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Decision

Matter of: A-P-T Research, Inc.

File: B-414825; B-414825.2

Date: September 27, 2017

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DIGEST

1. Protest that agency's use of internal evaluation instructions for the purpose of evaluating proposals represented unstated evaluation criteria is denied, where the agency evaluated past performance based on criteria logically encompassed by the terms of the solicitation.
 2. Protest challenging the agency's upward cost adjustment is denied, where the agency's decision was reasonable and consistent with the solicitation.
 3. Protest of the agency's best-value tradeoff decision is denied, where the agency's decision was reasonable.
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DECISION

A-P-T Research, Inc. (APT), of Huntsville, Alabama, protests the award of a contract to Bastion Technologies, Inc. (Bastion), of Houston, Texas, by the National Aeronautics and Space Administration (NASA), under request for proposals (RFP)

No. NNM16577788R. The agency sought safety and mission assurance services (SMAS) for the Marshall Space Flight Center in Huntsville, Alabama, the Michoud Assembly Facility in New Orleans, Louisiana, and the Stennis Space Center in Hancock County, Mississippi. The protester alleges that the agency's past performance and cost evaluations were flawed and that the best-value tradeoff decision was improper.

We deny the protest in part and dismiss the protest in part.

BACKGROUND

On July 7, 2016, NASA issued the RFP as a small-business set-aside to be conducted in accordance with Federal Acquisition Regulation (FAR) part 15 procedures. RFP at 0118, 0435.¹ The solicitation contemplated the award of an indefinite-delivery, indefinite-quantity (IDIQ) contract with a 1-month fixed-price transition period, a 23-month cost-plus-award-fee (CPAF) base period, six 1-year CPAF option periods, and an optional 6-month extension period. Id. at 0092-0093. The solicitation contemplated award to the responsible offeror whose proposal offered the best value to the agency, considering the factors of mission suitability, past performance, and cost, which were of relatively equal importance. Id. at 0435.

Under the mission suitability factor, proposals would receive a score out of 1,000 points by summing the points awarded under three subfactors: management approach (maximum value 400 points); technical approach (maximum value 325 points); and sample task order scenarios (maximum value 275 points). Id. at 0436-0437. The RFP also provided for adjectival ratings under these subfactors. Id.

Under the past performance factor, offerors would receive an overall adjectival rating ranging from very high confidence to low confidence, in accordance with the system provided in NASA FAR Supplement (NFS) § 1815.305(a)(2)(A). Id. at 0438. Offerors were instructed to provide up to six contract references and were informed that the relevance of these references would be evaluated in comparison to the proposed SMAS contract in terms of size, content (or scope), and complexity. Id.; id. at 0354.

Under the cost factor, the RFP provided for an evaluation “to determine if the [offeror’s] estimated cost elements are realistic for the work to be performed, reflect an approach that clearly meets requirements, and are consistent with the unique methods of performance as described in the Offeror’s Mission Suitability proposal.” Id. at 0439. NASA also described the methodology for assessing an offeror’s proposed cost and an offeror’s probable cost as follows:

(2) The Offeror’s proposed cost for the contract requirements will be a Government-calculated IDIQ cost using the Offeror-provided fully burdened, composite labor rates applied to a Government model of labor hours required, and Offeror-provided burden rates applied to a Government-provided estimate for travel and Miscellaneous ODC [other direct costs]

¹ The RFP is included in the agency report (AR) at Tab 1. The AR has been electronically paginated, and the citations herein refer to the AR pagination.

(3) The Government assessment of the “probable cost of doing business” with each Offeror, of the possible cost growth during the course of the contract, and of features that could cause a given proposal to cost more or less than proposed will be included in this evaluation. Upward or downward adjustments may be made to the proposed rates as a result of the assessment of cost realism. This can include adjustments to all proposed direct and indirect costs[.]

Id.

