raise its concerns with the protester because the identified concerns were not evaluated as a significant weakness, deficiency, or adverse past performance information that the protester had not previously had an opportunity to address.
 3. Protest challenging the agency's cost realism evaluation is denied where the record shows that the upward adjustments to protester's proposed costs were reasonable.
-

DECISION

Maximus Federal Services, Inc., of Falls Church, Virginia, protests the award of a contract to Cognosante, LLC, under request for proposals (RFP) No. 283213-21-R-00000001, issued by the Social Security Administration (SSA), for program management services for the agency's Ticket-to-Work program. The protester contends that the agency's evaluation of proposals was unreasonable and inconsistent with the stated evaluation criteria.

We deny the protest.

BACKGROUND

The agency issued the RFP on April 21, 2020, pursuant to the procedures in Federal Acquisition Regulation (FAR) part 15, seeking program management support for the agency's Ticket-To-Work program. This program provides disability beneficiaries with options for employment services while increasing provider incentives to serve those individuals. Agency Report (AR), exh. 2, RFP at 1; exh. 3, Statement of Work (SOW) at 1-3.¹ The solicitation anticipated the award of a cost-plus-fixed-fee contract, with a 1-year base period of performance, four 1-year option periods, and a 3-month transition-out period. RFP at 10-11. The contractor will be required to complete specific tasks across eight broad objectives, such as conducting outreach and targeted marketing to beneficiaries, facilitating beneficiary access to employment networks, and facilitating and monitoring program processes. See SOW at 3-4.

The solicitation provided for award on a best-value tradeoff basis, considering six evaluation factors, listed in descending order of importance: (1) technical approach; (2) corporate experience; (3) staff qualifications and experience; (4) management and staffing plan; (5) past performance; and (6) cost. RFP at 109. The solicitation advised that primary consideration would be given to the technical quality of proposals, and that "all evaluation factors other than cost, when combined[,] are significantly more important than cost." *Id.* The SSA used an adjectival rating scheme for the technical factors, with the following possible rating combinations: excellent; good; fair; and poor.² See AR, exh. 4, Maximus Consensus TEP Report at 20-21, 37-38, 44, 61-62, 75; Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 5 n.6. Cost, while not assigned an adjectival rating, would be evaluated for reasonableness and realism. RFP at 110.

As relevant to this protest, for corporate experience, each offeror was to identify between three and five contracts or projects that encompass performing work of similar size, scope, and complexity to the RFP's requirements. RFP at 98. The experience could be either as a prime contractor or as subcontractor, and references "may be submitted for subcontractors performing major aspects of the project. . . ." *Id.* Under this factor, the contracts or projects identified were to be completed within seven years of the closing date of the RFP, or, if being currently performed, the offeror must have been performing on that contract for at least one year prior to the RFP's closing date. *Id.* The agency would evaluate proposals based on an assessment of the depth, breadth, and relevance of offerors' corporate experience in implementing and supporting a nationwide service delivery program of a similar size, scope, and

¹ Our citations to the record are to the page numbers that correspond to the Adobe PDF document page numbers.

² For past performance, there was an additional possible rating of neutral for proposals where "[n]o performance record [is] identifiable[.]" AR, exh. 4, Maximus Consensus Technical Evaluation Panel (TEP) Report at 74-75; AR, exh. 13R, Cognosante Final Consensus TEP Report at 72.

complexity to this requirement, where relevant was defined as projects similar to the areas identified in the SOW. *Id.* at 111. The SSA would evaluate an offeror's demonstrated experience in nine identified areas. *Id.* at 112. The solicitation further provided that, "[w]hen combined, the referenced projects should cover as many areas listed above as possible" and that proposals "will be evaluated based on the amount of experience that offerors have in each area[,] as well as the number of areas described above that the offeror demonstrates experience in." *Id.*

For past performance, the agency would utilize the references each offeror submitted in its proposal for corporate experience to evaluate historical performance across five distinct elements. *Id.* at 113-114. The RFP advised that the SSA "will only evaluate an offeror's performance for the 7 year period prior to the issuance of this solicitation" and that it may use sources of past performance other than those provided through the contractor performance reporting system (CPARS). *Id.* at 113.

Concerning an offeror's costs, the agency would evaluate the separate cost elements in an offeror's proposal to determine that they are fair and reasonable, and realistic. *Id.* at 110. The agency's cost realism analysis would determine the probable cost of performance and "whether specific elements of an offeror's proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the unique methods of performance described in the offeror's technical proposal." *Id.*

The agency received proposals from both Maximus and Cognosante by the May 26 submission deadline. COS/MOL at 9. On September 4, following the receipt and initial evaluation of proposals, the agency opened discussions with both offerors. *Id.*; see AR, exh. 6, First Discussion Letter for Maximus. Both offerors were notified of any identified significant weaknesses and deficiencies, and cost-related issues found during the agency's cost realism analysis. *Id.*; COS/MOL at 9. Concurrently with the first round of discussions, the agency issued amendment 2 to the RFP; among other things, the amendment "[r]eopen[ed]" the solicitation and established a new closing date of September 14. RFP at 1.

Following the submission of responses and revised proposals, the agency engaged in a second round of discussions with both offerors on October 8. COS/MOL at 10; see AR, exh. 9, Second Discussion Letter for Maximus. Following the submission and evaluation of final proposal revisions, the agency concluded that Cognosante's proposal represented the best value to the agency.

On December 23, Maximus filed a protest with our Office, arguing that the agency's evaluation of proposals was flawed. On January 14, 2021, the agency notified our Office of its intent to take corrective action; the SSA stated it would reevaluate proposals, conduct a revised best-value tradeoff analysis, and make a new award decision. Our Office subsequently dismissed Maximus's protest as academic. *MAXIMUS Federal Services, Inc.*, B-419487.1, Jan. 25, 2021 (unpublished decision).

