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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

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## Decision

**Matter of:** Bannum, Inc.

**File:** B-402730

**Date:** July 6, 2010

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Joseph A. Camardo, Jr., Esq. and Nancy M. Camardo, Esq., Camardo Law Firm, PC, for the protester.

Alex D. Tomaszczuk, Esq., Nicole Y. Beeler, Esq., and Daniel S. Herzfeld, Esq., for the intervenor.

Dionis M. Gauvin, Esq. and William D. Robinson, Esq., Department of Justice, Bureau of Prisons, for the agency.

Cherie J. Owen, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that agency conducted an unreasonable evaluation of the protester's proposal under the technical/management factor is denied, where the record supports the agency's assessments and demonstrates that the agency conducted the evaluation consistent with the solicitation's evaluation criteria.
  2. Protest that agency improperly evaluated the protester's proposal under the past performance factor is denied, where the agency reasonably considered the protester's past performance references, including the relevance of the contracts and the strengths and deficiencies associated with performance, in accordance with the solicitation's evaluation criteria.
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### DECISION

Bannum, Inc., of Odessa, Florida, protests the award of a contract to Dismas Charities, Inc., of Louisville, Kentucky, by the Department of Justice, Bureau of Prisons (BOP), under request for proposals (RFP) No. 200-1050-SE for the provision of residential reentry center services in the Savannah, Georgia area. Bannum contends that the agency improperly evaluated the firm's proposal, resulting in a flawed award decision.

We deny the protest.

## BACKGROUND

The Bureau of Prisons issued the RFP on December 9, 2008, seeking a contractor to provide services for a residential reentry center near Savannah, Georgia. The services to be provided under this contract include employment and residence development, as well as other self-improvement opportunities, to assist federal offenders during the transition from prison to the community. Offerors were required to propose all personnel, management, equipment, supplies, and services necessary to operate the residential reentry center. The RFP anticipated the award of an indefinite-delivery, requirements-type contract with fixed unit prices for a 2-year base period and three 1-year options. RFP at 1, 6, 17.

The RFP provided that the award would be made to the offeror whose proposal was found to represent the best value to the government, based on the evaluation of the following factors: past performance, technical/management, and price. Id. at 229. The past performance factor was stated to be more important than the technical/management factor, and those two factors, when combined, were significantly more important than price. Id. at 229.

As stated in the RFP, the past performance evaluation factor had five equally weighted subfactors: accountability, programs, community relations, personnel, and communications and responsiveness. Id. at 230. The technical/management evaluation factor also had five equally weighted subfactors: site location, accountability, programs, facility, and personnel. Id. at 230-31. The site location subfactor had two equally weighted sub-subfactors: site viability and suitability, and community relations program.<sup>1</sup> Id. at 230.

The RFP provided that the agency would evaluate each of the subfactors and sub-subfactors using a color/adjectival rating system: blue/very good, green/acceptable, yellow/poor, and red/unacceptable. Id. at 229. As is relevant here, blue/very good was defined as:

Offeror's proposal meets and exceeds the requirements of the solicitation. Their proposal shows they have a very good solution for meeting the needs and objectives of the program. One or more significant strengths exist. Weaknesses may exist, but none are considered significant and are easily correctable.

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<sup>1</sup> The RFP here identified evaluation areas, factors, and subfactors. RFP at 229-30. Thus, our use of the word factors in this decision refers to evaluation areas, subfactors refers to what the RFP terms factors, and sub-subfactors refers to what the RFP calls subfactors.

Id. Green/acceptable was defined as:

Offeror's proposal meets the minimum requirements of the solicitation. Their proposal shows they have an acceptable solution for meeting the needs and objectives of the program. Strengths and weaknesses may exist. The weaknesses are correctable.

Id. The RFP provided that once the agency rated each subfactor and sub-subfactor, it would assign an overall color/adjectival rating to each evaluation factor. Id.

For the past performance proposal, offerors were required to submit information regarding their five most relevant contracts or subcontracts performed in the past 3 years. Id. at 188. The RFP stated that recent and relevant past performance information would be "critical" to the agency's evaluation of past performance, and that more recent, more relevant past performance information would have "a greater positive impact" on the past performance evaluation than less recent, less relevant performance. Id. The RFP also stated that where an offeror's relevant performance record indicated performance problems, the government would consider the number and severity of the problems and the appropriateness and effectiveness of any corrective actions taken. Id. at 230.

