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## Decision

**Matter of:** W R Systems, Ltd.

**File:** B-287477; B-287477.3

**Date:** June 29, 2001

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John A. Howell, Esq., and Anne K. Shukis, Esq., Squire, Sanders & Dempsey, for the protester.

J. Michael Sawyers, Esq., Drug Enforcement Administration, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Contention that contracting officer's (CO) decision to reject initial evaluations and convene a new technical evaluation panel was designed to ensure that the protester was improperly eliminated from consideration is denied, where there is no evidence in the record that the CO's decisions were not made in good faith or that they were designed with the intent of changing technical rankings or avoiding an award to the protester.
  2. Allegation that protester was prejudiced because in preparing its proposal it assumed that offerors were prohibited from proposing certain individuals as core personnel on the basis of their work history is denied where the solicitation did not impose any restrictions, limits, or prohibitions on the individuals that could be proposed to fill the required core positions due to their prior work.
  3. Protest challenging agency's evaluation of awardee's past performance is denied where the record shows that the evaluation was reasonable and consistent with the evaluation criteria set forth in the solicitation.
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### DECISION

W R Systems, Ltd. (WRS) protests the award of a contract to Comprehensive Technologies, Inc. (CTI) under request for proposals (RFP) No. DEA-00-R-0013, issued by the Drug Enforcement Administration (DEA) for monitoring, translation, transcription, linguistic data analysis, and technical support services. WRS challenges the award on several grounds, including that DEA: (1) unreasonably decided to reject the initial evaluations and convene an entirely new evaluation panel; (2) failed to downgrade CTI's proposal for proposing personnel it could not

deliver or who were ineligible to work on the contemplated contract; and (3) improperly evaluated CTI's past performance.

We deny the protest.

## BACKGROUND

DEA's primary mission is to enforce narcotics laws and bring to justice organizations and individuals involved in growing, manufacturing, or distributing controlled substances destined for the illegal drug traffic in the United States and its territories. DEA's mission requires that DEA target and aggressively seek to prosecute persons and organizations involved in criminal activities. One key tool DEA uses in its mission is judicially authorized communication intercepts, which present some obstacles for DEA. For example, in some cases, the intended surveillance targets often communicate in different foreign languages and dialects. To address its operational needs, DEA must have at its disposal personnel with the ability to understand and reliably, quickly, and accurately translate and transcribe all of the detected communications. The procurement at issue here is to obtain personnel capable of monitoring, transcribing, translating, reviewing, and analyzing investigative documents involving both domestic and foreign communications in various foreign languages.

The RFP, issued on April 14, 2000, contemplated the award of an indefinite-delivery/indefinite-quantity contract for a base year with up to four 1-year option periods. Offerors were required to submit proposals in separate volumes--a technical proposal and a business management proposal. For each contract period, offerors were required to submit unit and extended hourly labor rates for estimated quantities of 12 different labor categories, described in the RFP as either "core" or "non-core" personnel. RFP amend. 4, § B; amend. 3 ¶¶ C.9.2, C.9.2.1, at 35. The RFP listed the following evaluation factors (maximum possible number of points for each factor shown in parentheses): furnishing qualified personnel (35), quality control plan (25), management plan (10), subcontracting plan (10), and past performance/risk assessment (20), for a maximum possible total of 100 points. Although price was not to be numerically scored, the RFP explained that its degree of importance would increase as proposals were considered equal in relation to technical factors. The RFP stated that technical factors combined were substantially more important than price. Award was to be made on the basis of the proposal deemed to represent the best value to the government.

Nine firms responded to the RFP by the time set on June 21 for receipt of proposals. On July 10, the agency convened a technical evaluation panel (TEP) to evaluate technical proposals. That panel completed its evaluation and submitted its report to the contracting officer (CO) on July 20. The CO explains that based on her personal experience with several offerors on similar acquisitions, she determined that the TEP's evaluation was inadequate. In her opinion, the scores were not in line with

historic scores these firms had earned under prior acquisitions for similar services. CO Statement, Apr. 26, 2001, at 4. Accordingly, the CO set aside the initial TEP's evaluations and convened a new panel to reevaluate proposals.