Following the dismissal of Maximus’s protest, the SSA reevaluated proposals and conducted a new best-value tradeoff.³ COS/MOL at 11; AR, exh. 19, Summary of Award at 5. The following is a summary of the agency’s final ratings of Cognosante and Maximus:

	Cognosante	Maximus
Technical Approach	Excellent	Good
Corporate Experience	Excellent	Good
Staff Qualifications & Experience	Excellent	Excellent
Management & Staffing Plan	Excellent	Fair
Past Performance	Excellent	Fair
Most Probable Cost⁴	\$87,393,538	\$76,829,662

AR, exh. 15R, Final Trade-off Analysis at 1-2.

The source selection official, who is also the contracting officer for the procurement, conducted an independent review of the evaluation materials and decided that Cognosante’s proposal represented the best value to the agency. *Id.* at 32. In so finding, the contracting officer noted that Cognosante was superior to Maximus across four of the five non-price factors, and equal under the management and staffing plan factor. *Id.* at 31. The contracting officer concluded that “Cognosante clearly had a superior proposal for which the SSA will greatly benefit from” and that “[a]lthough their most probable cost is \$10,563,876, or 13.75% more than Maximus’, their superior proposal is well worth this premium.” *Id.* at 31-32. The SSA notified Maximus, on April 27, that it re-affirmed its award to Cognosante. AR, exh. 20, Post-award Notification at 1. Following a written debriefing, this protest followed.

DISCUSSION

Maximus marshals multiple challenges to the agency’s selection of Cognosante as representing the best value to the government. First, the protester argues the SSA failed to reasonably evaluate Cognosante’s proposal under the corporate experience factor, where the agency did not consider whether the firm’s subcontractors would be performing major or critical aspects of the requirement, and where it considered contract references that were not “recent” as required by the RFP. Comments and First Supp. Protest at 4-26; Supp. Comments and Second Supp. Protest at 10-33. Second, the protester challenges the reasonableness of the SSA’s evaluation of the protester’s

³ The SSA represents that the agency’s reevaluation did not change the ratings for either offeror. AR, exh. 19, Summary of Award at 5.

⁴ As provided for in the solicitation, the agency would perform a cost realism analysis to determine the probable cost of performance. RFP at 110. Before adjustments, Cognosante’s proposed cost was \$79,584,311, while Maximus’s proposed cost was \$67,252,550. AR, exh. 19, Summary of Award at 8.

proposal under the past performance factor. Protest at 26-34; Comments and First Supp. Protest at 28-43; Supp. Comments and Second Supp. Protest at 42-46. In addition, Maximus contends that the agency failed to engage in meaningful discussions with the firm regarding concerns the agency had with Maximus's key personnel. Comments and First Supp. Protest at 45-47; Supp. Comments and Second Supp. Protest at 46-49. Finally, the protester challenges the agency's decision to upwardly adjust its proposed costs under the SOW's task 9, which concerned beneficiary satisfaction surveys. Protest at 38-41; Comments and First Supp. Protest at 47-50; Supp. Comments and Second Supp. Protest 50-51. For the following reasons, we find no basis on which to sustain the protest.⁵

Cognosante's Corporate Experience

The protester argues the SSA misevaluated Cognosante's proposal under the corporate experience factor by assigning the proposal a rating of excellent, contending the

⁵ Maximus raises other collateral allegations. Although our decision does not specifically address them all, we have considered each argument and find that none provides a basis on which to sustain the protest. For example, Maximus argues that the agency's assignment of a rating of excellent to Cognosante's proposal under the management and staffing plan factor--to include the agency finding that the awardee's proposal was "clearly superior" to Maximus's proposed approach--was unreasonable. Comments and First Supp. Protest at 26-28; Supp. Comments and Second Supp. Protest at 39-42. Based on our review of the record, the protester's argument is without merit. The agency's assignment of a rating of excellent was predicated on the TEP's assignment of 15 strengths and no weaknesses, significant weaknesses, or deficiencies; the TEP's evaluation findings support the assignment of an excellent rating. AR, exh. 13R, Cognosante Final Consensus TEP Report, at 60-61.

Moreover, we find nothing unreasonable with the contracting officer's conclusion that Cognosante's approach under this factor was "clearly superior" to Maximus's approach. The agency found, across multiple areas, that Cognosante's management and staffing solutions were stronger than Maximus's. See AR, exh. 15R, Final Trade-off Analysis at 22-27. While the agency did find that, on balance, both offerors received roughly the same amount of strengths, the agency had concerns about the increased risk associated with Maximus's approach, as manifested by the nine weaknesses assigned. *Id.* at 23 (Maximus's "proposed Management and Staffing Plan is not reasonably adequate and does not meet all requirements."); 27 ("Maximus did not provide a sound quality assurance plan and their proposed staffing levels for the [vocational rehabilitation] payments desk are inadequate, which could jeopardize timely and accurate payment process."). The protester's disagreement with the agency's evaluation determinations, without more, does not render the evaluation unreasonable or provide a basis to sustain the protest. *Ben-Mar Enters., Inc.*, B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

evaluation was inconsistent with the stated evaluation criteria in two respects.⁶ Comments and First Supp. Protest at 4-25; Supp. Comments and Second Supp. Protest at 10-33. First, Maximus contends the agency failed to consider, consistent with the terms of the RFP, whether the Cognosante's subcontractors would be performing "major or critical aspects of the requirement[.]" RFP at 111. Additionally, Maximus maintains that some of the awardee's submitted corporate experience references did not meet the RFP's recency requirements. *Id.* at 112-113. In response, the agency argues that its evaluation was consistent with the terms of the solicitation, and in the alternative, even if the agency erred in its evaluation, Maximus cannot demonstrate that it was competitively prejudiced by any evaluation errors. Supp. Memorandum of Law (MOL) at 2-15; see also Cognosante's Supp. Comments at 4-12.

