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## Decision

**Matter of:** Kord Technologies, Inc.

**File:** B-417748.6; B-417748.7; B-417748.8

**Date:** August 11, 2020

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Robert J. Wagman Jr., Esq., Joshua R. Robichaud, Esq., and Ryan M. Eletto, Esq., Bracewell LLP, for the protester.

Major Mark T. Robinson, Brian Chapuran, Esq., and Robert B. Neill, Esq., Department of the Army, for the agency.

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### DIGEST

1. Protest that agency failed to assess multiple strengths to protester's proposal, while unreasonably assessing five weaknesses, is denied where the record shows that the evaluation was reasonable.
  2. Protest that agency should not have evaluated skill mix under a particular technical evaluation factor is denied where the solicitation stated that under this particular evaluation factor, the agency would evaluate the offerors' total resource volumes, which included the proposed skill mix.
  3. Protest that agency failed to conduct meaningful discussions is untimely because protester had all the information it needed to raise this allegation in its initial protest but did not.
  4. Protest that the agency unreasonably evaluated cost realism is denied where protester is unable to demonstrate that the evaluation resulted in competitive prejudice.
  5. Protest that the solicitation should be canceled or amended because the agency's needs have changed is denied where the agency affirmatively states that its needs have not changed and protester has not provided any evidence to refute this statement.
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### DECISION

Kord Technologies, Inc. (Kord), of Huntsville, Alabama, protests its exclusion from the competitive range by the Department of Defense, Missile Defense Agency (MDA),

under request for proposals (RFP) No. HQ0147-18-R-0009, for services to support the MDA's Advanced Research Center (ARC).<sup>1</sup> Kord asserts that the agency failed to assess to its proposal a number of strengths, while unreasonably assessing five weaknesses; improperly evaluated skill mix under one of the technical evaluation factors; failed to conduct meaningful discussions; unreasonably evaluated cost realism; and that the solicitation should be canceled or amended because the agency's needs have materially changed.

We deny the protest.

## BACKGROUND

The agency issued the RFP as a woman-owned small business set-aside on September 10, 2018, seeking management and engineering services for the MDA's ARC facility. Agency Report (AR), Tab 44, RFP § M-1.1; AR, Tab 39, Performance Work Statement (PWS) § 1. The ARC is designed and operated to support MDA's ballistic missile defense system hardware-in-the-loop ground and flight test activities. See PWS § 1. The contractor will be responsible for providing the infrastructure, cybersecurity engineering, and management to support ballistic missile defense system ground and flight test activities, and implement a new continuous integration and continuous agile testing environment. *See id.*

The RFP stated that the agency intended to award a single cost-type contract with a 5-year base period and three 1-year option periods. RFP § M-1.1. Award would be based on a best-value tradeoff determination considering the following factors and subfactors:

<b>Information Management Control Plan</b>
<b>Transition Plan</b> Recruitment On-Board Processing
<b>Past Performance</b>
<b>ARC Technical</b> Network and Schedule Management/Asset Allocation Test Support Cybersecurity Network Design - Task Instructions
<b>Contract and Program Management</b> Program Management Approach Technical Staffing and Recruitment/Retention Approach
<b>Cost and Price</b>

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<sup>1</sup> The Department of the Army has represented MDA throughout this protest.

*Id.* § M-2.1. Under the first three factors, proposals would be evaluated as acceptable or unacceptable. *Id.* § M-2.3.1, M-2.3.2. Under the fourth factor, ARC technical, and fifth factor, contract and program management, proposals would be assigned a qualitative technical rating and a technical risk rating for each of the subfactors.<sup>2</sup> *Id.* § M-2.3.4. Ratings would not be assigned at the factor level. *Id.* § M-2.1.

The RFP explained that the “technical rating reflects the degree to which the proposed approach meets or does not meet the minimum performance or capability requirements through an assessment of the strengths, weaknesses, significant weaknesses, and deficiencies.” *Id.* § M-2.3.3. As relevant to this protest, a strength was defined as “[a]n 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 [g]overnment during contract performance.” *Id.* A weakness was defined as “[a] flaw in the proposal that increases the risk of unsuccessful contract performance.” *Id.*

The RFP contained a cross reference matrix that identified for each subfactor specific corresponding sections of the PWS and cross references to RFP sections L and M. Section L instructed offerors on what to address in their proposals and section M identified the criteria for the evaluation factors and subfactors. AR, Tab 43, RFP § L-6.2. For example, the matrix showed that PWS sections 4.3, 4.1.1b, 4.5k, and 4.6 corresponded to the network and schedule management/asset allocation subfactor.<sup>3</sup> *Id.* The RFP instructed offerors to “cross reference their proposal to the PWS and Sections L and M” as identified in the matrix. *Id.*

As relevant here, the RFP stated that the agency would evaluate the offeror’s proposed approach to specific activities that were identified for each subfactor under the ARC technical factor, and the contract and program management factor. *Id.* §§ M-6.0, 7.0. For example, under the network and schedule management/asset allocation subfactor of the ARC technical factor, the RFP stated that the agency would evaluate the offeror’s proposed approach to four specific activities, including “[e]xecute help desk functions as a method of ensuring configuration control, test asset management/metrics, and incident recovery.” *Id.* § M-6.1(a). Under the program management approach subfactor of the contract and program management factor, the RFP explained that the agency would evaluate the offeror’s approach to five activities, including managing cost, schedule, and technical performance, and processes for tracking status and prioritizing tasks.<sup>4</sup> *Id.* § M-7.1.

