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## Decision

**Matter of:** WAI-Stoller Services, LLC; Portage, Inc.

**File:** B-408248.13; B-408248.14; B-408248.15; B-408248.16; B-408248.17; B-408248.18; B-408248.19; B-408248.20

**Date:** May 29, 2015

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H. Jack Shearer, Esq., and Gabriel D. Soll, Esq., Department of Energy, for the agency.

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

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### DIGEST

1. Protest challenging agency's consideration of the contributions to contract performance of a subcontractor is denied where agency's reasonable method of calculating the percentage of subcontractor contribution furnishes protester no basis for questioning agency's conclusion that subcontractor's expertise would be a significant contribution under the technical approach factor.

2. Where solicitation issued in November 2011 provided that offerors' past performance would be evaluated with respect to performance under existing and prior contracts "completed or in progress during the past 3 years," and proposals were submitted in February 2012, agency performing reevaluation of the original 2012 proposals in summer 2014 (after a sustained protest) reasonably determined that the 3-year relevance window ran from the due date for those proposals rather than from the time of the reevaluation in 2014.

3. Where an agency in its corrective action after a sustained protest does not request revised proposals, and instead reevaluates the proposals that were the subject of the prior protest, reaching the same evaluation conclusions with regard to

a section of a proposal that our Office considered and found to be reasonable in the prior protest, we will not consider in a new protest arguments that were previously addressed and denied in the prior decision, or new arguments based on information that was known to the protester in the prior protest.

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## **DECISION**

WAI-Stoller Services, LLC (WSS), of Piketon, Ohio, and Portage, Inc. (Portage), of Idaho Falls, Idaho, protest the Department of Energy's award of a contract to Navarro Research and Engineering, Inc. (Navarro), of Oak Ridge, Tennessee, under request for proposals (RFP) No. DE-SOL-0002716, for legacy management (LM) support services at sites across the country. WSS and Navarro challenge the evaluation of offerors' proposals and the agency's resulting trade-off decision.

We deny the protests.

## **BACKGROUND**

Two Department of Energy programs are responsible for the cleanup and long-term monitoring of the environmental legacy created by decades of nuclear weapons development and government-sponsored nuclear energy research. The first program, under the Office of Environmental Management, performs environmental site cleanup, including waste disposal, substantial remediation of sites, and decontamination and decommissioning of facilities. The second program, under the Office of Legacy Management, assumes responsibility for monitoring the sites and remediating any residual contamination. This procurement sought services in support of the Office of Legacy Management. Portage Agency Report (AR) at 1-2; WSS AR at 2. These services were previously performed by S.M. Stoller Corporation, part of the WSS team for this procurement.<sup>1</sup>

The solicitation, issued as a small business set-aside on November 23, 2011, provided for the award of a cost-plus award-fee contract with a 24-month base period and one 36-month option period. The RFP sought proposals to perform five categories of services: (1) long-term surveillance and maintenance (LTS&M); (2) information technology (IT) and records management (RM); (3) asset management; (4) business support; and (5) program-wide support. RFP at 111. The first category of services, LTS&M, which comprised the majority of the work under this contract, includes maintaining, operating, and installing environmental remedies; site inspections; monitoring air, soil, surface water, and ground water; active record administration; and coordination with regulators and stakeholders.

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<sup>1</sup> WSS is a mentor-protégé joint venture, which consists of WAI as the protégé and S.M. Stoller as the mentor. Stoller is the incumbent contractor.

Award was to be made on a best-value basis considering cost plus the following non-cost evaluation factors, listed in descending order of importance in the solicitation: (1) technical approach/understanding the requirement; (2) management approach; (3) staffing; and (4) past performance. RFP at 95. The RFP advised that the technical approach/understanding of the requirement factor would include an evaluation of the offeror's technical discussion and its response to a sample task. With regard to past performance, the RFP required offerors to provide a list of three contracts and/or subcontracts, similar in labor mix, level of complexity, and scope as described in the performance work statement; performed within the past 3 years; and with an annual value greater than or equal to 10% of the effort here, including options. Id. at 87. The non-cost factors, when combined, were significantly more important than cost. Id. at 95.