With respect to its arguments that the agency failed to reasonably evaluate the experience of Cognosante's proposed subcontractors, as noted above, offerors were permitted to submit corporate experience references "for subcontractors performing major aspects of the project. . . ." RFP at 98. In turn, the agency would evaluate an offeror's corporate experience "based on an assessment of the depth, breadth, and relevance of its corporate experience (including proposed subcontractors that would perform major or critical aspects of the requirement), on recent experience, in implementing and supporting a nationwide service delivery program of a similar size, scope, and complexity to this requirement." *Id.* at 115. As relevant here, the solicitation did not explicitly define "major or critical aspects of the requirement."

As noted by the agency, however, the SOW includes five major components, eight objectives, and twenty-one specific tasks. SOW at 1-4. Cognosante submitted five corporate experience references, three of which were performed by the following subcontractors: [DELETED]; [DELETED]; and [DELETED]. As explained in Cognosante's proposal, [DELETED] would provide services under SOW tasks 11 (employment network (EN) activation, technical assistance, and training), 13 (EN

⁶ Maximus's initial protest also alleged that because Cognosante ostensibly lacked relevant corporate experience, the agency could not reasonably have evaluated the awardee's past performance as warranting a rating of excellent. Protest at 23. We previously dismissed the argument because we concluded that it failed to state a legally and factually sufficient basis of protest. 4 C.F.R. § 21.5(f). Rather, at best, it was merely a derivative challenge to the agency's evaluation of Cognosante's corporate experience evaluation.

In this regard, the solicitation's evaluation criteria for past performance did not include a separate requirement for relevancy; rather, the evaluation of relevancy was unique to the evaluation of corporate experience. Compare RFP at 111-112 with 114-115. As such, because Maximus's challenge was exclusive to the relevancy of Cognosante's past performance, rather than a challenge to the agency's evaluation of the past performance quality factors identified in the RFP, we dismissed the allegation. GAO Response to Partial Req. for Dismissal, May 28, 2021, at 2; see also GAO Resp. to Req. for Reconsideration, June 7, 2021 (dismissing Maximus's interlocutory request for reconsideration as premature).

payment process administration), and 14 (vocational rehabilitee (VR) payment process administration); [DELETED] would perform services related to task 9 (beneficiary satisfaction surveys); and [DELETED] would perform services under tasks 1 (contractor orientation), 7 (beneficiary outreach), 8 (beneficiary access to ENs), 10 (EN recruitment), and 11. See AR, exh. 14R, Cognosante's Final Technical Proposal at 99-103.

Maximus alleges that the agency, in failing to consider whether these subcontractors would, in fact, be performing major or critical aspects of the requirement, deviated from the RFP's evaluation criteria. Comments and First Supp. Protest at 8-18; Supp. Comments and Second Supp. Protest at 10-17. In this regard, the protester argues the contemporaneous record does not adequately address the agency's consideration of the subcontractors' proposed roles. Maximus also contends that [DELETED], in particular, is performing in such a "limited role" that the subcontractor cannot be considered to be performing major or critical aspects of the requirement. Supp. Comments and Second Supp. Protest at 13.

Based on our review of the record, we cannot conclude that the agency improperly deviated from the requirements of the solicitation with regard to its consideration of subcontractor corporate experience. Specifically, the underlying record supports the agency's conclusion that the three subcontractors at issue will perform major or critical aspects of the procurement. Again, the RFP required offerors to demonstrate, with their performance references, relevant experience in nine specific areas. RFP at 98, 112. Here, both [DELETED] and [DELETED] will provide services across several of the tasks identified in the SOW and their contract references demonstrated a record of performance that satisfied a number of the evaluative elements. AR, exh. 14R, Cognosante's Final Technical Proposal, at 71; 99-103.

With respect to [DELETED], the protester contends that the subcontractor will not perform a major aspect of the work because its work is limited to a single task of the SOW--task 9's beneficiary satisfaction surveys. The protester's arguments, however, ignore that experience with such surveys is one of the specific areas identified in the RFP with which offerors were required to demonstrate relevant experience. See RFP at 112 (providing that offerors would be evaluated based on demonstrated experience in "[c]onducting customer satisfaction surveys or other federally-sponsored data collection meeting the [Office of Management and Budget] (OMB) clearance requirements in accordance with the Paperwork Reduction Act of 1995[.]"). In the agency's view, performance of a task for which the solicitation required offerors to specifically demonstrate corporate experience was reasonably considered a major or critical aspect of the contract. In the absence of a definition for what constituted a major or critical aspect of the procurement, the protester has not demonstrated that the agency's evaluation judgment was inconsistent with the express terms of the solicitation. Rather, the protester's challenge amounts to nothing more than its disagreement with the agency's evaluation judgments, which does not establish that the evaluation was

unreasonable.⁷ *C2G Ltd. Co.*, B-415938.2, June 26, 2018, 2018 CPD ¶ 219 at 5. Accordingly, we find no basis to disturb the agency's determination that the three Cognosante subcontractors at issue would be performing major or critical facets of the requirement.

