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Washington, DC 20548

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## Decision

**Matter of:** Huntington Ingalls Industries, Inc.; VT Halter Marine, Inc.

**File:** B-409541; B-409541.2; B-409541.3; B-409541.4; B-409541.5

**Date:** June 2, 2014

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### DIGEST

1. Protests challenging an agency's past performance evaluation are denied where the agency reasonably considered past performance information received in response to questionnaires, the past performance information retrieval system, and follow-up conversations regarding recent and relevant contracts consistent with the solicitation's evaluation criteria.

2. Protest that an agency disparately evaluated offerors' under technical and past performance criteria is denied where the agency reasonably recognized that the offerors presented differing technical solutions and past performance records.

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### DECISION

Huntington Ingalls Industries, Inc., of Pascagoula, Mississippi, and VT Halter Marine, Inc., also of Pascagoula, protest the award of contracts to Bath Iron Works

Corporation,<sup>1</sup> of Bath, Maine; Eastern Shipbuilding Group, Inc., of Panama City, Florida; and Bollinger Shipyards Lockport, LLC, of Lockport, Louisiana, under request for proposals (RFP) No. HSCG23-12-R-OPC0001, issued by the United States Coast Guard for design of the Offshore Patrol Cutter. Huntington Ingalls and VT Halter Marine challenge the agency's evaluation of proposals and selection decision.

We deny the protests.

## BACKGROUND

The Coast Guard's Offshore Patrol Cutter is intended to replace the agency's fleet of 210-foot and 270-foot medium endurance cutters. The Offshore Patrol Cutter will be designed to operate beyond 12 nautical miles offshore and carry out various missions, such as security of ports, waterways, and coastal areas; search and rescue; drug interdiction; and alien migrant interdiction. RFP amend. 11, § C.1(d), (f); Contracting Officer's (CO) Statement at 1. The RFP stated that the Coast Guard would employ a two-phased, down-select strategy to procure the cutters. Phase I, which is the subject of this protest, provides for the award of up to three fixed-price contracts for preliminary and contract design.<sup>2</sup> In Phase II, the Phase I awardees will compete for a single contract for detailed design and ship construction. RFP amend. 11, §§ C.1(g), C.3.

Offerors were informed that the Phase I contracts would be awarded on a best-value basis, considering, in descending order of importance: concept design,<sup>3</sup> design approach, organizational management, production capability, past performance, small business/Department of Homeland Security mentor-protégé participation, and price.<sup>4</sup> All non-price factors, when combined, were significantly more important than price. RFP amend. 11, § M.I.3(b), (c). Offerors also were informed that any proposal offering a price for Phase I exceeding \$22 million would be rejected. *Id.* § M.I.8(b).

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<sup>1</sup> Bath Iron Works is a subsidiary of General Dynamics.

<sup>2</sup> Contract design expands on the preliminary design with more detailed specifications and a limited number of drawings. U.S. Coast Guard Procurement of Replacement Icebreaker, GAO/CED-79-16, Dec. 1, 1978, at 2.

<sup>3</sup> The concept design factor consisted of two, equally-weighted, subfactors: soundness of design and mission effectiveness. Agency Report (AR), Tab 33, Source Selection Decision, at 1.

<sup>4</sup> The RFP provided that the small business/Department of Homeland Security mentor-protégé participation and price factors would be evaluated but not rated. RFP amend. 11, § M.I.3(d).

With respect to the concept design factor, offerors were informed that the agency would evaluate the soundness of the offerors' concept designs and the extent to which it provided the basis for the development of preliminary and contract designs that satisfied Offshore Patrol Cutter requirements. Id. § M.I.4. In this regard, the RFP identified the following "hierarchy" of requirements: speed, helicopter hangar storage (aircraft type), operating range, accommodations, patrol endurance, small boat launch/storage capability (number), and 4-foot by 6-foot pallet storage capability (number). Id. § M.I.2(d). The RFP provided, as an attachment, a detailed system specification that among other things provided threshold requirements and objectives for these hierarchical requirements. For example, the RFP stated a threshold requirement for a sustained speed of 22 knots for the Offshore Patrol Cutter and an objective of 25 knots in full load condition. RFP amend. 11, attach. J-1, § 070.3.6.1. The RFP also stated as a threshold requirement the ability to launch two boats, and an objective of launching an additional boat. Id. § 070.3.12.1.

With regard to past performance, the RFP required offerors to submit past performance information for up to 5 contracts, similar in size, scope, and complexity to the Offshore Patrol Cutter work, and in which the offerors had "participated during the past 5 years." Id. § L.I.17(a)(2). Offerors were also required to submit descriptive narratives that summarized the relevancy of the contracts to the Offshore Patrol Cutter solicitation and described the performance of the offeror and its design agents. The RFP informed offerors that the determination of relevancy would be based on characteristics of the past performance examples, including at a minimum, the following ship characteristics: (a) dimensions (length, beam, design draft, and displacement); (b) performance (speed, horse power, range, and endurance); (c) propulsion plant; (d) electrical plant; (e) hull/structure materials; (f) boat launch and recovery, and (g) command, control, communications, computers, intelligence, surveillance, and reconnaissance (C4ISR) /electronic systems. Id. § L.I.17(a)(3).

Offerors were advised that the agency might contact references and other past customers to verify statements and representations made in proposals, and that this information might be considered more relevant than information submitted by the offerors. Offerors also were informed that contracts with completed deliveries may be deemed more relevant than contracts without completed deliveries. Id. § M.I.6. Offerors were encouraged to provide information on problems encountered on the past performance contracts and the corrective actions taken to resolve the problems. Id. § L.I.17(a)(3).

The RFP stated that the agency's evaluation of offerors' relevant past performance would be based on the following elements (in descending order of importance):

- (1) Overall Customer Satisfaction – Would the customer select this firm again?
- (2) Cost Control – Delivered within budget, provided current and accurate/complete billings, and relationship of negotiated costs to actuals.
- (3) Quality of Product – Compliance with contract requirements, accuracy of reports, technical excellence, management responsiveness, appropriateness of personnel, and stood behind warranty.
- (4) Timeliness of Performance – Met interim milestones, reliable, completed on time, including wrap-up and contract administration.

