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## Decision

**Matter of:** Jacobs Technology, Inc.

**File:** B-413389; B-413389.2

**Date:** October 18, 2016

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Brian P. Waagner, Esq., Hal J. Perloff, Esq., Steven A. Neeley, Jr., Esq., Michelle L. Caton, Esq., and Charles M. Fleischmann, Esq., Husch Blackwell LLP, for the protester.

Maj George M. Ebert, Department of the Air Force, for the agency.

Amy Laderberg O'Sullivan, Esq., Olivia L. Lynch, Esq., and Sarah A. Hill, Esq., Crowell & Moring LLP, for AS and D, LLC, an intervenor.

Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest challenging agency's technical evaluation of protester's proposal, cost realism evaluation of awardee, and source selection decision is dismissed where protester abandoned its substantive challenges to the agency's evaluation.
  2. Protest challenging the agency's past performance evaluation of the awardee is denied where the record reflects that the agency's evaluation was reasonable and consistent with the stated evaluation criteria, and adequately documented.
  3. Protest challenging the agency's technical evaluation of the awardee's proposal is sustained where the agency's evaluation was not reasonable or consistent with the stated evaluation criteria, in that the agency failed to reasonably consider an aspect of the awardee's technical submission that indicated a lack of technical understanding.
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### DECISION

Jacobs Technology, Inc. (JTI), of Tullahoma, Tennessee, protests the award of a contract to AS and D, LLC (AS&D), of Beltsville, Maryland, under request for proposals (RFP) No. FA9300-15-R-0001, issued by the Department of the Air Force for aerospace systems technical research and operations services (ASTROS), at Edwards Air Force Base, California. JTI argues that the agency's evaluation of offerors' proposals and resulting contract award decision were improper.

We sustain the protest.

## BACKGROUND

The Air Force Research Laboratory, Aerospace Systems Directorate (AFRL/RQ-West), performs research and development of rocket propulsion, space systems and their components, including next generation rocket propulsion technologies. Performance Work Statement (PWS) § 1.0. AFRL/RQ-West therefore plans, formulates, and conducts research, exploratory, and advanced development programs in scientific and engineering areas related to rocket and space propulsion; it also designs and analyzes advanced propulsion concepts, and promotes the application of advanced propulsion science and technology to military and commercial systems. Id., § 1.1. The ASTROS program supports the AFRL/RQ-West mission by providing it with the capability to evaluate, design, construct, and modify experimental research test facilities and systems; perform research and development test operations and test operation support; and maintain special test equipment and support infrastructure as required. Id., § 1.2.

The RFP,<sup>1</sup> issued on June 30, 2015, contemplated the award of a hybrid fixed-price/ cost-plus-award-fee/cost-reimbursement contract for a 3-year base period, with one 3-year option period and one 4-year option period. RFP § B; Contracting Officer's Statement (COS), Aug. 10, 2016, at 2. In general terms, the ASTROS PWS required the contractor to provide all personnel, supplies, and equipment necessary to perform the specified tasks in support of the AFRL/RQ-West mission. PWS § 2.0. The solicitation established that contract award would be made on a "best value" basis, based on three evaluation factors generally in descending order of importance: technical/risk (hereinafter, technical); past performance; and cost/price.<sup>2</sup> Id. at 256-57. The technical factor was comprised of four subfactors in descending order of importance: scenario; program management; subcontract management; and phase-in plan.<sup>3</sup> Id. at 257. The technical and past performance evaluation factors, when combined, were significantly more important than cost/price. Id.

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<sup>1</sup> The RFP was subsequently amended 10 times. Unless specified otherwise, all references are to the final version of the solicitation.

<sup>2</sup> The technical factor was more important than the past performance and cost/price factors, which were of equal importance to each other. RFP § M, at 257.

<sup>3</sup> The technical subfactors were in turn comprised of various elements on which the agency's evaluation would be based. Id. at 258-60. For example, the scenario subfactor consisted of 11 specific elements, e.g., "Designed [in accordance with] IAW appropriate standards." Id. at 258.

Three offerors, including AS&D and incumbent JTI, submitted proposals by the September 14 closing date.<sup>4</sup> An Air Force source selection evaluation board (SSEB)--consisting of a technical evaluation team (TET), past performance evaluation team (PPET), and cost/price evaluation team (CET)--evaluated proposals using adjectival rating schemes that were set forth in the RFP as follows: outstanding, good, acceptable, marginal, and unacceptable for the technical factor; and substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence/neutral for past performance.<sup>5</sup> The CET did not assign ratings to the offerors' cost/price submissions, but assessed them for reasonableness, balance, and realism. COS, Aug. 10 2016, at 2-5.

Based on its evaluation of initial proposals, the Air Force made a competitive range determination consisting of the AS&D and JTI proposals. The contracting officer thereafter conducted discussions with offerors, followed by the submission of final proposal revisions (FPR) by May 10, 2016. The SSEB evaluated offerors' FPRs, with the final evaluation ratings and costs of the AS&D and JTI proposals as follows:

	AS&D	JTI
Technical		
Scenario	Outstanding	Outstanding
Program Management	Outstanding	Outstanding
Subcontract Management	Acceptable	Acceptable
Phase-In Plan	Outstanding	Outstanding
Past Performance	Substantial Confidence	Substantial Confidence
Proposed Cost/Price	\$207,881,101	\$208,512,402
Evaluated Cost/Price	\$207,881,101	\$208,512,402

Agency Report (AR), Tab 40, Proposal Analysis Report, at 11-50; Tab 41, Source Selection Briefing, at 29.