The agency received eight proposals, including those submitted by Navarro, WSS, and Portage, by the February 15, 2012 closing date.<sup>2</sup> On March 29, 2013, the agency made its initial award decision, selecting Portage's proposal as representing the best value to the government. Navarro and WSS then protested the award to our Office; the protests were dismissed after the agency decided to reevaluate proposals and make a new award decision (B-408248 et al., May 29, 2013).

After the agency conducted a new evaluation and made a new award decision, again selecting the proposal submitted by Portage, WSS and Navarro again protested to our Office. In May 2014, we issued a decision sustaining in part Navarro's challenge to the evaluation and denying WSS's protest. WAI-Stoller Servs., LLC; Navarro Research & Eng'g, Inc., B-408248.6 et al., May 22, 2014, 2014 CPD ¶ 164. We recommended that the agency reevaluate the proposals of Navarro and Portage and make a new selection decision.

In undertaking its corrective action, the agency assigned a new source selection official (SSO); asked offerors to extend their proposals; and reevaluated all of the proposals. The agency did not permit offerors to submit proposal revisions as part of its reevaluation, and it did not reevaluate cost proposals. Portage AR at 7.

In the agency's reevaluation, the evaluators added and deleted strengths and weaknesses assigned to each of the parties' proposals. These changes, however, did not result in any change to the adjectival ratings or the point scores assigned to the offerors. Overall, the SEB's ratings of the offerors remained as follows:

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<sup>2</sup> In June 2012, one of the offerors elected not to extend its proposal. Portage AR at 6 n.4.

<b>Evaluation Factor and Maximum Points Available</b>	<b>Navarro</b>	<b>WSS</b>	<b>Portage</b>
<b>Technical Approach/ Understanding the Requirement - 400 points</b>	Excellent 400 points	Good 320 points	Excellent 400 points
<b>Management Approach - 300 points</b>	Good 240 points	Good 240 points	Good 240 points
<b>Staffing - 200 points</b>	Excellent 200 points	Excellent 200 points	Excellent 200 points
<b>Past Performance - 100 points</b>	Excellent 100 points	Good 80 points	Good 80 points
<b>Overall Technical &amp; Past Performance Rating - 1000 points</b>	Excellent 940 points	Good 840 points	Excellent 920 points
<b>Evaluated Cost</b>	\$260,233,172	\$244,451,508	\$251,729,790

AR, Tab E.1, SEB Report, at 24-25.

In making the current award decision, the SSO considered the ratings assigned to each offeror, but also looked behind the adjectival ratings and point scores and considered the underlying qualitative merits that distinguished the proposals. After establishing that the proposals of Navarro and Portage were considered to be superior to the other five proposals, the SSO conducted a head-to-head comparison of those two proposals. Id. At the conclusion of this comparison, for the reasons discussed below, the SSO selected Navarro for the award.

In his selection decision, the SSO agreed with the SEB that Navarro's proposal merited two significant strengths under the technical approach factor. SSDD at 9. The first significant strength was for a technical approach to long-term surveillance and maintenance (LTS&M) that showed a thorough understanding of the program and fully integrated the [DELETED] with the [DELETED]. The second significant strength was for Navarro's sample task approach, which the agency found proposed realistic innovations, identified possible risks, and fully integrated the task with the rest of the LTS&M program. Id. The SSA noted that these two significant strengths appreciably increased the probability of successful performance. Id. In addition, the SSO noted that Navarro's proposal also earned five strengths and no

weaknesses. Therefore, the SSO concluded that Navarro's proposal demonstrated a very high probability of success. Id. at 10.

The SSO noted that Portage's proposal also earned two significant strengths. SSDD at 10. The first significant strength was due to a technical approach to the LTS&M function that was comprehensive in its understanding and included an [DELETED]. The second significant strength was for Portage's approach to the sample task, which included realistic [DELETED], identified [DELETED], and demonstrated [DELETED]. Id. In addition, the SSO noted that Portage's proposal also earned one notable<sup>3</sup> strength and no weaknesses.

