



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Novetta, Inc.

File: B-414672.4; B-414672.7

Date: October 9, 2018

Scott F. Lane, Esq., Katherine S. Nucci, Esq., and Jayna M. Rust, Esq., Thompson Coburn LLP, for the protester.

Daniel R. Forman, Esq., and Laura J. Mitchell Baker, Esq., Crowell & Moring LLP, for Vencore, Inc.; and Deneen J. Melander, Esq., Richard A. Sauber, Esq. and Lanora C. Pettit, Esq., Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP, and Kenneth M. Reiss, Esq., Northrop Grumman Corporation, for Northrop Grumman Systems Corporation, the intervenors.

Sarah L. Carroll, Esq., and Aubri Dubose, Esq., Defense Information Systems Agency, for the agency.

Elizabeth Witwer, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the Source Selection Evaluation Board's (SSEB) rationale for removing a strength assessed by the Technical Evaluation Board is sustained where the SSEB's rationale is not meaningfully explained in the record.
2. Protest challenging the agency's evaluation under the problem statements factor is denied where the record shows that the agency's evaluation was reasonable, and there is no evidence that the protester was prejudiced by any alleged evaluation errors.
3. Protest alleging that latent ambiguities in the solicitation led offerors to propose pricing on an unequal basis is dismissed for failure to state a basis of protest where the protester does not identify any solicitation requirements that were ambiguous or unclear.
4. Protest challenging the agency's decision not to conduct discussions is denied where the protester erroneously contends that certain factors must be present in Department of Defense procurements valued over \$100 million in order for an agency to reasonably forego discussions.

5. Protest challenging the agency's best-value tradeoff is sustained where the record shows that the agency's determination was based upon a flawed underlying evaluation, and where the agency failed to consider the qualitative information underlying the ratings.

DECISION

Novetta, Inc., of McLean, Virginia, protests its failure to receive a contract award under request for proposals (RFP) No. HC1047-17-R-0001, issued by the Department of Defense (DoD), Defense Information Systems Agency (DISA), for information technology (IT) engineering services.¹ The protester challenges the agency's evaluation of its proposal under two non-price factors. The protester also contends that the agency failed to address a latent ambiguity in the RFP's requirements, abused its discretion in failing to conduct discussions with offerors, and failed to reasonably conduct its best-value tradeoff analysis.

We sustain the protest in part, deny it in part, and dismiss it in part.

BACKGROUND

DISA issued the RFP on February 22, 2017, using full and open competition, with the intent to establish a Multiple Award Task Order Contract (MATOC) referred to as the Systems Engineering, Technology, and Innovation (SETI) contract. Agency Report (AR), Tab 1, RFP at 1, 11, 102. The primary objective of the SETI contract is to provide engineering and technical support, services, and products globally to DoD, DISA, and DISA mission partners. Id. at 12. In this regard, the SETI contract "provides an overarching streamlined process for ordering a wide variety of critical IT engineering performance-based services while ensuring consistency and maximum opportunity for competition." Id.

The scope of the SETI contract includes a broad array of research and development, as well as "critical technical disciplines core to engineering, delivering, and maintaining DoD and DISA IT products and capabilities." Id. The performance work statement (PWS) identified the following eight task areas: (1) system engineering; (2) design analysis engineering; (3) systems architecture; (4) software systems design and development; (5) systems integration; (6) systems test and evaluation; (7) systems deployment and life-cycle engineering; and (8) special systems engineering requirements. Id. at 12-13.

¹ DISA awarded contracts to the following 14 firms: AASKI Technology, Inc. (AASKI); Accenture Federal Services (Accenture); BAE Systems Technology Solutions & Services (BAE); Booz Allen Hamilton, Inc. (BAH); Deloitte Consulting LLP (Deloitte); Harris Corporation (Harris); International Business Machines Corporation (IBM); KeyW Corporation (KeyW); Leidos Innovations Corporation (Leidos); LinQuest Corporation (LinQuest); NES Associates LLC (NES); Northrop Grumman Systems Corporation (Northrop Grumman); Parsons Government Services, Inc. (Parsons); and Vencore, Inc.

The RFP anticipated the award of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts in two pools: an unrestricted pool and a restricted pool.² AR, Tab 5, RFP Amend. 4, at 30. The protester submitted a proposal for consideration in the unrestricted pool and the awards at issue here relate to that pool. The RFP indicated that DISA intended to award approximately 10 contracts on an unrestricted basis and approximately 20 contracts on a restricted basis. Id. However, the agency expressly reserved the right to award more, less, or no contracts at all. Id.

The RFP provided that the ordering period would consist of a 5-year base period and a 5-year option period. AR, Tab 1, RFP at 41. Orders issued under the contract would be performed on a fixed-price, cost reimbursement, and/or time-and-materials basis, or a combination thereof, and might also include incentives. AR, Tab 5, RFP Amend. 4, at 30. The maximum dollar value for all contracts, including the base and option periods, is \$7.5 billion. AR, Tab 1, RFP, at 8.

Evaluation Criteria

The solicitation provided for award on a best-value tradeoff basis consisting of price and the following four non-price factors, listed in descending order of importance: (1) innovation, (2) past performance, (3) problem statements, and (4) utilization of small business. AR, Tab 5, RFP Amend. 4, at 50-51. When combined, the non-price factors were significantly more important than price. Id. at 51. The RFP indicated that DISA intended to award without discussions, but also reserved the right to conduct discussions if in the agency's best interest. Id. at 33, 50, 58.

With respect to the most important factor, innovation, section L of the RFP provided a lengthy explanation of how DISA viewed innovation, id. at 39-42, including the following definition of the term:

Definition of Innovation as it relates to the evaluation of this factor:

To DISA, and the DoD, fostering a creative culture and driving Innovation in defense of the country are paramount success criteria in executing the SETI Contract. In the SETI procurement, the Government is looking for innovative companies that accelerate attainment of new information system capabilities. In this context and for the evaluation of this factor, "innovative" means –

(1) any new technology, process, or method, including research and development; or

² The restricted pool was set aside for small business concerns under North American Industry Classification System (NAICS) Code 541412. AR, Tab 5, RFP Amend. 4, at 30.

(2) any new application of an existing technology, process, or method.

Id. at 39. As relevant here, section L of the RFP instructed offerors to address the following five criteria in their proposals in order to demonstrate their capabilities and proposed efforts to achieve and provide innovation:

- Section L.4.2.3.1, Corporate Philosophy/Culture on Innovation
- Section L.4.2.3.2, Investment in Innovation
- Section L.4.2.3.3, History of Engineering and Deploying Innovative Solutions
- Section L.4.2.3.4, Outreach and Participation
- Section L.4.2.3.5, Certifications, Accreditations, Awards, Achievements, and Patents.

Id. at 40-42. Under each criterion, the RFP included several bullets that offerors were to address. Id. As an example, under section L.4.2.3.5, Certifications, Accreditations, Awards, Achievements, and Patents, offerors were to address the following:

The Offeror shall:

- List and describe Awards and Achievements received that were awarded because of Innovation.
- List and describe the company's patents owned and applied for and how they relate to the SETI PWS.
- List of published papers regarding Innovation and successful implementation of an innovative process and solutions.
- Any other related information regarding the company's achievements related to Innovation.
- List Certifications and Accreditations that your company has that relate to Innovation.

Id. at 42.

In section M, the RFP provided that DISA would evaluate offerors' responses to the criteria described in section L. Id. at 52. The RFP further provided that the agency would consider strengths, weaknesses, significant weaknesses, uncertainties, and deficiencies in an offeror's proposal and would assign the proposal one of the following color/adjectival ratings reflecting an overall risk of "failure to be innovative:" blue/outstanding, purple/good, green/acceptable, yellow/marginal, or red/unacceptable. Id. at 51-52.

