



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: iGov; Technology Integration Group; Carahsoft Technology Corporation; Red River Computer Company; FCN, Inc.; Blue Tech, Inc.; Integration Technologies Group, Inc.; Technica Corporation; New Tech Solutions, Inc.; Advanced Computer Concepts

File: B-408128.24; B-408128.26; B-408128.27; B-408128.29; B-408128.30; B-408128.31; B-408128.32; B-408128.38; B-408128.40; B-408128.42; B-408128.45; B-408128.46; B-408128.47; B-408128.52

Date: October 31, 2014

Richard L. Moorhouse, Esq., and L. James D'Agostino, Esq., Greenberg Traurig, LLP, for iGov; G. Matthew Koehl, Esq., and Claire C. Rosston, Esq., Holland & Hart, LLP, for Technology Integration Group; Richard J. Conway, Esq., Michael J. Slattery, Esq., and Andrew E. Smith, Esq., Dickstein Shapiro LLP, for Carahsoft Technology Corporation; H. Todd Whay, Esq., for Red River Computer Company; J. Patrick McMahon, Esq., and William T. Welch, Esq., McMahon, Welch and Learned, PLLC, for FCN, Inc.; Stephen M. Ryan, Esq., James W. Kim, Esq., and Cecilia R. Showalter, Esq., McDermott Will & Emery, LLP, for Blue Tech, Inc.; J. Patrick McMahon, Esq., and William T. Welch, Esq., McMahon, Welch and Learned, PLLC, for Integration Technologies Group, Inc.; James J. McCullough, Esq., Jerald S. Howe, Esq., Aaron T. Tucker, Esq., and Samuel W. Jack, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for Technica Corporation; J. Patrick McMahon, Esq. and William T. Welch, Esq., McMahon, Welch and Learned, PLLC, for New Tech Solutions, Inc.; Joseph P. Hornyak, Esq. and Gregory R. Hallmark, Esq., Holland & Knight LLP, Advanced Computer Concepts, the protesters. Wade L. Brown, Esq., and Brian Tuftee, Esq., Department of the Army, 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. Agency did not conduct discussions when it had limited communications with offerors regarding adverse past performance and proposal ambiguities; accordingly, the agency was not required to conduct discussions with protesters prior to eliminating their proposals from the competitive range.

2. Protests of elimination of protesters' proposals from the competitive range are denied where the record shows that agency's evaluations were reasonable and supported by record, or that protesters suffered no prejudice.

DECISION

iGov, of Reston, Virginia; Technology Integration Group, of San Diego, California; Carahsoft Technology Corporation of Reston, Virginia; Red River Computer Company, of Claremont, New Hampshire; FCN, Inc., of Rockville, Maryland; Blue Tech, Inc., of San Diego, California; Integration Technologies Group, Inc., of Falls Church, Virginia; Technica Corporation, of Dulles, Virginia; New Tech Solutions, Inc., of Fremont, California; and Advanced Computer Concepts, of McLean, Virginia protest the exclusion of their proposals from the competitive range by the Department of the Army, Army Materiel Command, under request for proposals (RFP) No. W52P1J-11-R-0171 issued to procure what the Army terms as Information Technology Enterprise Solutions 3 Hardware (ITES-3H). The protesters raise various challenges to the evaluation of their own proposals, the conduct of discussions, and the competitive range determination.

We deny the protests.¹

BACKGROUND

The solicitation, issued on September 25, 2012, sought offers to “support the Army enterprise infrastructure and infostructure goals with a full range of innovative, world class information technology equipment and solutions at a reasonable price.” iGov Agency Report (AR)², Tab 4, Amended RFP, at 41. The RFP contemplated a best-value award of multiple indefinite-delivery/indefinite-quantity (ID/IQ) contracts, with a base period of three years and two one-year options, under which various federal agencies will be able to issue fixed-price delivery orders for the procurement of IT products and related services. Id. The solicitation stated that the agency planned to make at least eight awards, with up to four of the awards reserved for

¹ The sections of this decision addressing the background of the procurement and the issue of discussions are nearly identical to a second decision involving this procurement, also issued today. The parties in this decision were represented by attorneys who were admitted to our protective order. In the other decision, Presidio Networked Solutions, Inc. et al., B-408128.33 et al., Oct. 31, 2014, the protesters proceeded either without the assistance of counsel, or with the assistance of counsel who did not seek admission to our protective order.

² The agency report and contracting officer's statement for each protest contained similar background information and documents. For ease of reference, we cite to the iGov agency report and contracting officer's statement, to the extent possible.

small businesses. Id. The maximum value of the orders placed under this ID/IQ contract is \$5 billion. AR, Tab 3, RFP, at 3.

The RFP established a two-phase evaluation approach. Under Phase I, offerors would submit two proposal volumes--one which provided an equipment list and identified web-based support capabilities/data and reporting requirements; and a second which provided contractual documents. The Phase I proposals were to be evaluated as acceptable or unacceptable. RFP at 19, 96. Only offerors evaluated as acceptable in Phase I would be invited to submit Phase II proposals. Id. at 19. The solicitation stated that the Army did not intend to hold discussions under Phase I, but reserved the right to engage in discussions and clarifications, if necessary. Id. Under Phase II, the agency planned to conduct discussions after establishing a competitive range. Id. at 238.

In Phase II, offerors were to submit a mission support proposal, past performance proposal, and price proposal. RFP at 20. The Phase II proposals were to be evaluated on the basis of the following factors (in descending order of importance): mission support, past performance, and price. RFP at 32. The non-price factors, when combined, were significantly more important than price. There were three subfactors under the mission support factor: management, technology, and small business participation. The mission support subfactors were also listed in descending order of importance.

With regard to the small business participation subfactor, the RFP provided that the agency would evaluate offerors' proposed participation of small businesses (SB), small disadvantaged businesses (SDB), women-owned small businesses (WOSB), historically underutilized business zone (HUBZone) small businesses, veteran-owned small businesses (VOSB), and service-disabled veteran-owned small businesses (SDVOSB). iGov AR, Tab 3, RFP, at 115. In this regard, the solicitation specified that the agency would evaluate the extent to which an offeror identified and committed to utilizing each of the above small business categories in the performance of the proposed contract. Id. To do so, the RFP informed offerors that the agency would consider the percent of participation proposed for each small business category as compared to the percentage goals identified in the RFP. Id. Specifically, the RFP contained the following small business goals:

Total Small Business Participation	23.00%
Small Disadvantaged Businesses	5.00%
Women-Owned Small Businesses	5.00%
HUBZone Small Businesses	3.00%
Veteran-Owned Small Businesses	5.00%
Service-Disabled Veteran-Owned Small Businesses	3.00%

Id. at 71.

The agency received 50 proposals by the November 28, 2012, due date. iGov Contracting Officer's (CO) Statement at 4. After evaluating the Phase I proposals, the agency initially found 13 proposals acceptable and 37 unacceptable. Id. Offerors that had submitted acceptable Phase I proposals were invited to submit Phase II proposals; offerors that had submitted unacceptable proposals were notified of their elimination from the competition.

After several of the unacceptable offerors filed an earlier round of protests with our Office challenging their elimination from the competition, the agency took corrective action and we dismissed the protests.³ See, e.g., UNICOM Government, Inc., B-408128.3, B-408128.13, May 20, 2013. As part of the agency's corrective action, it conducted discussions with Phase I offerors whose proposals had been initially evaluated as unacceptable. iGov CO Statement at 4. Each offeror whose Phase I proposal contained deficiencies was informed of those deficiencies and given seven days in which to submit a revised proposal.⁴

Due to concerns that the proposals of offerors who had initially been evaluated as acceptable were growing stale while the agency conducted its corrective action, the agency invited all offerors, including those initially judged to be acceptable, to submit final revisions to their Phase I proposals. Id. at 5. The due date for revised Phase I proposals was September 4, 2013. AR, Tab 9, Aug 28. Close Discussion Letter, at 1-4. In addition, since some offerors had already submitted their Phase II proposals, the agency's letter also stated the following:

[S]ince your company has already submitted pricing under Phase II for your Equipment List items, if you make any adjustments to your Equipment List in response to this letter, you will be permitted to update your pricing at a later date. Regardless of whether or not

³ The corrective actions taken in response to the earlier protests took two forms. For some of the protesters, the agency determined that the RFP was ambiguous and their proposals were consistent with a reasonable interpretation of the instructions. Therefore, the agency determined that these Phase I proposals were acceptable and invited the offerors to submit Phase II proposals. With regard to the second group, which had been eliminated due to deficiencies in their proposals, the agency took corrective action after our Office advised, during outcome prediction alternative dispute resolution, that certain Phase I "clarifications" constituted discussions. In response, the agency conducted Phase I discussions with these offerors, advised them of their proposal deficiencies, and allowed them to submit revised proposals.

