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## Decision

**Matter of:** Brown Point Facility Management Solutions, LLC

**File:** B-420299

**Date:** January 24, 2022

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### DIGEST

Protest challenging past performance evaluation of protester's quotation is denied where error did not competitively prejudice the protester, and the evaluation was otherwise reasonable and consistent with the terms of the solicitation.

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### DECISION

Brown Point Facility Management Solutions, LLC, of Lincoln, Rhode Island, challenges the issuance of a task order to HamHed, LLC, of Jeffersonville, Indiana, under request for quotations (RFQ) No. 1498285, issued by the Department of the Interior, National Park Service (NPS) for custodial and janitorial services for service areas in San Francisco and Marin Counties, California. The protester contends that the agency unreasonably evaluated its past performance.

We deny the protest.

### BACKGROUND

The solicitation was issued on June 21, 2021, through the General Services Administration's (GSA) e-Buy system under the procedures of Federal Acquisition Regulation (FAR) subpart 8.4 to small business vendors holding federal supply schedule (FSS) contracts for "complete facilities maintenance and management" and "complete facilities maintenance." Agency Report (AR), Tab 1A, RFQ Posting Email at 1; Contracting Officer's Statement (COS) at 2. The RFQ sought custodial and

janitorial services, including the interior and exterior cleanings of windows, entrances, steps, walkways, and bathrooms for recreation and administrative buildings. AR, Tab 2B, Performance Work Statement (PWS) at 3.

The agency contemplated issuing a fixed-price order on a best-value tradeoff basis, considering the following factors: price, relevant experience, and past performance. AR, Tab 5B, RFQ at 20.<sup>1</sup> Relevant experience and past performance, when combined, were equally as important as price. *Id.* at 21.

Brown Point and HamHed each submitted timely quotations. COS at 4. NPS initially issued the task order to Brown Point on July 28, 2021. *Id.* HamHed protested to GAO, contending that the agency failed to reasonably evaluate HamHed's relevant experience and past performance, along with Brown Point's price. *HamHed, LLC*, B-420046, Aug. 23, 2021 (unpublished decision). In response, NPS notified GAO that it would take corrective action, by reevaluating the quotations from HamHed and Brown Point, and issuing a new award decision if appropriate. *Id.* Our Office dismissed the protest as academic on August 23. *Id.*

The reevaluation resulted in the following assessment of quotations:

	<b>HamHed</b>	<b>Brown Point</b>
<b>Relevant Experience</b>	Acceptable	Acceptable
<b>Past Performance<sup>2</sup></b>	Satisfactory	Unsatisfactory
<b>Price</b>	\$584,436	\$554,372

AR, Tab 10, Source Selection Decision (SSD) at 5, 7. Thereafter, the source selection authority (SSA) selected HamHed for award, and the agency notified Brown Point of its unsuccessful quotation on October 4. *Id.* at 8; AR, Tab 11, Unsuccessful Offeror Letter. Brown Point filed its protest with our Office on October 14.

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<sup>1</sup> The solicitation was amended on September 10, 2021. COS at 4. Unless noted otherwise, references to the RFQ are to the conformed copy provided at AR, Tab 5B.

<sup>2</sup> The agency considered four adjectival ratings in assessing past performance: exceptional, satisfactory, neutral, and unsatisfactory. AR, Tab 6, Evaluation Definitions at 2. Relevant here, satisfactory past performance was defined as: "Offeror's record of relevant past performance and information regarding past performance is acceptable. Based on the offeror's past performance record, the Government has a reasonable expectation that the offeror will successfully perform the required effort." *Id.* Unsatisfactory past performance was defined as: "Offeror's record of relevant past performance and information regarding past performance is marginal to unacceptable. Based on the offeror's past performance record, the Government does not have a reasonable expectation that the offeror will successfully perform the required effort." *Id.*

## DISCUSSION

The protester argues that the agency unreasonably evaluated its past performance. More specifically, Brown Point contends that (1) it was unreasonable for the agency to consider two reports from the Contractor Performance Assessment Reporting System (CPARS) because, according to the protester, the contracts were not relevant to the current requirement; (2) even if it was reasonable to consider the CPARS reports, the agency's assignment of an unsatisfactory rating for past performance was "irrational" because it was not supported by the ratings from the reports; and (3) the agency failed to consider past performance information about Brown Point that was in the agency's possession at the time of reevaluation. Protest at 8-13; Comments at 4-6, 11, 16-18.

