



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Sheela Inc.

File: B-423412

Date: July 1, 2025

Ross Fox, Esq., A Y Strauss, LLC, for the protester.
Nina R. Paladino, Esq., Major Ryan P. Payne, Sarah Needham, Esq., Kyle Paladino, Esq., and Erika Whelan Retta, Esq., Department of the Air Force, for the agency.
Michael A. Eible III, Emily R. O'Hara, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of protester's past performance is denied where the evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Sheela Inc., a small business, of Wrightstown, New Jersey protests the awards of six contracts, under request for proposals (RFP) No. FA448424R0017, issued by the Department of the Air Force, for design-build and construction projects at Joint Base McGuire Dix Lakehurst (JBMDL), New Jersey. The protester contends that Sheela should have received an award had the agency reasonably evaluated its past performance.

We deny the protest.

BACKGROUND

On September 5, 2024, the Air Force issued the solicitation, as a small business set-aside, for an indefinite-delivery, indefinite-quantity multiple award construction contract (MACC), pursuant to Federal Acquisition Regulation (FAR) part 15 and subpart 36.3. Agency Report (AR), Tab 3, RFP at 1; Contracting Officer Statement (COS) at 2. The agency sought proposals for the execution of a broad range of design-build and construction projects at JBMDL, with award based on offerors' responses to the solicitation's "seed" project. RFP at 54, 56. The seed project was to provide partial design-build for the conversion of a dorm room into a new common area kitchenette for building 821. Memorandum of Law (MOL) at 1; AR Tab 8, RFP amend. 3 at 61.

The solicitation contemplated award of five--but reserved the right to award more--MACCs for one base year and six 1-year option periods. RFP at 207. Award would be made on a best-value tradeoff basis, considering the following factors: price and past performance. *Id.* at 207. Past performance was significantly more important than price.¹ Offers would be ranked according to the proposed seed project price. *Id.* at 208. The solicitation explained:

If the lowest five (5) priced offerors were not determined to have a “Substantial Confidence” performance confidence assessment, the next five (5) lowest priced offerors would be evaluated, and the process would continue (in order by price) until a target of five (5) offerors were determined to have a “Substantial Confidence” performance assessment, or until all offerors re-evaluated.

Id.

The agency received 25 proposals by the solicitation’s October 21, deadline. COS at 3. Sheela was ranked the sixth lowest-priced offer, with a total evaluated price of \$109,792.62. AR, Tab 20, Source Selection Evaluation Board (SSEB) Report at 30. After evaluating the protester’s past performance references, the agency assigned Sheela a confidence rating of “limited confidence.” AR, Tab 21, Source Selection Decision at 3.

On March 12, 2025, the Air Force awarded MACCs to six offerors.² COS at 8. On the same day, the Air Force notified Sheela that it was an unsuccessful offeror. AR, Tab 22, Unsuccessful Offeror Letter at 2. Sheela requested and received a written debriefing on March 13. AR, Tab 23, Debrief at 1. This protest followed on March 24.

DISCUSSION

Sheela raises multiple challenges to the agency’s evaluation of the firm’s proposal. The protestor contends the Air Force’s evaluation of its past performance was unreasonable because the agency relied solely upon one negative Contractor Performance Assessment Reporting System (CPARS) report and failed to consider the protestor’s rebuttal of the negative CPARS report. Protest at 2-3. Additionally, the protestor

¹ Past performance would be evaluated and assigned one of the following confidence assessment ratings: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. RFP at 209-210.

² The awardees are: FBSG-GForce, Norristown, Pennsylvania; Ranco Construction Inc, Southampton, New Jersey; Benaka Inc., New Brunswick, New Jersey; Eastern Construction, Wrightstown, New Jersey; Kaser Mechanical, LLC, Burlington, New Jersey; and Ritz Construction, Inc., Frederick, Maryland. AR, Tab 22, Unsuccessful Offeror Letter at 2.

asserts that the Air Force's decision to amend the solicitation after submission of proposals was improper. Comments at 4-5. We have considered all the protester's arguments and find no basis to sustain the protest.