Under the past performance factor (factor 2), offerors were instructed to submit up to three references that the agency would evaluate for recency, relevancy, and quality of effort. Id. at 42-43, 52-54. The agency also reserved the right to obtain past performance information from any sources available to the government. Id. at 52. In evaluating past performance, the RFP provided that the agency would assign one of

the following performance confidence ratings: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. Id. at 54.

Under the problem statements factor (factor 3), offerors were asked to demonstrate their technical skills and ingenuity by solving two hypothetical problems. The purpose of these notional problems was to provide DISA insight into an offeror's ability to meet the requirements and the offeror's problem solving methodologies. Id. at 44. Offerors in the unrestricted pool were to respond to problem statements 1 and 2. AR, Tab 4, RFP Amend. 3, Attach. 7, Problem Statements. The problem statements were weighted equally and were each assigned one of the following ratings: blue/outstanding, purple/good, green/acceptable, yellow/marginal, or red/unacceptable. AR, Tab 5, RFP Amend. 4, at 55.

Under the utilization of small business factor (factor 4), offerors were instructed to submit a small business participation plan outlining how offerors intended to maximize the utilization of small businesses. Id. at 46. The RFP stated that the agency would evaluate the offerors' submissions for adequacy of the proposed small business participation plan and proposed goals, and would assign one of the following ratings to the proposal: blue/outstanding, purple/good, green/acceptable, yellow/marginal, or red/unacceptable.³ Id. at 56.

Finally, with respect to price, offerors were instructed to input direct labor rates and indirect rates, to include profit/fee, into a spreadsheet provided by DISA in which the agency listed the applicable labor categories with an estimate of the labor hours for each category.⁴ Id. at 48; AR, Tab 4, RFP Amend. 3, Attach. 9, Pricing Spreadsheet. The RFP indicated that the spreadsheet would calculate the fully burdened labor rate for each category and the total proposed price for the offeror.⁵ AR, Tab 5, RFP Amend. 4, at 48, 57. The RFP informed offerors that the agency would review the fully burdened fixed price labor rates for reasonableness and completeness using one of the techniques defined in section 15.404 of the FAR.⁶ Id. at 57. The RFP provided that

³ Under this factor, firms other than small businesses were also required to submit a subcontracting plan meeting the requirements of Federal Acquisition Regulation (FAR) clause 52.219-9 and Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.219-7003. AR, Tab 5, RFP Amend. 4, at 48.

⁴ The agency also supplied offerors with a description of the labor categories to be priced, as well as the years of experience and knowledge/skills expected. AR, Tab 1, RFP Attach. 10, SETI Labor Category Descriptions.

⁵ The labor rates would be the "capped ceiling" for that labor category for any fixed-price or time-and-materials task orders. AR, Tab 5, RFP Amend. 4, at 48. Offerors would be permitted to propose less than the capped rates. Id.

⁶ The RFP provided that no cost or price realism analysis would be conducted at the IDIQ contract level, but that costs for cost-reimbursement work would be evaluated at
(continued...)

DISA would also evaluate proposals for unreasonably high prices and unbalanced pricing, and that the existence of such prices “may be grounds for eliminating a proposal from competition.” Id. at 49, 57. Only the total proposed price would be used for tradeoffs between price and non-price factors. Id. at 48.

Evaluation of Proposals

The agency received 35 timely proposals in response to the solicitation. AR, Tab 65, SSDD, at 1; Memorandum of Law (MOL)/Contracting Officer’s Statement (COS) at 23. As set forth in the RFP, proposals were evaluated using a multi-step process. AR, Tab 5, RFP Amend. 4, at 57-58. First, proposals were evaluated by five separate and distinct evaluation boards—one for each factor—and consensus reports were prepared. AR, Tab 26, Technical Evaluation Board (TEB) Report (Innovation); Tab 27, TEB Report (Past Performance); Tab 28, TEB Report (Problem Statements); Tab 29, TEB Report (Utilization of Small Business); Tab 60, Price/Cost Evaluation Report.

Next, the contracting officer executed a memorandum for record (MFR) determining that the proposed prices of all offerors were fair and reasonable. AR, Tab 61, Pricing MFR, at 1. In reaching this conclusion, the contracting officer relied upon the Price/Cost Evaluation Report, id., which found that price reasonableness “is normally established by adequate competition” and, therefore, because 35 offerors submitted proposals, “it is implicit that price reasonableness has been determined at the macro level.”⁷ See e.g., AR, Tab 60, Price/Cost Evaluation Report, at 4. The pricing evaluation board did not compare offerors’ prices; the contracting officer likewise noted the 35 offers and concluded that “[t]he presumption is that all proposed prices are fair and reasonable if there is adequate competition.” AR, Tab 61, Pricing MFR, at 1 (citing FAR § 15.404-1(b)(2)(i)).

Around the same time, the Source Selection Evaluation Board (SSEB) reviewed the evaluation boards’ consensus reports, verified the evaluation results, and prepared an SSEB report. AR, Tab 62, SSEB Report. In some cases, the SSEB made changes to the assessments recommended by the various TEBs, including, as relevant here, downgrading the rating of Novetta’s proposal under the innovation factor. Id. at 142. The SSEB did not conduct a comparative analysis of proposals. Id. at 2.

Next, the Source Selection Advisory Council (SSAC) reviewed the evaluation record and ratings, and prepared a report for the Source Selection Authority (SSA). AR, Tab 63, SSAC Report. Additionally, the SSAC performed a comparative analysis of the

(...continued)

the task order level and would be subject to cost realism analysis at that time. AR, Tab 5, RFP Amend. 4, at 48.

⁷ The agency repeated this same conclusion verbatim in its review of each offeror’s proposal.

proposals, recommending award to the 14 offerors the SSAC deemed to be the “highest rated proposals” under the non-price factors. The SSAC concluded that “the technical merit of those proposals justifies paying a price premium over lower-rated, lower-priced proposals.” Id. at 13. Finally, the SSA reviewed and analyzed the SSEB and SSAC reports prior to executing a Source Selection Decision Document (SSDD). AR, Tab 65, SSDD.

With respect to the agency’s evaluation of Novetta’s proposal under the innovation factor, the TEB identified four strengths and assigned the proposal a rating of purple/good. AR, Tab 62, SSEB Report, at 141. The SSEB removed two of the strengths and combined two of the strengths. Id. at 142. Based on the one remaining strength, the SSEB assigned a final rating of green/acceptable to Novetta’s proposal under the innovation factor. Id. Under the past performance factor, the agency assigned Novetta’s proposal the highest rating of substantial confidence. Id. at 143. Under the problem statements factor, the agency identified one weakness and no strengths in Novetta’s response to problem statement 1, and identified no strengths or weaknesses in Novetta’s response to problem statement 2. Id. The agency assigned both problem statements ratings of green/acceptable. Id. Under the utilization of small business factor, the agency identified one strength and assigned the proposal a rating of purple/good. Id. at 173-74. Novetta’s total proposed price was [DELETED]. AR, Tab 60, Price/Cost Report, at 2.

