



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Comptroller General  
of the United States

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# Decision

**Matter of:** Jacobs Technology Inc.

**File:** B-410441.15; B-410441.16

**Date:** September 24, 2018

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## DIGEST

1. Protest challenging the agency's evaluation of proposals is denied where the agency's evaluation was reasonable and consistent with the terms of the solicitation.
2. Protest challenging the agency's source selection decision selecting a higher-rated, higher-priced proposal is denied where the agency's best-value tradeoff was reasonable and consistent with the terms of the solicitation.

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## DECISION

Jacobs Technology Inc., of Tullahoma, Tennessee, protests the award of a contract to TRAX International Company, of Las Vegas, Nevada, under request for proposals (RFP) No. W9124R-13-R-0001, which was issued by the Department of the Army, for mission test support services at the United States Army Yuma Proving Ground (YPG) in Arizona. Jacobs challenges the agency's evaluation of proposals under the mission capability, past performance, and small business participation factors, as well as the agency's best-value tradeoff.

We deny the protest.

## BACKGROUND<sup>1</sup>

On May 16, 2013, the Army issued the RFP, which was subsequently amended 14 times, for a cost-plus-award-fee-contract, with fixed-price and cost-reimbursable line items, for a base year and three 1-year options. RFP at 6-13. The awardee's primary responsibilities under the resulting contract will be to provide specialized personnel and support for military testing at the YPG.

Award was to be made on the basis of a best-value tradeoff, considering mission capability, past performance, small business participation, and cost. RFP, amend. No. 6, at 20. Mission capability was significantly more important than past performance, and past performance was more important than small business participation. Id. at 21. The non-cost factors, when combined, were approximately equal to cost. Id.

With respect to the mission capability factor, the RFP provided that the Army would evaluate each offeror's strategic performance plans based on the offeror's understanding and explanation of how it would partner with the government to help resolve future strategic issues as identified by YPG senior leadership, support YPG's stated acquisition objectives, and bring value to the YPG mission. Id. at 22. The agency's acquisition objectives are: (1) continuous improvement, development, and implementation of innovative, state-of-the-art testing techniques, procedures, processes, equipment, and methodologies in response to rapid, constantly changing test programs and requirements; (2) effective, efficient (in terms of both cost and schedule), flexible overall program management in the functional areas specified in the performance work statement (PWS); and (3) effective, efficient, flexible performance of the day-to-day test support services in the functional areas specified in the PWS. Id.

The mission capability factor was to be evaluated using the following subfactors: (a) management and organization approach; (b) personnel management approach; (c) quality control and continuous process improvement approach; and (d) technical expertise. Id. Subfactor a was the most important subfactor, subfactors b and c were equal, and subfactor d was the least important. Id. Subfactors b, c, and d, when combined, were equal to subfactor a. Id. Of the mission capability subfactors, only subfactor b, personnel management approach, is relevant to the issues in the protest.

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<sup>1</sup> This procurement has been the subject of multiple protests before our Office, as well as the United States Court of Federal Claims. As the prior decisions of the Court of Federal Claims and this Office provide relevant background regarding the procurement and the prior protests thereto, our discussion herein is limited to the issues relevant to the resolution of the specific allegations of this protest. See, e.g., Jacobs Tech. Inc. v. United States, 131 Fed. Cl. 430 (2017); TRAX Int'l Corp., B-410441.14, Apr. 12, 2018, 2018 CPD ¶ 158; TRAX Int'l Corp.--Costs, B-410441.8, Aug. 17, 2016, 2016 CPD ¶ 226.

Under the personnel management subfactor, the RFP indicated that the agency would evaluate the offeror's approach and expertise in obtaining qualified personnel to meet YPG's dynamic mission requirements. Id. at 24. Specifically, the Army was to evaluate the offeror's ability to: (1) provide sufficient manpower and quickly recruit and retain the requisite skill sets with the knowledge, education, certifications, appropriate security clearances, and expertise necessary to support all functional areas of the requirement to include staffing in support of the highly dynamic and volatile test mission over the life of the contract; (2) manage a multi-functional, multi-skilled workforce supporting multiple remote test centers, fluctuating staff levels, and utilizing a cross-training strategy to optimize the test mission while ensuring that the cost of testing to customers remains competitive; (3) manage an effective/comprehensive training program that ensures qualified and certified personnel in all positions prior to contract performance and that demonstrates flexibility and adaptability to meet future training needs in response to the growth of YPG's test customer base; and (4) establish a feasible approach for tracking, scheduling, and documenting recurring/refresher training. Id.

In addition to assigning an adjectival rating to each offeror's mission capability proposal, the RFP provided for the Army to assess a mission capability technical risk rating. Specifically, the Army was to assess technical risk considering the potential for disruption of schedule, increased costs, degradation of performance, the need for increased government oversight, or the likelihood of unsuccessful contract performance. Id. at 26.