Where, as here, an agency issues a solicitation to FSS contractors under FAR subpart 8.4 and conducts a competition, our Office will not reevaluate the quotations when reviewing a challenge to the agency's evaluation; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *Spectrum Comm, Inc.*, B-412395.2, Mar. 4, 2016, 2016 CPD ¶ 82 at 8; *OPTIMUS Corp.*, B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. We have considered all arguments, and for the reasons discussed below, find no basis upon which to sustain the protest.

### Past Performance

For past performance, the solicitation instructed vendors to submit references for projects "of a similar nature and scope" to the current requirement, completed within the past five years. RFQ at 19. In addition, the RFQ advised vendors that the agency may also "consider past performance information obtained through various sources . . . including the Past Performance Information Retrieval System (PPIRS)" as part of the evaluation of past performance.<sup>3</sup> RFQ at 21.

### CPARS--Relevance

The protester argues that the agency failed to make the threshold determination of whether the identified contracts were "of a similar nature and scope" to the requirements, and as such, improperly considered irrelevant CPARS reports in the evaluation of Brown Point's past performance. Protest at 11; Comments at 11 ("NPS further erred by instead considering past performance for Brown Point that is not germane to the instant procurement.").

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<sup>3</sup> Effective January 15, 2019, PPIRS was officially retired, and data from PPIRS.gov was merged into CPARS.gov, making CPARS the official system for past performance information. <https://interact.gsa.gov/blog/update-cparsppirs-merger> (last visited Jan. 11, 2022).

Generally, an agency has discretion to determine the scope of the past performance history to be considered, provided all quotations are evaluated on the same basis and the evaluation is consistent with the terms of the solicitation. *CSR, Inc.*, B-413973, B-413973.2, Jan. 13, 2017, 2017 CPD ¶ 64 at 7; see *Hygeia Sols. Partners, LLC; STG, Inc.*, B-411459 *et al.*, July 30, 2015, 2015 CPD ¶ 244 at 13. As such, an agency is not limited to considering only the information provided within the “four corners” of a vendor’s quotation when evaluating past performance. *Paragon Sys., Inc.*, B-299548.2, Sept. 10, 2007, 2007 CPD ¶ 178 at 8. Our Office has found that an agency’s reliance on final CPARS reports is acceptable when considering past performance, as final CPARS reports represent an agency’s considered opinion of a contractor’s performance and provide the contractor with an opportunity to respond. See *Sayres & Assocs. Corp.*, B-418382, Mar. 31, 2020, 2020 CPD ¶ 134 at 5-6.

Here, NPS relied on two CPARS reports as part of the agency’s evaluation of Brown Point’s past performance. AR, Tab 10, SSD at 6-7. The first report referenced Brown Point’s performance on contract No. 47PL0219A0008, which was for “Janitorial and Operations and Maintenance services.” AR, Tab 7A, CPARS Contract 1. The second report assessed the protester’s performance on contract No. 47PL0219A0005 for “Janitorial & Mechanical Services.” AR, Tab 7B, CPARS Contract 2.

As noted above, in order to evaluate past performance, the RFQ required vendors to provide a list of references showing projects “of a similar nature and scope” (or as the RFQ alternatively describes it, “similar in scope and complexity”) to the current requirement, stating that the agency “may call references to confirm the responses provided.” RFQ at 19-21. In addition to that requirement, the solicitation also advised vendors that the agency could consider other past performance information obtained through other sources such as PPIRS (now CPARS). RFQ at 21. There is, however, no corresponding language in the RFQ requiring the agency to consider only CPARS information that is “similar in scope and complexity” to the requirements. See *id.* at 19-21. The two provisions are separate and distinct conditions under the solicitation’s description of how past performance would be evaluated. *Id.* As such, nothing in the solicitation prevented the agency from considering CPARS reports that went beyond the scope, complexity, or time frame that was required for the past performance references requirement.

