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Decision

Matter of: Gaver Technologies, Inc.

File: B-409535.3

Date: April 2, 2015

Ralph C. Thomas III, Esq., Barton, Baker, Thomas & Tolle, LLP, for the protester. Barbara A. Duncombe, Esq., Suzanne Sumner, Esq., and Casie E. Hollis, Esq., Taft Stettinius & Hollister LLP, for Peerless Technologies Corporation, the intervenor. James T. Mahoney, Esq., and Kaprice L. Harris, Esq., National Aeronautics and Space Administration, for the agency. Jennifer D. Westfall-McGrail, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably rated protester's experience/past performance as high confidence, rather than very high confidence, where "very highly pertinent" experience was required for the latter rating, and protester's experience was not considered "very highly pertinent."
 2. Agency did not improperly rely on unstated evaluation factor in finding that awardee had an edge under the experience/past performance factor as a result of its subcontractor's experience as the incumbent.
 3. Protester's objection to evaluators' amendment of their technical findings made in connection with their reevaluation of proposals is denied where protester fails to show that amended findings were unreasonable.
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DECISION

Gaver Technologies, Inc., of Frederick, Maryland, protests the award of a contract to Peerless Technologies, Inc., of Fairborn, Ohio, under request for proposals (RFP) No. NNC13ZCH020J, issued by the National Aeronautics and Space Administration (NASA) for professional, administrative, computational, and engineering (PACE) services for the Glenn Research Center's (GRC's) Lewis Field, in Cleveland, Ohio, and its associated facility, Plum Brook Station, in Sandusky, Ohio. The protester contends that the agency's source selection decision was flawed.

We deny the protest.

BACKGROUND

The RFP, which was issued on May 17, 2013, as a small business set-aside, contemplated the award of a cost-plus-fixed-fee contract for a 5-year period.¹ Services to be provided under the contract include computer science, computer software engineering, information technology (IT) security, networking, application development, and web services.

The RFP provided for award to the offeror whose proposal was considered most advantageous to the government based on the following three factors (of approximately equal weight): mission suitability, relevant experience/past performance, and cost. The mission suitability factor was comprised of three subfactors: technical requirements (worth 45 percent of the factor weight); management plan (worth 35 percent); and work management (worth 20 percent). Under the technical requirements subfactor, the solicitation provided for evaluation of offerors' technical approaches and their responses to three sample scenarios. The RFP advised that in evaluating offerors' technical approaches, the agency would consider the sufficiency of the information provided pertaining to "disciplines, skills, and techniques" for performing the work, as well as "[p]roposed innovative processes, systems, and technology trends . . . for accomplishing and/or streamlining the tasks required in the [Statement of Work] with supportive rationale."² RFP at 92. Under the management plan subfactor, the solicitation provided for evaluation of the offeror's organizational structure and management; risk management plan; phase-in plan; staffing, recruitment, retention and compensation; subcontractor management; and key personnel. Under the relevant experience/past performance factor, offerors were to be rated as very high, high, moderate, low, very low, or neutral confidence based on the relevance of their experience and the quality of their performance.

NASA received six proposals by the June 28, 2013, closing date. The agency evaluated the proposals, excluded two of them from the competitive range, and conducted discussions with the remaining four offerors. At the conclusion of discussions, the proposals of Gaver and Peerless received the highest ratings. Final point scores, number of strengths identified, and adjectival ratings for the two proposals were as follows:

¹ The 5-year period of performance was comprised of a 20-month base period, a 24-month option period, and a second option period of 16 months.

² While not of relevance to this protest, the RFP also provided for consideration of IT-related certifications, ratings, and/or accreditations under technical approach.

