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Decision

Matter of: Nuclear Production Partners LLC

File: B-407948.10, B-407948.11

Date: February 27, 2014

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DIGEST

1. Agency's conclusion that a portion of protester's proposed cost savings were not feasible did not constitute a significant weakness or deficiency that the agency was required to address during discussions, and agency reasonably limited the scope of its corrective action to address the specific defects in its prior source selection process.

2. Protester's multiple complaints regarding the agency's evaluation and bases for its source selection decision reflect mere disagreement with the agency's judgments and provide no basis for sustaining the protest.

DECISION

Nuclear Production Partners LLC (NPP), of Lynchburg, Virginia, protests the Department of Energy (DOE), National Nuclear Security Administration's (NNSA) award of a contract to Consolidated Nuclear Security LLC (CNS), of Reston,

Virginia,¹ pursuant to request for proposals (RFP) No. DE-SOL-0001458 to perform services associated with maintaining and securing the nation's nuclear weapons.

NPP protests that the agency's limited corrective action, which was performed in response to this Office's April 2013 decision partially sustaining NPP's prior protest, failed to comply with various Federal Acquisition Regulation (FAR) requirements. NPP also challenges virtually every aspect of the agency's substantive evaluation and bases for the source selection decision. We deny the protest.

BACKGROUND

In December 2011, the NNSA published the solicitation at issue, seeking proposals for award of a cost-reimbursement contract to consolidate the management and operation (M&O) of NNSA's Y-12 National Security Complex (Y-12) and NNSA's Pantex Plant (Pantex), with an option to subsequently phase in NNSA's Savannah River Tritium Operations (SRTO).

In addition to consolidating the M&O functions, the solicitation provides that the contractor will be responsible for the design and construction of a new uranium processing facility (UPF) at Y-12. At the press conference conducted by NNSA following the agency's initial award to CNS, the agency stated that the total estimated value of the contract, if all options are exercised,² is \$22.8 billion. NPP's First Protest, Jan. 17, 2013, exh. 5, at 3.³

¹ NPP is a limited liability corporation (LLC) comprised of resources from: Babcock & Wilcox Technical Services Group, Inc.; URS Energy & Construction, Inc.; Northrop Grumman Technical Services, Inc.; and Honeywell International, Inc. CNS is an LLC comprised of resources from: Bechtel National, Inc.; Lockheed Martin Services, Inc.; ATK Launch Systems, Inc.; and SOC, LLC.

² The contract has a 4-month transition period, a 5-year base period, two 2-year option periods, and a final 1-year option period. RFP at 20.

³ In January 2013, NPP filed its first protest challenging the award to CNS; in April 2013, we issued a decision partially sustaining that protest. In June 2013, NPP filed another protest challenging the agency's then-ongoing corrective action; in September 2013, we issued a decision dismissing and denying that protest. In November 2013, NPP filed this protest challenging the agency's decision to re-award to CNS following completion of its corrective action. Our decision here cites to the parties' submissions in NPP's current protest, as well as to some of the submissions in the prior protests, differentiating the various submissions by referencing either NPP's First Protest, NPP's Second Protest, or NPP's Current Protest.

Consistent with the differing functions to be performed, the solicitation was divided into two contract line item numbers (CLINs). CLIN 0001 contained the requirements for M&O services at the NNSA sites. CLIN 0002 contained the requirements for construction management and other activities related to construction of the UPF. RFP at 332-33.

With regard to the CLIN 0001 requirements, the solicitation established the following technical/management evaluation factors: (A) management approach and cost savings; (B) key personnel and oral presentations; (C) past performance; and (D) corporate experience.⁴ RFP at 332. With regard to the evaluated cost for CLIN 0001, the solicitation provided for a “total available fee,”⁵ stating that such fee “will be used as the evaluated cost for purposes of the best value determination.”⁶ RFP at 336.

With regard to the CLIN 0002 requirements, the solicitation established the following technical/management evaluation factors: (A) past performance; (B) project management approach; (C) key personnel and oral presentations; and (D) corporate experience.⁷ RFP at 334. With regard to the evaluated cost for CLIN 0002, the solicitation provided for a “maximum available UPF fee,”⁸ stating that such fee “will be used as the evaluated cost for purposes of the best value determination.” RFP at 338.

In discussing this procurement, the agency has stated that one of the principle purposes for consolidating the M&O operations was to realize cost savings through efficiencies, particularly with regard to support services. Contracting Officer’s Statement of Facts and Agency’s Memorandum of Law (COSF/MOL) for NPP’s First Protest, Mar. 5, 2013, at 3. Indeed, before issuing the solicitation, the agency

⁴ The solicitation stated that factors A and B for CLIN 0001 were of equal importance and, when combined, were significantly more important than factors C and D. RFP at 333.

⁵ Total available fee was defined to be the sum of an offeror’s proposed fixed fee and its proposed performance incentive fee. RFP at 285, 336.

⁶ Although not included in the evaluation of cost, the solicitation also provided for the offerors to propose a “Cost Savings Incentive Fee,” which we discuss in more detail below. RFP at 10.

⁷ The solicitation stated that factors A and B for CLIN 0002 were of equal importance and, when combined, were significantly more important than factors C and D. RFP at 334.

⁸ The solicitation defined an offeror’s maximum available UPF fee as the offeror’s proposed fee percentage applied to “the Government’s notional cost for UPF of \$5.6B[illion].” RFP at 286, 338.

contracted with a private consulting firm (Navigant Consulting, Inc.) to perform an analysis of potential cost savings that could be achieved through merger of the contractual requirements for the three sites (Y-12, Pantex, and SRTO).⁹ See Agency Report (AR) for NPP's First Protest, Tab A-8, Navigant Report, Nov. 9, 2011. Navigant performed an analysis of potential cost savings related to 26 functional activities that have historically been performed at each of the three sites, and calculated "efficiency factors," by activity and site, that reflected the various percentages of efficiency Navigant believed to be achievable. Id. at 23. Based on Navigant's analysis, the agency estimated potential savings to be approximately \$895 million over a 10-year period. Id. at 7.

Consistent with the objective of achieving cost savings, each offeror was required to propose identifiable cost savings associated with its particular approach to performing the CLIN 0001 M&O requirements. Copies of the Navigant report, along with a considerable amount of other historical cost information were provided to the offerors for use in preparing their proposals. COSF/MOL for NPP's First Protest at 3. In this regard, section M of the solicitation provided that offerors' proposed cost savings would be evaluated under the CLIN 0001 evaluation factor, management approach/cost savings,¹⁰ stating:

The Government will evaluate and assess the feasibility and quality of the offeror's proposed management approach, including cost savings approach, while maintaining effective security and mission deliverables, utilizing the information provided for this Criterion in Section L, L-14(a) Criterion A, Management Approach and Cost Savings.^[11] The Government will also evaluate and assess the feasibility and the size of the proposed cumulative savings to the Government which is equal to the cumulative cost reduction proposal

⁹ The analysis was based on the assumption that "the merger will not affect the physical locations of the sites, but assumes the successor contractor will have the flexibility to restructure its workforce." AR for NPP's First Protest, Tab A-8, Navigant Report, Nov. 9, 2011, at 7.

¹⁰ As noted above, the solicitation effectively advised offerors that proposed cost savings would not be evaluated under the cost factor, stating that certain specifically identified proposed fees "will be used as evaluated cost for purposes of the best value determination." RFP at 336, 338.

¹¹ Section L, L-14(a) of the solicitation required each offeror to describe its management approach and cost savings with reference to 7 specific criteria. RFP at 275.

savings minus the contractor's total share in savings over the entire period of performance of the Contract.[¹²]

RFP at 334.

Despite the agency's stated goal of obtaining cost savings, the solicitation provided virtually no requirements as to the manner in which proposed cost savings were to be presented or substantiated. For example, offerors were not required to present their proposed cost savings in the context of the functional activities identified in the Navigant report, nor against any other common baseline. The only common requirement was that offerors must list the amounts of their total proposed cost savings, by year of contract performance, along with the applicable share ratios. See RFP at 276, 325.

On or before the March 13, 2012 closing date, initial proposals were submitted by three offerors, including CNS and NPP.¹³ Thereafter, the proposals were evaluated, discussions were conducted, and final proposal revisions (FPR) were submitted on September 5, 2012. Each offeror proposed significant levels of cost savings flowing from multiple cost savings initiatives.¹⁴ In evaluating the proposed cost savings, the agency's cost savings advisory committee (CSAC) assigned the savings for each initiative to one of the four following categories: reasonable, partially reasonable, not reasonable, or cannot determine.

Over 60 percent of both NPP's and CNS's proposed cost savings were categorized as "partially reasonable." However, at the hearing our Office conducted in connection with NPP's first protest, the CSAC chair testified that the committee was unable to quantify, in any way, the portion of an offeror's "partially reasonable" cost savings that were, in fact, reasonable. Hearing Transcript for NPP's First Protest (Tr.1) at 903-05, 947-60; see also Tr.1 at 1127. Nonetheless, in selecting CNS's proposal for award, the SSA assumed that 100% of the cost savings proposed by every offeror was feasible. NPP's first protest challenged the award to CNS on

¹² As noted above, the solicitation provided for a "Cost Savings Incentive Fee." Specifically, offerors could propose a share ratio applicable to their proposed cost savings (up to a maximum of 40 percent for two years) and, to the extent of that proposed ratio, share in the savings achieved. RFP at 10, 63-68.

¹³ The third offeror's proposal is not relevant to NPP's current protest, and is not further discussed.

¹⁴ NPP proposed 81 cost savings initiatives for a total of approximately \$3.45 billion. CNS proposed 62 cost savings initiatives for a total of approximately \$3.27 billion. AR for NPP's Current Protest, Tab C-1, NPP Technical Proposal, at 128; Tab D-1, CNS Technical Proposal, at 118.

various bases, including the agency's failure to meaningfully evaluate proposed cost savings.