Moreover, even if we were to agree with the protester and find that the RFQ limited the types of CPARS information that the agency could consider--which we do not--we would still find these two CPARS reports to be relevant (*i.e.*, “of a similar nature and scope”) to the tasks described in the PWS. While not all requirements are identical, many services required in the two CPARS contracts closely parallel and appear to be similar to the categories of work identified in the solicitation. For example, the PWS identifies the services required here as “janitorial.” AR, Tab 2B, PWS at 2. The two CPARS reports that NPS considered were, in part, for “Janitorial” services. See AR, Tabs 7A-7B, CPARS Contracts 1 & 2. More importantly, the assessments in the two reports speak directly about the protester’s performance of the janitorial services portions of those contracts. See *e.g.*, AR, Tab 7A, CPARS Contract 1 at 3 (“Indoor Firing range

comprehensive cleaning was not met and was removed from contract for failure to perform.”); AR, Tab 7B, CPARS Contract 2 at 3 (“[T]he cleaning logs reflect that for 5 days janitorial services were not performed.”). Thus, we find the work performed under the two CPARS reports to be relevant to the requirement here, and we find the agency’s consideration of Brown Point’s CPARS contracts to be reasonable.<sup>4</sup>

### CPARS--Adjectival Ratings

Brown Point also argues that the agency was unreasonable in assigning the protester an overall rating of “unsatisfactory” for past performance when the ratings assigned to the protester in its CPARS reports ranged from “marginal” to “satisfactory.” Protest at 13. We disagree.

In making an overall past performance assessment, an agency is not compelled to adopt wholesale the adjectival ratings assigned to a vendor in its CPARS reports. See *Al Raha Grp. for Tech. Servs., Inc.; Logistics Mgmt. Int’l, Inc.*, B-411015.2, B-411015.3, Apr. 22, 2015, 2015 CPD ¶ 134 at 18; *Lockheed Martin MS2 Tactical Sys.*, B-400135, B-400135.2, Aug. 8, 2008, 2008 CPD ¶ 157 at 10-11. For example, receiving a rating of “satisfactory” on one or more CPARS categories does not prevent an agency from considering the protester’s past performance in the aggregate to determine whether the CPARS reports identify a negative performance trend or repeated areas of concern. See *Al Raha Grp.*, *supra*. In this regard, it is well established that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision making in the procurement process. *LOUI Consulting Grp., Inc.*, B-413703.9, Aug. 28, 2017, 2017

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<sup>4</sup> Brown Point also argues that it was unreasonable for the agency to fail to contact the protester’s listed references. According to the protester, had the agency contacted the provided references, NPS would not have had to rely on the CPARS reports in the evaluation of Brown Point’s past performance. Protest at 10; Comments at 2, 9. Generally, there is no law or regulation that requires an agency to contact references submitted with a quotation. *EA Eng’g, Sci., & Tech., Inc.*, B-417361.2, June 13, 2019, 2019 CPD ¶ 218 at 12 (“While the solicitation suggested that the agency would contact the vendors’ references, we are not aware of any requirement that the agency do so.”); see *Advanced Data Concepts, Inc.*, B-277801, B-277801.4, June 1, 1998, 98-1 CPD ¶ 145 at 10. (“[T]here is no legal requirement that all past performance references be included in a valid review of past performance.”).

Here, the RFQ simply stated that the agency “may call references,” not that it was required to do so. RFQ at 20. Further, nothing in the RFQ prevented the agency from considering reference responses *and* information obtained from CPARS reports. *Id.* at 20-21 (indicating that the agency may both call references and consider past performance information obtained through various sources). Thus, we cannot conclude that the agency erred either in not contacting references or relying on CPARS reports as part of its reevaluation of Brown Point’s past performance. See *Sayres & Assocs.*, *supra* at 6 (finding that GAO could not “conclude the agency erred by relying on CPARS [reports] rather than interviewing officials in the [prior contracting agency’s] office”).