⁴ Due to the number of offerors, the agency staggered discussions, allowing each offeror a 7-day period to revise its proposal. iGov Contracting Officer's (CO) Statement at 5.

your company elects to make changes to your Equipment List at this time, all offerors who successfully pass into Phase II will be permitted a final opportunity to submit updated pricing for their Phase II proposals. The Government will request updated pricing for Phase II at some point prior to establishing the Competitive Range for Phase II proposals.

Id. at 2.

After reviewing the revised Phase I proposals submitted by offerors on September 4, the agency again opened discussions regarding Phase I proposals with four offerors whose Phase I proposals remained unacceptable. iGov CO Statement at 6. Thereafter, the agency again allowed all offerors to submit final revised Phase I proposals by a new due date of December 5, 2013, at which time, Phase I discussions closed. AR, Tab 10, Dec. 3 Close Discussion Letter, at 2. After the December 5 Phase I final proposal revisions, a total of 39 offerors were evaluated as acceptable under Phase I and invited to compete in Phase II.⁵ iGov CO Statement at 6.

Thereafter, on January 29, 2014, the agency sent an e-mail message to all 39 offerors remaining in the competition, informing them of the option to submit revised Phase II price proposals. Specifically, the e-mail message stated:

The Government is now allowing all offerors in Phase II to submit a revised price model for the base and both option years. For any Price Model revisions, the revised proposed pricing shall be for the equipment in your final proposed equipment list that was deemed to be Acceptable. For those items that have been discontinued, the last valid price before the item was discontinued should be used for purposes of completing the Price Model. No other changes to your proposal including the equipment list are allowed or will be accepted. Submission of revised price model is due on 4:30 PM Central Time on 4 February 2014.

AR, Tab 12, Request for Phase II Revised Price Proposals, at 1.

⁵ Offerors submitted Phase II proposals at different times. For example, offerors whose initial Phase I proposals were evaluated as acceptable were informed on April 11, 2013, that they would have 30 days in which to prepare and submit their Phase II proposal. iGov CO Statement at 6-7. Other offerors were invited to submit Phase II proposals in June 2013 or December 2013. Id. at 7. Regardless of the date on which the Phase II proposal was requested, each offeror was given 30 days from the date of the request to submit its Phase II proposal. Id. at 6.

Following the agency's receipt of revised price proposals, it conducted exchanges with some offerors regarding their proposals. For example, the agency contacted several offerors regarding "less than favorable" past performance information. See, e.g., Technology Integration Group AR, Tab 22, Phase II Exchanges, at 13, 18, 30. With regard to ITG, the agency noted that it had identified "less than favorable" performance information in a Contractor Performance Assessment Reporting System (CPARS) report involving a delivery order for blade servers. Id. at 30-31. In response, ITG provided an explanation of the circumstances surrounding the CPARS report and providing additional information about how the firm would avoid similar performance problems in the future. Id. at 31.

In evaluating proposals, the agency prepared a short evaluation report for each of the two non-price factors. See, e.g., iGov AR, Tab 13, Evaluation of iGov's Mission Support Factor; iGov AR, Tab 14, Past Performance Factor. With regard to price, the agency prepared a single price evaluation report containing all of the offerors' proposed prices. See, e.g., Technology Integration Group AR, Tab 15, Price Evaluation Report. Thereafter, the source selection advisory council presented the source selection authority (SSA) with a briefing that summarized the evaluation results for each offeror. See, e.g., Technology Integration Group AR, Tab 16. This briefing included the numbers of strengths, weaknesses, and deficiencies identified under each evaluation factor and subfactor, as well as the evaluators' adjectival ratings. The briefing also contained a brief description of the basis for each strength, weakness, or deficiency. For example, with regard to iGov's rating under the management subfactor, the briefing stated that the proposal was rated "Good, with three strengths for its formal quality processes, methodology for providing quotes to at least 500 RFQ's per week through IT e-mart and/or FedBid and processes for providing timely and efficient customer support." Id. at 27.

Thereafter, the SSA established the competitive range on July 11, 2014. In doing so, the SSA made her own independent assessments of the proposals. Technology Integration Group AR, Tab 17, Competitive Range Determination, at 46. Although the SSA accepted many of the evaluators' ratings, she also disagreed with a number of them and recorded her basis for changing the rating. For example, with regard to Red River, the SSA disagreed with the evaluators' assignment of a past performance rating of limited confidence. Id. at 50. Instead, based on the fact that the agency had identified five CPARS reports for the last 12 months that revealed problems with quality, scheduling, late deliveries, damaged equipment, and inconsistent communication, the SSA believed a rating of no confidence was appropriate. Id. at 50. After independently assessing each of the offerors' ratings, the SSA, consistent with Federal Acquisition Regulation (FAR) § 15.306(c), decided to select only the most highly-rated proposals, and to further reduce the competitive range for efficiency purposes. Technology Integration Group AR, Tab 17, Competitive Range Determination, at 52. In this regard, the SSA decided to limit the competitive range to those proposals that received a rating of at least good

under the mission support factor, and at least satisfactory confidence under the past performance factor. Id. at 52-54.

Specifically, with regard to the mission support factor, the SSA explained:

Given the large number of Offerors with Mission Support ratings of Good, and with prices which are relatively low, I do not consider any Offerors with a Mission Support rating of Acceptable to be among the most highly[-]rated proposals. Keeping in mind the target number of awards, it would not be reasonable to include any Offeror who did not have a Mission Support rating of at least Good, as offerors with a Mission Support rating of Acceptable are unlikely to receive award.

Id. at 54.

With regard to the past performance factor, the SSA stated that:

Given the large number of Offerors that had a Past Performance rating better than Limited Confidence or No Confidence, there was no reason to consider Offerors with a rating of Limited Confidence or No Confidence, regardless of how low those Offeror's proposed prices may be. . . . Even though some of these offerors have relatively low prices, I would be willing to pay a significant premium for offerors who do not have such negative Past Performance ratings. Accordingly, the Offerors with Limited Confidence and No Confidence will not be included in the Competitive Range.

Id.

Finally, in considering price, the SSA observed that there was a large pool of offerors with ratings of good under the mission support factor and satisfactory confidence or better under past performance ratings, all with reasonable prices. Id. The SSA found that the "price break between the 12th and 13th [lowest-priced] offeror meeting this criteria was significant" (the 13th priced offeror, Blue Tech, was approximately 35% higher than the 12th priced offeror). Id. Therefore, the SSA concluded that offerors whose prices were ranked 13th and higher were not among the most highly-rated proposals, and were unlikely to receive an award. Id. On this basis, the SSA identified for inclusion in the competitive range the 12 lowest-priced proposals that received a mission support rating of good and a past performance rating of satisfactory confidence or better.

After the agency notified the unsuccessful offerors of their elimination from the competitive range and provided debriefings, these protests followed.

The protesters raise various challenges to the evaluation of their own proposals, the conduct of discussions, and the competitive range determination. In reviewing protests challenging an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. We have long held that the evaluation of proposals is a matter within the discretion of the procuring agency; we will question the agency's evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the RFP. Hardiman Remediation Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3.

Here, we find none of the protesters' arguments provides a basis to sustain the protest. We discuss several examples below.

SHARED CHALLENGES RELATED TO DISCUSSIONS

Several of the protests contend that the agency's actions at various points in the procurement process constituted discussions.⁶ As a result, the protesters contend that the agency conducted discussions with some, but not all, offerors, resulting in competitive prejudice to the offerors who did not receive discussions. We will address these assertions below.

As a general matter, where an agency engages in discussions, it must afford all offerors remaining in the competition an opportunity to engage in meaningful discussions. See Lockheed Martin Simulation, Training & Support, B-292836.8 et al., Nov. 24, 2004, 2005 CPD ¶ 27 at 8. The FAR requires agencies conducting discussions with offerors to address, "[a]t a minimum ... deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond." FAR § 15.306(d)(3).

The protesters contend that the agency conducted discussions with some offerors during Phase I of the procurement process, which allowed certain offerors to improve their Phase I proposals to the level of acceptable. The protesters argue that it was improper for the agency to conduct Phase I discussions with some, but not all, offerors. Alternatively, the protesters argue that once discussions were opened in Phase I, the agency was required to conduct discussions regarding Phase I and Phase II proposals.

