

PAST PERFORMANCE/EXPERIENCE

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Protests concerning agency evaluations of past performance and experience represent a significant number of the protest challenges at the General Accounting Office (GAO). Although the regulatory guidance in this area received a significant rewrite in 1997, the protests filed at GAO have raised important questions concerning how firms' past performance and experience should be evaluated. GAO has issued numerous decisions that address experience and past performance issues, and that offer significant guidance to agencies concerning the handling of past performance and experience during the acquisition process. This article surveys the issues GAO has addressed in the some 200 decisions GAO has issued in the past 3 years. These decisions identify problem areas and lessons learned for agencies in conducting their acquisitions.

Regulatory Background

Under the FAR, the evaluation factors and significant subfactors that apply to an acquisition and their relative importance, generally are within the broad discretion of agency acquisition officials, with two provisos. Price or cost to the Government shall be evaluated in every source selection and the quality of the product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience (10 U.S.C. 2305(a)(3)(A)(i) and 41 U.S.C. 253a(c)(1)(A)).

Although the evaluation of prior experience is one of the factors that may be evaluated to satisfy the requirement that the quality of the service or product is considered, past performance must be evaluated in all source selections for negotiated competitive acquisitions expected to exceed \$100,000.

Unlike the evaluation of prior experience, the FAR at 15.305, contains detailed guidance concerning its evaluation. The FAR implementation addresses a number of areas:

Solicitation contents—the solicitation shall describe the approach for evaluating past performance, including evaluating offerors with no relevant performance history, and shall provide offerors an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the Government requirement. The solicitation shall also authorize offerors to provide information on problems encountered on the identified contracts and the offeror's corrective actions. The Government shall consider this

information, as well as information obtained from any other sources, when evaluating the offeror's past performance. The source selection authority shall determine the relevance of similar past performance information.

Evaluation—the evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition. The evaluation also should include the past performance of offerors in complying with subcontracting plan goals for small disadvantaged business (SDB) concerns (see Subpart 19.7), monetary targets for SDB participation (see 19.1202), and notifications submitted under 19.1202-4(b).

Currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance shall be considered. This comparative assessment of past performance information is separate from the responsibility determination required under Subpart 9.1.

Firms with no relevant past performance history—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.

Experience and past performance are separate concepts.

The FAR identifies prior experience and past performance as separate concepts, and these concepts should not be confused in an evaluation. Although sometimes the agency's evaluate past performance and experience together, GAO decisions recognize there is a distinction between the two evaluation criteria. For example, in Oceaneering Intl., Inc., B-287325, June 5, 2001, 2001 CPD ¶ 95, GAO concluded that the agency reasonably evaluated the comparative degree of relevance of the past contract experience of offerors under the experience factor, and not under the past performance factor, consistent with the solicitation's evaluation scheme. The evaluation scheme recognized the distinction between past performance which was defined as “a measure of the degree to which an offeror satisfied its customers in the past and complied with Federal, state and local laws and regulations” and experience defined under the RFP as “the opportunity to learn by doing” and called for evaluation of “each offeror's organizational experience on the basis of its breadth, its depth, and its relevance to the work” required under the RFP. Experience is more objective in the sense that the issue is whether the firm has performed the requisite work previously. Under past performance, the firm may have performed the work, but the actual quality of its performance is evaluated. Cf. Oceaneering Intl., Inc., *supra*.

In Consolidated Eng'g. Servcs., Inc., B-291345; B-291345.2, Dec. 23, 2002, 2002 CPD ¶ __, the agency eliminated a firm from the competition for operating, maintaining and repairing the Pentagon Heating and Refrigeration Plant as technically unacceptable based on lack of past performance in performing these services in a facility comparable to those at the Pentagon. In rejecting the firm's proposal, GAO noted that under the RFP's past performance evaluation factor, the agency appeared to be more concerned with the protester's alleged lack of relevant experience, rather than the quality of its performance; the agency neither received, nor was aware of, any negative past performance reports for the protester.

Disclosure of Evaluation Factors

Contracting agencies are required by statute and regulation to clearly set forth in the solicitation all evaluation factors and significant sub factors that will affect contract award and their relative importance.

An agency is required to disclose in the solicitation a subfactor to evaluate a particular type of experience under the experience factor where the subfactor constitutes 40 percent of the technical evaluation. Lloyd H. Kessler Inc, B-284693, May 24, 2000, 2000 CPD ¶ 96.