Despite the fact that Navarro's and Portage's proposals both received ratings of excellent under the technical approach/understanding the requirement factor, the SSO found Navarro's proposal to be superior to Portage's under this factor. In his head-to-head comparison of the two proposals, the SSO noted that Navarro proposed realistic innovations and showed a strong emphasis on safety and customer satisfaction, which set Navarro's proposal above that of Portage. SSDD at 11. Therefore, the SSO considered the significant strengths identified in Navarro's proposal to offer more value than the significant strengths in Portage's proposal. Id. at 11-12. Further, the SSO noted that some of the other strengths identified in Navarro's proposal also served as discriminators between the Navarro and Portage proposals. These strengths included Navarro's plan to expand the use of the [DELETED] to increase collaboration and automation of tasks, Navarro's integration and interrelation of LM goals and objectives, and the firm's realistic schedule assumptions. Id. at 12.

The SSO conducted a similar qualitative analysis of the proposals for each of the non-cost factors. See id. at 12-18. Specifically, the SSO found that Navarro's proposal was superior to Portage's under three of the four non-cost factors: technical approach/understanding the requirement, staffing, and past performance. Id. While the SSO recognized that Portage's proposal was slightly superior to Navarro's under the management approach factor, and Portage's evaluated cost was approximately 3.1 percent lower, id., he ultimately concluded that "the clear advantages of the Navarro technical proposal and superior past performance outweigh Portage's slight cost advantage." Id. at 20.

The SSO also compared Navarro's proposal to WSS's, noting that Navarro's non-cost proposal was superior to WSS's under each of the evaluation factors. SSDD at 20. Under the technical approach/understanding the requirement and the management approach factors, the SSO noted that WSS's proposal "narrowly

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<sup>3</sup> The agency defined a "notable" strength as one that did not meet the definition of a significant strength, but was considered to be of a higher value than an ordinary strength. SSDD, at 9 n.3.d.

qualif[ied] for the ‘Good’ ratings,” while Navarro’s proposal earned a rating of excellent. Id. While Navarro’s and WSS’s proposals received the same adjectival rating under the staffing factor, the SSO considered Navarro’s proposal to be superior under this factor due to the significant strength assigned to Navarro’s proposed program manager. Id. at 15, 20. Navarro’s proposal was also found to be superior to WSS’s under the past performance factor, with Navarro’s proposal earning a rating of excellent, and WSS’s earning a rating of good, due, in part, to a near-fatal safety incident involving WAI at DOE’s Oak Ridge facility. Id. at 17, 20. As a result, the SSO found that, notwithstanding its lower evaluated cost, WSS’s proposal was not as advantageous to the government, overall, as Navarro’s.

## DISCUSSION

WSS and Portage challenge the evaluation of proposals and the agency’s resulting trade-off decision. We have considered all of the protesters’ arguments and find that none presents a basis on which to sustain the protest. We discuss several of the most significant arguments below.

### SAIC as a Major Subcontractor of Navarro

Both protesters challenge the agency’s evaluation of Navarro’s proposal based on their view that SAIC is not a major subcontractor of Navarro, as defined by the RFP. WSS Protest at 12-13; Portage Second Supp. Protest at 2-6. In this regard, the RFP required offerors to submit past performance contract references for themselves and their “major subcontractors,” and defined “major subcontractor,” for purposes of the past performance evaluation, as “those subcontractors proposed to perform a minimum of 10% of the effort over the contract period, including options.” Id. Other than this language, the RFP did not further specify how 10 percent of the effort would be calculated.

The record here shows that Navarro’s proposal identified SAIC as a major subcontractor and stated that SAIC would “provide expertise in IT, RM [records management], and beneficial reuse.” AR, Tab D.2, Navarro Proposal Volume II, at 204. In evaluating Navarro’s proposal under the technical approach factor, the agency assigned five strengths. One of these strengths was for “IT and Records Management, Understanding of PWS Requirements.” AR, Tab E.1, SEB Report, at 32. In explaining the basis for this strength, the agency noted several positive aspects of Navarro’s proposal, including the following:

[Navarro] selected a subcontractor (SAIC) that has extensive experience working with DOE. For Records Management, SAIC has extensive experience in managing [DELETED] for DOE and currently maintains [DELETED] for DOE [DELETED], the [DELETED], and [DELETED].

Id. at 32-33. In addition, the agency considered SAIC to be a “major subcontractor” for purposes of the past performance evaluation, and concluded that SAIC’s past performance contributed to the significant strength assigned to Navarro’s proposal for its team’s performance ratings.<sup>4</sup> See SEB Report at 91.