FACTOR/SUBFACTOR	Peerless	Gaver
MISSION SUITABILITY		
Technical Requirements	Very Good Point score: 360 (of 450) 1 Significant Strength/ 2 Strengths	Excellent Point score: 428 (of 450) 5 Significant Strengths
Management Plan	Very Good Point score: 315 (of 350) 2 Significant Strengths/ 3 Strengths	Very Good Point score: 298 (of 350) 1 Significant Strength/ 3 Strengths
Work Management	Very Good Point score: 150 (of 200) 2 Strengths	Very Good Point score: 150 (of 200) 2 Strengths
Total Points	825	876
RELEVANT EXPERIENCE/ PAST PERFORMANCE		
	High Confidence	High Confidence
Final Proposed Cost	\$110,697,551	\$125,688,886
Final Probable Cost	\$108,467,033	\$111,048,084

Source Evaluation Board (SEB) Selection Briefing, Jan. 15, 2014, at 10, 14, 31; Gaver Debriefing at 42.

After reviewing the SEB's findings, which included detailed explanations of significant strengths and strengths in the proposals, the source selection authority (SSA) concluded that despite the considerable difference in point scores and number of significant strengths identified, there was no meaningful difference between the two proposals under the technical requirements subfactor. In support of her conclusion, the SSA noted that some of the significant strengths attributed to Gaver's proposal were based in part on proposed innovations that the GRC might not be able to implement due to budgetary constraints. The SSA further concluded that Peerless had an advantage under the management plan subfactor, based in part on her understanding that Peerless had committed to complete phase-in within 30 days, as opposed to the required 60 days. As a result of the above findings, the SSA found that Peerless's proposal had a slight advantage over the protester's with regard to the mission suitability factor. She further found that while both offerors received ratings of high confidence under the relevant experience/past performance factor, Peerless's proposal had a slight edge under the factor due to the highly relevant experience of its team members and "the direct experience and overall successful performance of its major subcontractor" on the predecessor contract to the contract here. Finally, the SSA noted that the probable costs of the two proposals were almost equal, with Peerless's being slightly lower. She concluded that because Peerless's proposal offered slight advantages under each of the three factors, it represented the best value to the government.

After receiving notice of the award to Peerless and a debriefing, Gaver protested to our Office. The protester argued that the SSA had departed from the RFP's stated evaluation scheme by failing to give its proposal credit for multiple innovations identified by the SEB. Gaver also argued that the SSA had unreasonably credited Peerless with offering a 30-day phase-in period. After developing the written record and conducting a hearing, we concluded that the protester's arguments had merit and recommended that the SSA make a new source selection decision. See Gaver Techs., Inc., B-409535, June 3, 2014, 2014 CPD ¶ 168 (hereinafter referred to as Gaver I).

In response to our recommendation, the contracting officer notified the four offerors included in the agency's competitive range that NASA would reconvene the SEB to reevaluate limited areas of the technical proposals. The contracting officer further advised that any new findings would be presented to the SSA for a new SSD.

Gaver protested the agency's proposed corrective action to our Office, arguing that it was contrary to our recommendation (in that we did not recommend a reevaluation of proposals) and overbroad (in that it encompassed reevaluation of the proposals of offerors other than Gaver and Peerless). We dismissed this protest as failing to state a legally sufficient basis for protest. See Gaver Techs., Inc., B-409535.2, Sept. 12, 2014 (hereinafter referred to as Gaver II). We explained that because the details of implementing our recommendations for corrective action are within the sound discretion and judgment of the contracting agency, we would not question an agency's ultimate manner of compliance so long as it remedied the procurement improprieties that were the basis for the recommendation. Cooperativa Muratori Riuniti, B-294980.5, July 27, 2005, 2005 CPD ¶ 144 at 5. We further explained that where an agency took corrective action beyond our recommendation, the agency's decision to pursue such a course of action did not, by itself, provide a basis for protest absent some showing that the agency's proposed corrective action was contrary to procurement law or regulation, or otherwise improper. C2C Solutions, Inc.; TrustSolutions, LLC, B-401106.6, B-401106.7, June 21, 2010, 2010 CPD ¶ 145 at 3. In dismissing the protest as legally insufficient, we concluded that while the measures taken by the agency here went beyond our recommendation, they addressed the underlying improprieties that led us to sustain the protest, and that the protester had failed to allege facts that would support a finding that the agency's actions were contrary to law or regulation or otherwise improper.