The agency does not dispute that it conducted discussions with offerors during Phase I, but contends that it was not obligated to conduct discussions with offerors

⁶ Specifically, iGov, TIG, Carahsoft, Blue Tech, Technica, and NTS raised these challenges.

whose Phase I proposals had already been deemed acceptable, since acceptable was the highest available rating in Phase I, and since a proposal rated acceptable could not be further improved. The agency also argues that its Phase I discussions did not obligate it to conduct discussions with offerors regarding their Phase II proposals because the solicitation put offerors on notice that the two phases would be considered separate for purposes of the evaluation and the conduct of discussions.

We find nothing objectionable in the agency's decision to conduct discussions during Phase I with only those offerors whose Phase I proposals were deemed unacceptable. The scope and extent of discussions are a matter of contracting officer judgment. FAR § 15.306(d)(3); Tritech Field Eng'g, Inc., B-255336.2, Apr. 13, 1994, 94-1 CPD ¶ 261 at 5. Where proposals are to be rated acceptable/unacceptable, a proposal rated "acceptable" cannot be further improved. Therefore, we have recognized that in such situations, an agency properly may conduct discussions with only those offerors whose proposals are unacceptable. See Zodiac of North America, B-409084 et al., Jan. 17, 2014, 2014 CPD ¶ 79 at 4; Commercial Design Group, Inc., B-400923.4, Aug. 6, 2009, 2009 CPD ¶ 157 at 3. Thus, the agency was not obligated to conduct Phase I discussions with offerors whose proposals had already been rated acceptable, since those proposals could not have been further improved at that point in the competition.

Further, we disagree with the protesters that the conduct of discussions during Phase I obligated the agency to conduct discussions with offerors regarding their Phase II proposals. In this regard, we note that the solicitation put offerors on notice that the agency considered the two phases separate and distinct with regard to discussions. Specifically, the RFP stated the following:

4.2 Phase I - Acceptable/Unacceptable

The Government does not intend to hold discussions under Phase I. However, the Government reserves the right to engage in discussions and clarifications if necessary.

4.3 PHASE II

The Government intends to award contracts after conducting discussions with offerors in the competitive range under Phase II. Only those offerors within the competitive range will be engaged in discussions and be requested to submit a final proposal revision.

AR, Tab 4, RFP Amendments, at 237, 238.

Given that offerors were informed that the agency “reserve[d] the right to engage in discussions” during Phase I, but planned to conduct discussions during Phase II only after establishment of the competitive range, we find that the offerors were on notice that the agency considered the Phases to be separate and distinct for purposes of conducting discussions. Therefore, we find nothing improper in the agency’s decision to conduct Phase I discussions, without engaging all of the offerors in discussions regarding their Phase II proposals.

Next, the protesters contend that various communications between the agency and some of the offerors regarding Phase II proposals constituted discussions and, having opened discussions with some offerors, the agency was required to also conduct meaningful discussions with each offeror regarding its Phase II proposal.

FAR § 15.306 describes a range of exchanges that may take place with offerors during negotiated procurements. Clarifications are “limited exchanges” between an agency and an offeror for the purpose of eliminating minor uncertainties or irregularities in a proposal, and do not give an offeror the opportunity to revise or modify its proposal. FAR § 15.306(a)(2); Tetra Tech, Inc., B-409095, B-409095.2 Jan. 17, 2014, 2014 CPD ¶ 108 at 8. Discussions, on the other hand, occur when an agency communicates with an offeror with the intent to obtain proposal revisions and include bargaining, give and take, persuasion, and alteration of assumptions and positions. Companion Data Servs., LLC, B-410022, B-410022.2, Oct. 9, 2014, 2014 CPD ¶ ___ at 14; see FAR § 15.306(d); Dynacs Engineering Co., Inc., B-284234 et al., Mar. 17, 2000, 2000 CPD ¶ 50 at 4. An agency is required to hold communications with offerors whose past performance information is the determining factor preventing their proposals from being placed in the competitive range; otherwise, an agency may, but is not required to, engage in communications with offerors whose exclusion from, or inclusion in, the competitive range is uncertain. FAR § 15.306(b)(1); Government Telecommunications, Inc., B-299542.2, June 21, 2007, 2007 CPD ¶ 136 at 8 n.10. As with clarifications, communications are not to be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. FAR § 15.306(b)(2); Int’l Medical Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 9.

Here, the agency engaged in a number of communications with offerors during Phase II, but we find that none of these communications constituted discussions. For example, the agency allowed several offerors to address negative past performance information that the agency identified during its evaluation. See, e.g., AR, Tab 22, Record of Phase II Exchanges Prior to Competitive Range, at 13, 17, 23, 27, 30, 33, 36. For example, as set forth above, the agency notified ITG that it had identified negative past performance information in a CPARS report and allowed ITG to respond to the information. ITG’s response explained the circumstances surrounding the CPARS report and provided additional information about how the firm would avoid similar problems in the future. Id. at 31. In another

example, after the agency identified several negative CPARS reports that had not been self-reported by Red River, it contacted the firm and asked it to describe the delivery schedule issues it had encountered and to explain the corrective actions taken in response to the problems. Id. at 51. In response, Red River submitted a five-page explanation of the past performance problems it had encountered and the steps it had taken in response to the problems. Id. at 52-56.

The FAR provides that agencies “shall” hold communications with offerors whose past performance information is the determining factor preventing them from being placed within the competitive range, and may hold communications with offerors whose exclusion from, or inclusion in, the competitive range is uncertain. FAR § 15.306(b)(1); see Professional Performance Development Group, Inc., B-408925, Dec. 31, 2013, 2014 CPD ¶ 78 at 9. The FAR also allows agencies to hold communications with offerors to enhance the agency’s understanding of proposals, allow reasonable interpretation of the proposal, or facilitate the evaluation process. FAR § 15.306(b)(2). We find that the agency’s exchanges with offerors regarding their negative past performance information constituted the type of pre-competitive range exchanges anticipated by FAR § 15.306(b), and did not constitute discussions. None of these exchanges were used to cure material omissions, materially alter the technical or cost elements of proposals, or otherwise revise proposals. Therefore, we find that the agency’s exchanges with offerors regarding their negative past performance did not constitute discussions.

The agency also contacted some offerors regarding ambiguities or minor flaws in their proposals that needed to be clarified or corrected. For example, the agency contacted offerors that failed to provide a statement that the offeror had no contracts that experienced performance problems within the past three years, as required by the RFP.⁷ See AR, Tab 22, Record of Phase II Exchanges Prior to Competitive Range, at 39, 42. The agency also contacted one offeror to inform it that a price on one document in its proposal did not match the price in another document of its proposal. Id. at 8. The offeror responded that the inconsistency was the result of a rounding error, and corrected the error. Id. at 9.

After reviewing each of these exchanges, we find that none of them rose to the level of discussions. Again, these exchanges constituted the type of pre-competitive range communications anticipated by FAR § 15.306(b). Specifically, the agency’s exchanges permitted the correction of minor flaws, allowing the agency to

⁷ The solicitation provided that offerors were required to identify “every relevant contract it was awarded that experienced any performance problems related to deliverables, warranties, or services; and every recent contract that was terminated, or cancelled for any reason, in whole or in part within the past three (3) years of issuance of the RFP.” AR, Tab 4, Amended RFP, at 28. If there were no such contracts, offerors were required to provide a statement to that effect. Id. at 29.

reasonably interpret the proposals. None of the communications were used to cure material omissions, materially alter the technical or cost elements of proposals, or otherwise revise proposals. Therefore, we find that the agency's limited communications with offerors regarding their Phase II proposals did not constitute discussions.

Finally, the protesters contend that the agency conducted discussions when, on January 29, 2014, it allowed all offerors in Phase II to submit revised price proposals. See AR, Tab 12, Request for Phase II Revised Price Proposals, at 1. As set forth above, discussions occur when an agency communicates with an offeror with the intent to obtain proposal revisions, and include bargaining, give and take, persuasion, and alteration of assumptions and positions. Companion Data Servs., LLC, supra; see FAR § 15.306(d); c.f., Global Analytic Information Tech. Servs., Inc., B-298840.2, Feb. 6, 2007, 2007 CPD ¶ 57 at 5 (where agency personnel comment on, or raise substantive questions or concerns about, an offeror's proposal in the course of an oral presentation, and either simultaneously or subsequently afford the offeror an opportunity to make revisions in light of the agency's comments or concerns, discussions have occurred).