NASA received three proposals, including those of APT and Bastion, by the August 22, 2016 due date. AR, Tab 39, Source Selection Decision (SSD), at 3583-3584. The final evaluation of APT and Bastion was as follows:

Factor / Subfactor	APT	Bastion
Mission Suitability (total points)	740	608
<i>Management Approach (400)</i>	<i>Excellent (368)</i>	<i>Very Good (292)</i>
<i>Technical Approach (325)</i>	<i>Very Good (270)</i>	<i>Good (211)</i>
<i>Sample Task Orders (275)</i>	<i>Fair (102)</i>	<i>Fair (105)</i>
Past Performance	High Confidence	High Confidence
Proposed Cost	\$(DELETED) million	\$(DELETED) million
Probable Cost (after adjustments)	\$206.1 million	\$188.9 million

AR, Tab 39, SSD, at 3585-3589; Tab 38, SMAS Briefing, at 3398, 3400.

In its source selection decision, NASA concluded that APT’s proposal “had an advantage over the Bastion proposal resulting primarily” from several significant strengths identified in APT’s proposal. AR, Tab 39, SSD, at 3594. Although Bastion and APT had the same past performance adjectival rating, the agency found that “Bastion’s past performance record was stronger than APT’s” due to a greater degree of relevance between Bastion’s contract references and the PWS [performance work statement]. Id. at 3590. In addition, Bastion’s price was lower. Id. NASA decided that, while “the APT proposal provides some real advantages under the Mission Suitability factor that enhance the potential for successful contract performance . . . [these were not] worthy of the higher cost associated with the APT proposal.” Id. at 3594. The agency made award to Bastion as the offeror with the proposal offering the best value, and this protest followed. Id. at 3598.

DISCUSSION

APT raises several challenges to the agency's past performance evaluation and proposed and probable cost calculations, as well as to the best-value tradeoff decision. For the reasons below, the protest is denied in part and dismissed in part.²

Past Performance Evaluation

Unstated Evaluation Criteria – Undisclosed Internal Methodology

First, APT alleges that the agency applied unstated criteria in evaluating the relevance of APT's contract references under the content and complexity portions of the past performance relevance evaluation. Protester Comments at 9. The protester contends that the solicitation did not advise offerors of the specific evaluation criteria in the source evaluation plan, and that these criteria were not reasonably encompassed by the evaluation description in the solicitation. Id. Our review finds no inconsistency between the agency's evaluation and the information provided to offerors in the solicitation.

Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the agency's discretion. Tele-Communication Sys., Inc., B-413265, B-413265.2, Sept. 21, 2016, 2016 CPD ¶ 266 at 7; American Envtl. Servs., Inc., B-406952.2, B-406952.3, Oct. 11, 2012, 2013 CPD ¶ 90 at 5. The evaluation of past performance, by its very nature, is subjective, and we will not substitute our judgment for reasonably-based evaluation ratings; an offeror's disagreement with an agency's evaluation, by itself, does not demonstrate that those judgments are unreasonable. Cape Envtl. Mgmt., Inc., B-412046.4, B-412046.5, May 9, 2016, 2016 CPD ¶ 128 at 8-9.

In a negotiated procurement, an agency must evaluate proposals based on the solicitation's enumerated evaluation factors. FAR § 15.305(a); DA Def. Logistics HQ, B-411153.3, Dec. 2, 2015, 2015 CPD ¶ 358 at 4. An agency may properly apply evaluation considerations that are not expressly identified in the RFP if those considerations are reasonably and logically encompassed within the stated evaluation criteria and there is a clear nexus linking them. SupplyCore, Inc., B-411648.2, B-411648.3, Feb. 21, 2017, 2017 CPD ¶ 72 at 9. Agencies need not disclose evaluation standards or guidelines for rating proposals as more desirable or less desirable, since agencies are not required to inform offerors of their specific rating methodology. See Open Sys. Sci. of Virginia, Inc., B-410572, B-410572.2, Jan. 14,

² During the course of the protest, APT consolidated or withdrew several protest grounds. Protester's Comments at 3-4. Furthermore, although our decision does not address all of APT's remaining arguments, we have fully considered each of them and find that none provides a basis to sustain the protest.

2015, 2015 CPD ¶ 37 at 11; Arcus Properties, LLC, B-406189, Mar. 7, 2012, 2012 CPD ¶ 107 at 8. Rather, the rating system used need only be consistent with the terms of the solicitation. Id.