The SEB reevaluated the proposals in two limited areas, proposed innovations and phase-in. Based on its reevaluation, the SEB amended some of its findings pertaining to significant strengths/strengths in the protester's technical approach, which resulted in a reduction in the proposal's point score and adjectival rating under the technical requirements subfactor. No changes were made to the scoring or rating of Peerless's proposal under the technical requirements subfactor. The SEB also edited its findings pertaining to both offerors' phase-in plans, but these

changes did not alter the point score (or rating) of either proposal under the management plan subfactor. Point scores and ratings of the two proposals under the mission suitability factor, as reevaluated, were as follows:

FACTOR/SUBFACTOR	Peerless	Gaver
MISSION SUITABILITY		
Technical Requirements	Very Good Point score: 360 (of 450) 1 Significant Strength/ 2 Strengths	Very Good Point score: 392 (of 450) 4 Significant Strengths/ 1 Strength
Management Plan	Very Good Point score: 315 (of 350) 2 Significant Strengths/ 3 Strengths	Very Good Point score: 298 (of 350) 1 Significant Strength/ 3 Strengths
Work Management	Very Good Point score: 150 (of 200) 2 Strengths	Very Good Point score: 150 (of 200) 2 Strengths
Total Points	825	840

SEB Selection Briefing, Oct. 17, 2014, at 12, 15, 49.

After reviewing the SEB's revised findings, the SSA found that Gaver's proposal had a slight advantage over Peerless's under the mission suitability factor. She found Peerless's proposal continued to have a slight edge under the relevant experience/past performance factor, however, as a result of the direct experience and overall successful performance of Peerless's major subcontractor on the preceding contract. The SSA further recognized that Peerless had a slight price advantage. She concluded that the "qualitative merit in [Gaver's] slightly better Mission Suitability proposal" did not "warrant[] the increased probable cost of approximately \$2.5M," and, as a result, that Peerless's proposal represented the best value to the government. Source Selection Statement, Dec. 17, 2014, at 11.

By letter of December 18, the contracting officer notified Gaver that Peerless had again been identified as the successful offeror. After requesting and receiving a debriefing, Gaver filed a timely protest with our Office.

DISCUSSION

Gaver objects to the agency's corrective action. The protester also challenges the agency's evaluation of its own proposal, and that of Peerless under the past performance factor and the technical requirements subfactor of the mission suitability factor. In addition, Gaver challenges the agency's cost evaluation, arguing that the agency should either have conducted a new probable cost analysis based on our decision in Gaver I, or requested new final proposals from the offerors in the competitive range. The protester also contends that the SSA's tradeoff

decision failed to remedy the problems identified in Gaver I. For the reasons discussed below, we have no basis to sustain the protest.

Challenge to Corrective Action

As an initial matter, Gaver complains that the agency's corrective action was overbroad. According to Gaver, the corrective action should have been limited to "narrowly target" the defects identified in our earlier decision, which pertained exclusively to the SSA's failure to give reasonable weight to the findings of the SEB. The protester cites three decisions from the Court of Federal Claims in support of its argument: Sheridan Corp. v. U.S., 95 Fed. Cl. 141 (2010); Delaney Constr. Corp. v. U.S., 56 Fed. Cl. 470 (2003); and MCII Generator Elec., Inc. v. U.S., No. 1:02-CV-85, 2002 U.S. Claims Lexis 172, 2002 WL 32126244 (Fed. Cl. Mar. 18, 2002). This line of argument essentially re-raises the matter previously dismissed by our Office in Gaver II. To the extent that the protester has sought to bolster its previously dismissed allegations by reference to decisions of the Court of Federal Claims, its new arguments, raised several months after we dismissed its prior protest, are untimely at this juncture. 4 C.F.R. § 21.2(a)(2) (protesters are required to raise allegations within 10 days of when the protester knows or should know its basis for protest).

