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Decision

Matter of: Straughan Environmental, Inc.
File: B-411650; B-411650.2; B-411650.3
Date: September 18, 2015

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DIGEST

1. Protest challenging the agency's evaluation of the protester's proposal is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's evaluation criteria.
2. Protest challenging the agency's exclusion of the protester's proposal from the competitive range where the protester alleges that the proposal would have had a reasonable chance for award without the need for significant proposal revisions is denied where the record shows that the agency reasonably found that the protester's initial proposal was not among the most highly-rated proposals.

DECISION

Straughan Environmental, Inc., a small business, of Columbia, Maryland, protests the elimination of its proposal from the competition under request for proposals (RFP) No. NNK14513883R, which was issued by the National Aeronautics and Space Administration (NASA), for the John F. Kennedy Space Center (KSC) Environmental and Medical Contract (KEMCON). Straughan alleges that the agency unreasonably evaluated its proposal under the mission suitability and past performance evaluation factors, and abused its discretion in establishing a competitive range of only one offeror.

We deny the protest.

BACKGROUND

On October 10, 2014, NASA issued the RFP as a total small business set-aside for project/program management (performance work statement (PWS) § 1.0), medical (PWS § 2.0), environmental health (PWS § 3.0), and environmental services (PWS § 4.0) for NASA at KSC, and for the United States Air Force at Cape Canaveral Air Force Station and Patrick Air Force Base (PWS § 5.0). RFP, PWS, at 00875.¹ The RFP contemplated the award of a single cost-plus-award-fee contract, with an indefinite-delivery, indefinite-quantity component with task orders to be awarded on a cost-plus-fixed-fee basis. RFP at 01042. The anticipated contract will have a 2-year base period, and two 1-year options. Id. at 00983.

NASA was to evaluate proposals under three evaluation factors, in descending order of importance: (1) cost; (2) mission suitability; and (3) past performance. Id. at 01070. The non-cost factors, when combined, were to be equal to cost. Id. Under the cost factor, NASA was to conduct a cost realism analysis. Id. at 01076.

Under the mission suitability factor, NASA was to evaluate: (a) how well the offeror's approach demonstrated an overall understanding of the requirements; (b) the adequacy of the offeror's proposed approach to meet the requirements; and (c) whether the offeror's proposed resources were consistent with, and appropriate to meet, the proposed efforts and accomplishments. Id. at 01071. The factor included two subfactors: (1) management approach, key personnel, and safety and health (the management subfactor); and (2) technical approach. Each subfactor would be scored based on a 0-500 point scale, with a maximum score of 1000 points for the mission suitability factor. Id. Under the management subfactor, NASA was to evaluate eight sub-subfactors, including as relevant here the offeror's program management approach, organizational structure and corporate resources, and business and financial management approach. Id. at 01072-73. Under the technical subfactor, the agency was to evaluate six sub-subfactors, including as relevant here the offeror's staffing plan, basis of estimate, and approaches to meeting the RFP's specific performance requirements. Id. at 01073-76.

Under the past performance factor, the agency was to evaluate an offeror's and its proposed subcontractors' recent and relevant past performance of work as compared to the size, content, and complexity of the KEMCON requirements. Id. at 01076. NASA was to consider the currency, relevance, and source of the information, the context of the data, and general performance trends. Id. A reference would be recent if performed or completed in the previous 5 years. Id.

¹ References in this decision to page numbers are to NASA's Bates numbering in the agency report (AR). References to the RFP are to the version conformed through amendment No. 5; amendment No. 6 is not material to our decision.

NASA received five proposals in response to the RFP. See Contracting Officer’s Statement of Facts (COSF) (July 15, 2015) at 6. The Source Evaluation Board (SEB) evaluated the five initial proposals as follows:

	Mission Suitability	Past Performance Confidence	Cost/Price (\$M)	
			Proposed	Probable
Offeror A	755	Very High	\$79.3	\$82.8
Offeror B	725	High	\$93.7	\$95.3
Offeror C	600	Moderate	\$98.2	\$98.2
Straughan	500	Moderate	\$81.6	\$82.2 ²
Offeror D	490	Moderate	\$112.1	\$112.9

AR, Tab 13.03, Competitive Range Determination (May 26, 2015), at 20506.

NASA evaluated Straughan’s proposal under the mission suitability factor as follows: (1) one significant weakness, relating to the proposed program manager’s and business manager’s lack of relevant experience, and no strengths under the management subfactor; and (2) five weaknesses, relating to unclear or inadequate staffing, and no strengths under the technical subfactor. AR, Tab 11.01, Straughan Mission Suitability Evaluation (undated), at 20275-20283. The agency evaluated the protester’s past performance as warranting “moderate” confidence because it demonstrated: (1) significantly relevant experience under PWS § 1.0; and (2) moderately relevant experience under PWS §§ 2.0-4.0. AR, Tab 12.01, Straughan Past Performance Evaluation (undated), at 20298.

The contracting officer concluded that making award based on initial proposals was not in the government’s best interest and discussions were necessary. AR, Tab 13.03, Competitive Range Determination (May 26, 2015), at 20505. The contracting officer recommended to the Source Selection Authority (SSA) that Offerors A and B be included in the competitive range based on their relatively high ratings under the mission suitability and past performance factors. Id. NASA, however, ultimately concluded that Offeror B’s relatively high proposed costs, compared to Offeror A, resulted in Offeror B not being among the most highly-rated proposals under the most important evaluation factor, and excluded Offeror B’s proposal from the competitive range. Id. Offerors C and D were found not to be

² NASA represented that Straughan’s staffing and technical approaches were evaluated as including weaknesses, but that “[t]he SEB was unable to make probable cost adjustments due to Straughan’s unclear [technical] approach.” AR, Tab 13.03, Competitive Range Determination (May 26, 2015), at 20507. As a result, the agency anticipated that the protester’s probable costs would require further upward adjustments if the weaknesses were resolved. Id.

among the most highly-rated proposals based on any of the three evaluation factors, and thus were also eliminated from the competitive range. Id. at 20508.

Based on Straughan's apparent competitiveness under the cost factor, which was the most important of the three evaluation factors, NASA separately evaluated whether the protester's proposal should be included in the competitive range. Id. The SSA found that Straughan's proposal was not among the most highly-rated proposals and did not have a reasonable chance for award because:

If Straughan were to correct the significant weakness and weaknesses reflected in the SEB's findings relative to inadequate and unclear staffing which were not part of the SEB's probable cost adjustments due to insufficient information in Straughan's proposal, it is highly probable that Straughan's proposed and probable Costs would increase. Moreover, without any strengths or significant strengths in its proposal, it is highly unlikely that discussions would result in Straughan increasing its Mission Suitability score without substantially rewriting its proposal and changing out its proposed management team. Despite its approximately equivalent probable Cost, correction or elimination of Straughan's significant weakness and weaknesses would likely result in an increase in its Costs and would not likely result in a significant increase to its Mission Suitability score much less result in it supplanting [Offeror A] as the highest assessed [proposal under] Mission Suitability. Straughan's Past Performance assessment would likely remain unchanged.

Id. at 20508-09.

Therefore, the SSA concluded that only Offeror A should be included in the competitive range. Id. at 20509. On May 27, 2015, NASA notified Straughan that its proposal was eliminated from the competition because it was not evaluated as being among the most highly-rated proposals. AR, Tab 13.04, Notification of Elimination from the Competitive Range (May 27, 2015), at 20511. Following a debriefing, this timely protest followed.

DISCUSSION

Straughan challenges NASA's evaluation of its proposal under the mission suitability and past performance evaluation factors. The protester also alleges that the agency unreasonably excluded Straughan's proposal from the competitive

range based on the flawed evaluation, and that the agency abused its discretion when it created a competitive range of only one offeror.³

Where a protest challenges an agency's evaluation of an offeror's proposal, and its decision to exclude a proposal from a competitive range, we first review the propriety of the agency's evaluation of the proposal, and then turn to the competitive range determination. PTSI Managed Servs. Inc., B-411412, July 20, 2015, 2015 CPD ¶ 236 at 3. Our Office will review an agency's evaluation and exclusion of a proposal from the competitive range for reasonableness and consistency with the solicitation criteria and applicable statutes and regulations. ABM Gov't Servs., LLC, B-410991.2, Apr. 17, 2015, 2015 CPD ¶ 130 at 4-5. An agency is not required to include a proposal in the competitive range where the proposal is not among the most highly-rated proposals. Federal Acquisition Regulation (FAR) § 15.306(c)(1). For the reasons that follow, we find no basis to sustain the protest.

Evaluation of Straughan's Proposal

Straughan challenges NASA's evaluation of its proposal under the mission suitability and past performance evaluation factors. The protester primarily alleges that the agency's evaluation was unreasonable because it relied on unstated evaluation criteria and did not reasonably consider information in Straughan's proposal.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Computer World Servs. Corp., B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. Rather, we will review the record only to assess whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. ARBEIT, LLC, B-411049, Apr. 27, 2015, 2015 CPD ¶ 146 at 4. A protester's disagreement with the agency's evaluation, without more, does not establish that the agency acted unreasonably. Strategic Resources, Inc., B-411024.2, Apr. 29, 2015, 2015 CPD ¶ 200 at 4.

Mission Suitability Factor – Management Subfactor

Straughan first argues that NASA unreasonably assessed a significant weakness based on the protester's proposed program manager's and business manager's lack of relevant experience. The protester alleges that the agency unreasonably

³ Straughan raises other collateral arguments. While our decision does not specifically address every argument, we have considered all of the protester's arguments and find that none provides a basis on which to sustain the protest. Our Office also previously dismissed other protest grounds on various bases.

relied on unstated evaluation criteria and disregarded information in Straughan's proposal. We find no basis to sustain the protest.⁴

The RFP required offerors to propose key personnel positions and provide rationales for why the positions were critical to the success of the KEMCON. RFP at 01052. Offerors were also required to (a) describe the function, responsibility, and authority for each key position, and (b) describe why the personnel being proposed for the positions "are qualified (education, background, and experience)." Id. Relevant to the issues in this protest, key personnel were to be evaluated based on their résumés and "appropriateness for the identified position." Id. at 01072.

Straughan proposed seven key personnel positions; the program manager and business manager positions are relevant here. Regarding the program manager position, Straughan's proposal explained that the "position is the most critical, since it has the broadest span of control, the greatest set of responsibilities, and the highest level of authority of all our KEMTEAM management positions." See AR, Tab 7.02, Straughan Mission Suitability Proposal (Jan. 6, 2015), at 03556. Regarding the business manager position, Straughan's proposal explained that:

The Business Manager is our Deputy Program Manager, lead for financial reporting, and contracting in the [program management office]. . . . The Business Manager also leads procurement, [information technology] leadership, [human resource] management, subcontract management, procurement [sic],

⁴ Straughan also alleges that NASA unreasonably credited certain offerors for proposing a key individual, while not similarly awarding the protester a strength for proposing the same person. See Protester's Comments (July 27, 2015) at 17. Where a protester alleges unequal treatment in an evaluation, it must show that the differences in rating did not stem from differences between the offerors' proposals. PTSI Managed Servs. Inc., supra, at 6. The protester has not made this showing. NASA explained that some offerors received strengths because they proposed the individual for a key personnel role which included more responsibility; in contrast, Offeror A and Straughan did not receive strengths because they proposed the same individual for roles with lesser responsibilities. See AR, Tab 13.03, Competitive Range Determination (May 21, 2015), at 20322; Supp. COSF (Aug. 6, 2015) at 4. In this regard, the RFP stated that an offeror's rationale for the classification of key positions would be evaluated for "appropriateness and the criticality of the proposed positions to the success of the KEMCON," and that the responsibilities and authorities of each key personnel would be evaluated for "effectiveness and to ensure contract requirements can be met." RFP at 01072. We find that the agency's explanation reasonably demonstrates that the offerors' different approaches were the basis for the different evaluation results.

property management, risk management and oversight and coordination oversees [sic] of the work control system.

Id.

NASA evaluated the individuals proposed by Straughan for these two positions and assessed a significant weakness because the individuals did not demonstrate relevant experience commensurate with the responsibilities of the proposed positions. With regard to the proposed program manager, the agency found that the individual had managed only 35 employees on another NASA contract and under a few additional, smaller agency contracts. NASA concluded that this individual did not demonstrate experience managing contracts of similar complexity and requiring a similar number of employees as the KEMCON. AR, Tab 11.01, Straughan Mission Suitability Evaluation (undated), at 20275; Tab 16.05, SEB Chair Decl. (July 13, 2015), at 23338-40.⁵ With regard to the proposed business manager, NASA found that the individual demonstrated “only marginal experience, at best” with procurement, contracting, finance reporting, and information technology, responsibilities that Straughan proposed the individual would be responsible for on the KEMCON. AR, Tab 11.01, Straughan Mission Suitability Evaluation (undated), at 20275.