As part of its stated evaluation criteria in section M, the solicitation advised offerors that the agency would assess the relevance of contract references by examining their “size, content, and complexity.” RFP at 0438. In relation to the intended “assessment of relevance,” section L of the RFP instructed offerors to provide the following information for each contract reference: “(1) Size (e.g., dollar value per year, total dollar value and number of Work Year Equivalents (WYEs)); (2) Content (of particular relevance are efforts relating to SMA [safety and mission assurance] disciplines, aerospace support, life safety, fire prevention and support services/IDIQ business structures); and (3) Complexity of the contract.” Id. at 0354. The RFP also instructed offerors to include, for each contract reference, the following:

Description of contract work and comparability to the proposed effort.
Rationale shall be provided to demonstrate that the work is comparable with this procurement to include both a cross-walk of past performance relevance to the PWS [performance work statement] discipline, namely System Safety Engineering (PWS 3.1), Reliability and Maintainability Engineering (PWS 3.2) Software Assurance (PWS 3.3), Quality Engineering (PWS 3.4), Quality Assurance (PWS 3.5), Independent Assessments Tasks (PWS 3.6), Industrial Safety Program (PWS 4.1) and Pressure Systems (PWS 4.2), and the size of the effort (in equivalent work years) for each discipline.

Id. at 0355.

NASA’s internal source selection evaluation plan (SSEP) provided that if a contract reference was considered not relevant under any of the size, content or complexity criteria, then it would be considered not relevant. AR, Tab 7, SSEP, at 0554. In terms of considering the similarity between an offeror’s contract reference and the PWS, the SSEP instructed agency evaluators to assign adjectival ratings for references as follows, depending on whether the reference was for the offeror as prime contractor or for a subcontractor:³

³ To be considered relevant for size, the SSEP required prime contractor contract references to demonstrate a minimum annual value of \$2.5 million, and subcontractor contract references to demonstrate an annual value of at least \$500,000. RFP at 0438. References for contracts with lower annual revenue were not considered relevant. Id.

Rating	Content	Complexity
Prime Contractor		
Highly Relevant	Performed 3 or more PWS § 3 disciplines and 1 or more of the PWS § 4 disciplines, or 5 or more PWS § 3 disciplines. ⁴	Manned space system, launch vehicles (manned or unmanned), safety or mission critical aspects of highly complex space systems (such as International Space Station, constellations of 2 or more satellites, any system that travels beyond LEO [low earth orbit].)
Relevant	Contract reference includes 1 or more PWS § 3 disciplines and 1 or more PWS § 4 disciplines, or 3 or more PWS § 3 disciplines.	Commercial manned aerospace projects, Military unmanned aerospace projects, unmanned space systems that are less than highly complex, life-support systems for ground application.
Not Relevant	All others.	All others.
Subcontractor		
Highly Relevant	Reference includes 2 or more SMA disciplines and those disciplines align with the work the subcontractor will perform on the SMAS contract; or includes 1 or more SMA disciplines and subcontractor is the exclusive provider of the discipline on the SMAS contract.	Manned space system, launch vehicles (manned or unmanned), safety or mission critical aspects of highly complex space systems (such as International Space Station, constellations of 2 or more satellites, any system that travels beyond LEO.)
Relevant	Reference includes 1 or more SMA disciplines and those disciplines align with the work the subcontractor will perform on the SMAS contract, but the subcontractor is not the exclusive provider of that discipline.	Commercial or military manned aeronautical projects, Military unmanned aeronautical projects, unmanned space systems that are less than highly complex, life-support systems for ground application.
Not Relevant	All others.	All others.

Id. at 0552-0553.

⁴ Section 3 of the PWS addresses program and project discipline support and section 4 addresses institutional discipline support. RFP at 0134, 0149. Echoing the RFP's section L instructions to offerors, NASA's internal evaluation plan states that the relevant PWS § 3 disciplines are System Safety (PWS § 3.1), Reliability and Maintainability (PWS § 3.2), Software Assurance (PWS § 3.3), Quality Engineering (PWS § 3.4), and Independent Assessment (PWS § 3.6). The relevant PWS § 4 disciplines are Industrial Safety (PWS § 4.1) and Pressure Systems (PWS § 4.2). AR, Tab 7, SSEP, at 0553; see also RFP at 0355. The term SMA disciplines refers to the combination of PWS §§ 3 and 4 disciplines. AR, Tab 7, SSEP, at 0552-0553.

