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Decision

Matter of: Aerostar Perma-Fix TRU Services, LLC

File: B-411733; B-411733.4

Date: October 8, 2015

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Anne B. Perry, Esq., and Katie Calogero, Esq., Sheppard Mullin Richter & Hampton LLP, for North Wind Group, the intervenor.

Ronald Freeman, Esq., Charmaine A. Howson, Esq., Timothy B. O'Keefe, Esq., and H. Jack Shearer, Esq., Department of Energy, for the agency.

Cherie J. Owen, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's technical evaluation is denied where record shows that the evaluation was reasonable and consistent with the stated evaluation criteria.
 2. Protest challenging agency's evaluation of relevant experience is denied where agency's assignment of weaknesses to protester's proposal, including a weakness for failing to follow solicitation's instruction that each team member submit a form identifying relevant experience, was reasonable and consistent with the stated evaluation criteria.
 3. Protest of evaluation of past performance by awardee's subcontractor under the incumbent contract is denied where the agency reasonably assigned a rating of neither favorable nor unfavorable based on the totality of the past performance, including not only significant performance problems, but also the contractor's corrective action and recent very good or satisfactory performance.
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DECISION

Aerostar Perma-Fix TRU Services, LLC (APT), of Oak Ridge, Tennessee, an 8(a) mentor-protégé joint venture, protests the Department of Energy's (DOE) award of a contract to North Wind Group, under request for proposals (RFP) No. DE-SOL-

0006331, for management and operation of the Oak Ridge Transuranic Waste Processing Center. APT contends that the agency conducted a flawed evaluation of proposals, resulting in a flawed selection decision.

We deny the protest.

BACKGROUND

The Transuranic Waste Processing Center (TWPC) is a Category II nuclear facility operating under DOE's Office of Environmental Management to process transuranic debris and soil waste from the Oak Ridge National Laboratory. RFP at 21. The RFP, issued on October 14, 2014 as a small business set-aside, contemplated award of a contract with a 1.5-month transition period, a base period of 34.5 months, and one 24-month option, to manage and operate the TWPC. RFP at 1-2, 35. The RFP contains fixed-price and cost-plus-award-fee contract line item numbers (CLINs), as well as an indefinite-delivery/indefinite-quantity (ID/IQ) CLIN. RFP at 93.

Award was to be made on a best-value basis considering five evaluation factors: (1) past performance; (2) technical understanding and approach; (3) key personnel and management plan; (4) relevant experience; and (5) cost/price. RFP at 134. Past performance and technical understanding were of equal importance, while key personnel and relevant experience also were of equal importance. Past performance and technical understanding combined were significantly more important than key personnel and relevant experience combined, while the four non-cost/price factors, when combined, were significantly more important than cost/price. RFP at 134.

The solicitation required offerors and significant subcontractors to submit a past performance and relevant experience reference information form (Form L-3) that identified relevant contracts performed by the company. RFP at 104, 117. Specifically, the RFP required that the offeror, "including each entity comprising the teaming arrangement, submit an Attachment L-3, Past Performance and Relevant Experience Reference Information Form . . . for three (3) contracts or projects." RFP at 104 (emphasis omitted). Similarly, each significant subcontractor was required to submit a Form L-3 for two contracts or projects. *Id.* The RFP provided that Form L-3 would be used in evaluating past performance and relevant experience. In addition, the RFP stated that, in the context of past performance, except in unusual circumstances, work performed for DOE's Office of Environmental Management would be considered at least somewhat relevant. RFP at 105, 135.

The agency received seven proposals by the December 23, 2014 closing date, including those submitted by APT¹ and North Wind. The proposals of APT and North Wind were rated as follows:

	North Wind	APT
Past Performance	Substantial Confidence	Substantial Confidence
Tech. Understanding & Approach	Good	Satisfactory
Key Personnel & Mgmt Plan	Good	Good
Relevant Experience	Outstanding	Marginal
Evaluated Cost/Price	\$129,862,925	\$112,167,552

Agency Report (AR), Tab E.1, SEB Report, at 9.