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<sup>2</sup> The technical ratings were, from highest to lowest, blue-outstanding, purple-good, green-acceptable, yellow-marginal, and red-unacceptable; the technical risk ratings were, from highest to lowest, low, moderate, high, and unacceptable. RFP § M-2.3.4.

<sup>3</sup> The related RFP sections for this subfactor were L-10.1 and M-6.1. RFP § L-6.2.

<sup>4</sup> The specific activities listed for each subfactor generally tracked to the requirements of the corresponding PWS sections identified in the cross reference matrix.

Offerors also had to submit a total resources volume, to include a basis of estimate narrative that explained its proposed labor, the methodology for developing the basis of estimate, and the skill mix required for performing the work. *Id.* § L-13.0. In particular, the RFP instructed offerors to “identify the labor skill mix required to accomplish the requirement.” *Id.* The RFP explained that under the evaluation of the ARC technical factor, the “total resource volume will be used to ensure the offeror has a clear understanding of the work to be accomplished” and that the offeror’s approach is “accurately reflected in the [t]otal [r]esource [v]olume.” RFP § M-6.0.

Four offerors, including Kord, submitted proposals. Contracting Officer’s Statement (COS) at 4. On June 6, 2019, the agency informed Kord that award had been made to DTechLogic. On July 8, Kord protested that award to our Office. We subsequently dismissed Kord’s protest after the agency notified our Office that it intended to take corrective action. *Kord Techs., Inc.*, B-417748, B-417748.2, Aug. 15, 2019 (unpublished decision). On October 30, 2019, the agency sent a letter to all offerors requesting that they either submit a final proposal revision (FPR) or confirm that no changes were required to the FPR submitted prior to the initial award to DTechLogic. AR, Tab 55, Req. for FPR. Kord timely submitted an FPR on November 18.

On January 16, 2020, the agency notified Kord that it had been excluded from the competitive range because its proposal was not among the most highly rated. AR, Tab 65, Notice of Exclusion from the Competitive Range. Kord received its debriefing from the agency on April 22, 2020, and subsequently filed a protest with our Office.<sup>5</sup>

## DISCUSSION

Kord raises multiple challenges to the agency’s evaluation. Kord contends that under the ARC technical and contract and program management factors, the agency failed to assess numerous strengths to various aspects of its proposal; unreasonably assessed five weaknesses; and improperly evaluated skill mix under the ARC technical factor. In addition, Kord maintains that the agency failed to conduct meaningful discussions when it assessed a weakness for an aspect of Kord’s November 2019 FPR that had not changed from its initial proposal, which was not assessed any weakness for this aspect. Kord also claims that the agency conducted an unreasonable cost realism evaluation. Finally, Kord asserts that the solicitation should either be cancelled or amended

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<sup>5</sup> Prior to receiving its debriefing, Kord filed a protest on January 24, 2020, in which it argued that the scope of the agency’s corrective action failed to adequately remedy the issues raised in Kord’s initial protest. We dismissed this protest because we concluded that it was, in essence, a premature challenge to the technical evaluation of Kord’s November 2019 FPR that the agency conducted as part of its corrective action. *Kord Techs., Inc.*, B-417748.5, Apr. 17, 2020, 2020 CPD ¶ 158.

because it no longer reflects the agency's needs. As explained below, we conclude that none of Kord's arguments provide a basis to sustain this protest.<sup>6</sup>

### The Agency's Evaluation of Kord's Proposal

The agency evaluated Kord's proposal and documented its findings regarding whether Kord met the evaluation criteria, and the strengths and weaknesses assessed to Kord's proposal. See AR, Tab 63, Competitive Range Briefing (CRB). As relevant here, the following chart shows the final technical and risk ratings assigned to Kord's proposal under the ARC technical and contract program and management factors:

<b>Factor/Subfactor</b>	<b>Rating</b>	<b>Risk</b>
<b>ARC Technical</b>		
Network and Schedule Management/Asset Allocation	Marginal	Moderate
Test Support	Acceptable	Low
Cybersecurity	Marginal	Moderate
Network Design - Task Instructions	Acceptable	Low
<b>Contract and Program Management</b>		
Program Management Approach	Good	Low
Technical Staffing and Recruitment/Retention Approach	Acceptable	Low

AR, Tab 63, CRB at 34.

The agency assessed two weaknesses each under the network and schedule management/asset allocation and cybersecurity subfactors, and one weakness under the test support subfactor.<sup>7</sup> *Id.* The basis for all five of the weaknesses was that the agency determined there was a mismatch between Kord's proposed technical approach

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<sup>6</sup> Prior to the filing of the agency report, the agency requested dismissal of some of Kord's protest grounds. We granted that request in part and dismissed Kord's allegations that the agency failed to properly implement corrective action; disparately evaluated proposals; and failed to adequately consider an organizational conflict of interest. We determined that the first two allegations were speculative, while the third was premature because the agency had not yet made an award. Kord also raises a number of allegations tangential to the ones listed above, including an allegation that the agency did not evaluate whether proposals met or exceeded the PWS requirements. We have reviewed all of Kord's arguments and conclude that none of them provides a basis to sustain this protest.

<sup>7</sup> The agency assessed one strength to Kord's proposal under the program management approach subfactor. AR, Tab 63, CRB at 34.

and its labor skill mix.<sup>8</sup> *Id.* at 35-41. The agency ultimately excluded Kord from the competitive range “because it is not among the most highly rated proposals” and “was the only offeror to receive yellow/marginal ratings and moderate risk ratings in any factor.” AR, Tab 64, Competitive Range Decision Document (CRDD) at 4.

#### Failure to Assess Strengths to Kord’s Proposal

As noted above, Kord contends that under the ARC technical and contract and program management factors, the agency failed to assess numerous strengths to various aspects of Kord’s proposal. The RFP defined a strength as “[a]n 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 [g]overnment during contract performance.” RFP § M-2.3.3. Based on this definition, Kord argues that “the question of whether a proposal ‘exceeds specified performance’ is an objective inquiry” and that “assigning strengths for features that exceed the solicitation’s minimum specified performance is not optional under the solicitation’s terms.” Protest at 29. Kord maintains that under the ARC technical and contract and program management factors, the agency failed to assess 17 unique strengths to aspects of Kord’s proposal that, if measured objectively, exceeded the solicitation’s requirements. Protest at 28-42; Comments & Supp. Protest at 4-22.

The agency counters that Kord’s interpretation of the RFP’s definition of a strength is incorrect. The agency contends that the assessment of a strength requires subjective review as to whether an aspect of the proposal will be advantageous to the government during contract performance; merely proposing to exceed the specified requirements by itself does not require the assessment of a strength. Memorandum of Law (MOL) at 19-20. We agree with the agency.

We have previously concluded that where a protester asserts that the agency should have credited as a strength certain aspects of the protester’s proposal that exceeded the RFP requirements, “the agency was not required to reach such a conclusion unless it also concluded that these features would be advantageous to the government.” *Avon Prot. Sys., Inc.*, B-411569.2, Nov. 13, 2015, 2016 CPD ¶ 33 at 8. Thus, we deny Kord’s claim that the agency was required to assess strengths to aspects of Kord’s proposal that allegedly exceeded the RFP’s specified requirements.

In addition, in reviewing protests challenging an agency’s evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency, but rather examines the record to determine whether the agency’s judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. *Native Energy & Tech., Inc.*, B-416783 *et al.*, Dec. 13, 2018, 2019 CPD ¶ 89 at 3-4. A protester’s disagreement with the agency’s evaluation and assessment, without more, does not establish that the evaluation was unreasonable.

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<sup>8</sup> Despite these weaknesses, the agency ultimately concluded that “Kord’s proposed labor skill-mix sufficiently covers all areas of the PWS.” AR, Tab 63, CRB at 33.

See *Centerra Group, LLC*, B-414768, B-414768.2, Sept. 11, 2017, 2017 CPD ¶ 284 at 9.

Here, the record reflects that the agency reasonably concluded that these 17 aspects of Kord's proposal did not merit a strength. See COS at 20-77. We address some representative samples below.<sup>9</sup>

Under the network and schedule management/asset allocation subfactor, Kord asserts that its proposal to integrate its [DELETED] tool [DELETED] with helpdesk functions while maintaining configuration control by using five industry best practices exceeded the requirements of PWS section 4.5(a).<sup>10</sup> Protest at 30. The agency responds that Kord's reliance on PWS section 4.5(a) is misplaced because this PWS section is not identified in the RFP as something that offerors should specifically address, or that would be evaluated by the agency under this subfactor. COS at 20-21. The agency also states that it determined that this aspect of Kord's proposal did not exceed the requirements in a way that was advantageous to the government, and therefore it did not assess a strength to this aspect of Kord's proposal. *Id.* at 21.

Based on our review of the record, we find the agency's conclusion unobjectionable. As noted above, the RFP included a cross reference matrix that identified specific PWS paragraphs that corresponded with each subfactor. For the network and schedule management/asset allocation subfactor, PWS paragraph 4.5(a) was not listed in that matrix. Thus, it was reasonable for the agency to determine that this aspect of Kord's proposal did not provide a strength since it concerned a PWS section that the RFP did not require offerors to address or the agency to evaluate.<sup>11</sup> Moreover, the RFP stated that under this subfactor the agency would evaluate an offeror's approach to "[e]xecute help desk functions as a method of ensuring configuration control, test asset management/metrics, and incident recovery." Kord has not shown how its proposed

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<sup>9</sup> Although we discuss only 4 of the 17 alleged strengths, we have considered all 17 purported strengths in resolving the protest, and found that the agency reasonably concluded that none of them deserved to be assessed a strength.

<sup>10</sup> Section 4.5(a) of the PWS required the contractor to "plan, implement, and operate the ARC [in accordance with] the [i]nformation [t]echnology [i]nfrastructure [l]ibrary [(ITIL)] standards." PWS § 4.5(a). One of the five best industry practices proposed by Kord was the use of ITIL-based processes and tools. Protest at 30.