Below is a summary of the agency's ratings of the proposals of the 14 awardees and Novetta:

Offeror	Factor 1	Factor 2	Factor 3		Factor 4	Factor 5
	Innovation	Past Performance	Problem 1	Problem 2	Small Business	Price
IBM	Outstanding	Substantial	Acceptable	Good	Good	\$234,935,046
Accenture	Outstanding	Neutral	Good	Good	Good	\$179,623,424
Northrop Grumman	Good	Substantial	Good	Good	Good	\$269,623,861
Vencore	Good	Substantial	Acceptable	Acceptable	Outstanding	\$156,662,569
BAH	Good	Substantial	Acceptable	Acceptable	Good	\$134,266,455
Leidos	Good	Substantial	Acceptable	Acceptable	Good	\$144,662,993
Harris	Good	Satisfactory	Outstanding	Outstanding	Good	\$184,752,341
BAE	Acceptable	Substantial	Outstanding	Good	Good	\$156,962,323
NES	Acceptable	Substantial	Good	Good	Good	\$137,217,707
LinQuest	Acceptable	Substantial	Good	Good	Good	\$175,049,125
Deloitte	Acceptable	Substantial	Acceptable	Good	Outstanding	\$126,180,137
Parsons	Acceptable	Substantial	Good	Acceptable	Outstanding	\$178,181,282
KeyW	Acceptable	Substantial	Good	Acceptable	Good	\$123,192,620
AASKI	Acceptable	Substantial	Good	Acceptable	Good	\$181,683,274
Novetta	Acceptable	Substantial	Acceptable	Acceptable	Good	\$291,803,529

AR, Tab 65, SSDD, at 3, 16.

Best-Value Tradeoff Analysis

In conducting the source selection, the SSA adopted a multi-step methodology to narrow the pool of proposals under consideration. First, noting the importance of the innovation factor, the SSA looked to the ratings under this factor. The SSA identified seven proposals that were rated either outstanding or good under the innovation factor: IBM, Accenture, Northrop Grumman, Vencore, BAH, Leidos, and Harris. Id. at 5.

For each of the seven offerors included in this first pool, the SSA noted where the offeror's price fell among all offerors.⁸ Id. at 5-9. Next, the SSA listed, at a high level, the strengths (and any weaknesses) assigned to the proposal under the non-price factors. After summarizing the underlying evaluation, the SSA concluded with regard to each of the seven proposals that the proposal's strengths under the non-price factors merited its "selection over lower-rated, lower-priced proposals." See e.g., id. at 5. Despite the SSA's stated conclusion, these awards were made without any consideration of whether associated price premiums were justified by increased technical merit.

In order to identify a second pool of proposals for consideration, the SSA next looked to those proposals that received a rating of acceptable on the innovation factor. Id. at 9. Noting that there were 26 such proposals, the SSA further narrowed the pool to those proposals with a rating of acceptable on the innovation factor in combination with a rating of substantial confidence on the past performance factor. Id. Noting that there were still a large number of proposals (18), the SSA further narrowed the pool to those proposals with a rating of acceptable on the innovation factor, a rating of substantial confidence on the past performance factor, and a rating of good or better on both problem statements. Id. This resulted in a pool of three proposals: BAE, NES, and LinQuest. Id. at 9-11.

For each of the three offerors included in this second pool, the SSA performed essentially the same analysis as used for the first pool. That is, the SSA noted where the offeror's price fell among all offerors; listed, at a high level, the strengths assigned to the proposal under the non-price factors; and concluded that strengths under the non-price factors merited "selection over lower-rated, lower-priced proposals."

At this point, the SSA considered concluding the tradeoff analysis in light of the fact that the agency had selected 10 proposals for award, which was the approximate number of anticipated awards set forth in the RFP. Id. at 11; AR, Tab 5, RFP Amendment 4, at 30. The SSA noted, however, that four additional proposals--those of Deloitte, Parsons, KeyW, and AASKI--were assigned essentially the same ratings as the proposals of BAE, NES, and LinQuest with the exception that the four additional proposals received one good rating and one acceptable rating for the problem statements. Id. at 11. The SSA decided to include these four proposals because more offerors could "potentially driv[e] prices down in future task order competitions." Id. The SSA further observed that "[t]wo of the next four most highly rated proposals also have comparatively low total proposed prices (ranked [DELETED] and [DELETED] by price), which could benefit future price competition."⁹ Id. Like the proposals in the first two pools, the SSA

⁸ For example, with respect to IBM's price, the SSA noted that "[t]his Offeror's total proposed price was ranked [DELETED] of 35." Id. at 5.

⁹ Of course, the SSA's comment regarding price does not explain why the other two proposals were included. Their inclusion appears to be based solely on the adjectival ratings assigned to the proposals.

recommended each of these four proposals for award on the basis that its strengths under the non-price factors merited its selection over lower-rated, lower-priced proposals. See id. at 11-13.

With respect to the remaining technically acceptable proposals that were not included in the above pools, the SSA considered the proposals of the two lowest-priced offerors. Id. at 3, 13-14. In both instances, the SSA confirmed the ratings on the non-price factors and concluded that “considering the selection methodology where all non-price factors are significantly more important than price, the SSAC does not believe [the proposal] merits an award as compared to the proposals with higher prices and higher technical merit, and I agree.” See e.g., id. 14.

Finally, with respect to the 19 remaining technically acceptable proposals, including Novetta’s proposal, the SSA notes that the SSAC “took a final look at all of the ratings for all of the Offerors to see if there were any other proposals with significant technical merit.”¹⁰ Id. at 14. The SSA further noted that the SSAC “did not identify sufficient technical merit in any other proposals to justify their recommendation for award, and I agree.”¹¹ Id. at 13.

In summarizing the SSAC’s recommendation, with which the SSA agreed, the SSA stated that the SSAC “recommended award to the 14 highest rated proposals in the non-price factors, as identified above, because the technical merit of those proposals justifies paying a price premium over lower-rated, lower-priced proposals.” Id. at 16. With respect to making any “additional awards,” the SSA concluded that the remaining 21 proposals “do not have sufficient technical merit.” Id.

Notice of Award, Debriefing, and Protest

On June 14, the agency provided notice to all unsuccessful offerors, including Novetta. AR, Tab 67, Unsuccessful Offeror Letter (Novetta). Novetta timely requested a debriefing, which the agency provided on June 15. AR, Tab 99, Novetta Debriefing. In its letter, the agency advised Novetta that it could request an enhanced debriefing pursuant to DoD Class Deviation 2018-0011, id. at 3, which Novetta did by submitting additional questions. AR, Tab 103, Enhanced Debriefing Questions from Novetta.

¹⁰ In considering the ratings of the other proposals, the SSAC observed that one of the proposals appeared to be an “anomaly” because, but for its rating of marginal under the innovation factor, it “could have been in line for award” based on the combination of ratings its proposal received under the other non-price factors. AR, Tab 63, SSAC Report, at 12; Tab 65, SSDD, at 14-15. Other than this one proposal, there is no discussion of any other proposal.

¹¹ The SSAC report does not contain any additional analysis, concluding likewise that it “did not identify sufficient technical merit in any other proposals to justify their recommendation for award.” AR, Tab 63, SSAC Report, at 10.

The agency responded to the questions on June 25. AR, Tab 107, Agency Response to Enhanced Debriefing Questions. This protest followed on June 29.

DISCUSSION

Novetta raises five primary grounds of protest: (1) the agency unreasonably and unequally evaluated Novetta's proposal under the innovation factor; (2) the agency unreasonably and unequally evaluated Novetta's proposal under the problem statements factor; (3) the agency failed to address a latent ambiguity in the RFP's requirements; (4) the agency improperly failed to conduct discussions; and (5) the agency failed to perform a reasonable best-value tradeoff analysis. For the reasons discussed below, we sustain protest grounds 1 and 5; we deny protest grounds 2 and 4; and we dismiss protest ground 3.¹²

Innovation Factor

Novetta argues that the agency unreasonably evaluated its technical proposal under the innovation factor (factor 1) because the SSEB removed two strengths originally assigned by the TEB to its proposal.¹³ Protest at 14-17, 19-21; Comments at 9-14. Novetta also argues that DISA evaluated offerors unequally under this factor. Comments at 2-8; Supp. Comments at 3-8. Specifically, Novetta claims that its proposal should have received additional strengths because it proposed capabilities comparable to those for which various other offerors received strengths. We sustain Novetta's challenge to the removal of one of the strengths originally assigned by the TEB. We deny the remainder of Novetta's challenges to the agency's evaluation under this factor.