Here, the agency uniformly allowed offerors to update their prices prior to beginning the evaluation. The agency had not evaluated proposals and had not communicated with offerors regarding the contents of their proposals prior to allowing these revisions. The agency had not asked questions or sought information regarding areas of concern in the offerors' proposals. Rather, the opportunity to submit revised price proposals was not accompanied by any communications for the purpose of correcting problems in the proposals, or seeking proposal changes to improve an offeror's competitive position. In short, there was no bargaining, no give-and-take, no attempt at persuasion, no alteration of assumptions and positions, and no negotiations involved in the agency's decision to allow offerors to update their prices. Rather, the agency uniformly afforded offerors the opportunity to update their price proposals due to the passage of time. While we have held that an agency is not required to provide for the submission of revised proposals merely because of the passage of time, Inchscape Shipping Servs. Holding, Ltd., B-403399.3, B-403399.4, Feb. 6, 2012, 2012 CPD ¶ 65 at 4, we will not hold that an agency's decision to do so, in order to enhance competition and allow offerors to be evaluated based on the most up-to-date information, constitutes discussions. Therefore, we find that none of the agency's actions here required it to conduct Phase II discussions with offerors.

Each of the protesters also raises challenges to the agency's evaluation of its proposal. While our decision does not specifically address each of the protesters' arguments, we have fully considered them all and find that none provides a basis to sustain the protest. Several of the arguments are discussed below.

In response to challenges like these, our Office will review an agency's evaluation and exclusion of proposals from the competitive range for reasonableness and consistency with the solicitation criteria and applicable statutes and regulations. Cylab Inc., B-402716, July 13, 2010, 2010 CPD ¶ 163 at 4. Contracting agencies are not required to retain in the competitive range proposals that are not among the most highly-rated or that the agency otherwise reasonably concludes have no realistic prospect of being selected for award. FAR § 15.306(c)(1); General Atomics Aeronautical Sys., Inc., B-311004, B-311004.2, Mar. 28, 2008, 2008 CPD ¶ 105 at 5. In this regard, a protester's mere disagreement with an agency's evaluation and competitive range judgment does not establish that the agency acted unreasonably. CEdge Software Consultants, LLC, B-409380, Apr. 1, 2014, 2014 CPD ¶ 107 at 6.

iGOV

iGov received a mission support rating of acceptable (with ratings of good under the management subfactor, acceptable under the technology subfactor, and marginal under the small business participation subfactor); and a past performance rating of satisfactory. iGov's total proposed price was \$5.70 billion.⁸ iGov AR, Tab 17, Competitive Range Determination, at 21-22; iGov AR, Tab 13, Evaluation of Mission Support Factor, at 1. Under the criteria used by the contracting officer to establish the competitive range, iGov's mission support factor rating of acceptable and its high price were the reasons the proposal was not included in the competitive range.⁹

With regard to the small business subfactor, the agency found that iGov's proposal did not meet the solicitation's small business participation objectives. Specifically, the evaluators prepared the following chart comparing iGov's proposed small business participation with the percentages identified in the solicitation:

	Percent Proposed	Government Objective	Difference
Small Businesses	[DELETED]%	23.00%	([DELETED]%)
Small Disadvantaged Businesses	[DELETED]%	5.00%	([DELETED]%)

⁸ Prices throughout the decision are rounded.

⁹ As set forth above, only offerors with a mission support rating of good, past performance rating of satisfactory or better, and a total price under approximately \$4 billion were included in the competitive range.

Women-Owned Small Businesses	[DELETED]%	5.00%	([DELETED]%)
HUBZone Small Businesses	[DELETED]%	3.00%	([DELETED]%)
Veteran-Owned Small Businesses	[DELETED]%	5.00%	([DELETED]%)
Service-Disabled Veteran-Owned Small Businesses	[DELETED]%	3.00%	([DELETED]%)

iGov AR, Tab 13, Evaluation of Mission Support Factor, at 8; see also, iGov AR, Tab 8, iGov’s Mission Support Proposal, at 30. As a result, iGov’s proposal was assigned significant weaknesses for its failure to propose to meet the government’s objectives for utilization of small disadvantaged businesses, women-owned small businesses, and HUBZone small businesses. The proposal was also assigned weaknesses for its low proposed utilization of small businesses and service-disabled veteran-owned small businesses. Id. at 8-9.

iGov raises several challenges to the evaluation of its proposal. For example, the protester argues that, while “[i]t is true that iGov did not propose to fully meet the small business participation goals in the RFP, and was assigned only a Marginal Small Business Participation subfactor rating,” its proposal was a realistic one and it did not realize that it would be penalized for making realistic, rather than inflated, commitments. iGov Comments at 6-7. iGov also complains that it should not have been eliminated on the basis of its price because the “Army never advised Phase II offerors that their price ranking might be a material factor in their inclusion in the competitive range.” iGov Comments at 13.

We find that the agency’s evaluation of iGov’s proposal was reasonable and consistent with the solicitation’s criteria. The solicitation clearly informed offerors that they would be evaluated on the basis of small business participation and price. AR, Tab 4, RFP Amendments, at 32. Further, the solicitation contained specific objectives for each small business type, and informed offerors that the agency would evaluate the percent of small business participation proposed as compared to the agency’s objectives. AR, Tab 3, RFP at 115. To the extent that iGov thought the objectives in the RFP were unreasonable, it was required to protest the solicitation terms by the due date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (2014). Therefore, iGov’s protest is denied.

TECHNOLOGY INTEGRATION GROUP (TIG)

TIG received a mission support rating of unacceptable (with ratings of outstanding under the management subfactor, outstanding under the technology subfactor, and unacceptable under the small business participation subfactor), and a past performance rating of satisfactory. TIG’s total proposed price was \$9.86 billion. TIG AR, Tab 17, Competitive Range Determination, at 36-37, 51. Under the criteria used by the contracting officer to establish the competitive range, TIG’s mission support rating of unacceptable and its price (it was the third-highest priced offeror of

the 39 proposals included in Phase II) were the reasons the proposal was not included in the competitive range.

TIG's unacceptable rating under the small business subfactor was due to a deficiency that was assigned for TIG's failure to provide required information regarding its past small business participation and to complete the Contract Participation Matrix as required by the RFP. TIG AR, Tab 17, Competitive Range Determination at 36. In this regard, the evaluators noted the following:

1. The Offeror fails to identify the estimated dollar value that each of its subcontractors will be providing as required by paragraph 7.2.2.3.1.3 of the solicitation.
2. The Offeror fails to include its own performance in the Contract Participation Matrix as required by paragraph 7.2.2.3.1.2 of the solicitation.
3. The Offeror fails to include the Total Participation Dollars in the Contract Participation Matrix as required by paragraph 7.2.2.3.1.3 of the solicitation.
4. The Offeror fails to provide the CAGE code for all participants or provide the Offeror's written cert[ification]s as required by paragraph 7.2.2.3.1.4 of the solicitation.

Note that the four items above are required by the solicitation, and failure to provide the information is a Deficiency.

TIG AR, Tab 13, Evaluation of Mission Support Factor, at 10.

TIG does not dispute that its proposal was lacking this required information. Instead, the firm complains that these deficiencies were "easily-corrected informational errors." TIG Comments at 4. The RFP, however, informed offerors that a proposal that did not meet the solicitation's requirements and contained one or more deficiencies would be rated unacceptable and would not be eligible for award. TIG AR, Tab 4, RFP Amendments, at 68. The evaluators determined, and the protester admits, that TIG's proposal did not comply with the solicitation's requirements. As a result, the evaluators reasonably assessed a deficiency to TIG's proposal, and assigned it a rating of unacceptable under the small business subfactor. It is well-settled that a technically unacceptable proposal cannot be considered for award, and thus properly may be excluded from the competitive range. Henry Schein, Inc., B-405319, Oct. 18, 2011, 2011 CPD ¶ 264 at 7. An offeror that does not submit an adequately written proposal runs the risk of having its proposal rejected as unacceptable. Henry Schein, Inc., supra; L-3 Communications EOTech, Inc., B-311453, B-311453.2, July 14, 2008, 2008 CPD

¶ 139 at 4. We find that the agency here reasonably excluded TIG's proposal from the competitive range due to a reasonably identified deficiency under the small business subfactor. Therefore, TIG's protest is denied.¹⁰

CARASOFT TECHNOLOGY CORPORATION

Carahsoft received a mission support rating of unacceptable (with ratings of acceptable under the management subfactor, unacceptable under the technology subfactor, and unacceptable under the small business subfactor), and a past performance rating of limited confidence. Carahsoft's total proposed price was \$7.01 billion. Carahsoft AR, Tab 17, Competitive Range Determination, at 31, 50. Under the criteria used by the contracting officer to establish the competitive range, Carahsoft's mission support rating of unacceptable, its past performance rating of limited confidence, and its high price were the reasons the proposal was not included in the competitive range. See id. at 52-54.

Under the technology subfactor, evaluators found that Carahsoft's proposal contained two deficiencies. In this regard, the evaluators found that the proposal failed to address two RFP requirements. Specifically, the agency found that Carahsoft failed to comply with the solicitation requirement that an offeror "shall . . . Identify which equipment catalogs are affected by the Unified Capabilities approved products list." Carahsoft AR, Tab 4, RFP Amendments, at 26. The solicitation also required that an offeror "shall . . . Describe its understanding of the burden caused by the Unified Capabilities migration and how the offeror plans to minimize the impact to the Government over the contract life." Id.

Carahsoft challenges the agency's evaluation of a deficiency due to its failure to address these requirements, arguing that the following language in its proposal met the solicitation's requirement:

[T]he timelines needed to maintain a listing of UC-compliant product solutions will vary based upon [DELETED]. As we release new products, we will continue to [DELETED]. If we determine that a particular product should be listed on the APL, we will [DELETED].

¹⁰ In its supplemental protest, TIG alleges unequal treatment because the agency conducted Phase II communications with some offerors but did not give TIG an opportunity to correct the deficiency in its proposal. TIG Comments and Supp. Protest at 16. However, the FAR specifically prohibits the use of communications to cure proposal deficiencies or material omissions or otherwise revise proposals. FAR § 15.306(b)(2). Had the agency allowed TIG to make the necessary changes, this would have constituted discussions. Therefore, we find no merit in TIG's supplemental protest.

AR, Tab 8, Carahsoft's Mission Support Proposal, at 20.

Carahsoft contends that this statement fulfilled the solicitation requirement to identify specific catalogs that would be affected by the UC approved products list, and to describe the offeror's understanding of the burden and explain how it will minimize the impact of the burden over the life of the contract. Carahsoft Comments at 6. In this regard, Carahsoft argues that "the Army could not expect Carahsoft to provide a more fulsome response in its proposal to this area of the RFP if it expected Carahsoft to provide an honest response." Id. at 7. The protester further argues that the agency should not have expected a different or more expansive answer than the one provided by Carahsoft because the solicitation stated that the actual Unified Capabilities-compliant list would not be required until after contract award. Id.; see Carahsoft AR, Tab 4, RFP Amendments, at 26.

We find the assignment of deficiencies to Carahsoft's proposal for failure to address the solicitation's requirements to be reasonable. In this regard, we note that, while Carahsoft may not have known the actual items that would be affected by the Unified Capabilities approved products list, other offerors identified the categories of equipment affected.¹¹ C.f., iGov AR, Tab 8, iGov Phase II Proposal, at 23-24 (listing catalogs affected and proposing ways of minimizing the burden). Moreover, Carahsoft fails to rebut the agency's conclusion that the proposal should have, but did not, discuss the burden caused by the Unified Capabilities migration and how Carahsoft planned to minimize this impact over the life of the contract. Given that we find the agency reasonably identified deficiencies in Carahsoft's proposal and reasonably assigned a technical subfactor rating of unacceptable, and given that these findings disqualified the proposal for award, we need not address the remainder of Carahsoft's arguments.¹²

RED RIVER COMPUTER COMPANY

Red River received a mission support rating of good and a past performance rating of no confidence. Red River's total proposed price was \$2.07 billion. Red River

¹¹ To the extent Carahsoft believed that it was not possible, at the time of proposal submission, to identify with specificity the equipment catalogs that would be affected by the Unified Capabilities approved products list, it was required to protest that solicitation requirement by the due date for receipt of proposals. 4 C.F.R. § 21.2(a)(1).

¹² For example, Carahsoft also challenges a deficiency assigned under the small business factor, arguing that it should have been allowed to remedy proposal deficiencies through "clarifications." Carahsoft Comments at 10. However, the FAR prohibits the use of clarifications or communications to cure proposal deficiencies or material omissions or otherwise revise proposals. FAR § 15.306(b)(2).

AR, Tab 17, Competitive Range Determination, at 32, 50. Under the criteria used by the contracting officer to establish the competitive range, Red River's past performance rating of no confidence was the reason the proposal was not included in the competitive range. See id. at 52-54.

In this regard, the agency identified several CPARS reports for the company (which were not self-reported by Red River) that contained negative past performance information for the company. For example, one CPARS report contained marginal ratings for quality and scheduling as a result of several issues the agency experienced in dealing with Red River. In this regard, items arrived with shipping damage, some deliveries did not contain supporting paperwork, and other deliveries were shipped using the incorrect pallet type. Red River AR, Tab 14, Red River Past Performance Evaluation, at 6. The CPARS report also indicated that, due to Red River's failure to verify its supply chain before proposing for an order, there were significant delays and items were delivered nearly four months later than promised. Id. Another CPARS report indicated that items were delivered more than 30 days late, after Red River twice extended the delivery schedule without approval from the agency. Id. at 7. A third CPARS report indicated a late delivery, as well as a two-month delay in receiving a new box to replace one damaged in shipping. Id. A fourth CPARS report indicated that Red River had delivered damaged materials; some deliveries failed to include the required paperwork; and some items were delivered late, which impacted the agency's production control schedule. Id. A fifth CPARS report contained marginal ratings for schedule, business relations, and management of key personnel, noting that Red River failed to meet delivery schedules, caused considerable delays, and engaged in inconsistent communications with the agency regarding the problems. Id. The agency also reported that once problems were identified, Red River took "an extraordinary amount of time" to resolve the issues. Id.

After raising these negative past performance reports during communications with Red River and considering the firm's response,¹³ the evaluators assigned Red River a past performance rating of limited confidence. Red River AR, Tab 17, Competitive Range Determination, at 32. However, the SSA changed the rating from limited confidence to no confidence based on her independent assessment of the CPARS reports, stating that Red River's five negative CPARS reports in the last twelve months revealed issues with quality, scheduling, late deliveries, damaged equipment, inconsistent communications, and management of key personnel. As a result, the SSA concluded that she had no expectation that Red River would be able to successfully perform the required effort. Id. at 50.

¹³ In its response, Red River acknowledged that it was "ultimately responsible for quality and delivery performance on all orders" and described the corrective actions it has taken to try to prevent similar problems in the future. Red River AR, Tab 22, Record of Phase II Exchanges, at 52-56.

In its comments, Red River contends that the agency's assignment of a no confidence past performance rating was unreasonable because, "excluding the Agency's issue with Red River's past performance for Order Nos. SAQMMA11L1390, SAQMMA11L1357, SAQMMA13L0565 and SAQMMA11L1899 under Contract No. SAQMMA-10-A-0382 and Order No. DJD11STE0045, all of Red River's numerous past performance references were positive." Red River's Comments at 2. In this regard, the protester complains that the agency focused on a handful of CPARS reports, rather than considering all of the information before it, much of which was positive. Id. at 7.

Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the agency's discretion. American Env't'l Servs., Inc., B-406952.2, B-406952.3, Oct. 11, 2012, 2013 CPD ¶ 90 at 5; AT&T Gov't Solutions, Inc., B-406926 et al., Oct. 2, 2012, 2013 CPD ¶ 88 at 15. The evaluation of past performance, by its very nature, is subjective, and we will not substitute our judgment for reasonably based evaluation ratings; an offeror's mere disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. American Env't'l Servs., Inc., supra; Short & Assoc., B-406799, B-406799.4, Aug. 31, 2012, 2012 CPD ¶ 251 at 4.

The record supports the reasonableness of the SSA's rating of no confidence. In this regard, the solicitation defined a no confidence rating as one that, based on the offeror's recent/relevant performance record, provided the agency with no expectation that the offeror will be able to successfully perform the required effort. Red River AR, Tab 4, RFP Amendments, at 36. Here, the agency found multiple CPARS reports that indicated repeated failures to comply with delivery schedules, delayed responses, and communication problems. In evaluating Red River's past performance, the agency acknowledged that the firm had received several positive ratings, but nevertheless downgraded Red River's past performance based on its observation that Red River had experienced several similar performance problems within a relatively short timeframe.¹⁴ In these circumstances, we find that the agency reasonably determined that Red River's past performance merited a rating of no more than limited confidence (in the view of the evaluators), or even no confidence (in the SSA's view) and reasonably excluded Red River from the competitive range. The protest is denied.¹⁵

¹⁴ We note that even if the SSA had adopted the evaluators' higher rating of limited confidence, Red River's past performance rating would have still barred the company from the competitive range.

¹⁵ In its supplemental protest, Red River also contends that the agency failed to sufficiently consider price in making its competitive range determination. Red River
(continued...)

FCN, INC.

FCN received a mission support rating of acceptable (with ratings of acceptable under the management subfactor, acceptable under the technology subfactor, and good under the small business subfactor), and a past performance rating of satisfactory confidence. FCN's total proposed price was \$976 million. FCN AR, Tab 17, Competitive Range Determination, at 44-45, 52. Under the criteria used by the contracting officer to establish the competitive range, FCN's mission support rating of acceptable was the reason the proposal was not included in the competitive range. See id. at 54.

FCN does not challenge its ratings of acceptable under the management subfactor and the technology subfactor. Instead, its sole bases of protest are that the agency unreasonably assigned the firm a significant weakness under the small business subfactor for failing to propose goals for utilizing veteran-owned small businesses, and that the agency's past performance evaluation was unreasonable. FCN Comments at 1-2.

First, we note that, given that the protester does not challenge the assignment of a rating of acceptable under the two most important mission support subfactors, it is unclear that, even if one of the two significant weaknesses assigned under the small business subfactor were eliminated, the overall rating of the mission support proposal would be elevated to a rating of good (the rating needed to qualify FCN for

(...continued)

Supp. Protest at 3. However, the protester's allegations are belied by the record here. The competitive range determination makes clear that price was a substantial consideration, provided the proposals reached a threshold showing good under the mission support factor and satisfactory confidence or better under the past performance factor. Red River AR, Tab 17, Competitive Range Determination, at 54. Therefore, we find no merit in this allegation. Further, Red River contends that the agency engaged in unequal treatment in its past performance evaluation, since another offeror had three negative CPARS reports, but received a past performance rating of satisfactory confidence. Red River Supp. Protest at 10. However, our review of the record reveals substantive differences between these two offerors' past performance. The other offeror was reported to have experienced a "one-time" communications lapse, and its references stated that, although it had experienced a few missed delivery dates, these were attributed to the manufacturer, rather than the offeror. Red River AR, Tab 17, Competitive Range Determination, at 8. The agency found 100 CPARS reports for the other offeror, and almost all of the reports located showed "very favorable ratings in all of the critical areas." Id. Based on this record, we find the agency reasonably distinguished between the two offerors.

the competitive range). In any case, and as set forth below, we find that the agency's assignment of a weakness here was reasonable.

FCN proposed the following percentages for small business participation:

Small Businesses	[DELETED]%
Small Disadvantaged Businesses	--% ¹⁶
Women-Owned Small Businesses	[DELETED]%
HUBZone Small Businesses	[DELETED]%
Veteran-Owned Small Businesses	--%
Service-Disabled Veteran-Owned Small Businesses	[DELETED]%

FCN AR, Tab 8, FCN Phase II Proposal, at 31.

The agency asserts, and we agree, that the evaluators reasonably assigned weaknesses for FCN's failure to propose any goal whatsoever for small disadvantaged businesses and veteran-owned small businesses (VOSB). FCN contends that the agency's assignment of a weakness for the lack of a VOSB participation percentage was erroneous because FCN's proposal identified a [DELETED]% goal for service-disabled veteran-owned small businesses (SDVOSB). FCN Comments at 2. However, the solicitation set a VOSB goal of 5%. FCN AR, Tab 3, RFP, at 71. Therefore, even if the agency had counted FCN's proposed [DELETED]% utilization of SDVOSB as applicable to the VOSB category, FCN's proposal was still below the agency's objective. Given that FCN failed to identify any VOSB participation, and given that even if the agency credited FCN's utilization of SDVOSBs under the VOSB category, FCN's proposal did not meet the goals set forth in the RFP, we find the assignment of a weakness here reasonable. Therefore, we see no merit in FCN's argument that it should have received a higher rating under the small business subfactor. Moreover, FCN did not challenge the ratings of acceptable under the two most important mission support subfactors. Thus, even if we agreed with FCN that its small business rating should be higher (which we do not), it is unclear that the change would have resulted in a higher mission support rating.

Since FCN's mission support rating of acceptable was the reason for its exclusion from the competitive range, and we find the agency's evaluation in this regard to be reasonable, we need not address FCN's challenge to the agency's past performance evaluation. Specifically, even if the protester's past performance rating were improved to a rating of substantial confidence, FCN would nevertheless

¹⁶ FCN's proposal indicated the proposed percentage of small disadvantaged business and veteran-owned small business participation using only dashes, as shown. The proposal is silent about whether the dash should be read as a zero.

have been excluded from the competitive range based on its mission support rating of acceptable. Therefore, the protest is denied.

BLUE TECH, INC.

Blue Tech received a mission support rating of good and a past performance rating of satisfactory confidence. Blue Tech's total proposed price was \$5.29 billion. Blue Tech AR, Tab 17, Competitive Range Determination, at 34-35, 50. Under the criteria used by the SSA to establish the competitive range, Blue Tech's price, which was approximately 35% higher than the next-lowest priced offeror meeting the SSA's criteria, was the reason the proposal was not included in the competitive range. See id. at 54.

Blue Tech raises several challenges to the agency's evaluation and competitive range determination. For example, Blue Tech complains that the agency provided the offerors insufficient time to submit revised price proposals. In this regard, the protester states that "[r]evision of a pricing model that is 8 months out of date requires substantially more effort than one that had been prepared days prior." Blue Tech Comments at 6.

First, we note that, to the extent Blue Tech believed the agency had allowed the offerors insufficient time to submit revised price proposals, it was required to protest that issue by the closing time for receipt of the revised price proposals. 4 C.F.R. § 21.2(a)(1). In any case, the record indicates that the offerors (including Blue Tech) were notified as early as August 28, 2013 (approximately 5 months prior to the request for revised price proposals), that they would be permitted to submit new pricing. Blue Tech AR, Tab 9, Close Discussion Letter of Aug. 28 ("Regardless of whether or not your company elects to make changes to your Equipment List at this time, all offerors who successfully pass into Phase II will be permitted a final opportunity to submit updated pricing for their Phase II proposals. The Government will request updated pricing for Phase II at some point prior to establishing the Competitive Range for Phase II proposals"). As set forth above, the agency subsequently contacted offerors on January 29 and invited them to submit revised price proposals by February 4. Blue Tech AR, Tab 12, Request for Revised Phase II Price Proposals, at 1. Therefore, we find no merit in Blue Tech's argument that the agency acted unreasonably when it notified offerors on January 29 that they could submit revised price proposals by February 4. Moreover, even if we agreed with Blue Tech that this time period was insufficient, Blue Tech has not shown that it suffered prejudice--that is, it has not shown that its price would have decreased sufficiently, by approximately 35%, to qualify it for the competitive range.¹⁷

¹⁷ Blue Tech also speculates that, "on information and belief," some offerors may not have complied with the agency's instructions that, for items that had been discontinued, offerors were to submit the last valid price before the item was
(continued...)

INTEGRATION TECHNOLOGIES GROUP (ITG)

ITG received a mission support rating of good and a past performance rating of limited confidence. ITG's total proposed price was \$1.79 billion. ITG AR, Tab 17, Competitive Range Determination, at 12-13, 46. Under the criteria used by the SSA to establish the competitive range, ITG's past performance rating was the reason the proposal was not included in the competitive range. See id. at 54.

In this regard, among ITG's past performance problems identified by the agency was a report in the Federal Awardee Performance and Integrity Information System (FAPIS) of a contract termination for cause that had not been reported by ITG. ITG AR, Tab 14, Evaluation of ITG's Past Performance, at 5. The evaluators noted the following about this report:

In the termination notice, it was reported that ITG was unable to meet the requirements and terms of the order. Therefore, the order was terminated at no cost to the Government. Attempts to obtain additional information about the termination from the Contracting Officer proved unsuccessful. It was also reported within the termination notice that ITG had quoted ITG maintenance services for Quantum Disk Arrays. The customer wanted OEM direct warranty services and did not want 3rd (ITG) party warranty services. The customer terminated the contract. The termination found in FAPIS had a negative influence to the performance assessment and rating of the past performance of ITG.

(...continued)

discontinued. Blue Tech Comments at 8-9. In this regard, Blue Tech complains that the agency may have failed to validate whether offerors complied with this requirement. Blue Tech Comments at 8. We find no merit in this argument. First, the agency's instructions to offerors did not create a requirement for the agency to independently validate that offerors had complied with the requirement. Rather, an agency may reasonably rely upon information provided by an offeror in its proposal in performing its evaluation, especially where it has no reason to question the accuracy of that information. Able Bus. Techs., Inc., B-299383, Apr. 19, 2007, 2007 CPD ¶ 75 at 5. Further, the protester's speculation that other offerors failed to comply with this requirement, without more, does not meet the requirements of our Bid Protest Regulations that a protest include a detailed statement of the legal and factual grounds for protest. See Harris Corp., B-409148.3, B-409148.4, July 30, 2014, 2014 CPD ¶ 225 at 4; 4 C.F.R. § 21.1(c)(4).