With respect to past performance, the RFP established that the agency would assess the relative risks associated with an offeror's likelihood of success in performing the RFP's requirements as indicated by that offeror's record of past performance. Id. The agency expressly reserved the right to consider the data included in offerors' proposals, as well as data obtained from other sources, such as Contractor Performance Assessment Reports (CPAR). Id. The agency's evaluation was to include the following areas: (1) transition; (2) management of personnel; (3) customer satisfaction; (4) quality of service; (5) schedule; (6) safety issues/violations; (7) business relations; and (8) ability to obtain and retain a highly qualified workforce. Id. Each offeror was to be assigned a performance confidence assessment rating based on the offeror's recent past performance, focusing on performance that was relevant to the contract requirements. Id. As part of the past performance evaluation, the RFP advised offerors that the agency would assess the recency and relevancy of the offeror's referenced contracts, and the quality of the offeror's performance on those contracts. Id. at 26-27.

Under the small business participation factor, offerors were required to demonstrate their level of small business commitment for the proposed acquisition, and their prior level of commitment to utilizing small businesses in performance of prior contracts. Id. at 28. The Army was to consider the following subfactors: (a) the extent to which small business firms, as defined by Federal Acquisition Regulation (FAR) parts 19 and 26, were specifically identified; (b) the extent of commitment to use such firms (enforceable commitments, such as teaming agreements were to be considered more heavily than non-enforceable ones); (c) the complexity and variety of the work small business firms

were proposed to perform in completion of the contract; (d) the extent of utilization of small business firms on prior contracts, such as compliance with subcontracting goals in previous government contracts; and (e) the extent of participation of small business firms on this acquisition in terms of the value of the total acquisition with detailed explanations/documentation supporting the proposed participation. Id.

With respect to cost, the RFP established that the agency would conduct a cost realism analysis in accordance with FAR § 15.404-1(d) to determine whether the estimated proposed cost elements were realistic for the work to be performed, reflected a clear understanding of the requirements, and were consistent with the unique methods of performance described in the offeror's technical proposal. RFP, amend. No. 10, at 2.

As addressed supra, this procurement has been protracted, resulting in several prior awards, and been the subject of several pre-award and post-award protests before our Office and the Court of Federal Claims. On three prior occasions, the Army selected Jacobs' proposal for award. Following the most recent post-award protest filed by TRAX, the agency elected to take corrective action, including reopening discussions, and seeking and evaluating revised proposals. Relevant here, the agency's evaluation of the offerors' final proposals was as follows:

	<b>TRAX</b>	<b>Jacobs</b>
<b>Mission Capability</b>	Outstanding	Outstanding
<b>Mission Capability Risk</b>	Low	Low
<b>Past Performance</b>	Substantial Confidence	Satisfactory Confidence
<b>Small Business Participation</b>	Outstanding	Good
<b>Total Evaluated Price</b>	\$448,805,916	\$440,416,891

Agency Report (AR), Tab 79, Source Selection Decision, at 4.

The Source Selection Authority (SSA) reviewed the lower-level evaluators' findings with respect to the proposals, adopting the evaluated ratings, strengths, and weaknesses where he concurred, and noting where he disagreed with the assessed findings. Id. at 5-15. He then conducted a tradeoff analysis, concluding that TRAX's superior ratings under the past performance and small business participation factors warranted the associated 1.8 percent cost premium, and thus selected TRAX's proposal as offering the best value to the government. Id. at 16-17. Following a debriefing, Jacobs filed this protest with our Office.

## DISCUSSION

Jacobs challenges the Army's evaluation of proposals under the mission capability, past performance, and small business participation evaluator factors, as well as the

reasonableness of the SSA's best-value tradeoff decision. For the reasons that follow, we find no basis on which to sustain the protest.<sup>2</sup>

### Mission Capability

Jacobs challenges the agency's evaluation of Jacobs' and TRAX's proposals under the mission capability factor. First, the protester alleges that the Army erred in evaluating a weakness in Jacobs' proposal relating to a proposed efficiency, arguing that the agency's evaluation was contrary to the terms of Jacobs' proposal. Second, Jacobs challenges the agency's evaluation of TRAX's proposed efficiencies, arguing that the Army's evaluation was inconsistent with the terms of the RFP, and failed to mitigate TRAX's unfair incumbent advantage. Third, Jacobs alleges that the agency's evaluation demonstrates that the evaluation was unequal with respect to the two proposals. For the reasons that follow, we find no basis on which to sustain the protest.

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. Crowder Constr. Co., B-411928, Oct. 8, 2015, 2015 CPD ¶ 313 at 4. 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.