APT submitted six contract references, three for itself as a prime contractor and three for its proposed subcontractors. AR, Tab 38, SMAS Briefing, at 3502. Of the three prime contract references, one was considered not relevant under the content criteria and of the three subcontractor references, two were considered not relevant under each of the content and complexity criteria. Id.

APT challenges the agency's conclusions that the contract references were not relevant due to on a lack of overlap between PWS areas and prior work. The protester contends that "[i]t is unreasonable to conclude that, based on the language as set forth in the RFP, [that] the offerors were on notice that such minimum requirements [in the SSEP] existed for content and complexity." Protester Comments at 12. APT asserts that NASA "failed to notify the offerors of the threshold minimum requirements for both content and complexity," and, had it known that the agency would examine contract similarity in terms of PWS disciplines, it would have drafted its proposal in a manner that would have resulted in a higher past performance rating. Protester Comments at 9, 16. NASA contends that the RFP informed offerors that their contract references "would have been assigned more evaluation credit if the offerors described their performance experience as it related to" areas of the PWS. Memorandum of Law (MOL) at 8.

Notwithstanding APT's general arguments about the use of minimum criteria for evaluating contract reference relevance, the protester fails to describe how the agency's internal evaluation method was not encompassed by the RFP's instructions and evaluation criteria. Here, the RFP advised offerors that NASA would consider similarity between prior work and the subject PWS, with "particular relevance" given to "SMA disciplines, aerospace support, life safety, fire prevention and support services." RFP at 0354, 0438. The agency also instructed offerors to provide a "[d]escription of contract work and comparability to the proposed effort" as well as a rationale "to demonstrate that the work is comparable to this procurement." Id. at 0355. These instructions asked offerors to draw comparisons between their prior work and the SMAS effort, which the agency would later recognize and reward under the SSEP rubric. AR, Tab 7, SSEP, at 0552-0553. Finally, the RFP instructed offerors to perform crosswalks between the references and the SMAS PWS. RFP at 0355. The crosswalks corresponded to every PWS section included in the agency's internal evaluation criteria. Id.; AR, Tab 7, SSEP, at 0552-0553.

On this record, we see nothing inconsistent between the RFP evaluation criteria and the agency's evaluation method. Although the RFP did not specifically inform offerors that content relevance would be evaluated by comparing the overlap between PWS sections to prior work, this evaluation is logically encompassed within the RFP provisions. The protester's objections to NASA's evaluation methodology do not provide a basis upon which to sustain the protest. MetalCraft Marine Inc., B-410199, B-410199.2, Nov. 13, 2014, 2014 CPD ¶ 338 at 8.

APT also contends that the agency applied unstated evaluation criteria by requiring offerors to discuss the relevance of each contract reference, rather than considering the

relevance of the references as a group. Protester Supp. Comments at 5 n.1. The protester insists that, had it understood the agency's approach from the RFP, its past performance description for each contract reference would have been more fulsome and its contract references evaluated more favorably. Id.

A reasonable reading of the RFP finds no support for the protester's position. For example, the RFP advised offerors that relevance evaluations would include consideration of annual revenue and "[c]omplexity of the contract." RFP at 0354. Without language to the contrary, the plain meaning of the term annual revenue is reasonably read in this context to mean revenue of a single contract reference. Similarly, the reference "the contract" reasonably refers to each contract reference in the singular, rather than the totality of contracts. Furthermore, offerors were advised to provide information by individual contract reference. Id. at 0355. The agency contends that, to the extent that APT's proposal failed to address areas highlighted in the RFP, the responsibility lies with APT. MOL at 9.

It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. Analytic Servs., Inc., B-405737, Dec. 28, 2011, 2012 CPD ¶ 16 at 11. Here, the protester's interpretation of the solicitation's instructions to offerors is not reasonable. In sum, we find nothing improper or unreasonable about the agency's past performance relevance evaluation. This protest ground is denied.

BASES Contract

APT also contends that NASA misevaluated its Battlefield Automated Systems Engineering Support (BASES) contract and should have evaluated the contract as relevant.⁵ NASA argues that its relevance evaluation was reasonable and consistent with the solicitation. MOL at 12.

As noted above, our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. TeleCommunication Sys.

⁵ APT also argues that if the BASES contract were considered relevant, the protester would have received another strength under the past performance factor due to the quality of its past performance. Protester Supp. Comments at 13. The agency disagrees with this argument and contends that an additional strength would not change the protester's adjectival rating. Contracting Officer's Statement (COS) at 28-29. Because we find that the agency had a reasonable basis to find that the BASES contract reference was not relevant, the protester's arguments regarding the additional strength simply reflect APT's disagreement with the agency's evaluation and do not provide a basis to sustain the protest.

Inc., supra. An offeror's disagreement with an agency's evaluation, by itself, does not demonstrate that those judgments are unreasonable. Cape Envtl. Mgmt., Inc., supra.

Here, because the BASES reference was submitted for APT as a prime contractor, the agency assessed whether the reference demonstrated performance in one or more of each of the PWS §§ 3 and 4 disciplines, or three or more of the PWS § 3 disciplines, in order to be considered relevant. AR, Tab 7, SSEP, at 0552. The record shows that APT twice indicated--by checkmark on a summary sheet--that the BASES contract was only similar to PWS § 3.3, software assurance. AR, Tab 19, APT Past Performance Questionnaires, at 2872, 2882; RFP at 0144. Similarity to other PWS topic areas for comparison (e.g., system safety (PWS § 3.1), industrial safety (PWS § 4.1)) was not indicated. AR, Tab 19, APT Past Performance Questionnaires, at 2872, 2882.

NASA evaluated the BASES contract as not relevant for content because it was only able to verify work in a single discipline, PWS § 3.3 software assurance, with some references to PWS § 3.1, system safety. AR, Tab 38, SMAS Briefing, at 3506. Because the contract was rated not relevant for content, it was considered not relevant overall and did not form part of the final past performance evaluation. Id. at 3502.

On this record, the agency's evaluation was consistent with the solicitation's evaluation criteria. The protester's allegations to the contrary show only disagreement with the agency's evaluations, which provides no basis to question the reasonableness of the agency's judgments. The AEgis Techs. Grp., Inc.; Wingbrace LLC, B-412884 et al., June 28, 2016, 2016 CPD ¶ 175 at 6. This protest ground is denied.

Cost Adjustments

APT raises two central challenges to NASA's upward adjustments to APT's cost: first, that the agency double-counted certain personnel, and second, that the upward adjustment of APT's labor rates failed to account for APT's substantial fringe benefits. Protester Comments at 25-27. We find neither argument persuasive.

Personnel Double-Counting

APT argues that NASA improperly added four personnel to APT's center management operations (CMO), resulting in an upward adjustment of \$[DELETED] million. Protest at 32. The protester contends that these were clearly technical positions whose costs would be allocated to the contract as direct labor, and not as part of the overhead rate. Protester Comments at 24-26.

In reviewing a protest challenging an agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency's discretion. NCI Info. Sys., Inc., B-412680, B-412680.2, May 5, 2016, 2016 CPD ¶ 125 at 4. Rather, we will review the record to determine whether the agency's evaluation was reasonable; consistent with the stated evaluation criteria, applicable procurement statutes, and

regulations; and adequately documented. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3.

The responsibility for submitting a well-written proposal--with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency--lies first and foremost with the offeror. Turner-Southland-Dean, JV, B-407998, May 20, 2013, 2013 CPD ¶ 133 at 7. A protester's disagreement with the agency's judgment that its proposal was unclear regarding the roles and responsibilities of the division managers and the technical director does not demonstrate that the agency's judgment was unreasonable. Id.

APT proposed a technical director as "the [DELETED] leader" who serves as the "[DELETED] manager on the program." AR, Tab 9, APT Proposal, Mission Suitability Factor, at 0708. APT also proposed "[DELETED]" who are "managers" with various responsibilities, including staffing management. Id. One of the division managers "will serve [DELETED]" while the other two will "supervise." Id. at 0708-0709. Each division manager position will have a deputy who "will be [DELETED]." Id. at 0709.

NASA assessed a weakness to APT's proposal under the mission suitability factor, management approach subfactor because APT failed to "adequately address how the roles of Technical Director [TD], Division Manager [DM], Discipline Leads, and required clerical support will be costed." AR, Tab 38, SMAS Briefing, at 3414. The agency concluded that there was "insufficient information provided in the task order process and the Management Plan to adequately determine if the costs are included in task orders discretely or as program management support overhead." Id. NASA found that "[t]he lack of clarity regarding costing of key management and clerical positions increase[d] the risk of unsuccessful contract performance." Id. The agency correspondingly adjusted APT's probable cost by \$[DELETED] million for 4 work year equivalents (WYEs), including 1 WYE for a technical director and 3 WYEs for division managers. Id.; AR, Tab 32, APT Adjusted CMO Spreadsheet, at 1.

NASA defends its conclusion that the individuals were part of APT's management structure, rather than labor personnel. MOL at 43; see also AR, Tab 30, APT Direct Labor Adjustments Spreadsheet, at 3313; COS at 39. The agency points to the fact that, after reading APT's proposed organizational scheme, "the SEB [source evaluation board] understood APT's three DMs and the TD to be part of APT's management team" and awarded APT a strength for this structure. COS at 39. NASA argues that it reasonably concluded that "the TD and DMs should be included in the proposed CMO burden" due to APT's organizational scheme, the responsibilities associated with these positions, and their apparent relationship to contracting management. COS at 39. APT's cost proposal "was adjusted to account for the cost of these four individuals" and received an associated weakness in the mission suitability factor for lack of clarity. Id.

The protester contends that its proposal was clear that "the DM and TD would primarily perform technical work and [would] not affect the CMO cost," because, for example, the "DMs would 'assume existing work effort' (i.e. perform work, not manage [the]

performance of others).” Protester Comments at 24-25, citing AR, Tab 9, APT Proposal, Mission Suitability Factor, at 0693. However, APT’s proposal also states that the DMs would be tasked with assigning work and recruiting new personnel. Id. at 0693. Furthermore, APT’s proposal refers to both DMs and TMs as managers. Id. at 0708. Thus, the record shows that the proposal was unclear and inconsistent, and therefore the agency had a reasonable basis for assigning a weakness to this aspect of APT’s proposal and the corresponding upward cost adjustment. Turner-Southland-Dean, JV, supra. AR, Tab 38, SMAS Briefing, at 3414 (weakness assigned to APT’s proposal under the mission suitability factor, management approach subfactor, for failure to “adequately address how the roles of technical director, division manager, discipline leads and required clerical support will be costed.”). This protest ground is denied.

Labor Rate Adjustment

APT next argues that NASA’s upward adjustment to APT’s direct labor rates was excessive because the agency failed to account for compensation provided as indirect labor costs. Protester’s Comments at 27. APT also contends that even if its direct labor rates were too low, its fringe benefits were above-market but were not reasonably considered by the agency, i.e., with a lesser increase in APT’s direct labor rates. Id.

In reviewing protests of agency evaluations, we review the record to ensure that the evaluation and source selection decision were reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations. Webco Dental & Med. Supplies, Inc., B-410587, Jan. 8, 2015, 2015 CPD ¶ 32 at 3. A protester’s disagreement with the agency’s evaluation conclusions, without more, does not provide a basis for our Office to object to the evaluation. Omega Apparel, Inc., B-409715, July 22, 2014, 2015 CPD ¶ 3 at 5.

NASA assessed a weakness to APT’s proposal under the mission suitability factor, management approach subfactor, on the basis that [DELETED] of APT’s 19 proposed labor rates were at least 10 percent lower than the independent government cost estimate (IGCE) labor rates, and were therefore unrealistic and posed a risk to personnel recruitment and retention. AR, Tab 38, SMAS Briefing, at 3418. NASA contends that since many of APT’s proposed direct labor rates were approximately [DELETED] percent or more below the IGCE labor rates, its slightly higher fringe benefits would not have offset its below-market labor rates.⁶ COS at 37. In this regard,

⁶ The agency did not provide details on its adjustment method, but the record shows that when APT’s labor rates were as much as [DELETED] percent below the IGCE, they were not raised, but where they were at least [DELETED] percent below the IGCE, they were raised until they were 10 percent below the IGCE. AR, Tab 30, APT Direct Labor Adjustments Spreadsheet, at 3313. APT did not challenge the agency’s calculation of IGCE or, importantly, the method the agency used to determine which rates would be raised, or the amount of the increase.

the agency found that most of the fringe benefits were at--not above--the agency's target level, with the exception of APT's employee stock ownership plan, which NASA did not consider to provide adequate compensation to offset APT's lower salaries. COS at 37-38. NASA made a corresponding upward adjustment to APT's labor rates, which resulted in an increase of \$[DELETED] million to APT's estimated probable cost. Id. at 3532. Here, APT simply disagrees with the agency's conclusions regarding the value of the fringe benefits and does not otherwise show that the agency's upward adjustment was unreasonable. This protest ground is denied. Omega Apparel, Inc., supra.

