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Washington, DC 20548

Comptroller General
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Decision

Matter of: B-287589

File: Maytag Aircraft Corporation

Date: July 5, 2001

J. Randolph MacPherson, Esq., Sullivan & Worcester, for the protester.
Sam Zalman Gdanski, Esq., for Midwest Weather, Inc., an intervenor.
Capt. Charles T. Kirchmaier, and Col. Michael R. Neds, Department of the Army, for the agency.
Tania Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that contracting agency improperly evaluated protester's proposal as marginal under one aspect of the technical evaluation is denied where the record shows the proposal lacked information showing satisfaction of experience requirements by one proposed key person even after agency requested that the required information be provided.
 2. Protest that contracting agency improperly evaluated proposals with respect to past performance is denied where the record shows the evaluation was reasonable and consistent with the evaluation criteria; awardee with no Department of Defense past performance was properly given neutral rating for this aspect of the evaluation.
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DECISION

Maytag Aircraft Corporation protests the award of a contract to Midwest Weather, Inc. under request for proposals (RFP) No. DAHA90-00-R-0016, issued by the National Guard Bureau (NGB) to obtain meteorological services. Maytag contends that the agency improperly evaluated proposals and failed to conduct meaningful discussions with the firm.

We deny the protest.

The NGB issued this solicitation on November 2, 2000, to obtain weather observation services for the Air National Guard at seven locations throughout the United States, and weather forecasting services at two of those locations. Award of a fixed-price

contract was to be made to the offeror whose proposal represented the best value to the government, considering the following evaluation criteria:

- Area 1: Technical/Management
 - Item 1: Technical/Management
 - a. Understanding of Requirements
 - b. Contract Management
 - Item 2: Quality Control
 - Item 3: Training Plan
- Area 2: Past Performance
 - Item 1: Relevant Department of Defense (DOD) Past Performance
 - Item 2: Relevant Other Federal, State and Local Government, or Commercial Past Performance
- Area 3: Cost¹

The technical/management items were equally-weighted and, together, were significantly more important than past performance. The first item in the past performance area was significantly more important than the second item. RFP § M.4.a. When combined, the non-price evaluation factors and subfactors were significantly more important than price. RFP § L.4.b. The NGB planned to assign adjectival ratings to the technical/management area items and factors, and to assign past performance risk ratings equivalent to the degree of risk evaluated in each proposal. RFP § M.6. Price was not to be rated, but was to be evaluated as to completeness, reasonableness, and realism. RFP § M.5.b.

The agency received five proposals in response to the solicitation. Based on the results of the source selection committee's initial evaluation, the contracting officer established a competitive range of three, including the proposals of Midwest and Maytag, the incumbent contractor at five of the seven locations. Discussions were conducted and revised proposals were submitted and evaluated, with the following final results:

	Technical/Management	Past Performance	Price
Firm A	Highly Acceptable	Low Risk	\$(DELETED)
Midwest	Fully Acceptable	Low Risk	\$7,882,850
Maytag	Fully Acceptable	Moderate Risk	\$(DELETED)

Maytag's technical/management proposal received only one rating that was not fully acceptable. Under the technical/management item, the firm's proposal was rated

¹ Although the RFP uses the term "cost," the solicitation anticipated the award of a fixed-price contract and the agency conducted a price analysis of proposals.

marginal under the contract management factor because the NGB found that it failed to adequately cover the hiring of personnel at one location. The NGB concluded that there was no indication the firm would have a qualified supervisor onboard as required; the resume for the person proposed did not meet the minimum experience requirement set forth in the performance work statement (PWS). Despite this marginal rating for one factor under the technical/management item, the item itself was rated fully acceptable overall, as was the technical/management proposal. Maytag's proposal was rated marginal/moderate risk² under the past performance area because the agency believed Maytag's past performance at [DELETED] locations indicated a [DELETED] concern regarding the firm's ability to recruit and retain highly qualified personnel.