The TET identified strengths and weaknesses in the offerors' technical proposals in support of the ratings assigned. Specifically, the agency evaluators identified a total of 10 strengths and no weaknesses in AS&D's technical submission, and a total of 5 strengths and no weaknesses in JTI's technical submission. AR, Tab 40,

<sup>4</sup> The Air Force also held oral presentations (see Federal Acquisition Regulation § 15.102) with offerors. COS, Aug. 10, 2016, at 5. These were recorded and evaluated together with written proposals under the applicable technical subfactors. Id.

<sup>5</sup> The agency's past performance evaluation also assessed the relevance (very relevant, relevant, somewhat relevant, and not relevant) and quality (exceptional, very good, satisfactory, marginal, unsatisfactory, and not applicable/ unknown) of the offerors' references. RFP § M, at 262-63.

Proposal Analysis Report, at 11-20, 35-41. Separately, the PPET made narrative findings regarding the relevance and quality of the offerors' past performance references in support of the assigned confidence ratings.<sup>6</sup> Id. at 20-23, 42-43.

An agency source selection advisory council (SSAC) then conducted a comparative assessment of the offerors' proposals. The SSAC found that, notwithstanding the equivalent ratings, AS&D's proposal was superior to that of JTI under the scenario, program management, and phase-in plan subfactors (the offerors were considered equal under the subcontract management subfactor). AR, Tab 39, Comparative Analysis Report, at 5-14. Similarly, the SSAC found, notwithstanding the equal ratings, JTI's past performance to be superior in relevance and quality to that of AS&D.<sup>7</sup> Id. at 15-16. Overall, the SSAC found that AS&D's technical advantages outweighed JTI's past performance advantage, and recommended contract award to AS&D. Id. at 19.

On June 24, the agency source selection authority (SSA) received and reviewed the SSEB evaluation reports, as well as the SSAC's findings and recommendations.<sup>8</sup> AR, Tab 42, Source Selection Decision, at 1-6. The SSA agreed with the SSAC that AS&D's proposal was technically superior under the scenario, program management, and phase-in subfactors, while JTI had superior past performance. Id. at 3-6. The SSA thereafter concluded that AS&D's technical advantages--"most notably the Scenario Subfactor which was the most important"--and lower cost outweighed JTI's past performance advantage, and that AS&D's proposal represented the best value to the government all factors considered. Id. at 6.

After providing JTI with notice of contract award on June 30, and a debriefing on July 7-8, this protest followed.

## DISCUSSION

JTI raises various issues regarding the Air Force's evaluation and resulting award decision. The protester alleges that the evaluation of AS&D's past performance was improper. JTI also contends the agency's technical evaluation of AS&D was unreasonable. Further, JTI argues that it was prejudiced by the evaluation errors.

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<sup>6</sup> The agency report to our Office included the SSEB's evaluation worksheets for both the AS&D and JTI proposals.

<sup>7</sup> The SSAC considered the cost difference between the AS&D and JTI proposals--0.3 percent over the 10-year period of performance--to be insignificant, and viewed the offerors as equal in this area. Id. at 17-18.

<sup>8</sup> The agency evaluators also provided the SSA with a detailed presentation summarizing their evaluation findings and recommendations. AR, Tab 40, Source Selection Debriefing, at 1-108.

Had the agency performed a proper evaluation, the protester asserts, JTI would have been found to represent the best value to the government. As detailed below, we find the Air Force's evaluation of AS&D's technical proposal, under the scenario subfactor, was improper. Although we do not specifically address all of JTI's remaining issues and arguments, we have fully considered all of them and find they provide no additional basis on which to sustain the protest.

### Abandoned Issues

JTI, in addition to its AS&D past performance and technical evaluation challenges, initially makes several other arguments in connection with the agency's evaluation and award decision. Specifically, the protester alleges that the agency's technical evaluation of JTI was unreasonable because it: (1) failed to recognize numerous strengths and undervalued JTI's technical approach; (2) applied unstated evaluation criteria when determining AS&D's technical superiority; (3) failed to perform an adequate cost realism evaluation of AS&D; (4) failed to conduct a rational best value tradeoff determination; and (5) failed to adequately document the basis for its source selection decision. Protest at 14-21.

In response to these allegations, the agency provided a detailed discussion of its evaluation of offerors' proposals under each evaluation factor and subfactor in order to rebut JTI's allegations. Memorandum of Law (MOL), Aug. 10, 2016, at 15-26; COS, Aug. 10, 2016, at 13-37. In its comments responding to the agency's report, JTI does not discuss the merits of the agency's response here or in any way substantively rebut the agency's position. Rather, the protester states only that "[t]he Agency Report confirms that the Air Force's evaluation of JTI's and AS&D's proposals was unreasonable." JTI Comments at 1.

Where, as here, an agency provides a detailed response to a protester's assertions and the protester either does not respond to the agency's position or provides a response that merely references or restates the original protest allegation without substantively rebutting the agency's position, we deem the initially-raised arguments abandoned. Bannum Inc., B-411586.2, Jan. 6, 2016, 2016 CPD ¶ 13 at 4; Avaya Gov't Solutions, Inc., B-409037 et al., Jan. 15, 2014, 2014 CPD ¶ 31 at 3-4. We therefore conclude that these assertions have been abandoned, and do not consider them further.