Straughan argues that NASA unreasonably relied on unstated evaluation criteria, specifically the program manager’s experience supervising a similarly sized staff as required for the KEMCON, and the business manager’s experience with procurement, contracting, finance reporting, and information technology. See Protest (June 15, 2015) at 25-29. It is axiomatic that in a negotiated procurement an agency must evaluate proposals based on the solicitation’s enumerated evaluation factors. FAR § 15.305(a); RTI Int’l, B-411268, June 26, 2015, 2015 CPD

⁵ Straughan argues that the SEB Chair’s declaration submitted with the agency report contains improper post hoc rationalizations, and ostensibly argues that we should afford no weight to it in our review. See Protester’s Comments (July 27, 2015) at 17. We find no basis to disregard the declaration. Our Office generally considers post-protest explanations, such as those presented here, where the explanations merely provide a detailed rationale for contemporaneous conclusions and fill in previously unrecorded details, so long as the explanations are credible and consistent with the contemporaneous record. See TaxSlayer LLC, B-411101, May 8, 2015, 2015 CPD ¶ 156 at 8; Vinculum Solutions, Inc.--Recon., B-408337.3, Dec. 3, 2013, 2013 CPD ¶ 274 at 3 n.2. We find that the explanations in the declaration are credible and provide additional explanation consistent with the contemporaneous evaluation record, and note that the protester has failed to present any evidence to call into question the credibility of the post-protest submissions aside from the fact that they were not recorded contemporaneously with the evaluation.

¶ 206 at 12. Agencies, however, properly may evaluate proposals based on considerations not expressly stated in the solicitation where those considerations are reasonably and logically encompassed within the stated evaluation factor, and where there is a clear nexus between the stated and unstated criteria. Gaver Techs., Inc., B-409535.3, Apr. 2, 2015, 2015 CPD ¶ 115 at 7; Morpho Detection, Inc., B-410876, Mar. 3, 2015, 2015 CPD ¶ 85 at 5.

Here, we find that NASA reasonably considered whether Straughan's proposed program manager had experience with contracts of similar size and complexity. The RFP required offerors to demonstrate that its proposed key personnel were qualified in terms of education, background, and experience. RFP at 01052. Under these circumstances, we find that the proposed program manager's experience managing a similar number of staff as will be expected under the KEMCON was reasonably and logically encompassed within the stated evaluation criteria. See CISGi, B-407101, Nov. 6, 2012, 2012 CPD ¶ 315 at 5 (finding consideration of key personnel's experience with similarly large contracts was not an unstated evaluation criterion where the RFP stated that the agency would evaluate whether the proposed key personnel had "the appropriate mix and balance of education, experience, and training in order to provide the services required").

NASA found, based on the program manager's résumé and the SEB's own knowledge of his responsibilities on other agency contracts, that the proposed individual only had experience managing contracts smaller than the KEMCON. See AR, Tab 11.01, Straughan Mission Suitability Findings (undated), at 20275; Tab 16.05, SEB Chair Decl. (July 13, 2015), at 23338-40.⁶ The proposed individual's résumé reflected that he leads and manages 35 employees on a current NASA subcontract, and oversees "a total of up to 35 additional employees not under his direct supervision" on three other NASA-related projects. See AR, Tab 7.04, Straughan Proposal Vol. IV (Jan. 6, 2015), at 03828-29; Protest (June 15, 2015), at 28 (arguing that the identified projects should have been evaluated "cumulatively" to equal supervision of approximately 70 people). For the base year of the KEMCON, Straughan proposed approximately 77 full year equivalents (FYE)

⁶ Straughan argues that the evaluators unreasonably substituted their personal knowledge regarding the program manager's experience on other agency contracts in lieu of limiting their consideration to the information in the proposal. See Protester's Comments (July 27, 2015) at 17-18. We find no merit to this argument. We have held that an agency is not bound by the "four corners" of an offeror's proposal, and may properly use information known by its own evaluators, as with any other references, to aid in the evaluation of proposals. Interfor US, Inc., B-410622, Dec. 30, 2014, 2015 CPD ¶ 19 at 7; Northrop Grumman Sys. Corp., B-406411, B-406411.2, May 25, 2012, 2012 CPD ¶ 164 at 11. Other than disagreeing with the evaluators' views, Straughan provides no substantive basis to question the evaluators' conclusions.

of its own, and approximately 143 FYEs when including subcontractor personnel. See AR, Tab 7.04, Straughan Proposal Vol. IV, Basis of Estimate (Jan. 6, 2015), at 03915, 04349, 04605, 04789, 05379. Even assuming that Straughan's argument that the number of supervised staff identified in the proposed program manager's résumé should have been evaluated cumulatively, the proposed program manager's cumulative managerial experience would only be approximately half of the staff proposed by Straughan for the KEMCON. On this record, we find that the protester has failed to demonstrate that NASA's evaluated concern regarding the program manager's lack of relevant experience on projects of similar size and complexity was unreasonable.

Regarding the business manager, Straughan argues that NASA unreasonably evaluated the individual's experience with tasks not listed under the RFP's evaluation criteria for the business management sub-subfactor. See Protest (June 15, 2015) at 28-29. The RFP criteria, however, referenced by the protester do not pertain to offerors' proposed key personnel. RFP at 01072. Straughan itself proposed that the business manager would be responsible for managing, among other matters, procurement, contracting, finance reporting, and information technology. See AR, Tab 7.02, Straughan Mission Suitability Proposal (Jan. 6, 2015), at 03556. We therefore find nothing unreasonable in NASA's consideration of the proposed individual's experience in areas identified by Straughan as areas that the individual would be responsible for under the KEMCON. The protester here does not rebut NASA's finding that the business manager lacks relevant experience in these areas, and therefore we find no basis to sustain the protest. Therefore, we find that Straughan has failed to demonstrate that the agency's evaluation under the management subfactor was unreasonable.

Mission Suitability Factor – Technical Subfactor

Straughan also challenges NASA's assessment of a weakness based on the protester's unclear approach to meeting surge requirements. The protester alleges that the agency unreasonably "cherry picked" statements from the proposal and failed to reasonably consider the totality of Straughan's proposed approach. Protest (June 15, 2015) at 39-41. We find no basis to sustain the protest.

As an initial matter, Straughan's protest challenged each of the five weaknesses evaluated by NASA under the technical subfactor. See Protest (June 15, 2015) at 32-41. The agency report specifically addressed--in more than 40 pages of detail--each of the five challenged weaknesses. See AR at 11-23; COSF (July 15, 2015) at 20-32; Tab 16.05, SEB Chair Decl. (July 13, 2015), at 23341-51. In its comments, however, the protester merely argued that "as set forth in Straughan's original protest, which the agency has not adequately addressed, the SEB selectively ignored the relevant portions of Straughan's proposal to conclude that weaknesses existed," and that "[t]he Agency Record does not provide support for the evaluation." Protester's Comments (July 27, 2015) at 3. The comments further

added that “[t]he Agency Record demonstrates that the Agency did not take into consideration the entirety of Straughan’s proposal,” and then replied to only one of NASA’s detailed responses. Id. at 10. On this record, we find that Straughan abandoned its challenge to the four weaknesses that it did not specifically address in its comments. In this regard, where an agency provides a detailed response to a protester’s assertions and the protester fails to rebut or otherwise substantively address the agency’s arguments in its comments, the protester provides us with no basis to conclude that the agency’s position with respect to the issue in question is unreasonable or improper. IntegriGuard, LLC d/b/a HMS Fed.--Protest & Recon., B-407691.3, B-407691.4, Sept. 30, 2013, 2013 CPD ¶ 241 at 5; Israel Aircraft Indus., Ltd.--TAMAM Div., B-297691, Mar. 13, 2006, 2006 CPD ¶ 62 at 6-7.

The remaining protest allegation challenges NASA’s evaluation of a weakness in Straughan’s proposed approach to meeting surge requirements. The RFP stated that the “offeror’s approach to maintaining staffing flexibility, including managing fluctuations and cross-utilization of personnel” would be evaluated. RFP at 01073-74. NASA was concerned that statements in Straughan’s proposal that temporary surges for high priority needs would be staffed within a week, and longer term requirements would be staffed within 3 to 6 weeks raised doubts about the protester’s ability to timely staff high priority requirements. AR, Tab 11.01, Straughan Mission Suitability Evaluation (undated), at 20282. NASA also could not discern whether surge support was already built into two Straughan fixed-price level-of-effort subcontracts, or, if not, how the support could be obtained in a timely manner. Id.; AR, Tab 16.05, SEB Chair Decl. (July 13, 2015), at 23350. Straughan argues that NASA unreasonably conflated surge and emergency staffing requirements and unreasonably ignored several references to the protester’s proposed approach to meeting both types of contingencies. See Protest (June 15, 2015) at 39-40; Protester’s Comments (July 27, 2015) at 10.

As an initial matter, Straughan does not address the portion of the agency’s concern with respect to the lack of clarity regarding the staffing ability and mechanism for acquiring surge support from the proposed subcontractors. Thus, we find no basis to question the assignment of that portion of the weakness. Furthermore, while the protester points to information in its proposal that addresses the protester’s approach to maintaining staffing flexibility and addressing contingencies, Straughan does not directly address NASA’s concern that the proposal also indicates that some high priority surge needs will not be filled for a week or more. In this regard, where a proposal omits, inadequately addresses, or fails to convey required information, the offeror runs the risk of an adverse agency evaluation. Graybar, B-410886, Mar. 4, 2015, 2015 CPD ¶ 102 at 4. Therefore, we find no basis to sustain the protest.

Past Performance

Straughan next alleges that NASA unreasonably found a past performance reference for CSS-Dynamac, a proposed Straughan subcontractor to be only “moderately” relevant. See Protest (June 15, 2015) at 43-45. We find no basis to sustain the protest.

An agency’s evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror’s performance history, is a matter of agency discretion which we will not disturb unless the agency’s assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. Fox RPM Corp., B-409676.2, B-409676.3, Oct. 20, 2014, 2014 CPD ¶ 310 at 3. A protester’s disagreement with the agency’s judgment, without more, is insufficient to establish that an evaluation was improper. Beretta USA Corp., B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 10.

Straughan identified two prior contracts for its past performance assessment, and three prior contracts for two of its proposed subcontractors. AR, Tab 12.01, Straughan Past Performance Evaluation (undated), at 20299. The agency considered the relevance of each reference only for those PWS sections that the prime or subcontractor was proposed to perform under the KEMCON. Id. at 20299; Tab 13.01, Competitive Range Presentation (May 21, 2015), at 20365. NASA assessed one contract as highly relevant (in terms of size, content, and complexity compared to the KEMCON) under PWS § 1.0 (project/program management), one contract as moderately relevant under PWS § 2.0 (medical), one contract as moderately relevant and two contracts, including one for CSS-Dynamac, as minimally relevant under PWS § 3.0 (environmental health), and two contracts as moderately relevant under PWS § 4.0 (environmental services). AR, Tab 12.01, Straughan Past Performance Evaluation (undated), at 20299. Other than one of the past performance references for CSS-Dynamac, Straughan does not otherwise challenge the agency’s evaluation of its or its teammates’ past performance.

NASA determined that the CSS-Dynamac reference was only minimally relevant to the KEMCON requirements because the bulk of the work under the cited contract was relevant to PWS §§ 2.0 and 4.0, with only minimal work being relevant under PWS § 3.0. COSF (July 15, 2015) at 33. Straughan, however, did not propose CSS-Dynamac to perform any of the tasks required by PWS §§ 2.0 or 4.0 for the KEMCON. See AR, Tab 7.02, Straughan Mission Suitability Proposal (Jan. 6, 2015), at 03550-55 (organizational charts reflecting CSS-Dynamac employees only proposed for tasks under PWS sections 3.0 and 5.3); id. at 03574 (work allocation figure showing CSS-Dynamac performing tasks only under PWS §§ 3.0-3.8 and 5.3). Thus, NASA asserts that the CSS-Dynamac reference was properly evaluated as being only minimally relevant to the KEMCON. COSF (July 15, 2015) at 33. The protester does not meaningfully rebut this argument. Therefore, we find

that the protester has failed to show that NASA's past performance evaluation was unreasonable.