We also find no basis to conclude that the agency unreasonably assigned Cognosante's proposal strengths based on the [DELETED] corporate experience reference. The relative merits of an offeror's corporate experience information is generally within the broad discretion of the contracting agency. See *Paragon Tech. Group, Inc.*, B-407331, Dec. 18, 2012, 2013 CPD ¶ 11 at 5. A protester's disagreement with the agency's judgment does not establish that an evaluation was unreasonable. *FN Mfg., LLC*, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7. The RFP gave broad discretion to the agency concerning how it would evaluate corporate experience: the SSA would assess the depth, breadth, and relevancy of recent experience, and how that experience demonstrates performing work in the nine identified performance areas. RFP at 111-112. Here, the agency assigned strengths based on the performance record demonstrated during [DELETED]'s performance. AR, exh. 13R, Cognosante Final Consensus TEP Report at 37, 39. For example, [DELETED]'s reference, which included collecting data and conducting surveys, as well as preparing OMB clearance packages, was evaluated as warranting a strength. *Id.* at 37-38. This work is

⁷ We also find no merit to the protester's arguments that we should reject the agency's explanations, submitted in response to the protest, that it specifically considered the proposed roles of Cognosante's subcontractors when evaluating corporate experience. See, e.g., AR, exh. 27, TEP Chair's Declaration at 1 ("[T]he TEP specifically considered, and concluded in its evaluation of Cognosante's corporate experience and past performance that Cognosante's proposed subcontractors, [DELETED], [DELETED], and [DELETED], would be performing 'major or critical aspects of the TPM contract.'"); AR, exh. 26, Contracting Officer's Declaration at 1 ("I specifically considered, and concluded in my evaluation of Cognosante's corporate experience and past performance that Cognosante's proposed subcontractors, [DELETED], [DELETED], and [DELETED], would be performing 'major or critical aspects of the TPM contract.'").

In this regard, in determining the rationality of an agency's evaluation and award decision, we do not limit our review to contemporaneous evidence, but consider all the information provided, including the parties' arguments and explanations. *MiMoCloud*, B-419482, Mar. 25, 2021, 2021 CPD ¶ 157 at 9. While we generally give little weight to reevaluations prepared in the heat of the adversarial process, we will consider post-protest explanations that provide a detailed rationale for contemporaneous conclusions, which, as is the case here, simply fill in previously unrecorded details. These explanations will generally be considered in our review of the rationality of selection decisions, so long as the explanations are credible and consistent with the contemporaneous record. *Id.* As set forth above, we find the agency's additional clarification of the record submitted in response to the protest to be credible and consistent with the contemporaneous evaluation.

reasonably related to the work that it will perform under task 9, which will include, among other necessary tasks, conducting periodic surveys and preparing a draft OMB clearance package for the beneficiary survey instrument and associated data collection. SOW at 24. Thus, the protester's objection in this regard is without merit.⁸

Next, Maximus argues that the SSA improperly considered two of Cognosante's corporate experience references despite, in the protester's view, neither contract reference meets the solicitation's requirements for recent performance. Comments and First Supp. Protest at 18-25; Comments and Second Supp. Protest at 18-33. Specifically, the protester argues that Cognosante's reference for work performed under a Department of Veterans Affairs (VA) contract, as well as its submitted reference for [DELETED]'s (one of Cognosante's subcontractors) contract, did not meet the definition of recent because they were still ongoing and had not been ongoing for at least a year as of the closing date of the solicitation. In response, the agency argues that these two references met the requirements of the solicitation, and, in the alternative, even if they did not, their consideration did not prejudice the protester. Supp. MOL at 6-9; 13-15.

⁸ The protester's arguments with respect to other assessed strengths, however, appear to raise legitimate questions about whether the agency reasonably assessed certain strengths for [DELETED]'s prior performance reference related to services that it will not perform on this effort. See, e.g., AR, exh. 13R, Cognosante Final Consensus TEP Report at 41 (noting that [DELETED] has extensive experience developing payment processes, even though this experience is unrelated to the beneficiary satisfaction surveys to be performed under task 9, the only task [DELETED] would be performing under the contract). Even assuming these additional assessed strengths were in error, however, we can discern no reasonable possibility of competitive prejudice because the strengths assigned for [DELETED]'s reference appear to be duplicative of other strengths assessed for the experience of Cognosante and its team. See e.g., AR, exh. 13R, Cognosante Final Consensus TEP Report at 35 (Cognosante was also assessed a strength for its development and administration of payment processes with respect to one of its other references).

Additionally, even removing the few erroneously assessed strengths for [DELETED]'s prior experience that are unrelated to its proposed scope of work on this effort would not materially impact the Cognosante team's overall experience rating. Cognosante would still have 19 assigned strengths, no weaknesses or significant weaknesses, and demonstrated experience across all nine of the evaluation areas. See *id.* at 27-41; AR, exh. 15R, Final Trade-off Analysis at 14-22. Competitive prejudice is an essential element of any viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. *AdvanceMed Corp.*, B-415360 *et al.*, Dec. 19, 2017, 2018 CPD ¶ 4 at 10; *DynCorp Int'l LLC*, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 12-13.

The solicitation defines recent “as completion of a similar project within the past seven (7) years as of the closing date of this solicitation or, if still ongoing, the project must have been ongoing for at least a year as of the closing date of this solicitation.” RFP at 111-112; see also RFP at 98. At issue here, Cognosante submitted corporate experience references for its work for the VA, and for its subcontractor, [DELETED], for work performed for the [DELETED]. RFP, exh. 14R, Cognosante’s Final Technical Proposal, at 81, 88. For its VA contract, Cognosante’s proposal stated that the date of award was August 30, 2019 and the contract completion date would be August 29, 2022.⁹ *Id.* at 81. For the [DELETED] reference, the contract start date was provided as October 1, 2019, and the completion date as September 30, 2020. *Id.* at 88.