JTI argues that it did not abandon--or at least, did not intend to abandon--its initial protest issues. Rather, the protester argues that the "crux" of its initial protest was that it was unreasonable for the Air Force to assign the same overall ratings to the AS&D and JTI proposals under the past performance and technical factors, and that the protester's comments "provide illustrations and specific examples of numerous flaws that simply confirm JTI's initial protest grounds." JTI Supp. Comments at 2. We disagree.

As a preliminary matter, JTI does not dispute that the agency report expressly addressed all initial protest grounds, and that the protester did not rebut the agency position in its comments. We also find no merit in JTI's assertion that its comments --which focused on the past performance and technical evaluations of AS&D-- somehow provided illustrations and examples in support of completely unrelated protest grounds, e.g., the agency's cost realism evaluation of AS&D. Moreover, our Bid Protest Regulations do not contemplate being able to plead or preserve protest issues by means of examples. See Beechcraft Def. Co., LLC, B-406170.2 et al., June 13, 2013, 2013 CPD ¶ 147 at 24 n.9 (citing Planning and Dev. Collaborative Int'l, B-299041, Jan. 24, 2007, 2007 CPD ¶ 28 at 11). As JTI elected not to respond to the agency report, but merely alluded to its original protest allegations in comments, we consider the aforementioned issues abandoned.

#### Past Performance Evaluation of AS&D

JTI protests the agency's past performance evaluation of AS&D. Specifically, the protester alleges that the Air Force improperly considered non-recent past performance references for AS&D and its subcontractors. Supp. Protest at 16-19. JTI further contends that the agency's relevancy assessments for one AS&D subcontractor were flawed, because the concern's references did not match its proposed role under the ASTROS contract. Id. at 19. JTI also argues that the relevance and quality of AS&D's past performance does not merit an overall "substantial confidence" rating. Id. at 20. Although we do not specifically address all of JTI's challenges to the evaluation of AS&D's past performance, we have fully considered all of them and find they provide no basis on which 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 discretion which we will not disturb unless the assessment is unreasonable or inconsistent with the solicitation criteria. WingGate Travel, Inc., B-412921, July 1, 2016, 2016 CPD ¶ 179 at 4; Metropolitan Life Ins. Co., B-412717, B-412717.2, May 13, 2016, 2016 CPD ¶ 132 at 14. Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations and to ensure that the agency's rationale is adequately documented. DynCorp Int'l, LLC, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 14; Falcon Envtl. Servs., Inc., B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. WingGate Travel, Inc., supra; Beretta USA Corp., B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 10.

The RFP instructed offerors to submit up to three past performance references for the prime contractor, and up to two references for each major/critical subcontractor

proposed. RFP § L, at 207. The solicitation established that the past performance evaluation would consider each offeror's "demonstrated record of recent and relevant performance in supplying products and services that meet the contract's requirements." RFP § M, at 261. Relevant to the protest here, the RFP defined recency as follows:

An assessment of the past performance information will be made to determine if it is recent. To be recent, the effort must be ongoing or must have been performed during the past 5 years from the date of issuance of this solicitation. Past performance information that fails this condition will not be evaluated.<sup>9</sup>

Id.

Further, with regard to the relevancy assessment, the RFP established that the agency would evaluate the extent to which the work previously performed related to the solicitation's technical subfactors (i.e., scenario, program management, subcontract management, phase-in plan), as well as the cost/price factor. Id.

AS&D submitted a total of nine past performance references--three for itself and two each for proposed subcontractors: ASRC Energy Services Alaska, Inc. (AES AK); Omega Natchiq, LLC; and Applied Engineering Services, Inc. AR, Tab 22, AS&D Proposal, Vol. III, Past Performance Proposal, at 11-62. In accordance with the RFP instructions, AS&D provided for each reference a brief description of the prior effort performed, contract dollar value, period of performance, and an explanation regarding how the contract was relevant to the RFP technical subfactors and cost/price factor. Id.; see RFP § L, attach. 1, at 213-222. Three of the awardee's references involved work that began before July 1, 2010. For example, AS&D's University-affiliated Spaceport Technology Development contract had been performed from February 10, 2003 to February 28, 2011.<sup>10</sup> Id. at 26.

As part of its evaluation, the PPET found all of AS&D's references to be recent, as the contracts were either ongoing or had been performed within 5 years of the RFP issuance date. AR, Tab 38 AS&D Evaluation Worksheets, at 88-215; COS, Aug. 10, 2016, at 15. The agency evaluators then considered seven of AS&D's

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<sup>9</sup> As previously mentioned, the RFP was issued on June 30, 2015, thereby making the previous 5-year period begin on July 1, 2010, and end on June 30, 2015.

<sup>10</sup> Similarly, AES AK's Eni Petroleum Nikaitchuq Development contract was performed from October 1, 2005, to September 1, 2011, while Omega's BP Master Services Agreement was performed from July 13, 2006, to December 8, 2017 (expected end date). AR, Tab 22, AS&D Proposal, Vol. III, Past Performance Proposal, at 28, 33.

references to be relevant--the two Applied Engineering Services references were deemed too small to be relevant--and assessed the relevance and quality of each reference under each RFP technical subfactor as well as the cost/price factor. AR, Tab 40, Proposal Analysis Report, at 20-23. For example, the PPET found that with regard to the scenario subfactor, AS&D had six references that were deemed relevant and one deemed somewhat relevant, with five rated as exceptional and two rated very good as to quality. Id. at 22. Based on the overall determination that there was a high expectation that AS&D would successfully perform the ASTROS contract, the PPET assigned a substantial confidence assessment to AS&D's past performance. Id. at 23.