Id. § M.I.6.

#### Evaluation of Proposals

The Coast Guard received proposals from eight offerors, which were evaluated by separate past performance, technical proposal, and management proposal evaluation teams.<sup>5</sup> The evaluation teams assigned adjectival ratings under the evaluation factors for each proposal, supported by a narrative that identified respective strengths, weaknesses, and deficiencies under each of the evaluation factors.<sup>6</sup> At the conclusion of this review, the Coast Guard established a competitive range that included the proposals of Bollinger, Eastern, Huntington

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<sup>5</sup> The Coast Guard did not establish a price evaluation team for Phase I of the procurement. Rather, the contracting officer reviewed the offerors' prices and determined, based upon the competition and upon comparing the prices received to the independent government cost estimate, that all offerors' prices were fair and reasonable. CO's Statement at 16.

<sup>6</sup> As relevant here, past performance was evaluated as superior, satisfactory, marginal, unsatisfactory, or neutral. A superior rating reflected a proposal where one or more past performance examples exceeded requirements without any marginal or unsatisfactory reports. A satisfactory rating reflected past performance that satisfied requirements without any marginal or unsatisfactory reports. A marginal rating reflected one or more examples of past performance that failed to meet requirements due to the contractors' fault. AR, Tab 5, Proposal Evaluation Procedures, at 52-53.

Ingalls, Bath Iron Works, and VT Halter Marine. The proposals of the three other offerors were excluded from the competitive range. AR, Tab 17, Competitive Range Determination, at 9.

Discussions were conducted to advise the offerors of the weaknesses and deficiencies in their proposals. As relevant here, both Eastern and Bath Iron Works received strengths under the concept design factor. Specifically under the soundness of design subfactor, the technical evaluation team found that both firms proposed a mature and feasible machinery plant control and monitoring system based on previous systems for naval vessels of similar complexity. This was determined to provide a benefit to the government because the mature design increased confidence that the systems will meet requirements and have lower technical risk. See AR, Tab 14, Eastern Initial Technical Evaluation, encl. 2, at 8; Bath Iron Works Initial Technical Evaluation, encl. 2, at 5. In contrast, the technical evaluation team assigned VT Halter Marine a significant weakness under the design approach factor for the firm's approach to machinery plant control and monitoring systems, noting that VT Halter Marine demonstrated an inadequate understanding of the intended role of the system relative to the C4ISR system. Id., VT Halter Marine Initial Technical Evaluation, encl. 2, at 29.

The Coast Guard also informed offerors of weaknesses in their respective past performance. In this regard, Huntington Ingalls, VT Halter Marine, and Bath Iron Works were informed of marginal ratings in past performance and were requested to document any corrective action taken with regard to negative past performance.

Offerors submitted draft final proposals and received feedback from the agency prior to submitting final proposal revisions (FPR). Both Eastern and Bath Iron Works made changes to their ship design. As relevant here, in its draft final proposal, Eastern increased its ship's length from [Deleted] feet to [Deleted] feet, and increased its ship's weight from [Deleted] long tons (LT) to [Deleted] LT. See e.g., AR, Tab 21, Eastern's Draft Final Proposal, Technical Vol., at 6, 183. Bath Iron Works increased the weight of its ship from [Deleted] LT to [Deleted] LT. See AR, Tab 10, Bath Iron Works Initial Proposal, Technical Vol., at 19; Tab 23, Bath Iron Works Draft Final Proposal, Technical Vol., at 19. The Coast Guard analyzed the impact of these changes and concluded that they did not affect the offerors' ability to meet the speed requirement.<sup>7</sup> CO's 2<sup>nd</sup> Supp. Statement at 2.

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<sup>7</sup> Eastern's FPR further increased the weight to [Deleted] LT and provided analysis to demonstrate that its design would meet the speed requirements. See AR, Tab 26, Eastern's FPR, Technical Vol., at 177-186.

The Coast Guard evaluated FPRs as follows:

	<b>Bollinger</b>	<b>Eastern</b>	<b>Bath Iron Works</b>	<b>Huntington Ingalls</b>	<b>VT Halter Marine</b>
<b>Concept Design</b>					
Soundness of Design	Superior	Superior	Superior	Superior	Superior
Mission Effectiveness	Superior	Superior	Superior	Superior	Superior
<b>Design Approach</b>	Superior	Superior	Superior	Superior	Superior
<b>Organizational Management</b>	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory
<b>Production Capability</b>	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory
<b>Past Performance</b>	Satisfactory	Superior	Satisfactory	Marginal	Marginal
<b>Price</b>	\$21,950,000	\$21,975,000	\$21,400,000	\$22,000,000	\$22,000,000

AR, Tab 32, Source Selection Authority (SSA) Briefing, at 16.

The technical evaluation team (TET) determined that the offerors had corrected all identified weaknesses or deficiencies, and assigned all offerors superior ratings under the two concept design subfactors, and under the design approach factor. As relevant here, the technical evaluation team found that VT Halter Marine’s FPR explained the functionality of its proposed system such that the firm no longer had a significant weakness under the design approach factor.<sup>8</sup> See AR, Tab 30, VT Halter Marine Final Technical Evaluation, at 7.

With respect to past performance, the agency’s past performance evaluation team (PPET) reviewed the past performance questionnaires for contracts identified by the offerors for recency and relevance. The PPET also identified additional recent and relevant contracts through the past performance information retrieval system (PPIRS). Where the PPET found negative or questionable past performance information, the PPET had telephone conversations with references. We set forth below a summary of the past performance assessments of each of the competitive range offerors.

<sup>8</sup> Specifically, VT Halter Marine explained that its machinery plant control and monitoring system architecture consists of [Deleted]. See AR, Tab 29, VT Halter Marine’s FPR, Technical Volume, at 237d.

