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# Decision

**Matter of:** Jude & L Construction, LLC

**File:** B-423425

**Date:** July 3, 2025

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Department of the Air Force, for the agency.  
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## DIGEST

Protest challenging the agency's evaluation of the protester's past performance as only warranting a rating of "neutral confidence" and the resulting decision not to award the protester a contract is denied. Although the agency unreasonably interpreted the solicitation to prohibit the evaluation of past performance references submitted for the protester's corporate affiliate, the neutral confidence rating was nevertheless reasonable where the protester failed to ensure that past performance questionnaires for its affiliate's references were timely submitted to the agency.

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## DECISION

Jude & L Construction, LLC (JLC) of Katy, Texas, protests its non-selection for award of a multiple award indefinite-delivery, indefinite-quantity (IDIQ) contract, under request for proposals (RFP) No. FA491125R0002, issued by the Department of the Air Force, for construction services at Prince Sultan Air Base, Kingdom of Saudi Arabia.<sup>1</sup> JLC challenges the agency's past performance evaluation and resulting award decision.

We deny the protest.

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<sup>1</sup> The agency ultimately awarded six contracts to: Astrea Technical Services LLC, of Dubai, United Arab Emirates; Saudi Naval Support Co., of Riyadh, Saudi Arabia; AQ Global for General Trading & Contracting Co. WLL, of Safat Kuwait; Prime Veritas General Trading & Contracting Co., of Doha, Qatar; Prime One Group General Trading & Contracting Co., of Al Farwaniya, Kuwait; and Tawreek Dimensions Enterprises, of Riyadh, Saudi Arabia. Agency Report (AR), Tab 19, Unsuccessful Offeror Notice at 1.

## BACKGROUND

The RFP, which was issued on December 10, 2024, and subsequently amended four times, sought proposals for the award of multiple IDIQ contracts to fulfill a recurring need for minor construction and maintenance projects at Prince Sultan Air Base, Kingdom of Saudi Arabia. AR, Tab 5, RFP at 1, 5. The RFP contemplated the award of contracts with 5-year ordering periods and an aggregate maximum value of \$100,000,000 across all contracts.<sup>2</sup> *Id.*

Awards of the IDIQ contracts were to be made on a best-value tradeoff basis considering two non-price factors: technical and past performance.<sup>3</sup> AR, Tab 10, RFP, amend. 4, Section M at 1. The RFP contemplated a two-step evaluation process. First, the technical factor, which was to be evaluated on an acceptable/unacceptable basis, included three subfactors: (i) design package; (ii) progress schedule; and (iii) material/labor breakdown. *Id.* at 2. Only those proposals evaluated as being technically acceptable would advance to the past performance evaluation phase. *Id.* at 1.

In phase two, offerors' past performance would be evaluated for recency, relevancy, and quality, and assessed one of the following overall confidence assessments: substantial; satisfactory; neutral; limited; or no confidence. *Id.* at 3, 5. Relevant here, a substantial confidence rating would be warranted where "[b]ased on the offeror's recent/relevant performance record, the Government has a high expectation that the offeror will successfully perform the required effort," and a neutral confidence rating would be warranted where "[n]o recent/relevant performance record is available or the offeror's performance record [and] is so sparse that no meaningful confidence assessment rating can be reasonably assigned." *Id.* The RFP further provided that a proposal assigned a neutral confidence rating "may not be evaluated favorably or unfavorably on the factor of past performance." *Id.*

Relevant to the issues presented in the protest, the RFP's section L proposal instructions provided that "the offeror shall submit Past Performance information for itself as a prime contractor only," and that "experience performing as a subcontractor will not be considered." AR, Tab 8, RFP, amend. 3, Section L at 6. The RFP's section M evaluation criteria also explained that the agency would evaluate the past performance of predecessor companies, affiliates, other divisions, or corporate management where the offeror demonstrated that such third party would be meaningfully involved in the resulting contract. Specifically, the provision stated:

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<sup>2</sup> The agency's internal acquisition plan anticipated five to seven IDIQ contract awards. AR, Tab 4, Acquisition Plan at 5.

<sup>3</sup> Price was not to be evaluated for the award of the IDIQ contracts but was to be evaluated for the award of the "seed project" task order. AR, Tab 10, RFP, amend. 4, Section M at 5.