Based on the results of the evaluations by the new TEP, the agency excluded three proposals from further consideration, established a competitive range comprised of the remaining six proposals, conducted discussions with the six firms whose proposals were included within the competitive range, and requested and received final proposal revisions (FPR). The TEP reevaluated proposals based on FPRs, with the following final results:

	Pers.	Qual. Cont.	Mgmt. Plan	Sub. Plan	Past Perf.	Total Score	Price
CTI	33	24	7	9	18	91	\$26,872,408
A	33	24	8	8	16	89	28,616,442
WRS	33	22	9	8	20	92	29,399,225
B	33	23	9	9	19	93	30,154,638
C	33	23	9	9	16	90	30,635,358
D	32	22	9	9	15	87	31,442,927

Agency Report (AR) exh. 6, Final Technical Evaluation Report, Jan. 31, 2001; exh. 8 Price Analysis.

The CO awarded the contract to CTI based on these final results. AR exh. 9, Source Selection, Mar. 12, 2001 (Revised). This protest followed a debriefing.

#### PROTESTER'S CONTENTIONS

WRS challenges the CO's decision to reject the initial TEP's evaluation and convene an entirely new panel to evaluate proposals. WRS also contends that the TEP should have downgraded CTI's offer because it proposed personnel that CTI could not deliver, and because some of the individuals CTI proposed to fill core positions are ineligible to work on the contract. The protester also argues that DEA improperly ignored instances of CTI's poor past performance on other DEA contracts for similar services.<sup>1</sup>

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<sup>1</sup> Initially, WRS also challenged the award to CTI because WRS incorrectly assumed that DEA had waived for CTI a solicitation requirement for offerors to submit letters of commitment for core personnel. In its comments, WRS concedes that CTI did, in fact, submit the required letters of commitment. WRS also maintained that DEA's "cost realism" analysis was flawed. After receipt of the agency report which explained DEA's analysis, WRS withdrew this protest ground. Protester's Comments, May 11, 2001, at 2 n.1.

## DISCUSSION

### Initial Evaluations and New TEP

The initial TEP completed its evaluation and submitted a report to the CO in July 2000. Under this initial evaluation, with the exception of WRS's proposal which earned 83 points, the scores ranged from 0 to 58 points; CTI's technical proposal earned a total of 56 points. Competitive Range, Nov. 15, 2000, at 1.

Upon reviewing the initial TEP's evaluations, the CO determined that "[m]any of these companies have previously submitted [proposals] under other solicitations for the same or similar requirement and received higher scores." Id. at 2. Accordingly, the CO rejected the TEP's initial evaluation and convened a new panel. This new panel completed its evaluation and reported its findings to the CO in January 2001. AR exh. 6, Final Technical Evaluation Report, supra.

WRS contends that the CO's decision to reject the initial TEP's evaluations and to change the composition of the TEP was improperly motivated by the CO's desire to ensure that CTI's proposal earned a higher score and avoid awarding the contract to WRS. Specifically, WRS maintains that the CO's decision to change the membership of the TEP was designed to exclude certain technical and "end-users" from the reconvened TEP who were aware of CTI's poor past performance.

We have recognized that it is within the CO's discretion to convene a new evaluation panel where, for example, the CO, in good faith, determines that such action is necessary to ensure the fair and impartial evaluation of proposals, and the record shows that it was not made with the specific intent of changing a particular offeror's technical ranking or avoiding an award to that offeror. See Loschky, Marquardt & Nesholm, B-222606, Sept. 23, 1986, 86-2 CPD ¶ 336 at 5; Pharmaceutical Sys., Inc., B-221847, May 19, 1986, 86-1 CPD ¶ 469 at 5. Further, a procuring agency may convene a new evaluation panel where the CO reasonably determines that the evaluation may have been biased or where there is a potential for an appearance of a conflict of interest. See, e.g., EBA Eng'g, Inc., B-275818, Mar. 31, 1997, 97-1 CPD ¶ 127 at 3-4; Louisiana Physicians for Quality Med. Care, Inc. B-235894, Oct. 5, 1989, 89-2 CPD ¶ 316 at 5.