With respect to Bollinger, the PPET determined that the offeror had satisfactory past performance based upon three past performance questionnaires.<sup>9</sup> One of the questionnaires addressed the performance of Bollinger's design agent, Gibbs & Cox, on the Littoral Combat Ship, which the PPET found to be recent and relevant.<sup>10</sup> The prime contractor, who completed the questionnaire, rated Gibbs & Cox's performance as marginal with respect to its "ability to manage an acceptable ratio of negotiated costs to actual costs."<sup>11</sup> AR, Tab 12, Bollinger Past Performance Questionnaire (Littoral Combat Ship), at 4. The PPET contacted the prime contractor, who stated that the design agent did not meet some contractual requirements and that costs surged as additional government requirements were added to the contract. The PPET also contacted the Navy personnel responsible for the program; those individuals stated that the contractual issues were not entirely the fault of the design agent because the construction of the ship was simultaneous with its design, and a requirement to adhere to Naval Vessel Rules was added during contract administration.<sup>12</sup> The PPET concluded, based upon the Navy's opinion, that the design agent's marginal rating was mitigated by circumstances that were not the agent's fault. AR, Tab 14, Bollinger Initial Past Performance Evaluation, at 5-6; Tab 30, Bollinger Final Past Performance Evaluation, at 1-2.

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<sup>9</sup> The PPET also received a past performance questionnaire for Bollinger for the Holland Class Offshore Patrol Vessel, which the PPET found was not relevant because the questionnaire addressed performance by one of Bollinger's team members that was not the design agent. See AR, Tab 14, Bollinger Initial Past Performance Evaluation, at 4.

<sup>10</sup> The Department of the Navy awarded multiple contracts for the Littoral Combat Ship. One contract was awarded to Lockheed Martin for the design and construction of the Freedom variant of the ship; Gibbs & Cox was the design agent under this contract. Another contract was awarded to Bath Iron Works for the first two ships of the Independence variant (LCS 2 and LCS 4). See Navy Fact Sheet: Littoral Combat Ship Class, [www.navy.mil/navydata/fact.asp](http://www.navy.mil/navydata/fact.asp).

<sup>11</sup> The prime contractor noted in the questionnaire's narrative that "[c]osts were dramatically different for the completed design . . . for many reasons beyond [Gibbs & Cox's] control." AR, Tab 12, Bollinger Past Performance Questionnaire (Littoral Combat Ship), at 4.

<sup>12</sup> The Naval Vessel Rules are criteria and verification requirements for approving and certifying vessels. The Naval Vessel Rules were developed by the American Bureau of Shipping in cooperation with the Navy, Coast Guard, and industry. RFP amend. 11, attach. J-1, § 042.1.4.

Two of Bollinger's questionnaires addressed the firm's performance of contracts for the Coast Guard's Fast Response Cutter and the Bee Mar Offshore Supply Vessel, which the PPET also found to be recent and relevant. The Coast Guard additionally reviewed PPIRS reports for the Fast Response Cutter. With respect to the Fast Response Cutter, the most recent PPIRS report included four marginal ratings in the areas of schedule, management, management responsiveness, and logistic support/sustainment. In this regard, the PPIRS report stated that the schedule for soft deliverables was unsatisfactory. AR, Tab 13, Bollinger PPIRS Report, at 3-5. The more recent past performance questionnaire for the Fast Response Cutter, by the same individual that reported on PPIRS, rated Bollinger's performance as mostly exceptional to satisfactory, with no marginal or unsatisfactory ratings. Although the questionnaire's narrative indicated some areas of concern (such as non-compliant "soft deliverables"), it noted the firm's substantial organizational and management change, which had resulted in improved performance. AR, Tab 12, Bollinger Past Performance Questionnaire (Fast Response Cutter), at 4-5. The PPET concluded that Bollinger "met previous contractual requirements with no marginal or unsatisfactory past performance reports" and stated that, with respect to timeliness of performance, Bollinger had addressed its initial delivery problems and was on schedule, due to improvements in Bollinger's management structure. See AR, Tab 30, Bollinger Final Past Performance Evaluation, at 1-3.

With respect to Eastern, the PPET determined that the offeror's past performance was superior, based upon five past performance questionnaires; the PPET found no relevant PPIRS reports. Two of the questionnaires addressed the performance of Eastern's design agent, STX Marine, on the Irish Offshore Patrol Vessel and the New Zealand Offshore Patrol Vessel. As relevant here, the questionnaire for the Irish Offshore Patrol Vessel was completed by the prime contractor on the contract, Babcock International,<sup>13</sup> who provided positive evaluations. AR, Tab 12, Eastern's Past Performance Questionnaire (Irish Offshore Patrol Vessel), at 3. The questionnaire for the New Zealand Offshore Patrol Vessel was completed by the prime contractor's engineering manager, whose involvement with the program covered the period from June 2004 to April 2007. Id. (New Zealand Offshore Patrol Vessel), at 3. The remaining questionnaires addressed Eastern's performance on the Aries Marine Platform Supply Vessel, Grand Manan Adventure ferry, and the Laborde Marine Supply Vessel, and contained positive evaluations. All of the contracts were found to be recent and relevant, and based on the past performance questionnaires, the PPET assigned Eastern a superior rating under past performance. AR, Tab 30, Eastern Final Past Performance Evaluation, at 1.

With respect to Bath Iron Works, the PPET determined that the offeror's past performance was satisfactory. The PPET found that three of Bath Iron Works' five

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<sup>13</sup> Babcock is proposed as a second-tier subcontractor by Eastern. See AR, Tab 26, Eastern's FPR, Past Performance Section, at 4.