Jacobs first objects to the Army's evaluation of a weakness and corresponding most probable cost adjustment based on one of Jacobs' proposed efficiencies to the baseline staffing requirements. The RFP included Technical Exhibit 10, Item 6, which contained staffing levels by labor category. With respect to offerors' management capability proposals, the RFP directed offerors to use the staffing information in the technical

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<sup>2</sup> Jacobs raises other collateral arguments. While our decision does not specifically address every argument, we have considered all of the protester's arguments and conclude that none provides a basis on which to sustain the protest. For example, Jacobs argues that the agency unreasonably, in essence, "double-counted" an evaluated technical weakness by also making an upwards cost adjustment. See Protest at 24-25. We find no basis to sustain the protest because there is no prohibition on an agency accounting for both technical and associated cost risks. An agency is not prohibited from making cost realism adjustments and also downgrading a technical proposal, where the cost adjustments are necessary to reflect the offeror's probable costs of performance based on its proposal, and the weaknesses assessed in the offeror's technical evaluation reflect the performance risk stemming from the inadequacy of the technical proposal. Pueblo Envtl. Solutions, LLC, B-291487, B-291487.2, Dec. 16, 2002, 2003 CPD ¶ 14 at 15. As discussed below, the Army reasonably evaluated a concern arising from uncertainty in Jacobs' final revised mission capability proposal, and, as a result of the uncertainty, also reasonably concluded that an upwards cost adjustment was appropriate.

exhibit as the baseline (excluding management and administrative staff) for calculating the anticipated number of labor hours required to perform the contract, by labor category and in total. RFP, amend. No. 11, at 10. The RFP further directed that deviations from the baseline based on the offeror's unique management approach and promised efficiencies were permitted, but required them to be fully explained and justified. Id. The RFP included a similar requirement that any deviations to the baseline based on an offeror's unique management approach or promised efficiencies similarly had to be fully explained and justified in the offeror's cost narrative in its cost proposal. Id. at 18.

In response to the foregoing requirements, Jacobs proposed a number of efficiencies that would reduce the total number of hours under the baseline. Relevant here, Jacobs proposed a [DELETED] percent reduction in productive hours due to its anticipated efficiency based on the protester's prior performance on similar test support contracts. The Army previously accepted the proposed [DELETED] percent reduction during earlier rounds of proposal evaluation. In the most recent evaluation, however, the Army issued a discussion question to Jacobs seeking additional information about the reduction. Specifically, the agency stated that it was concerned that such an immediate reduction would significantly impact performance, and requested specifics regarding the impacted functional areas, skill classifications, and positions. AR, Tab 59, Jacobs' Discussion Responses, at 5. Jacobs explained that its proposed approach of reducing man-hours immediately at contract start was developed based on its successful implementation of similar workforce assignment, scheduling, and management approaches on relevant contracts. Id. The protester further represented that it anticipated potential man-hour reductions of [DELETED] percent, but that it applied a "conservatism factor" reducing the proposed reduction to [DELETED] percent based on its lack of visibility into YPG-specific staffing information. Id. at 5, 6. Jacobs further stated that it would work with the Army during the transition to identify specific skills and personnel to exclude from the proposed efficiency, or at most implement a less than [DELETED] percent reduction. Id. at 5.

Notwithstanding the foregoing discussion responses, Jacobs' final proposal revision stated that "immediately at contract start, we plan to make another [DELETED] % reduction in the productive hours by inclusion of our more flexible workforce management approach which relies on the efficiencies built into our organizational structure." AR, Tab 63c, Jacobs' Final Mission Capability Proposal, at 10 (emphasis added). The evaluators assessed a weakness for the proposed efficiency, noting that Jacobs' proposed reduction was overly optimistic and unrealistic to support YPG's dynamic mission. AR, Tab 67, Source Selection Evaluation Board Final Proposal Report, at 8. The evaluators were concerned that Jacobs' proposed immediate, off-the-top reduction would have the potential to adversely affect YPG's test throughput because the testing requirements at YPG are very unpredictable, and require flexibility to support the variable testing schedule. Id. at 9. The SSA concurred with the evaluated weakness, finding that Jacobs did not provide detailed information regarding where the immediate additional reduction would occur, or explain how such an immediate reduction would provide for sufficient manpower so as to not negatively

impact its ability to accomplish YPG's dynamic mission. AR, Tab 79, Source Selection Decision, at 12.

Jacobs concedes that “[w]hen read in a vacuum, the Agency’s interpretation may be reasonable.” Jacobs’ Comments & Supp. Protest at 16. While recognizing that “Jacobs may bear the risk associated with its written [final proposal revision (FPR)],” the protester nevertheless argues that the Army had to consider Jacobs’ proposal based on the totality of the circumstances, “not one word taken out of context.” *Id.* at 17. Specifically, Jacobs alleges that it reasonably explained during discussions that its proposed reduction was based on its experience with relevant testing support contracts, and that the [DELETED] percent reduction would be implemented after coordination with the agency. AR, Tab 59, Jacobs’ Discussion Responses, at 5-6. Jacobs further argues that the [DELETED] percent reduction was not an “additional” reduction, but was already included in Jacobs’ modified baseline, as reflected in other areas of its FPR. Protest at 21-22. The protester asserts that the reference to “another” reduction in its FPR was, in essence, a drafting error resulting from the deletion of an earlier referenced efficiency, and that the agency should have placed the erroneously used “another” in the proper context of Jacobs’ proposal and the history of the procurement. Jacobs’ Comments & Supp. Protest at 16.