In response to a request from our Office that the CO expand on her reasons for rejecting the initial evaluations, she states that she has been the CO on three other similar linguistic services contracts for which CTI competed. According to the CO, in two of those procurements, CTI's proposal had earned at least 91 points and its high score was 95 points. CO Statement, May 17, 2001, at 2. Although proposals were not numerically scored in the third procurement, CTI's proposal was rated acceptable and CTI was awarded that contract. Id. The CO further states that she was the CO on four other similar contracts where offeror A's proposal, which initially received only 58 points here, earned from 83 to 98 points on similar rating

scales. The CO explains that given the disparity of the scores the TEP assigned here, and comparing those scores to the scores earned by these same offerors on other similar procurements, she was especially concerned with the relatively low scores earned by CTI's and offeror A's proposals.

The CO states that, although she could not be absolutely certain, she suspected that the initial TEP's scores reflected a bias, either in favor of WRS (which earned a high score of 83 points) or against the other offerors (which earned relatively low numerical ratings ranging from 0 to 58 points). Id. Another possibility, according to the CO, was that the scores reflected the TEP's failure to properly evaluate proposals. The CO states that she was particularly concerned over this latter possibility because it could have formed the basis for a successful challenge to an award. In any event, the CO concluded that given the disparity in technical scores within the initial TEP's report and as compared with historical scores, she could not reasonably rely on the initial TEP's evaluation to independently assess the technical merits of the proposals. Id. We then held a hearing in this matter limited to obtaining testimony from the CO to better understand the basis for her decision to reject the initial evaluations and convene a new TEP.

At the hearing, the CO testified that she knew from her personal experience with other similar procurements that CTI and the other firms had previously earned higher scores. The CO was thus alerted by the initial TEP's relatively low scores that there may have been a problem with the evaluations. Video Transcript (VT) at 10:01. The CO further testified that upon closer scrutiny of the initial TEP's report, she found that the TEP had not adequately supported the low scores assigned the proposals. While in written statements in response to the protest, the CO indicated her concern with only two other offerors' scores, it is clear from her testimony at the hearing that she was concerned with the relatively low scores of all other offerors.

The CO also disagreed with the TEP's findings in part because its explanations for downgrading proposals in several areas were inconsistent with the information the offerors provided. VT at 10:02; 10:22:35. For example, the initial TEP downgraded CTI's proposal under the "furnishing qualified personnel" factor based upon its conclusion that CTI had not demonstrated in its proposal that it could provide qualified personnel, and that only 5 of 22 required core personnel were CTI employees. The CO disagreed with this particular finding because her review of CTI's proposal revealed that at least 14 core personnel were employed by CTI or its proposed subcontractors. VT at 10:03:10. The CO thus found that the TEP's evaluation was inconsistent with what CTI actually proposed with respect to personnel. VT at 10:05. The CO also disagreed with the TEP's findings with respect to other areas of the evaluation which, in her view, resulted in unreasonable point deductions. See, e.g., VT at 10:05 (regarding CTI's recruiting/retention program).