Based on review of the Source Evaluation Board (SEB) Report, the source selection official (SSO) found North Wind's proposal to be superior to APT's under each of the non-cost/price factors. In this regard, under the past performance factor, the SEB found that APT's proposal included three very relevant contracts, one relevant contract, and three somewhat relevant contracts. The evaluators rated the quality of performance on one of the contracts listed by APT as neither favorable nor unfavorable; the performance on three other contracts as favorable; and the performance on three additional contracts as highly favorable. AR, Tab E.1, SEB Report, at 41.

The SEB found that North Wind's past performance proposal included two very relevant contracts, four relevant contracts, and one somewhat relevant contract. The evaluators rated the quality of performance on four of the contracts as highly favorable; the performance on two other contracts as favorable; and the performance on one contract (the incumbent contract) as neither favorable nor unfavorable. *Id.* at 58. With regard to the incumbent contract, which is currently being performed by North Wind's significant subcontractor, Wastren Advantage, Inc. (WAI), and which was considered to be a very relevant contract, the SEB found that WAI's performance included both positive and negative aspects, such that overall the quality was neither favorable nor unfavorable. *Id.* at 58.

¹ APT is an 8(a) mentor-protégé joint venture comprised of Perma-Fix Environmental Services, the large business mentor, and Aerostar SES LLC, the 8(a) small disadvantaged business protégé. Protest at 2.

Notwithstanding the SEB's findings with regard to WAI's performance on the incumbent contract, the SSO nevertheless concluded that North Wind's overall past performance was superior to APT's. In this regard, the SSO emphasized that North Wind demonstrated highly favorable past performance on a very relevant and recent contract (the Advanced Mixed Waste Treatment Project for DOE's Office of Environmental Management) with a scope and complexity almost identical to the performance work statement here. In addition, the SSO noted that North Wind also demonstrated, through its significant subcontractor, WAI, very relevant past performance as the incumbent contractor on the TWPC contract, performing "essentially the same size, scope, and complexity this solicitation requires." AR, Tab G, Source Selection Decision Document (SSDD), at 14. Although the SSO acknowledged that WAI had experienced some performance problems on the incumbent contract resulting in a rating of neither favorable nor unfavorable, the SSO also noted that WAI has made significant performance improvements through corrective actions. Id. at 13-14. As a result, the SSO concluded that, "based on North Wind's most recent record of past performance on the very relevant current incumbent TWPC," and the significant improvements in WAI's performance evidenced in the most recent Past Performance Information Retrieval System (PPIRS) reports and "close-at-hand" information (i.e. information not in the proposals, but of which the agency evaluators or the SSO was aware), North Wind's past performance was superior to that of APT and other offerors. Id.

The SSO also found North Wind's proposal to be superior under the technical understanding and approach factor. In this regard, North Wind's proposal earned one significant strength, seven strengths, and three weaknesses, while APT's proposal earned eight strengths and four weaknesses. AR, Tab E.1, SEB Report, at 93, 104. One of APT's weaknesses was related to APT's approach to performing the nuclear fuel services (NFS) soils requirements, which the evaluators noted APT appeared not to understand. Id. at 96. Specifically, the evaluators found that APT's proposal indicated that the [DELETED], which was contrary to the requirements of the solicitation. Id.; see RFP at 154. Other weaknesses included APT's inadequate approach to performing contact-handled (CH) transuranic debris and soil waste and remote-handled (RH) transuranic debris and soil waste, which included inadequate detail regarding APT's plan to [DELETED]; APT's failure to provide sufficient details regarding several of its proposed improvements with respect to decreasing the cost or time needed to process waste; and APT's failure to demonstrate adequate staffing during "[c]old" standby when performing the facility decontamination and downgrade. AR, Tab E.1, SEB Report, at 96-97.