The Army, however, was not required to infer Jacobs’ intent or permit Jacobs to revise its FPR. It is well-settled that an offeror has the obligation to submit a well-written proposal free of ambiguity regarding its merits or compliance with solicitation requirements and that an offeror fails to do so at its own risk. Independent Sys., Inc., B-413246, Sept. 15, 2016, 2016 CPD ¶ 260 at 5; Cubic Simulation Sys., Inc., B-410006, B-410006.2, Oct. 8, 2014, 2014 CPD ¶ 299 at 6. An agency is not required to infer information from an inadequately detailed proposal, or to supply information that the protester elected not to provide. Optimization Consulting, Inc., B-407377, B-407377.2, Dec. 28, 2012, 2013 CPD ¶ 16 at 9 n.17. Here, any confusion with respect to Jacobs’ staffing approach is directly attributable to the protester’s conceded drafting error in failing to properly modify its FPR to reflect its intended approach to the agency’s requirements, not any unreasonable evaluation by the Army. Furthermore, the protester’s argument that the Army ignored the information included in Jacobs’ discussion responses fails because the agency’s invitation for the submission of FPRs explicitly warned offerors that the discussion responses would not be incorporated into the offeror’s proposal. Specifically, the letter warned offerors as follows: “Please note that responses to [evaluation notices (EN)] are not FPRs. If you want information that was stated in your EN response to be considered as part of your proposal, it must be included in the FPR and appropriately marked as a change [in accordance with] the instructions above.” AR, Tab 60, FPR Letter to Jacobs, at 2.<sup>3</sup>

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<sup>3</sup> Jacobs also argues that the agency’s evaluation of the weakness is unreasonable and irreconcilable with the overall low risk assessment assigned to Jacobs’ mission capability proposal, relying on our decision in Grunley Constr. Co., Inc., B-407900, Apr. 3, 2013, 2013 CPD ¶ 182. Grunley, however, is readily distinguishable. In

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Jacobs also challenges the agency's evaluation of TRAX's proposed efficiencies. First, the protester argues that the agency either unreasonably credited TRAX for efficiencies implemented on the incumbent contract or failed to reasonably mitigate TRAX's unfair access to information resulting from its performance on the incumbent contract, thus evidencing unfair preferential treatment based on TRAX's incumbent performance. Second, Jacobs alleges that several of TRAX's proposed efficiencies were inadequately explained and justified. We find neither line of argument provides a basis on which to sustain the protest.

With regard to Jacobs' arguments alleging that the agency unfairly credited or failed to mitigate perceived advantages of TRAX's incumbency in its evaluation of TRAX's proposed efficiencies, it is well settled that an offeror may possess unique information, advantages, and capabilities due to its prior experience under a government contract--either as an incumbent contractor or otherwise--and the government is not necessarily required to equalize competition to compensate for such an advantage, unless there is evidence of preferential treatment or other improper action. See FAR § 9.505-2(a)(3); Lovelace Sci. & Tech. Servs., B-412345, Jan. 19, 2016, 2016 CPD ¶ 23 at 12; Signature Performance, Inc., B-411762, Oct. 19, 2015, 2015 CPD ¶ 321 at 5. The existence of an incumbent advantage, in and of itself, does not constitute preferential treatment by the agency, nor is such a normally occurring advantage necessarily unfair. Superlative Techs., Inc.; Atlantic Sys. Grp., Inc., B-415405 et al., Jan. 5, 2018, 2018 CPD ¶ 19 at 7. Here, we find no basis to Jacobs' arguments that the agency gave any undue preferential treatment to TRAX arising from any unfair competitive advantage due to its incumbency.

With regard to Jacobs' argument that the Army improperly credited TRAX for previously implemented efficiencies, the protester has failed to allege with any specificity which of TRAX's proposed efficiencies that were accepted by the government were supposedly previously implemented on TRAX's incumbent contract, or otherwise were improper. The protester merely speculates that if this occurred, the Army would have acted

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Grunley, our Office sustained the protester's challenge to the evaluation of its proposal, finding that the agency failed to reconcile the assessment of a weakness for the protester's alleged failure to provide an adequate shift transition plan, while simultaneously awarding the protester a strength for its transition plan. Grunley Constr. Co. Inc., supra at 6. Thus, our concern in Grunley was the agency's inability to reconcile the inconsistent evaluation results where the identical issue resulted in the award of both a strength and weakness. In contrast, Jacobs has failed to demonstrate any irreconcilably inconsistent result here. Rather, the record shows that the Army generally found that Jacobs' mission capability proposal was reasonable and presented low risk to the government, but nevertheless was concerned regarding this singular instance of ambiguity in the protester's proposal. See, e.g., AR, Tab 79, Source Selection Decision, at 10.

unreasonably. In this regard, Jacobs' relies on a hypothetical situation that it argues would demonstrate unfair credit for TRAX's incumbent performance. See Jacobs' Comments & Supp. Protest at 31-32. Jacobs' speculation, without any credible or detailed allegations regarding which, if any, of TRAX's proposed efficiencies were supposedly unreasonably considered, fails to state legally sufficient bases of protest.<sup>4</sup>

We similarly find no merit to Jacobs' arguments that the agency failed to reasonably mitigate TRAX's unfair knowledge of the Army's requirements gleaned from its performance of the incumbent requirements. The protester argues that TRAX had unfair insight that, in essence, allowed it to unfairly manipulate the RFP's staffing baseline data, pointing to TRAX's discussion of "current YPG practices" in its proposal. Id. at 32. We find that the general information contained in TRAX's proposal about current YPG practices, however, appears to be typical information that an incumbent would observe as a result of performing the incumbent requirements, not any information that TRAX unfairly obtained. In this regard, the section of current YPG practices in TRAX's discussion of its proposed efficiencies specifically addressed the concern, shortcoming, or area of improvement on which the proposed efficiency was directed at addressing.