Another area where the CO disagreed with the TEP's findings pertained to the evaluation of the offerors' proposed security plans. Specifically, the CO found that the TEP had unreasonably downgraded CTI's proposal for failing to provide details of its proposed security plan for handling classified materials. VT at 10:08. The CO testified that she believed this deduction was unfair because, in her view, the TEP had apparently lost sight of the fact that only the incumbent could have provided the level of detail the initial TEP was looking for regarding DEA's security procedures. Id. The CO also testified that with respect to the evaluation of other offerors, she concluded that the TEP had not followed her instructions in that the ratings did not reasonably differentiate between weaknesses, significant weaknesses, and deficiencies between proposals. VT at 10:10:12. For example, the CO found that the TEP had deducted points from one offeror's proposal in one area, while failing to do so in evaluating other proposals where the TEP had identified the same weakness or deficiency. VT at 10:11:32-35. The CO also found the TEP's report insufficient in that it did not provide details she believed necessary to conduct meaningful discussions with the firms. VT at 10:03:56. In sum, given the unwarranted point deductions and inconsistent ratings, the CO believed the evaluations were not fair. As a result, the CO lost confidence in the initial TEP, concluded that the initial evaluations did not accurately reflect the merits of proposals, and set aside the initial TEP's findings. VT at 10:13:59; 10:21:15. In view of her conclusions regarding the TEP's initial evaluations, we have no reason to question the CO's decision to reject the initial evaluations.

WRS argues that the decision to convene a new panel was motivated by the CO's desire to exclude from the new panel users who were aware of allegedly adverse past performance information about CTI.<sup>2</sup> This argument simply is not supported by the record. In this connection, the agency states that the chairperson of the new TEP is a DEA Assistant Special Agent-in-Charge (ASAC), who will supervise the successful contractor's performance of the contemplated contract, and will be a direct user of the required services. The fact that some of the other TEP members were not "end-users," as WRS contends, is no basis for disqualifying them from the panel. Further, there is no evidence in the record suggesting that either the CO or the initial TEP was or should have been aware of CTI's allegedly poor performance

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<sup>2</sup> We note that WRS does not argue, and there is no evidence in the record, of bias or bad faith on the part of any member of the TEP. In fact, a comparison of the initial TEP's scores with the new TEP's scores shows that WRS's scores increased from 83 to 92 points in the final evaluation--only 1 point below the highest score of 93 points earned by offeror B and 1 point higher than CTI's final score--thus undermining even a suggestion that the new TEP could have been biased against WRS.

on a DEA contract WRS refers to in its pleadings. In sum, WRS has identified nothing to establish any basis to question the composition of the new TEP.<sup>3</sup>

The protester suggests that rather than establishing an entirely new TEP, the CO could have reconvened the original panel and requested that it provide a more detailed explanation supporting its findings. While this was an option, we see no basis to object to the CO's decision to convene a new panel instead. In view of the CO's conclusion that the initial TEP may have been biased (either in favor of WRS or against the other offerors), and that the initial TEP may not have followed her basic instructions the first time around—which combined to effectively undermine her confidence in the initial TEP—the CO reasonably decided to reject all of the initial evaluations.<sup>4</sup>

WRS relies on our decision in Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91, to argue that the CO's post-protest explanations for her decision to reject the initial evaluations and convene a new TEP should not be accorded any weight. Post-protest explanations that provide a detailed rationale for contemporaneous conclusions, as is the case here, simply fill in previously unrecorded details, and will generally be considered in our review of the rationality of selection decisions, so long as those explanations are credible and consistent with the contemporaneous record. See NWT, Inc.; PharmChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16; Northwest

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<sup>3</sup> WRS also argues that the new TEP's consensus scores are inconsistent with the rejected scores assigned by the initial TEP, particularly with respect to the evaluation of CTT's proposal under the personnel factor. Different evaluation panels may reasonably reach different conclusions regarding the quality of an offeror's proposal given the subjective judgment necessarily exercised by evaluators. See Warvel Prods., Inc., B-281051.5, July 7, 1999, 99-2 CPD ¶ 13 at 10-11. Further, a final consensus score need not be the same as scores initially awarded. See I.S. Grupe, Inc., B-278839, Mar. 20, 1998, 98-1 CPD ¶ 86 at 6. The overriding concern in these matters is whether the final scores assigned reasonably reflect the merits of proposals. *Id.* Here, we think that the CO reasonably determined that the final TEP's scores accurately reflected the technical merits of the proposals, and properly relied on those scores to make her selection decision. Accordingly, the fact that the final consensus scores differed from those the CO initially had rejected, is immaterial.