The Government will take into account past performance information regarding predecessor companies (if used), affiliates, other divisions, or corporate management if such was provided for evaluation and if the offeror's past performance volume (Volume III) demonstrates the company, affiliate, or division will provide the offeror with resources for the instant proposed effort, such as workforce, management, facilities, or other capabilities demonstrating direct and meaningful involvement in the performance of the proposed instant effort. Offerors shall clearly indicate the connection or linkage with the predecessor companies.

AR, Tab 10, RFP, amend. 4, Section M at 3.

Also relevant, section L IID(5)(a) of the RFP's instructions required offerors to exert their best effort to ensure that two points of contact (POC) for each past performance reference submitted a completed past performance questionnaire (PPQ) to the agency by no later than 5 p.m. on January 22, 2025. AR, Tab 8, RFP, amend. 3, Section L, at 7. This provision specifically established that "[t]he responsibility to send out and track the completion of the Past Performance Questionnaires rests solely with the offeror (i.e., **it shall not be delegated to any other entity**).” *Id.*

The RFP provided that the agency intended to award contracts to all responsible offerors that were evaluated as technically acceptable with a substantial confidence past performance assessment. AR, Tab 10, RFP, amend. 4, Section M at 1. The RFP further provided that the agency would make a comparative analysis of technically acceptable proposals by ranking proposals from highest to lowest in the order of their past performance confidence rating, and then integrate the source selection team's evaluations. *Id.*

Prior to the receipt of proposals, JLC and the contracting officer exchanged emails discussing the various requirements described in sections L and M pertaining to past performance. In one exchange, the contracting officer reiterated to JLC that the agency would not consider information about an offeror's past performance as a subcontractor. Req. for Dismissal, attach. 9, Email from Contracting Officer to JLC at 1. The contracting officer then directed JLC to review section M IID(1)(b)'s provision regarding the acceptability of past performance of affiliates. *Id.*

In a separate email exchange related to the submission of PPQs, the contracting officer stated that he would contact the protester's POCs for its past performance if the agency did not receive submitted PPQs for the references by the January 22, 2025, deadline. Specifically, the contracting officer informed JLC that:

[W]e will reach-out ourselves and request the information direct[ly] to fill in the blanks in the event there [are] no PPQs submitted. We want to get as many qualified contractors on this requirement as possible and will work diligently to get the information we need to make a sufficient evaluation of performance.

Comments at 12.

The agency received 18 proposals in response to the RFP, including from JLC. See AR, Tab 19, Notice of Unsuccessful Offeror at 1. Relevant here, JLC submitted three past performance references for consideration. Two of the references were performed by a corporate affiliate as a prime contractor, and one project was performed by a joint venture comprised by JLC and its corporate affiliate. AR, Tab 13, JLC Past Performance Proposal at 2. The proposal further explained that the corporate affiliate would be meaningfully involved in performance of the resulting contract by providing design management, finance, procurement and logistics of long lead items, and supporting quality control management. *Id.*

The agency ultimately declined to consider any of JLC's three references. It did not consider the reference performed by the joint venture because the agency found that the contract was performed outside of the RFP's recency period. AR, Tab 19, Notice of Unsuccessful Offeror at 2. The agency rejected the other two references because the contracts were performed by an entity other than JLC, and JLC "failed to sufficiently explain how [it] contributed to the prime contractor's performance above and beyond subcontracting effort." *Id.*

Furthermore, the agency concluded that it did not have sufficient quality assessment information about JLC's performance of the contracts because the agency did not receive completed PPQs for any of JLC's references by the RFP's prescribed due date. Furthermore, the agency represents that it did not reach out to the POCs for the two references performed by JLC's affiliate because they were not performed by the protester. See Agency Resp. to Req. for Supp. Briefing, attach. 1, Decl. of the Contracting Officer at 1-2. As a result, the agency assigned the protester's past performance a rating of neutral confidence. AR, Tab 19, Notice of Unsuccessful Offeror at 2.

Consistent with the agency's evaluation criteria and basis of award, the agency subsequently selected for award the six proposals that were evaluated as technically acceptable and had a rating of substantial confidence for past performance. The source selection official further determined that this number of awardees would "bring the best competition outcomes for future task orders" and "the awarded vendor pool is still a desirable outcome to meet future task order requirements." AR, Tab 16, Source Selection Decision at 3. After the agency provided JLC with a debriefing, this protest followed.