As addressed in the representative example below, TRAX's discussion of the current YPG practice identified the lack of automation in data entry and processing, and the perceived inefficiencies of its approach to introduce technology and automated forms. TRAX's recognition through its incumbent experience that operations could be made more efficient through the use of technology and automation does not evidence that it relied upon sensitive government data or information obtained while performing the incumbent requirements; rather, this is a quintessential example of the type of ordinary, advantageous observations that an incumbent would obtain through its prior

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<sup>4</sup> In addition to the above flaws in the protester's arguments, the record shows that the Army reasonably evaluated TRAX's proposed efficiencies, including those that may have relied in part on TRAX's incumbent performance to substantiate the proposed efficiency. For example, TRAX proposed to implement [DELETED], with some personnel working [DELETED] and others working [DELETED], in order to reduce overtime arising from testing needs occurring [DELETED]. AR, Tab 64, TRAX Final Revised Cost Proposal, at 81. As part of the support for the proposed initiative, TRAX argued that it was able to save a significant number of overtime hours over a 12 month period with the implementation of tightened overtime policies, and explained that [DELETED] would "provide an additional mechanism to reduce overtime hours." Id. The evaluators believed that the proposed initiatives could reduce some of the total amount of overtime proposed, but determined that "there are required areas of performance where the offeror has no control and therefore cannot control some of the necessary overtime." AR, Tab 68, Final Cost Evaluation Report, at 13. As a result, the evaluators accepted only [DELETED] percent of the proposed reduction in anticipated labor hours. Id.

performance. On this record, we find no basis to conclude that the agency provided TRAX, or otherwise failed to mitigate, any unfair or improper incumbent advantage.

We also find no merit to Jacobs' arguments that certain of TRAX's proposed efficiencies were inadequately explained or justified, where Jacobs' arguments are based merely on a count of the number of words included in TRAX's proposal regarding the efficiencies. See Jacobs' Supp. Comments at 8. As an initial matter, these arguments, which were first raised in Jacobs' supplemental comments, appear to constitute a piecemeal presentation of issues. The timeliness requirements of our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues. See Battelle Memorial Institute, B-278673, Feb. 27, 1998, 98-1 CPD ¶ 107 at 24 n.32; 4 C.F.R. § 21.2(a)(2). Even if we were to consider these arguments responsive to the agency's supplemental report, and not supplemental protest grounds, we nevertheless find that they are without merit.

The record supports the agency's determination that the proposed efficiencies were adequately explained and justified. The record reflects that TRAX's proposal provided information identifying the current nature of the issue or concern, TRAX's proposed initiative, and the anticipated benefits to the government. For example, TRAX identified a concern stemming from the fact that current practice is for drivers and data collectors to prepare handwritten notes and logs that have to be transcribed and typed into electronic databases. The protester explained that these are often hard to read, subject to misinterpretation, and time consuming to type into an electronic format. AR, Tab 64, TRAX Final Revised Cost Proposal, at 98. TRAX proposed to outfit staff with high handwritten documentation requirements with e-notebooks and automated forms that can be downloaded directly to a database. Id. TRAX identified the benefits of its approach as allowing drivers and data collectors to more efficiently utilize their time when entering data, and reducing the need for additional administrative assistance. Id. TRAX then calculated the anticipated savings based on the anticipated number of affected employees and hours to be saved, as well as noting that the savings would not be expected to be implemented until the first option year due to the requisite time needed to implement the initiative. Id. Thus, as this representative example illustrates, TRAX identified a concern (*i.e.*, lost efficiency resulting from a lack of automation), proposed a specific solution (*i.e.*, the provision of technology hardware and automated data entry), and calculated the anticipated cost savings and implementation schedule. On this record, we find no basis to object to the reasonableness of the agency's evaluation.

Finally, Jacobs alleges disparate treatment. In this regard, the protester contends that it was unreasonable for the agency to evaluate a weakness in Jacobs' proposal due to a concern in a reduction to the baseline hours, while not simultaneously assessing a weakness against TRAX for proposing an even lower number of baseline hours. We find that Jacobs' allegations of disparate treatment fail because the record shows the differences in the evaluation results were based on unique aspects of the proposals. See Sierra Nevada Corp., B-410485 et al., Jan. 5, 2015, 2015 CPD ¶ 23 at 16; The Boeing Co., B-409941, B-409941.2, Sept. 18, 2014, 2014 CPD ¶ 290 at 8.