<sup>4</sup> In its post-hearing comments, WRS states that, since the CO testified that she had not found any errors with the initial evaluation of WRS's proposal, her decision to reject the findings of the initial TEP with respect to WRS was an abuse of discretion. This argument is without merit. Once the CO reasonably concluded that there were questions about the reliability of the initial TEP's findings, there was nothing unreasonable about referring all the proposals to the new TEP for its evaluation.

Management, Inc., B-277503, Oct. 20, 1997, 97-2 CPD ¶ 108 at 4 n.4. Unlike in Boeing, the CO's statement in response to WRS's protest--as confirmed by her testimony at the hearing, which we find credible--is not a new analysis based on hypothetical assumptions to attempt to justify a post-protest decision in the face of a protest. Accordingly, the Boeing decision does not require that we disregard the CO's post-protest explanations here.

#### Evaluation of Proposals Personnel

Under the evaluation subfactor relating to the offeror's ability to furnish qualified personnel, the awardee received a score of 33 out of 35 points. WRS argues that CTI's score should have been lower in this area because it was clear from CTI's proposal that it intended to recruit--or "raid," in WRS's terms--personnel from other firms to fill positions under the contract to be awarded here. In view of this approach to staffing, WRS asserts, the agency should have concluded that CTI would not be able to furnish the necessary personnel. As the agency points out, there is no reason to make the connection that WRS urges--that is, that CTI's approach of recruiting and hiring employees from other firms necessarily carries a high risk that it will not be able to provide qualified employees. On the contrary, as WRS acknowledges, CTI submitted all required letters of commitment for its proposed personnel, and explained in its proposal how it intended to screen and recruit qualified incumbent personnel as well as experienced former DEA employees for various labor categories. CTI FPR, Dec. 22, 2000, at 5-7. Other than its conclusory statement that CTI's proposal presented "demonstrated performance risk," Protester's Comments, May 11, 2001, at 16, WRS simply provides no basis for us to question the evaluators' conclusion regarding CTI's ability to furnish the required personnel as outlined in its proposal.

WRS also argues that CTI proposed individuals ineligible to work on the contemplated contract. According to WRS, individuals who previously worked on contracts involving highly secure wiretaps, and left those positions to work on less secure matters are "contaminated" (WRS's term), and are thus prohibited by a DEA "security rule" from returning to work on highly secure linguistics contracts such as the one contemplated here.<sup>5</sup> WRS alleges that it has been especially aware of DEA's

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<sup>5</sup> WRS believes that the alleged rule is "contained in a classified memorandum of understanding (MOU) between the Department of Justice, Department of the Treasury, the Immigration and Naturalization Service, and possibly, the Department of Defense." Protester's Comments, May 11, 2001, at 12. According to WRS, "[a] DEA representative informally advised WRS that the rule was rescinded on January 18, 2001--indicating that the rule was in effect both when [the RFP] was issued and when the initial technical evaluations occurred. WRS, of course, cannot confirm or deny the accuracy of such advice." Id. at 12-13 n.12.



rule because DEA has enforced the rule on its personnel in the past. As such, WRS states that it assumed that DEA would enforce the same prohibition here. The protester maintains that it was prejudiced because CTI proposed “contaminated” individuals, and had it known that DEA would not enforce the rule, it would have proposed different, presumably better qualified, “contaminated” individuals, resulting in its proposal earning a higher score under the “furnishing qualified personnel” factor.