past performance questionnaires were relevant.<sup>14</sup> One questionnaire addressed the performance of Bath Iron Works' design agent, Navantia S.A., on the Spanish Navy's Buque de Acción Maritima. Two questionnaires addressed the performance of Bath Iron Works on the U.S. Navy's DDG 51 (Arleigh-Burke class guided missile) and DDG 1000 (Zumwalt class guided missile) destroyers.<sup>15</sup> The PPET also identified PPIRS reports for Bath Iron Works' contracts for two Littoral Combat Ships (LCS 2 and LCS 4), which were determined to be relevant. The PPET initially assigned Bath Iron Works a marginal rating largely based on its performance on the LCS 2 and LCS 4 contracts. In this regard, the PPET noted that, with regard to customer satisfaction, the Navy customer rated Bath Iron Works as marginal or worse on both the LCS 2 and LCS 4 contracts for management responsiveness, cost control, quality of product, and schedule. See AR, Tab 14, Bath Iron Works Initial Past Performance Evaluation, at 1-5. The PPET conducted follow-up telephone calls to obtain updated information on the Littoral Combat Ship contracts, and were informed that performance had improved since the Navy stopped changing the requirements and that schedule issues continued to improve over time. AR, Tab 30, Bath Iron Works Final Past Performance Evaluation, at 2, 5. As relevant here, the customer on the Littoral Combat Ships (LCS 2 and LCS 4) informed the PPET that Bath Iron Works was meeting contract requirements and had learned how to weather problems caused by outside forces--such as Hurricane Katrina and the U.S. Navy deciding to use the Naval Vessel Rules--that played a large part in Bath Iron Works' lateness and failure to meet schedule requirements earlier in the contract. Id. at 5. On this basis, the PPET determined that the past performance problems on the Littoral Combat Ship contracts were not the fault of Bath Iron Works.

With respect to Huntington Ingalls, the PPET determined that the offeror's past performance was marginal. The PPET received past performance questionnaires for four contracts for the Coast Guard's National Security Cutters and the U.S. Navy's DDG 51 destroyer.<sup>16</sup> All were found to be recent and relevant, and included mostly positive comments. However, the PPET noted that a PPIRS report for the

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<sup>14</sup> Two questionnaires concerned performance of support services and were found to be not relevant. See AR, Tab 14, Bath Iron Works Initial Past Performance Evaluation, at 7-8.

<sup>15</sup> The questionnaire for the DDG 51 destroyer was not filled out, but was attached to a Contractor Performance Assessment Report (CPAR), which is part of PPIRS. The PPET considered the CPAR report in place of the questionnaire. See AR, Tab 14, Bath Iron Works Initial Past Performance Evaluation, at 5.

<sup>16</sup> One questionnaire addressed Huntington Ingalls' performance on National Security Cutter Nos. 4 and 5; another addressed Cutter No. 3, and a third addressed Cutter No. 2. See AR, Tab 12, Huntington Ingalls Past Performance Questionnaires.

National Security Cutter No. 5 contract indicated schedule problems. AR, Tab 30, Huntington Ingalls Final Past Performance Evaluation, at 6-7. The PPET also identified three PPIRS reports for Huntington Ingalls' contract for LPD-17 class amphibious transport dock ships.<sup>17</sup> Id. at 10. The PPET found that the PPIRS reports, which covered performance from October 2009 to September 2012, included adjectival ratings that ranged from exceptional to unsatisfactory. In this regard, the PPET noted that, although the customer that completed the PPIRS report stated that it "probably would" again award a contract to Huntington Ingalls, the PPIRS report included numerous adverse comments. For example, the PPET noted Huntington Ingalls' unsatisfactory rating for cost control, under which the LPD customer commented that "[c]ost performance . . . has degraded" over the performance period. Id. at 3. The PPET's follow-up conversations on the LPD contract indicated that negative performance was continuing. In this regard, the customer for the LPD contract noted that Huntington Ingalls' work had deteriorated prior to Hurricane Katrina, worsened after the hurricane, and had improved to be "stabilized at a poor level." Id. at 13. On this basis, the PPET concluded that Huntington Ingalls' failure to meet contract requirements was the contractor's fault. Id. at 1.

Finally, with respect to VT Halter Marine, the PPET determined that the offeror's past performance was marginal. The PPET received past performance questionnaires for five contracts and identified an additional contract in PPIRS. Three of the questionnaires addressed the performance of VT Halter Marine's design agent, DCNS, on the Singapore Navy Formidable Class Frigate, the French Navy Multi-Mission Class Frigate, and the French Navy Horizon Class Frigate, and provided very positive comments on DCNS's performance. See AR, Tab 14, VT Halter Marine Initial Past Performance Evaluation, at 6-9. The remaining two questionnaires addressed the performance of VT Halter Marine on the Egyptian Navy Fast Missile Craft and the U.S. Navy's T-AGS 66 oceanographic survey ship. The PPET also identified PPIRS reports for the two VT Halter Marine contracts, as well as reports for the U.S. Navy's T-AGM 25 unarmed missile range instrumentation ship. The PPET found the five contracts for which it received past performance questionnaires and the T-AGM 25 contract were recent and relevant. In this regard, the PPET concluded that the T-AGM 25 was relevant due to the similarity of work in both type and complexity as that required by the Offshore Patrol Cutter, and was comparable due to similar sizes, speeds, and draft requirements. AR, Tab 30, VT Halter Marine Final Past Performance Evaluation, at 12; Encl. 2, Past Performance Relevancy Worksheet, Offeror H. The PPET noted the PPIRS reports and questionnaires indicated problems under the Egyptian Navy and T-AGM 25 contracts with respect to VT Halter Marine's performance in delivering a quality product in a timely fashion. The PPET concluded that VT Halter Marine's multiple instances of failing to meet contract requirements merited a marginal past

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<sup>17</sup> The PPIRS reports addressed LPDs 22 through 27.

performance rating.<sup>18</sup> See AR, Tab 30, VT Halter Marine Final Past Performance Evaluation, at 1-5.

### Source Selection Decision

The evaluation results were provided to the agency's SSA, who weighed the comparative merits of the offers based upon the final evaluation reports. AR, Tab 33, Source Selection Decision, at 1. In this regard, the SSA identified strengths and differentiating characteristics of the offerors' proposals under each of the evaluation factors. With respect to the most important factor, concept design, the SSA concluded that all the competitive range offerors had strong technical concept designs and that no offeror stood out. Id. at 3. The SSA recognized, however, that various offerors had strengths under the hierarchical requirements. For example, the SSA acknowledged that both Eastern and VT Halter Marine received strengths for their proposed speeds of [Deleted] and [Deleted] knots, respectively. The SSA recognized, however, that all offerors proposed speeds that were above the threshold requirement and below the objective. The SSA also noted, as relevant here, that Huntington Ingalls met the 60-day patrol endurance objective, but met only the lower 2-boat threshold requirement, and was the only offeror that failed to propose some form of electric propulsion for slow speed operations. In this regard, the SSA stated that the ability to use electric propulsion for extended periods of slow speed operations had significant advantages. The SSA found no differentiation among offerors for helicopter hangar storage, accommodation, and pallet storage requirements. Id. at 3-4.