CPD ¶ 277 at 6. As such, an agency is required to look behind adjectival ratings to form the substance of its evaluation. *Id.* The essence of an agency's evaluation is reflected in the evaluation record itself, not in the adjectival ratings or adjectival characterizations of quotation features as strengths or weaknesses. See *Systems Eng'g Partners, LLC*, B-412329, B-412329.2, Jan. 20, 2016, 2016 CPD ¶ 31 at 7.

Here, the contracting officer used two CPARS reports as part of her evaluation of Brown Point. Within the CPARS reports, there are "evaluation areas" in which contractor performance may be assessed (with an adjectival rating) by the government. In both of the CPARS reports for Brown Point, the firm received assessments on its performance in the following areas: quality, schedule, and management. AR, Tabs 7A-7B, CPARS Contracts. Brown Point correctly points out that, while the adjectival ratings in the CPARS reports ranged from "marginal" to "satisfactory" for those areas, the firm did not receive a rating of "unsatisfactory" in any evaluation area. It is apparent, however, from the commentary in the CPARS reports--and reflected in the agency's evaluation record --that the agency reasonably concluded there were sufficient documented weaknesses in Brown Point's performance on those contracts that, in the aggregate, justified a rating of "unsatisfactory" for past performance, *i.e.*, a conclusion that the agency did not have a reasonable expectation that the vendor would successfully perform the required effort. See AR, Tab 6, Evaluation Definitions at 2.

The contemporaneous record confirms the agency's finding that several weaknesses were apparent on the face of Brown Point's CPARS reports. For example, in regards to the "schedule" evaluation area, the first CPARS report noted:

The completion dates of deliverables have not been met. It took more than 10 months to have required deliverables that were acceptable. . . . Email response to CO [Contracting Officer], CS [Contract Specialist], COR [Contracting Officer's Representative] and facility management questions or concerns in many cases required a second follow up email from GSA to obtain a response. . . . Indoor Firing range comprehensive cleaning was not met and was removed from contract for failure to perform.

AR, Tab 7A, CPARS Contract 1 at 3. Other comments on this report included:

It took 6.5 months of 10 month base contract to get a reliable on-site supervisor to perform requirements of this contract. All interaction was with the corporate office which caused delays in GSA receiving additional information on issues at ports . . . [and] requirements of this contract were not met with, late completion of deliverables, no initial weekend or holiday janitorial cleaning of outer ports, no cleaning schedule, [and] janitors doing Tours at outer ports without proper skill or training.

*Id.* Further, the CPARS assessment observed that the "[o]n-site staff had no leadership, guidance or knew who their supervisor was." *Id.* Although the report indicated that there had been some improvement over the base year of the contract, the

report added that improvements were not made timely enough to support a satisfactory rating.<sup>5</sup> *Id.* at 4. In conclusion, the assessing official for that report stated: “Given what I know today about the contractor’s ability to perform in accordance with this contract . . . I would not recommend [Brown Point] for similar requirements in the future.” *Id.*

The second CPARS report revealed similar concerns, noting that “[t]he COR was also alerted to the QCP [Quality Control Plan] not being followed when . . . no quarterly quality control inspection had been performed per the plan nor did the monthly progress reports reflect ongoing quality control inspections were being accomplished and/or reviewed by the Quality Control Manager per the plan.” AR, Tab 7B, CPARS Contract 2 at 3. The report stated that after an inspection of janitorial periodic requirements, the agency “identified that pest control was not being performed monthly per their plan”; that “janitorial tasks outlined in the QCP checklist were incomplete due to staff being diverted to perform snow removal services,” which the COR had not authorized; and that “cleaning logs reflect that for 5 days janitorial services were not performed.” *Id.* The assessment also noted that Brown Point was not properly documenting whether cleaning services had been provided. *Id.* at 4. The report concludes with the following observation: “By the end of the performance period the contractor was performing satisfactorily overall, but given the performance issues identified under [the “quality” evaluation area] for much of the performance period [Brown Point is] recommended *with hesitation*.” *Id.* at 5 (emphasis added).