Specification Challenges—An agency has broad discretion in the selecting of evaluation factors that will be used in an acquisition, and the agency's determination is not objectionable so long as the factors reasonably relate to the agency's needs in choosing a contractor that will best serve the government's interests.

Protest that solicitation's past performance evaluation criteria are unnecessarily restrictive is denied where the record shows the provisions are reasonably related to the agency's minimum needs. C. Lawrence Constr. Co., Inc., B-289341, Jan. 8, 2002, 2002 CPD ¶ 17.

Agency's decision to limit past performance evaluation factor to consideration of only corporate experience and not the past performance of key personnel is unobjectionable where agency has supported decision and decision is not contrary to applicable regulation. Olympus Bldg. Servs., Inc., B-282887, Aug. 31, 1999, 99-2 CPD ¶ 49.

Protest that solicitation gives undue weight to past performance because, in addition to past performance evaluation factor, certain non-price subfactors included under technical excellence and management factors concern past performance-related considerations is denied; there is no limitation on weight

agency can assign particular factors in the evaluation. American Med. Info. Servs., B-288627, Nov. 7, 2001, 2001 CPD ¶ 188.

Where solicitation requires that to be considered technically acceptable, an offeror must demonstrate experience in completing at least three projects of similar type and magnitude within the last 5 years on a contract similar in size and scope to the project being awarded, the agency reasonably considered whether the past projects referenced in proposals were comparable in dollar value as well as complexity. Agency reasonably rejected protester's proposal as unacceptable, where protester had not performed three projects of contract dollar value comparable to that of the requirement being solicited,. Knightsbridge Constr. Inc. B-291475.2, Jan. 10, 2003, 2003 CPD ¶ __.

Notwithstanding statement in solicitation that simplified acquisition procedures were being used and authority at Federal Acquisition Regulation (FAR) §12.602(a) not to disclose the relative weight of evaluation factors when using simplified procedures, an agency's failure to disclose the relative weight of evaluation factors was unreasonable because basic fairness dictated disclosure of the relative weights where the agency required offerors to prepare detailed written proposals addressing unique government requirements. Also, protester's contention that an agency's decision to assign a weight of 5 percent to a solicitation's past performance evaluation factor violates FAR § 12.206 (providing that past performance should be an important element of every evaluation) is denied as the FAR provision is discretionary, not mandatory. Finlen Complex, Inc., B-288280, Oct. 10, 2001, 2001 CPD ¶ 167.

Evaluation Issues

Evaluation of experience must be reasonable and consistent with the solicitation's evaluation criteria and applicable statutes and regulations.

An agency's determination that the corporate experience of the awardee was equivalent to that of the incumbent is reasonable where the awardee performed contract work very similar to the work required under the solicitation and where the awardee's proposed key management personnel possessed significant experience Oceanering Intl., Inc., supra.

An agency's evaluation of an offeror's corporate experience which gives firm only limited credit for experience of its key personnel with other entities is unobjectionable where evaluation was performed in accordance with stated evaluation criteria and reflects reasonable assessment of offeror's experience. The Project Mgmt. Group, Inc., B-284455, Apr. 14, 2000, 2000 CPD ¶ 66.

Protester's proposal reasonably received marginal rating where proposal lacked information showing satisfaction of experience requirement. Maytag Aircraft Corp., B-287589, July 5, 2001, 2001 CPD ¶ 121

Protester is not entitled to higher rating than awardee for experience simply because protester previously had furnished item requested by solicitation and awardee had not, where protester's experience was not recent and both protester and awardee had recent experience producing similar item. Eagle-Picher Technologies, LLC, B-289093, B-289093.2, Dec. 27, 2001, 2002 CPD ¶ 14.

An agency may properly evaluate the corporate experience of a new business by considering the experience of a predecessor firm or a subcontractor, including the experience gained by employees while working for the predecessor firm. The key consideration is whether the experience evaluated reasonably can be considered predictive of the offeror's performance under the contemplated contract. Al Hamra Kuwait Co., B-288970, Dec. 26, 2001, 2001 CPD ¶ 208

Lack of experience can be part of risk evaluation.

Agency's evaluation of protester's experience for risk-rating purposes properly took into account the fact that protester had not performed contracts that were similar in size and scope to the contract contemplated by the solicitation. Molina Eng'g. LTD./Tri-J Indus., Joint Venture Inc., B-284895, May 22, 2000, 2000 CPD ¶ 86.

Agency cannot relax experience requirements solely for one offeror.