<sup>11</sup> We also note that Kord's proposed approach to use ITIL-based processes and tools as one of the five best industry practices appears only to meet, but not exceed, the requirement in PWS section 4.5(a) that requires offerors to operate the ARC in accordance with ITIL standards.

approach exceeded this evaluation criterion in a way that would be advantageous to the agency. Accordingly, we find the evaluation reasonable.<sup>12</sup>

As another example, under the test support subfactor, Kord asserts that it exceeded the requirements of PWS section 6.3.<sup>13</sup> The protester contends that it exceeded this section of the solicitation by proposing test event certification (TEC) and development of certification data packages (CDP) approaches that have already been implemented in the ARC, and a “comprehensive step-by-step process with timelines,” which would “eliminate the risk of incomplete or inaccurate test certification packages, delays in formal test schedules and invalid test configurations.” Protest at 33. The agency responds that it evaluated this aspect of Kord’s proposal and determined that it “provides enough supporting data to demonstrate an adequate understanding and a sound approach but did not meet the RFP’s definition of a strength.” COS at 36.

The record supports the agency’s argument. Under the test support subfactor, the RFP stated that the agency would evaluate whether the proposal demonstrated an understanding and sound approach to TEC and development of CDPs. RFP § M-6.2. Consistent with the RFP, the agency’s evaluation found that “Kord adequately demonstrated an understanding and sound approach to test support, including integration and network set-up for test event configuration . . . and development of [c]ertification [d]ata [p]ackages.” AR, Tab 63, CRB at 37. It also found that Kord “proposed a six-step process to support test integration and network set-up, developmental and [integrated master test plan] formal test, and real-world events simultaneously.” *Id.* Thus, the record shows that the agency considered Kord’s approaches to the TEC process and development of CDPs, including Kord’s step-by-step processes, and determined that Kord’s proposal adequately met the requirements, but did not amount to a strength. Based on this record, we find nothing objectionable about this conclusion.

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<sup>12</sup> With respect to this alleged strength, and a number of others, Kord argues that the evaluation was unreasonable because the record does not contain a discussion of why the agency did not find that particular aspect of Kord’s proposal to be a strength. See Comments at 7-22. An agency is not required to document every single aspect of its evaluation or explain why a proposal did not receive a strength for a particular feature. *22nd Century Techs., Inc.*, B-417336, B-417336.2, May 24, 2019, 2019 CPD ¶ 198 at 5; *InnovaSystems Int’l, LLC*, B-417215 *et al.*, Apr. 3, 2019, 2019 CPD ¶ 159 at 10. The protester’s contention that these aspects of its proposal deserved strengths does not provide a basis to conclude that the agency’s evaluation was unreasonable.

<sup>13</sup> Section 6.3 of the PWS required the contractor to “support [t]est [e]vent [c]ertification (TECs) process and activities . . . and ensure formal certification is received prior to test execution . . . [and] develop [c]ertification [d]ata [p]ackages (CDPs) of ARC assets in support of formal ground tests.” PWS § 6.3.

Under the cybersecurity subfactor, Kord contends that it proposed to scan for network vulnerabilities four times more frequently than the RFP required. Kord explains that it proposed this approach so that “[v]ulnerabilities are mitigated more rapidly, reducing cyber risk to the government” which exceeded the requirements of PWS section 5.1.<sup>14</sup> Protest at 37. The agency responds that Kord’s proposal merely restated the guidance provided in the PWS, and did not state that Kord would conduct vulnerability scans four times more frequently than required. COS at 46-47. The agency also maintains that it evaluated Kord’s proposal consistent with the RFP and determined that it demonstrated an understanding and sound approach to this aspect of cybersecurity compliance, but did not exceed requirements in a way that would be advantageous to the agency. *Id.* at 47.

The record confirms the agency’s argument. For the cybersecurity factor, the RFP stated that the agency would evaluate the offeror’s approach to “[c]ybersecurity compliance and expertise in the areas of [r]isk [m]anagement [f]ramework as it relates to [information technology (IT)] [i]nfrastructure and networks.” RFP § M-6.3(c). As relevant here, Kord’s proposal stated that it would “perform a system wide analysis of the IT systems . . . for vulnerabilities weekly and monthly.” AR, Tab 59, Kord Proposal Vol. VI, ARC Technical at 25. The agency’s evaluation determined that Kord “proposed to . . . monitor ARC networks for vulnerabilities, intrusions, and alerts” but did not conclude that Kord’s approach merited a strength. AR, Tab 63, CRD at 39.

Thus, the record confirms that Kord’s proposal indicated that Kord would meet the PWS requirements, but did not state that Kord would scan for network vulnerabilities four times more frequently than required.<sup>15</sup> Moreover, the agency evaluated this aspect of Kord’s approach and concluded it did not merit a strength. Based on this record, we find the agency’s evaluation to be reasonable.

Finally, under the program management approach subfactor of the contract and program management factor, Kord contends that its proposal to implement [DELETED], its cost accounting tool; plan, do, check, act framework; and its configuration management plan “to monitor, manage, assess, and optimize resource allocation,” exceeded the requirements of PWS section 3.1(a).<sup>16</sup> Protest at 40; *see also* AR, Tab 60, Kord Prop. Vol. II, Management at 5. The agency responds that it found that

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<sup>14</sup> Section 5.1 of the PWS required the contractor to “perform a system wide analysis every week on all IT systems and infrastructure to identify vulnerabilities and implement risk mitigation recommendations” and to “scan and monitor all networks for vulnerabilities, intrusions, and alerts.” PWS § 5.1(b), (c).

<sup>15</sup> Kord did not refute the agency’s contention that Kord’s proposal merely restated the PWS requirements. Comments & Supp. Protest at 16.

<sup>16</sup> Section 3.1(a) of the PWS required the contractor to “manage and maintain program cost, schedule, performance, risk, subcontracts, vendors, test assets and associated maintenance agreements, infrastructure, and data to sustain ARC operations” and to maintain a program management plan. PWS § 3.1(a).

this aspect of Kord's proposal met the requirements for this subfactor, but did not merit a strength. COS at 61-62.

Again, the record supports the agency's position. As relevant here, for the program management approach subfactor, the RFP stated that the agency would evaluate the offeror's approach to managing cost, schedule, and technical performance. RFP § M-7.1. The agency's evaluation concluded that Kord's proposal indicated a thorough understanding of the requirements for this subfactor, and would provide efficiencies in managing schedule, technical and cost "using [DELETED]; plan, do, check, act . . . framework; configuration management system . . .; ARC Integrated Master Schedule . . .; and the program management plan as the basis to monitor, manage, assess, and optimize resource allocation." AR, Tab 63, CRD at 43. Thus, the record shows that the agency considered and evaluated this aspect of Kord's proposal but did not determine that it rose to the level of a strength. Based on this record, we find the agency's evaluation reasonable.

Kord also generally argues that the work that it and its proposed subcontractor have performed on the incumbent contract is objective evidence that the government has already determined that many of the 17 alleged strengths would be advantageous to the government.<sup>17</sup> Protest at 29-40; Comments & Supp. Protest at 4-20. In this regard, Kord relies on contract performance assessment reporting system (CPARS) reviews of Kord's and its proposed subcontractor's performance on the incumbent contract, which Kord contends show that the agency already determined that certain aspects of Kord's proposal were advantageous to the agency. See *id.* The agency argues that prior contract performance was evaluated under the past performance factor, and that it would have been improper for the agency to evaluate prior performance under the ARC technical and contract and program management factors. MOL at 20-21. We agree with the agency.

The RFP included a past performance evaluation factor under which the agency would evaluate an offeror's "demonstrated recent and relevant record of performance, and quality of performance." RFP § M-5.0. As explained above, for the ARC technical and contract and program management factors, the RFP stated that the agency would evaluate the offeror's proposed approach to certain identified activities, but did not state that the agency would consider prior performance. Thus, the RFP made clear that prior performance would be evaluated under the past performance factor, not the ARC technical or contract and program management factors.

The RFP also warned that "[o]fferors shall assume that the [g]overnment has no prior knowledge of their experience and will base its evaluation on the information presented in the offeror's proposal." *Id.* § L-3.2. The CPARS reviews referenced in Kord's protest

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<sup>17</sup> Kord performs as a subcontractor to prime contractor COLSA Corporation on the current ARC support contract. Protest at 18. For this procurement, Kord would perform as the prime contractor and has proposed COLSA as a subcontractor. *Id.*

were not included in Kord's proposal volumes addressing the ARC technical and contract and program management factors. Thus, the agency acted reasonably in not considering Kord's or its subcontractor's performance on the incumbent contract when evaluating the ARC technical and contract and program management factors.<sup>18</sup>

### Unreasonable Assessment of Weaknesses

As noted above, the agency assessed five weaknesses to Kord's proposal under the ARC technical factor due to a mismatch in Kord's proposed approach and its proposed labor and skill mix. Kord contends that none of the weaknesses are supported by the record.<sup>19</sup> Based on our review of the record, we find the agency's assessment of all the weaknesses was reasonable.<sup>20</sup>

For example, one weakness assessed under the network and schedule management/asset allocation subfactor was as follows:

Kord's proposed labor hours/skill mix does not match the approach for [s]ection M-6.1(b) because Kord proposed to develop the [DELETED] and the [DELETED] tools but did not include any experienced personnel that would possess the required skills to do so (no software or database developers and insufficient experienced engineers). Not having properly skilled personnel to build the innovative tools proposed can delay or eliminate Kord's ability to perform the increasingly complex scheduling, configuration management, and asset de-confliction tasks.

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<sup>18</sup> Moreover, even if the CPARS reviews showed that the agency had found any aspect of Kord's proposal to be beneficial or advantageous for performance of that contract, this does not require the agency to come to the same conclusion in its evaluation of Kord's proposal.

<sup>19</sup> Kord also argues that the agency cannot reconcile the five weaknesses for labor skill mix mismatches with its finding that "Kord's proposed labor skill-mix sufficiently covers all areas of the PWS." Comments & Supp. Protest at 24-30. Here, each weakness was assigned because the agency determined that the proposed skill mix for certain aspects of Kord's proposed technical approach did not include enough experienced personnel to perform complex tasks, which increased the risk of unsuccessful performance. AR, Tab 63, CRD at 36, 38, 40-41. According to the RFP, a weakness meant the agency determined that there was a "flaw in the proposal that increases the risk of unsuccessful contract performance"; not that the offeror failed to propose a sufficient skill-mix to generally perform the work. RFP § M-2.3.3. Thus, the assessment of these five weaknesses is not inconsistent with a finding that Kord generally proposed a skill mix that sufficiently covers all areas of the PWS.