The contemporaneous evaluation record further demonstrates that NPS documented its concerns about Brown Point’s past performance. The agency used ratings worksheets to identify vendors’ strengths and weaknesses, and formulated the agency’s final conclusions in its source selection decision. See AR, Tabs 9-10. In the ratings worksheet for Brown Point, the agency identified, as weaknesses, many of the issues discussed in the two CPARS reports. AR, Tab 9, Rating Sheet at 2. In the source selection decision, NPS noted that, for the first CPARS report, the quality control plan was not being followed to ensure that problems were identified and resolved. AR, Tab 10, SSD at 6. For the second contract, the agency noted that Brown Point was not closing out actions in a timely manner, with 63 actions being overdue at one point; the agency also quoted the CPARS assessment that indicated a lack of conformity with contract requirements put the government at risk. *Id.* at 6-7. As a result, NPS stated

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<sup>5</sup> Specifically, the report stated:

There were documented performance issues in meeting minutes which included, but not limited to . . . conducting required cleanings. . . . This has put a burden on the Government team efforts and oversight of performance. Brown Point was unable to effectively manage the contract. Brown Point made minimum effort to correct deficiencies, and the Government did not have evidence of progress until the end of this period of performance. The contractor was unable to satisfactorily perform and adhere to the contract terms and conditions.

AR, Tab 7A, CPARS Contract 1 at 4.

that “[t]he Contracting Officer has significant concerns about whether Brown Point will successfully perform the requirement.” *Id.* at 7.

Here, the agency’s evaluation reflects its documented concerns with the numerous weaknesses identified in Brown Point’s performance on two past janitorial-related contracts. AR, Tab 9, Rating Sheet at 2. Contrary to the protester’s assertion, the agency was not simply bound by the adjectival ratings assigned in the CPARS reports. Rather, the agency could, as it did here, identify a negative performance trend or repeated areas of concern revealed in the reports’ narrative assessments. *Id.*; AR, Tab 10, SSD at 6-7; see *Al Raha Grp., supra*. The CPARS reports and evaluation record sufficiently demonstrate that NPS looked beyond the adjectival ratings to identify concerns about Brown Point’s past performance, which formed the basis of the agency’s overall past performance assessment. Therefore, on this record, we find nothing objectionable with the agency’s assignment of a rating of “unsatisfactory” for past performance.<sup>6</sup>

#### Past Performance Information

Lastly, the protester contends that NPS’s past performance evaluation was unreasonable because the agency failed to consider past performance information about which it was aware, that would have improved Brown Point’s rating. Protest at 8-10. Specifically, Brown Point asserts that the agency was in possession of a response from a past performance reference that had been contacted during the initial, pre-corrective action evaluation. The protester argues that the agency could not properly ignore this past performance information in its reevaluation of Brown Point’s quotation. Comments at 4-7.

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<sup>6</sup> The protester also takes issue with the agency’s conclusion that Brown Point must receive a rating of “unsatisfactory” for past performance. Comments at 16-18. Specifically, the protester points to the following statement:

Our [internal] source selection plan provided that an “Unsatisfactory” rating for past performance is appropriate where an “Offeror’s record of relevant past performance and information regarding past performance *is marginal to unacceptable*. Based on the offeror’s past performance record, the Government does not have a reasonable expectation that the offeror will successfully perform the required effort.” Both CPARs ratings for Brown Point’s contracts had overall Marginal ratings. Based on this, Brown Point must receive an “Unsatisfactory” past performance rating.

AR, Tab 10, SSD at 7. While we share the protester’s view that the statement quoted above describes a mechanical approach to assessing past performance (*i.e.*, a rating of marginal must receive an unsatisfactory rating), the totality of the record here does not support a conclusion that the agency acted improperly. Instead, the evaluation record—including the evaluator ratings worksheet, the source selection decision, and the CPARS narrative assessments—sufficiently supports the agency’s conclusion that it did not have confidence in Brown Point’s ability to successfully perform the requirement.