Under the design approach factor, the SSA concluded that all offerors provided a comprehensive design approach, with few discriminators, but noted that Bollinger offered an approach that increased the government's confidence of success, and that Eastern's approach increased the likelihood that Eastern would meet all requirements. Under the organizational management factor, the SSA concluded that all offerors provided adequate descriptions of their organizational management and met the minimum requirements of the RFP, but noted that the proposals of

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<sup>18</sup> The PPET noted that VT Halter Marine had provided additional past performance information pertaining to the Egyptian Navy Fast Missile Craft in its FPR, but that the information did not address any specific causes for failures or corrective actions taken to improve contract performance. Rather, the PPET found that VT Halter Marine provided generic statements about learning valuable lessons and implementing "substantive and specific measures" but did not describe such measures in relation to the Egyptian Navy contract. AR, Tab 30, VT Halter Marine Final Past Performance Evaluation, at 11. The PPET stated that, although VT Halter Marine's performance had improved, the firm failed to meet several government requirements on the Egyptian Navy contract and delayed ship delivery.

Huntington Ingalls and Bath Iron Works were the only ones to receive strengths under this factor. Id. at 4-5.

Ultimately, the SSA concluded that past performance provided the basis upon which to differentiate these proposals. In this regard, the SSA stated that the evaluation of Bollinger's and Eastern's proposals indicated no adverse past performance information and therefore past performance was not raised in discussions with these firms. In contrast, the SSA noted that the initial evaluation of Bath Iron Works, Huntington Ingalls, and VT Halter Marine identified adverse past performance information, which was discussed with these firms. With respect to Bath Iron Works' performance problems on the Littoral Combat Ship program, the SSA noted that Bath had described its corrective actions, that the customer confirmed that Bath had made significant improvements, and that some of the problems were not Bath's fault. Thus, the SSA agreed with the PPET that Bath Iron Works' past performance was satisfactory. With respect to Huntington Ingalls' past performance problems, the SSA noted that the customer provided updated information that indicated that Huntington's performance, though improved, remained at a poor level. With respect to VT Halter Marine's performance, the SSA noted that the contractor had timeliness problems on the T-AGS 66 and T-AGM 25 ships, and had not described in its FPR any changes or improvements that the firm had implemented to improve poor performance, but rather had focused on changes it would implement if it received this contract. The SSA agreed with the PPET that Huntington Ingalls' and VT Halter Marine's past performance should be assessed as marginal. Id. at 7-8.

Based upon his review, the SSA concluded that, although Huntington Ingalls' and VT Halter Marine's proposals met all technical and management requirements and offered some unique strengths, the offerors' recent and relevant past performance records did not provide confidence that they would be able to satisfactorily perform the contract. Id. at 9. The SSA further concluded that Huntington Ingalls' proposal included "essentially a threshold Concept Design" and otherwise had limited distinguishable benefits in comparison to other offerors. The SSA also noted that considering the firm's marginal past performance rating, its proposal was the least advantageous to the government. Id. at 10. With respect to VT Halter Marine's proposal, the SSA recognized that the offeror's proposal had several technical strengths in concept design and met several hierarchical objectives, but its marginal past performance offset any technical advantages. Id.

Based on these conclusions, the SSA selected the proposals of Bollinger, Eastern, and Bath Iron Works for award. After debriefings, Huntington Ingalls and VT Halter Marine protested to our Office.

## DISCUSSION

Huntington Ingalls and VT Halter Marine raise numerous challenges to the Coast Guard's evaluation of proposals under the technical and past performance factors, and to the selection decision. The protesters also contend that Eastern's reliance on a subcontractor to provide a past performance questionnaire for Eastern created a conflict of interest. We have considered all of the protester's arguments, although we only address the primary ones, and find that none provide a basis to sustain the protests.

### Bollinger's Past Performance

Huntington Ingalls and VT Halter Marine both challenge the Coast Guard's evaluation of Bollinger's past performance, arguing that the agency unreasonably assigned Bollinger a satisfactory past performance rating despite receiving negative information about Bollinger's performance on the Fast Response Cutter contract. See Huntington Ingalls Supp. Protest at 53; VT Halter Marine 2<sup>nd</sup> Supp. Protest at 15-20. In this regard, Huntington Ingalls contends that the Coast Guard unequally evaluated its and Bollinger's past performance. Specifically, Huntington Ingalls contends that the Coast Guard ignored negative information with respect to Bollinger's performance of the Fast Response Cutter contract, while focusing on negative comments in a PPIRS report in evaluating Huntington Ingalls' performance of the LPD contract. See Huntington Ingalls Supp. Comments at 25-27.

As a general matter, the evaluation of an offeror's past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. Where a protester challenges an agency's past performance evaluation and source selection, we will review the evaluation and award decision to determine if they were reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. DynCorp Int'l LLC, B-406523.2, B-406523.3, Dec. 16, 2013, 2014 CPD ¶ 7 at 6; Falcon Envtl. Servs., Inc., B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7. A protester's disagreement with the agency's judgment concerning the merits of the protester's past performance does not establish that the evaluation was unreasonable. Sam Facility Mgmt., Inc., B-292237, July 22, 2003, 2003 CPD ¶ 147 at 3.