Removal of First Strength

Novetta claims that that SSEB's decision to remove the two strengths assigned to its proposal by the TEB was unreasonable and not meaningfully explained. See Protest at 14-17, 19-21. Regarding the first strength, the RFP required offerors to "[d]escribe how the company's core competency of Innovation significantly aligns with DISA's mission needs and requirements." AR, Tab 5, RFP Amend. 4, at 40 (Section L.4.2.3.1, bullet 2).

¹² Novetta raises other collateral arguments. We have reviewed these arguments and find that none provides a basis to sustain the protest. For instance, Novetta claims that its response to problem statement 2 was evaluated unequally. On the record before us, we conclude that the differences in the agency's assessment of proposals reasonably stemmed from differences in the proposals themselves and were not the product of unequal treatment. Thus, we deny this protest ground.

¹³ In its protest, Novetta also objected to the SSEB's decision to combine two strengths. Protest at 17-19. Based upon its review of the record, Novetta withdrew its objection. Comments at 9 n.2.

The TEB assigned a strength to Novetta's proposal for providing detailed descriptions of innovative projects that Novetta had undertaken in connection with [DELETED] DISA mission need areas. AR, Tab 62, SSEB Report, at 141. The strength read as follows:

1) L.4.2.3.1 Corporate Philosophy/Culture on Innovation.

The Offeror provides detailed descriptions of innovative projects for each of [DELETED] defined DISA mission need areas, including support for "[DELETED]," similar to the acquisition structure and complex problem domains of SETI. . . . Their demonstration of experience in [DELETED] of the 21 DISA mission areas increases the probability of success on future SETI task performance.

Id. The SSEB removed this strength, stating that it "did not agree that this was an aspect of the Offeror's proposal that had merit or exceeded specified performance or capability requirements in a way that will be advantageous to the Government during contract performance." Id. at 142. Novetta argues that SSEB's conclusion in this respect was unreasonable and not meaningfully explained.¹⁴ Protest at 16.

In response, the agency states that the SSEB reasonably exercised its discretion and determined that this aspect of Novetta's proposal merely met the requirements of the solicitation, but did not exceed them. MOL/COS at 38-39. In this regard, the agency represents that, in removing the strength, the SSEB applied the definition of a "strength" included in the DoD Source Selection Procedures, dated April 1, 2016.¹⁵ MOL/COS at 38.

It is well-established that the evaluation of proposals is a matter within the discretion of the contracting agency. Vectrus Sys. Corp., B-412581.3 et al., Dec. 21, 2016,

¹⁴ In arguing that the TEB's assignment of a strength was proper, Novetta points to aspects of its proposal that provided "highly relevant and unique illustrations of innovation on [DELETED], that will increase the probability of success in performing SETI task orders." Protest at 15. Novetta also argues that the assignment of a strength was consistent with the RFP, which provided that proposals would be evaluated more favorably and achieve higher ratings for demonstrating, inter alia: (a) "continuous investment in Innovation through evidence of sustained, year-after-year investment in technologies and innovative ways to develop new capability, improve service, reduce costs and create efficiencies" and (b) "[v]alidated processes and procedures that demonstrate useful metrics and achieved results based on innovative processes." Protest at 16 (quoting AR, Tab 5, RFP Amend. 4, at 52).

¹⁵ The agency also alleges that the SSEB removed similar strengths assigned by the TEB under this section of the RFP to other offerors' proposals. MOL/COS at 26, 38. This fact has no bearing on our decision here. Even assuming for the sake of argument that the strengths are comparable to the one assigned by the TEB to Novetta's proposal, this does not demonstrate that any of the strengths were unwarranted.

2017 CPD ¶ 10 at 3. An offeror's disagreement with an agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. Id. In reviewing an agency's evaluation, we will not substitute our judgment for that of the agency, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria and with procurement statements and regulations. MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4-5.

Although evaluators may reasonably disagree with the ratings and recommendations of lower-level evaluators, they are nonetheless bound by the fundamental requirement that their independent judgments must be reasonable, consistent with the provisions of the solicitation, and adequately documented. Immersion Consulting, LLC, B-415155, B-415155.2, Dec. 4, 2017, 2017 CPD ¶ 373 at 5; CLS Worldwide Support Servs., LLC, B-405298.2 et al., Sept. 11, 2012, 2012 CPD ¶ 257 at 7. On this record, we cannot conclude that it was reasonable for the SSEB to remove this strength.

The TEB's comments were specific and, importantly, identified the impact of Novetta's experience on contract performance. Specifically, the TEB assessed a strength explaining that Novetta provided "detailed descriptions" of innovative projects related to [DELETED] DISA mission need areas. AR, Tab 62, SSEB Report, at 141. The TEB found that these projects were "similar to the acquisition structure and complex problem domains of SETI" and, therefore, "increase[] the probability of success on future SETI task performance." Id. In this respect, the TEB's comments demonstrate that it believed the proposal exceeded the RFP's requirement in that Novetta's innovative projects not only align with DISA's mission needs, but also are particularly beneficial in the context of the SETI procurement.

In disagreeing with the TEB, the SSEB did not explain how it reached its conclusion to remove the strength; rather, it simply restated verbatim the definition of a strength and concluded that this aspect of the proposal did not meet that definition. See AR, Tab 62, SSEB Report, at 142. As the agency represents, the SSEB relied upon the definition of a "strength" as set forth in the DoD Source Selection Procedures. MOL/COS at 38. This internal agency guidance provides that a "[s]trength is an aspect of an offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance." DoD Source Selection Procedures, Apr. 1, 2016, at 40, available at <https://www.acq.osd.mil/dpap/policy/policyvault/USA004370-14-DPAP.pdf> (last visited Oct. 9, 2018). Accordingly, the SSEB's rationale for removing the strength was simply that the SSEB "did not agree that this was [a strength]."¹⁶ AR, Tab 62, SSEB Report, at 142.

¹⁶ The SSEB does not explain why it disagrees with the TEB's conclusion that this aspect of the Novetta's proposal demonstrates an increased probability of successful performance on future SETI task orders. Nor do the agency's protest filings provide any further insight. See MOL/COS at 26, 38-39.

Having failed to document any rationale for its removal of this strength, we cannot conclude that the agency's evaluation in this regard was reasonable. The Arcanum Grp., Inc., B-413682.2, B-413682.3, Mar. 29, 2017, 2017 CPD ¶ 270 at 8 (removal of weakness unreasonable where the SSA concluded that the findings did not meet the definition of weakness but did not explain how she reached her conclusions); Immersion Consulting, LLC, *supra*, at 6 (removal of strength unreasonable where SSA's rationale was not meaningfully explained in the record and where underlying SSEB's evaluation was specific, identified the impact of the approach, and described how the government would benefit from the approach); IBM U.S. Fed., a division of IBM Corp.; Presidio Networked Solutions, Inc., B-409806 *et al.*, Aug. 15, 2014, 2014 CPD ¶ 241 at 14-16 (SSA's decision to overrule technical board unreasonable where contemporaneous documentation evidences the SSA's conclusion but fails to explain why he disagreed with the substance of the board's findings). We therefore sustain Novetta's challenge to this aspect of the evaluation.