As discussed above, the agency's concern regarding Jacobs' proposed baseline hours resulted from a lack of clarity regarding the "additional" and "immediate" [DELETED] percent reductions in Jacobs' FPR labor hours. Jacobs' protestations about unequal treatment ignore that the crux of the weakness assigned to its proposal was the result of Jacobs' ambiguous FPR. To the extent the agency did not accept efficiencies proposed by TRAX, and made corresponding upward adjustments to its proposed costs, they were not based on any ambiguity or misunderstanding of the requirements. For example, the SSA declined to accept a TRAX proposed initiative to modify maintenance and sustainment activities because a similar Jacobs' proposed efficiency was not accepted. AR, Tab 79, Source Selection Decision, at 7. Thus, on this record, we find no basis to conclude that the agency engaged in an unequal evaluation of proposals.

#### Past Performance

Jacobs challenges the agency's evaluation of its past performance. The protester contends that the Army relied upon irrelevant instances of adverse past performance, failed to reasonably consider the totality of Jacobs' past performance, or otherwise failed to give reasonable consideration to the effectiveness of corrective actions taken in response to the identified instances of adverse past performance. For the reasons that follow, we find that the agency's evaluation was reasonable and in accordance with the terms of the solicitation.

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

Here, by way of example, Jacobs objects to the Army's consideration of a 2013 incident involving the protester's loss of a government furnished laptop that potentially contained classified material.<sup>5</sup> On June 3, 2013, the Army, on another relevant test support services contract, issued a cure notice to Jacobs based on the protester's May 2013 disclosure that a laptop provided under the contract was missing. AR, Tab 63e, Army Cure Notice, at 1. The Army's cure notice stated that, although the laptop was ultimately determined not to have classified material on it, it had been missing since August 2012, but the loss was only identified and reported due to the departure of a Jacobs employee in April 2013. Id. The Army expressed concern with Jacobs' failure

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<sup>5</sup> Jacobs initially challenged the agency's consideration of the recency of certain past performance information, but it expressly withdrew those arguments after receipt of the agency's report. Jacobs' Comments & Supp. Protest at 23.

“to effectively manage [government furnished property] and report the loss of an item in a timely fashion.” Id. Based on Jacobs’ response, which included a root cause analysis and proposed changes to its inventory system, the Army agreed to reduce the cure notice to a letter of concern. AR, Tab 63e, Army Response to Jacobs’ Cure Response, at 1. Jacobs argues that it was unreasonable to allow this single negative instance to overshadow Jacobs’ otherwise strong performance on the contract, and accuses the Army of “reach[ing].” Jacobs’ Comments & Supp. Protest at 24.

Similarly, Jacobs objects to the Army’s consideration of a marginal rating for cost control assigned to one of its key subcontractors on another testing contract. The assessing official wrote that a contract modification was needed to ensure that the testing was completed on time and within budget constraints because Jacobs’ subcontractor, during an internal audit following a stop work order, discovered that the project’s lead contractor was using a flawed database for recording and reporting contractor labor hours and travel/other direct costs. AR, Tab 65c, Jacobs’ Team CPARs, at 6. The assessing official further identified that travel requests were neither submitted nor approved prior to travel. Id. The assessing official stated that, after lengthy discussions with the government, it was agreed that Jacobs’ subcontractor could convert and redistribute labor hours among the remaining subcontractors in order to meet contract requirements and bring the project to a successful close. Id. The assessing official stated that this effort required extensive management by government personnel. Id. Rather than considering this a weakness, Jacobs argues that its team should have actually been credited with a strength for promptly identifying the issue before anything significant happened, taking prompt corrective action, and successfully completing the contract requirements. Jacobs’ Protest at 28.

Notwithstanding Jacobs’ assertions regarding the insignificance of the assessed concerns or the effectiveness of its remedial actions, we cannot conclude that the agency’s concerns were unreasonable. In this regard, we find nothing unreasonable with the Army’s consideration of the underlying issues in its evaluation. The above performance issues reflected Jacobs’ or its subcontractor’s failure to meet the standards of performance required by the agency, which required the active intervention and oversight by the agency. As our Office has explained, an agency’s past performance evaluation may be based on a reasonable perception of a contractor’s prior performance, regardless of whether the contractor disputes the agency’s interpretation of the underlying facts, the significance of those facts, or the significance of corrective action. General Revenue Corp., et al., B-414220.2 et al., Mar. 27, 2017 CPD ¶ 106 at 40. Additionally, although consideration of past performance trends and corrective actions is generally appropriate, an agency is not required to ignore instances of negative past performance. PAE Aviation and Tech. Servs., LLC, B-413338, B-413338.2, Oct. 4, 2016, 2016 CPD ¶ 283 at 5; Vectrus Sys. Corp., B-412581.3 et al., Dec. 21, 2016, 2017 CPD ¶ 10 at 9. Therefore, we find no basis on which to sustain the protest.