In finding North Wind's proposal to be superior under the technical understanding and approach factor, the SSO noted that it provided "more detail than any other proposal on their approach to analyze waste processing alternatives with emphasis on technical, compliance, and high risk factors." AR, Tab G, SSDD at 16. The SSO also cited "the combination of the significant strengths and strengths of North

Wind's technical approach," "especially in the understanding and approach for Waste Processing Operations and Certification, which is [the] critical requirement of this effort." Id.

The SSO likewise found North Wind's proposal to be superior under the relevant experience factor. In this regard, the SEB assigned North Wind's proposal one significant strength, two strengths, and one weakness under the relevant experience factor. The significant strength was for the experience of North Wind's subcontractor, WAI, as the current incumbent contractor. AR, Tab E.1, SEB Report, at 153. For the relevant experience factor, APT's proposal earned two strengths, one weakness, and one significant weakness. AR, Tab E.1, SEB Report, at 149. As relevant here, the evaluators assigned APT's proposal a significant weakness on the basis that, while the solicitation required each offeror, "including each entity comprising the teaming arrangement," to submit an Attachment L-3, Past Performance and Relevant Experience Reference Information Form, Aerostar, the lead partner in the joint venture and the entity proposed to perform the highest percentage of the overall effort, did not submit any Form L-3s identifying relevant contracts or projects. Id. at 150. The evaluators viewed the failure to identify any relevant experience for the lead joint venture partner and the entity proposed to perform [DELETED]% of the work (Aerostar) as appreciably increasing the risk of unsuccessful contract performance. Id. The SSO agreed with the evaluators, finding that Aerostar had failed to demonstrate relevant experience in several key areas. AR, Tab G, SSDD, at 20.

In addition, the SSO found North Wind's proposal to be superior under the key personnel and management plan factor. In this regard, the SSO noted that while the proposals of North Wind and APT both received ratings of good under this factor, there were a number of discriminators between the two proposals such that North Wind's proposal was superior. For example, the SSO noted that North Wind's proposed Waste Operations Manager has over 21 years of directly relevant DOE waste management experience, including 7.5 years as the current TWPC Waste Operations Manager.² AR, Tab G, SSDD, at 17.

The SSO concluded that North Wind's higher-priced, higher-rated proposal represented the best value, explaining that:

Although North Wind's [total overall evaluated price] is 14% higher than APT Services' [total overall evaluated price], I find that the North

² The SEB also recognized that APT's Waste Operations Manager had extensive experience in nuclear industry engineering and technical security systems. AR, Tab E.1, SEB Report, at 130. However, APT's manager did not have experience as the TWPC Waste Operations Manager, as did North Wind's manager. See AR, Tab C, APT's Proposal, at 93-95.

Wind proposal clearly presents a better overall value to the Government. APT Services would be challenged to meet performance expectations. . . . APT Services did not demonstrate an adequate understanding of multiple PWS sections and did not provide an adequate staffing approach. Additionally, I evaluated the North Wind proposal at least a level higher in Criterion 2 [technical understanding and approach] (as detailed above) and Criterion 4 [relevant experience] for APT Services' lack of demonstrated relevant experience in several important areas of the PWS, due to a very significant lack of relevant experience for the leading partner [Aerostar] in the Joint Venture. This partner has been assigned a very significant share of the proposed work effort, particularly with respect to PWS requirements for [transuranic] waste processing which presents very significant performance risk, despite the fact that the Offeror's overall team (Prime and subcontractors) past performance record provided substantial confidence in performing the requirements of this effort.

AR, Tab G, SSDD, at 20. The SSO found that "the significant gap between the technical merit exhibited by the APT Services proposal in relation to the North Wind proposal, including the additional performance certainty and significantly less risk" associated with North Wind's proposal justified the price premium associated with North Wind's proposal. *Id.* at 21. Upon learning of the resulting award to North Wind, APT filed this protest with our Office.