JTI argues that the agency's evaluation of AS&D's past performance was improper, insofar as three of the awardee's references were not recent with regard to the phase-in plan aspect.<sup>11</sup> JTI maintains that because three of AS&D's references began before July 1, 2010, the phase-in plan aspect of each was necessarily performed more than 5 years prior to the RFP's issuance date. Supp. Protest at 17-19. JTI also argues that when assessing the recency of offerors' past performance, the RFP phrase "the effort" refers to each specific aspect of prior contract performed (e.g., phase-in plan, program management). Id. at 17. According to the protester, because the agency was required to determine whether each aspect of offerors' past performance was ongoing or had occurred within 5 years of the RFP's issuance date, but failed to do so, the evaluation of AS&D's past performance was unreasonable.

The Air Force argues that the recency of offerors' past performance was not to be assessed on an aspect-by-aspect basis, but as a whole: whether the prior contract was ongoing or had been performed within 5 years of the RFP's issuance date. MOL, Sept. 1, 2016, at 22. In support thereof, the agency maintains that the RFP phrase "the effort" refers to the offeror's past performance reference as a whole (i.e., the prior contract) and not discrete work elements. Id. at 22-23. If an offeror's reference had been performed within 5 years of the RFP issuance date, the agency argues, it was properly considered recent in all regards. Id. at 23.

Here JTI essentially challenges the agency's interpretation of the RFP's "the effort" phrase, and asserts that its interpretation should be the controlling one. When a dispute arises as to the actual meaning of solicitation language, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. DKW Commc'ns, Inc.,

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<sup>11</sup> For the three AS&D references which JTI challenges, the protest is limited to the recency of the phase-in aspect of the work performed: JTI does not dispute that even these references were otherwise recent.

B-412652.3, B-412652.6, May 2, 2016, 2016 CPD ¶ 143 at 7; KAES Enters., LLC, B-411225 et al., June 18, 2015, 2015 CPD ¶ 186 at 5.

We have reviewed the solicitation and find the agency's interpretation of the RFP to be a reasonable one. First, while the RFP expressly states that past performance relevancy would be assessed at the factor/subfactor level (e.g., phase-in plan, program management), it simply does not state or suggest the same with regard to the determination of recency. Moreover, other than contract phase-in, JTI fails to explain how the Air Force would determine recency other than as to the past performance reference was a whole. The RFP also instructed offerors, when submitting their references, to provide a "brief description of effort," that is, a "description of the service provided and actual work performed under this contract reference." RFP § L, attach. 1, at 219. It is therefore clear, we think, that the solicitation used the phrase "the effort" to mean the past performance reference as a whole.

Lastly, even assuming that JTI's interpretation here is also reasonable, the resulting ambiguity was readily apparent from the face of the RFP. Thus, to be timely, any protest on this ground had to be filed prior to the closing time for submission of proposals. See 4 C.F.R. § 21.2(a)(1); Apptis, Inc., B-299457 et al., May 23, 2007, 2008 CPD ¶ 49 at 16. Since it was not, and since the agency's interpretation of the phrase here was reasonable, we have no basis to question the consideration of the challenged AS&D references in the agency's past performance evaluation.

JTI also protests that the agency's evaluation of AS&D's past performance was unreasonable, because the two references submitted by subcontractor AES AK did not demonstrate past performance consistent with the subcontractor's planned role in the ASTROS contract. Specifically, the protester contends that AES AK's stated role under the ASTROS contract was to provide "engineering design and drawings, operations and maintenance." AR, Tab 22, AS&D Proposal, Vol. III, Past Performance Proposal, at 8; see also Tab 29, AS&D Oral Presentation, at 3. JTI argues that because AES AK's references do not reflect operations and maintenance experience, it was improper for the agency to find these references relevant or very relevant with regard to the various technical subfactors. We disagree.

The record reflects that AES AK's past performance references involved both engineering design, as well as operations and maintenance, services. AR, Tab 22, AS&D Proposal, Vol. III, Past Performance Proposal, at 34, 39. For example, with regard to its Brooks Range Petroleum Company (BRPC) reference, AES AK described its prior work as "[o]ur engineers provide engineering and design services, from early conceptual stages of a project through final design and beyond, to fabrication, commissioning, facility startup, and operations and maintenance support on BRPC, and we will provide the same services on ASTROS." Id. at 34. Similarly, with regard to its Eni Petroleum Nikaitchuq Development contract, AES

AK described its prior effort as “[o]ur engineers provided engineering and design services, from early conceptual stages of each project through final design and beyond, to fabrications, commissioning, facility startup, and operations and maintenance support.” Id. at 39. We therefore find no merit in JTI’s assertion that AES AK’s references failed to demonstrate prior work consistent with the role that the subcontractor would perform under the ASTROS contract. While the protester also alleges that the kind of operations and maintenance work previously performed by AES AK is somehow different from the work to be performed under ASTROS, it provides no support for such an assertion. In sum, we find the agency’s evaluation of AES AK’s past performance references to be proper.