Removal of Second Strength

Novetta claims that that SSEB's decision to remove a second strength was also unreasonable and not meaningfully explained. *See* Protest at 19-21. Regarding this strength, the RFP required offerors to describe "[p]articipation and contributions within various standards making bodies to include how these initiatives have been implemented within various large scale organizations." AR, Tab 5, RFP Amend. 4, at 42 (Section L.4.2.3.4, bullet 3). The TEB assigned a strength to Novetta's proposal for its significant technical role in [DELETED]. AR, Tab 62, SSEB Report, at 141. The SSEB removed this strength, stating that it "did not feel that the Offeror's response regarding their significant technical role in [DELETED] was an aspect of the proposal that had merit or exceeded specified performance or capability requirements." *Id.* at 142. Novetta argues that SSEB's conclusion in this respect was unreasonable and not meaningfully explained.

On the record before us, we conclude that the contemporaneous documentation does not contain any explanation of the SSEB's decision. Following the submission of the protest, however, the agency supplied further explanation for the SSEB's decision. MOL/COS at 41-42. The agency explains that the SSEB concluded that Novetta's proposal did not merit a strength for its participation in [DELETED] because Novetta does not [DELETED] nor do they participate in [DELETED]. *Id.* at 42; Supp. MOL/COS at 5. Rather, Novetta holds leadership positions within [DELETED]. MOL/COS at 42 (*citing* AR, Tab 62, SSEB Report, at 141-42). Because the RFP asked offerors to describe participation in "various standards making bodies," the agency contends it was reasonable for the SSEB to remove the strength and conclude that Novetta's participation in a limited number of [DELETED] standards making bodies was merely responsive to the RFP without exceeding the stated requirement. *Id.*

We find the agency's post-protest explanations to be credible and consistent with the contemporaneous record.¹⁷ Here, the record shows that proposals that were assigned strengths under this RFP requirement demonstrated either that the offeror served in leadership positions within multiple standards making bodies or that they participated in a wide-breath of standards making bodies.¹⁸ AR, Tab 62, SSEB Report, at 32, 40, 106, 195. Accordingly, we find no basis to object to the SSEB's removal of this strength.

Unequal Treatment

Novetta also contends that DISA evaluated offerors unequally under the innovation factor. Specifically, Novetta claims that its proposal should have received additional strengths because it proposed capabilities comparable to those for which various other offerors received strengths. Comments at 2-8.

It is a fundamental principle of government procurement that agencies must treat offerors equally, which means, among other things, that they must evaluate proposals in an even-handed manner. SRA Int'l, Inc., B-408624, B-408624.2, Nov. 25, 2013, 2013 CPD ¶ 275 at 10. Where a protester alleges unequal treatment in an evaluation, we will review the record to determine whether the differences in ratings reasonably stem from differences in the proposals. See SURVICE Eng'g Co., LLC, *supra*, at 9; Exelis Sys. Corp., B-407111 *et al.*, Nov. 13, 2012, 2012 CPD ¶ 340 at 20-21. Here, we find that the agency has provided reasonable explanations demonstrating that differences in the evaluators' findings were based on meaningful differences between the proposals. See Supp. MOL/COS at 4-5. Thus, we deny this ground.

¹⁷ Where, as here, the agency offers post-protest explanations that provide a detailed rationale for contemporaneous conclusions and simply fill in previously unrecorded details, such explanations will generally be considered in our review of the rationality of selection decisions, so long as those explanations are credible and consistent with the contemporaneous record. Tantara Corp., B-416003.2, May 23, 2018, 2018 CPD ¶ 193 at 6 n.3.

¹⁸ Novetta challenges the agency's conclusion with the respect to one of the awardees, contending that Novetta's participation in standards making bodies is not substantively different from that awardee's participation. Comments at 14. The agency correctly notes, however, that there is a meaningful difference in the proposals. See MOL/COS at 6. Whereas Novetta has leadership roles in [DELETED] standards making bodies, AR, Tab 22, Novetta Proposal, Vol. 2, Tab C, at 2-19, the awardee has leadership roles in [DELETED] different bodies. AR, Tab 62, SSEB Report, at 32. Moreover, the awardee received an award for its work and, in the words of the TEB, the awardee plays a "high profile, highly successful role" in driving innovation-related changes that demonstrates it is an industry leader. Id. Here, we think that the record reasonably demonstrates that the evaluation findings are the result of differences in the offerors' proposals. See SURVICE Eng'g Co., LLC, B-414519, July 5, 2017, 2017 CPD ¶ 237 at 9.

Novetta claims it should have received strengths for: (1) [DELETED] similar to those [DELETED] by [DELETED];¹⁹ (2) partnering with innovative companies as Accenture claims;²⁰ and (3) receiving awards for innovation as Vencore claims.²¹ Comments at 4-8. Although we do not discuss the proposals of [DELETED], Accenture, Vencore, or Novetta in great detail here, we have reviewed the agency's evaluation and conclude that it was reasonable.

Regarding [DELETED], the record demonstrates that, although Novetta's proposal indicated that it [DELETED], as well as supports a program to foster and reward innovation, *i.e.*, [DELETED], AR, Tab 22, Novetta Proposal, Vol. 2, Tab C, at 2-5, [DELETED] received strengths for [DELETED] multiple [DELETED], and for supporting multiple programs that foster and reward innovation. AR, Tab 62, SSEB Report, at 11-12, 66; Tab 8, [DELETED] Proposal, Vol. 2, Tab C, at C-3; Tab 12, [DELETED] Proposal, Vol. 2, Tab C, at C-5, C-6, C-8, C-16. Accordingly, the record demonstrates substantive differences in the proposals.

Regarding partnerships with innovative companies, Novetta's proposal includes a table listing partnerships with [DELETED] companies and provides a relatively general discussion of its relationships with these companies. AR, Tab 22, Novetta Proposal, Vol. 2, Tab C, at 2-6. By contrast, Accenture's proposal shows partnerships with [DELETED] companies and provides substantially greater detail regarding [DELETED] of its partnerships, explaining [DELETED]. AR, Tab 8, Accenture Proposal, Vol. 2, Tab C, at C-4. Thus, here too, we conclude that the record demonstrates substantive differences in the proposals.

Finally, regarding awards for innovation, although the record shows that Novetta received more awards than Vencore, Novetta failed to describe the awards, as required by the RFP, and, therefore, the agency reasonably concluded that the proposal lacked detail regarding how the awards were relevant to innovation and how the awards would benefit the government in the performance of the SETI procurement. Supp. MOL/COS at 5. See AR, Tab 22, Novetta Proposal, Vol. 2, Tab C, at 2-20; Tab 20, Vencore Proposal, Vol. 2, Tab C, at C-18, C-19. Accordingly, we conclude that the differences in

¹⁹ Bullet 4 of section L.4.2.3.1 (Corporate Philosophy/Culture on Innovation) required, in relevant part, that offerors "[d]escribe the company's culture regarding employee's pursuit of Innovation and how they are rewarded for doing so." AR, Tab 5, RFP Amend. 4, at 41.

²⁰ Bullet 5 of section L.4.2.3.1 (Corporate Philosophy/Culture on Innovation) required, in relevant part, that offerors "[d]escribe the company's partnerships/relationships with SETI-relevant innovators that align with [performance work statement] task areas[.]" AR, Tab 5, RFP Amend. 4, at 41.

²¹ Bullet 1 of section L.4.2.3.5 (Certifications, Accreditations, Awards, Achievements, Patents) required that offerors "[l]ist and describe Awards and Achievements received that were awarded because of Innovation." AR, Tab 5, RFP Amend. 4, at 42.

the agency's assessment of proposals here reasonably stems from differences in the proposals themselves and are not the product of unequal treatment. Thus, we deny this protest ground.