Maximus alleges that because these contracts were not, per the solicitation’s instructions, performed for more than one year prior to the RFP’s closing date--which the protester asserts was May 26, 2020--the SSA should not have considered these references in its evaluation under the corporate experience or past performance factors. In response, the agency argues that Maximus is applying the incorrect “closing date” in its analysis. Supp. MOL at 7-9. In the agency’s view, while the original RFP provided that proposals were due on May 26, the agency “amended the RFP on September 4, 2020, in part, to “[r]eopen the solicitation, extending the due date for proposals to 1:00 PM Eastern Time on September 14, 2020.”” *Id.* at 7, *citing* RFP at 1. The agency goes on to provide that on October 8, the agency notified both Maximus and Cognosante that they were required to submit final revised proposals no later than October 13, 2020. AR, Exh. 9, Second Discussion Letter for Maximus, at 1. The agency asserts that the October 13 date (when final proposals were required to be submitted) is the controlling “closing date” for the RFP. Supp. MOL at 7. Accordingly, the agency concludes that because Cognosante’s VA reference began performance in 2017, and the [DELETED] reference had concluded performance by September 30, 2020, both references were recent under the terms of the RFP. Supp. MOL at 8. In the alternative, the agency argues that even if the agency should have excluded these two corporate experience references, Maximus cannot demonstrate competitive prejudice. *Id.* at 13-15.

First, we find unobjectionable the agency’s consideration of Cognosante’s VA reference. The solicitation--while referencing the phrase “closing date” in its instructions to offerors and evaluation criteria under the corporate experience factor--never actually defines that term. While the original RFP stated that proposals were to be submitted on May 21, the SSA’s second amendment to the RFP provides that its purpose was, in part, to “[r]eopen the solicitation, extending the due date for proposals” to September 14. RFP at 1. In our view, because the solicitation was expressly reopened via the second amendment to the RFP, thereby extending the closing date to

⁹ The agency avers that Cognosante’s proposal mistakenly stated that the contract start date was August 30, 2019, but in fact, the contract began in June 2017. Supp. MOL at 6. As we conclude that Cognosante’s reference was performed for more than a year prior to the closing date of the solicitation based on an August 2019 start date, we need not address the propriety of the agency’s reliance on this alternative start date.

September 14 for any firm to submit an initial proposal, we find nothing objectionable in the agency considering the recency of corporate experience on the basis of this amended closing date. As such, because Cognosante's VA reference began performance on August 30, 2019, more than one year prior to September 14, 2020, the agency's consideration of this reference is not unreasonable.

Based on the cumulative nature of the agency's evaluation of the Cognosante team's corporate experience, we find it is unnecessary to decide whether the [DELETED] reference was recent based on the October 13 deadline for the submission of revised proposals, as advocated by the agency. In this regard, Maximus cannot establish a reasonable possibility of competitive prejudice, even if the reference should not have been considered recent, because it is not apparent that the offerors' competitive positions would materially change if the strengths associated with that reference were removed. Specifically, Cognosante's remaining four corporate experience references satisfy each of the nine evaluation areas identified in the RFP; the [DELETED] references simply added depth to its already demonstrated experience. See AR, exh. 14R, Cognosante's Final Proposal at 71. Moreover, even removing the two strengths attributable to the experience demonstrated on the [DELETED] contract, Cognosante would still have at least 19 strengths, with no weaknesses, significant weaknesses, or deficiencies; such a rating amply satisfies the solicitation's criteria for a rating of excellent. See AR, exh. 13R, Cognosante Final Consensus TEP Report at 40.

Additionally, Cognosante's evaluated advantages under the corporate experience factor, as compared to Maximus's proposal, would not materially change. In this regard, the contracting officer noted that "Maximus demonstrated stronger corporate experience in five out of the nine areas examined," and stated that the protester received a rating of good (as compared to Cognosante's rating of excellent) based on two identified weaknesses. AR, exh. 15R, Final Trade-off Analysis at 21-22. The tradeoff decision turned on Maximus's "fail[ure] to demonstrate the necessary level of experience in two of the [evaluation] areas, whereas Cognosante was able to offer some level of experience in every area," as well as the fact that the awardee presented "sufficient" and "far reaching experience" across all the evaluation areas. *Id.* Thus, the record demonstrates that the award decision would not be materially affected by the non-consideration of the [DELETED] reference. Accordingly, the protest allegation is denied because Maximus has failed to demonstrate that it suffered competitive prejudice because of the agency's decision to evaluate the [DELETED] reference.

Evaluation of Maximus's Past Performance

Next, the protester raises multiple challenges to the agency's evaluation of its past performance, for which the SSA assigned a rating of fair. Protest at 26-34; Comments and First Supp. Protest at 28-43; Supp. Comments and Second Supp. Protest at 42-46. In this respect, Maximus contends that the agency's assignment of deficiencies and significant weaknesses for the firm's past performance was in error. In essence, the protester argues that the agency, by improperly focusing on the negative performance aspects of its incumbent contract, unreasonably ignored the improvements made over

the life of that contract and the positive aspects of its other submitted references. Moreover, Maximus argues that the agency failed to consider information the offeror provided during discussions, concerning actions taken to address its performance on the predecessor contract. In sum, the protester alleges that the manner in which the agency used Maximus's past performance information in its evaluation was unreasonable and inconsistent with the terms of the RFP.

Where a protester challenges an agency's evaluation of experience or 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. *Falcon Envtl. Servs., Inc.*, B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7. An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion, which we will not disturb unless the agency's assessment is unreasonable or inconsistent with the solicitation criteria. *Metropolitan Life Ins. Co.*, B-412717, B-412717.2, May 13, 2016, 2016 CPD ¶ 132 at 14. A protester's disagreement with the agency's past performance judgements, without more, is insufficient to establish that the evaluation was improper. *Beretta USA Corp.*, B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 10.