Cost Savings From Unique Technical approach

APT next argues that NASA failed to credit APT with cost savings resulting from APT's unique technical approach. Protest at 29-30, citing RFP at 0439. NASA responds that "the selected cost evaluation methodology did not include evaluation of the realism of a proposed staffing approach or any innovative or efficiency-creating aspects of such a staffing approach beyond evaluation of contract management overhead (CMO) related to the proposed management staff." COS at 10-11. The agency also contends that, "[i]n this procurement, NASA did not solicit unique labor staffing approaches (though NASA did solicit unique contract management staffing approaches, which were to be accounted for as part of contract management overhead, separately from direct labor costs)." MOL at 33. NASA asserts that APT was nevertheless properly recognized for the strength of its technical approach under the mission suitability factor, where it was rated the highest of three offerors overall. Id. at 33-34; AR, Tab 38, SMAS Briefing at 3354. The parties thus disagree as to whether the RFP provided for recognition of cost-saving technical innovations within the agency's cost evaluation.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions. Tele-Consultants, Inc., B-408465 et al., Sept. 27, 2013, 2013 CPD ¶ __ at 22. An ambiguity exists if a provision is susceptible to more than one reasonable interpretation that is consistent with the solicitation, when read as a whole. Poly-Pacific Techs., Inc., B-293925.3, May 16, 2005, 2005 CPD ¶ 100 at 3. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error; for example, where solicitation provisions appear inconsistent on their face. NCS Techs., Inc., B-406306.3, Sept. 17, 2012, 2012 CPD ¶ 259 at 4. In such situations, an offeror may not simply make unilateral assumptions regarding the meaning of patently ambiguous terms in the solicitation and then expect relief when the agency does not act in the manner assumed. Rather, the offeror must challenge the alleged ambiguity prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1); see Environmental Sys. Research Inst., Inc., B-408847.2, Jan. 17, 2014, 2014 CPD ¶ 53 at 5. Where a patent ambiguity is not challenged prior to submission of quotations, we will dismiss as untimely any subsequent protest assertion that is based on one of the alternative interpretations as the only permissible interpretation. U.S. Facilities, Inc., B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 10.

As part of the cost evaluation, the RFP stated that “[t]he Offeror’s proposed cost for the contract requirements will be a Government-calculated IDIQ cost using the Offeror-provided fully burdened, composite labor rates applied to a Government model of labor hours required,” as well as offeror-provided burden rates applied to agency-provided travel and miscellaneous costs, and the proposed fee. RFP at 0439-0440. Thus, the RFP provided that an offeror’s proposed cost--as calculated by the agency--would reflect the agency’s assumptions regarding number of hours worked and labor mix, not the offeror’s intended approach to number of hours and labor mix.

In contrast, the RFP also stated that the agency’s cost evaluation would reflect “features that could cause a given proposal to cost more or less than proposed.” Id. at 0439. The solicitation instructed offerors to “[p]resent the cost associated with the[ir] proposal” as well as “their approach to provide effective staffing levels, flexibility, and responsiveness in managing workload functions.” Id. at 0344. In addition, the RFP required offerors to include a sample task order scenario that showed an offeror’s “technical approach to execute the work describe for each task order scenario . . . include[ing] the ground rules and assumptions, staffing levels and skill-mix (by labor category and hours).” Id. at 0352. Offerors were to “identify any innovations or efficiencies in the proposed approach to the sample task order request that will provide additional benefits to the Government, including innovative staffing and other methodologies that achieve lower cost solutions.” Id. at 0353. The solicitation obligated the agency to assess whether an offeror’s costs were “consistent with the unique methods of performance”⁷ Id. at 0439.