The agency responds that it is unaware of any DEA rule that bars allegedly “contaminated” individuals from working on this contract because of their work histories. DEA further states, as confirmed by our own review of the solicitation, that the RFP is silent with respect to the alleged security rule or its applicability to DEA’s core staffing requirements. In addition, the ASAC of the Office of Special Projects, who chaired the TEP and will supervise contract performance, has provided to our Office a sworn declaration affirming that she is unaware of any such DEA policy. See ASAC Declaration, Apr. 25, 2001. The ASAC further affirms that she is unaware of any DEA contract for these services that contains a blanket prohibition on employees returning to work on sensitive projects based solely on their work histories. Id.

Moreover, in further support of DEA’s position, the ASAC declares that she has reviewed documentation related to previous highly secure linguist contracts where at least 10 contractor employees left their positions in those contracts to work on projects involving less sensitive information and subsequently returned to highly sensitive jobs. ASAC Declaration, June 8, 2001, ¶¶ 2-3. In addition, the ASAC has provided documentation gathered during her research of this issue showing that in its offer in response to the instant RFP, WRS proposed one of those 10 allegedly contaminated individuals to fill a core position here. Id. The ASAC further reaffirms that she is not aware of any rule that would prohibit the individual WRS proposed from returning to perform the type of sensitive work contemplated here.

WRS has provided no evidence, and we could find none in the record, even suggesting that the RFP incorporated or referenced the alleged prohibition on core personnel. In fact, WRS’s position is undermined by its own proposal, where the firm apparently listed at least one employee to fill a core position who, under WRS’s interpretation, was allegedly prohibited from working on the contract. In view of the lack of any reference in the RFP to the alleged DEA rule or any other evidence even suggesting that DEA would prohibit offerors from proposing certain core personnel due to their work histories, any assumptions WRS made to its detriment in preparing its proposal regarding the alleged prohibition were due solely to the firm’s business judgment and could not reasonably be attributed to any improper agency action.

## Past Performance

WRS contends that DEA either failed to obtain, or ignored, allegedly adverse past performance information concerning CTI and one of its proposed subcontractors, resulting in an artificially inflated score for the awardee in this area. For example, WRS states that CTI has failed to provide the required staffing under a contract for similar services DEA awarded CTI in support of the agency's New York Field Division. In addition, WRS contends that CTI's poor performance on that contract caused the CO, who is the same CO involved here, to obtain the required services through blanket purchase agreements (BPA), presumably issued to other vendors including WRS, to compensate for CTI's allegedly deficient performance. The protester makes similar arguments regarding contracts DEA awarded CTI in support of the agency's Houston and Detroit Field Divisions. The protester further maintains that because of CTI's proposed subcontractor's allegedly poor performance on another contract for technical support in DEA's New York office, the agency did not exercise remaining options on that contract. WRS also maintains that the evaluators improperly relied exclusively on the past performance information contained in CTI's proposal, implying that the TEP should have contacted other references not listed in the proposal to independently verify CTI's performance history.

Our Office will examine an agency's past performance evaluation 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 contracting agency's discretion. Pacific Ship Repair and Fabrication, Inc., B-279793, July 23, 1998, 98-2 CPD ¶ 29 at 3-4. In conducting a past performance evaluation, an agency has discretion to determine the scope of the offerors' performance histories to be considered, provided all proposals are evaluated on the same basis and consistent with the solicitation requirements. Federal Env'tl. Servs., Inc., B-250135.4, May 24, 1993, 93-1 CPD ¶ 398 at 12. Based on our review of the record, we find nothing unreasonable in the agency's conduct of the performance evaluation or in the rating given CTI's proposal.

The RFP stated as follows with respect to the evaluation of proposals in this area:

### Past Performance/Risk Assessment

This section must include sufficient information to identify and describe the previous work experience of the offeror in similar or related work and to demonstrate the offeror's current capacity to perform the proposed work, as supplemented by Past Performance survey. The offeror shall demonstrate his, and/or his key personnel's, past performance experience is relevant to the current requirement. The offeror shall provide performance improvements to previous performance, and/or planned improvements to take effect upon award of this requirement. The offeror shall provide the completed past

performance surveys and ratings in accordance with Section L.6. The Government will evaluate past performance in accordance with Section M.3.