Maximus submitted five corporate experience references for the agency's consideration under the past performance factor, to include its performance on the incumbent effort (TPM contract). AR, exh. 12, Maximus Final Tech. Proposal at 86-93. In its evaluation, the TEP, consistent with the terms of the RFP, reviewed submitted past performance questionnaires (PPQs) and CPARs records for these references, as well as the information Maximus provided during discussions. AR, exh. 4, Maximus Consensus TEP Report at 63. The TEP's review found the protester's past performance warranted a rating of fair. *Id.* at 75. In so finding, while the TEP concluded that Maximus's past performance deserved a number of strengths, the agency also found numerous deficiencies and significant weaknesses with its performance record, overall. *Id.* at 64-74. Notably, while the TEP focused its evaluation on Maximus's performance on the incumbent TPM contract (given the close similarities between the two efforts), the record demonstrated the TEP evaluated all submitted references. *Id.* at 75 (“[D]ue to relevance (as a result of the similarities in tasks, deliverables, and personnel performing tasks) and implications of general trends, the TEP weighted SSA's TPM contract review of MAXIMUS's performance more heavily than the evaluations received from the other organizations, while still including these other evaluations in our overall assessment.”). While the TEP assessed the protester's performance on the TPM contract as poor, the positive aspects of Maximus's remaining references led the TEP to assign an overall rating of fair. *Id.* at 78. The contracting officer largely adopted the TEP's conclusions, though with some minor modifications. See AR, exh. 15R, Final Trade-off Analysis at 27-29.

The protester raises a number of allegations challenging the agency's evaluation of the firm's past performance, none of which provides a basis for our Office to sustain the protest. First, Maximus contends that the SSA improperly failed to consider information

the firm supplied during two rounds of discussions concerning its past performance record. Protest at 16-19; Comments and First Supp. Protest at 37-43. In this regard, when provided an opportunity by the agency to address adverse past performance information in both the first and second rounds of discussions, Maximus supplied information that, in its view, addressed the agency's concerns about the firm's historical performance on the TPM contract. See AR, exh. 7, Maximus's Response to First Discussion Letter, at 15-17; AR, exh. 10, Maximus's Response to Second Discussion Letter, at 24-25. However, the agency did not view Maximus's responses as mitigating the firm's performance record on the incumbent TPM contract. See AR, exh. 4, Maximus Consensus TEP Report at 78 (noting that while Maximus "acknowledged [the performance issues] and provided information about how [the firm] will avoid the errors" in the future, Maximus's comments did "not negate the agency's experiences with" Maximus.).

Based on our review of the record, we find the agency reasonably considered the information supplied by Maximus during discussions. Indeed, the TEP and contracting officer both acknowledged the information supplied by Maximus during discussions, but concluded that such information did not alleviate the agency's concerns. *Id.*; see also AR, exh. 15R, Final Trade-off Analysis at 27-29. Further, the TEP Chair explains that following discussions with the protester, the agency actually upgraded Maximus's past performance rating. AR, exh. 27, TEP Chair's Declaration at 3; see also AR, exh. 4, Maximus Consensus TEP Report at 78 (highlighting that after discussions and final proposal revisions, the TEP upwardly adjusted Maximus's past performance rating to fair). While Maximus provided some information about its corrective action plans for the performance issues identified by the TEP, the agency reasonably concluded that much of this information was forward-looking and did not otherwise explain or mitigate the prior adverse information. See e.g., AR, exh. 10, Maximus's Response to Second Discussion Letter, at 24-25 (noting that its corrective action plan will add additional resources and personnel). While an agency may properly consider past corrective actions, an agency is not required to ignore instances of negative past performance. *Dehler Mfg. Co., Inc.*, B-416819, B-416819.2, Dec. 19, 2018, 2019 CPD ¶ 45 at 4 (citing *The Bionetics Corp.*, B-405145, B-405145.2, Sept. 2, 2011, 2011 CPD ¶ 173 at 7-8).¹⁰ Given our review of the record, we find no basis to conclude that the agency failed to reasonably consider information supplied by Maximus during discussions.

¹⁰ For example, in the base year of performance on the TPM contract, the SSA found that Maximus performed unsatisfactorily in the areas of quality, schedule, cost control, and management; performed marginally in regulatory compliance; and satisfactorily in small business contracting. AR, exh. 15B, Maximus's CPARs Information at 1-2. This CPARs reference details Maximus's sub-par performance across a number of factors, and provides that the contracting officer "would not recommend them for similar requirements in the future." *Id.* at 5. While, as the protester points out, the adjectival ratings for Maximus's performance did improve in the option years--with the offeror achieving a rating of satisfactory for 16 of the 18 option year's quality ratings--the

Similarly, and more broadly, we find no basis to conclude that the SSA's evaluation of Maximus's past performance was otherwise flawed. Here, the record demonstrates that the TEP thoughtfully considered all available information concerning Maximus's prior performance history. As a preliminary matter, we find unobjectionable the agency's primary reliance on the past performance information derived from the incumbent TPM contract. Indeed, as noted by the agency, given the strong similarities between the prior effort and the SSA's current requirement, it seems axiomatic that Maximus's performance on the TPM contract would be a strong indicator of its performance on this effort. See AR, exh. 4, Maximus Consensus TEP Report at 75. However, contrary to the protester's assertion, the evaluation record does not reflect that the agency ignored positive aspects of Maximus's TPM performance history, or failed to consider its generally positive performance on its four other references. Indeed, the TEP assigned Maximus multiple strengths based on its performance history, to include its performance on the incumbent TPM contract. AR, exh. 4, Maximus Consensus TEP Report at 63-64, 67-68, 71, 73-74. However, the TEP reasonably concluded that these aspects of Maximus's performance history, when coupled with the significant performance issues Maximus experienced on the TPM contract, warranted only a rating of fair.