DISCUSSION

APT raises numerous challenges to the agency's evaluation of proposals, including challenges to every weakness assigned to its own proposal. APT also challenges the agency's selection decision, which the protester contends was based on a flawed evaluation. We have considered all of APT's arguments, and find that none furnish a basis to sustain the protest. We discuss some of APT's more significant arguments below.³

³ We note that the protester repeatedly references our decision in Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 to support the protester's position that the contracting officer's statement should be "given little weight," and should be rejected because it provides post-hoc explanations of the evaluation and selection decision. Protester's Comments at 7, 9, 13. However, the Boeing Sikorsky decision and its progeny do not require that we disregard the agency's explanations here. First, and contrary to the protester's assertions, neither our decision in Boeing Sikorsky nor its progeny provide for the automatic rejection of an agency's judgments made in response to protest contentions. Rather, our Office has repeatedly stated that post-protest explanations
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Technical Understanding and Approach

APT challenges each of the four weaknesses assigned to its proposal under the technical understanding and approach factor. In this regard, the evaluation of an offeror's technical proposal is a matter within the agency's broad discretion and our Office will not substitute our judgment for that of the agency; rather, we will examine the record to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Ball Aerospace & Technologies Corp., B-411359, B-411359.2, July 16, 2015, 2015 CPD ¶ 219 at 14; Nuclear Production Partners LLC; Integrated Nuclear Production Solutions LLC, B-407948 et al., Apr. 29, 2013, 2013 CPD ¶ 112 at 21. A protester's disagreement with the agency's judgment does not establish that the evaluation was unreasonable. WAI-Stoller Servs., LLC; Portage, Inc., B-408248.13 et al., May 29, 2015, 2015 CPD ¶ 201 at 7. Based on our review of the record, we find that none of the challenges to the evaluation under the technical understanding and approach factor call into question APT's rating of only satisfactory under this factor.

For example, the protester contends that the evaluators unreasonably concluded that APT did not understand that the solicitation required that the Nuclear Fuel Services (NFS) soil waste would be certified after receipt at the TWPC, rather than before. See RFP at 154; AR, Tab E.1, SEB Report, at 96. In this regard, the protester argues that the "majority" of references in APT's proposal indicated that APT was aware of the correct sequence of events. Protester's Comments at 10.

We find that APT has not shown the agency's assignment of a weakness in this regard to be unreasonable. As noted by the evaluators, APT's proposal stated that

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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. See, e.g., Raytheon Co.-Missile Sys. Division, B-408906.4 et al., Mar. 17, 2015, 2015 CPD ¶ 120 at 11. Here, we find the agency's post-protest explanations to be reasonable and consistent with the contemporaneous record. Moreover, the agency's contemporaneous evaluation judgments and selection decision are well-documented in the agency's 205-page SEB report and 23-page selection decision. See generally, AR, Tab E.1, SEB Report; Tab G, SSDD. Therefore, we find no merit in the protester's arguments that we should disregard the post-protest statements under the standard set forth in Boeing Sikorsky.

[DELETED]⁴ [DELETED], which was contrary to the solicitation's requirements. AR, Tab E.1, SEB Report, at 96; see AR, Tab C, APT Proposal, at 67 ([DELETED]). The solicitation, however, provided that the waste would be certified after receipt at the TWPC. See AR, Tab E.1, SEB Report, at 96; RFP at 154. While APT contends that the above statement in its proposal was simply a minor error due to the omission of the word "not"--asserting that the sentence should have read, "[DELETED]," Protest at 22, n.2; Protester's Comments at 10, we note that DOE has identified another passage in the protester's proposal which likewise stated that NSF soil waste would be "[DELETED]." AR, Tab C, APT Proposal, at 69. Offerors are responsible for submitting a well-written proposal with adequately-detailed information that allows for a meaningful review by the procuring agency. WAI-Stoller Servs., LLC; Portage, Inc., supra at 12; iGov, et al., B-408128.24 et al., Oct. 31, 2014, 2014 CPD ¶ 329 at 31; Henry Schein, Inc., B-405319, Oct. 18, 2011, 2011 CPD ¶ 264 at 7. Where a proposal is unclear or inconsistent, the offeror risks having such an inadequately written proposal evaluated unfavorably. STG, Inc., B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 5-6. Here, given that APT's proposal included unequivocal statements that the [DELETED], the agency could reasonably conclude that the offeror did not understand the requirement for certification after receipt.⁵