Past Performance Evaluation

Sheela challenges the agency's evaluation of the firm's past performance. Protest at 2. According to Sheela, the agency improperly relied on a single negative CPARS report instead of more relevant CPARS reports with positive trends. *Id.* The agency responds that, consistent with the solicitation, the past performance evaluation was reasonable given Sheela's marginal and unsatisfactory evaluations on recent and relevant CPARS reports. MOL at 5.

CPARS

An agency's evaluation of past performance, which includes its consideration of the significance of an offeror's performance history, is a matter of discretion, which we will not disturb unless the assessment is unreasonable or inconsistent with the solicitation criteria. *CIMA JV, et al.*, B-422813 *et al.*, Oct. 28, 2024, 2024 CPD ¶ 261 at 6. When a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria as well as applicable procurement statutes and regulations. *Id.* The evaluation of past performance, by its very nature, is subjective, and we will not substitute our judgment for reasonably based evaluation findings. *Intercontinental Constr. Contracting, Inc.*, B-415040 *et al.*, Nov. 8, 2017, 2018 CPD ¶ 82 at 7. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. *APC Constr., LLC*, B-419771, July 13, 2021, 2021 CPD ¶ 258 at 6.

The solicitation instructed offerors to provide "a list of no more than three (3) of the most relevant contracts performed for Federal agencies and commercial customers within the last five (5) years." RFP at 204. The Air Force would evaluate the quality of an offeror's performance based on the recency and relevance of past performance information. *Id.* at 209. Further, the RFP advised that the agency's evaluation would be based not only on the performance references submitted by the offeror, but "any other sources of information available to the Government to assess present/past performance." *Id.* at 204.

Here, in evaluating the protester's past performance, the agency accessed 28 recent CPARS reports for Sheela and reviewed the following categories for each report: quality, schedule, cost control, management, small business subcontracting, and regulatory compliance. COS at 5-6. The agency noted, across the categories for these reports, Sheela received three "marginal" ratings and one "unsatisfactory" rating. *Id.*; AR, Tab 19, Sheela Past Performance Evaluation at 1. Three of the negative ratings were assessed to Sheela's performance on contract No. 47PC0220D0009. AR, Tab 16, CPARS Reports at 1. The contract was for cyclical upgrades to judge's chambers,

which included tasks such as providing new carpeting, painting, wallcovering, wood refinishing, and floor mastic abatement remediation. *Id.* The protester received a rating of marginal under the schedule category, and the CPARS report indicated Sheela had “on many occasions” failed to provide a workable schedule, did not complete the project on time, and quality deficiencies led the government to issuing three extensions. *Id.* at 3.

Sheela also received a rating of marginal in the regulatory compliance category because of the firm’s “multiple failures to comply with [Homeland Security Presidential Directive 12] requirements, and also failure to comply with [New York City] regulations for asbestos abatement work.” *Id.* at 8-9. Finally, Sheela received a rating of unsatisfactory under the management category because, among other things, there were “numerous communications issues, lack of supervision on site and many coordination issues were present during the performance of this contract due to poor management.” *Id.* at 5-8. Ultimately, these negative assessments led the contracting officer for the report to not recommend Sheela for similar work in the future. *Id.* at 9.

The last negative rating was found in the CPARS report for contract No. FA448420D0002. *Id.* at 13. This contract was valued at \$90,000,000 and was for work Sheela performed as an incumbent on the prior MACC. *Id.* Sheela received a rating of marginal under the management category for lack of supervision on the jobsite and other delays attributable to the contractor. *Id.* at 16. Based on this recent and relevant performance history, the evaluators concluded that Sheela’s past performance record supported “a low expectation that the offeror will successfully perform and manage several task orders at the same time and successfully perform similar magnitudes described in the solicitation.” MOL at 7.