Here, the record shows that the Coast Guard's evaluation of Bollinger's past performance on the Fast Response Cutter was reasonable. The PPET recognized that the most recent PPIRS report included four marginal ratings in the areas of schedule, management, management responsiveness, and logistic support/sustainment. See AR, Tab 13, Bollinger PPIRS Report, at 3-5. The PPET also received, however, a more recent past performance questionnaire from the same individual (the contracting officer) that prepared the PPIRS report for this

cutter. The questionnaire provided adjectival ratings that ranged from mostly exceptional to satisfactory; there were no marginal or unsatisfactory ratings. See AR, Tab 12, Bollinger Past Performance Questionnaire (Fast Response Cutter), at 4-5. The questionnaire's narrative comments indicated that Bollinger had made "substantial changes" to its organization and to its management, which resulted in improved performance. For example with respect to "customer satisfaction," the contracting officer stated that the "new management structure is a breath of fresh air and is a very positive step in the right direction" and that Bollinger "recently showed very good progress." Id. at 4. Similarly with respect to timeliness of delivery, the contracting officer stated that problems with deliveries had been resolved and that a "positive trend appears apparent with regard to delivering of [Fast Response Cutters] with fewer discrepancies." Id. at 5.

Although the past performance questionnaire indicated some areas of concern, such as timely submittal of "soft deliverables," the Coast Guard found that the narrative discussion of Bollinger's performance on the Fast Response Cutter supported a satisfactory rating. The agency states, in this regard, that the PPET noted that the more recent past performance questionnaire showed an increasing trend of improved performance for Bollinger that justified a satisfactory rating. Supp. CO's Statement at 8-9. Huntington Ingalls and VT Halter Marine disagree with this judgment, but this does not show that the agency's evaluation was unreasonable.

We also do not find that the Coast Guard treated Huntington Ingalls and Bollinger disparately, where the PPET did not accept certain positive adjectival ratings with respect to Huntington Ingalls' LPD contract with the Navy.<sup>19</sup> The record shows that the PPET, as it did with Bollinger's questionnaire, looked below the adjectival ratings and considered the narrative information in the PPIRS reports and information obtained directly from the LPD project manager. Although the PPET concluded that Huntington Ingalls' performance had improved in some areas, it

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<sup>19</sup> Huntington Ingalls objects to the marginal rating for overall customer satisfaction for performance on its LPD-17 contract, arguing that the customer provided positive adjectival ratings in the PPIRS reports. Huntington Ingalls Protest at 37. However, an agency may, as here, reasonably consider the accompanying narrative, particularly where the adjectival rating does not reflect the substance of the narrative. See DynCorp Int'l LLC, supra, at 7 (narrative belied adjectival ratings); NSR Solutions, Inc., B-406894, Sept. 20, 2012, 2012 CPD ¶ 278 at 6 (while questionnaire included satisfactory adjectival rating, agency's consideration of narrative indicating otherwise was reasonable). To the extent that Huntington Ingalls complains that the agency's definition of marginal past performance constituted an undisclosed evaluation factor, Huntington Ingalls Protest at 28, agencies are not required to inform offerors of their specific rating methodology. Arcus Properties, LLC, B-406189, Mar. 7, 2012, 2012 CPD ¶ 107 at 8.

remained poor overall. In this regard, the PPET noted a number of statements indicating dissatisfaction with performance on the LPD-17 contract. CO's Statement at 31 citing AR, Tab 30, Huntington Ingalls Final Past Performance Evaluation, at 2. In this regard, the LPD project manager informed the PPET in a telephone conversation that Huntington Ingalls' performance had "stabilized at a poor level." AR, Tab 30, Huntington Ingalls Final Past Performance Evaluation, at 13. We find that the PPET's marginal rating of Huntington Ingalls' past performance did not reflect disparate treatment.<sup>20</sup>

#### Impact of Hurricane Katrina

Huntington Ingalls also complains that the Coast Guard treated it and Bath Iron Works unequally with respect to the impact of Hurricane Katrina on the offerors' past performance. That is, Huntington Ingalls argues that the Coast Guard ignored the negative impact of Hurricane Katrina on its less than favorable performance, while finding that the impact of Hurricane Katrina excused Bath Iron Works' poor performance. Huntington Ingalls Supp. Protest at 47-50.

The Coast Guard explains that it followed up with various points of contact with respect to the contracts in question, and found the impact of Hurricane Katrina on the performance of Huntington Ingalls and Bath Iron Works was not similar. Huntington Ingalls' past performance references stated that the company's poor performance on the LPD contract started well before Hurricane Katrina and continues to date ("stabilized at a poor level"). In contrast, the Navy references for Bath Iron Works' Littoral Combat Ship contracts stated that Bath's poor performance was caused in part by Hurricane Katrina, as well as the Navy's decision after contract award to adopt the Naval Vessel Rules (which provided new criteria and verification requirements for approving and certifying ships). Additionally, the Navy noted that Bath Iron Works' performance on the Littoral Combat Ship contracts had improved and that contract requirements were being met. Supp. CO's Statement at 3-4.

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<sup>20</sup> Huntington Ingalls also argues that the Coast Guard should have given it more credit for the positive past performance information the firm received on the National Security Cutter contract, which Huntington Ingalls argues is more relevant than the LPD-17 contract. Huntington Ingalls Protest at 29. Huntington Ingalls does not contend that the LPD-17 contract is not relevant, only that its poor performance under this contract should be discounted given its more favorable performance ratings under the National Security Cutter contract. Even were we to accept Huntington Ingalls' argument that the RFP provided that performance under a more relevant contract should receive greater weight, this does not mean, as the protester apparently believes, that the agency could not consider the firm's poor performance under an admittedly relevant contract.

The record demonstrates that the Coast Guard's consideration of the impact of Hurricane Katrina on the performance of Huntington Ingalls and Bath Iron Works was reasonable. While the protester focuses on the offerors' FPR submissions to support its position that it adequately explained how Hurricane Katrina negatively impacted its performance, see Huntington Ingalls Supp. Comments at 20-21, offerors were put on notice that information independently gathered by the Coast Guard might be given greater weight than information provided in offerors' proposals. See RFP amend. 11, § M.I.6(d). Here, the agency reasonably gave greater weight to information provided in the PPIRS reports, as well as follow-up conversations with the Navy's project manager, contracting officer, and contracting officer's representative for the LPD program, in determining how to assess fault for Huntington's poor performance under the program. See AR, Tab 30, Huntington Ingalls Final Past Performance Evaluation, at 2-5. In contrast, the reviewing official for the Littoral Combat Ship PPIRS reports informed the Coast Guard that Bath Iron Works' performance problems were not primarily Bath's fault, but were the result of Hurricane Katrina and the Navy switching to the Naval Vessel Rules after contract award. The reviewing official also advised that Bath Iron Works is now meeting its contract requirements. See id., Bath Iron Works Final Past Performance Evaluation, at 3. Although Huntington Ingalls disagrees with the agency's judgment in this regard, it has not shown that the agency acted unreasonably.