In sum, we find no merit to the protester's contention that the agency's evaluation of its past performance was flawed. Based on the record before us, the agency meaningfully considered the entirety of Maximus's available past performance information, to include the information presented during discussions, and reasonably assigned a rating of fair. While Maximus may disagree with the scope and content of the agency's evaluation, such disagreement, without more, does not provide a basis to sustain the protest. *Beretta USA Corp.*, *supra*, at 10.

Agency's Failure to Conduct Meaningful Discussions

various assigned contracting officers for the TPM project, nonetheless, identified numerous performance concerns.

As one illustrative example, concerning performance in the second option year of the TPM contract, the SSA assigned Maximus a rating of satisfactory under the quality metric. *Id.* at 13. Despite this, however, the contracting officer identified various performance issues in the narrative section of this CPARs reference. *Id.* at 13-14 (noting that it was unclear as to which tasks Maximus implemented its quality control process, that the agency was required to correct Maximus's errors in messages for service providers and invoices, and that the firm incorrectly calculated and submitted various reports); see also AR, exh. 15A, Maximus's PPQs at 6 (the assessing official represented that "there were significant performance issues that had a major impact on the overall quality of the program" in the base year, and while Maximus's performance did improve in the option years, "there are still recurring issues with timeliness and quality").

Additionally, the protester argues that the agency failed to engage in meaningful discussions concerning the firm's key personnel. When discussions are conducted in a negotiated procurement, they must be meaningful, equitable, and not misleading. *QinetiQ N. Am., Inc.*, B-405163.2 *et al.*, Jan. 25, 2012, 2012 CPD ¶ 53 at 16. When conducting discussions, agencies must identify, at a minimum, deficiencies, significant weaknesses, and adverse past performance information to which an offeror has not yet had an opportunity to respond. FAR 15.306(d)(3). To satisfy the requirement for meaningful discussions, an agency need only lead an offeror into the areas of its proposal requiring amplification or revision; all-encompassing discussions are not required. *Id.* Agencies are not required to "spoon-feed" an offeror during discussions by identifying every possible area where a proposal might be improved or suggesting alternative approaches. *Torrent Techs., Inc.*, B-419326, B-419326.2, Jan. 19, 2021, 2021 CPD ¶ 29 at 12. Agencies have broad discretion to determine the content and extent of discussions, and GAO will limit its review of the agency's judgments in this area to a determination of whether they are reasonable. *InfoPro, Inc.*, B-408642.2, B-408642.3, Dec. 23, 2014, 2015 CPD ¶ 59 at 9.

Here, Maximus alleges that the agency's discussions were flawed because the SSA failed to apprise the protester of its concerns about the firm's proposed key personnel. Comments and First Supp. Protest at 43-47; Supp. Comments and Second Supp. Protest at 46-49. In its evaluation of Maximus's past performance, the TEP detailed its analysis as to why the firm's past performance warranted a rating of fair. AR, exh. 4, Maximus Consensus TEP Report at 74-78. In so doing, and as previously discussed, the TEP explained its significant concerns with Maximus's performance on the incumbent TPM effort. *Id.* In its report, the TEP also stated it was "concerned about the effectiveness of [Maximus's] Key Personnel." *Id.* at 77. Specifically, the TEP noted that Maximus's project director and deputy project director--who would be responsible for budget maintenance, quality assurance, and deliverable timeliness--were carried over from the incumbent effort to perform the SSA's current requirement. In the TEP's view, since these staff members were responsible for the incumbent contract that "has had so many issues, it is concerning that new staff were not proposed to provide program improvement." *Id.*

It is Maximus's position that because these concerns with key personnel constituted adverse past performance information, but were not raised with the firm during discussions, the SSA's conduct of those discussions was flawed. We disagree. First, the TEP's concerns with the protester's continued use of certain key personnel cannot reasonably be considered a significant weakness or deficiency in Maximus's technical approach. Indeed, the trade-off decision makes no mention of any concerns with Maximus's key personnel under the staff qualifications and experience factor (the factor under which key personnel were evaluated), for which Maximus received a rating of excellent, the highest rating. See RFP at 112-113; AR, exh. 15R, Final Trade-off Analysis at 22. Second, the TEP's concerns are not reasonably viewed as "adverse past performance information to which the offeror has not yet had an opportunity to respond." FAR 15.306(d)(3). That is because the TEP's concerns about the use of certain key personnel for an upcoming requirement does not equate to past

performance information; past performance information, necessarily, concerns a contractor's historical performance record, not future or intended performance. See FAR Part 2. Moreover, even if the TEP's concerns could be reasonably construed as adverse past performance information, Maximus did, in fact, have an opportunity to respond to its past performance record on the incumbent contract during discussions. See AR, exh. 7, Maximus's Response to First Discussion Letter; exh. 10, Maximus's Response to Second Discussion Letter.

Finally, and dispositive, the record demonstrates that any concerns on part of the TEP played no role in the decision to award to Cognosante. To be sure, the contracting officer's trade-off analysis makes no mention of the TEP's statements, and the contracting officer provides that she "did not consider the TEP's concerns about Maximus's key personnel to be relevant in evaluating its past performance, or any other technical factor[.]" AR, exh. 26, Contracting Officer Declaration at 2; see also AR, exh. 27, TEP Chair's Declaration at 2 (providing that "the TEP did not consider its concerns over key personnel as a weakness, significant weakness, or deficiency for past performance or any other technical factor."). Accordingly, we cannot conclude that the agency failed to conduct meaningful discussions with Maximus.