Here, we find that the solicitation contained a patent ambiguity. In general, the cost of an offeror’s proposal reflects its technical approach, i.e., its unique combination of labor mix, labor hours, and wage rages. Indeed, the RFP here indicated in several instances that the agency’s cost evaluation would reflect such “features” of an offeror’s proposal. Id. at 0439. However, the RFP also stated that the agency’s cost evaluation would use

⁷ The RFP also contains the following relevant question and answer:

Question 086: Page L-24 of the RFP requests innovations in the technical approach (TA4: Innovations). It also requests labor rates for a specific set of labor categories (page L-43, Tab A – IDIQ Rates Development), which will be used to evaluate cost reasonableness [sic] in the cost factor. How will the Government evaluate innovations in the cost factor to include the effect of those innovations in the price evaluation?”

Answer: Innovations should be described to include the benefit to the Government (including potential cost savings) as part of Mission Suitability, in both Subfactor 2: Technical Approach as part of TA4: Innovations, and where appropriate in Subfactor 3: Sample Task Order (TO) Scenarios TO2: Efficiencies.

RFP at 0029.

the agency's own "model of labor hours required," i.e., the agency's choice of labor mix and labor hours. Id. The RFP provision that the cost evaluation would reflect an offeror's choice of labor mix and labor hours directly conflicts with the provision that the agency's cost evaluation would use NASA's own labor mix and labor hours. The solicitation was thus ambiguous as to the agency's intended cost evaluation, and this ambiguity was apparent on the face of the RFP. Accordingly, APT cannot now timely challenge this matter. PacArctic LLC, B-413914.3, B-413914.4, May 30, 2017, 2017 CPD ¶ 177 at 12. This protest ground is dismissed. Id.

Best-value Tradeoff

APT challenges the agency's best-value decision, arguing that in addition to relying on the allegedly flawed conclusions addressed above, the decision was also improper because APT's strengths under the mission suitability factor should have outweighed Bastion's cost advantage. Protester's Comments at 33. The agency contends that its best-value decision reflected "a meaningful assessment of the qualitative aspects of each offeror's proposal against the offeror's costs" and that the "selection of Bastion was sound and documented, and therefore, unobjectionable." MOL at 47.

Source selection officials in best-value procurements have broad discretion in making price/technical tradeoffs, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the solicitation's evaluation criteria. World Airways, Inc., B-402674, June 25, 2010, 2010 CPD ¶ 284 at 12. Where a protester challenges the agency's evaluation and source selection, we will review the evaluation and award decision to determine if they were reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2; Integrated Sci. Sols., Inc., B-406987, B-406987.2, Oct. 10, 2012, 2012 CPD ¶ 290 at 9. However, a protester's disagreement with the agency's determinations as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency, without more, does not establish that the source selection decision was unreasonable. See Loyal Source Gov't Servs., LLC, B-407791.5, Apr. 9, 2014, 2014 CPD ¶ 127 at 8.

We find NASA's source selection decision to be reasonable and consistent with the stated evaluation criteria. The record shows that the agency's selection was based on an integrated assessment of the technical capability, past performance and total evaluated price of the offers submitted. See generally, AR, Tab 39, SSD. In this regard, NASA specifically acknowledged APT's superior technical proposal. Id. at 3594. However, the SSA concluded that APT's advantage under this evaluation factor did not merit the price premium. Id. at 3598. Although APT disagrees with the agency's judgment of the relative merits of the offerors' proposals, this does not demonstrate that

the agency's evaluation and selection decision were unreasonable. See Team BOS/Naples--Gemmo S.p.A./DeJen, B-298865.3, Dec. 28, 2007, 2008 CPD ¶ 11 at 8.⁸

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel

⁸ In arriving at its best-value decision, NASA examined the basis for the past performance ratings and concluded that Bastion's past performance was stronger than APT's, although the two had the same adjectival rating. AR, Tab 39, SSD, at 3590. The protester argues that the agency improperly "looked beyond this adjectival rating assigned to both APT and Bastion" and thus "erroneously attempted to reevaluate [the contracts]." Protester Comments at 23. Evaluation scores are merely guides to intelligent decision making. enrGies, Inc., B-408609.9, May 21, 2014, 2014 CPD ¶ 158 at 8. What is important are the underlying substantive merits of the proposals as reflected in the scores and the accompanying underlying narrative description. Id. The argument that the agency should not have examined the basis for the past performance adjectival ratings has no merit. General Dynamics Info. Tech., Inc., B-407057, Oct. 12, 2012, 2012 CPD ¶ 293 at 3, 12.