In April 2013, we issued a decision partially sustaining NPP's first protest. Nuclear Production Partners LLC; Integrated Nuclear Production Solutions LLC, B-407948 et al., Apr. 29, 2013, 2013 CPD ¶ 112. Our decision there was based on the fact that, although the solicitation stated that the agency would evaluate the feasibility and size of the offerors' proposed cost savings, the agency's evaluation record provided no reasonable basis to determine whether little, much, or most of each offerors' proposed cost savings were, in fact, feasible. Id. at 17. We recommended that the agency reopen the procurement, request additional information from the offerors regarding their proposed cost savings initiatives and, consistent with the solicitation's provisions, evaluate the relative size of each offeror's feasible cost savings. Id. at 25.

In response to our decision, the agency amended the solicitation, directing offerors to submit FPR addendums in order to "supplement and clarify" the cost saving initiatives they had previously proposed. RFP amend. 005, June 6, 2013; AR for NPP's Current Protest, Tabs F.1, F.2, Discussion Letters to NPP and CNS. The discussion letters accompanying the RFP amendment were tailored to reflect the particular initiatives proposed by each offeror and directed each offeror to submit specific information, including "the basis of the savings estimate" for each initiative, "such as, but not limited to company direct experience, benchmark or metric data, or detailed estimate." Discussion Letters at 2. The agency also directed each offeror to provide "a concise description of the basis for each estimate, including who/what was benchmarked, the period of time covered, and how that data is relevant." Id. Further, each offeror was directed to map its proposed cost savings, including the specific numbers of reduced full time equivalent (FTE) personnel, to the 26 functional activities relied upon by the Navigant report.¹⁵ AR for NPP's Current Protest, Tabs E-7, E-8, Baseline Tabs. In requesting the addendums, the agency provided spreadsheets that established the format in which the additional information was to be presented, and also permitted each offeror to submit up to 100 pages of narrative clarifying and supporting its previously-proposed cost savings. Finally, offerors were precluded from changing the total value of their proposed cost savings, or from adding new initiatives.¹⁶ AR for NPP's Current Protest, Tab F-1 at 1, 3.

¹⁵ The agency added a 27th functional area (taxes) to be addressed. See AR for NPP's First Protest, Tab A-8, Navigant Report, at 23; AR for NPP's Current Protest, Tab E-7, Baseline Tab.

¹⁶ Specifically, the agency stated that "offerors may not revise the cost savings values as proposed in their FPR using the table at Section L, Attachment E of the RFP." AR for NPP's Current Protest, Tab F.1 at 1. This table contained the aggregate proposed cost savings, per year of contract performance, but did not

(continued...)

On June 17, 2013, NPP and CNS submitted their responses to RFP amendment No. 5.¹⁷ In their respective responses, each offeror provided a significant amount of new information, discussing their cost savings and FTE reductions in the context of the 26 functional activities identified in the Navigant report,¹⁸ thereby providing greater insight for the agency regarding both the nature and feasibility of the proposed cost savings. AR for NPP's Current Protest, Tabs C.1, C.2, NPP's Addendum Files 1 and 2; Tabs D.2, D.3, CNS Addendum Files 1 and 2. Thereafter, the agency performed a comprehensive evaluation of each offeror's submission, making judgments as to the percentage of each initiative it considered to be feasible, calculating a specific dollar amount of feasible cost savings based on those judgments, and providing an accompanying narrative discussion regarding the basis for its judgments regarding each initiative.¹⁹ AR for NPP's Current Protest, Tab H-1, IPT, ACSAT, and SME Feasibility Analysis Summary. Based on

(...continued)

reflect costs for separate functions, activities, or initiatives. RFP at 276, 325. The discussion letters also stated, "no new initiatives shall be added." AR for NPP's Current Protest, Tab F.1 at 3.

¹⁷ Prior to the due date for the amendment 5 submissions, NPP filed a protest challenging the agency's corrective action, arguing, among other things, that the agency should conduct broader discussions and permit more extensive proposal revisions. In responding to that protest, the agency stated that the evaluation of the offerors' addendums "may result in further communications with the offerors." COSF/MOL for NPP's Second Protest, at 7 n.4. Accordingly we dismissed as premature NPP's allegations regarding the scope of discussions and proposal revisions. Nuclear Production Partners LLC, B-407948.9, Sept. 24, 2013, 2013 CPD ¶ 228 at 7.

¹⁸ Both CNS and NPP had initially discussed their proposed cost savings initiatives in the context of fewer, and differing, functional activities than the 26 activities identified in the Navigant report. Although CNS and NPP identified differing activities, coincidentally, their proposals each referred to 14 functional areas.

¹⁹ In performing the reevaluation, the agency established a 3-member integrated project team (IPT). The IPT was supported by two advisory cost savings analysis teams (ACSAT) and 12 subject matter experts (SME). The ACSATs and the IPT read each offeror's previously-submitted FPR along with the cost-savings addendums and thereafter, determined whether an offeror's addendum included all of the required information; verified that the mathematics/formulas were accurate; and verified that the cumulative cost reduction proposal savings in each offeror's addendum matched the value in its previously-submitted FPR. SMEs were assigned initiatives to analyze for each offeror's addendum based upon their technical expertise. COSF/MOL for NPP's Current Protest, Dec. 23, 2013, at 5-6.

its comprehensive analysis, the agency concluded that approximately [redacted] percent of NPP's total proposed cost savings was feasible, and that approximately [redacted] percent of CNS's total proposed cost savings was feasible. AR for NPP's Current Protest, Tab G-1, Source Selection Decision (SSD), Oct. 20, 2013, at 6.

In evaluating the offerors' proposals with regard to CLIN 0001, management approach/cost savings, the IPT assigning adjectival ratings of excellent to both CNS's and NPP's proposals under that evaluation factor.²⁰ AR for NPP's Current Protest, Tab E-1, IPT Supplemental Evaluation Report, at 9. More specifically, the IPT assigned a significant strength to NPP's proposal on the basis that it had proposed [redacted] billion feasible cost savings to the government,²¹ stating that "[t]he size of feasible cumulative cost savings to the Government is approximately [redacted] of the total projected ten year budget for the CLIN 0001 scope of work," and noting that this "is a significant benefit to the Government." AR for NPP's Current Protest, Tab E-1, IPT Report, at 11-12. The IPT did not reevaluate the offerors' proposals under the other evaluation factors and, thereafter, the source selection authority (SSA)²² reviewed the IPT report along with the prior source evaluation board (SEB) report, and performed his own independent assessment. AR for NPP's Current Protest, Tab G-1, SSD, at 1, 3. In performing his own assessment, the SSA agreed with most of the IPT's and SEB's ratings, but concluded that CNS's ratings should be excellent, rather than good, under three evaluation factors.²³ Specifically, the SSA raised CNS's rating from good to excellent under CLIN 0001, corporate experience;²⁴ raised CNS's rating from good

²⁰ In evaluating proposals under the non-cost evaluation factors, the agency identified strengths, significant strengths, weaknesses, significant weaknesses, and deficiencies in each offeror's proposal, and assigned adjectival ratings of excellent, good, satisfactory, and less than satisfactory for each factor. AR for NPP's Current Protest, Tab B, Rating Plan, at 10-11.

²¹ As noted above, the solicitation permitted offerors to propose share ratios. This calculation of NPP's feasible cost savings to the government reflects application of NPP's share ratio.

²² In connection with the corrective action, the agency assigned a new SSA for this procurement. COSF/MOL for NPP's Current Protest at 9.

²³ The prior SSA had made the same evaluation rating changes.

²⁴ In making this change, the SSA stated that the SEB had not afforded appropriate credit for the experience of CNS's team members, including the specific experience of Lockheed Martin Services, Inc. in the [redacted]. AR for NPP's Current Protest, Tab G-1, SSD, at 11.

to excellent under CLIN 0002, project management approach,²⁵ and raised CNS's rating from good to excellent under CLIN 0002, key personnel and orals.²⁶

Following the SSA's changes, CNS and NPP's proposals were rated as follows:

CLIN 0001	NPP	CNS
Mgmt. App./Cost Savings	Excellent	Excellent
Key Personnel/Orals	Excellent	Excellent
Past Performance	Satisfactory	Satisfactory
Corp. Experience	Excellent	Excellent
Evaluated Cost	\$485.90 Million	\$445.68 Million

CLIN 0002	NPP	CNS
Past Performance	Satisfactory	Satisfactory
Project Mgmt. App.	Excellent	Excellent
Key Personnel/Orals	Excellent	Excellent
Corp. Experience	Excellent	Excellent
Evaluated Cost	\$308 Million	\$280 Million

AR, Tab G-1, SSD, at 13, 17, 18.

In performing his own assessment, the SSA also identified various discriminators between the two proposals, concluding that these discriminators favored CNS under two evaluation factors and favored NPP under one factor.

Specifically, with regard to CLIN 0001, management approach and cost savings, the SSA concluded that CNS's proposal was superior due to: its cost savings approach; its organizational structure;²⁷ its commitment of up to [redacted]; its "approach to creating a culture of continuous improvement that increases the likelihood of the

²⁵ In making this change, the SSA recognized that CNS had identified [redacted] project management key personnel for the UPF project, but noted that the RFP did not require any particular positions to be key personnel, referenced CNS's proposal of multiple functional leads reporting directly to the project manager, and concluded that CNS's reporting structure was similar to NPP's proposed organizational structure. Id. at 15.

²⁶ In making this change, the SSA referenced the multiple qualifications of CNS's proposed project director, concluding that these qualifications warranted a significant strength for CNS's proposal. Id. at 16.

²⁷ The SSA stated that CNS's "use of [redacted] provides agility to quickly respond to issues that may arise." AR for NPP's Current Protest, Tab G-1, SSD, at 9.

Government realizing proposed savings”;²⁸ and its “superior approach to small business utilization.” AR for NPP’s Current Protest, Tab G-1, SSD, at 9. For these reasons, the SSA viewed CNS’s proposal as “significantly more advantageous to the Government.” Id.

Next, with regard to CLIN 0001, key personnel and orals, the SSA noted that he had been “made aware of a pending trade secrets Virginia State Court case against [one of CNS’s proposed key personnel]” during which the proposed key personnel had “corrected his testimony,” in which he had earlier denied retaining property that belonged to Babcock & Wilcox (B&W), and acknowledged that he “was in fact in possession of [such property].” Id. at 10. The SSA concluded that such conduct “is inconsistent with DOE/NNSA’s focus on full transparency” and removed a previously-assigned CNS strength. Id. The SSA concluded that NPP had “a slight advantage over CNS” under this evaluation factor. Id.