<sup>20</sup> Although we discuss only two of the five weaknesses, we have considered all of them in resolving the protest, and find that the agency reasonably assessed all five weaknesses.

AR, Tab 63, CRD at 36.

Kord argues that this weakness was irrational for two reasons. First, the [DELETED] tool is a solution that was implemented on the incumbent contract during this procurement and therefore there is no risk of delay in developing it. Protest at 49. Second, Kord's proposal did include a number of experienced database and software developers and engineers, which are more than sufficient to develop the [DELETED]. *Id.*

The agency responds that Kord's proposal did not explain that the [DELETED] tool had been implemented during performance of the incumbent effort, and discussed the tool as something that Kord would develop for the solicited procurement. COS at 86. With respect to the [DELETED], the agency explains that development of the tools at issue here corresponded with the requirements of PWS section 4.0, and that the part of Kord's proposal providing its skill mix to meet the PWS section 4.0 requirements did not include any software or database developers. *Id.* The software and database developers Kord refers to in its protest were proposed to support the work under PWS paragraph 6.0, and therefore Kord cannot now rely on them to argue it proposed sufficient personnel to develop these tools. *Id.* at 86-87.

We agree with the agency. Under RFP section M-6.1(b), the agency would evaluate the offeror's approach to "[i]nnovation through tool development for scheduling, configuration management, and asset de-confliction." RFP § M-6.1(b). As explained above, the cross reference matrix in the RFP identified certain parts of PWS section 4.0 that corresponded to this evaluation criterion. *Id.* § L-6.2. In particular, PWS section 4.1.1(b) required the contractor to "develop a tool for scheduling, configuration management, asset de-confliction and system availability."<sup>21</sup> PWS § 4.1.1(b).

With respect to the [DELETED] tool, Kord's proposal stated that the "[DELETED] will be a Microsoft Project-based tool" and explained the functions that the [DELETED] will have. AR, Tab 59, Kord Prop. Vol. VI, Technical at 4. Thus, Kord's proposal anticipated future development of the [DELETED] tool, and as the agency noted, the proposal did not state that the [DELETED] tool had already been implemented. With respect to the [DELETED] tool, Kord's total resources volume presented its proposed labor skill mix by PWS section. For example, the volume identified a particular PWS section and then explained the basis of estimate and proposed skill mix needed to meet the requirements of that particular PWS section. In the section of its total resources volume addressing PWS section 4.0, Kord did not propose any software or database developers. AR, Tab 62, Kord Prop. Vol. IX, Total Resources at 15-17. While Kord did propose developers, it proposed these developers in the section of the total resources volume which addressed the requirements of PWS section 6.0. *Id.* at 39-41.

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<sup>21</sup> Section 6.0 of the PWS addressed test support, and corresponded with the test support subfactor. PWS § 6.0; RFP § L-6.2.

Offerors bear the burden of submitting adequately written proposals, and contracting agencies evaluating one section of a proposal are not obligated to go in search of needed information which the offeror has omitted or failed to adequately present. *Robert F. Hyland & Sons, LLC*, B-408940, Dec. 19, 2013, 2013 CPD ¶ 296 at 3. As noted above, the RFP also stated that “[o]fferors shall assume that the [g]overnment has no prior knowledge of their experience and will base its evaluation on the information presented in the offeror’s proposal.” RFP § L-3.2.

Based on our review of the record, we find the assessment of this weakness to be reasonable. The RFP made clear that the agency would evaluate the information contained in the offeror’s proposal. As the agency noted, Kord’s proposal did not state that the [DELETED] tool had already been implemented. In addition, Kord’s proposal did not include any software or database developers in the skill mix to meet the requirements of the corresponding PWS section that addressed development of the [DELETED] and [DELETED] tools. Accordingly, based on Kord’s proposal, the agency reasonably determined that Kord had not proposed an adequate skill mix to develop these two tools, and reasonably assessed a weakness.

As another example of a weakness that Kord contests, under the cybersecurity subfactor, the agency assessed the following weakness:

Kord’s proposed labor hours/skill mix does not match the approach for [s]ection M-6.3(a) because there are not enough experienced personnel or the right skill set mix to accomplish the tasks identified. Kord proposed a [security technical implementation guides (STIG)] implementation approach and an incident response methodology that requires experienced personnel to accomplish, but Kord proposed to staff primarily inexperienced level 1 cyber security/[information assurance (IA)] personnel and security specialists . . . . Indeed, 69% of proposed hours for the cyber security/IA labor category are level 1 inexperienced personnel that would not possess the required experience to attain certifications needed to complete these tasks per [Department of Defense (DOD) Directive] 8570.01-M. And for incident response tasks, additional computer network defense - incident response . . . certifications are required that cannot be attained without years of experience. This leaves less than 3 [full-time employees (FTEs)] available to complete the more difficult tasks associated with STIGs and incident response and this may not be enough to meet the demand. This flaw increases the risk of unsuccessful contract performance because it can place the security of the ARC at risk.

AR, Tab 63, CRD at 40.