Cost Realism Adjustments

Finally, Maximus challenges the agency's cost realism analysis, specifically, as it relates to the agency's upward adjustment to Maximus's costs for performing task 9 under the SOW (work related to beneficiary satisfaction surveys). Protest at 38-41; Comments and First Supp. Protest at 47-50; Supp. Comments and Second Supp. Protest at 50-51. In Maximus's view, the agency's decision to adjust Maximus's costs for task 9 was unreasonable because, based on Maximus's reading of the RFP and SOW, and its historical experience as the incumbent contractor, this task was not a "firm requirement" to be completed on an annual basis. Protest at 39. Based on our review of the record, the SSA's adjustments to Maximus's costs for task 9 were reasonable and consistent with the solicitation.

When an agency evaluates a proposal for the award of a cost-reimbursement contract or task order, the offeror's proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR 15.404-1(d), 16.505(b)(3); *AECOM Mgmt. Servs., Inc.*, B-418467 *et al.*, May 15, 2020, 2020 CPD ¶ 172 at 4. Consequently, the agency must perform a cost realism analysis to determine the extent to which the offeror's proposed costs are realistic for the work to be performed. FAR 15.404-1(d)(1); see *Noridian Admin. Servs., LLC*, B-401068.13, Jan. 16, 2013, 2013 CPD ¶ 52 at 4-5. An agency is not required to conduct an in-depth cost analysis, or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. See *Cascade Gen., Inc.*, B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8; see FAR 15.404-1(c). Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonable; a protester's disagreement with the agency's judgment, without more, does not provide a basis to sustain the protest.

Imagine One Tech. & Mgmt., Ltd., B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 14-16.

The SOW included a requirement “to conduct periodic surveys (for example, on an annual basis) of beneficiaries receiving services under” the Ticket-to-Work program, and provided the specific performance requirements of this task. SOW at 24. Offerors, per the solicitation’s instruction, were to provide their costs for task 9 for both the base year, and the option years. See RFP at 10-11 (identifying specific contract line item numbers (CLINs) for the base and option years of performance for task 9). Though task 9 was designated in the solicitation as an “optional” task, the RFP made clear that offerors, in their business proposals, were to provide their costs for all optional tasks. See *id.* at 102 (noting that offerors “are instructed to provide a separate cost breakdown for the option year and all optional tasks” and were required to provide costs “for each” CLIN.).

Maximus, in its business proposal, did not include costs for all of the CLINs for task 9; instead, the protester included costs for the base year, significantly reduced costs for the first option year, and no costs for option years two, three, and four. AR, exh. 11, Maximus’s Business Proposal at 9, 13. In conducting its cost realism analysis, the agency identified that Maximus’s proposed costs for the CLINs associated with task 9 were unrealistic. The TEP’s cost realism analysis identified that the number of full-time equivalents Maximus proposed for task 9 in the option years was “unacceptable” and that even though this “optional task should be budgeted through the life of the contract[,]” a “comparison of Optional Task 9 across the option years show a drastic decrease in price from the base year to option year 1 and then there is no cost in option years 2-4.” AR, exh. 16, TEP’s Cost Realism Analysis at 8, 11.

The contracting officer’s independent cost realism analysis, while considering the TEP’s cost analysis, similarly identified problems in Maximus’s proposed costs. See AR, exh. 17, Contracting Officer (CO’s) Cost Realism Analysis. While noting the precipitous drop in costs in the option years, the contracting officer specifically identified that Maximus’s proposal assumed that the task 9 surveys would only be performed in the base period, “[b]ased on historical precedent[.]” *Id.* at 8; AR, exh. 11, Maximus’s Business Proposal at 17. However, the contracting officer identified that, per the terms of the solicitation, the CLINs in the option years for this task were to include a proposed cost in an offeror’s proposal. AR, Exh. 17, CO’s Cost Realism Analysis at 8-9. Accordingly, given Maximus’s failure to provide costs for each CLIN, the contracting officer upwardly adjusted the protester’s costs under task 9 for the option years.¹¹ *Id.* at 9.

¹¹ The contracting officer provides a detailed explanation as to how she arrived at the dollar amounts of her adjustments. AR, exh. 17, CO’s Cost Realism Analysis at 9. While we conclude the agency’s decision to upwardly adjust Maximus’s costs, as a general matter, under task 9 to be reasonable, the record also demonstrates that the agency’s methodology and specific dollar adjustments were reasonable, as well.

Maximus's main objection centers on the fact that, according to the protester, the surveys underlying Task 9 "have historically been conducted on only a sporadic basis, [and] the SSA failed to take this into account when performing its cost-realism analysis" for the task 9 CLINs. Comments and First Supp. Protest at 48. That is, Maximus conducted the survey in the base year of its incumbent contract (in 2016), and that "due to SSA budget constraints[.]" the agency removed this optional work in the option periods. Protest at 39. Thus, in the protester's view, because, based on the historical infrequency that Maximus, the incumbent contractor, had to perform these tasks, the agency was required to consider this fact during its evaluation to determine an offeror's most probable costs.

This argument does not withstand scrutiny. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation requirements. *Right Direction Tech. Sols., LLC*, B-414366.2, June 13, 2017, 2017 CPD ¶ 202 at 7. An offeror also runs the risk that a procuring agency will evaluate its proposal unfavorably where it fails to do so. *Id.* Here, the solicitation clearly required offerors to include costs for all CLINs, to include those corresponding to optional tasks under the SOW. And, moreover, the SOW specifically identified that the surveys to be conducted pursuant to task 9 would be performed "for example, on an annual basis[.]" SOW at 24. Yet, the protester, contrary to the terms of the solicitation, failed to provide costs for the performance of the survey in the option years. Where the protester failed to provide the required cost information, the agency reasonably added these costs and developed an estimate of the protester's cost of performance that was consistent with the solicitation instructions and allowed for a reasonable comparison of offerors' estimated costs of performance.

The protest is denied.

Edda Emmanuelli Perez
General Counsel