⁴ The agency explains that CCP is the transuranic waste certification authority for all transuranic waste being shipped to the waste isolation pilot plant. AR at 19, n.8.

⁵ In addition, the protester argues, with regard to several weaknesses, that the assigned weakness conflicts with the agency's assignment of a strength for the same aspect of its proposal. For example, APT's proposal received a strength for its innovative proposal to [DELETED]. However, the proposal was also assigned a weakness due to the protester's failure to sufficiently explain how it would accomplish this proposed approach. The agency explains that APT's proposal earned a strength for offering an alternative way of processing waste streams that had not been previously done by the agency, but that this new approach presented a number of additional risks or "hurdles" that APT did not adequately address, resulting in a weakness. AR at 21-22. For example, although APT explained how it would [DELETED], it did not provide details on how it planned to [DELETED]. AR at 22, n.10; AR, Tab E.1, SEB Report, at 96. We find no inconsistency in this result, and we find the agency's evaluation judgments in this regard to be reasonable. See R&D Dynamics Corp., B-298766, Dec. 11, 2006, 2006 CPD ¶ 195 at 6 (rejecting argument that a weakness for failure to provide sufficient detail regarding an innovation was inconsistent with the assignment of a strength for proposing the innovation).

Relevant Experience

APT also complains that the agency's assignment of a significant weakness under the relevant experience factor was unreasonable. In this regard, the agency assigned a significant weakness on the basis that the failure to identify any relevant experience for Aerostar, the lead joint venture partner and the entity proposed to perform [DELETED]% of the work, appreciably increased the risk of unsuccessful contract performance. AR, Tab E.1, SEB Report, at 150.

APT argues that the solicitation did not require each entity comprising the teaming arrangement or joint venture to submit a Form L-3 identifying relevant contracts or experience. Protester's Comments at 17. Rather, according to the protester, the solicitation limited the joint venture to three past performance references total, basing its understanding on the following language in the solicitation:

Past performance information is limited to the three (3) most relevant contracts or projects for the Prime Offeror (inclusive of any teaming entities) and the two (2) most relevant contracts or projects for each significant subcontractor.

RFP at 104; Protester's Comments at 17-18. However, to the extent this language created any uncertainty regarding whether the limit of three references applied to each member of a joint venture or to the joint venture as a whole, other language on the same page of the RFP clearly specified that the former interpretation was correct:

The Offeror, including each entity comprising the teaming arrangement, shall submit an Attachment L-3, Past Performance and Relevant Experience Reference Information Form, and Attachment L-5, Environmental, Safety, Health, and Quality (ESH&Q) Past Performance Information Form, for three (3) contracts or projects.

RFP at 104 (emphasis omitted).⁶

⁶ To the extent any ambiguity regarding the RFPs' Form L-3 requirements remained, the ambiguity was patent. Where, as here, a patent ambiguity is not challenged prior to submission of solicitation responses, we will not consider subsequent untimely arguments asserting the protester's own interpretation of the ambiguous provisions. FFLPro, LLC, B-411427.2, Sept. 22, 2015, 2015 CPD ¶ 289 at 10-11; Marine Group Boat Works, LLC, B-404277, B-404277.2, Jan. 19, 2011, 2011 CPD ¶ 23 at 4; Kellogg Brown & Root, Inc., B-291769, B-291769.2, Mar. 24, 2003, 2003 CPD ¶ 96 at 8. An offeror who chooses to compete under a patently ambiguous solicitation does so at its own peril, and cannot later complain when the
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Since the solicitation clearly informed offerors that “each entity comprising the teaming arrangement shall submit” a Form L-3 “for three (3) contracts or projects,” we find that the agency reasonably assigned a significant weakness to APT’s proposal due to the fact that the lead member of the team, and the entity proposed to perform [DELETED]% of the overall effort, failed to submit a single form L-3, and thus failed to demonstrate any experience. See AR, Tab E.1, SEB Report, at 145.⁷