The protesters first challenge the agency’s method for determining whether a proposed subcontractor should be considered major. In this regard, the protesters contend that the calculation of ten percent of the “contract effort” should have been based on the total estimated cost of the contract. WSS Protest at 12; Portage Second Supp. Protest at 3. Portage contends that its method of calculation is supported by the RFP’s “Mandatory Cost Exhibit Instructions,” which instructed offerors on the requirements for completing various cost exhibits for their proposal. Portage’s Comments at 5 (citing RFP at 90). These instructions inform offerors that, for purposes of the cost exhibits, offerors were “required to address all elements of cost applicable to the proposed effort,” which included all cost elements for the contract, and not merely labor costs. RFP at 90. Portage contends that these instructions demonstrate that the term “effort,” as used in the RFP, refers to more than labor costs. Portage’s Comments at 5.

In contrast, the agency interpreted the solicitation’s reference to “contract effort” to include only labor costs for purposes of its calculation of the percentage of contribution of a subcontractor. To support its method of calculation, the agency notes that its calculation of the “effort” is consistent with the Small Business Administration’s method of determining compliance with the limitation on subcontracting clause. Portage AR at 40 (citing 13 C.F.R. § 125.6(a)(1)). As a result, while the protesters contend that SAIC’s involvement represents only [DELETED] percent of the total overall estimated cost of the contract, the agency found that SAIC’s involvement amounted to [DELETED] percent of the total labor costs for the contract. See Portage AR at 40; Portage Second Supp. Protest at 5; WSS Protest at 12.

The evaluation of an offeror’s proposal is a matter within the agency’s discretion. The Boeing Co., B-409941, B-409941.2, Sept. 18, 2014, 2014 CPD ¶ 290 at 6; G4S-SJC, LLC, B-409694, B-409694.2, July 14, 2014, 2014 CPD ¶ 229 at 4. A protester’s disagreement with the agency’s judgment does not establish that the evaluation was unreasonable. The Boeing Co., supra; iGov, et al., B-408128.24 et al., Oct. 31, 2014, 2014 CPD ¶ 329 at 13. In reviewing a protest against an agency’s evaluation of proposals, our Office will not reevaluate the proposals, but will instead examine the record to determine whether the agency’s judgments are reasonable and consistent with the solicitation’s evaluation factors and applicable

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<sup>4</sup> We note, however, that the only weakness assigned to Navarro’s past performance proposal was due to “less than satisfactory ratings on a [Contractor Performance Assessment Report] for subcontractor SAIC.” SEB Report at 90.

statutes and regulations. CyQuest Business Solutions, Inc., B-410366 et al., Dec. 18, 2014, 2015 CPD ¶ 13 at 11; G4S-SJC, LLC, supra.

We find that the agency's approach to assessing SAIC's subcontracting role was reasonable and not inconsistent with the RFP. Although the protesters disagree with the agency's approach, they have not shown the approach to be unreasonable. In particular, we see no basis to conclude, as Portage urges, that the agency's focus on labor costs was unreasonable because it was inconsistent with an instruction on completing cost exhibits, directing offerors "to address all elements of cost applicable to the proposed effort." RFP at 90. In this regard, we note that the RFP's instructions to offerors on how to complete various cost exhibits required by the RFP do not appear to bear any relation to the calculation of the percentage of subcontractor effort under the past performance factor.

Moreover, even if we were to find that SAIC was not a major subcontractor for purposes of the past performance evaluation, this would not furnish a basis for questioning the agency's conclusion that SAIC's expertise in IT, RM, and beneficial reuse warrants assigning a strength to Navarro's proposal under the technical approach factor. In this regard, Navarro's proposal provided that:

SAIC brings world class experience and capabilities in records management and information technology, as well as the ability to augment Navarro's capabilities in other technical areas. . . . Navarro is bringing a major subcontractor with best-in-class experience in IT and records management services. We have chosen SAIC to perform this work because their extensive knowledge of technology in the IT and records management will allow us to continuously identify efficiencies and improvements in these areas to meet and exceed the cost reductions in the LM performance objectives for records management. Their extensive expertise with the [DELETED] and with [DELETED] will allow us to provide LM the best service in these areas.