Additionally, even if NASA had evaluated Straughan as warranting a higher confidence level in relation to PWS § 3.0 based on the CSS-Dynamac reference, it is not apparent that Straughan suffered any competitive prejudice. Competitive prejudice is an essential element of every viable protest, and where none is shown or otherwise evident, we will not sustain a protest, even where a protester may have shown that an agency's actions arguably were improper. Interfor US, Inc., supra. The protester does not challenge NASA's determination that Straughan demonstrated only moderately relevant past performance under PWS §§ 2.0 and 4.0. Thus, it is not apparent that even if the protester's past performance was evaluated as more relevant under PWS § 3.0 that Straughan's overall past performance rating would be any different.⁷ Therefore, Straughan has failed to demonstrate that NASA's evaluation under the past performance evaluation factor was unreasonable.

Exclusion From The Competitive Range

Finally, Straughan argues that, even if NASA's evaluation of its proposal was reasonable, the agency's decision to exclude the protester from the competitive range was nonetheless an abuse of discretion because Straughan had a reasonable chance of being selected for award. The protester alleges that its evaluated weaknesses could reasonably have been addressed during discussions without the need for material proposal revisions. See Protest (June 15, 2015) at 24; Protester's Comments (July 27, 2015) at 22-23. In this regard, Straughan alleges that it was unreasonable for NASA to assume that the protester could not readily substitute its program manager and business manager as a result of discussions. See Protester's Comments (July 27, 2015) at 2; Protester's Supp. Comments (Sept. 2, 2015) at 2-3. Additionally, the protester alleges that NASA failed to reasonably consider Straughan's competitive proposed total cost in excluding

⁷ Straughan also complains that NASA unreasonably failed to separately evaluate relevant past performance under PWS § 5.0 relating to services for the Air Force. See Protester's Comments (July 27, 2015) at 18-21. We find no merit to this argument. NASA explained that the services for the Air Force under the RFP "are very similar or exactly the same as the referenced PWS' [services for NASA], but at a much smaller scale." AR, Tab 12.01, Straughan Past Performance Evaluation (undated), at 20293. The agency further explained that evaluation of the PWS § 5.0 requirements was included in the evaluation for PWS §§ 2.0-4.0 because "it was determined that a separate evaluation of PWS 5.0 would have little to no bearing on the level of confidence determination." Id. Straughan has failed to demonstrate how NASA's evaluation was unreasonable or what possible prejudice it suffered as a result.

Straughan's proposal from the competitive range. See Protester's Comments (July 27, 2015) at 3. We find no basis to sustain the protest.

As an initial matter, we note that Straughan relies on older decisions issued by our Office that interpreted and applied materially different and superseded competitive range requirements under the FAR. See, e.g., Protester's Comments (July 27, 2015) at 12-13; Protester's Supp. Comments (Sept. 2, 2015) at 5. The FAR currently requires that the competitive range generally include, with an exception not applicable here, "all of the most highly rated proposals." FAR § 15.306(c)(1). The FAR's current requirement, which was promulgated in 1997, materially differs from the previous requirement, which required that the competitive range "include all proposals that have a reasonable chance of being selected for award." FAR § 15.609(a). The same superseded FAR provision further provided that "[w]hen there is doubt as to whether a proposal is in the competitive range, the proposal should be included." Id. As our Office has previously explained, "the explanatory preamble published at the time the final version of the FAR Part 15 rewrite was issued makes clear that the intent of the revised language was to permit a competitive range more limited than under the prior 'reasonable chance of being selected for award' standard." SDS Petro. Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 5. Additionally, in amending the competitive range requirements in 1997, the FAR Council specifically rejected retaining the previous presumption in favor of retaining a proposal in the competitive range. See FAR; Part 15 Rewrite; Contracting by Negotiation & Competitive Range Determination, 62 Fed. Reg. 51224, 51226 (Sept. 30, 1997).

As addressed above, an agency is authorized to exclude proposals from the competitive range that are not among the "most highly rated." FAR § 15.306(c)(1). Our review is limited to whether the agency's evaluation and competitive range determination were reasonable and consistent with applicable procurement statutes and regulations. ABM Gov. Servs., LLC, supra. In this regard, we have held that there is nothing inherently improper in a competitive range of one where the agency has a reasonable basis for its competitive range determination. M&M Investigations, Inc., B-299369.2, B-299369.3, Oct. 24, 2007, 2007 CPD ¶ 200 at 3; SDS Petro. Prods., Inc., supra.

NASA's competitive range determination includes a detailed analysis comparing the relative merits of the competing proposals against all three of the evaluation factors. See AR, Tab 13.03, Competitive Range Determination (May 26, 2015), at 3-6. With respect to Straughan, the agency found that the protester was ranked fourth of five under the mission suitability factor, and 250 points behind Offeror A, the highest rated offeror. Id. at 20506. In contrast to Straughan, whose proposed program and business managers resulted in the assessment of a significant weakness, the three higher-rated offerors, including Offeror A, received significant strengths for their respective proposed management teams. Id. at 20506-07. Straughan argues that the agency engaged in unreasonable "pure speculation" in concluding that the

protester could not substitute its program manager and business manager for stronger candidates after inclusion in the competitive range. Protester's Supp. Comments (Sept. 2, 2015) at 3. We find that NASA's evaluation was reasonable.

Under FAR § 15.306, NASA had the discretion to evaluate Straughan's initial proposal to determine whether it was among the most highly-rated proposals; as addressed above, we find that the agency reasonably evaluated Straughan's proposal. See Matrix Gen., Inc., B-282192, June 10, 1999, 99-1 CPD ¶ 108 at 3 (finding an agency reasonably excluded an acceptable proposal from the competitive range where it did not address certain criteria as well as other offerors, and thus was not among the most highly-rated proposals). The agency here, however, elected to go further and consider whether the protester's proposal was susceptible to being made one of the most highly-rated proposals through discussions and proposal revisions, and thus whether it would have a reasonable chance for award. In this regard, we note that NASA's evaluation of Straughan's proposal largely tracked with the competitive range standard advanced by the protester, that is, whether the proposal had a reasonable chance of being selected for award without the need for a significant rewriting of the proposal. See AR, Tab 13.03, Competitive Range Determination (May 26, 2015), at 20509 (finding that Straughan could not materially improve its Mission Suitability score without "substantially rewriting its proposal and changing out its proposed management team"). Even though NASA elected to conduct this further analysis, we find nothing objectionable with NASA's evaluation here. See STS Strategic Techs. & Scis., Inc., B-257980, B-257980.2, Nov. 17, 1994, 94-2 CPD ¶ 194 at 4-5 (denying a protest challenging the exclusion of a proposal from the competitive range based on the lack of relevant experience of proposed key personnel).

Straughan's past performance confidence rating of "moderate" was also not as high as at least two other offerors, including Offeror A. AR, Tab 13.03, Competitive Range Determination (May 26, 2015), at 20506. NASA concluded that the protester's past performance confidence rating would not likely change as a result of discussions. Id. at 20508. We find that this determination was reasonable. First, as discussed above, Straughan does not contend that its past performance with respect to PWS §§ 2.0 or 4.0 was misevaluated or that it could--or how it would--have materially improved its rating with respect to those areas. Additionally, it appears NASA had no duty to address Straughan's past performance even if it had conducted discussions. See FAR § 15.306(d)(3) (requiring discussions to address only "adverse past performance information to which the offeror has not yet had an opportunity to respond").

The record also demonstrates that NASA thoroughly considered Straughan's proposed cost. As addressed above, the agency specifically concluded that although Straughan's proposed cost was the lowest for all offerors, the protester's

final probable cost would likely increase if the evaluated weaknesses regarding inadequate or unclear proposed staffing were resolved.⁸ AR, Tab 13.03, Competitive Range Determination (May 26, 2015), at 20507, 20508-09. The protester does not specifically rebut NASA's determination that resolution of the weaknesses would likely result in upward cost adjustments to Straughan's proposal. Thus, we do not find that NASA's determination that Straughan's apparent cost advantage was likely illusory was unreasonable. Based on this record, we find that Straughan has failed to demonstrate that NASA unreasonably concluded that the protester's proposal was not among the most highly-rated proposals, or improperly excluded the proposal from the competitive range.

The protest is denied.

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General Counsel

⁸ When an agency evaluates a proposal for the award of a cost-reimbursement contract, as NASA is doing here, an offeror's costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR § 15.305(a)(1); CSI, Inc.; Visual Awareness Techs. & Consulting, Inc., B-407332.5 et al., Jan. 12, 2015, 2015 CPD ¶ 35 at 5. Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(1).