Past Performance

The protester also contends that the agency’s evaluation of past performance was unreasonable in several respects. For example, the protester challenges DOE’s evaluation of the past performance of North Wind’s subcontractor, WAI, under the incumbent contract. As set forth above, the agency assigned WAI’s performance under that contract a rating of neither favorable nor unfavorable. APT asserts that the agency unreasonably failed to consider several sources of adverse information regarding WAI’s performance. Protest at 18-20. Specifically, APT notes several reports of safety problems and performance problems, including news reports of a safety incident in 2013 related to ventilation and filtration systems at the TWPC; a second safety incident involving the venting of a waste drum; and an enforcement letter sent to WAI from DOE’s Office of Enforcement and Oversight that identified several problems with WAI’s performance under the incumbent contract. Id.

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agency proceeds in a manner inconsistent with one of the possible interpretations. Wackenhut Servs., Inc., B-276012.2, Sept. 1, 1998, 98-2 CPD ¶ 75 at 4-5.

⁷ APT also contends that, in the face of Aerostar’s failure to submit a single contract or project for consideration under the relevant experience factor, the agency should have obtained information about Aerostar’s experience from PPIRS or the Contractor Performance Assessment Reporting System (CPARS). Protest at 32-33. This argument is without merit. While we have held that an agency “may” consider close-at-hand experience information known to the agency and not found in a firm’s proposal, we have declined to extend the close-at-hand doctrine beyond the area of past performance so as to require an agency to consider close-at-hand information in the context of an experience evaluation. See, e.g., SNAP, Inc., B-409609, B-409609.3, June 20, 2014, 2014 CPD ¶ 187 at 8. Moreover, the “too close at hand” doctrine is not intended to remedy an offeror’s failure to include information in its proposal. SNAP, Inc., supra; Great Lakes Towing Company dba Great Lakes Shipyard, B-408210, June 26, 2013, 2013 CPD ¶ 151 at 8. Such circumstances are instead governed by the well established principle that offerors are responsible for submitting a well-written proposal with adequately-detailed information that allows for a meaningful review by the procuring agency. Hallmark Capital Group, LLC, B-408661.3 et al., Mar. 31, 2014, 2014 CPD ¶ 115 at 9.

Where a solicitation requires the evaluation of offerors' past performance, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria. Ball Aerospace & Tech. Corp., supra, at 9; TriWest Healthcare Alliance Corp., B-401652.12, B-401652.13, July 2, 2012, 2012 CPD ¶ 191 at 24. An agency's evaluation of past performance is a matter of agency discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. WAI-Stoller Servs., LLC; Portage, Inc., supra, at 10; Affolter Contracting Co., Inc., B-410878, B-410878.2, March 4, 2015, 2015 CPD ¶ 101 at 12. In assessing past performance, it is proper for the agency's evaluation to reflect the totality of an offeror's prior contract performance, and an agency may reasonably assign a satisfactory rating to an offeror despite the fact that portions of its prior performance have been unsatisfactory. Ball Aerospace & Tech. Corp., supra; Nuclear Production Partners LLC; Integrated Nuclear Production Solutions LLC, supra, at 18-19.