JTI also argues that the agency’s past performance evaluation of AS&D was unreasonable because none of the awardee’s references were considered “very relevant” for the most important, scenario subfactor. Supp. Protest at 20. As stated above, the PPET found six of AS&D’s references to be relevant with regard to the scenario subfactor and one to be somewhat relevant; the agency evaluators also considered the quality of work previously performed here to be either excellent (five references) or very good (two references).

We find no merit to the protester’s allegation. First, there was no requirement that an offeror have very relevant past performance under the scenario subfactor in order to receive a substantial confidence rating. Here, the agency performed an integrated assessment of the relevancy and quality ratings assigned to AS&D’s past performance references when determining the overall confidence assessment. Given that AS&D’s references were generally considered very relevant or relevant, and excellent or very good as to quality, we find it was reasonable for the Air Force to conclude that there was a high expectation that AS&D would successfully perform the ASTROS contract, thereby warranting the assigned substantial confidence rating.<sup>12</sup>

#### Technical Evaluation of AS&D

JTI challenges the agency’s technical evaluation of AS&D. The protester alleges that the evaluation of AS&D under the scenario subfactor was unreasonable.<sup>13</sup> JTI also contends that the Air Force engaged in unequal treatment with regard to assignment of strengths to the offerors’ technical proposals, and relied on inconsistent and unexplained evaluation ratings. JTI further contends that the

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<sup>12</sup> While JTI also contends that its past performance was both more recent and relevant than AS&D’s, this assertion does not make the performance confidence rating assigned to the awardee improper.

<sup>13</sup> In resolving this aspect of the protest, GAO conducted a 1-day hearing to receive testimony from various agency officials involved in this procurement, as well as a technical expert on behalf of the protester.

agency unreasonably awarded strengths to AS&D despite disagreements among individual evaluators, and that the agency improperly favored AS&D throughout the technical evaluation. Had the agency conducted a reasonable evaluation, the protester argues, the agency could not have concluded that AS&D was technically superior to JTI. Supp. Protest at 2-14.

The evaluation of an offeror's proposal is a matter within the agency's discretion. Innovative Test Asset Solutions, LLC, B-411687, B-411687.2, Oct. 2, 2015, 2016 CPD ¶ 68 at 5; VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. In reviewing a protest of an agency's evaluation of proposals, our Office will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. While we will not substitute our judgment for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, undocumented, or not reasonably based. Innovative Test Asset Solutions, LLC, *supra*; BAE Sys. Info. & Elec. Sys. Integration Inc., B-408565 *et al.*, Nov. 13, 2013, 2013 CPD ¶ 278 at 5.

As detailed below, we find the agency's evaluation of AS&D's proposal under the scenario subfactor to be unreasonable. Although we do not specifically address all of JTI's remaining arguments regarding the agency's technical evaluation, we have fully considered all of them and find they provide no further basis on which to sustain the protest.

#### AS&D Scenario Subfactor Evaluation

The Air Force, as part of its evaluation of offerors' technical capabilities, required offerors to respond to a hypothetical scenario with requirements as follows:

- install 100 linear feet of Type 316 stainless steel piping for liquid oxygen (LOX) service
- a working pressure of 3,000 pounds per square inch (psi)
- a flow rate of 750 pounds per second (lbm/s)
- pipe lengths of 20 feet
- foundations, elevations, insulation, and flanges provided
- all work to be completed within two months of authorization to proceed

RFP § L, at 250.

The hypothetical scenario also referenced various applicable standards, and stated that "[t]he design, installation, inspection, and cleaning must be in compliance with [American Society of Mechanical Engineers] ASME B31.3-2010, 'Process Piping,'

Chapters V [Fabrication, Assembly, and Erection] and VI [Inspection, Examination, and Testing] . . . .”<sup>14</sup> Id.

The RFP also established, as part of the scenario subfactor, 11 specific elements upon which the evaluation would be based. RFP § M, at 258-259. These elements concerned an offeror’s demonstrated ability and understanding of the technical requirements for the handling of LOX as well as scenario program management. Id. at 258. Relevant to the protest here, one of the scenario subfactor elements was “[d]esigned IAW appropriate standards.” Id.

AS&D’s technical proposal included the offeror’s response to the RFP’s hypothetical scenario. AR, Tab 21, AS&D Proposal, Vol. II, Technical Proposal, at 13-65. Here, AS&D detailed its approach for the design, fabrication, and installation of a 10-inch diameter piping to successfully transport LOX in accordance with the scenario’s stated requirements, and provided engineering calculations in support of its proposed design. Id. Additionally, among its scenario assumptions, AS&D stated that “[w]e are designing for ASME B31.3 Category D Fluid Service and personnel are evacuated while the pipeline is at design pressure.” Id. at 14.

Category D Fluid Service is a classification where the fluid being handled is nonflammable, nontoxic, and not damaging to human tissue. AR, Tab 49, ASME B31.3, Process Piping, at 4. At the hearing held by our Office, the SSEB chair<sup>15</sup> testified that with regard to the design of piping systems for Category D Fluid Service, ASME B31.3 establishes “basically the most liberal or relaxed design. It identifies the piping, what pipes can be used, what the material can be. It’s basically a cookbook recipe of going through piping, flanges, threads, calculations that need to be completed, stresses within, how to calculate the stress within the pipe.” Tr. at 41:14-21. By contrast, Category M Fluid Service is the fluid classification where the potential for personnel exposure is judged to be significant and in which a single exposure to a very small quantity of a toxic fluid, caused by leakage, can produce serious irreversible harm. AR, Tab 49, ASME B31.3, Process Piping, at 4-5. When designing piping systems for Category M Fluid Service, ASME B31.3 “become[s] more restrictive. You are limited on the type of pipe you can use, type of flange you can use. . . . They restrict the material to listed materials . . . . And the allowances become smaller or eliminated.” Tr. at 42:2-10.

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<sup>14</sup> ASME B31.3 is the primary technical standard for the design, fabrication and inspection of newly constructed piping, both metallic and non-metallic, in the United States and throughout most of the world. Supp. Protest, exh. A., Declaration of Thomas W. Eager, at 3; Hearing Transcript (Tr.) at 41:8-13.

<sup>15</sup> The agency official was both the TET chair and SSEB chair for this source selection. AR, Tab 41, Source Selection Briefing, at 15; Tr. at 27:14-29:9.

The agency and protester do not dispute that the proper fluid service for a LOX piping system, as set forth in the RFP's hypothetical scenario, is Category M Fluid Service. See MOL, Sept. 1, 2016, at 6; COS, Sept. 1, 2016, at 7-8; Supp. Protest at 3.

The TET was aware of AS&D's stated assumption that its LOX piping system was being designed for Category D Fluid Service, and two agency evaluators initially considered this to be a weakness. AR, Tab 38, AS&D Evaluation Worksheets, at 19-20, 26-27. For example, one TET member stated that,

[t]he assumption that this piping can be built to Fluid Service D is incorrect. AFRL will not allow mitigation to Fluid Service D from High Pressure Fluid service by assuming "personnel are evacuated while the pipeline is at design pressure." . . . Designing the piping to fluid service D will limit the use. AS&D's design approach increases the risk of unsuccessful contract performance.

Id. at 27.

Ultimately, however, the TET found that AS&D had met the "design IAW appropriate standards" requirement: the evaluators concluded that the awardee's reference to Category D Fluid Service "was most likely an administrative error," because "all of the calculations use the appropriate temperatures and pressures and weld inspections exceed the requirements for Category M fluid service . . ." <sup>16</sup> AR, Tab 38, AS&D Evaluation Worksheets, at 6; AR, Tab 40, Proposal Analysis Report, at 12. Also, at the hearing conducted by our Office, the SSEB chair testified that the agency considered AS&D's reference to Category D Fluid Service to be an administrative error because the offeror's proposed weld inspections exceeded Category D (and Category M) Fluid Service requirements, and "[t]here was nothing in their proposal that supported a Fluid D Service." Tr. at 96:1-18, 139:17-18.

Overall, the TET identified five strengths and no weaknesses in AS&D's scenario proposal, and assigned the awardee a rating of outstanding. AR, Tab 40, Proposal Analysis Report, at 11-14.

However, during the hearing that GAO held for this protest, the SSEB chair, on cross-examination, testified that AS&D's reference to Category D Fluid Service was not, in fact, an administrative error. Specifically, the SSEB chair admitted that Category M Fluid Service does not allow for pressure and temperature variations as

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<sup>16</sup> AS&D's reference to Category D Fluid Service, as well as the SSEB's determination that it was most likely an administrative error, was not discussed with the SSA because the evaluators considered the issue to have been resolved. Tr. at 121:17-22.

it does for Category D Fluid Service, tr. at 142:14-147:2, and AS&D's proposal assumed--in at least three separate instances--that the piping system allowed for overpressure and indicated that the offeror had designed its piping system for Category D Fluid Service. Id. at 148:147:3-151:15; see also AR, Tab 21, AS&D Proposal, Vol. II, Technical Proposal, at 14, 54.

For example, the SSEB chair stated that:

Q: And so their actual calculations contemplate that they will be able to utilize the overpressure allowances permitted for Category D but not permitted for Category M.

A: Yes, sir.

\* \* \* \* \*

Q: And you would agree that . . . if AS&D had not -- if its calculations did not comply with Category M [Fluid Service], there would be a weakness, correct?

A: Yes, sir.

Tr. at 151:11-152:3.

In sum, the SSET chair acknowledged that: (1) AS&D's reference to Category D Fluid Service was not an administrative error, id. at 162:13-20; (2) the error affected AS&D's stress calculations by which the offeror had designed its piping system, id. at 164:9-16; (3) AS&D may have under-engineered its piping system by believing Category D Fluid Service to be applicable, id. at 165:1-3; and (4) AS&D would have been given a weakness in its scenario proposal, under the "designed IAW applicable standards" element, had the agency evaluators been aware of this information during their evaluation. Id. at 162:21-163:9.