The agency considered Firm A's proposal to be technically superior to both other proposals, but acknowledged that it was also the most costly proposal. The NGB believed that Midwest was the next most highly qualified offeror based on the evaluation results, at the lowest price, and did not believe it could justify award to Firm A over Midwest. Award was made to Midwest on March 30, and this protest followed. Maytag contends that the NGB improperly evaluated its proposal under the technical/management area, improperly evaluated both proposals under the past performance area, and failed to conduct adequate discussions with the firm.

Technical/Management Area

Maytag contends that the NGB improperly evaluated its proposal as marginal under the contract management factor. Maytag asserts that an objective review of the resume at issue shows that the person it proposed as a weather supervisor for one location met the minimum requirements.³

² The contracting officer states that the reference to a marginal/moderate rating is a typographical error since the RFP's rating scheme called for either a marginal/high risk rating or a fully acceptable/moderate risk rating. Since the evaluation document refers to Maytag's proposal as fully acceptable, the agency meant to say, according to the contracting officer, that the proposal was rated fully acceptable/moderate risk. Contracting Officer's Statement at 5-6.

³ Maytag's allegation that the agency improperly evaluated Midwest's proposal under the technical/management area, raised for the first time in its comments, is untimely. In its protest, Maytag generally alleged that the agency improperly evaluated proposals, but the sole specific allegation it made regarding Midwest's proposal concerned the evaluation of its past performance. Since a broadly stated protest allegation does not permit the protester to later present a specific, and otherwise untimely, argument having some relevance to that initial general allegation, Advanced Communication Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 12, Maytag was required to file its specific allegation regarding the evaluation of

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We will review an agency's technical evaluation of proposals to determine whether it was fair, reasonable and consistent with the stated evaluation criteria. HSQ Tech., B-279707, July 9, 1998, 98-2 CPD ¶ 13 at 5. The technical evaluation of a proposal is based on information submitted in it, and an offeror runs the risk of having its proposal downgraded and rejected if the proposal submitted is inadequately written. Id.; Research Analysis and Maintenance, Inc., B-242836.4, Oct. 29, 1991, 91-2 CPD ¶ 387 at 5.

Proposals were required to include all data and information requested by the solicitation instructions. RFP § L.1.a.(1). Among other things, these instructions required offerors to provide information relevant to their proposed technical approach and program execution for each requirement outlined in the PWS, and to provide a staffing plan that explained how it would ensure requirements are satisfied. RFP § L.5.a. Amendment No. 0001 specifically instructed offerors to include, with their proposals, resumes for all site weather supervisors. Firm A's Aug. 14 Question & Answer No. 3. According to the PWS, each resume for a proposed weather supervisor was required to attest to the fact that the person met relevant experience requirements; contain a chronological list of past employment positions held substantiating work experience for the position being applied for; and clearly indicate the work/tasks performed and the inclusive period of time each position was held. PWS ¶ 1.2.2.6. At issue here, weather supervisors are required to have, among other things, a "minimum of 2 years management and supervisory experience in DOD weather station operations as their primary job." PWS ¶ 1.2.2.9.

Maytag's initial proposal did not identify the persons it proposed as weather supervisors at [DELETED] locations. During discussions, Maytag was told that, for these locations, it had provided an inadequate staffing plan that fell short of guaranteeing personnel there. Maytag explained that it had supervisors lined up for these locations and would provide their resumes with its revised proposal.