Kord argues that this weakness was irrational because the STIG task duties can be performed by a variety of labor categories, not just the cyber security/IA and security specialists, and Kord proposed a mix of these specialists in its STIG implementation approach. Protest at 51-52. Kord also asserts that its proposal expressly stated that all

staff would maintain certifications in accordance with DOD Directive 8570.01-M, and therefore the agency's determination that Kord's personnel would not be able to possess these certifications is incorrect. *Id.* at 53.

The agency responds that Kord's protest focuses solely on the STIG implementation and does not address the agency's concerns regarding incident response. COS at 92. In this regard, the agency acknowledges that level 1 personnel could potentially perform STIG implementation, but explains that its concern was "with 69% of the skill-mix being [l]level 1 and only 3 FTE of more experienced personnel, there would not be enough experienced personnel to handle the more complex STIG implementation and incident response." *Id.*

Based on our review of the record, we find the agency's assessment of a weakness to be unobjectionable. The contemporaneous evaluation states that the basis for the weakness was because Kord proposed a high number of lower-skilled personnel and fewer than 3 experienced FTEs to complete the difficult complex tasks associated with both STIG implementation and incident response. Kord's protest focused primarily on STIG implementation, but did not address the agency's concerns with incident response. Thus, while Kord has provided evidence to refute the agency's statement that Kord's proposed personnel would not possess the required certifications under DOD Directive 8570.01-M, Kord has not demonstrated that the underlying concern--*i.e.*, not enough experienced personnel to perform complex tasks for both STIG implementation and incident response--was irrational.<sup>22</sup>

Kord also argues that the assessment of all five weaknesses violated the terms of the solicitation because skill mix was not a consideration under the ARC technical factor. Protest at 42-43; Comments & Supp. Protest at 22-23. The agency responds that the RFP informed offerors that skill mix would be considered under the ARC technical factor. MOL 22-23. We agree with the agency.

As noted above, the RFP instructed offerors to submit a total resources volume, which was to include the proposed labor and skill mix required for the work. RFP § L-13.0. For the evaluation of the ARC technical factor, the RFP explained that the "[t]otal [r]esource [v]olume will be used to ensure the offeror has a clear understanding of the work to be accomplished. The approach must also be accurately reflected in the [t]otal [r]esource [v]olume." *Id.* § M-6.0. Thus, the RFP made clear that as part of its

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<sup>22</sup> Kord also contends that the agency's explanation for this weakness in the contracting officer's statement is an "alternative argument" that is not supported by the record. Comments & Supp. Protest at 29. We disagree. The agency's explanation that the concern was because Kord's proposed skill mix was 69 percent of level 1 personnel and only 3 FTE of more experienced personnel is consistent with the underlying evaluation record that "69% of proposed hours . . . are level 1 inexperienced personnel" and that this approach "leaves less than 3 FTEs available to complete the more difficult tasks associated with STIGs and incident response and this may not be enough to meet the demand."

evaluation of the ARC technical factor, the agency would evaluate the total resources volume, which included the proposed labor skill mix to perform the requirements, to confirm that the offeror has a clear understanding of the work to be accomplished. Given this RFP language, we find it reasonable and consistent with the solicitation that the agency evaluated under the ARC technical factor whether Kord's proposed skill mix matched its proposed technical approach. This protest ground is denied.

#### Failure to Conduct Meaningful Discussions

Kord also asserts that the agency failed to conduct meaningful discussions. We find this argument untimely. As explained above, in this procurement the agency previously evaluated proposals and made an award in June 2019, which Kord protested to our Office. The agency took corrective action and gave offerors an opportunity to submit FPRs. Kord submitted an FPR in November 2019, but made no changes to the skill mix proposed to develop the [DELETED] and [DELETED] tools. Comments & Supp. Protest at 26-27. Given this history, Kord argues that the weakness assessed for the failure to propose software and database developers to develop these tools shows that the agency failed to conduct meaningful discussions. *Id.* Kord asserts that this weakness was obvious in Kord's previously evaluated proposal, and "[b]ecause the [a]gency held discussions with Kord under the previous evaluation and never identified the failure to include any software or hardware developers specific to PWS [p]aragraph 4.0 . . . as a weakness, the [a]gency is prohibited from now asserting it as a weakness for the first time on reevaluation." *Id.*

Under our Bid Protest Regulations, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Where a protester initially files a timely protest, and later supplements it with new grounds of protest, the later-raised allegations must independently satisfy our timeliness requirements, since our regulations do not contemplate the piecemeal presentation or development of protest issues. *Vigor Shipyards, Inc.*, B-409635, June 5, 2014, 2014 CPD ¶ 170 at 5.