Here, the agency's contemporaneous evaluation record shows that, in evaluating WAI's performance of the incumbent contract, the agency was aware of, and considered, the performance problems that WAI has experienced on the incumbent contract. Specifically, the SEB considered the information provided by the awardee in Form L-3 for this contract, the PPIRS reports for WAI's performance of the contract, and the DOE Independent Oversight of TWPC Effectiveness Review. AR at 11-15; see AR, Tab E.3, DOE Independent Oversight of TWPC Effectiveness Review. In its Form L-3 for this project, WAI itself identified performance problems it encountered. Specifically, the Form L-3 states that "WAI experienced abnormal/near-miss events (breathing air outage, contamination events, and respiratory protection violations)." AR, Tab D, North Wind Proposal, at 39. Form L-3 also references a 2013 DOE letter to WAI regarding its performance problems; explains the corrective actions WAI took in response to the problems; and notes that WAI's safety program earned four VPP (Voluntary Protection Program)⁸ Stars of Excellence (2011-2014) and a Legacy of Stars excellence award (2014). Id.

With regard to the PPIRS reports, the SEB found that most of the recent ratings were either very good or satisfactory. AR, Tab E.1, SEB Report, at 62. While WAI received an unsatisfactory rating for cost control for the period of August 2014 to January 2015, which the SEB noted was highly unfavorable, the SEB also noted

⁸ The U.S. Occupational Safety and Health Administration (OSHA) operates the Voluntary Protection Program. In 1994, DOE developed and implemented the DOE-VPP, which is identical to the OSHA program, but only open to contractors employed at DOE facilities. <https://www.vpppa.org/vpp-programs>. Contractors' programs that meet the requirements for outstanding safety and health programs, earn VPP "Star" status, which is the highest of three achievement levels. <http://orise.orau.gov/safety/vpp-star-status.aspx>.

that only 15% of the contract here will be cost reimbursable, and that WAI's unsatisfactory rating was confined to the area of cost control. Id.

In addition, the SEB report specifically discussed the performance and safety problems that WAI experienced:

[WAI] has experienced substantial problems in the areas of . . . respiratory protection violations, operational occurrences, and contamination control. These problems were of significance such that the DOE-OREM [Oak Ridge Office of Environmental Management] manager issued a formal letter to [WAI]. [WAI] responded quickly and appropriately and convened a collective significance review with formal corrective actions. The DOE convened an independent review of the Contractor's effectiveness review and concluded that although there has been a significant improvement in facility operational awareness and control made, improvements are still warranted.

AR, Tab E.1, SEB Report, at 62-63.

After considering the numerous positive PPIRS ratings and positive narrative in the PPIRS reports from 2009 to the present, as well as some negative PPIRS ratings and information (including WAI's own description of the events, the PPIRS ratings and narrative, and the DOE Independent Oversight of TWPC Effectiveness Review), the evaluators concluded that WAI's overall performance of the incumbent contract should be considered neither favorable nor unfavorable. AR, Tab E.1, SEB Report, at 63; see AR, Tab E.3, DOE Independent Oversight of TWPC Effectiveness Review, at 1-220; Tab E.2, WAI PPIRS Reports for Incumbent Contract, at 1-48; Tab D, North Wind Proposal, at 37-40.

Based on our review of the record here, we find no basis to question the agency's evaluation of WAI's performance of the incumbent contract. The record shows that the agency performed a comprehensive review of relevant past performance information, considered and downgraded WAI with regard to negative past performance, but also considered reports of corrective action and recent ratings of very good or satisfactory performance, and found WAI's overall performance of the incumbent contract to be neither favorable nor unfavorable. Although APT complains that the SEB's discussion of WAI's performance problems does not specifically identify or discuss each identified problem, or each communication between WAI and the agency regarding these problems, see Protester's Comments at 4, this information was included in the material considered by the evaluators, and the protester has not shown the agency's overall evaluation of WAI's performance of the incumbent contract as neither favorable nor unfavorable to be unreasonable. In sum, we have considered all of the protester's challenges to the agency's

evaluation of past performance and find that none of them provides a basis on which to sustain the protest.

The protest is denied.

Susan A. Poling
General Counsel