We find the agency's evaluation of AS&D's proposal under the scenario subfactor to be unreasonable. Specifically, the record demonstrates that the agency evaluators failed to reasonably consider those parts of AS&D's proposal that incorrectly assumed that the piping system allowed for overpressure, and which indicated the offeror had improperly designed its piping system for Category D Fluid Service. As a result, the SSEB unreasonably concluded that AS&D's reference to Category D Fluid Service was an administrative error when, in fact, it was much more substantive. That is, the incorrect fluid service classification affected the offeror's stress calculations, such that AS&D may have under-engineered its piping system. The SSEB chair also acknowledged that had the agency been aware of this information during its evaluation, it would have assigned a weakness--rather than a "meets"--to AS&D's proposal under the "designed IAW appropriate standards"

element. Consequently, by failing to reasonably evaluate AS&D's proposal here, the agency failed to identify a significant design shortcoming, under the most important technical subfactor.<sup>17</sup>

### Other Technical Evaluation Challenges

JTI also alleges that the agency's evaluation of technical proposals was disparate with regard to assignment of strengths, and that the final evaluation ratings for AS&D were inconsistent and unexplained. Additionally, JTI contends the agency unreasonably awarded strengths to AS&D despite disagreements among individual evaluators, and that the agency improperly favored AS&D throughout its technical evaluation. Supp. Protest at 4-14. We find no merit in these various assertions.

For example, JTI contends that the agency treated offerors disparately with regard to the "administrative errors" found in the offerors' proposals. JTI compares how the agency treated the administrative error found in AS&D's scenario proposal, *i.e.*, the awardee's reference to Category D Fluid Service, to the "truly administrative" error in JTI's scenario proposal under the risk and mitigation strategies element, *i.e.*, an incorrect color designation in the offeror's post-mitigation likelihood/consequence (L/C) ratings.<sup>18</sup>

Contrary to the protester's assertions, however, the record reflects that JTI was not downgraded because of the aforementioned administrative error in its scenario proposal. Specifically, the technical team came to a consensus "that the wrong color was an administrative error and did not increase the risk of unsuccessful contract performance." AR, Tab 37, JTI Evaluation Worksheets, at 9. The record instead reflects that the agency evaluators had mistakenly relied on JTI's incorrect color ratings when performing their initial evaluation (in which JTI was assessed a strength) and, after recognizing the error, reasonably found that JTI's proposal met (rather than exceeded) the RFP's risk and mitigation strategies requirement. *Id.*

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<sup>17</sup> JTI also raised three additional allegations regarding shortcomings in AS&D's design--contraction/expansion, pipe diameter, and water hammer/hydrologic shock. Supp. Protest at 3, exh. A, Declaration of Thomas W. Eagar, at 4-9. The Air Force fully addressed the protester's assertions in its report to our Office, MOL, Sept. 1, 2016, at 5-8; COS, Sept. 1, 2016, at 5-10, and at the hearing. Tr. at 72:16-112:4. Based on the record before us, we find that the agency's evaluation of AS&D's scenario proposal in these areas to be reasonable.

<sup>18</sup> JTI used a 5X5 risk matrix to assess the likelihood and consequence of various self-identified risks. AR, Tab 15, JTI Proposal, Vol. II, Technical Proposal, at 45. While JTI assigned post-mitigation L/C ratings of 1/5 to two identified risks, it incorrectly assigned green, rather than yellow, color ratings to such risks. *Id.* at 47.

We therefore find no disparate treatment in the agency's evaluation regarding alleged "administrative errors."

For example, JTI also alleges the agency treated offerors disparately with regard to employee retention plans. The protester contends that AS&D alone received a strength for a feature that was also present in JTI's proposal, and thus the agency impermissibly applied different standards to its evaluation. Supp. Protest at 7-8.

Under the program management subfactor, AS&D received two strengths: one related to the key positions/personnel recruitment and retention element, and the second related to the organizational structure element. AR, Tab 40, Proposal Analysis Report, at 16-17. AS&D's first strength was based on several features in the offeror's proposal, including its employee retention plan where the awardee had proposed to [DELETED]. Id. JTI received also received a strength assessment under the program management subfactor related to key positions/personnel recruitment and retention, *i.e.*, its [DELETED] program. Id. at 38. The strength here, however, did not include the fact that JTI also proposed to [DELETED]. Id.; AR, Tab 15, JTI Proposal, Vol. II, Technical Proposal, at 70.

The SSAC, when performing its comparative assessment of proposals, expressly considered the issue which JTI now raises. The agency evaluators first found that both offerors met the RFP's key position and compensation plan requirements, and that both offerors exceeded requirements with regard to employee performance incentives. AR, Tab 39 Comparative Analysis Report, at 9-10. The SSAC then found that while AS&D had proposed to [DELETED], thereby decreasing the risk of loss of corporate knowledge, this strength existed only because of its non-incumbent status. Id. at 10. Thereafter, the SSAC stated "[a]s it would be unfair to evaluate this approach as being superior solely based on [non-]incumbency, this criterion has been evaluated as equal."<sup>19</sup> Id. We therefore find no merit in JTI's assertion that it was treated disparately regarding employee retention plans.

For example, JTI argues that the Air Force unreasonably favored AS&D throughout the technical evaluation. Supp. Protest at 12. In support thereof, the protester provides a dubious quantitative analysis in an attempt to demonstrate that in those instances where the agency evaluators did not initially agree with each other, the doubts were resolved in favor of AS&D more often than they were in favor of JTI. Id. at 12-14. From this comparison of initial and final evaluation findings, JTI alleges that there was a "strong overall bias" in the agency's actions. We find no merit in the protester's assertion here.

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<sup>19</sup> The SSAC instead found it was AS&D's second, organizational structure strength that made the awardee's proposal superior to JTI's under the program management subfactor. Id. at 10-11.