We dismiss this allegation as untimely. During the debriefing in April 2020, Kord learned that the agency had assessed a weakness to Kord's proposal for the failure to include software or database developers to develop the [DELETED] and [DELETED] tools.<sup>23</sup> AR, Tab 74, Agency Responses to Kord Debrief Questions at 3. Thus, Kord knew at that time that the agency had assessed a weakness to a part of its proposal that Kord had not changed in its November 2019 FPR, and that the agency had previously evaluated but had not assessed a weakness. Accordingly, to be timely, Kord

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<sup>23</sup> In response to debriefing questions from Kord, the agency provided Kord with the same explanation for the weakness that was in the contemporaneous evaluation record. *Compare* AR, Tab 74, Agency Responses to Kord Debrief Questions at 3 *with* AR, Tab 63, CRB at 36.

had to raise this issue in its initial protest. However, Kord raised this issue in a supplemental protest filed after the agency report and well over 10 days after the debriefing was closed.<sup>24</sup> Comments & Supp. Protest at 26-27. As a result, we dismiss this protest ground as untimely.<sup>25</sup>

### Evaluation of Cost Realism

Kord contends the agency's cost realism evaluation was unreasonable.<sup>26</sup> The agency counters that Kord has not demonstrated that it was prejudiced by any error in the cost realism evaluation because the agency excluded Kord from the competitive range as a result of its low technical ratings. Thus, even if Kord was correct that the cost realism evaluation was erroneous, it still would have been eliminated from award due to its technical ratings. We agree with the agency.

Competitive prejudice is an essential element of every viable protest, and where none is shown or otherwise evident, we will not sustain a protest, even if a protester may have shown that an agency's actions arguably were improper. *REG Prods., LLC*, B-414638, July 3, 2017, 2017 CPD ¶ 213 at 3.

As explained above, the agency excluded Kord from the competitive range because it was not among the most highly rated proposals and "was the only offeror to receive yellow/marginal ratings and moderate risk ratings in any factor." AR, Tab 64, CRDD at 4. As also explained above, we find that the agency's evaluation of Kord's proposal was reasonable. Thus, based on the record before us, Kord has not demonstrated that any alleged errors in the cost evaluation were prejudicial because Kord still would be the only offeror to receive marginal and moderate risk ratings and therefore still would

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<sup>24</sup> While Kord's initial protest challenged the assessment of this weakness as irrational, it did not also argue that the weakness demonstrated a lack of meaningful discussions.

<sup>25</sup> Kord argues that it timely raised this issue as a supplemental protest ground because the agency changed its justification for the weakness in the agency report, when it explained that the weakness was because Kord failed to include software and database developers in the correct section of its proposal. Supp. Comments, June 29, 2020, at 7. We disagree. The agency's explanation that Kord failed to include developers in the correct section of its proposal was made in response to Kord's claim in its protest that it had proposed developers. Thus, the agency did not change its justification but rather demonstrated--correctly--that Kord's contention that it had proposed developers relied on a part of its proposal that was not relevant to the evaluation of the skill mix for tool development.

<sup>26</sup> Kord specifically argues that nothing in the record justified the agency's upward adjustment to Kord's proposed cost, and that the agency's cost comparison technique was irrational. Comments & Supp. Protest at 32-35.

have been eliminated from the competitive range.<sup>27</sup> As a result, we find no basis to sustain this protest allegation.

#### Cancellation or Amendment of the Solicitation

In a letter dated June 4, 2020, the agency requested that COLSA, the current incumbent contractor and Kord's proposed subcontractor, provide information about the networks and information systems operated and maintained by COLSA under the incumbent contract. Supp. Protest, attach. A, Letter from MDA to COLSA, June 4, 2020. In a subsequent letter, the agency further explained that it needed this information because "[a] decision has been made by MDA leadership that IC will be the provider of IT services. This data will be used for planning and program realignment purposes."<sup>28</sup> Supp. Protest, attach. C, Letter from MDA to COLSA, June 25, 2020.

Based solely on these letters, Kord argues that the agency's decision to have IC provide IT services will result in a 50% reduction in the requirements in the RFP, and that as a result the agency should either cancel or amend the solicitation. Supp. Protest at 14-23. The agency responds that it is moving IT services to IC as part of an internal reorganization, and that the "[a]gency's requirements for ARC support have not changed due to the decision to have the ARC networks managed by IC." COS, July 8, 2020, at 3. The agency also states that "MDA's requirements for the ARC [c]ontract are accurately reflected in the ARC [s]olicitation and have not changed." *Id.* at 4; MOL, July 8, 2020, at 4-5.

It is well-established that a procuring agency is in the best position to determine its own needs and the best method for accommodating them, and our Office will not question that determination absent clear evidence that it is unreasonable. *ATA Aerospace, LLC*, B-417427.2, Mar. 6, 2020, 2020 CPD ¶ 96 at 9. In response to this allegation, the agency has stated multiple times that its requirements have not changed and that the current solicitation accurately reflects its needs. Kord has not provided any evidence to discredit these statements. Kord relies solely on the letters sent to COLSA as proof that the agency's requirements have materially changed. However, the letters merely indicate that the agency intends to have IC provide IT services, and that the agency needed data from COLSA for planning and program realignment purposes; they do not establish that the agency's needs have changed. Thus, the protester has not provided persuasive evidence to support its claim that the agency's needs have changed, especially where, as here, the agency has affirmatively stated that they have not. This protest ground is denied.

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<sup>27</sup> We note that the agency made an upward adjustment to the other two offerors' proposed costs, and that Kord's initial proposed price was higher than both of the other two offerors' probable costs. AR, Tab 64, CRDD at 3.

<sup>28</sup> The agency explained that "IC" referred to an organization within MDA, led by the Chief Information Officer, which is responsible for management of the MDA networks. COS, July 8, 2020, at 2-3.

The protest is denied.

Thomas H. Armstrong  
General Counsel