## DISCUSSION

JLC presents two principal protest issues, both related to how the agency evaluated the protester's past performance.<sup>4</sup> First, JLC contends that the agency erred when it failed to consider the past performance of its corporate affiliate that would have meaningful involvement in the performance of the resulting contract. See, e.g., Protest at 1. In particular, the protester argues that the agency improperly categorized the past performance of its affiliate as instances of JLC's subcontracting experience, which the agency would not consider under section L IID(1)(a) of the RFP, rather than as past performance of an affiliate company, which the agency was to consider under section M IID(1)(b). *Id.* at 2.

The agency responds that JLC misinterpreted the meaning of these two solicitation provisions. Memorandum of Law (MOL) at 8. The agency argues while the RFP allowed an offeror to provide affiliate past performance, the offeror had to establish "how it contributed to [the affiliate's] prime contractor performance above and beyond a subcontracting effort." *Id.* at 6. The agency alternatively argues that the sections are in "obvious conflict," and create a patent ambiguity that is untimely raised after award. *Id.* at 8. In this regard, the agency argues that section L IID(1)(a) excludes all past performance from agency consideration except for the offeror's own past performance as a prime contractor. *Id.* The agency further contends that to the extent section M IID(1)(b) provided that the agency would consider the past performance of entities besides the offeror as a prime contractor, such a reading is in clear contradiction with

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<sup>4</sup> The protester raises a number of collateral arguments. While our decision does not specifically address each argument, we have reviewed all of the arguments and find that none provides a basis on which to sustain the protest. For example, JLC argues that it was improperly excluded from award based solely on its neutral past performance confidence rating in a manner contrary to the RFP's requirement that a neutral confidence rating would not be unfavorably evaluated by the agency. See, e.g., Comments at 13. We disagree.

Here, the RFP unambiguously provided that the agency intended to make award to all proposals evaluated as technically acceptable with substantial past performance confidence. AR, Tab 10, RFP, amend. 4 at 1. The record reflects that consistent with the RFP's unambiguous terms, the source selection official reasonably made award to the six technically acceptable proposals with substantial past performance confidence ratings. Further, the source selection official ultimately determined that six awards were sufficient to satisfy the government's requirements and to provide adequate competition at the task order level. AR, Tab 16, Source Selection Decision at 3. On this record, we disagree with the protester's argument that the agency was required to consider proposals beyond those that were evaluated as technically acceptable with substantial past performance confidence. See *Deloitte Consulting, LLP; Softrams, LLC*, B-421801.2 *et al.*, Jan. 30, 2024, 2024 CPD ¶ 41 at 4 n.2 (denying protest ground that the agency should have made additional awards where the record reasonably supported the agency's decision as to the number of contracts awarded).

the section L provision. *Id.* In either case, the agency contends that it reasonably did not consider the corporate affiliate's past performance references.

Second, JLC argues that to the extent we agree with its interpretation of the solicitation's provisions discussed above and the agency should have considered its affiliate's past performance references, the agency unreasonably failed to contact the POCs provided in JLC's proposal, despite the contracting officer representing that he would do so in a pre-award email exchange with JLC. Protest at 2-3. JLC ultimately concludes that, had the agency included its affiliate's past performance and contacted the listed POCs when evaluating JLC's past performance, then JLC would have received a past performance rating of substantial confidence and been selected for a contract award. *Id.* at 3.

For the reasons that follow, we agree with the protester's interpretation of the solicitation--it did not limit the agency to considering past performance information about contracts performed by JLC itself such that the agency could disregard the information about JLC's affiliate and we reject the agency's contention that the solicitation was patently ambiguous on this point. Nevertheless, because the protester failed to ensure that the agency timely received PPQs for the references--as it was required to do by the unambiguous terms of the RFP--the agency reasonably determined that the absence of quality information would support JLC's rating of neutral confidence and, therefore, the protester cannot establish any competitive prejudice.