Tab D.2, Navarro Proposal Volume II, at 1, 186. As noted, the agency found that SAIC's extensive experience in performing records management for DOE constituted a strength. SEB Report at 32-33.

Navarro's proposal indicated that SAIC would provide major support in the areas of information technology and records management, and additional support in beneficial reuse. As set forth above, information technology and records management was one of the five main categories of services required under the contemplated contract. RFP at 111. On this record, given the important role SAIC would play in meeting the solicitation requirements, we find that even if SAIC were not a major subcontractor for purposes of the past performance evaluation, the

agency reasonably considered SAIC's role in assigning a strength to Navarro's proposal under the technical approach factor.<sup>5</sup>

### Portage's Past Performance

Next, Portage contends that the agency erred in assigning a weakness for Portage's past performance of a contract to provide legacy management support services for DOE at the Paducah Gaseous Diffusion Plant. The weakness was assigned based on ratings of marginal in the areas of management of key personnel, schedule, cost control, and safety in Past Performance Information Retrieval System (PPIRS) reports for 2010 and 2011. AR, Tab E.1, SEB Report, at 95. According to the protester, the agency should not have considered its past performance at Paducah because the performance fell outside the three-year relevance window set forth in the RFP. In this regard, the RFP, initially issued on November 23, 2011, provided that offerors' past performance would be evaluated "with respect to performance in service contracting under existing and prior contracts of a similar type, scope, and complexity completed or in progress during the past 3 years." RFP at 98. Although offerors submitted their proposals, including past performance references, on February 12, 2012, Portage contends that its performance under the Paducah contract now falls outside the RFP's 3-year window for considering past performance when measured from the agency's reevaluation in the summer of 2014. Portage Protest at 11; Portage Comments at 15.<sup>6</sup>

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<sup>5</sup> Portage also challenges the agency's cost realism analysis. However, the record reflects that this protest ground is untimely. Specifically, the agency informed Portage, during its debriefing on February 13, 2015, that the agency elected not to conduct a new cost evaluation, and instead relied on its prior evaluation of costs. Between the earlier protest and the current protest, Portage hired new counsel to represent it in its protests to our Office. Subsequently, Portage's new counsel were admitted to the protective order and on March 4, they were authorized to access the documents related to the prior protests, including the prior cost evaluation documents. At that time, counsel for Portage had access to all of the documents necessary to support its challenge to the agency's cost evaluation. However, Portage did not raise its cost realism allegations until March 19, 10 days after DOE's document production in response to the current protest, but 15 days after Portage had access to the facts giving rise to its protest ground. We find this protest ground is untimely as it was filed more than 10 days after the protester knew or should have known about the basis of protest. 4 C.F.R. § 21.2(a)(2).

<sup>6</sup> Portage also contends that the Paducah contract was not relevant because it involved environmental management rather than the current legacy management effort. Portage further argues that it performed this contract as part of a joint venture (JV), and that Portage conveyed all of its interests in this JV to another company in 2011; Portage contends that since it is no longer a member of the JV,  
(continued...)

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. Affolter Contracting Company, Inc., B-410878, B-410878.2, March 4, 2015, 2015 CPD ¶ 101 at 12; National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4.

Here, Portage has not shown that the agency's evaluation was unreasonable or inconsistent with the solicitation. Despite multiple rounds of protests and corrective action, the agency has not requested, and offerors have not provided, updated proposals. As a result, the agency's evaluation considered as relevant contracts that had been completed or were in progress during the three years prior to the time initial proposals were due. See Portage AR at 14. In addition, the agency's approach has the added benefit of providing a time certain that the offerors could anticipate when submitting their proposals. While Portage disagrees with the agency's application of the 3-year relevance window, it has not shown that measuring the 3-year window from the time of proposal submission was an unreasonable implementation of the solicitation provisions.<sup>7</sup>

#### WSS's LTS&M Weaknesses

In its previous protest to our office, WSS raised, and our Office rejected, challenges to the evaluation of WSS's proposal under the technical approach factor. WAI-Stoller Servs., LLC; Navarro Research & Eng'g, Inc., supra, at 16-19. Specifically,