Finally, with regard to CLIN 0002, Past Performance, while both CNS and NPP were rated satisfactory, the SSA noted a significant risk associated with performance of an NPP team member, URS Energy & Construction, Inc., on the “Integrated Waste Treatment Unit” (IWTU) project.²⁹ Id. at 14. Noting that although the project was completed in April 2012, “it has not successfully been put into operation.” Id. Accordingly, the SSA concluded that CNS “has a slight advantage over NPP” under this evaluation factor. Id. at 15.

The SSA concluded that, overall, the discriminators favored CNS, and noted that CNS also offered the lowest evaluated cost. Accordingly, the SSA selected CNS for award. This protest followed.

DISCUSSION

NPP protests the agency’s limitations on the scope of its corrective action, asserting that such limitations are contrary to various FAR requirements.³⁰ NPP also protests virtually every substantive aspect of the agency’s evaluation and source selection decision. As discussed below, we find no basis to sustain NPP’s protest.

²⁸ The SSA noted that CNS had [redacted], elaborating that he believed this would “build trust between employees and new management” due to the fact that [redacted]. AR for NPP’s Current Protest, Tab G-1, SSD, at 6-7.

²⁹ This project is also referred to as the “Sodium Bearing Waste Treatment Project” (SBWT).

³⁰ As noted above, NPP protested the scope of the agency’s corrective action before submitting its response to the agency’s request for additional information; we dismissed that portion of NPP’s protest as premature. Accordingly, this matter is timely raised.

Scope of the Agency's Corrective Action

First, NPP challenges the scope of the agency's corrective action, asserting that the agency failed to comply with the FAR requirement that, in conducting discussions, an agency must identify deficiencies, significant weaknesses, and adverse past performance to which the offeror has not yet had an opportunity to respond. See FAR § 15.306(d)(3). NPP asserts that the agency's ultimate determination that approximately [redacted] percent of NPP's proposed cost savings were not feasible constituted a significant weakness in NPP's proposal and, therefore, the agency was obligated to have brought to NPP's attention during discussions the particular bases for the non-feasibility determinations.

When an agency engages in discussions with an offeror, the discussions must be meaningful. For discussions to be meaningful, they must identify significant weaknesses, deficiencies, and adverse past performance to which the offeror has not yet had an opportunity to respond. FAR § 15.306(d)(3). A significant weakness is a flaw that appreciably increases the risk of unsuccessful contract performance. FAR § 15.001. A deficiency is a material failure to meet a government requirement or a combination of significant weaknesses that increases the risk of unsuccessful contract performance to an unacceptable level. Id. In contrast to the requirement to discuss significant weaknesses and deficiencies, an agency need not discuss areas in which a proposal may merely be improved, JWK Int'l, Corp. v. U.S., 279 F.3d 985, 988 (Fed. Cir. 2002), nor is an agency required to point out every aspect of a proposal that offers a less desirable approach than that offered by its competitors. ProLog, Inc., B-405051, Aug. 3, 2011, 2012 CPD ¶ 84 at 7; PWC Logistics Servs., Inc., B-299820, B-299820.3, Aug. 14, 2007, 2007 CPD ¶ 162 at 6.

The agency responds that NPP's proposed cost savings did not constitute a significant weakness in its proposal. To the contrary, the agency points out that NPP's proposal was rated excellent under the management approach/cost savings evaluation factor, and was assigned a significant strength specifically because of its proposed cost savings. As noted above, in assigning this strength, the agency stated:

The IPT found approximately [redacted] B[illion] of the cumulative savings . . . to be feasible without impact to effective security and mission deliverables (See Exhibit E). The size of the feasible cumulative cost savings to the Government is approximately [redacted] of the total projected ten year budget for the CLIN 001 scope of work. . . . The [redacted] B[illion] feasible savings is a significant benefit to the Government because it represents a substantial amount of cost savings relative to the operating budget. . . . The size of these cost savings for reinvestment will

become increasingly more important as federal budgets continue to decline.

AR for NPP's Current Protest, Tab E-1, IPT Supp. Evaluation Report, Oct. 28, 2013, at 11-12.

In short, the agency asserts that, rather than constituting a significant weakness or deficiency in NPP's proposal, the proposal offered a substantial amount of feasible cost savings that constituted a significant benefit to the government. The fact that NPP also proposed cost savings which the agency found to be infeasible did not constitute a deficiency or significant weakness.³¹ See Hearing Transcript for NPP's Current Protest (Tr.C), Testimony of SSA, at 841-42.³²

In asserting that the agency's infeasibility determinations regarding [redacted] percent of its proposed cost savings constituted a significant weakness in its proposal, NPP refers to the solicitation's "gateway" provision, which provides that in order to be eligible for exercise of a contract option, the awardee must have achieved, by the end of year three, at least 80 percent of the cost savings that it proposes to achieve by that time.³³ RFP at 21. NPP further notes that, in his source selection decision, the SSA stated that, because NPP's feasible cost savings constituted a lower percentage of its total proposed cost savings than that of CNS, NPP would need to "reach farther" than CNS to extend contract performance, noting that NPP's efforts in this regard "could lead to a loss of management focus on security, safety, and mission." SSD at 6.