Maytag's revised proposal identified the person it proposed as the weather supervisor at the site at issue, stated she was currently the weather station supervisor at a major commercial airport, and attached her resume. The resume appeared to have been faxed from this commercial airport, but did not list any

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Midwest's technical/management proposal within 10 days of the time it received the agency report. 4 C.F.R. § 21.2(a)(2) (2001); Ralph G. Moore & Assocs.-Recon., B-270686.3, June 5, 1996, 96-1 CPD ¶ 268 at 2-3. In this case, Maytag appropriately requested, and was granted, an extension of time to file its comments under our rules, see 4 C.F.R. § 21.3(i), and filed its comments on June 5, 19 days after it received the agency report. However, an extension of time to file comments does not, and cannot, waive the timeliness requirements for filing new bid protest issues. Oceaneering Int'l, Inc., B-287325, June 5, 2001, 2001 CPD ¶ __ at 7.

employment there. The most recent employment period, from 1996 to 1999, at two Marine Corps installations, did not identify a job title but listed seven areas of responsibility. One of the evaluators subsequently contacted Maytag's weather contracts manager and asked about this person's post-1999 employment experience. Maytag faxed the agency an addendum to the resume listing an additional position at this major commercial airport.

The record shows that the agency did not believe that the resume met the requirement to have a minimum of 2 years supervisory experience at a DOD weather station as this person's principal job. As a result, Maytag's proposal was rated marginal for the contract management factor. Maytag contends that the agency unreasonably assigned this marginal rating because the resume meets the PWS requirement "on its face." Protester's Comments, June 5, 2001, at 12.

Maytag cites four areas of responsibility listed under this person's Marine Corps employment as evidence that she met the requirement at issue: "[s]upervised and conducted Instrument Ground School brief for the Third Marine Aircraft Wing aviators"; "[d]eveloped and implemented training program in areas of weather forecasting, weather observation, meteorological equipment operations and logistics"; "[m]anaged Marine Wing Support Squadron-374 personnel and assets co-located with the station weather office"; and "[s]upervised logistical planning, embarkation and deployment of Meteorological Mobile Facilities in support of West Coast deployments and exercises." Maytag asserts that these responsibilities clearly indicate supervisory and management experience in DOD weather station operations.

Maytag is correct that these responsibilities clearly indicate supervisory and management experience in DOD weather station operations, but that is not the requirement. The requirement is, rather, a "minimum of 2 years management and supervisory experience in DOD weather station operations as their primary job." PWS ¶ 1.2.2.9. As the agency explains, the resume does not include a job title that might have provided a managerial context for these responsibilities. As a result, it is unclear whether these responsibilities were part of this person's primary job as a manager or whether they were merely incidental to a non-managerial job. It is also unclear whether these responsibilities were ongoing tasks that met the requirement to have 2 years of management and supervisory experience or whether they were occasional tasks that took place at some point in the 1996-99 timeframe. While Maytag objects to this "microscopic scrutiny" of the resume," Protester's Comments, June 21, 2000, at 2, it has provided us no basis to find the agency's assessment unreasonable.

The record shows that after award, Midwest proposed this person as a weather supervisor for the same location. For the same reasons outlined above, the agency did not believe she met the experience requirements based on her resume, and so advised Midwest. This person subsequently provided additional information

explaining her employment history, and the agency accepted her as a weather observer for Midwest, not a weather supervisor. The fact that Midwest later provided information about this person sufficient to qualify her as a weather observer—or even a weather supervisor—is not relevant to the question whether the agency reasonably evaluated Maytag’s proposal. The only relevant fact is that Maytag failed to provide the agency with sufficient information about this person’s experience during the evaluation process. There is no support for Maytag’s allegation that the agency did not approve this person as Midwest’s weather supervisor in order to avoid compromising its position in the protest. Government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference and supposition such as that presented by Maytag. Ready Transp., Inc., B-285283.3, B-285283.4, May 8, 2001, 2001 CPD ¶ __ at 6 n.5.