## Small Business Participation

Jacobs also challenges the agency's identification of two concerns with its small business participation proposal. The protester contends that these concerns were without a basis because the Army failed to reasonably consider responsive information contained in Jacobs' FPR. Jacobs alleges that, but for these erroneously evaluated concerns, its proposal should have received an outstanding rating for the factor, thus making it technically equal to TRAX's proposal. As addressed above, it is an offeror's responsibility to prepare and submit an adequately written proposal. Independent Sys., Inc., supra; Optimization Consulting, Inc., supra. For the reasons that follow, we find that the agency's evaluation was reasonable and in accordance with the terms of the solicitation.

First, the agency evaluated Jacobs' proposal as good with respect to its approach to identifying small business firms. Nonetheless, the agency found that Jacobs did not sufficiently identify the small disadvantaged business category of Historically Black Colleges and Universities/Minority Institutions (HBCU/MI) that would be used in performance of the contract. AR, Tab 66b, Jacobs Small Business Participation Factor Evaluation Report, at 1-2. Jacobs argues that the Army's evaluation was unreasonable, because the protester did include the names of HBCU/MIs in its final proposal. While it is true that Jacobs' proposal included a list of HBCU/MIs, the proposal did not specifically identify HBCU/MIs that will actually perform on the resulting contract or what anticipated roles those entities would perform. Rather, the names of HBCU/MIs provided by Jacobs were identified as those that it is currently partnering with on an unrelated contract, and entities that it will contact in connection with this contract effort. AR, Tab 63d, Jacobs Small Business Participation Proposal, at 10. Nowhere does Jacobs indicate that these entities have currently been approached regarding, or are committed to performing on, these requirements, which is in stark contrast to the presentation in Jacobs' proposal regarding the other small business categories. See, e.g., id. at 8 (including a figure identifying the name of the company, the type of service or supply to be subcontracted, and the associated small business categories for the firm). The agency's determination that Jacobs' proposal warranted a good under this subfactor was therefore consistent with the definition in the RFP, which stated that a good rating would be warranted where: "[small business] Firms are identified by name in most categories in FAR 19 and 26." RFP, amend. No. 6, at 28.

Second, the agency rated Jacobs' proposal as acceptable with respect to the complexity and variety of work that small business firms were proposed to perform in the completion of the contract subfactor, while finding that the proposal did not include sufficient detail regarding the complexity of the integrated work that small businesses would perform. Specifically, the evaluators found that Jacobs had identified the general PWS areas that the subcontractors would perform, noting that there appeared to be a variety of work to be performed, but they were unable to reasonably determine the complexity. AR, Tab 66b, Jacobs Small Business Participation Factor Evaluation Report, at 3. Jacobs contests the agency's finding, arguing that it included additional information in its FPR regarding its methodology for ensuring the variety and complexity

of small business subcontracting work, and provided information both about the magnitude of subcontracting at the PWS level and the percent of labor hours performed by Service Contract Act exempt and non-exempt personnel among its small business subcontracting partners. See AR, Tab 63d, Jacobs Small Business Participation Proposal, at 9-10. The agency responds that this additional information still was insufficient to provide clarity regarding the specific nature and complexity of the work to be performed by the subcontractors. On this record, we find no basis to object to the agency's evaluation.

It is important to note that the Army did not evaluate a deficiency or allege that Jacobs had failed at all to address the question of the complexity of the work to be subcontracted. Rather, the agency merely found that the information provided was not sufficiently detailed to warrant a higher rating under the evaluation criterion. In this regard, the additional information provided by Jacobs explained how Jacobs would determine the complexity of the work to be subcontracted at an abstract level, and provided top level information by PWS section. But this information does not identify with any specificity the work that Jacobs actually intends to subcontract to the small businesses. Thus, the protester's disagreement with the agency regarding the level of detail necessary to warrant a higher adjectival rating under the subfactor fails to provide a sufficient basis on which to sustain the protest.

#### Best-Value Tradeoff

Finally, Jacobs also challenges the reasonableness of the SSA's best-value tradeoff decision. The protester contends that the tradeoff decision was unreasonable and inconsistent with the RFP's evaluation criteria because the SSA could not reasonably conclude that TRAX's superior ratings under the past performance and small business participation factors warranted the payment of a less than 2 percent cost premium in light of the RFP's approximately equal weighting of cost and the non-cost factors. Jacobs also challenges the reasonableness of certain cost-saving assumptions included in the SSA's tradeoff decision. For the reasons that follow, we find no basis on which to sustain the protest.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results; cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the evaluation criteria. Crowder Constr. Co., supra, at 10. In this regard, award may be made to a firm that submitted a higher-rated, higher-priced proposal where the decision is consistent with the evaluation criteria and the agency reasonably determines that the technical superiority of the higher-priced offeror outweighs the price difference. Charles Kendall & Partners, Ltd., B-310093, Nov. 26, 2007, 2007 CPD ¶ 210 at 4. Where a cost/technical tradeoff is made, the source selection decision must be documented, and the documentation must include the rationale for any tradeoffs made, including the benefits associated with the additional costs. FAR § 15.308. 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. Pacific-Gulf Marine, Inc., B-415375, B-415375.2, Jan. 2, 2018, 2018 CPD ¶ 124 at 7. Here, we find that the agency's tradeoff decision was reasonable and adequately documented.