#### Eastern's Past Performance

VT Halter Marine also challenges the Coast Guard's evaluation of Eastern's past performance, arguing that the PPET improperly credited Eastern for performance of the firm's proposed design agent on the New Zealand Offshore Patrol Vessel because the reference was for performance outside the RFP's 5-year recency requirement (July 2004 through April 2007). VT Halter Marine 2<sup>nd</sup> Supp. Protest at 11-12. The Coast Guard responds that the RFP required past performance references for contracts that were performed during the past five years, but did not limit the agency's review of performance to within the 5-year window. Supp. AR at 6.

We need not resolve this dispute about the Coast Guard's interpretation of the RFP because the record does not show any reasonable possibility of prejudice with respect to the consideration of the design agent's past performance on the New Zealand Offshore Patrol Vessel.<sup>21</sup> Even if this performance is not considered,

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<sup>21</sup> Prejudice is an element of every viable protest, Lithos Restoration, Ltd., B-247003.2, Apr. 22, 1992, 92-1 CPD ¶ 379 at 5, and we will not sustain a protest unless the protester demonstrates a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, (continued...)

Eastern provided four other recent and relevant past performance questionnaires (including another for its design agent's performance on the Irish Offshore Patrol Vessel) that showed superior past performance. As a result, we see nothing unreasonable about the superior rating for past performance assigned to Eastern's proposal.<sup>22</sup>

#### VT Halter Marine's Past Performance

VT Halter Marine complains that the Coast Guard unreasonably considered its performance on the T-AGM 25 unarmed missile range instrumentation ship, which the Coast Guard itself found in PPIRS and for which the agency determined that VT Halter Marine had performance problems. VT Halter Marine contends that this contract should not have been viewed as relevant to the work here because of differences in the ships' dimensions, performance, propulsion, electrical systems, C4ISR, and small boat recovery and launch requirements. VT Halter Marine Protest at 23-31. We agree.

The RFP informed offerors that the agency's relevance determination would be based on various ship characteristics, including dimensions, performance, propulsion, electrical plant, hull/structure materials, and boat launch/recovery. RFP amend. 11, § L.I.17(a)(3). In its protest, VT Halter Marine provided detailed information describing how the T-AGM 25 and the Offshore Patrol Cutter are very different in terms of size and complexity. The Coast Guard did not respond to these arguments, but instead relied upon conclusory statements in the evaluation record that the T-AGM 25 was comparable due to similar sizes, speeds, and draft requirements. AR, Tab 30, VT Halter Marine Final Past Performance Evaluation, at 12; encl. 2, Past Performance Relevancy Worksheet, Offeror H. In fact, the information provided by VT Halter Marine indicates that the T-AGM 25 is much larger (534 feet in length and displacing 12,253 tons as compared to the proposed Offshore Patrol Cutter's [Deleted] feet and [Deleted] tons) with a different propulsion system. Absent some explanation from the Coast Guard in response to the protest,

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(...continued)

Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

<sup>22</sup> VT Halter Marine also challenges the agency's determination that any of Eastern's past performance references were relevant; Huntington Ingalls initially challenged the relevance of Eastern's past performance, but abandoned its arguments following the receipt of the agency's report. The record supports the reasonableness of the Coast Guard's explanations with respect to the PPET's determination that Eastern's past performance was relevant. Although VT Halter Marine disagrees, it has not shown that the agency abused its broad discretion with respect to determining relevancy.

or otherwise in the record, there is no basis to conclude that the T-AGM 25 contract is relevant.

Nevertheless, the record establishes that VT Halter Marine was not prejudiced by the agency's consideration of its T-AGM 25 performance. Specifically, the PPET also based its marginal past performance rating upon the firm's poor performance of the Egyptian Navy Fast Missile Craft contract.<sup>23</sup> See AR, Tab 30, VT Halter Marine Final Past Performance Evaluation, at 1-5. The PPET found that the customer on this contract reported marginal performance with respect to, among other things, VT Halter Marine's management of its design agent and its untimely contract performance. Id. at 10-11. The customer also advised the PPET that, although VT Halter Marine does a "great job" in production and construction, it has problems with engineering and management that require more than the usual amount of oversight. Id. at 11. On this record, even if we conclude the Coast Guard should not have included a review of VT Halter Marine's performance of the T-AGM 25 contract, we see no basis to sustain this protest given the similar problems described in the firm's performance of the contract for the Egyptian Navy.

#### Conflict of Interest

VT Halter Marine and Huntington Ingalls also contend that the Coast Guard should not have considered Eastern's past performance questionnaire for the Irish Offshore Patrol Vessel contract, arguing that it was tainted by a conflict of interest. Eastern proposed Babcock International, the company that completed the past performance questionnaire for the design agent's performance on the Irish Offshore Patrol Vessel, as a second-tier subcontractor. The protesters argue that Babcock's evaluation of the design agent's performance under the Irish Offshore Patrol Vehicle contract reflects an impermissible impaired objectivity conflict of interest. VT Halter Marine 2<sup>nd</sup> Supp. Protest at 10-11; Huntington Ingalls Supp. Comments at 23-24.

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<sup>23</sup> VT Halter Marine complains that the Coast Guard considered a PPIRS report for the Egyptian Navy Fast Missile Craft that reflected performance outside the RFP's 5-year recency requirement. VT Halter Marine 1<sup>st</sup> Supp. Protest at 10-12. Although this particular PPIRS report is not within the RFP's recency requirement, the record shows that the PPET considered a number of other PPIRS reports and questionnaires for the Egyptian contract showing unsatisfactory and marginal performance that fell within the RFP's recency requirements. See AR, Tab 13, VT Halter Marine PPIRS Reports (12/1/2010 – 11/30/2011), at 3-6; see also AR, Tab 12, VT Halter Marine Past Performance Questionnaire (Egyptian Navy) at 3-5; Tab 30, VT Halter Marine Final Past Performance Evaluation, at 2-5, 11. Thus, we see nothing unreasonable about the Coast Guard's conclusion about the protester's prior past performance on this contract.