The agency received timely proposals from Bannum and Dismas, and convened a technical/management evaluation panel to evaluate and rate the offerors' technical/management proposals. With regard to Bannum, the panel assigned Bannum's proposal ratings of blue/very good for the accountability subfactor (one significant strength and two strengths identified) and personnel subfactor (one significant strength identified). Agency Report (AR), Tab 7, Technical/Management Evaluation, at 6, 11. The panel assigned ratings of green/acceptable for the site location (no strengths), programs (one strength), and facility (no strengths) subfactors. Id. at 3, 9, 10. With two subfactors rated as blue/very good, and three rated as green/acceptable, the panel determined that Bannum's overall technical rating was green/acceptable. Id. at 12.

The contracting officer was responsible for evaluating the offerors' past performance. Contracting Officer's Statement at 4. Bannum submitted past performance information on five of its current BOP contracts--Savannah, Georgia (the incumbent contract); Fayetteville, North Carolina; Tupelo, Mississippi; Jackson, Mississippi; and Clarksburg, West Virginia. AR, Tab 15, Bannum's Past Performance Proposal, at 2-15.

The contracting officer evaluated offerors' past performance by reviewing the past performance proposals submitted by each offeror and the contractor evaluation forms that were in the agency's files. Contracting Officer's Statement at 4. With

regard to Bannum, one contract--the Savannah contract--was found to be highly relevant, and the remaining four contracts were found to be moderately relevant.<sup>2</sup> AR, Tab 9, Past Performance Evaluation, at 3. Bannum's performance under the Savannah and one other contract was rated very good overall, and its performance under three other contracts was rated acceptable, as noted below:

	<b>Savannah</b>	<b>Fayetteville</b>	<b>Jackson</b>	<b>Tupelo</b>	<b>Clarksburg</b>
<b>Accountability</b>	Very Good	Poor	Very Good	Acceptable	Very Good
<b>Programs</b>	Very Good	Poor	Acceptable	Acceptable	Very Good
<b>Community Relations</b>	Acceptable	Acceptable	Acceptable	Acceptable	Acceptable
<b>Personnel</b>	Very Good	Acceptable	Acceptable	Acceptable	Acceptable
<b>Communications/ Responsiveness</b>	Very good	Acceptable	Acceptable	Acceptable	Very Good
<b>Overall Rating</b>	<b>Very Good</b>	<b>Acceptable</b>	<b>Acceptable</b>	<b>Acceptable</b>	<b>Very Good</b>

Id. at 3-4.

With regard to the Savannah contract, the contracting officer identified strengths under each of the subfactors, including that Bannum provided an effective accountability program to ensure that residents were at their approved destinations, had [REDACTED], and had staff who were responsive and proactive in providing residents with the appropriate programming in order to transition into the community. Id. at 4-6. However, the contracting officer also noted two weaknesses under the programs and community relations subfactors because Bannum's program plan for two residents did not always reflect certain needed information and the firm had not been able to establish a community relations board. Id. at 7-8.

With regard to the Fayetteville contract, the contracting officer noted strengths under the community relations, personnel, and communication and responsiveness subfactors, but also found numerous deficiencies under all but the community relations subfactor. Id. at 5-9. As examples, the contracting officer identified a number of repeat deficiencies under the accountability and programs subfactors, including that Bannum had failed to conduct monthly vehicle searches on inmates with driving privileges during 2 months of the performance period, failed to conduct room searches on inmate housing units during the month of December 2007, had not provided acceptable accountability for residents assigned to home confinement status, and failed to conduct adequate drug testing of residents. Id. at 6-7. The

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<sup>2</sup> The relevance of past performance references was determined based on the size of the facility. Contracts involving facilities containing 16 to 30 beds were considered to be moderately relevant, while contracts involving facilities containing 31 or more beds were considered to be highly relevant. AR, Tab 9, Past Performance Evaluation, at 3.

contracting officer also noted other non-repeat deficiencies under these and other subfactors, such as having “enormous turnover” and staff shortages, failing to ensure that inmate discipline reports were submitted, failing to ensure that residents were attending “life skills” programming, failing to maintain documentation to ensure that on-site employment visits and monthly follow-up telephone calls had been conducted, and failing to maintain or review resident telephone bills. Id. at 7-9.

With regard to the remaining three contracts--Jackson, Tupelo, and Clarksburg--the contracting officer again noted strengths and weaknesses under the various subfactors. Id. at 4-9. The Tupelo contract, in particular, was assessed weaknesses under each of the subfactors, including that the majority of accountability checks were initiated by offenders instead of staff, contraband (empty liquor bottles, beer cans, and a white powdery substance) was found, there were no alcohol counseling programs for offenders, a quarterly community relations meeting had not been conducted, strained relationships existed with the local probation office, and there was a “serious allegation of staff misconduct” including bribery, accepting things of value, and inattention to duty. Id. at 7-9. With regard to the Tupelo facility, the contracting officer noted that the courts lost confidence in the program and the probation office removed seven supervision cases from the facility. Id. at 9.

After considering the evaluated strengths and weaknesses of all five contracts, as well as the relevance of each of the contracts, the contracting officer concluded that “the numerous repeat and new deficiencies cited and the severity of the deficiencies of the contracts evaluated far outweighed all of the strengths listed.” Id. at 10. Thus, Bannum’s proposal received an overall rating of green/acceptable for the past performance factor. Id.

In comparison to the green/acceptable rating that Bannum’s proposal received for both the past performance and technical/management factors, Dismas’ proposal received ratings of blue/very good for each of these factors. Contracting Officer’s Statement at 4. Bannum’s proposed price for the 2-year base period was \$2,008,960, and Dismas’ proposed price for the 2-year base period was \$2,028,057, a difference of \$19,097. AR, Tab 11, Notice to Unsuccessful Offeror; Tab 13, Bannum’s Business Proposal, at 27.

In making her selection decision, the contracting officer noted that under the RFP’s evaluation scheme, the technical/management factor and the past performance factor, when combined, were significantly more important than price. The contracting officer selected Dismas’ proposal for award, stating that the more highly rated proposal submitted by Dismas warranted paying the price premium associated with that proposal. AR, Tab 10, Source Selection Decision, at 29. After receiving notice of the award and a debriefing, Bannum protested.

## DISCUSSION

Bannum argues that the agency improperly evaluated its proposal under the technical/management factor and violated the RFP's stated evaluation criteria by assigning the proposal a factor rating of green/acceptable instead of blue/very good, which the protester believes was merited. The protester also contends that the BOP's past performance evaluation violated the terms of the solicitation because the BOP failed to give sufficient weight to Bannum's highly relevant past performance contract and instead improperly focused on deficiencies under less relevant contracts. Further, Bannum argues that the contracting officer improperly considered older past performance information when more recent information was available.

The agency argues that its evaluation of the protester's proposal was in accordance with the RFP's evaluation criteria, and that it used the most recent past performance information available at the time of the evaluation.

The evaluation of an offeror's proposals, including the evaluation of technical approaches or past performance, is a matter within the agency's discretion. NLX Corp., B-288785, B-288785.2, Dec. 7, 2001, 2001 CPD ¶ 198 at 7. In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, but we will examine the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. An offeror's mere disagreement with an agency's evaluation judgment is not sufficient to establish that the agency acted unreasonably. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

Based on our review of the record, as discussed below, we find the agency's evaluation unobjectionable.

### Technical/Management Evaluation

The protester argues that because the agency identified two significant strengths, four strengths, and no weaknesses in the firm's technical/management proposal, the proposal should have received an overall factor rating of blue/very good, under the solicitation's description of the evaluation ratings.<sup>3</sup>

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<sup>3</sup> Bannum also contends that its proposal should have been credited with a blue/very good rating under the technical/management factor, in part, because of the firm's positive performance history under the Savannah contract. Bannum's Comments at 6. However, past performance was not required to be evaluated under the

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The agency explains that it evaluated each subfactor independently pursuant to the evaluation criteria specified in the RFP, and that the protester did get credit for significant strengths and strengths. As a result, the accountability and personnel subfactors were rated as blue/very good and the remaining three subfactors were rated as green/acceptable. Noting that the RFP states that all subfactors were to be given equal weight, the agency then determined that Bannum's overall technical/management rating was green/acceptable. See AR, Tab 10, Source Selection Decision, at 12-20.

Based on our review of the record, we find that the agency's evaluation of Bannum's proposal under the technical/management factor was reasonable and consistent with the evaluation criteria. As noted above, the agency credited Bannum's proposal with its strengths and significant strengths when assigning the ratings for the subfactors, and then used the subfactor ratings to arrive at an overall technical/management rating of green/acceptable. Under the accountability and personnel subfactors, the agency recognized as significant strengths Bannum's recruiting approach and its use of [REDACTED] to track offenders. The agency also recognized strengths for using [REDACTED]. Id. at 16-17, 20-21. However, under the remaining three subfactors (site location, programs, and facility), the agency found only one strength under the programs subfactor for the firm's ability to leverage and network with relevant community resources, and it determined that the proposal only met the requirements of the RFP for these three subfactors. Id. at 13, 19.

Because Bannum's proposal exceeded the requirements for only two of the five equally weighted subfactors (accountability and personnel) and met the requirements for the remaining three subfactors (site location, programs, and facility), we find that the agency reasonably assigned Bannum's proposal an overall rating of green/acceptable under the technical/management factor. The evaluation criteria did not require that the agency assign an overall blue/very good rating where the proposal only met the RFP requirements and did not offer any significant strengths for the majority of the equally weighted subfactors. Although Bannum disagrees with the agency's rating, it has not shown the evaluation to be unreasonable. See Birdwell Bros. Painting & Refinishing, supra, at 5.

#### Past Performance Evaluation

The protester contends that rather than giving greater weight to the highly relevant Savannah contract, as required by the RFP, the BOP improperly focused on isolated deficiencies involving less relevant contracts.

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technical/management factor. Instead, Bannum's performance history was properly considered under the past performance factor.

The agency argues that it performed its evaluation in accordance with the RFP's evaluation criteria. Specifically, the agency notes that the RFP stated that where an offeror's record of past performance indicated problems, the agency would consider the number and severity of the problems in its evaluation, as well as the appropriateness and effectiveness of any corrective action taken. See RFP at 230. Although the agency acknowledges that the RFP indicated that more relevant, recent information would be given greater weight in the evaluation, see RFP at 229, this does not mean that the impact of one positive reference should have outweighed numerous deficiencies identified by remaining references. Further, the agency argues that the occurrence of repeated deficiencies is especially significant because it demonstrates problems the contractor has failed to remedy.

Our review of the record leads us to conclude that the agency's decision to rate Bannum's past performance as green/acceptable was both reasonable and consistent with the RFP's evaluation criteria. Although the contracting officer's past performance evaluation recognized numerous strengths in Bannum's past performance, as noted above, the evaluation also noted several weaknesses, some of which were repeat deficiencies. AR, Tab 9, Past Performance Evaluation, at 4-10. The record shows that Bannum's positive performance under the Savannah contract was given credit for being highly relevant, but the agency found that numerous other deficiencies and the severity of those deficiencies, considering all contracts evaluated, outweighed Bannum's strengths. Id. at 10. Based on our review of the record, including the solicitation, we agree with the agency's conclusion that the RFP's terms do not require the agency to disregard repeat or severe deficiencies in the protester's past performance, merely because of its good performance on a highly relevant contract.

#### Recency of Past Performance Information

The protester also contends--as set forth in more detail below--that the contracting officer improperly considered older past performance information when more recent information was available. In addition, the protester contends that the contracting officer should have considered interim and final monitoring reports in her past performance evaluation.

With regard to the age of the contractor evaluation forms, the protester notes that the contracting officer's evaluation considered contractor evaluation forms for the following periods:



<b>Past Performance References (Considered)</b>	<b>Time Period of the Contractor Evaluation Forms</b>
Savannah	Sept. 1, 2006 - Aug. 31, 2007
Fayetteville	Nov. 1, 2007 - Oct. 31, 2008
Jackson	Jan. 1, 2008 - Dec. 31, 2008
Tupelo	Feb. 1, 2008 - Jan. 31, 2009
Clarksburg	Feb. 1, 2008 - Jan. 31, 2009

Bannum's Comments at 2. However, the protester contends that the contracting officer should have considered the following more recent contractor evaluation forms:

<b>Past Performance References (Not Considered)</b>	<b>Time Period of the Contractor Evaluation Forms</b>
Savannah	Sept. 1, 2008 - Sept. 1, 2009
Fayetteville	Nov. 1, 2008 - Oct. 31, 2009
Jackson	Jan. 1, 2009 - Dec. 31, 2009
Clarksburg	Feb. 1, 2009 - Jan. 31, 2010

Bannum's Comments at 3.<sup>4</sup>

The agency states that, pursuant to Federal Acquisition Regulation (FAR) § 42.1503, the past performance evaluation system involves several levels of internal agency review, as well as an opportunity for the contractor to comment on the ratings, before a contractor evaluation form can be finalized. The agency contends that none of the contractor evaluation forms identified by the protester had been finalized by the time the contracting officer performed her past performance evaluation on December 18, 2009. Furthermore, three contractor evaluation forms (Fayetteville, Jackson, and Clarksburg) were still provisional or in dispute at the time of the source selection decision on March 25, 2010. Supp. AR at 4.

With regard to the Savanna contract, an initial contractor evaluation form for the period identified by the protester--September 1, 2008 to September 1, 2009--had been prepared by the agency and sent to Bannum for comment on December 14, which was 4 days prior to the contracting officer's past performance evaluation. Supp. AR, attach. 1, Contractor Evaluation Form Correspondence, at 1. Bannum submitted its

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<sup>4</sup> To the extent that the protester asserts that the agency should have considered a contractor evaluation form for the period February 1, 2008 to January 31, 2009 for the Tupelo contract, the record shows that the agency in fact considered this. Compare Bannum's Comments at 3 with AR, Tab 9, Past Performance Evaluation, at 3.

comments and rebuttals on January 11, 2010, more than 3 weeks after the contracting officer had prepared her past performance evaluation of the protester's proposal. *Id.* at 6. Initial contractor evaluation forms for the Fayetteville, Jackson and Clarksburg contracts had not yet been prepared or sent to Bannum at the time of the contracting officer's past performance evaluation on December 18, 2009. Supp. AR at 7, n.10. Indeed, with regard to the Jackson and Clarksburg references, the periods covered by the more recent contractor evaluation forms did not end until December 31, 2009 and January 31, 2010, respectively—which was 2 to 3 weeks after the contracting officer had performed her past performance evaluation of Bannum's proposal. *Id.* at 5-6.

The FAR provides:

Agency evaluations of contractor performance prepared under this subpart **shall** be provided to the contractor as soon as practicable after completion of the evaluation. Contractors **shall** be given a minimum of 30 days to submit comments, rebutting statements, or additional information. Agencies **shall** provide for review at a level above the contracting officer to consider disagreements between the parties regarding the evaluation. The ultimate conclusion on the performance evaluation is a decision of the contracting agency. . . . These evaluations may be used to support future award decisions.

FAR § 42.1503(b) (emphasis added).

Given that the agency was required under the FAR to afford Bannum an opportunity to comment on its proposed contractor evaluation form ratings prior to finalizing them and using them to support future award decisions, we find the agency was under no obligation to consider the initial contractor evaluation form ratings in evaluating Bannum's past performance. Therefore, we find no merit to the protester's argument that the agency failed to use the most current contractor evaluation forms.<sup>5</sup>

Similarly, we find unpersuasive the protester's argument that the agency should have considered the interim and final monitoring reports. Monitoring reports document individual visits to a contractor's facility and, in the aggregate, form the supporting basis for the ratings assigned in the contractor evaluation form. Declaration of

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<sup>5</sup> The protester also has not established that the newer contractor evaluation forms would have increased its overall past performance rating above green/acceptable. In this regard, the newer contractor evaluation forms reflect higher ratings for some subfactors and lower ratings for others. Bannum's Comments at 3. The agency explains that the newer contractor evaluation forms still identified numerous weaknesses and deficiencies in Bannum's performance. Supp. AR at 7-9.

Deputy Chief of Community Corrections (June 15, 2010), at 1-2. A full monitoring report documents an announced planned visit by a BOP monitoring team to assess the contractor's performance. Id. at 1. An interim monitoring report documents a visit that may be announced or unannounced and often focuses on areas of contractor performance that the agency previously identified as areas of concern or deficiency. Id.

Agencies have the discretion to determine the scope of the performance history to be considered, provided that all proposals are evaluated on the same basis and the evaluation is consistent with the terms of the RFP. Weidlinger Assocs., Inc., B-299433; B-299433.2, May 7, 2007, 2007 CPD ¶ 91 at 8; USATREX Int'l., Inc., B-275592, B-275592.2, Mar. 6, 1997, 98-1 CPD ¶ 99 at 3. Given this discretion, we cannot find unreasonable the agency's decision to rely on contractor evaluation forms--the final, formal performance evaluations of the entire performance period--rather than monitoring reports, which memorialize only the performance observed during a single visit.<sup>6</sup> Therefore, we will not disturb the agency's decision to rely on final contractor evaluation forms, combined with the information submitted in the offerors' past performance proposals, to evaluate past performance.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel

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<sup>6</sup> The protester's own past performance proposal supports this approach, as it focuses on contractor evaluation form ratings and does not appear to contain any references to monitoring reports. See AR, Tab 15, Bannum's Past Performance Proposal.