In any event, we do not view the above-cited Court of Federal Claims decisions to stand for the principle that an agency's exercise of its discretion in the implementation of corrective action must be limited to targeting the specific defects identified through a protest. Although not binding on our Office, we understand these cases to stand for the narrow principle that where award has been made, and the winning offeror's proposal information revealed, resolicitation of proposals may compromise the integrity of the procurement system and may not be appropriate corrective action where the procurement errors could be adequately addressed through a proper reevaluation. We reached a somewhat similar conclusion in Security Consultants Group, Inc., B-293344.2, Mar. 19, 2004, 2004 CPD ¶ 53, in which we held that a reopening of the competition after award was not appropriate corrective action to remedy a solicitation defect (failure to accurately describe intended weights of evaluation factors) where there was no evidence of prejudice to any offeror arising from the defect. The situation here is clearly distinguishable from the situation in the cited cases in that the corrective action here did not involve a reopening of the competition through the resolicitation of proposals. To the extent Gaver now challenges the results of the reevaluation and new selection decision, as discussed below, we find these arguments to be without merit.

Past Performance

Gaver argues that its proposal should have received a rating of very high confidence, as opposed to merely high confidence, under the experience/past performance factor. The protester also argues that it was inconsistent with the

stated evaluation factors for the SSA to attribute a slight edge to Peerless under the factor for including the incumbent contractor on its team.

The evaluation of past performance is a matter within the discretion of the contracting agency. In reviewing an agency's evaluation of past performance, we will not reevaluate proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation. Maywood Closure Co., LLC, B-408343 et al., Aug. 23, 2013, 2013 CPD ¶ 199 at 5.

In its first protest at our Office, Gaver argued that its proposal should have been rated very high confidence under the experience/past performance factor, and we found that the argument did not provide a basis for sustaining the protest. Gaver I, supra, at 9 n.7. Then--and now--our reasoning was that to achieve a rating of very high confidence, an offeror's relevant performance had to be both "of exceptional merit" and "very highly pertinent," and while the record showed that Gaver's past performance was considered excellent (thereby arguably meeting the first requirement), it failed to show that the experience was considered highly pertinent.³ That is, the agency evaluated Gaver's team as having relevant, as opposed to highly relevant, experience. Selection Briefing, Oct. 17, 2014, at 74. Because the record shows that protester's experience/past performance did not meet the criteria for a rating of very high confidence, we find this argument to be without merit.

Regarding the protester's argument that the SSA relied on an unstated evaluation factor in finding that Peerless had a slight edge under the past performance factor based on its subcontractor's experience as the incumbent, an agency may properly apply evaluation considerations that are not expressly outlined in the solicitation where those considerations are reasonably and logically encompassed within the stated evaluation criteria. That is, an agency may properly apply such considerations where there is a clear nexus between the stated criteria and the unstated consideration. Savvee Consulting, Inc., B-408416, B-408416.2, Sept. 18, 2013, 2013 CPD ¶ 231 at 5. Here, the solicitation clearly contemplated consideration of the degree of relevance of past experience; moreover, experience

³ The RFP defined a rating of Very High Level of Confidence as follows:

The Offeror's relevant past performance is of exceptional merit and is very highly pertinent to this acquisition, indicating exemplary performance in a timely, efficient, and economical manner; very minor (if any) problems with no adverse effect on overall performance. Based on the Offeror's performance record, there is a very high level of confidence that the Offeror will successfully perform the required effort. ** (One or more significant strengths exist. No significant weaknesses exist.)

RFP at 97.

under the predecessor contract clearly had a very high degree of relevance. As a result, we have no basis to conclude that the SSA improperly relied upon an unstated evaluation factor in finding that Peerless had an edge under the experience/past performance factor as a result of its subcontractor's experience as the incumbent. See Wisconsin Physicians Serv. Ins. Corp., B-401068.14, B-401068.15, Jan. 16, 2013, 2013 CPD ¶ 34 at 9, 11.

Technical Evaluation (Gaver)

Gaver complains that during their reevaluation, the evaluators amended some of their findings pertaining to its technical approach, resulting in a reduction in its proposal's point score and adjectival rating under the technical requirements subfactor. Specifically, Gaver objects to the evaluators' modification of the bullets supporting their second finding of significant strength, which pertained to innovative processes and technology trends proposed by the protester. The protester also objects to the downgrading of the finding from significant strength to strength.

At the outset, we point out that the mere fact that a reevaluation varies from an original evaluation does not constitute evidence that the reevaluation was unreasonable. IAP World Servs., Inc., B-406339.2, Oct. 9, 2012, 2012 CPD ¶ 287 at 3. It is implicit that a reevaluation could result in different findings and conclusions. QinetiQ North America, Inc., B-405163.2 et al., Jan. 25, 2012, 2012 CPD ¶ 53 at 13. In reviewing the results of the reevaluation, our primary concern is not whether the findings and ratings are consistent with the earlier findings and ratings, but rather, whether they reasonably reflect the relative merits of the proposals. Domain Name Alliance Registry, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 11. We review reevaluations in the same manner as other evaluations; that is, we examine the results to ensure they are reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. See Scheduled Airlines Traffic Offices, Inc., B-253856.7, Nov. 23, 1994, 95-1 CPD ¶ 33 at 6 n.7.

As we discussed in Gaver I, the SEB initially assigned Gaver's proposal a significant strength for proposing a technical approach incorporating "a multitude of highly innovative processes and insightful technology trends." Gaver I, supra, at 4, citing Selection Briefing, Jan. 15, 2014, at 15. As further discussed in our prior decision, the evaluators supported the finding with the following six bullets of explanatory detail:

- Offeror proposed a quarterly Technology Trends report and Analysis of Alternatives to provide "cutting edge" innovation with stable, risk mitigating options. This will provide timely and innovative information to the [Office of the Chief Information Officer (OCIO)] decision makers.

- Offeror proposed migrating to using radio frequency identification (RFID) technologies which has the potential to significantly reduce cycle time for inventory management. This is a proven, effective tracking technology that has not yet been exploited for IT at GRC.
- Offeror proposed a solution for applications that cannot be managed within the NASA Access Management System (NAMS). This is an innovative approach for increased security and streamlined system administration, installation, user support and workflow management for those applications.
- Offeror proposed a creative no cost effective approach to moving GRC toward cloud computing, one step at a time, without sacrificing GRC control of resources and expenditures. The basis for this approach was technically well-grounded and represents a desired technology direction.
- The Offeror's proposed approach to mobile device management provides a win-win solution for GRC OCIO to more effectively manage mobile devices. Offeror proposes using the [Hewlett Packard Enterprises Services (HPES)] tool AppCenter which provides the capability to wrap a layer of security without changing the software. Using AppCenter gives GRC the option of delivering this solution either via [Agency Consolidated End User Services (ACES)] or PACE IV, but still leveraging the completing price point HPES has negotiated.
- Offeror proposed using industry standard Factor Analysis of Information Risk (FAIR) for Security and Operational Risk. This model leverages NIST 800-30 to identify and quantitatively measure risk to assist individuals in making weighted decisions based on the impact a realized risk may present to the organization.

Id. The evaluators concluded that Gaver had proposed “credible and innovative approaches that [would] reduce cost and risk while providing GRC OCIO with the information required to be smart consumers,” which would “greatly enhance the potential for successful contract performance.” Id.