RFP amend. 2, May 19, 2000, § M.5, at M-5.

In assessing proposals under this factor, the TEP applied three subfactors—relevance, performance improvements, and past performance surveys. In order to assist the agency in evaluating proposals in this area, offerors were instructed to submit with their proposals “Client Authorization Letters” and completed “Past Performance Contractor Surveys,” included in the RFP. Offerors were instructed to send copies of the survey form to at least three government agencies or commercial sources, with which the offeror has current or previous contracts in the area of translation, transcription, and automated data processing support services. In its proposal, CTI provided completed past performance surveys and narratives explaining CTI’s and its subcontractors’ responsibilities and performance under several DEA contracts which the firms are either currently performing or have recently completed. The TEP reviewed this information, and as explained below, noted strengths, deficiencies, and weaknesses within the applicable subfactors.

#### Relevance

The TEP noted as strengths that CTI’s proposal exceeded requirements for work relevance, and that CTI’s and its proposed subcontractors’ past projects related to the instant project. CTI TEP Evaluation Consensus, Nov. 8, 2000, Past Perf./Risk Assessment–Relevancy. Based upon the initial and final evaluations, the TEP identified no deficiencies or weaknesses in CTI’s proposal, and awarded the firm the maximum number of points available (10) for this subfactor. *Id.*; TEP Final Evaluation Consensus, Jan. 30, 2001.

#### Performance Improvements

The TEP noted several strengths, including that CTI’s subcontractor “has knowledge of current technical requirements,” and had corrected its problems with its system. CTI TEP Evaluation Consensus, *supra*, Past Perf./Risk Assessment–Performance Improvements. In addition, the TEP noted as a strength in the proposal CTI’s “layers of quality control and performance improvements.” *Id.* Noting only one deficiency and one weakness within this subfactor, the TEP awarded the firm’s proposal 4 points out of 5 available for this subfactor following the initial evaluation. CTI’s score for this subfactor did not change after discussions.

#### Surveys

The TEP found that the surveys were “good” and “exceeded requirements” for CTI and its subcontractors. CTI TEP Evaluation Consensus, *supra*, Past Perf./Risk

Assessment–Past Performance Surveys. The TEP noted only one weakness because CTI had submitted only one performance survey related to one of its subcontractors, and downgraded CTI’s proposal 1 point out of a maximum of 5 available for this reason. This score did not change following discussions with CTI.<sup>6</sup>

The past performance surveys requested respondents to rate the firm on a scale ranging from 1 to 4 on several questions, where 4 points reflected that the contractor “considerably surpassed minimum contract requirements.” For each question, the surveys contained a space for respondents’ comments. Our review of the completed past performance surveys CTI submitted with its proposal for itself, as well as for its proposed subcontractors, reveals that the respondents generally rated the firms positively, making several favorable comments regarding their performance. For example, one respondent who rated CTI’s performance on a DEA contract in the Chicago Field office rated the firm 3 or higher on all questions, and commented that CTI adequately staffed the referenced contract, even though the locations and amount of work fluctuated greatly. That respondent also noted that CTI had submitted timely transcripts and invoices, and worked closely with the agency to resolve performance problems. Completed surveys related to other DEA contracts also contained similarly high ratings and favorable comments on CTI’s performance. Based on our review, we think that the TEP’s assessment of CTI’s past performance is unobjectionable.

WRS also contends that the CO should have been aware of CTI’s and one of its proposed subcontractors’ allegedly poor performance on other DEA contracts for similar services. In response, the CO states that she has never issued orders under BPAs to compensate for CTI’s allegedly poor performance in the New York Field Division. CO Statement, supra ¶ 2. At the hearing, the CO further testified that she is not aware that CTI or its subcontractors performed poorly on any other DEA contract. VT at 10:37:20. Accordingly, there is no evidence in the record upon which we could reasonably conclude that the CO should have been aware of CTI’s allegedly poor performance.