Id.¹⁸

In accordance with FAR § 15.306(b), the agency raised this termination with ITG during communications. ITG AR, Tab 22, Record of Phase II Exchanges, at 34. In response, ITG stated that it did not identify this termination in its proposal because FAPIIS only retains delivery order information for vendor review for three years. “Therefore, Integration Technologies Group (ITG) was not able to review the comments about this [delivery order] within this system.” Id. With regard to the termination, ITG added that, during the course of the earlier procurement, its sales representative failed to explain to the end-user that ITG (rather than the original equipment manufacturer (OEM)) would provide maintenance. Id. When the agency discovered that OEM maintenance was not available, the contract was terminated. ITG also stated that, in response to the incident, the sales representative had been fired. Id.

ITG now protests the agency’s assignment of a limited confidence rating, arguing for the first time in its protest that the contract at issue involved a low dollar value and, therefore, was not relevant to the procurement here. ITG Protest at 3. Since ITG was given the opportunity to provide information to the agency regarding this termination and failed to express concerns about the relevance of the contract at that time,¹⁹ we find the agency’s decision to downgrade the protester’s past performance based on this information to be reasonable. Finally, we note that the agency also identified two additional CPARS reports containing negative past performance information, which ITG does not challenge here. Specifically, one

¹⁸ The agency’s past performance evaluation also identified other negative information in two CPARS reports, which are not challenged in this protest. For example, in one CPARS report, ITG was rated marginal in the areas of schedule and business relations. ITG AR, Tab 14, Evaluation of ITG’s Past Performance, at 5. Another CPARS report also rated ITG marginal in the area of schedule. Id. at 6. These two CPARS reports also contributed to the agency’s assignment of a limited risk past performance rating. Id.

¹⁹ When the agency contacted ITG during communications to allow ITG to provide information explaining why the offeror should not be downgraded on the basis of this negative past performance, ITG failed to dispute the relevance of the contract. Instead, it stated that it had not included the adverse information in its proposal because it was no longer accessible to ITG in FAPIIS, and described the corrective actions it had taken to prevent the situation from recurring. ITG AR, Tab 22, Record of Phase II Exchanges, at 34. Thus ITG’s arguments here are inconsistent with its actions during the competition. See KMS Solutions, LLC, B-405323.2, B-405323.3, Oct. 6, 2011, 2011 CPD ¶ 209 at 13; FitNet Int’l Corp., B-291986, May 19, 2003, 2003 CPD ¶ 102 at 3 n.1 (rejecting litigation positions inconsistent with protester’s position during the competition).

CPARS report referenced marginal ratings in the areas of schedule and business relations, and another CPARS report contained a rating of marginal in the area of schedule. ITG AR, Tab 14, Evaluation of ITG's Past Performance, at 5. In these circumstances, it is unclear, even if we agreed with ITG regarding the relevance of the termination, that ITG's past performance rating would have changed as a result. Therefore, this protest is denied.

TECHNICA CORPORATION

Technica received a mission support rating of unacceptable (with ratings of acceptable under the management subfactor, outstanding under the technology subfactor, and unacceptable under the small business participation subfactor), and a past performance rating of satisfactory confidence. Technica's total proposed price was \$12.32 billion. Technica AR, Tab 17, Competitive Range Determination, at 30, 50. Under the criteria used by the SSA to establish the competitive range, Technica's mission support rating of unacceptable and its very high price were the reasons the proposal was not included in the competitive range. See id. at 52-54.

The basis for Technica's unacceptable rating under the small business factor was the firm's failure to address the small business subfactor or provide the percentages of business proposed for each small business category identified in the solicitation. Technica AR, Tab 13, Evaluation of Technica's Mission Support Proposal, at 9. Technica admits that the firm's proposal unintentionally omitted the entire small business participation section of its proposal, Technica Protest at 14, but argues that the agency's assessment of a deficiency was unreasonable because "the Army should have been aware that Technica was and remains a small business, a veteran-owned small business, and minority-owned business." Technica Comments at 3. Technica also notes that another section of its proposal listed the firm's team members and identified their small business and socio-economic status, which the protester argues should have put the agency on notice that Technica planned to have small business participation on the contract. Technica Comments at 7; see, Technica AR, Tab 8, Technical Phase II Proposal, at 16 (identifying large and small business subcontractors, but not identifying percentages of small business participation).

Offerors bear the burden of submitting an adequately written proposal and contracting agencies evaluating one section of a proposal are not obligated to go in search of additional information that the offeror has omitted or failed to adequately present. Keystone Sealift Servs., Inc., B-401526.3, Apr. 13, 2010, 2010 CPD ¶ 95 at 4; Sam Facility Mgmt., Inc., B-292237, July 22, 2003, 2003 CPD ¶ 147 at 5. That is, agencies are not required to infer information from an inadequately detailed proposal or information that the protester elected not to provide. Optimization Consulting, Inc., B-407377, B-407377.2, Dec. 28, 2012, 2013 CPD ¶ 16 at 9 n.17.

Technica's argument is without merit. In eTouch Fed. Sys., LLC, B-404894.3, Aug. 15, 2011, 2011 CPD ¶ 160, a protester's proposal was rated unacceptable due to its failure to include a required small business subcontracting plan, and our Office rejected the protester's argument that the agency should have considered other relevant information scattered throughout the proposal. Specifically, we stated that, "[h]aving failed to submit the small business subcontracting plan, the protester cannot reasonably require the agency to assemble the plan itself from various disparate portions of the proposal." Id. at 4. Similarly, here, we will not impose on the agency the requirement to assemble from disparate other places the information that should have been included in the small business section of the proposal. Further, even if the agency had engaged in such a mission, the protester has provided no indication (and we can find none) that other sections of its proposal contained its proposed percentages for the different categories of small businesses. Moreover, we note that Technica's proposal indicated that both large and small businesses would be involved in performance of the contract. Technica AR, Tab 8, Technical Phase II Proposal, at 16. Thus, the agency had no way of knowing what percentage of the contract's requirements would be performed by large businesses and what percentage would be performed by small businesses. Since we find that the agency reasonably rated Technica's proposal unacceptable under the small business subfactor, we need not address the protester's other challenges to the evaluation of its proposal.

ADVANCED COMPUTER CONCEPTS (ACC)

ACC received a mission support rating of unacceptable (with ratings of acceptable under the management subfactor, unacceptable under the technology subfactor, and marginal under the small business participation subfactor), and a past performance rating of unknown confidence.²⁰ ACC's total proposed price was \$5.33 billion. NTS AR, Tab 17, Competitive Range Determination, at 20-21, 48. Under the criteria used by the SSA to establish the competitive range, ACC's mission support rating of unacceptable and its high price were the reasons the proposal was not included in the competitive range. See id. at 52-54.

²⁰ The evaluators assigned ACC's past performance a rating of unknown confidence. ACC AR, Tab 17, Competitive Range Determination, at 43. However, the SSA downgraded ACC's past performance to a rating of no confidence. Id. After ACC received notice of its elimination from the competitive range and requested a debriefing, the SSA issued an "addendum" to the competitive range determination, noting that she had mistakenly attributed adverse past performance to ACC. Therefore, she was changing ACC's past performance rating to the unknown confidence rating that was initially assigned by the evaluators. ACC AR, Tab 25, Addendum to Competitive Range Determination, at 1-2.

ACC challenges the agency's price evaluation, arguing that, since other offerors proposed much lower prices, they might have offered "gray market" items (products acquired cheaply through non-authorized distribution channels). ACC Comments at 2, 10. ACC argues that the agency unreasonably failed to evaluate whether offerors offered such gray market items. We dismiss this challenge as speculative. As a general matter, in evaluating proposals an agency may reasonably accept as accurate information provided by an offeror in its proposal. Vinculum Solutions, Inc., B-406760, B-406760.2, Aug. 22, 2012, 2012 CPD ¶ 249 at 9. Thus, we do not agree with ACC that the agency was required to take steps to ensure that the offerors had not proposed gray market items.

ACC also challenges the agency's past performance evaluation. The RFP here provided that offerors were to submit up to five contract references representing their recent and relevant performance under government and/or commercial contracts. ACC AR, Tab 3, RFP at 107. ACC submitted only two past performance references: one as a first tier subcontractor on a federal government procurement and one commercial contract. ACC AR, Tab 8, ACC's Phase II Proposal, at 30-32. Nonetheless, the protester contends that its own search yielded "ten CPARS reports for itself as a prime contractor, reflecting very strong past performance." ACC Protest at 17. Therefore, ACC contends that the agency's rating of unknown confidence was unreasonable. We find no merit in this argument.