In their reevaluation, the evaluators amended the summary of their finding to provide that the protester's proposal contained “innovative processes and insightful technology” (in contrast to “a multitude of highly innovative processes and insightful technology trends.”) Selection Briefing, Oct. 17, 2014, at 18. The evaluators also amended the supporting bullets of explanatory detail as follows:

- Deleted the word “innovative” from the first bullet, and added the following explanation:

[Gaver] proposed this quarterly report and analysis but no further detail was provided. Without knowing what the report will contain, no determination can be made as to the costs and/or savings of implementing the ideas contained in this report. Lack of detail or examples of what the report might contain equates to lack of supporting rationale.

Id.

- Deleted the finding pertaining to RFID technology, noting as follows:

Cost to implement is not included in pricing. Projected cost savings are not defined.

Upon re-consideration, the SEB no longer considers migrating to RFID technology for inventory management to be innovative to GRC. While the SEB appreciates the value of having RFID for inventory management, [Gaver] provides no further discussion of the details to implement this idea. Therefore the SEB is removing this as a detailed finding in support of this strength.

Id.

- Deleted the finding pertaining to a solution for applications that cannot be managed within NAMS, noting as follows:

RFP asked for this in Section 3.2.8 and 3.2.9. Upon re-consideration, [Gaver] proposes providing what the government asked for. Solution is not provided through use of a dedicated application. The SEB has determined the proposed response meets the requirements.

Id.

- Amended the finding pertaining to cloud computing to delete the reference to the basis for the approach being “well-grounded.” Added the following explanation:

Cost of preparing plan included in pricing. . . . Unknown implementation cost. Potential for implementation costs to be significant.

A plan to move toward cloud computing proposed by [Gaver], . . . , and delivered within the first 90 days of contract start will be a draft plan. While the SEB appreciates the value of having a plan available for the CIO’s consideration and the

proposed “one step at a time” approval, [Gaver] provides no further discussion of the details that might be contained within the plan. The proposed approach may or may not align with the agency’s direction.

Id. at 19.

- Deleted the finding pertaining to mobile device management, observing as follows:

Cost for AppCenter not included in pricing. There is no supporting documentation in the BOE [Basis of Estimate] for the AppCenter software licenses. While the SEB acknowledged AppCenter as a viable solution to Mobile Device Management (MDM), . . . , NASA has chosen the software product MaaS360 as the MDM software for the Agency. The proposed solution, AppCenter, is no longer consistent with the Agency’s OCIO technical direction.

Id. at 20.⁴

Finally, the SEB amended its concluding summary of the strength to delete the reference to reducing cost/risk and to add the following explanation:

This finding was significantly revised and is now a Strength. The changes did reduce the overall point scored due to: 1) the diminished value of the findings related to RFID, NAMS-like services, and MDM; and 2) the lack of specificity in the supporting rationale and lack of implementation costs for the reports, analysis, and plans provided to the government.

The wording of the summary statement was changed to reflect that the association of reduced cost with RFID and reduced risk with a MDM solution. (sic) With those findings removed, the summary statement needed to change.

The innovations that remain--the quarterly Technology Trends report and Analysis of Alternatives and the Draft GRC Datacenter Evolution Plan will provide useful information to the OCIO organization and will

⁴ The sixth bullet was moved to support the finding of significant strength pertaining to the protester’s approach to IT Security. To the extent Gaver complains that its proposal lost points during the reevaluation as a result of the evaluators’ reorganization of this and other findings, the firm has not offered any evidence demonstrating--nor do we discern from the existing record--that its point score dropped as a result of the reorganized findings.

assist them in creating a roadmap for the evolution of GRC's IT infrastructure and services.

Id.

Gaver objects to the SEB's revised findings. Specifically, the protester argues that NASA diminished the value of several Gaver innovations on the basis that the proposed processes were commonly used in industry, which was improper since the pertinent issue is whether the proposed process is innovative to GRC. Protester's Comments, Feb. 9, 2015, at 6. Gaver also argues that in its reevaluation, the agency improperly took into account information not available at the time of the initial evaluation.⁵

With regard to the protester's first argument, we note that while Gaver asserts the evaluators diminished the value of several of its proposed innovations on the basis they were not innovative to the industry, the contemporaneous record shows only one instance in which a proposed innovation was devalued on this basis (*i.e.*, the protester's proposed use of RFID technology for inventory management).⁶ Moreover, we think that it was reasonable for the evaluators to interpret the RFP section providing for consideration of "proposed innovative processes" in the manner they did, that is, whether they were innovative as defined by the industry generally, not simply whether the process would be new to GRC.