³¹ The agency also asserts that, even if the infeasibility of a portion of NPP's proposed cost savings was considered to be a significant weakness, the agency did not reasonably know of that flaw in NPP's proposal prior to submission of the detailed and reformatted information required in response to RFP amend. No. 5. The agency points out that procuring agencies are not required to re-open discussions regarding matters that are first reasonably disclosed to the agency by an offeror's submission responding to discussions. See L-3 Communications Corp., BT Fuze Products Div., B-299227, B-299227.2, Mar. 14, 2007, 2007 CPD ¶ 83 at 19. Finally, the agency notes that NPP was, in fact, advised during discussions that it must provide supporting information for each and every cost savings initiative, and that NPP did so.

³² In resolving this protest, GAO conducted a 3-day hearing, during which testimony was provided by the agency's SSA, an SME involved in the evaluation, the contracting officer, and NPP's consultant.

³³ During the transition period, the awardee will submit a merger transformation plan that includes a timeline for projected cost savings. RFP at 21, 68-73.

Here, we do not view the portion of NPP's proposed cost savings that the agency found to be infeasible as constituting a significant weakness or deficiency. As noted above, the IPT and the SSA both concluded that NPP's proposal was properly rated as excellent under the management approach/cost savings evaluation factor, and further recognized that the substantial amount of feasible cost savings that NPP proposed constituted a significant benefit to the government. Further, the evaluation record supports the view that NPP fully understood the contract requirements and the SSA testified that he did not question NPP's capability to successfully perform the contract. Tr.C at 841-42.

In arguing that its proposed cost savings constituted a significant weakness, NPP's reliance on the solicitation's "gateway" provision is misplaced. Successful performance of the contract requirements was not conditioned on achieving 80 percent of the proposed cost savings, or upon being eligible for contract extension. Rather, the solicitation's "gateway" provision was clearly intended to function as both an incentive for offerors to propose achievable cost savings, and a tool for the agency to use in administering the contract. In our view, the SSA's recognition that a contractor's interest in achieving greater cost savings could lead to loss of management focus did not constitute a determination that this aspect of NPP's proposal constituted a "flaw that appreciably increases the risk of unsuccessful contract performance"--that is, the agency reasonably concluded that it did not rise to the level of being a significant weakness.

Even if we were to conclude that NPP's infeasible cost savings constituted a significant weakness (which we do not), the record supports the agency's alternative argument that it did not know--and could not have known--the bases for finding a portion of NPP's proposed cost savings to be infeasible when it evaluated NPP's previously-submitted FPR. That is, it was not until NPP submitted its corrective action addendum, with the additional information required, and in the format mandated by the agency, that the magnitude of NPP's infeasible cost savings became reasonably apparent. Accordingly, the agency was not required to reopen discussions. See L-3 Communications Corp., BT Fuze Products Div., supra.

Finally, as the agency also notes, NPP was, in fact, advised by the agency's discussion letter that it must provide supporting information for each and every cost savings initiative it had proposed. Among other things, the agency directed NPP to "[e]xplain the basis for each initiative," and to "provide a concise description of the basis for each estimate." AR for NPP's Current Protest, Tab F.1, Discussion Letter for NPP, at 1 (underlining added). NPP does not dispute that it did, in fact, provide additional supporting information for each and every cost savings initiative, and it has not identified any particular additional information that it would have provided if discussions had been reopened. On this record we reject NPP's assertion that the

agency failed to conduct meaningful discussions in connection with its corrective action.³⁴

Evaluation of Proposals and Source Selection Decision

Next, NPP challenges virtually every aspect of the agency's substantive evaluation of proposals and the bases for its source selection decision. In this regard, NPP challenges the agency's evaluation with regard to every cost savings initiative that the agency concluded was less than 100 percent feasible; challenges virtually every discriminator relied on by the SSA in selecting CNS for award; asserts that various areas of its proposal should have been viewed as strengths or discriminators; and generally complains that it was treated unfairly and unequally. We have reviewed all of NPP's allegations and find no basis to sustain its protest.

For example, NPP challenges the agency's conclusion that its proposed cost savings regarding [redacted] benefits were not 100 percent feasible. In this regard, NPP proposed to achieve cost savings by "eliminating [redacted]" for both union and non-union employees. AR for NPP's Current Protest, Tab C-2, NPP Addendum File 1, at 50-54. NPP elaborated, stating:

This cost savings accounts for [redacted].^[35] Our proposed benefits program does not include [redacted].^[36]

Id. at 50.³⁷

³⁴ We have also considered NPP's various assertions that the agency's prior communications with, and release of information to, NPP were misleading; that the discussions were unfair; that the discussions did not seek to obtain the best value to the government; and that the agency considered adverse past performance information that NPP had not previously had an opportunity to address. See FAR §§ 15.306(d), 15.306(e). We conclude that none of these assertions provide a basis for sustaining NPP's protest.

³⁵ The agency's SME explained that, currently, [redacted]. Tr.C at 309.

³⁶ NPP acknowledges that, although the language quoted above discusses both [redacted], its cost savings estimates "did not include cost savings for [redacted]. NPP Comments, Jan. 8, 2014, exh. 1, Consultant's Report, at 4. In any event, the agency notes that "eliminating" future projected costs constitutes cost avoidance, not cost savings; accordingly, the agency did not credit NPP with cost savings for avoiding future costs.

³⁷ This quotation was taken from NPP's proposal regarding "bargaining," that is union, employees. NPP's proposal for non-union employees contains virtually identical language. See AR for NPP's Current Protest, Tab C-2, NPP Addendum File 1, at 52.

In evaluating NPP's proposal, the agency separately considered the feasibility of these proposed cost savings as it related to union and non-union employees. With regard to union employees, the agency's SME stated:

In my technical judgment , a portion of the proposed initiative is feasible. . . . Eliminating [redacted] is 25% feasible as it has not currently been done at any of the NNSA and DOE sites and is less common in industry. Additionally, implementation of this initiative is subject to successful negotiation with the unions. Based on this, I believe this initiative is 25% feasible. At this portion, this initiative can be implemented without impacting effective mission.

AR for NPP's Current Protest, Tab H-1, IPT, ACSAT and SME Feasibility Analysis Summary, at 57.

With regard to non-union employees, the agency's SME stated:

In my technical judgment , a portion of the proposed initiative is feasible. . . . Eliminating [redacted] is 50% feasible as it has not currently been done at any of the NNSA and DOE sites and is less common in industry. This part of the initiative is likely to be met with strong resistance from stakeholders. Oak Ridge has a very strong [redacted] and will likely fight this part of the initiative. Based on this, I believe this initiative is 50% feasible. At this portion, this initiative can be implemented without impacting effective mission.

Id. at 59.

NPP complains that the agency's evaluation in this regard was unreasonable, asserting, among other things, that the percentages were assigned "arbitrarily," that "there is no necessity to negotiate with the union about changes to [redacted] for [redacted],³⁸ and that NPP should have received credit for avoiding costs for [redacted]. NPP's Current Protest, Nov. 20, 2013, at 59-60. Additionally, NPP asserts that the agency unequally evaluated CNS's proposed cost savings with regard to [redacted] benefits, which NPP asserts to have been essentially the same. NPP Comments, Jan. 8, 2014, at 55.

In reviewing an agency's evaluation, we will not reevaluate offerors' proposals; instead, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and procurement

³⁸ NPP cites to [redacted] as authority for this proposition. NPP's Current Protest, Nov. 20, 2013, at 59.

statutes and regulations. The Eloret Corp., B-402696, B-402696.2, July 16, 2010, 2010 CPD ¶ 182 at 12. An offeror's mere disagreement with the agency's evaluation is not sufficient to render the evaluation unreasonable. Id.

Here, NPP's various complaints reflect mere disagreement with the agency's considered judgment. First, we find nothing unreasonable in the agency's determination that a lower level of cost savings was feasible in reducing [redacted] benefits for union employees, as compared to non-union employees, whether or not negotiation with the union is legally required. Further, at the GAO hearing, the agency's SME testified extensively regarding the various bases for her interpretation of both CNS's and NPP's proposals, as well as her technical judgments regarding the feasibility of each offeror's cost savings for [redacted], including her consideration of current industry trends. See Tr.C at 308-327; 331-37; 344-48; 356-413; 514-523. We found the SME's testimony to be reasonable, credible, and persuasive. We have reviewed all of NPP's assertions regarding alleged unfairness and inequality, and find NPP's arguments unpersuasive.³⁹ NPP's protest regarding the agency's evaluation of cost savings for [redacted] benefits is denied.

By way of another example, NPP challenges the evaluation of cost savings related to employee pensions. In this regard, NPP proposed to significantly reduce NPP's pension costs for non-union employees, stating:

[redacted]⁴⁰

AR for NPP's Current Protest, Tab C-2, NPP's RFP Addendum File 1, at 55.

In short, for purposes of pension calculations, employees' years of service would be [redacted], effectively precluding any [redacted]. To [redacted], NPP proposed to implement a [redacted].⁴¹ Id.

³⁹ For example, NNP asserts that the SME unreasonably gave CNS credit for [redacted] which, according to NPP, CNS "did not propose." NPP Post-Hearing Comments, at 15. Nonetheless, at the hearing, NPP's own consultant testified that the SME's view regarding this matter "could be a reasonable opinion." Tr.C at 631.

⁴⁰ The agency's SME explained that under a defined benefit plan, the employer promises a retirement benefit for life, and the employer bears all of the risk with regard to funding for the promised benefits. Tr.C at 292-93. In contrast, under a 401k, or defined contribution plan, funds are invested and the employee bears the risk with regard to funding for future benefits. Id. at 292-94.

⁴¹ NPP also proposed to combine the Y-12 and Pantex pension trust funds, resulting in "lower investment fees, reduced record-keeping, less administrative support fees, one investment committee and lower filing-fees for combined plan

(continued...)

In evaluating NPP's proposal to achieve cost savings by [redacted], the agency found this portion of its initiative to be only 50% feasible, stating:

This initiative will likely be met with opposition from employees and stakeholders [redacted]. While [redacted] has been accomplished at all the NNSA sites ([redacted]) we have not seen contractors [redacted]. NPP states that B&W corporate has taken these steps with their [redacted]. However, this action is more aggressive than what we have seen at other NNSA and DOE sites.