As we have repeatedly held, government officials are presumed to act in good faith, and a protester's contention that contracting officials are motivated by bias or bad faith thus must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. See, e.g., Independent Sys., Inc., B-413246, Sept. 15, 2016, 2016 CPD ¶ 260 at 7 n.14; Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8. Here, the record does not contain, and JTI has not adduced, any evidence of wrongdoing or bad faith on the part of the agency or its contracting officer. Quite simply, unlike the protester, we will not infer that an agency acted in bad faith.

We also find unavailing JTI's analysis of comparing individual evaluator findings to final agency determinations to be entirely misplaced. We recognize that it is not unusual for individual evaluator findings to differ from one another, or from the consensus determinations eventually reached. See SRA Int'l, Inc., B-407709.5, B-407709.6, Dec. 3, 2013, 2013 CPD ¶ 281 at 10; Systems Research and Applications Corp.; Booz Allen Hamilton, Inc., B-299818 et al., Sept. 6, 2007, 2008 CPD ¶ 28 at 18. Indeed, the reconciling of such differences among evaluators' viewpoints is the ultimate purpose of a consensus evaluation. J5 Sys., Inc., B-406800, Aug. 31, 2012, 2012 CPD ¶ 252 at 13; Hi-Tec Sys., Inc., B-402590, B-402590.2, June 7, 2010, 2010 CPD ¶ 156 at 5. Likewise, we are unaware of any requirement that every individual evaluator's worksheet track the final evaluation report, or that the evaluation record document the various changes in evaluators' viewpoints. SRA Int'l, Inc., *supra*; J5 Sys., Inc., *supra*, at 13 n.15. The overriding concern for our purposes is not whether an agency's final evaluation conclusions are consistent with earlier evaluation conclusions (individual or group), but whether they are reasonable and consistent with the stated evaluation criteria, and reasonably reflect the relative merits of the proposals. See, e.g., URS Fed. Tech. Servs., Inc., B-405922.2, B-405922.3, May 9, 2012, 2012 CPD ¶ 155 at 9 (a consensus rating need not be the same as the rating initially assigned by the individual evaluators); J5 Sys., Inc., *supra*, at 13; Naiad Inflatables of Newport, B-405221, Sept. 19, 2011, 2012 CPD ¶ 37 at 11.

Here, while JTI spends considerable time quantifying, for example, the number of instances where AS&D received a final determination that was higher than one or more individual evaluator findings, it fails to demonstrate the key factual predicate: that the agency's final evaluation determinations were unreasonable. Similarly, JTI's assertion that there was no explanation for how the agency resolved individual evaluator differences also provides no basis on which to sustain the protest. The agency's final evaluation need not explain why it changed or didn't change from individual evaluator ratings, but rather, that it was reasonable and consistent with the solicitation's stated evaluation criteria and adequately documented.

## Prejudice

The Air Force and intervenor argue that notwithstanding any deficiency in the technical evaluation of AS&D's proposal under the scenario subfactor, JTI was not prejudiced. The agency maintains that given AS&D's advantages over JTI under the technical and cost/price factors, and the relative importance of the evaluation criteria, it is impossible for JTI to represent the best value to the government. In support thereof, the agency contends that none of the strengths found in AS&D's technical proposal were affected by the evaluation error, and that the Air Force already considered JTI's proposal to be superior to AS&D's with regard to the "designed IAW appropriate standards" element, under the scenario subfactor. Accordingly, the Air Force argues, the one shortcoming regarding the agency's evaluation of AS&D's scenario proposal could not possibly change the conclusion that AS&D's proposal was both technically superior to JTI's and the best value overall.

Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. Innovative Test Asset Solutions, LLC, supra, at 11; DRS C3 Sys., LLC, B-310825, B-310825.2, Feb. 26, 2008, 2008 CPD ¶ 103 at 28; see Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996).

We recognize that AS&D's scenario proposal was found to have strengths that JTI's did not, and that the Air Force already considered JTI's scenario proposal to be superior to AS&D's with regard to the "designed IAW appropriate standards" element (a strength as compared to a meets). However, as detailed above, the record shows that the agency's evaluation of AS&D's scenario proposal was fundamentally flawed for the following reasons: (1) the agency failed to reasonably consider information indicating that AS&D believed that Category D Fluid Service to be applicable, and may have thereby under-engineered its piping design; (2) the agency unreasonably concluded that AS&D's reference to Category D Fluid Service was an administrative error; (3) the agency admittedly failed to assign a weakness to AS&D's proposal in this area; and (4) the agency failed to take this weakness into account in its comparative evaluation of proposals. In light of these significant deficiencies in the agency's evaluation of AS&D's scenario proposal, we cannot determine what AS&D's rating should have properly been here. While this was one aspect of the agency's evaluation, "designed IAW appropriate standards" was clearly a significant element under the most important subfactor, under the most important factor. Moreover, the agency already recognized that JTI's past performance was superior to AS&D's both as to relevance and quality, and that the cost difference between offerors was extremely small (to the point where the SSAC considered it to be insignificant). Consequently, as we cannot determine that AS&D's proposal would remain technically superior, or the best value overall, we conclude that the agency's actions here were prejudicial to the protester.

## RECOMMENDATION

We recommend that the agency reevaluate AS&D's proposal under the scenario subfactor and, based on that reevaluation, make a new source selection determination. If, upon reevaluation of proposals, JTI is determined to offer the best value to the government, the Air Force should terminate AS&D's contract for the convenience of the government and make award to JTI. We also recommend that JTI be reimbursed the costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). JTI should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling  
General Counsel