Problem Statements Factor

Novetta argues that the agency unreasonably assigned a weakness to Novetta's response to problem statement 1. Protest at 24-27; Comments at 21-24; Supp. Comments at 18-19. Novetta also argues that DISA evaluated offerors' responses unequally under problem statement 1. Comments at 15-21; Supp. Comments at 10-18, 19-25. Although we conclude that the agency unreasonably assigned a weakness to Novetta's proposal under this factor, there is no evidence that the protester was prejudiced by this error. Accordingly, we deny this ground and the remaining grounds raised by Novetta under this factor.

Weakness under Problem Statement 1

Novetta claims that the weakness assigned to its proposal under problem statement 1 is based upon an unreasonable reading of its proposal. Protest at 24. We agree, but conclude that Novetta was not prejudice by the error.

In crafting a response to problem statement 1, the RFP required offerors to "[i]nclude a discussion on the potential high-risk features of the work that may adversely impact the completion date and the Offeror's plan to mitigate these risks." AR, Tab 5, RFP Amend. 4, at 45. In its proposal, Novetta included a table with two columns. AR, Tab 22, Novetta Proposal, Vol 2, Tab E-1, at 2-14, 2-15. In the first column, Novetta identified a series of risks for the problem statement; and, in the second column, Novetta enumerated a series of associated mitigation strategies to achieve "mitigation for low risk." Id. The table included [DELETED] entries of risks and associated mitigation strategies. Below is an excerpt from the proposal:

2.5.1.7 Potential Risks

Our team is well-equipped to perform risk assessment activities for [the solution]. Below are the risks identified for this Problem Statement task with associated mitigations.

Risk	Mitigation for Low Risk

Id.

As reflected in the weakness, the agency interpreted the table as identifying only “low risk” items that would be mitigated. The SSEB report provides as follows:

1) L.4.2.5.1 Problem Statement Narrative:

On Page 2-14, in Section 2.5.1.7, Figure 31, the title of Figure 31 states “Low Risks.” The Offeror identified only low risk items. The Offeror failed to identify high risk features and plans to mitigate these risks. The failure to address high risk features raises the risk of failure to be innovative because innovations typically involve some high risks and a failure to recognize these risks and to plan a mitigation strategy has the potential to increase[] costs and to impact completion dates of future SETI task orders.

AR, Tab 62, SSEB Report, at 143.

Novetta argues that the only reasonable interpretation of its proposal is that it “identified a series of risks, and for each risk, specified the mitigation actions that would be implemented to achieve a state of low risk.” Protest at 26. Novetta argues that the agency “blatantly misread the proposal.” Comments at 22. The agency responds that, “[i]f this was Novetta’s intent, it did not come across clearly to the TEB, which reasonably interpreted figure 31 as a list of low risks and the mitigations to be applied to those low risks.” MOL/COS at 43.

In its comments, Novetta correctly asserts that two awardees included nearly identical tables and, yet, were not assigned any weaknesses. Comments at 24. In this regard, excerpts from these proposals show the following headings were used:

ID	Risk Category	Mitigation Strategies

AR, Tab 17, [DELETED] Proposal, Vol. 2, Tab E, at 14.

Risk	Mitigation

AR, Tab 19, [DELETED] Proposal, Vol. 2, Tab E, at II-E-14.

We agree that the agency’s interpretation of the table is unreasonable when read in context. Moreover, we find that the agency has engaged in unequal treatment in assigning a weakness to Novetta’s proposal for its alleged failure to address high risk weaknesses in its table, while not assigning similar weaknesses to the proposals of two awardees who included nearly identical tables. In any event, we find that the protester was not prejudiced by any alleged evaluation errors in this regard.

Despite initial findings by the TEB that the weakness could adversely impact contract performance, see AR, Tab 62, SSEB Report, at 143 (“risk of failure to be innovative”

and “potential to increase[] costs and to impact completion dates of future SETI task orders”), the SSEB ultimately concluded that the weakness “will have little or no impact on Contract performance,” and assigned a rating of acceptable to the proposal. Id. Accordingly, we conclude that Novetta has not been prejudiced by the agency’s assignment of this weakness. Competitive prejudice is an essential element of every viable protest; where, as here, the record establishes no reasonable possibility of prejudice, we will not sustain a protest even if a defect in the procurement is found. See Procentrix, Inc., B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 11-12. Accordingly, we deny Novetta’s challenge to the weakness assigned under this subfactor. That said, in light of the grounds we sustain here, the agency may want to consider removing this weaknesses as part of any corrective action it takes.

Unequal Treatment under Problem Statement 1

Novetta also alleges that its proposal should have received a strength for its response to problem statement 1 based on strengths that DISA assigned to other offerors’ proposals. Comments at 16-21; Supp. Comments at 10-18. Here, too, we conclude that differences in the agency’s assessment of proposals are the result of differences in the proposals themselves and are not the product of unequal treatment. Thus, we deny this protest ground.

Novetta claims it should have received strengths for: (1) proposing a “[DELETED]” similar to that proposed by [DELETED];²² (2) proposing [DELETED] similar to that proposed by [DELETED]; and (3) proposing [DELETED] similar to that proposed by [DELETED] and an unsuccessful offeror (hereinafter Offeror A). Although we do not discuss the proposals of [DELETED], [DELETED], [DELETED], Offeror A, or Novetta in great detail here, we have reviewed the agency’s evaluation and conclude that it was reasonable.

Generally, the agency explains that the problem statements were intended to be “highly complex and technical to ‘give the Government insights into each offeror’s ability to meet DISA requirements in numerous and diverse technical areas and into each offeror’s problem solving methodologies.’” Supp. MOL/COS at 7 (quoting AR, Tab 5, RFP Amend. 4, at 44). To aid the agency in evaluating responses, the RFP instructed offerors to describe “as specifically as possible the actual methodology to be used for accomplishing [or] satisfying these requirements.” Id. In explaining its evaluation process, the agency represents that, although “many offerors used the same technical jargon, only the offerors that went into detail describing their actual methodology received strengths under the Problem Statements Factor.” Id. With respect to Novetta’s proposal, the agency asserts that the proposal met the requirements, but did not propose solutions that were sufficiently innovative or detailed to earn strengths. Id.

²² [DELETED] may have received a significant strength for this aspect of its solution. See AR, Tab 62, SSEB Report, at 35 (stating that its proposed “[DELETED]” demonstrated a “significant strength”). The record is not clear in this regard.

Regarding [DELETED], the record shows that [DELETED] was just one aspect of the strength assigned to [DELETED]'s proposal. AR, Tab 62, SSEB Report, at 35. [DELETED] received a strength for proposing [DELETED] and [DELETED] was noted as one example of the awardee's innovative [DELETED]. Id. To the extent Novetta believes that [DELETED] was (or should be) the principal basis for this strength, see Supp. Comments at 11, such arguments are not supported by the record and, instead, evidence disagreement with the agency's judgment. An offeror's disagreement with an agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. Vectrus Sys. Corp., supra.

Regarding [DELETED], the record evidences that [DELETED] described its processes in greater detail. Compare AR, Tab 14, [DELETED] Proposal, Vol. 2, Tab E, at 6-7 with AR, Tab 22, Novetta Proposal, Vol. 2, Tab E-1, at 2-3, 2-7. Although Novetta is correct when it argues that both offerors proposed to [DELETED], Supp. Comments at 13-15, the thrust of the agency's assigned strength does not appear to be related solely to the [DELETED]. See AR, Tab 62, SSEB Report, at 97. In short, we find the agency's statement that "[t]he greater level of detail provided by [DELETED] explains why it received a strength for [DELETED] and [DELETED], and why Novetta did not," Supp. MOL/COS at 8, to be supported by the record and unobjectionable.

Finally, regarding [DELETED], the record reflects that DISA awarded [DELETED] a strength for its [DELETED]. AR, Tab 62, SSEB Report, at 129-30; Supp. MOL/COS at 8. The agency asserts that Novetta proposed an approach to make [DELETED], but its approach did not pertain to systems integration. Supp. MOL/COS at 8. Although Novetta disagrees with the agency's conclusion, arguing that its [DELETED] is highly relevant to system integration, Supp. Comments at 17, the protester's disagreement, without more, does not provide a basis upon which to sustain the protest.

Regarding any similarities between the proposals of Offeror A and Novetta in terms of [DELETED], the record reflects that DISA awarded Offeror A a strength not only for its [DELETED], but also for its proposed use of [DELETED]. AR, Tab 62, SSEB Report, at 189. The agency contends that Novetta did not include such detail.²³ Supp. MOL/COS at 8. In response, Novetta concedes that it does not propose the same [DELETED]. Supp. Comments at 18. Instead, its [DELETED] was based on its [DELETED], which the protester claims provides the same benefits. Here, despite Novetta's claim that the agency should have determined its design to be equally

²³ Alternatively, DISA argues that, even assuming for the sake of argument that Novetta is correct regarding its allegations of unequal treatment vis-à-vis an unsuccessful offeror, the agency's remedy would be to remove the strength assigned to the unsuccessful offeror's proposal. Supp. MOL/COS at 8 n.1. We agree that such action would be logical if DISA had contended that it erroneously assigned the strength. Here, however, DISA does not claim that the strength assigned to Offeror A's proposal was assigned in error.

beneficial, the agency did not agree. We will not substitute our judgment for that of the agency in this regard.

For the foregoing reasons, we conclude that the strengths assigned to the awardees' and Offeror A's proposals were the result of differences in the proposals themselves and not the product of unequal treatment. Thus, we deny this protest ground.

Latent Ambiguity Regarding Pricing

Novetta alleges that the RFP contained a latent ambiguity that prevented offerors from competing on an equal basis. Protest at 5, 31-33. Specifically, Novetta points to the wide variance in proposed prices²⁴ and claims that “[t]he only reasonable interpretation for the gulf between the [] prices is a materially different interpretation and understanding of the scope and complexity of the work to be performed, or the requisite labor categories and skills required by the Solicitation.” *Id.* at 31, 35. In this respect, Novetta claims that had it “been allowed to submit a proposal based on the same understanding of the Solicitation held by many of the awardees regarding those acceptable skillsets, Novetta would have drastically reduced its proposed price.” *Id.* at 5, 35. We dismiss this ground because it fails to state a legally sufficient basis of protest. 4 C.F.R. §§ 21.1(c)(4), (f); 21.5(f).

The protester primarily relies upon our Office's decisions in IBM-U.S. Fed., B-407073.3 *et al.*, June 6, 2013, 2013 CPD ¶ 142, US Sprint Commc'ns Co. Ltd. P'ship, B-243767, Aug. 27, 1991, 91-2 CPD ¶ 201, Baytex Marine Commc'ns, Inc., B 237183, Feb. 8, 1990, 90-1 CPD ¶ 164, and MSI, Division of the Bionetics Corp., B-233090, Feb. 22, 1989, 89-1 CPD ¶ 185, to assert that the agency was obligated to “clarify” its requirements once it became clear that offerors lacked a common understanding of the solicitation requirements. Protest at 31-32. In those cases, however, the lack of a common understanding could be traced to unclear or latently ambiguous requirements found within the solicitation, which resulted in offerors proposing differing products or solutions. See Centerra Grp., LLC, B-414768, B-414768.2, Sept. 11, 2017, 2017 CPD ¶ 284 at 5-6 (summarizing our decisions in US Sprint Commc'ns Co. Ltd. P'ship and Baytex Marine Commc'n, Inc.).

²⁴ The record reflects a wide variance among total evaluated prices and labor rates. For instance, Novetta, the [DELETED], proposed a total price that was more than two and a half times higher than the price of the lowest-priced offeror. The proposed total evaluated prices of the awardees contain a similarly wide variance with the highest-priced awardee proposing a price that is more than double the price of the lowest-priced awardee. Novetta also points out divergent pricing in the fully burdened labor rates, including labor rates that are 50 percent higher in some cases. Comments at 34.

Novetta, however, fails to make the threshold showing required to prevail on this allegation. For an ambiguity to exist, there must be two or more reasonable interpretations of a term. ACADEMI Training Ctr., LLC dba Constellis, B-415416, Dec. 18, 2017, 2018 CPD ¶ 3 at 5. Apart from general statements that offerors must possess different assumptions about the scope of work, requisite labor categories, and skills required, see Protest at 31, 33, Novetta does not identify any RFP requirements that were ambiguous or unclear.²⁵ Absent such a threshold showing, we conclude that this protest ground fails to state a legally sufficient basis of protest. 4 C.F.R. §§ 21.1(c)(4), (f); 21.5(f); Team People LLC, B-414434, B-414434.2, June 14, 2017, 2017 CPD ¶ 190 at 5 n.6; The Gerard Co., B-242976, Feb. 27, 1991, 91-1 CPD ¶ 240 at 2 (dismissing protest where protester only raised general assertion that the solicitation contained a latent ambiguity without identifying clear evidence that the awardee interpreted the solicitation differently than the protester).

Award without Discussions

Novetta also alleges that the agency abused its discretion by making the award without conducting discussions. Protest at 33-35. Novetta relies upon section 215.306(c) of the DFARS, which provides that “[f]or acquisitions with an estimated value of \$100 million or more, contracting officers should conduct discussions.” Based on this regulation, and the fact that this is a DoD procurement valued over \$100 million, Novetta argues that our Office should review the agency’s decision not to conduct discussions.

We recently had occasion to review the cited DFARS section. In Science Applications Int’l Corp., B-413501, B-413501.2, Nov. 9, 2016, 2016 CPD ¶ 328 (hereinafter “SAIC”), we concluded that the regulation “is reasonably read to mean that discussions are the expected course of action in DoD procurements valued over \$100 million, but that agencies retain the discretion not to conduct discussions if the particular circumstances of the procurement dictate that making an award without discussions is appropriate.” Id. at 9-10. See also McCann-Erickson USA, Inc., B-414787, Sept. 18, 2017, 2017 CPD ¶ 300 at 9 n.10. In SAIC, we further stated that “we see the inquiry here to be whether the record shows, given the particular circumstances of this procurement, that there was a reasonable basis for the agency’s decision not to conduct discussions.” SAIC, supra, at 10. Applying this reasonableness standard, our Office determined that, under the particular circumstances of the procurement in SAIC, the agency’s decision to forego

²⁵ The agency correctly notes that the RFP supplied offerors with the necessary labor categories, descriptions of the labor categories, necessary years of experience and knowledge/skills for each labor category, and the estimated number of labor hours. AR, Tab 1, RFP Attach. 10, SETI Labor Category Descriptions; Tab 4, RFP Amend. 3, Attach. 9, Pricing Spreadsheet. Accordingly, the only pricing information supplied by the offerors was direct labor rates and indirect rates, to include profit/fee. AR, Tab 5, RFP Amend. 4, at 48. For this reason, the agency argues that the disparity in prices reflects different business judgments regarding how to price fully burdened labor rates. MOL/COS at 46.

discussions was reasonable where: (1) the awardee had received a higher technical score under virtually all evaluation factors; (2) the awardee's price was reasonable; and (3) the protester's proposal contained deficiencies. Id. at 10-11.

Novetta contends that our Office adopted a three-part test based on the factors above and that such a test must be met before an agency may dispense with discussions in a DoD procurement valued over \$100 million. Protest at 33-34. Although we concluded in SAIC that these factors were sufficient to dispense with discussions, we did not find that these factors were necessary to award without discussions. An agency's decision to award without discussions could be reasonable under other fact patterns as well. As a result, our decision in SAIC is not properly read to mean that those three factors are the only factors a DoD agency can consider when deciding to award without discussions within the meaning of this DFARS clause. We therefore reject Novetta's argument that the factors discussed by our Office in SAIC are necessary in order for DISA to award without discussions here.