Agency improperly relaxed the solicitation's minimum qualification requirement that key personnel have experience in the operation and maintenance of a comparable government functional activity of the same or similar scope where the awardee's key personnel lack government experience. Meridian Mgmt. Corp.; Johnson Controls World Servs., Inc., B-281287.10; B-281287.11, Feb. 8, 2000, 2000 CPD ¶ 5.

Procuring agency properly may use traditional responsibility factors as technical evaluation factors in a negotiated procurement, where the agency is to perform a comparative evaluation of these factors.

Protest that agency improperly converted technical evaluation process into responsibility determination is denied where record shows that award was based on a comparative evaluation of the relevant past performance of awardee and protester. Goode Constr., Inc., B-288655, et al, Oct. 19, 2001, 2001 CPD ¶ 186.

In contrast, when using the lowest price technically acceptable process, and the contracting officer elects to consider past performance as an evaluation factor, it shall be evaluated in accordance with 15.305. However, the comparative assessment in 15.305(a)(2)(i) does not apply. As a result, if the contracting officer

determines that a small business' past performance is not acceptable, the matter shall be referred to the Small Business Administration for a Certificate of Competency determination, in accordance with the procedures contained in Subpart 19.6 and 15 U.S.C. 637(b)(7)).

Relevancy of Past performance Information

Where solicitation requires the evaluation of offerors' past performance, 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.

Protester's contention that agency improperly evaluated its past performance because it excluded two references the firm submitted with its proposal is denied, where the agency reasonably excluded the references for contracts that were not directly relevant to the procurement; the record shows that the agency evaluated proposals in accordance with the criteria announced in the solicitation; and the record reasonably supports the overall rating assigned the protester's proposal in this area. Symtech Corp., B-285358, Aug. 21, 2000, 2000 CPD ¶ __.

Agency reasonably determined that experience on full food service contracts was less relevant for purposes of evaluating past performance than experience on mess attendant services, which were the services being procured. Ti Hu, Inc., B-284360, Mar. 31, 2000, 2000 CPD ¶ 62.

Consistent with the stated evaluation scheme in the solicitation, agency reasonably found that protester's past performance was satisfactory, rather than exceptional, where the protester's recent experience was not on projects of the same magnitude as the solicited project and the particular complexities of the protester's projects were not an aspect of the solicited project. Five-R Company, B-288190, Sept. 10, 2001, 2001 CPD ¶ 163

Protester's argument that it should have received higher past performance score than awardee under solicitation calling for work in a "hot" laboratory, i.e., a laboratory in which live viruses are present, since it has experience working in a "hot" laboratory, whereas awardee does not, is denied, where record demonstrates that awardee does in fact have experience working in a "hot" laboratory. LB&B Assocs., Inc., B-281706, Mar. 24, 1999, 99-1 CPD ¶ 74.

Agency unreasonably evaluated proposals under past performance evaluation factor where the solicitation contemplated a qualitative assessment of the quality of performance of contracts relative to the size and complexity of the job order contract (JOC) for construction services being procured, and the agency gave the highest possible rating to an offeror with no JOC prime

contractor experience and whose experience was in performing relatively small dollar construction contracts, and a lower rating to an offeror with extensive, successful performance of JOCs similar to JOC under consideration. Beneco Enter., Inc., B-283512, Dec. 3, 1999, 2000 CPD ¶ 175.

In evaluating past performance under solicitation for quantity of leather, agency reasonably disregarded non-leather supply contracts in its evaluation of the protester, and limited its evaluation to leather contracts, on the basis that leather contracts were the most relevant. Power Connector, Inc., B-286875, B-286875.2, Feb. 14, 2001, 2001 CPD ¶ 39.

In procurement for the construction of a berthing wharf for nuclear powered aircraft carriers, protest by offeror that it should have received higher rating for its experience and past performance based on numerous small projects, even though it never successfully completed a project of this magnitude, is denied; agency reasonably concluded that offeror with no comparable large project experience presents higher performance risk than contractor with comparable large project experience. Marathon Constr. Corp., B-284816, May 22, 2000, 2000 CPD ¶ 94.

Past performance evaluation must be conducted fairly, reasonably, and in accordance with the stated evaluation terms, and based upon relevant information sufficient to make a reasonable determination of the offeror's overall past performance rating, including relevant information close at hand or known by the contracting personnel awarding the contract.