The protester's second objection pertains to the evaluators' deletion of their finding regarding Gaver's proposed approach to mobile device management. According to the protester, it was improper for the evaluators to find its proposed solution for

⁵ In its protest, Gaver also complained that the evaluators had unreasonably diminished the value associated with its proposed offering of a quarterly Technology Trends report and Analysis of Alternatives as inadequately detailed. The agency responded to this argument in its report, and Gaver did not further address the issue in its comments on the agency report; as a result, we consider the protester to have abandoned this issue and will not address it further. To the extent that the protester reasserted the argument in its supplemental comments, we will not consider abandoned issues even when reasserted in supplemental filings since our rules do not contemplate the piecemeal presentation of protest issues. 901 North Fifth St., LLC, B-404997, B-404997.2, July 22, 2011, 2011 CPD ¶ 152 at 5-6 n.8.

⁶ According to the contracting officer, "[t]he SEB determined during re-evaluation that Radio Frequency Identification (RFID) . . . was not an 'innovation' because the Agency has already technically progressed in this area, even though GRC lags behind." Contracting Officer's Statement of Facts at 14.

MDM inconsistent with the agency's technical direction where the change in technical direction occurred after proposals had been submitted and evaluated.

In response, the agency maintains that the evaluators' basis for deleting this bullet was that the cost for AppCenter was not included in the protester's price proposal, and Gaver's proposal did not include adequate supporting documentation to explain its technical value or the savings associated with implementation of the innovation. Agency Supplemental Report at 4. According to the agency, the SEB removed the bullet point based on the foregoing consideration, and the fact that the agency had selected another MDM solution was "just another fact that supported the SEB's decision to do so." Id. Since based on the existing record, the evaluators had a reasonable basis for removing the finding unrelated to the consideration to which the protester objects, we find that this argument fails to furnish a basis for sustaining the protest. In any event, we fail to see how the agency acted unreasonably by discounting the value of Gaver's MDM solution since, as a practical matter, it provided the agency with no actual value where, as described above, the agency had already implemented a different MDM platform. Although the timing of the agency's implementation and the reevaluation may have been unfortunate for the protester, Gaver has not provided any support for its contention that the agency should have given it evaluation credit for something the agency knew it did not need.⁷

Technical Evaluation (Peerless)

The protester further argues that in their revised evaluation findings, the evaluators continued to identify Peerless's phase-in plan as a significant strength. This was unreasonable according to Gaver since in Gaver I, our Office found that the evaluators had erroneously credited Peerless with proposing to complete phase-in within 30 days.

In Gaver I, we noted that while both the SSB and the SSA had credited Peerless for proposing to accomplish the phase-in transition within 30 days, the record showed that Peerless had not, in fact, proposed a 30-day phase-in period. In response to our decision, the SEB reevaluated both offerors' phase-in plans. The evaluators revised their finding that Peerless had committed to completing the phase-in transition within 30 days to now provide that Peerless had clearly demonstrated its ability to assume full contract responsibility within the 60-day phase-in. Selection Briefing, Oct. 17, 2014, at 42. The evaluators also added two bullets of detail "to help clarify the finding's significant strength." According to the SEB, "these last two

⁷ Furthermore, to the extent our discussion above does not address every objection to the evaluators' amended findings raised by the protester, we considered all of the arguments and find that none provides a basis for sustaining the protest.

bullets were discussed during SEB deliberations, but were not written down as part of the finding initially.” Id. at 43. The two additional bullets provided as follows:

- The Offeror provided a clear understanding of the transition of current work activities to the new Work Area structure. The Offeror performed an analysis of the new structure and SOW and developed a PACE IV organizational structure that connects the OCIO with Peerless’ six group managers to enable quick acquisition of services with clear lines of authority.
- The Offeror’ team includes three incumbent companies with executed teaming arrangements to support the prime contractor, which will greatly minimize dependency upon the Government.