The CPARS reports that ACC identifies in its protest are not for the contracts that ACC identified in its past performance proposal. See ACC Protest, Ex. D. Therefore, we cannot find that the agency acted unreasonably in failing to consider CPARS reports for contracts that the protester itself did not identify as relevant to the procurement here.

Further, our review of the agency's past performance evaluation shows that the evaluation was reasonable. With regard to ACC's first past performance reference, which the agency considered only somewhat relevant, ACC served as a subcontractor on an IT hardware procurement. ACC AR, Tab 14, Evaluation of ACC's Past Performance, at 1. Although the agency made several attempts to obtain responses to the past performance questionnaire, the point of contact did not respond to the agency's inquiries. Id. at 2. In addition, the agency found only one CPARS report related to this contract that mentioned ACC.

With regard to the second reference, a contract with [DELETED], the agency found that ACC had not complied with the solicitation's requirement to identify past performance involving at least \$5 million.²¹ ACC AR, Tab 14, Evaluation of ACC's

²¹ Specifically, the solicitation required that each contract used as a past performance reference have a minimum dollar value of \$5 million for equipment and
(continued...)

Past Performance, at 2. Further, the agency made several attempts to obtain past performance information from the point of contact identified in ACC's proposal, but received no response. Id. Moreover, since this was a commercial contract, no CPARS reports existed for the contract. Therefore, the agency was unsuccessful in obtaining information regarding the quality of ACC's performance of the [DELETED] subcontract. As a result, the agency assigned ACC a past performance rating of unknown confidence, indicating that "[n]o recent/relevant performance record is available or the offerors performance record is so sparse that no meaningful confidence assessment rating can be reasonably assigned." ACC AR, Tab 3, RFP at 117; ACC AR, Tab 14, Evaluation of ACC's Past Performance, at 1. Based on this record, we find the agency's evaluation of ACC's past performance to be reasonable.²²

(...continued)

related incidental services. In this regard, the solicitation provided three ways this threshold could be satisfied:

1) A single contract with a duration of twelve (12) months or less and a value of at least \$5M; or a single contract with a duration of over twelve (12) months, and an average value of \$5M or more per year.

2) A combination of multiple task orders (TOs)/delivery orders (DOs) awarded under a single Indefinite Delivery Indefinite Quantity (IDIQ) contract that when combined, equals \$5M or more of orders placed within a consecutive six-month period.

3) A combination of multiple call orders/TOs/DOs awarded under a single Blanket Purchase Agreement (BPA) or single Basic Ordering Agreement (BOA) that when combined, equals \$5M or more of orders placed within a consecutive six-month period.

ACC AR, Tab 4, RFP Amendments, at 245.

²² ACC also challenges its mission support rating of unacceptable. However, we find that, to the extent the agency may have made errors in its evaluation under this factor, the errors do not result in competitive prejudice. In this regard, we note that ACC does not challenge the rating of acceptable under the most important subfactor, management approach. Under the second most important subfactor, technology, ACC challenges only the assignment of a deficiency. Thus, if we were to agree with ACC that the deficiency under the technology subfactor was unreasonably assigned, its overall mission support rating would improve to merely acceptable. While ACC raises several challenges to the weaknesses assigned to its proposal under the least important subfactor, small business participation, it has not shown that an improvement in its rating under this subfactor would have

(continued...)

NEW TECH SOLUTIONS (NTS)

NTS received a mission support rating of acceptable (with ratings of acceptable under the management subfactor, acceptable under the technology subfactor, and good under the small business participation subfactor), and a past performance rating of satisfactory confidence. NTS's total proposed price was \$2.35 billion. NTS AR, Tab 17, Competitive Range Determination, at 20-21, 48. Under the criteria used by the SSA to establish the competitive range, NTS's mission support rating of acceptable was the reason the proposal was not included in the competitive range. See id. at 52-54.

NTS challenges the agency's assignment of a rating of good under the small business subfactor and argues that it should have received a rating of outstanding. In addition, NTS contends that if it had received an outstanding rating under the small business subfactor, its overall mission support rating would have improved to a rating of good, which would qualify the firm's proposal for the competitive range.

Under the small business subfactor, the agency evaluators created the following chart comparing NTS's small business goals with the RFP's objectives, and assigned weaknesses for those instances in which NTS failed to meet the RFP's objectives:

	Percent Proposed ²³	Government Objective	Difference
Small Businesses	[DELETED]%	23.00%	[DELETED]%
Small Disadvantaged Businesses	[DELETED]%	5.00%	([DELETED]%)
Women-Owned Small Businesses	[DELETED]%	5.00%	([DELETED]%)

(...continued)

resulted in an improvement in its overall mission support rating sufficient to qualify the firm for inclusion in the competitive range. Finally, we note that even if ACC could show that its overall mission support rating would have improved to a rating of good (which it has not), the firm's price and unknown confidence past performance rating would still not meet the SSA's criteria for inclusion in the competitive range. See Asset Mgmt. Real Estate, et al., B-407214.5 et al., Jan. 24, 2014, 2014 CPD ¶ 57 at 13 n.13 (in a best value procurement agency can consider a neutral past performance rating as less desirable than a good past performance rating).

²³ The percentages in this column were obtained directly from NTS's proposal, NTS AR, Tab 8, NTS's Phase II Proposal, at 30.

HUBZone Small Businesses	[DELETED]%	3.00%	([DELETED]%)
Veteran-Owned Small Businesses	[DELETED]%	5.00%	[DELETED]%
Service-Disabled Veteran-Owned Small Businesses	[DELETED]%	3.00%	[DELETED]%

NTS AR, Tab 13, Evaluation of Mission Support Factor, at 9; see also, NTS AR, Tab 8, NTS’s Mission Support Proposal, at 30.

NTS was assessed a strength for each category in which it exceeded the agency’s objective (SB and SDVOSB), and a weakness for each category in which its proposed percentages failed to meet the agency’s objective (SDB, WOSB, and HUBZone). NTS Gov AR, Tab 13, Evaluation of Mission Support Factor, at 9-10. NTS was assigned an additional strength for its clear commitment to small business contracting and a strength for its high percentage of small business contracting in the past (past small business participation). Id. at 10. The proposal was assigned one additional weakness due to two inconsistencies in the proposal. Specifically, the agency found that a chart on page 29 of NTS’s proposal, which contained estimated dollar amounts to be performed by specified small businesses, indicated different percentages of participation for the various small business categories than the percentages proposed on page 30 of NTS’s proposal. Id. at 11. In addition, the agency noted that one of the small businesses identified in NTS’s proposal as a small business, HUBZone small business, veteran-owned small business, service-disabled veteran-owned small business, and a section 8(a) small business was identified in the System for Award Management (SAM) and the Dynamic Small Business Search (DSBS) as only a small disadvantaged business. Id. Therefore, overall, NTS received four strengths and four weaknesses under the small business subfactor. However, the proposal was nevertheless assigned a subfactor rating of good because the agency found that the strengths qualitatively outweighed the weaknesses in the proposal. Id. at 8.

We find that the agency’s assignment of a rating of good for the small business subfactor was reasonable. In this regard, we note that, while one portion of NTS’s proposal showed that it exceeded all of the agency’s small business participation objectives, see NTS AR, Tab 8, NTS’s Mission Support Proposal, at 29, another section of the proposal, labeled “Percent of Participation based on Total Contract Value” indicated that NTS would not meet the agency’s objectives for small disadvantaged businesses, women owned small businesses, or HUBZone businesses. See NTS AR, Tab 8, NTS’s Mission Support Proposal, at 30. Moreover, the solicitation specifically instructed offerors that “SB participation shall include all SB categories for which the business qualifies. For example, a HUBZone certified, SDVOSB would be included in the SB percentage, the HUBZone percentage, the SDVOSB percentage, AND the VOSB percentage.” NTS AR, Tab 3, RFP, at 106. Although NTS now argues that the agency should have recognized that the percentages in its proposal were actually higher because some businesses qualified as more than one type of small business category, NTS

Protest at 5, NTS admits that its chart was prepared “using only one of each company’s small business Designation.” Id.

We have repeatedly held that it is the offeror’s responsibility to submit a well-written proposal that complies with the solicitation’s requirements, and an offeror that does not do so runs the risk of having its proposal rejected as unacceptable. Henry Schein, Inc., supra. Here, it was NTS’s responsibility to submit a proposal that counted the performance of small businesses under each small business category for which it qualified, as instructed by the solicitation. Therefore, we will not hold that the agency’s assignment of weaknesses due to the conflicting numbers in NTS’s proposal to be in error.

The protests are denied.

Susan A. Poling
General Counsel