The agency explains that it elected to award without discussions because: (1) offerors were on notice that the agency intended to make awards without discussions; (2) the initial proposals demonstrated clear technical advantages and disadvantages to differentiate among the offerors; and (3) the initial proposals demonstrate significant technical merit at fair and reasonable prices.²⁶ AR, Tab 64, Discussions MFR, at 1-3. We find that Novetta has not provided a sufficient basis to warrant sustaining its protest of the agency's decision not to conduct discussions.

Best-Value Tradeoff Analysis

Finally, Novetta challenges the agency's tradeoff analysis. Novetta asserts that the SSA engaged in a mechanical tradeoff analysis that failed to look behind the ratings when determining which proposals represented the best value to the government. In particular, Novetta argues that the SSA failed to consider whether Novetta's strength under the most important factor, innovation, rendered its proposal higher rated than the proposals of awardees who had no strengths under Factor 1, but who had strengths under one or more sub-factors within the RFP's third most important factor, the problem statements factor. Comments at 39.

²⁶ Novetta asserts that, even if the agency determined that the proposed prices were reasonable, the gulf between the "price proposals is staggering and should have led the Agency to conduct discussions." Protest at 35. The protester further asserts that, through discussions, it could have lowered its price. Id. Unless an offeror's proposed price is so high as to be unreasonable or unacceptable, an agency is not required to inform an offeror during discussions that its proposed price is high in comparison to a competitor's proposed price, even where price is the determinative factor for award. Centerra Grp., LLC, supra, at 6. Thus, the agency would not have been required to discuss Novetta's comparatively high price with the firm. Id.

For instance, Novetta points out that Deloitte had no strengths under the most important factor, innovation, whereas Novetta had one strength (and possibly two depending on the results of the corrective action we recommend here). Comments at 40. Both offerors received the same rating of substantial confidence under the past performance factor. Under the problem statements factor, both offerors received the same rating of acceptable for problem statement 1 and were assigned no strengths or weaknesses. Deloitte, however, received a rating of good under problem statement 2 for its two assigned strengths; Novetta had no strengths and was assigned a rating of acceptable. As a result of these findings, Novetta challenges the SSA's conclusion that Deloitte was higher-rated, arguing that the SSA never considered whether Novetta's strength(s) under the more important factor outweighed Deloitte's two strengths under one sub-factor of factor 3.²⁷ Id.

As a general matter, source selection officials enjoy broad discretion in making tradeoffs between the comparative merits of competing proposals in a best-value evaluation scheme; such tradeoffs are governed only by the test of rationality and consistency with the solicitation's evaluation criteria. Coastal Int'l Sec., Inc., B-411756; B-411756.2, Oct. 19, 2015, 2015 CPD ¶ 340 at 14. In a best-value procurement, it is the function of the source selection authority to perform a tradeoff between cost and non-cost factors, that is, to determine whether one proposal's superiority under the non-cost factor is worth a higher cost. Id.

When proposals are compared for purposes of a best-value tradeoff decision, the number of identified strengths is not dispositive; rather, it is the qualitative information underlying the ratings that the source selection authority should consider in assessing whether and to what extent meaningful differences exist between proposals. National Gov't Servs., Inc., B-412142, Dec. 30, 2015, 2016 CPD ¶ 8 at 18-19. The propriety of a price/technical tradeoff decision does not turn on the difference in the technical scores or ratings per se, but on whether the selection official's judgment concerning the significance of the difference was reasonable and adequately justified in light of the RFP's evaluation scheme. Id.

Here, the agency notes that the SSA reviewed the SSEB report, which documented each strength assigned under each factor, as well as the SSEB's conclusions as to the value of those strengths to the agency. MOL/COS at 48. Although some of the acceptable proposals were assigned strengths, the SSEB concluded, in every instance, that none of those strengths would have a significant impact on contract performance. See generally, AR, Tab 62, SSEB Report. The SSA documented that he reviewed the

²⁷ Novetta makes a similar argument regarding NES, who received no strengths under the innovation factor, but was rated higher under both problem statements. Comments at 40. We note neither the agency nor Novetta discuss the ratings under the small business participation factor (factor 4). The SSA, however, concluded that this factor was not a major discriminator, AR, Tab 65, SSDD, at 4, and thus, there is very little consideration of this factor in the best-value tradeoff analysis.

SSEB report and stated that he concurred “with the assigned ratings as well as the identified technical advantages and disadvantages underlying those ratings.” AR, Tab 65, SSDD, at 2. Having documented this determination that the offered strengths would have little impact on contract performance, the agency argues that it was reasonable for the SSA to treat the proposals rated as acceptable “as effectively equal in technical merit” under the innovation factor. MOL/COS at 48.

Even were we to conclude that the agency’s post hoc explanation is reasonable and consistent with the record, this does not explain whether and, more importantly, why the SSA concluded that the proposals of offerors with no strengths under the innovation factor, like Deloitte, NES, and others, were essentially equal to proposals, like Novetta’s, that were assigned strengths under this factor. In any event, as explained above, we find the agency’s evaluation of Novetta’s proposal under the innovation factor to be flawed. Any increase in the standing of Novetta’s proposal under this factor could reasonably have impacted its overall technical rating.

Of course, in light of the fact that Novetta proposed the [DELETED] price, we recognize that the agency might ultimately conclude any increase in technical standing is not worth the associated price premium. Under the circumstances here, however, where the record reflects that DISA did not find Novetta’s price to be unreasonably high,²⁸ where DISA made awards at prices only somewhat lower than Novetta’s, and where DISA did not rank the unsuccessful offerors in terms of technical merit, we cannot predict what tradeoff decision DISA would have made, nor can we find that the record establishes no reasonable possibility of prejudice. See Procentrix, Inc., supra, at 11-12. In these circumstances, we resolve doubts regarding competitive prejudice in favor of the protester. AdvanceMed Corp., B-414373, May 25, 2017, 2017 CPD ¶ 160 at 16. Where, as here, the protester has shown a reasonable possibility that it was prejudiced by the agency’s actions, we will sustain its protest. Id. at 16-17.

²⁸ In fact, DISA argues that, “[a]s a result of the selection methodology employed by the SSA, Novetta’s high price was not what precluded it from being selected for award, but rather the fact that Novetta’s technical proposal was not among the most highly rated[.]” MOL/COS at 33. Novetta has shown, however, that the agency’s conclusion regarding which proposals were higher-rated was flawed. Accordingly, after reviewing the underlying strengths, should the agency conclude that Novetta’s proposal was higher rated than the proposals of Deloitte or NES, for example, the agency acknowledges that it is willing to pay, in some cases, a price premium for higher-rated proposals.

RECOMMENDATION

For the reasons discussed above, we conclude that DISA's evaluation under the innovation factor and its best-value tradeoff source selection decision were unreasonable. We further conclude that Novetta was prejudiced by the agency's evaluation. We recommend that DISA reevaluate Novetta's proposal under the innovation factor. In conducting its reevaluation, the agency may also consider removing the weakness assigned to Novetta's proposal under the problem statements factor. Upon completion of its reevaluation, DISA should prepare a new source selection decision with appropriate consideration given to all evaluation factors. We also recommend that the agency reimburse the protester's reasonable costs associated with filing and pursuing its protest, including attorneys' fees. 4 C.F.R. § 21.8(d). The protester's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained in part, denied in part, and dismissed in part.

Thomas H. Armstrong
General Counsel