Id.

In commenting on the agency report, the protester took issue with the two bullets of additional justification. Gaver argued that the first bullet “sounds very close to the reason why, [in Gaver I], the GAO found that NASA had unequally treated [Gaver] and Peerless” in assigning Peerless’s proposal a significant strength for proposing an organizational structure mirroring that of the GRC. Protester’s Comments, Feb. 9, 2015, at 9. Gaver further argued that the second bullet was unrelated to a stated evaluation criterion.

Regarding the protester’s first argument, we do not view the rationale here as “very close” to the rationale to which we objected in Gaver I. In Gaver I, we objected to the SSA’s apparent focus on Peerless’s proposed alignment to GRC’s organizational structure as a basis for distinguishing between the two proposals. Here, the rationale focuses not on the extent to which Peerless’s organizational structure aligns with GRC’s structure, but rather on how Peerless’s organizational structure will promote the agency’s acquisition of services.

We also disagree with Gaver’s argument pertaining to the second bullet. The RFP provided that in evaluating offerors’ phase-in plans, the agency would consider the level of dependency upon the incumbent contractor and/or NASA personnel during the phase-in period. RFP at 94. In our view, the above finding is related to such a consideration; as a result, we find the protester’s argument to be without merit.

Cost Evaluation

The protester argues that given our findings in Gaver I pertaining to innovations, the agency should either have conducted a new probable cost analysis or requested new final proposals from the offerors in the competitive range.

The protester’s first argument rests on the mistaken premise that in Gaver I, we found that the evaluators had not given proper weight to the protester’s proposed

innovations in calculating the proposal's probable cost. What we found was that the SSA had not given proper weight to the SEB's findings in her source selection decision (which has no bearing on probable cost). As a result, we see no basis for the argument that our findings in Gaver I should have led the agency to conduct a new probable cost analysis. Further, we will not consider the protester's complaint that the agency should have reopened the competition and requested new final offers because Gaver did not raise this argument in a timely manner. We also point out that the argument is directly contrary to the protester's argument, supra, that the agency's corrective action should have involved nothing more than reconsideration of the SSA's source selection decision based on the existing record.

Source Selection Decision

Finally, Gaver argues that the corrective action undertaken by the agency was improper in that it did not remedy the fundamental improprieties identified in our decision. In this regard, Gaver asserts that the SSA made no adjustments to her flawed source selection decision.

While it is true that the SSA ultimately selected the same firm--Peerless--as representing the best value to the government, the rationale for her decision was different in the second decision. The improprieties we identified in Gaver I were that in her source selection decision, the SSA unreasonably failed to give weight to several SEB findings pertaining to strengths in the protester's proposal, and unreasonably relied on Peerless's offering of a 30-day phase-in period as a basis for discriminating between the two proposals. As discussed above, however, the underlying SEB evaluation findings pertaining to the strengths of the proposals submitted by Gaver and Peerless changed as a consequence of the reevaluation. The record reflects that the SSA's second decision properly accounted for these new SEB evaluation findings. More specifically, in her first SSD, the SSA found that the difference between the two proposals under the technical requirements subfactor was immaterial and that Peerless's proposal had a slight advantage overall under the mission suitability factor. In her revised SSD, however, the SSA found that the protester's proposal was slightly better than Peerless's proposal under the technical requirements subfactor and that the former had a slight advantage overall under the mission suitability factor. Accordingly, we have no basis to conclude that the agency failed to remedy the issues previously identified by our Office.

The protest is denied.

Susan A. Poling
General Counsel