Sheela does not dispute that the agency could consider CPARS ratings for past performance, nor does the protester dispute that the CPARS include the discussed negative assessments. See Comments at 1-2. Instead, the protestor argues that the agency unreasonably gave too much weight to a single negative CPARS report and effectively ignored multiple CPARS reports with positive outcomes. Protest at 2 (“The agency’s reliance on one single CPARS report was unreasonable in light of Sheela’s multiple more recent, favorable CPARS . . .”). Contrary to the protester’s contentions, the evaluation record demonstrates otherwise.

As the record makes clear, Sheela’s negative performance ratings were found in two separate CPARS reports, not one as the protester suggests. More importantly, the record reflects that the agency reviewed not only the 28 CPARS reports pulled for Sheela, but the evaluators also reviewed the three past performance questionnaires (PPQ) submitted with Sheela’s proposal. AR, Tab 19, Sheela Past Performance Evaluation at 1-4. Ultimately, the evaluators concluded:

The past performance provided for [Sheela] referenced *essentially the same scope*, magnitude and complexity to the effort described in the solicitation, resulting in three “Very Relevant” ratings. However, when

considering the ratings of the past performance submitted via PPQs as merely Satisfactory performance with no elaboration in value-add to the Government, and the several CPARS with very concerning performance ratings of Marginal and Unsatisfactory, the quality of [Sheela performance] is low. As a result, a **Limited Confidence** rating is being assigned to [Sheela] as the Government has a low expectation that the offeror will successfully perform and manage several task orders at the same time and successfully perform similar magnitudes described in the solicitation.

Id. at 3.

In other words, the agency considered both the protester's positive and negative CPARS reports in assigning Sheela a rating of "limited confidence." Sheela disagrees with the agency's past performance evaluation based on the protestor's own judgment about the weight that should be assigned to these performance reviews. See Comments at 2. While the protester takes issue with the agency's conclusion, this disagreement with the agency's evaluation judgments, without more, does not demonstrate that those judgments were unreasonable or otherwise provide a basis on which to sustain the protest. *APC Constr., LLC, supra*. As such, we find no basis to object to the agency's evaluation, and this allegation is denied.

CPARS Rebuttal

Further, the protester argues that, under FAR section 42.1503(d), the agency was required--and failed--to consider Sheela's rebuttal to its negative CPARS report when evaluating the firm's past performance. Protest at 2. The agency responds that FAR section 42.1503(d) does not apply to the evaluations of offerors' proposals and that, nonetheless, the Air Force did consider the CPARS rebuttal in the evaluation of Sheela's past performance. MOL at 7-8.

Relevant here, section 42.1503(d) of the FAR provides:

Contractors shall be afforded up to 14 calendar days from the date of notification of availability of the past performance evaluation to submit comments, rebutting statements, or additional information. Agencies shall provide for review at a level above the contracting officer to consider disagreements between the parties regarding the evaluation. The ultimate conclusion on the performance evaluation is a decision of the contracting agency. . . . These evaluations may be used to support future award decisions[.]

FAR 42.1503(d). As the agency explains, the FAR provision does not govern the evaluation of an offeror's past performance but, instead, pertains to the government's "evaluation of a contractor's performance of a [completed] contract and documenting that evaluation of the contractor's performance for use in future source selections." MOL at 7. We agree.

Subpart 42.12 of the FAR “provides policies and establishes responsibilities for recording and maintaining contractor performance information.” FAR 42.1500. While the subpart acknowledges that “[p]ast performance information (including the ratings and supporting narratives) is relevant information for future source selection purposes,” nothing in the provision imposes any requirement with regards to what the agency must do with the information provided in a CPARS report. FAR 42.1501(a); see *generally* FAR 42.15.

Nonetheless, even if the FAR provision afforded the protester some substantive right with regards to the agency’s evaluation of Sheela’s past performance--which it does not--the record reflects that the evaluators were aware of Sheela’s rebuttal to the negative CPARS report during the agency’s evaluation. MOL at 7 (“[T]he Air Force was aware of Sheela’s response to its poor past performance ratings.”); AR, Tab 20, SSEB Report at 28. Where, as here, an agency has considered reasonably available and relevant past performance information, its judgments regarding the relative merits of competing offerors’ past performance are primarily matters within the contracting agency’s discretion. *TPMC-Energy Solutions Envtl. Servs. 2009, LLC*, B-408343.2 *et al.*, Aug. 23, 2013, 2013 ¶ 215 at 8. Given this record, we have no basis to conclude that the agency’s evaluation was unreasonable or otherwise improper.