The SSA first reviewed the lower-level evaluators' ratings, the strengths and weaknesses assessed for each proposal, and noted where he agreed with the findings and where he took exception. AR, Tab 79, Source Selection Decision, at 5-15. After his review, the SSA accurately recognized that the cost and the non-cost factors were approximately equal in weight, as well as the relative weight of the non-cost evaluation factors, and concluded that TRAX's superior past performance and small business participation warranted the associated 1.8 percent cost premium. Id. at 16-17. Additionally, the SSA expressed concern with the evaluated weakness relating to Jacobs' proposed immediate [DELETED] percent reduction in productive hours, as it could have a disruptive effect on the workforce and negatively affect YPG's mission requirements. Id. at 16.

The SSA concluded that TRAX's superior technical proposal would offer cost savings, test optimization, and enhanced readiness. Id. at 16. In this regard, the SSA stated that:

The testing environment at Yuma is highly dynamic and fluid and it is imperative that tests be executed in a precise and accurate fashion because inaccurate results, failed tests, and/or untimely execution can result significantly in increased costs to the Army through re-testing and/or other mitigating solutions and significantly impact Army Readiness via delay [in] fielding of systems.

Id.

The SSA found that Jacobs' immediate staffing reduction increased the risk of unsuccessful performance, while TRAX's superior past performance "gives greater assurances to the Army that tests will be executed in a more efficient and effective manner." Id. at 16-17. The SSA also concluded that TRAX's superior small business participation proposal would encourage strong small business participation, which in turn would help build the potential industrial base. Id. at 17. The SSA determined that a stronger industrial base would promote competition and reduce future acquisition costs for the government. Id. In sum, the SSA concluded that TRAX's more highly-rated technical proposal warranted the associated 1.8 percent cost premium. Id.

On this record, we find no basis to conclude that the SSA unreasonably elevated the importance of past performance or small business participation in a manner inconsistent with the terms of the RFP. The record shows that the SSA recognized the RFP's evaluation methodology, carefully considered the relative merits of the proposals, and

determined that TRAX's proposal represented the best-value to the government, notwithstanding the associated cost premium.

With respect to Jacobs' specific challenges to the potential cost savings discussed by the SSA, we find no basis on which to sustain the protest. As addressed above, the SSA carefully reviewed and concurred with the evaluators' findings with respect to the strength of TRAX's proposal under the past performance and small business participation factors. In his analysis, he specifically noted the unique elements of TRAX's proposal under these factors, including the intervenor's favorable past performance in connection with the incumbent requirements and the detailed complexity and variety of work proposed to be subcontracted to small business concerns. AR, Tab 79, Source Selection Decision, at 8-9. As the record makes clear, the focus of the SSA's review of the merits of TRAX's proposal was on the evaluated strength of its proposal based on the RFP's evaluation scheme. In the tradeoff section of his decision, the SSA explains the benefit of TRAX's higher technical ratings as reducing performance risks and promoting YPG's mission objectives, which in turn could result in cost savings to the government. Id. at 16-17. Read in context, it is apparent that the SSA's discussion of potential cost savings to the government was an ancillary consideration explaining the basis for his determination that the benefits of TRAX's higher-rated proposal was worth the associated 1.8 percent cost premium.

Our consideration is bolstered by the fact that the record reflects that the tradeoff did not turn on these potential cost savings. The record reflects that the tradeoff was made using the evaluated most probable costs, which did not consider any of the potential cost savings challenged by Jacobs. Specifically, the SSA, independent of the challenged potential cost savings, found that the benefits offered by TRAX's higher-rated proposal warranted the associated 1.8 percent price premium. AR, Tab 79, Source Selection Decision, at 17. The SSA's detailed analysis makes plain that the potential cost savings was simply an additional consideration, which was not necessary to support the award determination. Thus, as the propriety of this additional consideration would not undermine the primary basis for the agency's evaluation and tradeoff, we have no basis to sustain this aspect of the protest. See IPKeys Techs., LLC, B-414890, B-414890.2, Oct. 4, 2017, 2017 CPD ¶ 311 at 11-12 (denying challenge to an evaluated strength and resulting source selection decision where potential cost savings were only an additional consideration, and the record showed that the agency relied on the offeror's evaluated costs without consideration of the potential additional cost savings); ASRC Commc'n's, Ltd., B-414319.2 et al., May 9, 2017, 2017 CPD ¶ 167 at 6-7 (denying a protest challenging the reasonableness of the award of a strength referencing potential cost savings where the strength was actually based on the awardee's proposed innovative approach, as opposed to the potential cost savings specifically); Wilcox Elec., Inc., B-270097, Jan. 11, 1996, 96-1 CPD ¶ 82 at 6-7

(similarly denying challenge to presumed cost savings where they were only an additional consideration).

The protest is denied.

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General Counsel