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<sup>6</sup> WRS believes that awarding 4 points to CTI’s proposal under the surveys subfactor is “too high.” WRS further argues that the evaluation under the performance improvements subfactor was inconsistent because both CTI’s and WRS’s proposals earned 4 points in this area, even though the TEP noted strengths in WRS’s proposal and a deficiency in CTI’s proposal under this subfactor. While WRS disagrees with these ratings, a protester’s mere disagreement with the agency’s conclusions does not render the evaluation unreasonable. Calian Tech. (US) Ltd., B-284814, May 22, 2000, 2000 CPD ¶ 85 at 3-4. In any event, we reviewed the record in this regard and could find no basis to object to the TEP’s evaluation of proposals under these subfactors.

Regarding WRS's allegation that the CO here was required to obtain the required services on other DEA contracts from other vendors, the CO states that successful offerors on other similar DEA contracts, including CTI and one of its proposed subcontractors, historically have been unable to provide all of the required personnel upon award of their contracts. The CO explains that this is primarily due to DEA's strict security clearance policy, and not due to a contractor's poor performance. In this connection, the CO explains that DEA does not perform security screenings of proposed personnel until after award, and that it is not unusual for some of an awardee's proposed staff to be found ineligible to receive security clearances. Another possibility is that even where personnel are eligible to receive clearances, their processing is delayed for administrative reasons. In these circumstances, DEA either requires that the awardee provide substitute personnel or the agency must obtain the required employees to achieve its mission from other sources. The CO states, however, that in either event, this process is relatively routine regardless of the awardee and DEA does not consider it indicative of poor performance. CO Statement, May 17, 2001, at 1. Even assuming, therefore, that DEA has obtained services from vendors other than the awardees, in view of the CO's explanation, WRS's contentions in this regard are without merit.

WRS's argument that DEA improperly relied exclusively on past performance information contained in CTI's proposal is similarly without merit. Contrary to the protester's apparent belief, there is no requirement for agencies to seek out additional references who were not listed in an offeror's proposal to independently verify an offeror's past performance history, except in circumstances not applicable here.<sup>7</sup> See Basic Tech., Inc., B-214489, July 13, 1984, 84-2 CPD ¶ 45 at 7. In reviewing the manner and conduct of an agency in contacting, or choosing not to contact, references listed by offerors in their proposals, we look to see if the agency proceeded in a reasonable and prudent manner. International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5.

Here, the RFP provided that the agency would evaluate past performance based on the documentation submitted by the offerors concerning their experience and demonstrated capability, and completed performance surveys. As explained earlier, the record reflects that the agency did just that. While WRS is correct in its assertion that the the RFP stated that in assessing past performance the government would

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<sup>7</sup> For instance, an agency may accept a firm's representations of its experience unless there is reason to believe that the representations are inaccurate. See Geographic Resource Solutions, B-260402, June 19, 1995, 95-1 CPD ¶ 278 at 4, citing Medical Care Dev., B-235299, Aug. 17, 1989, 89-2 CPD ¶ 149; Roy F. Weston, Inc., B-197866, B-197949, May 14, 1980, 80-1 CPD ¶ 340. Here, CTI's experience is not at issue, and there is nothing in the record which should have suggested to the TEP that the completed past performance surveys CTI submitted with its proposal did not accurately reflect the firm's performance history.

consider information provided by “other sources,” we do not read this as requiring the agency to independently contact references not listed in the proposals to verify a firm’s performance history where there is no reason to question the validity or accuracy of the completed surveys. In view of the specific strengths the TEP noted in CTI’s proposal, and the relatively high ratings and favorable comments made by CTI’s references who completed the past performance surveys, we think that the TEP’s rating of CTI’s proposal under the past performance area is reasonably supported.

The protest is denied.

Anthony H. Gamboa  
General Counsel