Regarding the question of whether the solicitation precluded the agency from considering the past performance references of JLC's affiliate, where a dispute exists as to a solicitation's actual requirements, we begin by examining the plain language of solicitation. *Harper Constr. Co., Inc.*, B-415042, B-415042.2, Nov. 7, 2017, 2018 CPD ¶ 47 at 4. We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. *Desbuild Inc.*, B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 5. An interpretation is unreasonable if it fails to give meaning to all of a solicitation's provisions, renders any part of the solicitation absurd, surplus, or creates conflicts. *Innovative Mgmt. Concepts, Inc.*, B-419834.2, B-419834.3, Sept. 20, 2021, 2021 CPD ¶ 319 at 15.

If the solicitation language is unambiguous, our inquiry ceases. *Id.* An ambiguity, however, exists where two or more reasonable interpretations of the solicitation are possible. *Colt Def., LLC*, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. If the ambiguity is an obvious, gross, or glaring error in the solicitation then it is a patent ambiguity. *Id.* A patent ambiguity must be protested prior to the closing time for receipt of proposals to be considered timely. *Office Design Grp.*, B-415411, Jan. 3, 2018, 2018 CPD ¶ 43 at 4. Here, we conclude that the disputed provisions of the solicitation are unambiguous, and the agency's interpretation is not reasonable.

As stated above, the RFP's instructions provided that "[t]he offeror shall submit Past Performance information for itself as a prime contractor only," and that "experience

performing as a subcontractor will not be considered.” AR, Tab 8, RFP, amend. 3, Section L at 6. The location of the word “only” in the provision is significant in interpreting its plain meaning. Here, the “only” relates to the requirement that the cited past performance must be as a prime contractor. JLC additionally argues that this interpretation is further supported by the next sentence of the instruction, which emphasizes that the agency will not consider subcontractor experience. In sum, we find the interpretation advanced by the protester is reasonable and comports with the plain meaning of the instruction as written.

In contrast, the agency advances an unreasonable interpretation which effectively seeks to move the “only” to relate to the offeror itself. In this regard, the agency’s interpretation that the instruction limits past performance references only to the offeror itself effectively would read the instruction as if it were written as the offeror shall submit past performance information *only for itself* as a prime contractor. We do not believe that the agency’s interpretation is consistent with the plain text or import of the instruction.

We next consider the evaluation criteria’s provision that the agency would consider the past performance of related entities. In this regard, the RFP unambiguously states that “[t]he [agency] will take into account past performance information regarding predecessor companies (if used), affiliates, other divisions, or corporate management if such was provided for evaluation.” AR, Tab 10, RFP, amend. 4, Section M at 3. The provision further provides that in order to rely on such references, the protester must demonstrate “the company, affiliate, or division will provide the offeror with resources for the instant proposed effort, such as workforce, management, facilities, or other capabilities.” *Id.* The protester contends that the instruction and evaluation criterion can be read in a manner that harmonizes and gives effect to both provisions. Specifically, JLC contends that the instructions require that each past performance reference have been performed as a prime contractor, and the evaluation criterion makes clear that such references could have been performed either by the offeror or a related entity that will have meaningful involvement in the performance of the resulting contract. We agree with the protester that this interpretation is reasonable and provides effect to both provisions.

In contrast, we disagree with the agency’s alternative interpretation of the two provisions, which it argues imposes a requirement on offerors who include past performance of related entities to have performed itself on those previous contracts “above and beyond a subcontracting effort.” MOL at 6. In this regard, nothing in the evaluation criteria require the offeror to demonstrate its performance on the related entity’s past performance references. Rather, the relevant evaluation criterion required that the offeror demonstrate the related entity’s anticipated meaningful involvement on the resulting contract. Nothing in the RFP instructed offerors to describe their own performance on the past performance references submitted on behalf of related entities, let alone establish that such performance was “above and beyond a subcontracting effort.” Instead, the plain meaning of this provision instructs the opposite: that offerors must describe how the related entity will perform on the present proposed effort.

In sum, we find that the solicitation's past performance requirements were not ambiguous and only the protester's proffered interpretation is reasonable. Therefore, we agree that the agency erred in failing to consider the past performance references submitted on behalf of JLC's affiliate that was proposed to be meaningfully involved in performance of the resulting contract.

This conclusion, however, does not end our inquiry. Specifically, in addition to finding the rejecting the references because they were submitted on behalf of an affiliate, the agency also noted that it never received timely PPQs for the references, and, thus, the lack of quality assessment information would nevertheless support JLC's neutral confidence past performance assessment.<sup>5</sup> To the extent the agency did not receive PPQs, nothing in the solicitation required the agency to affirmatively contact the POCs for the protester's past performance references.