Remaining Challenges

Finally, the protester raises two new arguments for the first time in its comments to the agency report. First, the protester alleges that the Air Force engaged in “a pattern of unfair treatment” against Sheela. Comments at 4. The protester’s only support for this assertion is that the Air Force did not select it for award in three prior unrelated procurements and that it has “witnesses who will testify” to the allegedly unfair treatment Sheela has suffered at the hands of unidentified individuals at the Air Force. *Id.*

Our Bid Protest Regulations contain strict rules for the timely submission of protests. 4 C.F.R. § 21.2; *K&K Industries, Inc.*, B-420422, B-420422.2, Mar. 7, 2022, 2022 CPD ¶ 62 at 4. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Our regulations make clear that protests other than those challenging the terms of the solicitation must be filed within 10 days of when a protester knew, or should have known, of its basis for protest. 4 C.F.R. § 21.2(a)(2). Where a protester initially files a timely protest, and later supplements it with independent grounds of protest, the later-raised allegations must independently satisfy the timeliness requirements, since our regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. *Savvee Consulting, Inc.*, B-408416.3, Mar. 5, 2014, 2014 CPD ¶ 92 at 5.

Here, the protester knew the operative facts underlying this allegation prior to its initial protest, *i.e.*, its non-selection on three prior procurements. Thus, the information upon

which the protester based its new allegation in its comments was known or should have been known prior to the filing of Sheela's initial protest. As we explained, our regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. *Id.* Because the protester waited until its comments to raise this new argument--which could have been raised in its initial protest--it is untimely and will not be considered.³ 4 C.F.R. § 21.2(a)(2); *Spatial Front, Inc.*, B-417985, B-417985.2, Dec. 18, 2019, 2020 CPD ¶ 8 at 11 n.13.

Second, the protester alleges, also for the first time in its comments, that the agency's "decision to amend the evaluation process after the submission of proposals without affording offerors the opportunity to review their submissions" deprived the firm of "the chance to adjust its submission to meet any new or clarified administrative requirements." Comments at 4-5. We find this allegation also to be untimely.

Here, the solicitation was amended three times prior to the November 12 deadline for submission of proposals. COS at 3; AR, Tab 8, RFP amend. 3 at 1. On December 31, the agency issued amendment 4, notifying all offerors that submitted proposals by the November 12 due date. AR, Tab 18, Amendment 4 at 1; COS at 3. Amendment 4 did not extend the due date for the submission of proposals or otherwise allow for submission of proposal revisions.

Our regulations require that a protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1). Where alleged improprieties do not exist in the initial solicitation, but subsequently occur (e.g., via an amendment to the solicitation), they generally must be protested not later than the next closing time for receipt of proposals. *Id.*; *ODL Servs.*, B-421537 *et al.*, May 25, 2023, 2023 CPD ¶ 130 at 6. If no further submissions are anticipated, any alleged solicitation improprieties must be protested within 10 days of when the alleged impropriety was known or should have been known. 4 C.F.R. § 21.2(a)(1). Because the time set for receipt of proposals had passed, Sheela was required to file any protest challenging the amended terms of the solicitation not later than 10 calendar days after the protester knew, or should have known, of the basis of the protest--which would have been January 10, 2025. 4 C.F.R. § 21.2(a)(1); *ODL*

³ Because we find the argument to be untimely, we need not address whether Sheela's bare assertion states a factually and legally sufficient basis of protest, as required by our regulations. See 4 C.F.R. § 21.1(c)(4) and (f).

Servs., B-421537 *et al.*, *supra*. Consequently, this allegation is similarly dismissed as untimely.

The protest is denied.

Edda Emmanuelli Perez
General Counsel