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(...continued)

the past performance of the JV is not relevant to this contract. Protest at 10. However, we find reasonable the agency's position that the Paducah contract was relevant because both environmental management and legacy management involve remediation and decontamination activities. Portage AR at 15-16 (listing areas of the performance work statement that involve similar activities). Indeed, as the agency notes, Portage's proposal itself references contracts involving environmental management work. See e.g., AR, Tab C.5, Portage Proposal Volume II, at 368 ("Portage's [DELETED]"); see also, Portage AR at 17 (citing Tab C.5, Portage Proposal Volume II, at 50-53, 57-58, 67-68, 75, 78, 80). Further, we agree with the agency that the fact that, after Portage's joint venture had performed the contract, Portage conveyed all of its interest in the joint venture to another company, does not insulate Portage from responsibility for its role in performance of the contract as a member of the joint venture. Portage AR at 21.

<sup>7</sup> In any case, it appears that under Portage's suggested evaluation method, several of the firm's positive past performance references would also be considered outside the 3-year relevance window. Portage AR at 14.

in the prior evaluation, which involved the same proposals as those evaluated here, WSS's proposal was assigned four weaknesses under the most important evaluation factor, technical approach/understanding the requirement. SEB Report at 42-45. These weaknesses were in the areas of: (1) technical approach and schedule; (2) long-term surveillance and maintenance (LTS&M); (3) LTS&M risk; and (4) asset management, integrated facilities infrastructure support.

In our decision, we noted that the agency's concerns with respect to WSS's approach to LTS&M were particularly significant because LTS&M work constituted the majority of the work to be performed under the contract. WAI-Stoller Servs., LLC; Navarro Research & Eng'g, Inc., supra, at 16-17 (citing Hearing Transcript at 18 and RFP at 399-418 (showing that more than half of the direct productive labor hours for the contract will be in the area of LTS&M)). In addition, the SEB report in the previous evaluation indicated that WSS's weakness in the area of LTS&M resulted from the fact that its proposal was overly general, without supporting detail. See WAI-Stoller Servs., LLC; Navarro Research & Eng'g, Inc., supra, (citing prior SEB Report at 43-44). In particular, the prior SEB report included seven paragraphs of examples of the evaluated lack of detail in WSS's proposal. Id. Since WSS failed in its prior protest to point to any significant detail in its proposal that would rebut the agency's criticism in this regard, we found no basis to question the downgrading of the proposal on the basis of a lack of meaningful detail with respect to its LTS&M approach. WAI-Stoller Servs., LLC; Navarro Research & Eng'g, Inc., supra, at 17.

In the agency's most recent reevaluation, the SEB's evaluation of WSS's proposal under the technical approach factor remained largely unchanged, with the exception of changes not related to WSS's LTS&M weaknesses. In its protest to our Office, WSS again challenges the weaknesses related to LTS&M and LTS&M risk. WSS Protest at 14.

Essentially, WSS challenges the same evaluation conclusions, which are based on an evaluation of the same proposal, that our Office previously considered in the prior protest. Our Office, however, will not consider arguments that were previously addressed and denied in a prior decision or new arguments based on information that was known to the protester in the prior protest. See Savvee Consulting, Inc., B-408416.3, March 5, 2014, 2014 CPD ¶ 92 at 5. Here, WSS has furnished no basis for us to question the agency's reevaluation in this area, which came to the same conclusions regarding WSS's lack of detail as did the initial evaluation.

WSS argues that its allegations in its prior protest should have put the agency on notice that WSS's proposal contained additional detail regarding its LTS&M approach in WSS's discussion of its approach to the sample task. WSS Protest at 14. WSS's protest arguments, however, are not a substitute for an adequately written proposal. Where an offeror is in control of information in its proposal--and is not reliant on third parties to submit that information--it exercises its own judgment

as to the information that the agency should consider. Bowhead Science & Tech., LLC, supra; see West Sound Servs. Grp., LLC, B-406583.4, B-406583.5, July 9, 2014, 2014 CPD ¶ 208 at 12-13. Such circumstances are instead governed by the well established principle that offerors are responsible for submitting a well-written proposal with adequately-detailed information that allows for a meaningful review by the procuring agency. Hallmark Capital Grp., LLC, B-408661.3 et al., Mar. 31, 2014, 2014 CPD ¶ 115 at 9. Thus, an offeror may not compel an agency conducting a reevaluation to refer to its prior protest to remedy defects in its proposal.