Maytag contends that the agency improperly failed to tell the firm the resume was deficient. We do not agree. For discussions to be meaningful, they must lead offerors into the areas of their proposals requiring amplification or revision, but the agency is not required to “spoon-feed” an offeror as to each and every item that could be revised so as to improve its proposal. Du and Assocs., Inc., B-280283.3, Dec. 22, 1998, 98-2 CPD ¶ 156 at 7-8. During discussions, Maytag was told that its staffing plan was deficient because it failed to provide adequate resumes. When the agency received a resume that it still believed was deficient, it was under no further obligation to raise the issue.⁴

Past Performance

The agency evaluated Maytag’s past performance as presenting moderate risk. Although the agency believed the overall indications from its survey showed that Maytag’s performance had been satisfactory, it found that the firm’s past performance at [DELETED] locations raised a [DELETED] concern about its ability to recruit and retain highly qualified personnel. Since this contract is to provide weather support to flight operations at seven locations, the agency believed that staffing concerns could affect the safety of flight.

Maytag alleges that the agency improperly evaluated its proposal as presenting moderate risk. Maytag contends that an objective review of the past performance information evaluated by the agency and the pertinent facts regarding these

⁴ That the evaluator receiving the faxed resume addendum may have responded, “no, this will be fine,” to Maytag’s request whether anything else was needed (as Maytag contends) should not have misled Maytag into believing the resume was acceptable, since the purpose of the transmission was to give the agency information about this person’s post-1999 employment, not to explain her 1996-99 employment.

[DELETED] locations shows that the agency “attempted to manufacture bogus deficiencies in order to downgrade Maytag’s past performance.” Protester’s Comments, June 5, 2001, at 16.

Where a solicitation requires the evaluation of offerors’ past performance, we will examine an agency’s evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria, since determining the relative merits of offerors’ past performance information is primarily a matter within the contracting agency’s discretion. DRG Assocs., Inc., B-285428, B-285428.2, Aug. 25, 2000, 2000 CPD ¶ 145 at 11. An agency may base its evaluation of past performance upon its reasonable perception of inadequate prior performance, regardless of whether the contractor disputes the agency’s interpretation of the facts. Ready Transp., Inc., *supra*, at 5. A protester’s mere disagreement with the agency’s 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. Our review of the record leads us to conclude that the NGB’s evaluation of Maytag’s proposal with respect to past performance was reasonable.

Offerors were required to provide a summary of relevant past performance relating to the PWS and performed within the past 5 years for DOD and for other federal, state, and local governments or commercial entities. The purpose of the past performance assessment was to determine the probability that each offeror would comply with and meet all of the commitments in its proposal; the risk assessment was to be based on the probability of an offeror’s success in meeting its proposal commitments. Source Selection Plan (SSP) ¶ 5.5.2.

The agency evaluated 11 past performance questionnaires for Maytag, including 2 from quality assurance evaluators (QAE) who also served as members of this source selection committee, and conducted telephone interviews with four of Maytag’s references. As reflected in the evaluation documentation, most of the questionnaires and phone surveys contained favorable information about Maytag’s past performance, with adjectival ratings ranging from satisfactory to excellent. At issue here is the past performance information received from [DELETED] sources, including two of the evaluators here.

One evaluator is the QAE for Maytag’s contract at a site at issue here. He gave the firm ratings that generally ranged from satisfactory to very good, but rated the firm marginal on its “ability to meet appropriate staffing levels with qualified personnel in order to provide required services.” The QAE made two points in his narrative remarks. First, he stated that [DELETED] contract discrepancy reports (CDR) had been issued to Maytag during fiscal year 2000, all for services that were slightly below standard. He stated that this was a noted decrease in the quality of Maytag’s work when compared to the prior fiscal year, but that the firm’s performance was good overall. Second, he stated that the firm had great difficulty recruiting qualified personnel in the past year. He explained that this led to staffing shortages that lasted

several months and undoubtedly contributed to an increase in CDRs and therefore a decrease in the quality of its services. If this trend continued, he stated, it could be cause for concern due to its impact on the customer's mission.