In this regard, Our Office has generally declined to find that an agency has an affirmative obligation to seek out past performance information where the solicitation places the burden on offerors to ensure the timely submission of PPQs. See, e.g., *MicroTechnologies, LLC*, B-420196.3, B-420196.4, Jan. 6, 2023, 2023 CPD ¶ 17 at 9. Here, the RFP unambiguously charged offerors with ensuring that the agency timely received completed PPQs from at least POCs per reference. Specifically, the RFP stated that each offeror was to "exert your best effort to ensure that at least two (2) POCs per relevant contract submitted a completed [PPQ] **directly to the Government [no later than] 5:00 p.m. on 22 January 2025 for receipt of proposals**," and that "[t]he responsibility to send out and track the completion of the [PPQs] rests solely with the offeror (i.e., **it shall not be delegated to any other entity**)." AR, Tab 8, RFP, amend. 3, Section L at 7.

Notwithstanding the plain terms of the solicitation, the protester nevertheless argues that the contracting officer made representations that he would contact past performance reference POCs in the event PPQs were not timely received. Specifically, the protester points to a pre-award email where the contracting officer represented that the agency would:

[R]each-out ourselves and request the information direct[ly] to fill in the blanks in the event there [are] no PPQs submitted. We want to get as many qualified contractors on this requirement as possible and will work diligently to get the information we need to make a sufficient evaluation of performance.

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<sup>5</sup> We note that the agency was not obligated to consider a PPQ that was received almost a month after the submission deadline where the RFP clearly established that it was the protester's responsibility to ensure that the completed PPQs were received by a prescribed deadline. See *ZemiTek, LLC; Integrated Fed. Solutions, Inc.*, B-415313, B-415313.2, Dec. 20, 2017, 2017 CPD ¶ 181 at 10-11.



Comments at 12.

For the reasons that follow, we find that the contracting officer's email, which was not incorporated into the solicitation as an amendment, created a patent ambiguity that needed to be protested prior to the due date for the submission of proposals.

Under our Bid Protest Regulations, alleged improprieties in a solicitation apparent prior to bid opening or the time set for receipt of proposals must be filed prior to bid opening or the time set for receipt of proposals. 4 C.F.R. § 21.2(a)(1). A written communication from a contracting officer that does not amend the solicitation but is directly contrary to the terms of the solicitation creates a patent ambiguity that must be protested in accordance with the timeliness requirements of 4 C.F.R. § 21.2(a)(1). See, e.g., *Harrington, Moran, Barksdale, Inc.*, B-401934.2, B-401934.3, Sep. 10, 2010, 2010 CPD ¶ 231 at 5 (dismissing as untimely a post-award argument that an email from the contracting officer created an ambiguity as to the solicitation's experience requirements); *Input Solutions, Inc.*, B-294123, Aug. 31, 2004, 2004 CPD ¶ 185 at 3-4 (same, where the protester alleged that the agency's written discussions letter superseded the solicitation's proposal preparation instructions).

To the extent the protester contends that the contracting officer's email exchange relieved the protester of its non-delegable obligation to ensure the timely submission of completed PPQs to the agency, such an interpretation would present a patent ambiguity that needed to be protested prior to the closing date for proposals. On this record, we find no basis to conclude that the agency was obligated to contact the protester's PPQ references, and, therefore, find no basis to sustain the protest where the neutral past performance assessment would still be justified based on the lack of any quality related information available for the past performance references of JLC's affiliate.

In conclusion, although we find that the agency improperly evaluated JLC's past performance when it rejected the past performance of JLC's affiliate, we do not find that the agency's error resulted in competitive prejudice. Competitive prejudice is an essential element of every protest, and requires that a protester prove that, but for the agency's actions, it would have received the award. *Alexandra Constr., Inc.*, B-417212, Apr. 2, 2019, 2019 CPD ¶ 132 at 6. Under the facts here, the protester did not suffer any competitive prejudice because, even if the agency had properly considered the past performance of JLC's affiliate, the agency still would have lacked the PPQs necessary to assess the quality of JLC's past performance. As a result, we do not find that JLC would have received a substantial past performance rating in the absence of the agency's error and, therefore, would not have been in line for award.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel