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## Decision

**Matter of:** Epsilon Systems Solutions, Inc.

**File:** B-409720; B-409720.2

**Date:** July 21, 2014

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David B. Dixon, Esq., S. Douglas Kerner, Esq., Rachel E. Waters, Esq., Buchanan Ingersoll & Rooney PC, for the protester.

Daniel R. Forman, Esq., James G. Peyster, Esq., Derek R. Mullins, Esq., and Robert J. Sneckenberg, Esq., Crowell & Moring LLP, and Terence Murphy, Esq., and Patrick H. O'Donnell, Esq., Kaufman & Canoles, P.C., for AMSEC, LLC, the intervenor.

Stephen P. Anderson, Esq., and Rhonda L. Russ, Esq., Department of the Navy, Naval Sea Systems Command, for the agency.

Noah B. Bleicher, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Challenge to assignment of adjectival ratings under two technical subfactors based solely on definitions included in the source selection plan is denied because source selection plan was not included with the solicitation and is considered an internal agency document that does not give rights to outside parties, and record shows that agency reasonably considered relative merits in source selection.
2. Objections to agency's determinations regarding relevancy of past performance projects is denied where agency used its broad discretion to make reasonable determinations that were consistent with the solicitation.
3. Protest challenging agency's evaluation of proposed subcontractor's past performance is denied where evaluation was reasonable, consistent with the solicitation, and within the discretion of the agency evaluators.
4. Discussions were not misleading where agency warned protester that proposed direct labor rates were low based on one salary survey and later found the increased rates to be acceptable based on additional metrics.

5. Agency's cost/technical tradeoff is unobjectionable where the decision was consistent with the solicitation, supported by underlying evaluation findings, and adequately documented.

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## **DECISION**

Epsilon Systems Solutions, Inc., of San Diego, California, protests the award of a contract to AMSEC, LLC, of Virginia Beach, Virginia, under request for proposals (RFP) No. N50054-12-R-0002, issued by the Department of the Navy, Naval Sea Systems Command, for engineering and technical services support. The protester raises numerous challenges to the agency's evaluation under the technical and past performance factors, the conduct of discussions, and the cost/technical tradeoff decision.

We deny the protest.

## **BACKGROUND**

The Navy issued the RFP on September 7, 2012, seeking proposals for the engineering and technical services to support the maintenance and planning for the repair and overhaul of equipment and systems associated with U.S. Navy aircraft carriers and West Coast surface ships. RFP at 1, 14. The RFP's statement of work (SOW) identified numerous ship systems and components the contractor was to inspect, examine, analyze, and repair and emphasized support for the Carrier Engineering Maintenance Assist Team (CEMAT) and the Surface Engineering Maintenance Assist Team (SEMAT). Id. at 14-15.

The RFP contemplated the award of a cost-plus-fixed-fee indefinite-delivery/indefinite-quantity contract with a 1-year base period and four 1-year option periods.<sup>1</sup> Id. at 45, 51, 73, 105. The RFP advised offerors that proposals would be evaluated on a best-value basis, considering technical, past performance, and cost. Id. at 120. With respect to the technical factor, the RFP identified the following three equally-weighted subfactors: organization/management, manpower resources, and facilities. Id. at 120-21. The RFP also identified the following four equally-weighted past performance subfactors: technical, schedule, cost control, and management. Id. at 122. For purposes of award, the RFP stated that the technical factor was more important than the past performance factor, and taken together, the two non-cost factors were more important than cost. Id. at 120.

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<sup>1</sup> The RFP was amended nine times during this procurement. Citations in this decision to the solicitation are to the conformed RFP issued via amendment 9. See RFP, amend. 9, at 1-123.

The RFP provided detailed instructions for the preparation of proposals. Under the technical factor, offerors were to “clearly demonstrate that the offeror has a thorough understanding and capability to perform the efforts described in the [SOW].” Id. at 113. Offerors were also required to “describe the manpower and facilities the offeror proposes to use to accomplish the effort described in [the SOW].” Id. In evaluating technical proposals, the agency would assess “the offeror’s capability to perform the requirements” and assign proposals adjectival ratings of exceptional, very good, satisfactory, marginal, or unsatisfactory under each subfactor. Id. at 120-21. The RFP also identified various elements the agency would assess under the technical subfactors. For example, the agency would assess the offeror’s approach to controlling and tracking incurred costs and its ability to manage emergent requirements under the organization/management subfactor. Id. at 121. Under the manpower subfactor, the agency would review the offeror’s plan to provide qualified personnel to perform the SOW requirements as well as the availability of key personnel. Id.

With respect to past performance, the RFP permitted offerors to submit “any information regarding [the offeror’s] past performance of contracts similar to the Government’s requirement that it would like the Government to consider,” including, for example, data from the contractor performance assessment reporting system (CPARS) and explanatory information of poor performance. Id. at 109, 115-16. The RFP also instructed offerors to identify at least three “recent, similar contracts.”<sup>2</sup> Id. at 116. Offerors were required to provide a “narrative explanation” describing how each of these contracts was “similar in scope, magnitude, or complexity to the work being solicited. . . .” Id. The RFP also instructed offerors to explain the “objectives achieved and any cost growth or schedule delays encountered.” Id. The RFP further required offerors to identify references for each of the contracts and have those references submit past performance information (PPI) surveys, which were included as an attachment to the RFP. Id.; RFP, attach. J-21, PPI Survey, at 1-7. The RFP also advised that the Navy would review CPARS ratings and “other existing past performance ratings on relevant contracts.” RFP at 115. In addition, the RFP stated that the agency “may evaluate the past performance of significant subcontractors based on percentage and/or nature of work. . . .” Id.

The RFP advised that past performance would be evaluated to “determine the contractor’s performance risk.” Id. at 121. The RFP stated that the Navy would give “greater consideration to contracts requiring the same or similar type and complexity of work required by the solicitation.” Id. In this regard, the RFP identified as follows the type of work the Navy considered to be most relevant:

- (a) Experience performing inspections, examinations, analysis, repairs, and making recommendations in the areas of maintenance

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<sup>2</sup> The RFP defined a recent, similar contract as one performed within the last 3 years with a value of at least \$500,000. RFP at 116.

planning and/or repair as requested on naval propulsion and auxiliary machinery.

(b) Experience providing technical guidance to Ship's Force relating to work on Hull, Mechanical & Electrical (HM&E) and aviation equipment and systems.

(c) Experience providing services on board U.S. Navy vessels.

Id. at 121-22. The RFP also discussed the agency's evaluation under each of the past performance subfactors. Id. at 122. Pursuant to the RFP, the Navy would rate past performance as exceptional, very good, satisfactory, marginal, or unsatisfactory under each of the subfactors. Id. A neutral rating would be assigned in the case of an offeror without past performance or if past performance information was otherwise unavailable. Id.

With respect to cost, the RFP required offerors to submit a cost proposal that included breakdowns of various cost elements, including, for example, direct labor rates, material costs, and indirect costs. Id. at 117. The solicitation also included pricing exhibits that offerors were to electronically fill out for each year of the contract. Id.; see RFP, amend. 7, exhs. A-E. In evaluating cost proposals, the RFP advised offerors that the agency would conduct a cost realism analysis to determine the probable cost to the government. RFP at 122. The RFP stated that each labor category and amount of labor would be reviewed to determine if they were "realistic for the work promised in the technical proposal." Id. For award purposes, the agency would add the total estimated cost and fixed fee for the base and all option periods. Id. The RFP warned that a cost proposal that is "unrealistic, unreasonable, or unbalanced may be rejected." Id.

Three offerors, including Epsilon and AMSEC, the incumbent contractor, submitted proposals prior to the RFP's submission deadline. Agency Report (AR) at 6. A source selection evaluation board (SSEB) reviewed technical proposals and past performance, and a cost analysis panel (CAP) reviewed cost proposals. With respect to Epsilon's technical proposal, the record shows that the SSEB highlighted numerous strengths under each of the technical subfactors. AR, Tab IV.B.1., Initial Technical SSEB Report, at 7-8. The SSEB also identified various weaknesses and deficiencies in Epsilon's technical proposal that required additional responses from Epsilon. Id. at 9-11. Similarly, the SSEB reviewed Epsilon's past performance and identified various strengths and positive aspects under each of the subfactors. AR, Tab IV.C.1., Initial Past Performance SSEB Report, at 31-38. However, the SSEB concluded that it required additional past performance information with respect to

Epsilon's proposed significant subcontractor [deleted].<sup>3</sup> Id. at 30. With regard to cost, the CAP identified various concerns that required Epsilon's attention, including what it considered to be low proposed direct labor rates and low rates of escalation. AR, Tab IV.D.1., CAP Report, June 26, 2013, at 13. Accordingly, the agency conducted discussions with Epsilon.

Following the submission of proposal revisions, the SSEB determined that Epsilon resolved all of the identified deficiencies in its technical proposal. AR, Tab IV.B.2., Final Technical SSEB Report, at 14-15. Where the proposal was initially rated unsatisfactory under the organization/management and manpower resources subfactors, the SSEB now found the proposal very good under those subfactors (and exceptional under the facilities subfactor). Id. at 15. Consequently, the SSEB assigned the proposal an overall technical rating of very good. Id. With respect to past performance, the SSEB reviewed the additional past performance information for subcontractor [deleted] and assigned the proposal a very good past performance rating. AR, Tab IV.C.2., Final Past Performance SSEB Report, at 5. In addition, after two rounds of cost-related discussions, the CAP determined that Epsilon's final proposed cost of \$176,811,501 was reasonable and realistic. AR, Tab IV.D.3., Final CAP Report, at 16.

The SSEB and CAP presented their initial and final reports to the source selection advisory council (SSAC). The SSAC noted that Epsilon was rated very good under the technical and past performance factors and AMSEC was rated exceptional under the factors. AR, Tab IV.E.1., SSAC Memo, at 2-3. However, the SSAC highlighted that AMSEC's cost proposal of \$187,795,397 was approximately \$11 million more than Epsilon's, and the SSAC concluded that it "would not be in the best interest of the Government" to pay the extra costs to AMSEC. Id. at 3-4. Thus, the SSAC recommend to the source selection authority (SSA) that the contract be awarded to Epsilon.<sup>4</sup> Id. at 4.

The SSA reviewed the SSAC's recommendation and considered the evaluation reports. Despite the SSAC's recommendation to make the award to Epsilon, the SSA concluded that AMSEC actually represented the best value to the government. AR, Tab IV.F.1., SSA Memo, at 6. In reaching this conclusion, the SSA took a "closer look" at the proposals and the evaluators' findings. Id. at 5. The SSA noted that under the first technical subfactor, neither Epsilon nor AMSEC were evaluated as having any weaknesses and "several strengths were common to both

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<sup>3</sup> The SSEB initially rated Epsilon's past performance as very good and assigned a neutral rating to [deleted] past performance due to a lack of past performance information. AR, Tab IV.C.1., Initial Past Performance SSEB Report, at 31, 35-38.

<sup>4</sup> A third offeror's proposal was also considered but found not to represent a better value to the government. AR, Tab IV.E.1., SSAC Memo, at 3.

proposals.” Id. at 6. The SSA “distilled down the relative strengths” and concluded that the “major real difference” was that AMSEC proposed “well defined approaches and procedures that have proven effective on previous contracting containing the CEMAT requirements.” Id. Under the second technical subfactor, manpower resources, the SSA noted that AMSEC “as the incumbent, brings very qualified and experienced personnel and will require no new hiring, with no loss of continuity resulting.” Id.

The SSA also expressed various concerns with respect to Epsilon’s proposed costs. For example, the SSA noted what he considered to be low rates of escalation on direct labor and low proposed fee percentages. Id. at 3. Additionally, Epsilon had proposed to use [deleted], but due to the low proposed fee, the SSA concluded that [deleted]. Id. Specifically, the SSA concluded that he “cannot accept that the [deleted].” Id. Further, the SSA noted that the [deleted] was tied to both the cost and technical factors [deleted], and found that this “correlation of the [deleted] has built in cost/technical aspects that detract from the proposal’s overall value.” Id. at 4.

The SSA then detailed why he believed that AMSEC’s higher-rated proposal outweighed the additional costs, and documented the rationale for this cost/technical tradeoff as follows:

Both AMSEC and Epsilon illustrated that their technical proposals meet the requirement[s] of the solicitation. However, AMSEC’s proposal exceeds more requirements than does Epsilon’s proposal. . . . AMSEC brings proven approaches and procedures that Epsilon does not match. AMSEC out-weighs Epsilon in providing experience[d], highly qualified personnel. This becomes significant in that I have concerns about how the low direct labor escalation and low fees proposed by Epsilon could adversely impact Epsilon in attracting and retaining highly qualified personnel. On this basis I conclude that it is to the Government’s interest to pay the 6.21 percent higher probable costs in order to receive the extra benefits presented by AMSEC’s proposal.

Id. at 6. Thus, the SSA determined that AMSEC’s proposal represented the best value to the agency, and on April 4, 2014, the Navy awarded the firm the contract. AR at 9. Epsilon received a debriefing on April 15, and this protest followed.

## DISCUSSION

In its protest, Epsilon challenges various aspects of the procurement, including the Navy’s evaluation of the firm’s technical and past performance proposals, the conduct of discussions, and the best-value tradeoff decision. We have reviewed

each of Epsilon's protest arguments and find that none provides a basis to sustain the protest.<sup>5</sup>

### Technical Evaluation

First, Epsilon objects to the rating of very good assigned to its technical proposal under the organization/management and manpower resources subfactors. Comments/Supplemental (Supp.) Protest at 3. Specifically, the protester argues that the SSEB should have assigned the proposal an exceptional rating under the organization/management subfactor because the SSEB identified 19 strengths (no weaknesses) that corresponded to all of the RFP's evaluation criteria for the subfactor. *Id.* at 7. Likewise, the protester contends that its proposal should have earned an exceptional rating under the manpower subfactor because the SSEB identified five strengths (no weaknesses) and found that 19 of 44 proposed key personnel exceeded the requirements of the subfactor. *Id.* at 11. The protester bases these challenges solely on the rating definitions included in the source selection plan, which was not provided to offerors as part of the RFP. *Id.* at 4. The protester does not contend that the SSEB's technical evaluation was otherwise unreasonable.

Source selection plans provide internal agency guidelines and, as such, do not give outside parties any rights. *E.g.*, Walsh Investors, LLC, B-407717, B-407717.2, Jan. 28, 2013, 2013 CPD ¶ 57 at 8 n.6; Mid Pacific Envtl., B-283309.2, Jan. 10, 2000, 2000 CPD ¶ 40 at 6. It is the evaluation scheme in the RFP, not internal agency documents, such as the source selection plan, to which an agency is required to adhere in evaluating proposals and in making the source selection. All Points Logistics, Inc., B-407273.53, June 10, 2014, 2014 CPD ¶ 174 at 10 n.10; Meadowgate Techs., LLC, B-405989, B-405989.3, Jan. 17, 2012, 2012 CPD ¶ 27 at 6 n.7; Synergetics, Inc., B-299904, Sept. 14, 2007, 2007 CPD ¶ 168 at 8.

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<sup>5</sup> In its initial protest, Epsilon raised a number of additional concerns that are not addressed in this decision. GAO previously dismissed many of these points for failing to state a valid basis of protest, failing to set forth a detailed statement of legal and factual grounds of protest, being speculative, or being untimely. GAO Ruling on Motion to Dismiss at 1; *see also* 4 C.F.R. § 21.5(f) (2014) (requiring dismissal of protest grounds that lack a detailed statement of the legal and factual grounds of protest or which fail to clearly state legally sufficient grounds of protest); 4 C.F.R. § 21.2(a)(2) (requiring that protests be filed not later than 10 days after the basis of protest is known or should have been known). In addition, in its comments on the agency's report on the protest, Epsilon failed to meaningfully address the agency's response to certain other allegations. Accordingly, we consider the protester to have abandoned these arguments. Organizational Strategies, Inc., B-406155, Feb. 17, 2012, 2012 CPD ¶ 100 at 3 n.3.

Here, Epsilon's protest allegation, based entirely on definitions included in the source selection plan, is without merit. See Comments/Supp. Protest at 4. The protester has not argued that the technical evaluation was unreasonable or inconsistent with the RFP's evaluation criteria. The protester's complaint does not allege that the agency violated any procurement law or regulation. Instead, Epsilon's objection is that the SSEB's findings under the two technical subfactors were more consistent with the source selection plan's definition of an exceptional rating rather than the very good rating assigned. Id. at 7, 11. As stated above, the source selection plan was not provided to offerors nor was it incorporated into the solicitation. Thus, because the source selection plan here is an internal agency document that does not give rights to outside parties--contrary to the protester's suggestions otherwise--this protest ground is denied. See Park Tower Mgmt. Ltd., B-295589, B-295589.2, Mar. 22, 2005, 2005 CPD ¶ 77 at 6 n.5 (denying challenge based on alleged deficiency in the application of an agency's source selection plan because such plans are internal agency instruction and do not give outside parties any rights).

In any event, our Office has consistently recognized that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision-making in the procurement process. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 11. The evaluation of proposals and assignment of adjectival ratings should generally not be based upon a simple count of strengths and weaknesses, but on a qualitative assessment of the proposals consistent with the evaluation scheme. See Clark/Foulger-Pratt JV, B-406627, B-406627.2, July 23, 2012, 2012 CPD ¶ 213 at 14. Where the evaluation and source selection decision reasonably consider the underlying basis for the ratings, including the advantages and disadvantages associated with the specific content of competing proposals, in a manner that is fair and equitable, and consistent with the terms of the solicitation, the protester's disagreement over the actual numerical, adjectival, or color ratings is essentially inconsequential in that it does not affect the reasonableness of the judgments made in the source selection decision. General Dynamics, American Overseas Marine, B-401874.14, B-401874.15, November 1, 2011, 2012 CPD ¶ 85 at 10.

The record here reflects that the agency reasonably considered the qualitative merits of Epsilon's proposal in making the final award decision. As discussed above, the SSA reviewed the SSEB's and CAP's reports and "distilled down the relative strengths" of Epsilon's and AMSEC's proposals. AR, Tab IV.F.1., SSA Memo, at 6. In making the ultimate award decision, the record shows that the SSA highlighted substantive differences between the competing proposals before determining that AMSEC represented the best value. Id. at 5-6. While the SSA acknowledged the adjectival ratings assigned to the proposals, they did not form the sole basis for the award decision. As such, we are not persuaded that a higher adjectival rating under two technical subfactors would have impacted Epsilon's chance for award.



## Past Performance

Epsilon raises various challenges to the agency's evaluation of its past performance, arguing that but for these "errors" the firm would have received an exceptional rating instead of the very good rating the SSEB assigned. Protest at 19; Comments/Supp. Protest at 35-38. For example, Epsilon objects to the agency's determination that one of the projects the firm submitted for review was not relevant and complains that the Navy instead identified in CPARS a different project that it used for evaluation purposes. Epsilon also objects to the agency's evaluation of a proposed subcontractor's past performance. We have reviewed all of Epsilon's past performance challenges and find that none provide a basis to sustain the protest; several are discussed below.

The evaluation of an offeror's past performance, including the agency's determination of the relevance of an offeror's performance history and the weight to be assigned to a subcontractor's past performance, is a matter of agency discretion, which we will not find improper unless it is inconsistent with the solicitation's evaluation criteria. CLS Worldwide Support Servs., LLC, B-405298.2 *et al.*, Sept. 11, 2012, 2012 CPD ¶ 257 at 15; Nat'l Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4. In addition, the relative merits of an offeror's past performance information is generally within the broad discretion of the contracting agency. See Paragon Tech. Group, Inc., B-407331, Dec. 18, 2012, 2013 CPD ¶ 11 at 5. A protester's disagreement with the agency's judgment does not establish that an evaluation was unreasonable. FN Mfg., LLC, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

First, Epsilon argues that it was unreasonable for the Navy not to consider in its past performance evaluation one of the contracts Epsilon identified for review in which the firm's performance was rated exceptional. Specifically, the protester disagrees with the agency's determination that the firm's work as a subcontractor providing aircraft carrier support equipment (SE) and aircraft launch and recovery equipment (ALRE) installations work was not relevant. Comments/Supp. Protest at 13-23.

Here, the SSEB documented in its report all of the past performance projects that Epsilon submitted for review and whether the agency considered the information in its evaluation. AR, Tab IV.C.1., Initial Past Performance SSEB Report, at 23-24. With respect to the SE/ALRE project at issue, the SSEB report states, "Considered not relevant, and therefore, not used for evaluation purposes. Contractor performed in the role of a subcontractor. Work performed was for [Alternations Installation Team] installations and Integrated Launch and Recovery Television Surveillance System Service Changes." *Id.* at 24. The agency further explains that Epsilon's SE/ALRE work involved "the discrete and limited tasks of installing a series of

changes to certain shipboard equipment.”<sup>6</sup> AR at 16. The agency contrasted that work with the “management of a major, broad engineering and technical services effort” required under this solicitation. Id. Consequently, the Navy explains that because the SE/ALRE subcontract work “did not involve the same or similar tasks” required by this solicitation, the SSEB concluded that the project was not relevant and reasonably did not include it in its evaluation. Supp. AR at 9.

The agency also convincingly rejects Epsilon’s contention that the SE/ALRE work involved more than just installation projects. In this regard, the agency counters that the language Epsilon used in its proposal to describe the effort “essentially mimic[s]” the solicitation’s definition of relevant work, but the PPI survey the agency received from the prime contractor “does not correspond” to Epsilon’s description. Supp. AR at 10 n.3; compare AR, Tab IV.C.3.i., [deleted] PPI Survey, at 3, 7-11 with AR, Tab II.B.1., Epsilon Past Performance Proposal, at 14. On this record, it was not improper for the agency to rely on the work descriptions stated in the PPI survey as part of its relevance determination.

In addition, in finding the SE/ALRE effort not relevant, the SSEB also noted that Epsilon’s role on the project was as a subcontractor. AR, Tab IV.C.1., Initial Past Performance SSEB Report, at 23. The RFP here did not preclude the agency from considering work performed as a subcontractor to be less relevant than work performed as a prime. Accordingly, the protester’s objections otherwise have no merit. See Comments/Supp. Protest at 14.

In sum, because the solicitation expressly advised that “greater consideration” would be given to more relevant contracts and the government “reserve[d] the right to determine the relevancy of [submitted] information,” we have no basis to question

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<sup>6</sup> Epsilon asserts that the agency’s explanation of the SSEB’s determination is a post hoc determination that our Office should not consider. Comments/Supp. Protest at 22; Supp. Comments at 15 (citing Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91). However, in reviewing an agency’s evaluation, we do not limit our review to contemporaneous evidence, but consider all of the information provided, including the parties’ arguments and explanations. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 10. While we generally give little weight to reevaluations and judgments prepared in the heat of the adversarial process, Boeing Sikorsky Aircraft Support, supra, at 15, post-protest explanations that provide a detailed rationale for contemporaneous conclusions and simply fill in previously unrecorded details will generally be considered in our review of evaluations where, as here, those explanations are credible and consistent with the contemporaneous record. APIus Techs., Inc., B-408551.3, Dec. 23, 2013, 2014 CPD ¶ 12 at 10 n.11; NWT, Inc.; PharmChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16.

the agency's conclusions here. See RFP at 109, 121. Although Epsilon disagrees, it has not shown that the agency abused its broad discretion with respect to determining relevancy.<sup>7</sup> See LOGMET LLC, B-407061, Oct. 17, 2012, 2012 CPD ¶ 307 at 6 (relative relevance of an offeror's past performance is primarily a matter within the agency's discretion).

Epsilon similarly complains that it was unreasonable for the SSEB not to consider the SE/ALRE project relevant but to find relevant a different project, one in which Epsilon's performance was rated satisfactory. Protest at 20; Comments/Supp. Protest at 26. We disagree. As provided for in the RFP, the SSEB searched CPARS and identified the other project where Epsilon performed as a prime contractor.<sup>8</sup> AR, Tab IV.C.1., Initial Past Performance SSEB Report, at 24-25; see RFP at 108, 115. The agency explains that this contract was for engineering, technical, and evaluation services in the area of hull, mechanical, and electrical (HM&E) systems on surface ships and submarines. AR at 17; Supp. AR at 15. Because technical services related to HM&E systems was identified in the solicitation as one of the types of work most relevant to this procurement, see RFP at 122, the SSEB properly considered Epsilon's performance on this contract. See AR at 18; Supp. AR at 16. Moreover, the contract met the solicitation's requirement that the work be performed within the past 3 years of the solicitation, and its value of

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<sup>7</sup> In its supplemental protest of May 27, 2014, Epsilon argues for the first time that the Navy failed to conduct meaningful discussions with the firm because the agency did not inform Epsilon during discussions that it considered its SE/ALRE subcontract work to not be relevant. Comments/Supp. Protest at 23. As a general matter, protests other than alleged solicitation improprieties must be filed within 10 calendar days of when the protester knows or should have known its bases for protest. 4 C.F.R. § 21.2(a)(2). Where a protester initially files a timely protest, and later supplements it with new grounds of protest, the later-raised allegations must independently satisfy our timeliness requirements, since our Regulations do not contemplate the piecemeal presentation or development of protest issues. Planning & Dev. Collaborative Int'l, B-299041, Jan. 24, 2007, 2007 CPD ¶ 28 at 11; Biospherics, Inc., B-285065, July 13, 2000, 2000 CPD ¶ 118 at 12-13. Here, the record reflects that Epsilon was informed at its April 10, 2014, debriefing that the agency did not consider the SE/ALRE subcontract work to be relevant. See Comments/Supp. Protest at 13; Supp. AR at 13. Because Epsilon did not raise its challenge to the agency's past performance discussions in its initial protest and waited more than a month to raise the objection, this protest ground represents an improper piecemeal presentation of arguments and will not be considered.

<sup>8</sup> The record shows that the SSEB identified 15 Epsilon contracts through its search of CPARS. AR, Tab IV.C.1., Initial Past Performance SSEB Report, at 24-29. The evaluators concluded that only the project at issue was relevant; the other identified contracts were not used for evaluation purposes. Id.

\$3.4M (over a 5-year period) was above the RFP's \$500,000 threshold for consideration.<sup>9</sup> AR, Tab IV.C.1., Initial Past Performance SSEB Report, at 25; see RFP at 116. However, because "some of the work was performed on submarines," the SSEB considered the project less relevant and, consistent with the RFP, afforded it less weight in its evaluation. AR, Tab IV.C.1., Initial Past Performance SSEB Report, at 25; see RFP at 121. On this record, we have no basis to question the agency's decision to consider Epsilon's performance on this contract as part of the Navy's evaluation of the firm's past performance.

Finally, Epsilon objects to the SSEB's "unfair and unreasonable" decision to change PPI survey ratings assigned to its significant subcontractor, [deleted], from exceptional to very good. Comments/Supp. Protest at 31-32. Following discussions, [deleted] and Epsilon submitted for review information about two different contracts in which [deleted] performed maintenance and logistic services on interior communication (IC) systems and switchboards. See AR, Tab IV.C.2., Past Performance SSEB Report Amendment, at 2. The SSEB reviewed two PPI surveys submitted for these projects and concluded that the exceptional ratings assigned by the references "were not supported by" the references' narrative statements under each of the four elements in the surveys.<sup>10</sup> Id. at 4. Consequently, in one survey the SSEB changed all four exceptional ratings to very good ratings, and in the other survey the SSEB changed three exceptional ratings to very good ratings (and maintained the one very good rating assigned). Id. These ratings, coupled with the identified strengths of [deleted] past performance, resulted in the SSEB evaluating the subcontractor's past performance as very good overall. Id. at 5.

Here, we find reasonable the evaluation of [deleted] past performance, including the decision by the SSEB to lower the subcontractor's PPI survey ratings. In this regard, the SSEB explained that an exceptional rating required "specific examples" where the contractor "met contractual requirements and exceeded many to the

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<sup>9</sup> Epsilon spends great effort contrasting the two past performance projects based solely on the value of the contracts. See Comments/Supp. Protest at 27-29. We are not persuaded by the protester's arguments because the dollar value of the contracts was not the sole barometer of relevance, as the protester implies. Instead, the solicitation here expressly identified the type of work it deemed to be most relevant, RFP at 121-22, and as discussed above, the SSEB reasonably concluded that the type of work performed (as the prime contractor) on the smaller effort identified in CPARS was more relevant to this procurement than the work performed (as a subcontractor) on the slightly larger project submitted by Epsilon.

<sup>10</sup> PPI survey references rated past performance under the same four subfactors identified in the RFP: technical, schedule, cost control, and management. RFP, attach. J-21, PPI Survey, at 5-7; RFP at 122.

Government's benefit." AR, Tab IV.C.2., Past Performance SSEB Report Amendment, at 4; see AR, Tab IV.A.1., Source Selection Plan, at 14. In fact, with respect to the assignment of an exceptional rating, the PPI survey instructs references that "[t]o justify an **Exceptional** rating, you should identify **multiple** significant events and state how they were a benefit to the Government. However, a singular significant benefit could be of such magnitude that it alone constitutes an Exceptional rating." RFP, attach. J-21, PPI Survey, at 2 (emphasis in original); see also id. at 5-7 (requiring references to "[p]rovide specific examples of the contractor's work to support the recommended rating").

The record here shows that [deleted] references simply did not include the multiple examples and significant events, or singular significant benefit of magnitude, necessary to support the exceptional ratings. For instance, in rating the firm exceptional under the management subfactor in one of the surveys, the reference explained:

[deleted] management focus is customer satisfaction. They stay on top of the required work efforts, and ensure that the proper resources are employed where required. They communicate well and ensure established priorities are understood.

AR, Tab IV.C.4.b., PPI Survey for Contract [deleted], at 7. No specific examples were discussed. Elsewhere, the reference highlighted the subcontractor's "extensive naval experience" with IC shipboard integration, but only provided a single example of when the firm used "technical skills above those required . . . to troubleshoot apparent failures in the IC Switchboards. . . ." AR, Tab IV.C.4.a., PPI Survey for Contract [deleted], at 2-3. Epsilon's argument that the narratives support an exceptional rating reflect the protester's disagreements with the SSEB's determinations and do not demonstrate that the conclusions were unreasonable.

In any event, we note that [deleted] subfactor and overall ratings were not based solely on the PPI survey ratings, but instead on all of the past performance information submitted. Moreover, [deleted] past performance was only considered by the SSEB to be "somewhat relevant," and the SSEB report highlights that the "prime contractor was given significantly more weight when assigning an overall rating." AR, Tab IV.C.2., Past Performance SSEB Report Amendment, at 2, 5. On this record, we are simply not persuaded that maintaining [deleted] exceptional PPI survey ratings would have impacted the overall award decision, particularly where the SSA looked beyond adjectival ratings in making his selection decision. In sum, we find unobjectionable the agency's evaluation of Epsilon's proposal under the past performance factor.

## Misleading Discussions

Next, Epsilon argues that the Navy conducted misleading discussions with the firm. The protester contends that the cost-related discussion questions “improperly induced Epsilon to raise its direct labor rates.” Comments/Supp. Protest at 42.

Of relevance here, during this procurement, the Navy requested that the Defense Contract Audit Agency (DCAA) examine the direct labor rates portion of Epsilon’s cost proposal for realism and possible understatement of rates. AR, Tab II.F.1., DCAA Report, at 1. In performing its analysis of Epsilon’s proposed rates, DCAA relied on median salary survey data from the Economic Research Institute’s (ERI) salary assessor. Id. at 8. DCAA concluded that Epsilon’s proposed direct labor rates for all positions in the locations DCAA reviewed were “significantly below the comparable market survey benchmark rates.”<sup>11</sup> Id. DCAA also questioned the methods Epsilon used to develop its rates, warned that the proposal did not include adequate descriptions of the basis of estimates for direct labor, and concluded that Epsilon understated its proposed cost escalation of all option periods. Id. at 6-7, 9.

Subsequent to its review of DCAA’s report, the agency provided Epsilon with cost-related discussion questions on August 27, 2013. See AR, Tab IV.D.1., CAP Report, June 26, 2013, at 12-13. With respect to Epsilon’s proposed direct labor rates, the Navy referenced the DCAA audit, explaining as follows:

(2) Lack of compensation analysis to determine reasonableness. The reasonableness of the proposed direct labor rates were evaluated by the [DCAA] using salary assessor of Economic Research Institute’s October 1, 2012 database for shipbuilding and repair [standard industrial code (SIC)] 3731. Your proposed direct labor rates for all position[s] in each location reviewed were significantly below the comparable market survey benchmark rates i.e., greater than 10 percent range.

AR, Tab II.D.1.d., Cost Discussion Questions, at 1-2. The CAP requested a revised proposal that was to include “a detailed and convincing explanation of the basis of estimate and methodology used for the proposed direct labor rates.” Id. at 2.

In its response, Epsilon countered that its proposed direct labor rates were “consistent with current market salary conditions and therefore present a low risk to the government in terms of recruiting and retaining qualified personnel.” AR,

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<sup>11</sup> Specifically, DCAA found that Epsilon understated [deleted] labor rates in the base period and understated [deleted] rates in the option periods (combined). AR, Tab II.F.1., DCAA Report, at 1. DCAA also found that [deleted] direct labor rate was overstated by \$[deleted]. Id. at 8.

Tab II.D.1.g., Cost Discussion Question Responses, at 5. Epsilon also contested DCAA's reliance on the ERI salary assessor. In this regard, Epsilon argued that the "use of multiple sources is a more accurate basis of estimate for the direct labor required for this solicitation." Id. at 6. Specifically, Epsilon contended that the firm's use of [deleted] were a "more accurate and realistic gauge of direct labor rates." Id. With respect to whether its proposed rates were too low, the firm stated as follows:

After verification of [deleted], Epsilon Systems is confident that its labor rates are supported by reasonable, realistic, and sufficient assumptions. . . . Epsilon Systems believes that the [deleted] . . . is the most accurate estimate of the current market labor rates.

Id. at 6-7. Epsilon also explained that "as an offset to lower wages" the firm would [deleted]. Id. at 7. In addition, Epsilon provided additional explanation about the development of the rates and revised the methodology used to calculate three rates, which resulted in an approximately 20 percent increase in the proposed rates for those categories. Id. at 3-5. Despite raising these three rates, Epsilon's overall proposed price decreased by \$2.5 million primarily due to [deleted]. Compare AR, Tab IV.D.1., CAP Report, June 26, 2013, at 3-5 with AR, Tab IV.D.2., CAP Report, October 23, 2013, at 3-5.

The CAP reviewed Epsilon's responses and expressed continued concern with the proposed rates, noting that the government assumes the risks if the work cannot be completed within the expected cost of performance. AR, Tab IV.D.2., CAP Report, October 23, 2013, at 21. The CAP also considered Epsilon's [deleted] to be low. Id. Therefore, in a second round of cost-related discussion questions, the Navy stated the following (along with several other discussion points not at issue here):

Based on the analysis from DCAA, the proposed direct labor rates for all positions in each location reviewed were significantly below the comparable market survey benchmark rates. As a general rule, salary information is considered to reflect the market price within plus or minus 10 percent.

\* \* \* \* \*

Please review your direct labor rates. The Government considers them to be low and not reasonable.

AR, Tab II.D.2.a., Final Discussion Questions, at 1-2. Accordingly, the discussion question put the protester on notice that the CAP considered the firm's direct labor rates to be low.

In its final proposal revision (FPR), Epsilon increased some of its proposed direct labor rates. AR, Tab II.E.1., Epsilon Final Proposal, at 264. The record shows that

Epsilon also made upward adjustments to its rate of escalation, based on concerns the Navy expressed during discussions, and altered its fee structure. Id. at 338, 351. Consequently, Epsilon's final proposed cost increased \$4,364,249 as compared to its original cost proposal. Comments/Supp. Protest at 41.

The CAP reviewed Epsilon's final cost proposal and concluded that the revised rates were reasonable and realistic. AR, Tab IV.D.3., Final CAP Report, at 16. In reaching this conclusion, the CAP explained that it "conducted extensive cost realism utilizing several different methods to review direct labor." Id. at 14. The CAP noted that the DCAA audit--finding Epsilon's proposed rates significantly below its market survey--was based "predominately" on the ERI salary survey. Id. at 13. The CAP also noted that Epsilon based its direct labor on [deleted]. Id. The CAP explained that the "DCAA audit input was considered, but ultimately the ERI survey was not the predominate measure used to gage [sic] what direct labor costs should be." Id. at 14. According to its report, the CAP also used historical labor rates and considered the range of competitor's labor rates. Id. The CAP concluded that Epsilon was "low on some labor categories, but was high in other categories." Id. In its final report, the CAP still expressed "some slight concerns" regarding some of Epsilon's proposed labor rates. Id. at 10. Additionally, the CAP also noted that various aspects of the firm's cost proposal, including how labor rates were developed and its [deleted], remained a "slight concern" and presented "some risk to the government." Id. at 12. Nevertheless, the CAP made no adjustments to Epsilon's direct labor rates and found them realistic as reflected in Epsilon's final proposal. Id.

In its protest, Epsilon complains that the Navy misled the firm during discussions because the concerns regarding Epsilon's direct labor rates focused on the DCAA audit findings and the ERI survey comparison, but the CAP ultimately relied on additional metrics in its analysis of the reasonableness of Epsilon's rates. Comments/Supp. Protest at 39, 42. Epsilon contends that had it known that the agency "no longer intended to use the ERI survey as the 'benchmark'" to assess rates, then it would not have raised its direct labor rates. Id. at 42.

In negotiated procurements, whenever discussions are conducted by an agency, the discussions are required to be meaningful, equitable, and not misleading. Grunley Constr. Co., Inc., B-407900, Apr. 3, 2013, 2013 CPD ¶ 182 at 7-8; Boeing Co., B-311344 et al., June 18, 2008, 2008 CPD ¶ 114 at 49. To satisfy the requirement for meaningful discussions, the agency need only lead an offeror into the areas of its proposal requiring amplification or revision. ITT Fed. Sys. Int'l Corp., B-285176.4, B-285176.5, Jan. 9, 2001, 2001 CPD ¶ 45 at 7. The scope and extent of discussions with offerors are matters of a contracting officer's judgment. Federal Acquisition Regulation § 15.306(d)(3) (2014); Am. States Utilities Servs., Inc., B-291307.3, June 30, 2004, 2004 CPD ¶ 150 at 5.



Here, we find nothing misleading about the agency's conduct during discussions. In this regard, the record does not support the protester's accusation that the Navy "improperly threatened" during discussions that it would find Epsilon's direct labor rates "unreasonable" if they were not increased. See Supp. Comments at 29. Instead, the record shows that the CAP adequately informed Epsilon of the Navy's concerns regarding various aspects of the firm's cost proposal during two rounds of cost-related discussions. In its FPR, Epsilon made several cost adjustments, including raising its direct labor rate for various labor categories.<sup>12</sup> AR, Tab II.E.1., Epsilon Final Proposal, at 262-352. Although the CAP ultimately concluded that Epsilon's direct labor rates were reasonable and realistic, the CAP report indicates that the evaluators were still concerned with Epsilon's revised cost proposal, even after the firm raised its rates. See AR, Tab IV.D.3., Final CAP Report, at 10, 12, 16. Specifically, the CAP highlighted that Epsilon had "partially mitigated" some of the agency's concerns because the firm increased some of its rates. Id. at 29. Indeed, as discussed above, the SSA reiterated many of the same issues regarding low rates in making the source selection decision. AR, Tab IV.F.1., SSA Memo, at 3-4. On this record, we find that the agency properly advised the protester during discussions of a legitimate concern regarding proposed costs; the record does not support the protester's accusation that the Navy "improperly induced" Epsilon to raise its rates. See Comments/Supp. Protest at 42.

In addition, the protester's blanket assertion that the "CAP decided not to rely on the ERI survey" is not supported by the record. See id. (emphasis in original). On the contrary, the record shows that the CAP "considered" the DCAA audit (which used the ERI survey) in addition to reviewing historical labor rates and competitor's labor rates. AR, Tab IV.D.3., Final CAP Report, at 14. Indeed, the agency's approach here was consistent with the suggestions made by Epsilon in its revised and final cost proposals that the agency consider multiple sources in comparing labor rates. See AR, Tab II.D.1.g., Cost Discussion Question Responses, at 6; AR, Tab II.E.1., Epsilon Final Proposal, at 264. Moreover, the solicitation did not identify any specific methodology that the agency would use in its cost analysis. See RFP at 122. Similarly, the Navy did not warn Epsilon during discussions that the ERI would be the exclusive metric used to assess labor rates. That the ERI was not the "predominate measure" does not mean that it was discounted altogether, as the protester suggests, and the use of additional metrics was certainly not precluded by the solicitation or the Navy's discussion questions. See AR, Tab IV.D.3., Final CAP Report, at 14.

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<sup>12</sup> We note that a primary reason for the firm's overall cost increase was increases in the firm's proposed rates of escalation throughout the contract period of performance as well as increases in proposed fee percentages. AR, Tab II.E.1., Epsilon Final Proposal, at 338, 351.

Lastly, we are not persuaded by the protester's complaint that it "would not have raised its direct labor rates" if it knew that the ERI survey would not be the sole metric to assess direct labor rates. See Comments/Supp. Protest at 42. In this regard, the record shows that Epsilon modified its labor rates due to numerous internal bases, none of which involved the ERI survey. For example, three rates were increased due to [deleted]. AR, Tab II.D.1.g., Cost Discussion Question Responses, at 4-5. Other increases were due to [deleted]. AR, Tab II.E.1., Epsilon Final Proposal, at 264-65. Finally, more rates were modified due to [deleted]. Id. at 265. On this record, we fail to see how the agency's discussion questions that referenced the ERI "improperly induced" Epsilon into increasing its rates. See Comments/Supp. Protest at 42. The protester's complaints regarding the conduct of the agency's discussions fail to provide a basis to sustain the protest.

### Best Value Determination

Finally, Epsilon challenges the agency's cost/technical tradeoff which resulted in the selection of a higher-priced, higher-rated offeror for award. Protest at 33-34. Specifically, the protester contends that the agency was "obligated" to make the award to Epsilon because the firm should have been rated higher and the 6.21 percent cost premium paid by the agency was "unjustifiable." Id. at 34. Epsilon also complains that the SSA's decision was inconsistent with the solicitation. Comment/Supp. Protest at 43.

In a best value procurement, it is the function of the selection official to perform a price/technical tradeoff, that is, to determine whether one proposal's technical superiority (however represented) is worth the higher price, and the extent to which one is sacrificed for the other is governed only by the test of rationality and consistency with the stated evaluation criteria. Savvee Consulting, Inc., B-408416.3, Mar. 5, 2014, 2014 CPD ¶ 92 at 7; The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 13. A protester's disagreement with the agency's determinations as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency, does not establish that the source selection decision was unreasonable. General Dynamics--Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8.

Here, the agency's source selection decision was reasonable, well-documented, and consistent with the solicitation's evaluation criteria. As discussed above, the SSA reviewed the solicitation, the SSEB reports, the CAP reports, and the proposals. AR, Tab IV.F.1., SSA Memo, at 1, 5. In his decision document, the SSA highlighted various concerns with respect to Epsilon's proposed costs, including the firm's low escalation rates and low fixed fees, as well as concerns with the firm's "[deleted]." Id. at 3-4. With respect to technical proposals, the SSA noted that both proposals shared some of the same strengths, but that AMSEC's proposal featured several specific attributes that Epsilon "cannot match." Id. at 6. For example, as

discussed above, the SSA noted that AMSEC “as the incumbent, brings very qualified and experienced personnel and will require no new hiring, with no loss of continuity resulting.” Id. In making his ultimate award decision, the SSA concluded that AMSEC’s ability to provide “experience[d], highly[-]qualified personnel” was “significant,” particularly due to concerns the SSA had with respect to Epsilon’s ability to attract and retain highly-qualified personnel due to the firm’s low escalation rates and fees. Id.

The protester alleges that the SSA’s focus on AMSEC’s strengths as the incumbent demonstrates a flawed source selection that was inconsistent with the solicitation’s evaluation criteria. Id. We disagree. In this regard, the manpower resources subfactor expressly required the agency to evaluate the offeror’s plan to provide qualified personnel and “experienced manpower.” RFP at 121. With respect to this subfactor, the SSA reasonably concluded that AMSEC would not require any new hiring and highlighted that no loss of continuity would result. See AR, Tab IV.F.1., SSA Memo, at 6. Such a conclusion was completely consistent with the analysis required by the solicitation. Likewise, we find that the SSA’s conclusions with respect to AMSEC’s “proven” approaches and procedures is also in accordance with the solicitation criteria under the organization/management subfactor. See id.; RFP at 121. The protester’s complaints otherwise reflect its disagreement with the SSA’s conclusions and do not provide a basis to sustain the protest.

Finally, Epsilon’s argument that the source selection was flawed because it was premised on the alleged errors in the SSEB’s and CAP’s evaluations has no merit. See Comments/Supp. Protest at 43. As discussed above, we find unobjectionable the agency’s evaluation of Epsilon’s proposal. Therefore, Epsilon’s argument fails to provide a basis to question the SSA’s source selection decision.

The protest is denied.

Susan A. Poling  
General Counsel