Maytag disputes this assessment of its performance, but our review of the questionnaire, the underlying documents, and affidavits provided by Maytag's contracts manager gives us no basis to question either the contents of the questionnaire or the agency's evaluation of its import. Maytag principally contends that the CDRs involve a relatively small number of discrepancies, and that only three of those discrepancies could have had an operational impact. Maytag's position is consistent with the QAE's statement that Maytag's services were "slightly below standard" and its overall performance "good," but the record shows the agency's concern was not grounded in this aspect of the CDRs but, instead, in the staffing shortages. In that regard, Maytag's implication that the QAE has no support for its comments that the firm had staffing shortages is belied by Maytag's contemporaneous explanations of the causes of some CDRs. As Maytag stated, for example, "the personnel were also working long hours due to shortages of personnel," and "[t]hese errors were caused by carelessness on the part of the forecaster due to the long hours and the shortage of personnel." Maytag CDR Nos. FY01-02 and FY01-03. Maytag's proffered reasons for the staffing shortages and its assertion that it acted promptly to increase the pool of part-time fill-in personnel to prevent a recurrence of the shortages do not persuade us that the agency's fundamental concern was misplaced or unreasonable.

Another evaluator is the QAE for Maytag's contract at a second site at issue here. She gave the firm ratings that were mostly very good, but rated the firm marginal on its "ability to meet appropriate staffing levels with qualified personnel in order to provide required services." In her narrative remarks, the QAE stated that the quality of the firm's work was very good; it had had minor discrepancies but none that resulted in a CDR. She also stated that she did have some concern regarding the firm's management of key personnel. She explained that, on [DELETED] occasions in the prior 6 months, she had been asked to waive certain requirements that individuals seeking employment lacked. She stated that, with this contract, there were seven sites to be staffed and she was concerned that the firm might not have a qualified pool of applications to fill positions, especially since stricter qualifications of personnel would be enforced. Her narrative regarding these waivers is supported by contemporaneous memoranda to the file.

Again, Maytag has provided us no basis to question either the contents of the questionnaire or the agency's evaluation of its import. Maytag does not dispute that it requested these waivers. Instead, the firm contends that the requirements at issue were soon to become obsolete, either for technical reasons or because they were not in the new solicitation, and that the QAE approved the requests and expressed no concern. This explanation for the waivers does not address or diminish the agency's concern that the firm lacked a qualified pool of applicants from which to draw. As

the QAE explains, if Maytag had a pool of qualified people to select from to fill these positions it would not have had to ask for waivers and she was concerned that, if Maytag could not find [DELETED] qualified people to work at one site, it might be difficult for it to find qualified people to fill positions at seven sites, especially the two new sites. We cannot find this concern unreasonable.

The final source of information at issue here is a telephone interview with the quality assurance specialist (QAS) on another Maytag contract. In response to the question whether Maytag had staffing problems, such as not having a reasonable number of personnel under the contract for extended periods of time, the QAS stated that, for a month in the fall of 2000, both the contract manager and the site supervisor had to work shifts due to a staffing shortage. In response to the question whether Maytag had ever requested waivers of qualifications or experience for personnel it intended to hire, the QAS stated that Maytag had asked about deleting the requirement for the site supervisor to have a degree in meteorology.

Maytag states that, during the time at issue, a weather observer quit without notice and the contract manager and supervisor had to work several shifts to fill in. Maytag contends that the minor delay in filling the position was not due to a recruiting problem but resulted from its decision to “hold” the position for a particular person. While this incident might not reflect a recruiting problem, the agency’s concern was with Maytag’s ability to both recruit and retain personnel. Maytag has not addressed that concern, which we find reasonable. Maytag also states that it did not request a waiver under this contract but merely discussed the idea of deleting a requirement. This position is entirely consistent with that taken by the QAS here, and there is no evidence that the agency misinterpreted the QAS’s statement to mean a waiver was requested. The record shows that the agency’s concern about requested waivers were based on the first-hand knowledge of two of its evaluators, as discussed above.

In conclusion, the fact that Maytag disputes the agency’s interpretation of the facts surrounding its past performance does not establish that the evaluation was unreasonable. Maytag’s allegation that the agency “attempted to manufacture bogus deficiencies in order to downgrade Maytag’s past performance” is wholly unsupported. Again, government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference and supposition such as that presented by Maytag.

Maytag also contends that the agency improperly failed to raise these issues with the firm during discussions. The Federal Acquisition Regulation (FAR) requires that contracting officers discuss with each offeror being considered for award “significant weaknesses, deficiencies, and other aspects of its proposal . . . that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal’s potential for award.” FAR § 15.306(d)(3). The scope and extent of discussions are a matter of contracting officer judgment. *Id.* The statutory

and regulatory requirement for discussions with all competitive range offerors means that such discussions must be meaningful, equitable, and not misleading. Du and Assocs., Inc., supra.

The contracting officer explains that she did not conduct discussions on these matters because she did not believe the associated weakness could be “altered or explained to enhance materially the proposal’s potential for award.” She based this conclusion on the fact that the problems were well-documented by both the agency and Maytag, and the fact that two of the three references at issue were evaluators on the source selection committee with first-hand knowledge of the general trends in Maytag’s past performance. She did not believe discussions would have changed the facts known to these evaluators. Contracting Officer’s Statement at 4-5. Under the circumstances, we have no basis to question the contracting officer’s judgment here. The record shows that these problems, which were factual in nature, were well-documented by the agency; Maytag was given a chance to respond to the agency’s concern; and its input was taken into consideration. Our view is underscored by the fact that, during the course of the protest, Maytag was afforded ample opportunity to recast its past performance in these areas to show the agency’s view was unreasonable, and has been unable to do so. As a result, even if the agency should have raised these matters during discussions, it is clear from the record that Maytag was not prejudiced by its failure to do so. See Pacific Ship Repair and Fabrication, Inc., B-279793, July 23, 1998, 98-2 CPD ¶ 29 at 5-6.

Maytag finally contends that the agency unreasonably evaluated Midwest’s past performance as presenting low risk. Maytag asserts that, under the RFP, DOD past performance was significantly more important than other past performance but Midwest has no past performance with DOD. In addition, the PWS requires the contractor to perform weather forecasting services at two of the seven locations but Midwest has no past performance with weather forecasting.

The agency evaluated Midwest’s past performance as highly acceptable, with all indications showing a low risk of substandard performance and a good chance of success if awarded the contract. To arrive at this determination, the agency evaluated questionnaires concerning five Federal Aviation Administration (FAA) contracts for weather observation services. Two questionnaires contained “satisfactory” and “very good” ratings; two contained “very good” and “excellent” ratings; and one contained almost exclusively “excellent” ratings. None of the questionnaires contained negative comments about Midwest’s past performance.

The RFP merely required offerors to provide a summary of relevant past performance—with DOD and with other entities—relating to the PWS. RFP § L.5.b. The SSP advised the evaluators that the purpose of the past performance assessment was to determine the probability of each offeror’s ability to comply with and meet all of the requirements in its proposal. SSP ¶ 5.5.2. Risk ratings were to be assigned based on the probability of success in meeting proposal commitments; a low risk

rating reflected very little risk to the government related to compliance with terms, conditions, and standards. Id. ¶ 4.2.6.4. The two past performance items, DOD past performance and non-DOD past performance, were intended to determine the degree of success and customer satisfaction each offeror had achieved as expressed by previous and current customers. Id. ¶ 5.5.3. Consistent with the requirement of FAR § 15.305(a)(2)(iv) (in the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance), the evaluators were to give offerors without any or significant past performance in an assessment area a neutral rating for that assessment area, which was to result in neither a penalty nor favorability for the firm. SSP ¶ 5.5.3.3.

The agency explains that since Midwest had no DOD past performance, it was given a neutral rating for that item. The agency believed, however, that Midwest's past performance on five FAA contracts covering numerous sites, and its customers' very favorable assessment of that performance, were sufficient to rate the firm as presenting a "low risk" overall when averaged with the neutral rating. Evaluator A Affidavit at 1-2; Evaluator B Affidavit at 1. The agency explains that while there are differences in format between DOD and other federal agencies when it comes to reporting the weather, they are not sufficient to outweigh Midwest's extensive and favorable FAA experience. Evaluator A Affidavit at 1. The agency also reiterates that, pursuant to the SSP, it was evaluating past performance in a more general sense to see if negative feedback would be forthcoming from current contracts regardless of the source. Our review of the record shows that the agency did not read the DOD past performance item out of the solicitation, as Maytag contends, but factored in Midwest's lack of DOD past performance as part of its evaluation, consistent with the SSP and FAR § 15.305(a)(2)(iv). As a result, we cannot find the agency's actions unreasonable with respect to Midwest's lack of DOD past performance.

The agency concedes that Midwest has no weather forecasting past performance, but states that Midwest addressed forecasting services in detail in its technical proposal and proposed key personnel with significant DOD forecasting and observation experience in its staffing plan. On balance, and considering that weather observation services were the bulk of the required services, the agency believed that Midwest's past performance merited a "low risk" assessment. Evaluator B Affidavit at 1; see also Evaluator A Affidavit at 1. Our review of the record affords us no basis to find this assessment unreasonable. The SSP advised the evaluators that the purpose of their past performance assessment was to determine the probability that each offeror would comply with and meet the commitments in its proposal, and weather forecasting services were to be provided to only two of the seven locations at issue here. While Midwest had no past performance with weather forecasting services, the agency considered its overall exemplary past performance record and appropriately considered the fact that Midwest proposed key personnel with relevant experience in weather forecasting.

FAR § 15.305(a)(2)(iii). Under the circumstances, we cannot find the firm's "low risk" assessment objectionable.⁵

In any event, even if the agency unreasonably evaluated Midwest's past performance as presenting a low risk, there is no evidence to suggest that the firm should have received a rating lower than moderate risk, the same rating received by Maytag. If we assume that both firms should have been rated moderate risk, we are not persuaded that Maytag has suffered any prejudice. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

Setting aside past performance, the record shows key distinctions between the two proposals. Under the most important area, technical/management, Midwest's proposal was evaluated as having no weaknesses and five strengths: the firm's corporate management had a good meteorological background from the top down; the firm had a good focus on its recruiting base and methods; the firm had a good focus on targeting prior Air Force personnel who would provide the best support with less training; the firm had a good understanding of required products and their accuracy; and the firm had a well-detailed training plan. In contrast, Maytag had a weakness associated with its inadequate resume, discussed above, and its sole strength was that it was the incumbent contractor at five of the seven contract locations. Midwest was also the lowest-priced offeror, by \$[DELETED].

Given the technical superiority of Midwest's proposal, and its [DELETED] lower price, we do not believe that Maytag would have a substantial chance for award even if both proposals were rated moderate risk for past performance. Our view is reinforced by the fact that the source selection authority did not believe she could justify award to Firm A, the most highly rated offeror, because its price was

⁵ Maytag contends that, after award, certain personnel proposed by Midwest did not take those positions and other individuals are now performing. The determination of which among competing offerors will be selected for award must be based on their proposals as submitted, and the agency's evaluation of resumes of the key personnel named in the offeror's proposal is not objectionable provided the resumes were submitted in good faith with the consent of the respective individuals and the agency is reasonably assured that the personnel are committed to the offeror in the event the offeror receives the award. Bionetics Corp., B-221308, Dec. 24, 1985, 85-2 CPD ¶ 715 at 2-3. There is no evidence that Midwest submitted these resumes in bad faith or without consent or that the agency had any basis for questioning the availability of Midwest's proposed personnel.

\$(DELETED) more than that of Midwest; the difference in price between the proposals of Maytag and Midwest, \$(DELETED), is nearly the same amount.

The protest is denied.

Anthony H. Gamboa
General Counsel