AR for NPP's Current Protest, Tab H-1, at 61.

NPP complains that the agency's evaluation with regard to this portion of NPP's proposed cost savings was arbitrary, and asserts that the CNS's proposal was "substantially the same" as NPP's, yet the agency found more of CNS's proposed cost savings to be feasible. NPP Comments, Jan. 8, 2014, at 54-57. The record does not support NPP's assertions.

As noted above, in reviewing an agency's evaluation, we will not reevaluate offerors' proposals; instead, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and procurement statutes and regulations. The Eloret Corp., supra. An offeror's mere disagreement with the agency's evaluation is not sufficient to render the evaluation unreasonable. Id.

First, in contrast to NPP's proposal to [redacted] and [redacted], CNS proposed to [redacted].⁴² The agency found that CNS's proposal regarding [redacted] would be 100 percent feasible for non-union employees, but only 25 percent feasible for union employees. AR for NPP's Current Protest, Tab E-6 at 162.

At the GAO hearing, the agency's SME provided a detailed explanation supporting her conclusion that NPP's cost savings proposal with regard to pensions would be [redacted] than the cost savings proposed by CNS. Tr.C at 292-308. Among other things, the SME provided various supporting calculations to illustrate her conclusions.⁴³ Id. Again, we found the SME's testimony to be reasonable, credible,

(...continued)

assesses of similar size." NPP's FPR Addendum File 1 at 55. The agency found this portion of NPP's proposal to be 100 percent feasible.

⁴² CNS also proposed to [redacted].

⁴³ For example, the SME testified that NPP's proposal to [redacted] could result in a benefit decrement of [redacted], and that the [redacted] that NPP proposed
(continued...)

and persuasive. Based on the record provided, we reject NPP's assertions that the agency unfairly or unequally evaluated NPP's and CNS's proposals with regard to their materially different proposed cost savings related to pension costs.

By way of yet another example, NPP asserts that the agency's evaluation was flawed due to its application of benchmarks flowing from the Navigant analysis. On one hand, NPP asserts that the evaluation was flawed because the agency failed to automatically apply those benchmarks in a situation where NPP's proposed FTE reductions were within them, complaining that, upon recognizing that NPP's proposed reductions were within the Navigant benchmarks, "[t]hat should have been the end of the story, and all proposed savings should have been found by NNSA to be feasible." NPP's Current Protest, Nov. 20, 2013, at 53. Alternatively, NPP complains that the agency's evaluation was flawed because of its allegedly "mechanical application" of those benchmarks. NPP Current Supp. Protest, Nov. 25, 2013, at 16.

Here, the record shows that the agency considered information drawn from the Navigant report as a basis to calculate "upper bound" benchmarks of FTE reductions for the 26 Navigant-identified activities,⁴⁴ but that, in considering whether proposed reductions above or below those benchmarks were feasible, the agency also considered whether the offeror had presented "compelling" information to support its proposal. See AR for NPP's Current Protest, Tab E-5, at 12. We find nothing unreasonable in the agency's reliance on, and application of, the Navigant analysis, and NPP's protest regarding the agency's consideration of that analysis in performing its evaluation is denied.

Throughout its various protest submissions, NPP has repeatedly asserted that the agency's evaluation reflected unfair treatment of NPP, making various comparisons between NPP's and CNS's proposals, asserting that the agency's evaluation judgments were disparate, unequal, and prejudicial. As noted above, in its corrective action, the agency performed a comprehensive analysis of every proposed cost savings initiative, making numerous judgments regarding the multiple cost savings initiatives proposed by each of the offerors; these judgments were

(...continued)

[redacted] was unlikely to "come anywhere close" to compensating [redacted].
Tr.C at 300-04. .

⁴⁴ The agency's reference to the Navigant analysis in its request for FPR addendums, and its requirement that offerors present their proposed cost savings in the same format as that analysis, reasonably put offerors on notice that Navigant's analysis and conclusions would be considered by the agency in evaluating the feasibility of proposed cost savings.

based on the substantial experience and technical expertise of the agency's personnel and consultants. While NPP is clearly dissatisfied with the agency's various judgments and comparative assessments, it has failed to demonstrate that they were, in any material way, unreasonable.⁴⁵

The protest is denied.

Susan A. Poling
General Counsel

⁴⁵ In addition to the arguments specifically discussed above, NPP's various protest submissions include assertions that: CNS made prohibited changes to its corrective action addendum; the agency used improper assumptions regarding the percentage of union employees; the agency's risk assessments were unreasonable because, in preparing its proposal, NPP had previously made "Monte Carlo" risk adjustments; the agency misclassified some of NPP's proposed cost savings; the agency failed to recognize the organizational value of an independent oversight committee that NPP had proposed; the SSA failed to view NPP's proposal of key personnel for the RFP's security requirements as a discriminator; and the agency failed to conclude that one of CNS's proposed key personnel will be unable to obtain a security clearance due to ongoing litigation. We have considered all of NPP's complaints, along with the agency's comprehensive responses, and find no basis to sustain the protest.