#### Consideration of New Past Performance Information

Next, WSS challenges the agency's consideration of additional past performance information that the agency received during the reevaluation. WSS Fourth Supp. Protest at 2-6; WSS Comments at 19-22. Specifically, during its reevaluation, the agency became aware, through at least three different sources, of a safety incident related to WAI's performance of a contract at the Oak Ridge Transuranic Waste Processing Center (TWPC). The agency first learned of these performance problems of WAI, a joint venture partner in WSS, in a media report dated February 7, 2014.<sup>8</sup> WSS AR at 30; AR, Tab J.1 at 13. WAI's performance problems related to this contract were also raised in one of Portage's filings during the prior round of protests. AR, Tab I.10, Portage Comments on Prior Agency Report, at 4 n.11. In addition, on July 7, 2014, Navarro's president submitted a letter to DOE referencing these same WAI performance issues.<sup>9</sup>

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<sup>8</sup> For example, the article states that "[o]ver the past year, Wastren Advantage Inc. (WAI) has struggled in its management of the Transuranic Waste Processing Center and received a stern notice from DOE to get the safety and other issues under control." AR, Tab J.1 at 13.

<sup>9</sup> Specifically, the letter alleged that WAI "experienced ongoing, egregious nuclear safety management and worker health and safety issues . . . [including] a hot cell fire, a power loss that resulted in ventilation issues, personnel contamination issues, and two 'loss of breathing air' incidents." AR, Tab E.2.m, Navarro Letter to DOE, at 2. Navarro's letter also asserted that its past performance was "excellent." AR, Tab E.2.m, Navarro Letter to DOE, at 2. WSS contends that this constituted a proposal revision, and that the agency was thereafter required to allow all offerors to revise their proposals. WSS Fourth Supp. Protest at 5. However, the record contains no indication that the agency considered this general characterization to be a proposal revision or that the agency gave Navarro's general assertion any consideration in its evaluation of Navarro's past performance. Therefore, we find no merit in this argument. Similarly, we find no merit in WSS's claim that Navarro's provision of information about other offerors constituted a revision to Navarro's proposal. WSS Fourth Supp. Protest at 5.

After becoming aware of these allegations of adverse past performance, the agency investigated each allegation and considered whether the information should be reflected in the past performance evaluation. In this regard, the agency assigned WSS an additional weakness in the area of past performance based on the performance problems experienced by WAI, one of the WSS joint venture partners. The protester contends that the agency's consideration of this information was improper. WSS Protest at 8-11; WSS Comments at 19-22.

We find that the agency's consideration of this past performance information was reasonable. The RFP informed offerors that past performance "[r]eferences other than those identified by the Offeror may be contacted by the Government with the information received used in evaluation." RFP at 98. Therefore, offerors were on notice that the agency could consider past performance information not found in the firm's proposal. Further, after receiving this information about WSS's negative past performance, the SEB obtained information from a DOE official with knowledge of WAI's performance of the TWPC contract. Specifically, an official from DOE's Office of Health, Safety and Security, stated that WAI self-reported and fully investigated the incident, and promptly implemented appropriate corrective action. AR, Tab E.1, SEB Report, at 101.

In considering this information, the SEB concluded as follows:

Worker safety is a vital area of concern to LM; therefore, repeated incidents in the safety area resulting in an Office of Enforcement letter raise serious concerns with the overall safety culture. Nonetheless, the SEB also considered information from a cognizant official from DOE's Office of Health, Safety and Security that WAI self-reported and fully investigated the incident, and promptly implemented appropriate corrective action, and favorable information in the CPAR for the assessed performance period, which rated WAI overall Satisfactory. Therefore, despite the seriousness of these incidents, this past performance information is considered a Weakness rather than a Significant Weakness.

SEB Report at 101. Thus, the record reflects that upon learning of potential performance problems on the part of WAI, WSS's joint venture partner, DOE contacted the cognizant officials and carefully considered the relevant circumstances before assigning WSS a weakness based on problems with safety. On this record, WSS has not shown the agency's approach or evaluation conclusions to be unreasonable.

Having considered all of the arguments raised by these protesters, we find that none presents a basis on which to question the agency's conclusion that Navarro's proposal represented the best value.

The protests are denied.

Susan A. Poling  
General Counsel