We find no merit to this argument. As relevant here, an impaired objectivity organizational conflict of interest arises where a firm's ability to render impartial advice to the government would be undermined by the firm's competing interests. Federal Acquisition Regulation (FAR) § 9.505-3; Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 13. The concern in impaired objectivity situations, including evaluation of products or services, is that a firm's ability to render impartial advice to the government will be undermined by its relationship to the product or service being evaluated. PURVIS Sys., Inc., B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 at 7. Unlike the situation here, the situations described by the FAR and in our decisions relating to impaired objectivity involve cases where a firm's work under one government contract could entail its evaluating itself, either through an assessment of performance under another contract or an evaluation of proposals. For example, in Aetna, we concluded that the participation of an affiliate of the awardee's proposed subcontractor in evaluating offerors' proposals as a consultant to the agency presented an impaired objectivity organizational conflict of interest. See Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., supra, at 17. Here, however, Babcock did not complete the past performance questionnaire as part of its performance of a government contract; that is, Babcock was not under contract to the Coast Guard to evaluate proposals.

Moreover, to the extent that the protesters believe that allowing Eastern to rely on Babcock for past performance information resulted in the Coast Guard receiving biased information, the protesters have not demonstrated that the information provided by Babcock was inaccurate. In this regard, Eastern's design agent was involved in all of Eastern's past performance reference contracts, all of which indicate the design agent's positive past performance. See, AR, Tab 26, Eastern's FPR, Business Vol., Past Performance Narratives, at 9-18; Tab 12, Eastern Past Performance Questionnaires. Without a showing that Babcock provided inaccurate or misleading information, we have no basis to conclude that the agency erred in its reliance on this information.

#### Technical Evaluation

Huntington Ingalls and VT Halter Marine challenge various aspects of the Coast Guard's evaluation of technical proposals. For example, both protesters argue that the Coast Guard failed to consider the effect of increases in vessel length and weight in Eastern's FPR on the vessel's speed.<sup>24</sup> In this regard, the protesters contend that the analysis produced by the Coast Guard was based on Eastern's

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<sup>24</sup> VT Halter Marine also raises a similar complaint with respect to Bath Iron Works' FPR, but acknowledges that Bath Iron Works' FPR was unchanged in this regard from its draft final proposal, which the Coast Guard appears to have analyzed. See VT Halter Marine 2<sup>nd</sup> Supp. Comments at 5 n.3.

draft final proposal and did not reflect changes in weight that appeared in Eastern's FPR. Huntington Ingalls 2<sup>nd</sup> Supp. Comments at 2-3; VT Halter Marine 2<sup>nd</sup> Supp. Comments at 5.

We agree with the protesters that the analysis provided by the Coast Guard in response to the protests does not appear to be based on the information provided in Eastern's FPR. However, Huntington Ingalls and VT Halter Marine have not demonstrated that Eastern's FPR design would have failed to meet the solicitation's speed requirement or proven that the calculations provided in Eastern's FPR are in error. As such, their arguments do not provide a basis for sustaining the protests.

VT Halter Marine also protests the evaluation of its proposal under the technical design factor, arguing that the Navy unreasonably credited Eastern's and Bath Iron Works' proposals with a strength for their machinery plant control and monitoring systems without similarly crediting a strength to VT Halter Marine's proposal for the same feature. More specifically, VT Halter Marine argues that, similar to Eastern and Bath Iron Works, it proposed an advanced machinery plant control and monitoring system that would consist of [Deleted]. VT Halter Marine 2<sup>nd</sup> Supp. Protest at 43-44.

In reviewing protests against allegedly improper evaluations, our Office examines the record to determine whether the agency's judgment was reasonable, in accord with the evaluation factors set forth in the RFP, and whether the agency treated offerors equally in its evaluation of their respective proposals and did not disparately evaluate proposals with respect to the same requirements. IAP World Servs., Inc.; EMCOR Gov't Servs., B-407917.2 et al., July 10, 2013, 2013 CPD ¶ 171 at 11.

The record shows that the Coast Guard did not evaluate the proposals of VT Halter Marine, Eastern, and Bath Iron Works disparately with respect to the firms' proposed machinery plant control and monitoring systems. The TET found that Eastern and Bath Iron Works proposed designs that were based on previous systems for naval vessels of similar complexity, and that were more mature than what was expected of a concept design. The TET concluded that this would benefit the government because it increased confidence that the machinery plant control and monitoring system would meet requirements and would present lower technical risk. See AR, Tab 30, Eastern TET Consensus Report, encl. 2, at 8; Bath Iron Works TET Consensus Report, encl. 2, at 6. In contrast, VT Halter Marine's initial explanation of its proposed machinery plant control and monitoring system was viewed as a significant weakness. See AR, Tab 14, VT Halter Marine Initial Technical Evaluation, at 29. After discussions, the TET concluded that VT Halter Marine had resolved the evaluators' concerns and that the firm's proposed machinery plant control and monitoring system was acceptable. Although VT Halter Marine argues that its proposed system should have been assigned a strength, and that its design is advanced, VT Halter Marine has not explained or demonstrated how its system is advanced or that it is similarly based on a mature design. In

short, VT Halter Marine had not shown that the agency's judgment was unreasonable or in error.

#### Selection Decision

Finally, Huntington Ingalls and VT Halter Marine challenge the SSA's selection decision, asserting that it was flawed because the decision was based on evaluations that the protesters allege were unreasonable. As discussed above, we found no merit to the protesters' challenges to the agency's technical and past performance evaluations. Thus, there is no basis to question the SSA's ultimate selection decision. Orbis Inc., B-408033.2, June 3, 2013, 2013 CPD ¶ 140 at 7.

The protests are denied.

Susan A. Poling  
General Counsel