Protests against award of federal supply schedule task order contracts for private collection agency services are sustained where the record shows that the contracting agency's evaluation of offerors' past performance, which largely relied upon a mechanical comparison of past performance scores for incumbent contractors, was unsupported and unreasonable. OSI Collection Servs., Inc., B-286597, B-286597.2, Jan. 17, 2001, 2001 CPD ¶ 18.

Under solicitation for freight transportation, contracting agency's evaluation of offerors' past performance was unreasonable where (1) with respect to reports of past performance problems, agency focused on the absolute number of those problems, without considering, for each offeror, the number of shipments the offeror had made in the relevant time period; (2) with respect to past performance problems, contemporaneous evaluation documents contained no evidence the agency complied with solicitation instruction to "look for reasons, explanations and clarifications" for past performance problems; and (3) with respect to past percent on-time delivery, agency also failed to consider the wide variance in the offerors' shipping volume over the relevant period Green Valley Transp., Inc., B-285283, Aug. 9, 2000, 2000 CPD ¶ 133.

In determining whether one company's performance should be attributed to another, an agency must consider the nature and extent of the relationship between the two companies—in particular, whether the workforce, management, facilities, or other resources of one may affect contract performance by the other. In this regard, while it would be inappropriate to consider a company's performance record where that record does not bear on the likelihood of successful performance by the offeror (or vendor), it would be appropriate to consider a company's performance record where it will be involved in the contract effort or where it shares management with the offeror. Lynwood Mach. & Eng'g, Inc., B-285696, Sept. 18, 2000, 2001 CPD ¶ 113.

In evaluating past performance, agency properly considered performance record of company other than the one submitting a quotation where company submitting quotation intended to rely heavily on the other company's personnel in performing the job. Lynwood Mac. & Eng'g, Inc., *supra*.

Agency's determination to not consider the past performance of the protester's proposed subcontractor was reasonable where the subcontractor's performance under the solicited work was not major or critical to the overall effort and thus not reasonably indicative of the protester's performance under the contract. MCS of Tampa, Inc., B-288271.5, Feb. 8, 2002, 2002 CPD ¶ __.

Past performance of teaming members can result in downgrades.

In evaluating experience and past performance of joint venture under mentor-protégé program, agency properly considered that small business protégé, which would be performing a majority of the work under the contract, had no relevant experience. Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91

In evaluating the protester's experience and past performance, an agency was not required to impute to the protester the totality of its proposed mentor's experience and past performance, where the mentor was not proposed to play a major role in the performance of the contract. Biogenesis Pac., Inc., B-283738, Dec. 14, 1999, 99-2 CPD ¶ __.

Although an agency properly may, in appropriate circumstances, consider the experience of supervisory personnel in evaluating the experience of a new business, there is no legal requirement for an agency to attribute employee experience to the contractor as an entity. Blue Rock Structures, Inc., B-287960.2; B-287960.3, Oct. 10, 2001, 2001 CPD ¶ 184.

Neutral Ratings

Agency reasonably rated protester's past performance as "neutral with unknown confidence" where record shows that protester failed to submit in its proposal required detailed information showing that it had performed contracts relevant to the solicited effort. Boland Well Sys., Inc., B-287030, Mar. 7, 2001, 2001 CPD ¶ 51.

Under solicitation that provided that submission of fewer than three questionnaires from offeror's past performance references could be regarded as inadequate to evaluate offeror's past performance, agency reasonably assigned past performance rating of neutral/unknown confidence to offeror for whom it received only one relevant contract reference. Thomas Brand Siding Co., Inc., B-286914.3, Mar. 13, 2001, 2001 CPD ¶ 53. and Chicataw Constr., Inc., B-289592; B-289592.2, Mar. 20, 2002, 2002 CPD ¶ ____.

Placement of an order at a significant price premium for the sole reason that the vendor quoting a lower price has no prior performance history in supplying the item being procured was unreasonable, where determination was not made in accordance with the stated evaluation scheme. National Aerospace Group, Inc., B-281958; B-281959, May 10, 1999, 99-1 CPD ¶ 82.

An agency is only required to make a reasonable effort to contact a reference, and where that effort proves unsuccessful, it is unobjectionable for the agency to proceed with its evaluation without benefit of that reference's input. Lynwood Mac. & Eng'g, Inc., *supra*.

Agency's evaluation of protester's past performance was reasonably based upon comments received from one of protester's references and the agency's assessment of protester's subcontract performance under the prior contract for the required items, where the agency, despite repeated attempts, could contact only one of protester's three references listed in the protester's proposal. North Am. Aerodynamics, Inc., B-285651, Sept. 15, 2000, 2000 CPD ¶ 160.

Agency is not required to contact all of a vendor's references, but must act reasonably in determining which ones to contact and which not to contact. Lynwood Mac. & Eng'g, Inc., *supra*.

Agency may consider information concerning vendor's past performance obtained from a source not identified by the vendor in its quotation. Lynwood Mac. & Eng'g, Inc., *supra*.

Absent some evidence of abuse of the contract disputes process, contracting agencies should not lower an offeror's past performance evaluation based solely on it having filed claims or protests.

While it is appropriate, in evaluating past performance, to consider a contractor's "combative" attitude, we have recognized that absent some evidence of abuse of the contract disputes process, contracting agencies should not lower an offeror's past performance evaluation based solely on it having filed claims; firms should not be prejudiced in competing for other contracts because of their reasonable pursuit of such remedies in the past. OneSource Energy Servs., Inc., B-283445, Nov. 19, 1999, 2000 CPD ¶ 109.

Evaluation of protester's past performance is unreasonable where it is based upon inaccurate information and improperly considered the protester's legitimate exercise of rights under its contract to be evidence of negative past performance. OneSource Energy Servs., Inc. supra.

Protest is sustained where agency improperly downgraded protester's past performance based merely on protester's history of contract claims, with no allegation that protester abused the claims process. Nova Group, Inc., B-282947, Sept. 15, 1999, 99-2 CPD ¶ 56.

Exchanges concerning past performance

Exchanges if award will be made without conducting discussions

Clarifications are limited exchanges, between the Government and offerors, that may occur when award without discussions is contemplated. **If award will be made without conducting discussions**, offerors may be given the opportunity to clarify certain aspects of proposals (e.g., the relevance of an offeror's past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor or clerical errors.

Where award is to be made without discussions, or discussions are not required in a simplified acquisition, contracting officer must give an offeror an opportunity to clarify adverse past performance information to which the offeror has not previously had an opportunity to respond only where there is reason to question the validity of the past performance information; in the absence of a clear basis to question the past performance information, contracting officer has discretion, short of acting in bad faith, not to ask for clarification. A.G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45; Ocean Technical Servs., Inc., B-288569, Nov. 27, 2001, 2001 CPD ¶ 193.

Exchanges leading to establishment of the competitive range

Communications are exchanges, between the Government and offerors, after receipt of proposals, leading to establishment of the competitive range. If a competitive range is to be established, communications shall be held with offerors

whose past performance information is the determining factor preventing them from being placed within the competitive range. Such communications shall address adverse past performance information to which an offeror has not had a prior opportunity to respond; and may only be held with those offerors whose exclusion from, or inclusion in, the competitive range is uncertain. These communications may be considered in rating proposals for the purpose of establishing the competitive range. They are for the purpose of addressing issues that must be explored to determine whether a proposal should be placed in the competitive range. Such communications shall not provide an opportunity for the offeror to revise its proposal, but may address, among other things information relating to relevant past performance; and shall address adverse past performance information to which the offeror has not previously had an opportunity to comment.

Exchanges with offerors after establishment of the competitive range.

Negotiations are exchanges, in either a competitive or sole source environment, between the Government and offerors, that are undertaken with the intent of allowing the offeror to revise its proposal. Discussions are tailored to each offeror's proposal, and must be conducted by the contracting officer with each offeror within the competitive range. At a minimum, the contracting officer must, indicate to, or discuss with, each offeror still being considered for award, deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond. The contracting officer also is encouraged to discuss other aspects of the offeror's proposal that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award. However, the contracting officer is not required to discuss every area where the proposal could be improved.

Contracting agency failed to conduct meaningful discussions where the protester was not asked in either written or oral discussions about its staff's experience that was a major concern to agency. Cotton & Co., LLP, B-282808, Aug. 30, 1999, 99-2 CPD ¶ 48.

Agency must discuss lack of experience during discussions if concern is significant.

Rejection of protester's proposal as unacceptable because it allegedly did not show specific required experience was unreasonable, where the proposal specifically represented that it had the required experience, the basis for the rejection was the omission of information concerning this experience in documents that were provided by the protester to the agency at a site visit for another purpose and which did not reasonably establish that the protester did not have the experience required, and the alleged deficiency was not identified to the protester during discussions. SWR Inc., B-286161.2, Jan. 24, 2001, 2001 CPD ¶ 32.

The FAR provides that, in conducting exchanges with offerors, agency personnel “shall not engage in conduct that . . . favors one offeror over another.” FAR § 15.306(e)(1).

Agency’s conduct of exchanges with awardee regarding its delivery record, when viewed together with the agency’s failure to conduct similar exchanges regarding protester’s delivery record, constituted conduct which improperly favored awardee and violated the provisions of FAR § 15.306(e)(1). Martin Elec., Inc., B-290846.3; B-290846.4, Dec. 23, 2002, 2002 CPD ¶ __; see Chemonics Int’l, Inc., B-282555, July 23, 1999, 99-2 CPD ¶ 61.

No discussions required

Agency was not required to conduct discussions regarding two weaknesses regarding its past performance identified in its proposal since the two weaknesses were not considered significant and protester’s past performance was acceptable overall. Agencies are not required to point out every element of acceptable proposals that receive less than the maximum evaluation rating. Digital Sys. Group, Inc., B-286931, Mar. 7, 2001, 2001 CPD ¶ 50.

Past performance evaluation rating of satisfactory was reasonable, and did not require discussions, where it reasonably reflected agency’s experience with protester’s work on prior project. Pflow Indus., Inc., B-289970, May 20, 2002, 2002 CPD ¶ __.

Allegation that it is improper for an agency to rely on information retrieved from an electronic database to evaluate a construction contractor's past performance, without giving protester an opportunity to comment on allegedly negative information in the database, is denied, where the record shows that the protester has previously been given ample opportunities to clarify adverse past performance information in the database, and there is no reason to question the validity of the past performance information. TLT Constr. Corp., B-286226, Nov. 7, 2000, 2000 CPD ¶ 179.

Source Selection Decisions

Source selection officials in a negotiated procurement have broad discretion in determining the manner and extent to which they will make use of the technical and price evaluation results; price/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. Even where price is the least important evaluation factor, an agency may award to an offeror with a lower priced, lower scored proposal if it determines that the price premium involved in awarding to an offeror with a higher rated, higher priced proposal is not justified.

Where solicitation provided that past performance was significantly more

important than price, but that the award would not necessarily be made to the offeror whose proposal received the highest past performance rating, agency reasonably selected a lower priced, lower rated proposal for award after determining that the price premium associated with the protester's higher rated proposal was not justified in light of the awardee's minimal risk of nonperformance. NAPA Supply of Grand Forks, Inc., B-280996.2, May 13, 1999, 99-1 CPD ¶ 94.

Protest challenging past performance evaluation and resulting source selection decision is denied where, notwithstanding limited contemporaneous documentation supporting award decision, record includes post-protest explanation consistent with the available contemporaneous documentation, both of which support agency's determination that proposals were technically equal and that lowest-priced proposal therefore represented best value to the government. Ideal Elec. Sec. Co., Inc., B-283398, Nov. 10, 1999, 99-2 CPD ¶ 87.

Past Performance Records

FAR Part 15 provides that "the currency and relevance of [past performance] information, source of the information, context of the data, and general trends in contractor's performance shall be considered." FAR § 15.305(a)(2)(i).

A contractor's past performance information may be considered for up to 3 years after the completion of contract performance as a whole, rather than for only 3 years after each incident of performance under the contract.

Agency complied with Federal Acquisition Regulation § 42.1503(e), which provides that "past performance information shall not be retained to provide source selection information for longer than 3 years after completion of contract performance," even though agency considered protester's 5-year past performance history under the predecessor contract, because the past performance evaluation took place within 3 years of completion of that contract's performance. D. F. Zee's Fire Fighter Catering, B-280767.4, Sept. 10, 1999, 99-2 CPD ¶ 62.

However, agency's consideration of past performance information regarding contract performance completed more than 3 years prior to source selection does not provide a basis to sustain the protest where the contracts were submitted by the protester as part of its proposal, in response to a solicitation requirement that offerors provide up-to-date past performance references and information. Oregon Iron Works, B-284088.2, June 15, 2000, 2000 CPD ¶ 119.

Protests objecting to agency's evaluation of vendors' past delivery performance on the basis of data that do not distinguish between original and revised delivery dates are denied where agency demonstrates that delivery dates are never revised for the vast majority of contract line items; that data that do

not distinguish between compliance with original and revised delivery dates still furnish meaningful information regarding a vendor's delivery performance; and that the agency will have no cost-effective means by which to evaluate past performance if it is not permitted to use the data. Island Components Group, Inc., B-281517; B-281550, Feb. 19, 1999, 99-1 CPD ¶ 43.