Although an agency has discretion to choose the scope of its past performance review, we have recognized that in certain limited circumstances, an agency has an obligation (as opposed to the discretion) to consider outside information bearing on the vendor's past performance. See *DKW Commc'ns, Inc.*, B-411182, B-411182.2, June 9, 2015, 2015 CPD ¶ 178 at 8.

During its initial evaluation of Brown Point's quotation, NPS contacted and received a response from one of the protester's references. Nov. 30 Additional Development (AD) Resp. at 1. That response was memorialized in writing by the evaluator and sent to the contracting officer as part of the first evaluation. *Id.* at 2; see AR, Tab 7C, Reference Response. NPS confirms that the contracting officer performed the reevaluation of Brown Point's past performance, and that the contracting officer was aware of the information--and had the reference responses in her possession--at the time of reevaluation. Dec. 8 AD Resp.; COS at 1. The agency concedes, however, that the contracting officer did not consider this information in reevaluating Brown Point's past performance. Dec. 8 AD, Legal Resp. at 1. Thus, because NPS was aware of the reference response and had the response in its possession at the time of the post-corrective action reevaluation, we find the agency's failure to consider the past performance information unreasonable. *DKW Commc'ns, Inc.*, *supra*. However, while we agree with the protester that the agency improperly failed to consider information it had in its possession at the time of reevaluation, as set forth below, we find no basis upon which to sustain the protest because the protester was not competitively prejudiced by the agency's inaction.

### Competitive Prejudice

Competitive prejudice is an essential element of every viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. *CSI Aviation, Inc.*, B-415631 *et al.*, Feb. 7, 2018, 2018 CPD ¶ 68 at 7. Here, even if the agency considered the July 27 past performance reference response--and the new information resulted in a change to Brown Point's past performance rating--there would be no competitive prejudice because, as documented in the SSA's tradeoff decision, NPS would have still issued the task order to HamHed.

Weighing the relative merits of quotations from HamHed and Brown Point, the SSA's tradeoff decision expressly concluded that even if Brown Point had not received a rating of "unsatisfactory" for past performance, "the risk that [Brown Point's performance] presents relative to the only slightly higher priced Hamhed, which received a Satisfactory past performance rating, would not be worth the approximately 5% savings." AR, Tab 10, SSD at 8; see *also id.* at 7-8 (finding that HamHed's CPARS reports indicated that all tasks were performed to a satisfactory level and that the only weaknesses were minor issues that were timely corrected by the vendor). However, because the agency failed to properly consider the past performance reference

information it had at the time of the evaluation, we cannot rule out the possibility that the reevaluation could have resulted in the assessment of a rating higher than “satisfactory.”

Notwithstanding the possibility that information from the one reference could have elevated Brown Point’s past performance rating, the agency’s evaluation of Brown Point’s past performance properly included a review of the two relevant CPARS reports that, as discussed above, reasonably raised concerns with the SSA regarding the risk of unsuccessful performance by the protester. Relevant here, the SSA specifically found the following: “Based on the offeror’s past performance record, the [g]overnment does not have a reasonable expectation that the offeror will successfully perform the required effort.” *Id.* at 7. As such, the record demonstrates that, regardless of a change to Brown Point’s past performance rating, the SSA, in the tradeoff analysis, concluded that, based on weaknesses found and documented in the CPARS reports, Brown Point presented a performance risk, and that the small price savings was not worth the risk of unsuccessful performance. Consequently, the protester suffered no competitive prejudice as a result of the error, because the SSA’s documented tradeoff was between the performance risk presented by Brown Point--which was reasonably assessed based on the CPARS reports--and the slightly higher price quoted by HamHed. See *Asset Prot. & Sec. Servs., LP*, B-417024.6, B-417024.7, Apr. 6, 2020, 2020 CPD ¶ 137 at 3, 5-6 (“[D]espite the agency’s determination that [protester] was ineligible for award, the SSA, nevertheless, included [protester’s] proposal in his detailed tradeoff analysis [that justified the agency’s selection of a higher-rated, higher-priced proposal]. . . . Consequently, [the protester] suffered no competitive prejudice as a result of any agency error.”).

The protest is denied.

Edda Emmanuelli Perez  
General Counsel